

Case Number: 2012-0561
[REDACTED] vs. [REDACTED]
Hearing Officer: Stacey Stutzman

Illinois State Board of Education
Special Education Services
100 North First Street
Springfield, Illinois 62777

RECEIVED

OCT 24 2012

**SPECIAL EDUCATION
SERVICES**

Impartial Due Process Hearing Decision Cover Page

Instructions: Complete this form and return it along with the decision. The information collected on this form will be used for the purpose of indexing the decision by subject matter as required by 23 Illinois Administrative Code 226-695

District Name [REDACTED] Phone: [REDACTED]
Superintendent [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Parent Name [REDACTED] Phone: [REDACTED]
Address [REDACTED]
Represented by [REDACTED]

Date and Timelines

Date of Written Request: 06/21/2012
Date of Pre-hearing Conf: 08/21/2012

Date of Hearing: 10/09/2012 and 10/11/2012
Date of Decision: 10/22/12

Summary of Decision

Hearing was requested by Parents of 20 year old Student with a learning disability, who was placed at Parents' request and at District's expense in a private transition program located outside of District, a 45 to 50 minute ride from his home for the 2011-2012 school year, pursuant to a previously executed due process settlement agreement. The Student has remained in the private program during the pendency of the current due process dispute. The sole issue presented for this hearing was whether District deprived Student of FAPE by transporting Student to and from his program by small 12 seat bus rather than by car or minivan after Parent complained that Student was becoming ill due to anxiety and/or motion sickness which she attributed to the bus ride, even though she testified that he had ridden a bus to his previous program for five years and that she had no concerns about the transport time or distance when choosing the current program for Student. It was alleged that Student was missing a portion of his morning programming by spending time in the washroom upon arrival at school. The bus driver testified that Student did not exhibit illness or anxiety on the bus and that he slept during transport. The teacher testified that Student exhibits anxiety and complains of stomach problems at various times during the instructional day when confronted with activities he feels uncomfortable doing, including going out for certain community activities. He sometimes spends 10 to 15 minutes in the restroom upon arrival at school in the morning when the other students are having breakfast and meeting as a group. Parents requested an Order requiring District to pay \$190 per day for transportation of Student to and from his program by the private school's minivan for the remainder of the 2012-2013 school year. They also requested compensation for the denial of FAPE in the 2011-2012 school year in the form of private tutoring 3 times per week for 60 minutes per session and payment for Student's therapy with his current private psychologist one time per week for 45 minutes at a rate of \$180 per session for the remainder of the 2012-2013 school year.

HELD: For District

ORDER: Parents' request for relief is denied.

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)
) **ISBE CASE NO. 2012-0561**
)
) **Stacey L. Stutzman**
) Impartial Due Process
) Hearing Officer

DECISION AND ORDER

Procedural Background

This matter is before the undersigned impartial hearing officer for a due process hearing concerning Parents' request for Orders that District pay for the transportation offered by Student's current private transition program provider by minivan to and from Student's home at the rate of \$190 per day for the remainder of the 2012-2013 school year, and that, in compensation for transportation related deprivation of FAPE in the 2011-2012 school year, District provide Student with private tutoring 3 times per week for 60 minutes per session and also pay for Student's therapy with his current psychologist once a week for 45 minutes at the rate of \$180 per session for the remainder of the 2012-2013 school year. The hearing officer has jurisdiction to hear and decide this matter under *105 ILCS 5/14-8.02a(g)(2012)*. The parties have been informed of their hearing rights under *23 ILAC 226.625(2007)* and *34 CFR 300.512(2006)*. The undersigned hearing officer has also advised the parties that there are and have been no personal or professional conflicts which prevent her from conducting a fair and impartial hearing and rendering a fair and impartial decision in this cause.

An IEP conference was held on June 14, 2012, and Parents requested the due process hearing in this matter through their attorney on June 21, 2012. District received the request on June 21, 2012, and responded to it in writing on June 29, 2012. Counsel for the parties executed a waiver of the resolution session in lieu of mediation and District counsel submitted it to ISBE on August 9, 2012. The parties participated in state sponsored mediation on August 8, 2012, and pursuant to a mediation agreement, the parties were to participate in an IEP conference by September, 30, 2012.¹

The undersigned Impartial Hearing Officer was appointed to this matter through the Illinois State Board of Education Special Education Database System (*ISBE SEDS*) on June 28, 2012. The original date established by the ISBE SEDS for Pre-Hearing Conference in this matter was July 23, 2012. The Pre-Hearing Conference was held on August 21, 2012, following the allowance of the parties' joint requests for continuances, which is required under Illinois law, as delineated in the *Pre-Hearing Conference Report* and the *Amended Pre-Hearing Conference Report*.²

At the Pre-Hearing Conference, both parties requested delay of the due process hearing in order to convene an IEP meeting pursuant to the mediation agreement on or before September

¹ At the time of the Pre-Hearing Conference in this matter on August 21, 2012, there was an additional issue for hearing relating to Student's eligibility for special education due to a speech or language impairment, secondary to his eligibility for a specific learning disability. In regard thereto, District had agreed at mediation to conduct a speech and language assessment of Student and convene an IEP meeting. That issue was resolved at the time of the hearing, and Parents withdrew that issue and the remedy requested pursuant thereto. The parties advised the I.H.O. at the time of the hearing that the IEP conference had not yet been held but that the District would restore Student's eligibility secondarily due to a speech or language impairment and that Student's speech/language services had been provided to him per his IEP even without the eligibility and that they would continue.

² This I.H.O.'s *Amended Pre-Hearing Conference Report* dated 8/30/12 is attached to and incorporated into the record in this matter as Hearing Officer Exhibit A. The original *Pre-Hearing Conference Report* dated 8/22/12 was amended only to incorporate the remedies as set forth in *Parents' Restatement of Remedies Sought*, submitted on 8/29/12.

28, 2012. They requested that two days be allowed for the hearing. Hearing was scheduled for October 9 and October 11, 2012.

On August 28, 2012, Parents' counsel submitted by email a Motion to exclude the testimony of two witnesses identified as Directors of private day schools in which Student has not been enrolled and which he has not attended, District counsel responded, and an Interim Order granting the motion was entered on September 5, 2012. On September 10, 2012, Parents' counsel submitted his Motion to exclude the testimony of A.D., District's Transition Services Coordinator and other District testimony relating to Student's placement and programming, which Motion was denied by Interim Order dated September 19, 2012. At the time of the hearing, Parents' counsel requested reconsideration of his Motion relating to [REDACTED] and District counsel advised that [REDACTED] had not participated in any of Student's IEP meetings, and the Motion to exclude the testimony of [REDACTED] was therefore granted.³

The Due Process Hearing in this matter proceeded as scheduled on October 9 and 11, 2012 at Parents' counsel's offices. It was closed to the public at the election of Parents. In attendance at the hearing were Student's Mother, her attorney, [REDACTED] and attorneys and legal staff from [REDACTED] office, including [REDACTED] attorney, [REDACTED] and [REDACTED], and District's attorney, [REDACTED]. The hearing was reported by [REDACTED], CSR, of [REDACTED].

Six witnesses were called to testify in accordance with the parties' respective pre-hearing disclosures and their elections at the time of the hearing. Testifying on behalf of both parties were **Mother**, [REDACTED] Principal of Student's private transition program, and [REDACTED] Teacher of Student's private transition program. The following also testified on behalf of District: [REDACTED], District Transportation Coordinator; [REDACTED], Bus Company Senior Contract Manager, and [REDACTED] Bus Driver.

The following documents were entered into evidence at hearing: Parent documents⁴ : P1, 4-11, 22-79, and 85-87; District documents⁵ : D102-108.

Each attorney presented his oral closing argument. Parents' counsel cited *23 ILAC 226.750(2007)* in his closing argument. District counsel did not give citation of law in support of his argument. Parents' counsel submitted copies of *23 ILAC 226.750(2007)*, *Sytsema v. School Dist. No. 20*, 50 IDELR 213(10th Cir. 2008), and five SEA determinations from Illinois, New York, and New Jersey in his disclosure submission.

The Decision and Order in this matter is not being submitted within 45 days of the District's receipt of Parents' Due Process Hearing Request due to the parties' joint requests for continuance of the Pre-Hearing Conference and Hearing. It is being issued within 10 days of the conclusion of the due process hearing.

Issue

Whether District violated Student's right to a free appropriate public education by its failure to provide him with transportation appropriate to his needs between home and school during the 2011-2012 school year, which negatively impacted his ability to receive an appropriate education, and to offer him transportation appropriate to his needs for the 2012-2013 school year, and specifically in regard thereto,

- A. failure to appropriately assess Student's need for specialized transportation due to anxiety disorder and motion sickness in determining the mode of transportation for Student;

³ Parents' attorney has opposed District's efforts to include evidence relating to the availability of appropriate transition programs closer to Student's home on the grounds that the previous settlement agreement required Student's placement at the current private program for the 2011-2012 school year, and that an IEP meeting has not been held to consider a change of program since the submission of the hearing request in this matter, for which the only issue presented is the propriety of the mode of transportation to and from the current program, where Student has remained during the pendency of these proceedings.

⁴ Referenced herein by page number preceded by the letter P.

⁵ Referenced herein by page number preceded by the letter D.

- B. failure to appropriately consider Student's private providers' reports relating to motion sickness and anxiety disorder in relation to the provision of specialized transportation in determining the mode of transportation for Student; and
- C. failure to fund appropriate transportation available to Student from his current private school of attendance?

Findings of Fact

The material facts relevant to the issue in this matter, based upon the evidence presented at hearing, are as follows: Student is a 20 year old male, residing within District, who is eligible for special education and related services in the category of specific learning disability. (P25) Student is prescribed 30 mgs. of generic Paxil for anxiety. He also takes Adderall. Mother has observed that Student's stomach problems, when he complains of them at home, described to Mother by Student as his stomach "feeling like it will explode" manifest themselves as diarrhea. (Mother)

Parents wanted Student in a smaller setting than his public school for high school due to concerns over his shyness, poor social skills, and lack of academic progress. His anxiety and stress increased as he aged because of the things that were expected of him. He was placed at a private therapeutic day school, for high school at District expense, and he remained there over a period of five school years. He was transported to and from the previous program by a large school bus. That bus ride was 20-25 minutes each way. (Mother)

On October 5, 2010, Parents filed a request for due process hearing to challenge the appropriateness of the educational program and placement offered for Student. (D102) Parents desired placement of Student in the transition program operated by [REDACTED] outside of District. It takes Mother 50 minutes to drive from Student's home to [REDACTED] he drove Student to [REDACTED] before District transportation began. Parents were not concerned about the time and distance between home and [REDACTED]. (Mother) A settlement agreement executed in the previous due process matter and finalized on June 8, 2011 called for Student's placement at Academy at District expense through the end of the regular term of the 2011-2012 school year and required District "...to provide transportation to and from [REDACTED]" during that time. (D102-108)

District contracted with Bus Company to transport Student to and from [REDACTED] in July, 2011. ([REDACTED]) The bus company transports Student in a small van sized air conditioned bus that is 15 to 20 feet long and has 6 seats on each side of the bus. ([REDACTED], [REDACTED]) The buses have been regularly inspected and properly maintained. ([REDACTED], [REDACTED]; stipulation of counsel for Parents) On two occasions this school year and three or four times last year, when his regular bus was being serviced, Student was transported in larger buses. ([REDACTED], [REDACTED]) An aide/monitor also rides the bus. ([REDACTED]; [REDACTED]) One other student who attended a different school in the same area rode the bus with Student in 2011-2012, but Student is the only student riding his bus this school year. ([REDACTED], [REDACTED])

Student began attending [REDACTED] at some point on or possibly prior to August 2011. (Mother, [REDACTED], [REDACTED])⁶ The instructional day at [REDACTED] begins at 9:00 a.m., when students come into the building, eat breakfast, and then start their group time. The school day ends at 2:30 p.m. [REDACTED]

Student is picked up at his home by the bus driver at approximately 8:00 a.m. Depending on the traffic, it typically takes 45 minutes for the bus to reach [REDACTED]. Depending upon how tired Student is when he boards the bus, he chats briefly with the bus driver about politics or such, and then sleeps for the duration of the bus ride. He has never complained to the driver of exhaust fumes. He has not complained of or exhibited nausea, upset stomach, or motion sickness. Student once requested that the driver turn off the heat due to his sinus condition. Upon arrival at school, when it is time to go into the building, Student goes in. The driver has not observed any signs of illness as Student has left the bus. The bus has dropped Student off at school late twice

⁶ Testimony varied and conflicted as to start date, from January 2011 to May 2011 to August 2011, so it cannot be determined factually for purposes of this Decision.

since September this school year. () The bus arrived late on unspecified dates during the 2011-2012 school year, but it improved after February, 2012. ()⁷

Student exhibits anxiety and complains of stomach problems at school when he must perform certain tasks or when transitioning to certain activities in the community beyond the school setting. It occurs with changes in routine and situations that are uncertain. On those occasions, Student states "Oh, my stomach" and goes to the bathroom. On some days when he arrives at school in the morning, he says "Oh, my stomach" and then spends 10 to 15 minutes in the bathroom. () The teacher cannot quantify the percentage of the day that Student exhibits this behavior, and, on some days, he does not exhibit it. He is permitted to take the time he needs and then rejoin the group. He talks to the school social worker, who is a member of the classroom staff, individually, but he mostly manages his own time, and the staff has not conducted a functional behavior assessment or developed a behavior intervention plan to address this behavior. ()

Student was absent from school 26 days during the 2011-2012 school year for the stated reasons of doctors appointments and allergies. () He has been absent 9 or 10 days so far in the current school year. () He does not suffer from motion sickness when traveling in the car with his Parents, even on long trips, or when travelling into the community in the () vehicles. He does get nervous and exhibit anxiety when traveling to activities that he does not prefer or enjoy. (Mother; ())

Mother has contacted the bus company directly to advise when Student will not be attending school. The bus company has not received any calls or complaints from Parents or others regarding any negative experience of Student on its buses, including a bumpy ride, nausea, anxiety, or fumes. () District's Transportation Coordinator received one phone call from Parent over one year ago indicating that Student had become ill due to smells or fumes on the bus and she was contacted by the () Principal in regard to same as well. She had the bus sent for a re-inspection in response to the complaint. She received one phone call from the Principal regarding the bus arriving late during the last school year, and she investigated and discovered that Student was taking a class in another building at that time. He did not provide her with any specific dates when the bus was late to allow her to investigate further. () Parent: ()⁸

IEP documents for Student were generated by District's Case Manager. () An IEP conference was convened for Student on December 8, 2011, and the IEP document from that date included a note stating that "(Mother) has expressed a desire for her son to have alternative transportation due to her son's anxiety and motion sickness." (P11) Thereafter, District's Transportation Coordinator was contacted by Student's Case Manager⁹ regarding the possibility of another mode of transportation for Student to accommodate Mother's request. She informed her that the District currently did not have any car contracts but she was able to offer to reimburse Parents for mileage as an alternative to the yellow bus. ()

Parent solicited brief letters from Student's private medical providers in January and February, 2012 to support her request for alternative transportation for Student. The medical providers directed their letters "To whom it may concern", and Parent gave the letters to the Principal of the (). (Parent; P5-7) The Principal then wrote a letter to Parents' attorney, dated February 22, 2012, noting ()'s offer to transport Student to and from school in () minivans driven by () employees. The cost of that transportation is \$190 per day. Principal's letter to the Parents' attorney referenced Mother's notification that Student "suffers from motion sickness while riding in a bus." It did not complain of any incidents of late

⁷ Although there was some testimony from Principal and Teacher relating to late arrival of the bus during the first part of the 2011-2012 school year, the due process request does not take issue regarding late arrival and it is not a part of the stated issue in the case. The written complaint regarding busing made by Principal of Academy to Parents' attorney (P4) does not reflect a complaint of late arrival, and Parents' concerns as related to the IEP team did not include late arrival times.

⁸ Parents' attorney stated during hearing that fumes were not a serious or ongoing issue and stipulated that the buses Student rode were regularly inspected and maintained. The due process hearing request does not raise an issue of the bus delivering Student to school late.

⁹ Student's Case Manager, C.C., an employee of District, was listed as a witness by both parties, she was to testify first at hearing, and she did appear as scheduled on the first day of hearing. However, neither District nor Parents elected to present her testimony.

arrival of the bus, but advised that Student was spending "at least an hour to recoup from motion sickness." (██████████, P7)

An IEP document dated March 1, 2012, relating to a transition planning meeting, notes Student's asthma and allergies, includes an Asthma Action Plan and detailed accommodations for these conditions, and also notes that "Mom is concerned about the long bus ride because (Student) suffers from motion sickness." (P60) Attendees of that meeting are noted to include the Case Manager, Teacher, and School Nurse, but there are no signatures confirming attendance on the document. (P59) The IEP documentation reflects Student's eligibility for transportation as a related service due to his social/emotional needs and his attendance at school out of the city pursuant to due process settlement. It notes that Parent accepts transportation as a related service and that District will provide transportation and a bus aide due to safety concerns. (P75)

IEP documents including conference dates of 5/22/2012, 5/24/2012, and 6/14/12 denote that an IEP revision meeting was convened on May 22, 2012 and reconvened on 5/24/2012 and that an eligibility conference was held on May 24, 2012 and reconvened on June 14, 2012. There are no signatures to confirm who participated in any of those meetings, but checkmarks by the names on the IEP Participants sheets indicate participation by the Case Manager, Teacher ██████████ and School Nurse on May 22 and May 24, 2012, and by the Case Manager, School Nurse, a teacher other than ██████████, who was not working at the time of that conference, Parent, Student, Speech/Language Pathologist, and Parents' Attorney's Paralegal on June 14, 2012. (P22-23, 25-26, 34-35; ██████████) According to the documentation, revisions were made to Student's Areas of Need, Transition Service Plan, Specialized Instruction, Extended School Year, Accommodations and Modifications, and LRE Grid/Setting on May 24, 2012. (P22)

Parent gave the ██████████ Principal a letter from Student's physician, addressed "To whom it may concern" dated May 25, 2012. (Parent; ██████████.) That letter stated:

(Student) is currently under my medical care. He suffers from an anxiety disorder and being treated for this. It is best for (him) to try to minimize the factors that aggravate his anxiety. Being on the school bus causes him significant anxiety. This results in him suffering motion sickness and an upset stomach and because of this, he is unable to perform well in school. It is recommended that rather than travel to school by bus, he have a different mode of transport....

(P1)

The Eligibility Determination documentation relating to Student's triennial evaluation in the domain of *Health* references Student's asthma, allergies, anxiety and depression, and the various medications he was being prescribed to address those conditions. It also reports, per staff, that Student "...spends some time experiencing nausea in the morning." It references a report from Student's physician attributing Student's "...nausea to anxiety caused by riding on the school bus." At that time, per the eligibility documentation, Student had been absent from school 26 days over 35 weeks. It concludes that "(Student's) current health may impact his educational progress." (P27) Student was determined eligible for special education in the category of Specific Learning Disability on June 14, 2012. (P31-32) He receives transportation from District as a related service due to his social/emotional needs and because of the location of his placement outside of the District as well as the related services of direct speech/language therapy and direct social work in the amounts of 60 minutes per week each. (P49, 53) He was eligible for extended school year services for the summer of 2012. (P52)

Student has not yet mastered the annual goals that were written for him by ██████████ in December 2011, but he has made progress in the areas of job search and application and socialization. He is managing his anxiety. He is advocating for himself and he feels good about himself as a person. His vocabulary has increased and he is easier to understand. (Mother; ██████████)

Conclusions of Law

District did not violate Student's right to a free appropriate public education by its failure to provide him with transportation appropriate to his needs between home and school during the 2011-2012 school year, which negatively impacted his ability to receive an appropriate education, and to offer him transportation appropriate to his needs for the 2012-2013 school year, and specifically in regard thereto:

- A. It did not fail to appropriately assess Student's need for specialized transportation due to anxiety disorder and motion sickness in determining the mode of transportation for Student.
- B. It did not fail to appropriately consider Student's private providers' reports relating to motion sickness and anxiety disorder in relation to the provision of specialized transportation in determining the mode of transportation for Student.
- C. It was not required to fund [REDACTED] available minivan transportation in order to provide Student with FAPE.

At a special education due process hearing convened pursuant to the provisions of the *Illinois School Code*, it is incumbent upon the school district to present evidence that, if at issue, it has properly identified and evaluated the nature and severity of the student's suspected or identified disability and provided or offered to provide him with a free appropriate public education in the least restrictive environment. *105 ILCS 5/14 8.02a(g-55)(2012)* However, the burden of persuasion in a special education due process hearing rests on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005) In this case, Parents bore the burden of persuasion by a preponderance of evidence on the issue for which they sought relief. Based upon the application of law to the evidence presented, it is concluded that Parents failed to meet their burden and that they are not entitled to their requested relief.

A free appropriate public education, commonly referred to as *FAPE*, must be made available to disabled Illinois school children by their respective school districts in accordance with the *IDEA* and its attendant regulations. *20 USC 1400(2004)*; *23 ILAC 226.50(2007)*; *34 CFR 300.17, .101-.103(2006)* It is an education that is reasonably calculated to provide a disabled student with meaningful educational benefit, as based upon an individual education plan, or *IEP*, developed by an *IEP* team, including a student's parents. *Hendrick Hudson Dist. Bd. Of Ed. v. Rowley*, 458 U.S. 176 (1982)

The school district is required to follow procedures that are designed to allow the parent to participate in the development of the *IEP*. The applicable procedures are set forth in *34 CFR 300.300-328(2006)* and *23 ILAC 226.110-350(2007)*. Procedural violations alone, where they occur, cannot be deemed a denial of *FAPE* unless the evidence proves that the violations impeded the student's right to *FAPE*, the parent's right to participate in the decision making process, or caused the student to be deprived of an educational benefit. Otherwise, a hearing officer's determination of whether *FAPE* was received must be based on substantive grounds. *34 CFR 300.513(2006)*

Special transportation to and from school is among the services a District is required to provide eligible special education students, including those placed in non-public programs, as the student's disability or the location of his program may require. *34 CFR 300.34(a) and (c)(16)(2006)*; *23 ILAC 226.750(b)(2007)* Illinois regulations require that arrival and departure times allow the student to receive a full instructional day, that efforts are made to limit transit time to no more than one hour each way, that transportation is scheduled in such a way that it does not adversely affect a student's health and ability to relate to the educational experience, and that the vehicles used are adapted¹⁰ to the specific needs of the children being transported. *23 ILAC 226.750(b)(2007)*

¹⁰ The Federal regulation governing the provision of transportation as a related service requires that the transportation provided include specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Parents argue that District violated the aforesaid Illinois regulation by transporting Student by school bus instead of a smaller vehicle, and that the transportation by school bus negatively impacted Student's ability to receive FAPE, both in the 2011-2012 school year and the current school year at [REDACTED] cause on some days he spends time in the restroom upon arrival at school when students are having breakfast and meeting as a group. However, the preponderance of the evidence presented at hearing does not support the contention that the mode of transportation provided by District has been the cause of Student's anxiety or behavior, and it cannot be concluded, based on the evidence, that District has engaged in either a procedural or substantive violation of FAPE that would require the relief requested by Parents in this case.

The information provided by Parent relating to Student's anxiety and possible motion sickness was considered by Student's IEP team, including the school nurse, according to the documentation referenced at hearing. Parents elected not to present testimony from the District representative who attended the IEP meetings and generated those documents. They elected not to call the adult Student himself to testify firsthand of his experience on the bus this year and last, even though he was listed as a witness for hearing and he was present on the first day of the hearing. [REDACTED] Social Worker, who was part of the classroom team and provided individual services to Student presumably addressing his anxiety issues, was not listed as a witness for this hearing, and was not called to testify. Student's bus driver for the 2011-2012 school year was not listed as a witness and was not called to testify. It is also significant that, per Mother's testimony, Student rode a large bus to and from his previous school for five years, and he is able to go on long car trips without motion sickness. She further testified that the stomach problems Student develops manifest in diarrhea, not vomiting, Student takes medications for asthma and allergies, as well as Adderall and a high dosage of generic Paxil. And, although the various private medical providers who issued notes at Mother's request to support her desire for alternative transportation were listed on Parents' witness list, they were not called to testify, even though they could have testified by telephone and there was ample time for them to give testimony over the two days set aside for this hearing.


However, Student's current bus driver did testify most credibly for District that he picks Student up in the morning at about 8:00 a.m., that it generally takes 45 minutes to transport Student to school in the morning, that Student is the only child being transported, and that Student gets on the bus and goes to sleep. He does not complain of illness on the bus. Student's teacher testified that she cannot quantify how much class time Student has missed by being in the restroom upon arrival at school, but it does not occur every day and it typically amounts to 10 to 15 minutes. She also testified that Student complains of his stomach when he is confronted with activities that he is uncomfortable with or nervous about during the school day, and that he spends time in the restroom on those occasions as well. The teacher allows Student to manage his own anxiety and time, and, as noted, the social worker wasn't called to testify, and staff has not considered a functional behavior assessment or implementation of a behavior intervention plan to address Student's anxiety about certain activities and the resulting bathroom time.

For the above reasons, it is concluded that District was not required to provide Student with transportation by minivan or car or to pay for [REDACTED] private transportation under the facts of this case in the last or current school year pursuant to the *IDEA* and the *Illinois School Code*. The Tenth Circuit decision in the *Sytsema* case and the various SEA decisions provided by Parents' counsel do not persuade otherwise. The efficacy of [REDACTED] program in terms of Student's needs was not made an issue in this matter. Student's IEP team may consider whether it is appropriate for Student at this time.

IT IS THEREFORE ORDERED:

That Parents' request for relief is denied.

DATED: October 22, 2012


Stacey L. Stutzman
Impartial Hearing Officer

RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party and to the Illinois State Board of Education. The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the hearing officer is not authorized to entertain a request for reconsideration.


RIGHT TO FILE A CIVIL ACTION

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of the decision of the impartial due process hearing officer is mailed to the parties.

CERTIFICATE OF SERVICE

The undersigned due process hearing officer certifies that she uploaded this Decision and Order onto the ISBE SEDS on October 22, 2012, and served copies of the aforesaid Decision and Order upon Parent, her counsel, District, District's counsel, and the Illinois State Board of Education at their respective addresses by depositing same with the United States Postal Service at Libertyville, IL, certified mail postage prepaid, on October 22, 2012 before 5:30 p.m.

DATED: October 22, 2012


Stacey L. Stutzman
Impartial Hearing Officer