

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

**Student/Mascoma Valley Regional School District
IDPH-FY-13-04-038**

DECISION

This due process proceeding was initiated by the Mascoma Valley Regional School District (“District”) on April 30, 2013. A prehearing conference was held telephonically on May 14, 2013. The due process hearing was held at Spaulding Youth Center (“SYC”) on June 25 and 26, 2013.

The issues for due process were as follows:

- a) Whether the District can effectively implement Student’s IEP at Spaulding Youth Center on a residential basis, and whether said residential placement represents the least restrictive environment;
- b) Whether the District exhausted available remedies in attempting to find suitable transportation for Student;
- c) Whether the District denied Student a FAPE by offering to reimburse Guardians for transporting Student to and from Spaulding Youth Center at the federal mileage rate while the District attempted to find suitable alternative transportation;
- d) Whether Guardians should receive financial reimbursement, at a reasonable rate, from the District from March 19, 2013 to the date of the decision.
- e) Whether the District was required to conduct an evaluation pursuant to 34 C.F.R. §104.35(a) prior to proposing a residential placement.

The District presented first, and called the following witnesses: Barbara McCarthy, Special Education Director; Holly Barlow, BCBA, Behavioral Consultant for the District; Colleen Sliva, SYC Principal; Linda Pletch, SYC Behavioral Specialist; and Christine Gleaton, SYC teacher. The Guardians called the following witnesses: Eric LeClerc, SYC case manager; Peter Lessard, transportation provider; Jillian Snow, SYC Residential Assistant; Rodderick Rodriguez, STS transportation provider; [], father and guardian.

DISCUSSION

The focal point of this case is the safe provision of transportation for Student to and from [] home to [] day program at SYC. Based upon its belief that Student's behaviors are too dangerous to transport [] safely, the District has proposed that Student be residentially placed at SYC. The Guardians disagree, pointing out that the majority of Student's behavioral issues since attending SYC have arisen in places other than a transport vehicle. Drivers hired by the District have resigned, and the Guardians have been transporting Student themselves since early 2013. Although they are being reimbursed for mileage at the federal rate, the Guardians' position is that they should additionally be reasonably compensated for the time spent driving Student back and forth. The District has declined to do so, maintaining that it cannot act as the Guardian's supervisor.

An educationally handicapped student is entitled to a free appropriate public education in the least restrictive environment. The majority of witnesses agreed that the SYC day program is appropriate for Student and is the least restrictive setting for [] to receive [] educational services. It is also clear that Student enjoys and benefits from close family and community connections and activities, which connections would be significantly compromised if [] were placed residentially. From an educational perspective, Student is appropriately placed at the SYC day program.

As noted above, Student's Guardian has been transporting Student to and from school. The Guardian testified that this has taken a heavy toll on []'s business, and requests that [] be paid a reasonable hourly rate in addition to the mileage reimbursement. Witnesses' testimony established that, although some of the Guardian's approaches with Student during car rides would not be utilized by professionals, the Guardian has been able to get Student to school successfully. The evidence shows that the only mechanism for the Guardian to receive hourly payment would be for [] to become an employee of the District. There is very little to indicate that this arrangement would be feasible. Further, even if a hearing officer had the authority to order a school district to employ a particular individual, it is questionable whether a productive employment relationship could exist between these parties.

The concerns of both parties are understandable. However, it is apparent that further evaluation can and should be done, so that the team can explore alternative transportation options and develop a transportation plan for this Student.

FINDINGS AND RULINGS

Guardians' Proposed Findings of Fact: Numbers 48 -50, 52, 55 – 57, 59 – 63, 65, 70, 71, 73 – 75, 77 – 80, 83, 93, 94, 96 – 99, 103, 111 – 114, 116 – 120, 122 -129, 131 – 136, 138, 140 – 147, 150, 153 – 168, 171 – 176, 180, 182 – 185, 186 – 203, 205 – 212, 214 – 217, 221, 224 – 237, 239, 244, 246, 247, 250, 251, 253, 256, 257 are GRANTED. The remainder are neither granted nor denied as written.

Guardians' Proposed Rulings of Law: Numbers 5 – 10, 14 – 16 are GRANTED. The remainder are neither granted nor denied as written.

District's Proposed Findings of Fact: Numbers 1 – 8, 10 – 16, 23, 26 – 28, 31 – 38, 41 – 43, 45, 47 – 55, 60 – 64, 68, 69, 71 - 79, 81, 85, 87 – 91, 94, 95, 97 – 105, 107 – 112, 114 – 118, 121, 124 – 126 are GRANTED. The remainder are neither granted nor denied as written.

District's Proposed Rulings of Law: Numbers 2 – 4, 6 – 9, 14 – 17, 32 – 34 are GRANTED. The remainder are neither granted nor denied as written.

ORDER

- A. A residential placement at Spaulding Youth Center is not the least restrictive environment for Student.
- B. Providing the Guardians with mileage reimbursement does not constitute a denial of FAPE.
- C. The District shall conduct a transportation evaluation and the team shall explore other potential transportation options, such as STS.

So ordered.

Amy B. Davidson, Hearing Officer

Date: July 17, 2013

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 Guardians 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, Guardians or School District, seeks judicial review of the hearing officer's decision