

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

Student ██████████ School District
IDPH-FY-20-08-013

DUE PROCESS DECISION

BACKGROUND

On August 26, 2019, the Parent filed a due process request against the ██████████ School District (District). Student is currently attending a charter school in ██████████ New Hampshire, where ██████████ was placed by ██████████ Parent. The Parent alleged that the District committed procedural violations during the 2018-2019 school year, and requested that the District provide transportation to the Student at the charter school.

Initially, the issues for due process were as follows:

1. Whether the District committed procedural violations during the 2018-2019 school year;
2. Whether the District is obligated to provide transportation to the charter school.

On September 17, 2019, the District filed a Motion for Summary Judgment, maintaining that the matter should be dismissed in its entirety because this forum cannot grant the relief sought by the Parent – transportation to the charter school. In an order dated October 4, 2019, the District's request for summary judgment was granted as to the issue of provision of transportation, and denied as to the issue of alleged procedural violations.

The due process hearing was held on October 7, 2019. The Parent had the burden of proof, and testified first. The District called ██████████ Director of Student Services. The Student attended the hearing, but did not provide testimony. Both parties submitted exhibits and filed post-hearing submissions.

The sole issue for due process was whether the District had committed procedural violations during the 2018-2019 school year that resulted in denial of FAPE.

DISCUSSION

Student attended ██████████ Community School from kindergarten through eighth grade (2018-2019 school year). In fourth grade, ██████████ was found eligible for special education; ██████████ IEPs have contained social-emotional goals, but no academic goals.

Parent advised the District that ██████████ did not want Student to attend ██████████ High School, the District's high school of record - and made it clear that ██████████ was actively looking for alternative high school placements for Student. In January of 2019, Parent informed the District that the ██████████ (██████████ a public charter school in ██████████ New Hampshire, would be a perfect fit for Student. In April of 2019, Parent accepted an offer from ██████████ to enroll Student there for the 2019-2020 school year (ninth grade). Student began attending ██████████ in August of 2019. The record shows that Parent did not waver from her decision to place the Student at ██████████ nor did ██████████ request or propose another placement. The District advised the Parent that if Student attended a charter school, the District would meet its obligation to provide special education services pursuant to ██████████ IEP.

RSA 194-B:11(III), which defines a school district's obligations when a Student is placed by the Parent in a public charter school, is the applicable law in this case. In accordance with that statute, the District convened an IEP team meeting, invited charter school representatives to attend, and proposed an IEP. The Parent accepted the IEP, with one exception (Parent requested transportation as an accommodation). Per RSA 194-B:11(III)(b)(5), the District contracts with

the charter school to provide services to Student. Therefore, the District has fulfilled its obligations under the applicable statute.

Parent also alleges that certain procedural violations occurred relative to IEP development during the 2018-2019 school year. Even if a violation occurred, it must be shown to have resulted in a loss of educational opportunity or seriously deprived the Parent of participation in Student's education. 34 C.F.R. §300.513(a)(2).

In this case, the record supports the following conclusions:

- a) The certification status of Student's case manager during the 2018-2019 school year did not constitute a procedural violation, nor did it have any adverse impact upon Student's ability to receive a free appropriate public education during that year.
- b) At IEP team meetings, Parent was provided with a copy of Procedural Safeguards.
- c) The 9-day delay in consenting to the February 10, 2019 - June 14, 2019 IEP did not constitute a procedural violation, nor did it impact Student's educational program.
- d) Although two IEP team meetings were scheduled with less than ten days notice, Parent was able to attend, and was not deprived of participation in the process.
- e) The Student's 2019-2020 IEP was properly developed during the spring of 2019, and is being implemented at [REDACTED]. By all accounts, Student enjoys school and is making excellent progress.

CONCLUSION

On this record, the Parent has not met [REDACTED] burden of demonstrating that the District committed procedural violations during the 2018-2019 school year which resulted in denial of FAPE or deprived the Parent of participation in Student's education.

So ordered.

/s/ Amy B. Davidson

Date: November 6, 2019

Amy B. Davidson, Hearing Officer

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.

Cc: Parent, Attorney, Eggert

Via electronic transmission and certified mail, return receipt requested.