

The State of New Hampshire

Department of Education

In re: Student [REDACTED]

IDPH FY-21-08-006

1. INTRODUCTION

A Pre-Hearing Conference was held on September 29, 2020. An Order was issued on September 29, 2020 and identified as the issues to be resolved included FAPE, IEP, ESY and Compensatory Education. The Parents presented first. They were represented by Attorney [REDACTED]. The District was represented by Attorney [REDACTED]. The Hearing was held on January 26 and February 8, 2021.

2. DISCUSSION

[REDACTED] from the [REDACTED] Program testifies first. [REDACTED] Resume is at Parent's (P) 5. [REDACTED] is BCBA certified. [REDACTED] trains parents of children with Autism. Student, dob 07/13/[REDACTED] started with the [REDACTED] Program in November, 2016. [REDACTED] began at [REDACTED] one month later. [REDACTED] used Applied Behavioral Analysis (ABA) to observe behavior and be able to treat it. The Student's behavior plan was for 30 hours of ABA therapy weekly. The behavior plan [REDACTED] created for the Student is at SD 715-716. The IEP created for the Student is at SD 582. It incorporated the Behavior Plan created by [REDACTED]. The Student was attending [REDACTED] and [REDACTED] after school.

[REDACTED] recommended that the Student attend [REDACTED] in the morning in District and [REDACTED] in the afternoon. District disagreed and wanted the Student in District all day. The Parents countered by offering that the Student attend in District 3 days and RSC 2 days. The parties were unable to agree. SD 671 is the proposed IEP for 7/1/18-6/30/19. The parents rejected the IEP but did not appeal the rejection. [REDACTED] felt that the IEP was not appropriate, particularly with respect to behavioral goals. The parties also disagreed on placement. The Student attended [REDACTED] for 20 hours per week for [REDACTED]. [REDACTED] felt that the Student would need a behavior plan to begin [REDACTED]. The Student's behaviors were tracked in behavior reports at P. 378-402.

There was limited Cross-examination. The Witness acknowledged that [REDACTED] last worked with the Student in May, 2019 and that [REDACTED] never observed the Student at [REDACTED] School.

The Student's [REDACTED] testified next. Student has had issues since birth, including no eye contact or socialization and living in [REDACTED] own world. [REDACTED] was referred for special education services at [REDACTED] years of age. [REDACTED] had been evaluated by ESS and qualified for services. SD 527 is the IEP at [REDACTED] years old with a handicap of Speech Language Impairment. [REDACTED] wanted [REDACTED] for education and District offered 6 hours/week in a State approved school. Student went to District School for Speech and Occupational Therapy. Student attended [REDACTED] 30 hours/week. Student also received ST and OT at [REDACTED] because [REDACTED] was not satisfied with District's services. [REDACTED] was never approved by District. [REDACTED] recalled that [REDACTED], special Education Director questioned whether Student even qualified for Special Education services. [REDACTED] felt that District was not implementing the behavior plan and that District felt they were the experts and disregarded [REDACTED], [REDACTED] and [REDACTED] recommendations. SD 689 is [REDACTED] rejection of the IEP for 2018-2019 [REDACTED]. At a meeting (SD 703) District offered to transition Student into [REDACTED] and Parents disagreed. [REDACTED] met with the Superintendent to request less than full day [REDACTED] but was not successful. [REDACTED] informed District that Student would not attend [REDACTED] and [REDACTED] informed [REDACTED] that Student would be placed on [REDACTED]. Student received no services from District for [REDACTED]

Planning for [REDACTED] began with a meeting in May, 2019 that was not a full team meeting. Summer, 2019 included ESY for 3 weeks of ½ days. Student began having behavioral issues including striking another student and a teacher. [REDACTED] felt that District was not using the behavior techniques taught by [REDACTED]. Behavior records are at P. 378-398. Student was sent the the Principal's office which [REDACTED] felt reinforced negative behaviors. The IEP was agreed upon sometime in 2020. Student has an IEP for [REDACTED] and things are going well. P. 437-43 is a chart of expenses incurred by the Parents as a result of the unilateral placement at [REDACTED] and with [REDACTED], plus transportation expenses.

On Cross-examination, the [REDACTED] acknowledged that the expenses just referred were not actually incurred by the family except for transportation and Child care expenses. [REDACTED] acknowledged that ESY, ST and OT were offered in summer, 2018 and not accepted. [REDACTED] also rejected all [REDACTED] services. In [REDACTED] grade Student leaves early 3 afternoons per week. [REDACTED] left early 1 day per week in [REDACTED] grade. There was no ESY in 2020 due to COVID.

██████████ requested ABA services for Student at every meeting and brought a person to explain why. ██████████ is not considered a school by the State as it is a medical service. For ██████████, District had a BCBA person available SD 703.

District witnesses testified before the conclusion of the Parent's case. Their testimony will be addressed below. The final Parent witness was ██████████ (BCBA). ██████████ worked with the Student at ██████████ after ██████████ left. ██████████ felt that Student needed ABA and speech services. ██████████ followed the public school academics with Student at ██████████. Student had an FBA and removing ██████████ from the classroom would cause ██████████ behavior to escalate.

On Cross-examination, ██████████ agreed that ██████████ is not a certified classroom teacher. ██████████ told the team in a meeting on 1/6/20 that 90% of the time ██████████ does behavior intervention, not academics. ██████████ never observed Student in District schools.

District's first witness was ██████████, Special Ed. Director. District would not approve placement at ██████████ because it is not State approved. ██████████-school is and it could have provided ST and OT. ██████████ received the Doctor's letter identifying Student as ██████████ but wanted to wait until ██████████ year when the 3 year evaluation would be due to occur. Student did not attend ██████████ in 2018-19. There was an issue raised by ██████████ that the school handbook offered ½ or full day ██████████ and this witness said that that was no longer the policy and had, by mistake, not been omitted from the handbook. District offered ABA services through a Consultant but Parents rejected ██████████ IEP and placement. The Superintendent met with the ██████████ because the handbook makes it an option. When informed by the Parents that Student would not attend ██████████, ██████████ instructed them that Student would be placed on ██████████. ██████████ told the Parents that by withdrawing Student from school they lose special education services. ██████████ felt Student made progress in ██████████ at ██████████.

██████████ testified that the District never received the medical information from ██████████ until the Due Process request was filed. District had no knowledge that Student attended ██████████ (P. 543) yet Parents want to be compensated for that placement. ██████████ felt that Parents had already selected ██████████ even though District could provide for Student's needs in District. SD 555 are minutes of a team meeting on 10/22/16 and District did not obtain a copy of the evaluation that had been done. In ██████████ opinion Student was ready for full-day ██████████ and Parents rejected it. As mentioned earlier, the parties attempted to negotiate the amount of time that the Student would be in ██████████ but were not successful. Student started ██████████ grade without an IEP. ██████████ had behavioral issues so a BCBA was put into place to address these issues. There were 19 behavioral incidents between October, 2019 and February, 2020. A partially accepted IEP was ultimately agreed to.

According to [REDACTED], Parents rejected the following from District: [REDACTED] 2016, speech services, ESY, 2018, speech services, [REDACTED] and [REDACTED] was kept home for two weeks in February, 2020.

On Cross-examination, [REDACTED] testified that Student would escalate when asked to do an academic task. [REDACTED] acknowledged that [REDACTED] informed the District of the [REDACTED] diagnosis in August, 2016, no team meeting was held. For [REDACTED] Parents wanted [REDACTED] and District wanted [REDACTED]. No evaluation was done for the [REDACTED] diagnosis in 2016. SD 661 are minutes of a meeting in which the Parents wanted an evaluation and none was done. [REDACTED] reiterated that [REDACTED] was not a viable placement because it is not State approved. Parents rejected [REDACTED] for 2018-19. State regulations mandate that a meeting be held to try and come to an agreement and, per [REDACTED], it was held on 7/19/18 (Written Prior Notice at SD 699).

[REDACTED], BCBA testified next for District. [REDACTED] consults 8 hours per week in District. [REDACTED] does file reviews, observations and meets with teachers as applicable. [REDACTED] observed Student in summer before [REDACTED] grade 2019/20 and did not see a lot of challenging behaviors. [REDACTED] observed Student in [REDACTED] grade and thought that [REDACTED] made progress in academics although [REDACTED] behavior could be noncompliant regarding doing school work. SD3 is a survey [REDACTED] sent to the Parents which was never completed or returned to [REDACTED]. [REDACTED] consultation notes are at SD 4 and 5. [REDACTED] felt that Student did not need a 1:1 para. [REDACTED] acknowledged that there was an increase in behaviors as described above between October and February of [REDACTED] grade. SD 115 is [REDACTED] FBA Assessment. [REDACTED] felt that the teacher was implementing [REDACTED] recommendations. [REDACTED] did not believe that Student needed an Individual Behavior support Plan but did provide one in January of 2020. Student is doing well in [REDACTED] grade.

On Cross-examination, [REDACTED] acknowledged that ABA is appropriate for Student.

[REDACTED], Special Education teacher testified next for District. [REDACTED] has been Case Manager for Student since [REDACTED] grade. [REDACTED] agreed [REDACTED] should have been in all day [REDACTED] and that Parents rejected [REDACTED] because they wanted Student in [REDACTED]. [REDACTED] felt that 2 days at [REDACTED] and 3 in Kindergarten was not a good mix. Student had a lot of gaps because [REDACTED] missed [REDACTED]. On Cross-examination [REDACTED] agreed that Student could have received ST and OT without an IEP.

[REDACTED] grade teacher testified next. Student was behind when [REDACTED] started [REDACTED] grade.

felt that Student was behind when started grade. people only worked on behavioral issues with Student. grade had around 20 students with a para and Case Manager and ST/OT were pull out. did refer Student to the Principal for behavior issues. felt that Student made good academic progress in grade. On Cross-examination acknowledged that modified Student's academics and that behavior could interfere with academics.

3. Requests for Findings of Fact and Rulings of Law.

Parent's Requests for Findings of Fact are Ruled upon as follows: #1 Granted; #2 Granted; #3 Granted; #4 Granted; #5 neither Granted nor Denied but if inconsistent with the Decision below deemed denied; #6 neither Granted nor Denied; #7 Neither Granted nor Denied; #8 Granted; #9 Denied; #10 Neither Granted nor Denied; #11 Neither Granted nor Denied; #12 Denied; #13 Neither Granted nor Denied (these are ruled upon as well as the above ones because the Request includes contradictory information); #14 Granted; #15 Granted; #16 Neither Granted nor Denied; #17 Granted; #18 Granted; #19 Neither Granted nor Denied; #20 NGND; #21 NGND; #22 NGND; #23 NGND; #24 NGND; #25 NGND; #26 NGND; #27 NGND; #28 NGND; #29 NGND; #30 NGND.

Rulings of Law: #1 Denied; #2 Denied; #3 Denied; #4 Denied; #5 Denied; #6 Denied; #7 Denied; #8 Denied.

District's Requests are combined. Any NGND ruling is based on contradicting or ambiguous or argumentative statements contained in any Request. #1 Granted; #2 Granted; #3 Granted; #4 NGND; #5 NGND; #6 Granted; #7 Granted; #8 Granted; #9 Granted; #10 Granted; #11 Granted; #12 Granted; #13 NGND; #14 Granted; #15 Granted; #16 Granted; #17 NGND; #18 NGND; #19 NGND; #20 Granted; #21 Granted; #22 Granted; #23 Granted; #24 Granted; #25 NGND; #26 NGND; #27 Granted; #28 Granted; #29 NGND; #30 NGND; #31 NGND; #32 Granted.

4. DECISION

In this case it is the undersigned's finding and Ruling that the Parents wanted the Student to receive services at [REDACTED] from the beginning even though [REDACTED] is not an educational program but is a behavioral one. The Parents stood by their position regarding [REDACTED] and when they could not agree with District, they opted out of [REDACTED] and the Student was rightfully placed on [REDACTED]. The Student never received a [REDACTED] education but instead received behavioral services at [REDACTED] and [REDACTED]. That was their decision but at no fault of the District. Had the Student matriculated in District for [REDACTED], [REDACTED] would have had a much better opportunity for academic and behavioral success. [REDACTED] was behind when [REDACTED] started [REDACTED] grade. [REDACTED] did have some manageable behavioral issues but made progress in [REDACTED] grade and continues to do so. The District did not violate any procedural obligations to the Student that impacted [REDACTED] education. Clearly, the Parents had every right to determine that their child receive the services that they felt [REDACTED] needed, and did so. However, they are not entitled to compensatory education or reimbursement. The District is the Prevailing Party.

4. APPEAL RIGHTS

If either party is aggrieved by the decision of the Hearing Officer as stated above either party may appeal this Decision to a Court of Competent jurisdiction. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The School District shall promptly notify the Commissioner of Education if either party, Parent or School District seeks judicial review of the Hearing Officer Decision

So Ordered,



John P. LeBrun
Hearing Officer

03/24/2021