

**New Hampshire Department of Education  
Special Education Due Process Hearing**

**HEARING DECISION AND ORDER**

**COVER SHEET**

In the Matter of                    )   IDPH-FY-24-04-047  
  )  
Student                                )  
  )  
&    )  
  )  
[REDACTED] School District    )

Hearing Date:                        June 4, 2024

Parent/guardian:                    [REDACTED] (Pro Se)

Counsel for School District:       [REDACTED], Esq.

New Hampshire Department of Education  
Special Education Due Process Hearing

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INDEX OF NAMES

██████████ / ██████████ School District – IDPH-FY-24-047

Director of Student Services	██████████
Assistant Director of Student Services	██████████
Elementary School Special Education Administrator	██████████
Case Manager	██████████
Classroom Teacher	██████████
Petitioning Parent	██████████
Hearing Officer	James Baron

**New Hampshire Department of Education**  
**Student / [REDACTED] School District**  
**IDPH-FY-24-04-047**

**Due Process Decision**

**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.

The Petitioning Parent filed for a due process hearing on April 17, 2024. The Student's other parent ("Non-Petitioning Parent") is not a party to this proceeding. The School District filed its response on April 29, 2024, followed by a Sufficiency Challenge on May 2, 2024. The Hearing Officer denied the Sufficiency Challenge on May 6, 2024. A Prehearing Conference was held on May 21, 2024 and resulted in the following issue defined for hearing:

*Whether the Present Levels of Performance section of the Student's IEP should be amended to include grade level performance information.*

A due process hearing was conducted via Zoom on June 4, 2024.

The Petitioning Parent called five witnesses:

- Petitioning Parent;
- Director of Student Services ("Director")
- Elementary School Special Education Administrator for the School District ("Elementary Administrator")
- Student's Special Education Case Manager ("Case Manager");
- Student's Classroom Teacher ("Teacher").

The School District called one witness:

- Assistant Director of Student Services ("Asst. Director").

The official record of the hearing consists of thirty-one core exhibits, thirty-two supplemental School District Exhibits, ten exhibits submitted by the Petitioning Parent, and the voice and video Zoom recordings of the hearing.

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

Petitioning Parent included a “Rebuttal Exhibit” in the post-hearing submission. This exhibit is not accepted and will not be given any weight, due to submission after the “5 day rule” which defines when exhibits must be submitted. Even if used for rebuttal purposes, it would need to be provided at hearing, such that the opposing party would have an opportunity to review it, place any objections, and ask questions about it at hearing. Therefore, it is not accepted as a “Rebuttal Exhibit” and will not be given any weight or consideration.

The school district was represented by counsel. The Petitioning Parent was pro se.

## **II. Findings of Fact**

1. Student is identified under the IDEA as having a specific learning disability in the area of basic reading. See Core Documents (“CD”) 1 at pg. 5; CD-13 at pgs. 81-82; CD-14 at pg. 106; CD-24 at pg. 162; CD-25 at pg. 184; Witness Testimony.
2. During the 2023-2024 school year, Student was in 4th grade. See e.g. CD-1 at 5; Witness Testimony.
3. School District utilizes the Wilson Reading System to provide [Student’s] reading support. Witness Testimony; CD-24.
4. Parents share decision-making for Student. CD-31 at pg. 235.
5. A final marital restraining order is in place that states, in part: “. . . For parent/teacher conferences or IEP meetings, the parties will schedule separate meetings.” CD-31 at pg. 239, ¶ 7.
6. The School District has scheduled separate IEP Team meetings with the Parents during the 2023-2024 school year. Witness Testimony; CDs 2-3, 20-21, 31.
7. Student underwent “benchmarking” during the end of November or beginning of December. The benchmarking showed Student’s reading level to be at or above grade level. Case Manager Testimony.
8. Student’s IEP Team met with Petitioning Parent on January 2, 2024 and with Non-Petitioning Parent on January 9, 2024 to develop Student’s IEP for the period of January 18, 2024 – January 17, 2025. See CD-1-3.
9. On January 12, 2024, the Case Manager emailed the Elementary Administrator that the Non-Petitioning Parent “is truly taking advantage of the special education system – [Student] just scored an 83 percentile on the AimsWeb.” When asked at hearing to clarify, the Case Manager testified that Student “was making great gains,” and that school personnel were considering removing Student from special education, because

Student no longer needed special education services, but that they ultimately decided to keep Student on an IEP to make sure Student stayed “on track.” SD 48 at 60; Case Manager Testimony.

10. Following the two IEP meetings, district staff reviewed the input received from each parent and updated the draft IEP. See e.g. CD-5, 6, 7.
11. On January 18, 2024, the Case Manager emailed the Elementary Administrator, “[Petitioning Parent] is NOT happy with our removing the wording in Present Levels that [Student] is currently on grade level for... reading [and] would like it put back in there and make note under parent concerns that [Non-Petitioning Parent] did not agree. Help me with this please.” S-50 at 68.
12. On January 22, 2024, the Non-Petitioning Parent emailed the Case Manager, “I am getting these messages, where [Petitioning Parent] is using your IEP draft to cancel the tutor. I need to make sure [Student’s] IEP is written accurately, so [Student] can continue to have the [tutor]...” S-50 at 69.
13. An IEP with the creation date of January 29, 2024 was sent to Parents. CD-13,14.
14. The Student Strengths subsection within the Present Levels section of the January 29 IEP states, “[Student] has grown a lot especially in reading with the small group intervention [Student] is receiving. [Student’s] vocabulary skills are very good. [Student has] had extra help with phonics and this made a difference with [Student’s] decoding and encoding. [Student] knows how to apply phonemic awareness to figure out an unfamiliar word.” CD-13 at 82.
15. The Academic Needs subsection within the Present Levels section of the January 29 IEP included the following language:

[Student] is a student with an identification of a specific learning disability in the area of basic reading. [Student] has grown leaps and bounds with reading and phonological awareness. [Student]’s hurdle is [Student’s] anxiety. If [Student] gets “stuck” and does not understand [Student] will not self advocate... Instead will just sit until the adult in the room asks... Once the direction has been explained again, [Student] does get started and is successful. [Student] does dislike writing and will push this off until the very last thing.

[Student] has been making progress in [Student’s] IEP driven reading goals, while working in a 1:2 setting with a reading specialist and given specific accommodations for [Student’s] classroom and assessments. [Student] is currently reading with 95% accuracy and [Student’s] comprehensive [sic] is also at 95% accuracy. [Student’s] current scores are equivalent to a mid-year 4th grade level for reading. These are through the Wilson reading program and are an average of [Student’s]

performance over a 6 week timeframe. The first 8 weeks of instruction this school year yielded a reading accuracy of 96% on early 4th grade work with a comprehension score of 85% with adult help.

For phonics, using the Wilson program, [Student] is working a [sic] the end of level 7 and beginning of level 8 out of 12 levels. This indicates finishing 3rd grade and beginning 4th grade. At [Student's] current level [Student]'s average scores are as follows: Words 93% Nonsense words 100% Sentences 93% Passages 93[.]

[Student] will benefit from continued practice and work in a structured reading discipline, such as Wilson reading program, to continue to make gains and consistently produce these results in [Student's] intervention times and work to generalize these skills to the classroom setting. [Student] will require continued interventions and accommodations to continue to independently apply these skills to the classroom setting.

[Student] continues to struggle with the generalization of [student's] encoding and decoding abilities in the general education classroom. [Student] has completed 12 spelling tests this year and is averaging a 72.7% correct on the assessments. [Student] has achieved below 80% correct on 5 of these assessments (approximately 42% of the time).

CD-13 at 82.

16. The reference in the IEP to the Student being at a “mid-year 4th grade level for reading” was based on Wilson Reading data provided to the Case Manager by the Reading Specialist. Case Manager Testimony.
17. The January 29 IEP had two goals, one in Reading and one in Language Arts. Id. at 88.
18. Special Education Services in the January 29 IEP appeared as follows:

**Special Education Services**

Type of Service	Goal	Coordinator Title	Provider Title	Sessions Frequency	Time Per Session	Begin / End Dates	Location of Services	Medically Necessary
Phonics/Phonemic Awareness Specially Designed Instruction	1 , 2	Special Ed Teacher	Reading and Writing Specialist	2 times / wk	2 sessions / wk of 30 min	01/18/2024 01/17/2025	Special Education Setting	N
Reading - Specially Designed Instruction	1 , 2	Special Ed Teacher	Reading and Writing Specialist	3 times / wk	3 sessions / wk of 30 min	01/18/2024 01/17/2025	Special Education Setting	N

19. On January 31, 2024, the Petitioner partially accepted the IEP via Docusign, and emailed the following back to provide detail of the partial acceptance:

There are numerous errors and inaccuracies as well as procedural concerns that leave me unable to fully authorize the IEP as written. Specifically, 1)

the document has gone through numerous revisions outside of the team meetings 2) extended year was checked off, however, no discussions took place in the meeting 3) the parental concerns section misrepresents my concerns and fail to capture the points raised in the team meeting 4) the team failed to acknowledge [Student's] medically prescribed reading eye glasses, which play a critical part in [Student's] ability to effectively read 5) the team inappropriately made reference to '[Student's] anxiety,' which is a mental disability [Student] does not have, nor has [Student] ever, yet it appears multiple times throughout the narrative which is inaccurate and misleading and any such references should be removed from [Student's] records pursuant to 34 CFR §300.618 6) the evaluation results do not consistently include the dates for each one, which misleads the reader and portrays an inaccurate view of [Student's] academic abilities and how they may have changed over time 7) meeting notes were not shared after the meetings 8) the meeting attendees section was blank, failing to document all participants in the discussion.

CD-13 at 99; Petitioning Parent Testimony

20. Also on January 31, 2024, the Non-Petitioning Parent returned a partial acceptance of the IEP. The Non-Petitioning Parent refused consent for “Accommodations for test taking,” and requested the following changes to the IEP, “Language that points to certain grade level only in instances where [Student] has scored well with accommodations.” (sic). CD-14 at 121.
21. On February 14, 2024, the Case Manager emailed the Elementary Administrator, “These parents make me very uncomfortable with their bantering and squawking back and forth - I want to be honest, I don’t feel comfortable dealing with either of them. [Student] is due for reevaluation next Dec - in my opinion, [Student] should be tested at the beginning of 24/25 school year in which time I think [Student] will not qualify for SpEd services. I would strongly suggest a 504 for accommodation for [Student] at this point.” CD-18.
22. The Team met twice on February 20, 2024, once with each parent separately. Notes from the in-person meeting with the Non-Petitioning Parent show that the Non-Petitioning Parent expressed “concern that it is not consistent across the IEP in defining what is grade level and what is not... Many of [Student's] spelling word lists are often below [Student's] current grade level.”<sup>1</sup> Director shared that Student “is not achieving across the board at grade level, and the IEP should just reflect the skills that

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<sup>1</sup> It is not clear what “it is not consistent” is referring to in this statement – whether Student’s results are not consistently at grade level across different areas reported in the IEP, or whether District’s use of grade level as a measuring tool “across the IEP” is not consistent (i.e. used for some reporting areas and not for others).

[Student] is working on developing. [Student's] present level should be a description of [Student's] progress on the Wilson reading program.”

Notes from the Team meeting with the Petitioning Parent make no reference to removing grade-level references. CD-20, 21.

23. The Written Prior Notice from the February 20, 2024 Team meetings make no reference to removing grade-level references. Instead, the WPN simply states that the proposed IEP “includes updates of data for present levels, goals, services, accommodations, and objectives. The proposed services will include direct instruction in reading and phonics... The team has... discussed additions/subtractions for the document.” CD-22.
24. On February 22, 2024, the Elementary Administrator and the Non-Petitioning Parent discussed removal of the grade level comparisons from the IEP. The Elementary Administrator wrote, “Yes, grade level comparisons will be removed... If anything, grade equivalent would reflect something such as a spelling test score and it being below [Student's] current grade, i.e. [Student's] classroom spelling tests have been at a 3<sup>rd</sup> grade level with 60% accuracy (I am making this up as an example!). I am trying to write it specific to skills and where [Student] is functioning at.” CD-23.
25. An amended IEP was proposed on or about February 23, 2024. Reference to grade level in the Present Levels section of the IEP was removed. The new version of the Student Strengths subsection stated, inter alia, “[Student] has grown a lot especially in reading with the small group intervention [Student] is receiving. [Student's] vocabulary skills are very good. [Student has] had extra help with phonics and this has made a difference with [Student's] decoding and encoding, [Student] knows how to apply the phonics skills to figure out an unfamiliar word. [Student] shows a strength in math and demonstrates solid problem solving and calculation skills.” CD-24 at 163.
26. Similarly, the Academic Needs subsection stated:

[Student] is a student with an identification of a specific learning disability in the areas of basic reading. [Student] has grown leaps and bounds with reading and phonological awareness. When taking on work [Student's] hurdle can be [Student's] uneasiness and self-doubt when [Student] is unsure what to do. If [Student] gets “stuck” and does not understand [Student] struggles to independently self advocate... Instead will [sic] just sit until the adult in the room asks... Once the direction has been explained again, [Student] does get started and is successful. [Student] does dislike writing and will push this off until the very last thing.

[Student] receives differentiated instruction in [Student's] classroom to work with [Student's] current reading, encoding, and decoding abilities.



[Student] struggles to consistently encode and decode words independently in the classroom.

[Student] has been making progress in [Student's] IEP driven reading goals, while working in a 1:2 setting with a reading specialist and given specific accommodations for [Student's] classroom and assessments. The Wilson Reading System (WRS) is a structured literacy program designed to support students with reading difficulties. The WRS focuses on individualized specialized instruction in areas such as phonemic awareness, decoding and encoding based on the specific needs of each learner. The student progresses at their own pace based on mastery of each step per the program criteria. [Student] is currently on step 7 of 12, and will continue to work on finishing all 12 steps. [Student]'s verbal comprehension is very good and gives explicit details of the story. [Student] is stronger at these abilities when [Student] is reading aloud or being read to, and will need to continue to work towards applying these abilities to silent reading fluency. [Student] struggles to be able to share [Student's] thoughts in writing when answering comprehension questions. [Student] requires assistance to formulate [Student's] answers in complete sentences and including the details [Student] is able to give verbally.

When writing [Student] will sometimes misspell words. These words tend to be phonic skills that haven't [been] covered in the Wilson program (vowel team, diphthongs). [Student] will work with the Reading Specialist to spiral back through the Wilson levels [Student] has done to be sure [Student] has mastered these previously taught skills.

[Student] will benefit from continued practice and work in a structured reading discipline, such as Wilson reading program, to continue to make gains and consistently produce these results in [Student's] intervention times and work to generalize these skills to the classroom setting. [Student] will require continued interventions and accommodations to continue to independently apply these skills to the classroom setting.

CD-24 at 163, 25 at 185.

27. The Special Education Services grid was changed to include ESY summer services:

**Special Education Services**

Type of Service	Goal	Coordinator Title	Provider Title	Sessions Frequency	Time Per Session	Begin / End Dates	Location of Services	Medically Necessary
Phonics/Phonemic Awareness Specially Designed Instruction	1 , 2	Special Ed Teacher	Reading and Writing Specialist	2 times / wk	2 sessions / wk of 30 min	03/04/2024 03/03/2025	Special Education Setting	N
Reading - Specially Designed Instruction	1 , 2	Special Ed Teacher	Reading and Writing Specialist	2 times / wk	2 sessions / wk of 45 min	03/04/2024 06/17/2024	Special Education Setting	N
Reading - Specially Designed Instruction	1 , 2	Special Ed Teacher	Reading and Writing Specialist	3 times / wk	3 sessions / wk of 30 min	09/09/2024 03/03/2025	Special Education Setting	N

28. On February 26, 2024, Petitioning Parent emailed the Director, stating

The revisions to the Academic Needs section from the 1/29/24 draft to the latest sent on 2/23/24 were unnecessary and obscure the facts concerning [Student’s] academic performance. Nothing of value was added to create clarity or provide additional context. On the contrary, actual data on [Student’s] performance and contextualizing that against grade level expectations was removed. This is highly inappropriate and in line with feedback I previously provided when [Case Manager] removed such references from prior versions.

CD-26 at 208

- 29. In response, the Director responded, inter alia, “special education interventions for remediation do not directly correlate to grade level skills.” Id.; Petitioning Parent’s Testimony.
- 30. Non-Petitioning Parent provided full consent to this IEP on February 28, 2024. CD-24 at pg. 180.
- 31. Petitioning Parent provided partial consent to this IEP on February 29, 2024. CD-25 at pg. 200.
- 32. Petitioning Parent testified that details of the partial consent were provided via email, since Docusign did not allow for providing such detail with the signature. Petitioning Parent Testimony; CD-28 at 206.
- 33. Following receipt of Petitioning Parent’s partial consent, and in response to Petitioning Parent’s request for more data about Student’s grade level, the School District obtained additional information from Student’s classroom teacher and drafted potential alternate language for the present levels/academic needs section. CD-27, 28.
- 34. On March 11, 2024, this language was communicated to both parents via email. Id.
- 35. On that same day, Non-Petitioning Parent indicated agreement with these changes via email to the Director. CD-27 at pg. 211.

36. On March 15, 2024, Petitioning Parent responded that the “changes are unacceptable and unnecessary.” CD-28 at pg. 214.

37. On March 18, 2024, a representative from Wilson Language emailed the Assistant Director, confirming:

[T]he Wilson Reading System (WRS) Steps are not aligned to grade levels, it is also inaccurate to state the steps are correlated with age levels... The ultimate goal is that (eventually) the student will be able to read grade level text at **their grade level** at the 50<sup>th</sup>ile (or higher)... Progress monitoring with tools like DIBELS, AimsWeb, etc. is important because that is measuring WCPM<sup>2</sup> with grade level text based on the students’ grade level... Using the controlled text written for each WRS Step, identifying the associate [sic] grade level, then comparing WCPM to the norms for the associated grade level helps to establish a baseline and thus measure progress over time....”

S-39 (emphasis in original).

38. On March 18, 2024, following receipt of the email from Wilson Reading, the Assistant Director emailed the Director, with a suggestion of how to respond to Petitioning Parent to clarify that “the Wilson Reading Program in isolation is not sufficient to determine an overall grade level for reading...” However, the Assistant Director made no reference to the other parts of the Wilson email, such as the part about using Wilson in conjunction with other tools (not “in isolation”), such as AimsWeb, to monitor progress. S-40, S-41.

39. On March 19, 2024, the Director responded via email, offering another Team meeting to discuss, but also clarifying:

When there was an initial question regarding the 1/29/2024 present levels we spoke on the phone, and I explained that the statement comparing the Wilson program to grade level norms was an error. The Wilson Reading System is a criterion-referenced program and does not reference grade levels. Therefore, performance on the steps of the Wilson Reading Program in isolation is not sufficient to determine an overall grade level for reading, which is a multifaceted task that includes not only phonics applications at the word level, but comprehension as well. The team needed to revise this portion of the present levels as was discussed when the team met again on 2/20/2024. The revised language is included in the current IEP.”

Id.

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<sup>2</sup> Words Correct Per Minute

40. On March 20, 2024, Petitioning Parent responded via email, continuing to express disagreement with the revised present levels and attaching a screenshot from a Wilson program indicating that for that particular program for students in grades K-3, the levels typically correspond to a student's grade level. Id.
41. The Asst. Director testified that the screenshot provided by Petitioning Parent was for the Wilson Foundations program, which is a different program than the Wilson Reading program being used with Student. Asst. Director Testimony.
42. The Director testified that the reference to "grade level" performance in the January 29, 2024 IEP was in error, as the Wilson Reading program being used with Student does not correlate to grade level. Director Testimony.
43. There are no currently available evaluation results that state what the Student's grade level is in reading. Petitioning Parent Testimony; Director Testimony.
44. In Spring of 2023, when Student was in the 3<sup>rd</sup> grade, Student scored at a Level 1 in the 2023 State (SAS) testing, indicating that Student was "below proficient in applying the English language arts/literacy knowledge/skills." SD 58.
45. Between the fall 2023 and winter 2024 administrations of the AimsWeb evaluation tool, Student's Reading Composite score rose from the 34<sup>th</sup> to the 82<sup>nd</sup> percentile; Reading Comprehension rose from the 23<sup>rd</sup> to the 60<sup>th</sup> percentile; and Vocabulary rose from the 70<sup>th</sup> to the 82<sup>nd</sup> percentile. Silent Reading Fluency, which was deemed invalid "due to poor comprehension accuracy" in the fall, was at the 83<sup>rd</sup> percentile in the winter. Oral Reading Fluency showed a decline, falling from the 47<sup>th</sup> to the 40<sup>th</sup> percentile. The IEP notes that the winter 2024 administration was the first time Student took the AimsWeb with the accommodation of being in a separate setting, and there was speculation on the IEP that Student benefitted from being in a separate setting with no distractions. Although breaks were available if needed, no breaks were taken. CD-24 at 168; P-4.
46. The Classroom Teacher testified that Student receives significant support in the area of reading in the general classroom setting and the Student requires more teacher support than other fourth grade students. Teacher Testimony.
47. Student's preferred independent reading books are typically at the second or third grade reading level, or graphic novels at the fourth or fifth grade level, which have fewer words on each page. Teacher Testimony.
48. The Assistant Director testified that School District staff erred by including grade level references which were based on the Wilson Reading results in paragraphs two and three of the Academic Needs section of the 1/29/24 IEP. SD 39; ADSS Testimony.

49. The Case Manager, with input from the Reading Specialist, developed the “initial drafts of the [January 2024] IEP,” including the Academic Needs and Present Levels sections. The Case Manager did not draft the Present Levels in the February 23, 2024 IEP. Case Manager Testimony.
50. Even with the knowledge that Wilson Reading step levels do not correspond to grade levels, the Case Manager still believes that Student is reading at or above grade level. Case Manager Testimony.
51. Student’s IEP Reading Goal contained one objective, with a target date of January 2025, which the Student has already met as of March 28, 2024. Specifically, the objective was, “By January 2025 , after reading an unfamiliar passage at [Student’s] independent reading level, with adult support from a reading specialist, [Student] will independently fill out a graphic organizer and/or answer comprehension questions pertaining to the passage to include 7 or more complete details in writing accurately for 4 out of 5 times in 4 out of 5 opportunities. Progress will be monitored by the reading specialist using student word work and reported each trimester.” CD-29.
52. Student’s current report card shows that between the first and second trimesters of the 2023 – 2024 school year, Student’s overall Reading grade rose from B+ to A+. Likewise, Mathematics rose from A- to A, Social Studies rose from A- to A+, and Science remained at A+. Writing remained at B- for both semesters. S-60; P-7.
53. School District Exhibit 63 is a notarized statement from the Non-Petitioning Parent dated May 28, 2024. However, this statement does not state that it is an affidavit, nor was it signed under the pains and penalties of perjury. S-63.
54. Student’s Teacher provided contradictory testimony regarding grade-level reporting.
- On the one hand, when asked whether grade-level performance should be on an IEP, the Teacher said no, because it is “too wide of a concept to be included,” and that there are “so many pieces of each subject area like specifically in reading there are so many different areas comprehension, fluency, automaticity. There are so many different elements that I think using a balloon like grade level is just too general.”  
Teacher Testimony
- On the other hand, the Teacher maintains a chart describing the Student’s Summary of Classroom Progress. There are five rows within the chart, one row for each subject area (General Class, Language Arts, Reading, Math, Social Studies). There is a column titled “Overall Level of Performance.” This column describes the Student’s performance in each subject area – below level, on level, or above level. When asked what is meant by “level,” the Teacher stated that it is referring to the general 4<sup>th</sup> grade level where the Teacher would expect students to be. SD-45; Teacher Testimony.
55. Student’s next triennial evaluation is due by December 16, 2024. Case Manager Testimony.

56. When asked for an opinion about whether the Team has enough information to determine if Student is on grade level, the Director stated, “No... Because I think that the best way to triangulate all of this information is to have updated evaluations...” Director Testimony.
57. When asked whether there are any standardized tests available that could show the student’s grade level, the Director testified, “Standardized academic achievement tests typically do offer both age based and grade based norms, and so we could technically look at both of those.” Director Testimony. The two most popular tests used by the School District that show grade level equivalency information are the Kaufman Test of Educational Achievement 3<sup>rd</sup> Edition and the Wechsler Individual Achievement Test 4<sup>th</sup> Edition. Asst. Director Testimony.

### III. Guiding Law

1. N.H. R.S.A. § 186-C:16-b, III-a (Burden of Proof):

In all hearings the school district shall have the burden of proof, including the burden of persuasion and production, of the appropriateness of the child’s program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence.

2. 34 CFR § 300.320 – Definition of individualized education program

(a) [T]he term individualized education program or IEP means a written statement for each child with a disability... that must include –

(1) A statement of the child’s present levels of academic achievement and functional performance, including –

(i) How the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children)...

3. “Every IEP begins by describing a child’s present level of achievement, including explaining ‘how the child’s disability affects the child’s involvement and progress in the general education curriculum.’” Andrew F. v. Douglas Cnty. Sch. Dist., 137 S.Ct. 988, 1000 (2017) (quoting 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa)).
4. New Hampshire has a statewide education improvement and assessment program that, inter alia, “[d]efine[s] what students should know and be able to do... The assessment portion of the program shall consist of a variety of assessment tasks that measure academic standards and are objectively scored... At each grade level assessed, the standards and expectations identifying what a student should know and be able to do shall be the same for every New Hampshire student.” N.H. R.S.A. §

193-C:3; See, also <https://www.education.nh.gov/who-we-are/division-of-learner-support/bureau-of-instructional-support/state-model-competencies>

5. Students in grades 3 through 8 must be assessed annually utilizing either the statewide assessment, a locally developed assessment, or a standardized assessment “that identifies a pupil’s range of learning and yields objective data to use in improving instruction and learning.” N.H. R.S.A. § 193-C:6.
6. New Hampshire has adopted the Common Core standards. There are standards, by grade, for each content area, including English Language Arts and Reading. N.H. Ed 306.37; <https://www.education.nh.gov/who-we-are/division-of-learner-support/bureau-of-instructional-support/career-and-college-ready-standards>; <https://www.education.nh.gov/who-we-are/division-of-learner-support/bureau-of-instructional-support/state-model-competencies>

#### **IV. Rulings of Law**

1. This hearing concerns a dispute regarding the content of the Student’s Individualized Education *Program* (IEP). Therefore, pursuant to the “program or placement” requirement of RSA 186-C:16-b, III-a, the burden of proof resides with the school district.
2. None of the IEP’s submitted as exhibits in this hearing satisfy the IDEA requirement of including, “a statement of the child’s present levels of academic achievement and functional performance, including (i) How the child’s disability *affects the child’s involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children)*.” 34 CFR §300.320(a)(1) (emphasis added).
3. Wilson Step levels do not correspond to grade levels.
4. Since curriculum changes from grade to grade, the Wilson Step levels cannot be depended on to describe how the child’s disability *affects the child’s involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children)*.
5. The Present Levels section of the IEP needs to be amended to better meet the requirements of 34 CFR §300.320(a)(1).
6. Reporting on grade level equivalency, where such information is available, is one way to meet the requirements of 34 CFR §300.320(a)(1).
7. There are no current standardized special education evaluation results for Student that provide grade level equivalency information.
8. New Hampshire does have academic standards, by grade level, which apply to all students, both special education and non-special education. Furthermore, standardized special education evaluation tools are available for use which would

show the Student's grade level equivalency. Therefore, between existing state and/or district evaluation data, as well as data that can be obtained through additional standardized special education testing, the Team has, or can readily obtain, sufficient information to better describe the Student's present levels of academic achievement and functional performance, including how the Student's disability affects the Student's involvement and progress in the general education curriculum.

9. The School District has not met its burden of proving that grade-level equivalency information should not be included in the present levels section of the Student's IEP.

## **V. Discussion**

Although the School District is not the prevailing party in this case, and although the School District admittedly erred in its use of the Wilson data in the January 2024 IEP, the School District is to be praised for its patience and professionalism as it has attempted to work through a very difficult situation with both parents, who are divorced and appear to have a very contentious relationship with each other. The School District has had to conduct twice the number of Team meetings as it normally does, has had to communicate separately with each parent while ensuring that each parent remains well-informed, and has had to try to figure out how to bridge the differences between the two parents so that the Student can be properly educated. However, by trying to appease both parents, the wording in the Present Levels section of the IEP has been watered down to the point that it does not satisfy the requirements of 34 CFR §300.320(a)(1).

The January 2024 IEP did have grade level equivalency information, which, if correct, would likely satisfy the requirements of 34 CFR §300.320(a)(1). However, that grade level information was not correct. It was based on bad information – the non-existent relationship between Wilson Step and grade levels. With the grade level information removed, the Present Levels section of the IEP now just lists Wilson Step data, but that does not help to explain “[h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children).” The same is true for the remainder of the wording in the current Present Levels section – it does not provide the information required by 34 CFR §300.320(a)(1).

There appears to be conflicting testimony and exhibits regarding the Student's current reading levels. On the one hand, the Student is getting excellent report card grades, including an A+ in Reading. The AimsWeb scores are very good, and have shown significant improvement in one year, including showing a Reading Composite score that has gone from the 34<sup>th</sup> to the 82<sup>nd</sup> percentile. The Student's reading improvement has been so dramatic that at least some School District staff have been considering taking steps to move the Student off of an IEP altogether.<sup>3</sup> On the other

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<sup>3</sup> I am not suggesting that IEP removal is appropriate. I am simply pointing out that the Student's reading growth has impressed some within the School District.



hand, the Teacher testified that the Student requires significant adult support, and the high report card grade might be due to the level of adult support the Student is receiving. Also, the significant growth shown in reading has occurred only recently, so there is a possibility that it might prove transitory, especially if services are still required but removed. The content and status of the IEP – other than the issue being decided in this hearing – is a Team decision, and beyond the scope of this hearing.

Since the current Present Levels section of the IEP does not sufficiently describe how the Student’s disability affects the Student’s involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children), that section must be amended. Adding grade level equivalency, if available, is one way to satisfy the requirements of §300.320. There might be other ways to amend the Present Levels to satisfy the requirements of §300.320, but none were presented at hearing. Therefore, the short answer to the question raised by the issue of this hearing – whether the Present Levels of Performance section of the Student’s IEP should be amended to include grade level performance information – is “yes.”

Finally, I take administrative notice of New Hampshire’s adoption of the Common Core standards and the required annual assessments (RSA 193-C:3, RSA 193-C:6, Ed. 306.37). Both special and regular education students take the same assessments, so the Student’s annual assessment results might provide useful information to help the Team amend the Present Levels section of the IEP. However, the annual assessment is not a special education evaluation, so this is just one piece of information that should be considered along with other information, such as, but not limited to, the results of the triennial evaluation, the AimsWeb results, and classroom data. Since the annual assessment results were not discussed at hearing, I leave the final decision of how much weight to put on those results to the wisdom of the IEP Team.

## **VI. Order**

1. The Student’s next triennial evaluation shall be accelerated and occur forthwith;
2. The triennial evaluation shall utilize standardized special education evaluation tools that allow for determination of grade level equivalency;
3. Once the triennial results are available, the Present Levels section of the Student’s IEP must be amended to include grade level equivalency information based on the triennial results, as well as other relevant, available information.

## **VII. Proposed Findings of Fact and Rulings of Law**

1. Parent's Proposed Findings of Fact (attached to this decision)
  - A. Granted: None.
  - B. Denied: 13 (there was one Proposed Finding of Fact in the Petitioner's Post Hearing Submission, appearing as paragraph 13).
2. School district's Proposed Findings of Fact (attached to this decision)
  - A. Granted: 1 – 2, 4 – 16, 18 – 20, 22 – 23, 28 – 35, 38 – 42, 45 – 46, 49 – 50, 52 – 53, 55, 57 – 61.
  - B. Denied: 3, 17, 21, 24 – 27, 36 – 37, 43 – 44, 47 – 48, 51, 54, 56, 62.
3. Parent's Proposed Rulings of Law
  - A. Granted: None.
  - B. Denied: 14 (there was one Proposed Ruling of Law in the Petitioner's Post Hearing Submission, appearing as paragraph 14).
4. School District's Proposed Rulings of Law (they started with number 63) (attached to this decision)
  - A. Granted: 63, 65, 66 (true statement but incorrect CFR citation), 69, 71, 73 – 75, 77
  - B. Denied: 64, 67 – 68, 70, 72, 76, 78 – 81.

## **VIII. Appeal and Post-Hearing Enforcement**

Any party aggrieved by this decision may appeal to a court of appropriate jurisdiction as noted in state and federal laws, including RSA 186-C:16-b(IV), Ed 1123.20, 20 USC § 1415(i); 34 CFR § 300.516.

This due process decision shall be implemented by the school district and monitored and enforced by the Department of Education pursuant to Ed 1123.22 and Ed 1125.

So ordered.

/s/ James Baron, Hearing Officer

June 28, 2024