

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

**Student/Nashua School District  
IDPH-FY-22-12-023**

**DUE PROCESS DECISION**

**I. INTRODUCTION**

The Nashua School District (District) requested due process relative to whether the evaluations it conducted in the areas of communications and mobility were appropriate, and whether the Parent is entitled to an Independent Educational Evaluation (IEE).

Telephonic prehearing conferences were held on December 27, [REDACTED] and January 3, [REDACTED]. The due process hearing was held via Zoom on January 25 and 26, [REDACTED]. The District presented first, and called four witnesses: [REDACTED] PT, DPT; [REDACTED] MS, CF-SLP; [REDACTED] Teacher; and Marcia Bagley, Special Education Director. Parent called [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and also testified [REDACTED].

At the hearing, the parties agreed to file post-hearing submission by February 9, [REDACTED] with a decision date of February 18, [REDACTED]. Following the hearing, Parent requested a transcript of the proceedings for use in preparing post-hearing submissions; the transcript was provided on February 14, [REDACTED]. Although no formal motion was filed to extend the deadline for post-hearing submissions, it was extended to February 18, [REDACTED] and again to February 23, [REDACTED] to allow sufficient time for filing. A new decision date of February 25, [REDACTED] was set.

**II. FACTS**

1. Student is a [REDACTED] grader at the [REDACTED] School in Nashua, New Hampshire. [REDACTED] was found eligible for special education under the IDEA, with an identification of [REDACTED]. Student's last agreed-upon IEP is dated June 11, [REDACTED] to June 10, [REDACTED].
2. The District conducted Student's three-year re-evaluation in the spring of [REDACTED]. The Academic Performance Assessment was conducted by a certified educator. Intelligence and emotional status assessments were conducted by the school psychologist. At that time, mobility was not a suspected educational disability.
3. The communications evaluation was conducted by [REDACTED] a licensed speech-language pathologist. [REDACTED] had been providing services to Student at school since February of [REDACTED]. [REDACTED] administered the Clinical Evaluation of Language Fundamentals, 5<sup>th</sup> Edition, an appropriate tool for determining language disorders. [REDACTED] found that Student presented with age-appropriate intelligibility, voice, pragmatic skills, and fluency, in the average range of abilities in tested areas of receptive and expressive language skills. [REDACTED] noted that Student put forth good effort during the evaluation. [REDACTED] [REDACTED] evaluation process, report, and findings were reviewed and approved by [REDACTED] mentor.

4. Student's IEP team met on June 3, [REDACTED] to review all of the evaluations available at that time. The team agreed that the social/emotional status evaluation needed to be completed by having Parent provide information, and would be amended with the new information once it was received.
5. The team met again on August 25, [REDACTED] to review the amended social/emotional status evaluation. Parent informed the team that [REDACTED] had an outside PT evaluation for the team to consider. It was decided that, upon receipt of the outside PT evaluations, the District would review it and another team meeting would be convened.
6. In late August of [REDACTED] the outside PT evaluation was provided to the District. Upon reviewing that evaluation, which had been conducted solely in a clinical setting, the District did not believe that it provided enough information with which to determine the need for school-based services. The District concluded that it should conduct its own mobility evaluation in the school setting.
7. The mobility assessment was conducted in the fall of [REDACTED] by [REDACTED] a licensed physical therapist and Board Certified Clinical Specialist in Pediatric Physical Therapy. [REDACTED] performed a standard orthopedic assessment and used the gross motor skill portions of the School Functions Assessment, an appropriate assessment tool. [REDACTED] [REDACTED] also observed Student across several school settings, including gym, classroom, hallways, and playground. [REDACTED] concluded that Student was able to perform a wide variety of functional motor skills necessary for full participation and success in the school setting.
8. The findings and observations of both [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were consistent with the observations by Student's [REDACTED] grade teacher.
9. There is no dispute regarding the examiner qualifications, the tests administered, or the findings of the examiners.
10. All triennial evaluations were conducted within reasonable time periods, given the circumstances. They were reviewed and considered at the next team meeting on November 19, [REDACTED]
11. Parent maintains that the District did not accept the outside PT evaluation [REDACTED] provided to the team. The IEP team must *consider* outside evaluations provided by the Parent, but may not necessarily adopt the recommendations. As noted above, the IEP team did receive and consider the outside PT evaluation, and determined that an in-school evaluation was necessary. The District also received several doctors' notes and an outside PT letter provided by the Parent, regarding Student's need for bus transportation; the District has agreed to provide this transportation for the [REDACTED] school year.

### III. RULINGS OF LAW

- A. In the case of a parental request for an IEE at public expense, the District must either grant the request or seek due process. See 34 CFR §300.502. In that event, the District must show that its evaluation is appropriate. See 34 CFR 300.502(a)(2)(i); *see also* Ed 1107.03(b).

- B. A parent is only entitled to an IEE at public expense if it is found that the school district's assessments failed to comply with the IDEA's requirements for evaluations.
- C. The evaluations and test instruments were appropriate for assessing all areas of suspected disabilities. The communications and mobility evaluations were administered in accordance with criteria set forth in state and federal law. The assessments were administered by trained and knowledgeable personnel, both of whom held appropriate certifications and/or licenses, and who were qualified examiners for the tests they administered. The communications and mobility evaluations were valid and reliable.
- D. There is no evidence in the record that the evaluators used by the District were biased, or that the evaluations were not conducted properly.

**IV. REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW**

The District filed a Request for Findings of Fact and Rulings of Law, which is attached to this Decision and incorporated herein.

District: Request for Findings of Fact: Numbers 1 – 34 are granted. Request for Rulings of Law: Numbers 33 – 46, 48 are granted as written.

Parent: No requests were filed.

**V. CONCLUSION AND ORDER**

Based upon the testimony and evidence submitted by the parties, the record does not support an entitlement to an IEE at public expense in the areas of communications and mobility.

Date: February 25, [REDACTED]

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Amy B. Davidson, Hearing Officer

Cc: Parent, Attorney Bennett

**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.

THE STATE OF NEW HAMPSHIRE  
STATE DEPARTMENT OF EDUCATION  
STUDENT/NASHUA SCHOOL DISTRICT

IDPH-FY-22-12-023

**NASHUA SCHOOL DISTRICT'S  
REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW**

NOW COMES the Nashua School District (“District”), by and through its attorneys, Wadleigh, Starr & Peters, PLLC, and respectfully submits the following Request for Findings of Fact and Rulings of Law:

I. ISSUE PRESENTED AND BURDEN OF PROOF

1. The issue for due process is: Whether the evaluations the District conducted in the areas of communications and mobility are appropriate, and whether the Parent is entitled to an Independent Educational Evaluation (IEE).

2. The District, having initiated due process, has the general burden of proof. *See Schaffer v. Weast*, 546 U.S. 49 (2005); see also Ed 1123.17a.

3. If a parent requests an IEE at the public’s expense, the District must either grant the request or file a due process complaint requesting a hearing. See 34 CFR 300.502. In this matter, the District is obligated by state and federal regulations to show that its evaluations are appropriate. See 34 CFR 300.502(b)(2)(i); see also Ed 1107.03(b).

II. REQUEST FOR FINDINGS OF FACT

A. [REDACTED] background information.

4. [REDACTED] date of birth is [REDACTED] [REDACTED] is [REDACTED] years old and enrolled as a [REDACTED] grade student at the [REDACTED] School in Nashua, New Hampshire. [REDACTED] is

currently identified as having a [REDACTED] Testimony of District witnesses; District Exhibit (“Ex.”) 5.<sup>1</sup> [REDACTED] last agreed upon IEP is dated June 11, [REDACTED] June 10, [REDACTED] Ex. 5.

5. [REDACTED] has been diagnosed with [REDACTED] [REDACTED] in prior evaluations. [REDACTED] has diagnoses of [REDACTED] [REDACTED]. Testimony of District witnesses; Ex. 5.

**B. [REDACTED] triannual re-evaluation.**

6. In the Spring of [REDACTED] the District conducted a three-year re-evaluation of [REDACTED] to determine, in part, if [REDACTED] remained eligible for special education services. [REDACTED] was evaluated in the areas of academics, communications and social emotional. As will be explained later, the District conducted a mobility (PT) evaluation of [REDACTED] during the fall of [REDACTED] Testimony of District witnesses; Ex. 13,16,20.

7. All evaluations were conducted by qualified individuals. The Academic Performance Assessment was conducted by [REDACTED] [REDACTED] a certified educator. Ex. 13. The Communications Skills evaluation was conducted by [REDACTED] [REDACTED] a state-licensed speech-language pathologist. Transcript of January 25, [REDACTED] (“TR.1”) P 27 L 25, P. 28 L 3-8. The intelligence and [REDACTED] emotional status assessments were conducted by [REDACTED] [REDACTED] a school psychologist. Ex. 13. The mobility (PT) assessment was conducted by [REDACTED] [REDACTED] [REDACTED] a licensed physical therapist. Tr.1 P 5 L8-23.

8. The IEP team met on June 3, [REDACTED] to review all evaluations, except the mobility evaluation which was not completed until later. Mobility (PT) was not evaluated initially because it wasn’t an area of suspected educational disability. Ex 16. [REDACTED] [REDACTED] who completed

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<sup>1</sup> All references to exhibits are those exhibits contained in the Core exhibits submitted by the District.

the Communications Skills assessment, was present at the meeting and explained [REDACTED] evaluation process and findings. Ex. 16.

9. [REDACTED] [REDACTED] testified at this hearing, as [REDACTED] did at previous IEP meetings, that [REDACTED] is a state-licensed speech pathologist. Tr.1 P. 27 L 25, P. 28 L 3-8. [REDACTED] stated that [REDACTED] had conducted a number of evaluations during [REDACTED] Master's program and had completed several for the District at the time [REDACTED] conducted [REDACTED] evaluation. Tr.1 P49 L6-11. [REDACTED] further testified that [REDACTED] evaluation process, report and findings were reviewed and approved by [REDACTED] mentor, [REDACTED] [REDACTED] Tr.1 P 28 L17-21; see also Ex. 20.

10. [REDACTED] [REDACTED] testified that the evaluation tool selected by [REDACTED] Clinical Evaluation of Language Fundamentals, 5<sup>th</sup> Edition (CELF-5), was an accepted and appropriate tool for diagnosing language disorders in children. Tr.1 P 32 L18-23; Ex. 12.

11. [REDACTED] [REDACTED] testified that the Student comfortable during the evaluation and put forth a good effort. Tr.1 P 31 L16-17, P 32 L12. [REDACTED] findings were consistent with [REDACTED] observations of [REDACTED] made since February [REDACTED] when providing services to [REDACTED] at school. Tr.1 P 34 L9-13.

12. [REDACTED] [REDACTED] found that [REDACTED] "presents with average range abilities in tested areas of receptive and expressive language skills" and that [REDACTED] "presents with age appropriate intelligibility, voice, pragmatic skills, and fluency." Tr.1 P43 L5 to P 44 L 5; Ex. 5.

13. [REDACTED] [REDACTED] findings and observations of [REDACTED] communication skills are supported by the observations of [REDACTED] [REDACTED] [REDACTED] [REDACTED] grade teacher. Tr.1 P 63 L 24 to P 65 L 8.

14. The IEP team did not complete its review of all evaluations on June 3, [REDACTED] because the social/emotional status assessment was not complete. Ex. 16. The Parent had not

returned the “scales” sent to [REDACTED] and intended to provide input from the student’s home. Ex. 16. The team agreed that the social/emotional status assessment would be amended with the new information once returned by the Parent. Ex. 16. The Parent finally returned the scales several weeks later. Transcript of January 26, [REDACTED] (“Tr.2”) P 94 L23.

15. At the conclusion of the June 3, [REDACTED] meeting, the Parent stated that [REDACTED] was giving [REDACTED] notice for independent evaluations at public expense. Ex. 16. Neither the Parent nor Parent’s counsel indicated what evaluations they were requesting or the additional areas of need to be evaluated. Ex 16; see also Ex. 18 (Parent’s counsel waiting to see if IEEs may be necessary.). It was not until the conclusion of the November 19, [REDACTED] IEP meeting that Parent and [REDACTED] counsel requested IEEs in the areas of communication skills and mobility (PT). Ex. 20.

16. The IEP team convened its next meeting on August 25, [REDACTED] Ex. 18. The District had sought an earlier meeting date but, as the parent testified, [REDACTED] was unavailable for almost the entire month of August, [REDACTED] Tr.2 P 96 L 13-15.

17. The purpose of the August 25, [REDACTED] meeting was to review the amended social/emotional status assessment (psycho educational evaluation) with the additional information provided by the parent in late July, [REDACTED] Ex. 18. The team was also slated to redeliberate [REDACTED] eligibility for special education services. Ex. 18.

18. During the August 25, [REDACTED] meeting, parent and [REDACTED] counsel informed the District that [REDACTED] had an outside PT evaluation which [REDACTED] wished the team to consider. Ex. 18. Parent’s counsel inquired as to why the District had not previously done its own PT evaluation and was told that [REDACTED] mobility had not previously been identified as an area of need and that [REDACTED] had never previously received OT or PT services through the school. Ex. 18. The District proposed ending the meeting. Ex. 18. Parent’s counsel requested that all evaluations be reviewed at the

next meeting so it could be determined if additional evaluations or IEEs would be required. Ex.

18. The meeting concluded with the understanding that, upon receipt of the outside PT assessment, the District would review it and schedule an IEP meeting. Ex. 18.

19. Upon receipt of the outside PT evaluation (dated June 17, [REDACTED] but not provided to the District until after August 25, [REDACTED] IEP meeting, the District determined that it should conduct its own mobility evaluation, but in a school setting.

20. [REDACTED] [REDACTED] a licensed physical therapist and Board Certified Clinical Specialist in Pediatric Physical Therapy conducted the mobility assessment of [REDACTED] Tr.1 P 5 L8-23; Ex. 2.

21. [REDACTED] [REDACTED] performed a standard orthopedic assessment and used the gross motor skill portions of the School Functions Assessment (SFA), an appropriate evaluation tool. Ex. 6. [REDACTED] [REDACTED] observed [REDACTED] across several school settings, including the classroom, hallways, gym and on the playground. Tr. 1 P 8 L 3-6; Ex. 6.

22. [REDACTED] [REDACTED] found that [REDACTED] is able to perform a wide variety of functional motor skills necessary for full participation and success in the school setting. Tr. 1 P16 L9-19; Ex. 6. [REDACTED] [REDACTED] testified that [REDACTED] has no safety concerns for the Student. Ex. 6. [REDACTED] testified that the Student, when compared with [REDACTED] peers, had average abilities in getting around the school. Tr.1 P 15 L3-5.

23. [REDACTED] [REDACTED] observations of [REDACTED] in the classroom, hallways and on the playground were supported by the observations of [REDACTED] [REDACTED] [REDACTED] [REDACTED] grade teacher. Tr.1 P 65 L9 to P 67 L14.

24. The outside PT evaluation submitted by Parent to the District in late August, [REDACTED] was also reviewed and considered by the District Team. Tr.1 P 97 L 15- P 98 L1. The outside PT evaluation was conducted solely in a clinical setting. Ex. 7. It did not provide enough



information to determine the need for school based services. Tr.1 P102 L6-7. The outside PT assessment states, in part, that no standardized testing was done. Ex. 7.

25. [REDACTED] testified that physical therapy in the school setting is a related service to enable students to access their educational program. Tr.1 P 6 L18—21. [REDACTED] stated that the outside PT evaluation does not address a student's specific physical requirements for participating in their school activities. Tr.1 P 6 L24 to P 7 L 2.

26. The parent provided several doctors' notes and a letter from the outside physical therapist regarding [REDACTED] need for bus transportation to and from school. Ex 8, 9, 10,11.

27. The School District currently provides bus transportation for [REDACTED] and has agreed to continue the bus transportation at least through this school year. Tr. 1 P 82 L 8-11.

28. All evaluations, including those for communication skills and mobility, were conducted within a reasonable time period. Delays were caused by parent's failure to return information required for completion of evaluations and parent's unavailability for a large portion of the [REDACTED] summer. Tr. 2 P 94 L 18-23, P 96 L13-15.

29. All triannual evaluations, including those for communication skills and mobility, were conducted by licensed/certified personnel who were qualified examiners in their areas of expertise. Ex. 13.

30. The evaluation tools used by [REDACTED] and [REDACTED] were appropriate; the Student put forward good effort during the evaluations; and, their findings were supported by the observations of the Student's [REDACTED] grade teacher. Tr.1 P 32 L18-23; Tr.1 P 31 L16-17, P 32 L12; Tr.1 P 63 L 24 to P 65 L 8; Ex. 6; Tr.1 P 65 L9 to P 67 L14.

31. All evaluations which were part of the triannual re-evaluation for determination of [REDACTED] eligibility for special education services were reviewed at the November 19, [REDACTED] IEP team meeting. Ex. 20.

32. The members of the Team, after completing the Developmental Delay Deliberation Form, concluded that [REDACTED] did not qualify to be identified as a student with a [REDACTED] disability. Ex 20. The District proposed that [REDACTED] no longer be determined to have a disability requiring specially designed instruction. Ex. 20.

33. [REDACTED] [REDACTED] the Student's [REDACTED], agreed that [REDACTED] wasn't taking issue with the qualifications of the professionals who administered the mobility and communications evaluations, the evaluation tools chosen by the evaluators, or even the findings of the evaluators. Tr.2 P55 L2-14.

34. [REDACTED] [REDACTED] the Student's [REDACTED] stated that [REDACTED] believed the evaluators were licensed by the state to perform the evaluations and did not take exception to the evaluation tools used by them. Tr.2 P 84 L 21, P 86 L 11-17, 21. [REDACTED] [REDACTED] claims that the evaluators used by the District are biased in favor of the District, but offered no support for that claim. Tr. 2 P 80 L18-19. Likewise, [REDACTED] [REDACTED] alleges that the evaluations were not conducted properly, but again offers no evidence in support of that allegation. Tr.2 P 80 L 19-20.

### III. REQUEST FOR RULINGS OF LAW

#### **Request for an Independent Evaluation at Public Expense**

33. The assessments and evaluations used by the District were used for the purposes for which they are valid and reliable. 34 CFR 300.304(c)(1).

34. The assessments were administered by trained and knowledgeable personnel, who held appropriate certifications and/or licenses, and who were qualified examiners for the assessments they administered. Ed. 1107.04.

35. The assessments were administered in accordance with procedures/instructions with the assessment tools.

36. The assessments and other evaluation materials included those tailored to assess specific areas of educational need.

37. When the District uses qualified evaluators who evaluate the student in conformity with the IDEA, the Parent is not entitled to an IEE at public expense. See e.g., B.G. v. Board of Educ. of the City of Chicago, 72 IDELR 231 (7th Cir. 2018) (Neither a school psychologist's failure to explain certain scores on one assessment nor [REDACTED] failure to consider the results of a behavioral rating scale invalidated an Illinois district's reevaluation of a bilingual [REDACTED]-grader with a specific learning disability and emotional disturbance.); E.P. v. Howard County Pub. Sch. Sys., 72 IDELR 114 (4th Cir. 2018, unpublished) (Neither a Maryland district's failure to administer certain subtests when evaluating a [REDACTED] with [REDACTED] nor its use of a "pattern of strengths and weaknesses" model when testing the student for SLD entitled the parents to an IEE at public expense.).

38. Parental disagreement with the scope of an evaluation or the argument that the evaluator could have done more does not warrant an IEE at public expense. See e.g., Fulton County Sch. Dist., 9 GASLD 9, 115 LRP 51672 (SEA GA 2015) (Although the father expressed that the district evaluator could have done more during [REDACTED] evaluation of the [REDACTED] with articulation issues, the ALJ concluded that the district's evaluation complied with the IDEA.).

39. Though a school district must consider the results of an IEE, the district is not obligated to accept the evaluator's recommendations or conclusions. T.S. v. Bd. of Educ. of the Town of Ridgefield, 10 F.3d (2d Cir. 1993); G.D. v. Westmoreland Sch. Dist., 17 IDELR 751 (1st Cir. 1991)

40. A parent is only entitled to an IEE at public expense if a hearing officer finds the district's assessment failed to comply with the IDEA requirements for evaluations. Those requirements include using qualified personnel to administer assessment, administering assessments in a manner that does not discriminate on a racial or cultural basis, and assessing the student in all suspected areas of disability. B.G. v. Board of Educ. of the City of Chicago, 72 IDELR 231 (7th Cir. 2018)

41. The evaluations conducted by the District were valid and reliable.

42. The evaluations conducted by the District were administered in accordance with criteria set forth in applicable state and federal law. See 34 CFR 300.301-305 and corresponding state regulations.

43. The assessment, tests, and instruments were appropriate for assessing the areas of suspected disability. The District conducted full and individual evaluations to determine if the Student was eligible for special education services in the areas of communication skills and mobility. See 34 CFR 300.301; see Ed 1107.04; Table 1100.1.

44. Because IDEA evaluations depend on the exercise of professional judgment, they are entitled to a reasonable degree of deference. Accordingly, when parent challenges a decision reached by an educational professional, they must show more than simple disagreement with the conclusion; they must show the professional judgment rendered is actually wrong, and not just in doubt. For example, a parent must show evidence of a flawed evaluation process, by failing to

follow regulatory requirements or evaluation tool instructions. See e.g., West Chester Area Sch. Dist. v. G.D., 69 IDELR 91 (E.D. Pa. 2017).

45. Once a District has met its burden of proving that its evaluations were appropriate, the burden shifts to the Parent to prove that the evaluators' methodologies were flawed. E.P. v. Howard County Pub. Sch. Sys., 70 IDELR 176 (D. Md. 2017).

46. The District has met its burden of proving that the evaluations were appropriate under the law.

47. The Burden having shifted, the Parent has not demonstrated the value or need for additional evaluations in the areas of communication skills and mobility nor a reason why such IEEs should be done at public expense.

48. The Parent is not entitled to independent evaluations at public expense.

49. The District is the prevailing party.

Respectfully Submitted,

NASHUA SCHOOL DISTRICT,

By its attorneys,  
WADLEIGH, STARR & PETERS, PLLC

By: 


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Dated: February 18, [REDACTED]

CERTIFICATION

I hereby certify that a copy of the within Request for Findings of Fact and Rulings of Law have this day been mailed, by certified mail, to parent, [REDACTED] [REDACTED]

[REDACTED]

  
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Stephen M. Bennett, Esq.