

New Hampshire Department of Education

Student/ School District

IDPH FY 24-03-042

**Due Process Decision**

**Introduction**

The parents brought a variety of claims. The parents' claims are generally based on one or more of the following arguments: (1) in hindsight, the school district should have placed the student in a residential placement sooner, and the school district should reimburse the parents for costs they incurred that were associated with the school district not doing so; (2) once the student was in a residential placement, some services increased, which proves that the school district should have provided the increased services sooner; or (3) an evaluator recommended that something needed to be done or provided to the student, so the school district is required to do it or provide it.

**Findings of Fact**

1. Some of the parents' claims involve the time period between 6/17/22 and 10/31/23.
2. The student attended an out-of-district day placement between 6/17/22 and 10/31/23. The parents initially agreed to the day placement but requested a residential placement on 6/5/23.
3. At some point during the out-of-district day placement, the student displayed unsafe and inappropriate behaviors at home, but these behaviors did not occur at the day placement.
4. It was after these behaviors occurred that the parents asked for the residential placement on 6/5/23.
5. After their 6/5/23 request, the parents obtained a CAT assessment. Based on the CAT assessment, the IEP team agreed to a residential placement in July 2023 and agreed to pursue the parents' preferred residential placement even though it did not have openings at the time.
6. The parents' preferred residential placement accepted the student on September 12, pending an opening. At some point, an opening occurred, and the student began attending the parents' preferred residential placement on November 1, 2023, and remains there today.
7. The parents also have some claims involving the time period between 6/17/22 and 3/1/24, which is the date that they filed their due process complaint.

8. The parties also disagree about whether two goals from the residential placement's ISP should be included in the student's IEP. The school district contends that they should not because they are residential services that are not educationally necessary.
9. The school district's proposed findings of fact, which were granted in the section of this decision below titled "School District's Proposed Findings of Fact," provide more detailed findings of fact.<sup>1</sup> Those granted findings of fact are incorporated herein.

### **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 between 6/17/22 and 3/1/24.
2. The school district met its burden to prove that it provided the student with FAPE between 6/17/22 and 3/1/24.
3. Under the IDEA, IEPs, services provided to students, evaluations, and placements are based on the information known at the time, not in hindsight.
4. The IEPs, services, and placements at issue between 6/17/22 and 3/1/24 were appropriate and reasonably calculated to provide the student with FAPE based on the information available at the time. One caveat is that the current IEP needs to include ISP goals, as discussed below, but that did not deny the student FAPE because those ISP services were still provided and paid for by the district even though they were not in the IEP.
5. The school district properly evaluated the student between 6/17/22 and 3/1/24, and no other evaluations beyond what the school district conducted were required under the IDEA.
6. As with the findings of fact, more detailed rulings of law are provided in the school district's proposed rulings of law, which were granted in this decision in the section below titled "School District's Proposed Rulings of Law." Those granted proposed rulings of law are incorporated herein.

### **Discussion**

The parents raised so many claims and issues at different times during the hearing process, and the school raised so many objections to various claims that it was hard to keep track of it all.

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<sup>1</sup> Pursuant to RSA 541-A:35, if "a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding." Since the hearing officer is required to rule on the proposed findings of fact submitted by the parties and agrees with the findings of fact submitted by the school district that were granted in this decision, and since both parties have those proposed findings of fact, and they were filed as pleadings as part of the due process hearing, there is no need to repeat or retype them in this section of the decision.

This section discusses the reasons for denying the parents' claims, as I understand them. To the extent any of the parents' claims are not specifically addressed in this discussion, they are also denied since the school district provided FAPE, appropriate IEPs and services, and evaluations from 6/17/22 to 3/1/24. The order at the end of this decision notes that all of the parents' claims are denied, except for ordering the two ISP goals to be included in the IEP.

While the legal requirements in the IDEA and for FAPE can be frustrating and counterintuitive for parents because they do not always require schools to provide services parents believe are necessary, I am bound to apply them. The parents are seeking services to meet their child's needs from their perspective as parents based on information they have about their child and their beliefs about what that information requires. The parents' approach is understandable, but the IDEA has limits on what schools must address. The rulings of law in this decision and the school district's proposed rulings of law that were granted set forth those limits and the legal requirements under the IDEA. Based on those legal standards and the evidence presented, the parents' claims for relief must be denied except for the ISP goals being included in the IEP.

### **Au pair and living expenses**

The parents state that, in hindsight, they would not have agreed to the day placement, and the school district should have placed the student residentially sooner, presumably on 6/17/22. The parents seek reimbursement of au pair and living costs arguing that these costs were incurred because the school did not place the student residentially during this time.

The school district provided evidence that the student received appropriate services and made progress in their day placement between 6/17/22 and 10/31/23. The parents did not request residential placement until 6/5/23, and that occurred because of unsafe and inappropriate behavior at home that did not occur at school. After the request, the school district took reasonable steps to place the student residentially and presented evidence that the student did not start until 11/1/23 because the school district agreed to place the student at the parents' preferred residential placement, which did not have openings until that time. During the interim, the student remained at the day placement, continued making progress, and received FAPE. The parents did not establish that the au pairs' services were necessary to provide the student FAPE between 6/17/23 and 10/31/23.

Similarly, the living expenses that the parents seek resulted from the need to separate the student from their sibling to prevent more unsafe and inappropriate behaviors at home. As the school district noted, those behaviors never occurred at school. They only occurred at home, and the school district is not responsible for the safety and security of students or their family members at home.

As a result, no amount can be awarded to the parents for the costs of the au pair or living arrangements.

To the extent the parents seek reimbursement for any other costs or any other type of relief for not placing the student residentially sooner, those are also denied under the same reasoning noted above: The parent did not establish that they should be awarded based on the evidence provided, and the school established that the student received FAPE during the relevant time period of 6/17/22 to 10/31/23.

### **IEP goals and objectives**

The parents claim that the IEPs during the relevant time period (6/17/22 to 10/31/23) were not reasonably calculated to provide the student with FAPE because they included the same goals after the goal had been mastered and did not include all of the goals that were subsequently developed for the student by the out-of-district placement in December 2023 after a 30-day assessment by the out-of-district placement. See Sch. Dist. Exh. 6 at pages 92 – 108.

The school district presented evidence establishing that goals were not repeated. While some goals were similar, they were changed in ways that included higher levels and increased the quantum of opportunities measured in the goal.

In terms of not including information provided after the 30-day assessment on December 2023, school districts are required to develop IEPs based on information available at the time, not hindsight. The parents did not establish that these December 2023 goals should have been included in prior IEPs based on information that was available at the time of those prior IEPs, and the school district established that the student made progress and received FAPE with the IEPs that were in place between 6/17/22 and 10/31/23.

As a result, no relief can be awarded regarding the prior IEPs.

### **Counseling**

The student received counseling during the relevant period (6/17/22 to 10/31/23). However, the parents claim it was insufficient because the student's counseling increased to four times per week at the residential placement. The parents seek reimbursement of counseling costs they paid out of pocket during the 6/17/22 to 10/31/23 time period.

The fact that the student's counseling subsequently increased does not by itself mean that the amount of counseling provided previously was insufficient to provide FAPE. The school district presented evidence that the counseling provided was sufficient for the student with FAPE. While the witness from day placement testified that "in hindsight, the student could have used more counseling," the levels of services provided are not assessed based on hindsight, and saying a student could have used more counseling is not the same as saying the student required or needed more counseling to receive FAPE.

As a result, no relief can be awarded to the parents for their counseling costs or any other requests for relief regarding counseling.

## **Physical Therapy**

The parents contend that the student requires physical therapy services. The parents seek compensatory education from 6/17/24 to 3/1/24 for the services not being provided. The parents did not meet their burden to prove that physical therapy services were required under the IDEA. Witnesses from the day placement testified that physical therapy was not needed when the student was at the day placement. Similarly, witnesses from the current residential school stated that the student does not need physical therapy services. The school district established that the student received FAPE without physical therapy between 6/17/22 and 3/1/24.

As a result, no relief can be awarded for not providing physical therapy.

## **Other Requested Relief**

The parents also seek a variety of other relief, including:

Partial reimbursement for social thinking program costs

A functional vision assessment

A forensic evaluation/risk assessment

Reimbursement for CPI training for the parent.

Audiobooks and an mp3 player for the student to use while riding the bus

Reimbursing \$2500 to an evaluator for their evaluations and participation in IEP meetings

Reimbursing EASE program costs.

Costs of installing smoke alarms

All of these claims except the smoke alarms are denied because the school district established that it provided the student with FAPE, properly evaluated the student's needs under the IDEA, and provided appropriate services to the student between 6/17/22 and 3/1/24 so the parents' requested items were not required under the IDEA. The parents did not establish that CPI training for the parent's safety at home was required under the IDEA.

The costs of installing smoke alarms would be denied on the same grounds, but since they were incurred in 2020, before the 6/17/22 time period, the costs are precluded by the parties' prior settlement agreement and the statute of limitations. The parents seek reimbursement for those costs now on the argument that the alarms are still in their home, but the relevant time period is when the costs were incurred, which was before 6/17/22.

Along those lines, the school district's proposed rulings of the law state that some of the claims and requested relief addressed in this decision are outside the scope of the hearing timeframe (6/17/22 – 3/1/24) or were not raised in the due process complaint. As noted previously, there

was so much back-and-forth between the parties on those issues and so many requests for relief in this case that it was very difficult to keep up with it all, and both parties presented evidence during the hearing process on all of the claims/issues discussed in this decision.

Based on the evidence provided during the hearing process, all of the claims noted in this decision are denied on the grounds stated in this decision, except for adding the ISP goals to the current IEP discussed below. If some of those claims/evidence also happened to not be within the hearing timeframe (6/17/22 – 3/1/24) or not raised in the due process complaint, then that can be considered an alternative grounds for denying the relief.

### **Current IEP**

The residential placement developed what it refers to as an ISP (individual service plan) that addresses the services provided to the student at the residential placement, including residential services. The ISP was provided to the IEP team to develop the IEP. The school district IEP members agreed that two of the goals in the ISP (goals 6 and 7) did not need to be included in the IEP because they were part of a “treatment plan,” involved residential services, and were not specialized instruction. The parent disagreed.

The residential placement still implemented the ISP goals and will provide progress reports on these two goals even though the school district did not include them in its IEP. The parents seek an order to include the ISP goals in the IEP.

The ISP goals are under a “treatment plan” section, but they do not address any medical treatments. Instead, goal 6 addresses daily living skills, and goal 7 addresses interpersonal skills. By including them in the ISP, the residential placement service providers presumably determined that both were areas of need for the student that needed to be addressed with goals and objectives to measure progress. As a result, they are within the IDEA’s requirements for FAPE and should be included in the IEP.

The parents’ requested relief of adding goals 6 and 7 from the ISP into the IEP is awarded.

### **Parents’ Proposed Findings of Fact**

**Granted:** None

**Denied:** 1 – 10

### **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 have some accurate general statements about placement and unilateral practices, but some are not relevant here because there was not a traditional unilateral placement. To the extent the services the parents provided and the costs they incurred could be considered a unilateral placement, those costs and services would still be denied because the school district established that it provided FAPE. As the school district

notes, it would also mean that the claims would be subject to a shorter 90-day statute of limitations.

The parents have some accurate statements about the legal standards for evaluations, but here, the evidence established that the school district met the IDEAs evaluation requirements.

### **Parents' Proposed Relief**

The parents also listed their proposed relief in their post-hearing submission. Items 1-5 are denied, with the exception of adding the two ISP goals to the IEP. Item 6 is granted to the extent that the school district is ordered to include the two ISP goals in the IEP.

### **School District's Proposed Findings of Fact**

**Granted:** 1-97

**Denied:** None

### **School District's Proposed Rulings Law**

**Granted:** 98-120, 122, 123, 125-129, 130 (partially granted with the caveat that ISP goals 6 and 7 need to be included), 131 – 145, 148-154.

**Denied:** 121, 124, 146, 147 (not necessary to address)

### **Order**

All of the parents' requested relief is denied except for the two ISP goals that are in dispute. The school district shall include the two ISP goals in dispute (goals 6 and 7) in the student's IEP.

5/12/24  
Date

/s/ Scott F. Johnson  
Scott F. Johnson

### **Appeal and Post-Hearing Enforcement**

Any party aggrieved by this may appeal as noted in Ed 1123.20, Ed 1123.25, and 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 Ed 1125.

