

**NH DEPARTMENT OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING
HEARING DECISION AND ORDER
IDPH-FY-24-06-055**

I. Procedural Background and Issues

This decision is issued pursuant to the provisions of the Individuals with Disabilities Education Act (20 USC, Section 1401 *et seq.*), NH RSA 186-C, and the regulations promulgated under those statutes.

Parent initially filed the due process hearing request on June 18, 2024. The School District filed a Response and a Motion for Partial Dismissal on July 16, 2024. The Motion for Partial Dismissal was based on claims of the Parent dating back further than allowed under the standard two-year statute of limitations. On July 19, 2024, Parent filed two Motions: a “Motion for Hearing Officer’s Consideration of any Grounds for Recusal Based on Prior Mediator Role” and a “Motion to Postpone Pre-Trial Hearing.” The Hearing Officer who was then assigned to the case granted both motions on July 21, 2024, though a new prehearing date was not specified. The case was administratively reassigned to the current Hearing Officer on July 22, 2024. Parent filed an Opposition to the School District’s Motion for Partial Dismissal on July 26, 2024. On July 31, 2024, the current Hearing Officer granted the School District’s Motion for Partial Dismissal, dismissing all claims prior to June 17, 2022.

On July 29, 2024, the parties jointly requested (via email sent by Parent’s advocate) that the hearing decision due date be continued to September 27, 2024, and that the hearing occur sometime during the week of September 9, 2024. On August 5, 2024, the Hearing Officer issued a Ruling and Scheduling Order, granting new hearing dates of September 9 and 10, 2024, and setting a prehearing date of August 28, 2024.

On August 12, 2024, the parties submitted a “Joint Motion Regarding Hearing and Prehearing Scheduling,” requesting new hearing dates of September 24 and 26, 2024, and a new prehearing date of September 6, 2024. The Hearing Officer issued a Ruling and Scheduling Order on the same day (August 12), granting the requested dates.

On September 6, 2024, a prehearing conference was conducted. Among other items discussed, the parties discussed issues with obtaining discovery from third parties. Based on the length of time needed to address the discovery issues, combined with availability limitations of the parties, attorneys and Hearing Officer, the parties requested, both verbally at the prehearing conference and subsequently via an assented motion filed on September 9, 2024, that the hearing dates be rescheduled to October 28 and November

1, 2024. The Hearing Officer granted the assented motion on September 9, 2024. Based on the assented motion, relevant dates were scheduled as follows:

- Monday, October 14, 2024: Core Exhibits Due
- Monday, October 21, 2024: 5-Day Rule for Exhibits and Witness Lists
- Monday, October 28, 2024: Due Process Hearing, Day 1
- Friday, November 1, 2024: Due Process Hearing, Day 2
- Monday, November 11, 2024: Proposed Findings of Fact and Rulings of Law Due
- Monday, November 25, 2024: Due Process Decision Due.

On October 2, 2024, the District filed a Motion to Compel (“MTC”) seeking an order requiring Parent to sign releases allowing the District to obtain discovery information from Boston Children’s Hospital (“BCH) and [REDACTED] (“[REDACTED]”). On October 8, 2024, the Hearing Officer issued the ruling, denying the MTC in regard to BCH, but granting the MTC in regard to [REDACTED]. In the ruling, the Hearing Officer required, “Parent shall immediately and properly sign and date the release to [REDACTED] [REDACTED] that is documented in Appendix H of the MTC, and return that to the School District.”

On October 21, 2024, the parties filed an Assented Motion to Modify the 5 Day Rule, requesting that the 5-day rule be waived to allow into evidence documents not yet received from [REDACTED]. The Assented Motion to Modify stated that Parent did not return the signed release until October 18, 2024, ten days after the order was issued. The Assented Motion to Modify was denied, but the alternative relief offered to convert the first day of hearing (October 28, 2024) to a prehearing rescheduling conference was granted.

On October 28, 2024, a prehearing rescheduling conference was conducted. The hearing was rescheduled for November 1 and November 7, 2024.

There were three issues for hearing:

1. Did the District fail to offer the Student a free appropriate public education during the 2022-2023 school year by failing to offer Parent an IEP to sign? If so, what shall the remedy be?

2. Did the District fail to offer the Student a free appropriate public education during the 2022-2023 school year by failing to offer services pursuant to a stay-put IEP? If so, what shall the remedy be?

3. Did the District's failure to issue a Summary of Performance upon the Student's graduation deny the Student's right to a free appropriate public education? If so, what shall the remedy be?

A due process hearing was conducted via Zoom on November 1 and 7, 2024, starting at 9:00 A.M. each day. The Parent was represented by the New Hampshire state Advocate for Special Education. The School District was represented by counsel.

The Parent called four witnesses:

- Student;
- Private Speech Language Pathologist ("Private SLP");
- Private BCBA ("Private BCBA");
- Parent

The District called three witnesses:

- The District's Director of Special Education ("Sped Director");
- Dean of [REDACTED] [REDACTED] ("Charter Dean");
- Former Special Education Teacher at [REDACTED] [REDACTED] ("Charter Teacher");

The official record of the hearing consists of the Zoom voice and video recordings, as well as 1,844 pages of exhibits:

- Core exhibits totaling 689 pages (no exhibit numbers);
- Three PDF files of School District exhibits totaling 1,034 pages (no exhibit numbers).
- One PDF file of Parent exhibits, containing ten exhibits totaling 121 pages.

Both parties submitted post-hearing memoranda with Proposed Findings of Fact and Proposed Rulings of Law.

II. Findings of Fact

1. The Student is 20-years-old (C-43).¹
2. The Student received a regular high school diploma on August 25, 2023 (C-660).
3. The School District is the Local Education Agency (“LEA”) (C-43).
4. The Student attended Charter School from the 2016-2017 academic year (seventh grade) until Student graduated in 2023 (C-9-10).
5. Charter School is a public charter school located in New Hampshire (Charter Dean). Charter School serves students in grades five through twelve (*Id.*).
6. Student attended extended-school-year (“ESY”) in the District’s high school in 2019, and was present for approximately one day during seventh grade at the District’s middle school, but otherwise has not attended the District’s public schools since the start of middle school (Sped Director).
7. The Student qualified for special education and related services based on the educational disabilities of Autism and Other Health Impairment due to a diagnosis of ADHD (C-43-45).
8. An IEP covering the time period June 5, 2020 to June 4, 2021 was proposed by the District on June 21, 2020. The IEP addressed goals in the areas of written expression, executive functioning, transitional self-advocacy, and transitional social skills. The service delivery grid appeared as follows:

Special Education Services/Supplementary Aids and Services

Goal	Provider Title	Sessions Frequency	Time Per Session	Location of Session
Written Expression	Special Educator and Regular Educator	4x weekly	45 min	Special Ed
Executive Functioning	Special Educator	1x daily	15 minutes	Special Ed
Transitional Self-Advocacy	Counselor	1x weekly	30 min	Regular Ed
Executive Functioning	Paraprofessional support	1x daily	45 minutes	Regular Ed
Social Skills	Counselor	1x weekly	30 minutes	Regular Ed
Written Expression Ex. Functioning Transition/self-advocacy	General Special Education Teacher with autism background	4x quarterly consult IEP meetings	60 minutes	Special Education

(C-43-63).

¹ Core exhibits are identified with the prefix “C,” School District exhibits with the prefix “S,” School District supplemental exhibits with the prefix “S-SUPP,” and Parent exhibits with the prefix “P.”

9. Parent signed the IEP on June 25, 2020, agreeing with exceptions.² The exceptions documented by the Parent are as follows (C-63):

The IEP does not adequately address all instructional requirements arising from [Student's] dyslexia and executive functioning issues.

The IEP does not provide an appropriate level of instruction and adult support to address [Student's] executive function deficits. It should require both morning and afternoon check-in sessions (15-minutes each) with a special educator to go over schedule, materials, homework, longer-term assignments, and the like, as well as provide for a paraprofessional to assist [Student] with organization and work completion during four 45-minute class periods per day.

(C-63).

10. District agreed to reimburse the Charter School for the cost of implementing the Student's IEP at the Charter School. The District was responsible for writing the Student's IEPs, scheduling IEP team meetings, and overseeing the provision of the Student's special education and related services (Sped Director).
11. The Charter School was responsible for issuing the Student's IEP progress reports and for the day-to-day implementation of classroom accommodations (Sped Director).
12. On March 5, 2021, the Parent submitted a handwritten letter to the Charter Dean, stating, "No information regarding my [child]... is to be released without my express written permission... No testing materials, grade reports, transcripts, or schedules will be released without my express written permission..." (C-64-65).³
13. Sped Director testified that Parent's prohibition of releasing records without express written consent made IEP development much more challenging. It resulted in very little communication between the Charter School and School District. The Sped Director was unable to find out what was happening with Student at Charter School on a day-to-day basis. The District's communication with the Charter School regarding other District students enrolled there was much better than it was

² Although this IEP was in effect prior to the relevant time period of claims allowed in this case pursuant to the Partial Motion to Dismiss (i.e. claims starting June 17, 2022), the IEP is documented here because it was the last signed IEP – albeit with exceptions – prior to the relevant time period. Because it was accepted with exceptions, only the non-rejected portions would be considered “stay put.” The Parental exceptions did not expressly reject the services listed in the IEP, but instead sought a higher or different level of services. Therefore, the June 25, 2020 IEP will be considered the stay put IEP.

³ Although this letter was written prior to the start of the relevant time period for claims (June 17, 2022), it is documented here because the Parent's instructions were still in place during the relevant time period.

- regarding Student (Sped Director). The Charter Dean testified she had never received a letter like this from a parent (Charter Dean).
14. On March 31, 2021, the District sought the Parent's consent for the Charter School to disclose "all educational records, including report card, schedule, transcript" to the District. The purpose of the disclosure was to "provide oversight to IEP implementation and FAPE." On April 13, 2021, the Parent rejected the requested consent, writing, "maintain existing process that requires parental consent for each release." (C-66).
 15. The District completed a Functional Behavior Assessment (FBA) of the Student on June 8, 2021 (C-68-72). The results of the FBA indicated that the Student "engages in the target behaviors of inappropriate computer use" but that "[t]he behaviors of concern to the teachers have been addressed in [Student]'s Individual Education Plan" through classroom accommodations. *Id.* at 70. The Student's target behaviors "typically occurred when the rest of the class was not using the computer and the expectation was that their computers were put away." *Id.* at 69.
 16. The results of the FBA did *not* identify attendance issues as a target behavior (C-68-72).
 17. The Student testified that at Charter School, there were no ramifications for not handing in assignments, because grades were based on quizzes, not homework. Student thought the same would occur in college (Student).
 18. The Student was initially expected to graduate from the Charter School with a regular high school diploma in June 2022 (Charter Dean). However, by the end of the 2021-2022 academic year, the Student was missing one required Math credit and had not completed a senior project required by the Charter School. Therefore, Student needed a "second senior year." (Charter Dean; Student; Parent; Sped Director).
 19. As described, *supra*, the relevant time period for claims in this hearing starts on June 17, 2022. However, for at least two months prior to that, the parties had been attempting to schedule a Team meeting and draft an IEP. Because these scheduling and drafting attempts are relevant to the issues of this case, they are documented for the record as follows:
 - A. March 23, 2022: Parent emails District, "I would like to know when you are planning on scheduling another iep meeting?"
 - B. March 24, 2022: District responds with several dates (April 1, 4, 5, 8).

- C. April 4, 2022: Parent responds, “These dates aren’t good... Is there another day?”
- D. April 4, 2022: District responds with more available dates (April 12, 13, May 3, 4, 9).
- E. April 21, 2022: With no response from Parent, District follows up.
- F. April 21, 2022: Parent responds, “That’s so funny... I was just about to write to you. I am getting ready to go to Poland and I had to file for an extension to do the IEP meeting. I would like to do 5/3 at 1.”
- G. April 21, 2022: District confirms a meeting on May 3.

(C-237-243).

- 20. On May 2, 2022, the District emailed the Parent “a very draft IEP.” The District added transitional goals to the IEP “based on our last couple of discussions where [Student] would attend [the Charter School] or [the District] for [the] academic classes [Student] needs to graduate and then spend time in the community/job shadowing.” (C-244). *See also* C-300-302 (5/2/2022 Meeting Notes).⁴
- 21. On May 3, 2022, a Team meeting was held. There are two Written Prior Notice (“WPN”) documents from this meeting. The first WPN documents a discussion about evaluations and a prior mediation agreement, neither of which is relevant to the issues of this hearing. However, an unknown person wrote at the bottom, “Parent disagrees with this document.” It is unclear whether “this document” refers to the WPN, the IEP, or the requested consent for evaluation. The second WPN documents that Student would continue to qualify for an IEP under the categories of Autism and Other Health Impairment (ADHD). The WPN states, “These impact [Student’s] ability to show what [Student] knows in writing and...executive functioning skills.” (C-264-265).
- 22. On May 27, 2022, the District emailed the Parent proposing an IEP Team meeting on June 8, 2022 “to talk about some of the transition services we can offer” and reminding the Parent that Parent was “going to share the IEP draft with [Parent’s advocate]” so that Parent could inform the District of “any other changes [the Parent] wanted before I send a final proposal” (C-316-317).
- 23. On June 6, 2022, having not heard back from the Parent, the District sent a follow-up email. The Parent responded, “I am reviewing it, however, I don’t understand the purpose of having a meeting on the 8th....” The District then responded, “When

⁴ The draft IEP sent on May 2, 2022 and the May 3, 2022 meeting to discuss the draft IEP have relevancy after June 17, 2022.

- we had met we talked about meeting with... Work Opportunities staff so that they could answer some scheduling questions that you might have. I will just wait until you have reviewed the paperwork and we can go from there.” *Id.*
24. On August 24, 2022, the District emailed the Parent again to request an IEP Team meeting, explaining, “we still need to finalize the IEP and I sent you the draft to review with [Parent’s advocate].” (C-374). The District also sought clarification as to where the Student was planning to attend school for the upcoming academic year, as the Student had the option of attending and receiving services at either the Charter School or the District’s high school (C-374, 244, 300-302; Sped Director). In response, the Parent denied receiving a draft IEP (C-374).
 25. Charter School academic year began on September 7, 2022 (Charter Dean).
 26. On September 9, 2022, the District emailed the Parent. “I assume [Student] is at [Charter School], should I set up an IEP meeting with them in attendance?” (C-376).
 27. On September 12, 2022, the Charter Teacher emailed the Parent with a link to the Student’s special education services schedule for the 2022-2023 school year (S-95; *See also* SD Doc 56-57 (service schedule)). The Parent testified that they were unable to access the link; however, Parent did not contact the Charter School or the District about this (Parent).
 28. On September 14, 2022, Charter Dean emailed Parent, “I wanted to touch base and see how things are going. Do you have any updates on classes? Have you received communication from [Charter Teacher] about [Student’s] service?” Parent responded, “I just received a generic letter from [Charter Teacher].” (S-96).
 29. On September 19, 2022, the Charter Dean emailed the Parent asking when the Student would report to school, because based on having missed more than ten half-days of school, the Student was considered truant (S-125).
 30. On September 20, 2022, the District emailed the Parent,

I was informed that [Student] is not attending [Charter School] for any classes and therefore not receiving any services as well. I believe at this time we need to have a meeting as we do not have a signed IEP or placement. Where is [Student] attending school. I do not believe [Student] can remain enrolled at [Charter School] if [Student] is not attending any classes there.
(C-377).

Twenty minutes later, Parent responded,

“Really? That is news to me as [Student] is doing one class at TFA (the Senior Project) and the remaining class on [REDACTED] [Student] only needs two classes to graduate and it is perfectly fine for students to finish out their classes on [REDACTED] and has been done by others in the past. You can schedule a meeting, but you are out of compliance on the IEP as it as [sic] not ready to go at the beginning of the last school year and it was completely inadequate. If [Charter Dean] is expelling [Student], then [Charter Dean] should be contacting ME directly and not you.”

(C-377).

31. On September 22, 2022, the Charter Dean emailed the Parent to communicate that all students enrolled at the Charter School must take a minimum of four classes per semester “that are taught in our building by our faculty. Round Table, Study Halls, Lunch, and... [REDACTED] do NOT count towards this total... In rare situations, students with extenuating circumstances may be given permission to take fewer than the 4-class minimum, but only after meeting with the [Charter School] administration and developing a specific plan for graduation.” However, no such exception was in place for the Student (S-125).⁵

32. The Student took Probability and Statistics through [REDACTED] even though the Charter School offered that class, as well. The reason the Student did not take the Probability and Statistics class through the Charter School was that the Student had a prior conflict with the teacher (Charter Director).

33. On September 24, 2022, Parent emailed the Sped Director:

If you wish to schedule a meeting, we can, however, I am tired of having endless meetings which don't end and no finalized iep. The one I received is not completed and I have some serious reservations regarding some of the newer provisions. I was not happy with the services provided last year, which I repeatedly stated and was completely ignored.

(C-379)

34. On October 6, 2022, Charter Teacher went out on maternity leave for eight weeks. The Charter School did not provide a replacement special education teacher to provide IEP services in the absence of the Charter Teacher. Neither the Charter School nor the District offered or provided compensatory services (Sped Director; Charter Teacher; Charter Dean).

⁵ In prior years at the Charter School, Student took and passed full course loads (C-12). There appears to be a conflict between the Charter School requirement that all students must take four courses each semester and the reality that Student only needed to take two courses to graduate. Although that was a legitimate issue that Parent raised with Charter School and District, it is not relevant to the three discrete issues of this case.

35. On October 12, 2022, the IEP Team met (C-384, 398). According to the Sped Director's meeting notes, the District reiterated its offer to provide the Student's special education and related services, including transition services, at the District's high school (C-401; Sped Director). The meeting notes also indicate that the Parent rejected this offer and informed the IEP team that the Student would finish the senior project with the Charter School while taking Probability and Statistics through the [REDACTED] Charter School ([REDACTED] (C-402).
36. The meeting notes from the Sped Director indicate that after the Team meeting, Parent was to send Sped Director updates on what Parent "is looking for." The Sped Director would then "finalize IEP proposal & send." (C-401).
37. On October 16, 2022, the Charter Dean emailed the Parent to schedule a meeting to discuss Student's schedule. The Charter Dean wrote, "I am willing to work with [School District] and your family while creating a schedule. We will need [Student] to take some classes at [Charter School] to be considered a [Charter School] student." (S-171).
38. On October 26, 2022, the Parent sent the District a rejection of the May 3, 2022 *draft* IEP, along with copious handwritten edits (C-406-423).
39. On November 7, 2022, the District sent Parent a list of proposed dates for an IEP team meeting "to review [Parent's] concerns." (C-425). The dates offered were November 18, 23 and 29. The Parent did not acknowledge the District's request to schedule an IEP team meeting, but instead questioned why the IEP was still in development (C-430-431). On November 22, 2022, Parent emailed the District, "This went to my junk file. [Student] did [the] senior Project Proposal and found [a] mentor. Things are moving forward." (C-430).
40. On December 19, 2022, the District emailed the Parent another list of proposed dates for an IEP team meeting "to finalize [Student]'s IEP and respond to the feedback from [the Parent]." (C-430). The Parent did not acknowledge the District's request, but instead wrote back, "It's so funny that you emailed today. I was actually looking for the paperwork that I was supposed to receive from you. I have gone through everything but can not find and it and would like to schedule the testing for Early [sic] January. Can you kindly re-send?"
41. On December 20, 2022, the Charter Dean emailed the Sped Director (copying the Parent) to communicate that the Student still had not completed the senior project, and would get credit for the Probability and Statistics class once [REDACTED] sent the credit to the Charter School. The Charter Dean asked if there was any opposition to Student graduating in January, once the senior project and Probability and Statistics class were complete. The Charter Dean also provided notice that the Student "has not received any special education services this school year. We have had an

- available staff to service [Student] for all services outside of [Charter Teacher's] maternity leave (C-438).
42. On January 4, 2023, the District again emailed the Parent requesting to schedule an IEP team meeting. The Parent did not respond (C-446).
 43. On January 27, 2023, the District emailed the Parent, "it is essential that we meet for an IEP meeting and I have not heard back from you about potential dates. Please see the attached meeting notice. Hard copy is being mailed to you and [Student]." The District scheduled the IEP team meeting for February 13, 2023 (C-465, 473).
 44. Despite several back-and-forth emails, the Parent did not state whether or not the Parent would be able to attend the Team meeting on February 13. The District did move forward with the meeting, and neither Parent nor Student attended. Instead, two hours after the meeting, the Parent emailed the District twice within two minutes, first stating, "I'm sorry but I'm not available due to an emergency. We will have to reschedule," then stating "I am writing to you as I was not able to attend the IEP meeting today." (C-477, 475).
 45. On March 2, 2023, the District informed the Parent via email that it was "finalizing the IEP discussed at the meeting" and offered to "set up a meeting after you receive the paperwork" (C-498).
 46. The District emailed the Parent a final IEP proposal on March 24, 2023 (C-500-501, 515).
 47. On April 9, 2023, the Parent returned a fully rejected IEP response dated April 7, 2023. On April 11, 2023, the District notified Parent that they were unable to open the emailed attachment, and asked the Parent to send the response in a different format, which the Parent did. (C-543-544).
 48. On May 1, 2023, the District provided the Parent with a list of proposed IEP team meeting dates to discuss the Parent's concerns (C-546). The Parent did not respond. *Id.*
 49. On May 8, 2023, the District sent an email to the Parent, asking whether Parent received the May 1, 2023 email with proposed IEP meeting dates (C-547). The Parent then responded from a new email address, writing, "No, I went through all my emails. I don't kno[w] if you sent it to the old account, but if you did then I am not using it anymore." (C-547).
 50. An IEP team meeting was scheduled for the date selected by the Parent, May 15, 2023, to discuss the Parent's concerns. During the meeting, the Parent requested that services in written expression be added back into the Student's IEP. Parent also

requested that ESY services be added back, even though Student had not participated in ESY for several years. The District complied with both requests (C-553-557, 567-572).

51. On May 15, 2023, a Team meeting was held. The Sped Director’s hand-written meeting notes indicate “[e]veryone agreed that [Student] could graduate this June[.]” Three options were discussed for receiving the high school diploma: (A) the Student could receive a diploma in June and graduate from the Charter School; (B) the Student “could elect not to receive [a] diploma in June and work on his transition skills including writing in ESY[;]” or (C) the Student could elect not to receive a diploma in June, attend ESY, and attend the District’s high school program for the 2023-2024 school year to work primarily on transition skills (C-554-556; Sped Director).
52. On May 18, 2023, the District emailed the Parent an amended IEP proposal (C-599). The amended IEP included a new goal in Written Expression (C-609-610). ESY was also included. The Service Delivery Grid appeared as follows (C-609):

Special Education Services/Supplementary Aids and Services				
Goal	Provider Title	Sessions Frequency	Time Per Session	Location of Session
Transitional Self-Advocacy September 2023 – May 2024	Special educator	1x daily	45 min	Special Ed
Transitional job shadowing /community outings September 2023 – May 2024	Special educator	1x daily	45 min	Special Ed
Executive Functioning September 2023 – May 2024	Special educator	1x daily	60 minutes	Regular Ed
Executive Functioning May – June 2023	Special educator / paraprofessional to check in	1x daily	60 minutes	Regular Ed
Social Skills May – June 2023	Guidance Counselor	1x daily	15 minutes	Special Ed
Social Skills September 2023 – May 2024	Special educator	1x daily	15 minutes	Special Ed
Writing Skills May-June 2023	Special educator	4x weekly	45 minutes	Special Ed
Writing Skills Sept 2023 – May 2024	Special educator	1x daily	45 minutes	Special Ed
All	General Special Education Teacher with autism background	4x quarterly consult IEP meetings	60 minutes	Special Education

53. On June 3, 2023, the Parent emailed the District, “I found a number of errors in the IEP, and so I am declining it.” (C-628).
54. On June 14, 2023, the District emailed the Parent to remind the Parent that they had

- still not responded to the IEP, and also to “confirm the plan for receiving [the Student’s] diploma as that was left up in the air when you both left the [May 15] IEP meeting.” (C-630).
55. On June 16, 2023, the day before the Charter School’s graduation, Charter Dean informed the Parent that “[a]s of 2:30 this afternoon, our records show that [Student] still has a few assignments left to finish on [REDACTED] (C-631). The Student was thus ineligible to graduate until fourteen remaining assignments were complete (C-631, 650).
 56. On June 19, 2023, the Parent emailed the District, “I wrote you an answer, however, I also asked [Student] to drop off a paper copy. I will have to see what [Student] did with it.” (C-632).
 57. Over the course of 2022-2023 school year, the Charter School marked the Student as absent for a total of 124 out of approximately 160 school days (C-1; Charter Dean). Parent testified that Student should not have been marked absent, because Student was taking just two courses, neither of which required daily attendance on campus (Senior Project and [REDACTED] Probability and Statistics) (Parent).
 58. Regarding IEP services, the Parent testified that Parent was unaware of the availability of services at the Charter School. However, the exhibits show that Parent was informed several times that services were in place at the Charter School beginning as early as September 12, 2022 (S-95; C-377, 438, 481).⁶
 59. The Student attended the Charter School for “less than a month” towards the end of the school year, often refusing to participate in written expression services, claiming to need to work on [REDACTED] (S-266; Charter Teacher; Student). Student admitted to feigning working in [REDACTED] while actually playing video games. When the Teacher came near, Student would swap screens out of [REDACTED] or close the laptop, or hide the screen with Student’s body (Student; Charter Teacher).
 60. It is unclear when the District received the Parent’s written response to the District’s amended IEP proposal. However, the Parent response is dated June 2, 2023. The response was a full rejection of the the proposed IEP and placement (C-624).
 61. A lengthy, wide-ranging email chain over the course of June and July, 2023 show a continuing dispute regarding ESY, [REDACTED] progress, graduation status, a records

⁶ Regardless of the issue of whether Student could take classes remotely or needed to be in-person at the Charter School for classes, and even if I assume, arguendo, that Charter School did not send a schedule to the Parent, it is difficult to believe that Parent would allow an entire school year to elapse without questioning where IEP services would occur (other than the time period when Charter Teacher was out for maternity leave).

- request from Parent, and planning for possible services during the 2023 – 2024 school year (C-649-659).
62. The Student was planning to attend [REDACTED] for the 2023-2024 school year (Parent; Student; C-554-555).
 63. Student was supposed to report to [REDACTED] for ROTC on August 14, 2023. Classes were supposed to start in “late August.” Student started late at [REDACTED] missing both the start of ROTC and of classes, either because Student had not yet received a diploma or because there was a death in the family. Parent testified that both were true (Parent). A definite date of when Student actually started at [REDACTED] was not provided at hearing, but Student testified it was in October or November (Student).
 64. On August 21, 2023, [REDACTED] emailed the Student and the Parent, “After multiple reminders, we have not received your final high school transcript. Please submit your transcript by 4PM Eastern on Wednesday, August 23... [or] your application will be withdrawn.” (S-72). In a previous email on July 17, 2023, [REDACTED] warned, “If we do not receive your final high school transcript by Friday, August 25 at the latest, University Scholarships and Financial Aid will cancel your 2023-24 financial aid.” (S-30).
 65. The Student submitted the final [REDACTED] assignments on August 24, 2023 (S-69; Charter Dean). Student received a regular high school diploma from the Charter School on August 25, 2023 (S-336); C-660.
 66. On August 28, 2023, the District proposed discharging the Student from special education due to receiving a regular high school diploma. On September 4, 2023, the Parent rejected the District’s proposal, writing “still owe me a summary of performance among other things.” (C-660-662).
 67. On August 30, 2023, [REDACTED] emailed the Student to “confirm[] your registration with Services for Students with Disabilities at [REDACTED] [REDACTED]. The email set forth the following “Approved Accommodations” for the student: (a) Accessible Media (accessible text: electronic format with searchable text); (b) Exam Accommodations (computer and word processor for exams, distraction reduced testing space: small group setting, extended time 2.00x); (c) Notes and Lecture Access (advanced class materials, notetaking technology). (S-506-507).
 68. The Sped Director testified that college accommodation plans are usually scaled back quite a bit from high school 504 plans or IEPs, but that she was pleasantly surprised at how robust the Student’s [REDACTED] accommodation plan was (Sped Director).
 69. In addition to the accommodation plan referenced in the above paragraph, the Student was eligible to receive academic coaching through [REDACTED] Tech’s SSD office (S-456). The SSD Academic Coaching Program offers a weekly meeting to

“address executive functioning skills such as planning and time management” and to “go over grades, discuss resources, review upcoming assignments, address study strategies, etc.” (S-455).

70. The Student testified that Student was unable to access academic coaching because it took place during lunch hour. When asked why that was the only slot available, Student testified that coaching was available from 7 A.M. until 2 P.M., but that classes were scheduled in that time. However, Student also testified that Student sleeps “like a boulder,” and would often sleep through the alarm, missing classes. If Student woke up, then Student would go to class (Student). Communications from the academic coach indicates that there was flexibility in scheduling. For example, in an email dated October 25, 2023, the coach writes, “I reviewed your class schedule and provided days and times that match my schedule. Please let me know which one works best for you. If neither of the times work, we can discuss alternative times.” The coach then offered two days the following week, one at 3 P.M. and one at 1 P.M. (S-454).
71. On September 5, 2023, the District emailed the Charter School, “[w]ith [Student] exiting the program I need to provide a summary of performance to [Parent]. I am struggling given that [Student] did not participate in any programming or [REDACTED] academic last year.” In response, the Charter School provided the District with a copy of the Student’s senior project and transcript (C-664).
72. The District admitted in testimony that it did not issue a Summary of Performance (Sped Director).
73. On December 16, 2023, the Student was placed on “1st Academic Probation” at [REDACTED] due to a GPA of “less than 2.0 at the end of the 2023 Fall semester . . .” (S-Supp 353). On May 11, 2024, the Student was placed on “First Academic Suspension” at [REDACTED] [REDACTED] “through the end of the fall 2024 semester.” (S-Supp 471).
74. According to the Parent’s hearing request, “[T]he District failed to exit Student from high school special education . . . with a Statement of Performance (‘SOP’) ⁷ required by IDEA. Therefore . . . [Student] did not receive help that might have been available in the college setting for students with disabilities . . .” (Hearing Request Attached Stmt. at 1). The Parent also claimed in the hearing request, “In the absence of an SOP or the recommendations required to be contained therein, Parent was unable to obtain services and support for Student within the college setting.” (Hearing Request Attached Stmt. at 6). However, there is no indication that [REDACTED] required or requested a SOP. In a communication to Student on April 11, 2023, [REDACTED] wrote, “Thank you for making an expedited accommodation request. For an expedited accommodation request you will need to submit documentation of

⁷ Parent appears to be referencing the “Summary of Performance” required by 20 U.S.C. § 1414(c)(5)(B)(ii).

previous accommodation. *This may be a previous school letter, an IEP, or 504 plan...* If documentation of that type is not available, please call... or email... to request a standard Welcome Meeting.” (S-511) (emphasis added).

75. Records received from [REDACTED] through discovery reveal the Student struggled at [REDACTED]. Numerous emails between Parent, Student, faculty and staff from the office of Services for Students with Disabilities (SSD) show that Student had poor attendance in classes and was sometimes marked as a “No Show” at academic tutoring sessions (S-440-460; S-Supp 104, 193, 196, 286, 302).
76. A grade report for the second semester at [REDACTED] show that most of Student’s assignments were not submitted (P-23-32).
77. Student received an F in all classes for both semesters (S-514).

III. Guiding Law

1. *RSA 186-C:16-b, III-a. Burden of Proof*

The school district has the burden of proof, including the burden of persuasion and production, of the appropriateness of Student’s program or placement, or of the program or placement proposed by the school district. This burden shall be met by a preponderance of the evidence.

2. *Free appropriate public education (“FAPE”)*

Federal and state law guarantees every student with a disability the right to a free appropriate public education (“FAPE”). 20 U.S.C. §1400 (d)(1)(A); Ed 1106.01; Ed 1102.02(r). To constitute a FAPE, a student’s educational program must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”. *Endrew F. ex. rel. Joseph F. v Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017); FAPE is “special education and related services [consisting of] both ‘instruction’ tailored to meet a child’s ‘unique needs’ and sufficient ‘support services’ to permit the child to benefit from that instruction”. 20 U.S.C. §1401(9), (26), (29); *C.D. v. Natick Public School District, et al.*, 924 F.3d 621, 624 (1st Cir. 2019), quoting *Fry v. Napoleon Community Schools*, 580 U.S. 154, 158 (2017).

Effective progress must be examined in the context of the educational potential of the student. See *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 29 (1st Cir. 2008). “[T]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Endrew F.*, 137 S.Ct. at 1000-01.

3. *Procedural Violations and FAPE*

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

- (I) impeded the child’s right to a free appropriate public education;
- (II) significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child; or
- (III) caused a deprivation of educational benefits.

20 U.S.C. § 1415(f)(3)(E)(ii)

4. *Procedural Violations and Compensatory Services*

Although a substantive FAPE violation claim may give rise to a claim for compensatory education, “compensatory education is not an appropriate remedy for a purely procedural violation of the IDEA.” *Maine Sch. Admin. Dist. No. 35 v. Mr. R.*, 321 F.3d 9, 19 (1st Cir. 2003).

5. *Conduct of Parent*

“The development of an IEP is meant to be a collaborative project.” *C.G. v. Five Town Commun. Sch. Dist.*, 513 F.3d 279, 285 (1st Cir. 2008). Where a parent’s “actions disrupt[] the [IEP] process, stalling its consummation and preventing the development of a final IEP[,]” their unreasonable conduct may preclude relief. *Id.* at 288.

6. *Summary of Performance*

When a student loses eligibility for special education due to graduation from secondary school with a regular diploma, “a local education agency shall provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.”

IV. Rulings of Law

1. The District has the burden of proof, including the burden of persuasion and production, of the appropriateness of Student’s program or placement, or of the program or placement proposed by the District. This burden shall be met by a preponderance of the evidence. RSA 186-C:16-b, III-a.

2. When Student was in high school, Student qualified for special education based on Student's diagnoses of Autism Spectrum Disorder and ADHD (Other Health Impairment).
3. The Service Delivery Grid in the June 25, 2020 IEP are the "stay put" services.
4. The District failed to offer the Parent an IEP to sign from the start of the 2022 – 2023 school year until March 24, 2023.
5. The failure to provide an IEP to sign was due in large part to delays caused by the Parent.
6. The District's failure to provide an IEP to sign did not impede the Student's right to FAPE.
7. The District's failure to provide an IEP to sign did not significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education for the Student.
8. The District's failure to provide an IEP to sign did not cause a deprivation of educational benefits.
- 9. The District did not fail to offer the Student a FAPE during the 2022-2023 school year by failing to offer the Parent an IEP to sign.**
10. The District failed to offer services pursuant to the stay-put IEP for the eight weeks in which the Charter Teacher was out on maternity leave, which started on October 6, 2022.
11. The District failed to provide compensatory services for the eight weeks in which stay put services were not provided by the Charter School.
- 12. By failing to offer services pursuant to a stay put IEP for eight weeks starting on October 6, 2022, and by failing to offer compensatory services for that failure to provide stay put services, the District failed to offer the student a FAPE for those eight weeks.**
- 13. Other than the eight week period just described, the District did not fail to offer the Student a FAPE during the 2022-2023 school year by failing to offer services pursuant to a stay put IEP.**

14. The District failed to offer the Student a Summary of Performance upon the Student's graduation from high school.
15. ■ did not require a Summary of Performance in order for the Student to receive accommodations.
16. There was no evidence that ■ accommodation plan would have been any different if ■ had been provided with a Summary of Performance.
17. The District's failure to issue a Summary of Performance upon the Student's graduation did not significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student.
18. The District's failure to issue a Summary of Performance upon the Student's graduation did not cause a deprivation of educational benefits.
- 19. The District's failure to issue a Summary of Performance upon the Student's graduation did not impede or deny the Student's right to a FAPE.**

V. Discussion

This case is not about what is required to be included in the Student's IEP in order for the Student to receive FAPE. Instead, it is about alleged procedural violations and whether those alleged violations resulted in denial of FAPE. Although there was significant evidence that the parties disagreed about what should be included in the IEP, that disagreement is not relevant to the issues of this case. Therefore, I will limit discussion to the three issues.

Failure to offer an IEP to sign

The first issue in this case is whether the District failed to offer Student a FAPE for the 2022 – 2023 school year by failing to offer the Parent an IEP to sign. The evidence is undisputed that during the 2022 – 2023 school year, the District did not offer the Parent an IEP to sign until March 18, 2023. However, for multiple reasons, this was not a denial of FAPE.

The Parent responded to the March 18, 2023 IEP by returning a full rejection on April 9, 2023. Thus, the June 25, 2020 stay put IEP remained in place. Even if the District had offered the IEP to the Parent in August or September of 2022, assuming the Parent had rejected it, the stay put IEP would have remained in place, just as it did when the IEP was actually returned on April 9. Thus, there would have been no difference in the level of services, goals or accommodations offered to the Student. Again, this case is not about a disagreement of IEP contents; it is about whether a procedural violation

denied FAPE. Here, the procedural violation did not make any difference to the IEP that was in use.

Additionally, there is strong evidence that the March 2023 IEP would have been offered much earlier in the school year, but for parental delays and obstruction of the IEP process. The District was responsible for drafting the IEP, but the District was dependent on an exchange of information with the Charter School in order to do that. The Parent's instruction to the Charter School that "No information regarding my [child]... is to be released without my express written permission... No testing materials, grade reports, transcripts, or schedules will be released without my express written permission..." created a very difficult communication hurdle for both the Charter School and the District. The Parent didn't just ask to be included on communications – the Parent prevented communications without the Parent's written permission. This is not realistic for a Charter School and a School District that are dealing with so many records for so many students.

Even if I were to agree that such a prohibition was reasonable, we are still left with numerous delays caused by the Parent. I will not repeat the facts described above, but in looking at those facts, it is clear that the Parent often took weeks to respond to the District. Over the course of a year, multiple weeks at a time adds up to multiple months. Whether the cause of the delay was the Parent preparing for an international trip, or emails going into the Parent's junk folder, or Parent's email being full, or Parent's email address being changed, or Parent dealing with medical or family emergencies, none of that was the fault of the District.

The District's delay until March 18, 2023 in presenting a proposed IEP to the Parent was neither negligent nor nefarious. The District was trying to ensure that the Parent had every opportunity to be involved in the IEP development process – to keep the IEP process "collaborative." At any point in the school year prior to March 18, the District could have presented an IEP to the Parent, knowing that the Parent would reject it, but it tried to keep working with the Parent to develop the IEP. Thus, both substantively and procedurally, the District's failure to offer the Parent an IEP to sign did not result in a denial of FAPE during the 2022-2023 school year.

Failure to offer services pursuant to a stay put IEP

This issue needs to be broken down into two time frames. The first time frame is the eight weeks during which the Charter Teacher was on maternity leave; the second time frame is the rest of the 2022-2023 school year.

Looking first at the eight weeks the Charter Teacher was on leave, the testimony of the witnesses was consistent: IEP services were not offered, nor were compensatory services offered. In fact, there was testimony that compensatory services were not

offered to any students impacted by the Charter Teacher's leave, but that goes beyond the scope of this hearing, which concerns just one student. Whether the Student was previously and subsequently physically in attendance at the Charter School is immaterial for the eight-week period. During that period of time, IEP services were not available. The District owes the Student compensatory services for those eight weeks. The services need to be as described in the Service Delivery Grid of the stay put IEP, as described in the Facts section, paragraph 8. Normally, the IEP Team would be ordered to reconvene to discuss and agree on the scheduling of compensatory services. In this case, given that the Student graduated over a year ago and had poor attendance prior to that, and also given the poor relationship between the parties, it is not reasonable to believe that the IEP Team will be able to reconvene, agree on and implement compensatory services. Therefore, Parent shall have the right to obtain the services equivalent to those described in the stay put IEP from private providers properly licensed by the state of New Hampshire or credentialed by a professional organization that credentials specialists in the relevant subject area, with said services being paid for or reimbursed by the District. Specifically, the following is authorized:

- Written Expression with a special educator, regular educator or writing specialist for up to 1,440 minutes (calculated as 4x45x8);
- Executive Functioning with a special educator, executive functioning specialist, LCSW, therapist or psychologist for up to 600 minutes (calculated as 1x15x8);
- Transitional Self-Advocacy with a counselor, transition specialist, LCSW, therapist or psychologist for up to 240 minutes (calculated as 1x30x8);
- Social Skills with a counselor, therapist, LCSW or psychologist for up to 240 minutes (1x30x8).

For the portion of the 2022-2023 school year not encompassed by the Charter Teacher's maternity leave, IEP services were offered and available. This was communicated to the Parent. During this time period, the District did not fail to offer services pursuant to a stay put IEP.

Failure to issue a Summary of Performance

The District admits it failed to issue a Summary of Performance upon the Student's graduation. However, the Student's chosen college, ■■■ did not require or even request a Summary of Performance, so there is no reason to believe that the accommodations offered by ■■■ would have been any different if a Summary of Performance had been issued. Using 20 U.S.C. § 1415(f)(3)(E)(ii) as guidance, the

failure did not impede the Student's right to a FAPE, impede the Parent's right to participate in decision making, or cause a deprivation of educational benefits.

VI. Order

With one exception, the District has met its burden on all claims. The one exception is that the District failed to offer the Student FAPE during the eight weeks starting on October 6, 2022 when the Charter Teacher was on leave. As such, Student is entitled to compensatory services for that eight-week period at a level equivalent to the services described in the stay put IEP. The District shall either pay the private provider directly or reimburse the Parent. The private provider must be properly licensed by the state of New Hampshire or credentialed by a professional organization that credentials specialists in the relevant subject area. Specifically, the following is authorized as compensatory services:

- Written Expression with a special educator, regular educator or writing specialist for up to 1,440 minutes (calculated as 4x45x8);
- Executive Functioning with a special educator, executive functioning specialist, LCSW, therapist or psychologist for up to 600 minutes (calculated as 1x15x8);
- Transitional Self-Advocacy with a counselor, transition specialist, LCSW, therapist or psychologist for up to 240 minutes (calculated as 1x30x8);
- Social Skills with a counselor, therapist, LCSW or psychologist for up to 240 minutes (1x30x8).

The right to obtain compensatory services expires when the Student reaches the age of twenty-two (22). The right of the Parent or Student to seek reimbursement from the District for compensatory services shall expire sixty (60) days after Student reaches the age of twenty-two (22).

VII. Proposed Findings of Fact and Rulings of Law

Both parties submitted Proposed Findings of Fact and Rulings of Law.

1. Parent's Proposed Findings of Fact:

A. Granted: 1 – 2, 8, 11 – 14, 16 – 17, 20 – 21, 23, 27 – 48, 51.

B. Denied: 3 – 7, 9 – 10, 15, 18 – 19, 22, 24 – 26, 49 – 50, 52 – 53.

2. Parent's Proposed Rulings of Law:

A. Granted: 4.

B. Denied: 1 – 3, 5 – 7.

3. District's Proposed Findings of Fact:

A. Granted: 1 – 41, 43 – 51, 53, 55 – 63.

B. Denied: 42, 52, 54.

4. District's Proposed Rulings of Law:

A. Granted: 5, 8 – 9, 11.

B. Denied: 1 – 4, 6 – 7, 10.

VIII. Appeal and Post-Hearing Enforcement

Any party aggrieved by this may appeal as noted in Ed 1123.20.

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

So ordered.

/s/ James Baron, Hearing Officer

November 29, 2024