

STATE OF NEW HAMPSHIRE
STATE DEPARTMENT OF EDUCATION

██████████ School District

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

PARENT/GUARDIAN PROPOSED FINDINGS OF FACT

It is undisputed that Student did not receive IEP services from the District in the '22 – '23 School Year.

1. Student was on a “stay put” IEP from the 2020 – 2021 school year, that specified the following services still due in the '22 – '23 school year: 4X weekly writing services for 45 minutes; 1x daily executive function service for 15 minutes, all to be provided by special educator; 45 minutes daily executive function service to be provided by paraprofessional, social skills 30 minutes per week and transitional self-advocacy 30 minutes per week to be provided by a counselor; 4X quarterly consult to the IEP team by special educator. P_SD Core Exhibits at 23-41.
2. Parent documentary evidence and testimony indicate that Parent reached out to the Charter School inquiring about a schedule for Student in August, 2022. Parent Supplemental Ex. 14-18.
3. Documentary evidence indicates that Dean of Charter School followed up to ask whether Parent had a schedule of services. Parent responded indicating that no schedule but only a generic welcome email had been provided. SD Exhibit 96. Testimony of Dean of Charter School indicated that if no document was produced in discovery showing that Parent received a schedule of IEP services, it could be assumed that no email or other document existed having been sent to Parent. Testimony of Dean of Charter School on cross-examination.
4. Parent testified that Parent never received a schedule of services and did not know that services were available at the School until IEP meeting in May, 2023. Testimony of Parent.
5. Special Educator testified to not having provided a schedule of services, indicating instead that the schedule was in the “portal.”

6. Dean of Charter School testified that at the time Parent was seeking schedule by emails at start of school year, special education services may not have been in the portal. Testimony of Dean of Charter School regarding SD Exhibit 262.
7. Documentary evidence established that Parent maintained that Student needed only to present Senior Project and earn a virtual probability and statistics credit to graduate, thereby providing clarity early in Fall 2022 that Student would not be at Charter School regularly for any classes.
8. Dean of Charter School in testimony indicated that at some point in time it was agreed that Student would be attending Charter School solely for very limited times to complete Senior Project, with additional probability and statistics course required for graduation to be completed through [REDACTED].
9. Parent email in October, 2022 confirms that Parent believed that no IEP services were available at the Charter School stating, “you have no paras and no special education teacher. . . .” SD Exhibit at 171 No direct response to Parent, in the form of a schedule of services or a denial of Parent’s explicitly stated understanding that there were no available IEP services was produced in discovery materials or elicited in testimony.
10. LEA Representative testified on cross-examination to not being aware of any IEP meeting in which Parent was presented a schedule of IEP services.
11. Special Educator testified on cross-examination that Special Educator sat each day through the service delivery time for Student but that **AT NO TIME** blocked for services for Student, when Student did not show up day after day from 11:25-12:25, did Special Educator reach out to Parent by email or by mail or by phone to inquire about whether Parent was aware of the schedule of IEP services or intended to bring Student for services on that schedule. School District Exhibit 56 (schedule of spec. educator) and Cross Examination Testimony of Special Educator.
12. LEA Representative testified that IEP services were available “throughout ’22 – ’23 school year at the Charter School.” Testimony of LEA Representative on direct examination.
13. LEA Representative testified on direct examination that Student’s case had been at the “top of day to day to do list” almost every day. Testimony of LEA Representative on direct examination.

14. Notes written by LEA representative in May 2023 IEP meeting indicate that LEA Representative believed services were available all year and conveyed that to Parent in May 2023 IEP meeting. P_SD Core Exhibit 554.
15. Testimony of LEA Representative and notes from May IEP meeting from LEA Representative regarding the availability of Special Education services all year was undermined by testimony of Dean of Charter School and Special Educator. Both confirmed that Special Educator left for maternity leave in October, 2022. No replacement was available and the Charter School's intention elicited in testimony was to offer compensatory education to families, including Student presumably, once the Special Educator returned.
16. Special Educator confirmed in testimony, in response to Hearing Officer questioning, that NO compensatory education for special educator provided services was ever offered/scheduled for Student or **any other students**.
17. Testimony of Dean of Charter School and Special Educator provided no clarity as to who was supervising paraprofessionals during 8-12 week maternity leave. Special Educator testimony hinted at a presumption that Dean of Charter School could supervise or was supervising paraprofessionals. This was not confirmed, or even implied, by Dean of Charter School in testimony. Testimony of Dean of Charter School on cross examination, Testimony of Special Educator on cross examination.
18. Student was not receiving services of school counselor and District was never billed for services of School Counselor for Student, even when Student attended in June briefly, despite services being in stay-put IEP. SD Exhibit at 356, P_SD Core Exhibits at 626-627, 545, 534, 497, 468, 443, 429, 424, 395.
19. Student had not previously received School Counselor services as no school counselor was available for services to Student in 2021-2022 school year. P_SD Core Exhibits at 74; Parent indicated in email in October, 2022 that counselor did not meet with Student for the year. Parent Supplemental Exhibits at 18.
20. Parent brought Student for services in early June, 2023, after the IEP meeting in May 2023 during which Parent was told services were available. Email documentary evidence indicates Student was in attendance in June, 2023 but that Parent had concerns about provision of services. SD Exhibits at 265, 278, 281.

21. Special Educator testified regarding nature of services provided in June, 2023 that Student did not want to do writing and Special Educator testified, “I couldn’t force him to write if he didn’t want to write.” Testimony of Special Educator.
22. Special Educator testified that services in June, 2023 across a handful of days focused on ██████ assignments being completed in furtherance of executive function goals. Testimony of Special Educator.
23. Special Educator testified to NOT actually seeing assignments that Student was reporting turning in and did not verify that Student turned in ██████ assignments, indicating that Student “did not like” showing computer screen. Testimony of Special Educator on cross examination.
24. Special Educator testified that it was possible to check with guidance counselor on how many ██████ assignments were turned in/remained outstanding; however, Special Educator testified to not recalling doing that check-in and not being aware of how many assignments were being turned in, despite goals of “completing assignments” as a part of IEP executive functioning goal for which Special Educator was responsible for services. Testimony of Special Educator on cross examination.
25. Special Educator had been explicitly asked by LEA Representative to “keep an eye on those stat assignments.” SD 260. LEA Representative emailed, copying Dean of Charter School, to indicate that no ██████ assignments had been completed in June, 2023. SD 291.
26. Dean of Charter School remained aware through Summer 2023 that no/minimal ██████ assignments were being completed. SD 298.
27. Parent asked about compensatory services. SD 265.
28. Dean of Charter School provided a schedule for a week in June that provided no guidance counselor services when ██████ was in. SD 266.
29. LEA Representative confirmed in testimony having responsibility for oversight of provision of IEP services to Student, by way of explaining communication with Dean of Charter School regarding Student’s attendance in School and IEP meeting notes confirm LEA Representative’s understanding of responsibility for IEP service provision and knowledge that Student was not in School daily. P_SD Core Exhibits 401-404.

30. Parent hired outside providers throughout the 2022 – 2023 school year in the person of a BCBA to work on Student’s work avoidance/executive functioning and a Speech Language Pathologist with Orton Gillingham reading/writing certifications to work on communications including Senior Project communication of presentation.
Testimony of Outside BCBA; Testimony of Outside SLP.

It is undisputed that Parent was not offered a proposed IEP to sign for the '22 – '23 school year until March of 2023 and that Parent was not offered Extended School Year services for Summer 2023 that related to Student’s coursework and needed support for graduation.

31. After the stay put IEP expired in June, 2021, Parent was not offered a proposed IEP to accept (or to which Parent could otherwise respond) until March of 2023, almost two years later. P_SD Core Exhibit at 502.
32. Parent responded to the March 2023 IEP in April of 2023, within time period specified for acceptance or rejection. SD Exhibits at 237.
33. The March 2023 IEP presented for acceptance or rejection dropped the writing goal and writing services. P_SD Core Exhibits at 502-513.
34. Parent had emphasized via direct feedback written on the IEP draft itself, after a draft was presented in May, 2022, that the writing goal was important via several notations regarding writing on the IEP draft. Parent had also given direct feedback on social skills, transitional self-advocacy and executive functioning, all written on IEP draft. P_SD Core Exhibits at 283-299, SD Exhibits at 148.
35. Parent expressed frustration at endless meetings and IEPs “still in development” on more than one occasion. SD Exhibits at 127, 195, 239.
36. Parent expressed that Parent was not happy with the manner of provision of services in the '21 – '22 school year and felt ignored. SD Exhibits at 128.
37. Parent testified to patterns that had developed with Student wherein Parent consistently was notified of a number of missing assignments near the end of a semester and asked to ensure that student completed assignments. Documentary evidence shows this pattern. SD Exhibits at 80 and 154.
38. Parent testified that Parent believed Student had learned a pattern of not turning in assignments without consequences. Parent testimony.

39. Student testified to frequently not turning in any assignments or turning in blank assignments without knowledge of IEP service providers who were not checking to avoid this. Student testimony.
40. Parent had continuously been expressing concerns about Student's services designed to address executive function and completion of assignments since at least the exceptions provided in June, 2020 to the stay put IEP. P_SD Core Exhibits at 41.
41. Notes of LEA Representative in Fall 2022 indicated that the IEP in drafting mode would include a writing goal and that the writing goal could be worked on through the Senior Project platform. P_SD Core Exhibits at 402-403.
42. Evaluation by Hartmann in 2019 indicated strong need for writing goals, specifically noting "significant difficulties in writing" and that Student "needed to continue to receive direct instruction in a research based writing program." The report made numerous other recommendations regarding writing services and accommodations. P_SD Core Exhibits at 457 and 451.
43. A neuropsychological evaluation conducted in December, 2021 also indicated significant needs in writing. The evaluation noted that "Student required continued daily writing instruction with a special education teacher that is explicit and incremental. . ." and recommended an explicit writing program, "Empower." P_SC Core Exhibits at 91.
44. LEA Representative testified that the evaluations noted above and other evidence were used to eliminate a writing goal in the IEP proposed in Spring, 2023; however, on cross-examination LEA Representative could not identify the other evidence. Testimony of LEA Representative on cross examination.
45. LEA Representative could not identify any progress reports from the '21 - '22 school year or later. Testimony of LEA Representative on cross examination.
46. In May, 2023, another IEP was proposed that re-introduced a writing goal and writing services but that did not provide any services for ESY in executive functioning or math to support [REDACTED] probability and statistics class completion. ESY services were only for writing, the newly replaced goal. P_SD Core Exhibits at 614.

Balance of equities provides no support for payments made to providers not offering services and testimony of witnesses shows Student can benefit from services.

47. SLP Provider indicated that Student needed significant provision of services to learn to write at grade level. SLP Provider saw no evidence that appropriate writing structures had been introduced to Student previously. Testimony of Outside SLP.
48. BCBA testified that Student could produce work if working in person 1:1 and required by service provider to complete and submit assignments. BCBA recommended continued development of this skill. Testimony of Outside BCBA.

Accommodations for disability offered from the University were not tailored to Student as might have been achieved with reference to Statement of Performance. LEA Representative should have obtained relevant information by way of progress reports or other provider interviews.

49. University accommodations plan did not include services and recommendations contained in various evaluations and known to providers of services to Student, including recommendations for speech to text for writing, 1:1 direct support and instruction (providing instead online writing class in schedule) and 1:1 direct support for executive function tasks of checking for, initiating and submitting assignments, rather than virtual meetings. See SD Supp A 86-87, SD Supp A 85.
50. Template Statement of Performance specifically addressed numerous areas of Student's deficits. Parent Supplemental Exhibits at 30-44; testimony of Parent on direct examination with regard to areas of Statement of Performance relevant to Student.
51. Student asked for tutoring and executive functioning support. SD Supp A 53.
52. Student failed to succeed at university in large part because Student failed to turn in assignments, including those assignments involving significant writing. Parent Supplemental Exhibits at 21 – 33.
53. District failed to heed Parent request for consistent schedule of progress reports, which Parent explicitly asked that District LEA receive. P_SD Core Exhibits at 64, #3 as delineated by Parent. Nowhere in thousands of pages of documents were there any progress reports from '21 – '22 school year or later. Further, LEA Representative

testified to having no basis to provide any statement of the student's performance.
Testimony of LEA Representative on direct examination.

Submitted by:

/s/ Kristen Mansharamani

Kristen Mansharamani, Advocate for Special Education

On behalf of Parent

Certificate of Service

I certify that on today's date, I served a copy of this Post hearing briefing by electronic mail to attorney for the District, simultaneously with filing.

/s/ Kristen Mansharamani

November 18, 2024

Kristen Mansharamani

Date