

New Hampshire Department of Education

Student/Timberlane Regional School District & Crotched Mountain School

IDPH FY 14-09-008 & 14-07-004

Due Process Decision

The parent/guardian made a variety of allegations and claims in this case. Some of the parent/guardian's allegations were disturbing and at times there seemed to be some foundation for them, but when it came time to present evidence to support the claims the parent/guardian was never quite able to do so. During the hearing process, the questioning of witnesses by the parent/guardian was unhelpful and the documents relied upon by the parent/guardian often did not support the point that the parent/guardian was trying to make. Ultimately, the parent/guardian was unable to sufficiently support the allegations and claims made in this proceeding.

Overall, the parent/guardian did not provide sufficient evidence to support the claims asserted and, as a result, is not entitled to the relief sought.

The following is what I understand to be the parent/guardian's main arguments/claims:

1. The parent/guardian's main overall argument is that the student left Crotched Mountain in significantly worse condition than when the student started at Crotched Mountain. The parent/guardian contends that the student went into the placement at Crotched Mountain able to do grade level work and regressed to the point of being removed from the general curriculum and all academic courses. This allegation encompasses claims that the placement, codings, and IEP's at Crotched Mountain were all inappropriate and that the student was not provided access to the general curriculum. (Claims 1, 2 and 3 in the 3rd prehearing order).

These assertions are not supported by the evidence in the record. The parent/guardian relies on intake documents from Crotched Mountain to support the claim that the student was at grade level when the student entered Crotched Mountain, but these very documents note that the student is many grade levels below in some areas and questions whether she can do high school work at that time. (See SD Exh. 5, page 44). Other documentation in the record including IEP's, team minutes, and evaluations, all describe the student as having difficulty with academics and being many grade levels below in academic areas at the time she entered Crotched Mountain.

The parent/guardian also relies on one set of academic testing where some average results were obtained. (See parent/guardian's Post Trial Brief at 14). However, these tests are inconsistent with a variety of other tests in the record and the tests in and of themselves do not show that the student was doing grade level work at that time.

The evaluations in the record establish that the student has low cognitive ability with some tests showing a full scale IQ ranging from as low as 48 and has high as 67. (See SD Exh 7, page 72 and SD Supp. Exh 1 and 3). The school psychologist testified that the student's academics were always well below grade level and always would be because of the student's low cognitive level.

One of the student's codings was for intellectual disability/mental retardation because of the student's low cognitive ability. The parent/guardian claims this coding is not appropriate, but there is nothing in the record to dispute the various tests that show low cognitive ability, or that the coding was inappropriate.

Along these lines, the parent contends that the student's identification should not have been changed from learning disability/non-verbal learning disability to intellectual disability. The parent/guardian did not provide any evidence to support the claim that the identification should not be changed other than pointing out that the student's non-verbal disability did not just disappear. While that is true, it in and of itself does not mean the student should not have been coded with intellectual disability or that the student did not receive FAPE. If appropriate programming was provided for the student regardless of her coding, then FAPE was provided. The parent has not established that change of coding was inappropriate under the IDEA or state law requirements, or that FAPE was not provided.

Also, the parent/guardian's understanding of the services that the student received at Crotched Mountain seems off the mark. The parent/guardian contends that the student did not have any academic classes and spent all of her time shredding paper. The witness testimony and documents in the record do not support that allegation. The student first tried a full academic program at Crotched Mountain and that was not successful, so the student was put in the life skills or vocational track. However, this track does include academic classes and the student did attend and make some progress in academic classes given her ability.

Additionally, while FAPE does include access to the general curriculum, the parent/guardian did not establish that the program the student received did not meet this standard. Rather, it is unclear in the record if the life skills program included enough aspects of the general curriculum or not. As noted above, it did include academic classes. The connection between those life skill academic classes and the general curriculum was not addressed or explained during the

hearing. Since the parent/guardian has the burden on the claim, I cannot find in the parent/guardian's favor.

2. The parent/guardian contends that the student had a nervous breakdown at Crotched Mountain and that tainted the student's academic performance. There is some support for this accusation in the record, but there is also evidence in the record to suggest that what the parent/guardian calls a nervous breakdown was something related to changes in medication levels that the parties were fighting over at the time. Either way, that allegation itself does not mean that the student did not receive FAPE. The school's obligation would be to address the student's unique needs that came about because of the nervous breakdown or change in medication and the school appears to have made efforts to do so. There is not enough information in the record to establish that FAPE was not provided as a result of the alleged nervous breakdown.

3. The parent contends that the student has a non-verbal learning disability and the school should have provided ABA or Lovass type services to address it. (Claim #5 in the 3rd prehearing order). The parent did not provide any evidence that these types of services were necessary for the student.

4. The parent claims the student was assaulted, sexually harassed, and injured at Crotched Mountain and the school did not notify the parents or take any actions to address it. This is part of the parent/guardian's claim that the student's behavioral needs were not met. (Claim #4 in the 3rd prehearing order). There is some evidence to support this allegation as well. The parent/guardian went through a variety of incident reports that showed assaults on and by the student, injuries to the student as a result of assaults, and one report where a fellow student grabbed the student's breast. There was also evidence that the student was restrained.

There was evidence that some action was taken by the school for at least some of these incidents. It is unclear in the record before me if those actions were sufficient and who was notified of the incidents. It is also unclear if the allegations that the parent noted occurred during the relevant time period for the claims at issue in this case, and whether the school should have reported these incidents to the parent/guardian in this case because they did have legal custody of the student for at least part of the time that the student was in Crotched Mountain.

Given all of this uncertainty and the fact that the parent/guardian has the burden of proof, I cannot find for the parent/guardian on this claim. However, it also did not appear that Crotched Mountain was notifying the sending school district of the incidents and it is unclear if the restraints and notifications of restraints were performed in compliance with Ed 1114.07-1114.09. Both of these issues are of concern and I order Crotched Mountain to review its

policies, procedures, and practices on behavior interventions, incident reports, and aversives/restraints to ensure that they are in compliance with state and federal law including Ed 1114.07-1114.09. This would include policies, procedures, and practices regarding the use of restraints or aversives, notifications when an incident occurs, whether it be a restraint or some other type of incident, and verification that notifications are actually made.

Parent/Guardian’s Proposed Findings of Fact

Granted

13, 18, 20, 21, 21C, 21D, 22-27, 29-31, 32B-C, 33D, 33E, 33F, 34, 35, 36a, 36b,37, 44, 45, 46, 49, 50,55, 56, 59, 60-63, 65-69.

Denied (note that some of the requests are denied because I cannot understand what the proposed fact is supposed to be due to misspellings or phrasing that I do not understand and some because they have multiple factual statements in one or more long sentences. Also, some statements are unnumbered).

1-12, 14-17,19, 21B, 28, 32, 33, 34A, 36, 38-43, 47, 49a, 51-54, 57, 58, 64

School District’s Proposed Findings of Fact

Granted

1,2, 20-22, 25-29, 32-52, 55-65,67,68, 74,81- 99, 101-103, 105-112, 114 -137, 139-141, 151-169, 174

Denied

30, 31

Neither granted nor denied

These requests either go beyond the scope of the issues presented before me, were not clear in the record, or are phrased in a way that does not quite comport with the documents cited in the proposed fact. While there may be documents in the voluminous record that provide some support the proposed request, these requests were not generally at issue or addressed during the hearing, and were not the subject of any witness testimony at the hearing, so I do not feel comfortable granting the requests based on my understanding of the evidence before me.

3-19, 23, 24, 53, 54, 66, 69-73, 75-80, 100, 104, 113, 138,142-150, 170-173, 175

Parent/guardian Proposed Rulings of Law

None submitted

School District Proposed Rulings of Law

Granted

1, 9, 10, 16, 19, 23, 25-28, 31-45, 52, 53, 58

Denied

2-8, 11 -15, 17, 18, 20-22, 24, 29, 30, 46, 51, 55-57,

Neither granted or denied

47-50, 54, 59, 60-68

Order

The parent/guardian did not prove the claims asserted and is not entitled to any relief. The school district is the prevailing party.

I order Crotched Mountain to review its policies, procedures, and practices on behavior interventions, incident reports, and aversives/restraints to ensure that they are in compliance with state and federal law including Ed 1114.07-1114.09. This would include policies, procedures, and practices regarding the use of restraints or aversives, notifications when an incident occurs, whether it be a restraint or some other type of incident, and verification that notifications are actually made.

Crotched Mountain shall file a report of its review and any actions it is taking pursuant to that review with the New Hampshire Department of Education pursuant to Ed 1123.22

So ordered

5/1/2014

Date

Scott F. Johnson
Hearing Officer