

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Decision of the Hearing Officer

IDPH-FY-06-10-023 / Exeter School District

Background

A request for an administrative due process hearing was received at the New Hampshire Department of Education on October 13, 2005 . The parents desired a change of coding and reimbursement for placement for their child and charged that the Exeter School District (School District) had failed to provide a free and appropriate public education for Student. The request informed the Department that the Student had been unilaterally placed at Crossroads Center for Children, Sudbury , MA , beginning on July 18, 2005 . The sufficiency of the complaint was challenged by the School District and found not sufficiently descriptive to give notice in the area of identification or coding. Leave to amend was requested.

A pre-hearing conference was held on December 12, 2005 and a Pre-hearing Report and Order were issued that day. On December 14, 2005 , the parents were granted leave to amend their petition. The most recent IEP reveals that Student is presently not coded as a student with autism as is needed to be admitted to the Birchtree School , a school for children with autism in New Hampshire that was the parents' first choice when they decided to remove Student from Exeter schools.

A hearing commenced on December 21, 2005 with the parents represented by Theresa Kraft, Esq. and the School District represented by Diane McCormack, Esq. Parents presented three witnesses: Eric A Mayville, M.D., who is a Board Certified Behavioral Analyst and is an educational consultant and Clinical Director for the Institute for Educational Planning of the Connecticut Center for Child Development; Helen Bloomer, Executive Director of Crossroads School and the Student's mother.

On December 22, 2005, School District presented its case calling five witnesses: Catherine Ann Cote, Certified Behavior Analyst and formerly and Educational Consultant for the May Institute, who worked with Student last year; Sandra Pierce-Jordan, Ph.D., an Educational Consultant for May Institute, who supervised Catherine Cody; John Barker, applicant for ABA certification, who taught student during 2 nd and 3 rd grades; LEA representative at Main Street and Lincoln Schools at the time Student was in District schools.

Discussion

Parent's case focused on developing through testimony the benefits Student has enjoyed as a result of ...months at Crossroads. Parents' witnesses did not target inadequacies in the IEP and education Student had received and would receive in Exeter schools commensurate with failure to provide FAPE. Some observations raised in Dr. Mayville's testimony bolstered the School District 's case rather than the parents' case. Yet, *Schaffer v. Weast* , 546 U.S. _____ November 14, 2005 , announces that it is the party who brings complaint who bears the burden of persuasion and admonishes that it is unsatisfactory to assume that every IEP is invalid until the school district shows it is not.

If the parents have not persuaded through testimony and documentary evidence that an appropriate education is not likely to be had by this Student utilizing the District proposed IEP in the Student's own School District , then the burden of persuasion that rests on the parent as the complainant has not been met. They have not. Further, the School District has shown that the IEP proposed for Student during the 2005-06 school year is adequate under the standard of *Hendrick Hudson Board of Education v. Rowley* , 458 U.S. 176, 190 (1982), and may be performed in the Student's home school district with likely success.

Following the hearing, the parties submitted their closing submissions.

Conclusion and Order

Reviewing the testimony and the documentary evidence presented in this matter, it is concluded that a decision for the parents is not supported and the relief requested by the parents is denied.

Appeal Rights

If either party is aggrieved by the decision of the hearing officer as stated above, either party may appeal this decision to a court of appropriate jurisdiction. The parent has the right to obtain a transcription of the proceedings from the Department of Education. The District shall notify the Commissioner of Education when either party, Parent or District, seeks a judicial review of the decision.

So Ordered.

Decided this 17 th day of January, 2006

Gail C. Morrison, Hearing Officer