

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

*In Re: Student/ School District*

*IDPH-FY-E-18-12-020*

DECISION

INTRODUCTION

The School District initiated this matter after it determined that the Student needed to be removed from the Student's current placement at the District public school and placed in an alternative interim educational setting for up to 45 days because maintaining the Student in the current placement was substantially likely to result in injury to the Student or others. The Mother initially objected to the District's decision but then agreed with it. The Father objected and the matter went forward to Hearing on January 8 and 9, 2018.

DISCUSSION

The District called several witnesses including the Principal, . Mr. Described the Student's history in the District. The Student is identified with Autism as the Student's disability. The Student is currently in the 6<sup>th</sup> grade. The Student has required A 1:1 para throughout the Student's educational career. There have been behavioral Challenges throughout the 7 years of education which the District and parents have Worked through. Late in the 5<sup>th</sup> grade, however, the behavior escalated and the Student's Demeanor changed. The 6<sup>th</sup> grade year began with the same teacher, same para, same Classroom and same seat in the classroom. There were a number of troubling incidents that Occurred in the first part of this school year that ultimately led to the District's decision to seek The 45 day interim alternative placement. On September 14, 2017 the Student was playing

Basketball and nearby a younger child was swinging a hockey stick over his head. The Student Approached the child and pushed the child to the ground. This was the first time that the District Had observed the Student physically attack another peer. Paragraph 13 of the Complaint Describes 11 separate incidents that occurred between September 7 and November 20, 2017 Wherein the Student attacked staff, including a teacher, two staff members, the para, the school Secretary, the Principal, another student, the Behavior Analyst the Student's Mother a Police Officer. The Behavior Analyst was required to visit Urgent Care and receive a tetanus shot and Antibiotics. The Principal injured his back. The incidents are graphically described in paragraph Of the Complaint. The remaining witnesses, including , Special Education Director, , The Student's 3<sup>rd</sup> and 4<sup>th</sup> grade teacher, , Board Certified Behavioral Analyst, , the para, , another BCBA and , Special Education Teacher, all recounted the same incidents relative to the Student escalating And creating a serious danger in the school and on the grounds in the fall of 2017.

testified that the is an appropriate setting for a 45 day alternative placement for the Student and for the safety of both the Student, other Students and the Staff. She testified that the parents were unwilling to allow the District to The Student's records to several other potential placement, thus preventing the District from Considering those placements. was willing to accept the Student without those records. In addition it is the local collaborative, a is available, it is a therapeutic day program And could be there for support.

The father called one witness, , a psychologist who has a prior history of Working with the Student in the first grade, but who had not worked with the Student since. He Was contacted by the Father in 2017 due to the Student being suspended four times as a result

Of the out of control behaviors described in detail in paragraph 13 of the Complaint.

Was provided with data from the relative to the Student's escalating behaviors and Prepared a draft plan to deal with those behaviors which would have included both he and Another member of working directly with the Student. He Was to meet with the team to go over the drat plan when he was notified that the meeting was Cancelled because the student was removed and the Complaint filed by the District.

's plan was essentially almost identical to what the District already had in place at the time Which included essentially 4 persons working directly with the Student at all times. The father Did not testify. It is clear that the father believes that the plan proposed by should Have been implemented and that the father opposes as the 45 day interim alternative Placement.

#### REQUESTS FOR FINDINGS AND RULINGS

The District submitted 4 request for finding and rulings. All are granted. Specifically, the Rules that the District carries the burden of persuasion and has met that burden. The Undersigned rules that maintaining the Student in the public school placement is Substantially likely to result in injury the Student and others, and, in fact, has already Done so, and that is a appropriate 45 day alternative Placement . The parents' refusal to allow other alternative placements access to the Student's Educational records prevented access to other placements. Pursuant to 34 C.F.R. 300.532 b 2 ii The undersigned Hearing Officer upholds the District's decision to make the 45 day interim Alternative placement at

DECISION

The Hearing Officer upholds the District's decision to make the interim alternative educational placement at

APPELLATE RIGHTS

If either party is aggrieved by the Decision of the Hearing Officer set forth above, either party may appeal this Decision to a Court of appropriate jurisdiction. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The District shall notify the Commission of Education when either the District or the Parent seeks judicial review of the Decision.

If neither party appeals this Decision to a Court then the District shall within ninety (90) day provide to the Office of Legislation and Hearing (Department of Education) and the Hearing Officer a written report describing the implementation of this Decision and provide a copy to the Parents. If the Parents do not concur with the District's report, the Parents shall submit their own report through the Commission of Education.

**SO ORDERED:**

Dated: 01/14/18

  
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John P. LeBrun, Esquire  
Hearing Officer