

New Hampshire Board of Education

Student/Thornton School District

SB FY 12-03-017

Report & Recommendation

This matter is a request for a change of assignment under the Manifest Educational Hardship statute, RSA 193:3. The underlying allegation by the parents is that their older child was bullied at the public school and the school did not take sufficient action to address the bullying. The school district disagrees and contends that the actions that occurred did not rise to the level of bullying and that they took appropriate steps to address the actions when they occurred.

In addition to their older child who attended the public school, the parents also seek reassignment for their youngest child who has not yet attended school.

The local school board denied the parents' request and the parents' appeal to the State Board of Education.

Proposed Findings of Fact

1. The parents have two children. One just completed the 5th grade and the other does not yet attend school because of his age.
2. The older child attended school in Lincoln-Woodstock through most of the 3rd grade school year. Then, the parents moved and the student began attending school in Thornton during the latter part of 3rd grade in the 2009-2010 school year.
3. During the 2010-2011 school year, the student attended school in Thornton and was in the 4th grade.
4. During the 2010-2011 school year, there were at least two incidents that occurred where the parents contend their child was bullied.
5. The first incident involved another student pushing their child into a locker. The parents contend this happened more than once. The school testified they were only aware of it occurring one time.
6. The parents' child informed the teacher what happened. The teacher testified at the hearing before the hearing officer and said that she told the parents' child to tell the student to stop pushing him into lockers and to tell her if the student did it again.

7. The teacher also testified that she spoke to the other student about his behavior.
8. The teacher testified that she did not see any other incidents and that parents' child never told her of any other incidents.
9. The teacher described the parents' child has happy at school.
10. The second incident involved another student hitting and kicking the parents' child on the playground. A paraprofessional was assigned to this other student. She testified at the hearing before the hearing officer.
11. The paraprofessional testified that when she saw the student hitting and kicking the parents' child, she went over and stopped the student and made the student stand against a wall in a time out. She also later told the student to apologize to the parents' child and she informed the student's classroom teacher what happened.
12. The paraprofessional testified that the parents' child said he was fine and continued playing with other students. He did not go to the school nurse.
13. The school did not notify the parents about this incident. The parents found out about it from their child the day it occurred.
14. It is unclear in the record on exactly when these incidents occurred during the 4th grade year.
15. The parents' child completed the 4th grade school year (2010-2011) without any other incidents.
16. The parents did not contact their child's teachers or the principal regarding these incidents or any other incidents during the 4th grade school year.
17. The parents contend that their child's attitude toward school changed. He did not want to go to school any longer and he was sad and not himself at home.
18. The parents did not contact their child's teachers or the principal regarding the changes in the student's mood, or his dislike of going to Thornton schools.
19. On August 25, 2011, before the 5th grade school year for the student began, the parents sent the Superintendent a letter stating that they intended to homeschool their child because he was being bullied at the Thornton school. The letter mentions the incidents previously noted. See School Exhibit 3.
20. The Superintendent provided the letter to the Asst. Superintendent who sent the parents a letter regarding the homeschool aspect and began communicating by email with the parents and the school principal about the bullying allegations.

21. On September 9, 2011, the school principal sent the parents a letter apologizing for the child having a negative experience at the school and noting that the incidents of bullying that the parents' specified in their August 25, 2011 letter to the Superintendent had been addressed with staff and the other students that were involved. See School Exhibit 6.
22. The parents' child was been homeschooled for the 2011-2012 school year.
23. On December 14, 2011, the parents sent the Superintendent a request to change school assignment for both of their sons under the Manifest Educational Hardship statute, RSA 193:3. See School Exhibit 16.
24. The parents asked that their children be reassigned to the Lincoln-Woodstock school district.
25. On December 22, 2011 the Superintendent responded by letter advising the parents that the matter would be considered at the next school board meeting. He also instructed the school principal to conduct an investigation of the bullying allegations.
26. The principal conducted an investigation and found that the incidents that occurred did not rise to the level of bullying. See School District Exhibits 26-27.
27. The parents attended the school board meeting in January 2012 and provided the school board with information about why they requested the assignment to Lincoln-Woodstock schools.
28. On February 16, 2012, the Chairperson of the Thornton School Board sent the parents a letter denying the request for assignment in Lincoln-Woodstock. For the younger child, the letter notes that the child is not yet eligible for for assignment under RSA 193:3 because the child is not old enough to attend school. See School District Exhibit 1.
29. The Chairperson's letter goes to deny the request for the older child as well and notes that the Board agreed with the principal that the student was not bullied, and that the parents did not establish by clear and convincing evidence that the child's academic, physical, personal, and social needs could not be met by Thornton.
30. At the hearing before the hearing officer, the Superintendent testified that if there was a manifest educational hardship, he would not reassign to Lincoln-Woodstock schools. Rather, he would reassign to one of the other elementary schools in the school district.
31. The student's 4th grade report card notes fairly consistent grades throughout the year with some fluctuations in various subjects from one quarter to the next. Generally the student's grades are in the B and C range. See Parent Exhibit 2.
32. The student was absent from school for 11 days during the 4th grade year. See School Exhibit 37.

33. The local school board's policy on Manifest Educational Hardship adopts and follows Ed 320.01. It was adopted in its final version by the school board after the parent's request was made, but before the local school board hearing on the request.

Proposed Rulings of Law

1. RSA 193:3 states:

Any person having custody of a child may apply to the school board for relief if the person thinks the attendance of the child at the school to which such child has been assigned will result in a manifest educational hardship to the child. If the person having custody of the child is aggrieved by the decision of the school board, the person may appeal to the state board of education, and the state board of education, after investigating the case and giving notice to the school board, may order such child to attend another school in the same district, if such a school is available, or to attend school in another district. In case the child is assigned to attend school in another district, the district in which such child resides shall pay tuition computed as provided in RSA 193:4 to the district in which such child attends.

2. State regulation Ed 320.01 Change of School Assignment states:

(a) If a parent(s) or guardian thinks the attendance of the child at the school to which such child has been assigned will result in a manifest educational hardship to the child, a parent or guardian may apply to the school board for a change of school assignment to:

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

(b) In order to apply to the school board for a change of school assignment based on manifest educational hardship a parent shall demonstrate the detrimental or negative effect on the pupil if the pupil continues to attend the school to which he/she is assigned.

(c) If a school board determines that manifest educational hardship has been found, the school board shall issue a waiver of the school assignment and the student shall be reassigned to a reasonably available public school, in the district or in another district.

(d) Each school board shall establish a policy, which shall allow a school board, with the recommendation of the superintendent, to take

appropriate action including, but not limited to, assignment to a public school in another district when manifest educational hardship is shown.

(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 a 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.

(f) If a parent or guardian is aggrieved by the decision of the school board, cooperative school board, or the authorized regional enrollment area receiving school board, he/she may appeal to the state board in accordance with the provisions of Ed 200.

3. On appeal, the parents have the burden of establishing that the school board made the wrong decision meaning that the parents must show that the school board was presented with clear and convincing evidence that a substantial portion of a pupil's academic, physical, personal and social needs cannot be met by the assigned school; that the assigned school's failure to meet the pupil's needs will impair the educational progress of the pupil; and that another public school, either within the district or in another district, may reasonably meet the pupil's educational needs. Ed 209.02; Ed 320.01.

4. The parents have not met their burden on appeal.

5. The record before the local school board and the State Board does not demonstrate clear and convincing evidence that the local school to which the students are assigned cannot meet the students' academic, physical, personal and social needs, or that the assigned school's failure to meet the pupil's needs will impair the educational progress of the pupil.

Discussion

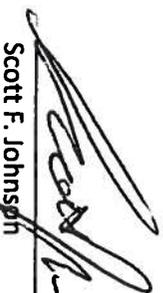
While the parents raised a number of legitimate points regarding problems that their child experienced at the Thornton elementary school, they do not rise to the level of a manifest educational hardship as that term is defined in state statute and regulations. Much of the parents' focus at the hearing before me was on the bullying aspect of it and whether the school and school board conducted appropriate investigations, or took appropriate action to address what the parents believe was bullying.

The State Board's analysis is whether the manifest educational hardship requirements were met or not. Those standards are different from the bullying statute and whether a child is bullied or not is

not the sole factor in whether a manifest educational hardship exists. A child that is not bullied may still be eligible for a change of assignment if the requirements of Ed 320.01 and local policies are met. Conversely, a child who is bullied does not automatically meet the educational hardship requirements. Rather, there must still be evidence that the requirements in Ed 320.01 and local policies are met.

Since the parents have the burden both at the local level and as the appealing party before the State Board, I recommend that the State Board uphold the local board's decision since I cannot say on the record before me that the requirements in Ed 320.01 are met.

6/14/12
Date


Scott F. Johnson
Hearing Officer