

# **State of New Hampshire**

## **Department of Education**

In Re: IDPH-FY-06-03-052 / Timberlane Regional School District

### **DECISION OF THE HEARING OFFICER**

#### **I. Background**

##### **A. Prehearing Conference**

On March 6, 2006 , the Petitioner, the Timberlane Regional School District , filed a Request for an Expedited Hearing with the Department of Education. On March 7, 2006, the New Hampshire Department of Education (the "Department") issued a scheduling notice in the above-entitled matter to ... the parents of the minor child, ... and to the Timberlane Regional School District ("District"), and their attorney. The scheduling notice set a prehearing conference for 12:30 p.m. on March 13, 2006 and hearing dates of March 20, and 21, 2006 at the Department's hearings unit at 57 Regional Drive in Concord, N.H.

At the prehearing conference, Edwina Lovett, the Assistant Director of Pupil Personnel Services for the District and Jeanne M. Kincaid , Esq., attorney for the District, represented the School District . The prehearing conference was intentionally delayed until 1:15 p.m. and concluded at 1:30 p.m. The Parents did not attend the prehearing conference and no legal representative appeared on their behalf.

The District represented that they had received no notice from either Parent indicating their intention to appear or not appear. The Parents also failed to contact the Hearing Officer in advance of the prehearing conference to indicate their intentions regarding the School District 's appeal.

The District submitted a Prehearing Statement in advance of the Hearing, a copy of which, the District's counsel represented, had been sent to the Parents. The District also submitted a set of the District's core exhibits with copies provided to the Parents. The District's Request for An Expedited Hearing clearly states that it is seeking an order authorizing it to conduct a comprehensive assessment of the child and a change of placement to an interim alternative educational setting. The Expedited Hearing Request further specifies that the District is seeking placement in a residential program, based on the assertion that maintenance of the student's current placement at Learning Skills Academy is substantially likely to result in injury to the student.

The Parents were notified by telephone via a message left for them on Thursday, March 16, 2006 , in which they were advised of the Prehearing Conference and the Hearing scheduled for March 20 and 21, 2006. The Parents were further notified of the fact that, due to the Parent's failure to appear, the hearing would be conducted via witness testimony, affidavits and offers of proof at the discretion of the Hearing Officer. The child's mother, ... contacted the Hearing Officer by telephone at approximately 8:15 a.m.

on the morning of the hearing, Monday, March 20, 2006 , and advised that the Parents would not be appearing at the hearing on the School District 's request for relief. Subsequently, the March 20, 2006 hearing on the merits went forward via a combination of live testimony and affidavits with no contrary evidence submitted by the Parents. In addition, the hearing day scheduled for the presentation of the Parent's case, Tuesday, March 21, 2006 , was cancelled.

## **B. Hearing**

A due process hearing was held in this matter on March 20, 2006 . At the hearing, Petitioner, the Timberlane Regional School District was represented by Attorney Jeanne Kincaid. ... Parents, her mother, ... and her father, ... elected to not participate in the hearing process.

In support of its Expedited Hearing Request, the School District offered oral testimony and affidavits from the following witnesses, Lisa McManus, Education Director, Learning Skills Academy , Wayne Ford, Associate School Psychologist, Learning Skills Academy , Marla Podszuz, R.N., Maxim Healthcare, and School District Assistant Director of Pupil Personnel Services, Edwina Lovett. The School District also offered the telephonic testimony of Michele Noel, Director of Admissions and Utilization Review, Brattleboro Retreat and entered numerous documentary exhibits into the record, including the affidavits of School Psychologist, Sam Richman, and Legal Assistant Judi Philips.

At the Hearing, the School District 's submitted Requests For Findings of Fact and Rulings of Law. A review of all of the evidence and legal authority submitted mandates that judgment and an appropriate Order be issued in favor of the School District . The basis of this decision is set forth in the following findings of fact and rulings of law.

## **II. Findings of Fact**

Student is an educationally disabled, 14 year-old student who has been classified as having a non-verbal learning disability and other health impairment (OHI) based on ... diagnoses of juvenile diabetes and ADHD. Student completed the eighth grade within the Timberlane Regional School District but has attended only a minimal amount of days of school during the 2005-2006 school year. By an order dated December 15, 2006, this Hearing Officer approved the School District's request to place Student at Learning Skills Academy, “unless it is determined that ... is unable to attend school” for reasons related to ... physical or mental health.

Student attended the Learning Skills Academy from January 11, 2006 to February 21, 2006 . On February 21, 2006 student, attempted to harm ...self ...saying that ...“needed to choke on this tonight and die” Student has not attended Learning Skills Academy since that incident.

To be resolved in this proceeding are three issues raised by the School District: (1) whether it is necessary to conduct a comprehensive reevaluation of Student, (2) whether the current placement at Learning Skills Academy (“LSA”) is substantially likely to

result in injury to Student; and (3) whether, LSA, irrespective of the threat of harm, is an appropriate placement for Student.

### **A. Necessity of Comprehensive Reevaluation**

Student was last evaluated for special education services in September and October 2002, by the Epping School District . In the fall of 2005, Mother informed the Timberlane Regional School District that Student had been recently hospitalized. Student had been first admitted into Elliot Hospital on August 24, 2005 and then transferred to Hampstead Hospital , from which ... was discharged on September 14, 2005 with a provisional diagnosis of “Psychosis, NOS and Bipolar Affective Disorder, NOS”. SD pp. 279, 280.

Upon admission to Hampstead Hospital , Student displayed an “increase in psychotic as well as manic symptomatology.” (SD p. 280) Student's mother subsequently advised Dr. Jeannette M. Clemons, a psychiatrist at Manchester Counseling Services, that Student was “getting worse and worse, but I know ... doesn't mean to harm ...self.” (SD p. 325). In addition to auditory and visual hallucinations, Student had “become increasingly aggressive” and had assaulted family members as well as a physician.” (SD pp. 307, 323, 325). Hampstead Hospital ruled out diabetes as the cause of the symptomatology. (SD p. 307). Instead, Student's Hampstead Hospital medical records document that Student was experiencing psychotic symptoms during ... stay at Hampstead. These symptoms included auditory and visual hallucinations, confusion, scattered thoughts, pressured speech, and difficulty staying on one topic. These symptoms were consistent with the observations of staff at both Timberlane Middle School and Learning Skills Academy .

Prior to obtaining copies of the Hampstead Hospital medical record, the School District had reasonably presumed that the Hampstead hospitalization was diabetes-related, based on a previous hospitalization for this condition. (Aff. Lovett, p. 2, ¶6) In October 2005, Mother telephoned Edwina Lovett, the Assistant Director of Pupil Personnel Services for the School District, to advise her that her ... would be returning to school and request that the School District reevaluate .... (SD p. 92)

On October 12, 2005 , the School District held two meetings: (1) a re-entry meeting to discuss and prepare for Student's transition to the high school; and, (2) a meeting to discuss a special education reevaluation. The Parents did not attend these meetings. At the time of these meetings, unaware of Student's psychiatric hospitalization, the School District proposed to conduct an observation and to reevaluate ... in the areas of Achievement, Intelligence, Adaptive Behavior, Memory, Speech and Language/Communication Skills and Motor Ability.

After receiving the Hampstead Hospital records, on December 23, 2005 , the School District convened a subsequent meeting to discuss reevaluating Student but the Parents did not attend. (Aff. Lovett, p. 4, ¶18; SD pp. 160, 162) The team members that were present, concluded that the Hampstead Hospital records warranted a reconsideration of Student's coding to include a possible emotional handicap. If in fact Student is determined to be emotionally handicapped, ... educational programming and placement would need to be reviewed. (Aff. Lovett, p. 4, ¶17)

The team concluded that ... remained eligible as a child with a disability, so completing the other testing was not necessary for eligibility purposes. Further, the team

recommended completing speech-language and motor ability assessments in the spring or early fall, given Student's fragile emotional state. (SD p. 163; Aff. Richman, p. 2, ¶11) To date, the Parents have not granted their written consent to reevaluate Student. (Aff. Lovett, p. 4, ¶19; SD p. 164. As noted in the December 15, 2005 decision on Student's IEP and placement for 2005, the information obtained from the Hampstead Hospital records would need to be addressed in the student's upcoming tri-annual evaluation. In addition, the School District needs to conduct a comprehensive assessment to properly identify, program and place Student. Aff. Richman, p. 1, ¶4; Aff. Ford, p. 2, ¶9.

- **Proposed Change of Placement**

- 1. Risk of Injury to Student**

- (a) Management of Diabetes**

Student is diagnosed with Type 1 diabetes, a controllable condition in which careful food management is critical to ...health. Aff. Podszus, p. 6, ¶34, p. 7, ¶39; SD p. 425. During Student's most recent hospitalization, Dr. Anne Woods recommended "strict control" of Student's diabetes. SD p. 344. The failure to maintain proper dietary control in diabetes patient such as Student, is likely to have significant, irreversible, long-term health consequences such as liver and kidney damage and loss of vision. In addition, Student is at risk of losing limbs and could suffer a heart attack. Aff. Podszus, p. 6, ¶34.

With Type 1 diabetes, Student is unable to use the food ... eats for energy. This results in an accumulation of sugar or glucose in the blood and the cells of the body being starved for food. Aff. Podszus, p. 3, ¶12; SD p. 425. The target range for Student's blood glucose is 80-150 cc's before meals. Aff. Podszus, p. 3, ¶10; SD pp. 426, 633. However, while enrolled at LSA in January and February of 2006, Student rarely tested at the target range; ... levels were consistently in excess of 200 and 300 cc's and have been reported as high as 1000 cc's. Aff. Podszus, p. 7, ¶40; SD pp. 419, 426, 633.

Student's consistent excessively high blood sugar levels upon arrival to LSA were definitely correlated with an inappropriate diet management protocol. Aff. Podszus, p. 7, ¶41. Although individuals with Type 1 diabetes can occasionally safely eat sweet foods and candy with appropriate insulin coverage, despite doctor's orders and reminding from Nurse Podszus, the Parents consistently provided Student with sweet foods during the time that ... was enrolled at LSA. Aff. Podszus, p. 7, ¶¶42, 43; SD pp. 431, 632. Despite the fact that Student's mother had previously demonstrated an understanding of how to count carbohydrates, the amount and types of foods the Parents routinely provided to Student to take to school were inappropriate and dangerous for Student. Aff. Podszus, p. 2, ¶¶5-9, 11; Aff. McManus, pp. 1-2, ¶5; SD pp. 372, 388-91; 395-419; 632-33.

Similarly, Mother was unable or unwilling to follow doctor's orders regarding appropriate food consumption for Student while Student was hospitalized at Hampstead Hospital . The Parents' apparent inability to manage Student's diabetes is further illustrated by the fact that they sent in expired hemoglobin strips. Aff. Podszus, p. 2, ¶7; SD p. 407 and on two occasions during Student's brief enrollment at LSA, the endocrinologist had to amend his doctor's orders due to the Parents' inability to carry them out. Aff. Podszus, p. 4, ¶¶16, 17; SD pp. 375, 383. This problem is compounded by the fact that Student's

ability to attend to ... own diabetic needs has seriously eroded since the 2004-05 school year and ... is now completely dependent on the nursing care to address this critical medical need. Aff. Podszus, p. 6, ¶37; Aff. Lovett, p. 6, ¶24.

**(b) Student's Mental and Emotional State**

While enrolled at LSA, ... first educational placement since being discharged from the hospital, Student appeared to display psychotic symptoms (hallucinations, inappropriate affect, disorganized thinking and catatonic motor behaviors), appeared to be in a dissociative state and was completely unavailable for learning at times. These symptoms support Hampstead Hospital 's recent discharge diagnoses of Psychotic Disorder and Mood Disorder. (Aff. Richman, p. 2, ¶7)

The School District retained Maxim Health Care strictly to provide diabetes management for Student at LSA, not for psychiatric management. Aff. Podszus, p. 5, ¶21; Aff. Lovett, pp. 3-4, ¶15; SD pp. 629, 635, 644-46, 650-51. Neither LSA nor Maxim Health Care had the doctor's orders required to administer psychotropic medication to Student. Aff. Podszus, p. 5, ¶23; Aff. Richman, p. 3, ¶15; Aff. Ford, p. 1, ¶5; Aff. McManus, p. 2, ¶11; SD pp. 629, 634, 635, 644-46, 650-51. Due to Student's mental state and affect, LSA staff is not qualified to determine if ... is experiencing "anxiety" and merely taking the prescription Ativan will not alter those behaviors. SD pp. 634, 651, 657; Aff. McManus, 3/13/06 letter, p. 2. In addition, LSA does not serve students diagnosed with active psychiatric conditions, as the school does not have qualified staff to address such students' needs and is not designed to provide the level of supervision Student requires. (Aff. McManus, p. 2, ¶8; SD pp. 455-57, Aff. McManus, 3/13/06 letter, p. 2; SD pp. 629-30, 653, 655.

Student's most serious incident occurred on February 21, 2006, when ... appeared to go into a dissociative state and later that day attempted to choke ... self ... while yelling ... hoped ... choked and died at night. Aff. Podszus, p. 4, ¶18; SD pp. 625-26. In response to LSA's resulting notice that Student could not return unless ... was cleared by a psychiatrist and provided with a safety plan, Mother. suggested that Student was discussing dying at school due to a change in insulin regimen in which the Parents had told ... that they needed to wake ... in the middle of the night or ...could die. Aff. McManus, p. 4, ¶25; SD pp. 470, 627. A behavior plan for a student actively psychotic would be of no value. (SD pp. 653-54)

On March 6, 2006 , the School District convened an IEP team meeting that occurred in three stages: school officials only (due to Parents' late arrival); Parents and school officials; and school officials only (after Parents were asked to leave due to their behavior). SD Ex. 16; Aff. Ford, p. 2, ¶8; Aff. McManus, pp. 4-5, ¶¶28, 29.

Student's current deteriorating physical and mental health needs, as described at the meeting strongly suggest that ... would pose a threat of injury to ...self if ... placement at LSA were maintained. Aff. Richman, p. 2, ¶8; Aff. Lovett, p. 8, ¶37, Aff. Richman, p. 3, ¶14. As such, school officials from LSA and the School District, along with Nurse Podszus, uniformly and correctly agreed that maintaining Student's placement at LSA was not only inappropriate but was substantially likely to result in injury to Student. Aff. Lovett, p. 8, ¶37, p. 11, ¶ 52; Aff. Ford, p. 2, ¶11; Aff. McManus, p. 5, ¶31; Aff. Richman, p. 2, ¶8

## **2. Appropriateness of Continued Placement at LSA**

The School District requested and received an order placing Student at LSA on December 15, 2005 . At the time, however the School District had not had an opportunity to thoroughly review recently received medical records from Hampstead Hospital relative to Student's October 2005 admission. When the School District learned the actual basis for Student's hospitalization, it then questioned the appropriateness of the LSA placement. Aff. Lovett, p. 5, ¶22. Indeed, the December 15, 2005 Order noted that “[t]he placement at Learning Skills Academy is appropriate until such time as the school district special education team, in a timely manner, reviews the new medical information now available, completes its tri-annual evaluation and offers a new IEP.” SD p. 52. The Order also made clear that “the new medical information included in the Hampstead Hospital records may necessitate a change in Student's IEP and placement...”. SD p. 50.

Pursuant to the December 15, 2005 Order, Student began attending LSA on January 9, 2006 . However, Student was absent seven days and tardy one day out of the 28 days that ... was enrolled. Aff. McManus, p. 3, ¶20, SD p. 387. Until February 21, 2006 , when LSA advised the Parents that Student could not return without clearance and a safety plan, the Parents never advised LSA that Student had an active psychiatric disorder. Aff. McManus, p. 2, ¶10, p. 4, ¶26; SD pp. 655, 658.

The Parents' provided medical information about Student's diabetes condition but did not disclose that Student had been prescribed medication for a diagnosed psychiatric condition. SD p. 487. Moreover, the State of New Hampshire has not certified LSA as a school that serves children coded as emotionally handicapped and LSA's staff is not qualified to address Student's psychiatric needs. Aff. McManus, p. 2 ¶8, Aff. Podszus, p. 5, ¶28; Aff. McManus, p. 2, ¶8; Aff. Ford, p. 2, ¶12; SD p. 655-56. In addition, Student's performance at LSA demonstrates a continual decline from an emotional, physical health and educational performance standpoint and Student has not benefited from ... education at LSA. Aff. Lovett, p. 7, ¶32, p. 9, ¶47, Aff. Podszus, p. 6, ¶30; Aff. Richman, p. 2, ¶8; Aff. McManus, p. 3, ¶19; SD p. 656.

## **C. Placement at Interim Alternative Educational Setting**

On March 7, 2006 , the School District provided the Parents with Written Prior Notice of their intention to place Student in an inpatient treatment center and conduct assessments for a period of 45 school days. Aff. Lovett, p. 8, ¶38; SD pp. 139-44. Student's social, emotional, physical and educational needs are so intertwined that ... presently requires placement in a residential facility equipped to conduct a complete and comprehensive assessment and, after these conditions are stabilized to a point where ... is available to learn, to develop an interim IEP. Aff. Richman, p. 2, ¶10; Aff. Lovett, pp. 4-5, ¶20.

This comprehensive assessment should be conducted in an inpatient treatment facility capable of addressing not only Student's educational needs, but also ... significant physical and mental health needs. Aff. Richman, p. 1, ¶5; Aff. Ford, p. 2, ¶10; Aff. Lovett, pp. 4-5, ¶20; Aff. McManus, p. 5, ¶32. The Brattleboro Retreat provides a full range of psychiatric care and diagnostic assessment for children and youth, including residential services. Testimony Noel; SD pp. 566-71. The Inpatient care program is staffed by board-certified psychiatrists, doctoral and master's-level therapists, certified

addiction counselors, psychiatric registered nurses, a certified recreation therapist and nutritionists, the kinds of health care providers Student requires. SD p. 569

Although the Brattleboro Retreat cannot accept a student without an interview and a records review, which the Parents have not yet authorized, the description of Student's profile matches the kinds of children that the Center serves. (Testimony Noel). If the Brattleboro Retreat determines that Student should be served through its partial hospitalization program, ... would likely attend Meadows Education Center , an accredited school on the grounds of the facility, approved by the Vermont Department of Education to provide special education services. Testimony Noel; SD p. 571-d, k. The Brattleboro Retreat is also affiliated with the Bennington School and students whose conditions stabilize can begin to receive education in the community when appropriate. The Bennington School is approved by the Vermont Department of Education to provide special education services. It also is a residential program. Testimony of Noel; SD pp. 571-r-t.

All requests for factual findings by the District are granted or denied in accordance with the foregoing Findings of Fact.

### **III. Rulings of Law**

- Student is an educationally disabled student to whom the Timberlane Regional School District (the “ School District ”) is obligated to provide a free appropriate public education (“FAPE”). RSA 186-C:2,I; 186-C:9; 34 C.F.R. ¶¶ 300.7, 300.13, 300.341; ED 1102.09. 1102.23.
- As part of its FAPE obligation, the School District has an obligation to conduct a tri-annual evaluation of Student. 20 U.S.C. ¶ 1414(a)(2)(A)(i) and (B)(ii); 34 C.F.R. § 300.321; ED 1107.01.
- Parental consent is required for reevaluations, to conduct further assessments to evaluate the educational needs of an eligible student and when seeking to change the student's classification. 20 U.S.C. § 1414(c)(3); ED 1107.02(g); 1125.04(a)(4), and (6)
- .If Student's physical and emotional health is not assessed in a comprehensive manner, the School District will not be able to provide FAPE to .... 34 C.F.R. § 300.121; RSA 186-C:1, 186-C:9; ED 1107.02(i).
- Because the Parents have either failed or refused to provide consent to the School District 's request to conduct assessments of Student, which are necessary in order to ensure that ... receives FAPE, the School District was obligated to request a due process hearing. ED 1107.02(f); 1125.04(b); 1125.05(c)).
- Student has not benefited from ... education at LSA and ... physical and mental conditions continue to deteriorate, justifying ... placement in a more restrictive environment. *Abrahamson v. Hershman*, 701 F.2d 223, 227-28 (1 st Cir. 1983); 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.550(b)(2); ED 1115.01.
- Because the parents have been unable to effectively manage Student's diabetes care, ...ongoing dangerous physical health condition is compromising ... receipt of an appropriate education, justifying a more restrictive placement. *Id.*
- Student's emotional health continues to deteriorate and a comprehensive assessment of ... emotional needs that affect ... ability to access ... education is necessary. *See Cedar Rapids v. Garret F.* , 119 S.Ct. 992 ( U.S. )

- Maintaining Student's placement at LSA or any similar day program is substantially likely to result in injury to Student. 20 U.S.C. § 1415(k)(3)(B)(ii)(II); *West Orange Bd. of Educ.* 42 IDELR 254 (SEA NJ 2004); *Prospect Heights Sch. Dist. No. 33* , 42 IDELR 214 (SEA IL 2004); *Ocean Township Bd. of Educ.* , 41 IDELR 21 (SEA NJ 2004); *Chichester Sch. Dist.* , 33 IDELR 290 (SEA PA 2001)
- Irrespective of the potential injury to Student by maintaining ... placement at LSA, Student's social, emotional and educational needs are so intertwined that ... is not able to make progress in a setting less restrictive than a residential care facility. *Horry Cty. Sch. Dist. v. P.F.* , 29 IDELR 354 (D.S.C. 1998).
- The unique circumstances posited in this case warrant Student's placement in an interim educational alternative placement, such as the Brattleboro Retreat, for the purposes of conducting a comprehensive assessment of ... mental, physical and education needs. This interim alternative placement, under this Order, shall be for a maximum period of 45 school days, or less, if the IEP team working in concert with the treatment facility, determines that a lesser restrictive environment is appropriate. 20 U.S.C. § 1415(k)(3)(B)(ii)(II).
- If the Student's IEP team, working in concert with the treatment facility, determines that, due to risk of injury to Student or others, it is necessary for this placement to continue beyond 45 school day period authorized by this Order, the School District may seek to maintain Student's placement at the Brattleboro Retreat or other facility in accordance with 34 C.F.R. 300.526(c)(4) (and proposed 34 C.F.R. 300.532(b)(3)).
- In accordance with 20 U.S.C. § 1415(k)(4), if the parents appeal this decision, the child's stay put placement is the interim alternative educational setting ordered above.
- for said placement. This Revised Placement Report shall be submitted within 10 days after the effective date of the revised placement.

#### **IV. Appeal**

In accordance with RSA 186-C, this Decision may be appealed to a court of competent jurisdiction pursuant to 20 U.S.C. Section 1415(e) within 120 days from receipt of the final decision. RSA 186-C:IV.

#### **V. Order of the Hearing Officer**

For the reasons set forth in this Decision the Hearing Officer issues the following Order:

- The School District is ordered to place Student in an appropriate interim alternative educational setting for a period of 45 school days or less, if school officials determine that a change in placement is appropriate (20 U.S.C. § 1415(k)(3)(B)(ii)(II));
- Said interim alternative educational setting shall be Student's stay put placement pursuant to 20 U.S.C. § 1415(k)(4)(A).
- The School District is authorized to conduct comprehensive assessments of Student in all areas of suspected need, including ... physical and mental health needs which are seriously interfering with ... ability to access ... education (20 U.S.C. §§ 1414(a)(2)(A)(i) and (B)(ii));

- Given the complexities of Student's physical and mental health needs, the School District is authorized to conduct these diagnostic assessments at an in-patient facility, which may serve as the interim alternative educational setting, such as the Brattleboro Retreat in Brattleboro , Vermont or any other similarly equipped facility or combination of facilities.
- Once the student's conditions have been stabilized, the School District shall convene an IEP team meeting for the purposes of drafting an interim IEP to aid in the delivery of educational services during ... diagnostic placement;
- Once the assessments are completed, the School District shall convene an IEP team meeting to determine whether Student's classification should be modified, and, if appropriate, modify the interim IEP and placement;
- The Parents are ordered to fully and completely cooperate in this critical process by releasing all requested records, including psychiatric records, to the diagnostic placement, granting the placement the right to consult with all of Student's treating health care providers and participating in Student's screening and intake procedures in a cooperative and expeditious manner;
- Within five (5) business days of the issuance of this Order, the Parents shall apply for their child's admission to the Brattleboro Retreat, completing all necessary paperwork and interviews in an expeditious matter and immediately admit ... for assessment and treatment if and when approved;
- If the Brattleboro Retreat does not accept Student, the Parents will immediately notify the School District and work cooperatively in locating an alternative placement that is equipped to conduct a comprehensive assessment of Student's needs, either in or out-of-state;
- Irrespective of harm to Student, ... has not and will not receive a free appropriate public education while attending LSA nor any day placement and the School District is authorized to change ... placement to a more restrictive environment in the nature of a residential placement, until such time as the IEP team determines that a lesser restrictive placement is appropriate;
- Any of the above authorizations may be modified by mutual consent of the parties or, in the event that the child becomes a ward of the State, by mutual agreement of the School District and the entity or individual assigned responsibility for granting consent or by order issued by a Department of Education hearing officer or a Court of law.
- If the Brattleboro Retreat is not able to admit Student for the purposes indicated in this Decision, the School District shall file a Revised Alternative Placement Report with the Hearing Officer indicating the alternative placement decision it has made and the basis or that placement.

SO ORDERED.

Date: March 24, 2006  
Peter T. Foley  
Hearing Officer