

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Student (A.M.)/Gorham School Board

⁹
(SB-FY-12-04-01g)

HEARING OFFICER'S RECOMMENDATION ON MOTION TO DISMISS

I. Procedural History

On April 4, 2012, the Parents filed a *pro se* appeal of the School District's action in response to a bullying/assault complaint filed on behalf of their child who is a student at the Gorham Middle High School in the Gorham School District. That appeal included the following statement of relief sought by the Parents:

We want to the bully here suspended due to the assault committed.
We want the Principal and Vice-Principal to apologize to
[Student]. We also want a report filed with the police department
from the School regarding the threat and assault.

The School District responded by stating that the School Board heard the Parents' Appeal at their March 20, 2012 and concluded that:

- 1) The School Administration had conducted a thorough investigation in accordance with law;
- 2) The discipline administered was appropriate; and
- 3) No further action was warranted.

School District's Prehearing Statement, May 15, 2012.

A telephonic Prehearing Conference was held on May 21, 2012 at which it was agreed that the School District would submit a Motion to Dismiss prior to a hearing on

the merits of the appeal. On May 25, 2012, the School District filed its Motion to Dismiss and a hearing was scheduled for July 16, 2012 at 1 p.m.

II. Legal Analysis/Recommendation

The School District in its Motion to Dismiss asserts, among other arguments, that the Parents:

- 1) Lack standing to challenge a disciplinary decision relative to another student;
- 2) Lack standing to request that the Principal and Vice-Principal be ordered to apologize; and
- 3) Have failed to allege sufficient facts to state a claimed violation of RSA 193-D.

In addition to these defenses, the School District has also requested a finding of default against the Parents for failure to file an objection to the School District's Motion to Dismiss and failure to appear at the July 16, 2012 hearing.

As a result of the at least facial validity of the former three School District arguments and the Parents' apparent decision to abandon the prosecution of their appeal it is recommended that:

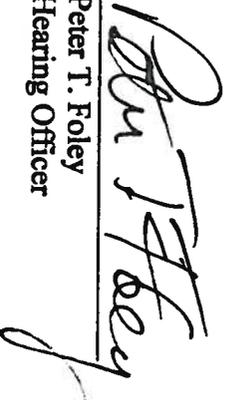
- 1) The State Board of Education rule that the Parents:
 - a. Lack standing to challenge discretionary disciplinary action relative to another student;
 - b. Lack standing to request that School District employees be ordered to apologize;
 - c. Have failed to allege sufficient facts to state a claim for a violation of the reporting requirements of RSA 193-D and;
 - d. Have defaulted on their appeal; and

- 2) The State Board of Education, for the foregoing reasons, grant the School District's Motion to Dismiss.

III. Notice Pursuant To Ed 201.01

A list of exceptions with supporting memoranda of law may be filed by either Party within 15 days of the date of this Recommended Order. 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: August 7, 2012


Peter T. Foley
Hearing Officer