

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

**Decision of the Hearing Officer**

**Case No. IDPH-FY-06-11-032 Londonderry School District**

**Background**

A request for an administrative due process hearing was received at the New Hampshire Department of Education on or about November 28, 2005 . Notice of hearing was sent on on December 2, 2005 .

A pre-hearing conference was held on December 19, 2005 and the Pre-hearing Order and Report was sent that same day. The hearing was scheduled for January 17 and 23, 2006. A continuance was requested by the parent on January 10, 2006 in order that she might seek an attorney. The hearing was continued and rescheduled for February 13, 2006 . However, the Parent appeared *pro se* . Margaret Ann Moran represented the School District and Brian Balke, Director of Pupil Services.

The School District sought a ruling on Burden of Proof. An Order assigning the burden of proof to the Parent was issued on February 10, 2006 . It was determined that the Parent had challenged the 2005-2006 IEP and bore the burden of proving that Student would be denied a free and appropriate education (FAPE) if the School District was allowed to carry out its IEP. Two days of hearing ensued: February 13, 2006 and March 6, 2006 . A new decision date of March 31, 2006 was agreed at the hearing.

**Discussion**

The sole issue between the parties is the School District 's right to carry out one aspect of the 2005-2006 IEP. The School District seeks to hire one full-time aid for Student to be an employee trained to meet Student's medical and educational needs while student is in school. In the past, a private duty nurse has followed Student from ... home, through ... school day and home again. The School District wishes to employ an aide during school hours who will be with ... from the time ... departs ... home until ... returns to ... home.

Parent's main witness was Dr. Ann Dobbins, the Student's primary care physician. She agreed that combining medical and educational duties into a position of aide for Student was possible and logical. It is a matter of choosing the right person and providing appropriate training in both areas. No witness said that the School District's plan to discontinue the use of the contracted special duty nurse in school and substitute a person who would become an employee of the School District would disadvantage Student and

interfere with ... educational needs and prevent ... from receiving FAPE. A medical report dated September 7, 2005 from Student's specialist, Dr. Filipano advises to the contrary (SD Ex. 5) but ... primary care physician who has attended team meetings and is aware of Student's everyday challenges testified that, with proper training, an LPN who is specifically trained for this combined position may prove an advantage.

### **Findings of Fact**

Both parties submitted Requests for Findings of Fact.

The School District 's Findings are as follows:

Granted: 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15,16, 17, 18, 19, 20, 23, 25, 26, 27, 28, 29, 33, 40, 41, 42, 43, 44,

Granted in part: 6, 22, 24,

Neither granted nor denied: 12, 21, 30, 31, 34-39, 45, 46, 47

Parent's Findings are as follows:

Granted: 1, 2, 3, 4, 7, 8,

Granted in part: 6

Neither granted nor denied: 5, 9, 10

### **Conclusion and Order**

The testimony from the witnesses who testified on this matter did not support the Parent's contention that Student must have a private duty nurse hired through MAXIM to attend to Student's medical needs at school as well as a separate educational aide in order to receive FAPE. The School District 's plan for hiring an LPN to work in a combined medical and educational position as addressed in Student's most recent IEP is a plan that is reasonably calculated to provide FAPE to Student. *Hendrick Hudson School District Board of Education v. Rowley, 458 U.S. 176, 206 (1982)* . The decision regarding the method of employment and the individual to be hired is exclusively that of the School District .

### **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 31st day of March, 2006

Gail C. Morrison, Hearing Officer