

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS**

In Re: Vladimir¹

&

BSEA #1503957

Acton-Boxborough Regional School District

DECISION

This Decision is issued pursuant to M.G.L. c71B and 30A, 20 U.S.C. §1401 *et seq.*, 20 U.S.C. §794 and the regulations promulgated under those statutes. The parties agreed to submit this matter for Decision without a Hearing pursuant to BSEA Rule XII. The parties' submissions were received on March 16, 2015.

ISSUE

The issue for Decision, as set out in the Prehearing Order of February 19, 2015, is limited to:

Whether Acton-Boxborough has failed to provide the related service of transportation so as to deny [Vladimir] equitable access to a free appropriate public education during the 2014-2015 school year?

PARENT POSITION

The transportation service used by Action-Boxborough to transport Vladimir between his home and his day placement during the 2014-2015 school year unilaterally terminated services, imposed unreasonable conditions of service and changed hours of service causing Vladimir to miss the educational hours guaranteed to him in his accepted IEP. Acton-Boxborough failed to provide reliable alternative transportation, to timely meet the service conditions imposed by the transportation vendor, and to properly evaluate Vladimir's transportation-related behaviors and needs. As a result Vladimir has not received a free appropriate public education during the 2014-

¹ "Vladimir" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

2015 school year. While the Parent has been reimbursed at the state negotiated rate for the mileage and time she spent thus far in providing necessary substitute transportation, that reimbursement does not make up the educational service time lost by Vladimir, nor does it operate as the learning tool Vladimir needs to conform his transportation related behavior to expected norms. Furthermore, there is no plan in place to prevent future arbitrary disruptions of transportation to Vladimir. The Parent seeks an Order requiring Acton-Boxborough to develop an appropriate, consistent transportation plan, and a back-up plan, to ensure that Vladimir receives a free appropriate public education.

SCHOOL POSITION

Acton-Boxborough acknowledges that its transportation vendor unilaterally and precipitously imposed conditions of service that prevented timely transport of Vladimir, and at times any transport of Vladimir, to his educational placement. Acton-Boxborough asserts that it worked closely with the transportation company and with the Parent to minimize disruptions to Vladimir's educational program. It further asserts that the Parties reached an agreement concerning reimbursement to the Parent and that it has fulfilled the terms of that agreement.

FACTUAL BACKGROUND

The pertinent facts are not in dispute and may be briefly summarized:

1. Vladimir is a 16 year old 9th grade student. He attends a substantially separate classroom program operated by the LABBB Collaborative pursuant to an accepted March 2014-March 2015 Individualized Education Program developed by the Acton-Boxborough Regional School District ("Acton-Boxborough"). The appropriateness and availability of that placement is not in dispute. The IEP provides for regular transportation services. (S-1, P-1)
2. Acton-Boxborough does not directly provide transportation to Vladimir. It contracts with CASE Collaborative transportation services to provide door-to-door transportation to Vladimir between his home in Acton and his special education program in Lexington. (Affidavit of Kidder)
3. Beginning in September 2014 Vladimir exhibited behaviors on the van which prompted CASE Collaborative ("CASE") to curtail or refuse transportation to him. The behaviors included removing clothing, after which CASE refused to transport Vladimir between September 29 and October 2, 2014, and reflux/vomiting after which CASE Collaborative refused to transport Vladimir between October 8 and October 13, 2014. Between October 14 and October 17, 2014 CASE agreed to provide afternoon transportation only. On October 20, 2014 CASE resumed morning transportation on a one hour delay with Vladimir as the sole van passenger, causing Vladimir to miss the first hour of each school day. (Affidavit of Kidder)
4. The Parent provided physicians' notes indicating a medical explanation and ongoing medical treatment for the problematic behaviors (S-3; S-7; P-4; S-4; S-8; P-5)

5. Acton-Boxborough arranged for consultations with Board Certified Behavior Analyst from the district and from LABBB, to evaluate Vladimir's transportation behaviors and needs. (Affidavit of Kidder) There is no other evidence in this record of the existence or results of any such consultations.
6. On October 29, 2014 the Parent rejected the portion of the current IEP that provided for regular transportation. She requested that the IEP reflect Vladimir's need for special transportation.
7. On November 5, 2014 CASE transportation requested the assignment of a bus monitor during Vladimir's transportation runs. CASE refused to provide morning transportation without one. Acton-Boxborough provided a bus monitor on November 12, 13 and 14, 2014. (Affidavit of Kidder)
8. On December 1, 2014, Vladimir removed his seatbelt and attempted to open the van door. Thereafter CASE refused to transport Vladimir in the absence of a monitor. (Affidavit of Kidder)
9. Acton-Boxborough had difficulty arranging for a bus monitor throughout October, November and December 2014. When CASE refused to transport Vladimir his mother provided substitute transportation. Acton-Boxborough reimbursed the Parent for mileage costs associated with 28 round trips made during that period. (Affidavits of Emmons and Kidder: P-2)
10. Acton-Boxborough continued to have difficulty arranging for consistent bus monitor service in January 2015. The Parent provided substitute transportation nine times for which reimbursement, at the time of this Decision, is pending. (Affidavits of Emmons and Kidder; P-3)
11. On January 20, 2015 Acton-Boxborough hired a nursing service to provide bus monitoring services to Vladimir. Since January 20, 2015, with the exception of the morning of January 23, 2015, the bus monitor has been available to Vladimir and CASE has provided transportation. (Affidavit of Kidder)
12. Since the Parent provided substitute transportation when necessary Vladimir did not miss any full days of school as a result of the district and collaborative's transportation difficulties. Vladimir did miss at least 10 hours of special education service as a result of CASE Collaborative's insistence on a shortened school day in October 2014. (Affidavit of Kidder)

FINDINGS AND CONCLUSIONS

There is no dispute about Vladimir's eligibility for special education pursuant to M.G.L. c 71B and 20 U.S.C. §1401 *et seq*, nor about the appropriateness of the special education program

and placement he participated in accordance with the March 2014-March 2015 IEP. The Parent seeks clarification of the School's transportation responsibilities, and enforcement thereof.

Transportation is a "related service" when it is necessary to assist a student with a disability to benefit from special education. 20 U.S.C. §1401 (26); 34 CFR 300.34. A school district is responsible for providing transportation to a student with a disability at a time, in a manner, and with the equipment and personnel necessary to ensure the student receives all the special education services outlined in the IEP. 603 CMR 28.05 (5) (b); 603 CMR 28.06(8). When a Parent steps in to provide transportation that a school district is obligated to provide but has not, the Parent is entitled to public reimbursement of transportation related expenses. 603 CMR 28.07 (6).

Here there is no dispute that transportation services during the 2014-2015 school year have been problematic, nor that the Parent has stepped into the breach on multiple occasions to ensure that Vladimir attends school. While Acton-Boxborough has proffered financial reimbursement to the Parent for mileage and, later, for her time, that addresses only part of its obligation.

Acton-Boxborough has been on notice since at least September 29, 2014 that its "regular" transportation arrangement with CASE Collaborative was not working for Vladimir. Throughout the month of October CASE had on several occasions refused to transport Vladimir to his special education program, had transported him at odd times resulting in curtailment of his special education services, and had demanded the assignment of additional personnel on the bus to assist with Vladimir's behaviors and medical needs. Acton-Boxborough had also received notes from two physician's documenting Vladimir's medical issues.

Acton-Boxborough did not reconvene the Team to discuss the new information it had received concerning Vladimir's transportation requirements. Acton-Boxborough did not evaluate Vladimir or his transportation environment to determine whether developing a plan to address the behavioral concerns raised by CASE could avoid the diminishment of special education programming Vladimir was then experiencing. Acton-Boxborough did not address the Parent's specific request to change the transportation plan set out in Vladimir's 2014-2015 IEP from "regular" to "special". No explanation was offered for Acton-Boxborough's inaction.

While reimbursing the Parent for some of the costs she incurred in taking up the school's transportation responsibilities is a start, it does not meet Acton-Boxborough's obligations to ensure seamless access to all of the special education services set out in Vladimir's IEP. To that end, based on the uncontroverted facts set out above, the following Orders are entered:

1. Vladimir is entitled to "special transportation" pursuant to 603 CMR 28.05 (b).
2. Acton-Boxborough shall, within 30 days, conduct a Functional Behavioral Assessment of Vladimir during morning and afternoon transportation.

3. The Team shall reconvene within 45 days to consider the results of the Functional Behavioral Assessment, the concerns voiced by CASE Collaborative and the Parent, the medical documentation and any other available transportation-related information and to develop an appropriate transportation plan for Vladimir. The transportation plan must include a “back-up” plan to ensure full implementation of Vladimir’s IEP.

By the Hearing officer

Lindsay Byrne
Dated: April 10, 2015