

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Student/█████ School District
IDPH-FY-22-04-035

DUE PROCESS DECISION

I. INTRODUCTION

On April 18, █████ Parent filed this due process request, challenging the Student's current placement by the █████ School District (District) at the █████ School, a special education day program in █████ Massachusetts. Parent requests that Student be returned to an in-district placement. Parent also requests that a Functional Behavioral Assessment be conducted.

A telephonic prehearing conference was held on May 23, █████ The due process hearing was held remotely, via Zoom, on June 7, █████

The issues for due process were:

1. Whether the District's placement at the █████ School, proposed in April of █████ is reasonably calculated to provide Student with a free appropriate public education;
2. Whether the District should provide Student with a Functional Behavioral Assessment.

The District presented first, and bore the burden of proof as to the appropriateness of its proposed placement at the █████ School.

The District called three witnesses; Parent testified on her own behalf.

II. FACTS

1. Student is a █████ year-old █████ grader who is currently placed at the █████ School, a special education day program in Massachusetts. █████ current identification is Emotional Disturbance.
2. From kindergarten through part of █████ grade, Student was placed in the District's public █████ school. During first through █████ grades, Student was placed at the █████ School.
3. During █████ grade, there were a number of disciplinary issues, including aggression toward peers and staff. After consultation with a █████ a behavior plan was developed,

and Student was provided with a one-on-one paraprofessional to assist with [REDACTED] behaviors.

4. Significant behavior incidents continued during [REDACTED] and [REDACTED] grade, on several occasions resulting in Student's removal from class to be taught in a small group, or removal from school. In [REDACTED] grade, Student's IEP was amended to reflect additional supports.
5. During Student's [REDACTED] grade year ([REDACTED] [REDACTED] was placed in the [REDACTED] at the [REDACTED] School, another public [REDACTED] school within the District. While attending this program, Student was restrained three times during September and October, and suspended for three days for aggressive behavior toward staff.
6. Following these incidents, the Student's IEP team recommended a more restrictive placement; Parent agreed with this recommendation. As of December 5, 2019, Student was placed at the [REDACTED] ([REDACTED] program, a special education program in Andover, Massachusetts. Between January 6 and March 20, [REDACTED] there were fourteen behavioral incidents at [REDACTED]
7. In March of [REDACTED] [REDACTED] shifted to remote learning due to the COVID-19 pandemic. Student experienced difficulties in attendance in group and individual lessons.
8. Student remained at the [REDACTED] program for the first part of [REDACTED] grade. During the fall of [REDACTED] while attending the program in person, Student had over one hundred incidents involving aggression, non-compliant behavior, and property destruction. A large portion of Student's school day was spent processing [REDACTED] behaviors. As a result, [REDACTED] suggested that Student be placed in a more restrictive program.
9. Student remained at the [REDACTED] program pending completion of [REDACTED] three-year evaluation, and to allow sufficient time to identify an appropriate placement during a period when many schools were still working remotely.
10. In January of [REDACTED] the Evaluation team met and determined, with Parent's agreement, that Student's identification should be changed from Other Health Impaired to Emotional Disturbance.
11. In December of [REDACTED] the team met and proposed placement at the [REDACTED] School, with which Parent agreed. Student began attending [REDACTED] on a remote basis in January of [REDACTED]

12. ██████ School is a special education school and therapeutic treatment facility, approved by the State of Massachusetts. Class size ranges from six to eight students; therapeutic interventions are embedded throughout the program. Student is in a classroom with eight students, and receives 4.5 hours per day of paraprofessional support. Although ██████ finds academics challenging, Student is making academic progress. ██████ has continued to struggle with negative behaviors both at school and at home.
13. In the fall of ██████ Student returned to ██████ School as a ██████ grader. ██████ continued to experience dysregulation, and engaged in behaviors including aggression toward peers and staff, and non-compliance.
14. In late October of ██████ Parent requested that Student be transitioned into a trial placement at the ██████ School, a public school in the District, for part of the day. Over the course of the next few months, efforts were made to arrange for Student to attend ██████ School for the last two blocks of a school day. However, due to escalation in ██████ behaviors, in February of ██████ the visit to ██████ School was cancelled.
15. Parent's position is that ██████ School is inappropriate for Student and that Student has learned ██████ maladaptive behaviors there. Parent testified that Student is refusing to attend school with students (whom Student describes in pejorative terms).
16. The District's position is that Student requires a therapeutic educational program, and that ██████ School is appropriate to meet ██████ needs. The District maintains that ██████ School does not have the embedded therapeutic programming and level of support that Student requires to address ██████ behaviors.
17. The District advised the Parent that in order to return to the public school setting, Student would have to demonstrate appropriate behaviors. The District has offered to discuss possible alternative placements. However, Parent has declined to consider any other placement except ██████ School.

III. RULINGS OF LAW

- A. If education in a regular classroom with supplemental services cannot be achieved satisfactorily, a school district may consider and propose a separate day placement.
- B. A regular classroom in a local public school is not necessarily the least restrictive environment for a student whose behaviors pose a threat to the safety of the student and others, and whose needs are such that the public school classroom cannot provide an appropriate education.

- C. A separate program may be the appropriate program in the least restrictive environment for a student whose behaviors present a danger to self and others.
- D. Parent strongly believes that Student should be given a chance to attend the public school program. While there is nothing to prevent the team from revisiting a transition plan as appropriate, staff and providers working with Student do not believe ■ would be able to manage placement in a public school setting at this time. The record supports this conclusion.

IV. REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW

The District filed a Post-Hearing Memorandum of Law.

Neither party filed requests for findings of fact/rulings of law.

V. CONCLUSION AND ORDER

- I. Based upon the testimony and evidence submitted by the parties, the District has met its burden of showing that the proposed placement at ■ School is the most appropriate placement in the least restrictive environment available at the present time.
- II. There is nothing to prevent the team from consideration and development of a transition plan for Student to return to the local school, as appropriate.

Date: June 29, 2022

Amy B. Davidson, Hearing Officer

Cc: Parent, Attorney Loughman

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.