

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

Student School District  
IDPH-FY-19-03-024

DUE PROCESS DECISION

**I. INTRODUCTION AND BACKGROUND**

On March 27, 2019, Parents filed a due process request relative to the IEP, services, placement, and a number of other issues. The prehearing conference was held on April 12, 2019; a Prehearing Conference Report and Order was issued.

The due process hearing was held on May 13 and 14, 2019, at the Hearings Office in Concord, New Hampshire. The Parent represented \_\_\_\_\_, and also offered testimony under oath. Parent presented first and bore the burden of proof. Both parties submitted exhibits.

The following witnesses testified credibly:<sup>1</sup>

\_\_\_\_\_, LABA, Behavioral Consultant;  
\_\_\_\_\_, Guidance Counselor, \_\_\_\_\_ High School;  
\_\_\_\_\_, Occupational Therapist, \_\_\_\_\_ School District;  
\_\_\_\_\_, Special Education Coordinator, \_\_\_\_\_ High School;  
\_\_\_\_\_, School Nurse, \_\_\_\_\_ High School;  
\_\_\_\_\_, Student Services Director.

The issues for due process are as follows:<sup>2</sup>

1. IEP:<sup>3</sup>

- a) Whether the level & quality of nursing services is appropriate;
- b) Whether the proposed placement is appropriate.

<sup>1</sup> All of the witnesses, except for \_\_\_\_\_ (called by the Parent) and \_\_\_\_\_ (called by the District) were witnesses in common.

<sup>2</sup> Issues as set forth herein reflect Parent's clarifications submitted at the start of the due process hearing.

<sup>3</sup> At the prehearing conference, the issues delineated relative to the then current IEP were as follows:

- a) Whether the level of behavioral services is sufficient;
- b) Whether the level & quality of nursing services is appropriate;
- c) Appropriateness of some of the goals;
- d) Whether the organizational goal was written appropriately;
- e) Whether the transitional goal was developed without Student input;
- f) Whether a school health plan/nursing services were provided;
- g) Whether the proposed placement is appropriate.

Subsequently, the Parents approved the proposed IEP for May 2018-May 2019, with the exception of Items b) and g), above. Accordingly, the remaining IEP issues relative to the 2018-2019 IEP are now moot.

2. IEP Implementation (2017-2018 school year):

- c) Whether the paraprofessional services were appropriate;
- d) Whether the manner in which work was presented to the Student was appropriate;
- e) Whether Occupational Therapy (OT) was implemented appropriately by trained personnel;
- f) Whether a denial of FAPE occurred prior to August of 2018;
- g) Whether the related services in OT were implemented using evidence-based programming to the extent possible;
- h) Whether the Functional Behavioral Assessment (FBA) took too long to implement;
- i) Whether the District failed to provide the Student with academic and transition information from a February 2018 field trip using other means, resulting in academic consequences.

3. Procedural violations:

- i. Whether OT services were removed in June of 2018 without parental consent;
- ii. Whether, with respect to audiologist services, the District considered the impact on the school staff's ability to meet Student's needs;
- iii. Whether changes in paraprofessional services were implemented without Written Prior Notice;
- iv. Whether, in October of 2017, the behavior plan was no longer implemented, without Written Prior Notice;
- v. Whether Parents were excluded from decision-making process regarding failed grades and how to complete requirements;
- vi. Whether a December 22, 2018 meeting continued without the Parent;
- vii. Whether the development process for the 2018-2019 IEP was appropriate;
- viii. Whether there were date errors on documents
- ix. Whether the ESY program for summer of 2018 was implemented appropriately;
- x. Whether any of the above procedural violations, if found: a) impeded Student's right to a FAPE; b) significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of FAPE; or c) caused a deprivation of educational benefits.

## II. FINDINGS

- 1. Student is seventeen years old, and a junior at High School. has a primary identification of autism, and a secondary identification of other health impaired.
- 2. For the past several years, Student has been placed in the mainstream classroom with supports and accommodations. IEP goals include organization, occupational therapy, speech/language and transition. Related services include speech/language, occupational therapy, audiology, and behavioral services. Paraprofessional support is provided in the regular classroom. In addition, Student has a Health Care Plan due to migraine headaches and abdominal migraines. is on a number of medications.
- 3. Student's excessive absences have become a major concern. It did not appear to school staff that Student's doctors knew how much school was actually missing.

### A. The 2018-2019 IEP

As noted above, the IEP for May 2018 to May 2019 has been approved, with two exceptions: nursing services, and placement.

#### a) Nursing Services – 2018-2019

- 4. A school health plan is written in collaboration with the physician, parents and nurse, and is intended for use by the teachers and school nurse.

5. The school nurse is well qualified to provide Student with the care needs.
6. Student's Health Care Plan includes a list of diagnoses, medications and dosages, additional treatment interventions, and checklists. SD Exhibits p. 622. In addition, it references Student's Behavior Support Plan and attached doctors' letters.
7. The school nurse has made every effort to provide care for Student, including giving Student certain medications if needed, assisting the Student to return to class, and obtaining information from the Parent.
8. The school nurse expressed concern regarding the multitude of medications Student was taking, and attempted to obtain information from Student's doctors.
9. The District hired a consultant, Dr. , to provide consulting services to the District for this Student. However, the Parent cancelled permission for the consultant to confer with Student's physicians. Dr. withdrew from Student's case in January of 2019.
10. The District has made every effort to obtain medical information from Student's doctors, and to work with the Parent regarding how to address Student's medical issues
11. The Parent presented no evidence that the school nurse and school staff failed to implement Student's health care plan, or failed to provide for his needs.

**b) Placement**

12. A student must be educated in the least restrictive setting.
13. The Parent requests that Student be provided with home-based programming with tutoring services provided by
14. is not a school, and cannot implement Student's IEP.
15. There is no evidence that Student cannot be educated in regular classroom with supports, or that a more restrictive setting is appropriate.

The May 2018 – May 2019 is appropriate as written.

**B. IEP Implementation for the 2017-2018 school year**

**c) Paraprofessional services**

16. Although parental consultation is important with respect to methodology and assignment of personnel, those decisions are within the province of the school district
17. Student's IEP in effect for May of 2017 to May of 2018 called for access to a paraprofessional during periods one and two for social and academic support. Student's IEP did not call for a one-on-one paraprofessional.
18. The evidence shows that the paraprofessionals assigned to Student's classroom provided services to Student appropriately.

**d) Manner in which work was presented to the Student**

19. At the beginning of the 2017-2018 school year, Student's homework was emailed to the Parent, and then to both Student and Parent.

20. School staff worked diligently with Student to assist with getting work done,
21. School staff, including case managers and guidance counselor, communicated regularly with the Parent, and attempted to accommodate requests, regarding work requirements, scheduling, options for credit recovery, and assignments.
22. The record does not support a conclusion that executive functioning was not implemented appropriately.

e) Implementation of Occupational Therapy services

23. Student's occupational therapy services were provided by a licensed occupational therapist.
24. Parent's claim pertains to a listening program called Quick Shifts. Although Quick Shifts is a methodology and is not mentioned in Student's IEP occupational goal, the District agreed to provide it.
25. There is no certification requirement for Quick Shift implementation.
26. There were some difficulties in getting Quick Shift up and running; the District took reasonable steps to remedy the problems.
27. When the occupational therapist did begin to implement Quick Shifts, the Student did not want to participate. Student's poor attendance also made it difficult to provide occupational therapy services.

The record supports a conclusion that Student received all of the occupational therapy services set forth in IEP, by trained personnel. There is no evidence as to any deficiencies in occupational therapy programming.

f) Denial of FAPE prior to 2018

28. In June of 2017, Parent approved the IEP for the 2017-2018 school year.
29. On July 31, 2018, and September 4, 2018, Parent filed complaints with the Department of Education. Findings regarding missed audiology sessions and transition services were addressed and corrected by the District.
30. The record does not support a conclusion that there was a denial of FAPE prior to 2018.

g) Issues regarding the provision of related services, occupational therapy, speech/language

31. The record indicates that related services were provided in accordance with the IEP, and that, in addition, Parents were reimbursed for outside speech services.

h) Functional Behavioral Assessment

32. Student had a behavior plan in 2015; the 2017-2018 IEP did not include behavioral goals.
33. In the fall of 2017, after Parent requested a behavior plan, the District began implementing the 2015 plan. The District contracted with Constellations, an outside provider, to do a functional behavior assessment. The functional behavioral assessment was completed, and a report was issued in February of 2018.
34. The District had understood that Constellations would also prepare and implement the behavior plan. When Constellations informed the District that it would not provide these services, the District hired LABA, prepared a behavior improvement plan using the 2015 behavior plan.
35. The plan was finally approved in February of 2019. The record shows that completion of the plan was delayed, in significant part, by numerous changes requested by the Parent.

i) Provision of academic and transition information from February 2018 field trip

36. The tenth grade career field trip is not tied to a class, but is something in which all sophomores participate. At the request of the Parent, student did not attend the career field trip in February of 2018.
37. Student's IEP contains nothing regarding preparation for field trips, or the provision of information from field trips.

**C. Procedural violations**

- i. The record reflects that OT services were provided on a weekly basis. There is no evidence that OT services were removed in June of 2018 without parental consent.
- ii. Any deficiency in audiology services that occurred during the 2017-2018 school year were subsequently made up. The record does not reflect any deficiency in IEP audiology services during the 2018-2019 school year.
- iii. The District is authorized to make personnel decisions, and written prior notice is not required for personnel changes. The District has provided Student with the support of a classroom paraprofessional. Student's IEP does not call for a one-on-one professional.
- iv. There was no behavior goal in Student's IEP for May 2017-May 2018. When Parent requested a behavior plan in the fall of 2017, the District began implementing the existing 2015 while in the process of developing a new one.
- v. The guidance counselor and case managers made efforts to advise the Parent as to what could be done to help Student meet course requirements, and to insure that Student and Parent were aware of assignments. However, grading decisions are made by teachers; parents do not participate in those decisions.
- vi. Parent left the December 22, 2018 meeting early. After left, discussion was primarily about another student, and no decisions were made regarding Student.
- vii. In the fall of 2017, the team began implementing the IEP signed by the Parent in June of 2017. The team met twenty-three times to develop the IEP for May 2018 – May 2019. The Parent took numerous exceptions to proposed IEPs; despite District's attempts to understand what was agreed to and to implement those portions as well as the Parent's exceptions, the Parent continued to request changes. In addition, Parent submitted emails to different staff at different times, creating significant confusion. Parent did not honor a reasonable request to send comments/exceptions to the case manager only. Parent also rescinded permission for school personnel to communicate with outside providers. Despite efforts by school staff, the actions of the Parent made the IEP development process and the provision of services to the Student extremely difficult.
- viii. There were occasional date errors on documents, but none were of substantive significance and were corrected when brought to staff's attention.
- ix. ESY for summer of 2018 was implemented appropriately. Student was initially offered a program called IMPACT; one purpose of the program was to improve Student's attendance. Student was interviewed, but the Parent rejected the program. The District then changed the program to five weeks of tutoring, which was provided even though Parent had not signed the IEP.

**CONCLUSION AND ORDER**

- A. The 2018-2019 IEP is appropriate as written. Parent's exceptions are denied; the evidence does not support the Parent's proposed placement, and the level and quality of nursing services is appropriate;
- B. Student has not been denied a FAPE;
- C. The Parent has not met burden to show that there were failures in implementation of the 2017-2018 IEP;
- D. The record does not support a finding of procedural violations.

In addition:

- E. In order to minimize confusion and make IEP development more efficient, the parties are advised to provide one contact for the Parent for purposes of communication regarding the IEP;
- F. The Parent is **strongly** urged to cooperate in authorizing school personnel, particularly the school nurse, to have open communication with Student's outside providers.

Date: June 2, 2019

  
\_\_\_\_\_  
Amy B. Davidson, Hearing Officer

### **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**

Cc:

*Via electronic transmission and certified mail, return receipt requested*