

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

IDPH FY-07-09-022 / Monadnock Regional School District

**DECISION**

**I. INTRODUCTION**

This matter was initiated on September 25, 2006 by the Monadnock Regional School District (“District”) relative to Student’s placement for the 2006-2007 school year. The District also requested an expedited ruling on the issue of Student’s current educational placement (“stay-put”) pending the outcome of these proceedings. A prehearing conference was held on October 27, 2006, following which a Prehearing Order issued. The due process hearing was scheduled for November 15 and 16, 2006, with an end date of November 24, 2006.

The matter went forward on November 15, 2006. The Parents had previously notified the Hearing Officer that they were withdrawing their child from special education and would not be participating in the proceedings. The District presented testimony of two witnesses; Lori Evans, Lead Special Education Teacher who provided direct services to Student, and Judith Bischoff, Director of Special Education. The District submitted Exhibits 1 – 177, along with a motion for entry of judgement and proposed findings of fact and rulings of law. The Parents did not attend or submit evidence. Following the hearing, the District filed a memorandum of law relative to its request for a ruling on Student’s stay-put placement.

**II. FACTS**

Student and Parents live in Richmond , New Hampshire , which is part of the Monadnock Regional School District . Student has a diagnosis of Autism, and has been identified as autistic under the Individuals With Disabilities Education Improvement Act (“IDEIA”).

For school years 2001-2002, 2002-2003 and 2003-2004, Student and family were involved in Son-Rise, a home-facilitated, parent-run program. During the 2005-2006 school year, Student’s agreed-upon placement was the kindergarten class and Autism Spectrum Disorders (“ASD”) program located at the Troy Elementary School . (Exh. 149, 150, 152). The ASD program is a special class in an in-district public school, with opportunities for mainstreaming for specials, lunch, morning circle and other developmentally appropriate activities. In addition, Student’s program is facilitated by a special educator, and there was a full-time 1-on-1 tutor accompanying Student in the regular classroom. (Testimony of Evans)

During the 2005-2006 school year, the District successfully implemented Student’s Individual Education Program (“IEP”) at Troy Elementary School , where Student benefited from the small structured classroom and made meaningful educational progress. (Testimony of Evans; Exh. 72, 73) Although Student’s IEP provided for the use of Hand Over Hand technique, neither restraints nor physical interventions were utilized. (Testimony of Evans) The many methodologies employed in the classroom, developed with input from the Parents and from Student’s previous program, were designed to address Student’s unique needs, and were successfully utilized. (Testimony of Evans)

On April 12, 2006, the Parents signed in agreement with Student's current IEP, which covers the periods from 4/6/06 to 6/25/06, and 8/29/06 to 4/15/07. (Exh. 46, 47, 54, 55)

The team met on May 18, 2006 and June 6, 2006 to discuss Student's current program and consider Parents' concerns. The team met again on August 29, September 12 and September 19, 2006 to continue to discuss the Parents' concerns and to propose that Student be placed at the ASD program and the regular first grade classroom at the Troy Elementary School for the 2006-2007 school year. (Exhs. 10, 18, 20, 24, 26-29) On each occasion, Written Prior Notice was given to the Parents. (Exhs. 18, 24, 27, 44)

Without prejudice to its position that the proposed placement was appropriate, the District offered to have Student attend the transitional tutoring program located at the Winchester Elementary School pending a hearing officer ruling on the placement issue. (Testimony of Bischoff, Exh. 23) The team met to consider the Parents' request that Student be placed at the Emerson School, but determined that Student's IEP could not be successfully implemented there. (Exh. 15, 18)

On or about September 19, 2006, the District received a letter from Student's pediatrician requesting that Student be tutored at home. The District scheduled a meeting for September 26, 2006 to review this letter and to discuss the plan for Student's triennial evaluation, including a neuropsychological assessment. The September 26 meeting was canceled by the Parents, who indicated that they would be unable to attend a meeting until October 2, 2006. (Testimony of Bischoff, Exhs. 13, 16) The District then offered, again without prejudice to its position regarding placement, two hours of home-based tutoring with related services to be provided at Troy Elementary School.

A meeting was scheduled for October 2, 2006 to discuss whether Student's IEP should be amended, as well as Student's three-year evaluation, the September 18, 2006 letter from the pediatrician and the request for a neuropsychological evaluation. (Exhs. 5, 9, 14) The Parents elected not to attend this meeting. (Exh. 4) That same day, Parents were advised that the District would conduct a neuropsychological evaluation; on October 4, 2006, the Parents were asked to execute releases for the District to obtain necessary information, as well as permission to evaluate Student. Neither the releases nor the permission to evaluate were returned. (Testimony of Evans)

Although the team listened to the Parents' concerns, and gave due consideration to the Parents' suggestions as to methodologies, not all of those methodologies were deemed appropriate for Student. (Testimony of Evans, Bischoff) The District made considerable efforts to accommodate the Parents' philosophies and incorporate them into Student's program where appropriate; such efforts included researching the Son-Rise Program, setting aside time for the Parents to lead a discussion regarding their philosophies, and agreeing to conduct a behavioral analysis. (Exh. 54)

On October 26, 2006, the Parents advised that they were declining special education services for Student. (Exh. 171)

### **III. DISCUSSION**

The issue to be determined is whether the District's proposed placement for the 2006-2007 school year is reasonably calculated to provide meaningful educational benefit to Student. Brown v. Bartholomew Consolidated School Corp., 2005 WL 552194 (S.D. Ind. 2005), *vacated and remanded* F3d 2006 WL 784953 (7<sup>th</sup> Cir. 2006). Deference must be given to the methodologies chosen by the educators; parents are not entitled to compel a school district to employ a specific methodology for their child. *See Lachmann*

v. Board of Education, 852 F.2d 290, 297 (7 th Cir. 1988). The burden of proof is on the Parents who are challenging the proposed placement. Student/Londonderry School District, Case No. IDPH-FY-06-11-032 (March 2006).

In this case, the evidence demonstrates that the District has proposed a school-based, customized program for Student which provides ample inclusion and which utilizes a blend of carefully selected methodologies. This program is reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. See Michael D.M. et al v. Pemi-Baker Regional School District, 41 IDELR 267, 268 ( U.S. Dist. Ct., NH 2004).

#### **IV. PROPOSED FINDINGS AND RULINGS**

#### **V. ORDER**

In light of the above, the following order is made:

- 1) For the 2006-2007 school year, placement in the ASD program and regular first grade located at Troy Elementary School is appropriate for Student, is least restrictive and is reasonably calculated to allow Student's IEP to be successfully implemented, to allow Student to make educational progress and to provide meaningful educational benefit.
- 2) Student's stay-put placement is the regular first grade classroom and the ASD program at Troy Elementary School.

#### **VI. APPEAL**

In accordance with RSA 186-C, this Decision may be appealed to a court of competent jurisdiction. The Parents may obtain a transcription of any proceedings from the Department of Education. The District shall promptly notify the Commissioner of Education if any party seeks judicial review of this Decision.

So ordered.

Date: November 24, 2006      Amy B. Davidson, Hearing Officer