

DECISION

STATE OF VERMONT
DEPARTMENT OF SPECIAL EDUCATION

DP-12-16 ()

Hearing Officer - Jane Gomez Dimotsis

Parties: Father of () vs. Rutland City School
District

This case came before the decision maker by the filing of a due process complaint by [REDACTED]'s father on February 21, 2012. The hearing was held on April 11 and 13, 2012 in Rutland, Vermont. Attorney for the father is Linda Reiss, Esq. and the Rutland School District was represented by Dina Atwood, Esq. Based on the credible evidence adduced and upon the pleadings and papers on file with this case, the hearing officer makes the following findings of fact, conclusions of law and order.

ISSUES

Father has alleged the individualized educational program (IEP) offered by the Rutland City School District for his (), has failed procedurally and substantively to provide [REDACTED] a free, appropriate public education (FAPE). Specifically, he argues that the School District did not adhere to procedural requirements developing, revising, informing and providing services which is a denial of FAPE. He argues the School District did not preserve the child's physical and emotional safety and the District's lack of responsibility regarding accountability is also a denial of FAPE. The father is requesting more involvement of a private consulting firm in Rutland, S.D. Associates, to oversee or work with the school to program and to implement an appropriate behavioral plan that would meet the ongoing changing needs of [REDACTED] in the Rutland City School [REDACTED] attends.

Father specifically cites the following issues that he argues provide evidence that IEPs were not followed and FAPE was denied.

1. An annual review date for [REDACTED] IEP was missed. Father's partner (Father's partner is, although not legally, his wife and step-mother to [REDACTED]. She has been an active advocate for [REDACTED], taking the lead in this regard due to [REDACTED] education and experience) informed the school of this. The original date for annual review was May 16, 2011. There was no meeting until June 10, 2011. At the 6/10/2011 meeting father states it was agreed that a comprehensive evaluation would be done of [REDACTED] in the Fall of 2011. This was to include a Functional Behavioral Assessment and an agreement to collaborate with S.D. Associates with this part of the assessment. Although in progress the Assessment has yet to be completed.

2. Father also complains that IEP progress reports were not done timely.

3. There is a special van that transports [REDACTED] to the school and father complains they are frequently late picking up [REDACTED], which shortens [REDACTED] school day.

4. Father argues that on October 17, 2011 [REDACTED]. "bolted" from the school toward the road and disagrees strongly with the way this was handled. It resulted in a male para-educator helping restrain [REDACTED], with [REDACTED] female para-educator and Father does not want males to restrain [REDACTED], due to [REDACTED] history. Father argues that a male has repeatedly restrained [REDACTED] at the school, following [REDACTED] restraint [REDACTED] again escalated [REDACTED] behavior to the point [REDACTED] had grabbed scissors and was threatening staff with them. The member of S.D. Associates who was there restrained [REDACTED] and took the scissors from [REDACTED].

5. Father argues that [REDACTED] was allowed to watch a movie entitled "Goosebumps" at the school which caused [REDACTED] to have to return to sleeping medication due to [REDACTED] fears from watching this movie. Father states that the evening after watching the film [REDACTED] behaviors significantly escalated.

6. Father also complains that rules that he has requested surrounding food issues that [REDACTED] has have not been strictly adhered to by the District. Father wants more S.D. Associate involvement to keep [REDACTED] safe.

As a result of this hearing the Father wants 2 behavioral interventionists from S.D. Associates supervised by a BCBA with four hours of direct program consultation, consistent implementation of the behavior support plan by S.D. Associates, detailed documentation and data collection on [REDACTED] behavior and progress, and a small private workspace at the Intermediate school with regular education with [REDACTED] peers and additional opportunities for [REDACTED] such as gym, art, music etc.

or

Father requestss that one lead behavioral interventionist from S.D. Associates and one school para-educator for [REDACTED], supervised by a BCBA provide four hours of direct program consultation, consistent implementation of the S.D. Associates behavior plan, detailed documentation and data collection, a small private workspace for [REDACTED] at the Intermediate school with additional opportunities just as gym, art, music and whatever else is provided.

FINDINGS OF FACTS AGREED UPON BY PARTIES

1. [REDACTED] is currently [REDACTED] years old and attend the Success School which is part of the Rutland City School District.
2. [REDACTED] has been attending the school since January 2011 due to hospitalizations at Brattleboro Retreat following [REDACTED] father's obtaining custody of [REDACTED] in 2010.
3. [REDACTED] received multiple diagnoses including [REDACTED] ([REDACTED]), [REDACTED] ([REDACTED]), and [REDACTED] ([REDACTED]). [REDACTED] and has also been diagnosed with having [REDACTED] ([REDACTED]).
4. [REDACTED] is disabled within the meaning of the statutes as a disabled child.
5. [REDACTED] displays behaviors that are extraordinarily challenging and complex with physical, emotional and behavioral needs that can change on a daily basis.
6. [REDACTED] has been physically assaultive, difficult to control and potentially injurious to [REDACTED] and others needing restraints.
7. [REDACTED] has been hospitalized many times in [REDACTED] young life prior to coming to the Rutland school district including two separate occasions at the Brattleboro Retreat since arriving at the school district in April 2010.

ADDITIONAL FINDINGS OF FACT

8. [REDACTED] currently lives with [REDACTED] father and his partner (also referred to in this opinion as [REDACTED] stepmother), [REDACTED] parents and [REDACTED] siblings who are [REDACTED] and [REDACTED] years old as well as [REDACTED] father's partner's children who are [REDACTED], [REDACTED] and [REDACTED] years old. Father's partner's mother also runs a small (2 child) licensed day care business out of the home. The home is large and is located on a quiet street and has a swimming pool and trampoline on the property.

9. Both father and his partner work full-time outside the home. Partner's father cooks for the family dinners and the whole family dines out once a week. [REDACTED] usually does not usually return home from services provided to [REDACTED] by S.D. Associates (addressed later in the opinion) after school and until after 7:00 p.m. in the evenings on weeknights. [REDACTED] spends from noon until 6 p.m. with S.D. Associates on the weekends.

10. Prior to 2010 [REDACTED] was living with [REDACTED] mother and [REDACTED] mother's partner. One of the reasons for the custody change was that biological mother was uncooperative with both the school system where they lived and father and had spent some of [REDACTED] life with [REDACTED] living with a sex offender. [REDACTED] had some home tutoring but little formal schooling.

11. When [REDACTED] first came to live with [REDACTED] father and new family [REDACTED] was on 16 different medications. [REDACTED] has been weaned off all medications except a sleeping medication which [REDACTED] had to begin using again. There is a dispute regarding why the use of medication occurred. [REDACTED] had severe problems at home the night [REDACTED] had watched the Goosebumps movie at school. Father and partner attribute this to [REDACTED] having watched the movie but since [REDACTED] was fine at school it is not possible for the hearing officer to tell what happened between watching the movie and then going to S.D. Associates and then home since so many hours had passed and [REDACTED] had been in two subsequent environments. There was no evidence regarding what, if anything, happened after 2:00 p.m. until bedtime.

12. When [REDACTED] went to the school district immediately following transfer of custody [REDACTED] was physically and emotionally out of control in every sense. [REDACTED] was injuring, biting, hitting, kicking, spitting, swearing, not eating, sleeping or following any routine at school or home. Often it would take two to four adults to restrain [REDACTED] and keep [REDACTED] safe from [REDACTED] and others. [REDACTED] was described as being like "a wild animal" in plaintiff's written history presented to the hearing officer. These periods lasted anywhere from two to eight hours or longer. [REDACTED] was hospitalized at the Brattleboro Retreat from April 28, 2010 until after Thanksgiving. During that time the father and his partner, the District, Rutland Mental Health Services, the Brattleboro Retreat and the Local Intervention Team worked closely in order to transition [REDACTED] back home and to school. The Rutland School District who placed [REDACTED] in the Success School also recommended that the family utilize S.D. Associates, a private behavioral consulting firm in Rutland to assist in the transition plan. A plan was established in part by Alison Stone, Board Certified Behavior Analyst with S.D. Associates, which the school supported.

13. Even the well crafted plan did not succeed and [REDACTED] had to return to the Brattleboro Retreat from the end of December until mid-January of 2011.

14. Many meetings were held with the school district and the family to include "wrap-around" services for [REDACTED]. After school this included the double staffing of two behavioral interventionists from 2 p.m. (at the end of [REDACTED] school day) until 7:30 each night during the week and from noon until 6 p.m. on week ends. This plan remains in effect. On school vacations [REDACTED] is at S.D. Associates from 8:00 a.m. until 7 p.m. S.D. Associates frequently revises the plan as [REDACTED] needs change daily. [REDACTED] can earn additional home time by good behavior.

15. There were many meetings with the school district as well after [REDACTED] hospitalization to develop plans for [REDACTED] to be successful in school. Everyone agreed that [REDACTED] home, out of home time with S.D. Associates and school time be as consistent as possible.

16. The parents argue that this worked until around May of 2011 when the school started only using some of S.D. Associate's plan. Due to this the father contends that [REDACTED] has been denied FAPE, a fair and appropriate public education, under the Disabilities Education Act (IDEA) and that they have failed to comply with [REDACTED] Individualize Education Plan (IEP) on many occasions. Father contends that this places [REDACTED] safety at risk. He also contends that the school has failed to follow "Rule 4500" which establishes rules regarding restraints and the reporting of the restraints.

17. This is the primary basis of father's due process complaint and he cites incidents upon which there was testimony at hearing. However, this simply overlooks the amount of contact between the parents and the school on a daily basis.

18. The [REDACTED] disagrees with father's allegations and presented evidence at hearing on each incident complained of which can be found later in this opinion.

19. The [REDACTED] is part of Rutland's City School District. It is a therapeutic school for children who have issues which make it impossible for them to be in regular public school classes. Where [REDACTED] is currently located [REDACTED] has a private room with two trained para-educators and an additional special counselor on call by walkie-talkie all of the school day. [REDACTED] does join, when [REDACTED] behavior makes it possible, [REDACTED] peers for lunch and art classes. However, the plan is to move [REDACTED] classroom to the intermediate school. Where [REDACTED] is now is all middle school and high school students except for [REDACTED]. The intermediate school would have an almost an identical room to what [REDACTED] has now but would allow [REDACTED] more peer contact with children [REDACTED] age, a longer school day and access to art, music and some other additional classes. [REDACTED] special educator, [REDACTED], would remain the same. Now [REDACTED] works with [REDACTED] special para-educators weekly to prepare [REDACTED] lessons as well as meeting with [REDACTED] and working with [REDACTED] directly 2 times a month. In the intermediate school [REDACTED] would be in [REDACTED] actual classroom with [REDACTED] para-educators.

20. Susanne [REDACTED] is the principal of the [REDACTED]. [REDACTED] two para-educators are [REDACTED] and another woman named [REDACTED]. [REDACTED] is a licensed special educator educator and both she and [REDACTED] have had two types of training in restraints. One training was provided by the educational system and special training by S.D. Associates. This training includes a behavioral plan to follow to deescalate [REDACTED] from getting from inappropriate verbal behaviors to dangerous ones, either to [REDACTED] or others.

21. S.D. Associates also has trained staff who work well with [REDACTED].

22. [REDACTED] father and his partner's relationship with the Success School personnel has deteriorated. Both the father and his partner are loving advocates for [REDACTED]. They are understandably sensitive to any discrepancies between S.D. Associates work with [REDACTED] and the school's program they do not understand. They do not want [REDACTED] to have to be hospitalized again and therefore can be somewhat challenging for the school personnel to deal with on certain issues. There is no question that all parties want to help [REDACTED] succeed. However, the parents differ as what methods should be strictly followed and whether S.D. Associates or the school should be the driving force directing [REDACTED] education.

23. At the [REDACTED], [REDACTED] also works with [REDACTED], a trained school counselor soon to receive her masters degree in counseling in May of

2012. She has many years of experience in working in counseling and has been with the Success School for three years. Although she was involved with ●, since the beginning at the Success School, she was not ● counselor until this year. Prior to Ms. ●, a staff person from Rutland Mental Health Services was ● counselor. ● family (father and partner) asked that ● services be terminated with ●.

24. Ms. ● feels strongly that ● has made a lot of progress at the Success School this year and ● is now ready for more peer contact as ● behavior issues are much more in control. She said ● is "emerging" and needs to see children at the Intermediate School standing in line, working with their para-educators to model ● own behaviors and to make friends. She said all parties were originally in agreement with this move of Success School's classroom location for ● to the Intermediate school.

25. Ms. ●, along with others who teach ● at the Success School, has been trained in both CPI and the behavioral plan written by SD Associates. She finds them similar and in the same spirit. The difference being that one is for a school setting and one is used in a different type of setting at S.D. Associates.

26. Ms. ● was also very clear that ● behaviors and needs for restraints have dramatically changed for the better, including what is referred to as "bolting" which is leaving the task and includes running from the classroom. A major event occurred in October of 2011 where ● ran out of the school and toward the street. The way this was handled by the school has been a major source of conflict between the school and the parents. When ● bolted the person closest to ● became a male para-educator who helped ● female para-educator restrain ●. After returning to the school ● re-escalated and kept staff at bay with scissors. ● "stepmother" was present by this time having been called by the school personnel and she had also called a member of S.D. Associates who was present. The S.D. Associate called the head of S.D. Associates during this crisis and moved in to take the scissors from ●.

27. Eloise McGarry is the Director of Special Education Support Services at the ● and has been for twenty years. She has a license as a Director of Special Education and Special Educator Intensive Special Needs for ages 3 - through 21, Principal and Superintendent. She has a Master's Degree and Certificate of Advanced Study in special education.

28. She is the LEA representative for eligibility for IEPs as well as the final decision maker regarding the program provided to the student. She feels the appropriate least restrictive environment for ● at this time is in ● classroom at the Intermediate School based on meetings with staff, her knowledge of the student and her education and experience. She explained that the school system is not making a change in placement for ● but only a change in location. She explained to ● [s family that this would mean that ● school day would lengthen, which they wanted, but ● would be in the same program with the same types of educational goals as the current location of the Success school ● attends. A change in location would not mean a change in ● program.

29. The transition plan was adjusted to be done over several months. At first, ● would see the school on the computer's skypeing program. Then ● would make a visit. Those two components have been completed. Transition is planned to take two or three months. The transition would not be completed until a new comprehensive evaluation of ● has been done. This is being done at the parent's request and has not yet been completed. In fairness, the school wanted to move much faster, but it was due to parent's concerns that a longer time frame was agreed upon for the transition which all eventually agreed upon. The plan includes that ●, who works as special educator with ● now would also be ● teacher at the Intermediate School.

30. This plan was the result of several meetings with the parents,
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educators, counselor and family. The family had many concerns regarding [REDACTED] program at the Success School. They wanted [REDACTED] to have a longer school day to increase [REDACTED] educational component but mainly they want to have the school adopt the identical behavioral plan that S.D. Associates uses. They also want S.D. Associates to be consulted by the School. Ms. McGarry said she felt they were substantially following the S.D. Associate's behavior plan but adapted for the educational setting and she has her own equally qualified consultants to use if needed. She also credibly testified that [REDACTED] was making progress both behaviorally and academically.

31. [REDACTED] is the Director of the [REDACTED] and has worked for the Rutland City School System since 1992. She has been the Director of the Success Program for 3 1/2 years. She has been the District's psychologist and is a licensed school psychologist and licensed special educator as well as licensed as an Educational Director and principal. She has Master's Degree in Psychology and educational leadership. She is also a Board Certified Behavioral Analyst.

32. [REDACTED] first met [REDACTED] when [REDACTED] enrolled in the Success School and visited [REDACTED] at the Brattleboro Retreat. She went with [REDACTED] para-educators to begin building a relationship with [REDACTED]. At that time [REDACTED] was non-verbal and highly aggressive. [REDACTED] was very physical and kicking, punching, biting and spitting.

33. Ms. Engels worked with Allison Stone from S.D. Associates and others on the team to make a behavioral plan for [REDACTED] return to school. She was familiar with the suggestions that Allison made such as using a picture schedule for [REDACTED] to cue [REDACTED] about each day and what [REDACTED] would be doing next. She was also familiar with the behavioral techniques suggested by Allison Stone so she adopted them by cutting and pasting those parts appropriate for [REDACTED] into [REDACTED] IEP plan.

34. When [REDACTED] returned in 2011 to school [REDACTED] had frequent physical aggression, high intensity of the aggression and a high frequency of the aggression. [REDACTED] was restrained a great deal of the time as a last result. Ms. Engels admitted the printed information in the first year that [REDACTED] was at school did not reflect the actual times [REDACTED] was aggressive and restrained. It was sometimes hard to tell when one incident began and when it ended. Some incidents lasted hours. Each incident had multiple hits, kicks and strikes. This year the Success School is using tally sheets to document the restraints. However, [REDACTED] is clear that the father and his partner were receiving the complete information regarding [REDACTED] behaviors since they were in daily contact with [REDACTED] through a journal that is passed from home, S.D. Associates and the school regarding [REDACTED] daily behaviors as well as speaking either to father's partner by phone or leaving messages daily. There were also frequent meetings.

35. [REDACTED] credibly testified that his year the restraints are much less frequent and have much less intensity. [REDACTED] almost immediately relaxes upon restraint. That is one reason they have introduced hugs. It seems some times that this is really what [REDACTED] needs - just a hug. [REDACTED] also takes a time out or walks away before [REDACTED] behavior escalates much more of the time. [REDACTED] exhibits more verbal aggression than physical aggression.

36. Prior to October 2011 when the "bolting" incident happened, Ms. Engels was unaware of any preference against men to restrain [REDACTED]. She knew [REDACTED] father restrained [REDACTED] at home and she observed males restraining [REDACTED] at the Brattleboro Retreat. However, she credibly stated that she would have to have a male restrain [REDACTED] if that were her only option in a emergency situation. Otherwise she has agreed to have women restrain [REDACTED] unless there is an emergency.

37. [REDACTED] disagrees with the way S.D. Associates handled the situation in October 2011. She does not want people in her school taking orders from someone on the phone who is not in the room. The S.D. Associate had called her boss for instruction on how to deal with [REDACTED] when [REDACTED] threatened staff with the scissors. Also, [REDACTED] found it risky to restrain [REDACTED] and remove the scissors in the manner it was done. [REDACTED] could have hurt [REDACTED]. It would have been better to de-escalate the situation prior to grabbing the scissors. Following that incident

[REDACTED] prefers to have her own highly educated and trained staff deal with [REDACTED] in the school system. She did say she would be happy to share her behavioral plan and information with S.D. Associates if they wished.

38. [REDACTED] testified that she has communicated with [REDACTED] family more than any other family even if the child was as aggressive as [REDACTED]. [REDACTED] speaks with [REDACTED] para-educators daily informally regarding [REDACTED] and they have as much training as the S.D. Associates' staff.

39. [REDACTED] also finds the fact that [REDACTED] picked out the Goosebumps movie appropriate. She has watched this series with her own children and it was appropriate for [REDACTED] age. She did not observe that [REDACTED] had any negative reaction to the movie. [REDACTED] was fine leaving school and [REDACTED] does not know what happened after [REDACTED] left school which caused an escalation in [REDACTED] behavior to the point [REDACTED] needed sleep medications.

40. [REDACTED] is [REDACTED] special educator. She has her special education license and experience teaching children with behavioral and emotional issues. Her testimony models that of the other school witnesses. She meets with [REDACTED] now twice a week to work directly with [REDACTED] and gives instructions to the para-educators who are highly trained in special education the lessons for each week. She is delighted with [REDACTED] progress, enjoys working with [REDACTED] now and looks forward to having [REDACTED] in her classroom at the Intermediate School. She is amazed at the changes in [REDACTED] behavior and progress. She credibly testified that [REDACTED] is now ready to have more peer contact. She agrees that the least restrictive placement for [REDACTED] is in the Intermediate classroom with para-educators and a private space for [REDACTED] modeling [REDACTED] current classroom to be used as well. [REDACTED] does better in math and is working now at a [REDACTED] grade level. [REDACTED] still struggles with reading but is now working at a [REDACTED] grade level. [REDACTED] is now ready to learn and be with peers.

41. Although the original plan was to have an evaluation of [REDACTED] done by Fall it was agreed by all of [REDACTED] team members including the father not to do this at that time since [REDACTED] behaviors were too escalated. It was agreed that the evaluators might not get an accurate information regarding [REDACTED] performance. It was agreed to wait and do informal assessments with [REDACTED]. Father then delayed in giving his consent for the full evaluation until March 21, 2012. Given the number of individuals needed to complete such an evaluation the school needs at least 60 days and so the evaluation was not completed at the time of this hearing. Although Dr. Wright was at the team meeting and she will conduct the functional behavioral assessment, the parents have yet to meet with her but it is assumed this will happen soon. The school has provided their information to Dr. Wright.

42. [REDACTED] family have talked to the District on numerous occasions regarding [REDACTED] food issues. However, as time goes on the restrictions have become more strict and additions made as to what [REDACTED] can and cannot have. Finally, there is an agreement that [REDACTED] will only receive [REDACTED] lunch and that is being adhered to. It is confusing to school staff since they have observed S.D. Associates giving [REDACTED] chocolate cookies. However, the school will adhere to parent's request now that it is fully understood.

CONCLUSIONS OF LAW

To prove a denial of FAPE, Father must show substantively that the IEPs and programs provided to [REDACTED] were not reasonably calculated to enable [REDACTED] to receive educational benefits and procedurally, that the District has failed to comply with IDEA procedures. Board of Education v. Rowley, 458 U.S. 176, 206-207 (1982). However, as the findings above

indicate the District has met the substantive standard. ■ has made significant gains in behavioral, social and academic areas. ■ has progressed from a student who had constant disturbing behaviors which were often dangerous and required more than one person to restrain to a student who requires much less restraints which are shorter and less threatening and which happen much less. ■ is able to sit and work on ■ school work with ■ para-educators and ■ special educator. ■ also has a happy affect at school and has progressed in ■ social interactions.

The case law is clear that ■ father must show more than that ■ would benefit from better services but that ■ has not benefited from those services and programs provided to ■. O'Toole v Olaste Districts School Unified School District, 144 F.3rd 692, 708 (10th Circuit, (1998)). ■ has received more than is required by the school district. The credible testimony shows that ■ has been given as many services as the school can offer and the school district has followed as well as possible the rules provided by the parents. (Father and partner).

■ has provided a special van for ■ transportation. Although parents (Father and partner) complain that the van is often late, the credible testimony of all of the school personnel is that although the van is sometimes minutes late, perhaps as many as ten minutes on some occasions, this has not affected ■ educational program. In the beginning ■ was brought to school in ■ pajamas and the school had ■ change, and attended to ■ hygiene. Although this has changed, at that time Father did not complain that there was a loss of school program time. If the van was proven to be consistently late so that ■ missed ■ classes or significant class time than it would be problematic and the van should arrive timely. However, the van also has to contain ■ two para-educators which may delay it by a couple minutes. However, ■ should be gaining some benefit by being with them even in the van. This complaint regarding timeliness of the van is considered harmless to ■. However, that does not mean that the school should not strive for a timely pick-up each day.

As the evidence demonstrates the ■ suggested that S.D. Associates be brought in to help with a behavioral plan for ■ for the parents. The School also consulted S.D. Associates to ensure that the school was working on the same model for behaviors and their deescalation as S.D. Associates were. The parts of the S.D. Associates Plan that are pertinent to an educational based program are in ■ IEP. All staff who work with ■ have been trained in it by S.D. Associates. ■ file contains the entire S.D. Associate's Plan and has been read by all staff. Some staff really can't the difference between the two plans. There has been relevant testimony that the school follows the same basic plan as S.D. Associates adjusted for an educational setting. Even Allison Stone from S.D. Associates admitted that the home plan differs from the one they use when they work with ■ alone. The school district has the right to made the decisions regarding the methodology used by the educational professionals, not the parents. See Johnson v. Olaf District Schools, 316 F.Supp 2nd 960,975. As a hearing officer I must give weight to the educational professional's credible testimony by law. ■ has remained safe at the Success School despite ■ extremely challenging behaviors particularly in the beginning of ■ schooling there. Father and parther's preference over complete adherence to S.D. Associate's behavioral plan is not a legal obligation of the school.

Father has challenged procedural adherence to FAPE claiming the District has failed to either provide services or filed timely paperwork to the Parents. Father complained that ■ missed services to ■. However, demonstrated by the evidence and her testimony she only missed one session in ■ time at the school and that was due to the fact that ■ was in restraint at that time. Father also complains of missing information regarding the number of times ■ has been restrained and that the parents do not want a man restraining ■. However, father himself does the restraints of ■ in the home and the school district has, when informed of this issue, followed the request unless there was a safety issue regarding ■ as there was on October 17, 2011 when ■ ran into the road.

Father has also complained regarding the timeliness of information regarding
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● provided to him by the school. However, the school has had more communication with father and his partner than with any other parents in the school. There is notebook that travels with ● from home, S.D. Associates and to school in which each location cites what happened that day. In addition, regular reports have been given by the special educator at least three times a year which is all that is required. The school has also, at the parents request called them nightly to inform them regarding ● school behaviors each night. This has never been done for a parent before. There were also meetings with the parents fairly regularly on a two week basis. Most importantly, ● program has never been affected by any lack of reporting or paperwork done incorrectly. As the Court wrote in *Roland M. v. Concord School Community*, 910 F.2d 983, 994 (1st Circuit 1990) procedural flaws deny FAPE only if they result in actual and significant detriment; that is, that they compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process or caused deprivation of educational benefits.

The law provides that it is necessary to have meaningful parental participation for FAPE. In this case, ● father and his partner are loving advocates who want only the best for ● and are understandably concerned regarding every aspect of ● educational, social, emotional and behavioral needs. They have advocated strongly and have attended many many meetings, nightly phone calls, journals passed back and forth, messages they wrote to the school and full participation regarding their feelings on every aspect of ● school. They should be applauded for their love and concern and zealous advocating for ●. However, parents cannot be the final say in all of the school's decisions. Otherwise each student's program would be parent directed instead of directed by educational professionals. Thus, the decision is that father has had a full opportunity to participate under the meaning of the law regarding ● education and behavioral plan. Although parents are listened to carefully and their comments considered they cannot run the program or demand who should be beyond the school professionals. That does mean that the School cannot, if they choose to and said they would, share their program with S.D. Associates and follow other parental advice if appropriate. For example, the school now understands that food cannot be given to ●, even sugarless gum, without parental permission. The school has also agreed that a man will only restrain ● if safety emergencies demand it. The parents need to continue to advocate for the child when appropriate and have a meaningful participation. However, they also need to understand that the school has professional experts who can and should explain if they determine the parent's decisions are not appropriate.

As stated previously, the school district has no legal duty to implement outside consultants recommendations. In this case the School has no legal duty to implement S.D. Associate's plan or to collaborate further with them. *Renner v. Board of Education*, 185 F.3d 635, 644 (6th Circuit 1999). Also, it is the school district who has the right to hire and assign staff. *Slama v. ISD No. 2580*, 259 F.Supp 2d 280,884-885. Nonetheless, parents should still inform the school of their concerns regarding any problems with staff and advocate for their child.

Parents, as the complaining party, have the burden of proof in this matter. *Schaffer v. Weast*, 126 S. Ct. 528 (2005). In order to prove a denial of substantive FAPE, Father must show that the IEPs and programming provided to the student failed to be reasonably calculated to enable ● to receive educational benefits. There is ample credible testimony from the professional experts that educational benefits have occurred. There has been a dramatic shift in the behaviors and learning abilities of ●. He is now ready to enter more interaction with ● peers with more direct interaction with ● special educator, ●. The parents (Father and his partner), the school and S.D. Associates can all take some credit for this.

In order to demonstrate a procedural denial of FAPE, Father must prove that the District failed to comply substantively with the procedural requirements of the IDEA. Any small procedural failure is overcome by the success School's constant communication with the parents by daily journal entries, a period of time where

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information regarding was discussed or read into family's phone message daily, almost biweekly meetings with parents, and reports. Any miscalculation of the exact numbers of restraints for a time period is excused due to the constant reporting in other manners. However, this does not mean that the School does not have to do its best to follow the rules strictly. In this case, however, the restraints were so frequent in the beginning that it would be impossible to distinguish one event from the next in some cases. The school district is employing a new system to keep better record keeping now that is doing so much better and restraints happen at a much lesser frequency. Also, the school was several weeks late having a meeting for a new IEP. Again, however, the parents were in constant contact with the school and programming did not suffer. This is not a case where an IEP ran out and there was not contact or a child was forgotten. In fact, it was in part that so much was happening surrounding that the actual IEP date was neglected. This should not happen but was harmless in this case.

Parents do not prevail in this matter due to the fact that they have not supported their allegations of substantial or procedural failures to comply with IDEA, thus denying FAPE. Hopefully, the parties will continue to work together and listen to each other and the school will call on S.D. Associates for consultation when and if appropriate. However, this is the school's decision.

Signed in Moretown, Vermont this 7th day of May, 2012.

Jane Gomez Dimotsis, Esq.

The parents have the right to appeal this decision as well as other remedies. They should contact the Department of Education if they are interested in these measures.