

New Hampshire Department of Education

Student/ [REDACTED] School District

IDPH FY 22-05-037

Due Process Decision

Findings of Fact

1. The student resides in the school district and is eligible for special education under the identification of [REDACTED]
2. The parents requested due process on May 5, [REDACTED].
3. During the hearing process through exhibits and testimony, the parents provided examples of issues and disputes that they feel that they have had with the school district. From the parents' perspective these include:
 - a. Scheduling and conducting team meetings and communications between the parties during and after meetings.
 - b. Written prior notices not accurately reflecting what was said at team meetings and including information that was not discussed at team meetings.
 - c. Descriptions and goals and objectives in proposed IEPs that parents contend did not accurately reflect the student's needs and learning profile.
 - d. Parental input on IEPs and services not considered by the team.
 - e. Changes to IEPs that were agreed upon at meetings and not put into IEPs.
 - f. Not having an agreed upon IEP since sometime during the [REDACTED] school year.
 - g. Services not being provided to the student during the [REDACTED] school year other than relationship building services because the parents would not sign a proposed IEP that the parents did not agree to.

- h. Service providers not being experienced with students with [REDACTED] and not knowing how to work with students with [REDACTED]
 - i. The same materials being used over and over again by service providers indicating a lack of progress.
 - j. Lack of communication between services providers.
 - k. Distrust and lack of communication between the parents and team members.
- 4. The school contests most of these assertions. For example, the school contends that the providers assigned to work with the student are appropriately certified and licensed in the areas where they provided services and that the reason that more services were not provided during the [REDACTED] school year was due to the parents not allowing service providers into their home.
- 5. The parents state that the student has anxiety about school and was injured at school on various occasions. The school district contests some of the statements about injuries.
- 6. The student was permitted to receive services at home during part of the [REDACTED] school year due to the COVID pandemic. During that time, the parents noticed that the student improved because his mother was able to help with services, the student's anxiety decreased, and there were no safety/injury issues.
- 7. Given the benefits to the student that the parents noticed with in-home services, the parents want in-home services to continue going forward.
- 8. The parents sought the following relief in the due process hearing: (1) compensatory education; (2) an evaluation conducted by SERESC; (3) a mentor for the school district to ensure compliance going forward; and (4) an order that the parents be permitted to record team meetings.
- 9. The parties have agreed to compensatory services to resolve some of the issues raised in the complaint. These services are detailed in school exhibit 78. The parties also agreed that these services will be provided in the home, that they will start immediately, and that progress monitoring will be provided to the parents regarding these services.
- 10. The parties also agreed to a comprehensive evaluation of the student to be provided by SERESC.

11. The evidence presented at the hearing establishes that the New Hampshire Department of Education does not have the type of mentoring compliance program that the parents' requested as a remedy. The program offered by the department is a training program for new special education directors. It is not an oversight or compliance program.
12. The parents have attempted to record team meetings in order to have an accurate record of what was said and to allow them to effectively participate in the special education process. For example, the parents testified that things have been said or agreed to at team meetings and then not implemented or not accurately reflected in IEPs or subsequent documentation, and without a recording there is not an accurate record of what was said.
13. The parents were not permitted to record team meetings because not all team members agreed.

Rulings of Law

1. The school district is obligated to provide the student with FAPE.
2. The school district cannot permit disputes with the parents to interfere with providing the student with FAPE.
3. While consent is required under Ed 1120.04 for changes to the extent or nature of special education/related services, or for a proposed IEP or placement, the lack of consent cannot be used to stop providing services under prior agreed upon IEPs.
4. If parents do not agree to a proposed change/service, or to a proposed IEP/placement, the school district must continue to provide services under the last agreed upon IEP and seek dispute resolution to address and resolve the dispute issue so that the student has an appropriate IEP and placement and receives FAPE. The school district cannot sit idle and allow the issue to linger with the student not receiving appropriate services.
5. "At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP." 34 CFR § 300.323.
6. OSEP has stated the following in Letter to Anonymous (June 4, 2003), and in Appendix A to the 1999 IDEA Part B regulations (64 Fed. Reg. 12406, 12477 (Mar. 12, 1999)) regarding recording team meetings:

Part B does not address the use of audio or video recording devices at IEP meetings, and no other Federal statute either authorizes or prohibits the recording of an IEP meeting by either a parent or a school official. Therefore, an SEA [State educational agency] or public agency has the

option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings. If a public agency has a policy that prohibits or limits the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under Part B. An SEA or school district that adopts a rule regulating the tape recording of IEP meetings also should ensure that it is uniformly applied.

7. The evidence establishes that recording IEP meetings is necessary for the parents to implement parental rights guaranteed under part B and their efforts to ensure that student receives FAPE.

Discussion

The evidence establishes that the school permitted disagreements between the school and the parents to interfere with the services provided to the student during the [REDACTED] school year and currently.

As the First Circuit Court of Appeals noted long ago

Under section 1125, the school district must take the initiative to ensure that intransigence and foot-dragging in the IEP process, whether bureaucratic or parental, do not indefinitely compromise the child's right to a free and appropriate public education. See, e.g., *W.G.*, 960 F.2d at 1486 (parental conduct does not waive responsibility of school district); *Town of Burlington v. Department of Educ.*, 736 F.2d 773, 795 (1st Cir.1984) (same), *aff'd*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985).

Murphy v. Timberlane Reg'l Sch. Dist., 22 F.3d 1186, 1195 (1st Cir. 1994).

While Ed 1125 has since been changed to eliminate the express requirement to request due process under state regulations, the school district's obligation to ensure that FAPE is provided under the IDEA has not. That obligation brings with it the requirement that a school district must not allow disagreements with parents to interfere with providing a student with FAPE. When parents do not agree to proposals, the school cannot allow unresolved issues to result in the student not receiving appropriate services.

Rather, the school must continue to provide prior agreed upon services, unless it is not possible to do so, and seek dispute resolution to resolve the disagreements so that the student receives FAPE.

From the parents' perspective, services were not provided because they would not sign an IEP that they did not agree to. It also seemed that the parents' felt that the school was doing so in an attempt to leverage the parents into signing an IEP that they did not agree with. While the school will disagree with that assertion, that seems to be how the parents' felt about the

school's actions and those feelings will impact the trust and the relationship between the parties.

While the reasons and details may be in dispute between the parties, the information provided establishes that the school district permitted disagreements between the parties to result in a lack of services during the [REDACTED] school year and currently. This cannot continue going forward.

The parties have agreed to compensatory services to address the lack of services during the [REDACTED] school year.

The parents' request for an evaluation has also been resolved by agreement of the parties.

The parents' request for a mentor is denied because, as noted in the factual findings, it is not a potential option from the department.

The parents request to record team meetings is granted. Given all of the disputes between the parties and the issues that the parents raised with team meetings and subsequent communications, documentation, and implementation of matters discussed at team meetings, recording is necessary to permit the parents to implement parental rights guaranteed under Part B and their efforts to ensure that student receives FAPE.

School District's Request for Findings of Fact and Rulings of Law

The school district requested findings of fact and rulings of law. Some are denied because they go beyond the facts necessary to support the decision and the essential issues of law as required by Ed 1123.18, or they have some information that goes beyond what was addressed at the hearing, or phrase things in a way that is not completely accurate based on the evidence that was provided/not provided, or are phrased more as advocacy than factual findings.

Granted: 2,6,8, 12, 17, 18, 19, 22, 24,26,30,32,33,34,35,39,43,46,47,48,49,51, 56,57,61,62

Denied: 1,3,4,5,7,9, 10, 11, 13, 14, 15, 16, 20, 21, 23, 25, 27, 28, 29, 31, 36, 37, 38, 40, 41, 42, 44, 45, 50, 52, 53, 54,55,58,59,60,63,64

Order

The school district is ordered to do the following:

1. Provide the compensatory services noted in this decision as agreed upon by the parties. These services shall begin immediately and shall be provided in the home via in-person and/or remote/online services.

2. Conduct the comprehensive evaluation with SERESC noted in this decision that the parties have agreed upon and schedule a team meeting to review the results when they are available.
3. Schedule a team meeting to review the ABLLS assessment that has already been completed.
4. Schedule a team meeting to develop an appropriate IEP and placement for the [REDACTED] 2023 school year and have an IEP in place prior to the school year as required by state and federal law. If there is a dispute between the parties, request dispute resolution with the New Hampshire Department of Education to resolve the dispute.
5. If an IEP is not agreed upon before school begins, have a team meeting to determine what services will be provided in the interim and if there is a dispute between the parties, request dispute resolution with the New Hampshire Department of Education to resolve the dispute.
6. Permit the parents or their advocate/representative to record team meetings.
7. Comply with all procedural safeguards in the IDEA, IDEA regulations, and relevant state laws including
 - a. Written prior notice;
 - b. Scheduling and conducting team meetings to permit parental participation;
 - c. Considering parental input with regard to the student's evaluations, IEP, services, progress or lack thereof, and placement.
8. Create accurate IEPs that reflect the agreements reached at team meetings and properly save and print them in NHESIS. If the school is unable to do so, they should seek training on how to properly do so from the New Hampshire Department of Education.

This decision shall be implemented by the school district and monitored by the department pursuant to Ed 1123 and Ed 1125.

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

So ordered.

8/3/22
Date

/s/ Scott F. Johnson
Hearing Officer Scott F. Johnson

**State of New Hampshire
Department of Education**

[REDACTED] School District

IDPH-FY-22-05-037

[REDACTED] **School District's**

Request for Findings of Fact and Rulings of Law

NOW COMES the [REDACTED] School District ("District"), by and through its attorneys, [REDACTED], and respectfully submits the following Request for Findings of Fact and Rulings of Law:

I. Requests for Findings of Fact

1. Parents filed a request for due process on May 5, [REDACTED] seeking compensatory education based on alleged denials of FAPE from March 30, [REDACTED] June [REDACTED] and August [REDACTED] through May 5, [REDACTED] See Request for Due Process. Parents also requested an in-home placement and a speech-language evaluation (whole communication approach). Id. Since June 6, [REDACTED] Parents have indicated that they were requesting the following relief: compensatory education; an evaluation conducted by SERESC; a mentor for the District's LEA representative; and an order that IEP meetings be recorded. Parents' Prehearing Statement; July 25, [REDACTED] email from Parents' advocate. During the resolution process, and in an effort to reach agreement and move forward with the Parents, the District offered to provide compensatory educational services and the requested evaluation. District Exhibits ("DE") 64, 75-79; Parents' Exhibit ("PE") A, pg. 1 (email from [REDACTED] to advocate). Despite continuing to request these items, Parents did not provide consent and indicated that they wanted to proceed with a hearing. DE 79, pg. 98-99; PE A, pg. 2, AQ. The issues for the hearing were whether the Department of Education could provide

a mentor for the LEA, and if so, whether such request was warranted, and whether it is necessary to record IEP meetings. Preliminary Order ("Prelim. Order"), July 12, [REDACTED]

2. The Team is in the process of developing an IEP for the [REDACTED] school year and has not proposed placement for the [REDACTED] school year; the [REDACTED] IEP and placement are not the subject of this hearing. See e.g. Request for Due Process; Prelim. Order; Testimony.

3. Student ([REDACTED] is [REDACTED] years-old and eligible for special education services due to [REDACTED] See DE 4. Due to the COVID-19 Pandemic, [REDACTED] like all students received remote instruction in May and June [REDACTED] during the [REDACTED] school year, Parents elected to have [REDACTED] participate in remote instruction, which was an option available to all students. DE 94, pgs. 515-516. The District offered to provide in-home services during the [REDACTED] school year; that offer was declined by Parents. Testimony; DE 82, pg. 183; see also PE U.

4. The District offered to evaluate Student during the [REDACTED] school year; that offer was declined by Parents. DE 34, 35, 37, 39, 40, 42.

5. Summer [REDACTED] is not the subject of this due process proceeding. See Request for Due Process. However, Parents declined ESY from the District during the summer of [REDACTED] PE T; DE 44, 45, 47, 87.

6. During the [REDACTED] school year, the District did not offer remote instruction as an option; Parents requested home-bound instruction and provided a Doctor's note. DEs 95, 99.

7. [REDACTED] was not able to attend one IEP meeting (August 31, [REDACTED]); [REDACTED] and [REDACTED] Parents' advocate, attended and participated in the meeting. The Team reconvened to discuss [REDACTED] IEP because [REDACTED] did not attend that meeting. Testimony of [REDACTED] DE 51 pgs. 453, 456.

8. Parents have requested to record IEP meetings however, several Team members (both District employees and contracted providers) have objected to the request to record. See e.g. DE 51, DE 80, pg. 108 (noting that parents and their advocate consented to being recorded; [REDACTED] had no preference, and the rest of the Team declined).

9. Although Student was receiving home-bound instruction during the [REDACTED] school year, Parents did not want more than one person going into their home, due to COVID. Testimony of [REDACTED]; DE 51, pg. 455 (“[REDACTED] does not want two people going into the home due to COVID-19”); DE 82, pg. 229-230 (emails to Parent from [REDACTED] pg. 262-267 (noting that when the family feels comfortable with [REDACTED] level of engagement during sessions with [REDACTED] they will discuss adding additional service providers in the home), PE U, pg. 7 (8/13/21 email from advocate stating “Under the direction of [REDACTED] we would like [REDACTED] to come to the house for 1 hour each morning before [REDACTED] goes to the school building. At this time, we would like relationship building and pairing to be developed. . . . **At this time we would like to hold off on all other services until the relationship has been built and we can start introducing services in slowly**”) (emphasis added), [REDACTED] (emails from Parent stating: “Some of our suggestions was: - **only having one person visit the house, [REDACTED] and can set up materials in the small spaces we have etc. [sic]**” and “Also [REDACTED] used the phrase [REDACTED] and [REDACTED] **we will not be allowing [REDACTED] in the home at any time it will only be one person if that that is it that’s all [REDACTED] may be able to handle . . .**”) (emphasis added).

10. In September [REDACTED] Parents met with staff from [REDACTED] Consulting to discuss [REDACTED] in-home program; they developed an in-home instruction plan. DEs 54, 82 pgs. 262-267. Parents participated in the development of this plan, and it was revised to incorporate their input. Id. Parents expressed satisfaction with the 1:1 provider’s work with [REDACTED] See e.g. DE 82, pg. 302.

11. Parents also worked with the BCBA to develop a positive behavior support plan for [REDACTED] DE 57, 59, 82 pgs. 262-267; see also PE V, pg. 7 (email from [REDACTED] requesting further revisions to Positive Behavior Support Plan).

12. Parents and the District agreed that the 1:1 behavior technician ([REDACTED] [REDACTED]) would be going into Student's home to provide services, beginning with relationship building. DE 54, 55 (pg. 469), PE U, pg. 7.

13. Parents participated in the development of Student's IEPs, requesting changes and amendments, many of which were incorporated into [REDACTED] IEPs and other documents (such as the behavior plan, COVID waiver, in-home support plan). See e.g. DE 55, 58, 61, 62, 85, 86; see also DE 82 pgs. 203, 213-224, 236 (email from facilitator stating Parents "have done very well advocating for their [REDACTED] So as facilitator, I will be giving them the priority voice at our 45 min. meetings so they can be more focused and organized. I will have a meeting parking lot for future agenda items that parents want addressed at another meeting"), 237-245, 247-248, 256, 262-267, 278; see also PE AB, AC, AI.

14. During the [REDACTED] and [REDACTED] school years, Parents filed complaints with the NH Department of Education and the Office for Civil Rights (OCR), making allegations regarding the provision of services to [REDACTED] DEs 96-98, PE AG, Exhibit A, Complaint #21-18. The majority of these allegations were deemed unfounded or dismissed, and Parents specifically represented to OCR that they were "not aware of any instances in which the Student missed IEP services from January through June of [REDACTED] Id.; DE 98, pg. 547.

15. The only complaint allegations that were founded were part of Complaint #21-18. Exhibit A. In that complaint, the DOE substantiated allegations that the District failed to provide Parents with a written prior notice and failed to obtain written prior consent regarding the

addition of 1:1 behavioral support from a RBT/paraprofessional (this service has been provided by [REDACTED] of [REDACTED] Consulting since the [REDACTED] school year). Id.; Testimony. The investigator found that this service was inadvertently omitted from the IEP that parents signed on July 10, [REDACTED] and that the case manager contacted Parents regarding this omission on December 4, [REDACTED] January 5, [REDACTED] and January 21, [REDACTED] Parents did not respond. However, the District provided the 1:1 behavioral support beginning in September [REDACTED] and the Parents were aware that the District was providing this level of service. Exhibit A. Although these allegations were substantiated, the report and findings note that the District had attempted to obtain parental consent once it realized that the service had been omitted from the IEP. Id. Notably, the DOE determined that the Parents' allegations that the District failed to provide Student with services and supports outlined in the IEP was unsubstantiated. Id.; see also DEs 31-32.

16. Although Parents have made general assertions that the District has violated the IDEA, they have failed to provide any evidence that supports their assertions.

17. In May [REDACTED] the Team proposed to conduct an ABLLS assessment; parents consented to this evaluation on May 12, [REDACTED] and the evaluation has been completed. DEs 84, 89. The Team had scheduled a meeting to review the ABLLS assessment for July 14, [REDACTED] this meeting was cancelled by the Parents on July 13, [REDACTED] Testimony of parents; Ex B (emails dated 7/11/22-7/14/22), attached hereto. The District has offered to meet on August 10, [REDACTED] to discuss the evaluation. Ex. D, attached hereto.

18. The Team met in May and June [REDACTED] to discuss Student's IEP for the [REDACTED] 23 school year. DE 63, 65, 80, 84. An IEP meeting scheduled for June 14, [REDACTED] was cancelled by the Parents. DE 81, pg. 178.

19. The Team has not yet proposed an IEP for the [REDACTED] 23 school year, nor has it made a placement determination. Testimony of Parents.

20. The District has offered to provide in-home ESY services to Parents this summer; to date, they have declined this service. Testimony; Ex. B; see also DEs 63, 80.

21. Parents have asserted that they do not want to have a Team meeting to discuss the ABLLS or the [REDACTED] IEP until the conclusion of the due process proceeding. Testimony; Ex. B.

22. The District has requested an updated doctor's note to maintain Student's homebound placement for the [REDACTED] school year. See e.g. DE 80, pg. 112.

23. The providers assigned to work with Student are appropriately certified and/or licensed in the area for which they provide services. DEs 66-74; see also DE 20 pgs. 171-172.

24. Parents provided consent to the District's proposal to evaluate on July 27, [REDACTED] but did not assent to any assessments pertaining to an AAC device. Ex. C, attached hereto; see also DEs 64 (May [REDACTED] proposal to evaluate), 75 (5/20/[REDACTED] email enclosing evaluation proposal); see also DE 82, pg. 286 (11/9/21 email from Parent stating "We have made it clear a[n AAC] is not an option").

25. Parents have been able to participate in the IEP process and implement their IDEA rights. Testimony; Exhibits, Ex. A.

26. The Department of Education's mentor program is available to new special education administrators; individuals with 1-3 years of experience as an administrator. Testimony of [REDACTED] (" [REDACTED] Individuals who are mentees do not have more than 15 years experience as a special education director; instead, mentors typically have 15 years of experience. Id. The mentor program is not geared towards areas of compliance or

implementation concerns. Id. If Parents have concerns about compliance with the IDEA, they can file a complaint or address their concerns through the dispute resolution process. Id.; see also Ed 1100, et. seq. A mentor for the district is outside of the scope of the programs available at the Department of Education. Testimony of [REDACTED]

27. The safety concerns raised by the Parents are disputed by the District. See District's Response to Request for Due Process, pg. 5. Regardless, Parents did not raise any safety concerns during the period of May 5, [REDACTED] through the present. See Hearing Record. Moreover, the District has attempted to address the Parents' concerns regarding safety and had developed safety plans to address their concerns. See DE 8, 50 (pg. 449), 83.

II. Requests for Rulings of Law

28. The Parents' have consented to the proposal to evaluate and that issue is moot. Appeal of Hinsdale Fed'n of Tchrs., NEA-New Hampshire, NEA, 133 N.H. 272, 276 (1990); Ex.

B.

29. The Parents' have indicated that they agree with the compensatory services offered by the District and that issue is moot. Appeal of Hinsdale, 133 N.H. at 276; PE AQ.

A. Burden of Proof, Statute of Limitations and Issue Preclusion

30. "The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint . . . unless the other party agrees otherwise." 34 CFR 300.511(d). The District did not agree to expand the scope of the hearing beyond what was included in the due process complaint.

31. The District bears "the burden of proof, including the burden of persuasion and production, [as to] the appropriateness of the child's program or placement." RSA 186-C:16-b, III-a. The appropriateness of [REDACTED] program or placement is not the subject of this hearing.

32. Parents bear the burden of proof as to their requested relief: a mentor and to record IEP meetings. Schaffer v. Weast, 546 U.S. 49 (2005).

33. The burden of proof is the preponderance of the evidence standard. RSA 186-C:16-b; Ed 1123.

34. "Any action against a local school district seeking to enforce special education rights under state or federal law shall be commenced by requesting an administrative due process hearing from the department of education within 2 years of the date on which the alleged violation was or reasonably should have been discovered." RSA 186-C:16-b, I; see also 34 CFR 300.511(e).

35. Parents filed their request for due process on May 5, [REDACTED] and they are precluded from raising allegations prior to May 5, [REDACTED] RSA 186-C:16-b, I.

36. Parents allegations pertaining to safety issues predate the statute of limitations and are outside the scope of this due process proceeding. RSA 186-C:16-b, I.

37. Parents are further barred from litigating issues that have already been resolved through the complaint process. Parklane Hosiery Company, Inc. v. Shore, 99 S.Ct. 645 (U.S. 1979) (collateral estoppel); Gonzalez v. Banco Central Corp., 27 F.3d 751 (1st Cir. 1994) (res judicata).

38. Parents allegations pertaining to the provision of services provided through the conclusion of the [REDACTED] school year have already been resolved by the Department of Education and/or OCR, DEs 96-99.

B. Procedural and Substantive Requirements of the IDEA

39. As a general rule, "a hearing officer's determination of whether a child received FAPE must be based on substantive grounds." 34 CFR 300.513(a)(1).

40. The issues for this hearing do not involve the substantive provision of FAPE to Student. Prelim. Order; Email from Advocate dated July 25, [REDACTED]

41. Parents have not presented evidence to support their allegations that the District has not complied with the procedural requirements of the IDEA. See generally Hearing Record.

42. Any alleged procedural violations did not impede the Student's right to a FAPE, did not significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student, and did not cause a deprivation of educational benefit. 34 CFR 300.513(a)(2).

43. "In crafting a remedy for a denial of FAPE, the Hearing Officer must engage in a fact-intensive analysis that includes individualized assessments of the student so that the ultimate award is tailed student's unique needs." Mary McLeod Bethune Day Academy Public Charter School v. Bland, 534 F.Supp.2d 109, 116 (D.D.C. 2008).

44. The evidence supports that Student received all of his special education and related services through the conclusion of the [REDACTED] school year and that Parents declined ESY services for summer [REDACTED]. See Hearing Record.

45. During the [REDACTED] school year, Student did not receive all of his special education and related services; however, that was due to the fact that the Parents did not want service providers to enter their home. Testimony; DE 51, pg. 455; DE 82, pg. 229-230 (emails to Parent from [REDACTED] pg. 262-267, PE U, pg. 7, AK).

46. The District has offered to make up all of the services that were missed during the [REDACTED] school year. Testimony; DE 78, pg. 67; PE AQ.

47. District's must obtain informed, parental consent prior to conducting a re-evaluation, annual renewal of the IEP and placement of a child with a disability, and before they

change the nature or extent of the special education / related services. Ed 1120.04(a)(3), (5), (6). Districts are not permitted to implement new or amended goals or services without written, parental consent. Id.

48. Placement decisions must be made by the IEP Team on an annual basis and must be based on the student's IEP. 34 CFR 300.116(b). Student's IEP Team will make a placement determination for the [REDACTED] school year once his IEP has been developed. The District has expressed that it is willing to place student in a home-bound setting upon receipt of a doctor's note.

49. Districts are able to select service providers for students. See e.g. Student/School District, IDPH-E-FY-15-11-014 (N.H. SEA, Dec. 17, 2014); Lessard v. Wilton-Lyndeborough Coop. Sch. Dist., 2008 WL 3843913 (D.N.H. 2008), aff'd, 592 F.3d 297 (1st Cir. 2010).

50. The District has selected qualified service providers for Student. See Hearing record.

C. Request for a Mentor

51. The Department of Education's mentor program provides mentors to new special education administrators – individuals with less than 3 years of experience as an administrator. Administrators with more than 15 years of experience may not be mentees in that program.

52. The evidence supports that when Parents have filed complaints alleging violations of the IDEA, the majority of those allegations have been unfounded. The only substantiated allegations resulted from an inadvertent omission that the District had attempted to correct. [REDACTED] 96-99; Ex. A.

53. The evidence does not establish that the District has committed procedural violations of the IDEA. See generally Hearing Record.

54. Parents have not met their burden of proving that a mentor is necessary.

55. Hearing Officers do not have the authority to order a mentor for a school district representative. See e.g. Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist., 375 F.3d 603, 610 (7th Cir. 2004); Pachi v. Seagren, 373 F.Supp. 2d 969, 978 (D. Minn. 2005); In re Student with a Disability, 30 IDELR 408 (DDESS 1998).

D. Meeting Recordings

56. New Hampshire state law expressly forbids individuals from making an audio recording if all parties present do not consent to being recorded. RSA 570-A:2.

57. The U.S. Department of Education, OSEP has opined that “an SEA or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings.” Letter to Anonymous, 40 IDELR 70 (June 4, 2003). If the use of recording devices is prohibited or limited (as it is in New Hampshire) there remains an IDEA exception for instances when recording is necessary for the parent to understand the IEP or the IEP process or to implement parental rights guaranteed under Part B of the IDEA. Id.; see also E.H. v Tirozzi, 735 F.Supp.53 (D. Conn. 1990) (where the parent was a native of Denmark and had limited English language proficiency, recording was permitted to allow the parent the ability to re-listen to the meetings to fully understand the IEP process); V.W. v. Favolise, 16 IDELR 1070 (D. Conn. 1990) (where the parent had a partial disability in [REDACTED] hand that made notetaking difficult, the court upheld [REDACTED] right to record IEP meetings).

58. Parents do not have an absolute right to record IEP meetings and bear the burden of demonstrating that recording is required to understand the IDEA or IEP process. Norwood Pub. Schs., 44 IDELR 104 (SEA MA, 2005); see also Warrensburg Cent. Sch. Dist., 17 IDELR

371 (SEA NY 1990) (Parent must have a legitimate reason for recording IEP meetings; intent to use recordings as evidence in a legal proceeding is not a legitimate reason).

59. There is already a process in the law that allows Parents to request amendment of an educational record that they believe contains information that is inaccurate, misleading or in violation of the student's rights of privacy. 34 CFR 99.20.

60. Parents have not presented evidence to support their allegations that it is necessary for IEP meetings to be recorded. See generally Testimony; Exhibits.

61. Parents have been represented by an advocate and have been able to participate in the IEP process. See e.g. DE 7, pg. 105 ([REDACTED], advocate); DE 8, pg. 114 ([REDACTED], advocate); see generally DE and PE.

62. Parents have indicated that they understand Student's IEPs and the IEP process. Testimony of [REDACTED].

63. Parents have demonstrated that they are able to implement their rights guaranteed under the IDEA; they have had advocates and third parties attend IEP meetings, they have filed complaints with various agencies, they have requested due process, and they have provided substantial input into the IEP development process for their child. See generally Hearing Record.

64. Parents have not met their burden of proving that it is necessary for IEP meetings to be recorded.

Respectfully submitted,

[REDACTED] SCHOOL
DISTRICT

By and through its attorneys,

[REDACTED]

Dated: August 1, 2022

By: /s/ [REDACTED]

[REDACTED], Esq.,
NH Bar

CERTIFICATE OF SERVICE

I hereby certify that on the date below, I emailed a copy of the foregoing to the Parents.

Dated: August 1, 2022

By: /s/ Alison M. Minutelli
Alison M. Minutelli, Esq.