

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Student/_____ School District
IDPH-FY-15-09-007

DUE PROCESS DECISION

I. INTRODUCTION

This due process proceeding commenced on September 9, 2014, initiated by the Parents of []. A prehearing conference was held on October 8, 2014. The substantive issues for due process were:

- A. Whether the District's proposed placement in the _____ program for the 2014-2015 school year would provide Student with a free appropriate public education in the least restrictive environment;
- B. If not, whether the Parents' unilateral placement in a residential program at [] is appropriate for the Student;
- C. Whether the Parents provided the District with proper notice of the unilateral placement;
- D. Whether Parents are entitled to reimbursement for the costs associated with the residential placement;
- E. Whether the Student should be placed prospectively at [] for the 2014-2015 school year.

Procedural issues raised by the Parents are as follows:

1. Whether Student's classes were changed without notifying the Parent;
2. Whether only two manifestation meetings were held out of four suspensions, without inviting the Parent to one such meeting;
3. Whether the District failed to produce meeting minutes from the ESY program meeting as requested by Parent.

The due process hearing was held on October 24 and 27, 2014. Parents presented first, and had the burden of proof. Parents called the following witnesses: [] Principal; [] guidance counselor; [], mother; and [], Student's [] teacher at []. The District called the following witnesses: [], [] Special Education teacher; and [], Special Services Coordinator for _____ School. Both parties submitted exhibits and filed post-hearing submissions.

II. FACTUAL BACKGROUND

Student is a [] year-old [] grader who resides with his/her Parents within the _____ School District. He/She is eligible for special education and related services, by virtue of autism and other health impairment (attention deficit disorder).

Student began the 2013-2014 school year as a [] grader at _____ School, in a regular classroom setting with special education services. He/She struggled during that school year both behaviorally and academically. There were numerous behavioral incidents; Student was suspended from school in March of 2014, and pushed and injured a paraprofessional in early June of 2014.

In June of 2014, the IEP team agreed to place Student in the summer program at the [], a private, licensed special education school in []. This placement was requested by the Parents; from the District's perspective, the purpose of the placement was to provide Student with the opportunity to "reset", and to continue to work collaboratively with the Parents.

In August of 2014, the Parents requested a team meeting to discuss placement for the 2014-2015 school year. Parents were requesting that the team place Student at [].

The team, including the Parents, convened on August 25 and September 3, 2014 to consider placement. The _____, which is an extension of the _____ School, was discussed extensively. The District members of the team proposed that Student's placement be changed to the _____, and rejected Parents' request to place Student at [].

The Parents have unilaterally placed Student at [], and seek reimbursement for costs associated with that placement through the date of this Decision. They also seek placement for the remainder of the ____ grade school year.

III. DISCUSSION

Parents have the burden of proof and persuasion relative to the issues in this case. *See Shaffer v. Weast*, 44 IDELR 150 (U.S. 2005). In this case, Parents seek reimbursement for costs associated with placement at the [] to the date of the due process decision, as well as placement prospectively for the remainder of the 2014-2015 school year.

Reimbursement for unilateral placement may be ordered only when the parents prove that the district has not made FAPE available to the student in a timely manner prior to the parents' unilateral placement, and that the private placement is appropriate. 34 C.F.R. § 300.148(c); Ed 1112.02.

The IDEA and federal and state special education regulations require that Student be placed in the least restrictive appropriate environment. *See* 20 U.S.C. § 1412(a)(5)(A). Schools must make available a "continuum" of placement options, ranging from mainstream public school placements, through placement in special day schools, residential schools, home instruction and hospital placement. *See* 34 C.F.R. § 300.551(b)(2), 300.552(c), (e), 300.553; Ed. 1115.04(b). School districts must ensure, *to the maximum extent appropriate*, that children with disabilities are educated with non-disabled peers. 20 U.S.C. § 1412(5)(A); Ed 1111.01(a). (Emphasis added) However, in identifying the least restrictive environment, consideration must be given to any potential harmful effect on the student or on the quality of services that he/she needs. 34 C.F.R. § 300.556(d).

The appropriateness of a school district's action must be reviewed in terms of what was reasonable at the time. See Roland M. v. Concord School Committee, 910 F.2d 983, 992 (1st Cir. 1990), *cert.denied* 111 S. Ct. 1122 (1991). Accordingly, the school district's proposed placement at _____ must be reviewed in terms of what was reasonable as of the September 3, 2014 team meeting at which it was proposed.

In this case, Student's IEP, which expires in November of 2014, is agreed-upon and not in dispute. The IEP contains goals and objectives which heavily emphasize social interaction and development of social skills. Implementation of the IEP requires access to and interaction with typical peers and programs. For instance, with respect to Student's communication and school participation areas of need, implementation of the IEP requires participation in groups of other students. Without such opportunities, it is questionable whether Student could make meaningful progress in these areas.

The _____ is a self-contained program housed in a separate building. The _____ is more restrictive than placement at the _____ school. It is staffed by a special education teacher and two paraprofessionals. At the time of the [] meeting up to the time of the due process hearing, there were [] other students at the _____, ages []. Although Student would not be in any classes with the [] year-old student, he/she would be the only [] student in the program. According to school personnel, Student would have an individualized, flexible program with access to other students at the _____ as determined by his/her IEP. The school personnel also indicated that if Student were placed at the _____, the District would hire another teacher.

However, what was actually proposed at the September 3 meeting was significantly different in at least one critical area – access to peers and programs at the _____ school. Although there was discussion about *potential* participation in _____ school programs, it was clear that team members felt that Student should not return to the _____ school at that time. The proposed _____ placement did not include any specific time or programming at _____.

The [] is a day and residential school which is state-approved for special education. Despite the distance from Student's home, [] provides a regular school environment where Student attends classes with other students his/her age and has access to community activities. In contrast to his/her difficulties in [] grade, Student participates appropriately in academic instruction and social groups. His/Her IEP is being implemented there, and he/she is making meaningful educational progress on his/her goals and objectives.

Student's IEP calls for transportation as a related service. Student's Parents have been transporting him to and from the [], an approximately [] trip each way. Although Student stays overnight at [] three nights a week, there is no evidence that he/she requires either an extended school day or a residential placement in order to make meaningful educational progress. Therefore, the District's responsibility for transportation is limited to the quantity set forth in Student's IEP, for a total of five hours per week.

IV. PROCEDURAL ISSUES

The Parents allege that the District held a manifestation determination meeting on _____ following the _____ suspension without inviting the Parents. The Parents also allege they were not provided with meeting minutes in a timely manner, and that Student's classes were changed without notice to the Parents.

In matters alleging a procedural violation, a hearing officer may find that a student did not receive a free appropriate public education only if the procedural inadequacies impeded the student's right to a free appropriate public education, significantly impeded the Parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the student, or caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); *see also Roland M. v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990). The record does not reflect that any of these things occurred.

V. PROPOSED FINDINGS OF FACT AND RULINGS OF LAW

Parents' Proposed Findings of Fact: 1-8, 10-12, 13, 15-21, 23-25, 27 are **granted**; the remaining proposed findings of fact can neither be granted nor denied as written, except that to the extent that they conflict with this Decision, they are deemed denied.

Parents' Proposed Rulings of Law: 10, 11-13 (consistent with this Decision) are **granted**; the remaining proposed rulings of law can neither be granted nor denied as written, except that to the extent they conflict with this Decision, they are deemed denied.

District's Proposed Findings of Fact: 1 – 6, 8, 12-15, 17-23, 26, 28-31, 33, 41 are **granted**; the remaining proposed findings of fact can neither be granted nor denied as written, except that to the extent that they conflict with this Decision, they are deemed denied.

District's Proposed Rulings of Law: 1-5, 7, 8-12, 18, 19, 28, 31, 35 are **granted**; ; the remaining proposed rulings of law can neither be granted nor denied as written, except that to the extent that they conflict with this Decision, they are deemed denied.

VI. CONCLUSION AND ORDER

Although the placement at _____ *as proposed by the District on September 3, 2014* may have been able to implement certain portions of Student's IEP and may have been appropriate in some respects, overall that program was not reasonably calculated to provide Student with a free appropriate public education in critical areas of need.

The Student's IEP expires in early November, 2014. The District attempted to schedule a team meeting to develop the IEP for the period of [], 2014 through [] 5, 2015, which would presumably include a placement recommendation.

Accordingly, the following is ordered:

1. Placement at _____, as proposed by the District on September 3, 2014, would not provide the Student with a free appropriate public education.
2. Day placement at [] from the beginning of the 2014-2015 school year through the date of this decision was appropriate.
3. The Parents are entitled to reimbursement for the costs of the day program at [] through the date of this Decision, including transportation up to the amount set forth in the IEP.
4. The team shall convene at the earliest possible date to develop the IEP through November of 2015 and recommend placement for the remainder of the current school year.

VII. 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 Parents 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, Parents or School District, seeks judicial review of the hearing officer's decision

So ordered.

Date: November 17, 2014

Amy B. Davidson, Hearing Officer