

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, N.E., 3rd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
February 04, 2024

PARENT, on behalf of)	
STUDENT,)	Date Issued: February 4, 2024
)	
Petitioner,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2023-0197
)	
DC OFFICE OF THE STATE)	Online Videoconference Hearing
SUPERINTENDENT OF EDUCATION,)	
)	Hearing Date: January 29, 2024
Respondent.)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner (PARENT or MOTHER) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (DCMR). In this administrative due process proceeding, the Parent alleges that Respondent D.C. Office of the State Superintendent of Education (OSSE) denied her child a free appropriate public education (FAPE) in the 2022-2023 and 2023-2024 school years by failing to provide consistent special education transportation services and by not providing transportation information and notices in the Parent’s native language, Spanish.

Petitioner’s due process complaint, filed on October 6, 2023, named OSSE as respondent. The undersigned hearing officer was appointed on October 10, 2023. On October 24, 2023, I convened a videoconference prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters.

On October 24, 2023, I issued an order granting OSSE's partial motion to dismiss and dismissed Petitioner's claims against OSSE for systemic relief and claims made on behalf of similarly situated students in the District.

On November 7, 2023, I granted Petitioner unopposed motion for a continuance to extend the final decision due date to December 15, 2023. On December 13, 2023, I granted OSSE's unopposed motion to further extend the final decision due date to February 16, 2024.

With the Parent's consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on January 29, 2024. Parent appeared online for the hearing and was represented by PETITIONER'S COUNSEL 1, PETITIONER'S COUNSEL 2 and PETITIONER'S COUNSEL 3. Respondent OSSE was represented by OSSE'S COUNSEL. Spanish language interpretation was provided for the Parent. For the testimony of the Parent, a consecutive interpreter was provided. The rest of the hearing was interpreted simultaneously.

PETITIONER'S COUNSEL 2 and OSSE'S COUNSEL made opening statements. Parent testified and called EDUCATIONAL CONSULTANT as an additional witness. OSSE called RESOURCE CENTER MANAGER as its only witness. Petitioner's Exhibits P-2 through P-125 were admitted into evidence without objection, with the exception of Exhibits P-81, P-83, P-85, P-87, P-89, P-91, P-93, P-95, P-103 and P-104, which were

withdrawn. OSSE's Exhibits R-1 through R-10 were admitted into evidence without objection. Following the taking of the evidence, counsel for the respective parties made oral closing arguments. There was no request to submit written closings.

JURISDICTION

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-A, § 3049.1.

ISSUES AND RELIEF SOUGHT

The issues for determination, set out in the October 24, 2023 Prehearing Order, are:

Whether in the 2022-2023 and 2023-2024 school years, OSSE denied the student free appropriate public education (FAPE) by failing to implement the special education transportation provision in student's IEPs to provide consistent, safe and reliable transportation for the student to and from CITY SCHOOL;

Whether in the 2022-2023 and 2023-2024 school years, OSSE denied the student FAPE by failing to provide the parent with significant and important communications, information and notices in her native language.

For relief, Petitioner originally requested that the hearing officer order OSSE to provide consistent, reliable, and appropriate transportation for the student to and from school in conformity with the student's IEP, and ensure that the student would not be marked absent from school for the days OSSE does not provide transportation; Order OSSE to authorize comprehensive independent educational evaluations for the student, including but not limited to vocational, psychoeducational, speech-language, assistive technology, occupational therapy and neuropsychological evaluations; award the

student compensatory education services including tutoring and related services from a provider of Petitioner's choice and order OSSE to effectively communicate in the Spanish language with the parent regarding any changes to special education services and transportation including, but not limited to, changes to the student's route, delays, and cancellations.

At the due process hearing, the only relief sought by Petitioner's attorneys was for OSSE to be ordered to fund compensatory education for the harm to Student from missed school transportation and for OSSE to be ordered to find a way to communicate with the Parent, in her native language, about special education transportation services for Student.

FINDINGS OF FACT

After considering all of the evidence received at the due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE youth, resides with MOTHER in the District of Columbia. Testimony of Mother. Student is a "child with a disability," as defined by the IDEA, as having an Other Health Impairment (OHI). Exhibit P-24.
2. The source of Student's disability was an anoxic brain injury incurred in December 2011 following aspiration of a grape, occluding his/her airways for 10 minutes and causing cardiopulmonary arrest. Following his/her injury, Student stayed in the hospital for 2 months. Student's medical history includes anoxic encephalopathy, dysautonomia, dystonia, spasticity, axial hypotonia, stridor related to underlying

neurologic deficit, seizure disorder, quadriplegic cerebral palsy, osteoporosis and cortical vision impairment. Student is nonambulatory and is dependent for all mobility within the school and for all transitions and transfers. Student uses a wheelchair and is typically transferred via hoist lift with 2 people for changing and for positional relief.

Exhibit P-72. Student is non-verbal. His/her overall language skills are limited, resulting in the need for total support. His/her weaknesses in receptive language may manifest in the classroom as difficulty comprehending instruction and responding to curriculum-based questions. His/her low level of alertness may make it difficult for teachers to gain his/her attention for instruction. While Student can communicate pleasure and displeasure, he/she struggles to communicate his/her wants and needs. Frequently, the meaning of his/her self-expression is not clear, especially to less familiar communication partners. Exhibit P-73. Student has a gastric catheter for feeding/nutrition. Testimony of Mother.

3. Mother, a native Spanish speaker, does not speak or read English.

Testimony of Mother.

4. Since October 2015, Student has been enrolled in City School, a District of Columbia Public Schools (DCPS) school. Student's DCPS Individualized Education Programs (IEPs) have provided for, *inter alia*, special education transportation in an OSSE Department of Transportation (DOT) vehicle, with nursing assistance required for suction of the catheter. Exhibits P-1, P-2, P-3.

5. At all times concerned, OSSE DOT has been the regional transportation

system responsible for transporting eligible students with disabilities, in the District of Columbia, to and from school each day. Hearing Officer Notice.

6. OSSE stipulated on the record at the due process hearing that Petitioner is entitled to summary judgment that OSSE failed to provide school transportation for Student on 145 out of 180 school days in the 2022-2023 school year, Student missed school on those days and this resulted in a denial of FAPE to Student.

7. In the past, OSSE DOT has provided written communications, including text messages, only in the English language. OSSE provides a Parent Resource Center where parents may obtain interpretation in Spanish and other languages by telephone. However, at busy times, a parent may have to wait up to 45 minutes for the Parent Resource Center to supply an interpreter. Starting about January 2023, OSSE DOT has provided Spanish on its template, in addition to English, for text communications to all parents. Testimony of Parent Resource Center Manager.

8. Educational Consultant, who qualified as an expert in compensatory education in the District of Columbia, opined in his testimony, that based on Student's having missed 143 days of instruction in the 2022-2023 school year, the appropriate compensatory education remedy would be 572 hours of Specialized Instruction by a qualified tutor with experience working with students with low incidence disabilities, and training in visual integration deficits and visual impairment, 14 hours of physical therapy services, 4 hours of occupational therapy services, 11 hours of speech services and 7 hours of vision services. Testimony of Educational Consultant. OSSE, by counsel,

agrees with Educational Consultant's compensatory education recommendation.

Representation of OSSE's Counsel.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument of counsel, as well as this hearing officer's own legal research, my Conclusions of Law are as follows:

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Parent in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the child's IEP or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6). In this proceeding, the Parent has the burden of persuasion.

ANALYSIS

1. In the 2022-2023 and 2023-2024 school years, did OSSE deny Student a FAPE by failing to implement the special education transportation provision in student's IEPs to provide consistent, safe and reliable transportation for the student to and from CITY SCHOOL?

At the due process hearing, OSSE stipulated on the record that Petitioner is entitled to summary judgment that OSSE failed to provide school transportation for Student on 145 out of 180 school days in the 2022-2023 school year, that Student missed school on those days and that this resulted in a denial of FAPE to Student. Petitioner did not offer evidence of failure to implement special education transportation in the 2023-2024 school year. I find that Petitioner met her burden of persuasion that OSSE denied Student a FAPE by failing to provide special education transportation to Student on 145 school days in the 2022-2023 school year and that Student is entitled to compensatory education for that denial of FAPE.

2. In the 2022-2023 and 2023-2024 school years, did OSSE deny the student a FAPE by failing to provide the parent with significant and important communications information and notices in her native language.

OSSE DOT communicates primarily by text messages with parents. Until recent weeks, OSSE DOT has sent text message only in English. Mother's primarily language is Spanish and she does not speak or read English. OSSE also provides a telephonic interpreting service through its Parent Resource Center, but this interpreting facility may have lengthy wait times. This has resulted in Mother's not always having access to timely communications, in her native language, about transportation issues for Student. For example, in October 2022, Student had an accident on the school transportation van and when OSSE called Mother, she did not understand what was said because the caller only spoke English.

OSSE argues that the IDEA does not require that it provide communications concerning day-to-day transportation matters in a parent's native language. OSSE is correct that the IDEA only specifically requires limited communications, *e.g.*, Prior Written Notices and Procedural Safeguard Notices, to be provided in the native language of the parent. *See, e.g.*, 34 C.F.R. §§ 300.503(c), 300.504(d). However, special education transportation is an IDEA related service, which is part of the entitlement to FAPE for eligible children. A public agency is more generally required to provide related services as are required to assist a child with a disability *to benefit from special education*. *See* 34 C.F.R. §§ 300.34(a) (emphasis supplied). Therefore, transportation services must be "tailored to the unique needs" of the child. *Cf. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 3038, 73 L. Ed. 2d 690 (1982).

In this case, Student has a severe, low incidence, disability, and as a result, is nonambulatory and nonverbal. To assure that Student will be able to benefit from special education at City School, as well as out of safety considerations, it is incumbent upon OSSE to ensure that the parent is able to understand at least time-sensitive communications concerning Student's transportation. This may require OSSE to timely provide Spanish language interpretation or bilingual notices for some transportation communications.

At the due process hearing, Mother testified initially that she could not have interactions with OSSE because OSSE only communicated in English and she could not

understand. However, on cross-examination, the Parent, by counsel, stipulated that for all calls to the OSSE Parent Resource Center, the Parent requested a Spanish language interpreter and the service was provided. I found Mother's testimony about whether interpretation was provided to be inconsistent and, therefore, not sufficiently probative. I conclude that the Parent did not meet her burden of persuasion that OSSE denied Student a FAPE by failing to provide her with significant and important communications, information and notices in Spanish.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED:

1. As compensatory education for the denial of FAPE found in this decision, OSSE shall promptly issue funding authorizations to the parent to obtain for Student 572 hours of Specialized Instruction, 14 hours of physical therapy services, 4 hours of occupational therapy services, 11 hours of speech-language pathology and 7 hours of vision services. The funding authorizations shall be for services to be provided by qualified independent tutors and related service providers, who have experience working with students with low incidence disabilities, and have training, as appropriate, in visual integration deficits and visual impairment. Due to the severity of Student's disability-related needs, there shall be no specific rate cap for the independent services and OSSE must pay the respective providers' reasonable fees. Since the Parent expects Student to receive these services at the home, no transportation costs are anticipated.
2. All other relief requested by the Petitioner herein is denied.

Date: Date in Caption

 s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

cc: Counsel of Record
Office of Dispute Resolution.