

STATE OF NEW HAMPSHIRE  
STATE BOARD OF EDUCATION

*In Re: Student/School Board SB-FY-09-01-009*

RECOMMENDATION TO STATE BOARD OF EDUCATION

INTRODUCTION

A Prehearing Conference was held on February 9, 2009 and a copy of the Prehearing Order is attached hereto. The matter proceeded to Hearing on March 19, 2009 representing the interests of the School Board with Sarah Murdough, Esquire. The Parents represented the interests of the Student.

The underlying issues to be determined by the State Board of Education were whether or not there should be a change of placement pursuant to the Provisions of the Manifest Educational Hardship Statute and, secondly, whether the School Board has failed to comply with applicable Policies, Regulations and Statutes in the handling of issues involving the Student in question.

PROCEDURAL VIOLATIONS

Not applicable.

DISCUSSION

The Parents presented first and provided narrative testimony which included references to the Parents' Exhibits. The Mother indicated that the School District was not following its Policies and Procedures in the treatment of the Student, and this had a negative educational impact on the Student. She further alleged that the School Board stands behind the Principal of the School in question and that the Principal told the Parents to take their child out of his school. The Mother also testified that the Board violated its

School Board Member Ethics Policy (Parent Exhibit A, Paragraph 8) (hereinafter Parent Exhibits are referenced P... and School Board Exhibits are referenced as SB...).

Specifically, the Parents alleged that Paragraph 8 of Exhibit A (School Board Member Ethics) was violated because the School Board disclosed confidential information to the public and did not allow the Parents to be heard at the Suspension Hearing. Instead, they listened to the testimony of the Principal and a Psychologist who had never met the child. Further, the Parents allege that the District violated the Provisions of Ed. 204.01a No. 5

(P Exhibit D-1) because the School Board failed to issue a Decision in a timely manner and did not notify the Parents that the Decision could be appealed to the State Board and did not provide a rationale for the Board's Decision (P D 1, page 2, D and G). The Mother indicated that the Principal totally disregarded Parental rights and referred to Exhibits E 1, E 2, and E 3 which are a series of newspaper articles. She indicated that the Principal, Mr. Nannicelli, told the Parents that he does not follow Policies and does not even read them. She generally alleged a pattern of misbehavior by Mr. Nannicelli.

According to the Mother, the Principal labeled the Student as being depressed because the Student cried at a school dance. The Principal and Guidance Counselor allegedly allowed the Student to act inappropriately at School without disclosing the behavior to the Parents and allowed the behavior to go on during the entire school year.

The Mother referred to Exhibit H which is the Policy on Teacher Arrival and Departure Times, arguing that the students are not educated when the regular staff are out, and that substitute teachers are often not in place. She further indicated that the Policy on Gifted and Talented Students (P I.) disregarded this Student's talents and instead focused on this Student's negative behaviors. The Mother faulted the School District for refusing to change advisors for the Student and further alleged that the Homework Policy (P K) was violated because the Parents asked to be provided with all homework and were not given homework by the school so that they were unable to assist the Student in completing it. The Parents alleged that the Policy on Attendance (P L) was not properly monitored in that the Policy on Student Conduct (P M) was also not followed because the Principal refused to discipline the Student for improper behavior but instead sent the Student to see a

Counselor. In addition, the Parents argued that the Behavior Management and Intervention Policy (P M 2) was violated because detention is supposed to be used as a last resort, yet the Detention Room was always full.

The Parents argued that the Pupil Safety and Violence Prevention Policy (P N) was not complied with because the Principal refused to discuss bullying regarding the Student in question, although the Student claimed that the Student was bullied on school grounds. In addition, the Parents alleged that the Policy on Student Searches was violated because the Student in question was searched regularly and was suspended for 20 days in order to undergo an evaluation, and the Student should not have been repeatedly searched.

The Policy on Procedures for Suicide Intervention (P P 1) had not been complied with according to the Parents. No Suicide Intervention Team was assembled, and the School District threatened to call DCYF if the Parents did not have the child evaluated.

The Parents allege that the Policy on Student Records (P R) had been violated because the District had failed to provide the Parents with access to the Student's records, and the Parents had to go to the Attorney General's Office for intervention. The Parents further argued that the Policy on Parent Involvement in Education (P S) had been violated because the Parents were never told that the Student was seeing a Guidance Counselor about behavior problems and that the Parents were called a total of four times during the entire year, although the behavior was apparently occurring on a daily basis.

The Parents further argued that the Policy on Distribution of Materials in the Schools (P T) was violated because political information was distributed (P T 1 through P T 4).

The Parents concluded by indicating that it is a hardship for the Student to be at the school in question. The Student is picked on and has no friends, the school will not communicate with the Parents without all communications being tape-recorded; the Mother asked for someone other than the Principal to intervene because of the lack of communication between the Principal and the Parents, and the school refused. The Mother indicates that she was told that the Student should be removed from the school if the parents did not like the way that Mr. Nannicelli runs the school.

On cross-examination, the Mother acknowledged (Exhibit P-2) that the counselor from Riverbend, Tom Peters, recommended that the Parents consider Out Patient Counseling for the Student and that this recommendation came in December of 2007. The Mother further acknowledged that the Guidance Counselor did speak to her at length regarding the Student's status (see Parent Exhibit Q 1). DCYF did investigate the matter, and it was closed as unfounded. However, DCYF did recommend counseling (P Q-7). The Student was suspended earlier in the 2008-2009 school year (SB 17) for threats to kill other people at school, and the Mother did not object to the two 10-day suspensions. However, the Parents did object to the Student being evaluated before being allowed to return to school (SB 20) is a letter from Dr. Baker regarding the suspension and evaluation. With respect to the issue of the teachers leaving the building for meetings, the Mother took the position that the teachers leave frequently and are gone "all day long". There is little merit to the Mother's testimony in that regard.

The Father testified as the next witness and indicated that the Student was a "normal kid" at the beginning of the Sixth Grade in the Fall of 2007. However, the Parents were concerned about lackluster grades and performance, and there was a good deal of communication with the teachers to attempt to upgrade the program without any success or follow-up. The Parents were frustrated that the Student was not successful because the Student had been successful in prior years. The Parents later found out that the Student had been removed from the classroom over twelve times during the year to meet with the Guidance Counselor and that they had never been told. Early in 2008, the parents began receiving notices from the school about the Student's behavior. However, they were more concerned about the Student's academics. Subsequently, DCYF was involved. In the Summer of 2008, the Parents met with the School Board and the Administration and believed that a resolution had been reached. They agreed to send the Student back to the school in question, however, after two weeks, one of the teachers told the Parents to remove the Student from that teacher's class. The Father indicated that the Principal would not help him in any way and that the Advisor was a bad fit for the Student in that the parents asked that the Advisor be replaced without success. Subsequently, the Parents were told by the Principal that the Student should be removed from his school.

Subsequently, the Student was suspended due to the death threat referenced above in the Mother's testimony. The Father was further upset that the District accepted and considered a Report from a psychologist who had never met the Student but instead had only done the paper review.

On cross-examination, the Father indicated that he acknowledged the Superintendent was looking for a Psychological Evaluation, and he indicated that the Parents had already had one completed, although no such evaluation was submitted as part of the Exhibits.

The Parents rested after the testimony of the Father,

The first District Witness was Richard Nannicelli, the Principal who was in his third year at the school in question. The Student is in the Seventh Grade this year, and was in the Sixth Grade last year and was generally doing well academically (SB 1 and SB 2 are Progress Reports and Report Cards), (SB 3 are the Fall to Fall Testing Reports which show typical growth for the Student).

The Guidance Counselor came to Mr. Nannicelli with concerns about the Student due to the Student being unhappy. The Student was evaluated at Riverbend and came back to school. The Guidance Counselor had difficulty contacting the Parents and sent a Certified letter to the Parents without receiving any response. This resulted in contacting DCYF. The Parents were concerned that the teachers were not meeting the Student's needs, and a Student Contract was agreed-upon (SB 10) indicating what the Student needed to do, what the Parents needed to do, and what the School District needed to do in order to properly monitor the Student's progress. Mr. Nannicelli testified regarding the Code of Conduct with respect to discipline issues. SB 8 is the reference to the in-house suspension received by the Student for negative physical contact. In addition SB 6 and SB 7 are forms regarding problem-solving for two other incidents involving the Student in November of 2008. SB 5 is the Suspension Notice due to the death list that the Student had prepared. Mr. Nannicelli was not involved in the investigation regarding the death list which resulted in the suspension. Mr. Nannicelli contacted the Parents of the students who were on the death list because the Resource Officer at the School had not done so, and he felt an obligation to do so.

The Student returned to the School in January of 2009, and a Contract Meeting was held on January 12, 2009, which included the Parents, the Guidance Counselor, the Advisor, the Superintendent, and two School Board members. Mr. Nannicelli indicated that the Student's back pack was searched because he had received calls from the parents of other children indicating that other children were fearful to return to school. He also indicated that the Mother agreed to the back pack search. He indicated that the decision not to change the Advisor was reached because the Parents could not articulate why a new Advisor was necessary. With respect to bullying, Mr. Nannicelli indicated that if a report is received, the Student is asked to write a statement, and it is investigated. He acknowledged that the Student had told him that the Student was being teased. With respect to the allegation that the teachers are frequently out of the building and at Mr. Nannicelli's home, he indicated the need for planning purposes, and his home is only ten minutes from the school so it is a convenient site, and substitute teachers are always available. Mr. Nannicelli indicated that all school records requested by the Parents had been provided. He indicated that the Student is not treated any differently than any other student and that he has tried to work cooperatively with the Parents, and that he believes he can work with the Student and the Parents cooperatively in the future.

On cross-examination, Mr. Nannicelli agreed that the Guidance Counselor came to him for the first time with concerns around the date of the Riverbend evaluation in December of 2007. He did not review the Student's file when the Report was made to DCYF because he trusted the Guidance Counselor. He denied that the Student has ongoing behavioral problems. When a Student Contract for misbehavior does not succeed, there generally is a meeting that takes place to review the Contract. He indicated that he has had many meetings with the Parents and that the Parents wanted to be immediately informed of any disciplinary issues. Mr. Nannicelli did agree that the school in question is "in need of improvement" status under the No Child Left Behind Law for three years, going on four. Mr. Nannicelli admitted telling the Parents to remove the Student from school if they were dissatisfied because he felt that the school was doing the best it could and that it could not do more, and if the Parents were dissatisfied, they should look for another school.

Monique Amitrano testified as the next School Board Witness. She is a Special Education Teacher and is the Student's Advisor. There is a 40-minute Advisory each morning. SB 13 is Ms. Amitrano's Weekly Advisory Form. She felt that she had an excellent relationship with the Student and that the Student has a group of friends. The Parents wanted the Advisor changed because the Advisor allegedly yelled at the Student.

There was no significant cross-examination.

Paul Plater testified as the next School Board Witness. He is the Chairman of the School Board (SB 3). SB 15 is the letter denying the Manifest Educational Hardship Request. The School Board heard the Parents' request and denied the request because there was no basis for it. The Student's grades were satisfactory. Mr. Plater testified regarding the meeting in January, 2009 which brought all of the parties together to work cooperatively, and he thought that the meeting was productive.

Barbara Baker, Superintendent, testified as the next witness for the School Board. Her first encounter with the Parents involved the issues surrounding the report to DCYF that was made by the Guidance Counselor. SB 27 is a report from Mike Kelleher from the Department of Education who investigated the Parents' complaints.

With respect to the Parents' allegation that they were not informed of the numerous meetings between the Student and the Guidance Counselor, Dr. Baker indicated that this was not formal counseling but instead was an informal interaction between the Guidance Counselor and the Student (see SB 28). SB 20 is the correspondence from Dr. Baker to the Parents extending the ten-day suspension to 20 days, and it informs the Parents of their Appeal Rights. Dr. Baker wanted there to be some Risk Assessment done before the Student returned to School so that there would be some assurance that the peers would be safe. She contacted Dr. Esbicki to do a file review and make recommendations and otherwise advise the School Board. The Parents had told Dr. Baker that the Student had been evaluated. However, the evaluation was never produced. Finally, she indicated that all meetings were tape-recorded because there is too much miscommunication between the parties. With respect to the decision to deny the requested change of placement due to Manifest Educational Hardship, she disagreed with the School Board's mention in PU-2 that they would review the matter in thirty days because she felt that the decision was the

correct decision in the first place. She felt that the Father was out-of-line in making numerous negative claims against the Superintendent and feels that the school in question is doing a good job educating the Student.

Reuben Duncan, Assistance Principal, testified as the final witness.

Exhibit 17 is the actual death list document that resulted in the suspension of the Student. He investigated the incident and questioned the Student about the death list. He made a report of the incident and notified the Police and the Parents

On cross-examination, Mr. Duncan agreed that the death list was a serious matter, and he did not recall the Resource Officer's position with respect to the death list.

### REQUESTS FOR FINDINGS AND RULINGS

The Parents submitted approximately 15 pages of Requests for Findings and Rulings. None of the requests were numbered by the Parents, and the Hearing Officer has numbered them to the best of his ability, and there appears to be 120 such requests. Many of the requests referenced information that the Parents claim are contained in certain exhibits.

Request Nos. 10, 18, 20, 23, 34, 52, 64, 70, 93 and 100 are granted.

Request Nos. 3, 4, 5, 8, 9, 17, 22, 26, 27, 29, 32, 35, 36, 37, 38, 40, 41, 43, 44, 46, 48, 107 and 110 are denied.

All other requests are neither granted nor denied, although to the extent that they are inconsistent with the Recommendation made by the Hearing Officer, they are deemed to be denied.

The School Board submitted Requests for Findings of Fact and Rulings of Law, and the Requests For Finding of Fact are ruled on as follows:

Request Nos. 10, 11, 23 and 27 are neither granted nor denied. However, to the extent that they are inconsistent with the recommendation made herein, they are deemed to be denied. All other Requests for Findings of Fact are granted.

Requests for Rulings of Law Nos. 48 through 56 are all granted.

RECOMMENDATION TO THE STATE BOARD

Having heard the testimony of witnesses and reviewed the exhibits, the Hearing Officer cannot find that the Parents have met the requirements to sustain a request for transfer to a different school due to Manifest Educational Hardship (RSA 193:3 Ed 320.01). The Student is clearly succeeding educationally, and there is no indication that placing the student in another district/school would reasonably meet the Student's educational needs. It is clear that the Parents mistrust the Administration at the School, particularly Mr. Nannicelli, and that the Parents do not want the Student to matriculate at the school in question. In addition, the Parents' broad slight at virtually every school policy is unfounded and appears to be motivated by their desire to have the Student placed in another educational setting. The Hearing Officer is satisfied that the District has acted appropriately in dealing with behavioral problems, including suspension of the Student, in that the District's attempts to persuade the Parents to get help for the Student's behavioral issues fell on deaf ears. A review of the entire record supports the District's position and the ultimate School Board Decision to deny the request for change of placement due to Manifest Educational Hardship, and the Hearing Officer recommends that the School Board find that the District/Board followed the procedures that are in place to a reasonable degree.

April 6, 2009

John LeBrun  
Hearing Officer