

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

In Re: Student/Northwood School District

IDPH-FY-11-12-027

DECISION

INTRODUCTION

A Pre-Hearing Conference was held and a Pre-Hearing Order issued shortly thereafter. The request for Due Process was made by the Parents. The Parents are seeking to have the Hearing Officer rule that the three (3) year evaluation was not complete because it was missing a psychological evaluation. In addition, Parents are asking to have Mary Susan Smith complete the evaluation at District expense. The Parents believe that the IEP is not being followed. Parents request that the paraprofessional be replaced, that the case manager be replaced and that a certified science teacher other than the existing science teacher be provided for the Student. The Parents also request that they be immediately notified when the Student is injured by another student.

The matter proceeded to a hearing over the course of two (2) days. The Parents called a number of witnesses, all of whom were School District employees. The District called one (1) witness, the School Nurse. (See Discussion below).

DISCUSSION

This matter was heard over the course of two (2) days beginning on February 1, 2011. The Parent presented first. The first witness called by the Parent was Ruth Ashley, Certified Occupational Therapist Assistant (Licensed). She indicated that in the past year she has trained five (5) paraprofessionals for the Student and considered that to be an excessive number of

paraprofessionals for one (1) individual in that course of time. She attends IEP meetings, and it is a frequent occurrence for parents to request a specific one-on-one paraprofessional to work with their child. A reference to the Student's latex allergy appears in the Modification page of the IEP. Ms. Ashley has had Latex Allergy Training, and at that training, the nurse explained to the attendees that some latex exposure could lead to serious injury or death. Page 25 of the Parent exhibit was a sign in sheet, and her name was not on it. However, it became clear through later witnesses that this sign in sheet was not for the Latex Allergy Training. Ms. Ashley has known the Student since the Student was an infant. She suspected eye conversion and referred Student to see an eye doctor in the first grade. She has worked directly with the Student and her room is not latex free. P19 was a doctor's note relative to latex and Ms. Ashley had never seen it before the testimony at the Due Process Hearing. She agreed that exposure to latex is not restricted to physical contact but can be airborne. She would not recommend VLACS for Science for the Student, and she consults with the team monthly. She indicated that the email relative to the science fair (P34 – 36) was not appropriate for this Student because the font was too small. She has seen the Student in a segregated class with only identified students and believes that the Student's OT needs cannot be met in Mr. Fillipon's science class.

On cross-examination, Ms. Ashley indicated that she is supervised by a registered occupational therapist. Mr. Hartford has been principal at the School for two (2) years. The School District assigns paraprofessionals, not the parents. She also indicated that prior to her testimony at the Due Process Hearing, she had never been asked by the mother if her room was latex free. She agreed that in a meeting with Counsel for the School District, she indicated that the VLACS would be an appropriate program for the Student for science. In addition, (P34 – 36)

with respect to the science fair project, she was not aware that the Student was able to download information on to the Student's computer and pick a topic.

Joyce Helton, Paraprofessional, testified as the second witness. She began working with the Student in April 2010, and was told by the case manager that she was the best choice to work with the Student. She had access to the IEP, read it and understood it. There are no behavioral issues with this Student. She has witnessed the Student being bullied by other students twice, and on each occasion, the Student was struck with a basketball thrown at the Student. She has never witnessed the Student retaliate. She attended a Special Education Workshop (P25) and also attended the Latex Information Workshop. In her opinion, the Student needs one-on-one support in all classes. She indicated that Mr. Fillipon does not support this Student's IEP's goals and modifications, and in fact, ignored them. Ms. Helton helped the Student on the science fair project referenced earlier in terms of editing the background research for the paper. She recalled reminding Mr. Fillipon several times that he was using the wrong colored marker on the board contrary to the IEP requirements. She received her assignment for 2010/2011 on the first day of school and was not assigned to the Student. She disagrees with the recommendation that the Student return to Mr. Fillipon's class. On cross-examination, she denied telling Counsel for the District that she was relieved not to be the Student's paraprofessional. She never observed the Student display any symptoms of latex allergy and she has never been to the gym with the Student.

Sally Oxford, the Special Education Teacher and the Student's case manager for the 5th and 6th grade testified as the next witness on behalf of the Parent. She chose Joyce Helton to be the paraprofessional through the end of the 2009/2010 school year based on availability. She does not make recommendations regarding paraprofessionals for the following year for any

students and was unaware of any problems between the Student and Ms. Helton. SD96 is the record of the IEP team meeting of August 26, 2010, and she was identified as the Student's case manager, although she was not the case manager at that time and did not attend the meeting. She was the Student's case manager back in June, however. She believed that Mr. Fillipon followed the IEP including attempting to use black ink on white board when the Student was in Mr. Fillipon's class. She felt that there were a number of accommodations made for the Student at the science fair, and it was her position that the Student should be returned to Mr. Fillipon's science class.

On cross-examination, Ms. Oxford discussed a prior paraprofessional with whom the Parent has had difficulties, so that individual was replaced. She testified relative to the Parent making a statement that she was going to "get" Mr. Fillipon because she disliked him.

Richard Hartford, Principal of the Elementary School testified as the next witness called by the Parent. He is aware that the Student has a latex allergy, and the latex allergy is referenced in two (2) areas of the current IEP. He acknowledged that there was a complaint filed with the Department of Education by the Parent relative to the Student being exposed to latex and that it was substantiated by the Department of Education and it took several months for the School to fully correct the problem. (See P32). Since September 2010, the science class has been totally latex proofed, as are other classes. He did, however, testify that the OT room was latex free, contrary to the testimony of Ms. Ashley. Mr. Hartford indicated that he knew little about the VLACS science program, but agreed that there would not likely be any labs on an on-line course. He recalls Sally Oxford coming to him to voice concerns with respect to Mr. Fillipon. He discussed Mr. Beard (the current case manager) pulling some students together for a study hall and that all of the students were identified students and that he spoke to Mr. Beard about it and it

has not occurred since. He also agreed that Mr. Beard allowed another student to have access to this Student's computer, which was not appropriate. He further acknowledged that the new paraprofessional, Ms. Hermeneau took a student out of class one (1) time to do work and Mr. Hartford instructed the paraprofessional that this was not appropriate and should not occur again.

He acknowledges that there was one (1) incident in the previous school year regarding latex and that the mother contacted him and said that the Student was not responsible for the incident in the cafeteria with the elastic bands. There was a second incident relative to latex on September 10, 2010, where Mr. Fillipon gave an elastic band to another student to tie back the student's hair. The mother complained to the police in an attempt to have criminal charges brought against Mr. Fillipon. The mother requested that the Student be removed from the science class, and although it has been latex free since September, the mother has not allowed the Student to return. The Student has not exhibited any latex symptoms in school. The school is not willing to provide a separate certified science teacher for this Student. There is a bullying policy at the school and the mother has not appealed relative to any bullying issues. No other identified students' parents have complained about Mr. Fillipon.

Ann Kebler testified as the next witness. She acknowledged that the meeting minutes from last year's IEP meetings often do not include all of the information presented at the meeting. She denied that at a meeting on August 26, 2010, she indicated that Joyce Helton should remain with the Student for the 2010/2011 school year. The next psychological evaluation is due in 2012. In her opinion, the current IEP is more than adequate to address any discrepancy between processing speed and intelligence. Ms. Helton recommended that the Student receive paraprofessional support in all academic areas, and acknowledges that the mother wanted a certified teacher to teach science other than Mr. Fillipon.

On cross-examination, Ms. Kebler indicated that she first learned of the latex allergy in the Fall of 2009, and was looking for doctor's orders to be on file, but that did not occur until the Fall of 2010. She discussed the complaint filed by the Parent relative to the first latex incident and the report issued by the Department of Education substantiating that complaint. She would expect that the nurse would have doctor's orders on file with respect to dealing with the latex allergy and any latex exposure. She recalls the mother asking if Mr. Fillipon would be fired as a result of the rubber band incident. She denied that the School made light of the latex situation and indicated that the mother was not concerned about latex in the gym because, in her opinion, the mother has a good relationship with the gym teacher. The mother has not asked to have any other rooms in the school sanitized like she has with the science class. This witness did not believe VLACS was good for the Student in science, that the Student needs a live science class and could be successful in Mr. Fillipon's class with accommodations. She disagreed with Mr. Helton with respect to the Student not returning to Mr. Fillipon's class and indicated that Ms. Helton is not qualified to render such an opinion. She testified that the team agreed to waive the cognitive evaluation in the Fall of 2009 because one (1) was done in the Spring of 2009. The mother agreed at that time, but has since changed her mind and wants the evaluation ordered. Ms. Helton was not assigned to the Student partially because the IEP was not agreed to until August 30, 2010, which was the first day of school. Ms. Helton had already been assigned to another student. It is also not the District's practice to allow Parents to choose paraprofessionals as it will set a poor precedent. She does not agree that Mr. Beard should be replaced as case manager, as case managers are assigned by grade. Regarding modifications to the IEP, she indicated that the mother has raised the issue with her often, usually around things she is

unhappy with such as missed assignments. The VLACS is at the current academic curriculum for 7th grade.

Case manager Jeffrey Beard was called as the next witness by the Parent. He has worked with the family's children for five (5) years and is certified as a Special Education Teacher. The IEP was primarily written by Sally Oxford, but he did have some input. There are two (2) references to latex allergy in the Student's IEP. He frequently meets with teachers who implement the IEP for this Student, and he is the Student's case manager. He acknowledged that there were no accommodations in the science fair packet, but there was a list of modifications and accommodations given to the teacher and a copy left for the mother at the Special Education office.

With respect to a possible missed lab on December 3, 2010, Mr. Beard knew nothing of it. He denied removing the Student from class in September and sticking him with only identified students. He acknowledged that one (1) time he allowed another student to use this Student's computer to listen to an audio book, and Mr. Hartford discussed this problem with him. He spends time with the Student daily including two (2) classes that he co-teaches. He has experience with VLACS for disabled students, but acknowledges he has no experience with a visually challenged child using VLACS. He believed that the Student could comprehend the material in the VLACS science course at the 7th grade level.

On cross-examination, Mr. Beard indicated that the Student should return to Mr. Fillipon's science class. He advocated for Lesley Sorno to be the paraprofessional for the school year, however, she left around Christmas time and Ms. Hermeneau has replaced her. He denied that Ms. Hermeneau yells at the Student.

The hearing continued on February 9, 2011, and John Fillipon was the next witness. This is his fourth (4th) year teaching science and he has looked at the Student's IEP and is aware of the latex allergy reference therein. He acknowledged exposing the Student to latex last year, but denied doing so this year. He denied that giving a rubber band to another student to tie the student's hair back equaled exposure of latex to this student. With respect to the lab (P8), where no grade was given, he indicated that there was no grade because the Student had not completed the project as of that time. Now, the Student has completed the project with accommodations and believed that all latex has been removed from his class. He tries to always use black ink on white board when the Student is in his class.

On cross-examination, Mr. Fillipon indicated that he is certified K – 8 in elementary education and is a highly qualified teacher under the No Child Left Behind Statute. With respect to the latex allergy, the Student's allergy is contact dermatitis, which requires direct contact with the latex material. Mr. Fillipon never observed any signs of latex allergy in the Student. He is aware that the mother went to the police and alleged that Mr. Fillipon endangered the Student's life by giving an elastic band to another student to tie the student's hair back. The police spoke to the Principal and will not take any further action. He denied ever offering to bring gum to the Student and indicated that gum is not allowed at the school. He is aware that the mother told someone at the Deerfield Fair that she was going to "get him", and he spoke to the Principal about this. He does recall a study hall which the Student attended and there was a different color marker on the board (a quiz in red ink). It was not this Student's quiz and the next class when the Student attended, the correct color (black on white) was used. He indicated the Student was given accommodations for the science fair and the Student is working with the paraprofessional on science assignments that he provides. With respect to the grade difference (P9 and P10) in

science. Over a four (4) day span going from 85 – 91. He indicated that the Student completed two assignments that had not been completed, and those completed assignments raised the grade to a 91.

The Parent rested at that point, and the District called Beth Benham, the School Nurse. Ms. Benham met the Parent in the Fall and asked if the Student needed an epi-pen, and the Parent indicated that the Student did no. SD8 is an email to Mr. Hartford with a list of products that could contain latex. She indicated that she gave this to the 7th grade team. She wrote to the mother and asked her to come in to discuss the latex allergy and received no response. She received a release allowing her to communicate with the doctor (Dr. Hollister). She received (SD425) an Allergy Action Plan from Dr. Hollister indicating that the Student has Type 4 Contact Dermatitis Latex Allergy. The symptoms involve rashes to the mouth and skin to be treated with 25 mg of Benadryl and no epi-pen. She conducted the workshop on October 1, and reviewed the records from the prior nurse (P86-89) relative to the students with latex allergies going back to 2003.

On cross-examination, she indicated that she had reviewed the Student's file, and at the training, she told the staff that repeated exposure to latex could increase an individual's sensitivity. She reviewed P19, which is a letter from the physician referencing 25 mg of Benadryl to be used in the event of symptoms from latex exposure and that she had never seen this document before preparing for the Due Process Hearing.

The District rested at the conclusion of Ms. Benham's testimony.

The Parent submitted, what appears to be homework/quiz results which were not submitted at the hearing, and will not be considered for purposes of the Decision. The School

District submitted Requests for Findings of Facts and Rulings of Law, and they are ruled upon as follows:

Request Nos. 3, 8, 9 and 12 are neither granted nor denied. To the extent that they are inconsistent with the Decision below, are deemed to be denied. All other Requests for Findings of Facts are granted. The School District's five (5) requests for Rulings of Law are granted.

The Parent submitted a number of requests also, and they are ruled upon as follows:

Request Nos. 1, 2 and 3 are denied. Request Nos. 3 and 4 are neither granted nor denied. To the extent that they are inconsistent with the Decision, they are deemed to be denied.

DECISION

The Hearing Officer is satisfied, based on the credible testimony of virtually every witness that the IEP is being properly implemented. There is no justification for replacing the paraprofessional and there further is no justification for changing the case manager. The request for a different science teacher is both unnecessary and unreasonable. It is clear, also, that the Parent has not taken advantage of the appeal opportunities with respect to the School Bullying Policy and that the psychological evaluation is not yet due by agreement of the Parties, although that agreement was later rescinded by the Parent. Under the circumstances, the Hearing Officer finds and rules in favor of the District on all issues raised by the Parent in the Due Process Request.

APPELLATE RIGHTS

If either party is aggrieved by the Decision of the Hearing Officer set forth above, either party may appeal this Decision to a Court of appropriate jurisdiction. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The District shall

notify the Commission of Education when either the District or the Parent seeks judicial review of the Decision.

If neither party appeals this Decision to a Court then the District shall within ninety (90) day provide to the Office of Legislation and Hearing (Department of Education) and the Hearing Officer a written report describing the implementation of this Decision and provide a copy to the Parents. If the Parents do not concur with the District's report, the Parents shall submit their own report through the Commission of Education.

SO ORDERED:

Dated: 3/1/2011

John P. LeBrun, Esquire
Hearing Officer