

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION**

Student: [REDACTED]
IDPH-FY-21-05-032
IDPH-FY-21-05-033

DUE PROCESS DECISION

I. BACKGROUND

These consolidated cases were filed by the [REDACTED] School District (District) on May 18 and May 21, [REDACTED], respectively. ¹ The District requested due process because the Parent had disagreed with the District's eligibility proposal and proposed IEP, and had requested an Independent Educational Evaluation (IEE) at public expense.²

A telephonic prehearing conference was held on June 4, [REDACTED]; a prehearing conference report was issued on June 8, [REDACTED]. The Parent was notified and contacted, but declined to participate.³

The telephonic due process hearing was held and completed on June 15, [REDACTED].⁴ Unsuccessful attempts were made to contact the Parent prior to the start of the hearing, and it was presumed that [REDACTED] did not intend to participate.⁵

The issues for due process were:

1.. Whether Student is eligible under the IDEA due to a specific learning disability (SLD) in the areas of written expression and basic reading skills, and an other health impairment (OHI), and whether [REDACTED] eligibility must be updated as a matter of law;

2. Whether the District's triennial reevaluations are appropriate, such that an Independent Educational Evaluation (IEE) is not warranted;

3.. Whether the proposed IEP for the [REDACTED] school year is appropriate and reasonably calculated to enable Student to make meaningful progress.

As the party initiating due process, the District bore the burden of proof.⁶

The District submitted 45 exhibits; Parent submitted no exhibits.

The District called the following witnesses, who testified credibly under oath relative to the issues for due process: [REDACTED], School Psychologist; [REDACTED], Student Services Administrator, [REDACTED] School; [REDACTED], Occupational Therapist; [REDACTED], School Counselor; [REDACTED], Assistant Superintendent; [REDACTED], Student's [REDACTED] teacher; [REDACTED], Special Education teacher.

II. FACTS

¹ The cases were consolidated as they arose from the same or sufficiently similar set of facts and circumstances, and involve the same parties. The District assented to consolidation; the Parent did not file an objection.

² In the case of a parental request for an IEE at Public Expense, the District must either grant the request or seek due process. *See* 34 CFR 300.502. In the latter event, the District must show "that its evaluation is appropriate." *See* 34 CFR 300.502(b)(2)(i); *see also* Ed 1107.03(b).

³ *See Prehearing Conference Report*, June 8, [REDACTED].

⁴ The second day of hearing (June 16 [REDACTED]) was cancelled. *See Order on Post-Hearing Submissions*, June 15 [REDACTED].

⁵ *See Order on Post-Hearing Submissions*, June 15, [REDACTED].

⁶ *See Schaffer v. Weast*, 546 US 49 (2005).

1. Student is [REDACTED] years old, and is completing [REDACTED] grade at [REDACTED] School in [REDACTED], NH. [REDACTED] is currently identified under the IDEA as having a developmental delay.
2. Student's triennial reevaluation was conducted in February and March of [REDACTED]. The Team suspected potential disabilities in the areas of specific learning disability, emotional disturbance and other health impairment. In addition, Student's outside counselor reported that Student has "symptoms of inappropriate attention, hyperactivity and impulsivity that are consistent with a diagnosis of [REDACTED]"⁷ and Parent has indicated that Student has been diagnosed with [REDACTED].
3. [REDACTED], School Nurse, conducted the required hearing/vision screenings.
4. At Parent's request, the District also conducted the ETCH, an occupational therapy assessment used to evaluate handwriting for students in grades [REDACTED] through [REDACTED] who are experiencing writing difficulties.. The ETCH was conducted by [REDACTED], OTR/L, a licensed Occupational Therapist, qualified to evaluate students in the areas of fine and gross motor skills.
5. [REDACTED] is also a licensed occupational therapist. [REDACTED] evaluated Student in [REDACTED]. [REDACTED] used measures and assessments which were standardized, normed, and age appropriate.
6. [REDACTED], a certified and licensed school psychologist, conducted a Psychoeducational Evaluation of Student. [REDACTED] conducted the WISC-V, KTEA-3, BASC-3, and a classroom observation in Student's typical classroom learning environment; [REDACTED] also reviewed Student's educational records. [REDACTED] used measures and assessments which were standardized, normed, and age appropriate for the proposed areas of evaluation.
7. All of the District's evaluators were appropriately certified and/or licensed and thus are qualified examiners for conducting the assessments that were completed.
8. All of the tests and assessments were administered in accordance with the requirements contained in the protocols, and the results of the assessments are valid.
9. Upon completion of the assessments and other evaluative measures, the IEP Team made an eligibility determination. The eligibility meeting included a group of qualified professionals (including qualified examiners) and the Parent.
10. The Team determined that Student has a SLD in the areas of written expression and basic reading skills and an OHI due to [REDACTED]. All District witnesses testified that they agreed with the proposal to identify Student in those areas.
11. Student was assessed in all areas of suspected disability, including health, vision, hearing, social and emotional status, general intelligence, academic performance, and motor abilities. The IEP Team utilized the Eligibility forms in the areas of suspected disability as a guide for their deliberation.
12. The IEP Team drew upon information from a variety of sources, including aptitude and achievements tests, parent input, documents from [REDACTED], and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. The Team ensured that this information was documented and carefully considered. The IEP Team did not rely upon any single measure or assessment.

13. All District evaluators and District Team members opined that they did not require any further evaluations in order to reach their decisions regarding the areas of suspected disability.
14. Student's last agreed-upon IEP is dated June 30, [REDACTED] and extends to June 29, [REDACTED]. The proposed IEP extends from May 17, [REDACTED] through May 16, [REDACTED].
15. According to Student's teacher and other professionals, over the course of [REDACTED] grade year (school year [REDACTED]), Student was able to access the [REDACTED] grade curriculum and made meaningful educational progress. No modifications were made to [REDACTED] curriculum. Student will be promoted to [REDACTED] grade.
16. Mathematics is an area of strength for Student; however, writing is "taxing" and "tiring" for [REDACTED]. Student has shown growth in the area of reading, but it continues to be an area of need.
17. The proposed IEP addresses Student's areas of need and includes accommodations that will allow Student to make progress in the general education setting.
18. All District witnesses testified that they believe that the IEP proposed by the District is appropriate for Student and will allow [REDACTED] to make meaningful educational progress.
19. The services in the proposed IEP are appropriate and reasonably calculated to enable Student to make meaningful educational progress.
20. The evidence indicates that Parent continues to believe that Student should be eligible under the IDEA and should continue to receive special education and related services. Parent did not present any evidence indicating that the proposed IEP was inappropriate.

III. RULINGS OF LAW

- A. An identification as a "developmentally delayed child" is only available if the student is at least [REDACTED] years of age but less than [REDACTED] years of age RSA 186-C:2 I-a. Because Student turned [REDACTED] years old on April 9, [REDACTED], [REDACTED] can no longer be found eligible for special education services due to a developmental delay.
- B. A child with a disability includes a student who has a "specific learning disability" (SLD) or "other health impairment" (OHI). RSA 186-C:2 I; 34 CFR 300.8(a)(1).
- C. A SLD includes a disorder in one or more of the following: "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). It does not include "learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage." *Id.* The IDEA doesn't require a specific diagnosis or condition, such as dyslexia, dyscalculia, or dysgraphia, for a student to be eligible under the SLD category.
- D. The IEP Team followed the procedures required by the State for evaluation of a child suspected of being eligible for special education services by virtue of a SLD.

- E. OHI means having “limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that— (i) [i]s due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, [...]; and (ii) [a]dversely affects a child's educational performance.” 34 C.F.R. § 300.8 (c)(9).
- F. Student’s ██████ satisfies a determination of eligibility under OHI. In addition, Student’s ██████ adversely affects ██████ educational performance.
- G. The IEP Team followed the procedures required by the State for evaluation of a child suspected of being eligible for special education services by virtue of an OHI.
- H. Student remains eligible for special education and related services under the IDEA, due to having a SLD in the areas of written expression and basic reading skills, and an OHI based on the reported diagnosis of ██████.
- I. A parent is only entitled to an IEE at public expense if a hearing officer finds the district's assessment failed to comply with the IDEA requirements for evaluations.
- J. A Parent’s claim that the evaluators could have done more does not warrant an IEE at public expense. *See, e.g., Fulton County School. District*, 9 GASLD 9, 115 LRP 51672 (SEA GA 2015).
- K. In this case, the District’s assessments and evaluations were utilized for the purposes for which they are valid and reliable. 34 CFR 300.304(c)(1). The assessments were administered by trained and knowledgeable personnel, who held appropriate certifications and/or licenses, and who were qualified examiners for the assessments that they administered. The assessments were administered in accordance with any instructions provided by the producer of the assessments.
- L. The evaluations conducted by the District were administered in accordance with criteria set forth in applicable state and federal law. See 34 CFR 300.301-305 and corresponding state regulations.
- M. The assessment, tests, and instruments were appropriate for assessing all areas of suspected disability. The District conducted a full and individual evaluation to determine if the student was eligible for special education services in all areas of suspected disability (SLD, OHI and ED). See 34 CFR 300.301; see Ed 1107.04; Table 1100.1.
- N. Because IDEA evaluations depend on the exercise of professional judgment, those professionals are entitled to a reasonable degree of deference.
- O. Once a District has met its burden of proving that its evaluations were appropriate, the burden shifts to the Parent to prove that the evaluators’ methodologies were flawed. *E.P. v. Howard County Pub. Sch. Sys.*, 70 IDELR 176 (D. Md. 2017). The District has met its burden of proving that the evaluations were appropriate under the law.
- P. The Parent has not offered any evidence as to the need for additional evaluations, nor has ██████ articulated any reason why such evaluations should be at public expense.
- Q. To comply with the IDEA, an IEP must be reasonably calculated to confer a meaningful educational benefit. *Johnson v. Boston. Public Schools*, 906 F.3d 182, 194 (1st Cir. 2018).

- R. The IEP proposed by the District for the period of May 17, [REDACTED] through May 16, [REDACTED] is reasonably calculated to enable Student to make meaningful educational progress.

IV. REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

District: Requests for Findings of Fact and Rulings of Law: Granted.

Parent: None submitted.⁸

V. CONCLUSION AND ORDER

Based upon the record, including pleadings, exhibits, and witness testimony, the following is ordered:

- I. Student's eligibility under the IDEA must be updated as a matter of law. Student is eligible under the IDEA due to a SLD in the areas of written expression and basic reading skills, as well as an OHI.
- II. The District's triennial evaluations are appropriate, and therefore the Parent is not entitled to an independent evaluation at public expense;
- III. The IEP proposed by the District, which runs from May 17, [REDACTED] through May 16, [REDACTED], offers Student a free appropriate public education, and is reasonably calculated to enable Student to make meaningful educational progress.

Date: June 30, [REDACTED]

Amy B. Davidson, Hearing Officer

APPEAL RIGHTS

If either party is aggrieved by the decision of the hearing officer as stated above, either party may appeal this decision to a court of competent jurisdiction. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The School District shall promptly notify the Commissioner of Education if either party, Parent or School District, seeks judicial review of the hearing officer's decision.

Cc: Parent, Attorney Minutelli

Via electronic transmission and certified mail, return receipt requested

⁸ Parent's email of June 22, [REDACTED] – *the first and only submission filed by the Parent in this case* - and the District's June 24, [REDACTED] response thereto, have been reviewed. Upon due consideration, it is clear that Parent has been provided sufficient and timely notice of all aspects of these proceedings – including mediation, prehearing conference, and due process hearing. Parent has been given ample opportunity to participate, but has elected not to do so.