# The State of New Hampshire

Department of Education

In re: Student

IDPH FY-21-08-006

### 1. INTRODUCTION

A Pre-Hearing Conference was held on September 29, 2020. An Order was issued on September 29, 2020 and identified as the issues to be resolved included FAPE, IEP, ESY and Compensatory Education. The Parents presented first. They were represented by Attorney.

The District was represented by Attorney.

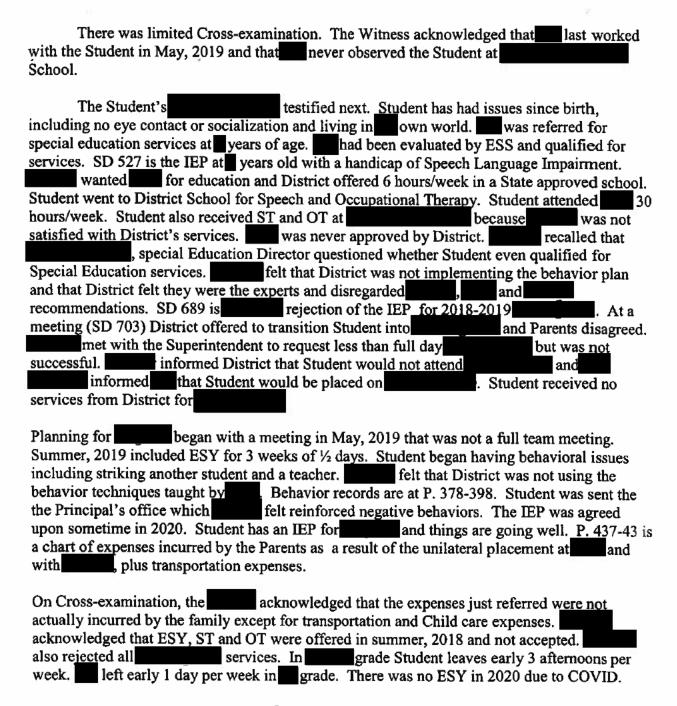
The Hearing was held on January 26 and February 8, 2021.

Program testifies first

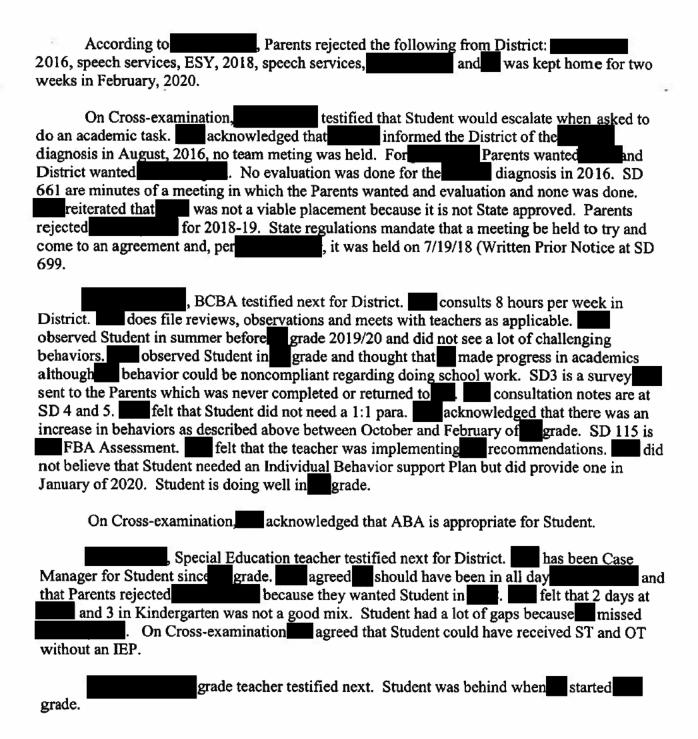
## 2. DISCUSSION

Resume is at Parent's (P) 5. is BCBA certified.
trains parents of children with Autism. Student, dob 07/13/ started with the
Progra in November, 2016. began at one month later.
used Applied Behavioral Analysis (ABA) to observe behavior and be able to treat it. The
Student's behavior plan was for 30 hours of ABA therapy weekly. The behavior plan
created for the Student is at SD 715-716. The IEP created for the Student is at SD 582.
incorporated the Behavior Plan created by . The Student was attending
and after school.
recommended that the Student attend in the morning in District and in the afternoon. District disagreed and wanted the Student in District all day. The Parents countered by offering that the Student attend in District 3 days and RSC 2 days. The parties were unable to agree. SD 671 is the proposed IEP for 7/1/18-6/30/19. The parents rejected the IEP but did not appeal the rejection. felt that the IEP was not appropriate, particularly with respect to behavioral goals. The parties also disagreed on placement. The Student attended for 20 hours per week for felt that the Student would need a behavior plan to begin The Student's behaviors were tracked in behavior reports at P. 378-402.

from the



requested ABA services for Student at every meeting and brought a person to explain why.  is not considered a school by the State as it is a medical service. For District had a BCBA person available SD 703.
District witnesses testified before the conclusion of the Parent's case. Their testimony will be addressed below. The final Parent witness was (BCBA). Worked with the Student at after left. If felt that Student needed ABA and speech services. If followed the public school academics with Student at Student had an FBA and removing from the classroom would cause behavior to escalate.
On Cross-examination, agreed that is not a certified classroom teacher. told the team in a meeting on 1/6/20 that 90% of the time does behavior intervention, not academics.
District's first witness was approve placement at because it is not State approved. Student did not attend but wanted to wait until year when the 3 year evaluation would be due to occur. Student did not attend in 2018-19. There was an issue raised my that the school handbook offered ½ or full day and this witness said that that was no longer the policy and had, by mistake, not been omitted from the handbook. District offered ABA services through a Consultant but Parents rejected IEP and placement. The Superintendant met with the because the handbook makes it an option. When informed by the Parents that Student would not attend would be placed on told the Parents that by withdrawing Student from school they lose special education services.
testified that the District never received the medical information from until the Due Process request was filed. District had no knowledge that Student attended (P. 543) yet Parents want to be compensated for that placement. felt that Parents had already selected even though District could provide for Student's needs in District. SD 555 are minutes of a team meeting on 10/225/16 and District did not obtain a copy of the evaluation that had been done. In opinion Student was ready for full-day and Parents rejected it. As mentioned earlier, the parties attempted to negotiate the amount of time that the Student would bi in but were not successful. Student started grade without and IEP. had behavioral issues so a BCBA was put into place to address these issues. There were 19 behavioral incidents between October, 2019 and February, 2020. A partially accepted IEP was ultimately agreed to.



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felt that Student was behind when started grade. people only worked on
behavioral issues with Student. grade had around 20 students with a para and Case Manager
and ST/OT were pull out. did refer Student to the Principal for behavior issues. felt that
Student made good academic progress in grade. On Cross-examination acknowledged
that modified Student's academics and that behavior could interfere with academics.

# 3. Requests for Findings of Fact and Rulings of Law.

Parent's Requests for Findings of Fact are Ruled upon as follows: #1 Granted; #2 Granted; #3 Granted; #4 Granted; #5 neither Granted nor Denied but if inconsistent with the Decision below deemed denied;#6 neither Granted nor Denied; #7 Neither Granted nor Denied; #8 Granted; #9 Denied; #10 Neither Granted nor Denied; #11 Neither Granted nor Denied; #12 Denied; #13 Neither Granted nor Denied (these are ruled upon as well as the above ones because the Request includes contradictory information); 14 Granted; #15 Granted; #16 Neither Granted nor Denied; #17 Granted; #18 Granted; #19 Neither Granted nor Denied; #20 NGND; #21 NGND; #22 NGND; #23 NGND; #24 NGND; #25 NGND; #26 NGND; #27 NGND; #28 NGND; #29 NGND; #30 NGND.

Rulings of Law: #1 Denied; #2 Denied; #3 Denied; #4 Denied; #5 Denied; #6 Denied; #7 Denied; #8 Denied.

District's Requests are combined. Any NGND ruling is based on contradicting or ambiguous or argumentative statements contained in any Request. #1 Granted; #2 Granted; #3 Granted; #4 NGND; #5 NGND; #6 Granted; #7 Granted; #8 Granted; #9 Granted; #10 Granted; #11 Granted; #12 Granted; #13 NGND; #14 Granted; #15 Granted; #16 Granted; #17 NGND; #18 NGND; #19NGND; #20 Granted; #21 Granted; #22 Granted #23 Granted; #24 Granted; #25 NGND; #26 NGND; #27 Granted; #28 Granted; #29 NGND; #30 NGND; #31 NGND; #32 Granted.

#### 4. DECISION

In this case it is the undersigned's finding and Ruling that the Parents wanted the Student from the beginning even though is not an educational program to receive services at but is a behavioral one. The Parents stood by their position regarding and when they could not agree with District, they opted out of and the Student was rightfully . The Student never received a education but instead received behavioral services at and and and an arm. That was their decision but at no fault of the District. Had the Student matriculated in District for would have had a much better opportunity for academic and behavioral success. was behind when grade. did have some manageable behavioral issues but made progress in grade and continues to do so. The District did not violate any procedural obligations to the Student that impacted education. Clearly, the Parents had every right to determine that their child receive the services that they felt needed, and did so. However, they are not entitled to compensatory education or reimbursement. The District is the Prevailing Party.

#### 4. 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 Decision

So Ordered,

John P. LeBrun Hearing Officer

03/24/2021