

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

**Student/Milford School District
IDPH-FY-13-05-039**

DUE PROCESS DECISION

I. INTRODUCTION

This due process proceeding was initiated by the Milford School District (“District”) on May 20, 2013 relative to the IEP and evaluation. The due process hearing was originally scheduled for June 17 and 18, 2013, with a decision date of July 1, 2013. A prehearing conference was held on June 11, 2013.

The issues for due process were as follows:

1. Whether the District should complete additional assessments to insure that [] (“Student”) is identified in all areas of suspected disability and to address concerns raised by [] (“Parent”) regarding identification;
2. Whether the IEP proposed by the District in March of 2013 as revised in April of 2013 is appropriate, meets Student’s needs and will provide him with a FAPE.

The due process hearing was held in its entirety on June 18, 2013. The District called the following witnesses: Johanna Johnson, Special Education Director; Cathy Goldwater, Associate School Psychologist; Meg Peterson, Title I Coordinator; Rose Julian, fifth grade classroom teacher; and Kris Reilly, Special Education teacher/Case Manager. The Parent appeared and testified on her own behalf. Both parties submitted exhibits. Post-hearing submissions were received from the District; none were received from the Parent.

II. FACTS

Student is a [] grader at the [] School in Milford, New Hampshire. Shortly after Student returned to the District in early 2011, [] began receiving Title I services. In the fall of 2012, Parent referred [] for special education. On December 20, 2012, relying heavily on the assessment and report of Dr. Goldwater, the team identified Student as learning disabled because of difficulty in math, staying on task and distractibility. A draft IEP was proposed at a March 13, 2013 team meeting. The team met again on March 20, 2013; at that time, because of concerns expressed by the Parent regarding Student’s performance in several areas, the team considered providing a neuropsychological evaluation by an outside evaluator. At an April 12, 2013 resolution meeting, the proposed IEP was revised to include, as an attachment, the list of Parent’s concerns. In May of 2013, the Parents notified the District that they were accepting the IEP with fourteen exceptions, requesting that the items

listed therein be removed from the IEP. The Parent has also rejected the District's proposal for a neuropsychological evaluation.

III. DISCUSSION

A. Evaluation

The District has recommended that a neuropsychological evaluation be conducted to insure that all areas of potential disabilities were identified. The Parent had expressed concerns regarding Student's executive functioning, written expression, reading fluency and comprehension. The team had similar concerns, particularly after the emergence of discrepancies between Dr. Goldwater's test results and Student's NWEA math scores. District witnesses testified that a neuropsychological evaluation would be comprehensive enough to address all of the existing concerns. At the due process hearing, the Parent explained that [] previous refusal of the neuropsychological evaluation was because [] had not understood why it was needed. Parent stated that, while [] had no objection to the evaluation, [] did believe it would be a conflict of interest for a District employee to conduct it. Parent stated that [] was in the process of obtaining a neuropsychological evaluation, but did not elaborate further. The District points out that it has recommended two outside providers, not District employees, to conduct the evaluation.

The evidence clearly demonstrates the need for the proposed neuropsychological evaluation, and there now appears to be no dispute in this regard. As to the conflict of interest suggested by the Parent, the law does not support this position. A school district's right to utilize evaluators of its choice – including school employees - is well-settled (citations omitted). In this case, however, the District is proposing that an outside provider conduct the evaluation. Outside evaluators may be used as long as they are qualified under Ed 1107.04. The Parent provided no other evidence from which any inference of a conflict could be drawn.

B. The IEP

The District's position is that the IEP initially proposed in March of 2013 and amended in April of 2013 is appropriate. The District's witnesses testified that if the items on Parent's list of exceptions were removed from the IEP, the IEP would become a Section 504 plan. The Parent stated that [] did not want to lower expectations for the Student for next year; Parent's position is that Student has met some of the goals and those should not be included in the IEP; that information should not be included in the IEP without objective data to support it; that goals addressing organization do not help Student with projects and written essays; and that Parent stands by the fourteen exceptions taken in May of 2013.

The weight of the evidence demonstrates that the IEP as proposed in March and April of 2013 was reasonably calculated to provide Student with a FAPE, and that

removing the fourteen items as requested by the Parent would render the IEP inadequate. The IEP was developed utilizing all of the information available to the team at the time and is appropriate in light of what was known about Student's needs. It is also clear that the proposed evaluation must be conducted to identify all areas of disability, to provide answers to questions posed by both the Parent and the school staff, and to determine whether additional or different services are warranted.

IV. PROPOSED FINDINGS OF FACT AND RULINGS OF LAW

District's Proposed Finding of Fact: Numbers 1 – 17 are granted.

District's Proposed Rulings of Law: Numbers 1 – 4 are granted.

Parent's Proposed Findings of Fact: None submitted.

Parent's Proposed Rulings of Law: None submitted.

V. CONCLUSION

I find that the IEP as proposed in March of 2013 and amended in April of 2013 is appropriate given the information the team had at the time. I also find that the District should conduct the proposed neuropsychological evaluation.

VI. 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 Parents have 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, Parents or School District, seeks judicial review of the hearing officer's decision

Date: July 1, 2013

Amy B. Davidson, Hearing Officer