

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Student/ School District
IDPH-FY-E-18-03-025

DUE PROCESS DECISION

I. INTRODUCTION

This matter was initiated by the School District (District) on March 19, 2018.

The due process hearing was held on April 2, 2018. The District called three witnesses: School Psychologist ; Case Manager ; Director of Student Support Services ; and , Student's

The sole issue for due process was whether the District's proposed placement at the in , New Hampshire is appropriate, and the least restrictive setting to enable the Student to make educational progress.

The District submitted exhibits; none were submitted by the Parent. Both parties filed post-hearing submissions.

II. FACTUAL BACKGROUND

Student is a nine year old second grader who has been identified as eligible for special education and related services pursuant to the Individuals with Disabilities Education Act (IDEA). is currently identified as Other Health Impaired, with diagnoses that include Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder, and Generalized Anxiety Disorder.

During the 2014-2015 school year, Student attended kindergarten at Elementary School in , New Hampshire. Student required extensive supports during the school day because of physically and verbally aggressive behaviors. In September of 2015, due to ongoing concerns about the severity of Student's interfering behaviors, Student was placed in the , in , New Hampshire.

Although Student made some educational progress at the , continued to engage in aggressive behaviors, leading to the use of restraints on certain occasions. Parents removed Student from the and homeschooled for the remainder of the 2015-2016 school year.

For the 2016-2017 school year, Parent declined special education services. Student was reassigned to in where, at Parent's request, repeated first grade. continued to exhibit disruptive behaviors which, on several occasions, resulted in suspension.

At the beginning of the 2017-2018 school year, Student's second grade teacher referred for special education services, primarily based upon Student's ongoing interfering and unsafe behaviors.

In November of 2017, Student was identified under the category 'Other Health Impaired'. Student's IEP was developed in December of 2017; Parent agreed to the IEP with exceptions. Since that time, Student's IEP has been revised several times to address continuing behavioral challenges. According to data collected by staff, during the three-month period between December 19, 2017 and March 15, 2018, Student engaged in hundreds of disruptive and unsafe behaviors. was suspended four times between mid-January and mid-March of 2018.

In February of 2018, consultant conducted an evaluation. noted that Student had deteriorated markedly over the school year, and recommended, among other things, that Student would benefit from one-on-one support from a paraprofessional, and a low stress classroom setting. suggested that consideration be given to alternative placements, such as , which was closer than other options.

The team met on February 19, 2018 and again on March 19, 2018, to discuss Student's program and consider alternative placements. All team members agreed that the current program at was not working; the IEP was agreed-upon, but the family rejected the District's proposal to place Student in the

III. DISCUSSION

As noted above, there is agreement that is not working for Student. Parent and have proposed that Student be placed at a school in , where teaches, or remain at his local elementary school with Student's serving as para-educator. The District gave these proposals due consideration, and ultimately rejected them. Although Parent and suggest that having a family member in the school setting might reduce Student's anxiety, school staff believed that it might in fact have the opposite effect due to different home/school approaches and expectations. Student's mother and also expressed concern about Student's prior negative experience at during the 2015-2016 school year, particularly with regard to suspensions.

The proposed by the District is located at the New Hampshire. It is approved by the New Hampshire Department of Education as a self-contained program for elementary-aged students with emotional disturbance and other disabilities.

The began during the 2015-2016 school year, the year Student attended. However, over the past few years, the program has undergone a number of changes. There are four students, one teacher and four paraprofessionals. Staff is trained to work with students who have behavioral challenges. The program offers a smaller classroom environment with less stimuli than in the regular educational setting. Programs are individualized and are developed with input from families. According to staff who spoke with Student's outside counselor

in March of 2018, the counselor has indicated that _____ would be a good program for Student and encouraged the family to keep an open mind about the program.

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) (emphasis added). In other words, a student must be placed in the least restrictive environment in which the student can make meaningful educational progress.

It is undisputed that Student's behaviors have posed a safety risk and have prevented from receiving any meaningful educational benefit in _____'s mainstream environment, even with increased supports. The evidence shows that the _____, particularly in its current form and in view of endorsement by _____ as well as the Student's own outside counselor, is likely to provide the kind of structure and intervention that Student needs in order to access education. In addition, _____ is located within the District, which is less restrictive than an out-of-district placement. The proximity to home also facilitates family input and participation, which is an important component of the _____ and Student's overall success.

There is nothing to prevent IEP team, which includes the Parent and family, from revisiting the placement issue at some point in the future to assess Student's readiness to transition back into a less restrictive setting.

IV. CONCLUSION AND ORDER

The record in these proceedings supports a conclusion that, at least at this time, Student is not succeeding in _____ current placement, and requires a more restrictive program in order to benefit from education. The _____ can implement Student's IEP and is reasonably calculated to provide an appropriate program in the least restrictive setting for _____.

V. 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: May 1, 2018



Amy B. Davidson, Hearing Officer

Cc: