

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

IDPH-FY 08-08-015 / Derry Cooperative School District

**DECISION**

I. Introduction.

A Pre-Hearing Conference was held in this matter on October 5, 2007 and a Pre-Hearing Order issued subsequently. A copy of that Order is affixed hereto. The only issue to be determined at the Due Process Hearing involved the IEP for the 2007/2008 school year. The matter proceeded to hearing on November 13, 2007 and November 14, 2007. The Parent presented witnesses first. The Parent was represented by Richard O'Meara and the School District by Barbara Loughman.

II. Procedural Violations.

There were no allegations made of procedural violations relative to the issue to be determined in this matter.

III. Discussion.

Tina LaPointe testified as the first witness for the Parent. She is an Educational Behavioral Consultant and has worked with the Student for five and one half years working on all academic areas in the Student's home and as a behavioral consultant to the family. In the spring of 2007, Ms. LaPointe was a member of a behavioral team at the Student's school together with another behaviorist, Tom Benjamin. Ms. LaPointe described the Student's learning style as needing a hands on approach and requiring visual and auditory support. The Student's primary difficulties surround self regulation, impulsivity, and ADHD. Ms. LaPointe used a number of strategies in working with the Student to keep the Student focused. At the

beginning of their work together the Student could last no more than five to ten minutes without needing a break, how the Student can often work with Ms. LaPointe for close to an hour without needing a break. Ms. LaPointe described the Student as making incredible strides in the home environment behavioral crisis used to occur two to three times a week and over the summer of 2007 occurred only two times. The Mother is present in the home during the tutorials but not in the workspace. When the Student escalates the Student tends to swear, strike out at adults and be extremely volatile. Ms. LaPointe felt that the behavior plan in place in the spring of 2007 was inadequate in that it lacked a self regulation piece and there was insufficient data collected. Ms. LaPointe felt that adequate staff training in dealing with the Student's behavior was very important. In her opinion the Student can be educated at a public school with proper supports in place. She felt that the Mother was helpful to the process in the spring of 2007, and knows the Student's language best and can intervene better than anyone else. Mistakes made in dealing with the Student's behavior will negatively impact the Student as well as peer in the educational environment. Ms. LaPointe described direct behavioral service as social skills teaching and training, modeling, and role playing all of which she did with the Student on a one to one basis in the summer of 2007. In her opinion the Student still needs direct behavioral services at a minimum of two hours per week. The behaviorist must be available every day. The Student has a reading program (Ortin Gillingham) which was set up by an individual named Brenda Peterson who is trained in the program and has been working with the Student independently since August. Ms. LaPointe felt that the Student's reading has improved since implementation of the Ortin Gillingham program. The sixth grade for the Student will be in a new building and the Student needs to continue with the direct behavioral services to learn social skills and adjusting

from the fifth grade to the sixth grade. Ms. LaPointe felt that the Mother's presence would be critical to allow a smooth transition to occur.

On cross examination Ms. LaPointe agreed that she is not certified as a teacher or a reading specialist nor is she board certified as a behavioral analyst. She agreed that the Student practices avoidance behaviors, can get fixated and is difficult to redirect and can refuse to do work that the Student is not interested in.

The Mother testified as a second witness for the family. The Student is thirteen years old and presently in the fifth grade. The Mother was in the building as a support for the Student in the 2006/2007 school year. The proposed IEP begins at P. 157. The Parent's exceptions to the proposed IEP are at P. 282-291. The Parent reviewed numerous e-mails outlining various exceptions and other issues with the proposed IEP. It is critical to note that the Parent's testimony was in many ways non-responsive to counsel's questions in that in response to a question the Parent would speak very quickly and drift from topic to topic without focusing on the question at hand. The Hearing Officer attempted to point this out to the Parent and counsel to no avail and the Parent's testimony was extremely difficult to follow giving the rambling nature of answers. The Parent is aware that the District does not want the Parent in the building any further and the Parent disagrees with this. SD. 454 and 455 describes a meeting with Chris Kellan and the school principal Tom Poliseno where the issue involved getting the Student in to school on time and the Mother remaining in the school. At that time Mr. Kellan was agreeable albeit without the Mother being paid and the Mother was agreeable to that. Both speech language and occupational therapy were provided together and known as co-treat. A special education instructor was hired in September, 2006 (Lorraine Patt) and the Mother indicated that she had not been told that she would eventually be phased out. There was no crisis management

program in place so the plan was to have the Mother be present if the Student escalated. The prior behavior management plan was no longer being used and the behaviorist was looking into a new crisis management plan but one did not get put into place during 2006. P. 2146 references notes by the behaviorist in October, 2006 calling for the Mother to execute the behavior plan if the Student escalated. When the Student was in the resource room the Mother would sit behind a wall so that the Student could not see her. SD 574 references a consult meeting indicating that once a crisis management system was in place that the Mother would not need to remain in the school. At this point in the Mother's testimony she continued to expand her answers significantly beyond the scope of the question posed making it extremely difficult to decipher the testimony. In January, 2007 the Mother received a letter from Mr. Kellan regarding the CALM Program for crisis management and she attended two full days of training. After the calm training the Parent continued to attend with the Student daily.

In March, 2007 Kim Heald, the behaviorist had to take leave due to her pregnancy and the Mother continued attending school daily. The Mother indicated that it was not her preference to be in school every day with the child but that it was necessary. The new behaviorist knew very little about the Student so the Mother was attending school on a full time basis. The Mother had to restrain the Student on several occasions in March, April and May. By April, 2007 the District wanted the Mother phased out of the program by the spring of 2007, the Mother was having difficulties dealing with Lorraine Patt, the special education teacher. She criticized Ms. Patt for an alleged inability to modify materials for the Student. The Mother further criticized Lorraine Patt for lacking appropriate training in dealing with behavioral issues and the relationship between the Mother and Ms. Patt deteriorated badly. The Mother indicated that Ms. Patt's behavior continued to deteriorate so that the Mother removed the Student from school on

June 7. There was interaction between the Mother and Ms. Patt which resulted in the police being called and an investigation occurring regarding possible criminal behavior.

The Mother indicated that the IEP proposed by the District does not call for monitoring of the Student's sensory diet and that this has still not occurred. In addition, monitoring of the speech language program was not in the IEP, although, the service had been provided by an individual named Mary from the previous school year. The Mother was further critical of the IEP in that it had no provision for direct behavioral support services. The Mother took the position that the Student needs to be included with peers and the IEP does not provide for sufficient inclusion. The IEP does not provide a specific reading methodology and the Mother would like Ortin Gillingham as the reading methodology. The behavioral support plan described at P. 1386 is inadequate. The crisis management program has not been modified appropriately raising concern for the Mother regarding the Student's safety in school. The Mother criticized the IEP for lacking a transition component from grade school to middle school. She is further critical that no visit was set up for the Student to tour the middle school. She was further critical that there was no backup plan for the behaviorist should the behaviorist leave as did Ms. Heald. She disagreed with the class size and was critical of the alternate assessment program for the State of New Hampshire as applied to this Student. The Mother was critical of the report card issued and felt that the Student is entitled to an appropriate report card and that the one issued was insulting. (P. 422). The Mother has been in the school since September, 2007 and is aware that some people do not want her there. It was her testimony that she is trying to step back and show the team that she supports them.

There was virtually nothing of any significance in the cross examination of the Mother aside from her statement that she is an expert on the Student.

The Parents rested at the conclusion of the Mother's testimony.

Christopher Kellan, Director of Student Services testified s the first District witness. He has known the Student since 1998 and is familiar with the Student's educational record and all of the e-mails in the file. He indicated that he spent thirty to forty percent of his time dealing with the Student and/or the Student's Mother in the last year. The school personnel feel unsafe with the Mother in the school building. The local union is concerned about it. SD. 1024 was a list of the numerous IEP and consult meeting that occurred during the 2006/2007 school year. With respect to the Parent's due process request Mr. Kellan indicated that the last agreed upon IEP does not provide for Parental support in the school and he felt that Parental support is not necessary or needed and that the staff are fully capable of handling their jobs if they are not intimidated and constantly criticized by the Mother. The other Parent is chair of the local school board and the educational staff fear reprisals from the school board. Mr. Kellan indicated that the Mother has tried to have several staff members fired or removed as service providers. SD 1025 includes a list of fourteen people that the Mother wanted removed as service providers and team members or fired outright. At one point Mr. Kellan had a conversation with the father and after that conversation it was disclosed that the father was concerned about Mr. Kellan's role as director of student services and wanted him dismissed. Mr. Kellan recalled a meeting that he tried to mediate with the team members and the Mother and the Mother walking out of the meeting. Mr. Kellan was adamant that the Mother is not needed in school to provide FAPE to the Student and it was his opinion that the co-treat team did an excellent job and the new special education teacher who replaced Lorraine Patt is doing well. He felt that the Mother is not qualified to supervise the staff and that her presence in the school is a distraction and is also confusing to the Student.

With respect to the behaviorist Mr. Kellan disagrees with the Mother's request that the behaviorist be involved in all consult meetings and felt that the IEP appropriately provided for weekly consult. He indicated that with respect to that issue no other team member agreed with the Mother. With respect to the behavior support plan (P. 1347), the team felt that the plan that was offered was appropriate. The plan is at 1386-1387. With request to the crisis management update he disagreed with the Mother's request and thinks that the crisis management plan does not need updating and that the CALM Program is satisfactory. The Student has never been harmed in school and the crisis management plan is appropriate in his opinion. With respect to the self regulation program Mr. Kellan indicated that it is in the existing IEP. He felt that direct behavioral services were not needed in the IEP and that there is no need for a behaviorist to work in isolation with the Student on social skills. With respect to the need for a backup behaviorist Mr. Kellan felt that Barbara Cannon is fully capable and she has consulted with her fellow colleagues who could step in if necessary. With respect to the speech and OT observations Mr. Kellan felt that a speech observation by an outside provider is not necessary nor is the OT observation. With respect to the Orin Gillingham methodology it was Mr. Kellan's position that he would not agree to it unless there was a recommendation following an evaluation and none exist. He felt that inclusion is offered in the IEP and that the Mother's request is too specific and that the approach needs to be flexible to deal with the Student's behaviors and other issues. The law does not require a transition plan for a student of this student's age. Mr. Kellan disagreed that the Mother needs to observe the Student at school and in his opinion the Mother is not qualified as a service provider. With respect to class size it was Mr. Kellan's position that whatever class size was implemented would not be satisfactory to the Mother and that in the end the class size is not highly significant because the Student spends such a small amount of time in

class. With respect to staff training Mr. Kellan felt that the staff training was appropriate. With respect to the alternate assessment program required by the State of New Hampshire and that there are certain rules and regulations with respect to the assessment that will not allow the Student to take the regular test as modified by the Mother's request. Mr. Kellan disagreed with the Mother's characterization of the report card. On cross examination Mr. Kellan dwelled on the issue of the father's involvement as school board director and agreed that the father is honorable and does a great job and that the father has not tried to retaliate against any employees who worked with the Student and that the incident involving the father's request that Mr. Kellan be terminated occurred years ago and Mr. Kellan was not terminated. Mr. Kellan acknowledged that in the fall of 2006, CPI was still in place although it was not appropriate for the Student and there was a gap between the end of CPI and the training of the staff in the CALM Program in February, 2007, thus, necessitating the Mother's presence to intervene if necessary.

Tom Benjamin testified as the second District witness. He is a Behavioral Consultant and his resume is set out at SD. 1028. He filled in for Ms. Heald when she left for the maternity break. He did observe the Student and was there every Friday with an associate of his available. He described direct service as direct observation and consultation with other providers and he observed the Student working with Ms. Patt. He felt that Ms. Patt went over and above the call of duty and did a good job with the Student. The Mother was in school when Mr. Benjamin was there. He felt that the Mother's presence was very detrimental to the child and not a good arrangement. He observed the Mother constantly telling Ms. Patt what to do and his associate Becky Roberts told Mr. Benjamin that the Mother was instructing her also.

Kim Heald, Behavioral Consultant testified as the third District witness. She has known the Student for four years and worked with the Student at home on weekends and was the

behaviorist between September, 2006 and April, 2007 when she left for maternity leave. She attended the consult meetings on Fridays and the plan was to phase the Mother out of the school. Ms. Heald felt that it is not appropriate for the Mother to be in school and that the Student needs social interactions and will not get these if the Mother is always there. There is also a question as to who is in charge, the Mother, the behaviorist or the special ed instructor? With respect to the direct behavioral services it was Ms. Heald's position that this is embedded into the consult and one on one services are not necessary. She created the crisis management plan and felt that it was comprehensive and thorough. On cross examination Ms. Heald indicated that there was a drastic reduction in restraints of the Student in the school year and an overall huge improvement over the previous year. She agreed that the Mother would not interrupt a work session between Ms. Patt and the Student but would comment after the session was over.

Tom Polisen, Principal of the elementary school testified as the next District witness. He has known the Student for over four years and indicated that approximately twenty percent of his professional time is spent working on this case. He attends consult meetings and IEP meetings. He described a consult meeting in January, 2007 where he indicated that the Mother should drop the Student off and that the District will be responsible for educating the Student and the Mother's response was "I dare you to say it again." He felt the Mother is oversensitive and not ready to let go of the Student and allow the District to educate the Student. He felt that the Mother's e-mails were "over the top" overly critical and that the e-mails grew in length and intensity as the discussion of removing the Mother from school occurred. He spoke to Tom Benjamin about transitioning the Mother out of the school and it was Mr. Benjamin's position that the Mother should probably be allowed to stay to school ended in June so as to create a natural break. He indicated that if the Mother is going to be in school then the school district

placement is not appropriate. The Mother is not needed, she is not qualified, she is not qualified to train staff, she is overly critical. He felt that the Mother's criticism of Mr. Patt was intense though he indicated that he received an e-mail at SD. 908 from the Mother indicating that it would be alright for Ms. Patt to work as a resource room teacher in the fall of 2007. However, this was prior to the confrontation between the Mother and Ms. Patt in June which resulted in the police being called. In his opinion the Student is never unsafe with Ms. Patt and he has observed the Student on numerous occasions with her. He indicated that the staff's perception of the Mother ranges from tolerance to hatred. The staff believes that the Mother is interfering, believes she knows everything in a negative way, that some of the students are afraid of her and that this impacts the Student because questions are asked as to why the Student's Mother has to always be there. The staff does not feel safe if the Mother is in the classroom and they are fearful for their job security. They are also fearful of being alone with the Mother after the incident that occurred between the Mother and Ms. Patt. It was Mr. Polisen's position that the Mother should be immediately removed from the school.

The final District witness was Michelle DeCosmo, Occupational Therapist. Her testimony was limited and is notable primarily for her statement that the Student is also most distractible when the Mother is outside the door during co-treat. In her opinion the Mother is not necessary with respect to provision of the co-treat services. The District rested at the conclusion of DeCosmo's testimony.

#### IV. Request for Findings of Fact and Rulings of Law.

The School District submitted three hundred twenty-six separate requests for finding of fact. The Hearing Officer considers this to be grossly excessive and totally unnecessary and declines to rule on each and every request.

The Parents submitted approximately one hundred fifty requests for finding of fact and they are ruled upon as follows:

The following requests are granted: 2, 3, 4, 5, 7, 10, 12, 13, 16, 21, 28, 29, 30, 31, 33, 37, 38, 55, 56, 57, 64, 65, 68, 71, 73, 80, 84, 88, 89, 96, 98, 101, 103, 106, 110, 111, 128, 129, 133, 136, 139, 145.

The following are denied: 17, 22, 23, 24, 35, 36, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 59, 60, 61, 74, 75, 77, 78, 79, 90, 91, 93, 94, 95, 99, 116, 117, 130, 134, 137, 138.

All other requests for finding of fact are neither granted nor denied and to the extent that they are inconsistent with the decision below are deemed to be denied.

The School District submitted requests for Rulings of Law. Request No. 23 (the issue of one hour per week of direct behavioral support) is denied. Request No. 24 (speech and OT therapy observations) is denied. Request Nos. 38 and 41 are neither granted nor denied. All other requests are granted.

The Parents submitted requests for Conclusions of Law. Request Nos. 1 and 2 are denied. Request No. 3 A is denied. 3B is granted ( related services observation monitoring). Request No. 3C is denied. 3D is denied. 3E is denied. 3F is denied. 3G is denied. 3H is denied. 3I is denied. 3J is denied. 3K is denied. 3L is denied. 3M is granted (regular education report card). Request No. 4 is denied.

The Parent's request for related services observation/monitoring is granted and the IEP is to be amended to incorporate that request as worded in Paragraph 3B of the Parent's Conclusions of Law. Likewise, the direct behavioral support services requested at Paragraph 3D of the Parent's Conclusions of Law is granted and the IEP is to be amended to reflect said services. Finally, the IEP is to be amended so that the Student will receive a regular education report card

with the same frequency as the Student's non-disabled peers containing grades and ranks (see 3M of Conclusions of Law). Otherwise, the Hearing Officer agrees with the School District that the IEP is appropriate and will provide FAPE to the Student. The Hearing Officer also is satisfied that the Parent should not be in the school building for any part of the Student's school day and that the Parent's involvement ultimately was detrimental to the Student's education and totally disruptive of the staff in the building. The Parent was overly critical of numerous staff members and essentially unwilling to agree with anything that the District proposed. The sheer volume in length of the e-mails from the Parent would make any professional trying to educate this Student weary if not exhausted. It would appear that the Parent will not be satisfied with any services offered or provided by the District and that the District will not be afforded a reasonable opportunity to educate the Student and provide FAPE without the interruption in intervention from the Parent. The IEP with the exception set forth above is appropriate and will provide the Student with FAPE.

V. Appeal Rights.

If either party is aggrieved by the Decision of the Hearing Officer set forth 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 Commission of Education when either the District or the Parent seeks judicial review of the Decision.

VI. Statement of Compliance with ED-1128.22 (b).

If neither party appeals this decision to a Court then the District shall within ninety (90) days provide to the Office of Legislation and Hearing (Department of Education) and the Hearing Officer a written report describing the implementation of this Decision and provide a

copy to the Parents. If the Parents do not concur with the District's report, the Parents shall submit their own report through the Commission of Education.

**SO ORDERED.**

Dated: \_\_\_\_\_

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John P. LeBrun, Hearing Officer