

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

**Student/Concord School District
IDPH-FY-11-04-043**

DECISION

I. INTRODUCTION

This due process proceeding commenced on April 25, 2011, initiated by the Parents of [] (“Student”).

The due process hearing was held on June 13 and 14, 2011 at the hearings office in Concord, New Hampshire. The Parents presented their case first, and called the following witnesses: Janice Goldstein, Ph.D., of Andover Counseling Center, Andover, Massachusetts; Foad Afshar, Psy.D. of the Cleer Institute in Concord, New Hampshire; Diana Weiner, M.D., of Riverbend Community Mental Health Center, Concord, New Hampshire; and both Parents. The Concord School District (“District”) called the following witnesses: [], [] School Special Education Coordinator; [], School Psychologist; [], Special Education teacher; [], Guidance Counselor; [], 5th grade classroom teacher; Kelly Smith, LCSE, Reactive Attachment Disorder (“RAD”) consultant; and Jeremy Brooks, Psy.D., child psychologist and consultant to the District. Both parties submitted exhibits ¹ and filed post-hearing proposed findings and rulings and memoranda of law. ²

The substantive issue for due process was whether the Individual Education Plan (IEP) and placement proposed by the District was appropriate. ³ The complaint also alleged four procedural violations, set forth and discussed in Section III, *infra*.

II. FACTUAL BACKGROUND

Student is almost eleven years old, resides with h-- Parents and sibling in the District, and just completed fifth grade at [] School in Concord, New Hampshire. Student is eligible for services pursuant to the Individuals With Disabilities Education Act (“IDEA”) and state regulations.

Student spent the first twenty-six months of h-- life in hospitals and orphanages in []. By all accounts, this early period in Student’s life was marked by neglect and lack of care. In February of 2002, Parents adopted Student and another child, and brought them home to New Hampshire.

¹ References in this Decision to Parents’ and District’s Exhibits (P.Exh. and D. Exh., respectively) are to page numbers.

² The parties agreed to a brief extension of the decision date to July 11, 2011.

³ As Parents acknowledge, placement for fifth grade is now moot, as the school year has ended; the dispute concerns the IEP and placement for sixth grade, school year 2011-2012.

Parents immediately connected with local resources and providers, sought evaluations, and conducted extensive research relative to RAD which they shared with the District. Testimony Parent. In 2004, Parents consulted with Dr. Foad Afshar and Kelly Smith concerning RAD. Also in 2004, as part of Riverbend's evaluation process, Student was evaluated by Dr. Elvira Downs of Riverbend, and diagnosed with RAD Disorder of Infancy, disinhibited type, and PTSD, chronic, with delayed onset. P.Exh. 508. Dr. Downs rated the severity of Student's psychosocial stressors as "extreme". *Id.* That same year, the District's school psychologist, Jane Plamondon, conducted an evaluation for the District.

Since age three, Student has received special education and related services from the District. In 2005, Student was identified as educationally handicapped by virtue of a developmental delay. During h-- kindergarten year in 2006, Student was admitted to New Hampshire Hospital's Philbrook Center for sixteen days following explosive behavioral episodes at home. Upon discharge from Philbrook, Student and Parents continued with outpatient treatment at Riverbend Community Mental Health Center. Riverbend has been working with Student on a number of social/emotional skills similar to those articulated in Student's proposed IEP. These services have included case management, individual, group and family therapy, therapeutic respite, behavioral services, pharmacological management and functional support services. P. Exh. 571-574; Testimony [psychiatrist]. In particular, the functional support services address social/emotional needs similar to those addressed in Student's IEP. According to Dr. [], both the intensity and longevity of services provided to Student were unusual even for the most severely disabled clients.

In 2007, Student was identified as having Emotional Disturbance as h-- primary disability, consistent with the complex constellation of medical diagnoses including RAD, Post Traumatic Stress Disorder ("PTSD") and mood disorder, and the maladaptive behaviors consistent with these diagnoses. P.Exh. 165 Student has also been identified as having a non-verbal learning disability.

Academically, Student's strengths are verbal skills, vocabulary and word reading; h-- actual reading is close to grade level. Testimony of Plamondon Student demonstrates significant weakness in mathematics and perceptual organizational skills and experiences frustration during math instruction. Student frequently misinterprets social situations, and has difficulty bonding with other people. Student is also, as h-- Parents noted, a survivor who wants to be successful. According to Jane Plamondon, Student did a marvelous job in guided reading lesson, was excited to be part of the group and actively participated in the reading lesson.

From the beginning, these Parents have been very involved with the District and other community agencies, and have conducted extensive research relative to RAD. Parents and District have, over the years, worked collaboratively around Student's program and needs. During Student's third grade year (2009-2010), they developed a plan whereby the Parents would select several articles on RAD and provide them to school staff three times a year.

Testimony [teacher]. This approach enabled school staff to have current information about RAD in order to best serve Student in class.

During fourth grade (2009-2010 school year), there were several instances where staff addressed behavioral issues in class; on two occasions, staff had to evacuate the other students. Testimony [] Additionally, Student was performing below grade level in many academic areas.

During fifth grade, (2010-2011 school year), Student had three admissions to New Hampshire Hospital – Anna Philbrook Center (“Philbrook”). The first admission occurred in late August of 2010, and [] remained for one month. Approximately five weeks after discharge, on November 9, 2010, Student was again admitted to Philbrook. This second admission lasted for four months, in large part to enable the hospital to obtain neurological test data and to develop collaborative strategies to help Student control h-- emotions and behavior. SD Exh. 412 Student has been on numerous medications with significant side effects. Despite those medications, a number of behavioral incidents occurred at Philbrook, necessitating Personal Safety Emergencies and seclusion, and other restrictions. Student’s treating psychiatrist at Philbrook noted Student’s inability to regulate h--self. In mid-March of 2011, Student was again admitted to Philbrook, this time for five days. Parent, P. Exh. 445. During this third hospitalization, Student reported to staff that [] was hearing voices telling h-- to do bad things, reinforcing the concern that [] was experiencing auditory command hallucinations and was at risk for schizoaffective process. Philbrook staff recommended involving other community agencies, in that Student “is at very high risk to require supervision throughout the rest of h-- life because of the severity of h-- developmental delay.” SD Exh. 413.

At a community meeting on January 19, 2011, the Philbrook social worker noted instances of what she termed “anticipatory anxiety”, whereby Student was so worried about doing the wrong thing that it became a self-fulfilling prophecy, resulting in verbal or physical aggression. P.Exh. 295 – 296 This was observed by school personnel as well. P.Exh. 296.

In December of 2010 and January of 2011, per agreement of the parties, Drs. Janice Goldstein and Kathryn Drinkwater of Andover Counseling Center in Andover, Massachusetts conducted a neuropsychological/psychological/educational evaluation. Student was referred by h-- Parents “for purposes of educational and treatment planning...[s]pecifically, h-- parents question whether h.. current educational placement is resulting in effective academic, social and emotional progress.” P.Exh. 319. Dr. Drinkwater traveled to New Hampshire to conduct the evaluation, as Student was hospitalized at the time and unavailable to travel to Massachusetts. The report was completed in February of 2011 and provided to the District.

Dr. Foad Afshar consulted with Parents in 2004, and conducted a three-hour observation of Student on January 5, 2011. Dr. Afshar provided the Parents with a “Preliminary Consultation Report” containing several recommendations, to be shared at the March IEP Team meeting.

On or about March 10, 2011, Parents gave the District an eight-page document detailing their concerns relative to the IEP. The District was also provided with reports from Drs. Goldstein's and Afshar's evaluations. On March 11, 2011, District members of the team met to review these evaluations as well as the Parents' documented concerns, and to prepare a draft IEP for the upcoming team meeting. The District team members worked late into the evening (Friday) and into the next day to incorporate all of this input and evaluation data into a draft IEP. Testimony of [] The draft IEP was sent to Parents on Sunday, March 12, 2011. D. Exh. 109

The draft IEP recited, *verbatim*, Parents' concerns from their March 10, 2011 submission. It included goals and objectives in the areas of math, reading, social/behavioral and occupational therapy. Modifications for academic, non-academic, counseling and gross motor were included as well. The District proposed to place Student in the 3R Program at Rundlett Middle School for Student's upcoming sixth grade year. The 3R Program serves students with multiple needs, provides structure, small class size, ongoing social/emotional support, ongoing, dedicated counseling and access to typical peers. Testimony of []

On March 14, 2011, the IEP team convened to review the evaluations and continue development of Student's IEP. During this meeting, school psychologist Jane Plamondon noted that Dr. Afshar's comparison of test scores over the years was not appropriate because the tests, questions and subtests were not the same. She also noted that Andover Counseling Center should not have discounted District test results in that, although different from Parents' results, they were valid and an accurate reflection of Student.

Toward the end of the March 14, 2011 meeting, Special Education Coordinator [] suggested that the entire team consider each of the goals and objectives and agree upon each one individually, and then move on to discussing services and placement, as was the parties' past practice and the District's process for all IEP development. This proposal was rejected by the Parents' advocate, who instead requested that the team consider residential placement. The Parents and their advocate asked the team to send them another draft IEP with placement proposals, and indicated that they did not want to schedule another team meeting to follow up.

On March 28, 2011, another draft was sent to the Parents. The Team did meet again on March 28, 2011 to continue IEP discussions. During the meeting, the Parents reiterated their concerns. Following that meeting, the District sent the Parents Written Prior Notice of proposed placement at Broken Ground School for the remainder of fifth grade, and the 3R Program at Rundlett for sixth grade. On April 20, 2011, Parents formally rejected the proposed IEP and placement, and subsequently initiated this proceeding.

Janice Goldstein, Ph.D. from Andover Counseling Center testified as to her neuropsychological evaluation of Student. Dr. Goldstein has considerable experience as a consultant to schools regarding programs for children with special needs. Dr. Goldstein noted that Student presents differently in different settings, although she did not observe Student in the school setting. Dr. Goldstein accounted for this discrepancy by opining that the structure of the school setting, with the "vigilance of the aide attached to her all day long" might account for her presentation at school. Although the structure and predictability of the school setting

calms her down, the issues are still present and would likely manifest in the school setting at some point. Testimony Goldstein. Dr. Goldstein described RAD as a constellation, stemming from disruption of early bonding process leading to mood and behavioral issues. Dr. Goldstein noted that Student was on medication when tested; meds provide some relief but not entirely. She felt strongly that intense intervention, with therapy and tight communication throughout the day. Small classes would enable Student to have more independence without a paraprofessional by her side. She testified that Student had not met most of the Curriculum Frameworks, although some skills manifest in the classroom. As to the IEP, the social/emotional goals were not comprehensive enough. Dr. Goldstein acknowledged that she had not met with anyone from the District, nor had she requested assessments of academic work. She noted the disparity between the school and Parent accounts could be explained by the structure of the school setting and the close availability of the aide.

Foad Afshar, Psy. D., maintains a private practice in consulting psychology in Concord, New Hampshire. He has two decades of experience working with special education students and has worked with the full spectrum of children with psychiatric difficulties, including students diagnosed with RAD. Dr. Afshar testified that children with RAD have a post traumatic stress response to intimate relationships and become reactive by testing those relationships - in contrast to a hospital setting, where providers are “temporary”. Dr. Afshar described what he called the “abused parent syndrome”, whereby the reactivity becomes so severe as to make it look like the parents are abusive. Dr. Afshar reviewed Student’s Riverbend and Philbrook records, and prepared a preliminary consultation report which was shared with the IEP team. The report contains a compilation of test results and comparisons of test scores over time; according to Dr. Afshar, Student’s intellectual functioning had declined in numerous areas, and concludes with several recommendations, including residential placement for Student. He notes that “[t]here are very few programs with a good success record for educating students like []” Dr. Afshar identifies two such programs: St. Ann’s Home in Massachusetts, and Wediko School in New Hampshire, which provides services exclusively to boys. P. Exh. 394

Dr. [], Student’s treating psychiatrist at Riverbend, has worked with Student as part of the Riverbend treatment team since 2008. Dr. [] is also familiar with the 3R Program at Rundlett, and does not believe it to be appropriate for Student. Dr. [] pointed out that Student has had a level of interventions well beyond what is typically offered by Riverbend, even to the most severe clients, both in intensity and duration of services. According to Dr. [], Student’s chance of stabilizing as a teenager is miniscule; h-- developmental job is to pull away, or individuate. If [] has never attached in the first place, h-- ability to individuate will be compromised. Dr. [] noted that Student is really on the cusp, such that [] needs intensive intervention now. According to Dr. [], the pattern of moving between home, school and hospital is harmful to Student. In her opinion, given Student’s difficulty with frustration, h-- problems with executive functioning and processing speed, as academic demands increase, Student’s emotional and behavioral control will worsen unless [] can develop a more stable emotional pattern first. In her opinion, for this Student, the academic, emotional, functional, psychological and behavioral issues are intertwined and related. Even with the most intensive array of services, Student continued to experience difficulties that could only be remediated in a residential treatment setting.

Drs. Goldstein, Afshar and [] all concurred that time was of the essence. They all noted that recommendations for residential placement are rare and not readily made in their respective practices. They agreed that it was not unusual for Student to be able to hold it together at school. They considered it crucial for the placement to be close to home to facilitate parent involvement, and testified, without elaborating, that there were residential options available close to home that could meet Student's needs.

Parent described her experiences with the process. Parents indicated that Student did not have any peer group friends.

[], Special Education Coordinator at [] School, testified that Student had successfully transitioned from Eastman Preschool to Dame School, and subsequently from Dame to []. She described Student as "happy, comfortable with school, good relationship with all teachers, hard worker, wants to please." This year, Student has sought out friends and enjoys such things as lunch groups. Student has a strong desire to be in a regular classroom. Ms. [] explained that the proposed IEP called for consult with a RAD specialist for the first time because the District had developed a good knowledge of RAD and Student was making progress. She testified that the Parents' documented concerns were not added to the IEP as written, but rather were incorporated into the goals and objectives. She noted that she would have explained this to Parents if the team had reviewed each goal and objective separately as the District had suggested, but the Parents advocate had rejected this suggestion.

Jane Plamondon, the school psychologist, evaluated Student in 2004 and 2007 and again in 2011. She clarified certain points regarding her own testing and disagreed with Dr. Afshar's interpretation and conclusions. She emphasized that testing results in a vacuum were not enough without validation within the school environment. In her opinion, the proposed IEP was appropriate, and Student would be best served in the least restrictive environment with opportunities to learn in a normal and natural setting. Student does not need a residential placement in order to learn. Testimony of Plamondon

[], Student's special education teacher at [] School, has extensive teaching experience which includes teaching at a residential school. She has known and worked with Student since Student began at [] School in third grade. [] noted that Student had made significant progress academically and socially during fifth grade, noting that Student had come a long way and has been able to do modified parts of the curriculum. Academic achievement testing performed by Ms. [] yielded several reading scores near or at grade level, while math reasoning and numerical operations continued to be areas of relative weakness. Math would need to be modified significantly in sixth grade. Socially, Student was observed by Ms. [] to engage in give and take humor with peers in the classroom, something [] would not have been able to do to this degree before. Ms. [] was with Student on "move-up" day at Rundlett, which went well. Ms. [] believes that the [] Program would meet Student's needs with regard to access to the counselor and to h-- peer group, and that Student does not require residential placement to benefit from education.

[], Student's guidance counselor, has worked at [] School for seven years, and has known and worked with Student for three years on counseling goals. She saw Student daily and also participated in IEP development. She disagreed with Dr. []'s description of Student. She noted that, in third grade, Student was more interested in adult relationships than relationships with peers, but was now beginning to develop close relationships with peers. She confirmed that Student's nonverbal learning disability causes h-- to misperceive a lot of social situations, in turn causing frustration. She noted that Student had picked up some bad behaviors at Philbrook. Student did transition back into the classroom following h-- Philbrook admission in the fall of 2010. During the spring of 2010, there were two behavioral incidents where the other students had to be removed from the classroom in order to diffuse the situation; This year, there were two incidents where h-- behavior escalated – one at the beginning of the year, and the second one recently – but not to the extent that the school had seen in fourth grade. Staff was able to assist Student to regain control in a relatively brief period of time. There are moments when Student is stressed at school, but staff assists h-- in processing. Student doesn't compare h--self to peers at school. Ms. [] does not see an “increasing sense of desperation”. Student is upbeat, but shows remorse following a behavioral incident. Ms. [] endorsed the 3R Program as an appropriate placement for Student

[], Student's fifth grade classroom teacher, spent four years teaching at Rundlett and is familiar with the [] Program. Student needs to have access to the same person all the time, regardless of h-- schedule, and the [] Program would provide that. She testified that Student loves to participate in class, is eager to ask questions and can connect information to a prior experience. Ms. [] agreed that Student's greatest academic struggle is math, where [] becomes most frustrated. Over the course of the year, as evidenced by Benchmark Progress testing, Student progressed from well below grade level in fourth grade to near grade level at level 5. She would not recommend a residential placement for Student. Testimony of []

Kelly Smith, the District's RAD consultant who had met with Parents in 2004 and consulted with the District in 2011, has worked in residential treatment programs and consults with foster and adoptive families. She has worked with over fifty children with attachment trauma, from Eastern European orphanages. Ms. Smith observed the [] program, spoke with Dr. Brooks about his work, met with school staff and observed Student for five hours, and did some limited record review which included the current IEP and the Riverbend evaluation by Dr. Downs. Ms. Smith noted that children with RAD will attach to residential caregivers, but would not be able to transfer that attachment to family when returning home. Ms. Smith described the proposed [] Program as offering consistency and structure, breaking things down into small steps, and home-school coordination. She had seen the Positive Behavior Support Plan developed by Dr. Jeremy Brooks work with other RAD students if implemented consistently. She testified that she has seen other students enter residential treatment and come out worse with new bad behaviors, as the guidance counselor had noted about Student's behaviors following Student's hospitalization at Philbrook. Ms. Smith was concerned because Student had already been abandoned once and would feel abandoned again. Ms. Brooks has done RAD training with residential programs such as Wediko and Spaulding, and can do RAD training with Dr. Brooks and school staff.

Jeremy Brooks, Psy. D., the District's consultant, is a psychologist who has worked with children and adolescents in McLean and Massachusetts General Hospitals and provides consultation to school districts, parents and courts. Dr. Brooks met with school staff, student and the family. He visited Philbrook, spoke to Student's treating psychiatrist there, and participated in one of the meetings. He has also reviewed records, including the Andover Counseling Center evaluation. His concerns regarding that evaluation were that they had not observed the school program, had made a residential placement recommendation without observing Student in home setting and had dismissed the school's rating on one of the tests. Dr. Brooks noted that Student requires a predictable, consistent approach. Consistent with RAD, Student has poor reality testing, but not psychosis. He testified that Student is more stable at school than at home; staff handled escalations very efficiently and let home know what is expected. Consistent with previous testimony, Dr. Brooks noted that Student's RAD issues are much more prevalent with Parent. Dr. Brooks opined that Student would do best in a program with mainstreaming, with peer role models.

III. PROCEDURAL ISSUES

In matters alleging a procedural violation, a hearing officer may find that a student did not receive a free appropriate public education only if the procedural inadequacies impeded the student's right to a free appropriate public education, significantly impeded the Parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the student, or caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); *see also Roland M. v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990).

The Parents contend that the District did not meaningfully consider the results of the most recent evaluations during the IEP process. This is not borne out by the meeting notes. The District staff did note areas of disagreement with testing. However, the team meeting ended before placement discussions could occur. The Parents also maintain that The District failed to consider the potential harmful effects of placing Student at [] (for the remainder of the school year) and Rundlett for the upcoming school year. The Special Education Coordinator recalled a lengthy discussion about the [] program at [], but did not recall Parents "bringing up negatives" about [] and did not believe this was discussed. Testimony []

The Parents also maintain that the District failed to provide them with adequate written prior notice as to why the Parents' requested IEP input was rejected. I would agree that the Written Prior Notice was somewhat sparse and should have more adequately addressed Parents' concerns. Finally, the Parents contend that the District has been operating with an expired IEP since 2/13/11. There is nothing in the record documenting parental consent; however, in its response to the due process request, the District represented that there was an oral agreement to this effect.

The record does not support a finding that the Parents' opportunity to participate in the decision-making process was significantly impeded. Although the District proposed to review each goal and objective as was its practice, the Parents, speaking through their advocate, declined further discussion of the IEP. Essentially, IEP development was stalled before placement consideration could even begin.

IV. DISCUSSION

Parents have the burden of proof and persuasion relative to the issues in this case. *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. *Lessard v. Wilton-Lyndeborough Cooperative School District*, 518 F. 3d 18, 23 (1st Cir. 2008); *see also 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' child's *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). School districts must ensure, *to the maximum extent appropriate*, that children with disabilities are educated with non-disabled peers. Ed 1111.01(a). (Emphasis added) If placement in a residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents. 34 C.F.R. 300.104.

The District maintains that Student has made progress at [], and, significantly, had no major incidents at school during h-- fifth grade year. The District also points out that the [] Program is Student's neighborhood school where [] would be able to participate with non-disabled peers, and is the next placement on the continuum from least to most restrictive. The District argues that the IEP and proposed placement are reasonably calculated to provide Student with educational benefit. The District witnesses unanimously endorsed the proposed IEP and placement.

The Parents' witnesses testified that Student's emotional disabilities are intertwined such that a twenty-four hour, full-year program is needed. They emphasized that time is of the essence from a developmental standpoint, due to the impending onset of puberty. They predict that, unless such intensive services are provided now, Student's prognosis for independent functioning will be quite poor. Testimony by the Parents' witnesses, particularly Dr. [], is persuasive with respect to Student's need for services and interventions that extend beyond the regular school day.

It is true that tribunals should recognize the expertise of educators with respect to the efficacy of educational progress. *C.G. v. Five Town*, 513 F.3d 279, 289 (1st Cir. 2008). To be sure, Student's

program at [] proved successful to a large degree, at least toward the latter part of the school year. The proposed program at [] for the upcoming school year would provide even more services with a greater degree of structure. The District staff and consultants unanimously voiced opposition toward residential placement, believing it to be too restrictive and not necessary to enable Student to benefit from h—education and make meaningful progress. Especially in the latter part of the school year, Student’s teachers have observed improvement in Student’s social skills, in that [] has been socializing more with h-- peers. The teacher also testified as to Student’s academic progress as measured by testing materials and as demonstrated by Student’s classroom work.

Yet, despite all of this, as well as the intense level of services provided by Riverbend and the Parents’ efforts to avoid hospitalization, Student was admitted to Philbrook three times, and spent *almost half* of h-- fifth grade year in the *most* restrictive placement of all – a psychiatric hospital. The Student’s overall fifth grade experience and degree of success cannot be measured without taking these three hospitalizations into account. In this particular case, given h-- diagnoses, the fact that the incidents leading to hospitalization occurred outside of school does not mean that h-- educational needs can be separated from h-- emotional needs. Further, an almost alarming array of psychiatric medications with major side effects has been tried with Student, with varying degrees of success.

This is an extremely difficult and complicated case – and a very close one. Clearly, each and every individual working with Student is dedicated to h-- and h-- family. Both the Parents and the District present compelling arguments, and conflicting testimony by credible and knowledgeable individuals. Placing Student in a residential setting is not without its drawbacks and concerns. As Parents so aptly stated, Student is a survivor. [] yearns to please, to do well and to be accepted. It is for that reason that there is concern about how Student might perceive “being sent away”, and the impact this would have upon h--. However, Dr. [] advised that it could be done if presented to Student appropriately. Kelly Smith went so far as to opine that a residential placement would be harmful because, although Student might attach to residential staff, those attachments could not be generalized to h-- Parents, the primary caregivers. It is not that the school environment cannot provide the structure Student needs to maintain control; however, as Dr. [] suggested, a residential program with small classes might obviate the need for continuous one-on-one paraprofessional supervision, thereby enabling Student to be more independent.

The facts and circumstances in this case are similar to those presented in Sanborn Regional School District, 107 LRP 29448 (NH SEA 2007), and Pembroke School District, 104 LRP 44742 (NH SEA 2004), both of which involved students whose behaviors manifested outside of the school setting. As was noted in Sanborn, the crux of the dispute is the parties’ interpretation of the scope of education and what is considered appropriate under the IDEA. Given Student’s unique constellation of disabilities, the scope must be broader and encompass more interventions than can be accomplished within a typical school day.

To be clear: Nothing herein is intended as a condemnation of the District’s proposed IEP and placement, or a minimization of its exceptional efforts on Student’s behalf and the progress Student has made. It is also apparent that the proposed IEP and placement might be appropriate *if a wraparound approach had proven to be effective over time*. Here, time is now of the essence. It is not that no progress has been made, or that Student is not able to function *when [] is at school*. That is the nature of her disabilities. By the same token, as Kelly Smith and school staff pointed out,

residential placement is restrictive on the placement continuum and has the potential for Student to learn inappropriate behaviors from other students. On the other hand, what cannot be ignored or minimized is the number and length of psychiatric hospitalizations, resulting in a substantial portion of the fifth grade school year in a psychiatric facility, even though [] attended school for a portion of h-- stay at Philbrook. Also compelling is the opinion of Dr. [], who knows Student well and is familiar with the proposed placement at []. It is her hope that if such a placement can be implemented for a concentrated period, this will allow Student to obtain skills to enable h-- to move back into the community. Without it, Dr. [] postulates, Student will likely require “a higher and higher level of care”. Testimony of []. This assessment is consistent with that of Student’s treating psychiatrist at Philbrook, who stated: “A continuing problem throughout [Student’s] development is h-- inability to regulate h-- mood and [] will often become escalated and excited. Principally this occurs toward family members, but [] is often quite unregulated...at school. The assaultive and destructive behaviors occur less so there.” P. Exh. 397

The proposed IEP and placement contain elements of what would constitute an appropriate program for this Student, such as small class size and ongoing social/emotional supports. Given the unique needs of this particular student, however, the District’s proposal does not go far enough. The evidence in favor of consistent programming throughout the day extending beyond the typical school day is compelling.

That having been said, any program into which Student is placed *must be sufficiently close to home* in order to effectively involve the Parents. As Dr. [] pointed out, residential programming doesn’t work without ongoing family involvement, particularly since the Parents are the integral part of the program. Parents’ witnesses all represented that there were appropriate placements close to home.

V. PROPOSED FINDINGS OF FACT AND RULINGS OF LAW

Parents’ Proposed Findings of Fact: 1 – 14; 16; 21 – 37; 41 – 43; 48 – 50; 58 – 66; 71 – 86; 89; 91; 93; 94; 97 – 102; 106 – 108; 111; 115; 118; 119; 129; 134; 136 – 152; 156; 158 – 166; 168 are **granted**; the remaining proposed findings of fact can neither be granted nor denied **as written**, except that to the extent that they conflict with this Decision, they are deemed denied.

Parents’ Proposed Rulings of Law: 1 – 3; 5; 6 are **granted**; 4 is **neither** granted nor denied **as written**, except that to the extent that it conflicts with this Decision, it is deemed denied.

District’s Proposed Findings of Fact: neither granted nor denied **as written**, except that to the extent that they conflict with this Decision, they are deemed denied.

District’s Proposed Rulings of Law: 1; 3; 7; 8; 13; 14; neither granted nor denied **as written** except that, to the extent that they conflict with this Decision, they are deemed denied.

VI. CONCLUSION AND ORDER

The team will reconvene to identify an appropriate program for the Student consistent with this Decision.

VII. 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/Student 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/Student or School District, seeks judicial review of the hearing officer's decision

So ordered.

Date: July 11, 2011

Amy B. Davidson, Hearing Officer