

STATE OF NEW HAMPSHIRE
STATE DEPARTMENT OF EDUCATION

██████████ School District

Case No. IDPH-FY-24-06-055

PARENT/GUARDIAN PROPOSED CONCLUSIONS OF LAW

1. District denied Student FAPE by failing to comply with 34 CFR 300.323 (a) and NH Ed 1109.03(a) requiring that an IEP must be in effect at the beginning of a school year. Such requirement, to be meaningful, must include a proposed schedule for provision of services. Evidence does not support District's defenses that but for Student's not being in school for classes everyday in his second senior year, Student would have received IEP services. District, if it wished to provide that defense to the undisputed fact that Student did not receive the services throughout the '22 – '23 school year, would have needed to carry the burden to show clearly that Parent was provided a schedule of services that Parent rejected. Thousands of pages of discovery do not support any indication that Parent was provided a schedule of IEP services, despite numerous opportunities by Charter School and District. Testimony of witnesses does not credibly identify any individual that provided Parent with a schedule of IEP services for Student. Rather, testimony shows definitively that Special Educator did not reach out to Parent with a schedule of services and that Dean of Charter School did not provide a schedule of services. Parent contracted limited services outside of the School because Parent was unaware of school-based IEP services.
2. District failed in its attempt to show that Parent thwarted efforts to construct a new IEP for Student, which new IEP might have better provided for delivery of needed services and FAPE through the '22 – '23 school year. Parent rejected only two proposed IEPs and did so on grounds that the services offered in March 2023 IEP proposal dropped a critical writing service and May 2023 proposed IEP did not offer relevant executive functioning services for ESY, without showing that Student had made progress and did not need the services. Student was struggling to complete assignments toward a requirement for graduation. Parent's position in rejecting both proposals was supported by evaluations, all of Parent's prior feedback and relevant evidence of Student's current struggles. District's position that writing services or ESY executive functioning services and full range of IEP services during ESY was not supported by any reference to available progress reports or witness testimony

regarding progress. Parent's actions in rejecting or failing to accept proposals were reasonable and do not rise to any level constituting a defense of Parent obstructionism.

3. District failed to adequately monitor provision of stay-put IEP services in '22 – '23 school year, as required by NH Ed 1109.04. This standard for implementation requires that an LEA, even when a non-LEA provider (Charter School) is responsible for provision of services, "shall maintain written evidence documenting implementation of the IEP. . .". Further, LEA Representative did not even realize that Charter School did not have special education service provider for months of the '22 – '23 school year, testifying that all services were available all year. Failure to monitor provision of IEP services resulted in District LEA Representative knowingly approving payment to service providers for special education and paraprofessionals when Parent did not know that services were available. This violates the NH Ed 1109.04 requirement to maintain written evidence. This also violates the spirit of the later Memorandum of Understanding signed between the District and the Charter School that would prevent such payments in the future. While the MOU did not exist at the time in question, it provides useful "color" for a determination of the "balance of the equities" in fashioning an equitable remedy. Further, LEA Representative did not question the fact that no billings were being sent to the District for counseling services despite the fact that counseling services were required under the Student's stay put IEP for 60 minutes per week and, presumably, fell under LEA Representative's testimony that all services were available at the Charter School for '22 – '23.
4. District LEA Representative did not provide a Statement of Performance as required by 34 CFR 300.305(e)(2) and NH Ed 1109.04(c).
5. District did not carry its burden to defend the failure in Proposed Conclusion 4 above by relying extensively on a single Parent letter asking that LEA Representative not be provided documentation, other than progress reports, without Parent providing permission. Parent did ask that District be provided with Progress Reports and, further, asked the District and Charter School establish a process for regular provision of progress reports. District LEA could have used progress reports from '21 – '22 school year, as well as information from Parent and from Parent's own service providers in '22 – '23 school year but District LEA failed to identify ANY progress reports that existed from '21 – '22 school year in thousands of pages of documentary evidence. Further, District, through its attorney raised the defense that only the template Statement of Performance referenced parental input and

that 34 CFR 300.305(e)(2) did not require parental input. However, this does not address the fact that a solicitation of parental input was well within the LEA Representative's discretion and could have led to input from Parent's private providers working with Student in '22 – '23.

6. District failed to carry its burden to prevail on the defense that a Statement of Performance was merely procedural because Student was granted accommodations by the University. The accommodations plan did not address specific, notable aspects of Student's profile. It is not possible to demonstrate that this lack of adequate support and accommodations could have affected Student's ability to succeed.
7. Compensatory education is appropriate to remedy denials of FAPE and denial of a SOP that could have helped Student succeed in post-secondary education, even after a Student is no longer eligible for IDEA services, whereas in this instance Student graduated. See *Maine School Administrative District No. 35 v. Mr. & Mrs. R.*, wherein the First Circuit concluded that "[t]he presence of an actionable claim for compensatory education will insulate an IDEA case against a mootness challenge even after the child's eligibility for special education services ends." [321 F.3d 9](#), 18 (1st Cir.2003). Further, this Hearing Officer should consider *Reid v. DC*, 401 F.3d 516 (DC Cir. 2005) wherein it was suggested that compensatory education might be awarded in part to remedy habits learned that need to be unlearned.

Wherefore, Parent asserts that the proposed conclusions of law justify Orders of the Hearing Officer that:

1 – District provide a MINIMUM of 168 sessions of compensatory education (representing 180 school year days plus 6 weeks of ESY) for writing services, 42 sessions of counselor support for self-advocacy/social skills (representing 180 school days – 36 weeks – plus 6 weeks of ESY), and 210 sessions of executive functioning support (representing 180 school days – 36 weeks – plus 6 weeks of ESY) all as set forth in the stay put IEP, at a reasonable market rate for service provision of these types of services, upon demonstration of qualifications by the District and District's reasonable consideration of the same ALL so as to place the Student in a position potentially to have the needed supports to succeed in post-secondary education or vocational goals and to receive those services in-person in Student's location, AND

2 – District work with Parent to provide a Statement of Performance per the template provided in Parent's Supplemental Exhibits.

Submitted by:

/s/ Kristen Mansharamani

Kristen Mansharamani, Advocate for Special Education

On behalf of Parent

Certificate of Service

I certify that on today's date, I served a copy of this joint motion by electronic mail to attorney for the District.

/s/ Kristen Mansharamani

November 18, 2024

Kristen Mansharamani

Date