

New Hampshire Department of Education

Student/ School District

IDPH FY 24-03-043

Due Process Decision

Introduction

There was so much back and forth between the parties about the claims that were at issue in this proceeding, with the parents seemingly raising new or different issues throughout the process, including their post-hearing statement, that it was difficult to follow. The following claims are the ones that I believe were properly raised and are addressed in this decision:

1. Eligibility. The parents seek an order that the student is eligible under the category of emotional disturbance.
2. Failure to provide FAPE between March 1, 2022 and March 1, 2024, which includes three areas:
 - a. Not providing speech and language services/addressing social skills. The parents seek compensatory education for the period of time that services were not provided.
 - b. Not including counseling in the IEP and not providing counseling. The parents seek an order that counseling be included and compensatory education be awarded for not providing counseling in the past.
 - c. Extended school year. The parents seek compensatory education for the school district not providing a social skills component to the ESY program during the summers of 2022 and 2023.
3. Non-disclosure agreement. The parents seek an order declaring that non-disclosure agreements are not permitted in settlement agreements.
4. The parents seek an order removing the special education director/case manager from being involved in their child's case going forward because of the acrimonious relationship between the parties.

Findings of Fact

1. The IEP team considered the relevant evaluations and information available regarding emotional disturbance, and the school IEP team members agreed that the student did not meet the criteria for emotional disturbance. The parent disagreed with the decision.

2. Evaluations, classroom observations, and student performance established that speech-language services, including pragmatics, were not required at the time they were not provided by the school district.
3. When the second-grade classroom teacher noticed issues with social skills, the school district took appropriate steps to address them with a social skills group.
4. When evaluations showed that the student required speech-language services, the school district proposed including them in the IEP.
5. The student has some issues with social skills outside of school that the school does not address.
6. The parent wants the student to receive school-based counseling and wants counseling services included in the IEP. The parent provided recommendations from outside evaluators regarding counseling and a letter from a licensed mental health counselor advocating for counseling at school to help the student with emotional and behavioral regulation and social skills.
7. School district witnesses testified that the social skills were being met with current services, and the student did not demonstrate other emotional regulation issues at school, so school-based counseling was not needed. The student's IEP includes a counseling consultation provision.
8. The parent raised some issues about WPNs and other school documents stating that school counseling was available to all students, yet it was not made available to their child.
9. The school district provided evidence that school-based counseling is available to all students who need it, and the school counselor determined that the student did not need school-based counseling after speaking with the student's teacher.
10. The student previously received ESY services at a school ESY camp that included some aspect of addressing social skills and related issues.
11. Due to staffing and related issues, the school district stopped offering the school ESY camp to all students, and the student did not receive ESY social skill services during the summers of 2022 or 2023.
12. The student's IEP for summer 2022 did not identify social skills as an area of need.
13. The parent presented evidence that the student struggled at a summer camp without any services at the camp but did not present evidence of significant regression when the student returned to school in the Fall of 2022 or 2023.

14. The school district has not included non-disclosure agreements (NDA) in any settlement agreement with the parent for this student.

Rulings of Law

1. Under 186-C:16-b III-a, the school district has the burden to prove that it provided the student with FAPE during the relevant time periods (March 1, 2022 to March 1, 2024).
2. The school district met its burden to prove that it provided the student with FAPE during the relevant time periods (March 1, 2022 to March 1, 2024).
3. The IDEA defines emotional disturbance as follows:
 - (i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
 - (A) An inability to learn that cannot be explained by intellectual, sensory, or 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.
 - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
 - (ii) 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 CFR s 300.8(c)(4).

4. The evidence did not establish that the criteria for emotional disturbance were met.
5. The evidence did not establish that the student required speech and language services, including social pragmatic services, to receive FAPE during the times the school district did not provide them.
6. The evidence did not establish that counseling services need to be included in the student's IEP or that the student required school-based counseling to receive FAPE.
7. ESY services are required to prevent significant regression in areas identified in a student's IEP.

8. The evidence did not establish that the student required different or additional ESY services during the summers of 2022 and 2023.
9. The evidence did not establish that the student had significant regression when they returned to school in the Fall of 2022 or 2023.
10. Awarding compensatory education is not an appropriate remedy in this case because the school district provided the student with FAPE.
11. Ordering that the student be identified as eligible under emotional disturbance is not an appropriate remedy in this case because the evidence did not establish that the student was eligible under the emotional disturbance category.
12. Ordering that school based counseling be included in the student's IEP is not an appropriate remedy in this case because the evidence did not establish that the student required school-based counseling to receive FAPE.
13. The merits of whether school districts can include NDAs in settlement agreements is not addressed because the parents/student in this proceeding were not subject to an NDA.
14. The parent did not establish that the hearing officer has the authority to remove the special education director/case manager from any further involvement in their child's case.

Discussion

While the legal requirements in the IDEA and for FAPE can be frustrating and counterintuitive for parents because they do not always require services that parents believe need to be provided, I am bound to apply them. If a student is receiving FAPE, the school district is not required to provide services that parents or evaluators believe the student needs. Parents have the right to challenge those team decisions as the parent did in this case, and the school district is then required to prove that it is providing FAPE at a due process hearing.

Here, the parent requested due process, and the school district proved that it provided the student with FAPE. The evidence did not establish that speech-language, counseling, or ESY services that were not provided were required to provide FAPE. As a result, the parents' requested relief for not providing counseling, speech-language, or ESY services cannot be awarded.

The evidence also did not establish that the student was eligible under the category of emotional disturbance, so no relief can be awarded for that claim.

The parents have not been subject to an NDA for this student, so that issue is not addressed on the merits. The First Amendment and whistleblower issues that the parent raised with NDAs are not within the hearing officer's jurisdiction to address. The parent did not establish that the hearing officer has the authority to remove the special education director/case manager from

any further involvement in their child's case so that relief cannot be awarded and the underlying allegations about the removal are not addressed.

Proposed rulings

Parents' Proposed Findings of Fact

Granted: None

Denied: 1 -10

Parents's Proposed Conclusions. Findings of Law

The parents did not number their proposed conclusions or findings of law, so it is not possible to rule on them individually. The parents make some accurate general statements about different topics, but based on the evidence, none of them would result in a different result in this case.

Parents' Proposed Relief

The parents also listed seven items as proposed relief in their post-hearing submission. All seven are denied. Items 3 and 4 are denied on the grounds that they are not at issue in this proceeding and are not ripe for review since they involve future events.

School District's Proposed Findings of Fact

Granted: 1, 2, 12-209, 211, 212, 213, 220, 224, 225, 228, 231- 247

Denied: 3-11 (given all the back and forth about the scope of the hearing, the school district's characterizations of what was raised or not raised in these paragraphs are denied, and the scope of the hearing are the issues addressed in this decision); 210, 214 – 219, 221- 223, 226, 227 (parental costs of reimbursement for ESY and the other issues raised in these proposed findings were not considered in this decision since the decision determined that additional ESY services were not required); 229 -230; 248 – 258 (not addressed in this decision as either beyond scope of the hearing or as to the removal of staff the parent did not provide evidence that the hearing officer has the authority to remove staff from an IEP team).

School District's Proposed Rulings of Law

Granted: 260, 262 – 264, 266, (after request 266, the school district's numbering is off and restarts with a second 260 on page 45, the 260 and other numbers granted hereafter are based on this new numbering system) 260, 261, 263 – 271, 273 – 279, 281, 286 – 290, 292 – 298, 307, 310-313, 321, 322, 325, 327-332.

Denied: 259 (given all the back and forth about the scope of the hearing, the school district's characterizations of the scope of the hearing are denied, and the scope of the hearing are the issues addressed in this decision and those noted in prehearing orders); 261 ("all other issues" is too broad); 265, second 262 in terms of saying it is the parents' burden, 272, 280, 282 – 285,

291 (the hearing did not go through all the proposed IEPs and details about them, as noted in this decision the school district provided the student with FAPE during the relevant time periods with the IEPs that were in place and the services that were provided); 299 – 303 (not addressed as noted in the findings of fact); 304 – 306 (not addressed since the school district provided FAPE); 308 (too broad); 309 (not necessary to address); 314 320, 323, 324, 326.

Order

Based on the evidence provided and the relevant legal standards under the IDEA and state laws, the parents' requested relief cannot be awarded.

5/13/24
Date

/s/ Scott F Johnson
Scott F. Johnson

Appeal

Any party aggrieved by this may appeal as noted in Ed 1123.20, Ed 1123.25, and 34 CFR § 300.514.