

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

Student v. Sharon Public Schools

BSEA # 1807731

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC § 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC § 794), the state special education law (MGL ch. 71B), the state Administrative Procedure Act (MGL ch. 30A), and the regulations promulgated under these statutes.

By agreement of the parties and pursuant to BSEA Hearing Rule XII, this matter is decided solely on the basis of documents that have been filed by the Parties. The Parents, (hereinafter, “Parents”) filed their Request for Hearing with the BSEA on February 21, 2018. Sharon Public Schools, (hereinafter, “Sharon”) filed its Response to Parents’ Hearing Request on February 28, 2018. Sharon filed its Memorandum of Law in Response to the Parents’ Request for Reimbursement for Transportation on May 31, 2018. Parents filed their Written Arguments for Reimbursement of Transportation Costs on June 7, 2018 along with Parent Exhibits 1 through 13. Parents filed Parents’ Response to SPS Written Arguments Against Reimbursement of Transportation Costs on June 14, 2018. The record closed at that time.

ISSUE

1. Whether Parents are entitled to reimbursement from Sharon for Student’s transportation for the period between February 22, 2016 and March 4, 2016.

UNDISPUTED FACTS

1. The student (hereinafter, “Student”) is 17 years old and resides within the Sharon Public School District (hereinafter, “Sharon”.) She qualifies for special education services due to an emotional disability. During the time period relevant to this decision, Student attended an out-of-district private day school funded by Sharon where she received academic and therapeutic supports. (Parents’ Request for Hearing; Sharon’s Response Hearing Request)
2. On or about February 12, 2016, Parents wrote to Sharon informing them that one Parent would be having major surgery during February vacation week and recuperating for several weeks thereafter. They stated that due to Student’s history of being hospitalized during the school year during times of environmental and emotional changes, they were seeking a respite placement for Student for the period during and after Parent’s surgery. They requested that Sharon provide transportation between the respite facility (which they later identified by name and address) and Student’s day school. (P-2, P-3) The district responded on February 17, 2016, stating that it was not legally obligated to provide transportation. (P-4)

3. During the period from February 14, 2016 through March 4, 2016, Student lived in a respite facility in Framingham, Massachusetts. The Department of Mental Health (hereinafter, "DMH") authorized funding for Student's respite placement for the time period from February 14-February 21, 2016, which was school vacation week. Student remained at the respite facility at parental expense from February 22 through March 4, 2016, as DMH declined to fund the placement. DMH did, however, authorize funding of Student's transportation from the respite facility to her day school placement for the period from February 22, 2016 through February 25, 2016. (P-13)
4. During the time Student resided at the respite facility she attended school every day except for one. She missed one day because a staff member at the respite facility inadvertently placed Student on the incorrect van to transport her to school. The driver brought her to the wrong school and then drove her back to the respite facility where she remained for the day instead of going to school. The respite facility paid the transportation cost for the day (\$250.00) directly to the transportation company. (P-9, Parents' Written Arguments in Support of Reimbursement for Transportation Costs)
5. Parents sent a letter to Sharon dated November 13, 2017 requesting reimbursement for transportation in the amount of \$2,250.00 for the cost of transportation of their daughter between her day school and the respite facility for the periods of February 22 through February 26, 2016 and February 29 through March 4, 2016.¹ (P-9) They attached an invoice from Transportation of New England with a notation indicating that the invoice was for ten round trips between Framingham and Student's day school from February 22-26 and February 29 – March 4. The total amount of the invoice was \$2,500 as was the amount paid. (P-11)

FINDINGS AND CONCLUSION:

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)² and the state special education statute.³ As such, she is entitled to a free appropriate public education (FAPE). Neither her status nor her entitlement is in dispute.

The only issue in dispute is whether Parents are entitled to reimbursement for the cost of transportation they incurred during the period in which Parents funded Student's respite home placement from February 22, 2016 through March 4, 2016.

¹Parents' letter states that they are not seeking reimbursement for the day on which the respite facility placed Student on the incorrect van and for which it paid the daily transportation cost. (P-9)

²20 USC 1400 *et seq.*

³MGL c. 71B.

It is unclear why Parents' Hearing Request states that they are seeking reimbursement for ten days of transportation costs when their own exhibits demonstrate that DMH provided funding for the period from February 22, 2016 through February 25, 2016 and the respite facility directly paid the transportation cost on the day on which Student was brought to the wrong school. That leaves only six days on which Parents did not receive reimbursement for transportation costs. As correctly noted by Sharon, a parent cannot recover twice for the same costs or damages. See *Zilberman v. Gateway Sch. Dist.* 65 IDELR 261 (W.D. Pa. 2015)

Parents point to no legal authority that supports their position that Sharon is required to reimburse them for transportation costs. Massachusetts special education regulations provide guidance as to district's responsibility for transportation. The regulations deal with regular transportation and special transportation separately. Parents claim that there is an ongoing dispute regarding whether Student requires transportation in order to benefit from special education, but they did not provide any proof of this dispute, nor is it relevant to the resolution of the reimbursement issue. Under the regulations,

If regular transportation is noted on the student's IEP and the student is placed by the school district in a program located at a school other than the school the student would have attended if not eligible for special education, the student is entitled to receive transportation services *to such program.* (*Emphasis added.*)
603 CMR 28.05(a)(1)

This regulation does not support Parents' position, as it only requires the district to provide transportation to Student's day school, and not to a respite program where Student was placed with no involvement from the district.

603 CMR 28.05(5)(b) sets out the requirements for providing special transportation. 28.05(b)(2) states

If special transportation is noted on the student's IEP, the student is entitled to receive transportation services to any program *provided by the public school* and in which the student participates. (*Emphasis added.*)

This regulation does not support Parents' position either, as it only requires the district to provide transportation services to programs provided by the district. The respite facility was not a program provided by the public school. Likewise, the Team did not make a determination that Student required the respite placement in order to receive FAPE.

Sharon, in its Response to the Parents' Request for Reimbursement for Transportation, cites to a line of cases which hold that the IDEA does not require a district to provide transportation when it is geared toward parental convenience or non-educational preferences. See *Ms. S. v. Scarborough Sch. Comm.*, 112 LRP 50061 (D. Me 2005); *N. Allegheny Sch. Dist. v. Gregory P.*, 687 A.2d 37, 40 (Pa. Comm. Ct. 1996). Additionally, the case of *Dunellen Township Board of Education*, New Jersey State Educational Agency (August 22, 2012) involves a factually similar situation to the matter at hand. In that case, an administrative law judge determined that parents were not entitled to reimbursement for transportation costs when parents placed their son at an outpatient psychotherapy program.

Similarly, Sharon persuasively argues that Parents in this matter made a decision based upon personal factors to place Student in respite care. The Team did not make the decision to place Student in respite care nor did it determine that respite care was necessary for Student's educational program. Student's out-of-district day placement met her educational needs at that time and Sharon offered transportation between her residence and the out-of-district placement. It was not obligated to provide transportation between the respite placement and her out-of-district placement.

Finally, Sharon has raised the statute of limitations as a defense to part of the Parents' claims. It is not necessary to reach this issue as I have already determined that there is no legal basis for ordering reimbursement for any portion of the transportation costs sought by Parents.

ORDER

For the reasons stated above, Parents' request for reimbursement for transportation costs is DENIED.

By the Hearing Officer,

Catherine M. Putney-Yaceshyn

Dated: July 23, 2018