

STATE OF VERMONT  
DEPARTMENT OF EDUCATION

Special Education  
Case # DP-14-12 ( )

Due Process Hearing

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Nature of the Case, Issues and Exhibits

A Due Process Hearing Request was filed in this matter on April 21, 2014, by the Parent acting pro se. Respondent Missisquoi Valley Union High School (hereinafter called "MVU") filed its response April 30, 2014, also appearing pro se, acting through its Special Education Coordinator who is also an attorney. See Vermont Special Education Rule 2365.1.6.15(c).

The parties identified the following issues to be decided at the hearing.

1. Would converting the student to the Learning Center full time deprive student of a free appropriate public education (FAPE)?
2. Is the Learning Center the least restrictive environment for Student?
3. Should the IEP be changed so that the Student is placed in the High School full time at the start of the next academic year?
4. Should the May 8, 2014 IEP be implemented by placing Student in the Learning Center full time?

The relief sought by Parent was that Student should remain in the current hybrid schedule for the remaining days of this academic year, then at the start of the next academic year Student should be placed in the High School full time.

The hearing took place on May 15, 2014, at the Franklin Northwest Superintendent's Office, 100 Robin Hood Drive, Swanton, Vermont.

The following exhibits were admitted into evidence. The Respondent's Core Exhibits which will be referenced as C plus the applicable stamped page number. Resumes of and Parent's Exhibit 1 consisting of Check-In, Check-Out forms.

Findings of Fact

1. The student, is years old, DOB: , and is in the grade at MVU with a "hybrid" part time placement at Learning Center. (Stipulation of parties.)

2. The student has \_\_\_\_\_ and is eligible for special education as a student with an \_\_\_\_\_ (Stipulation of parties.)
3. The student's IEP and Evaluation are current and there is no issue of any procedural or substantive nature regarding \_\_\_\_\_ special education prior to the April meeting wherein an offer of a change of placement was made. (Stipulation of parties.)
4. Prior to that time, the student was in a "hybrid" educational placement consisting of three (3) days per week at MVU and two (2) days per week at \_\_\_\_\_ Learning Center. (Stipulation of parties.)
5. MVU includes grades 7-12 and has an enrollment of 900 students. ( \_\_\_\_\_ testimony.)
6. \_\_\_\_\_ Learning Center is an accredited, independent licensed school operated by Respondent. It is a \_\_\_\_\_ and has a \_\_\_\_\_ available. It uses a reward system to promote \_\_\_\_\_. It has highly qualified regular education teachers. Due to its lower student-staff ratio and training in dealing with \_\_\_\_\_, \_\_\_\_\_ is better equipped to handle student \_\_\_\_\_ than MVU. (Testimony of \_\_\_\_\_ and \_\_\_\_\_.)
7. Students can get a high school diploma at \_\_\_\_\_. Students at \_\_\_\_\_ can play in sports activities at MVU. ( \_\_\_\_\_ testimony.)
8. It is common for students enrolled at \_\_\_\_\_ to progress to the point where they are then transitioned back to MVU. (Testimony of \_\_\_\_\_.)
9. \_\_\_\_\_ is a more \_\_\_\_\_ environment. Students cannot leave the classroom unaccompanied.
10. All witnesses agreed that the hybrid schedule with three days at MVU and 2 days at \_\_\_\_\_ per week has not been working.
11. Student is failing all of \_\_\_\_\_ classes except gym and will have to repeat the \_\_\_\_\_ grade. (Testimony of Parent, \_\_\_\_\_, Exhibits CA21, 26.)
12. Throughout 2013 and 2014 Student has been disciplined numerous times at MVU for \_\_\_\_\_ including: \_\_\_\_\_ (2/17/14, C176; 9/10/13, C184; 9/10/13, C185; 9/9/13, C186; 9/3/13, C190; 5/13/13, C199); \_\_\_\_\_ (3/10/14, C186; 9/4/13, C188; 6/4/13, C193; 1/25/13, C202-206; 1/17/13, C209); \_\_\_\_\_ (3/10/14, C172; 9/11/13, C182; 9/10/13, C183; 8/30/13, C191; 6/4/13, C194; 5/30/13, C198); \_\_\_\_\_ (9/16/13, C179).
13. Unlike MVU, at \_\_\_\_\_ fights do not result in suspensions. ( \_\_\_\_\_ testimony.) There was an incident in September 2013 where according to Parent two boys at \_\_\_\_\_ jumped Student and beat \_\_\_\_\_. No documentation of this incident has been produced by either party.

14. A check-in and check-out procedure was commenced at MVU whereby Student's MVU teachers would rate whether or not Student was properly engaged in classes, and (Parent's Exhibit 1.)

15. The most recent forms available from April 1, 2014 through May 3, 2014, show five days with ratings of 100%, one day with a rating of 88%; one day with 78%; and one day with 75%. Ratings for other days in this time span are missing.

16. On April 16, 2014, Student began taking \_\_\_\_\_ for \_\_\_\_\_ and \_\_\_\_\_, as prescribed by \_\_\_\_\_ (Parent testimony.)

17. Student has a variety of \_\_\_\_\_ conditions for which \_\_\_\_\_ is being tested or treated. reportedly has \_\_\_\_\_ and \_\_\_\_\_ (Parent testimony; C23; CA3.)

18. Nonetheless Student is physically active and is interested in playing football, riding bicycle, swimming and fishing. Student has consistently received excellent marks in gym, which enjoys. (Parent testimony.)

19. The \_\_\_\_\_ has helped improve Student's \_\_\_\_\_ and \_\_\_\_\_ (Parent testimony; testimony; CA3).

20. Despite the benefits of the \_\_\_\_\_ Student still had a problem with leaving or avoiding classes at MVU in April and May of 2014. (Testimony of \_\_\_\_\_) On May 9, 2014, for example, Student left \_\_\_\_\_ class on a bathroom pass and went to the library where \_\_\_\_\_ punched a wall and was belligerent to staff. (\_\_\_\_\_ testimony.)

21. A \_\_\_\_\_ was done on March 11, 2013, by \_\_\_\_\_, in which it was found that Student "remains at moderate-high risk for future \_\_\_\_\_ within the school setting." (C51, 65).

22. Student has an \_\_\_\_\_ suffers from \_\_\_\_\_ (CA4, C70.) wants to learn but is easily distracted. Changes in periods are a problem for Student because \_\_\_\_\_ is Student has suffered from a lack of consistency in changing back and forth from MVU to \_\_\_\_\_ (Parent testimony.)

23. Going full time at \_\_\_\_\_ would help improve Student's \_\_\_\_\_ and \_\_\_\_\_ likelihood of getting back to MVU would be good. (\_\_\_\_\_ testimony.)

24. Student's May 7, 2013, IEP (C68) and May 8, 2014, IEP (CA1) are similar. The main difference is that the May 8, 2014 IEP places Student full time at \_\_\_\_\_ (CA5), identifies program modifications such as \_\_\_\_\_ system (CA15), and details \_\_\_\_\_ (CA17).

#### CONCLUSIONS OF LAW

In accordance with the federal Individuals with Disabilities Education Act (IDEA) 20 U.S.C. § 1400 et seq., and Vermont's implementing regulations, Department of Education

Regulations 2360 et seq., children with disabilities in the State of Vermont are entitled to receive a free, appropriate public education (FAPE). The Act requires that the education provided must be tailored to the unique needs of the disabled student by means of an individualized educational program (IEP).

Under the leading case of *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed. 2d 690 (1982), the requirements of law are met when the school provides “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” 458 U.S. at 203. Additionally, the IEP “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”

In determining whether the school has complied with the IDEA’s mandate for the least restrictive environment, one must consider two issues: (1) whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily, and (2) whether the school has mainstreamed the child to the maximum extent appropriate. *Oberti v. Board of Ed of Clemonton*, 995 F.2d 1204, 1215 (3d Cir. 1993). Accord, *P. v. Newington Bd of Ed*, 546 F.3d 111 (2d Cir. 2008).

In the *Newington* case the Court aptly noted the factors to be considered:

In sum, in determining whether a child with disabilities can be educated satisfactorily in a regular class with supplemental aids and services (the first prong of the two-part mainstreaming test we adopt today), the court should consider several factors, including: (1) whether the school district has made reasonable efforts to accommodate the child in a regular classroom; (2) the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and (3) the possible negative effects of the inclusion of the child on the education of the other students in the class.

546 F.3d at 120.

I find that Student cannot be educated satisfactorily in a regular class with supplemental aids and services. Respondent has made strenuous efforts to mainstream Student and has devoted trained and competent personnel to the task. Parent has not demonstrated any deficiencies in Respondent’s efforts. The parties agree that the hybrid program did not work because Student could not handle that many changes in scheduling and setting. In addition, the opportunities for skipping classes at MVU have remained too tempting for Student to resist. Putting Student into the \_\_\_\_\_ program would be a better choice to give Student the stability and close supervision Student needs. Finally, due to Student’s \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ indicate that Student is not yet ready for MVU.

Respondent has included Student in school programs with \_\_\_\_\_ children to the maximum extent appropriate. Student may still participate in sports at MVU. Once Student has

shown and , has a high likelihood of return to MVU full time. A hybrid program with some time in MVU has been proven to be unworkable for Student.

In her testimony, Parent asserted that the use of the Check-In, Check-out procedure generated sufficient good ratings to prove that Student would be able to handle a full time placement at MVU. However, five days of proper behavior over a month and a half does not counterbalance continuing episodes of classes and

Parent also implies in her post-hearing brief that attendance at the enter carries a social stigma that she wishes to avoid. In light of the uncontested testimony that students frequently graduate from into MVU, I find that the center has a proven track record and is beneficial. No competent evidence has been introduced to establish that enrollment at would be detrimental to Student's social standing. To the contrary, resolving Student's issues with and would be far more likely to enhance Student's ability to fit in with others, make friends, and thrive as well as academically.

Accordingly, the issues posed in the Prehearing Order can be answered as follows.

1. Would converting the student to the Learning Center full time deprive student of a free appropriate public education (FAPE)? No.
2. Is the Learning Center the least restrictive environment for Student? Yes.
3. Should the IEP be changed so that the Student is placed in the High School full time at the start of the next academic year? No.
4. Should the May 8, 2014 IEP be implemented by placing Student in the Learning Center full time? Yes.

#### ORDER

Based on the foregoing, it is ordered that:

1. Parent's requests for relief are denied.
2. The May 8, 2014 IEP shall be implemented by placing Student in the Learning Center full time.

#### NOTICE OF APPEAL RIGHT

Pursuant to Vermont Department of Education Rule 2365.1.8:

“(a) The decision of a hearing officer is final unless appealed to a state or federal court of competent jurisdiction within 90 days of the decision.

(b) Parties have right to appeal the hearing decision by filing a civil action in a federal district court or a state court of competent jurisdiction. An appeal from a due process hearing decision to a court of competent jurisdiction in accordance with Rule 2365.1.9 shall be commenced within 90 days from the notice of the final decision, and not after.”

Dated this 3 day of June 2014 at Brattleboro, Vermont.

  
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Bruce Hesselbach, Hearing Officer