

STATE OF NEW HAMPSHIRE

BOARD OF EDUCATION

**Recommendation of the Hearing Officer**

**Student and Windham School Board**

**Case No. SB-FY-09-01-011**

**Background**

Parents requested review by the State Board of Education by letter of January 23, 2009. A hearing schedule was issued on January 29, 2009. At the request of Superintendent Frank Bass; the matter was continued in order that the Windham School Board might meet with the parents in hearing and formally issue a decision. They did so on February 12, 2009. A pre-hearing conference was held and the Pre-Hearing Report and Order was issued on February 17, 2009.

Parents have appealed the decision of the Windham School Board to deny their request to continue Student's education at Salem High School, where Windham students have been traditionally been tuition pupils through graduation. Windham has built a new high school for its students.

Student is an exceptional athlete who is completing her freshman year during which she has participated in varsity level basketball and volleyball in the noted athletic program offered at Salem High School. The Parents and Student request the New Hampshire School Board overturn the Windham School Board's denial, by finding that, to require Student to change schools this coming year would pose a manifest educational hardship, pursuant to RSA 193:3, and that the Windham School Board must continue her as a tuition student at Salem High School.

Windham's new high school will open in the autumn of 2009. When it opens, it will be attended by freshmen and sophomores who reside in Windham. The class of 2012, Student's class, took their freshman year at Salem and will transition to the new high school beginning in their sophomore year. Older students will finish at Salem High School. The controversial decision was made that no varsity sports, only sub-varsity sports, would be offered during that first 2009-1010 school year. It is planned that varsity sports will begin during the 2010-2011 school year.

**Hearing**

One day of hearing was held in Concord on March 9, 2009. The proceedings were electronically recorded. Evidence consisted of a bound packet of core exhibits marked Core Ex. 1-10. Parent Exhibit 1, three report cards; and Parent Exhibit 2, the Parents' statement before the Windham School Board,



Salem team. Mr. Raycraft testified that there will be varsity basketball and varsity volleyball at Windham during 2010-2011 and there will be opportunities for Student to be seen by college recruiters during that year.

Windham will be a member of Dynamic Sports Recruiting, a program that provides the best method to market each student. A small school like Windham offers the chance for a coach to work with each student, one on one. Raycraft believes that attending Windham High School will not be a hardship for the Student as he will have the chance to promote ██████ to the highest level at the new Windham High School.

The Windham School Board's second witness, Dr. Frank Bass, Superintendent of SAU #28, was sworn and testified that the sophomore class would have one year of junior varsity before varsity sports would be offered to them as juniors. The present juniors and seniors will finish at Salem High School, as it would lead to a negative situation if all classes returned to Windham at once, since those older students don't want to leave the prior school.

Mr. Bass averred that much research went into setting up the programs at the new school. Academics and technology in the new facility will be top notch. The classroom size will be no larger than twenty and the guidance load will be under one hundred students per counselor. The attendance will be seven to eight hundred students. Subjects will be taught in modified blocks. All humanities courses will be team taught and will be intra-disciplinary using literature as a lens. There will be a senior seminar in which students will tackle major problems of the day such as global warming, stem cell research and other topics of interest and use to the community. It will be a digitally oriented environment and each student will have a laptop computer so there is access to learning twenty-four hours, seven days per week. Foreign language studies will expand to reflect the needs of today.

Bass believes that, as Windham is a smaller school, there will be more time to promote the individual athlete. When recruitment begins, it's a long process and not necessarily one season. Signings will take place from October to April of the senior year. There will be plenty of time for recruiters to see the Student in ██████ junior year.

The new school is a fifty million dollar (\$50,000,000.00) facility and the curriculum will include all that is necessary for a fine education. It's a first rate school and the School Board wants Windham students to attend its new facility. There is an economic impact of ten thousand to twelve thousand dollars (\$10,000-\$12,000) for each student who attends and there will be opportunities planned they otherwise will miss. There has been pressure to bring in varsity sports right away but the idea was rejected for the upcoming year. The School Board wants to bring in varsity sports as soon as possible.

The witness agreed that, if this student were to attend Salem High School next year, ██████ would not be the only Windham student to continue there. Three hundred to three hundred and fifty juniors and seniors will be tuition students from Windham in the upcoming year. Thus concluded the hearing. The parties chose against post-hearing submissions.

## **Discussion**

NH RSA 194:22 allows school districts to contract with other school districts for the education of their students. Windham has contracted with the Salem School District to provide a high school education for the students of Windham for some number of years but in 2005 decided to construct a high school for Windham students to open for school year 2008-2009. Opening was delayed until the upcoming school year, 2009-2010. Unfortunately, the subject student has been caught in a complication resulting from the transition of students from Salem to Windham High School.

Though only a freshman student athlete, this student has been competing at a very high level with students who are generally older and more mature. [REDACTED] has been thriving in so doing. [REDACTED] will be leaving that behind if [REDACTED] were to move to the new Windham School with [REDACTED] classmates.

[REDACTED] parents sought an avenue to allow [REDACTED] to remain at Salem High School and have approached the Windham School Board. A hearing has been held and a decision issued. The Windham School Board's letter sent to the parents (Core Ex. 2) states that by unanimous vote, it was determined that the situation described "...did not rise to a level that would warrant a finding of manifest educational hardship." The Board has provided detailed reasons to support the members' decision.

RSA 193:3 establishes a process to request the local school board to place a student out of district and provide tuition. If met with refusal, then appeal may be taken to the state board of education with a claim that attendance at the assigned school will result in manifest educational hardship for the student. As with any hearing before the state board, the burden of proof lies with the party seeking to prove the affirmative claim, RSA 209:03. It is by a preponderance of the evidence, RSA 209:04, that the challenging party must show the occurrence of error in upholding the school assignment. The statute, RSA 193:3 requires each local school board to establish a policy on the matter of manifest educational hardship, as was done by Windham in 2005 (Core Ex. 9). The below administrative rule elucidates the statute.

Rule Ed 320.01 gives the standard to be applied by the local board in reaching its determination. It reads:

(e) The local school board shall issue a finding of manifest educational hardship if it determines that there is clear and convincing evidence that:

(1) A substantial portion of the pupil's academic, physical, personal and social needs cannot be met by the assigned school or are not found within the student body of the assigned school;

(2) The assigned school's failure to meet the pupil's needs will impair the educational progress of the pupil; and

(3) Another public school, either within the district or in another district, may reasonably meet the pupil's educational needs.

Little case law has been developed regarding the concept of manifest educational hardship. *Lisbon Regional School District v. Landaff School District*, 114 N.H. 674 (1974) preceded the language of the above cited rule in making clear that accessibility is not the only reason for a finding for a student and family. However, a ruling of manifest educational hardship demands a showing that a substantial portion of the pupil's academic, physical, personal and social needs cannot be met in the original assignment. Substantial is a word of quantity and value. Considering the cases that have come before the state board of education, it is rare that such a showing is made and this case proves no exception.

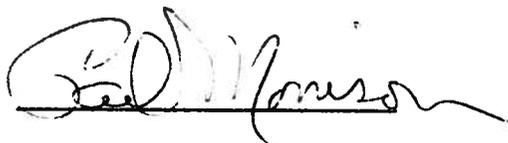
At Windham, the Student's extracurricular athletic endeavors, will not be as challenging for one school year of █████ remaining three high school years. Testimony supports the belief that, if recruitment does not begin in █████ sophomore year, it will not impede the student's progress long term. The academic offerings at the new school are strong and █████ will be part of the first class graduating from █████ school. The Student will make the transition to Windham with █████ friends removing the tension that remaining at Salem might have brought.

Athletics are very important to this student and it is clear █████ excels as an athlete. The parents and student have explained their positions well. However, in considering the testimony and the documentary evidence presented, this hearing officer is not convinced that a "substantial portion" of the student's needs relating to █████ school life cannot be met at the new Windham High School.

#### **Recommendation**

The Windham School Board has thoughtfully considered and applied the standard set out in Rule Ed 320.01 and no error is found in the Windham School Board's determination that the difficulties the Student's anticipates in transitioning to Windham High School with █████ class do not rise to the level of a manifest educational hardship. It is recommended that the New Hampshire Board of Education uphold the Windham School Board's decision in this matter.

Date: April 6, 2009



Gail C. Morrison, Hearing Officer