

DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
State Enforcement and Investigation Unit
Office of Review and Compliance

STUDENT HEARING OFFICE
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CONFIDENTIAL

In the Matter of:

STUDENT,

Petitioner,

v.

LOCAL EDUCATIONAL
AGENCY,

Respondent.

Case No.

**HEARING OFFICER
DECISION**

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ATTORNEY GENERAL'S OFFICE
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I. PROCEDURAL BACKGROUND

Petitioner, by and through his parent, filed a due-process complaint on April 6, 2009.

Petitioner waived the resolution session. Respondent answered the complaint on April 23, 2009.

This matter was originally scheduled for a due-process hearing on June 9, 2009, but Petitioner requested a continuance, which I granted. The parties had numerous scheduling conflicts. As a result, I held the hearing on July 16, 2009.

I conducted the due-process hearing under the applicable sections of the Individuals with Disabilities Education Improvement Act of 2004 (*see* 34 C.F.R. §§ 300.1-300.718) and of the District of Columbia municipal regulations (*see* 5 DCMR §§ 2500-3033). At the hearing, both parties were represented by counsel. Petitioner entered into evidence, without objection, twelve documents marked P-1 to P-12. One witness testified on Petitioner's behalf.

Respondent entered into evidence, without objection, two documents marked R-1 to R-2. It offered a third document, but I excluded it as a settlement offer I could not consider on the merits. One witness testified on its behalf.

II. ISSUES RAISED AND RELIEF SOUGHT

In the due-process complaint, Petitioner alleged Respondent denied him a free and appropriate education ("FAPE") by failing to provide him with transportation to and from School

A. For this lapse, Petitioner requests reimbursement for the expense of using public transportation instead.

III. FINDINGS OF FACT

Based on the witnesses' testimony, the documentary evidence presented by the parties, the arguments made by counsel, and my own observations at the due-process hearing, I find:

1. Petitioner is a -year old, learning-disabled student who attends School A.
2. On January 18, 2009, a hearing officer determined that Respondent should fund Petitioner's placement at School A and provide transportation to and from the school.
3. Petitioner's mother testified that she timely filed a request for transportation for her son and was told by a member of School A's that he would be provided a student bus pass for Metro shortly. In the meantime, Petitioner's mother gave her son bus fare to and from School A each morning before she left for work.
4. After several weeks, Petitioner's mother called School A again to find out when her son would receive the student bus pass. She was told to call the central transportation office for Respondent, which she did. She was told, again, that her paperwork was complete and that bus pass would be issued shortly. It was not.

2009 JUL 27 PM 12:35

STUDENT SERVICES OFFICE

5. Petitioner's mother continued to provide her son with bus fare each morning until, finally, the student bus pass began. She estimates she paid [redacted] in total for her son's transportation, calculated as 40 round-trip at the rush-hour fare of [redacted]

6. Respondent's counsel did not dispute that Respondent had an obligation to provide Petitioner with transportation. Nor did it dispute that it failed to immediately provide Petitioner with the transportation as it was obliged. Respondent offered no witness to dispute that Petitioner did not find alternative transportation and attend school on each of the days Respondent failed to provide him with transportation. Rather, Respondent contends that Petitioner could have used a SmarTrip card and received a reduced fare, which would have totaled [redacted]

7. Petitioner's mother testified that she would have had to pay [redacted] for the SmarTrip card (thus, increasing Respondent's total to [redacted] if she had understood that paying for public transportation was going to be an extended alternative. However, she said she was led to believe by the staff of School A and the central transportation office that her son's transportation service was to occur any day. So, she saw no need to invest in a SmarTrip card when it would have been of limited use.

IV. CONCLUSIONS OF LAW

Petitioner shoulders the burden of proof in this due-process proceeding, *see* 5 DCMR § 3030.3, and must carry it by a preponderance of the evidence. *See* 20 U.S.C. § 1415 (i)(2)(c).

Petitioner has amply demonstrated that he was entitled to public transportation, requested it, and expended money when Respondent failed to provide it. Respondent disputes only the amount of the expenditure—a difference of [redacted]

Petitioner offered Exhibit 12, which is a printout of a WMATA bus to rail schedule. It shows that Petitioner's travel times to and from School A would have occurred during rush hour traffic and cost one way. It also shows that there are no discounts for public school students. Exhibit 12 shows that the SmarTrip fare is sixty cents cheaper for trip. However, Petitioner's mother adequately explained her practical reason for not investing in a long-term cost-saving measure.

Respondent did not dispute Petitioner's estimation of 40 days of reimbursable travel. Accordingly, Respondent shall pay Petitioner in reimbursement of the transportation funds.

Petitioner prevails on this issue.

V. **ORDER**

It is this 26th day of July 2009—

ORDERED that Respondent reimburse Petitioner's Parent and it is further

ORDERED that this shall be a FINAL DECISION from which the parties have ninety days from today to file an appeal in a court of competent jurisdiction, and it is further

ORDERED that this matter is closed for all purposes.



Hearing Officer Latif Doman

Copies to: Counsel for the Parties
Student Hearing Office