

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

Student [REDACTED]  
IDPH-FY-21-01-016

DUE PROCESS DECISION

**I. INTRODUCTION**

On January 14, 2021, the [REDACTED] (District) filed this due process request relative to the District's proposed placement. The due process hearing was initially scheduled for February 12 and 16, 2021, with a decision date of February 26, 2021. Following a series of continuances, new hearing dates of March 24 and 26, 2021 were established, with a decision date of April 2, 2021.

The due process hearing was held telephonically<sup>1</sup> on March 24, 2021. The District and the Parents both submitted exhibits. The District presented first, and had the burden of proof. Both parties filed post-hearing submissions.

The following witnesses testified credibly: [REDACTED], [REDACTED] Principal; [REDACTED], Board Certified Behavior Analyst (BCBA); [REDACTED], Special Educator; [REDACTED], Special Educator; [REDACTED], School Psychologist; [REDACTED], [REDACTED] Grade Classroom Teacher; [REDACTED], Director of Student Support Services; [REDACTED], [REDACTED].

The sole issue for due process was whether the District's proposal for an out of district placement for Student is reasonably calculated to provide the Student with a free appropriate public education in the least restrictive environment.

**II. FACTUAL BACKGROUND**

Student is a [REDACTED] grader who resides with [REDACTED] and [REDACTED] in the District. Student has been identified as eligible for special education and related services pursuant to the Individuals with Disabilities Education Act (IDEA). [REDACTED] is currently identified as Other Health Impaired, with diagnoses that include [REDACTED], [REDACTED], and [REDACTED].

From May of 2018 to June of 2019 [REDACTED], Student attended the [REDACTED] Program, an emotional/behavioral support program at the [REDACTED] in [REDACTED], New Hampshire.

Student's IEP team met several times during the 2018-2019 school year. In January of 2019, the team proposed an IEP which included goals in areas of writing, math, and

<sup>1</sup> Proceedings are currently being held remotely do to the COVID-19 pandemic.

social/behavioral. The District provided a 1:1 paraprofessional, and BCBA consultation. Student's Parent consented to the January 2019 IEP, and to placement in the [REDACTED] program through June of 2019.

Student's behaviors deteriorated over the winter and spring of 2019, disrupting the school environment, and preventing Student from accessing [REDACTED] educational program. These behaviors included screaming, swearing, property damage, and threats toward [REDACTED] and others. All of Student's educational providers believed that Student was not making progress in the [REDACTED] program.

At the June 10, 2019 IEP meeting, the District proposed an out-of-district program for the Student. The team identified several approved placements, including [REDACTED], [REDACTED] School, and [REDACTED].

The Parent did not consent to continue Student's [REDACTED] placement for the 2019-2020 school year, and also rejected the District's proposed out-of-district placements for the 2019-2020 school year. Student did not attend ESY programming during the summer of 2019.

The District requested due process to ensure the Student was provided with a free appropriate public education. The District and the Parents entered into an agreement whereby the Parent agreed to provide a home-based program for the Student for the 2019-2020 school year, and the District would provide funding for that program. Reportedly, the Student's family did not use much of the available funding.

The IEP team met on July 8, 2020 to discuss Student's educational program for the 2020-2021 school year. The District proposed an IEP, to be implemented in an out-of-district special education placement. The District proposed doing a search for day programs including [REDACTED], [REDACTED], [REDACTED], and any other programs the family wished to explore. The family did not request a home-based program at that meeting.

The Parent and [REDACTED] did not formally respond to the District's proposed IEP and placement, but later informed the District that they did not support an out-of-district placement.

Following the District's January 14, 2021 due process request in this case, Student's [REDACTED] informed the District that [REDACTED] wanted Student to receive remote instruction, and that [REDACTED] did not want Student in any school at the present time.

Some of the approved special education programs identified by the District - [REDACTED], [REDACTED], and [REDACTED] - are willing to consider providing a remote program to the Student.

### III. DISCUSSION

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.

The Student's last agreed-upon placement is the [REDACTED] program. However, despite a supplementary aids and services, Student's behaviors have posed a safety risk and have prevented [REDACTED] from receiving a free appropriate public education. Both the District and the family agree that [REDACTED] is not an appropriate placement for Student.

Student has been in a home-based program during the 2019-2020 and 2020-2021 school years; it is unclear whether Student has made meaningful educational progress with respect to [REDACTED] IEP goals during that time. Student is not currently attending an approved program of special education and related services that is implementing all components of his IEP.

Home-based tutoring, requested by the Student's grandparent, was not presented to the IEP team. It is also a more restrictive environment than the special education day schools proposed by the District, and does not provide for the implementation of Student's last agreed-upon IEP.

An out-of-district day program is the next restrictive placement on the continuum of alternative placements; as such, it represents the least restrictive environment for Student. Some of those programs identified by the District are willing to consider providing the remote instruction that the family has requested.

### IV. FINDINGS OF FACT AND RULINGS OF LAW

District's Proposed Findings of Fact: Numbers 1 – 31 are granted.

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

Parent [REDACTED] Post-hearing submission: Reviewed and noted.

### V. CONCLUSION AND ORDER

The District's proposal for an out of district placement for Student is reasonably calculated to provide the Student with a free appropriate public education in the least restrictive environment.

**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: April 2, 2021

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Amy B. Davidson, Hearing Officer

Cc: Parent, [REDACTED], Attorney [REDACTED]

*Via electronic transmission*

To:

[REDACTED] \*\*  
[REDACTED], NH [REDACTED]

[REDACTED] \*\*  
[REDACTED], NH [REDACTED]

[REDACTED], Esquire  
[REDACTED]  
[REDACTED], NH [REDACTED]

*Via certified mail*

*\*\* Addresses corrected and re-sent 4/5/2021*