

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

**Student/Milford School District  
IDPH-FY-11-07-002**

DECISION

**I. INTRODUCTION**

This due process proceeding was initiated by the Milford School District (“District”) on July 22, 2010. A prehearing conference was held on August 2, 2010; a Prehearing Order was issued on August 3, 2010. The issue for due process was whether Student should be provided with a one-on-one aide, and whether the District’s proposed placement in the Milford School District is appropriate.

The due process hearing took place on August 20, 2010.<sup>1</sup> The parties submitted exhibits, and the following individuals testified: Kimberly Reppucci, Heron Pond Elementary School fourth grade teacher and former Title I teacher; Alison Pelletier, Student’s guidance counselor; Eileen Higgins, Student’s case manager and remedial reading teacher; Helen Bureau, special education teacher; and Peter Bonaccorsi, Heron Pond Elementary School principal. Post-hearing submissions were filed by both parties.

**II. FACTS**

Student is ten years old, and resides with h-- parents in the Milford School District. Student has been identified as having a Specific Learning Disability, and has just completed fourth grade at the Heron Pond Elementary School.

In November of 2009, following the Parents’ verbal request that Student’s special education identification and services be discontinued, the District initiated due process proceedings. On December 8, 2009, the parties entered into an agreement whereby the Parents subsequently agreed to continue Student’s IEP and services.

Testimony and written reports indicate that Student made progress during the 2009-2010 school year. There were some behavioral incidents which were characterized as minor infractions and appropriately addressed at school. Student is generally described as well-behaved, cooperative and making good effort in class. Without exception, the professionals working with Student do not believe that Student needs either a one-on-one aide or an out-of-district placement.

---

<sup>1</sup> The District presented first. However, since all of the witnesses except for Ms. Johnson were proposed by both parties, the Parent was allowed latitude in questioning them. Parent was also given the opportunity to utilize the additional hearing date(s) already scheduled, but he chose not to do so.

A team meeting was held on May 18, 2010 to develop Student's IEP and placement for the 2010-2011 school year. The IEP includes a reading goal with forty minutes per day of remedial reading and spelling instruction. A 2007 assessment relative to Reactive Attachment Disorder is documented in the IEP, along with observed behavioral issues such as manipulation and lying. General academic accommodations include providing regular contact with the school counselor as needed, and clearly defining classroom limits and expectations. Placement is in the fifth grade mainstream classroom at Heron Pond Elementary School. The On May 18, 2010, Parent signed his agreement with the IEP.

The following day, the Parents notified the District via e-mail that they were removing Student<sup>2</sup> from school "for safety reasons". Student has not returned to school since that time. On May 24, 2010, the Parent requested a full-time one-on-one aide as well as out-of-district placement for Student. A team meeting was scheduled for June 15, 2010 to discuss the Parent's request. Although the team denied the request for an aide, they did agree to amend the IEP to add a behavior plan in response to the Parents' expressed concerns about Student's behavior. The amendment was sent to the Parents on June 22, 2010. On July 14, 2010, the Parents advised that they rejected the IEP as amended.

### III. DISCUSSION

In this case, the Parent had the burden of demonstrating that the IEP as amended and placement at Heron Pond Elementary School were not reasonably calculated to provide Student with a free appropriate public education ("FAPE") in the least restrictive environment.. See Shaffer v. Weast, 44 IDELR 150 (U.S. 2005). The IDEA does not require that the School District provide Student with an IEP and placement that will "maximize" educational potential. See Board of Education of Hendrick Hudson School Dist. v. Rowley, 102 S. Ct. 3036, 3048 (1982). Rather, an IEP is "appropriate" if it is "reasonably calculated to enable the child to receive educational benefits"; and was developed in accordance with the procedures required by the Act. *Id.* at 3051. An IEP can provide a FAPE even if it is not "the *only* appropriate choice, or the choice of certain selected experts, or the parents' *first* choice, or even the *best* choice." G.D. v. Westmoreland School District, 930 F. 2d 942, 948 (1<sup>st</sup> Cir. 1991) (emphasis in original).

The IDEA and federal and state special education regulations require that Student be placed in the least restrictive appropriate environment. See 20 U.S.C. § 1412(a)(5)(A). Schools must make available a "continuum" of placement options, ranging from mainstream public school placements, through placement in special day schools, residential schools, home instruction and hospital placement. See 34 C.F.R. § 300.551(b)(2), 300.552(c), (e), 300.553; Ed. 1115.04(b). If placement in a less restrictive setting can provide an appropriate education, than placement in a more restrictive setting would violate the IDEA's mainstreaming requirements. See Abrahamson v. Hershman, 701 F.2d 223, 227 n.7 (1st Cir. 1983).

The weight of the evidence in this case demonstrates that school staff possess the requisite experience, training and qualifications to provide services to Student at the

---

<sup>2</sup> The Parents removed three other siblings as well, one of which is the subject of the other due process matter decided this date.

specifically focus on h-- unique needs, including Reactive Attachment Disorder. As to the IEP in question, the District was responsive to requests made by the Parent, such as development of a behavior plan, and provided adequate opportunity for Parents' participation in the process. The IEP developed on May 18, 2010, as amended on June 22, 2010 is reasonably calculated to enable this young Student to benefit from h-- program at Heron Pond Elementary School and access the curriculum. There is no basis to conclude that Student should be placed in a more restrictive setting. No evidence was presented which would warrant a conclusion that Student has been unsafe at school. Rather, Student's behavior has posed no risk to h--self or others and behavioral issues have been appropriately managed and addressed at school. Student has progressed academically and is able to work cooperatively with other students. There is likewise no basis on this record for a finding that Student needs a full-time one-on-one aide in the educational setting.

**IV. PROPOSED FINDINGS AND RULINGS**

None submitted.

**V. CONCLUSION AND ORDER**

The IEP developed on May 18, 2010 as amended on June 22, 2010 is appropriate for Student and reasonably calculated to provide h-- with a FAPE in the least restrictive environment.

The requests for out-of-district placement and a full time one-one-one aide are denied.

**VI. 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 competent jurisdiction. The Parents have the right to obtain a transcription of the proceedings from the Department of Education. The School District shall promptly notify the Commissioner of Education if either party, Parents or School District, seeks judicial review of the hearing officer's decision.

So ordered.

Date: September 17, 2010

---

Amy B. Davidson, Hearing Officer