

New Hampshire Department of Education

Student/John Stark Sch. Dist.

IDPH FY 10-02-031

Due Process Decision

The matter before me revolves around whether a settlement agreement that the parties entered into to resolve a prior request for due process precludes the parent from referring their child to the special education process under Ed 1105 and Ed 1106.01 for the 2009-2010 school year.

Settlement agreements generally resolve all claims to date between the parties arising out of the event to which the agreement is related. Settlement agreements generally do not include future claims or take away future rights unless the agreement is express in that regard.

The settlement agreement at issue in this case resolved the parents request for due process in June 2009 over the student's eligibility for special education. The parties agreed to dismiss the request for due process in exchange for the student being provided with services under a 504 plan for the 2009-2010 school year. The agreement resolved the issue of the student's eligibility based on the information that the parties had at the time of the agreement as that is what made up the parent's claim against the school at that time.

The school contends that the agreement also precludes the parent from referring the student to the special education process during the 2009-2010 school year because the settlement agreement resolved the issue of eligibility for the 2009-2010 school year. The settlement agreement says that it resolves the claims between the parties in the prior due process hearing and that issue was eligibility. The agreement also says that the parties agreed to it for the term of the 2009-2010 school year.

However, the agreement does not say that the parent is precluded from exercising future rights such as referring the student to the special education process if circumstances change during the school year, if the student regresses at school or fails to benefit from the 504 services being provided, or if new information about the student demonstrates a need to refer the student to special education. Doing so would be effectively take away the parent's future right to make a referral about their child regardless of the circumstances that occurred during the 2009-2010 school year and potentially the right to FAPE as well. Such an agreement would be fairly substantial leap of faith for the parties to take and would involve the parent bargaining away significant future rights in exchange for Section 504 services.

Based on the information presented in the motion to dismiss, the parent's response to the motion, and the information presented at the prehearing, it appears that the parties did not have a meeting of the minds on that aspect of the agreement. As noted, the principal contends that the agreement does include future requests for referrals while the parent contends that she did not understand the agreement to reach that issue.

Given the different interpretations of the agreement by the parties and the specific situation before me, I cannot agree that the settlement agreement precludes the parent from referring her child for special education services eight months after the agreement. If a school is asking a parent to bargain away future rights in the special education process, the agreement should expressly note this extra requirement so that it is clear that the parties have a meeting of the minds on that issue.

I view the parent's referral request as a new or future matter that is not precluded by the settlement agreement. The agreement resolves the student's eligibility for services based on the information the parties had back in June 2009. The school district certainly does not have to revisit that decision based on the same information it had at that time, but if the parent has new information that has transpired in the eight months since that time, the terms of the settlement agreement do not preclude her from presenting that new information¹ to the team for the team to consider under the special education referral process in Ed 1105 and 1106.01.

The school seemed to agree at the prehearing that if substantially new information about the student came to light that the school would again consider the student's need for special education by reviewing the new information and that is really all I am saying in this order. If the circumstances were reversed and the school felt that the student needed to be referred to the special education process because of information that arose after the agreement, I don't think that they would view the agreement as precluding them from doing so. Similarly, the parent should not be precluded.

This order is not intended in any way to address the student's eligibility, the appropriateness of the services that have been provided to the student under the settlement agreement, or how the team should resolve the referral request under Ed 1106.01(d). The order is simply saying that the settlement agreement between the parties does not preclude the parent from referring her child to the special education process under Ed 1105, Ed 1106.01 and local school policies.

The timelines and procedural requirements under state and federal regulations for addressing the parent's referral begin as of the date of this order.

SO ORDERED

Date

Scott F. Johnson

¹ It may also be that the new information combined with old information that the school already reviewed in the past is relevant to the referral as the new information may shed new light on information the school previously reviewed. My order should not be viewed as precluding the team from reviewing or considering information it has already reviewed in the past.