

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
STUDENT/NASHUA SCHOOL DISTRICT

Case No. IDPH-FY-25-07-001

**NASHUA SCHOOL DISTRICT’S REQUEST FOR FINDINGS OF FACT  
AND RULINGS OF LAW**

NOW COMES the Nashua School District (“District”), by and through its attorneys, Wadleigh, Starr & Peters, PLLC, and respectfully submits the following Request for Findings of Fact and Rulings of Law:

**I. ISSUES PRESENTS AND BURDEN OF PROOF**

1. Whether a year-round, residential placement is the least restrictive environment that is reasonably calculated to allow Student to receive FAPE;
2. If the Student does require year-round, residential placement, whether [REDACTED] is an appropriate placement;
3. If [REDACTED] is an appropriate placement, and if guardian has paid tuition to [REDACTED] for a unilateral placement, whether Nashua should reimburse guardian for tuition paid by guardian.
4. The District has the burden of proof of the appropriateness of its proposed placement. RSA 186-C:16-b,III.
5. The guardian has the burden of proof regarding the appropriateness of her proposed residential placement.

**II. REQUEST FOR FINDINGS OF FACT**

6. The Student is 9 years of age (DOB [REDACTED]). P.137.
7. The Student is identified as being in need of special education and related services with a diagnosis of Autism. Testimony of Guardian, K.C.
8. In May 2023, the Student transitioned from the local public school to [REDACTED] & Family Services. Testimony of Guardian, P.B, K.C; D.11.

9. The Student safely used bus transportation to access [REDACTED]. Testimony of K.S., K.C.; D. 16.
10. The Student successfully transitioned from the bus ride to school and into the classroom. Testimony of K.S.; D. 16.
11. The Student participated in classroom activities at [REDACTED]. Testimony of K.S.; D. 16.
12. The Student learned to transition from the classroom to the playground area at [REDACTED]. Testimony of K.S.; D. 16.
13. Spaulding drafted a new IEP in June, 2023 anticipating Student's return after vacation. Testimony of K.S.
14. During [REDACTED] annual school summer vacation in 2023, the guardian received no services, including respite services, to assist with the care of Student. Testimony of Guardian, M.H.; D. 41.
15. The Guardian was not physically able to manage Student when Student was physically aggressive. Testimony of Guardian.
16. Guardian could not safely transport Student to appointments. Testimony of Guardian, M.H.
17. Student's behaviors and accompanying safety risks to their self and the guardian were well known to local agencies. Testimony of M.H.
18. Student's behaviors and accompanying safety risks were well known to DHHS and DCYF. Testimony of Guardian; Testimony of M.H., L.V.
19. The Student was a safety threat to themselves, inflicting injuries by striking objects and hitting objects with their head. Testimony of Guardian, K.S., P.B.
20. Guardian could not provide a safe home for Student without assistance. Testimony of Guardian, M.H.
21. The Guardian sought assistance from DCYF through a voluntary CHINS petition, but DCYF withheld its consent. Testimony of Guardian, L.V.
22. DHHS and DCYF did not utilize the provisions available pursuant to RSA 169-C and RSA 169-D. Testimony of Guardian, L.V.

23. DHHS accomplished the removal from home, hospitalization and residential placement of the Student using a “director’s approval.” Testimony of L.V.
24. Student’s removal from home, their hospitalization and residential placement occurred without court supervision. Testimony of Guardian, L.V., M.H.
25. DHHS, with assistance of Gateways, conducted a search for residential placements for Student. Testimony of M.H., L.V.; D. 85-86.
26. The District was not included in DHHS’s searches for a residential placement for the Student. Testimony of K.C.; D. 73, 74, 76.
27. The District only agreed, after the residential placement was completed, to fund the school day placement costs at [REDACTED] (6.5 hours/day). Testimony of K.C., D.A.; D. 88.

### III. RULINGS OF LAW

1. “A school district meets its obligation to provide a FAPE ‘as long as the program that it offers to a disabled student is reasonably calculated to deliver educational benefits.’” *Samantha B. ex rel, H.B. v. Hampstead School District*, 2009 W.L. 5217035 at \*6 (D.N.H. December 30, 2009), (internal citations omitted.) “A FAPE has been defined as one guaranteeing a reasonable probability of educational benefits with sufficient support services at public expense .... Courts have concluded a FAPE may not be the only appropriate choice, or the choice of certain selected experts, or the child’s parents’ first choice, or ever the best choice. ... A FAPE is simply one which fulfills the minimum federal statutory requirements.” *Id.* (quoting *G.D. v. Westmorland Sch. Dist.*, 930 F.2d 942, 948 (1st Cir. 1998),).
2. The IDEA does not promise perfect solutions to the vexing problems posed by the existence of learning disabilities in children and adolescence. The Act sets more modest goals; it emphasizes an appropriate, rather than an ideal, education; it requires an appropriate, rather than an optimal, IEP. Appropriateness and adequacy are terms of moderation. It follows that, although an IEP must afford some educational benefit to the handicapped child, the benefit conferred need not reach the highest obtainable level or either the level needed to maximize the child’s potential. *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1086 (1st Cir. 1993) (citations omitted).
3. “To comply with the IDEA, an IEP must be reasonably calculated to confer a meaningful educational known benefit ...” *Johnson v. Bos. Pub. Sch.*, 906 F.3d 182, 194 (1st Cir. 2018) (quoting *D.B. v. Esposito*, 673 F.3d 26, 34 (1st. Cir. 2012)). “A school district meets its obligation to provide FAPE ‘as long as the program that it offers to a disabled student is reasonably calculated to deliver educational benefits.’”

*Samantha B. ex rel. H.B. v. Hampstead Sch. Dist.*, (internal quotes and citations omitted).

4. “Under the IDEA, disabled children are to be educated in the least restrictive environment that meets the requirements of educational benefit.... New Hampshire’s regulations implementing the IDEA require the least restrictive environment and provide a table of educational placements which shows that [a residential placement] is more restrictive than a full-time special day school.” *Lessard v. Wilton-Lyndeborough Co-Op. Sch. Dist.*, No. 06-CV-423-JD, 2008 W.L. 384913 \*C.1. (D.N.H. Aug. 14, 2008); 20 U.S.C. §1412 (a)(5)(A); *Kathleen H. v. Mass. Dep’t Educ.*, 154 F.3d 8, 11 (1st Cir. 1998); Ed 1111.03, Table 1100.3
5. Identified students are “entitled to attend an approved program which can implement the child’s individualized education program.” RSA 186-C:9.
6. While attending classes at the [REDACTED] Student “made progress appropriate in light of student’s circumstances.” *Andrew F.v. Douglas Cty. Sch. Dist.* R.E.-1, 137 Supreme Court 988, 1001 (2017).
7. “Courts focus on ‘whether the student’s conduct outside of the school building and outside of the normal hours of the school day is such that it impedes [the Student’s] ability to derive an academic benefit from a day program.’” *C.T. v. Croton-Harmon Union Fre Sch. Dist.*, 812 F.Supp. 2d 420, 432-433 (S.D.N.Y. 2011) (citing *M.H. v. Monroe-Woodbury Cent. Sch. Dist.*, 296 Fed. Appx. 126, 128 (2<sup>nd</sup> Cir. 2008); “The analysis must focus on whether the residential placement is necessary for educational purposes, or instead a response to medical, social or emotional conditions separate from the learning process.” *S.M. by J.M. v. Massachusetts Dept. of Education*, Civil No. 07CV11440-NG, 2009 W.L. 10729571 (D, MA March 9, 2009) (citations omitted).
8. Student received meaningful educational benefits at [REDACTED] specialized day placement program before their placement at Mass. General Hospital by DHHS and guardian. See *Doe v. Newton Public Schools*, 81 IDELR 211 (1st Cir. 2022).
9. Because Student received FAPE in a specialized day program prior to their unilateral placement, by DHHS and guardian, in a more restrictive residential placement, the District is not responsible for the non-educational expenses of the residential placement.
10. The guardian made no payments for Student’s tuition at [REDACTED] therefore, there is no reimbursement due from the District to the guardian. See *Doe v. Newton Public Schools*, 81 IDELR 211 (1st Cir. 2022).
11. The District is the prevailing party.

Respectfully submitted,

NASHUA SCHOOL DISTRICT  
By its attorneys,  
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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was sent to Kristen Mansharamani, New Hampshire Advocate for Special Education..

/S/ Stephen M. Bennett  
Stephen M. Bennett, Esq.