

STATE OF MAINE
SPECIAL EDUCATION DUE-PROCESS HEARING
#17.014H

Parents)
)
v.)
) SUMMARY JUDGMENT ORDER
York School Department)
)

On September 1, 2016, I entered a Stipulated Order on Stay Put Placement, ordering that the Student continue attending [REDACTED] in [REDACTED], Maine (“[REDACTED]”) during the pendency of the due process proceedings. On September 13, 2016, Deputy Commissioner William Beardsley issued a letter granting a waiver of the age limitation in [REDACTED] licensing requirements for the “pendency of the due process proceedings.” The parties to this proceeding have jointly filed a Motion for Summary Judgment on a stipulated record and set of facts pursuant to their agreement that the Student shall remain placed at [REDACTED] through the end of [REDACTED] summer program in 2017. I have carefully reviewed the undisputed facts in this case and based on those facts I hereby enter the following decision and order:

Stipulated Facts

1. The Student was born on [REDACTED]. The Student is therefore of [REDACTED] age under 20-A M.R.S.A. § 5201(2)(B) and under MUSER VI.2(C)(2)(b), (c).
2. The Student’s parents reside in [REDACTED], Maine and therefore the [REDACTED] School Department (“[REDACTED]”) has educational responsibility for the Student.

3. The Student is an identified child with a disability under state and federal special education laws. He is identified as a student with autism. His cognitive abilities have most recently been measured at the level of 70. His Vineland Adaptive Behavior Composite was at a standard score level of 60. The Student's receptive and expressive communication skills tested very low, with an expressive standard score of 54 and a receptive standard score of 50. He is dependent on augmentative alternative communication (AAC) devices and Picture Exchange Communication System (PECS) for communication. He does not yet have functional verbal speech. The Student can occasionally be aggressive, and he needs eyes on monitoring to ensure that he physically remains where he belongs.

4. The Student has been served as a student with a disability through the Child Development Services ("CDS") system up until the start of the current school year (2016-2017). Prior to the current school year, the Student was attending [REDACTED] in [REDACTED], Maine ("[REDACTED]"). [REDACTED] is a private special purpose school that serves children with developmental disabilities. Based upon his age, he was served by [REDACTED] through the CDS system up through the end of the summer of 2016. [REDACTED] is currently licensed by the Maine Department of Education ("MDOE" or "Department") to serve students up until they are entitled to enter [REDACTED]. The last day that [REDACTED] would normally have been licensed to serve the Student was August 31, 2016.

5. At an IEP team meeting on April 14, 2016, the parents, [REDACTED], and [REDACTED] school officials discussed the Student's IEP and placement for the upcoming school year. [REDACTED] officials at that time were considering the Student to be appropriate for placement in [REDACTED] self contained program at [REDACTED] School. The Team issued a new IEP on that

date addressing his services through the end of the summer of 2016. The Team also ordered evaluations to be completed through the spring and summer of 2016.

6. The Student received a speech evaluation in April/May 2016, an occupational therapy evaluation in May 2016, a PT evaluation in June 2016, and a psychological evaluation in July 2016.

7. On August 16, 2016, the Student's parents filed a due process hearing request with the MDOE asserting that [REDACTED] proposal to have the Student attend a self contained special education program at the [REDACTED] School in [REDACTED] was inappropriate at this time and would not provide him with a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.* The parents further sought placement for the Student at the [REDACTED] in [REDACTED], Maine, or, if possible, a continued placement of the Student at [REDACTED].

8. The Student's disabilities, as set forth in his IEP and in the most recent evaluations, present complex challenges for his learning, and heightened difficulties for transition into new educational settings. The Student's very limited communication skills and his cognition challenges make it particularly difficult for him to move from an educational setting within which he has become comfortable and accepted into a new educational setting with a different classroom, different providers, and a different school building. On top of his substantial communication difficulties, the Student will also occasionally dart from educational settings. At the present time, there appears to be a greater risk of such behaviors if he is moved into a different educational setting.

9. The Student has been receiving an appropriate education at [REDACTED]. He is in a classroom with educational providers who understand his needs and know how to address the

challenges he presents. He has been benefiting from this educational program. His educational needs require that he remain at [REDACTED] through the 2016-2017 school year while his IEP team and providers carefully address his transition needs for movement into a new educational placement and setting for the 2017-2018 school year.

10. The Student's educational needs also require that he remain at [REDACTED] during its available summer programming in the summer of 2017. The Student's placement at [REDACTED] during the summer of 2017 will avoid the transition difficulties that would arise if he were to receive Extended School Year services from providers and at a location different than [REDACTED] or the placement that his IEP team will have ordered for the 2017-2018 school year.

11. [REDACTED] currently has an opening available that would permit the Student to continue in the level of programming for the 2016-2017 school year that was successful for him during the 2015-2016 school year. The only barrier for [REDACTED] accepting the Student in that placement is [REDACTED]'s current age restriction in its licensing standards. As noted, the MDOE has approved a waiver of this age limitation, but only "during the pendency of these proceedings."

12. The MDOE, through its attorney Sarah Forster, has stated that the Department will grant a one-time waiver for the Student to remain at [REDACTED] for the remainder of this school year and during [REDACTED]'s programming for the summer of 2017, should the Hearing Officer and parties agree upon an order supporting such a placement. The Department will not grant further waivers for the Student at [REDACTED] for any time period after the summer of 2017.

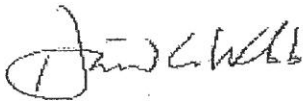
13. The parties agree that the Student should remain in his current program at [REDACTED] through the 2016-2017 school year and during [REDACTED]'s 2017 summer program, and that this

placement is the least restrictive setting for the current school year in which he can get an appropriate public education.

DECISION AND ORDER

I find that the [REDACTED] in [REDACTED] Maine is the least restrictive setting in which the Student can receive an appropriate education during the 2016-2017 school year and during the summer of 2017. I therefore ORDER that the Student remain placed at [REDACTED] in accordance with his current IEP, as it may be modified by the IEP team from time to time, for the 2016-2017 school year and for [REDACTED]'s 2017 summer program. I further order that the Student's IEP team continue to explore, throughout the school year, ways to move the Student into an appropriate placement that is properly licensed for his age for the 2017-2018 school year.

Ordered this 11th day of October, 2016.



David C. Webb, Esq.
Hearing Officer