

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

██████████ School District/Student

IDPH-FY-25-07-000

DUE PROCESS DECISION

I. INTRODUCTION

District brings the following claims: (1) its proposed IEP for the 2024-2025 school year is reasonably calculated to provide Student with a FAPE; (2) its proposed placement for the 2024-2025 school year is the least restrictive environment in which Student can receive a FAPE; (3) Student's IEP should not be amended to include a disability coding of autism; and (4) Parents' outside evaluations should not be given any weight.

II. BACKGROUND FACTS

Student is a qualified student with a disability, with functional abilities in the moderately low to low range. Student is described by family and school district employees as full of life and joy with a sense of humor.

Student was born ██████████ in 2008 and spent the first three years of life in an orphanage. Student was adopted, by another family, when ██████████ was five years old and moved to the ██████████. Student began Kindergarten in ██████████ Elementary School in September 2014. Student was identified as eligible for special education based on a primary disability of intellectual impairment and a secondary disability of speech language impairment. By February 2015 Student was withdrawn from Kindergarten and home schooled for a period before attending ██████████ and returning to ██████████ Elementary School for the 2016-2017 school year. It appears from the record that sometime in early 2017 the family moved to ██████████. Student attended ██████████ school in ██████████. The ██████████ Dept. of Education found Student eligible for special education based on an intellectual disability and offered an IEP.

In June 2017, after health issues with Students adopted family, the Student's current family were granted power-of-attorney over Student. Student moved to ██████████ at that time. In May 2023 Student's family became legal guardians and recently became ██████████ parents when Student's adoption became final on May 24, 2024.

In May 2018, Student was referred to ██████ School District (hereinafter “District”) for special education. At that time the Student had been home schooled since moving to New Hampshire. Student was found eligible for special education based on a primary disability of intellectual impairment and a secondary disability of speech language impairment. Student has been educated in ██████ since third grade (2018-2019). During that time, ██████ has qualified for special education and related services under the category of intellectual disability. ██████ had 1:1 adult support in grades three and four and 1:2 adult support in grade five. March 2020 due to the COVID 19 pandemic, the Governor ordered schools to close and switch to remote learning.

Beginning in sixth grade (2021-2022), Student was home schooled during which Student received remote VLACS services with remote occupational and physical therapy.

In March 2021 Student’s IEP team proposed to conduct a triennial evaluation to determine whether ██████ still qualifies for special education. In April 2021, the following assessments were conducted:

- An occupational therapy evaluation by ██████
- A psychoeducational evaluation of intelligence, academic achievement, and adaptive behavior by ██████
- An observation of Student during remote learning
- A speech/language evaluation by ██████

Based on the IEP team review of the results of the above assessments found that Student continued to be eligible for special education based on an intellectual disability. District offered Student an IEP for the period May 26, 2021 to May 26, 2022. The IEP was consented to and placement was at the District’s elementary school.

Student attended extended school year programming July 2022.

During seventh grade (2022-2023) the Student’s family, still operating under the special power-of-attorney, called a team meeting requesting a change of placement to ██████ based on concerns for the Student’s progress. District acknowledged staff shortages during the autumn of 2022 interfered with implementation of Student’s last agreed-upon IEP. There was testimony that District hired a special education teacher in December 2022 to provide compensatory education and support going forward.

During seventh grade, beginning in the fall of 2022, it became clear to Parents that ██████ was not meeting Student’s educational needs and was not implementing all of the services and supports called for in ██████ IEP. [█████’s Test.]

Student began to exhibit highly unusual behaviors at school as ██████ attempted to get the attention ██████ needed. ██████ received an email from a special educator in mid-November 2022. It read in pertinent part: I am checking in regarding Student . . . I am not ██████ current case manager although I have been trying to assist ██████ e I can. We have seen some regressive behaviors trying to obtain the para in the room’s attention which we met on and Student has been better . . . issues being under the table, kicking, etc. I told ██████ this is not acceptable.

In January 2023, [REDACTED] wrote to the District's Director of Special Education, [REDACTED], as well as Superintendent [REDACTED], to request an IEP Team meeting. Parents requested out-of-district placement of Student, so [REDACTED] could receive appropriate services to address ***** disability-related needs. [REDACTED] has consistently denied this request and continued Student's placement in mostly mainstream classes with "push-in" special education services through seventh and eighth grades.

At the January 2023 IEP Team meeting, [REDACTED] [REDACTED] acknowledged in an email that the District had no notes or reports from anyone who had served as Student's case manager. Meanwhile, in February 2023 Student's teachers confirmed to [REDACTED] [REDACTED] that there had been little or no paraprofessional involvement in Student's education for the entire 2022-2023 school year.

In March of 2023, the current family filed an IDEA due process hearing for an out-of-district placement. That due process request was later withdrawn because the family were not Student's legal guardians or parents.

In May 2023 an IEP team meeting was scheduled and the family appeared with an advocate employed by a law firm and the meeting was adjourned until District could reschedule with its own attorney.

In [REDACTED] 2023, after Student's family was appointed guardian by the New Hampshire Circuit Court- Family Division, the IEP team met.

Following up on the June 7 team meeting, District officially offered a proposed IEP for the period June 7, 2023 to June 6, 2024 in District and the team rejected placement at [REDACTED] as unnecessarily restrictive. On [REDACTED], 2023 the guardian family rejected the proposed IEP and requested another IEP team meeting. District offered Student extended school year services for the summer of 2023 but [REDACTED] did not attend.

According to the written prior notice from this meeting the District declined to place Student at [REDACTED] [REDACTED] but proposed to accelerate Student's triennial evaluation, which was due in May 2024, by evaluating [REDACTED] in the autumn of 2023. Student's guardian family requested an independent neuropsychological evaluation at public expense. District requested information from the family regarding their proposed independent evaluation. Upon receipt of this information, the District advised it would decide whether to voluntarily fund the independent evaluation, initiate a due process hearing to contest its liability, or propose a compromise. July 17, 2023 Student's guardian family filed their second request for an IDEA due process hearing. The complaint alleged that Student's proposed IEP was inappropriate, requested compensatory education, and sought placement at [REDACTED]. Shortly after filing the IDEA due process was withdrawn "without prejudice" by the guardian family with the intent to have an independent evaluation of Student done and then to re-file upon completion of the same.

In early August 2023 Student was evaluated by [REDACTED] and [REDACTED] of [REDACTED] in [REDACTED] at the guardians' request.

Student attended District for eighth grade year (2023-2024). For eighth grade, District implemented the last signed “stay-put” IEP created in May 2022.

In September of 2023 the guardian family filed a Petition for Adoption that was granted in May 2024.

On September 27, 2023, the IEP team met to propose specific instruments for its accelerated triennial evaluation of Student. The District issued a written prior notice listing the instruments it planned to administer for the evaluation. The team rejected Parents’ request to postpone evaluating until the independent evaluation by [REDACTED] and [REDACTED] were completed and reviewed.

On October 16, 2023 Student’s guardian family consented to the District’s request to conduct those evaluations.

During the month of November 2023, the following assessments were completed:

November 1, 2023- [REDACTED] conducted an occupational therapy evaluation of Student.

November 7-20, 2023 [REDACTED] of [REDACTED] Services conducted a speech and language assessment.

November 17 and 27, 2023. [REDACTED], case manager at [REDACTED] Elementary School, conducted an Educational Evaluation by administering the Wechsler Individual Achievement Test, Fourth Edition (WIAT-4).

November 27, 2023. [REDACTED], [REDACTED] Elementary School’s school psychologist, conducted a psycho-educational assessment and concluded that Student does not have autism.

Early December 2023 District tried to schedule an IEP team meeting to review the results of its testing and to meet with Dr. [REDACTED] to consider the results of [REDACTED] independent evaluation. The parties ultimately agreed to schedule this meeting for January 10, 2024. However, Dr. [REDACTED] did not phone in during the IEP team meeting. During the meeting District’s evaluators reviewed their reports.

This testing in November 2023 confirmed that Student’s cognitive abilities fall in the extremely low range and that [REDACTED] has disorders in receptive language skills, expressive language skills, and social pragmatic skills. District conducted an OT assessment; a speech-language assessment by [REDACTED] SLP; an academic assessment by [REDACTED] using the WIAT-4; and a psycho-educational assessment by the new school psychologist, [REDACTED]

[REDACTED] measured Student’s cognitive ability on the Reynolds Intellectual Assessment Scales-2, obtaining a composite score of 40. Student’s scores on the BASC-3 were clinically significant for Atypicality and Withdrawal. [REDACTED] scores on the Vineland indicated that [REDACTED] overall adaptive skills are in “moderately low” range. While [REDACTED] [REDACTED] opined that Student should not be diagnosed on the autism spectrum, [REDACTED] wrote that “Student presents as a student developing with splintered skills. [REDACTED] inconsistent strengths in the academic setting appear to be compensating for [REDACTED] vulnerabilities. It is important to take into consideration that a

student with a large variety of strengths and weaknesses could appear to have more developed skills than they have truly mastered.”

On [REDACTED] speech-language assessment, which was conducted remotely, Student scored lower on the CELF-5 social-pragmatic language testing than [REDACTED] had at [REDACTED] prior triennial. On the Understanding Spoken Paragraphs test, [REDACTED] results came in at the 0.1 percentile.

January 22, 2024 District issued a written prior notice summarizing the outcome of the January 10, 2024 IEP team meeting. The team agreed to identify Student with an intellectual disability, but not autism. During the hearing the guardian [REDACTED] testified [REDACTED] wanted the autism diagnosis for purposes of an out of district placement.

February 2024 [REDACTED], Director of Education at [REDACTED] School, observed Student in a math class at [REDACTED] Elementary School and met with Student’s IEP team. February 14, 2024 District issued a written prior notice summarizing its proposals from the February 6, 2024 IEP team meeting. These included:

- An IEP for the period commencing February 20, 2024.
- Extended school year programming.
- Placement in regular education classes at [REDACTED] Elementary School.
- Adding speech/language as a secondary disability.

Guardian parents rejected the proposed IEP and placement mid-February 2024.

After school reopened from spring vacation, [REDACTED], case manager, sent an email to guardian parents proposing to schedule another IEP team meeting in response to the refusal of the proposed IEP and placement.

Another IEP team meeting was held on April 19, 2024. Late in the afternoon on April 18, 2024, guardian parents emailed to the District concerns with Student’s proposed IEP.

The parties at the April 19, 2023 IEP team meeting schedule a follow up meeting held May 28, 2024. At some point in the spring the IEP team agreed that the “gold standard” for diagnosing a student with autism is the Autism Diagnostic Observation Scale, second edition, known as ADOS-2. District offered to have the school psychologist, [REDACTED], perform the ADOS-2. However, [REDACTED] was not qualified to administer the ADOS-2 and parents were notified of that at the next IEP meeting held on May 28. The parties agreed to meet again on June 10, 2024. On June 10, 2024 Student’s IEP team met to review the draft IEP. During the team meeting the parties were not able to complete the agenda so the team scheduled another meeting for June 17, 2024.

June 10, 2024 District issued a written prior notice summarizing that day’s IEP team meeting and scheduling another meeting for June 17. On June 14, 2024 District emailed to Parents a draft IEP for discussion at the June 17 IEP team meeting.

June 17, 2024 Student's IEP team held a meeting that resulted in the offered IEP at issue in this case and an additional team meeting was set for August 26, 2024 for further follow-up on transition services.

District emailed Parents on June 20, 2024 a written prior notice resulting from the June 17, 2024 IEP team meeting, proposing the following:

- Placement at ██████████ High School.
- An IEP for the period July 1, 2024 to June 30, 2025
- Placement in special education "intervention classes" reading, writing, and math four days per week for 50 minutes for each of those subjects. 9
- Two electives
- Remainder of the school day to be spent in Life Skills Program to work on functional life skills

District sent Parents a proposed IEP for the period July 1, 2024 to June 30, 2024 offering extended school year services for July 2024. Student did not attend and there was no reference to life skill goals or services. Parents rejected the proposed IEP and placement on July 3, 2024 because it is inappropriate for Student and lacked a Life Skills Program.

The District brought its due process hearing complaint regarding Student against the Parents on July 17, 2024, after the Parents rejected the District's proposed IEP and placement for the 2024-2025 school year. District is seeking permission from a hearing officer to implement the proposed IEP at ██████████ High School.

On July 24, 2024 ██████████, Ph.D., of ██████████ tested Student and then wrote a document titled "██████████," which the Parents included in their exhibits disclosed on August 6, 2024. Based on the recommendations made in Dr. ██████████ report on August 5, 2024 Parents sent an email to ██████████ requesting placement at ██████████, N.H.

III. DISCUSSION

Is District's proposed IEP for the 2024-2025 school year is reasonably calculated to provide Student with a FAPE

During the two days of testimony provided in this matter it is evident that Student has worked with a passionate group of educators and is loved and cared for by parents advocating for what they believe Student needs to be successful in school and in ██████████ future to be independent, safe and employed.

Based on the testimony and the facts known by the IEP team in June 2024 the proposed IEP was not reasonably calculated to provide Student with a FAPE for two reasons: first, the proposed IEP did not include any life skill goals or services and second, District and the IEP

team had sufficient information that resulted in the District offering an evaluation for autism using ADOS-2 and offered to have it performed by their school psychologist. When the District's employee was determined unable to perform that evaluation the District moved ahead and proposed an IEP that dismissed a diagnosis of autism. Parents decided to move forward with the plan and independently obtained the ADOS-2 testing from Dr. [REDACTED] a New Hampshire licensed and credential provider who has an impressive background, training and experience in the area.

Is District's proposed placement for the 2024-2025 school year is the least restrictive environment in which Student can receive a FAPE

No. Given the results of Dr. [REDACTED]'s diagnosis of Student being in the high range, based on the ADOS-2, for autism spectrum disorder autism and the Childhood Autism Rating Scale, second edition, known as CARS-2, revealing mild to moderate spectrum disorder, the recommendations of Dr. [REDACTED] for a learning environment in a placement that: (a) is year-round; (b) features small class sizes; (c) is staffed by highly specialized instructors experienced in working with student's sharing Student's disability profile; (d) does not rely on modification, accommodation, and paraeducator support; (e) features a cohort of peers with similar cognitive and language abilities, to allow Student to learn how to function in a group and build relationships; (f) focuses its instruction on functional academics and transitional skills (including community engagement and life skills); (g) provides explicit instruction in sex, health, and relationships at Student's learning and developmental level; (h) offers direct speech-language and occupational therapy; and (i) is capable of making productive use of Student's splinter skills to improve *** overall level of functioning.

The IEP Team should meet immediately to make a determination on an appropriate placement consistent with this order and the findings.

Student's IEP should not be amended to include a disability coding of autism

For the reasons stated above the IEP team should meet and review Dr. [REDACTED]'s report and make an appropriate finding based on the report and consistent with this order.

Parents' outside evaluations should not be given any weight

The reports of [REDACTED] and [REDACTED] were given the same weight by the hearing officer that the District relied on in making the team recommendation to offer the ADOS-2 as a diagnostic tool for the Student. Meaning that the District used the information from the reports to determine the need to offer the ADOS-2 in April 2024. The Parents agreed only to be told in May that the District could not complete the ADOS-2. The report of Dr. [REDACTED] was considered because the IEP Team in June, when offering the proposed IEP, did so knowing that the diagnostic test had not been performed. District can not claim that it is Monday morning quarterbacking to consider the report when it had notice, before offering the IEP, of the need for such an evaluation.

IV. FINDINGS OF FACT AND RULINGS OF LAW

Both parties have submitted proposed findings of fact and rulings of law. Both parties' submissions have been carefully considered, and portions of those submissions have been incorporated into this Due Process Decision. To the extent that proposed findings and rulings are inconsistent with this Decision, they should be deemed denied.

So ordered.

Date: August 28 ,2024

/S/ Briana Coakley
Briana Coakley, Hearing Officer

Appeal Rights and Post-Hearing Enforcement

Any party aggrieved by this decision may appeal to a court of appropriate jurisdiction as noted in state and federal laws, including RSA 186-C:16-b, Ed 1123.25, 20 USC § 1415(i); 34 CFR § 300.514

This due process decision shall be implemented by the school district and monitored and enforced by the Department of Education pursuant to Ed 1123.22 and 1125.