

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

Student/ [REDACTED] School District

IDPH-FY-24-09-007

DUE PROCESS DECISION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This due process proceeding was initiated by the parents on September 14, 2023. The prehearing conference was held October 31, 2023 and the hearing scheduled for two days on November 28 and 29, 2023.

Prehearing motions and requests were filed. The prehearing motions were addressed in written orders.

There were four issues for due process raised in the Parents' request and set forth in the prehearing conference report.

1. Did [REDACTED] fail to appropriately evaluate [REDACTED] in all areas of suspected disability?

Did [REDACTED]'s January 2023 IEP and placement offer for [REDACTED] fail to provide [REDACTED] with a free appropriate public education, either for procedural (failing to appropriately evaluate as identified above in paragraph 1) or substantive reasons?

2. Are [REDACTED] parents entitled to reimbursement for the costs associated with their independent evaluation and/or the tutorial services they purchased for [REDACTED] through Learning during the summer of 2023?
3. Is [REDACTED] entitled to further remedy for the violation of [REDACTED] right to a FAPE in the form of amendments to [REDACTED] IEP and/or future compensatory services?

II. FACTS

[REDACTED] is a nearly [REDACTED]-year old student in the [REDACTED] School District (" [REDACTED] " or the "District"). Born in [REDACTED], [REDACTED] attended school in the [REDACTED] through second grade. During kindergarten (2019-2020) [REDACTED] qualified for special education and related services in the category of Specific Learning Disability in reading, written expression, and math. [REDACTED] was assigned to [REDACTED]

the [redacted] School since kindergarten. [redacted] and [redacted] adopted [redacted] in 2018, when [redacted] was [redacted] years old along with [redacted]. In 2022, the family moved to [redacted], New Hampshire.

[redacted] medical history includes drug exposure in utero, born 6 weeks premature, Attention-Deficit/Hyperactivity Disorder “ADHD” with Combined Presentation and significant speech sound disorder with apraxia of speech. District’s Core Exhibits 121.

[redacted] struggled in [redacted] placement at the [redacted] School and in May of 2022, near the end of second grade, [redacted] parents referred [redacted] for a psychoeducational evaluation by [redacted], PhD. The psychological Evaluation Report notes that [redacted] “has not met the standards in any area of academic learning during the 2021-2022 school year.” District’s Core Exhibits 34.

As part of this testing Dr. [redacted] administered the Woodcock Johnson Fourth Edition Tests of Achievement. On this assessment [redacted] received very low scores in reading. Based on [redacted] low scores Dr. [redacted] diagnosed [redacted] with a severe impairment in reading (dyslexia). Due to the nature of [redacted] dyslexia Dr. [redacted] specifically recommended the [redacted] program for [redacted].

There was testimony that during the 2022 summer [redacted] was enrolled in a summer program with the [redacted] of four daily hours of 1:1 instruction in the foundations of reading.

The [redacted] School District IEP was shared with the District when [redacted] family moved to [redacted]. District’s Core Exhibits 5.

Based on the evidence and testimony, the District performed a Speech and Language file review, file review of Neuropsychological Record, file review of academic records and occupational therapy review in proposing a draft IEP for [redacted] dated December 12, 2022.

On October 24, 2022 the District performed an “i-Ready” math and reading assessment at school. [redacted] math score was 396 and fell in the “Needs Improvement” rating considering the scores at [redacted] grade-level ranged from 449 to 516. Of the four domains of the assessment all were marked “Needs Improvement.” Similarly, [redacted] i-Ready reading score was a 453 marked as “Needs Improvement” as scores at [redacted] grade level ranged from 511 to 602. There were six domains covered by the reading assessment and [redacted] scored in the “Needs Improvement” range in all but one domain.

As a result of the testing performed during the first quarter [redacted] parents sent the District a statement on December 9, 2022 emphasizing the need for the [redacted]

programming as previously recommended by Dr. [REDACTED] and shown effective during the period of three months in the summer of 2022.

In January 2023, the District offered [REDACTED] an IEP that was accepted by the Parents. There was a written note expressing concern that the services being offered may not be intensive enough for [REDACTED] to make meaningful progress.

[REDACTED] took the i-Ready math and reading assessments again in January 2023. While [REDACTED] raw scores on the assessments improved by a few points, [REDACTED] percentile rankings decreased, increasing the gap, and [REDACTED] remained in the "Needs Improvement" range on both assessments.

Based on the test results the [REDACTED] believed that the District had failed to conduct a proper evaluation of [REDACTED] needs. In March 2023, the [REDACTED] sent [REDACTED] for individual evaluation by [REDACTED], M.S. Ed., a special education consultant who specializes in disabilities related to reading, writing, and math.

As part of [REDACTED] evaluation, [REDACTED] administered the Feifer Assessment of Reading ("FAR") and the Feifer Assessment of Mathematics ("FAM"). The results of the FAR scores were found to be consistent with dyslexia and generally agreed with the recommendations from Dr. [REDACTED] done in May 2022.

On May 1, 2023 [REDACTED] shared [REDACTED]'s evaluation report with special education teacher [REDACTED]. [REDACTED] attended the following IEP team meeting in May. After the meeting [REDACTED] testified there were no changes made to [REDACTED] IEP.

The District proposed an amended IEP for [REDACTED], which included extended school year services. On May 23, 2023, [REDACTED] wrote to [REDACTED], [REDACTED]'s Director of Student Services, attaching [REDACTED] response to the District's proposed IEP. [REDACTED] indicated that [REDACTED] would only partially consent to the proposed IEP as it provided insufficient hours and delivery. In that same email to [REDACTED] attached a letter announcing the family's intention to place [REDACTED] unilaterally at [REDACTED] for the summer.

In response to the parents' unilateral placement letter [REDACTED]'s superintendent, [REDACTED], wrote on June 5, 2023 and asked [REDACTED] to reconsider sending [REDACTED] to the District's summer program.

[REDACTED] attended the summer program at [REDACTED] at [REDACTED] parents' expense, attending over 100 hours of instruction in reading.

### III. DISCUSSION

**Did [REDACTED] fail to appropriately evaluate [REDACTED] in all areas of suspected disability?**

For the reasons stated in the District's Posthearing Reply Memorandum paragraph III The Evaluation Issue District (page 9) the District was not under an obligation to perform evaluations and the IEP team, including the parents, further agreed to a file review. Based on the evidence and testimony presented by all the witnesses the IEP team had all of the necessary evaluations to properly identify and create an IEP appropriate for [REDACTED].

**Did [REDACTED]'s January 2023 IEP and placement offer for [REDACTED] fail to provide [REDACTED] with a free appropriate public education, either for procedural (failing to appropriately evaluate as identified above in paragraph 1) or substantive reasons?**

The District failed to prove based on a preponderance of the evidence that the IEP created for [REDACTED] was appropriate based on [REDACTED] identified needs in the areas of language and mathematics.

A review of the record shows that the [REDACTED] IEP states that "requires all of [REDACTED] instruction, including [speech-language] services and Rules-Based Reading outside of the general education classroom setting in order to make academic progress." [13] Before [REDACTED] left [REDACTED], [REDACTED] participated in Fall 2022 NWEA MAP testing, earning scores at the 8<sup>th</sup> percentile in math [110; P-34].

The [REDACTED] District initial schedule provided only for at most 2 hours per day of direct instruction with the special education teacher, [REDACTED], for a total of 9.5 hours per week, less than half the hours of specialized services called for in the [REDACTED] IEP. District Core Exhibit 115. This initial schedule prepared by [REDACTED] District uses the same evaluations and information available to the [REDACTED] School District, a team that had worked with [REDACTED] for years.

The January 2023 proposed IEP provided 7 hours per week of pull-out specialized instruction in reading (fourteen 30-minute sessions), 2.5 hours per week in pull-out specialized math instruction, and no pull-out specially designed instruction in written language. It offered some additional services in the regular education classroom for written expression, taught by the classroom general education teacher for 2.5 hours per week, and for mathematics for the same amount of time "taught by the Math Intervention Specialist as a small "in the mainstream classroom. District Core Exhibits 197-219.

Both parties presented numerous test results to show support for their positions on levels of progress. The hearing officer found, after a careful review of the various test scores and witness testimony, that the progress the District claims is a result of the [REDACTED].

IEP offered included significant intensive [REDACTED] intervention. Therefore, it makes it difficult to credit the District's IEP with the growth and there was evidence that during the period of the 2022-2023 school year, when [REDACTED] was not receiving intensive instruction, that [REDACTED] regressed from previous growth gained during the summer 2022. Additionally, there was concern raised by the parents over how the May i-Ready report was administered by the District that showed progress.

For these reasons the hearing officer finds that the District failed to provide FAPE for substantive reasons.

**Are [REDACTED] parents entitled to reimbursement for the costs associated with their independent evaluation and/or the tutorial services they purchased for her through [REDACTED] Learning during the summer of 2023?**

For the reasons stated above the parents are not entitled to reimbursement for the evaluation. The parents are entitled to reimbursement for summer tutoring given the deficiencies in the programming offered by the District.

**Is [REDACTED] entitled to further remedy for the violation of [REDACTED] right to a FAPE in the form of amendments to [REDACTED] IEP and/or future compensatory services?**

Yes, The IEP team needs to reconvene and based on the abundant information available to the team prepare an IEP that meets the specific needs of [REDACTED]. The IEP team shall also make a determination about what compensatory services are required at this time based on the District's failure to provide FAPE under the January 2023 IEP in both written language and math.

#### IV. FINDINGS OF FACT AND RULINGS OF LAW

Both parties have submitted proposed findings of fact and rulings of law. Both parties' submissions have been carefully considered, and portions of those submissions have been incorporated into this Due Process Decision. To the extent that proposed findings and rulings are inconsistent with this Decision, they should be deemed denied.

#### V. DECISION

In this case, the record supports the following conclusions relative to the issues for due process: a) There is insufficient basis upon which to find that the District did not conduct appropriate evaluations b) There is sufficient basis to find that the District failed to develop an appropriate IEP and failed to implement an appropriate IEP for

c) Parents' shall be reimbursed for their Learning expenses incurred during the summer of 2023; (d) Parents' shall not be reimbursed for their independent evaluation costs, (e) [REDACTED] shall amend IEP goals and objectives in the manner described above to include the recommendations of the [REDACTED] and [REDACTED] reports; and (f) The IEP team shall also make a determination about what compensatory services are required based on the District's failure to provide FAPE in both written language and math.

So ordered.

Date: January 5, 2024

/S/ Briana Coakley

Briana Coakley, Hearing Officer

**Appeal Rights**

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, Ed 1123.20, 20 USC § 1415(i); 34 CFR § 300.516