

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

*Students/Grantham School District*

(SB-FY-10-10-001)

**PROPOSED ORDER ON SCHOOL DISTRICT'S MOTION TO DISMISS**

PREHEARING DATE: November 19, 2009

PETITIONERS: Parents (*Pro se*), Grantham, NH 03753  
RESPONDENT: Grantham School District,  
Superintendent, Keith M. Pfeifer

LEGAL COUNSEL: P.O. Box 287, Grantham, NH 03753  
Gordon B. Graham, Esq., 220 Main St.  
Salem, NH 03079

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On October 21, 2009, Petitioner Parents, appearing *pro se*, filed an appeal (dated October 18, 2009) with the State Board of Education asserting that the Grantham School Board had improperly denied their claim of a manifest educational hardship involving their two children, ages 13 and 9. In particular, the Parents alleged that they had provided "evidence of a hardship" pursuant to RSA 193:3 and stated that they "would like our children's tuition paid in full by the district". The Petition does not identify a specific school stating only that the children were currently attending a "Hartford, VT approved independent school". In its September 24, 2009 decision denying the Parents' request, however, the School Board specifically addressed a request for payment of tuition at the Mid-Vermont Christian School. Petitioners' Exhibit 1.

A Prehearing Conference was held in this matter on November 19, 2009 at which time the Grantham School District, appearing on behalf of the School Board, filed a

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Motion to Dismiss asserting that the State Board lacks the legal authority to grant the relief requested by the Parents. The Parents objected to the School District's Motion orally at the Prehearing Conference and a schedule was agreed to by which the Parents would file any written response to the Motion to Dismiss by December 11, 2009 after which the School District would have until December 18, 2009 to file any reply. It was further agreed that, if necessary, a hearing on the merits would be held on January 14, 2010. The Parents responded via a letter dated December 10, 2009 in which the Parents requested that this preliminary issue be decided without further hearing. After consideration of the pleadings and oral presentations submitted on behalf of both parties, the Hearing Officer issues the following Proposed Order on School District's Motion to Dismiss for the State Board's consideration.

### II. LEGAL ISSUE

The legal issue presented by the School Board's Motion to Dismiss is whether the State Board of Education has the legal authority to grant the relief requested by the Parents. It is the School Board's position that granting the Parents' request for payment of tuition at a "private religious school" such as the Mid-Vermont Christian Academy was not authorized by RSA 193:3 or Ed 320 and, in addition, would violate both Part I, Article 6 of the New Hampshire Constitution and the First Amendment of the United States Constitution.

### III. LEGAL ANALYSIS

The Parents assert that their request meets the requirements of a request for a manifest educational hardship reassignment as set forth in RSA 193:3. RSA 193:3,II provides that the State Board shall adopt rules "relative to manifest educational hardship

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and related issues which affect a child's attendance at school." In accordance with this directive the State Board adopted Ed 320 which, in the case of a manifest educational hardship, authorizes a parent to request "a change of school assignment to:

- (1) Attend another public school in the same district; or
- (2) Attend a public school in another district."

Ed 320.01(a) (*emphasis added*).

Similarly, the only action to remedy a manifest educational hardship specifically authorized by RSA 193:3 is the reassignment of a pupil "from the public school to which he or she is currently assigned to another public school". RSA 193:3, II-III.

As a result, both the State Board and the Grantham School Board lack the authority under RSA 193:3 and Ed 320 to assign a student to the non-public Mid-Vermont Christian School as requested by the Parents. For this reason, the Parents appeal should be dismissed for lack of authority to provide the relief requested. As such it is unnecessary to address the merits of the Parents' request or the First Amendment and Part I, Article VI issues raised by the School Board.

In addition, however, based on the Parents statement at the Prehearing Conference that they might consider a reassignment to the Kearsarge School District and the School District's representation that that particular request for relief had not previously been presented to the School Board, the Parents remain free to file with the School Board a request for reassignment to that, or any other, public school district as authorized by RSA 193:3 and Ed 320.

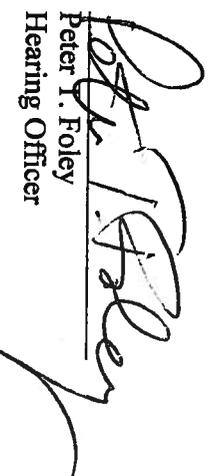
**IV. CONCLUSION**

On the basis of the foregoing analysis the School Board's Motion to Dismiss should be GRANTED and the Parents' appeal should be DISMISSED with prejudice on the issue of reassignment to a non-public school. As a result of this Proposed Order, the hearing on the merits scheduled by agreement of the parties for January 11, 2010 is hereby cancelled.

**V. NOTICE PURSUANT TO ED 201.01**

Any Party, within 15 days of the date of this Proposed Order, may file a list of exceptions with supporting memoranda of law for review by the State Board. Any Party who wishes to present oral argument to the Board shall file a separate request for oral argument within the same time frame.

Date: December 30, 2009

  
Peter I. Foley  
Hearing Officer