

New Hampshire Department of Education

Student / [REDACTED] School District

IDPH-FY-24-02-036

Due Process Decision

I. Procedural Background and Issues

The Parents filed for a due process hearing on February 8, 2024. The School District did not file a response. At the prehearing conference, the School District correctly stated that a response was not needed, since it had previously issued a Written Prior Notice (“WPN”) addressing the issue raised by the hearing request.

Ed 1123.02(d) required the School District to convene a Resolution Session within 15 days of receiving the due process complaint, which was February 23, 2024. The School District failed to convene the Resolution Session by that date. The School District stated at the prehearing conference that it did eventually convene the Resolution Session, on March 5, 2024, and that the Session was not successful in reaching resolution.

A prehearing conference via Zoom was held on March 7, 2024. The sole issue for hearing was confirmed as whether Student requires a 1-to-1 aide. At hearing, this was further clarified as whether Student requires a 1-to-1 aide as part of the Student’s transition to middle school [REDACTED].¹

A due process hearing was conducted via Zoom on March 15 and March 19, 2024. The only witness for the Parents was the Student’s parent (“Parent”). Witnesses for the School District were:

- [REDACTED] Principal of the [REDACTED] Elementary School (“Elem. Principal”);
- [REDACTED], Special Education Coordinator for the [REDACTED] Elementary School (“Elem. Coordinator”);
- [REDACTED], Special Education Teacher, Grades [REDACTED], [REDACTED] Elementary School (“Elem. Teacher”);
- [REDACTED], Assistant Principal, [REDACTED] Middle School (“Mid. Asst. Principal”);
- [REDACTED], Special Education Coordinator, [REDACTED] Middle School (“Mid. Coordinator”);

¹ The terms paraprofessional, paraeducator and aide are used interchangeably in the records and in the caselaw, and will be used interchangeably in this decision, as well.

- [REDACTED], Student Services Director, [REDACTED] School District (“Student Services Director”).

Parent submitted fourteen exhibits. The school district submitted ten exhibits, though Exhibit 3 consisted of three documents, Exhibit 4 consisted of nineteen documents, Exhibit 7 consisted of two documents and Exhibit 10 consisted of six documents (thirty-six total documents among the ten exhibits). During the hearing, the hearing officer requested that the school district also provide prior IEPs and evaluation reports, which were not initially provided by either party. In response, the school district provided ten supplementary exhibits. The exhibits are identified within this decision as PE-, SE- and SE-Supp, respectively.

After hearing, both parties submitted proposed findings of fact. The school district also submitted proposed rulings of law.

The school district was represented by counsel. The parents were pro se.

II. Findings of Fact

Background Information

1. [REDACTED] School District is the Local Education Agency (“LEA”) responsible for educating the Student.
2. Student is a [REDACTED]-year-old, [REDACTED] grade student at the [REDACTED] Elementary School, a public school in [REDACTED] New Hampshire.
3. Student repeated the [REDACTED] grade. (Parent Testimony).
4. Student qualifies as a student with a disability under state and federal special education laws. Student is eligible for special education and related services under the categories of Autism. (SE-1).
5. Student’s parent works as a paraprofessional at [REDACTED]. (Parent Testimony).
6. The proposed 1-to-1 aide requested by Parents would accompany Student throughout the entire day. The intended time period is for the first few months of the school year, to help with the Student’s transition to middle school. (Parent Testimony).
7. On January 3, 2024, Parent stated in an email to the school district that “[Student] has exhibited tremendous progress during h[REDACTED] time at [elementary school]...” In that same email, Parent also expressed concern about Student’s transition to middle school, and stated, “We believe that the inclusion of a 1:1 paraprofessional in h[REDACTED] educational plan is crucial for h[REDACTED] overall success and well-being.” (SE-4 at 137; Elem. Coordinator).

IEPs

8. The last fully accepted Individualized Education Program (“IEP”) is the IEP that ran from January 1, 2023 through December 31, 2023. (SE-1; Elem. Coordinator).
9. The 2021 and 2022 IEPs included four hours per day of 1-to-1 paraprofessional support. This was changed to four hours per day of shared paraprofessional support in the 2023 IEP, accepted by the Parents. (SE-Supp. at 60, 68, 40, 48; SE-1 at 11; Elem. Coordinator; Student Serv. Dir.).²
10. Between November 2023 and January 2024, the Parents and school district (“The Parties”) unsuccessfully negotiated with each other regarding the issue of a 1-to-1 versus a shared paraprofessional for Student during the transition to middle school [REDACTED]. At least three Written Prior Notices were created to document this issue during that time period. (SE-4).
11. The current IEP was created on January 3, 2024 and partially accepted by Parents on January 5, 2024. All parts of the IEP were accepted, other than the fact that the IEP did not include a 1-to-1 aide. (SE-4 at 162).
12. The Functional Needs section of the January 3, 2024 IEP states, “[Student] requires paraprofessional support for academic tasks, step by step instructions, transition times, and problem solving throughout h [REDACTED] day... [Student] requires increased support from a paraprofessional at the beginning of the school year to support h [REDACTED] transition from elementary school to middle school... [Student] requires a paraprofessional to help support [REDACTED] in a small group of students with equitable adult need (sic) (academic or communication support). Providing [Student] with a paraprofessional throughout h [REDACTED] day will allow [REDACTED] to continue to access independence, while also providing necessary support with academics, executive functioning, and anxiety-based self-regulation skills.” (SE-4 at 144).
13. The January 3, 2024 IEP contains goals in Reading, Math, Self-Help and Speech and Language. (SE-1).
14. Services in the January 3, 2024 IEP consisted of:
 - A. Specially Designed Instruction in Reading with a Special Education Teacher 3 x 30 per week for the remainder of the 2023 – 2024 school year, increasing to 5 x 30 for the 2024 – 2025 school year;
 - B. Specially Designed Instruction in Math with a Special Education Teacher 4 x 20 per week for the remainder of the 2023 – 2024 school year, increasing to 5 x 30 for the 2024 – 2025 school year;

² The supplemental exhibits that the school district kindly provided at hearing officer request during the hearing are referred to as SE-Supp.

- C. Speech (Group) with a Speech Language Pathologist 2 x 20 per week for the remainder of the 2023 – 2024 school year, increasing to 2 x 30 for the 2024 – 2025 school year
- D. Academic Support with a Paraeducator for four hours per day for the remainder of the 2023 – 2024 school year, increasing to six hours per day for the months of September, October and November, and then reverting to four hours per day for the final month of the IEP period (December 2024). (SE-4 at 151).
- E. An Occupational Therapy service, which had been in prior IEPs, was removed.³

Evaluations, Progress Reports and Report Cards

- 15. The school district completed a Psychoeducational Evaluation of Student in September 2023. Standardized tools utilized included the Wide Range Assessment of Memory and Learning (“WRAML-3”); Wechsler Individual Achievement Test (“WIAT-4”); Adaptive Behavior Assessment System (“ABAS-3”). The school district also evaluated in 2020, using different standardized tools.⁴ (PE-2).
- 16. A comparison of academic testing between 2020 and 2023, where there are categories that can be compared, shows some concerning results in major academic areas: (PE-2; SE-Supp. at 22).

	2020	2023
Reading Comprehension	18 th percentile	4 th percentile
Decoding Composite	5 th percentile	13 th percentile
Math Composite	1 st percentile	2 nd percentile
Written Language Composite	16 th percentile	10 th percentile
Phonological Processing	19 th percentile	9 th percentile

- 17. In the 2023 Speech and Language evaluation, Student tested Average in most areas, with the exception of the Following Sentences subtest of the Clinical Evaluation of Language Fundamentals-5 (“CELF-5”) and the Multiple Interpretations subtest of the Social Language Development Test – Elementary: Normative Update (“SLDT-E:

³ Given that Student’s Visual Motor Integration score remained below average between 2017 and 2023, removal of the Occupational Therapy service is concerning, but beyond the scope of this hearing.

⁴ Academic achievement testing was done with the Kaufman Test of Education Achievement (“KTEA-3”) in 2020 and with the WIAT-4 in 2023.

- NU”). On each of those subtests, ■ scored a 7 in 2023, which is described as “Below Average.” Although Student remains Below Average, each of those subtests is actually an increase over the 2020 testing, when Student scored a 4 in each. (Compare SE-4 at 79 and SE-Supp. at 5).
18. Student tested average in most areas of the 2023 Occupational Therapy evaluation, other than with the Beery-Buktenica Test of Visual Motor Integration, where ■ had a standard score of 87, which is described as “Below Average.” The last time this test was administered was in 2017, when Student scored 85. (Compare SE-Supp. at 2 and SE-Supp at 81).
 19. In the most recent IEP Progress Reports provided by the school district, dated November 13, 2023, Student’s results were primarily M or PED (Mastered or Performance Demonstrated). (SE-2).
 20. Student’s report card at the end of the 2021 – 2022 school year showed grades primarily of M (Meeting Expectations) or 4 (Demonstrates Consistently). Student’s grades declined for the 2022 – 2023 school year, when ■ finished with grades that were scattered among M, P (Progressing Toward), 4 or 3 (Demonstrates Most of the Time). (SE-3).

■■■■■■■■■■ Hospital Letters

21. On November 15, 2023, ■■■■■ B■■■■, M.D., M.Ed. of the Department of Neurology at ■■■■■ Hospital wrote a letter addressed to “To Whom It May Concern.” In this letter, Dr. B■■■■ stated “[Student] may face struggles or anxiety when in the transition to a new school environment with h■■ diagnosis and I advocate for ■■■ to receive the support needed to succeed both academically and emotionally for h■■ new school ■■■■■. I advocate for ■■■ to have 1:1 support to be with ■■■ during the year for the new transition to help ■■■ succeed.” (SE-4 at 78).
22. On January 16, 2024, Dr. ■■■■■ B■■■■ wrote another “To Whom It May Concern” letter in which ■■■ repeated h■■ recommendation for “1:1 support.” In this letter, as support for why Student should have 1:1 support, Dr. B■■■■ only provided a bullet list of concerns that Student’s parents shared with h■■. (SE-4 at 170; Elem. Coordinator).
23. When asked by the school district’s attorney if the Team considered Dr. B■■■■’s January 16, 2024 letter and list of concerns, the Elem. Coordinator did not answer the question, but instead described the process that ■■■ and the middle school coordinator engaged in to determine scheduling, class assignments and where Student might require more support during the day. When asked a second time, but in more detail, whether the Team considered Dr. B■■■■’s list of concerns, the Elem. Coordinator again did not answer the question, but instead described in detail how students move from class to class at the middle school, and how a shared paraprofessional might

- assist. When asked a third time about Dr. B [REDACTED]'s list of concerns, the Elem. Coordinator again did not address whether the Team considered that list, but instead went into a long description of h [REDACTED] opinion about how the plan for a shared paraprofessional will provide a "good balance" of support versus allowing independence. (Elem. Coordinator).
24. Student's current special education teacher was also asked the same question about whether the Team considered Dr. B [REDACTED]'s list of concerns. H [REDACTED] response was clear that the Team did consider that list. (SE-4 at 170; Elem. Teacher).
25. On March 6, 2024, [REDACTED] P [REDACTED], M.D., of the Neurology Department at [REDACTED] Hospital wrote an unsigned, "To Whom It May Concern" letter. In this letter, Dr. P [REDACTED] states that Student would benefit from counseling to address anxiety. The letter makes no reference to the recommendation for 1:1 support made by Dr. B [REDACTED] in the two prior letters. As with Dr. B [REDACTED]'s letters, there are many important questions that are not addressed, such as details of what the counseling should look like, who should provide it, whether the counseling should occur in school or out of school, or how often the counseling should occur. (PE-14).
26. The school district recommended counseling in late 2022 as the 2023 IEP was being developed. Parents declined counseling. (P-14; Elem. Coordinator; Student Serv. Dir.).
27. Dr. B [REDACTED] did not attend any Team meetings, visit the school, or contact anyone at the school district about Student. There was no reference during the hearing to Dr. P [REDACTED]'s contact or lack of contact with the school district. (SE-4 at 78; Elem. Coordinator).

Current Program in the Elementary School

28. Student is currently in a typical [REDACTED] grade classroom. Student is in that classroom for most of the day. There is one general education teacher plus three special education assistants in the classroom. All adults support all students in that classroom, though Student does have one preferred aide. There are approximately sixteen or seventeen students in the classroom, with three or four on an IEP. Student receives some support from the special education teacher in a separate classroom small group setting. There are also "push-in" services from the special education teacher. (Elem. Sch. Pr.).
29. Student is usually with peers when moving around the building. This will require more independence in middle school. (Elem. Sch. Pr.).
30. The Elem. Sch. Pr. testified that Student's assessment scores are reflective of an average Student, not a Student who is multiple grade levels behind. However, the principal did not provide detailed scores to support this statement. (Elem. Sch. Pr.).

31. The Elem. Sch. Pr. gave examples of times Student has “frozen” from anxiety or gotten upset and had to leave the classroom. The response has been to meet with the Parents to discuss how to deal with the issue in the future, and to help Student learn how to self-advocate better. (Elem. Sch. Pr.).
32. There is an informal plan in place for Student to go to the Elem. Sch. Pr. when Student gets too upset. (Elem. Sch. Pr.).
33. The Elem. Sch. Pr. does not believe that Student requires a 1-to-1 aide, and that such an aide would be detrimental and would inhibit the Student’s growth. ■ believes a shared aide would be much more subtle. (Elem. Sch. Pr.).
34. The Elem. Sch. Pr. described “globally” what is done to help students transition from elementary to middle school. There are five or six events that prepare ■ grade students for the transition to middle school. For example, the middle school principal comes to the elementary school to meet the students. The middle school counselors come to the elementary school for a question and answer session, and to discuss things that the students are worried about. There is a formal “move up day” in June, where students from all ■ elementary schools get bused over to the middle school and meet teachers. There will also be summer opportunities to ease the transition. Identified special education students will have additional opportunities to meet with special education staff and case managers at the middle school and have tours of the building. (SE-7; Elem. Sch. Pr.).
35. The Elem. Sch. Pr. also described what is being done specific to the Student to help with Student’s transition to middle school. The principal meets with Parents every five or six weeks. ■ testified that they have mapped out a “second-half of the year transition plan” for the Student. The plan includes having Parents meeting with the middle school principal. The elementary school principal says that ■ has expressed to the middle school principal the importance of developing a relationship with Student. The plan includes having Student meet the school counselor, go on tour of the school, and find lockers and classroom location. “We have a plan to continue that transition and that’s specific to [Student].” However, upon being questioned further, ■ also admitted that this is not a written plan. (Elem. Sch. Pr.).
36. The Elem. Coordinator has never formally observed or worked with Student. H ■ knowledge of the Student is based on reviewing records and discussions with teachers and support staff. (Elem. Coordinator Testimony).
37. The Elem. Coordinator and principal had different opinions about Student’s academic progress. The principal testified that Student is average academically, and not multiple grade levels behind. The Elem. Coordinator testified that Student is several grade levels behind. (Elem. Sch. Pr. Testimony; Elem. Coordinator Testimony).

38. The Elem. Coordinator believes Student has been successful with a shared paraprofessional. Team is working on independence with Student. ■ testified that going from less restrictive to more restrictive support would inhibit growth and would make Student more dependent on adults. (Elem. Coordinator).
39. School district is currently proposing three months of a shared aide for six hours per day at the start of the next school year, to help with the transition. After December 1, 2024, the shared aide support would revert to the current level of four hours per day (Ex. 4 at 151; Elem. Coordinator).
40. The elementary special education coordinator does not believe a 1-to-1 aide would be helpful for Student. ■ believes that having an adult nearby to prompt and help and cue with peer relationships and pragmatic language skills is important, but so is giving Student room to grow. (Elem. Coordinator).
41. The typical situations in which the school district will consider a 1-to-1 paraprofessional for a student are safety, significant behavioral needs, significant communication needs, mobility, health. Additionally, the school district will also look at whether a student can function and learn throughout their day without a 1-to-1. (Elem. Coordinator).
42. The Elem. Coordinator believes Student has consistently made progress and is functioning well in the school. ■ would be very hesitant to be more restrictive with a 1-to-1 for next year. On the other hand, on cross-examination, ■ admitted that Student has deficits in fluid reasoning, working memory and processing speed, with fluid reasoning and processing speed being the most significant deficits. ■ also admitted that Student fell in the very low to low range for attention, concentration memory and working memory. (Elem. Coordinator).
43. Student's current special education teacher has been Student's case manager for the past ■ year. ■ has been working with Student for the past ■ years as both a paraprofessional and as a special education teacher. As a paraprofessional, ■ worked with Student 1-to-1. (Elem. Teacher).
44. Student has a Self-help goal intended to help Student become more independent. (Elem. Teacher).
45. The Elem. Teacher's work with Student is both pull-out, as well as in the regular education classroom. The Elem. Teacher believes that Student does excellent in the regular education classroom. ■ actively participates and even leads in groups. ■ does need adult support in the classroom, though. (Elem. Teacher).
46. The Elem. Teacher does not agree that a 1-to-1 paraprofessional would be good for Student. If ■ has someone sitting by h ■ side, ■ will try to access that. However, ■ needs more incentive to be more independent, and not rely on one person supporting

- ████ at all times. █████ believes that a shared paraprofessional will be able to provide the proper level of support for Student. (Elem. Teacher).
47. The Elem. Teacher has seen Student get anxious. When █████ does, █████ gets quiet and wants to take a break. This is part of h████ plan to deal with anxiety, and it works well. █████ does not believe █████ needs a 1-to-1 aide to deal with anxiety. (Elem. Teacher).
48. The Elem. Teacher believes that Student is excellent at following routines and rules. █████ believes that once █████ gets comfortable with the routines and rules in middle school, █████ will do well. (Elem. Teacher).
49. There is no formal, written transition plan specific to Student to assist with the transition to middle school. (Elem. Sch. Pr.; Elem. Teacher; Student Serv. Dir.).

Proposed Program for the Middle School

50. The Student's proposed schedule █████ calls for "Para Support" during Science, Math, Unified Arts, Social Studies and ELA classes. (SE-7).
51. There will be a paraprofessional in Student's classroom who will support no more than three students who have like needs. (Student Serv. Dir.; Mid. Coordinator).
52. The Assistant Principal at the Middle School focuses on grades █████. █████ has been the Assistant Principal at that middle school for eleven years. (Mid. Asst. Principal).
53. The Mid. Asst. Principal testified about transition opportunities for all students who move from elementary school to middle school. All students have already started to meet their middle school counselors and the principal. Students are in the process of being assigned to one of three teams. Students will have a "Move-up Day," where they will spend approximately two hours touring the building, meeting administrators, seeing their team area, and meeting their teachers, so that they are comfortable with the new school before they leave for the summer. At the end of August, prior to orientation day, there will also be a Welcome Week. Students can sign up for a morning or afternoon session, where they will do teambuilding activities and again meet administrators, teachers and counselors. There will also be an ice cream truck. Following Welcome Week will be Orientation Day, when students will again have an opportunity to walk through classes, get their lockers, eat lunch at school, and then leave around 12:30 PM. There will also be a Parent Night, where parents get to meet the teachers. (Mid. Asst. Principal).
54. The Mid. Asst. Principal was also asked about transition opportunities specific to the Student. █████ stated that █████ has already been to the middle school twice. Also, █████ works all summer, and Student can come anytime during the summer to visit h████ and the school. (Mid. Asst. Principal).

55. There are 256 students transitioning from elementary schools to the [REDACTED] Middle School. These 256 students will be divided into three teams: the [REDACTED], [REDACTED] and [REDACTED]. Each team runs as a unit. In each unit are four core teachers for Math, Science, ELA and Social Studies. There is also a case manager associated with each team. The building is brand new. Each team has its own team area and classrooms with two independent bathrooms and two breakout rooms, as well as their own lockers. Each team will have 85 students who stay with their team for most of the day. The only time students leave their team is for Unified Arts (Art, Music, STEM, Gym). Paraprofessionals also work in each team area. There will be one counselor for all three teams, who will stay with them for three years. (Mid. Asst. Principal).
56. The team teachers, counselor, case manager and the Assistant Principal meet throughout each week during the school year. There are daily meetings with different attendees, depending on the purpose. Meeting purposes include teacher meetings, special and regular education meetings regarding specific students, school counselor and teacher meetings regarding counseling issues, curriculum planning and adaptation for special education students, and parent meetings. The entire team also meets weekly. (Mid. Asst. Principal).
57. Regarding scheduling of special needs students, the first priority is special needs students. They get placed on a team into a specific class. (Mid. Asst. Principal).
58. Regarding class size, each classroom should have around twenty-one students. (Mid. Asst. Principal).
59. Regarding paraprofessional support and student grouping, students will be grouped with other students who have similar needs, but at different intensities. The intensity of similar needs purposely gets mixed, so that paraprofessionals can more easily address the needs of multiple students. (Mid. Asst. Principal).
60. Schedules stay the same and are consistent each day, except for days referred to as [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. Classrooms are within ten feet of each other. Paraprofessionals will make sure Student gets settled when [REDACTED] changes classes. (Mid. Asst. Principal).
61. Unified Arts is broken out into quarters. Each class lasts for a quarter: Art, STEM, Health and Wellness, World Culture. (Mid. Asst. Principal).
62. To address bullying, each team is further broken down to small groups of ten to twelve students. Each small group works with one of the team teachers to discuss bullying, core values, and working together. This also allows for small group time with directed study. They try to make sure that each student has other students with them who they are comfortable with. The whole school does advisory or directed study for thirty minutes each day. (Mid. Asst. Principal).

63. School counselors do direct teaching in classrooms. They also provide lunch bunch groups for students who are struggling to make new friends. (Mid. Asst. Principal).
64. After school each day is a Power Program, where students get to participate in different clubs. (Mid. Asst. Principal).
65. Administrators and counselors are always available to help Student if ■■■ feels anxiety. They want him to feel welcome and safe. A lot of students have daily check-ins with school counselors, paraprofessionals or administrators. Paraprofessionals will be available to help Student go from one class to another, if needed. There are also two breakout rooms for each team in case Student needs a break from the classroom. (Mid. Asst. Principal).
66. The Special Education Coordinator at the middle school testified that ■■■ has a “vast degree of responsibilities.” ■■■ stated that ■■■ “act[s] as the LEA – the Local Education Agent for the school district.” ■■■ stated ■■■ also is responsible for reviewing IEP’s for students transitioning to ■■■ assisting staff with programming, and collaborating with families to ensure that programming is in place to meets the needs of students. (Mid. Coordinator).
67. The Mid. Coordinator also testified that ■■■ has met Student “several times,” though ■■■ only described meeting the Student once in the building for a tour and once outside at a local store. (Mid. Coordinator).
68. Regarding placement, an internal group from the middle school meets with the coordinators from the various elementary schools to talk about each student’s needs. A group within the middle school will then meet to discuss placement decisions. Since there are ■■■ feeder elementary school, there will be a mix of students, but they try to ensure that there are at least some familiar students with each student. Placement on teams was due to be complete by April 8. (Mid. Coordinator).
69. Assignment of paraprofessionals is based on student need. The middle school special education coordinator testified ■■■ is confident the school can provide the six hours of paraprofessional time that the school district is proposing. (Mid. Coordinator).
70. In reading Student’s IEP and seeing the level of Student’s needs, the Mid. Coordinator believes that a shared paraprofessional will meet Student’s needs and be provide less restrictive. (Mid. Coordinator).
71. The Mid. Coordinator believes that the middle school program, with a shared paraprofessional for Student, and with the transition opportunities that the middle school has in place, and with the way the middle school is broken down into smaller teams with unique supports for each team, will be able to address the needs and concerns of the Parents that were outlined by Dr. B ■■■ in h ■■■ January 16, 2024 letter. (Mid. Coordinator).

72. There is usually one paraprofessional in a classroom, though “on occasion” there might be two paraprofessionals in a classroom based on the needs of the students. The school district is currently fully staffed with paraprofessionals. (Mid. Coordinator).
73. ██████████ middle school students have IEPs. Not all special education students require paraprofessional support. (Mid. Coordinator).
74. Case managers at the middle school have dual roles which also include being a special education teacher. (Mid. Coordinator).

Other Relevant Facts

75. There was no expert testimony or affidavit supporting the need for a 1-to-1 aide.
76. Even though autism is the only disability listed on each IEP, the witnesses consistently talked more about Student’s anxiety than about Student’s autism.
77. The Student Services Director for the school district was asked about Student’s anxiety and how the school district should deal with it. ██████ testified that ██████ does not know the Student. H█████ knowledge of the Student is only through what the Team has shared and what ██████ has seen on paper. ██████ stated that the current informal plan for how the school principal deals with Student’s anxiety should be formalized. (Student Serv. Dir.).
78. The Student Services Director testified that a 1-to-1 aide is considered only in certain situations, such as if a student presents with safety, mobility or communication issues. It usually is not necessary or appropriate for a student dealing with anxiety, because it is too restrictive. It would be inappropriate to assign a 1-to-1 aide based on “what if” or “just in case” concerns. (Student Serv. Dir.).

III. Guiding Law

1. *RSA 186-C:16-b, III-a. Burden of Proof*

The school district has the burden of proof, including the burden of persuasion and production, of the appropriateness of Student’s program or placement, or of the program or placement proposed by the school district. This burden shall be met by a preponderance of the evidence.

2. *Free appropriate public education (“FAPE”).*

Federal and state law guarantees every student with a disability the right to a free appropriate public education (“FAPE”). 20 U.S.C. §1400 (d)(1)(A); Ed 1106.01; Ed 1102.02(r). To constitute a FAPE, a student’s educational program must be

“reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”. *Endrew F. ex. rel. Joseph F. v Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017); FAPE is “special education and related services [consisting of] both ‘instruction’ tailored to meet a child’s ‘unique needs’ and sufficient ‘support services’ to permit the child to benefit from that instruction”. 20 U.S.C. §1401(9), (26), (29); *C.D. v. Natick Public School District, et al.*, 924 F.3d 621, 624 (1st Cir. 2019), quoting *Fry v. Napoleon Community Schools*, 580 U.S. 154, 158 (2017).

Courts have recognized that there might be multiple reasonable choices available for a child’s FAPE. “FAPE may not be the only appropriate choice, or the choice of certain selected experts, or the child’s parents’ first choice, or even the best choice.” *G.D. v. Westmoreland School Dist.*, 930 F.2d 942 (1st Cir. 1991). Among the available choices, “an IEP need not be designed to furnish a disabled child with the maximum educational benefit possible.” *Sebastian M. v. King Philip Reg’l Sch. Dist.*, 685 F.3d 79, 84 (1st Cir. 2012).

Effective progress must be examined in the context of the educational potential of the student. See *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 29 (1st Cir. 2008). For progress to be “effective,” a student must make “‘demonstrable improvement’ in the various ‘educational and personal skills identified as special needs.’” *Lenn v. Portland Sch. Comm.*, 998 F.2d 1089-90 (1st Cir. 1993).

3. *34 CFR § 300.114(a)(2) - LRE requirements.*

Each public agency must ensure that—

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

4. IDEA has a preference for students being “fully integrated in the regular classroom...” *Endrew F.* at 1000.

5. *Ed 1123.02(d) Sequence of an Administrative Due Process Hearing (Resolution Meeting).*

The LEA shall convene a resolution meeting with the parent or parents and with the relevant member or members of the IEP team within 15 days of receiving notice of the parents' due process complaint as required in 34

CFR 300.510. The parties shall also have the option of convening a mediation session.

6. *34 CFR 300.510(a)(2) Resolution meeting (purpose).*

The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

7. Although a school district might protest procedural requirements, “the procedures are there for a reason.” *Andrew F. ex. rel. Joseph F. v Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 1000 (2017).

IV. Rulings of Law

1. Student does not present with needs for which the school district would normally consider a one-to-one aide, such as safety, significant behavioral needs, significant communication needs, mobility, or health issues.
2. Sufficient evidence was not provided to allow a finding that Student requires a one-to-one paraprofessional during the transition period to middle school.
3. School district has an unwritten plan to help Student transition to middle school.
4. In terms of the limited goal of helping the Student successfully transition to middle school, the school district’s proposal of providing a shared paraprofessional for six hours per day from September 1, [REDACTED] through December 1, [REDACTED], where the paraprofessional will service a maximum of three students with like needs, is reasonably calculated to allow Student to make meaningful progress, in light of h [REDACTED] disability, transitioning to middle school.⁵
5. The school district was in violation of Ed 1123.02(d) when it failed to hold the required resolution meeting within fifteen days of receiving notice of the parents' due process complaint.

⁵ Parent’s argument is that Student requires a one-to-one aide for the transition to middle school; Parent is not arguing that Student requires a one-to-one aide for a longer period of time or to address specific deficiencies. However, I was very concerned to see Student’s evaluation results between 2020 and 2023 remaining below average, and even declining, in Reading, Writing, Math and Speech. This is a strong indication that Student might not be making meaningful progress in those areas. That was not the issue for this hearing, though, so I decline to make such a ruling. I do, however, strongly advise the Team to reconvene and reconsider what else can be done to address Student’s deficiencies in those academic areas.

V. Discussion

Considering just the very limited goal of helping Student successfully transition from elementary school to middle school, the school district has met its burden of proving that a shared paraprofessional is reasonably calculated to allow Student to make meaningful progress toward that limited goal, in light of h's disability. The elementary school principal and the middle school assistant principal both described in great detail the transition program that is in place to help students of all levels, disabilities and needs transition from one of the feeder elementary schools to the one middle school. They both appeared to be caring, committed professionals. School district personnel are aware of the anxiety that students feel when they change schools, especially when they change to a larger school. The district appears to have in place multiple opportunities to help students get comfortable with their new building before the year starts, and more programs, opportunities and controls to keep tabs on students and assist with any issues that might arise once the school year starts. Specific to the Student, the Student Services Director for the school district and the Middle School Coordinator both testified that there will be a paraprofessional in the classroom who will support no more than three students who have like needs. Although the Parent provided examples of times that the Student had emotional difficulties in the classroom during the past year, that is not enough to prove that a shared aide would not allow for a successful transition to middle school, and that a 1-to-1 aide is needed.

The only support for the Parent's position of Student needing a 1-to-1 aide was in the form of two letters from the Student's neurologist, Dr. B. These letters were very limited. Although Dr. B clearly recommended 1:1 support, did not say why the less intensive and less restrictive support that would be provided by a shared aide would not allow for a successful transition to middle school. Even if had provided support for arguing against a shared aide, did not provide necessary detail about why a 1-to-1 aide would make the necessary difference. There were many questions that I would want to see addressed, such as why the 1:1 support would be important, what the 1:1 support should look like, what qualifications the provider should have, whether the 1:1 support should be all day or for a limited number of hours, and why was recommending 1:1 support all year for a transition. Beyond all of that, for Dr. B's opinion to really have much weight, would have needed to be available as a witness to explain under oath how and why reached h's recommendation, and also to allow the school district to ask additional questions on cross-examination. Based on all of the foregoing, I am unable to give Dr. B's letters much weight.

There simply was not enough evidence to support why a shared aide for six hours per day between September 1, and December 1, , who will be servicing no more than three students with similar needs, is not appropriate. Given that there is not enough evidence to support an argument that a less restrictive service is inappropriate, and given the LRE requirements of IDEA and New Hampshire special education law, I am unable to authorize an even more restrictive level of service, or to place an

unnecessarily higher support burden on the school district than is necessary to meet the FAPE requirement.

School district witnesses, especially the Elem. Sch. Principal and the Mid. Sch. Asst. Principal, referenced global opportunities to assist all students who are transitioning from elementary to middle school, and then they discussed more specific transition opportunities specific to the Student. I am concerned that the description of the opportunities specific to the Student are informal and unwritten. I have no disagreement with the quality or quantity of those opportunities. However, this needs to be reduced to writing so that there is no misunderstanding between the Parties about what the opportunities are. The process of creating this document, and the document itself, does not need to be complicated, nor does it require a formal IEP Team meeting. The school district simply needs to document the unwritten transition opportunities specific to the Student that were discussed by the Elem. Sch. Principal and the Mid. Sch. Asst. Principal, and share this with the Parents.

The school district has met its burden of proof specific to the issue of a 1-to-1 versus a shared paraprofessional... but that is not the end of the story. As I explained supra, in footnote 5, I am very concerned with some of the other data that I have seen as part of this case. Comparing the results of the Student's 2020 and 2023 triennial evaluations, the Student appears to be struggling to make meaningful progress in Reading, Writing, Math and Speech. That is not what this case is about, though, and there very well might be strong counter-arguments. As a result, it would not be fair or appropriate for me to issue any rulings related to this issue, and so I decline to do so. Nonetheless, I do want to at least raise this concern for the Parties to consider. I strongly advise the Parties to convene the Team to discuss this issue and decide if anything else can or should be done to examine in more detail and address any deficiencies in the Student's current program or skill level.

Finally, I need to address the school district's failure to convene a resolution meeting within fifteen days of receiving notice of the filing of the due process hearing. Parents filed the due process hearing request on February 8, 2024. Fifteen days after that – the due date for the resolution meeting – was February 23, 2024. The school district did not convene the resolution meeting until March 5, 2024, just two days before the prehearing conference. March 5 was twenty-eight days after the due process hearing request was filed – nearly twice as long as IDEA and New Hampshire state law allow. Whether the delay was intentional, or negligent, or based on lack of knowledge of federal and state special education law is unknown, but regardless, it is a violation that is more than de minimis. As the Supreme Court stated in *Andrew F.*, “the procedures are there for a reason.” As a result, I am referring this matter to the New Hampshire Bureau of Special Education Support for further investigation and to take any corrective actions that might be needed to address this issue.

VI. Order

1. Parent's request that the school district provide Student with a 1-to-1 paraprofessional for the beginning of the 2024 – 2025 school year is denied.
2. The school district is authorized and required to provide Student with a shared paraprofessional as described in the January 3, 2024 IEP. The assigned paraprofessional must support no more than three students with similar needs.
3. Within fourteen (14) calendar days of this decision being issued, the school district must create a formal, written transition plan specific to the Student that will document the informal transition opportunities referenced by the Elem. Sch. Principal and the Mid. Asst. Principal.⁶
4. The school district violated Ed 1123.02(d) and 34 CFR 300.510(a)(2) when it failed to convene a Team meeting within fifteen days of the due process hearing being filed. This is more than a de minimis oversight, and is being referred to the New Hampshire Bureau of Special Education Support for further investigation and corrective action.

VII. Proposed Findings of Fact and Rulings of Law

Parents' Requested Findings of Fact

Granted: None.

Denied: 1 – 9.

School District's Requested Findings of Fact

Granted: 1 – 3, 9 – 10, 16 – 18, 20, 21, 24 – 25, 27 – 31, 33 – 34, 36, 37, 41 – 44.

Denied: 4 – 8, 11 – 15, 19, 22 – 23, 26, 32, 35, 38 – 40, 45, 46.

School District's Requested Rulings of Law

Granted: 2

Denied: 1, 3

⁶ This is specific to the Student's transition from elementary to middle school, and is not to be confused with an IEP post-secondary transition plan.

VIII. Appeal and Post-Hearing Enforcement

Any party aggrieved by this decision may appeal as noted in Ed 1123.20.

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.

So ordered.

/s/ James Baron, Hearing Officer

April 21, 2024