

STATE OF VERMONT
AGENCY OF EDUCATION

Special Education
Case DP # 24-01 (M.T.)

IDEA Due Process Hearing

RULING ON MOTION TO DISMISS

On July 27, 2023 the Vermont Agency of Education received a Section 504 Due Process Complaint from the mother (Parent) of student, M.T. (Student). In the complaint, the Parent noted numerous allegations against the school district, and asserted that the Student needs transportation to a private school placement, which is necessary due to racial harassment and bullying that the Student was subjected to while he attended a District school. The Parent asserted that the District admitted that the Student could not be educated safely in his resident middle school, so conceded to pay for the Parent's requested out-of-district placement for the Student through his high school graduation, after the District substantiated the Parent's racial harassment and bullying claims, in December of 2022. The Parent stated that the District declined to pay for the transportation to the new private school placement but has agreed to pay for the tuition. The Parent also wrote that the Superintendent and School Board declined to pay for the transportation costs and lost wages and that the U.S. Department of Education's Office for Civil Rights (OCR) declined to open a complaint that the Parent filed under Section 504 of the Rehabilitation Act of 1973 (Section 504) or Title II of the Americans with Disabilities Act (ADA). The Parent now requests in her special education Due Process complaint, that the District reimburse her for both transportation to the new private school located outside of the District and for her lost wages to take the Student to and from his new school placement. The Parent wrote that she spent over \$10,000 in transportation costs during the 2022-2023 school year. The Parent also argued that the District should pay for the Student's transportation to the private school, in addition to the Student's yearly tuition. The complaint document notably does not contain any specific allegations related to a disability or legal claims under Section 504, the ADA, or the Individuals with Disabilities Education Act (IDEA). While some of the investigative documents from the District's bullying, hazing, and harassment investigative process, that were submitted by the Parent, do note that the Student was called "short" or "shortie" on numerous occasions and the Parent did mention his disability when asking the school board to reimburse the Student's private school tuition, there is no other reference in the filed complaint facts or allegations that could be construed as related to a disability law issue.

On July 28, 2023 the school district's attorney filed a Motion to Dismiss this complaint, by email, based on a lack of sufficiency for the complaint. In this message, the attorney argued that the Parent's claims were all related to general harassment, hazing, and bullying claims and not based on special education law or related to the Student's disability. The attorney also

claimed that the tuition reimbursement was agreed upon under Vermont State Law 16 VSA 822(c)(1)(B), which is a general education law that requires school districts in the state to maintain public high schools and also to pay tuition to private high schools for students, if needed. The attorney further argued that the District initially looked to general state laws for the Parent's claim for reimbursement, specifically the law for student transportation found at 16 VSA 1222. The District's attorney reported that the District did not find the Parent's transportation reimbursement request to be "reasonable and necessary to enable the student to attend school." The attorney also pointed out there is no statutory authority for parental reimbursement of their lost wages due to private school transfers and transportation costs. These arguments are all rooted in Vermont's general state education laws, as opposed to Section 504 or the IDEA.

On July 28th, July 29th, and August 2nd the Parent responded to these arguments and provided more information about the Student's disability. The Parent provided that the Student has post-traumatic stress disorder (PTSD) and is on a Section 504 Plan. The Parent also stated that her request under state law for the private school tuition reimbursement was based on both his disability needs and also due to the racism that her son experienced. The Parent also shared in an August 3, 2023 email that the Student was injured on the school bus in the District but allowed to return to the District's middle school and allowed to ride the bus. Notably, the Parent was not able to provide a specific claim related to the Student's free appropriate public education (FAPE) or to demonstrate that transportation is potentially necessary for the student to access a FAPE.

On August 2, 2023 the Hearing Officer asked, by email, if the Student's 504 Plan included any transportation services or for any specific Section 504 allegations. The parties did not provide a copy of a Section 504 Plan or a discreet allegation under Section 504 or the IDEA.

Finally, the U.S. Department of Education (ED) has held that students with disabilities who are placed in a private school by their parents, whether FAPE is at issue or not, do not have a general right to transportation as a related service. *See* U.S. Dept. of Educ. Office of Special Education Programs (OSEP), *Letter to Luger & Weinberg*, Dec. 6, 2011. However, students may require specialized transportation, if it is needed to access their FAPE. In this instance, there is no indication that this is the case or that the Parent is contesting the content of the Section 504 Plan.

As such, the District prevails on its argument that there is no potential Section 504 claim, and the Parent did not establish a special education basis for the request for reimbursement of the transportation expenses. There is no sufficiently cognizable allegation related to IDEA or Section 504 noncompliance in these claims, that could be proven in a special education due process hearing. As such, the District's motion to dismiss is granted and this case is dismissed without prejudice.

Dated this 3rd day of August, 2023.



Claudette Rushing

Contract Hearing Officer, Vermont Agency of Education