

STATE OF NEW HAMPSHIRE
STATE DEPARTMENT OF EDUCATION

IDPH-FY-24-03-042

██████████ / ██████████ School District

██████████ Post-Hearing Submission of Proposed Findings of Fact, Conclusions of Law, and Relief

Proposed Findings of Fact

1. ██████████ required residential placement from June 17 – October 31, 2023.

PE 18-32 Dr. ██████████, “██████████’s having what are referred to as notable callous and narcissistic traits, which can be a precursor to significant antisocial behavior if appropriate treatment is not provided. Complicating matters is the fact that ██████████ is opportunistic and resourceful...██████████’s risk of future conduct problems, interpersonal violence and destruction of property is quite high...The next question is the extent to which ██████████ poses a risk in a regular school or day school setting. The answer to this depends on the extent to which either of these settings could provide the level of supervision and containment that would be necessary to keep teachers, other students, and ██████████ ██████████ safe...██████████’s supervision would have to be more than line of sight; it would have to be more like arm’s-length supervision...actually accompany ██████████ into the bathroom...the person or persons supervising ██████████ would need to be knowledgeable about restraint techniques...while all these measures could theoretically be put in place in a public school or day school, from a practical standpoint I think it would be nearly impossible.”

PE 17-20 Dr. ██████████, “Given the psychological profile, intensive therapeutic intervention must be of primary importance at this time. Due to the severity of ██████████ mood instability, antisocial behaviors, and risk to others, ██████████ requires placement in a residential therapeutic school. Residential placement is necessitated on account of the ongoing nature of ██████████ challenges, and the need for 24/7 support in order to manage significant emotional vulnerability and dangerous behavior. Residential placement is also necessary to help monitor and identify early warning signs for emotional decline...Lastly, without intensive emotional support and structure provided in a residential setting, ██████████ will be unable to access other interventions that ██████████ requires in order to address ██████████ academic, social, and adaptive functioning.”

██████████, ██████████ of ██████████, “we cannot support plans to provide ██████████ services to ██████████ in a family home...We will continue to work with you and ██████████’s local school district to find the most appropriate residential school placement that best meets ██████████ needs.”

PE 27 1-5 2021 ██████████ Post Needs Assessment, “██████████ received 24/7 staff secure supervision at ██████████ and requires ongoing close supervision...██████████ should not be in an environment where ██████████ is not supervised by adults...Continuing Care As reported above, individual therapy, in home family support and family therapy, and psychiatric service recommended for ██████████. ██████████ requires a high level of supervision in all settings.”

DE 48 page 2024 CANS 2.0, “Intensive and/or immediate action is required to address the need or risk behavior.”

DE 49 page 2024 Dr. [REDACTED], “Due to concerns for safety, it is this writer’s recommendations that [REDACTED] be placed in a therapeutic residential treatment facility...Residential care would meet [REDACTED]’s high level of need for monitoring and treatment...”

PE 15, 2024 Ms. [REDACTED], “I’m writing to confirm my recommendation that [REDACTED] remain out of the home....it is clear that [REDACTED] needs a level of supervision and containment that cannot be maintained in the home environment.”

2. Lacking residential placement, [REDACTED] required in-home and community-based support and services June 17, 2022 – June 4, 2023. The district acknowledged [REDACTED]’s educationally necessary need for adult support to reinforce skills in all settings, and the District failed to provide it.

[REDACTED] provided testimony [REDACTED] attempted to provide in-home and community supports.

PE8 [REDACTED] Director [REDACTED] explains, “After reviewing the documentation and gathering info at yesterday’s meeting, we do not think we can safely support this student. I apologize for any inconvenience and hope you understand we took it into serious consideration, I hope you are able to identify supports that will meet [REDACTED]’s needs.”

Parents testified that left without educationally necessary support for [REDACTED], they had to hire special needs au pairs for community and in-home support.

PE 21-19 Dr [REDACTED] “The family has been addressing these concerns with making modifications to their stove, with arranging for fire safety education with [REDACTED], continuing [REDACTED] therapy with Dr. [REDACTED], utilizing psychiatry for medication management and obtaining an au pair to help with monitoring and support in the home.” “[REDACTED] should transport in a 1:1 ratio...If an electronic device is to be used in the vehicle, consider one that is attached to the seat (i.e. Built-in video/tablet)...There is already a camera mounted outside [REDACTED] bedroom and a door alarm on [REDACTED] bedroom door...”

3. The District was told of [REDACTED]’s sexually reactive behaviors to the [REDACTED] health class, denied the appropriate course, and persisted in implementing a program inappropriate for [REDACTED] in light of [REDACTED] circumstances.

PE13 1/25/22 [REDACTED] email, “In the next few weeks, we will be covering sex education...We understand that this discussion may bring up questions and feelings for your child. Our clinical team is prepared to process feeling and/or additional questions...”

DE15, IEP Progress Report of 6/14/22 pages 168-181, provides evidence [REDACTED] had no related clinical team in [REDACTED] IEP, and PE 11-5 [REDACTED] “As you are both aware, we have been working to fill the school counselor position at [REDACTED].”

Parents testified they reported sexually reactive behaviors to District and DCYF after [REDACTED]’s sexual education class began in 2022 and again in 2023 and found the sex ed class was not appropriate for [REDACTED].

DE 89 Hearing Recording teacher [REDACTED] testified even though [REDACTED] was opted out of the course in 2023, the middle school has [REDACTED] students and topics cannot be avoided in the milieu.

PE 10-5 March 4, 2022 Parent told IEP team [REDACTED] required “Elevatus Health/Sexuality program in place of [REDACTED]’s thoughtful, but not a good fit for [REDACTED], traditional program. [REDACTED] is no longer participating in [REDACTED]’s health class as it created extreme perseveration, increased disclosures of sexual abuse at [REDACTED] and subsequent sexually reactive behaviors.”

During the hearing April 2024 [REDACTED]’s [REDACTED] testified in hindsight [REDACTED]’s sexual education course was not appropriate for [REDACTED]. In redirect, [REDACTED] agreed IEPs are not made in hindsight.

Again, PE 10 is dated March 2022 and PE 2-1 is the 12/30/22 WPN “A Risk Assessment is not... necessary to understand [REDACTED]’s educational needs and develop and appropriate Individual Education Program (IEP).

4. Parents provided at their expense the appropriate health class and clinical support.

PE21-21Dr. [REDACTED], “Healthy sexuality and safe internet use is a must for all individuals who have developmental disabilities. In [REDACTED]’s case [REDACTED] has been exposed to inappropriate sexual behaviors and certainly is in need of replacement behaviors as well as education to better facilitate [REDACTED] sexual development. I recommend that [REDACTED]’s support team consider being trained in and utilizing Elevatus Training (www.elevatustraining.com) for resources in meeting this goal.”

PE 29 pages 1-3 details outpatient therapy with Dr. [REDACTED] 2022-2023.

PE 29 April - July 2023, parents obtained Dr. [REDACTED] to help the IEP team, “consultation, including but not limited to attendance at IEP meetings (June-July 2023) ... [REDACTED] required a specialized residential program to address [REDACTED] problematic sexual behaviors and [REDACTED] Autism, preparation for educational due process hearing, guidance to proceed to [REDACTED], consultation regarding participation in family, home, recreational and school events while waiting for residential placement given [REDACTED]’s history of sexual trauma at the [REDACTED] School in [REDACTED], and problematic sexual behavior in the home, with expressed sexual interest in a very small (due to genetic disorder) student at [REDACTED], [REDACTED]’s out of district day placement, etc.”

5. June 4, 2024 [REDACTED] required unilateral, out of home placement, which parents provided and sought via District.

DE 41 6/5/23 Parent email “We need an emergency IEP meeting for [REDACTED] regarding placement and recommendations for residential placement.”

DE 42 6/5/23 IEP Meeting Notes “... [REDACTED] reported to Drs today [REDACTED] has had these thoughts for a year, about [REDACTED] at school and [REDACTED].” District’s [REDACTED], “it is not an educational need, so residential placement as part of [REDACTED] IEP is not appropriate. Suggested working with other agencies...”

6. The district denied parent request for related services on the grounds that educational needs and related service needs are segregable.

DE 38 District denied related services “IEP goals, services and support in the proposed IEP are appropriate to address [REDACTED]’s school-based needs, [REDACTED] can participate in [REDACTED] school day and benefit from [REDACTED] special education program.”

PE 4-2, "...the District questions the educational necessity..."

This continues, as demonstrated by DE 90 page 924 of 945 ██████ stated "And I can also say that I know we disagree...It's not the school's responsibility to take the place of area agency mental health treatment. Everything we do is focused on an educational lens...is outside the purview of our responsibility."

DE 63 ██████ of 11/14/23 found, "The Daily Living Skills domain assesses ██████'s performance of the practical, everyday tasks of living that are appropriate for ██████ age. ██████ standard score for Daily Living Skills is 72, which corresponds to a percentile rank of 3." DE 1 provides no Daily Living Skills goals.

Parents and Clinician ██████ testified for ██████, life and other basic skills are educationally necessary and not segregable.

7. The District affirmatively rejected several evaluations for ██████.

Functional Vision:

PE23-14 OT Evaluation of 12/21 states, "Functional vision deficits are often misdiagnosed or labeled as attention or learning deficits. These deficits do not always include difficulty with acuity but can have a significant impact on academics and skill acquisition...Evaluation by a Developmental Optometrist to assess functional vision skills at next eye exam."

██████ testified the district failed to provide the necessary functional vision assessment, and instead offered an eye exam to assess acuity.

DE 25 page 236 of 461 The 2023 OT Report continued to find, "Functional Vision Deficits including: Difficulty dissociating movement of the head from movements of the eyes. Improving tracking, visual attention and convergence. Continues to have some jerkiness...."

Risk/Safety/Forensic Evaluation

PE 2 WPN 12/30/22 "A Risk Assessment is not necessary to determine ██████'s continued eligibility for special education, nor is it necessary to understand ██████'s educational needs and develop and appropriate Individualized Education Program (IEP)"

Physical Therapy

PE 23-24 Postural Testing was conducted at ██████, "Prone extension... ██████ was able to hold this position for 7 seconds. Norms for an 8-year old child is 30 seconds...Indicators of postural-ocular disorder. Supine Flexion Posture: ██████..struggled... ██████ maintained this position for 8 seconds with complaints of neck pain and fatigue. Norms for an 8 year old child are 88 seconds...Indicator of tactile and proprioceptive discrimination, motor planning, and a postural problem."

In the Resolution Meeting (DE10 page 120 of 461) ██████ **"does not mean needs PT educationally for access and participation in school."**

DE 12 page 133 of 461 "██████ shared ██████ **fatigues quickly, sometimes walks leaning against walls, slouches seated, etc**" Current performance (present levels) was assessed

and reported as varied in doing moves, “recently, 9-10 seconds” with the proposed IEP goal of 4/14/24 being to hold the moves for “30 seconds” by January 2025.

PE 24-3 By 12/1/22 proposed goal 1-“will demonstrate improved functional dynamic balance” (catching and throwing, lunge walks, etc) and 2-“will demonstrate functional postural control” (floor to stand transfer).

Psychosexual

Although this is being conducted at [REDACTED], there was no testimony it is part of the IEP or will be considered by the IEP Team.

8. Related services were considered and based on staffing.

PE 11-5 “[REDACTED] starts in July, [REDACTED] could access [REDACTED] services irrespective of whether or not would be in the IEP, DE 14 page 155 of 461 added counseling to IEP 8/29/22.

[REDACTED]’s [REDACTED] testified counseling for [REDACTED] was not adequate in three ways: first no counseling 6/17-8/28/22; second 8/29/22-10/31/23 the service delivery 1x30min/week was insufficient; third and 8/1-10/31/23 between staffing changes [REDACTED] assumed the role of school counselor, acknowledging at DE 90 page 923 of 945 “that there is a conflict of interest because I am head of the school and disciplinarian at times as well, so there is a conflict. For the IEP, we’ve known that there is a conflict...it’s not an appropriate counseling relationship...”

Clinician [REDACTED] testified 5 hours/week is necessary for [REDACTED]. DE 1 IEP of 2/15/24-2/14/25 at page 22 of 461 “Counseling/Individual 1x60min/week” and “Counseling/Group 3x60min/week.”

Dr. [REDACTED] testified it is 5 hours counseling/week as 4 at school and 1 is in the residence. DE 1 IEP excludes extended day/residential counseling.

PE 14-1 OTR/L writes “I felt it was time to pass the position onto someone who can be there more hours per month than I can. The good news about this is that the oT replacing me will be at [REDACTED] weekly and therefor available to provide more OT...” and again OT services were increased.

SLP: DE 15, progress report of 4th reporting period 2021-2022 reports only 50% of the time could [REDACTED] “increase communication skills and attention to topic, by asking questions of others ... or ... to sustain conversation...during speech and language session” not classroom setting, and again only 50% of the time did [REDACTED] demonstrate “awareness and understanding of nonverbal communication behaviors ...by stating their implied meaning...during speech and language sessions.”

[REDACTED] was denied Social Thinking Group (PE 2) as ESY or extended day service.

In 2025, 3 years later in a more restrictive therapeutic residential placement, DE 1 page 20 of 461 indicates the goal remains the same with 60% success expected, “By January 2025, [REDACTED] will initiate a conversation while continuing a 2-topic exchange and end a conversation during structured conversational activities with peers.”

9. Testimony of numerous witnesses requires recognition of intertwined educational and related service needs for a less restrictive environment.

Testimony of Clinician [REDACTED] indicated no appropriate less restrictive placement exists near [REDACTED]'s home in [REDACTED], NH.

[REDACTED]'s [REDACTED] stated the [REDACTED] team had recommended exploration of a life skills program.

[REDACTED] Teacher [REDACTED] testified in DE 89 at minute 52:30 forward that the IEP team had discussed the possibility of life skills or other placements that might better suit [REDACTED]'s needs during the 2022-2023 school year, that **“I do think [REDACTED] would benefit from more therapeutic services that can’t be provided during day school,”** and **“to try and separate academics from the rest of the child is confusing”**...and **“additional services can only be provided residentially.”** At 1:20 onward, [REDACTED] testified **“[REDACTED]'s developmental, emotional and cognitive needs are intertwined”** and they impact [REDACTED] access to future employment, housing and the post-secondary transition planning that [REDACTED] had begun. [REDACTED] also stated [REDACTED] requires therapeutic services that are hard to access in the [REDACTED] and those were not in the IEP, and that those therapeutic services are available only to residential students at [REDACTED]. [REDACTED] also testified [REDACTED] recommended [REDACTED] to the parents to meet [REDACTED] intertwined needs. [REDACTED] concluded at 1:27 **“I think a residential placement would benefit [REDACTED].”**

[REDACTED] testified [REDACTED] had received information from the parents that their sex ed program was negatively impacting [REDACTED] even before it started due to [REDACTED]'s perseverance.

PE 8 [REDACTED] [REDACTED] refused services previously.

DE 83 provides a timeline of screening in 16 residential placements. Schools reported waitlists of “4-5 months.” Only [REDACTED] accepted [REDACTED].

10. [REDACTED] was unable to access [REDACTED] education at [REDACTED] [REDACTED] placement when placement change had been identified in a timely manner.

DE 90, IEP Zoom Meeting of 10/2/23, [REDACTED]'s [REDACTED], “I think the biggest update from our last meeting is we have seen [REDACTED] becoming more stressed out since, you know, that [REDACTED] knows [REDACTED]'s going to another school...and so [REDACTED]'s just in between time, [REDACTED] has been expressing that it’s causing [REDACTED] to feel more anxious about it. Motivation is also a struggle...if I’m leaving at any point, what’s the motivation for [REDACTED] to engage in school?...more feelings distress”

[REDACTED] Proposed Conclusions/Findings of Law

Placement is extensively explored in *Kruelle v. Biggs*, 489 F. Supp. 169 (D. Del. 1980)

In *Kruelle* the District asserted, as here, placement was not their responsibility, was either the parents or some other social service entity’s.

“It is clear that the Act contemplates residential placement under some circumstances, and that when a residential placement is necessary for educational purposes, "the program, including non-medical care and room and board, must be at no cost to the parents of the child." 45 C.F.R. § 121 A. 302”

Public schools may be required to fund private education in unapproved programs where the public school fails to provide special education.

IDEA, 20 USC 1412(a)(10)(C)(ii) If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or Hearing Officer may require the agency to reimburse the parents for the cost of that enrollment if the court or Hearing Officer finds that the agency had not made a FAPE available to the child in a timely manner prior to that enrollment.

If a school determines that an eligible child cannot receive a FAPE from the programs that the public agency conducts, and therefore, “(i)f placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care room and board, must be at no cost to the parents of the child.” 99 CFR 300.302

Read together, these provisions indicate that if even where a parent unilaterally places ■■■ child in a residential placement, if that placement is necessary to provide FAPE to that child and if FAPE cannot be provided within one of the school district’s programs, then the Hearing Officer has the discretion to require the district to fund the placement. See *Forest Grove School District V. T.A.* 2009 WL1738644 (6/22/09), *Kruelle v. New Castle County School District*, 642 F2nd 687 (3rd Cir 1981) finding where a child is afflicted with such severe conditions, formal education begins with such basic life skills. Id at 693.¹

Denial of FAPE in LRE: Community and In-Home supports addressed as well:

In *Kruelle* the respite provider continued to reinforce the skills taught during the school day, including acts of daily living, and ■■■ had the skills needed for this student, but was not a licensed professional. *Kruelle* contemplated the reinforcement of skills by non-licensed professionals who have specific skills for the individual student’s needs.

“I am aware that the policy embodied in the Education of All Handicapped Children Act encourages the placement of a handicapped child in the "least restrictive environment." See, e. g., 45 C.F.R. § 121 A. 552. Ordinarily this policy would suggest that before placing a handicapped child in a twenty-four hour care program, attempts should be made to provide in-home, after school instruction which would allow the child to remain with ■■■ or ■■■

¹ Rothstein, L., & Johnson, S. F. (2020). *Special Education Law* (6th ed.). SAGE Publications, Inc. (US). <https://bookshelf.vitalsource.com/books/9781544388243>

family. In Paul's case, however, such attempts have been made in the past, and each has occasioned regression of Paul.”

In the case of [REDACTED], attempts were made by the District to provide supports and services in a less restrictive environment; but when these failed, the District rebranded these in-home, extended day services that reinforced [REDACTED] school instruction as not educationally necessary and the domain of some other organization. (See Findings of Facts 2)

Furthermore, when District sits idle and a child needs placement, parents may unilaterally place the student. Parents in this case made two unusual placements that were each necessary in light of the students' unique circumstances. In the first instance, parents placed the student in the home with additional staff, home modifications and related services June 17, 2022-June 4, 2023.

In the second instance, parents were forced to unilaterally place student outside the home to meet student’s educational need for placement. Although this placement was inadequate, it was the only available option June 5– October 31, 2023. To the extent that this hearing officer finds that this unilateral placement necessary, parents note that they provided adequate notice (in accord with 20 U.S.C. §1412(a)(10)(C)(iii); 34 C.F.R. §300.148) of the need for and intent in their requested meeting of June 5, 2023 DE 41 and 42. Exhibits as to further notice concerns was not raised as an affirmative defense, but such evidence was presented in due process in July 2023. Furthermore, Districts are meant to address a continuum of placements. See 34 C.F.R. §300.551(b)(2), 300.552(c), (e), 300.553; Ed. 1115.04(b)

Shaw v. Weast, 364 F. App'x 47, 53 (4th Cir. 2010) (quoting *Burke Cnty. Bd.of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990)), is not applicable should the Hearing Officer concur with Finding of Fact 9 above. Further, the IEP team agreed in Summer 2023 that residential placement was indeed the least restrictive environment for adequate progress and, thus, an argument about the severability of educational and related services needs for purposes of asserting that Parents are not entitled to relief for their provided related services in lieu of a placement lacks merit

The District failed to 1-conduct evaluations in all areas of suspected disability and/or 2-consider the evaluations and afterschool behavior data parents provided, which led to the evaluation plan that was not sufficiently comprehensive to provide the necessary and appropriate assessment to determine [REDACTED]’s eligibility for special education in the suspected disability categories or to understand [REDACTED] educational needs.

Lillbask ex rel. Maulclaire v. Coon. Dept. of Educ. 397 F. 3d 77 (2nd Cir 2005) interpreted the IDEA to include safety concerns to be part of the matters to be addressed that might “interfere with a disabled child’s right to receive a free and appropriate education.” 397 F. 3d at 93.

See also *Jonathan G. v. Caddo Parish School Board*, 875 Supp. 352 (W.D. La 1994) where the Court noted, given Student’s “ongoing behavioral problems, a reevaluation could and should have been completed ...”

Under 34 CFR 300.300, and 300.304((b)-(c)) parents may pursue a reevaluation, in the absence of school consent, as in the case here.. Under 34 CFR 300.303(a)(2) District must do a reevaluation by parent request, and at 300.305a(l)(i) consideration of parental documentation is addressed.

NH Ed. 1120.05 renders evaluations clearly within the realm of the Hearing Officer. The District may initiate due process if a parent refuses evaluations or reevaluations and does not speak to parent's right to due process if the District refuses the parent's request for evaluation or re-evaluation. Thus, this is within the Hearing Officer's discretion. NH Ed. 1120.05 does not speak to the federal regulations of CFR 300.300, it must be equally within the purview and authority of the Hearing Officer to provide for evaluations when the district does not consent to evaluations and rejects it's responsibility to do so.

Student has been denied FAPE by the District's narrow construction of educationally necessary and this has long been addressed in a large body of law.

20 U.S.C. § 1414(b)(3)(A)(ii), (b)(2)(B), (b)(3)(B) & (b)(4)(A); 34 C.F.R. § 300.304(b)(1) makes clear that the schools must meet the student's academic, developmental, and functional needs

See also Comments to federal regulations indicating that "functional" includes the student's nonacademic needs. 71 Fed. Reg. 46753 (Aug. 14, 2006).

In NH IDPH FY-23-02-024 the District failed to provide educationally necessary residential placement, deeming it the parent's or some other agency's responsibility.

In this case, the District attempted to hire in home/community support (Finds of Fact 2) and could not, thus parents were left with no alternative but to hire needed staffing.

Under 1125, the school district must take initiative to ensure that intransigence and foot-dragging in the IEP process, whether bureaucratic or parental, so not indefinitely compromise the child's right to a FAPE. See, e.g. *W.G.*, 960 F.2d at 1486 (parental conduct does not waive responsibility of the school district); *Town of Burlington v. Department of Education*, 736 F.2d 773, 795 (1st Cir. 1984) (same) *aff'd*, 471 US 359, 105 S.Ct. 1996, 85L.Ed. 385 (1985), *Murphy v. Timberlane Reg'l Sch. Dist.*, 22 F.3d 1186, 1195 (1st Cir. 1994) and NH IDPH FY 22-05-037.

Burlington School Committee v. Department Of Education: 471 U.S. 359 (1985) unilateral placement and reimbursement, 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148 timeliness of placement by district, reimbursement for transportation and babysitting in *Taylor v. Board of Education*, 649 F. Supp. 1253 (N.D.N.Y. 1986), *Florence County School District Four v. Carter*, 510 U.S. 7 (1993)

The US Department of Education interprets the term functional to mean activities and skills that are not considered academic or related to a child's academic achievement as measured on statewide achievement tests. Assistance to States of the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule 71 Fed. Reg. 46579 (8/14/2006)

Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. [34 CFR §300.320(b)(1)] The transition services (including courses of study) needed to assist the child in reaching those goals. [34 CFR §300.320(b)(2)]

20 U.S.C. § 1400(c)(5); 34 C.F.R. § 300.101(c), § 304(b)–(c), § 305(a)(2), § 300.43. Schools must meet the functional, developmental, and academic needs of students with disabilities, including students who have passing grades and are advancing from grade to grade.

See McKenzie, 771 F.2d at 1527; Russel by Russell v. Jefferson School District, 609 F.Supp. 605 (N.D.Cal.1985) Armstrong v. Kline, 476 F.Supp. 583, 603-05 (E.D.Pa. 1979)

Individuals with Disabilities Education Act (IDEA) (1997), 20 U.S.C. §§ 1400 et seq. Expanded on prior requirements in the law by including requirements for high expectations and outcomes for students with disabilities. Endrew F. v. Douglas County School District (2017) Expanded on the Rowley standard for defining what is an “appropriate” education. The Court held that the “merely more than de minimis” progress standard applied by the lower court in that case was not a sufficient standard for FAPE under the IDEA. Rather, the student’s educational program must be “appropriately ambitious” in light of the student’s circumstances and reasonably calculated to enable the student to make progress that is appropriate in light of the child’s circumstances.

IEP Development, Review, and Revision IDEA CFR 300.324 and IDEA Free Appropriate Public Education (FAPE) IDEA CFR; and all of Sec. 300.320.

Regarding financial matters and relief sought, NH Ed. 1123.15(b) addresses Prehearing Procedures and provides a 5-day rule with regards to documentary evidence. Parents submission of Exhibit 43 is not intended as evidence, nor is it intended to have any bearing on the Hearing Officer’s decision on what relief is due. The Hearing Officer has discretion in determining relief and may use this supplemental information, or not, in consideration of awarding monetary relief.

██████████ Relief Sought

1. Providing this Hearing Officer finds the above residential placement was necessary and the responsibility of the school district June 17, 2022 through October 31, 2024, parents urge the most relevant comparison. Parents recommend the order of reimbursement to parents is supported by body of law regarding unilateral placement as the district refused to acknowledge the necessity and there were no other options.

Special Needs Au Pairs \$29,245.56 (PE36, 37)
Housing \$9,900.00 (PE 33, 34, 35, 43)
NEST Units & Batteries \$1166.88 (PE40)
TOTAL:\$40,312.44

Should reimbursement for residential placement expenses not be preferable, Compensatory Education in the amount of \$405,684.78 is suggested, as the difference between ██████████’s and ██████████’s per diem rates (DE 70 and PE 44).

2. Reimburse parents for provisions of denied FAPE, including some mileage
 - ██████████ CBT \$4,990.00 (PE29)
 - Health Class \$1250.00 (PE39 and 43)
 - Social Thinking Boston \$630.00 (PE41)
 - Consultation Services of Dr. ██████████ \$2500.00 (PE30)
 - CPI De-Escalation Parent Training \$200.00 (PE31)
 - Audiobook Subscription and Purchase for transportation \$230.43 (PE38)
 - MP3 Player \$35.00 (Parent Testimony)
 - TOTAL: \$9,835.43

3. Award compensatory education for denial of FAPE in areas parents could not provide adequate educational provisions of FAPE:
 - Social Skills Training \$6150.00²
 - Counseling \$38,180.34³
 - Occupational/Physical Therapy \$6150.00⁴
 - Safety/Risk Assessment \$10,000.00
 - Counseling Consultation to IEP Team \$784.35⁵
 - Vision Assessment: Part 1 \$943.70⁶ and \$1000.00 Part 2, if determined necessary by ██████████ Vision Specialists
 - TOTAL: \$63,208.39

4. Order District to amend IEP to provide a FAPE, including
 - A-All components of ██████████'s program in IEP
 - B-Conduct Necessary Assessments to determine the necessary supports and services to enable student to access and make progress towards ██████ goals and confer meaningful educational benefit in the least restrictive environment:
 - i. PT Evaluation by PT who is a Pediatric Certified Specialist (PCS) and familiar with neurodevelopmental therapy for consideration in the 2/15/25-2/14/26 IEP.

5. Find district's narrow definition of "educational necessity" has been in err, and in as much as district has failed to accept the recommendations and reports available, strongly encourage district to appropriately construe "educational necessity" in reviewing, considering, and creating amendments to IEP from all available data, including upcoming vision, psychosexual, safety/risk and other evaluations.

² 1 x/week 6/17/22-3/1/24, 82 weeks of school at \$75/week, excludes school vacation weeks.

³ ██████████ CBT average rate/session of \$157.77, ██████████ 5 sessions/week necessity, 65 weeks of school indicates total need of 285 meetings, less counseling received at ██████████ (and ██████████ CBT should Hearing Officer find necessary and orders reimbursement for such) leaves remainder of 242 counseling sessions. 242 x \$157.77 = \$38,180.34

⁴ 1 x/week 6/17/22-3/1/24, 82 weeks of school at \$75/week, excludes school vacation weeks.

⁵ Clinical Consultation not in IEP 6/17/22 – 12/31/22, and only 7 of 10 consultations occurred 1/1/23-10/31/23, at average cost of \$87.15 (PE 10-1 & if considered in evidence DE 111)

⁶ Includes \$390 Evaluation Part 1, \$408.70 mileage from family's home to ██████████ and then to ██████████ Vision Specialists (610 miles, 10 hours transport time, round trip), \$72.50 transport time reimbursed at \$7.25 federal and NH minimum wage.

6. Order any other relief deemed just and appropriate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent to the District and its Attorneys electronically May 6, 2024.

A black rectangular redaction box covering the signature of the certifier.