

New Hampshire Department of Education

Student/Milford School District

IDPH FY 14-04-026

Due Process Order

The school district requested due process in this matter. The issues for hearing were whether the student should be identified as seriously emotionally disturbed (SED) and whether the school's proposed placements were appropriate.

Placement

The evidence before me establishes that placement at the Heron Pond School is not appropriate for the student. The student's behavioral issues at the placement reached the level where ... was segregated for entire school days in a pull-out environment against the parents' wishes and in conflict with the student's IEP. The student's IEP does not contemplate the student being in a self-contained environment all day. The student's behavior also required school staff to restrain the student on numerous occasions, including restraints just to get her to come into the school.

There appears to be something causing the student a great deal of trauma and stress associated with going to the Heron Pond School. The student would beg ... parents not to go to school and run away from school once there. The parents were put in the position of physically forcing the child to attend the school and school staff restrained the student just to get ... to go into the school. No parent or student should have to endure that. The result has been numerous absences, tardies, and dismissals over the past couple of school years and little to no evidence of progress. It reached the point where the student no longer came to school. Services have not been provided to the student since January 8, 2014.

The school proposed three placements. Based on the evidence presented, the Heron Pond School is not an appropriate placement. Very little evidence was presented about the second placement, Sage School, and the school did not meet their burden of establishing that this placement is appropriate. No evidence was presented regarding the third proposed placement, Easter Seals, so I cannot make a ruling on it one way or the other except to say that the school did not meet its burden of demonstrating that it is appropriate.

Coding

The dispute between the parties is whether the student should be identified SED. The school district has the burden of proof and I find that the school district did not meet their burden. From the evidence, it appears that the school has stated that it did not conduct formal assessments for this identification and the basis for the identification is a BASC test and the observations of the school psychologist and case manager. While the parent may have originally agreed with this coding, it has become a point of contention and should be further evaluated by the school to the extent it will assist with the student's services or placement.

Order

First, as with many cases that reach the hearing stage, there is an apparent amount of conflict between the parties. However, here there seems to be an additional amount between the case manager and the parents and that seems to have contributed to at least some of the issues that the student had with attending Heron Pond School as the case manager was also providing services to the student and was one of the school staff that restrained the student. It has also made communications between the parties difficult. As a result, going forward the school district shall replace the case manager for this student and remove the current case manager from the team that makes decisions about the student. I believe the testimony at the hearing was that the school had offered to do that anyway.

Second, the student shall be provided services immediately. The parents and student are concerned about receiving services at the school district, so the parties shall work together to determine a neutral site and a neutral service provider that can provide services to the student on an interim basis until an appropriate placement can be found. The parties may also look for an appropriate interim placement. Services shall include services over the summer if the parents wish to access them.

Third, the parties shall work to determine an appropriate placement for the student immediately so that the student can be placed in an appropriate placement as soon as possible. Placement shall include services over the summer if one is found in time and the parents wish to access the services over the summer.

Fourth, to the extent it matters for the student's services and placement, the school shall conduct the requisite formal assessments to assess the SED issue and allow the team to meet to make a decision about the issue. I note that the parties have agreed to an independent neuropsychological evaluation with Dr. Ted Davis and that evaluation should be part of the process. This evaluation should go forward as planned and scheduled already by the parties because a neutral, independent evaluation will help everyone involved going forward. As noted, the coding issue may be important for the placement decision, but I encourage the parties to look for placements that will meet the student's unique needs regardless of the specific coding. If the parties are able to find an appropriate placement, it may be that the coding issue becomes unimportant given the other codings the student already has. It may also be that some other coding reveals itself as more appropriate during the assessment/evaluation process.

The parties may utilize the New Hampshire Department of Education's facilitated IEP program if they are having difficulty making progress at team meetings. The Department will provide a neutral person to facilitate the meetings at no charge. The parties may contact Amy Jencks at the Department for more information.

So ordered.

5/28/2014

Date

Scott F. Johnson