

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Student [REDACTED]
IDPH-FY-21-04-029

DUE PROCESS DECISION

I. INTRODUCTION

This due process proceeding was initiated by the Parent on April 20, [REDACTED] relative to Student's level of speech services provided in Student's [REDACTED] IEP.

A telephonic prehearing conference was held on May 18, [REDACTED] and a prehearing conference report and order was issued on May 24, [REDACTED]

After a number of agreed-upon continuances, the due process hearing was held via videoconference on June 28, [REDACTED] and July 27, [REDACTED]. The District's Motion for Summary Judgement was held in abeyance pending the hearing.

The Parent presented first on June 28, [REDACTED] and had the burden of proof.¹ Parent provided own testimony, and also called [REDACTED] Student's classroom teacher at [REDACTED]. The District presented its case on July 27, [REDACTED], and called the following witnesses: [REDACTED] Student's current speech-language pathologist, who provided services to Student beginning in January of [REDACTED]; [REDACTED] Out of District Coordinator and LEA for Student's IEP team [REDACTED], speech-language pathologist who provided services to Student during the [REDACTED] school year, and the first half of the [REDACTED] school year. All of the individuals who testified are familiar with the Student and have attended IEP team meetings. All witnesses testified credibly.

Both parties submitted exhibits. Both parties filed post-hearing submissions.

The sole issue for due process is whether the levels of speech services provided in Student's IEP, covering the period of July 5, [REDACTED] through July 4, [REDACTED] (36 speech sessions per school year, for 30 minutes per session) are appropriate.

II. FACTS

The following facts are supported by the hearing record:

1. Student is [REDACTED] years old, and resides in the [REDACTED] District. [REDACTED] recently completed [REDACTED] grade at [REDACTED], a [REDACTED] in New Hampshire. [REDACTED] is currently identified under the IDEA as having a speech-language impairment.
2. In May of [REDACTED] Student's IEP Team met to develop [REDACTED] IEP for the [REDACTED] school year. It was determined that [REDACTED] had made progress during the [REDACTED] school year,

¹ NH HB 581 did not take effect until July 29, [REDACTED], two days after the due process hearing concluded.

and did not require compensatory services as a result of the mandated pandemic-related shift to remote learning in March of [REDACTED]

3. At that time, Student was receiving 30 minutes of speech services per week. Following the May [REDACTED] IEP team meeting, the District proposed an IEP that included 30 minutes of speech/language services per week. Parent agreed to this IEP with exceptions, requesting that Student receive speech services twice per week.
4. Student's IEP Team met again on June 17, [REDACTED] to discuss Parent's exceptions to the IEP; at that meeting, Student's speech-language pathologist at the time, [REDACTED], recommended that the speech services listed in Student's IEP be described as 36 sessions per year, rather than as one session per week. The purpose of this construct was to provide flexibility regarding frequency and timing of services, and to permit "front-loading" of services with gradual decrease as Student made progress. On August 16, [REDACTED] Parent signed [REDACTED] partial consent, maintaining [REDACTED] exception to level of speech services offered.
5. [REDACTED] provided speech-language services to Student twice per week from the end of September [REDACTED] through approximately December 21, [REDACTED]
6. During this period, Student made significant progress towards [REDACTED] IEP goals (which focused on articulation and intelligibility); [REDACTED] excelled within the classroom both academically and socially, and met or exceeded grade level expectations. Classroom observations during this period noted no concerns with Student's ability to communicate and interact with peers and teachers, and also noted that [REDACTED] engaged appropriately with peers and was comfortable asking questions and sharing [REDACTED] thoughts.
7. To address Parent's concerns relative to Student's level of speech services, the IEP Team proposed an updated speech-language evaluation.² Parent did not consent to the proposed evaluations. Based on Parent's testimony, it appears that [REDACTED] believed the evaluations to be unnecessary because Student was already identified as having a speech-language impairment.
8. [REDACTED] provided speech-language services to Student twice weekly beginning in January of [REDACTED]. The first week of March [REDACTED] [REDACTED] began providing speech language services to Student once per week.
9. During the March 17, [REDACTED] IEP Team meeting, [REDACTED] reported that Student was doing "phenomenally" with [REDACTED] articulation and mastering [REDACTED] skills, and Parent reported that [REDACTED] was not concerned with [REDACTED] articulation. [REDACTED] also reported that, since the transition of services to once per week, [REDACTED] had not seen a decline in any of Student's skills, and that there was no data to support Student needing increased speech services.

² To address concerns unrelated to Student's speech, the IEP Team proposed to evaluate Student for additional identifications

10. Following the transition to once-per-week speech sessions, there was no evidence of regression; rather, Student continued to excel academically and make progress towards █ IEP goals.
11. At the March 17, █ meeting, █ agreed to institute, as a diagnostic measure, a “push in” model, where speech sessions would be broken into two parts: 15 minutes within the classroom and 15 minutes outside of the classroom. This would enable █ to assess the extent to which Student’s skills were carrying over into the classroom, and to work on in-the-moment teaching of Student’s use of speaking strategies relative to rate of speech. This “push-in” model was begun on March 22, █ and was continued through the end of the school year.
12. █ opined that Student’s speech was not impacting █ access to education. The progress data in Student’s final IEP Progress Report establishes that Student mastered all but two of █ objectives, and made significant progress on both █ articulation and intelligibility goals. By the end of the school year, Student had mastered █ IEP goals and objectives.
13. On June 2 █ the IEP Team met and discussed Student’s IEP for the upcoming school year. Following that meeting, based on the progress data to date and the recommendations from █ the District’s proposed IEP included a graduated decrease in the level of speech services.
14. None of Student’s medical providers recommended a specific quantity of speech-services for Student.
15. According to Student’s classroom teacher, out of ten times Student spoke to an adult, █ did not understand █ twice per day; █ also noted that said “umm” while █ speaks. Student’s classroom teacher did not express these concerns to the District staff. The District’s speech-language pathologist opined that, that even given this information, it would not mean that Student required additional speech services. Strategies were implemented to help Student reduce anxiety. Once Student was reminded to speak at a slower rate, █ was able to be understood.
16. Despite the occasional display of tics or nervous behavior, increasing Student’s speech services would not reduce those tics; nor did those behaviors interfere with Student’s ability to access the general curriculum or impede █ ability to make meaningful progress. By the end of the █ school year, Student had met or exceeded all grade level expectations at █; █ is above grade level in math and reading.

III. RULINGS OF LAW

- A. To comply with the IDEA, an IEP must be reasonably calculated to confer a meaningful educational benefit. Johnson v. Boston Public Schools, 906 F.3d 182, 194 (1st Cir. 2018). The IDEA “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”. Endrew F. v. Douglas City School District, RE-1, 137 S. Ct. 988, 1001 (2017).

- B. The evidence establishes that Student received educational benefit during the [REDACTED] school year. Student excelled academically, ending the school year meeting or exceeding all grade level standards, and significantly exceeding the grade level standards in reading and math. In addition, [REDACTED] mastered [REDACTED] IEP goals to the point where articulation was no longer a concern, and [REDACTED] was over 90% intelligible in all settings. Student mastered [REDACTED] IEP goals. Therefore, the speech services provided during the [REDACTED] school year were appropriate, and Student received a FAPE.

IV. CONCLUSION AND ORDER

- I. The record does not support the Parent's claim that the level of speech services set forth in the Student's [REDACTED] IEP was inadequate to enable [REDACTED] to receive a FAPE;
- II. The record demonstrates that Student's [REDACTED] IEP was reasonably calculated to enable Student to make meaningful educational progress and Student made meaningful educational progress during the [REDACTED] school year, including with respect to speech-language goals;
- III. Although the speech services in the [REDACTED] IEP were appropriate, there is nothing to prevent the IEP team from reviewing or assessing speech services delivery at any time.

Date: August 13, [REDACTED]



Amy B. Davidson, Hearing Officer

Cc: Parent, Attorney [REDACTED] (via email and certified mail)

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.