

New Hampshire Department of Education

Student/Concord School District

IDPH-FY-11-10-013

Due Process Order

The school district requested an expedited due process hearing in this matter and seeks an interim alternative educational placement for the student under 34 C.F.R. 300.532. The parties agree that for such a placement to occur, the school district must establish that placement at the high school is substantially likely to result in injury to the student or others.¹ I find that the school district has met its burden and may continue the interim alternative educational placement to allow it time to obtain a safety evaluation and a social emotional evaluation of the student.

The undisputed evidence at the hearing demonstrated that the student screamed profanities at staff members in a threatening manner, directly and repeatedly threatened the school SRO when he was being arrested and escorted to a police cruiser, became enraged during that arrest process and had to be restrained during the process and in the police cruiser, threatened to shoot a teacher with a gun, and stated that he wished he had a lighter so that he could burn down the school. The student has also apparently been charged with crimes outside of school involving assault or attempted harm to others.

Based on the evidence presented, it appears that the lack of services and supports at the school were contributing to the students frustration and anger that led to the problems, outbursts, and arrests that he had at school. Returning the student back to that environment without the proper supports in place is a recipe for disaster and is not an appropriate placement for the student. The student argues that having him attend counseling outside of school and having friends/mentors be available to talk to the school and to come to the school if needed when an incident arises is enough to allow the student to return to school. Those do not seem to be sufficient supports as they will not provide the student with the in-school services that the student needs to prevent issues that may trigger frustration and anger that could lead to outbursts from the student, and they likely could not help in time if something did occur. The student needs more in-school support and the exact nature and extent of the services that the student requires won't be fully understood until he is evaluated.

On the other hand, the school district should not view my order as an opportunity to use the interim alternative placement as an "out of sight out of mind" solution to this issue. It may not prolong the interim alternative placement any longer than absolutely necessary to obtain the evaluations and develop a plan for the student. Given what has happened at the school already and the testimony of

¹ The student's counsel argues that in addition to this burden, the school's actions to address the student's disabilities in the past should be considered when deciding if the student should return to school and cites to an 8th Circuit Court of Appeals decision. I agree with the school district that this decision, which was issued in 1994, was superseded by subsequent changes to the IDEA and note that even if the case is still good law, my view would be that the school's alleged failures in the past may warrant some form of compensatory education, but they don't resolve the issue of how to ensure that the student and others are safe at school going forward.

school staff about their inability to meet the student's needs, it may be that the high school is not an appropriate placement at all. If that is the case, the school will need to find an appropriate placement for the student that can address safety issues and provide the student FAPE.

The school has had since at least October 20 to conduct the safety and social emotional evaluations and still has not done so. The school should conduct the safety evaluation this week (week of November 15-19) and have a result and a meeting with the student before November 24, 2010 so that it can determine whether it can adjust the interim alternative placement while it awaits the evaluation and results from a social emotional evaluation. Counsel for the school district noted at the prehearing and the hearing that the school was looking to provide additional services to the student and the school district should make every effort to do so and to provide those services as soon as possible.

My order is not in any way meant to be a determination that the school is providing the student with FAPE in this current placement, nor absolve the school from any liability that it may have for not providing the student with FAPE in the past. My order is simply meant to note that the school is warranted from a safety perspective in gathering more information so that it can protect the student and others from harm and develop an appropriate program for the student.

If I understand the information submitted to me correctly, the student has been in the interim, alternative placement by agreement since October 21, 2010. Therefore the 45 day clock begins on that date. However, as mentioned earlier the school district should not wait or plan on using all 45 days as a matter of course. It should move as quickly as possible to complete all evaluations and develop a plan for the student so that the student is placed in an appropriate environment as soon as possible.

So Ordered.

Date

Scott F. Johnson