

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
STUDENT / Nashua School District
IDPH-FY-25-07-001

Parent/Guardian Post Hearing Proposed Findings of Fact (“GPFF”)

Home Supports, Maintenance of Available Home, and Similarity of Home and School and Community Autism Presentation for Student – Dysregulation and Self-Injurious and Unsafe Behaviors Consistent Across Home, School and Community

1. Student lives with [REDACTED] as Guardian (hereafter “Guardian”). Testimony of Guardian.
2. Guardian brought Student to Early Intervention Services in Massachusetts as a baby at recommendation of pediatrician. Testimony of Guardian.
3. Guardian brought Student to Feeding Specialist services as a young child. Testimony of Guardian.
4. Guardian brought Student to speech therapy as a young child. Testimony of Guardian.
5. Guardian sought out all available services for Student and became involved with DHHS Bureau of Developmental Services (“BDS”) through which Guardian obtained additional services. Testimony of Guardian, Testimony of BDS staff, Testimony of [REDACTED] staff.
6. Guardian enrolled Student in [REDACTED] programming supporting autism for a full day of services after early intervention ended. Testimony of Guardian.
7. Guardian enrolled Student in [REDACTED] services, switching from [REDACTED], and Student attended [REDACTED] full day until starting public school in April 2022. Testimony of Guardian, Testimony of [REDACTED] BCBA.
8. Nashua School District (“NSD”) recommended Student continue for half days with [REDACTED] ABA programming and half days at school placement. Testimony of NSD school Principal.
9. Guardian secured recommendation from [REDACTED] BCBA for 1:1 aide for Student and provided to School. Testimony of BCBA, Testimony of Principal, Testimony of Guardian, Ex. P5.
10. NSD denied initial request/recommendation for 1:1 aide and provided shared para support. Testimony of Principal.
11. NSD initially experienced manageable behavior but saw regressions and behavior became less manageable. Testimony of Principal.
12. Home behavior regressed and self-injurious behaviors increased after starting NSD program. Testimony of Guardian. Testimony of [REDACTED] BCBA. Ex. P8-P11(BCBA notes).
13. Guardian became unable to manage outside appointments because of behavior. Ex. P37 (Speech therapy referral for increased supports). Testimony of BCBA. Ex. P8-P9 (BCBA notes).

14. NSD behavior became more unmanageable and in Fall 2022, 1:1 support was provided, BCBA consult services were provided in school. Testimony of Principal.
15. NSD sometimes needed 2 staff to manage Student. Testimony of Principal.
16. NSD decreased school day. Testimony of Guardian. Testimony of Principal. Testimony of LEA. Ex. P30.
17. NSD reported “increased rigidity” as school year 2022-2023 progressed, frequent dysregulation resulting in unsafe and self-injurious behaviors to [student] and others. Ex. P30-31 (WPN draft 1/27/23).
18. NSD added RBT and outside BCBA, in addition to school BCBA in late Winter/early Spring 2023 to deal with challenging behavior. School further decreased length of day. Testimony of Principal, Ex. P44 (IEP Team meeting minutes March 2023).
19. Transport service to new Day Outplacement experienced numerous behavioral episodes and needed two staff other than driver and a Transportation Protocol/Safety Plan by May, 2023. Ex. D22-33.
20. Student exhibited such severe self-injurious behaviors by Spring 2023, even in the presence of multiple experienced staff outside of Guardian in home, that neighbors complained because the shelves on the walls in the units next door shook from Student’s self-injurious head banging. Ex. D20.
21. Day outplacement Teacher reported daily restraints requiring two or three people. Testimony of Day Outplacement teacher. Testimony of Out of District Coordinator.
22. Van service had multiple severe behavioral episodes in late Spring 2023 commuting to and from Day Outplacement. Principal recalls reports on these. Testimony of Principal. On one occasion the van had to transport Student to Concord Hospital after more than two hours of trying to commute home because behavior was too dangerous to make it home. Ex. D23-D25. Testimony of Guardian.
23. Just prior to July 4, 2023, Student and Guardian entered the hospital ER based on a major behavioral incident. 5 people in the room at the ER were unable to keep Student safe and hospital staff needed to use mechanical restraints. Ex. D45. Student left hospitalization almost 3 months later for a Residential Outplacement.
24. Guardian continues to maintain the home and wishes to have Student return home if Student builds skills in communication, self-regulation and decreases drastically self-injurious and unsafe behaviors. Guardian does not wish to give up guardianship. Testimony of Guardian.
25. Guardian visits Student roughly weekly in Student’s Residential Outplacement. Testimony of Guardian

Adequate Progress Not Demonstrated In NSD Intensive Needs day placement or Day Outplacement

26. NSD reported decreasing progress steadily from Fall through Spring of 2022-2023 - from “making progress” in November 2022, WPN, Ex. P 12, to making “limited progress” in February, 2023, Ex. P40, to “not making progress” in April 2023 WPN, Ex. D12.

27. Day Outplacement reported from May 2023 through June 2023 getting Student outside the door of building under awning where Student would sometimes venture to a patch of grass or mud for 5 – 15 minutes without interaction with other students. Ex. D16; Testimony of Day Outplacement Teacher
28. Day Outplacement reported no nourishment taken in by Student at all in six weeks at school. Ex. D 17. Testimony of Day Outplacement Teacher
29. Day Outplacement testified as to tracking data on tantrum behavior (which included self-injurious and unsafe behavior) but did not conclude there was progress in reduction of the behavior in six weeks; incidences of restraint daily requiring two or more people. Testimony of Day Outplacement Teacher
30. Only a single progress report from Day Outplacement is in evidence and all IEP goals are indicated as “not yet introduced – NI” because Student was hospitalized for the entire period of time. Ex. P177-188. Day Outplacement teacher testified that prior to formulating the July onward goals, she was not working off any IEP goals but working on limited items like transitions and tantrum behavior reduction.

Referrals, Recommendations and Refusals Regarding Residential Placement for FAPE by NSD

31. Guardian repeatedly referred for Residential Outplacement through NSD, beginning in Fall 2022. Testimony of Guardian, Ex. P13, P14.
32. NSD repeatedly refused to consider Residential Outplacement through NSD. Ex. P12, P16, P.40 (WPNs refusing to conduct a search for residential outplacement.)
33. Student’s long-time outside BCBA referred for Residential Outplacement for consistency and continuity “until [student] is at a point where . . .available to learn how to keep []self and others safe.” Testimony of outside BCBA; Ex. P. 7
34. Student’s pediatrician referred for residential outplacement. Ex. P23-25; Testimony of Guardian
35. Student’s pediatric neurologist referred for residential outplacement. Ex. P28; Testimony of Guardian
36. Student’s Speech Language Pathologist referred for increased supports and services as it was no longer possible in Winter 2023 to deliver outside SLP services in SLP’s offices though that had been successful previously. Ex. P37, Testimony of Guardian.
37. NSD did not enter into Exhibits any records of team considering outside referrals for residential placement. LEA representative, on cross-examination, when asked about the weight given to outside referrals for residential outplacement noted that the providers “had not observed Student in school.” Testimony of NSD LEA Representative.
38. NSD Out-of-District Placement coordinator was notified when Student was hospitalized. Testimony of NSD Out of District Placement coordinator; Ex. D49.
39. NSD Out of District Placement coordinator received notification from Guardian during hospitalization that Guardian and support staff through BDS and DCYF were searching for Residential Outplacement. Ex. D52.
40. NSD Out of District Placement coordinator received notification from Guardian that Day Placement had denied a residential placement at its facility based on an inability

to meet Student's nutritional needs once medical team indicated no GI tube was necessary. Ex. D54.

41. NSD Out of District Placement coordinator indicated to others via email that the length of hospitalization was unknown "pending disposition planning." Ex. D 56.
42. NSD Out of District Placement coordinator never noticed a team placement meeting during hospitalization as he believed it might have made Guardian more stressed. Testimony of NSD Out of District Placement coordinator.
43. NSD Out of District Placement coordinator believed Student was making progress in the day placement before hospitalization because he understood Day Placement Teacher to have indicated that Student was playing on the playground with equipment and interacting with other Students. Testimony of NSD Out of District Placement coordinator.
44. NSD Out of District Placement coordinator testified - but then recanted on cross-examination - that Guardian specifically indicated that placement was not business of NSD. Testimony of NSD Out of District Placement Coordinator.
45. During hospitalization, BDS/BDS supervised staff attended monthly meetings regarding this Student's hospitalization and efforts to remove from hospital. Supervisor at BDS testified that at one meeting NSD psychologist gave her recommendation/assessment that Student needed residential placement. Testimony of BDS supervisor.
46. [REDACTED] staff member, supervised by BDS, gave testimony that at the monthly meeting, NSD psychologist indicated that it was the recommendation of the entire IEP team at NSD that Student needed residential placement but NSD administration disagreed. Testimony of [REDACTED] staff.
47. NSD continues to assert that Student can make progress in a day placement and continues to refuse residential outplacement by NSD for Student to receive FAPE. NSD LEA indicates they "can look to place him in another day program." Ex. D160-D161 (Meeting minutes from November and December annual IEP review and placement review.)
48. NSD rejected October 2023 draft IEP indicating service delivery grid for 7 days per week, day and evening, direct individualized instruction by special education staff. Id., Ex. P136-P153.
49. NSD insisted upon separate IEP for day placement and residential treatment plan for all hours except 6.5 hours / 5 days per week in current IEP. Id.
50. Case Manager in December 2023 indicated that Student needed structured programming at all waking hours, classroom setting and residential setting and that two documents requested would be the same. Id.
51. During Due Process Hearing, NSD Principal testified that she believed Student needs residential placement. Testimony of NSD Principal.
52. During Due Process Hearing, NSD Out of District Placement Coordinator testified that he believed Student he "knows today" needs residential placement. Testimony of NSD OOD Coordinator.
53. Current case manager testified at the Hearing that she would not recommend a "step down" in placement from residential to day.

54. Guardian continues to ask for residential placement through the IEP, writing, "I still do not agree that the education part when at the residence is not necessary." Guardian seeks this acknowledged as the responsibility of NSD and documented requests for a meeting on this topic in February, 2024. NSD did not meet but rather assured Guardian that all waking hours were covered between IEP and residential treatment plan. Ex. D98-D100.

DHHS Involvement and Full Exploration and Exhaustion of Supports or Placements Through Human Services/Agencies Under DHHS Umbrella

55. Several branches of DHHS were involved during Student's extended hospitalization in Summer 2023. Testimony of [REDACTED] representative, Testimony of BDS supervisor, Ex. D79-D86 (Emails regarding search for placements).
56. Guardian and DHHS agencies explored options for additional supports and services or placement. Testimony of Guardian, Testimony of [REDACTED] Director.
57. Guardian submitted a Child in Need of Services (CHINS) petition; Juvenile Justice Denied indicating Student did not meet criteria. Ex. D8, D9, D10, P48.
58. DCYF investigated any reasons to suspect abuse or neglect that might lead to residential placement and found none. Testimony of [REDACTED] Director.
59. BDS explored and exhausted all In Home Supports. Testimony of BDS Supervisor and [REDACTED] Director.
60. BDS In Home Supports in the form of BCBA support after school hours halted services based on safety concerns for staff in May 2023. Ex.P49, Testimony of outside [REDACTED] BCBA.
61. BCBH did a CAT assessment but found Student's behaviors to be a manifestation of his autism disability and not conditions for short term medical or mental health treatment through Episode of Treatment placement. Testimony of [REDACTED] Director.
62. Medical team at hospital in Summer 2023 ran a multitude of diagnostic tests and found no medically addressable needs. Testimony of Guardian, Testimony of [REDACTED] Director.
63. Medical team advised DHHS team members that continued hospitalization was doing harm to Student. Testimony of [REDACTED] Director.
64. DHHS, in the absence of other available programmatic supports, provided a Director's Approval for temporary funding of the residential program at a Residential Outplacement beginning in September, 2023. This temporary funding is assessed monthly. Testimony of [REDACTED] Director.
65. NSD LEA attended a placement meeting for Residential Outplacement in September, 2023 and agreed to amend IEP for NSD day placement only in Residential Outplacement setting. Ex. D87, Testimony of NSD LEA Representative.

Residential Outplacement Services and Progress

66. Residential Outplacement provides special education staff for all waking hours who work from school setting through residential setting on a rotation and all are trained on all IEP goals and are trained by all specialists such as OT, speech, behaviorists. Testimony of Residential Outplacement case manager.
67. Incidences of restraint of Student have decreased from daily (Testimony of OOD Placement Coordinator and Day Placement Teacher) to just 3 over the course of Residential Outplacement year. Testimony of OOD Placement Coordinator.
68. Student has made gains in transitions, tolerating medical and self-care support in a variety of settings, communications including increased verbalization and increased use of communications device, playing outdoors on the playground, and even swimming. Testimony of Residential Outplacement case manager.
69. Progress is demonstrated on virtually all IEP goals, including reduction of self-injurious behaviors. Ex. P128-P134; D103-D110 (Residential Outplacement Progress Reports).

Respectfully Submitted On Behalf of Guardian,

/s/Kristen Mansharamani

Kristen Mansharamani

Office of Advocate for Special Education

Certificate of Service:

I hereby certify that I have served this by electronic means as of the date here below signed on the attorney for the school District simultaneously with filing.

Date: 10/11/24

/s/ Kristen Mansharamani

Kristen Mansharamani

NH Advocate for Special Education