

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

IDPH-FY-07-07-006 / Hampstead School District

Decision of the Hearing Officer

Background

On July 21, 2006, the Parent filed a request for a due process hearing with the New Hampshire Department of Education. A sufficiency review limited the hearing to the question of placement. On August 24, 2006, School District submitted a Motion to Dismiss Parent's Complaint for failure to attend a resolution process and this was denied through verbal ruling at the pre-hearing conference held on that date.

At the pre-hearing conference, the Parent, _____ appeared *pro se* and Jeanne Kincaid, Esq. represented Winfried Feneberg, Special Education Director for the _____ School District. The Pre-hearing Conference Report and Order were issued on August 24, 2006. At the conference, the schedule for submission of exhibits was discussed and adopted in preparation for a hearing on September 5 and 6, 2006. Core exhibits, Nos. 1 through 88, were subsequently submitted. No packet of exhibits was received from Parent. Information and exhibits received *ex-parte* before the pre-hearing and those submitted beyond the timeframe set at the pre-hearing conference have not been considered in reaching this decision. In the interim between the pre-hearing and the hearing, a discussion of mediation ensued during a telephone conversation between the parties and the hearing officer. However, no referral was made when it became apparent to the hearing officer and the parties stated to one another that there was no hope of resolution through mediation.

Parent seeks to have the School District return the Student to the _____ where _____ had attended school after a placement by the _____ School District and then at the family's expense after moving into the _____ School District. Parent desires to have Student educated in a small homogeneous group with much individual attention. _____ believes that an appropriate program is not available at _____. The School District contends that the _____ School District can provide for Students' needs and that the Student's present IEP can be implemented at _____ Academy.

Hearing

The Parent went forward with _____ case on the first day of hearing, September 5, 2006. _____ opened with an explanation of why the placement proposed was unsatisfactory. _____ made reference to reports that had not been introduced and the School District's objection was sustained. Parent explained _____ position that the _____ was better able to offer _____ an education that _____ could benefit from and that _____ could not do the same.

_____, aged _____, was sworn as a witness and testified that _____ had begun classes in the District in October last year after having moved to Hampstead. _____ did not like being part of the special education program in a large diverse school. _____ found many of the kids were below _____ level and _____ did not feel smart being with them in school. _____ recalled being given the answers to questions by the aides. On the other hand, _____ stated that _____ didn't do

homework assigned because it was too hard and that no one insisted that _____ do homework. _____ felt that the special education program was a joke.

_____ did not ask for extra help and did not consider staying to speak to _____ teachers and taking the late bus home. _____ stated that _____ did not want to be there for more time than was required and not until 6:00 or 7:00 o'clock.

The School District called Carol Ann Silva, who had taught at _____ Academy for twelve years and worked with students in the Alternative Comprehensive Training Program of which the Student had been a part. She recalled that the Student made a good transition socially and academically even though _____ began the year in October. _____ did satisfactorily during the first semester or two quarters. Silva testified that _____ had a schedule of mixed classes and that _____ needed exposure to both students who had special needs and programs, and those children who do not have learning problems.

During _____ first semester, she taught a small reading class _____ attended with a 1/3 ratio of aide to students. She recalled that _____ main problem was a lack of organization. _____ would work closely with aides but didn't want to be given any answers. _____ did _____ homework sporadically and was given two or three resource periods so _____ might be more consistent with homework. She recalled a meeting early in _____ time at Pinkerton at which _____ decided that _____ wanted to take regular track classes to see if _____ could graduate with _____ class and so chose classes that would allow _____ to finish with _____ peers.

Silva testified that, during the second semester, _____ slowly began being absent from school until _____ was not attending at all. _____ passed _____ subjects first semester and failed the second semester because of _____ attendance. _____ was offered the opportunity to take an incomplete and then finish _____ work but that did not occur. There is an IEP in place that Student's mother signed with exceptions. Silva attested that the IEP could be implemented at _____ Academy.

The School District called Richard L. Sharp, Director of Special Education for _____ Academy; Michael K. Welch, Special Education Teacher and Case Coordinator, Donna Coyle, former special education teacher employed by the _____ School District until June 2006 and Winfried Feneberg, Director of Special Education, _____ School District. All testified that the program offered at _____ was well suited to this student and that staffing was adequate and staff was well qualified to provide the education appropriate for this student under the current IEP.

Student's mother testified that there were inaccuracies in the testimonies of Mr. Welch and others. However, the portions of the testimonies challenged were not corroborated and were not material to the decision at hand. Communication of goals and of simple notice between School District and Parent has been a problem. Testimony made clear that unfortunately the health of the witness poses a handicap in her efforts to advocate for her _____. Even so, what school placement is now required is the question. Student cannot be ordered to remain in or return to school though it is hoped that _____ will do so.

Findings of Fact and Rulings of Law

On September 18, 2006, the School District forwarded its Requested Findings of Fact and Requested Rulings of Law and they are granted without exception.

ORDER

Reviewing the testimonial and documentary evidence presented by the parties, it is found that the School District prevails in this matter. The School District is charged with providing this Student with a free and appropriate public education and the School District asserts that it has and can continue to do so at _____ Academy. It is the Parent who has challenged the placement approved by the IEP team as a whole.

The Parent believes this year's placement to be unsatisfactory. As such, under the prevailing caselaw cited in the School District's Requested Rulings of Law, it is the Parent's burden to present credible evidence as to what is claimed. The Parent has presented opinion but has not presented an iota of evidence that this Student cannot be appropriately educated at _____ Academy, the placement provided by the School District. The relief sought must be denied.

So ordered.

Dated: October 3, 2006

Gail C. Morrison, Hearing Officer

Appeal Rights

If either party is aggrieved by the Decision of the Hearing Officer set forth above, that party may appeal this decision to a court of appropriate jurisdiction. The Parents have the right to a transcription of the proceedings. The District shall notify the Commissioner of Education should either party seek judicial review of this decision.

Statement of Compliance with Rule Ed 1128.10 (b).

If neither party appeals this Decision to a court, then the District shall, within 90 days, provide the Commissioner of Education, the Hearing Officer and the Parents a written report describing the implementation of this Decision and provide a copy to the Parents. If the Parents do not concur with the District's report, the parents shall submit their own report to the Commissioner of Education on the implementation of the Decision.