

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

Student/_____ School District

IDPH-E-FY-17-06-048

DUE PROCESS DECISION

I. INTRODUCTION AND BACKGROUND

This due process proceeding was initiated by the [] School District (District) on June 27, 2017, relative to placement of (Student). The due process hearing was originally scheduled for July 18 and 25, 2017, with a decision date of August 9, 2017.

A telephonic prehearing conference was held on July 13, 2017. A Prehearing Conference Report was issued on July 13, 2017.

The first day of due process hearing was held on July 18, 2017, at the SAU office in [], New Hampshire. The District presented first, and called the following witnesses: [], Special Education Administrator; [], Inclusion Counselor; [], Ph.D., the District's expert who assessed Student; [], [] representative; [], [] School Principal; and [], Director of Student Services.

Following []'s testimony and Parent's cross examination, Parent left the hearing to attend to student at home. Although Parent did not return for the remainder of the testimony on July 18, 2017, special accommodations were made to allow [] to participate, *to wit*: [] was provided with a CD of the July 18, 2017 hearing, and the second hearing date was rescheduled at [] request so that [] could cross-examine District witnesses and present [] own case. Additionally, the decision date was extended to August 14, 2017.

On July 28, 2017, a telephonic proceeding was convened to permit Parent to cross-examine []. The Parent had not yet received the CD,¹ but was offered the opportunity to ask questions of [].

The third and final day of hearing was August 8, 2017, once again at the SAU office in [], New Hampshire. On that day, all other District witnesses were made available for Parent's cross-examination; [] and [] appeared in person and [] and Dr. [] appeared telephonically.² The Parent called three witnesses; [], Parent's friend and support; Parent and Student.³

The issue for due process was whether the District's proposed placement in a special education day school was appropriate.

¹ The CD was to be mailed to Parent **upon** [] request. As of July 28, 2017, she had not yet initiated the request.

² Although Parent received the CD days several days prior to the hearing, [] indicated that [] had not listened to it. However, it appears that [], Parent's witness and friend, did listen to the CD at Parent's home.

³ Also present for a portion of the proceedings was [], an advocate who had assisted Parent in the past.

The District submitted exhibits; none were submitted by the Parent. The District filed a post-hearing submission; none was received from the Parent.

II. FACTS

Student is a [] year old eight grade student who has been identified as eligible for services pursuant to the Individuals with Disabilities Education Act (IDEA). Student had previously attended the [] Middle School, where [] received services under a Section 504 plan. [] had also received outside therapy from the community mental health center.

The record shows that, during [] time at the [] Middle School, the Student engaged in disruptive behaviors such as repeated work refusal, and that Parent's own conduct and negativity toward school staff exacerbated Student's behaviors and adversely affected [] ability to access [] educational program. Eventually, it was determined that the Student could no longer benefit from education at the [] Middle School. The parties, including the Parent, agreed to a 45-day diagnostic placement at the []. The [] School, which serves students with disabilities, particularly students with emotional or behavioral issues, requires students to engage in therapeutic aspects of the program.

Student began attending [] School in the fall of 2016. Parent was initially agreeable and cooperative with staff. However, [] ultimately determined that it could no longer provide services to Student, primarily because the Parent would not authorize Student's participation in the therapeutic components of the program. [] terminated the placement in November of 2016.

Parent subsequently enrolled Student in []. According to the District, Student is only enrolled in [] on a part time basis, and has not been doing well.

Following [] discharge from the [] School, Student was found eligible for special education under the classification of Other Health Impaired. An IEP was developed in early 2017. The District identified two special education placements that it believed would be appropriate for the Student – [] School in [], New Hampshire, and []. Both schools are approved [] to provide special education services. [] provides, among other things, individualized instruction utilizing a behavioral approach and small class size, and accommodations for parents who lack transportation to enable them to attend meetings. [] is able to address potential issues that may arise on the bus as well. Currently, [] has five openings in Student's age range.

III. DISCUSSION

At the start of these proceedings on July 18, 2017, Parent advised that [] would not be sending Student to either of the schools proposed by the District. On the final day of hearing, Parent's friend, [], made an impassioned statement on behalf of Parent and Student. [] stated that Student wanted very much to be back in the classroom, whether in [] or []. Both Parent and Student acknowledged that they understood the impact of their behaviors, and both made it clear that they wanted Student to be given the chance to return to the [] Middle School.

While a desire for Student to return to [] Middle School is understandable, there are several concerns in this regard. Student has been out of the classroom environment for many months, which means that the District had not had an opportunity to communicate with outside mental health providers, to observe Student in the classroom, or to assess [] readiness to be successful at the [] Middle School – a program previously rejected by the Parent. Notably, over the course of these proceedings, Parent’s own accounts of Student’s recent behavior were inconsistent. For instance, on July 18, 2017, Parent abruptly left the hearing, explaining that [] was having extreme difficulties at home. Subsequently, during [] questioning of the [] School principal, Parent recounted []’s past disruptive behavior on the bus, and questioned []’s intervention protocol should there be a similar occurrence. At yet another point, Parent maintained that Student’s behavior had greatly improved because [] was no longer taking medication.

Considering all of these factors, the record in these proceedings supports a conclusion that, at least at this time, either of the two schools proposed by the District, particularly [] School, can implement Student’s IEP and provide an appropriate program for [].

While the record does not support the Parent’s position that [] Middle School is an appropriate placement at this time, there is nothing to prevent IEP team, which includes the Parent, from revisiting the placement issue at some point in the future to assess Student’s readiness to transition successfully back into the District.

IV. PROPOSED FINDINGS OF FACT AND RULINGS OF LAW

District’s Proposed Finding of Fact: Numbers 1, 3 – 7, 9, 11 - 27 are granted. Numbers 2, 8 and 10 are neither granted nor denied as written.

District’s Proposed Rulings of Law: Numbers 1 – 11 are granted.

Parent’s Proposed Findings of Fact: None submitted.

Parent’s Proposed Rulings of Law: None submitted.

V. CONCLUSION AND ORDER

1. The District’s proposed placements at [] School and [] would provide Student with a free appropriate public education in the least restrictive setting.
2. In order to insure that Student has the opportunity to participate meaningfully in [] educational program, it is **absolutely essential** that the Parent work cooperatively with the District, the IEP team, and the Student’s school, including timely signing any necessary releases authorizing the school staff to communicate with outside service providers and potential placements.
3. The IEP team shall, as is deemed appropriate, convene to consider Student’s progress, and determine Student’s readiness to transition back into the District.

So ordered.

VI. 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 Parent has 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, Parent or School District, seeks judicial review of the hearing officer's decision.

Date: August 14, 2017

/s/ Amy B. Davidson

Amy B. Davidson, Hearing Officer