

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

In Re: Student/Contoocook Valley Regional School District

IDPH-FY 13-07-001

DECISION

INTRODUCTION

A Pre-Hearing Conference was held in this matter on August 2, 2012, and a Pre-Hearing Ordered issued at that time. The hearing was held on August 23, 2012. The School District requested a Due Process Hearing regarding placement of the Student for the Student's third grade school year, 2012/2013. The School District believes that the Student should attend the Greenfield Elementary School (GES), which is the Student's home/neighborhood public school. The Parents believe that the Student should attend Francestown Elementary School (FES), where the Student attended for second grade based on an agreement reached between the Parents and the School District. The School District was represented by Attorney Alison Minutelli. The Parents were represented by Attorney Nancy Barbour.

PROCEDURAL VIOLATIONS

The Parents allege that the School District wrongfully predetermined placement for the 2012/2013 school year.

DISCUSSION

The first School District witness was Rachel Lunan-Hill, the third grade teacher at GES. Ms. Hill is certified for grades K – 8. Although she has never worked with the Student, she reviewed the Student's IEP (Exhibit 7) and would be responsible for implementing the goals set out at Pages 6 and 7 of the IEP and the accommodations at Page 8. She opined that she could implement all of the goals and accommodations in the IEP. She also reviewed the Student's

Reading Street Program and recent Progress Report (Exhibits 24 and 23). Ms. Hill felt that she could fully implement the IEP.

On cross-examination, Ms. Hill indicated that she has implemented two (2) other IEP's for students with developmental delays. She had approximately six (6) other Students with IEP's with similar speech goals. She has worked with Noreen Kilbride (the Special Education teacher) for six (6) years. She felt that the IEP goals were fairly "standard" goals.

Noreen Kilbride testified as the second School District witness. She is the educational support teacher at GES and is certified in General Special Education and as a teacher for K – 8. She meets with the regular education teachers daily to assess students' needs and supports and provides individual and small group direct instruction in reading, writing and math. She has sixteen (16) years experience in teaching reading and has experience teaching students with developmental delays. She knows the Student in question, having met with the Student when the Student was in Kindergarten and first grade at GES. She did not work with the Student during the Student's first grade year. She performed the academic evaluation (Exhibit 26, Page 8) in November, 2010. She drafted the IEP which went from 12/23/10 – 12/22/11 (Exhibit 9); and at that time, placement was at GES. The Parents requested a change of placement and the Student attended FES during the second grade. The IEP team did not meet to decide the question of changing the Student's placement.

Ms. Kilbride has reviewed the current IEP (Exhibit 7) and she will be responsible for implementing the reading portions of the IEP. She felt that the goals were "pretty common". She felt she could work with Ms. Hill in implementing the IEP, which calls for placement in the regular classroom for the majority of the Student's day. Ms. Kilbride felt that the Student made progress in reading in second grade and she has worked with children with similar levels of

reading ability. She felt she could coordinate any necessary information with Cheryl Orcott, the Educational Support Teacher at FES if the Student returned to GES for third grade. The IEP can be implemented at GES and the Student can make educational progress according to Ms. Kilbride.

On cross-examination, Ms. Kilbride acknowledged that she attended a three (3) day workshop on LIPS in August 2012. This is a reading program for students with sensory and auditory issues. She acknowledged that the Student was receiving LIPS instruction at FES. She would need support to provide the LIPS program at GES and will want to see an assessment done before deciding to continue with LIPS as she felt that the Student may be more advanced at this point and not need the LIPS program. She felt that the Progress Report from Windy Row at Exhibit 67 from June 2012, showed excellent progress for the Student.

Tim Iwanowicz, Supervising Principal for FES, GES and Hancock Elementary School testified as the third witness. The general education curriculum is identical at all three schools, and the resources are similar. He acts as the LEA for IEP teams. He is certified in regular education K – 8 and as a principal. He knows the Student in question. The Parents contacted him when the Student was in the second grade to look at options other than GES. They were looking for another school do to issues that had with, what would be the Student's second grade teacher, Ms. Mann, who had taught the Student in Kindergarten and with whom the Parents were not satisfied. He responded (Exhibit 13) that GES was appropriate for the Parents. The Parents met with the Superintendent and an agreement was worked out to allow the Student to attend FES for the second grade. The IEP team did not make the decision. According to the agreement between the Superintendent and the Parents, the FES placement was to end in June 2012. Mr. Iwanowicz believed that the IEP can be implemented at GES. He participated in the placement

meeting in May 2012 wherein the team proposed GES as the third grade placement. He understood that the Parents' concerns were two-fold. First, the Student had made wonderful progress at FES and the Parents were worried about losing the momentum which had been gained in the second grade. Secondly, there, apparently, is a group of high-achieving students at GES in the same grade and this may stigmatize the Student and cause him to feel negatively about his performance.

The Settlement Agreement is set forth at Exhibit 8 and was signed in June 2011. Mr. Iwanowicz acknowledged that there really was no progress meeting held despite the Parents' request for such a meeting. He indicated that he always felt that the Student would return to GES for third grade. The team meeting for the May 18, 2012, placement clearly indicates in the meeting notes that "Purpose of meeting is to offer placement at GES". Although there is discussion of progress in the first two (2) sentences of the Summary, there clearly was not a progress meeting held.

Gretchen Stockwell, the speech/language professional testified as the fourth witness. She is certified in speech/language pathology and works for the School District. She performs individual and group therapy, does evaluations, attends team meetings and reviews evaluations. She knows the Student and evaluated the Student during first grade and also provided speech and language services in 2010/2011. She reviewed the speech and language goals at Page 6 of the IEP (Exhibit 7) and felt that she has the experience to deal with the Student's needs and could implement those goals. The IEP could be fully implemented at GES.

Richard Matte, Director of Student Services, testified as the next District witness. He is certified as a Special Education Administrator and School Psychologist. He is familiar with the Staff at GES, which is the hometown school for the Student. He reviewed the letter from the

Parents (Exhibit 21), which was sent on May 21 to Mr. Matte after the placement meeting was held. He reviewed the Parents' concerns in that letter. He indicated that he studied the IEP, talked to building administrators, studied the make-up of students at GES, talked to the teachers in the third grade and concluded that the Student would be appropriately placed at GES and that the Student's needs could be met. He acknowledged that FES could also meet the Student's needs. He responded to the Parents' letter on May 25 (Exhibit 22) and indicated that the placement would be as previously decided, to wit: GES.

On cross-examination, Mr. Matte agreed that he did not attend the May 18, 2012 team meeting when GES was proposed as the placement. He acknowledged that at Exhibit 50, the Parents requested a progress meeting in addition to a placement meeting, and that at a progress meeting, the team typically reviews data and other information to judge/measure progress. He agreed that if no progress meeting occurred, this would be a major procedural error. Exhibit 54 is a series of emails where Mr. Matte informs the school principal that he is rejecting the Parents' request. The issue of the teacher in question was no longer ripe as it would not be that teacher and that the one (1) year of the agreement had now run.

Both Parents testified on behalf of the Student. The mother testified that she requested a progress meeting to determine the Student's progress, look at test scores and the services being rendered so that the team could know how to move forward. She indicated that the Student finally began to enjoy school while attending FES. He previously disliked school, felt stupid and wanted to be homeschooled. He made significant educational gains at FES. She indicated that at the team meeting on May 18, 2012 (Exhibit 20), the team kept repeating that the issue of placement was a contract issue and that they had no choice, because under the terms of the Settlement Agreement/contract between the Parents and the Superintendent, the FES placement

was only for one (1) year and that year had run. She further indicated that her husband asked the team members directly if they agreed with the decision to return the Student to GES and both the teacher and Cheryl Orcott said they could not comment because it was a contract issue. The entire meeting lasted fifteen (15) minutes.

The father testified on behalf of the Student. He also expected a progress meeting and indicated that during the Student's second grade year, the Student made progress and the family felt like FES may be the correct fit. The Student was flourishing and they wanted the education to continue at FES. The father indicated that it was not a personal problem with Ms. Mann; and in support thereof, indicated that his daughter was taught by Ms. Mass without any problems. He said that at the meeting on May 18, Ms. Stanley told the father that she would have voted to have the Student remain at FES. The team at the May 18 meeting consisted of the teacher, Mr. Iwanowicz, the two (2) Parents and Ms. Orcott for a total of five (5) members. The Parents both clearly were in favor of the FES placement.

At the close of the Parents' presentation, the School District called a rebuttal witness, Sara Surette, who is a school psychologist. She knows the Student from the 2010-2011 school year and did an evaluation. Her evaluation was set out at Exhibit 26, Page 18. She testified regarding the Student's progress in reading. There was nothing else significant about the witness' rebuttal testimony.

REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

The District's Requests for Findings of Fact are ruled upon as follows: Numbers 1 – 25 are granted, except Numbers 4, 22 and 25 as they are neither granted nor denied.

The Parents' Requests are ruled upon as follows: Numbers 1, 2, 3, 4, 5, 6, 10, 13, 14, 15, 16, 17, 18, 21, 22, 23, 30, 33, 34, 35, 37 and 39 are granted. The remainder are neither granted

nor denied, although they are deemed to have been denied to the extent that they are inconsistent with the Decision below. It is noted that Requests Number 19 and 20 are neither granted nor denied because of a typographical error in the date (August 30, 2012).

Rulings of Law were submitted by the District. Request Numbers 36, 43, 44 and 45 are denied. All remaining Requests are granted, except for Request Numbers 34, 35, 38, 41 and 42, which are neither granted nor denied.

The Parents' Requests for Rulings of Law are granted. The Parents' Request Number 40 (Conclusion) is neither granted nor denied.

DECISION

It is clear from the testimony provided and referenced in the Discussion section of this Decision that, based on the Settlement Agreement entered into between the Superintendent and the Parents in June and July 2011 (Exhibit 8), the District team was not willing to consider placement at FES for the third grade. It is further clear that the District failed to conduct a progress meeting to determine the Student's progress prior to making a placement decision. The Parents requested such a meeting and one was not held. The May 18, 2012 meeting was a placement meeting and it is clear from both the testimony of the Parents and from the minutes of the placement hearing that the School District pre-determined that GES would be the placement for the Student for the third grade year. It is further clear that, of the five (5) team members at the May 18, 2012 meeting, the two (2) Parents requested placement at FES and the teacher, Ms. Stanley, indicated that she could not answer the Parents' question regarding the placement decision initially because she was unable to comment because it was a contract issue, but that she subsequently told the father that she would have voted to have the Student remain at FES. Ms. Orcott also indicated that she could not respond to the father because it was a "contract" issue.

The team was not involved in the agreement between the Parents and Superintendant that resulted in the FES placement. There really never was a placement meeting. The fifteen (15) minute session appears to have been designed simply to inform the Parents that placement would be at GES and that there would be no meaningful discussion regarding what is the appropriate placement due to the “contract” reached between the Superintendant and the Parents for second grade.

The Parties are ordered to schedule a progress meeting relative to the Student and have a meaningful discussion relative to the Student’s progress and then to subsequently hold a placement meeting wherein each participant is free to voice his/her position relative to whether the Student should remain at FES or return to GES. Regardless of the language in the Settlement Agreement that the District’s obligations should terminate at the close of the 2011-2012 School year (i.e. the placement at FES would end then), the Student is still an identified student with an IEP and the District was obligated to make a placement decision consistent with the Student’s progress, the Student’s needs under the IEP and to consider both FAPE and LRE before rendering a placement decision for the third grade school year. Once the Parties have completed, first the progress meeting and subsequently the placement meeting, the Parties shall provide the record of said meetings to the Hearing Officer who will retain jurisdiction of this matter and render a subsequent ruling relative to the Student’s placement for the 2012-2013 third grade academic year. The Student shall remain at FES pending further Order by the Hearing Officer.

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.

STATEMENT OF COMPLIANCE WITH ED 1128.10(b)

If neither party appeals this Decision to a Court, then the District shall, within ninety (90) days, provide to the Commissioner of Education and the Hearing Officer a written report describing the implementation of this Decision and provide a copy to the Parents. I the Parents do not concur with the District's Report, the Parents shall submit their own report to the Commissioner of Education on the implementation of the Decision.

SO ORDERED:

Dated: August 27, 2012

John P. LeBrun, Esquire
Hearing Officer

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

In Re: Student/Con-Val School District

IDPH-FY 13-07-001

FURTHER ORDER

The Parties submitted documentation and correspondence relative to a Placement Meeting held on September 25, 2012 relative to the Student's placement either at FES or GES for third grade. Reviewing the Placement Meeting Summary Notes, it is clear that virtually all members involved agreed that the Student should remain at FES. The following statements were attributable to the various team members at the Placement Meeting:

"Cheryl: Student made good progress last yr. – made adjustments – seems happy this yr. . . She says Student should stay at FES this yr."

"Rick says he feels GES can meet needs for Student – FAPE – however, Rick agrees with Cheryl's sentiment."

"Noreen said she would have loved to have to Student stay at GES, but it's in his best interest to stay at FES."

"Laura related guidance counselor's discussion – at another unrelated mtg. – that students regret when they move from school to school."

"Rachel agrees with Laura."

"Gretchen feels she could provide services at either setting, but that he ought to stay at FES – he's settled, etc."

"Katherine Heck stated that Student is very happy at FES – wants to see him continue to progress."

"Tim echoes sentiment of group that Student stay at FES."

The team then decided that the Student would remain at FES through December 22, when the Student's current IEP expires.

Based on the above, the Hearing Officer Rules that placement at FES for the 2012 – 2013 (Third grade) school year is the appropriate placement.

SO ORDERED:

Dated: January 18, 2013

John P. LeBrun, Esquire
Hearing Officer