

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Parents/Hillsboro-Deering School District

(SB-FY-14-07-002)

RECOMMENDATION OF HEARINGS OFFICER

HEARING DATE: November 1, 2013

PETITIONERS: Parents (*Pro se*), Hillsboro, NH 03244

RESPONDENT: Hillsboro-Deering School District
Superintendent, Robert A. Hassett
P.O. Box 2190, Hillsboro, NH 03244

LEGAL COUNSEL: Edward M. Kaplan
Sulloway & Hollis
P.O. Box 1256
Concord, NH 03301

I. FINDINGS OF FACT

By letter dated July 23, 2013, Petitioner Parents, appearing *pro se*, filed an appeal with the State Board of Education challenging the Hillsboro-Deering School Board's refusal to grant their request for placement of their son at a school in the Contoocook Valley Regional School District. School District Exhibit E. That original request was made in March 2013 and was based on an allegation that their son was the subject of ongoing bullying while an eighth grade student at the Hillsboro-Deering Middle School. School District Exhibit A.

The Parents' had appeared before the Hillsboro-Deering School Board on May 20, 2013 after which the School Board issued a letter dated June 4, 2013 stating that it was deferring action on the Parents' request until Student had received and the School Board

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had reviewed the results of "[redacted] evaluation". The Parents renewed their request for a decision on their reassignment request by letter dated June 16, 2013 (School District Exhibit C) after which the School Board responded on June 19, 2013 that it "was awaiting the results of [Student's] [redacted] evaluation in order to make [its] decision". School District Exhibit D. The Parents' appeal of this decision to the State Board was delayed until July 23, 2013 [redacted]

On August 6, 2013, a prehearing conference was held at which it was agreed that if the parties could not reach an agreement on the need for an evaluation, an appeal hearing would be conducted on September 26, 2013. At the September 26, 2013 hearing, the Parties stipulated that Student was no longer being home-schooled but had, in August 2013, enrolled [redacted] at Hillsboro Deering High School. As a result of this change in circumstances, the matter was continued by agreement of the Parties "to allow the Parents an opportunity to present additional... evidence [in support of their "manifest educational hardship" claim] at a hearing before the Hillsboro-Deering School Board and to allow the School Board an opportunity to consider the Parents' presentation and issue a written decision pursuant to the requirements of Ed 204.01(e)." Order, September 26, 2013. It was also agreed that, if the Parties remained in dispute after the School Board hearing decision, an appeal hearing on the merits would be held on November 1, 2013.

A hearing was held before the Hillsboro-Deering School Board on October 7, 2013 at which the Parents and Superintendent Haslett presented their positions. Minutes, School District Exhibit O. The Parents also submitted a September 3, 2013 letter from Student's primary care physician, [redacted] M.D., (Parents Exhibit 6) while the

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School District submitted a September 24, 2013 letter from Hillsboro-Deering High School Principal Jim O'Rourke. School District Exhibit N. By letter dated October 10, 2013, the School Board issued its decision finding that Student's grades and attendance at the high school were good and that he was doing "reasonably well socially in the new environment". On this basis the School Board ruled that Parents' had not presented evidence of a "manifest educational hardship" within the meaning of RSA 193:3 and denied Parents' request for placement at the Con Val School District .

At the November 1, 2013 State Board appeal hearing, the Parents appeared *pro se* and stated that Student had been bullied by students at the middle school and, as the same students were attending the high school, they were concerned that it was going to happen again there. In support of their view, the Parents stated that, although Student was doing well at the high school so far, [REDACTED] had also started out well at the middle school. The Student also appeared and stated that, in [REDACTED] view, [REDACTED] was now being bullied at the high school in addition to what had occurred previously at the middle school.

II. RULINGS OF LAW

New Hampshire law provides that parents may apply to their local school board for relief if they believe that "the attendance of the child at the school to which such child has been assigned will result in a manifest educational hardship". RSA 193:3. The Parents claim that Student was bullied in middle school and may be bullied in high school. The School District asserts that the middle school issues were investigated and resolved at the guidance department level and did not constitute bullying. The issue in this appeal under RSA 193:3, however, is not whether Student was in fact bullied in middle school or may be subject to bullying in high school. The issue is simply whether

Student's attendance at Hillsboro-Deering High School will result in a "manifest educational hardship".

Ed 320.01(b) provides that a parent seeking a change of school assignment based on manifest educational hardship must demonstrate that there will be a "detrimental or negative effect" on the student if [redacted] continues to attend the school to which he/she is assigned." Ed 321.01(e) further states that a parent must present to the local school board "clear and convincing" evidence that "a substantial portion of a pupil's academic, physical, personal and social needs cannot be met by the assigned school" and that this failure "will impair the educational progress" of the student. Ed 321.01(e)(1)-(2).

As the Parents candidly stated that Student has started off well at the high school, both academically and socially, and similar information was provided to the Hillsboro-Deering School Board, there was clearly no factual basis for the School Board, or for the State Board at this time, to find a "manifest educational hardship" in this case.

III. RECOMMENDATION

In accordance with the foregoing factual findings and legal rulings, it is recommended that the State Board order that the Parents' appeal be denied for failure to meet their burden of showing that Student's attendance at Hillsboro-Deering High School constitutes a "manifest educational hardship". If Student's circumstances at Hillsboro-Deering High School change significantly and a manifest educational hardship subsequently develops, the Parents will, of course, be free to request the school board for a change of school assignment and can once again attempt to meet their burden of proof on that issue at that time.

IV. CONCLUSION

On the basis of the foregoing analysis, the Parents' appeal is hereby DISMISSED.

V. NOTICE PURSUANT TO ED 201.01

Any Party, within 15 days of the date of this Proposed Order, may file a list of exceptions with supporting memoranda of law for review by the State Board. Any Party who wishes to present oral argument to the Board shall file a separate request for oral argument within the same time frame.

Date: November 27, 2013


Peter T. Foley
Hearing Officer