

New Hampshire Department of Education

Student/[REDACTED] School District

IDPH FY 23-02-024

Due Process Decision

Introduction

The parties have numerous disputes that revolve around two primary issues: 1) the student's lack of progress in reading, and 2) the student not receiving related services while attending a charter school during the 2022-2023 school year. This decision focus on those two issues.

Findings of Fact

1. The student is a student with a disability under the IDEA and relevant state laws.
2. The student is currently in the 4th grade. The student was held-back in a prior grade and should be in the 5th grade.
3. Before the 2022-2023 school year, the student attended their assigned public school.
4. The student had problems at the public school, including accusations of bullying, which led to the student not wanting to attend the public school any longer.
5. The parent testified that the student would cry every night, developed other issues not specified in this decision to maintain student privacy, and did not want to go to the public school any longer.
6. The parent chose a local charter school for the 2022-2023 school year.
7. The student's last agreed-upon IEP requires the student to receive specialized instruction in reading, math, and related services, including speech services (that include written expression), PT, OT, and audiology services. The IEP requires math services 30 minutes daily and reading services 45 minutes daily, five days per week.
8. The charter school does not have related service providers.
9. The school district offered to provide related services at the public school, at the SAU office, or remotely.
10. The parent declined these options because of the student's prior difficulties at the public school. The parent also presented evidence that the student should have limited computer screen time due to vision issues, and the student did not do well with remote

services during Covid. The parent asked that services be provided in person at the charter school.

11. The school district presented evidence that it tried unsuccessfully to obtain service providers to provide related services at the charter school.
12. The parent presented evidence that suggested that some service providers were available to go to the charter school but were not asked to do so.
13. The school district did not provide the student with any of the speech, PT, or OT services required by the student's IEP during the 2022-2023 school year.
14. The school district provided some audiology services during the 2022-2023 school year.
15. The school district did not provide the student with any written expression services during the 2022-2023 school year.
16. The school district did not provide the student with any IEP progress reports for the 2022-2023 school year.
17. The charter school director provided the student with some specialized instruction in reading. The student also received some specialized reading instruction from a private tutor (Dr. [REDACTED])
18. The student made very little progress in reading from the specialized reading instruction provided by the school district in past school years and remains around a first-grade reading level.
19. The student made very little progress from the specialized reading instruction provided by the charter school during the 2022-2023 school year.
20. The student made substantial progress in reading during the instruction provided by Dr. [REDACTED]
[REDACTED] [REDACTED] [REDACTED] qualified to provide reading instruction to the student.
22. The school district proposed an IEP on August 8, 2022. The parent agreed to the 1-on-1 service provider offered in the IEP but disagreed with some other parts of the IEP, including reading goals.

Rulings of Law

1. The school district is responsible for providing the student with a free and appropriate education when a student attends a charter school. RSA 194-B:11, III (c).
2. The student's IEP team decides how and where services will be provided based on parameters set in state law, which state:

When a child is enrolled by a parent in a chartered public school, the local education agency of the child's resident district shall convene a meeting of the individualized education program (IEP) team and shall invite a representative of the chartered public school to that meeting. At the meeting, the IEP team shall determine how to ensure the provision of a free and appropriate public education in accordance with the child's IEP. For all subsequent meetings of the IEP team, the child's resident district shall provide prior notice to the representative of the chartered public school. The child's special education and related services shall be provided using any or all of the methods listed below starting with the least restrictive environment:

- (1) The resident district may send staff to the chartered public school; or
- (2) The resident district may contract with a service provider to provide the services at the chartered public school; or
- (3) The resident district may provide the services at the resident district school; or
- (4) The resident district may provide the services at the service provider's location; or
- (5) The resident district may contract with a chartered public school to provide the services; and
- (6) If the child requires transportation to and/or from the chartered public school before, after, or during the school day in order to receive special education and related services as provided in the IEP, the child's resident district shall provide transportation for the child.

RSA 194-B:11, III (b).

3. Under RSA 186-C:16-b, III-a, "the school district shall have the burden of proof, including the burden of persuasion and production, of the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency."
4. The school district did not meet its burden of establishing that it provided the student with FAPE during the 2022-2023 school year.
5. The school district did not meet its burden of establishing that the public school is an appropriate placement for the student.
6. The school district did not meet its burden of establishing that providing related services to the student at the public school, the SAU office, or remotely is appropriate for the student.
7. The school district did not meet its burden of establishing that the specialized instruction in reading provided by the charter school during the 2022-2023 school year enabled the student to make sufficient progress in reading to receive FAPE.

8. The school district did not meet its burden of establishing that the reading goals and objectives in the last agreed upon IEP or the IEP proposed on August 8th were reasonably calculated to ensure that the student received FAPE.
9. The services provided by Dr. [REDACTED] have resulted in the student making progress in reading that the student was not making without the services and must continue for the student to receive FAPE.

Parents' Requested Findings of Fact

Granted:

33-37, 39-66, 69, 70, 86-93, 100 – 104, 105 (excluding the part about the least restrictive environment), 106, 107, 110, 120 – 126, 128 - 131

Denied:

1 – 32. These requests are the parents' claims and requested relief, which are not findings of fact. 38, 67-68, 71 – 85, 94 – 99, 104-108 (Note there is a second set of 104-107 on page 15 of the parent's findings of fact. The ones denied are the ones under the heading about tampering with legal records, as those were explained to be an issue with the NHESIS computer system.) 109, 111 – 119, 127, 132 – 416 (these all are mostly partial shorthand statements, and some seem duplicative of prior requests.)

Discussion

The evidence established that the student made progress in reading with the services provided by Dr. [REDACTED] that the student had not made before or without those services. As a result, reading services with Dr. [REDACTED] must continue at school expense in order for the student to receive FAPE. Given the difficulty that the school has had in finding service providers for the student and the fact that the student made progress with Dr. [REDACTED] that did not occur with the services provided by the charter school, or in prior years at the school district, this is a unique situation where the selection of a specific service provider (Dr. [REDACTED] is necessary to ensure continued progress to meet the student's unique needs. Dr. [REDACTED] is willing to continue to provide services and to be involved in the team process. The school district is ordered to include Dr. [REDACTED] going forward, as noted in the order below.

The 90 minutes per day for reading services in the order below is based on the student's IEP and Dr. [REDACTED] testimony. The student's IEP requires 45 minutes a day of reading instruction. The instruction that the student received during that amount of time in the 2022-2023 school year did not produce sufficient progress. As a result, an additional 45 minutes a day is added to allow for sufficient progress and as a remedy to help the student recover from not making sufficient progress and not receiving FAPE during the 2022-2023 school year. Dr. [REDACTED] testified that 90 minutes a day of services was necessary for the student to make expected or sufficient progress based on the student's unique needs and abilities.

The school district contends that Dr. [REDACTED] is not qualified because [REDACTED] is not a certified teacher and has not provided services in a classroom. The evidence established that despite not being certified, Dr. [REDACTED] is highly qualified to provide reading instruction to the student. What Dr. [REDACTED] is doing is working. What the school was doing before Dr. [REDACTED] was not working. Given the evidence, the lack of state certification should not be used to deny a student access to services that meet their unique needs when the services the school provided or offered did not.

While the parent seeks orders regarding IEP language about methods of instruction and “certified dyslexia providers,” those specific requests are not addressed since they were aimed at allowing Dr. [REDACTED] to continue to provide services. This decision orders services to be provided by Dr. [REDACTED] at school expense going forward for the 2022-2023, ESY, and 2023-2024 school years.

The other compensatory services awarded are based on the evidence that those services were not provided during the 2022-2023 school year and the parent’s evidence regarding the total number of hours missed.

There are also disputes about the IEP reading goals. Given that the 2022-2023 school year is almost over, that issue is addressed by requiring the school district to include Dr. [REDACTED] in the IEP team process of developing IEP goals and objectives for the student for the 2023-2024 school year.

Some of the issues in the 2022-2023 school year appear to have resulted from the school’s view that it determined how services would be provided under the options in RSA 194-B:11, III (b) since the student was enrolled in a charter school. As noted in the order denying the motion to dismiss, that is not the case. Under the statute, that determination is a team decision subject to the dispute resolution process.

As noted in the rulings of law, the school district did not establish that providing services at the public school, the SAU, or remotely was appropriate for the student. Instead, the evidence established that services need to be provided in person at the charter school or some other agreed-upon location not affiliated with the public school to meet the student’s unique needs.

Order

1. The school district shall provide special education and related services required by the student’s IEP at the charter school or another location agreed upon by the parties.
2. As a compensatory services remedy for not making sufficient progress in reading to receive a FAPE during the 2022-2023 school year, and to allow for a FAPE to be provided during the 2023-2024 school year with sufficient progress in reading, the student shall continue to receive reading services/instruction from Dr. [REDACTED] for the remainder of the 2022-2023 school year, over the summer of 2023 as ESY, and for the 2023-2024 school year as follows:

- 90 minutes a day of reading services/instruction five days per week provided by Dr. [REDACTED] for the remainder of the 2022-2023 school year and for the 2023-2024 school year, with the specific services/instruction provided during that time determined by Dr. [REDACTED]
 - 75 to 90 minutes a day of reading services/instruction over the summer of 2022-2023 as ESY services for at least three days per week with Dr. [REDACTED] with the specific services/instruction provided and whether 75 or 90 minutes are required to be determined by Dr. [REDACTED]. Once services begin, if Dr. [REDACTED] determines that more than three days a week are needed for some or all of the ESY period to help the student make sufficient progress, then the additional days per week shall be provided.
3. The school district shall also provide the following as compensatory services:
- 62 hours of speech and language services to be provided at the charter school or another location agreed upon by the parties.
 - 36 hours of occupational therapy to be provided at the charter school or another location agreed upon by the parties.
 - 15 1/2 hours of physical therapy to be provided at the charter school or another location agreed upon by the parties.
 - Three sessions of audiology services
4. The school district shall include Dr. [REDACTED] as an IEP team member to assist in developing reading and related IEP goals and objectives, such as speech and language, written expression, and math, along with the services to be provided and the amount and frequency of services in these areas for the 2023/2024 school year.
5. The IEP team shall coordinate with Dr. [REDACTED] and the charter school to determine what, if any, reading services can be provided by the charter school during the 2022-2023 school year, ESY (if the student attends the charter school over the summer), and 2023-2024 school years so that they can work together to benefit the student and not interfere with or detract from the services provided by Dr. [REDACTED]
6. The school district shall pay Dr. [REDACTED] for time spent providing services, working with the IEP team, and coordinating with the school district and charter school.

So ordered.

__4/27/23__

Date

__/s/ *Scott F Johnson*_____

Scott F. Johnson