

# New Hampshire Department of Education

## Student/ School District

IDPH FY 24-11-019

### Introduction

This case involves transition services, reimbursement for unilateral placement, and compensatory education services.

### Findings of Fact

1. The student has severely low executive functioning and social pragmatic skills that impact numerous areas, including their ability to complete basic daily living activities such as personal hygiene, cleaning their room, preparing meals, social interactions with others, and obtaining and maintaining employment.
2. The student also has other social/emotional issues, including anxiety and depression.
3. The student's IEP team agreed to place the student in an out-of-district residential school in ██████████ for the 2020/2021 and 2021-2022 school years.
4. While attending the residential school, the student participated in a graduation ceremony and received a certificate, not a diploma, from the school in June 2022.
5. In June 2022, the student's IEP team agreed to provide the student with one additional year of services at a separate transition program that was part of the same ██████████ residential school the student attended during the 2020/2021 and 2021/2022 school years. SD Exh. A178 – 180.
6. The written prior notice states, "upon collecting and reviewing [the student's] data and need for additional support around activities of daily living the district is proposing one additional year for transitions services...." SD Exh. A 185.
7. The school district also agreed that the student would not receive their diploma until they completed their transition year. SD Exh. A 180.
8. The student's 2022/2023 IEP team added emotional disturbance to the student's eligibility classifications, which included OHI and specific learning disability. SD Exh A 188, 194, 211.
9. The transition program focused on developing daily living skills for independent living and addressing social pragmatic skills and emotional issues, including anxiety. The student's IEP team amended the student's IEP to address these issues.

10. In April 2023, the school district became aware that the parents were unhappy with the student's progress in the transition program.
11. Transition program staff testified that the student's lack of progress became evident in the Spring of 2023, and the student had become resistant to staff support and disengaged from the program.
12. While the progress reports from the transition program state that the student made satisfactory progress until the last term, the evidence presented during the hearing process established that overall the student made minimal progress at the transition school program, regressed in some areas, and still requires transition services.
13. During April 2023, transition program staff acknowledged to the parents that their program was not working for the student despite their continued efforts and met with the parents to discuss other placements that would be appropriate for the student. P Exh. 039, 048, 049.
14. The school district held a progress meeting with transition program staff on April 11, 2023, to discuss the student's progress.
15. On April 20, 2023, the school district proposed that the student continue with essentially the same IEP at the transition program until August 11, 2023, and then be awarded their diploma and discharged from special education services. The parents disagreed and later rejected the proposal.
16. At a June 9, 2023, IEP team meeting, transition program staff stated that the student had plateaued and regressed at their program, was no longer progressing on IEP goals, and could not live independently "at the point [they were] at now." SD Exh. A 315-316. Transition program staff stated that its program was no longer an appropriate placement for the student and recommended a change in placement. SD Exh. 0 094.
17. At the June 9, 2023, IEP meeting, the team discussed continuing services for another year (2023/2024) because of the student's experience at the [REDACTED] transition program. The parents wanted to explore other out-of-district options and said that they did not intend for the student to return home because of the lack of independent living skills, and it would be isolating for the student since they had no peers in the area. SD Exh. A 315-16.
18. The school district IEP team members wanted services to be community-based through school district vendors or at a day program because they believed that the student's needs were not severe enough to require a residential placement, and a community-based program could address the student's needs and increase community connections. SD Exh. A 315-16, 325.
19. Notes from the June 9, 2023 meeting state that "any proposal would involve [the student] returning to the home and community-based/day programming." SD Exh. A 317.
20. The IEP team agreed to a follow-up meeting in August where the parents believed the team would provide a specific proposal for the community-based or day program.

21. Shortly after the June 9, 2023, meeting, the school district issued a written prior notice agreeing to provide transition services to address independent living skills for 2023/2024 in a community-based/day program. SD Exh. A 325.
22. The parents investigated out-of-district residential options between the June and August meetings and focused on [REDACTED] residential program. The parents took the following steps toward enrolling the student in this program before the August IEP team meeting:
  - a. On June 28, 2023, they filled out an application for the [REDACTED] residential program.
  - b. On June 30, 2023, they flew to [REDACTED] with the student to tour the program.
  - c. On July 6, 2023, the [REDACTED] residential program accepted the student.
  - d. On July 30, 2023, the parents purchased round-trip tickets for themselves to [REDACTED] again and a one-way ticket for the student.
  - e. On July 31, 2023, the student's advisor at the [REDACTED] transition program the student was still attending emailed the parents stating that the student had "begrudgingly accepted the program and is willing to give it a try," SD Exh. B 002. The email asked for the program's name so the student could learn more about it. The parent responded stating that the program was the [REDACTED] residential program.
  - f. On August 4, 2023, the parents approved a proposed service plan from the [REDACTED] residential program.
  - g. On August 7, 2023, the [REDACTED] residential program's admission director sent the parents an email stating that they were "delighted that [the student] will be joining [the program] on August 21st!" SD Exh. L 36. The email directed the parents to review and sign an enrollment agreement and provide a non-refundable deposit.
23. The parents did not sign the enrollment agreement and agree to pay tuition until August 17th, after the August 9th IEP team meeting. P Exh. 88, 90.
24. The parents had previously talked to the school district about the student attending this [REDACTED] residential program back in June 2022. At that time, the school district stated that they could not place the student in the program because it was not approved for special education by the State of [REDACTED].
25. The school district states that its efforts to develop and propose a specific community-based proposal for the August 9th meeting were hindered by the parent's statement that the student would not be living at home and not knowing where the student would be living. SD Exh. A 315-317.
26. The IEP team met on August 9, 2023. The parents told the school district that the student returning home "was not an option" at the time because of the student's needs and the

parent's travel and work schedules. The parents stated that "managing [the student] is a full-time job." SD Exh C 006-007.

27. School district team members provided some information about community-based services at the August 9, 2023 meeting, but did not provide details or a specific program. The school district team members proposed that the student stay at the current [REDACTED] transition program until their 21<sup>st</sup> birthday in January 2024, even though the [REDACTED] transition program had expressly stated at the June team meeting that it was no longer an appropriate placement for the student and recommended a change in placement. SD Exh. 0 094.
28. At the August 9, 2023, team meeting, the parent informed the team that they were unilaterally placing the student in the [REDACTED] residential program.
29. The parents testified that the [REDACTED] residential program was their plan B in case the school district did not provide them with a specific community-based program at the August 9, 2023, meeting. When the school did not, they exercised that option.
30. The student's time at the [REDACTED] transition program ended on August 11. The student began attending the [REDACTED] residential program on August 21<sup>st</sup>.
31. In contrast to the [REDACTED] transition program, the student is making significant progress at the [REDACTED] residential program because of its structure and accountability.
32. The student has progressed in social skills, vocational/employment skills, and other basic daily living skills, such as planning and preparing healthy meals, personal hygiene, keeping a clean living environment, and managing money.
33. The parents testified that they have seen significant improvement in the student's social and emotional behavior in the six months the student has attended the [REDACTED] residential program.
34. The student has three unpaid internships as part of the [REDACTED] residential program, which has helped them stay on task and develop independent living and employment skills.
35. On October 17, 2023, the student's IEP team met, and the school district presented the parents with the student's diploma and said the student was being discharged from special education services.
36. The school district states that the student acquired 117 credits, and only 80 credits are required for a diploma.
37. The parents paid the [REDACTED] residential program \$56,108 from August 2023 to February 2024.
38. The student is a New Hampshire resident who is temporarily absent from the state attending school.

## Rulings of Law

1. Under 186-C:16-b III-a, the school district has the burden to prove that it provided the student with FAPE during the 2022/2023 school year.
2. The school district did not meet its burden to prove that it provided the student with FAPE during the 2022/2023 school year.
3. The services provided by the [REDACTED] transition program in 2022/2023 did not provide the student with FAPE.
4. The student did not make sufficient progress in the [REDACTED] transition program in 2022/2023.
5. Under 186-C:16-b III-a, the school district has the burden to prove that it offered or made FAPE available to the student for the 2023/2024 school year.
6. The school district did not meet its burden to prove that it offered or made FAPE available to the student for the 2023/2024 school year.
7. Under 186-C:16-b III-a, the school has the burden of proving that the student is no longer eligible for special education services and can be discharged from special education services by receiving a regular education diploma since it is a change in placement.
8. The school district did not meet its burden to establish that the student is no longer eligible for special education services and can be discharged from special education services by receiving a regular education diploma because it agreed that the student required an additional year of transition services before the student received their diploma, and those services have not been provided in a manner that provided the student with FAPE.
9. The school district did not make FAPE available to the student in a timely manner for the 2023/2024 school year, and the parents' unilateral placement at the [REDACTED] residential program is proper or appropriate under the IDEA and relevant state laws.
10. The parents met the notice and other requirements for unilateral placements in the IDEA and relevant state laws, including 20 USC § 1412(a)(10)(C)(iii), 34 CFR § 300.148(d), and RSA 186-C:16(b), so the reimbursement award is not limited under those provisions.
11. Awarding reimbursement for the parents' costs for the unilateral placement is an appropriate remedy in this case.
12. Awarding compensatory education is an appropriate remedy in this case.
13. RSA 186-C:5, 186-C:9, RSA 198:20-a, and Ed 1126.06, do not permit the hearing officer to award placement at or services from an unapproved out-of-state school or program, other than reimbursement for a unilateral placement under the IDEA.

14. The student is awarded one year of transition services as compensatory education services.
15. The school district did not meet its burden to prove its defense that the student is no longer eligible for services because they are no longer a New Hampshire resident.

### **Discussion**

The evidence established that in June 2022, the school district/IEP team agreed to provide the student with one year of transition services focusing on daily living skills and social/emotional issues before issuing their diploma. The school district/IEP team agreed to place the student in a [REDACTED] transition program to receive those services. The student did not make sufficient progress in that program, and the school district agreed to provide an additional year of transition services in June 2023.

These agreements were included in formal written prior notices, and the student's IEP was amended in June 2022 to include the services. The year of transition services was not a gift, as the school district attorney now argues. Instead, it was an agreement by the team that the student required additional transition services before receiving their diploma. Even if the school team members "acquiesced" to the parents' request in agreeing to provide services, the agreed-upon transition services needed to be provided in a manner that allowed the student to make sufficient progress on the daily living skills and social/emotional issues that the IEP team recognized and included in the IEP to provide the student FAPE. That did not happen at the [REDACTED] transition program. As a result, the student did not receive the year of appropriate transition services the IEP team agreed the student needed.

The school district and parents disagreed over how services should be provided in June 2023. The school district wanted the services to be community-based, but it never developed or proposed a specific community-based program for the student. The parents wanted an out-of-district residential placement, and the parents unilaterally placed the student in an out-of-district residential program in [REDACTED].

The parents stated that the out-of-district residential placement was their plan B. The evidence established that they took steps towards enrollment in the out-of-district residential placement before the August 9<sup>th</sup> meeting because they did not believe a community-based placement or a day placement would be sufficient given the student's needs and their work schedules. While the school district contends that parents' efforts to secure an out-of-district residential placement before the August 9<sup>th</sup> team meeting amounts to the parents' predetermining placement, the parents' efforts were necessary to ensure that their child continued to receive services because the student's placement at the [REDACTED] program was ending on August 11 and the [REDACTED] placement had stated that it was no longer an appropriate placement for the student.

If they had waited until after the August 9<sup>th</sup> meeting to take any of those steps, there would have likely been a substantial time gap before the student received services, leading to further regression in the student's independent living skills and social/emotional issues. While the parents took steps to make sure there was not a gap in services and that the [REDACTED] residential program was available to their child if needed before the August 9 meeting, the parents did not sign the contract and agree to the [REDACTED] residential program's tuition until after the August 9 meeting on August 17.

Additionally, the parents' taking steps to facilitate an out-of-district residential placement that they believed was necessary to provide their child with appropriate services is no more predetermining placement than what the school district did by ruling out any out-of-district residential placement at the

June 2023 meeting and saying that any placement would have to be community-based or at a day program. Therefore, the parents did not predetermine placement.

Since the student never received the appropriate year of transition services that the school district agreed the student needed and agreed to provide, the student is awarded one year of transition services as compensatory services.

Since the IEP team agreed that the student needed a year of transition services for the 2023/2024 school year but did not offer the student a specific program for that year, and since the parents' unilateral placement at the [REDACTED] residential program is proper or appropriate under the IDEA and relevant state laws, the parents are awarded reimbursement for the costs of the [REDACTED] transition program to date.

While the school district contends that it could have provided the same services as the [REDACTED] program through a community-based program here in New Hampshire, and that a residential placement is unnecessary, it never offered that program to the student. While the school district contends that not knowing where the student would live hindered their efforts, the school could have developed a proposal for the student to access if they returned home to make FAPE available to the student.

The parents' attorney mixed reimbursement and compensatory education remedies in their requested relief and provided some legal authority in their post-hearing memorandum to support their argument that a unilateral placement can be part of a compensatory education award. As a result, reimbursement for the unilateral placement at the [REDACTED] program from August 2023 to date constitutes seven months of the compensatory education awarded in this decision.

The school district's attorneys cited First Circuit Court of Appeals cases in its post-hearing memorandum, stating that reimbursement for a unilateral placement must be limited to amounts already paid by parents and cannot include prospective costs. As a result, the hearing officer is unable to award future costs for the placement or services at the [REDACTED] residential program as reimbursement for the unilateral placement.

The parents' attorney also requested that placement and services at the [REDACTED] residential program be continued as part of the school district's obligation to provide FAPE or as compensatory education. However, neither option is available for the [REDACTED] residential program because it is not approved for special education by the state of [REDACTED]. As the school district's attorneys note in their post-hearing memorandum, RSA 186-C:5, 186-C:9, RSA 198:20-a, and Ed 1126.06 do not permit state, local, or federal funds to be used for services at unapproved schools or programs, other than reimbursement for a unilateral placement.

As a result, the hearing officer cannot order the additional five months of transition services, or any other prospective placement or services, to be provided by the [REDACTED] program. Instead, the order below addresses how these compensatory services shall be provided.

#### **Parents' Requested Findings of Fact and Rulings of Law**

**Granted:** 1-73

**Denied:** None

#### **Parents Requested Conclusion and Proposed Rulings**

**Granted:** 1,2,

**Granted or Denied in Part:**

Request 3 is granted in part. As noted in the decision, the school district may issue the student’s diploma after it provides the five months of transition services, unless the parents/students decline some or all of those services.

The statements regarding retaliation are denied. As noted in the order on the motion to strike, the parents did not raise retaliation in their complaint. Regarding residency, this decision finds that the school district did not meet its burden to establish its defense that it can discontinue services on the grounds that the student is no longer a New Hampshire resident, as noted in the rulings of law.

Request 4 is granted in part and denied in part. As noted in this decision and order, the school district is ordered to pay the costs for seven months. As a result, item (a) requesting reimbursement is granted in part. Item (b) requesting continued placement is denied for the reasons explained in this decision. Item (c) is granted by awarding the year of compensatory education, seven months of which is reimbursement for the unilateral placement and five months of transition services as noted in the order below.

**School Districts Requested Findings of Fact**

**Granted:** 1-9, 11-16, 19-22, 24, 27, 28,30-35,38,39,43, 44,45,46,48,51,52,53,54,57,58,59,60,61,63

**Denied:** 10, 17, 18, 23, 25,26,29,36,37,40-42,47,49,50,55,56,61,62,64,65

Some requests are denied because they include facts along with some characterization or conclusion about that fact. Some of the underlying facts in the requests may be consistent with the hearing officer’s findings of fact. These requests include: 10, 23, 26, 40-42, 49, 50, 56, 62.

**School Districts Requested Rulings of Law**

**Granted:** 19

**Denied:** 1-18

Request 14 includes an argument that RSA 186-c:16-b, III-a violates the New Hampshire Constitution. That part of the request is neither granted nor denied due to a lack of jurisdiction/authority to rule on constitutional claims. The statement that the parents bear the burden of persuasion in the request is denied based on the requirements of RSA 186-c:16-b, III-a.

**Order**

1. The student is awarded one year of transition services focusing on daily living skills for independent living, including employment and social/emotional issues, as compensatory education.
2. The school district shall reimburse the parents the costs of the [REDACTED] transition program from August 21, 2023, to date, which constitutes seven months of the compensatory education award. The parent presented evidence of invoices and payments for the unilateral placement



up to February 2024, totaling \$56,108, but the description on Proposed Finding of Fact 73 is unclear on how much of that amount was already paid by the school district. As a result, the school district shall pay whatever amount of the \$56,108 has not already been paid, plus any amounts the parents paid since the February 2024 timeframe to the date of this decision.

- 3. The school district shall provide the student with the remaining five months of transition services in a manner that provides the student with FAPE through a program, school, or service provider(s)/vendor(s) permitted by state and federal law.
- 4. The school district shall convene a team meeting to address providing the additional five months of transition services. If the team cannot reach agreement on what services should be provided or on how or where they will be provided, the parties may utilize the dispute resolution options available through the New Hampshire Department of Education.
- 5. After the five months of transition services are provided to the student in a manner that provides the student with FAPE, the school district may issue the student their diploma and discharge them from special education. This order is not intended to preclude the parents/student from waiving some or all of these additional five months of transition services if they want to obtain the diploma without receiving services.

This order also is not intended to preclude the parents from having the student continue at the [redacted] residential program at their own expense and accessing the five months of transition services awarded in this decision after the student completes their time at the [redacted] program.

3/21/24  
Date

/s/ Scott F Johnson  
Scott F. Johnson

**Appeal and Post-Hearing Enforcement**

Any party aggrieved by this may appeal as noted in Ed 1123.20, Ed 1123.25, and 34 CFR § 300.514.

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.