

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Student/ School District
IDPH-FY-21-01-017

ORDER ON _____ SCHOOL DISTRICT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

On February 3, 2021, the _____ School District (District) filed a Motion for Summary Judgment relative to the whether the District is entitled to conduct Student's triennial reevaluation without the conditions imposed by the Parent in _____ January 25, 2021 response to the District's evaluation proposal. The Parent objected orally to the District's motion at the February 4, 2021 prehearing conference, and also filed a timely written objection on February 12, 2021.

Upon review of the pleadings and other documents in this matter, I conclude that summary judgment is appropriate on the sole issue in this case.

II. FACTS

There is no genuine issue as to the following material facts:

1. Student is in the fourth grade at _____ School in _____ New Hampshire. _____ is currently eligible for special education pursuant to the IDEA by virtue of delays in areas of fine motor, social/emotional, and adaptive development.
2. Student's last triennial evaluation was completed in early 2017. _____ became due for _____ triennial reevaluation in the spring of 2020.
3. In January of 2020, the District's IEP team began requesting parental consent for triennial testing. The most recent proposal for triennial testing was provided to the Parent in December of 2020. Parent did not provide consent.
4. On January 21, 2021, the District filed this due process request, seeking an order that the District is entitled to conduct the Student's triennial reevaluation.
5. On January 25, 2021, after the District filed its due process request, the Parent provided the District with a response, which consisted of a conditional consent to the District's proposed testing. The condition was that a third party, selected by the Parent, must be present during the testing process.
6. The District proposes to conduct the following triennial reevaluations, by qualified examiners and including assessments based upon suspected areas of disability:

Academic Performance;
Hearing Screening;
Vision Screening;
Intelligence;

Motor Ability;
Observation;
Social/Emotional Status.

7. According to the proposed evaluators, the motor ability assessment can be conducted with Parent observing from a separate room. However, the presence of a third party observer during the academic performance assessment, hearing and vision screenings, intelligence testing, and classroom observation would compromise the validity of those assessments.
8. The proposed assessments are necessary to determine Student's eligibility for special education services. They must be completed by April 9, 2021, Student's tenth birthday.
9. On February 12, 2021, Parent filed a written objection to the motion for summary judgment. On February 16, 2021, Parent filed a motion seeking dismissal of the District's case, in which concurs with the District's right to test, and agrees that the testing should be completed in full. ¹

III. RULINGS OF LAW

10. In reviewing a motion for summary judgment, the record is considered in the light most favorable to the non-moving party; if there are no genuine issues of material fact that would affect the outcome, the moving party is entitled to judgment as a matter of law. New Hampshire Health Care Assoc. v. Governor, 161 N.H. 378, 384 (2011).
11. The sole issue in this case is whether the District has the right to conduct Student's triennial reevaluation without the condition (third party observer selected by Parent) imposed by the Parent in his January 25, 2021 response to testing proposal.
12. Student's identification must be changed prior to April 9, 2021. *See* RSA 186-C:2, I-a.
13. The District has a right to conduct its triennial evaluations using evaluators of its choice, including outside evaluators; the District also has the obligation to conduct assessments in an environment that ensures testing process integrity. Student/Milford School District, IDPH-FY-13-05-039 (NH SEA July 1, 2013); Washington Township School District, 120 LRP 454 (N.J. SEA Sept. 6, 2019).
14. The District has provided the Parent with a proposal that includes the evaluations required based on suspected areas of disability, to be conducted by qualified examiners. Ed. 1107.04; Ed 11:02.04(q).
15. Parent's objection to the motion for summary judgment alleges that Student's "rights to all testing required" for FAPE would be violated. But granting summary judgment is intended to expedite the long-overdue triennial reevaluation process that Parent agrees should occur, and which is necessary and appropriate for this Student.

¹ *See* Motion for Dismissal of district's case, undated but submitted on February 16, 2021. I note that Parent has filed a number of pleadings, including own request for due process that has been docketed separately. Nothing in any of Parent's submissions precludes the granting of summary judgment on the single issue in this case.

IV. CONCLUSION AND ORDER

Having carefully reviewed and considered the pleadings and documents in this matter, and the respective arguments of the parties in the light most favorable to the Parent, I find that there is no issue of material fact, and summary judgment is proper, as a matter of law, as to the District's right to conduct Student's triennial reevaluation without restriction.

Accordingly, the following is ordered:

- A. The District's Motion for Summary Judgment as to its right to conduct Student's triennial reevaluations without Parent's proposed restriction is granted.
- B. The District has the right and the obligation to conduct all evaluations utilizing qualified examiners of its choosing, without the restriction imposed by the Parent.
- C. For purposes of this upcoming triennial evaluation, the District has agreed that the Parent may observe the motor ability assessment from a separate room; the District may make appropriate arrangements for Parent's observation of the motor ability assessment that will not compromise the testing process.²
- D. The District shall proceed expeditiously with Student's triennial reevaluations.

/s/ Amy B. Davidson

Date: February 19, 2021

Amy B. Davidson, Hearing Officer

V. APPEAL RIGHTS

If either party is aggrieved by the decision of the hearing officer as stated above, either party may appeal this decision to a court of competent jurisdiction. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The School District shall promptly notify the Commissioner of Education if either party, Parent or School District, seeks judicial review of the hearing officer's decision.

Cc: Parent, Attorney Minutelli

Via electronic transmission and certified mail, return receipt requested

² The District's agreement to allow the Parent to observe the motor ability testing in this case shall have no precedential value and shall not be construed as a general exception to the rights and obligations set forth herein.