

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, Second Floor
Washington, DC 20002

OSSE
Student Hearing Office
March 20, 2014

JOSEPH HUNTER

Petitioner,

Hearing Officer: Kimm Massey, Esq.

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOL

Respondent.

HEARING OFFICER DETERMINATION

**BACKGROUND AND
PROCEDURAL HISTORY¹**

Student currently attends School A, a nonpublic school located in the District of Columbia. On January 3rd, 2014, Petitioner filed a Complaint against Respondent District of Columbia Public School (“DCPS”). On January 13th, 2014, DCPS filed its Response to the Complaint.

The parties concluded the Resolution Meeting process by participating in a resolution meeting on Friday February 7th, 2014. The resolution period for this case ended on February 2nd, 2014. Hence, the 45-day timeline for this case started on February 3rd, 2014 and will end on March 19th, 2014, which is the HOD due date.

On February 12th, 2014, the hearing officer conducted a prehearing conference and determined, that the claims to be adjudicated, defenses asserted, and relief requested were as follows:

Petitioner’s Claims: (i) Alleged denial of a free and appropriate public education to the student (FAPE) by failing to ensure the adult student participated in his own MDT/IEP team meeting on November 8, 2013. (ii) Alleged denial of a FAPE to the student by purposefully convening the student’s MDT/IEP meeting on November 8, 2013 without an appropriate IEP team and lacking the presence of the student, his parent, his representatives, or any of his teachers and related service providers from School A. (iii) Alleged denial of a FAPE to the student by changing the student’s placement from School A to the allegedly materially different school of School B without considering the harm in removing the student mid-year during his last year in school and providing him with a new, allegedly inappropriate placement.

Respondent’s Defenses: (i) DCPS denies that it failed to ensure the student was a participant in the November 8, 2013 MDT/IEP meeting and further denies there has been a denial of FAPE. DCPS asserts that a letter of invitation to the meeting was provided in person and by mail to Petitioner and his mother. Both Petitioner verbally confirmed their plans to attend

¹ This section sets forth only the basic procedural history. Other events, including motions practice, may have taken place that are not listed here.

the November 8, 2013 meeting prior to and on the day of the meeting. (ii) A full IEP team was not required by law for a meeting held only to discuss a location reassignment and not to develop or make any substantive changes to the IEP. (iii) DCPS denies any failure to provide the student with a FAPE when it changed the student's location of services from School A to School B. On July 16, 2013, the Office of the State Superintendent for Education (OSSE) informed School A and DCPS that the status of its Certificate of Approval (COA) was being changed from full approval status to a probationary status. On October 9, 2013, DCPS determined that it would relocate all DCPS students currently placed at School A. On October 11, 2013, DCPS informed the petitioner's mother through a letter that it had identified a new location of services, School B. Moreover, Petitioner makes no allegation and pleads no facts demonstrating that School B cannot provide the requirements or offer the services contained in the student's agreed upon IEP.

Relief Requested : (i) The student be allowed to stay enrolled and placed at School A during the pendency of this litigation, including transportation. (ii) A determination in the petitioner's favor based on each of the issues raised in the due process complaint. (iii) An order requiring DCPS to issue a Prior Written Notice for the student to attend School A within 10 calendar days of the decision in this matter.²

The hearing officer convened the due process hearing on March 5th, 2014, as scheduled.³ At the outset, Petitioner's counsel stated that the only issue to be adjudicated was whether Student should be reimbursed \$118.80 for transportation costs he incurred from December 1, 2013 through March 4, 2014. The hearing officer also took DCPS's February 26, 2014 Motion to Dismiss under advisement. The hearing officer denied the motion on the record, rejecting DCPS's contention that all relief requested by Petitioner had been offered by way of DCPS's location of services letter authorizing Student to remain at School A for the duration of SY 2013/14, given Petitioner's unambiguous request in the Complaint for reimbursement of transportation expenses as well.

Thereafter, the hearing officer attempted to resolve the matter by way of stipulation but ultimately determined to allow the parties to proceed with the presentation of their testimonial evidence. All documents were then admitted into the record, and the hearing officer received opening statements and Petitioner's testimonial evidence. After DCPS stated that it would rest on the record, the hearing officer received closing statements, DCPS presented the hearing officer with a sealed 10-day letter pursuant to 34 C.F.R. § 300.517(c)(2)(i), and the hearing officer brought the hearing to a close.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUE(S)

1. Did DCPE deny Student a FAPE by failing to provide him with transportation during the period when DCPS had determined to change Student's location of services from School A to School B?

² Although the hearing officer inadvertently failed to include it in the Prehearing Order, and neither party brought the matter to the hearing officer's attention subsequent to the issuance of the Prehearing Order, Petitioner also requested reimbursement of monies Student, his family or School A paid towards transportation services necessary to get Student to and from school.

³ Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

FINDINGS OF FACT⁴

1. Student presently attends 12th grade at School A.⁵
2. Student's current IEP, dated June 21, 2013, provides for Student to receive Metro transportation in the form of fare cards and/or tokens).⁶
3. By letter dated July 16, 2013, OSSE advised School A that OSSE was exercising its discretion and issuing School A a probationary COA due to School A's incomplete application. The letter further advised that while the COA was on probationary status School A could not enroll any additional student from the District of Columbia.⁷
4. On October 3, 2013, OSSE issued a notice informing School A of OSSE's intent to refuse to renew School A's COA.⁸
5. By letter dated October 9, 2014, DCPS advised School A that it would cease making placements into School A and would also relocate all current placements.⁹
6. By letter dated October 11, 2014, DCPS advised Petitioner and his mother that School B would be Student's new school and that School B could implement Student's existing IEP.¹⁰
7. Student never began attending School B. Instead, he continued to attend School A.
8. On November 15, 2014, DCPS advised Petitioner and his mother that DCPS considered Student's failure to enroll at School B a rejection of the proposed FAPE and further considered Student to be unilaterally placed at School A. DCPS rejected all financial responsibility for Student's placement at School A.¹¹
9. Once DCPS disclaimed financial responsibility for Student's Placement at School A, DCPS ceased providing Student with fare cards and/or tokens to get to and from school. From that point forward, Student began using his own money, using money he obtained from his mother, and borrowing money from friends to get to and from School A. On approximately 10 occasions, the bus driver allowed Student to ride the bus for free; on other occasions, the bus driver would not let Student ride for free. On the days when Student could not obtain the money he needed to get to and from school and the bus driver would not let Student ride for free, Student stayed home from school.¹²

⁴ To the extent that the hearing officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, then the hearing officer has taken such action based on the hearing officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁵ Testimony of Student.

⁶ Stipulation of DCPS at the due process hearing.

⁷ Respondent's Exhibit 1.

⁸ See Petitioner's Exhibit 12 at 1.

⁹ Respondent's Exhibit 2.

¹⁰ Respondent's Exhibit 4.

¹¹ Respondent's Exhibit 12.

¹² Testimony of Student.

10. Student has to take two buses to get to and from School A for a cost of \$1.80 each way, which totals \$3.60 in transportation costs per day. Although Petitioner disclosed WMATA trip planner information obtained from the internet indicating that a bus trip to and from School A for Student costs \$1.60 each way (\$1.80 by cash or farecard), Petitioner was unable to present any proof of the money Student actually spent getting to and from School A when DCPS stopped funding his transportation. Student explained that bus drivers do not give receipts for money customers place in the fare box on the Metro buses.¹³
11. On January 22, 2014, a Panel reviewed OSSE's October 3, 2013 notice to School A of OSSE's intent to refuse to renew School A's COA. After a review of the relevant facts, the Panel determined that both reasons OSSE proffered as grounds justifying the failure to renew School A's COA were moot and could not serve as justification for the refusal to renew School A's COA.¹⁴
12. By letter dated February 11, 2014, DCPS advised Student that School A would be his location of services for SY 2013/14.¹⁵
13. On March 5, 2014, the date of the due process hearing in this case, Student received notification that his transportation services to and from School A had resumed.¹⁶

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). In this regard, IDEA does not require a departure from the ordinary default rule that plaintiffs bear the risk of failing to prove their claims. *See id.*; *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3rd Cir. 2012); *L.E. v. Ramsey Board of Educ.*, 435 F.3d 384, 391 (3rd Cir. 2006). Now, for a consideration of Petitioner's claim.

In the instant case, the sole issue for determination is whether Student should be reimbursed \$118.80 for transportation costs he incurred from December 1, 2013 through March 4, 2014. However, a review of the evidence in this case reveals that Petitioner has been unable to provide any proof whatsoever of funds that were actually expended to get Student back and forth to school on the bus during the period at issue. While the hearing officer fully accepts Student's explanation that bus drivers do not provide receipts for bus fares paid in cash, the hearing officer notes that there are other ways Petitioner could have provided the necessary proof. For example, Petitioner could have kept a contemporaneous log of funds expended showing each day funds were expended and the precise amount spent. In any event, under the circumstances of this case, where the hearing officer has not been provided with any reliable method of determining exactly how much money Petitioner spent during the period at issue to get Student to and from school, the hearing officer concludes that Petitioner has failed to meet its burden of proof in connection

¹³ See Testimony of Student; Petitioner's Exhibit 14.

¹⁴ Petitioner's Exhibit 12.

¹⁵ Respondent's Exhibit 15.

¹⁶ Testimony of Student.

with this claim. *See e.g., Schaffer v. Weast, supra* (IDEA plaintiffs bear the risk of failing to prove their claims).¹⁷

ORDER

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

1. Petitioner's request for relief in the form of reimbursement of transportation costs is **DENIED AND DISMISSED WITH PREJUDICE.**

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).

Date: 3/19/14

/s/ Kimm Massey

Kimm Massey, Esq.
Hearing Officer

¹⁷ The hearing officer notes, but as it is unnecessary under the facts of this particular case does not rule on, the possibility that DCPS's failure to fully implement Student's IEP by failing to cover his transportation costs during the period at issue while all other services required by the IEP continued to be provided conceivably could have been a mere *de minimis* failure to implement all provisions of the IEP that did not rise to the level of a material or substantial failure to implement necessary to constitute a denial of FAPE. *See e.g., Catalan v. District of Columbia*, 478 F. Supp. 2d 73 (D.D.C. 2007) (a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP; instead, the party must demonstrate a failure to implement substantial or significant provisions of the IEP).