THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Student./Milford School District
IDPH-FY-11-07-003

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 non-shared one-on-one aide properly trained in autism, and whether the District's proposed placement in the Milford School District is appropriate.

The due process hearing took place on August 20, 2010. [1] The parties submitted exhibits, and the following individuals testified: Eileen Higgins, Student's co-case manager; Helen Peter Bonaccorsi, Heron Pond Elementary School principal; Jodi Kimionakis, Student's regular education classroom teacher; Helen Bureau, special education teacher and co-case manager; and Johanna Johnson, Special Education Director. Post- hearing submissions were filed by both parties.

II. FACTS

Student is eleven years old, and resides with h-- parents in the Milford School District. H-- primary disability is autism, with a secondary identification of Specific Learning Disability. Student has just completed fifth 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.

Student's current IEP and placement were proposed by the team on February 12, 2010, and agreed upon by the Parent that same day. The IEP includes goals for reading, social/emotional needs and fine motor development, and contains a number of general educational accommodations. Student receives, among other things, group occupational therapy, remedial reading, assisted study hall and five hours per day of a shared aide. The IEP calls for the aide to accompany Student at all times during the day except when [ ] is

[1] 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.

with either Ms. Bureau or Ms. Higgins. Student would be transitioning to the middle school for upcoming school year.

On May 18, 2010, an incident occurred at school which involved Student briefly leaving the school building. [2] The evidence conclusively establishes that a school staff member who was following Student out of the building lost visual contact with h-- for a total of six (6) seconds between an inner and an outer door. Following this incident, the Parents sent the District staff a number of e-mails claiming that Student was allowed to leave the building unattended and that Heron Pond Elementary School was unsafe. On May 19, 2010, the Parents notified the District via e-mail that they were removing Student [3] from school "for safety reasons". Student did not return to school for the remainder of the school year.

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 held on June 15, 2010 to discuss the Parent's request. Parent attended that meeting. Although the team denied the request for an aide, they did agree to amend the IEP to include, among other things, initial training and quarterly consultation for the team by a Reactive Attachment Disorder specialist, additions to Student's behavior plan and one-on-one direct supervision by a shared aide during transitions.

According to testimony and written reports, Student progressed well during the 2009-2010 school year with respect to h-- IEP goals and in the regular educational curriculum. Behaviorally, Student has presented minimal difficulties, particularly when contrasted with h-- disruptive behavior of previous school years. Ms. Kimionakis, Student's classroom teacher, described Student's behavior as typical for children with h-- background, noting that the behavior management system utilized in class has worked well, and that Student's behavior improved as the year went on. Staff was unanimous in their testimony that Student did not require either a non-shared one-on-one aide or an out-of-district placement; the classroom teacher actually opined that assigning a full-time one-on-one aide would be counterproductive.

III. DISCUSSION

In this case, the Parent had the burden of demonstrating that the IEP as amended and placement at the middle school are 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

[2] The matter was thoroughly investigated by the Department of Education complaint investigator, who found the Parent's complaint to be unsubstantiated. A copy of the investigation report is found at SD Exhs. 334 – 349. This investigation is entitled to great weight.
[3] The Parents removed three other siblings as well, one of which is the subject of the other due process matter decided this date.

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 (1st 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 specifically focus on h-- unique needs, including Autism and Reactive Attachment Disorder. The District's responsiveness to requests made by the Parents was particularly reflected in the proposed IEP amendments developed at the June 15, 2010 team meeting which Parent attended. The IEP developed on February 12, 2010, as amended on June 15, 2010 is reasonably calculated to enable Student to benefit from h-- education program in the district, and access the curriculum.

On this record, there is no basis to conclude that Student should be placed in a more restrictive setting or that Student requires a non-shared one-on-one aide. The IEP provisions relative to the aide are more than adequate to address Student's needs as well as the Parents' stated concerns. No evidence was presented which would warrant a conclusion that Student has been unsafe at school. The May 18, 2010 incident did not, by any means, rise to the level of constituting an unsafe school environment; nonetheless, school personnel made every effort to be responsive to the Parents' complaints. Moreover, Student's behavior has significantly improved during the 2009-2010 school year over past years. Those behavioral issues which do exist are addressed in the IEP and have been appropriately managed at school. Student has progressed academically and is able to access the curriculum.

IV. PROPOSED FINDINGS AND RULINGS

None submitted.

V. CONCLUSION AND ORDER

The IEP developed on February 12, 2010, 2010 as amended on June 15, 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 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

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Amy B. Davidson, Hearing Officer