

STATE OF NEW HAMPSHIRE
STATE DEPARTMENT OF EDUCATION

[REDACTED] / [REDACTED] School District

IDPH-FY-23-06-033

[REDACTED] 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 submits the following Requests for Finding of Fact and Rulings of Law, stating as follows:

I. Findings of Fact

1. Student (DOB 02/10/2010) is 13 years old and is going into the 8th grade. Student attends [REDACTED] neighborhood public school, the [REDACTED] School. Ex 2¹, p. 9.
2. Student was first referred to special education in February 2022. Ex 1.
3. The Referral Team met in March and April of 2022 and proposed to conduct evaluations for three areas of suspected disability: Specific Learning Disability ("SLD"), Other Health Impairment ("OHI"), and Emotional Disturbance ("ED"). Ex 12; Ex 14.
4. After the District completed its evaluations, the Referral Team met and discussed the results on June 8, 2022. Following discussion, the Team determined that the Student was ineligible for special education under the IDEA. Ex 18.

¹ Unless otherwise noted, all references to exhibits herein refer to the District's exhibits.

5. The Referral Team met a second time on July 20, 2022, due to Parents' disagreement, and they again determined that Student did not meet the eligibility requirements under the IDEA. Ex 20; Parent testimony.

6. At some point after, the District convened the 504 Team and determined that Student was eligible for accommodations under Section 504. A Section 504 Plan was developed for Student prior to the start of the 2022-23 school year. Parent testimony.

7. Parent made a second special education referral for the Student in Spring of 2023; the Referral Team met on May 8, 2023. Ex 1; Ex 2.

8. At the meeting, the Team received input from the Student's language arts ("ELA") teacher, [REDACTED], on how [REDACTED] was performing in the classroom. [REDACTED] reported the following:

- a. The Student's biggest barrier was [REDACTED] ADHD and [REDACTED] ability to maintain focus for long periods of time.
- b. The Student benefits from personal repetitions of directions and graphic organizers to keep organized.
- c. The Student had growth in areas of self-advocacy, and [REDACTED] recently followed up with [REDACTED] to ensure work was completed when [REDACTED] had missed days of school.
- d. The Student's 504 Plan for executive functioning had been helpful for [REDACTED] and improved [REDACTED] access to the classroom.
- e. Student had a similar number of missing assignments as other students in [REDACTED] class.
- f. Student had substantially less impulsive behaviors than at beginning of the school year.

- g. ■ did not see any of the vulnerabilities Parent was concerned about in ELA, and ■ often volunteers to read in front of the class.

Ex 2, p. 12; McConnell testimony.

9. The referral meeting coincided with the District's assessment of which students would benefit from the school's summer support program. ■, the District's Special Education Coordinator, spoke with the middle school math specialist prior to this meeting, who informed ■ that the Student was not on ■ list of students of concern. This was based on standardized testing and benchmarks, classroom performance, and teacher recommendations. ■ reported this feedback to the Referral Team. ■ Testimony; see also Ex. 2.

10. ■ also reviewed the Student's STAR data for the Team's consideration. The Student's scores were within the expected range for ■ grade level in math and ELA. Ex 2.

11. Following this meeting, the District issued a written prior notice proposing to conduct evaluations (classroom observation and a vision/hearing screening), and to consider past data, including evaluations previously completed. The Team suspected the same three disabilities as part of this evaluation/referral. Ex 2, p. 16.

12. The Student's classroom observation was completed by ■, Psy.D. on May 22 and 26, 2023. ■ observed Student during an ELA, math, and social studies class. Ex. 3.

13. An evaluation review meeting was held on June 6, 2023. Dr. [REDACTED] presented

[REDACTED] classroom observation at this meeting and reported the following:

- a. The Student was actively participating in [REDACTED] classes and was positively interacting with [REDACTED] teachers.
- b. The Student had positive peer interactions and presented as social.
- c. The Student was sensitive to peer relationships and was navigating ways to maintain peer relationships while also managing expectations of the teachers.

Ex 4, p. 25. These are very typical observations of students in middle school. [REDACTED] testimony.

14. Following a discussion, the Team deliberated on the three eligibility categories: SLD, OHI, and ED. In doing so, the Referral Team considered a recent outside neuropsychological evaluation provided by Parent, the classroom observation, the previous special education evaluations (from May/June 2022), Student's report cards, school benchmark assessments, and statewide assessments. The Team also considered teacher, special educator, school psychologist, and parent input. Ex. 4.

15. By way of historical data considered by the Team, Student's prior Academic Evaluation was performed by [REDACTED], special educator, on May 25, 2022. Ex 15. The report from the evaluation notes the following "Academic History":

- a. The Student received math and reading intervention in the past.
- b. The Student displayed inconsistent progress, but did not display consistent effort in [REDACTED] work.

- c. The Student's teachers reported that Student had trouble with inattention and often needed reminders throughout class to stay focused and avoid talking to peers.
- d. The Student's recent STAR scores in both reading and math were in the average range when compared to [REDACTED] peers.

Ex 15, p. 101; see also [REDACTED] testimony.

16. [REDACTED] performed the Kaufman Test of Educational Achievement, 3rd Edition ("KTEA-3"). The KTEA-3 tests academic achievement in reading, writing, and math. Ex 15; [REDACTED] testimony.

17. The results of the KTEA-3 demonstrated that Student's composite scores in reading and writing were average. Ex. 15, p. 102.

18. While the Student had one below average subtest score for spelling, spelling is an area of need for [REDACTED] School students generally, and this score is one that would likely be seen for most of Student's peers. [REDACTED] testimony; Ex 15.

19. With respect to math, while the Student scored below average in both the composite score and subtests, the evaluator observed that these scores may not reflect the Student's true abilities. See Ex 15, p. 104 ("[i]t is unclear as to whether or not these scores are an accurate depiction of [REDACTED] academic abilities due to [REDACTED] seemingly fast rate, causing the examiner to question if [REDACTED] was putting forth [REDACTED] best effort.") Specifically, [REDACTED] reported that Student "often made small mistakes in the middle of problems, causing [REDACTED] answers to be off by one number. [Student] moved fast through this subtest, but was seemingly confident in [REDACTED] answers." Id. at 103.

20. This observation was validated by the Student's math teacher at the time of the evaluation, who reported at the meeting where ██████' evaluation was presented that ██████ observations in the classroom were similar. ██████ reported that Student performed fine when ██████ closely observed ██████ while working; however, ██████ would make these types of small errors when left alone. ██████ testimony.

21. The Student's 2022 Academic Evaluation from ██████ does not support identification under the category of SLD. ██████ testimony.

22. The Student's prior Psychoeducational Evaluation was performed by Dr. ██████² on May 31 and June 1, 2022. This evaluation included a classroom observation and an interview. Ex 16. It also included several tests to assess the Student's cognitive abilities, as well as ██████ attention, executive functioning, and social/behavioral functioning. Ex. 16.

23. Dr. ██████'s report noted that Student's "██████ reported concerns with ██████ distractibility, work completion, academic motivation, and executive functioning skills." Ex. 16, p. 106.

24. Dr. ██████ performed the Differential Ability Scales, Second Addition ("DAS-II") to assess the Student's cognitive profile. This evaluation demonstrated that the Student's overall cognitive ability was in the 42nd percentile, which is within the average range compared to others ██████ age. Ex. 15, p. 117.

² At the time, Dr. ██████ was employed by ██████ ██████ ██████ ██████ ██████, with whom the District contracted. Dr. ██████ did not then have ██████ doctorate in psychology; however, ██████ did have a master's degree in education and was a certified school psychologist. ██████ was well qualified to perform this evaluation. ██████ testimony.

25. The DAS-II also confirmed the following:
- a. Student's verbal ability was in the 55th percentile, which is in the average range.
 - b. Student's nonverbal reasoning was in the 37-38th percentile, which is in the average range.
 - c. Student's spatial ability was in the 42nd percentile, which is in the average range.
 - d. Student's recall of objects was in the 50th-58th percentile, which is in the average range.
 - e. Student's auditory working memory was in the 16th percentile, which is in the lower end of the average range.
 - f. Student's processing speed was in the 27th percentile, which is in the average range.

Thus, all of Student's scores on this test were within the average range, except for working memory, which was still in the low average range. Id.

26. Working memory can be impacted by a student's inattention. [REDACTED] testimony; see also Ex 5 (Parent's outside evaluator likewise noted that distractibility can negatively impact working memory scores); [REDACTED] testimony (confirming the same).

27. Dr. [REDACTED] also evaluated the Student's attention and executive functioning through the Conners-3 and the Behavior Rating Inventory of Executive Function, 2nd Edition ("BRIEF-2") rating scales, as well as two direct measures from subtests on the Wide Range Assessment of Memory & Learning, 3rd Edition (WRAML-3). Id. at 106.

28. While direct measures of the Student's attention were average, Dr. [REDACTED]'s behavioral observations of the Student during testing and within the classroom demonstrated that

the Student displayed deficits in sustaining attention. Therefore, Dr. ██████ diagnosed the Student with Attention Deficit/Hyperactivity Disorder, Predominately Inattentive Presentation (“ADHD”). Id. at 113.

29. The Student’s 2022 Psychoeducational Evaluation by Dr. ██████ does not support identification under the category of SLD. ██████ testimony.

30. Parent’s neuropsychological evaluation was performed by ██████, Ph.D. and the report was dated April 4, 2023. Ex 5, p. 33.

31. Part of the Student’s neuropsychological evaluation was Dr. ██████’s administration of the Wechsler Intelligence Scale for Children (IV) (“WISC-IV”), which also tests a student’s cognitive abilities. ██████ testimony; see also Ex 5.

32. A review of the WISC-IV demonstrates that all composite results were within the average or low average range. Ex 5, p. 54; ██████ testimony. Specifically, the only two low average scores were in working memory and processing speed, both of which, again, can be impacted by distractibility and not necessarily indicative of an SLD. Id. at 41; ██████ testimony; ██████ testimony (agreeing that working memory and processing speed can be impacted by distractibility).

33. These results were similar to those in Dr. ██████’s 2022 Psychoeducational Evaluation. ██████ Testimony.

34. Dr. ██████ also administered academic achievement testing with the Wechsler Individual Achievement Test, 2nd Edition (“WIAT-IV”) and the Key Math-3. Ex 5, p. 41-42.

35. Aside from the area of spelling, the Student scored average or low average on all academic skills on the WIAT-IV. Id.; ██████████ testimony.

36. Parent reported to Dr. ██████████ that Student had made progress in math over the past year. Ex. 5, p. 43.

37. Student's Key Math-3 scores demonstrated strengths and weaknesses. In some areas, the Student performed at or above grade level. Ex 5, p. 42; ██████████ testimony.

38. The District does not rely on age equivalence metrics when conducting their evaluations. Instead, they look towards standard deviation scores, which allows them to compare the testing over time. For Student, ██████████ scores for basic concepts were higher when looking at the standard deviation scores than looking at the age equivalence metrics. ██████████ Testimony.

39. When comparing Student's Key Math-3 standard deviation scores with ██████████ math scores on the KTEA-3, Student improved on several measures, as well on ██████████ overall math ability. ██████████ testimony.

40. Dr. ██████████'s report stated that Student met the criteria for the DSM diagnoses of specific learning disorder in reading- mild (F81.0) and specific learning disorder in math- mild (F81.2). Ex 5, p. 48; see also Corrected Supp Ex 32.

41. Under the DSM V, the Diagnostic Criteria for Specific Learning Disorder- mild are some difficulties in learning skills in one or two academic domains, "but of a mild enough severity that the individual may be able to compensate or function well provided with appropriate accommodations or support services, especially during the school years." Corrected Supp Ex 32.

42. The Student's 2023 Neuropsychological Evaluation by Dr. ██████ does not support identification under the category of SLD. ██████ testimony; see also Ex 7.

43. The Student participated in the State NHSAS testing in both ELA and math in Spring 2023. Ex 21; Ex 22. In ELA, the Student earned a Level 3 overall, demonstrating that ██████ performed consistently with 43% of ██████ peers. ██████ performed better than at least 35% of ██████ peers. With respect to the specific measures, Student was noted to be at or approaching grade level in all skills and performed consistently with 61-66% of ██████ peers. Ex 21; ██████ testimony. In math, Student earned a Level 2 overall, performing consistently with 23% of ██████ peers. ██████ performed better than 16%. With respect to the specific measures, ██████ was at or approaching grade level on all measures, and ██████ performed consistently with 43-55% of ██████ peers. Ex 22.

44. The Student's NH SAS scores do not indicate that Student has an SLD. ██████ testimony.

45. The District has also administered STAR benchmark testing to Student in both ELA and in math since 2016/2017. Ex 21, p. 146; Ex 22, p. 151. For ELA, Student's scores had a positive trend line, demonstrating that ██████ was making progress. ██████ testimony; Ex 21, p. 146. At no time during the Student's testing over the years had ██████ been flagged for "urgent intervention" for ELA, i.e., a red dot on the line graph. Id.; Ex. 21, p. 26. In assessing this benchmark testing, the District typically considers scores in the 30th percentile to be solidly average and on grade level. ██████ testimony. Student has consistently performed above the 30th percentile on ██████ ELA STAR testing. Ex 21, p. 146-47. Student's scores are therefore average and on grade level. ██████ testimony.

46. Student's math STAR testing scores likewise showed a positive trend line, demonstrating progress. Ex 22, p. 151; ██████ testimony. At no time during the Student's testing over the years had ██████ been flagged for "urgent intervention" for math. Id. Student's only recent score below the 30th percentile was ██████ most recent score in May 2023; however, ██████ received ██████ highest score to date only four months prior. Id. at 152. Aside from two scores (one in May 2023 and one back in 2016), the Student's scores have been at or above the 30th percentile. Id. at 151-52. Thus, all but two of Student's scores were average and on grade level. ██████ testimony.

47. The Student's STAR scores do not indicate that Student has an SLD. ██████ testimony.

48. The Student's report cards demonstrate that ██████ received predominately 2's and 3's on ██████ report card for the 2022-23 school year. See Parent Exhibit 5, p. 109, 115-117.

49. For each skill or benchmark on the Student's report card, 2's demonstrate that a student is progressing towards competent (the student demonstrates the emerging ability to apply and transfer essential content, knowledge and skills) and 3's indicate that a student is competent (the student consistently and independently demonstrated the ability to apply and analyze essential content, knowledge and skills in a new task). Id. at 114.

50. The goal for each student is to progress throughout the year and reach a 3 by the end of the end of the year. ██████ testimony; ██████ testimony. The average student finishes with 2s and 3s at the end of the school year, which indicates that they are engaging and progressing towards grade level goals. ██████ testimony; ██████ testimony.

51. Report cards are just one measure the District looks at when assessing a student's progress and abilities. A student's grades can be impacted by a variety of factors, including a lack of work completion. ██████ testimony.

52. Student did not consistently complete █████ schoolwork over the 2022-23 school year. Corrected Supplemental Ex 42; Parent Exhibit 15; see also █████ Testimony (testifying that Student was on academic probation multiple times and that it was not possible to be on academic probation if one completes their homework); Corrected Supp Ex. 34 and 35.

53. Following discussion of the relevant data (including the data discussed above in paragraphs 14 through 46), the Referral Team deliberated and again determined that Student was not eligible for special education under the IDEA in any of the three categories. Ex 4; █████ testimony; Parent testimony.

54. For SLD, the only question the Referral Team marked "yes" for was Question #1, which asks "[i]s there a disorder in one or more of the basic psychological processes (see definition of Specific Learning Disability...)" Ex 7.

55. The IEP Team answered yes to this question in order to recognize that the Student did have some below average scores on the subtests and that they took these into consideration in their deliberations. █████ testimony. The Parent had focused on these isolated lower scores during the Team discussion, and the Team sought to validate the information presented by the Parent. Id. However, the District members of the Team did not feel that, despite the Student having relative weaknesses, the Student had a disorder meeting the definition of Specific Learning Disability based on █████ overall strong cognitive profile. Id. █████ █████ does not

believe that the answer to Question 1 is yes, and [REDACTED] would have answered differently in hindsight. Id.

56. While the District does typically consider results of individual subtests as a piece of information to consider, the District does not typically rely on specific subtests in assessing a student's abilities or making an eligibility determination. This is because subtest results are just one data point, and the composite scores are a better representation of a student's abilities. [REDACTED] testimony.

57. The Referral Team answered "no" to the remaining questions on the SLD Deliberation Form. Ex 7. In doing so, the Referral Team considered Student's predominately average scores in academic testing, the NHSAS and STAR testing, report cards, and reports from the classroom teachers, as outlined above. [REDACTED] testimony.

58. The Referral Team also considered the Student's observed distractibility and diagnoses of Generalized Anxiety Disorder and ADHD in its deliberations. Ex 7. These behaviors and diagnoses are relevant to eligibility for SLD in that they represent other factors which may make learning challenging that are not related to an SLD. [REDACTED] testimony.

59. The Referral Team ultimately found that, while the Student had some relative weaknesses (which the District Team members do not believe rise to the level of a specific learning disability), these weaknesses did not prevent the Student from failing to achieve adequately for [REDACTED] age or meet grade level standards. Ex 7, p. 67. Thus, Student was determined ineligible for special education under the identification of SLD. Id.

60. Meeting paperwork consistent with the Referral Team's decision was forwarded to Parent on June 8, 2023. Ex 4, p. 28-29. Parent signed [REDACTED] disagreement to the District's determination on June 11. *Id.* at 27 (with the Parent purporting to list ADHD as the primary disability and SLD as a third disability, behind anxiety).

61. In July 2023, the District ultimately proposed to identify Student under the eligibility category of OHI based on [REDACTED] ADHD. As of the date of this pleading Parent has not responded or consented to this proposal; however, the IEP Team will meet within 30 days of [REDACTED] consent to eligibility to develop an appropriate IEP. This meeting has not yet been scheduled because the District has not received consent. [REDACTED] testimony; Parent testimony. Parent indicated that [REDACTED] intends to sign [REDACTED] agreement to this proposal. Parent testimony.

62. Student being identified under OHI would not preclude the District from providing services and goals related to reading and math skills. If the IEP Team determines after a discussion that math and reading are areas of need, it will act in good faith to propose an appropriate IEP to meet these needs. [REDACTED] Testimony; Parent Testimony (acknowledging that the IEP Team meeting could lead to math and reading goals); [REDACTED] testimony (agreeing that an IEP for OHI could provide direct instruction).

63. [REDACTED] [REDACTED] is the District's Special Education Coordinator, a position [REDACTED] has held since 2018. Prior to that, [REDACTED] was a special education teacher and case manager. [REDACTED]. [REDACTED] has approximately thirty years of experience in the special education field. In [REDACTED] role, [REDACTED] typically makes 30 to 40 eligibility determinations per year, and [REDACTED] has found students eligible for special education under SLD in the past. As a special education teacher, [REDACTED] has

worked with countless students with SLD over the years. ■■■. ■■■■■ has multiple certifications from the NH Department of Education, including an Experienced Educator License and endorsements as a Principal, Special Education Administrator, and Special Education Teacher. Ex 28; ■■■■■ testimony.

64. ■■■. ■■■■■ has ample experience and is well qualified in the field of special education, including in making eligibility determinations for SLD.

65. As a certified special educator, ■■■. ■■■■■ is also qualified to perform and interpret special education academic evaluations. When ■■■. ■■■■■ was a special educator, ■■■ performed these evaluations approximately five times per year. ■■■. ■■■■■ still performs these evaluations on a regular basis to fill in for teachers as needed, and ■■■ performed an academic evaluation as recently as this Spring. ■■■■■ testimony.

66. ■■■. ■■■■■ testified at the due process hearing in this case, and ■■■ was a credible and qualified witness.

67. ■■■. ■■■■■ provided credible testimony that the data available to the Referral Team supported its decision that the Student does not have an SLD.

68. ■■■■■ has assisted Parent as an advocate for over a year; however, ■■■ has been Parent's friend for 15 to 20 years. As a friend, ■■■ has provided Parent guidance with respect to Student since the first grade. ■■■■■ testimony.

69. ■■■■■'s experience in the education field has been predominantly in the state of Massachusetts, not New Hampshire. While ■■■ testified that ■■■ was credentialed by the New Hampshire Department of Education, neither ■■■■■ nor ■■■■■

appears on the Educator Search on the Department's website³. While [REDACTED] has performed academic evaluations in the past, [REDACTED] has not performed one in over 20 years.

[REDACTED] testimony.

70. [REDACTED] has never observed the Student in the school setting, nor has [REDACTED] communicated with Student's teachers outside of the Team meeting setting. All information [REDACTED] has with respect to Student's education has come from information provided by the Parent.

[REDACTED] testimony.

71. [REDACTED] has attended school meetings pertaining to Student; however, [REDACTED] did not attend the June 6, 2023 eligibility meeting. [REDACTED] drafted this present due process request prior to the eligibility meeting being held or any determination being made. Parent told [REDACTED] that "[w]hen I meet on Tuesday, I will not sign anything unless it's to disagree. But when I go on Tuesday all I plan to say is I want a plan in place to improve the areas with gaps." [REDACTED] testimony.

72. [REDACTED] and Parent did not participate in the eligibility meeting in good faith; they predetermined the outcome.

73. This is not the first time [REDACTED] encouraged Parent to predetermine the outcome of the Team process and prejudge the efficacy District's proposals. [REDACTED] testimony (confirming that, in August 2022, [REDACTED] emailed the Parent that the District "could dip a 504 in gold & it would not matter").

³ The license look up is available at <https://my.doe.nh.gov/profiles/educators/search.aspx> (last checked August 9, 2023).

74. ██████████ was not a credible witness nor was ██████ qualified to act as an expert, as ██████ was biased towards the Parent and against the District and ██████ does not have any recent relevant experience in the special education matters at issue.

II. Rulings of Law

75. “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 OHI and SLD) that adversely affects ██████ educational performance and *by reason thereof*, needs special education and related services. 34 CFR 300.8(a)(1), (c)(4), (9); NH Ed 1102.01(t); see also RSA 186-C:2, I. 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); see also Doe v. Cape Elizabeth Sch. Dist., 832 F.3d 69, 85 (1st Cir. 2016) (“A child who needs only accommodations or services that are not part of special education to fulfill the objective of the need inquiry does not 'need' special education”).

76. 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); see also Doe v. Cape Elizabeth Sch. Dist., 832 F.3d 69, 77-78 (1st Cir. 2016).

77. Specific learning disability is defined as “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that

may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.” 34 CFR 300.8(c)(10).

78. In order to determine that a student has an SLD, the Referral Team must find the following to be true:

- a. The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
 1. Oral expression.
 2. Listening comprehension.
 3. Written expression.
 4. Basic reading skill.
 5. Reading fluency skills.
 6. Reading comprehension.
 7. Mathematics calculation.
 8. Mathematics problem solving.
- b. The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; **or**
- c. The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305; **and**
- d. The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—
 1. A visual, hearing, or motor disability;
 2. An intellectual disability;
 3. Emotional disturbance;

4. Cultural factors;
5. Environmental or economic disadvantage; or
6. Limited English proficiency.

34 CFR 300.9(a); see also 34 CFR 300.11.

79. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation:

- a. Data that demonstrates that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

34 CFR 300.9(a).

80. A classroom observation is also required as part of an evaluation for SLD. See 34 CFR 300.10.

81. Under New Hampshire law, an evaluation of a child for a specific learning disability, must include one or more of the following criteria:

- a. A discrepancy model between intellectual skills and achievements;
- b. A process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures described in 34 CFR 300.307(a)(2); and
- c. Other alternative research-based procedures as described in 34 CFR 300.307(a)(3).

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82. The District's eligibility determination considered all of the required factors under state and federal law; it considered both a discrepancy model between intellectual skills and achievements and a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures. See Ex 7.

83. In interpreting evaluation data for the purpose of determining if a child is a child with a disability under the IDEA and the educational needs of the child, the district must "draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior." 34 CFR 300.306(c)(1).

84. Student's Referral Team drew upon information from a variety of sources, including standardized test results, parent and teacher input, grades, classroom performance, and observations in concluding that ■ was not eligible under the IDEA under the category of SLD.

85. While Student had some relative weaknesses, the totality of the data considered by the Referral Team, particularly with respect to the average results on the Student's cognitive and academic testing, the NH SAS scores, and the STAR data supports its decision that the Student does not have a specific learning disability.

86. During the 2022-23 school year, Student met grade level standards and ■ classroom performance was sufficient. See generally ■ testimony; District Core Documents; see also District Exhibit 32.

87. Student made meaningful educational progress during the 2022-23 school year.

88. To the extent the Student did not achieve 3's in all competencies on [REDACTED] report card, this is not due to a lack of skills or understanding; rather, it is better attributed to Student failure to complete [REDACTED] work, inattention, executive functioning and organization. See generally [REDACTED] testimony.

89. An IEP for Student's OHI will enable Student to make meaningful progress and improve the grades on [REDACTED] report card. [REDACTED] testimony.

90. Student does not require specialized instruction due to an SLD. [REDACTED] testimony.

91. Districts are not required to adopt the conclusions of independent evaluators when determining eligibility under the IDEA. R.Z.C. v. North Shore Sch. Dist., 73 IDELR 139 (9th Cir. 2018, unpublished).

92. As a matter of law, [REDACTED]'s diagnoses of specific learning disorder- mild for reading and math are not dispositive on the IEP Team. See [REDACTED] testimony; 34 CFR 300.8(c)(10); 34 CFR 300.9.

93. As the party requesting the Hearing and challenging the District's eligibility determination, the Parent bears the burden of proof. 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); RSA 186-C:16-b, III-a (limiting the District's burden of proof to "the appropriateness of the child's program or placement").

94. Parent did not meet [REDACTED] burden of proof in this due process proceeding.

95. Student does not have a specific learning disability as defined by the IDEA. 34 CFR 300.8(c)(10); 34 CFR 300.9.

96. The District is the prevailing party.

Respectfully Submitted,
[REDACTED] SCHOOL DISTRICT

By and through its attorneys,

[REDACTED]

By: [REDACTED]

Dated: August 11, 2023

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via email to Parent on the date below.

Dated: August 11, 2023

[REDACTED]
[REDACTED]