

STATE OF NEW HAMPSHIRE
STATE DEPARTMENT OF EDUCATION

[REDACTED] School District

IDPH-FY-24-03-043

SCHOOL DISTRICT’S REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

NOW COMES the [REDACTED] School District (“District”), by and through its attorneys, [REDACTED], and respectfully submits the following Requests for Findings of Fact and Rulings of Law in this matter:

I. Findings of Fact

A. Introduction and Scope of Hearing

1. The scope of this hearing was limited to the issues raised in the Parents’ request for due process, and any claims arising before March 1, 2022 were dismissed based on the statute of limitations. See Order on Motion to Dismiss, 4/17/24.

2. Parents’ request for due process alleges the following:

a. Eligibility: Parents allege that Student should be identified under the category of Emotional Disturbance (“ED”), see Due Process Request (“DPR”), B;

b. IEPs: Parents allege the following claims with respect to the District’s proposed IEPs:

i. For “over a year”, District failed to incorporate portions of Parents’ independent evaluations concerning Student’s “documented needs” for speech-language and mental health. See DPR, A.

ii. The District’s proposed IEPs were insufficient in that they failed to include the following components:

1. Mental health support/counseling,
2. Speech-language services, and
3. Appropriate Extended School Year (“ESY”) services.

See DPR, A, B, C¹.

- c. Compensatory Education: Parents requested compensatory services for an alleged denial of a free appropriate public education (“FAPE”) resulting from “over a year of rejected IEP[s]...” See DPR, F. Specifically, Parents seek compensatory services for mental health support/counseling, speech-language services, and ESY. See Parents’ Testimony; DPR, A, B, D, F.

3. Parents’ claims in their due process request were limited to the period beginning when the Parents had rejected the District’s Proposed IEPs. See generally DPR; District’s Motion to Dismiss, §2, p. 6-9.

4. Parents rejected the following IEPs:

- a. Proposed IEP dated 3/24/23 to 3/23/24, District Exhibit (“DE”) 16,
- b. Proposed IEP dated 5/11/23 to 5/10/24, DE 13, and
- c. Proposed IEP dated 12/4/23 to 3/23/24, DE 9.

5. Parents did not reject an IEP prior to the IEP proposed in March 2023, DE 16. See generally DEs.

6. Parents’ due process request does not challenge IEPs prior to the IEP proposed in March 2023, see DE 16, or seek compensatory education for the same. See generally DPR.

7. The scope of the hearing was limited to the IEPs proposed from March 2023 to present. Id.; District’s Motion to Dismiss, §2, p. 6-9.

8. Parents’ due process request does not include claims for reimbursement for past services Parents provided; rather, the claims were limited to the provision of compensatory services for past services allegedly denied. See generally DPR.

¹ The Parents’ due process request also raised allegations pertaining to an interoceptive method of toileting, a request for a communication log, and the addition of a fifth literacy session in Student’s IEP. These issues have since been resolved by the parties. See Parent’s Testimony; DE 1, 2; DSE 62, 63.

9. Parents' due process request does not include a claim that the District's evaluations were inappropriate, including any allegation that the District's speech-language evaluations failed to assess Student's vocabulary². See generally DPR.

10. Parents failed to raise any procedural claims when asked to clarify the issues for the hearing at the parties' Prehearing Conference.

11. Despite this, Parents appeared to raise a procedural claim at the hearing, alleging that District failed to convene a Team meeting when necessary. Parent Testimony; see also DPR, F. Parents further requested that the Hearing Officer order the District to replace [REDACTED] (Director of Student Services) and [REDACTED] (Student's case manager) as members of the Student's IEP Team. See Parent's Testimony; DPR, C.

B. Facts Pertaining to Issues for Hearing

i. Eligibility

12. Student is currently identified as a child with a disability under the IDEA under the categories of Other Health Impairment ("OHI") and Specific Learning Disability ("SLD"). DE 1³. Student's OHI identification is based on [REDACTED] diagnoses of Unspecified Trauma Disorder and Unspecified Anxiety Disorder. DE 27.

13. Student's trauma disorder encompasses the symptoms of [REDACTED] diagnosis of ADHD. DE 53, p. 377.

14. Parents do not dispute Student's eligibility identifications beyond asserting that [REDACTED] should also be identified as ED. Parent's Testimony; DPR.

² Even if such a claim were included, it would be barred by the statute of limitations with respect to the 2021 evaluation(s). See Order on Motion to Dismiss.

³ The District notes that Exhibits 1 and 2 were erroneously swapped in its Table of Contents for its Core Documents. Student's partially consented-to March 2024 IEP is Exhibit 1.

a. 2021/2022 Triennial Evaluations

15. Student had [REDACTED] triennial evaluations in December 2021 and January 2022. DE 36-40. The IEP Team suspected the following disabilities: OHI, SLD, ED, and Developmental Delay (“DD”). DE 33. The Parents agreed to the District’s evaluation plan on November 17, 2021 without any exceptions. Id. at 259.

16. Student’s psychoeducational evaluation was performed by the District’s school psychologist, [REDACTED] Ed. S., NCSP, in December 2021. DE 38.

17. [REDACTED] is certified by the New Hampshire Department of Education as a school psychologist and a school counselor. District Supplemental Exhibit (“DSE”) 56; [REDACTED] Testimony. [REDACTED] has over thirty years of experience as a school psychologist, and over twenty-five years of experience as a school counselor. Id.

18. [REDACTED] provided credible testimony regarding [REDACTED] psychoeducational evaluation of Student, as well as [REDACTED] professional opinions regarding Student’s eligibility under the category of ED. [REDACTED] Testimony.

19. [REDACTED]. [REDACTED] psychoeducational evaluation included the following assessments:

- b. Classroom observation,
- c. Differential Ability Scales - 2nd Edition (“DAS-II”),
- d. Behavior Rating Inventory of Executive Function -2 (“BRIEF-2”),
- e. Behavior Assessment System for Children - 3rd Edition (“BASC-3”), and
- f. Adaptive Behavior Assessment System - 3 (“ABAS-3”).

Id.; DE 38.

20. These assessments were in accordance with professional standards, and they were the assessments [REDACTED] typically uses for students with [REDACTED] profile. Id.

21. The results of ██████████ psychoeducational evaluation were a valid representation of Student's current functioning within the classroom. Id.

22. Student's psychoeducational evaluation demonstrated age-appropriate skills in behavior, adaptive behavior, and executive functioning within the classroom setting. DE 38, p. 298 ("...ratings of [Student]'s behavior, adaptive behavior, and executive functioning suggest that ██████ demonstrates age-appropriate skills in the classroom setting..."); ██████████ Testimony.

23. The DAS-II assesses a student's cognitive abilities. Id. Student scored within the average range for overall cognitive ability for a child ██████ age. Id. at 293. Student likewise received average scores on all cluster and individual subtests. Id. A relative strength for Student was noted on the Verbal Comprehension subtest, which "measures understanding of oral instructions involving basic language concepts." Id.

24. The BRIEF-2 is designed to gather data on a student's executive functioning, and the results are based on questionnaires filled in by parents⁴ and teachers. Id. at 294.

25. The teacher questionnaire was filled out by ██████████, Student's classroom teacher for the 2021-2022 and 2022-2023 school years. Id. ██████████ ratings of Student's executive functioning within the school setting demonstrated "age-appropriate skills in all areas of behavioral, emotional, and cognitive regulation, with no areas of concern noted." DE 38, p. 294. This included age-appropriate behavioral regulation and emotional control. Id.

26. The BASC-3 assesses a student's clinical and adaptive behavior. Id. at 295. Data for this assessment is gathered through questionnaires filled out by the student's parents and teachers. Id.

⁴ Student's au pair also filled out a questionnaire for the BRIEF-2 and the BASC-3. DE 38.

27. ██████'s ratings of Student on the BASC-3 demonstrate that Student had age-appropriate functioning in "all areas of clinical and adaptive behavior" assessed, with "no specific areas of concern noted." Id. at 296. As part of the BASC-3, neither Parents nor ██████ reported concerns with anxiety, depression, or somatization. Id.

28. The ABAS-3 assesses a student's adaptive behavior, as reported in questionnaires filled out by parents and teachers. Id. at 297; ██████ Testimony. As part of the ABAS-3, ██████ reported that Student demonstrated age-appropriate skills in the conceptual, social, and practical domain scales. Id.; ██████ Testimony.

29. ██████ performed a classroom observation of Student. Id. at 191. During this observation, Student was observed being attentive and engaged 93% of the time and inattentive but not disruptive 6% of the time. ██████ received adult individual attention 35% of the time. Id.

30. ██████ noted that "[i]t is evident from the classroom observation that ██████ has a very strong, positive, and trusting relationship with ██████..." Id. at 299.

31. Student's speech-language reevaluation was completed by the District's speech-language pathologist ("SLP"), ██████, M.S., CCC-SLP, in December 2021. DSE 39.

32. ██████ reported ██████ observations of Student within the classroom as part of Student's speech-language evaluation. Id. at 305. Specifically, ██████ reported the following:

██████ reports that in the larger class setting ██████ is also able to share information, respond to questions, and participate in tasks that require expressive language skills, as ██████ peers. ██████ can be impulsive and easily distracted at times, but is easily redirectable and continues to make progress in all areas of the curriculum. ██████ enjoys being with ██████ peers and is often able to navigate free play independently. At times, adults may intervene to assist with negotiations with peers, but overall, ██████ has been a successful and active participant in the classroom. Id.

33. Student's occupational therapy reevaluation was performed by ██████████ OTR/L. DE 40. ██████████ reported ██████ observations of Student within the classroom as part of this evaluation, including that Student "does not require significant adult assistance in order to remain emotionally regulated." Id. at 314.

34. ██████ ██████████ also observed Student in the classroom. ██████ noted the following as part of ██████ evaluation:

- a. Student "is an enthusiastic kindergartener who has made great gains in ██████ ability to follow classroom routines and in ██████ overall [participation] across ██████ school day." Id. at 317.
- b. While ██████████ occasionally requires some coaching to successfully interact with ██████ peers, ██████ responds positively to adult direction and overall, ██████ demonstrates gains regarding ██████ social interactions." Id.

35. ██████████ is certified by the New Hampshire Department of Education, and ██████ has approximately ten years of experience as a classroom teacher. DSE 59; ██████████ Testimony.

36. ██████████ testified credibly about ██████ observations of Student within the classroom, as well as the reasoning behind ██████ recommendations to the Student's IEP Team with respect to eligibility. ██████████ Testimony.

37. ██████████ testified at the hearing that the observations in these evaluations reflected what ██████ observed of Student's functioning in the classroom from March 2022 through the 2022-2023 school year. ██████████ Testimony.

38. ██████████ also testified as to the following observations of Student from March 2022 through the 2022-2023 school year:

- a. Student was a happy, outgoing, and energetic student, who was pleasant to be around.
- b. Student loved free play.

- c. Student was very helpful in the classroom, and ■ worked hard to be a good friend to ■ peers.
- d. Student functioned well in the classroom, and ■ participated in all activities.
- e. For the most part, Student accomplished ■ tasks in the time and space provided.
- f. Student interacted well with ■ peers, and ■ knew the classroom expectations.
- g. Student demonstrated growth with respect to ■ social skills over the time ■ had ■ as a student.
- h. Student could be impulsive, but ■ was always easy to redirect.
- i. ■ had no concerns with respect to Student having anxiety, depression, or other problems, and ■ always observed ■ to be a happy, social student.
- j. As the year went on, Student needed less and less support to be successful in the classroom, and some days ■ required no support at all.
- k. Student kept up with ■ class both academically and socially.

Id.; see also DE 18 (■■■■■■ input at the March 2023 IEP Team meeting). ■■■■■■

further testified that ■ reported these observations to the IEP Team. Id.

2. *January 2022 Eligibility Determination*

39. The IEP Team met on January 11, 2022 to review the Student's triennial evaluations. DE 32. At this meeting, all evaluators presented their findings to the Team, and ■■■■■ reported ■ observations. Id. Parent also shared ■ input. Id.

40. Following discussion, the IEP Team deliberated Student's eligibility and determined that Student was eligible for special education under the identifications of OHI and SLD, but not ED or DD. Id.; see also DE 26-30.

41. With respect to the Team’s ED determination, the Team noted that Student’s Other Specified Trauma Disorder and Unspecified Anxiety Disorder could constitute conditions supporting identification under ED. DE 29, p. 242.

42. However, the Team found that the Student did not meet any of the five required characteristics for ED under 34 C.F.R. § 300.8(c)(4)(i) either over a long period of time or to a marked degree. See DE 26. The Team further found that there was no adverse impact on Student’s educational performance. DE 29, p. 243.

43. Student’s ██████ raised concerns related to Student’s impulsivity. DE 32, p. 254-55. The Team noted that, while Student “demonstrate[d] some impulsivity, dysregulation, sensory seeking behaviors, and [wa]s distracted easily... [t]hese [we]re not [necessarily] inappropriate, but rather an exaggeration of expected behaviors. ██████ respond[ed] well to redirection and adult attention...” DE 29, p. 243.

44. Finally, the Team noted that Student’s conditions of trauma and anxiety were used as the condition to determine ██████ eligibility for OHI; therefore, notwithstanding the Team’s ED eligibility determination, ██████ would receive the necessary special education services and support to address ██████ educational needs. Id. at 243-44.

45. Student’s ██████ was the only Team member present who disagreed with the Team’s ED eligibility determination. DE 29, p. 245.

46. ██████, ██████, and ██████ as well as Student’s case manager, ██████, all credibly testified that they do not believe Student should have been identified under the category of ED, and that ██████ received appropriate services and supports under ██████ identifications of OHI and SLD.

47. The school members of the IEP Team felt that OHI “was a more appropriate fit and description given [Student’s] presentation.” DE 26.

48. The District addressed Parents’ request to change Student’s identification to ED in four different written prior notices (“WPNs”) between Student’s triennial evaluation and the end of the 2022-2023 school year. See DE 14, 22, 24, 26.

49. Student made meaningful progress from March 2022 through the 2022-2023 school year. See Testimony of █████, █████, █████, and █████ see also DSE 74 (Student’s 2022-2023 progress report demonstrated that █████ required less support as the school year progressed, and further reported that “[Student] ha[d] had a wonderful school year. █████ h[ad] made noticeable progress in █████ reading, writing, and math skills, and continue[d] to work towards meeting the grade level benchmarks. [Student] ha[d] shown exceptional growth in learning to cooperate and work effectively in groups. █████ ha[d] displayed a growing ability to collaborate with peers, share ideas, and listen attentively. [Student]’s respectful and helpful nature contribute[d] to a positive classroom environment.”); DE 43-50 (IEP progress reports).

50. Beyond Parent’s own testimony that Student required an ED identification and additional services, Parents presented no evidence that Student did not make meaningful progress in █████ educational program. See generally Parent’s Testimony; Parents’ Exhibits (“PEs”).

3. *The MGH Report*

51. Parents obtained an outside evaluation of Student from █████ █████ PhD of Massachusetts General Hospital in February 2023 (“MGH Report”). DE 53.

52. The District did not receive a copy of the MGH Report until sometime after its March 7, 2023 IEP Team meeting. DE 18 (noting that Parents obtained an outside evaluation but that there was no written report yet).

53. The IEP Team discussed the MGH Report during several IEP Team Meetings, including meetings held on April 7, 2023 (DE 15), October 3, 2023 (DE 12), and November 15, 2023 (DE 11).

54. Dr. ██████ did not observe Student in the classroom, nor did ██████ speak directly with anyone from the District. DE 53; ██████ Testimony.

55. Teacher input was only obtained for some of the rating scales in this evaluation, the BASC-3, the BRIEF-2, and the ASRS. Id. Dr. ██████ did not seek Student's classroom teacher's input for the ABAS-3, TSCY, or the CDCL. Id.

56. Student's scores in the MGH Report demonstrated that ██████ intellectual functioning was in the average range. Id. at 380-81; ██████ Testimony.

57. For the most part, teacher reports demonstrated that Student was within the normal limits for behaviors and skills tested by the BASC-3 and the BRIEF-2. Id. at 383-84; ██████ Testimony.

58. In those skills or behaviors which were not within normal limits, they were only either mildly elevated or at risk. Id.; ██████ Testimony.

59. A student's performance during an evaluation can be impacted by the environment in which the evaluation is given. ██████ Testimony; see also Testimony of ██████ and ██████. For example, the location of the MGH testing, as well as it being two hours long, could have impacted Student's scores. Id.

60. ██████████ provided credible testimony that ██████ reviewed the MGH Report and that it did not change ██████ professional opinion with respect to Student’s ineligibility under the category of ED. ██████████ Testimony.

61. The MGH Report did not recommend that Student’s eligibility identification be changed to include ED. See generally DE 53.

62. In fact, Dr. ██████████ shared with ██████ ██████████ that “█████ tried to help [Parents] focus less on [Student’s] classification and more around what is most helpful in terms of ██████ progression of skills.” DE 72B, p. 309.

4. *Observations of Student during the 2023-2024 school year*

63. ██████████ is Student’s current classroom teacher for the 2023-2024 school year. Testimony of ██████████.

64. ██████ ██████████ is certified by the New Hampshire Department of Education, and ██████ has over thirty years of experience as a classroom teacher. Id.; DE 58.

65. ██████████ testified credibly about ██████ observations of Student within the classroom during the 2023-2024 school year, as well as the reasoning behind ██████ recommendations to the Student’s IEP Team. ██████████ Testimony.

66. ██████████ testimony described ██████ observations of Student as follows:

- a. Student loves coming to school.
- b. Student always arrives to class ready to tell ██████ a story or a joke.
- c. Student is very social and connects with peers.
- d. Student loves to play games, and ██████ asks ██████ friends to play games with ██████
- e. Student participates in class.

- f. Student can be impulsive, but ■ benefits from redirection.
- g. Student requires less redirection and support in the classroom since the beginning of the year.
- h. Student has “grown a lot” over the course of the school year.
- i. Student benefits from coaching and previewing within the classroom.
- j. With supports, Student is accessing the regular second grade curriculum.
- k. Student does not exhibit any big reactions within the classroom.

Id.; see also DE 12 (■■■■■■■■■■)'s reported observations at 10/3/23 Team meeting, noting that Student is making progress academically and not having big emotional reactions or behaviors); DE 11 (minutes from 11/15/23 Team meeting); DE 6 (■■■■■■■■■■ reported that ■■■ has seen growth in Student and ■■■ independence from the beginning of the school year).

67. ■■■■■■■■■■ credibly testified that ■■■ believes Student is appropriately identified under the IDEA, and that ■■■ does not require an identification of ED. ■■■■■■■■■■ Testimony.

68. ■■■■■■■■■■, SLP took over as Student's SLP at the beginning of the 2023-2024 school year. ■■■■■■■■■■ Testimony; ■■■■■■■■■■ Testimony.

69. ■■■■■■■■■■ is licensed by the New Hampshire Board of Allied Health as a speech-language pathologist. DSE 60. ■■■ has approximately twenty-five years of experience workings as an SLP. Testimony of ■■■■■■■■■■. ■■■■■■■■■■ has worked with “hundreds” of students with respect to evaluations, direct services, and participation on their IEP Teams. Id.

70. ■■■■■■■■■■ testified credibly with respect to ■■■ evaluation, ■■■ observations of Student, and ■■■ professional opinions with respect to eligibility and recommended speech services. ■■■■■■■■■■ Testimony.

71. ██████████ and ██████████ completed observations of Student in October and November 2023. DE 35. These observations were consistent with what was reported by Student's classroom teachers. Id.

72. ██████████ credibly testified that ██████ believes Student is appropriately identified under the IDEA, and that ██████ does not require an identification of ED. ██████████
Testimony.

73. ██████████ testified that ██████ conducted a file review in this case, which included a review of the District's Core and Supplemental Exhibits, as well as Parents' Exhibits. ██████████ Testimony. ██████████ also observed the testimony of Student's classroom teachers, ██████████ and ██████████, at the hearing. Id.

74. ██████████ provided credible testimony that, in ██████ professional opinion, based on ██████ training and experience, as well as ██████ record review and knowledge of Student's classroom teachers' observations, that Student is still appropriately identified and that ██████ does not meet the criteria for eligibility under ED. Id.

75. ██████████ is Student's case manager, as well as the ██████████ School's Special Education Building Coordinator and the Preschool Coordinator. ██████████ Testimony; DE 55. ██████████ is certified by the New Hampshire Department of Education, and ██████ has worked in the field of education for over 30 years. Id.

76. ██████████ provided credible testimony pertaining to ██████ professional opinion that Student is still appropriately identified and that ██████ does not meet the criteria for eligibility under ED. Id.

77. Parents have not presented any evidence that any professional has recommended that Student's identification be changed to ED. See generally Parent's testimony; DEs; PEs.

78. Beyond citing Student's diagnoses, Parents have not presented any evidence that Student met the criteria for ED outlined in 34 C.F.R. § 300.8(c)(4)(i). See generally id.

79. Parents have not presented any evidence that Student's supports and services would change if ■ were identified as ED. Id.; contrast with Testimony of ■ (testifying that Student's programming is based on ■ educational needs, as opposed to ■ specific classification); DE 3, p. 37 (■ explained that Student's services would not change if ■ disability was changed from ED to OHI, and that "■ educational needs drive ■ program.")

80. Student has made meaningful progress over the course of the 2023-2024 school year. See Testimony of ■, ■, ■, and ■ see also DSE 73 (2023-2024 progress report noted that "[Student] has made a nice transition to second grade. When ■ is familiar with the routine, and knows what is coming up and what's expected, ■ is an active, hard working guy. ■ is becoming able to work independently and for longer periods of time. ■ wants to do well, and enjoys receiving positive feedback. [Student] LOVES playing our math games, and ■ has several classmates who enjoy playing the games with ■ as well. ■ is always willing to help out with jobs around the classroom."); ■ Testimony (Student has continued to make meaningful progress since the first term, and ■ is on track to earn 2s and 3s by the end of the year); DE 41-42 (IEP progress reports).

81. Beyond Parent's own testimony that Student requires an ED identification and additional services, Parents presented no evidence that Student has not made meaningful progress in ■ educational program during the 2023-2024 school year. See generally Parent's Testimony; PEs.

ii. IEPs⁵

82. Parents have alleged that the District's IEPs from March 2022⁶ to present were inappropriate because they failed to include mental health support/counseling, speech-language services, and/or appropriate ESY services. See DPR; Parent's Testimony.

83. Student's December 2021 speech-language evaluation by ██████████ did not indicate a need for speech-language services in Student's IEP. DE 39; ██████████ Testimony.

84. ██████████ is licensed by the New Hampshire Board of Allied Health as a speech-language pathologist. DSE 61, p. 31. ██████████ has over twenty years of experience working as an SLP. Id. at 30.

85. ██████████ testified credibly with respect to ██████████ evaluation, ██████████ observations of Student, and ██████████ professional recommendations to the Team with respect to eligibility and need for speech services. ██████████ Testimony.

86. ██████████ administered the Clinical Evaluation of Language Fundamentals-Preschool-3 ("CELF-P3"). Id. ██████████ also observed Student in a small group setting. Id.

87. These assessments were in accordance with professional standards, and they were the assessments ██████████ typically uses for students with ██████████ profile. Id.

88. The results of ██████████'s speech-language evaluation were a valid representation of Student's current functioning within the classroom. Id.

⁵ The District repeats and incorporates by reference the proposed factual findings above as if set forth fully herein, particularly with respect to Student's evaluations and the observations of Student's classroom teachers.

⁶ The District reiterates that Parents' due process request does not include claims pertaining to the District's IEP proposals prior to March 2023. See ¶¶1-5; District's Motion to Dismiss. However, the District is including this section in the event that the Hearing Officer disagrees.

89. The results of the CELF-P3 demonstrated that Student's Core Language score was above the average range, and that [REDACTED] "[a]reas of greatest strength were "in the areas of Sentence Comprehension (understanding sentences containing a variety of grammatical concepts), Word Structure (using grammatical markers correctly), Word Classes (relating vocabulary) and Following Directions (following directions containing language concepts)." Id. at 306-07. [REDACTED] further noted that Student "demonstrated solid skills across all subtests." Id. at 307.

90. [REDACTED] also reported [REDACTED] observations of Student during small group work with the District's occupational therapist, noting that Student's "speech intelligibility [wa]s excellent and [REDACTED] speech production [wa]s age appropriate. Additionally, [Student's] oral structure/function, voice, and fluency [we]re all adequate at [that] time." Id.; see also [REDACTED] Testimony.

91. [REDACTED] reported that Student demonstrated "appropriate communication skills when interacting with peers in small group therapy sessions as well as with classmates in a larger group." Id.; see also ¶28.

92. [REDACTED] psychoeducational evaluation did not indicate a need for counseling services. [REDACTED] Testimony; see also ¶¶11-25.

93. The purpose of school counseling is to support students with struggles and behaviors that impact them at school. Testimony of [REDACTED] see also DSE 76 (school counselors seek to "remov[e] barriers to learning and developing skills and behaviors critical for academic achievement.")

94. School counselors "do not provide therapy or long-term counseling in schools." DSE 76, p. 371; see also [REDACTED] Testimony.

95. School counseling is different from mental health therapy. ██████ Testimony; ██████ Testimony.

96. The District’s counselors are not licensed to provide mental health therapy. Id.

97. Providing mental health therapy is beyond the scope of school counseling. Id.

1. IEPs dated March 24, 2022 to March 23, 2023 and March 24, 2022 to March 23, 2023 (Amendment Date May 9, 2022)

98. The District proposed an annual IEP for Student on March 9, 2022. DE 23. This IEP was dated March 24, 2022 to March 23, 2023. Id. Parent partially consented to this IEP on March 24, 2022. Id. at 219.

99. As part of this IEP, Student received goals in school participation, fine motor development, reading, and writing. Id. at 209. Student’s school participation goal was designed to address Student’s sensory seeking patterns, regulation of body, and flexible thinking. Id. Student received occupational therapy (“OT”) as a related service to support this and the fine motor goal. Id. at 212.

100. The IEP included consultation by both the District’s occupational therapist and SLP. Id. The addition of the SLP consultation was to address Parents’ concerns related to social pragmatics. DE 24.

101. Finally, the IEP included an accommodation for a “consult with school counselor or school psychologist as needed.” DE 23, p. 215.

102. In its March 9, 2022 WPN, the District noted that it rejected Parents’ request for a goal and services for social pragmatics, emotional literacy and regulation skills (through either an SLP, social worker, or school counselor) for the following reasons:

- a. The proposed IEP included goals and services to address Student’s area of need to develop self-regulation skills.

- b. Student's speech-language evaluation did not demonstrate a need for such services, as Student had age-appropriate communication skills with peers.
- c. District added a consultation by the SLP to address any needs that may arise regarding social communication skills.
- d. The proposed IEP included a consultation from the school counselor/school psychologist if needed.
- e. Student was making good progress in ■■■ current program, and ■■■ is meeting both classroom expectations and ■■■ IEP goals; therefore, removing ■■■ from the general education classroom for an unnecessary service would not be appropriate.

DE 24.

103. The District Team members all agreed with the reasoning in the District's March 9, 2022 WPN. Testimony by ■■■■■■■■■■, ■■■■■■■■■■, ■■■■■■■■■■, and ■■■■■■■■■■

104. The District amended the Student's annual IEP effective May 9, 2022. DE 20. The amended IEP added the District's ESY proposal for the summer of 2022. Id. at 192; DE 19. Parent partially consented to this IEP on May 19, 2022. Id. at 194.

105. The District's ESY proposal for the 2022 summer included specialized instruction in reading and group OT services. Id.

106. Parents have not disputed the amount of reading and/or OT services in the District's 2022 ESY proposal. Parents' Testimony; DPR.

107. The District's proposed IEPs dated March 24, 2022 to March 23, 2023, along with the amended IEP of May 9, 2022, were appropriate and reasonably calculated to enable Student to make meaningful progress in light of ■■■ individual circumstances. Testimony by ■■■■■■■■■■, ■■■■■■■■■■, ■■■■■■■■■■, and ■■■■■■■■■■ DE 23 (IEP); ¶45 (citing evidence of Student's meaningful progress over the course of the school year).

108. The District's IEP was developed based on input from all members of the IEP, including Student's evaluators, service providers, classroom teacher, and Parents. Id.

109. No school evaluator, classroom teacher, or service provider recommended or saw a need for direct speech services for Student. Testimony by [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

110. [REDACTED], [REDACTED], and [REDACTED] all credibly testified as to their professional opinion that Student did not require direct speech services from March 2022 through the 2022-2023 school year. See [REDACTED] Testimony (testifying that [REDACTED] did not believe Student required direct speech services because [REDACTED] was accessing the curriculum as expected); [REDACTED] Testimony (testifying that [REDACTED] could understand Student and [REDACTED] speech did not impact [REDACTED] in the classroom); [REDACTED] Testimony.

111. No school evaluator, classroom teacher, or service provider recommended or saw a need for school counseling services for Student. Testimony by [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

112. [REDACTED], [REDACTED], and [REDACTED] all credibly testified as to their professional opinion that Student did not require school counseling services from March 2022 through the 2022-2023 school year. See [REDACTED] Testimony (testifying that there was no evidence to suggest school-based counseling at this time, as [REDACTED] was making progress both academically and socially); [REDACTED] Testimony (testifying that [REDACTED] has recommended students for school counseling in the past, but [REDACTED] was never concerned that Student required counseling); [REDACTED] Testimony.

113. [REDACTED], [REDACTED], [REDACTED], and [REDACTED] all credibly testified that Student received more of a benefit from being in the classroom with [REDACTED] peers, and that it

would not have benefited [REDACTED] to be removed from the classroom for direct speech services and/or school counseling. Testimony by [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

114. The District's ESY proposal was based on both the recommendations of Student's service providers over the course of the 2021-2022 school year, as well as input from the IEP Team at the April 21, 2022 IEP Team meeting. [REDACTED] Testimony; DE 21.

115. The District's ESY proposal was appropriate to meet Student's needs. [REDACTED] Testimony; DE 23, p. 192.

116. Parents' sole criticism of the District's 2022 ESY proposal was that it no longer included [REDACTED]. DPR; Parent Testimony; [REDACTED] Testimony.

117. [REDACTED] provided credible testimony pertaining to the basis and appropriateness of the District's various ESY proposals. Id.

118. [REDACTED] was a District-run summer camp that worked with students on their social and emotional behavioral skills. [REDACTED] Testimony. [REDACTED] was available to both identified and nonidentified students. Id.

119. The Team recommended [REDACTED] during the summer of 2021 because Student was transitioning to kindergarten, and the Team felt that [REDACTED] would be beneficial to Student's transition. Id. [REDACTED] provided Student with access to the building and the opportunity to work on [REDACTED] self-regulation. Id.

120. The fact that the Team recommended [REDACTED] for the summer of 2021 does not mean that the Team would have recommended [REDACTED] for the summer of 2022. Id.

121. The Team's 2022 ESY proposal was consistent with its ESY proposals prior to Student transitioning to kindergarten; it included services in the areas Student received services for during the school year. Id.; DE 23, p. 192.

122. Services for social pragmatics were not an area of need identified in Student’s IEP at the time of ESY 2022. Id.; see generally DE 23.

123. The District ceased offering ██████████ to all students (both identified and nonidentified) after the 2021 summer. Id.; Parent’s Testimony; PE 6.

124. At no time did ██████████ indicate to Parents that the Team would not discuss or propose appropriate ESY for the 2022 summer. Id.; see also PE 6.

125. Student successfully accessed ██████ ESY services during the 2022 summer, and █████ continued to make progress in █████ educational program upon █████ return to school during the 2022-2023 school year. █████ Testimony; █████ Testimony (describing the transition to first grade as “seamless”); ¶45 (citing evidence of Student’s meaningful progress over the course of the 2022-2023 school year).

2. IEP dated March 24, 2023 to March 23, 2024

126. The District proposed an annual IEP for Student on March 9, 2023. DE 16. This IEP was dated March 24, 2023 to March 23, 2024. Id.

127. The District’s proposed IEP was based on input from all members of the IEP Team, including Student’s evaluators, service providers, classroom teacher, and Parents at the Team’s March 7, 2023 Team meeting. DE 18, 17.

128. ██████████ reported to the Team that Student has been “able to play with different peers”, █████ “keeps up with the class”, █████ was “not needing as much support as other students in the classroom”, and that “some days █████ needs to support at all” with academics. Id. ██████████ further expressed █████ opinion that Student did not require direct speech language services, and that the consultation/coaching currently in place was sufficient. Id.; see also DE 17, p. 169 (██████████ was in agreement with this statement).

129. Parents did not dispute the classroom teacher's reports of in-school functioning; rather, they focused on behaviors that they had witnessed outside of school. See id.; see also Parent's Testimony. ██████████ reported at the meeting that the concerns Parents raised were inconsistent with Student's presentation at school. Id.

130. The District's proposed IEP did not contain school-based counseling; however, it continued to include an accommodation for a consult with school counselor or school psychologist as needed. DE 16.

131. The District's proposed IEP did not contain direct speech language services; however, it continued to include a consult and services from the District's occupational therapist, as well as a consult from the District's SLP. Id. at 157.

132. The District described its reasoning for declining to include direct speech-language services in social pragmatics in the IEP in its March 9, 2023 WPN. DE 17, p. 169. The District again noted that Student's social pragmatic needs were continuing to be met "in the moment in the classroom with cueing, and/or verbal prompts." Id.

133. ██████████, ██████████, and ██████████ all credibly testified that they agree with the reasoning in this WPN.

134. Parent rejected this IEP on March 20, 2023. Id. at 164. While Parents cited a lack of SLP services and a ESY plan as reasons for their rejection, they did not request the inclusion of school counseling services. DE 16, 164.

135. The District's proposed IEP dated March 24, 2023 to March 23, 2024 was appropriate and reasonably calculated to enable Student to make meaningful progress. See Testimony of ██████████, ██████████, ██████████ and ██████████ DE 16.

136. Student did not require school-based counseling or direct speech services to receive a FAPE at this time. See id.

137. The District had not yet proposed ESY at the time of this proposed IEP. Id.; see also ██████ Testimony (ESY proposals are typically made in the spring).

3. *IEP dated April 27, 2023 to April 26, 2024*

138. The IEP Team met on April 7, 2023 to discuss Parents' rejection of the IEP, as well as ESY for the 2023 summer. DE 15.

139. Prior to this meeting, the District received the MGH Report. Id.

140. ██████ credibly testified as to ██████ review of the MGH Report and its impact on ██████ opinion that Student does not require school-based counseling.

141. ██████ testified that ██████ reviewed the MGH Report, and that ██████ disagrees with its recommendation for school-based counseling. ██████ Testimony. In support, ██████ noted that the report does not reflect Student's functioning at school, and that it is just one piece of information to consider when planning for Student's educational program. Id.; see also DSE 72B, p. 309 (Dr. ██████ reported to ██████ that the services ██████ recommends are needed if Student "is showing difficulties accessing ██████ learning environment in those ways.")

142. ██████ and ██████ also testified that they have reviewed the MGH Report with respect to its language scores, and they both testified credibly about their review of the same and its impact on their opinions. Testimony of ██████ and ██████; see also DE 53 (MGH Report).

143. Dr. ██████ is not a speech-language pathologist. See DE 53; Testimony of ██████ and ██████.

144. ██████████ did not administer the full CELF-5 assessment as part of ██████ testing; rather, ██████ only administered select subtests. Id. at 381.

145. The results from the subtests administered demonstrated a Core Language score within the average range. Id.; Testimony of ██████████ and ██████████.

146. The expressive and receptive vocabulary scores from the EVT-3 and the PPVT-5 were inconsistent with what the District had received in its 2021 testing, which demonstrated average expressive and receptive language scores, as well as the observations of Student within the school setting. Id.; DE 39; Testimony of ██████████ and ██████████.

147. Moreover, the expressive vocabulary subtest ██████████ administered as part of the 2021 speech-language evaluation tested Student's vocabulary, and Student scored within the average range for this subtest. Testimony of ██████████; DE 39, p. 308.

148. Neither ██████████ nor ██████████ agreed with Dr. ██████████'s recommendations with respect to the need for direct speech services at that time. Testimony of ██████████ and ██████████.

149. As a result of the discussions at this meeting and the MGH Report, the District proposed an IEP dated April 27, 2023 to April 26, 2024. DE 13, 14. This IEP added an additional accommodation for the use of social thinking language in the classroom, as well as ESY services as recommended by the Team. DE 14.

150. The District included its reasoning for not including direct speech language services (for expression), as well as a request for a weekly services with the school counselor, in its April 27, 2023 WPN. Id.

151. ██████████, ██████████, ██████████ and ██████████ all credibly testified that they agree with the reasoning in this WPN.

152. Specifically, the District relied on the input from the SLP and classroom teacher in determining that Student does not have a need with respect to [REDACTED] expression to warrant pulling [REDACTED] out of the general education classroom for 1:1 speech services. DE 14. The District further noted that to do so would not be the least restrictive environment for Student. Id.

153. However, the District's SLP agreed to consult with Dr. [REDACTED] to obtain more information related to [REDACTED] evaluation. Id.; see also [REDACTED] Testimony.

154. With respect to school counseling, the District similarly reasoned that Student did not require this service to make progress and participate in [REDACTED] grade level curriculum. Id. The District emphasized that unnecessarily removing Student would not be the LRE. Id.

155. The District's 2023 ESY proposal contained specialized instruction in reading and group OT services. DE 13, p. 131.

156. Parents have not disputed the amount of reading and/or OT services in this proposal. Parent's Testimony; DPR.

157. Parent rejected this IEP on May 2, 2023. DE 13, p. 164. While Parents cited a lack of SLP services and an "inadequate" ESY plan as reasons for their rejection, they did not cite the rejection of school counseling services. Id. 164.

158. The District's proposed IEP dated April 27, 2023 to April 26, 2024 was appropriate and reasonably calculated to enable Student to make meaningful progress. See Testimony of [REDACTED], [REDACTED], [REDACTED] and [REDACTED] DE 13 (IEP).

159. Student did not require school-based counseling or direct speech services to receive a FAPE at this time. See id.

160. The Team's 2023 ESY proposal was appropriate for Student. [REDACTED] Testimony; DE 13, p. 131.

161. Services for social pragmatics were not an area of need identified in Student's IEP at the time of ESY 2023. See generally DE 13; ██████ Testimony.

162. Student successfully accessed ██████ ESY services during the 2023 summer, and ██████ continued to make progress in ██████ educational program upon ██████ return to school during the 2023-2024 school year. ██████ Testimony; ██████ Testimony; ¶74-75 (citing evidence of Student's meaningful progress over the course of the 2023-2023 school year).

4. IEP dated December 4, 2023 to March 23, 2024

163. Following the Team's April 2023 IEP Team meeting, ██████ immediately contacted Dr. ██████ to consult with ██████ regarding ██████ testing. ██████ Testimony.

164. Dr. ██████ shared the following with ██████ during ██████ consult:

- a. Dr. ██████ tried to help Parents "focus less on [Student's] classification and more around what is helpful in terms of ██████ progression of ██████ skills."
- b. Student appeared to have some gaps in vocabulary, but it could be due to "attentional difficulties."
- c. Student appeared to do well in the structured school setting.
- d. Dr. ██████ views ██████ role as to provide recommendations based on what ██████ saw in ██████ testing, and that it is "only meant to be a road map of what we might consider based on patterns..."
- e. Dr. ██████ reported that it is not uncommon to see a student perform better within the school setting than in ██████ testing, and that it was less important to ██████ what Student is identified as "or what level of services are provided, as long as areas of impact are being addressed...IF ██████ is showing difficulties accessing ██████ learning environment in those ways."
- f. Student was developing as "we expect a kid ██████ age to be developing, with some areas of weakness that may stand out against this nicely developing cognitive profile."

DSE 72B, p. 309-310.

165. The IEP Team met to discuss Student's transition into the second grade on October 3, 2023. DE 12. Parents participated in this meeting with the assistance of the State Advocate for Special Education. Id.

166. Student had a successful transition into the second grade. ██████████ Testimony; DE 12. While Student required support, ██████ responded well to the structured environment of the classroom, and ██████ was keeping up with the class socially and academically. Id.; see ¶¶59, 74 (describing Student's functioning and progress in the classroom); see also DE 12, p. 112 (occupational therapist reported that ██████ "[h]as seen ██████ interact with peers appropriately, is very regulated. Can be very gracious with ██████ peers. Will teach them about games, likes having a job/role within the group."); id. (██████████ reported that Student "functions quite well in a group setting in the classroom").

167. The IEP Team considered a letter Parents provided from the private camp Student attended over the summer. Id. The school-based team felt that the behaviors described in this letter were inconsistent with what was being seen in the school setting. Id.; see also Testimony of ██████████ and ██████████ (both also noting that they cannot speculate as to what supports Student received in that setting, or what services/programming were provided). For example, Student did not demonstrate the outwardly upset behavior or big reactions in the classroom, and ██████ responded very well to redirection and previewing. ██████████ Testimony; see also DE 12.

168. ██████████ did not observe any challenges with respect to Student's word retrieval or vocabulary at the time of this meeting, and ██████ reported this to the IEP Team. Id.; ██████████ Testimony.

169. Based on the discussion at the meeting, as well as Parents' concerns and ██████████ ██████████'s observations of Student in the classroom, ██████████ and ██████████

recommended that Student's IEP be amended to include small group social skills instruction within the classroom by the SLP. Id. The Team also proposed that the SLP conduct observations of Student in different settings to collect data on ■ functioning in the classroom with respect to social skills and pragmatics. Id.

170. Following ■ and ■'s observations, see DE 35, the IEP Team proposed to amend Student's IEP to include a social skills/communication goal as well as social skills group instruction twice per week for 30 minutes. DE 9, p. 94-96 (IEP); DE 10 (WPN); DE 11 (IEP Team meeting minutes).

171. The resulting IEP was dated December 4, 2023 to March 23, 2024. DE 9.

172. The District's proposed IEP was based on input from all members of the IEP Team, including Student's evaluators, service providers, classroom teacher, and Parents. DE 9-11; Testimony of ■, ■, ■, and ■.

173. ■, ■, ■, and ■ all credibly testified to their opinion that these new services were not necessary for Student previously because ■ did not exhibit a need for such services. Testimony of ■, ■, ■, and ■.

174. The District's November 21, 2023 WPN outlines the District's reasoning for declining to provide direct pull out speech services to Student at that time. DE 10, p. 107. ■, ■, ■, and ■ all credibly testified that they agreed with the reasoning in this WPN, including that Student would benefit more from services within the classroom, and that this would be the LRE. See Testimony of ■, ■, ■; see also DE 10.

175. Parent rejected the District's proposed IEP on December 5, 2023. DE 9, p. 103.

176. While Parents requested direct speech services in their rejection of the proposed IEP, Parents did not request counseling services. Id.

177. Parents' rejection of the proposed prevented the District from providing the services proposed therein. ██████ Testimony; ██████ Testimony.

178. The District's proposed IEP dated December 4, 2023 to March 23, 2024 was appropriate and reasonably calculated to enable Student to make meaningful progress. See Testimony of ██████, ██████, ██████ and ██████; DE 9.

179. Student did not require school-based counseling or direct speech services to receive a FAPE at this time. See id.

5. IEP dated February 29, 2024 to February 28, 2025

180. Parent contacted ██████ following the November 2023 IEP Team Meeting to share ██████ concerns related to Student's speech, as well as to encourage ██████ to look more closely at the MGH Report. ██████ Testimony; DSE 72B, p. 308 (email correspondence between Parent and ██████).

181. Following this conversation, ██████ reviewed the MGH Report in detail and determined that ██████ did not have sufficient information from the report to warrant changing ██████ opinions with respect to Student's speech services. ██████ Testimony; see also ¶¶133-37 (outlining ██████'s interpretation of the MGH Report).

182. Based on the fact that the MGH Report did not include a full CELF-5 assessment, that its scores were inconsistent with the District's prior testing, and that the Parents had ongoing concerns with respect to Student's speech, ██████ suggested performing an updated speech-language evaluation of Student. ██████ Testimony. The District adopted this recommendation in its January 8, 2024 WPN. DE 8; see also DSE 72B, p. 305 (Emails showing

that [REDACTED] suggested an updated speech evaluation on December 18, 2023 and Parents responded with their consent on January 3, 2024).

183. [REDACTED] completed an updated speech-language evaluation on February 6, 2024. DE 34.

184. [REDACTED] evaluation included the following assessments: (1) A file review, (2) The Clinical Evaluation of Language Fundamentals-5 (“CELF-5”), and (3) Language Processing Test-3 (“LPT-3”)- subtests: Associations and Categorization. Id.

185. These assessments were in accordance with professional standards. [REDACTED] Testimony.

186. [REDACTED] included the subtests of the Language Processing Test due to Parents’ concerns related to vocabulary. Id.

187. The results of [REDACTED]’s speech-language evaluation were a valid representation of Student’s current functioning within the classroom at that time. Id.

188. The results of the CELF-5 demonstrated that Student’s Core Language score was within the average range. DE 34, p. 262. Additionally, Student’s receptive and expressive language were also within the average range. Id.

189. Student’s receptive and expressive language scores were consistent with [REDACTED]’s 2021 evaluation. Compare id. and DE 39.

190. On the LPT-3, Student scored below the average range for Associations, but within the average range for Categorization. Id. at 263.

191. [REDACTED] credibly testified at the hearing that the LPT-3 subtests involve a hierarchy, and that each skill tested in each subtest builds on the prior skill tested in the prior subtest. [REDACTED] Testimony. In comparing the Associations and Categorization scores, [REDACTED]

testified that these scores were somewhat inconsistent as Student required the skills tested in the Associations test to perform as well as ■ did on the Categorization score. Id. Therefore, ■ felt it was important to put these scores into context with what is observed of Student in the classroom. Id.

192. The IEP Team met to discuss ■'s evaluation on February 12, 2024. DE 6. At this meeting, ■ reported the results of ■ evaluation. Id.

193. ■ reported at this meeting that Student's communication in class was "functional"; however, ■ had recently begun showing more difficulty with content specific language. Id.

194. ■ credibly testified that vocabulary difficulties often manifest as students develop and academic demands increase, and that it does not signify that Student had previously experienced a vocabulary deficit. ■ Testimony; see also DE 52, p. 377 (the MGH report likewise stated that vocabulary difficulties can emerge as curriculum demands increase).

195. ■ further observed "rare" occasions (three times during the school year) where Student would use the wrong word in communicating with ■ however, based on ■ experience with Student, this appeared to be more of an impulsivity issue as opposed to an "access to language issue." ■ Testimony (and describing an interaction concerning a stapler that was out of staples); DE 6.

196. ■ had not observed any concerns with vocabulary until shortly before this meeting. Id.; see also ■ Testimony (noting that no concerns were raised by the school-based Team members related to vocabulary prior to this meeting).

197. Based on the input from the Team, including ██████████'s evaluation and ██████████'s recent classroom observations, as well as Parents' concerns, the District proposed an updated IEP dated February 29, 2024 to February 28, 2025, which added an additional speech goal in the area of vocabulary, with one session per week of pull-out speech services with the SLP to address that goal. DE 5; DE 4 (IEP).

198. Specifically, the February 2024 IEP included the following speech goals/services:

- g. Social/Behavioral goal implemented by the SLP focused on social pragmatics. DE 4, p. 53.
- h. Speech/Language goal implemented by the SLP focused on vocabulary. Id.
- i. 30 minutes per week group social skills instruction by the SLP within the classroom setting. Id. at 55.
- j. 30 minutes per week of pull-out instruction with the SLP to address vocabulary. Id.

199. Parents do not dispute that this level of speech services is appropriate for Student. Parents' testimony; DPR; DE 3, p. 35 (Parent agreed that the current speech services were appropriate, but ██████ maintained that Student required compensatory speech services).

200. Parents raised a request for school-based counseling at the end of the February 2024 IEP Team meeting. DE 6, p. 75. The District discussed this request and the school-based members of the IEP Team did not believe that counseling was necessary. Id.

201. ██████████ reported that ██████ did not see a need for pull-out counseling services, that many of Student's needs with respect to rigidity and impulsivity were similar to ██████ same aged peers, and that ██████ has seen growth in ██████ since the beginning of the school year. Id.; see also ██████████ Testimony. Student's occupational therapist likewise reported that ██████ sees ██████ "doing well emotionally". Id.

202. The District's February 15, 2024 WPN reflected the District's reasoning for not proposing pull-out counseling services, i.e. that Student does not require such services to receive a FAPE and that providing these services would not be the LRE. DE 5.

203. ██████████, ██████████, and ██████████ all credibly testified that they agree with the reasoning in this WPN. Testimony of ██████████, ██████████, and ██████████

204. Parents partially consented to the District's February 2024 proposed IEP on February 16, 2024, and Student began receiving the updated speech services outlined therein. DE 4, p. 65; Testimony of ██████████.

205. Student's IEP was later amended twice based on areas where the parties reached a resolution on issues raised in this pending due process request. See, e.g., DE 2, DSE 63.

206. As part of the resolution session in this matter, the District offered a six week intervention session with the school counselor in order to "gather additional information about [Student], including whether such intervention is helpful and should be continued." DE 2, p. 32.

207. Parents rejected this proposal in its entirety because (1) Parents wanted the intervention to go until the end of the school year and (2) Parents requested ██████████ as the school counselor working with Student as opposed to ██████████. See DSE 64, p. 86 ("Again, I'm going to say [sic] with through the end of the school year, and that it be ██████████ ██████████.")

208. The District has not proposed to add pull-out counseling services to the IEP, nor has there been an ESY proposal for the summer of 2024 yet. Id.; ██████████ Testimony; Parent's Testimony. The District typically proposes ESY in the Spring. ██████████ Testimony.

⁷ The District never selected a provider to provide this intervention, as it was not accepted by Parents.

209. ESY for the summer of 2024 is not within the scope of this hearing. Parent's Testimony; DPR.

iii. Parents' Requests for Reimbursement⁸

210. Parents's reimbursement request is limited to the expenses listed in PE 24. Parent's Testimony. These requests included reimbursement for summer camps they enrolled Student in during the 2022 and 2023 summers, as well as reimbursement for their "special needs au pair" for the same timeframe. Id.

211. Parents presented no evidence as to the appropriateness of the summer camps they provided to Student that they allege were substitutes for ESY. PEs; Parent Testimony; see also Testimony of [REDACTED] and [REDACTED] (noting the lack of information about the summer camps provided by Parents, including any information demonstrating that they were appropriate for Student).

212. Parent presented no evidence as to what these summer programs offered Student for programming, the services provided to Student, or whether Student received a benefit from these programs. Id.; Testimony of [REDACTED] and [REDACTED].

213. In fact, Parent testified at the hearing that the summer camps they enrolled Student in for the 2022 and 2023 summers were not successful. Parent's Testimony.

214. Parents failed to provide any evidence documenting the costs and/or payment of their expenses for [REDACTED] for the 2022 and 2023 summers. PE 24; Parent Testimony.

⁸ The District reiterates that Parents' due process request does not contain a request for reimbursement for past expenses. Therefore, per the Hearing Officer's Order on Motion to Dismiss, this claim is barred. The District is including this section to the extent the Hearing Officer disagrees. Moreover, the District repeats and incorporates by reference the proposed factual findings above as if set forth fully herein.

215. Parents failed to provide any evidence documenting the costs and/or payment of their expenses for ██████████ for the 2022 summer. Id.⁹

216. Parents failed to provide adequate evidence documenting the costs and/or payment of their expenses for ██████████ for the 2023 summer¹⁰. See PE 24-3 (only including a credit card statement for an August 4, 2023 “Payment Received” from “MASCOMA SAVIN...” without any proof that this was a payment to ██████████ the amount of the payment, or an itemization of what the expenses covered, aside from a handwritten note from Parent).

217. Parents asserted at the hearing that they are only seeking reimbursement for 4 weeks of summer camp, which was the equivalent of ██████████ Parents’ Testimony. However, PE 24 requests reimbursement for more than 4 weeks. See PE 24; Parent’s Testimony.

218. Parents have provided no evidence as to why Student requires more than 4 weeks of summer camp for a FAPE. Parent Testimony, PEs.

219. Beyond citing vague concerns about social pragmatics, Parents have provided no evidence as to why Student requires any summer camp to receive a FAPE. Id.

220. Parents have not provided any evidence of any professional opining that Student requires four or more weeks of summer camp (or any summer camp) to receive a FAPE. Id.

⁹ On May 2, 2024, after the close of the Parents’ evidence, Parents sought to submit additional evidence of this cost. The District objected to this new evidence as beyond the 5-day disclosure deadline, and it is contemporaneously filing a written objection outlining the same. Even if this evidence were considered, this documentation would still be inadequate because PE 24-7 does not demonstrate that the expense for ██████████ was ever paid. Indeed, this email contemplates a potential payment of a balance.

¹⁰ As noted above, Parents sought to introduce untimely additional evidence pertaining to the ██████████ costs, see PE 24-3A, to which the District objects.

221. Parents have requested reimbursement for the same au pair expenses in this request for due process, as they have in a simultaneous request involving their other child (IDPH FY 24-03-042). Compare PE 24-6 in this proceeding (seeking reimbursement for check numbers 2880, 2881, 2882, 3008 and 3012) with PE 31-1 in IDPH FY 24-03-042 (seeking reimbursement for the same checks).

222. While Parent asserted at the hearing that they are only seeking 96 hours of the au pair's total time in this proceeding, Parent conceded that the checks submitted are not limited to those 96 hours. Parents' Testimony.

223. Parents have provided no evidence to support their request for 96 hours of a special needs au pair. Parents' Testimony, PEs.

224. Parents did not present any evidence that Student requires a 1:1 special needs au pair for ESY. Id.

225. Student's IEPs for the relevant time periods did not include any 1:1 support.

██████ Testimony; DE 2, 4, 9, 13, 16, 20, 23; DSE 63.

226. Parents provided no evidence to parse out the expenses outlined in PE 24-6 between services provided to Student versus the Parents' other child. Id. Likewise, Parents provided no evidence on the cost of 96 hours of a special needs au pair. Id.¹¹

227. Parents did not request reimbursement for au pair expenses from the District prior to this proceeding. See generally Testimony; DEs; PEs.

¹¹ Parents similarly sought to introduce untimely argument as to the costs of the special needs au pair, to which the District objects. See Table of Contents for PE 26; Table of Contents for PE 26, footnote 3. Even if this argument were considered, Parents still have not presented any evidence of their actual out of pocket costs for the special needs au pair's work with Student. PEs; Parent's Testimony.

iv. Parents' Requests for Compensatory Education¹²

228. Parents are seeking compensatory education in social pragmatics for ESY 2022 and 2023, mental health support/counseling from March 1, 2022¹³ to present, and direct speech language services from March 1, 2022 to February 16, 2024 (when Parents partially consented to the updated IEP with direct speech services). Parent's Testimony; DPR.

229. Parents are seeking both reimbursement for the services they provided during ESY 2022 and 2023 (summer camps and special needs au pairs) and compensatory education for the same services. Parent's Testimony; PE 24; PE 26.

230. Parents are therefore requesting to be compensated twice (in two different forms) for the same alleged deprivation of services. Id.

231. Student's ESY proposals were appropriate for the 2022 and 2023 summers.

██████ Testimony; DE 13, p. 131; DE 23, p. 192.

232. Student did not require a separate summer camp or ESY services in social pragmatics during the 2022 and 2023 summers in order to receive a FAPE. Id.

233. The summer camps provided by Parent during the 2022 and 2023 summers were not appropriate for Student. Parent's Testimony.

234. Student did not require a 1:1 special needs au pair during 2022 and 2023 ESY.

██████ Testimony; DE 13; DE 23.

235. Student does not require compensatory ESY services. ██████ Testimony.

¹² The District repeats and incorporates by reference the proposed factual findings above as if set forth fully herein.

¹³ As noted above, it is the District's position that the Parents' due process request does not include any claims prior to March 2023; however, the District is including claims from March 2022 in the event the Hearing Officer disagrees.

236. The District’s proposed IEPs from March 2022 to present were appropriate and reasonably calculated to enable Student to make meaningful progress in light of [REDACTED] individual circumstances. See ¶¶76-191 (detailing the evidence pertaining to the District’s proposed IEPs).

237. Student did not require direct speech services prior to February 2024. Testimony of [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]; see also ¶¶76-191.

238. Parents have presented no evidence that the lack of direct speech services between March 1, 2022 and February 16, 2024 resulted in a denial of FAPE or impacted Student’s ability to access [REDACTED] educational program. PEs; Parent Testimony.

239. Student does not require compensatory speech services. Testimony of [REDACTED] [REDACTED], [REDACTED], [REDACTED], [REDACTED]; see also ¶¶76-191; see also DE 5 (WPN outlines the District’s reasoning for declining Parents’ request for compensatory speech services); Testimony of [REDACTED], [REDACTED], [REDACTED], [REDACTED] (all testifying that they agree with the reasoning in this WPN).

240. The District offered additional speech services starting in November 21, 2023, but it was prevented from providing these services due to Parent’s refusal of the IEP in its entirety. See Testimony of [REDACTED], [REDACTED], and [REDACTED]; ¶¶162-63.

241. The District explained to Parents on several occasions that Parents are permitted to partially consent to an IEP, which would allow the District to provide the services to which Parents consented. See, e.g., DE 12, p. 112 (noting that “Parents can partially consent” when discussing the new speech-language proposal at the October 3, 2023 meeting); DSE 72A, p. 290 (Email from [REDACTED] to Parents dated 12/4/23 stating “[p]lease consider the option of providing partial consent to the IEP. This would allow us to better address [Student]’s current needs as they present with the services and goals in this new IEP; rather than still being stuck

with [REDACTED] expired IEP, and working on goals and services from almost a year ago. This option would also allow time for [REDACTED] to work directly with [Student] and obtain some functional information in the areas you mention. [REDACTED] and the team can see if [Student] is presenting with any significant weakness or not in these areas that may warrant more support/services.”); DSE 72A, p. 292 (Email from [REDACTED] to Parents dated 9/13/23 stating, “I would like us to be able to move forward with finding at least some agreement (partial content on an IEP), so that we are not working off [Student]'s old expired IEP that ended in March 2023... Would a shorter duration IEP be helpful, (e.g ending sometime sooner than one annual year (March 2024) so the team would review progress and develop a new annual IEP sooner? Are you amenable to scheduling a meeting to discuss options for hopefully moving us toward, at a minimum partial agreement?”); DSE 72A, p. 302 (Email from [REDACTED] to Parents dated 3/27/23 stating “We will work to schedule an IEP meeting to discuss the rejected IEP and hopefully reach agreement on how best to move forward. In the meantime, please consider the option of 'partially consenting' to the IEP. This would allow [Student]'s team to provide the new services and work towards the updated goals in [Student's] IEP, while still noting your areas of disagreement, not providing any aspects of the IEP you don't want, and we would still schedule an IEP meeting. I understand the new IEP was built based on [Student]'s current functioning and needs, so having to work-off a year old IEP will not be calibrated as well to [Student]'s current needs.”)

242. Student has never required direct pull-out school counseling services since March 2022. Testimony of [REDACTED], [REDACTED], [REDACTED], and [REDACTED]; see also ¶¶76-191.

243. Student has benefited from being in the classroom, where [REDACTED] had access to peer modeling and in the moment coaching/cueing. Testimony of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]; see also generally DEs.

244. Student received more benefit from being within the classroom than ■ would have from pull out speech services from March 2022 to February 16, 2024. Id.

245. Student received more benefit from being within the classroom than ■ would have from pull out counseling services from March 2022 to present. Id.

246. Parents have presented no evidence that the lack of direct counseling services between March 1, 2022 and the present resulted in a denial of FAPE or impacted Student's ability to access ■ educational program. PEs; Parent Testimony.

247. Student does not require compensatory counseling services. Testimony of ■, ■, ■, ■ see also ¶¶76-191.

v. Parents' Procedural Claims¹⁴

248. Parents have alleged that the District failed to convene IEP Team meetings when necessary. Parent Testimony. However, Parent's testimony did not provide any information related to this claim, aside from vague and conclusory allegations. Id.; see also PEs (which do not provide any support for Parents' claims).

249. The only evidence in the record that the District refused to convene Team meetings is found in two WPNS in the District's exhibits. See DE 8 (12/27/23 WPN); DE 22 (3/28/22 WPN).

250. Between March 1, 2022 and the present, the District has only refused to convene a Team meeting on two occasions. See generally DEs, DSEs, ■ Testimony.

¹⁴ The District notes that the Parents did not preserve their procedural arguments at the Prehearing Conference when asked to clarify their claims; therefore, these claims are not properly before the Hearing Officer. However, the District is including this section to the extent the Hearing Officer disagrees. Finally, the District repeats and incorporates by reference the proposed factual findings above as if set forth fully herein.

251. On both occasions, the IEP Team had already discussed the reasons for Parents' disagreement with the District's proposals in both IEP Team meetings and in WPNs. See DE 8; DE 22; see also ██████ Testimony.

252. The District was not required to convene the IEP Team meetings referenced in the December 27, 2023 and March 28, 2022 WPNs. See DE 8; DE 22; see also ██████ Testimony.

253. The District did not fail to convene an IEP Team meeting when required. See generally DEs; ██████ Testimony.

254. Parents presented no evidence that not convening the Team on these two occasions impeded the Student's right to a FAPE, significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student, or caused a deprivation of educational benefit.

255. Parents have requested that the Hearing Officer replace ██████ and ██████ on the Student's IEP Team because they alleged both staff members discriminated against their children. See DPR, C.

256. Parents have presented no evidence that ██████ and ██████ acted inappropriately or discriminated against Student. See generally Testimony and Exhibits.

257. ██████ and ██████ have acted professionally towards Student and Parents and have acted within their role on the Student's IEP Team. Id.

258. Parent failed to present sufficient evidence to support their request to replace ██████ and/or ██████. Id.

II. Rulings of Law

A. Rulings of Law Pertaining to the Scope of the Hearing and the Burden of Proof

i. Scope of the Hearing

259. The following claims are outside of the scope of the hearing, as they were not included within the Parents' due process request:

- a. Any claims that IEPs proposed prior to March 9, 2023, see DE 23, were inappropriate,
- b. Any claims for compensatory education arising prior to March 9, 2023,
- c. Any claims for reimbursement of Parents' alleged ESY expenses from the summers of 2022 and 2023,
- d. Any claims that the District's evaluations were inappropriate, including any allegation that the District's speech-language evaluations failed to assess Student's vocabulary¹⁵, and
- e. Any claims alleging that the District denied Student access to counseling services available to all students outside of the IEP Team process¹⁶.

See 20 U.S.C. § 1415(f)(3)(B) ("The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise"); Order on Motion to Dismiss.

ii. Burden of Proof and Standard of Review

260. The District bears the burden of proof, by a preponderance of the evidence, as to "the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency." RSA 186-C:16-b, III-a. Accordingly, the District bears the burden of proof that Student's IEPs were appropriate.

¹⁵ In the alternative, these claims are barred by the statute of limitations with respect to the 2021 evaluation(s). See Order on Motion to Dismiss; RSA 186-C:16-b, I; 20 U.S.C. 1415(f)(3)(B).

¹⁶ In the alternative, these claims are subject to dismissal as beyond the scope of a due process hearing and the jurisdiction of the Hearing Officer. See 20 U.S.C. § 1415 (b); 34 CFR § 300.507 (a) (a party may file a due process complaint on any matter "relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child").

261. As the party requesting the hearing, the Parents bear the burden of proof as to all other issues, including that Student should be identified as ED, that the District committed a procedural violation under the IDEA, that their requests for compensatory education are appropriate and necessary under the IDEA, and that they are entitled to a change in the LEA staff on Student’s IEP Team. See Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49, 56 (2005) (holding that, unless state law states otherwise, the party bringing the due process request has the burden of proof under the IDEA).

262. If the Parents are permitted to request reimbursement for expenses they allegedly incurred during ESY 2022 and 2023, Parents also bear the burden of proving that such services were necessary and appropriate. Id.

263. A district makes a free, appropriate public education (“FAPE”) available to a student when it complies with the IDEA’s procedural requirements and offers an IEP that is reasonably calculated to enable the child to make meaningful progress in light of the student’s unique circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386, 399 (2017).

B. Rulings of Law as to Issues for Hearing

i. Eligibility

264. “To be eligible for special education services, a student must be a child with a disability as that term is used under the law.” Bartlett Sch. Dist., IDPH-FY-08-03-050 (N.H. SEA June 19, 2008). The definition of “child with a disability” requires that a student have a condition (including ED) that adversely affects ■ educational performance and by reason thereof, needs special education and related services. 34 C.F.R. § 300.8(a)(1), (c)(4), (9); NH Ed 1102.01(t); see also RSA 186-C:2, I.

265. If a child only requires related services and not special education, then the child is not a child with a disability under the IDEA. 34 CFR 300.8(a)(2)(i); NH Ed 1102.01(t).

266. Although educational performance includes academics as well as social/emotional issues and other functional and developmental areas, "a disability cannot qualify a child for IDEA benefits unless it has a negative effect on educational performance; no effect, or a positive one, will not do." Bartlett Sch. Dist., IDPH-FY-08-03-050 (N.H. SEA June 19, 2008) (citation omitted); see also Doe v. Cape Elizabeth Sch. Dist., 832 F.3d 69, 77-78 (1st Cir. 2016).

260. In order to determine that a student has an ED¹⁷, their Team must find that the student has at least one of the following characteristics (1) over a long period of time, (2) to a marked degree, and (3) which adversely affects the student's educational performance:

- a. An inability to learn that cannot be explained by intellectual, sensory, or other health factors,
- b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers,
- c. Inappropriate types of behavior or feelings under normal circumstances,
- d. A general pervasive mood of unhappiness or depression, and
- e. A tendency to develop physical symptoms or fears associated with personal or school problems.

34 C.F.R. § 300.8(c)(4)(i).

261. A diagnosis alone is insufficient to qualify a student as a child with a disability under the IDEA. See J.D. ex rel. J.D. v. Pawlet Sch. Dist., 224 F.3d 60, 65 (2d Cir. 2000).

¹⁷ "Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section." 34 C.F.R. § 300.8(c)(4)(ii).

262. Parents have not met their burden of demonstrating that Student has demonstrated at least one of the five characteristics under 34 C.F.R. § 300.8(c)(4)(i) over a long period of time, to a marked degree, and which adversely affects the student’s educational performance.

263. Rather, the District established at the hearing that Student has not demonstrated any of the characteristics under 34 C.F.R. § 300.8(c)(4)(i) over a long period of time, to a marked degree, and which adversely affects the student’s educational performance.

264. Student has made meaningful educational progress from March 2022 to present.

265. From March 2022 through the 2022-23 school year, Student met grade level standards, made progress on ■■■ IEP goals, and ■■■ classroom performance/behaviors were appropriate.

266. Student has continued to meet grade level standards, make progress on ■■■ IEP goals, and show appropriate performance/behaviors within the classroom during the 2023-2024 school year.

267. Indeed, the school-based members of the IEP Team all consistently testified to their observations that, from March 2022 to present, Student has enjoyed coming to school, has not presented with any indicators that ■■■ had any depressive symptoms/feelings of unhappiness, has successfully engaged with ■■■ peers and developed positive relationships with both ■■■ peers and teachers, has met classroom expectations with respect to behavior, and has been able to access ■■■ grade level curriculum with minimal supports. See Testimony of ■■■■■■■■■■, ■■■■■■■■■■, ■■■■■■■■■■, and ■■■■■■■■■■

268. The District’s eligibility determination considered all of the required factors under state and federal law. 34 C.F.R. § 300.8(c)(4)(i).

269. Student’s IEP addressing ■ OHI and SLD is sufficient to enable ■ to make meaningful progress in light of ■ individual circumstances.

270. The IDEA is focused on providing students with an adequate education, not “coming up with a proper label with which to describe [the child’s] multiple disabilities.” J.W. ex rel. K.W. v. Contoocook Valley Sch. Dist., 154 F. Supp. 2d 217, 228 (D.N.H. 2001) (citations and quotations omitted). If the student’s needs are properly addressed and the student is identified as a student with a disability under the IDEA, the district complies with its obligations. See id. (reasoning that “the real question is not whether J.W. is eligible for SED, OHI, and/or MD codes, but whether ■ emotional and attention problems cause learning difficulties, requiring services not being delivered by or not available in ConVal, thus constituting unique needs not addressed by the IEPs”.)

271. Consequently, “[s]pecial education and related services must address the unique needs of the Student, and are not contingent upon a particular category of disability.” In re: Student with a Disability, IDPH-FY-17-07-006 (N.H. SEA Oct. 27, 2016).

272. Parents have not met their burden in demonstrating that the services and supports in Student’s IEP would change if ■ were identified as ED.

273. Student does not have an ED as defined by the IDEA. 34 C.F.R. § 300.8(c)(4)(i).

ii. IEPs

a. *Requirements for IEPs under the IDEA and State Law*

274. A FAPE “means special education and related services that – (a) Are provided at public expense, under public supervision and direction, and without charge; . . . (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.” 34 C.F.R. § 300.17.

275. An IEP is “a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324.” 34 C.F.R. § 300.22.

276. “‘Related services’ means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.” 34 C.F.R. § 300.34(a).

277. Related services must be included in an IEP only where that service is necessary for the student to benefit from special education. Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 894 (1984) (“only those [related] services necessary to aid a [child with a disability] to benefit from special education must be provided, regardless how easily a school nurse or layperson could furnish them”); see also In re: Student with a Disability, 65 IDELR 160 (SEA ID March 16, 2015) (quoting Tatro).

278. IEPs do not need to include services requested by parents if those services are not necessary for the student to receive a FAPE. Winkelman v. Parma City Sch. Dist., 411 F. Supp. 2d 722, 734 (N.D. Ohio 2005), aff'd, 294 F. App'x 997 (6th Cir. 2008), cert. denied, 557 U.S. 946 (2009); see also Lessard v. Wilton Lyndeborough Coop. Sch. Dist., 518 F.3d 18, 30 (1st Cir. 2008) (“The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits. Were the law otherwise, parents could endlessly parse IEPs into highly particularized components and circumvent the general rule that parents cannot unilaterally dictate the content of their child's IEP”) (citations omitted); see also Lancaster City Schs., 121 LRP 34533 (Ohio SEA, 8/20/21).

279. The IDEA does not address a student’s “social problems at home” that are “distinct” from a student’s educational needs. R.C. v. York Sch. Dep't, No. CIV 07-177-P-S, 2008 WL 4427194, at *27 (D. Me. Sept. 25, 2008), aff'd, No. 07-CV-177-P-S, 2008 WL

5135239 (D. Me. Dec. 5, 2008)¹⁸. In “determining governmental obligations” under the IDEA, the focus is on the student’s educational benefit. Gonzalez v. P.R. Dep’t of Educ., 254 F.3d 350, 352 (1st Cir. 2001) (citing Rome Sch. Comm. v. Mrs. B., 247 F.3d 29, 33 n.3 (1st Cir. 2001) (“The question is whether these behavioral disturbances interfere[] with the child's ability to learn.”).

280. Moreover, the IDEA does not require generalization of skills to home and community settings. See East Penn Sch. Dist., 110 LRP 45548 (Pa. Jan. 2, 2010) (rejecting Parents’ assertion that assessing meaningful progress in school must consider behaviors at home and community settings, noting that “the District is not required to guarantee that progress in school is generalized to home and community settings.”).

281. An IEP does not need to be ideal to be appropriate; the IEP needs only to be “reasonably calculated” to enable the student to make meaningful educational progress, consistent with the student’s circumstances. Andrew F., 580 U.S. at 399; see also C.D. v. Natick Pub. Sch. Dist., 924 F.3d 621, 629 (1st Cir. 2019) (“Under both Andrew F. and our precedent, a court evaluating whether an IEP offers a FAPE must determine whether the IEP was reasonably calculated to confer a meaningful educational benefit in light of the child's circumstances”); D.B. v. Esposito, 675 F.3d 26, 34 (1st Cir. 2012).

282. School officials are afforded deference due to their expertise and the ability to “offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably

¹⁸ The Court further noted that “there is material difference between requiring demonstration of skills and behaviors in school in the hope that they will be generalized to other contexts, ... and requiring demonstration of skills and behaviors outside of school as part of the educational curriculum itself.” Id. (citations omitted).

calculated to enable the child to make progress appropriate in light of [the] circumstances.”

Andrew F., 580 U.S. at 388-99.

283. When determining whether an IEP is appropriate, the IEP is reviewed based on the information available at the time it was implemented, “rather than with the benefit of hindsight,” and substantial deference must be afforded “to the educational programs developed by educators and other experts.” Lessard v. Wilton-Lyndeborough Co-op Sch. Dist., No. CIV.05-CV-192-SM, 2007 WL 1221103, at *5–6 (D.N.H. Apr. 23, 2007), aff’d. Lessard v. Wilton Lyndeborough Coop. Sch. Dist., 518 F.3d 18 (1st Cir. 2008).

284. Further, “the focus of an inquiry under 20 U.S.C. § 1415(e)(2) ... is not whether the IEP was prescient enough to achieve perfect academic results, but whether it was ‘reasonably calculated’ to provide an ‘appropriate’ education as defined in federal and state law. This concept has decretory significance... For one thing, actions of school systems cannot ... be judged exclusively in hindsight. An IEP is a snapshot, not a retrospective. In striving for ‘appropriateness,’ an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.” Id.; see also Ronald M. v. Concord Sch. Comm., 910 F.2d 983 (1st Cir. 1990), cert. denied 111 S.Ct. 1122 (U.S. 1991) (holding that the “actions of school systems cannot, as appellants would have it, be judged exclusively in hindsight.”); Pass v. Rollinsford Sch. Dist., 928 F. Supp. 2d 349, 374–75 (D.N.H. 2013) (explaining that “our Court of Appeals has emphasized that ‘actions of school systems cannot ... be judged exclusively in hindsight.’ Instead, as already mentioned, the court must review the adequacy of an educational plan ‘at the time the IEP was promulgated.’ A court therefore cannot view an IEP in retrospect and conclude solely on the basis of resultant ‘harm’ to the student that the school district failed to fulfill its obligations under the IDEA. Rather, if harm

to the student plays a role in evaluating an IEP, that role must be limited to assessing whether the possibility of such harm should have been apparent to the school district at the time it promulgated the IEP...” (citations omitted).

285. “As always, every parent is free to obtain for their children the best education available. However, under federal and New Hampshire law, a school district is only required to pay for an ‘appropriate education’ as defined by the IDEA.” Galina C. ex rel. Reed v. Shaker Reg'l Sch. Dist., No. CIV. 03-34-B, 2004 WL 626833, at *6 (D.N.H. Mar. 30, 2004) (“While parents are always free to seek optimal educational opportunities for their children, federal law does not require that ‘the benefit conferred [by the IEP] reach the highest attainable level or even the level needed to maximize the child's potential’”) (citations omitted).

286. Importantly, an IEP can provide FAPE even though it “may not be the *only* appropriate choice, or the choice of certain selected experts, or the child's parents' *first* choice, or even the *best* choice...” G.D. v. Westmoreland Sch. Dist., 930 F.2d 942, 948 (1st Cir.1991), quoted in Amann v. Stow Sch. Sys., 982 F.2d 644, 651 (1st Cir.1992) (emphasis in original); see also Burke v. Amherst Sch. Dist., No. 08-CV-014-SM, 2008 WL 5382270, at *8 (D.N.H. Dec. 18, 2008) (“the obligation to devise a custom-tailored IEP does not imply that a disabled child is entitled to the maximum educational benefit possible”) (citations omitted).

287. School districts are not required to adopt all parts of an independent evaluation, but are only required to consider the independent evaluation. See 34 C.F.R. § 300.502.

b. Requirements for ESY under the IDEA and State Law

288. The District is required to provide ESY when the IEP Team determines that ESY services are necessary for a student to receive a FAPE. NH Ed 1110.01(b); see also RSA 186-C:15, I; 34 C.F.R. § 300.106(a).

289. “ESY services are necessary to provide FAPE if educational gains will be *significantly jeopardized* when school is not in session...” Bureau of Special Education FY’18 Memo #29 (March 19, 2018) (emphasis added).¹⁹

290. “Because ESY services are uniquely designed to provide FAPE to students with disabilities, it is necessary to emphasize that these services are the following:

- a. Not based on the category of student’s disability – services must be based on the student’s unique educational needs; ...
- d. Not a child care service; ...
- e. Not required to be provided each day and/or all hours of the school day;
- f. Not an automatic program provision from year to year; ...
- h. Not a predetermined program design; and
- i. Not a service to be provided to maximize each student’s potential.

Id.

c. Student’s IEPs from March 2022 to Present

291. The District established, by a preponderance of the evidence, that the following IEPs proposed between March 2022 to present were appropriate and reasonably calculated to enable Student to make meaningful educational progress:

- a. IEP dated 3/23/22 to 3/23/23, DE 23;
- b. IEP dated 3/24/22 to 3/23/23 (amendment date 5/9/22), DE 20;
- c. IEP dated 3/24/22 to 3/23/24, DE 16;
- d. IEP dated 5/11/23 to 5/10/24, DE 13;
- e. IEP dated 12/4/23 to 3/23/24, DE 9;
- f. IEP dated 2/29/24 to 2/28/25, DE 4;
- g. IEP dated 2/29/24 to 2/28/25 (amendment date 4/1/24), DE 1²⁰; and

¹⁹ Available at https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/2020-04/fy18_memo_29_extended_school_year.pdf (last accessed 5/8/24).

²⁰ Adding a fifth literacy session, as agreed to at the resolution session in this matter.

- h. IEP dated 2/29/24 to 2/28/25 (amendment date 5/7/24), DE 63²¹.
292. Student's IEPs from March 2022 to present included the appropriate amount of special education and related services. 34 C.F.R. § 300.320(a)(4). Student did not require any services beyond what was contained in the above IEPs to receive a FAPE.
293. Student did not require counseling services as a related service to receive a FAPE from March 2, 2022 to present. Student was able to access ■ education and benefit from special education services without school counseling.
294. Student did not require direct speech services as a related service to receive a FAPE from March 2, 2022 to February 16, 2024. Student was able to access ■ education and benefit from special education services without direct speech services during that time.
295. As a matter of law, the District was not required to offer ■ to Student; rather, the District was required to propose ESY to enable Student to receive a FAPE. NH Ed 1110.01(b); see also 34 C.F.R. § 300.106(a).
296. Student did not require a separate summer camp and/or services in social pragmatics during either ESY 2022 or 2023.
297. From March 2022 through the present, Student has met grade level standards and made meaningful progress in ■ classes, on ■ IEP goals and objectives, and in ■ social interactions with peers and teachers.
298. Student received a FAPE from March 2022 to present.

²¹ Adding an accommodation for an interoceptive approach to toileting, as agreed to following the resolution session.

iii. Parents' Procedural Allegation

299. Per NH Ed 1109.06(b), a District may refuse to convene an IEP Team meeting if it provides a WPN detailing why the District refuses to meet. See also NH Ed 1120.04(f) (permitting an LEA to “refuse to convene the IEP team meeting if it determines that the requested changes and/or additions to the IEP have been addressed at a prior IEP team meeting.”)

300. The District complied with Ed 1109.06(b) and Ed 1120.04(g). See DE 8; DE 22.

301. Beyond noting that the District did not convene IEP meetings on request, Parents offered no evidence, nor made any argument, refuting the reasoning in the District’s WPNs or establishing why a meeting was required. PEs; Parent Testimony.

302. The District’s refusal to convene a Team meeting in March 2022 and December 2023 was appropriate because the Team had already addressed the Parent’s various requests on several occasions. See DE 8; DE 22; ██████████ Testimony; NH Ed 1120.04(f).

303. The District did not commit a procedural violation under the IDEA.

302. Even if the District did commit a procedural violation, it did not impede the Student’s right to a FAPE, significantly impede the Parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student, or cause a deprivation of educational benefit. See 20 U.S.C. § 1415(f)(3)(E)(ii).

303. Between March 2022 and present, Parents were always provided a meaningful opportunity to participate in the IEP Team process, and the Team appropriately considered their input and the input of their private evaluator. See Testimony of ██████████, ██████████ ██████████, ██████████, ██████████ and ██████████.

iv. Parents' Requests for Relief

304. Requests for reimbursement and compensatory educational services are equitable remedies and are only available if the district does not make a FAPE available to the student. Richards v. Hudson Sch. Dist., No. 12-CV-041-LM, 2013 WL 992756, at *5 (D.N.H. Mar. 12, 2013) (noting that if a hearing officer concludes that a district failed to provide a FAPE, it may, but is not required to, award reimbursement)); see also Mr. I. v. Maine Sch. Admin. Dist. No. 55, 480 F.3d 1, 23 (1st Cir. 2007) (reimbursement is “a matter of equitable relief committed to the sound discretion of the trial court”); Samantha B. v. Hampstead Sch. Dist., 2009 WL 5217035, at *6 (D.N.H. Dec. 30, 2009) (Parents who unilaterally change their child's placement without the consent of state or local school officials “do so at their own financial risk,” and are entitled to reimbursement “*only* if a federal court concludes both that the public placement violated IDEA and that the private school placement was proper under the Act) (emphasis in original) (citing Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 15 (1993)).

305. Tort-like money damages, as opposed to compensatory equitable relief, are not available under the IDEA. “Awards of compensatory education and equitable remedies that involve the payment of money, such as reimbursement to parents for expenses incurred on private educational services to which their child was later found to have been entitled, remain available.” Nieves-Marquez v. Puerto Rico, 353 F.3d 108, 124 (1st Cir. 2003).

a. Parents' Request for Compensatory Education

306. A claim for compensatory education is generally for “further services, in compensation for past deprivations” of IDEA benefits. Me. Sch. Admin. Dist. No. 35 v. Mr. R., 321 F.3d 9, 17-18 (1st Cir. 2003); see also 20 U.S.C. § 1415(i)(2)(C)(iii) (allowing relief as determined appropriate). Compensatory education is an equitable form of relief. Pihl v.

Massachusetts Dep't of Educ., 9 F.3d 184, 188-89 (1st Cir. 1993). An award of compensatory education should “aim to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.” Reid v. Dist. of Columbia, 43 IDELR 32 (D.C. Cir. 2005); see also Manchester Sch. Dist., IDPH FY-04-10-38 (N.H. SEA May 17, 2004) (“Claims for compensatory education have traditionally been based upon lengthy periods of school district failure to provide a student with a free appropriate public education.”)

Compensatory educational services are not warranted when there is “no evidence that the District was dilatory in any way, and at all times made good faith effort to complete the IEP process and respond to Parent's concerns”).

307. The District’s IEP Proposals between March 2022 and the present have been appropriate.

308. The District has not violated the IDEA.

309. The District has, at all times, made a good faith effort to complete the IEP process and respond to Parents’ concerns. See Testimony of ██████, ██████ ██████, ██████, ██████, and ██████.

310. Student has made meaningful educational progress between March 2022 and present; Student has received a FAPE during this timeframe.

311. The District provided Student with a FAPE so compensatory education services are not warranted.

312. Parents’ full rejection of the District’s proposed IEPs prevented the District from providing the proposed speech services during the 2023-2024 school year. See NH Ed 1120.04 (a) and (g) (providing that an LEA must obtain informed, written consent prior to “[c]hanging the nature or extent of the special education or special education and related services...” and in

the absence of such consent, “the child's most recent agreed upon IEP placement, or both shall remain in effect unless the LEA and parent agree otherwise...”)

313. Parents’ rejection of the District’s 6-week intervention with school counseling prevented the District from gathering additional information on Parents’ asserted need for school counseling.

314. Compensatory education is an equitable remedy and the equities do not support Parents’ request for compensatory education.

b. Parents’ Request for Reimbursement for Alleged ESY Expenses for 2022 and 2023 Summers

315. In order to obtain reimbursement, Parents must have incurred actual out-of-pocket expenses for the related services for which they seek reimbursement. Diaz-Fonseca v. Puerto Rico, 451 F.3d 13, 40 (1st Cir. 2006). “As the term ‘reimbursement’ suggests, tuition reimbursement is a backward-looking form of remedial relief”; “[r]eimbursement merely requires the [defendant] to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP. It goes without saying that those ‘expenses’ must be actual and retrospective, not anticipated.” Id.; see also Roe v. Healey, 78 F.4th 11, 16 (1st Cir. 2023) (Reimbursement of educational expenses is limited to money spent by parents for education-related expenditures that the state ought to have borne).

316. Parents have not provided sufficient evidence of their out-of-pocket expenses for the items for which they seek reimbursement and, therefore, their request for reimbursement fails. Chavez v. New Mexico Pub. Educ. Dep’t, 621 F.3d 1275, 1284 (10th Cir. 2010) (upholding the district court’s decision that reimbursement was not available because parents had provided insufficient evidence of their out-of-pocket expenditures to support any possible award of reimbursement).

317. Parents' requests for reimbursement exceed what is necessary for a FAPE for Student, so the District is not obligated to provide reimbursement. See, e.g., 34 CFR 300.148(a).

318. To the extent Parents are seeking reimbursement for replicating a placement (i.e., ESY 2022 and 2023), those requests were made beyond the 90-day statutory limitations period set forth in RSA 186-C:16-b, II and are therefore barred by the statute of limitations.

319. Reimbursement is an equitable remedy and the equities do not support Parents' request for reimbursement.

320. Parents are seeking both compensatory services and reimbursement for services provided for the same alleged deprivation of services (ESY 2022 and ESY 2023); equitable principles mandate that Parents may not recover twice for the same alleged deprivation.

c. Parents' Request to Change LEA Staff

321. Parents do not have the authority to dictate which case manager or other school personnel works with their child. See In re: Sarah M., 28 IDELR 571, (N.H. SEA June 16, 1998) (reasoning that while parents may prefer certain staff to other staff, "nothing with state or federal special education laws gives parents the authority to dictate which personnel will work with their child.")

322. Parents have not offered any case law to refute this established proposition.

323. Moreover, Parents failed to offer any evidence to warrant their request, and therefore, their request fails. See N.F. v. Charino Reg'l Sch. Dist., No. CA 11-177-ML, 2012 WL 723124, at *13 (D.R.I. Mar. 1, 2012) (concluding that the district faculty appropriately addressed student's needs and accommodated the parent's requests in a professional manner, notwithstanding the difficulties between the parent and staff); see also Northwood Sch. Dist., IDPH-FY-11-12-027, (N.H. SEA Mar. 1, 2011) (parents' request for the replacement of their

CERTIFICATE OF SERVICE

I hereby certify that on the date below, I emailed a copy of the foregoing to the Parents.

Dated: May 8, 2024

A large black rectangular redaction box covering the signature area of the certificate.