

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

Student/ School District  
IDPH--FY-18-01-021

DUE PROCESS DECISION

**I. INTRODUCTION AND BACKGROUND**

This due process proceeding was initiated on January 19, 2018 by the School District (District), relative to the Parent's request for an Independent Educational Evaluation (IEE) at public expense. A prehearing conference was held on February 6, 2018 in Concord, New Hampshire. The due process hearing was originally scheduled for February 22 and 23, 2018, but was continued to February 26 and 27, 2018 at the request of the parties.

The due process hearing was held on February 26, 2018, at the hearings office in Concord, New Hampshire. Neither Parent appeared.<sup>1</sup> The District called the following witnesses: , Special Education Administrator; , Middle School 7<sup>th</sup> and 8<sup>th</sup> grade teacher and case manager for the District; and , Associate School Psychologist for the District.

The sole issue for due process was whether the Parent was entitled to an IEE, or whether the District's evaluation was appropriate.

The District submitted exhibits, including two affidavits from District witnesses. No exhibits were submitted by the Parent. After discussion, due to the narrowness of the issue and because the matter was uncontested, it was determined that post-hearing submissions would not be necessary.

**II. FACTS**

Student is thirteen years old and is enrolled as a seventh grader in the Middle School. had previously been identified as eligible for services pursuant to the Individuals With Disabilities Education Act (IDEA), coded as Other Health Impaired by reason of a diagnosis of Attention Deficit Hyperactivity Disorder.

On September 26, 2017, the District's IEP team convened to plan for Student's triennial evaluation. At that meeting, the IEP team proposed to evaluate the Student in the following areas: academic ability; intellectual/cognitive ability; social/emotional status; hearing and

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<sup>1</sup> The Parents were given the opportunity to participate in these proceedings, but declined to do so. Parents were advised that the hearing would proceed in their absence, and that their rights relative to the issue for due process may be affected. See Prehearing Conference Report, 2/6/18, and Further Orders, 2/22/18. As of the day of the due process hearing, neither Parent had filed a response or other pleading.

vision. The team proposed to conduct a classroom observation and a review of records and other documents.

On September 26, 2017, Parent granted permission for the District to conduct the proposed testing. did not request any additional testing.

On November 14, 2017, the IEP team, including the Parent, convened to interpret and discuss the results of the various assessments. The Student performed well on every measure. Upon applying the eligibility criteria under the categories of Other Health Impairment and Emotional Disturbance, the IEP team determined that Student did not qualify for special education services.

On November 14, 2017, the District issued a Written Prior Notice documenting the team's deliberations and determination that Student no longer qualified for special education. The Parent signed agreement with the team's decision. According to school staff, Parent did not question any of the test results, nor did offer any objection to the team's findings and conclusions.

On December 18, 2017, Parent wrote to the District requesting an IEE at public expense. The letter stated that Parent disagreed with the evaluation results because felt Student still needed to have special education services. Parent did not identify what portion(s) of the evaluation believed were insufficient.

Upon receiving Parent's letter, , Director of Special Education, reached out to Parent in an effort to respond to her concerns. On January 4, 2018, Parent advised that did not wish to meet with the District and indicated that the District should pursue formal resolution.

On January 12, 2018, the District issued a Written Prior Notice declining Parent's request for an IEE at public expense. This appeal followed.

### III. DISCUSSION

A parent may obtain an IEE and have it considered by the special education team. However, when a Parent requests an IEE *at public expense*, the District must either pay for the IEE, or request a due process hearing. 34 C.F.R. §300.502(b)(2); Ed 1107.03(b). At the due process hearing, the District must prove that its evaluation was sufficient.

In this case, when the Parent made the request for an IEE, the District attempted, unsuccessfully, to informally address Parent's concerns. The District was nonetheless obligated to request due process, which it did.

Based upon consideration of the witnesses' credible testimony, as well as the exhibits - including the affidavits of the qualified examiners, evaluation reports and eligibility checklists - I find that the District has proven that its evaluations are appropriate. The evaluations were valid and reliable, administered by qualified examiners in accordance with criteria set forth in

applicable federal and state law. The tests were appropriate for assessing all areas of suspected disability for this Student. Further, Parent attended and participated at team meetings and indicated agreement with proposed assessments, as well as test results and team determinations. All procedures, including the provision of Written Prior Notice, were followed.

#### **IV. CONCLUSION AND ORDER**

The District's evaluations are appropriate; accordingly, the Parent is not entitled to an IEE at public expense.

So ordered.

Date: March 2, 2018

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Amy B. Davidson, Hearing Officer

#### **APPEAL RIGHTS**

If either party is aggrieved by the decision of the hearing officer as stated above, either party may appeal this decision to a court of competent jurisdiction. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The School District shall promptly notify the Commissioner of Education if either party, Parent or School District, seeks judicial review of the hearing officer's decision.

Copies to: