

STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING

August 9, 2005

Case No. 05.046H, *Parent & Parent v. Maine School Administrative District No. 17*

REPRESENTING THE FAMILY: The family appeared *pro se*.

REPRESENTNG [sic] THE SCHOOL: Marjorie Grey [sic], Director of Special
Education, MSAD #17

HEARING OFFICER: Peter H. Stewart, Esq.

INTRODUCTION

This special education due process hearing has been conducted, and this decision has been written, pursuant to state and federal special education law, 20-A MRSA 7202 *et seq.* and 20 USC 1415 *et seq.*, and the regulations accompanying each.

The family initiated this hearing by filing a Dispute Request Resolution Form with the Due Process Office of the Maine Department of Education on May 6, 2005, on behalf of their son (DOB: xx/xx/xxxx), who is a student in the Fox Elementary School in MSAD #17. The student lives with his parents within MSAD #17 and is eligible for special education services under the category of multiple disabilities.¹

The dispute in this matter concerns the transportation that the school offered to the student since his enrollment in the fall of 2004. Prior to the family’s move to Maine in the fall of 2004, the student had been attending [sic] school in Massachusetts that had identified him as eligible for special education services and developed an individualized education plan (IEP) for him. That IEP provided, *inter alia*, that the student be transported to and from school “on a regular transportation vehicle...” described only as a “van daily”. The school offered to transport the student between home and school in a small school bus but did not offer a van. The family rejected the school’s various offers of transportation and drove their son to school in their own vehicle. The parent’s [sic]

¹ The student was determined eligible under the category of multiple disabilities by the Massachusetts school he attended prior to moving to Maine.

claim here is that the MSAD #17 did not provide transportation to the student that was “consistent with the ...[IEP]...developed at the previous school...” Maine Special Education Regulations, Ch 101, 10.9. Further, the parents seek reimbursement for costs associated with their transport of the student to and from school. The school asserts that, at all times relevant to this proceeding, the transportation services it offered to the student were both safe and appropriate, and in compliance with relevant state and federal special education law and regulations.

The hearing officer conducted a pre-hearing conference on June 6 and a hearing on June 17, 2005. Three witnesses testified at the hearing. The family entered documents identified at Parent’s [sic] Exhibits P-1 through P-32 into the record. The parent’s [sic] documents include a series of photographs entered as P-16. The school entered documents identified as School Exhibits S-1 through S-12 into the record. The parties agreed to submit written closing arguments, due to be postmarked on or before June 27, 2005. The hearing officer received the school’s argument within that time period but did not receive any post-hearing statement from the family. The hearing officer closed the record on July 22, 2005.

ISSUES

The issue to be resolved in this matter is:

Whether the transportation services offered by the school to the student since his enrollment in the fall of 2004 were in compliance with state and federal special education law and regulations?

FACTUAL FINDINGS

- 1) The family initiated this hearing by filing a Dispute Resolution Request Form with the Maine Department of Education on May 6, 2005, on behalf of their son (DOB: xx/xx/xxxx) who is a student at the Fox Elementary School in MSAD #17. The student lives with his parents within MSAD #17 and is eligible for special education services under the category of multiple disabilities. (Record, P-1)
- 2) The student enrolled in the Fox Elementary School in the fall of 2004. He had already been identified as eligible for special education services by a prior school district in Massachusetts that had developed an IEP for him. The

Massachusetts IEP provided that he be transported to and from school “on a regular transportation vehicle” described only as a “van daily”[sic] (Record, P-21)

- 3) The school scheduled an initial PET meeting on December 21, 2004. That meeting was rescheduled at the request of the parents until January 13, 2005. From the time of the student’s enrollment in the Fox Elementary School through the February 7 mediation session, the school offered the student transportation on a small school bus of either 10-15 or 30-35 passenger capacity. That mediation session was resolved upon agreement that the school would transport the student on a small bus with preferential seating, effective on or before February 14, 2005. The school could not make a small bus available by February 14; it contracted with a local provider to transport the student to school individually. From February 14 through the end of the school year, the school offered the student daily transportation to and from school either on Bus #44, a 30-35 passenger bus, or individually via contract with the local provider. As a general rule, the parents declined to use the transportation offered by the school and, instead, drove the student to school in the morning and picked him up in the afternoon. The school never asked the parents to transport the student to or from school. In MSAD #17, the regular size school bus has a capacity of about 78 passengers; that is the largest bus operated by the school. All other buses or vans are smaller than the “regular” buses, and are referred to as “small” buses. (Testimony of Luff, Eastman, Damon; Record, P-5)

DISCUSSION

The parents first argue that the student, when he enrolled in the Fox Elementary School in the fall of 2004, was not offered “small bus or van transportation” because the IEP under which he was receiving special education services in Massachusetts called for him to be transported to school in a “van daily.” (P-15 and 21) The evidence admitted into the record in this matter does not support this argument. Unrebutted testimony of witnesses from MSAD #17 establishes that the school offered to transport the student in small buses or automobiles to and from school throughout the period from his enrollment

in late 2004 to the end of the school year in June of 2005,[sic] The small buses had a capacity of between 10-15 to 30-35 passengers. According to the nomenclature used by MSAD # 17 to describe its fleet of buses, the big yellow school buses we all see on the roads during the school year are referred to as “large buses”; they carry about 78 passengers. All other buses are considered “small buses” because their capacity is smaller than the “large” buses. The school’s offer of transportation included preferential seating for the student, up front near the driver, with instructions that the driver pay particular attention to the student. The hearing officer finds that this uncontradicted evidence describes transportation that is both safe and suitable, and that is also in substantial compliance with any obligation the school may have had as a result of the student’s Massachusetts IEP.

The parents next argue that the transportation offered by the school after the mediation session on February 7 did not comply with the terms of the mediation agreement reached by the parties which stated, in relevant part, that the student “will be transported daily to and from school by MSAD #17...[in a]...small bus with preferential seating.” (P-5). Because it could not make a small bus available by the effective date of the agreement, February 14th, the school contracted with a local company to transport the student individually in an automobile until a “small bus” or van became available. The family rejected this offer as well. The hearing officer determines that the school has complied with the mediation agreement by offering the student transportation in Bus #44, a small bus with a capacity of 30-35 students, and by providing individual transportation via contract for a short period of time until Bus #44 became available.²

Finally, the family seeks reimbursement for expenses it incurred while transporting the student to and from school. Maine Special Education Regulations, Ch. 101, 6.17, Transportation – Special Education, describes conditions under which it is possible for parents to be reimbursed for transporting a special education student to and from school: “If the parent with whom a student with a disability is living has been asked and has agreed to transport the student to and/or from school...the administrative unit

² The fact that the family refused to allow the student to travel on Bus #44 after it had become available reduces the significance of any short-term inability to provide a “small” bus.

shall reimburse the parent for mileage and necessary travel expenses....'[sic] However, under the facts of the present matter, these parents do not qualify for reimbursement because the evidence shows that they were never "asked" by the school to provide transportation to the student. Rather, the only conclusion the evidence can support is that the parents rejected every offer of transportation made by the school from the date of the student's enrollment onward and chose to drive their son to school themselves. Under these circumstances, the parents are not entitled to any reimbursement.

The hearing officer finds that the school offered the student suitable transportation to and from school in one of the smaller school buses in its fleet, with a capacity of between 12 [sic]-15 to 30-35 passengers,³ at all times relevant to this proceeding. While the student occasionally used the transportation offered by the school, the family generally rejected these services because they wanted the school to transport the student in a small van, and not in a small bus. Rather than use any of the transportation options offered by the school, the family chose to drive the student to and from school in their own vehicle. While the family is free to choose this method of transporting their son, the school is not thereby obligated to reimburse the family for expenses incurred as a result of that choice.

The hearing officer determines that, under the circumstances presented here, the transportation offered by the school to the student, from the time of his enrollment in the fall of 2004 onward, was both safe and appropriate. The hearing officer further determines that the transportation offered by the school to the student was in full compliance with the relevant provisions of state and federal special education law and regulations at all times relevant to this case. The family's request for reimbursement for expenses incurred when transporting the student to and from school is denied.

ORDER

Since no violation was found in this matter, there is no need to issue any order.

³ Or, for a short time after the February 7th mediation session, in an automobile operated by a local contractor of the school.

Peter H. Stewart
Hearing Officer

Date

WITNESSES

Mark S. Eastman, Superintendent, MSAD #17

Billie Lou Damon, Special Education Teacher, MSAD #17

Timothy Luff, Assistant Director of Special Education, MSAD #17

DOCUMENTS

Parents Exhibits P-1 to P-33

School Exhibits S-1 to S-20