

**STATE OF NEW HAMPSHIRE**  
**STATE DEPARTMENT OF EDUCATION**

[REDACTED] School District

IDPH-FY-24-03-042

**[REDACTED] SCHOOL DISTRICT'S REQUESTS FOR FINDINGS  
OF FACT AND RULINGS OF LAW**

NOW COMES the [REDACTED] School District ("District"), by and through its attorneys, [REDACTED], and submits the following Requests for Finding of Fact and Rulings of Law, stating as follows:

**I. Findings of Fact**

**A. Introduction and Scope of Hearing**

1. The scope of this hearing was limited to the issues raised in the Parents request for due process, and during the time frame of June 17, 2022, the conclusion of the 2021-2022 school year through March 1, 2024, the date Parents filed their request for due process. See Order on Motion to Dismiss, 4/17/24; see also District Exhibit ("DE") 67 ([REDACTED] school calendars); see also Settlement Agreement, attached to District's Response to Request for Due Process as Exhibit A.

2. As noted in DE 67, the 2021-2022 school year ended on June 16, 2022. [REDACTED] was on vacation from June 17, 2022 through June 26, 2022. [REDACTED]'s summer term commenced on June 27, 2022. DE 67, pgs. 25-526.

3. During the period of June 17, 2022 through October 31, 2023, Student was placed at [REDACTED], as a day student. See Testimony of Parents; [REDACTED]; [REDACTED]; DE 14, pg. 164; DE 39, pg. 353; DE 65 (IEP placement pages for July 2021-January 2022).

4. Student began attending [REDACTED], residentially, on November 1, 2023. See generally, Testimony of Parents and District Witnesses; DE. 84, pg. 799 (email confirming Student's arrival at [REDACTED]). Student's residential placement at [REDACTED] is not in dispute. Parents' Testimony; request for due process.

5. Parents' request for due process alleges the following:

- Evaluations – Parents allege that the District failed to conduct evaluations in the areas of physical therapy, forensic and functional vision (see Request for Due Process, § A, pg. 81);<sup>1</sup>
- Eligibility – Parents allege that the District should have conducted a functional vision assessment to determine eligibility due to a visual impairment (see Request for Due Process, § B, pg. 82);
- IEP – Parents allege that the IEPs were inappropriate because they did not include home and community supports, residential placements, psychosexual treatment, physical and occupational therapy, mental health counseling, safety equipment and adaptive equipment (see Request for Due Process, § C, pg. 82);
- Placement – Parents allege that Student required a residential placement prior to placement at [REDACTED] (see Request for Due Process, § D, pg. 83);

6. Parents request for due process does not seek compensatory services. See Request for Due Process.

7. Some of the allegations raised in the request for due process, and some of the Parents'

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<sup>1</sup> To the extent that a "forensic" evaluation is a "risk assessment," the District acknowledges that a request for a risk assessment was made in December 2022. To the extent that a "forensic" assessment is something other than a risk assessment, a request for a "forensic" assessment was not made until after this request for due process was filed and is therefore outside of the scope of this hearing. See DE 12, pg. 135; 20 U.S.C. 1415(f)(3)(B).

requested relief, are outside of the scope of this hearing in that they predate June 17, 2022 or the statutory limitations period, or were not included in their request for due process.

**B. Facts Pertaining to Issues for Hearing**

**i. Evaluations and Eligibility**

8. During the period of June 17, 2022 through October 31, 2023, Parents did not request that Student's IEP Team conduct evaluations in the areas of physical therapy and functional vision. See generally Parents' Testimony, ██████████ Testimony; DE and Parent Exhibits ("PE"); DE 21-23, 61 (12/22 evaluation planning meeting, evaluation plan and WPN).

9. Parents' request for physical therapy services and assessments and a functional vision assessment occurred during the 2021-2022 school year and are outside of the scope of this hearing. PE 24-25; Order on Motion to Dismiss. Parents' outside PT evaluation was obtained by Parents to determine a medical need for PT, not an educational need. See PE 24-1 (referred to PT by primary care physician for a wellness PT evaluation).

10. Student's IEP Team met in December 2022 for an evaluation planning meeting. DE 61; ██████████ Testimony.

11. At that meeting, Parents were represented by an educational advocate, ██████████, of ██████████. DE 74, pg. 555.

12. ██████████, current Co-Director of ██████████ and former Principal, provided credible testimony regarding Student's educational program and needs while ██████████ attended ██████████. ██████████ Testimony; see also DE 72. ██████████ staff attended the evaluation planning meeting and suggested the evaluations that they thought were appropriate, based on their observations and knowledge of

Student and [REDACTED] needs; those evaluations were incorporated into the Student’s evaluation plan. [REDACTED]

Testimony; DE 21, 61.

13. Following the meeting, an evaluation plan was developed. DE 21. Parents provided input into this plan. DE 22 (email correspondence from Parent requesting revisions to evaluation plan and WPN).

14. At no time during the evaluation planning process did Parents or any member of the Team, including [REDACTED] staff, recommend a physical therapy or functional vision assessment. Testimony of Parents, [REDACTED] [REDACTED] and [REDACTED] [REDACTED]; DE 21-23, 61.

15. During the December 2022 evaluation planning meeting, [REDACTED] requested a risk assessment; the reason for [REDACTED] request was that Dr. [REDACTED]’s 2020 evaluation did not accurately portray [REDACTED]’s current functioning. DE 61 at 43 minutes (also noting that [REDACTED] is “not” the behavioral student that other kids are, and that [REDACTED] has not had any behavioral concerns at [REDACTED]). [REDACTED] also asserted that Dr. [REDACTED]’s statement that “arms-length supervision is required” and “line of sight” supervision was insufficient did not accurately portray [REDACTED] current needs. Id. at approximately 44 minutes; see also DE 23, [REDACTED] (rejecting Parents’ request for a risk assessment because [REDACTED] “has not exhibited any aggressive behavior. . . . [REDACTED] has not demonstrated any significant behaviors of concern that warrant the need for a Risk Assessment. [REDACTED] parents did not share any significant or unsafe behaviors of [REDACTED] during the 12/12/22 meeting that would seem to warrant consideration for a possible Risk Assessment. Rather, [REDACTED] parents requested an updated Risk Assessment in order to show that [REDACTED] is no longer demonstrating the behaviors and level of risk [REDACTED] was previously, when the prior Risk Assessment was completed”); see also DE 112, pg. 199 (1/9/22 email from [REDACTED]

stating “Last summer [REDACTED] hired Dr [REDACTED] to complete a Risk Assessment as the Risk Assessment from 2020 by [REDACTED] hired by [REDACTED] no longer represents [REDACTED] risk or needs”), attached as Exhibit A.<sup>2</sup>

16. [REDACTED] provided credible testimony that Student did not engage in inappropriate behaviors at [REDACTED]. [REDACTED] Testimony; see also DE 27, pg. 267-268 ([REDACTED] staff noting “no outwards physical aggression,” and “no physical aggression concerns”).

17. Parents’ testimony that Student required “arms-length supervision” during the period of June 17, 2022 through March 1, 2024 is not supported by the evidence. See PE 21 (Although both the [REDACTED] and [REDACTED] reports are outside of the relevant time period for this hearing, Dr. [REDACTED]’s report, conducted in October 2021, states that Student did not require the “arms length supervision” that Dr. [REDACTED]’s evaluation recommended back in 2020); [REDACTED] Testimony.

18. The recommendation for “arms-length supervision” came from Dr. [REDACTED] 2020 risk assessment (PE 18-32); Parents’ testimony that [REDACTED] required “arms-length supervision” during the period of June 17, 2022 through March 1, 2024 is not supported by the evidence. [REDACTED], [REDACTED] [REDACTED] Testimony; DE 2 (10/11/23 WPN noting that Student was not exhibiting any sexualized behaviors at [REDACTED]); 27, pg. 267-268 ([REDACTED] staff noting “no outwards physical aggression,” and “no physical aggression concerns”), DE 45, pg. 375 (Student’s behavior at [REDACTED] during the summer 2023 was no different than it had been and [REDACTED] does not demonstrate the behaviors [REDACTED] exhibited at home); 56 (9/11/23 WPN noting that [REDACTED] staff reported that “[REDACTED] can continue to attend [REDACTED], that nothing has changed in [REDACTED]’s day to day functioning at school, and that the

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<sup>2</sup> This document was provided to Parents on April 19, 2023, as part of the District’s potential exhibits. It was emailed to the parents and Hearing Officer on April 26, 2024.

██████ team can continue to address ██████ educational needs”); 89 at Minute 45 (Testimony of Student’s ██████ Teacher on 7/25/23 noting that Student did not have significant behavioral concerns at ██████ ).

19. Dr. ██████’s 2021 did not recommend “arms-length supervision.” PE 21. In particular, Dr. ██████’s report states:

- “Regarding a risk for future sexually problematic behavior, it is my opinion that ██████ is presently at low risk.” PE 21-18.
- “Regarding a risk for future fire setting behaviors, it is notable that ██████ has not been motivated to find ways to set fires since ██████ return home in April 2021 as there are certainly opportunities for such in ██████ environment. Therefore, I do not view ██████ as having a compulsion to set fires.” PE 21-18.
- ██████ “should have eyes-on supervision when outside the home. . . . ██████’s current supervision in the home is adequate with someone knowing ██████ whereabouts and doing frequent check-ins. ██████ does not appear to need overnight monitoring at this time . . . .” PE 21-19.
- “Currently, ██████ does not present with a need for intensive behavioral treatment given the drastic and quite impressive reduction of ██████ aggression, fire setting and sexualized behaviors.” PE 21-20.

20. Parents’ request for a functional vision assessment was based on a recommendation from a prior evaluation. PE 23. The District offered to conduct additional assessments in 2021;

Parent did not provide consent. See DE 112, pg. 205, attached as Exhibit B.<sup>3</sup>

21. Student’s most recent occupational therapy assessment noted that [REDACTED] “functional vision skills “were within functional limits.” DE 25, pg. 243.

22. Student did not require a physical therapy, forensic/risk assessment or functional vision assessment. [REDACTED], [REDACTED], [REDACTED], [REDACTED] Testimony; see generally DEs and PEs.

23. None of Student’s educational providers suspect or suspected that Student has a visual impairment. [REDACTED], [REDACTED], [REDACTED], [REDACTED] Testimony; see also DE 25 at 242-243.

24. IEP Teams do not conduct assessments just to assess; assessments and evaluations are conducted based on a need. [REDACTED] Testimony.

**ii. IEPs**

25. [REDACTED], Student Services Director for the [REDACTED] School District, provided credible testimony. [REDACTED] has over twenty years of experience in the field of education. DE 71. [REDACTED] testified that Student’s IEPs have been developed based on the needs reported by Student’s service providers at [REDACTED] and [REDACTED] and based on Student’s progress in those settings.

**a. June 27, 2022-June 26, 2023 IEP**

26. Student’s IEP that was in effect from June 2022 through May 2023 was appropriate for Student. [REDACTED] Testimony; see also [REDACTED] Testimony; DE 14 (IEP), 15-20, 35, 40, 44 (IEP Progress Reports and Report Cards), 24, pg. 233 (2023 Speech evaluation, concluding “[REDACTED] is demonstrating positive participation as well as growth. Although deficits still appear, areas of weakness have now become strengths, including [REDACTED] socially driven personality and desire to interact with peers. . . . [REDACTED]

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<sup>3</sup> This document was provided to Parents on April 19, 2023, as part of the District’s potential exhibits. It was emailed to the parents and Hearing Officer on April 26, 2024.

is demonstrating positive participation as well as growth throughout our sessions together. [REDACTED] has become a very socially driven student, which previously was difficult for [REDACTED]”), 37 (letter of recommendation for overnight fishing camp), 89 at Minutes 29-32, 34, 37, 52, 54, 58 (Testimony of Student’s [REDACTED] Teacher on 7/25/23 noting that Student made meaningful progress while at [REDACTED], that [REDACTED] was pleased with Student’s relationships at [REDACTED] and placement at [REDACTED]).

27. Student’s IEP was developed based on input from [REDACTED] staff, Student’s service providers. [REDACTED] and [REDACTED] Testimony.

28. Student’s IEP included an appropriate amount of counseling from [REDACTED] during the period of July 5, 2022 through October 31, 2023. [REDACTED] Testimony; DE 14 (IEP), 18-19, 35, 44 (2022-2023 progress reports).

29. [REDACTED] staff did not recommend additional counseling for Student. [REDACTED] Testimony.

30. [REDACTED] staff did not recommend or see any need for physical therapy for Student. [REDACTED] Testimony; see generally DEs.

31. Student was consistently able to navigate [REDACTED]’s campus, participate in outdoor activities, and [REDACTED] either met or exceeded competencies in PE from June 2022 through October 31, 2023. Testimony [REDACTED]; DE 16-17, 20, 40, 54 ([REDACTED] School Report Cards).

32. Parents partially consented to the 2022-2023 IEP and agreed to day placement at [REDACTED]; Parents did not seek additional counseling services or any physical therapy services with their partial consent. DE 14, pg. 163-164.

33. [REDACTED] [REDACTED] provided credible testimony that Student’s IEP was appropriate and that [REDACTED] made meaningful progress at [REDACTED] as a day student during the 2022-2023 school year. [REDACTED]



Testimony; DE 14 (IEP), 15-20, 35, 40, 44 (IEP Progress Reports and Report Cards), 24, pg. 233 (2023 Speech evaluation, concluding “█████ is demonstrating positive participation as well as growth. Although deficits still appear, areas of weakness have now become strengths, including █████ socially driven personality and desire to interact with peers. . . . █████ is demonstrating positive participation as well as growth throughout our sessions together. █████ has become a very socially driven student, which previously was difficult for █████”).

34. Student’s occupational therapy goals were appropriate for Student. █████ Testimony; DE 14 (IEP), 15, 18-19, 35, 44 (IEP Progress Reports).

35. Student’s 2022-2023 IEP included 60 minutes of occupational therapy, twice per month. DE 14, pg. 155. The May 2023 IEP included the same amount of OT services that were contained in the 2022-2023 IEP, however, Student received 30 minutes of occupational therapy per week, rather than 60 minutes every two weeks. DE 39, pg. 343. During both years, that was the amount of occupational therapy support recommended by █████ staff. █████ Testimony.

36. Student’s educational profile indicates that █████ requires repetition to master skills. █████ Testimony; DE 26, pg. 263 (evaluation report noting that “Because of █████ challenged working memory, █████ will benefit from multiple opportunities and additional time to take in new information”). To the extent that Student’s goals are similar, that is consistent with █████ educational profile.

37. During the period of June 17, 2022 through October 31, 2023, Student’s 2022-2023 and 2023-2024 OT goals both addressed sensory regulation. DE 14, pg. 152 and DE 39, pg. 342. The 2022 goal required that Student demonstrate adequate regulation based on observation in 13/16

opportunities. DE 14, pg 152. In contrast, the 2023 goal required that Student identify the sensory regulation in 14 out of 16 opportunities. DE 39, pg. 342. The 2023 goal is a higher-level goal to achieve in that it requires a higher cognitive functioning and requires that the Student demonstrate the skill more frequently. [REDACTED] Testimony; see also DE 36, pg. 315 (meeting minutes noting that [REDACTED] agreed that the occupational therapy goal was appropriate).

38. Student's IEP included speech services for social pragmatics and appropriately addressed Student's areas of needs, including during the summer of 2022. [REDACTED] Testimony; DE 14, pg. 153, 160-161; PE 7-1 (email noting that "[t]he [REDACTED] team reports [REDACTED] is making progress. ST is getting sufficient SLP services and social skills instruction and support to address [REDACTED] social skills needs through [REDACTED] program at [REDACTED]").

39. Student did not require any additional services in [REDACTED] IEP during the 2022-2023 school year. [REDACTED] and [REDACTED] Testimony; see generally DEs.

**b. June 1, 2023-May 31, 2024 IEP**

40. Student's IEP dated June 1, 2023 through May 31, 2024 was agreed upon by Parents on May 25, 2023. DE 39, pg. 352-353.

41. Parents provided full consent to this IEP and to day placement at [REDACTED] School. Id.

42. At the time it was developed, the May 2023 IEP was appropriate for Student and reasonably calculated to enable [REDACTED] to make meaningful educational progress. [REDACTED] and [REDACTED] Testimony; DE 38 (WPN proposing IEP); 89 at 37 minutes (Testimony of Student's [REDACTED] Teacher on 7/25/23 that Student's IEP was appropriate and no additional goals or services were necessary).

43. The 2023-2024 IEP included a social skills group, which was recommended by [REDACTED] staff. DE 36, pg. 314 (Student's Teacher, [REDACTED], reported that "[REDACTED] team was thinking about social skills services 2 times a week with [REDACTED] and [REDACTED]. This is tied to communication needs/goal, based on social thinking goal"); 39, pg. 343; see also DE 78 (email between [REDACTED] and Student's [REDACTED] Teacher, [REDACTED] regarding IEP).

44. The IEP also included the amount of counseling that was recommended by the counselor at [REDACTED]. DE 62, pg. 471 ([REDACTED] counselor stating "Counseling: 30 minutes is good amount").

45. [REDACTED] staff did not recommend any additional occupational therapy services for Student, nor did they recommend any physical therapy services. [REDACTED] Testimony.

46. This IEP was implemented at [REDACTED] day school until October 31, 2023 when Student left [REDACTED]. [REDACTED] and [REDACTED] Testimony; see generally DEs.

47. Student's IEP was amended on October 26, 2023 to reflect residential placement at [REDACTED], effective November 1, 2023. DE 3 (10/26/23 WPN); 4 (Amended IEP; Parents provided partial consent, stating "We hope to revise the IEP to reflect any required family treatment at [REDACTED]'s program, and clarifying ESY program 2024").

**c. November 1, 2023-March 1, 2024**

48. [REDACTED], the Principal and Special Education Director at [REDACTED], provided credible testimony about Student's needs and [REDACTED] program at [REDACTED]. [REDACTED] Testimony. [REDACTED] has twenty-three years of experience in public and private education, including teaching and administrative roles and holds several certifications. Id.;

DE 73. ██████████ communicates regularly with Student's teacher and service providers.

██████████ Testimony. ██████████ staff and service providers inform ██████████ when they believe that students require more or different services. Id.

49. None of Student's ██████████ teachers or providers have recommended any additional assessments or expressed any concerns about Student's program at ██████████, ██████████ and ██████████ Testimony.

50. ██████████, Student's clinician at ██████████, provided credible testimony that Student has done well since arriving at ██████████ and has not had significant behavioral issues. ██████████ Testimony; see also ██████████ Testimony; PE 6 (██████████ Progress Report).

51. ██████████ staff have not recommended or opined that Student requires any physical therapy services. ██████████ and ██████████ Testimony.

52. ██████████ staff have not recommended or opined that Student requires any additional occupational therapy or speech services. ██████████ Testimony.

53. Student's current (██████████) IEP is appropriate for Student. Testimony of District Witnesses; DE 1, DE 6, PE 6.

54. Student's current (██████████) IEP was developed based on input from ██████████ staff. ██████████ and ██████████ Testimony; DE 1, 6, 85 (Emails between ██████████ and ██████████ staff regarding development of IEP).

55. The IEP includes the educational components of the ISP developed by ██████████, ██████████ and ██████████ Testimony; DE 1 and 6.

56. ██████████ staff are delivering all of the services in the IEP and ISP and are reporting on

Student's progress. Id.; see also PE 6.

57. When Student's service providers have made recommendations for changes to [REDACTED] program, the District has made those changes. See e.g. DE 85 at 852, 855, 866 (noting changes to Student's OT goal based on requests Parents made to the [REDACTED] OT and additional speech because it is part of [REDACTED]'s program).

58. Student's program at [REDACTED] is appropriate for [REDACTED]. See e.g. [REDACTED] and [REDACTED] Testimony.

**iii. Placement**

**i. June 17, 2022 through October 31, 2023**

59. There is no evidence that Parents disagreed with day placement at [REDACTED] during the period of June 17, 2022 through June 4, 2023. See generally, Parents Testimony; DEs and PEs.

60. During the period of June 17, 2022 through June 4, 2023, the parties were in agreement that a day placement for Student was appropriate. Testimony of [REDACTED], [REDACTED] and [REDACTED]; DE 14, pg. 164 (IEP placement page); DE 39, pg. 353 (IEP Placement page); DE 65 (IEP placement pages for July 2021-January 2022); 75, pg. 559 (1/31/23 email from [REDACTED] stating "[REDACTED] has been a great program for [REDACTED] . . ."); 76, pg. 562 (3/6/23 email from Parent stating "We of course are anxious to have [REDACTED] not try to move [REDACTED] for the last year of middle school, as [REDACTED] is a good fit") see also DE 89 at minute 42 (Testimony of Student's [REDACTED] Teacher on 7/25/23 that [REDACTED]'s 6/5/23 email was the first time Parents requested a residential placement).

61. At no time during the period of June 17, 2022 through June 4, 2023 did Parents request a residential placement; on the contrary, during that time period they agreed with day placement at

██████████ and expressed opposition to any change in placement during that time period. Id.; see also DE 75 (12/29/22 email from Parent to ██████████ staff and ██████████ staff noting that Parents “have ██████████ home with the supports ██████████ needs to stay home”).

62. Parents’ assertion that Student should have been residentially placed prior to ██████████ placement at ██████████ is based on hindsight. See generally ██████████ Cross-Examination.

63. During the period of June 17, 2022 through July 26, 2023, the IEP Team consistently proposed a day placement at ██████████. Testimony of Parents; ██████████ and ██████████ Testimony.

64. On June 5, 2023, Parents requested a residential placement. DE 41 (email from Parents); 42 (6/5/23 Meeting minutes). The reason for this request was because Student had reportedly assaulted ██████████, over the weekend at their home. DE 42 (Meeting minutes noting that ██████████ “shared that due to some acute events in the past two days ██████████ was hospitalized at ██████████ for unsafe sexualized behaviors with ██████████. ██████████ cannot be home because of this. ██████████ needs treatment in a stable program”).

65. The Team met on June 5, 2023 to discuss Parent’s request; a representative from DCYF attended the meeting and indicated that they were investigating the allegations. DE 42. Parents requested residential placement; it was noted that “with what has been shared it is not an educational need, so residential placement as part of ██████████ IEP is not appropriate.” Id. at pg. 360. The minutes note that “Dr. ██████████ will work with parents and ██████████ on possible supports/programs and also reach out to ██████████ ██████████ Id. Parents asked whether Student could continue to attend ██████████ and ██████████ indicated that ██████████ could do such. Id.

66. Student returned to ██████████ day placement on or about Monday, June 12, 2023. DE 43.

During the summer of 2023, Parents obtained a CAT assessment through NH DHHS, Bureau of Behavioral Health. DE 47 (7/21/23 email from Parent attaching the CAT assessment); 48 (CAT Assessment); see also DE 46 (7/19/23 email from Parents requesting a Team meeting to discuss CAT recommendations). Student was approved for a Level 3 residential setting. DE 48 at pg. 397. The CAT report states that Parents indicated that they wanted Student to attend [REDACTED]. Id. at pg. 396. Parents did not pursue placement through the system of care/bureau of behavioral health and declined to seek support from outside agencies. [REDACTED] Testimony; DE 53 at pg. 426.

67. On July 27, 2023, the Team proposed a residential placement, based on the recently obtained CAT assessment. DE 47 (email from Parent enclosing CAT assessment), 48 (CAT assessment), 53 (WPN).

68. Student remained at [REDACTED] while the Team searched for a residential placement; while at [REDACTED], Student continued to make meaningful educational progress. [REDACTED] Testimony; DE 2 (10/11/23 WPN noting that [REDACTED] continues to make progress at [REDACTED]); 53, pg. 426 (WPN noting that [REDACTED] has continued to demonstrate similar functioning and performance at [REDACTED] in summer 2023).

69. Parents preferred placement at [REDACTED] and were reluctant to pursue other residential placement options, even those that had more immediate openings. See DE 80, pg. 606 (6/16/23 email correspondence between Parent and DCYF noting that [REDACTED] was parents' preferred placement and that it had a 6 month wait); 83 (placement search timeline); 84 (Email correspondence between [REDACTED] and Parents and placements).

70. Parents provided the District with a release to start the application process at [REDACTED]

██████████ and ██████████ (another residential school) on Friday, August 4, 2023. DE 86, pg. 689-691. The District submitted the referral to ██████████ on August 8, 2023. DE 86, pg. 696; see also DE 86, pg. 700 (signed release for MPA), 701 (referral to ██████████), 703 (referral to ██████████), 714-717 ██████████ and ██████████ declined referral). Although Parents signed subsequent releases, they included expiration dates. DE, pgs. 755-764 (additional releases signed on 9/11/23 and expiring on 9/18/23), 777-780 (releases signed on 9/28/23 and expiring on 10/2/23). Referral packets were sent out by the District on September 12, 2023 and September 14, 2023. DE 86, pgs. 765-767, 775.

71. When an IEP Team proposes to change a placement, into either a day placement or a residential placement, the student typically remains in their then-current educational placement. ██████████  
Testimony.

72. Student was accepted at ██████████ on September 12, 2023, pending availability of an opening. DE 57.

73. Student's Team proposed to place Student at ██████████ on October 2, 2023 (the next IEP meeting following receipt of the acceptance letter). DE 59 (meeting minutes); see also DE 2 at 37, 39 (10/11/23 WPN, proposing placement at ██████████ and noting that the parties had been notified that they would have an opening in a few weeks). On October 11, 2024, the parties were notified by ██████████ that they had an unanticipated opening. DE 86, pg. 781. Student began attending ██████████ on November 1, 2023. DE 84, pg. 799.

**ii. November 1, 2023 through March 1, 2024**

74. Student is residentially placed at ██████████ and there is no dispute that ██████████ current placement is appropriate. See e.g. Parents Testimony; DE 1, pg. 30.



75. [REDACTED], Student's clinician at [REDACTED], provided credible testimony that [REDACTED] program at [REDACTED] is appropriate. [REDACTED] Testimony.

76. Student has not had significant behavioral concerns since arriving at [REDACTED]. [REDACTED] and [REDACTED] Testimony.

77. Students typically attend [REDACTED] for 18-24 months. [REDACTED] and [REDACTED] Testimony.

78. Student has been placed at [REDACTED] for approximately 6 months and there is no current proposal to transition [REDACTED] out of [REDACTED] or place [REDACTED] in a less restrictive environment. Testimony of all parties; DE 1, pg. 6 (IEP covering the period of February 15, 2024 – February 14, 2025), pg. 30 (residential placement at [REDACTED] through February 14, 2025); DE 6, pg. 89 (ISP noting that Student's anticipated placement at [REDACTED] is 18-24 months).

79. It would be premature and inappropriate to include a plan to transition Student out of [REDACTED] in [REDACTED] current IEP. [REDACTED] Testimony. Prior to planning for a student's transition, the Team reviews data and progress to ensure that students have progressed to the point where transition is appropriate. Id.

**iv. Parents' Requests for Reimbursement**

80. Parents did not provide any evidence pertaining to their request for reimbursement for expenses for counseling during the period of June 17, 2022 through September 18, 2022. PE 29.

81. Parents' requests for reimbursement for [REDACTED] [REDACTED] 30), [REDACTED] (PE 31), the TB test (PE 32) and room and board (PE 33-35) were not part of their request for due process. See Request for Due Process.

82. Parents have requested reimbursement for the same au pair expenses in this request for due process, as they have in a simultaneous request involving their other child (IDPH FY 24-03-043). Compare PE 36-1 in this proceeding (seeking reimbursement for check numbers 2880, 2881, 2882, 3008 and 3012) with PE 24-6 in IDPH FY 24-03-043 (seeking reimbursement for the same checks).

83. Parents did not request reimbursement for au pair expenses from the District prior to this proceeding. See generally Testimony; DEs and PEs.

84. Parents rely on ██████████'s report to support their request for reimbursement for adaptive equipment (Mp3 player and audio books) for Student's use while ██████ traveled to and from ██████. Parents Testimony.

85. Dr. ██████████'s report does not require adaptive equipment during transportation. PE 21-20 (“If an electric device is to be used in the vehicle . . .”) (emphasis added).

86. Parents did not provide any evidence, other than their own testimony, that the Mp3 player and audio books were necessary for Student to receive a FAPE. See generally Witness Testimony; Parents' Exhibits.

87. Parents also rely on ██████████'s 2021 report to support their request for reimbursement for the social thinking program and Elevatus Health curriculum. Parent Testimony; PE 21.

88. Dr. ██████████'s report does not require the use of either the social thinking program or the Elevatus Health curriculum as part of ██████'s IEP. PE 21-21. Instead, the report states: “The Social Thinking program is recommended for trainings and learning resources to support ██████'s social development.” Id. It also states “Healthy sexuality and safe internet use is a must in this social time

for all individuals who have developmental disabilities. . . . I recommend [REDACTED]'s support team consider being trained in and utilizing Elevatus Training . . .” Id. These recommendations are also specific to [REDACTED]'s family and any [REDACTED] staff who may be providing support to [REDACTED]. PE 21-1; PE 21-20 (emphasis added).

89. With regard to the Elevatus Health Program, Parents only made the request to [REDACTED] staff and specifically declined to make the request to the District. See DE 86 at 900-901 (12/22 emails between [REDACTED] and [REDACTED] regarding Elevatus Health, with [REDACTED] stating “It’s not worth talking to [REDACTED]”).

90. [REDACTED] believed that its health curriculum was appropriate for Student and allowed Parents to opt Student out at their request. [REDACTED] Testimony; DE 86.

91. The request for the social thinking program was made in May 2022, outside of the scope of this hearing. PE 7; PE 41 (noting payment on April 4, 2022).

92. [REDACTED] staff had an appropriate program that addressed social pragmatics for Student. [REDACTED] Testimony; DE 14, pg. 153-154 (22-23 IEP, speech language goal for social pragmatics); DE 39 (23-24 IEP).

93. Parents’ already received reimbursement for \$500 of the costs associated with the Social Thinking program. [REDACTED]'s Testimony.

94. Parents did not present any evidence that Student required the Elevatus Health program or the Social Thinking program to receive a free, appropriate public education (“FAPE”). See generally Witness Testimony; Parents’ Exhibits.

95. Parents request for reimbursement for the costs associated with providing smoke

detectors pertains to an expense incurred in 2020. PE 40.

96. The request for reimbursement for smoke detectors notes that the request was recommended to make Parents' home "code compliant." PE 40.

97. Parents requests for reimbursement exceed what they requested at IEP Team meetings during the timeframe for this hearing. See generally DEs; PEs.

## **II. Rulings of Law**

### **A. Rulings of Law Pertaining to the Scope of the Hearing and the Burden of Proof**

#### **i. Scope of the Hearing**

98. Parents request for functional vision and physical therapy evaluations are outside of the scope of this hearing, as they were requested prior to June 16, 2022. See PE 24, 25; see also Parents' Response to District's Motion to Dismiss and Clarify at pg. 2, §§ 1(B)( and (E)); see also Settlement Agreement, pgs. 7-8 ¶¶ 18-20 (releasing claims and precluding the parents from challenging any aspects of the IEP or placement through the conclusion of the 2021-2022 school year).

99. The following requests for reimbursement are outside of the scope of this hearing, as they were incurred prior to June 16, 2022, are barred by the parties Settlement Agreement, or are outside of the 2 year statutory limitations period (see RSA 186-C:16-b, I; 20 U.S.C. 1415(f)(3)(B); Order on District's Motion to Dismiss):

- [REDACTED] (PE 30) (not requested in request for due process);
- [REDACTED] (PE 31) (not requested in request for due process);
- TB Test (PE 32) (not requested in request for due process);

- Au Pair expenses (PE 36-3, noting expenses and charges made in July 2021);
- Mp3 Player requests (PE 38-5 (March 2022), 38-7 (March-May 2022), 38-8 (January-February 2022));
- Fire Prevention System (PE 40 – obtained in 2020 and noted as a recommendation for a “code compliant” fire protection system);
- Social Thinking Curriculum (PE 41 – payment made on April 4, 2022).

ii. Burden of Proof and Standard of Review

100. The District bears the burden of proof, by a preponderance of the evidence, as to “the appropriateness of the child’s program or placement, or of the program or placement proposed by the public agency.” RSA 186-C:16-b, III-a. Accordingly, the District bears the burden of proof that Student’s programs at [REDACTED] and [REDACTED] were appropriate. The District also bears the burden of proof as to the appropriateness of Student’s placement at [REDACTED].

101. As the party requesting the Hearing, the Parents bear the burden of proof that their requests for evaluations and reimbursement are appropriate and necessary under the IDEA. See Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49, 56 (2005) (holding that, unless state law states otherwise, the party bringing the due process request has the burden of proof under the IDEA).

102. If the Parents are permitted to request compensatory educational services, Parents also bear the burden of proving that such services are necessary. Id.

103. A district makes a free, appropriate public education (“FAPE”) available to a student when it complies with the IDEA’s procedural requirements and offers an IEP that is reasonably calculated to enable the child to make meaningful progress in light of the student’s unique

circumstances. Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386, 399 (2017).

**B. Rulings of Law as to Issues for Hearing**

i. Evaluations and Eligibility<sup>4</sup>

104. The evaluations that Parents allege the District should have conducted – physical therapy, functional vision and forensic/risk assessment – are not evaluations that are required to determine eligibility under the IDEA. Ed 1107.04; Table 1100.1, available at: [https://www.gencourt.state.nh.us/rules/state\\_agencies/ed1100.html](https://www.gencourt.state.nh.us/rules/state_agencies/ed1100.html); see also 34 CFR 300.15 (defining “evaluation” as “procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs”).

105. An evaluation under the IDEA is intended to identify whether a student is, or remains, a child with a disability under the IDEA and to assist the IEP Team in determining the special education and related services necessary for a child to receive a FAPE. 71 Fed. Reg. ). 71 Fed. Reg. 6,548 (2006).

106. Student’s educational providers at both [REDACTED] and [REDACTED] did not believe that assessments in the areas of physical therapy, functional vision, or forensic/risk assessment were necessary, based on their observations of Student and [REDACTED] progress in their settings. 34 CFR 300.305(a)(1)-(2) (When conducting reevaluations, the IDEA requires that the IEP Team “[r]eview existing evaluation data on the child, including – (i) Evaluations provided by

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<sup>4</sup> Although the District believes that the physical therapy and functional vision assessments are outside of the scope of the hearing, they are being included in this section in the event that the Hearing Officer concludes that they are within the scope of this hearing.

the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related service providers; and (2) On the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine . . . (i)(B) In the case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child.; (ii) The present levels of academic achievement and related developmental needs of the child”).

107. Student’s IEPs appropriately addressed Student’s areas of educational need and [REDACTED] present levels.

108. Parents have not met their burden of establishing that the District was required to conduct assessments in the areas of physical therapy, functional vision or a forensic/risk assessment.

109. A visual impairment under the IDEA is defined as “an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term includes both partial sight and blindness.” 34 CFR 300.8(c)(13).

110. Student’s providers at [REDACTED] and [REDACTED] did not and do not suspect that Student has a visual impairment.

111. The evidence does not support that Student has or had a visual impairment and Parents have not met their burden of establishing that Student should be evaluated for a visual impairment or that Student may have a visual impairment under the IDEA.

ii. IEPs

112. An individualized education program (“IEP”) is “a written statement for a child with a

disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324.” 34 CFR 300.22.

113. A FAPE “means special education and related services that – (a) Are provided at public expense, under public supervision and direction, and without charge; . . . (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.” 34 CFR 300.17.

114. “‘Related services’ means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.” 34 CFR 300.34(a).

115. Related services must be included an IEP only where that service is necessary for the student to benefit from special education. Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 894 (1984) (“only those [related] services necessary to aid a [child with a disability] to benefit from special education must be provided, regardless how easily a school nurse or layperson could furnish them”); see also In re: Student with a Disability, 65 IDELR 160 (SEA ID March 16, 2015) (quoting Tatro).

116. Student’s IEPs included the appropriate amount of special education and related services. 34 CFR 300.320(a)(4) (IEPs must include a statement of special education and related services that are required to “enable the child – (i) To advance appropriately toward attaining the annual goals; (i) To be involved in and make progress in the general education curriculum in accordance with 34 CFR 300.320(a)(1), and to participate in extracurricular and other nonacademic activities”).



117. IEPs do not need to include services requested by parents if those services are not necessary for the student to receive a FAPE. Winkelman v. Parma City Sch. Dist., 51 IDELR 92, 294 Fed. Appx. 997 (6th Cir. 2008), cert. denied, 557 U.S. 946 (2009); see also Lessard v. Wilton Lyndeborough Coop. Sch. Dist., 518 F.3d 18, 30 (1st Cir. 2008) (“The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits. Were the law otherwise, parents could endlessly parse IEPs into highly particularized components and circumvent the general rule that parents cannot unilaterally dictate the content of their child's IEP”) (citations omitted); see also Lancaster City Schs., 121 LRP 345533 (Ohio SEA, 8/20/21).

118. An IEP does not need to be ideal to be appropriate, the IEP needs to be “reasonably calculated” to enable the student to make meaningful educational progress, consistent with the student’s circumstances. Andrew F.; see also C.D. v. Natick Pub. Sch. Dist., 924 F.3d 621, 629 (1st Cir. 2019) (“Under both Andrew F. and our precedent, a court evaluating whether an IEP offers a FAPE must determine whether the IEP was reasonably calculated to confer a meaningful educational benefit in light of the child's circumstances”); D.B. v. Esposito, 675 F.3d 26 (1st Cir. 2012). School officials are afforded deference due to their expertise and the ability to “offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of [the] circumstances.” Esposito at 388, 399.

119. When determining whether an IEP is appropriate, the IEP is reviewed based on the information available at the time it was implemented, “rather than with the benefit of hindsight,” and substantial deference must be afforded “to the educational programs developed by educators and other experts.” Lessard v. Wilton-Lyndeborough Co-op Sch. Dist., No. CIV.05-CV-192-SM, 2007

WL 1221103, at \*5–6 (D.N.H. Apr. 23, 2007), aff'd. Lessard v. Wilton Lyndeborough Coop. Sch. Dist., 518 F.3d 18 (1st Cir. 2008).

120. “[T]he focus of an inquiry under 20 U.S.C. § 1415(e)(2) ... is not whether the IEP was prescient enough to achieve perfect academic results, but whether it was “reasonably calculated” to provide an “appropriate” education as defined in federal and state law. This concept has decretory significance in two respects. For one thing, actions of school systems cannot ... be judged exclusively in hindsight. An IEP is a snapshot, not a retrospective. In striving for “appropriateness,” an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.” Id.

121. “Beyond the broad questions of a student's general capabilities and whether an educational plan identifies and addresses ■ or ■ basic needs, courts should be loathe to intrude very far into interstitial details or to become embroiled in captious disputes as to the precise efficacy of different instructional programs.” Id.; see also Lessard v. Wilton Lyndeborough Coop. Sch. Dist., 518 F.3d 18, 28–29 (1st Cir. 2008) (“The Supreme Court has pointed out with conspicuous clarity that the IDEA confers primary responsibility upon state and local educational agencies to choose among competing pedagogical methodologies and to select the method most suitable to a particular child's needs . . . Rowley sends a very clear message. The short of it is that courts are entrusted with ascertaining the adequacy of an IEP's educational components but not with weighing the comparative merit of the components when stacked against other heuristic methods”); Ronald M. v. Concord Sch. Comm., 910 F.2d 983 (1st Cir. 1990), cert. denied 111 S.Ct. 1122 (U.S. 1991) (“actions of school systems cannot, as appellants would have it, be judged exclusively in hindsight. An IEP is a snapshot,

not a retrospective. In striving for “appropriateness,” an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated”); Pass v. Rollinsford Sch. Dist., 928 F. Supp. 2d 349, 374–75 (D.N.H. 2013) (“our Court of Appeals has emphasized that “actions of school systems cannot ... be judged exclusively in hindsight.” Instead, as already mentioned, the court must review the adequacy of an educational plan ‘at the time the IEP was promulgated.’ A court therefore cannot view an IEP in retrospect and conclude solely on the basis of resultant ‘harm’ to the student that the school district failed to fulfill its obligations under the IDEA. Rather, if harm to the student plays a role in evaluating an IEP, that role must be limited to assessing whether the possibility of such harm should have been apparent to the school district at the time it promulgated the IEP”) (citations omitted).

122. “As always, every parent is free to obtain for their children the best education available. However, under federal and New Hampshire law, a school district is only required to pay for an “appropriate education” as defined by the IDEA.” Galina C. ex rel. Reed v. Shaker Reg'l Sch. Dist., No. CIV. 03-34-B, 2004 WL 626833, at \*6 (D.N.H. Mar. 30, 2004) (“While parents are always free to seek optimal educational opportunities for their children, federal law does not require that “the benefit conferred [by the IEP] reach the highest attainable level or even the level needed to maximize the child's potential”) (citations omitted). An IEP can provide FAPE even though it “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 Sch. Dist., 930 F.2d 942, 948 (1st Cir.1991), *quoted in Amann v. Stow Sch. Sys.*, 982 F.2d 644, 651 (1st Cir.1992) (emphasis in original); see also Burke v. Amherst Sch. Dist., No. 08-CV-014-SM, 2008 WL 5382270, at \*8 (D.N.H. Dec. 18, 2008) (“the

obligation to devise a custom-tailored IEP does not imply that a disabled child is entitled to the maximum educational benefit possible”) (citations omitted).

123. Parents did not provide any evidence, other than their own testimony, that Student’s IEPs were inappropriate or that ■■■ required services beyond what was contained in those IEPs to receive a FAPE.

124. The documents provided by and relied on by Parents predate the timeframe for this hearing, and based on Parent’s own assertions during the 2022-2023 school year did not accurately reflect Student’s educational needs.

125. Student did not require physical therapy services receive a FAPE. Student was able to access ■■■ education and benefit from special education services without physical therapy. The counseling services in Student’s IEP were appropriate for Student and based on ■■■ level of need. Counseling was added to Student’s IEP as of July 5, 2022 at the level of service recommended by ■■■. The Occupational Therapy services contained in Student’s IEPs have been at the level recommended by the service providers. The only change from 2022-2023 to the 2023-2024 school year was that the service was provided weekly, rather than bi-weekly. The total amount of time was the same.

126. During the 2022-23 school year, Student met grade level standards and made progress in ■■■ classes and on ■■■ IEP goals and objectives, as well as progress socially with ■■■ peers; he made meaningful educational progress. Student did not require any services beyond what was contained in ■■■ IEP to receive a FAPE.

127. The District established, by a preponderance of the evidence, that Student’s IEP in

effect from June 17, 2022 through May 1, 2023 was appropriate and reasonably calculated to enable Student to make meaningful educational progress. Student received a FAPE during the 2022-2023 school year.

128. From June 1, 2023 through October 31, 2023, Student met grade level standards and made progress in [REDACTED] classes and on [REDACTED] IEP goals and objectives, and [REDACTED] continued to make progress socially; [REDACTED] made meaningful educational progress at [REDACTED].

129. The District established, by a preponderance of the evidence, that Student's IEP in effect from June 1, 2023 through October 31, 2023 was appropriate and reasonably calculated to enable Student to make meaningful educational progress. Student received a FAPE during the time period of June 1, 2023 through October 21, 2023.

130. The District has met its burden of proving, by a preponderance of the evidence, that Student's IEP and program at [REDACTED] is appropriate and reasonably calculated to enable [REDACTED] to make meaningful educational progress. Student has received a FAPE at [REDACTED].

iii. Placement

131. The IDEA requires placement in the least restrictive environment. 34 CFR 300.114, 34 CFR 300.116.

132. Student's day placement at [REDACTED] was appropriate and the least restrictive environment for Student.

133. Student did not require a residential placement prior to [REDACTED] placement at [REDACTED].

134. During the summer of 2023, the parties were involved in a due process proceeding

(IDPH FY 23-06-032). When there is a dispute about placement, the IDEA provides that students remain in the “current educational placement.” 34 CFR 300.518(a).

135. The Team proposed to change Student’s placement on or about July 27, 2023. [REDACTED] was accepted at [REDACTED], parents’ preferred placement, on or about September 12, 2023, pending an opening.

136. The District requested that Parents sign releases to submit applications to additional residential schools (other than [REDACTED]) and was seeking to submit applications to schools other than [REDACTED]; Parents were focused on placement at [REDACTED].

137. “[T]he process of locating a private school for a student requires both the initiative of the school district and the cooperation and participation of the parents. At any point in the process, parents are able to sabotage the school district’s efforts – for example, by refusing to allow the school district to make a referral to a particular private school . . . , by refusing to appear for an interview, or by otherwise advising the private school that the parents are not willing to send their son or daughter to the school.” Quincy Pub. Schs., 114 LRP 115599, BSEA #1403404 (Mass SEA, March 6, 2014).

138. The District conducted an appropriate search for a residential placement and placed Student at [REDACTED] as soon as practicable.

139. The District properly maintained Student’s day placement at [REDACTED] until October 31, 2023.

140. The District has established that Student’s placements were appropriate and in the least restrictive environment.

iv. Parents’ Requests for Relief

141. Requests for reimbursement and compensatory educational services are equitable remedies and are only available if the district does not make a FAPE available to the student. Richards v. Hudson Sch. Dist., No. 12-CV-041-LM, 2013 WL 992756, at \*5 (D.N.H. Mar. 12, 2013) (noting that if a hearing officer concludes that a district failed to provide a FAPE, it may, but is not required to, award reimbursement)); see also Mr. I. v. Maine Sch. Admin. Dist. No. 55, 480 F.3d 1, 23 (1st Cir.2007) (reimbursement is “a matter of equitable relief committed to the sound discretion of the trial court”); Samantha B. v. Hampstead Sch. Dist., 2009 WL 5217035, at \*6 (D.N.H. Dec. 30, 2009) (Parents who unilaterally change their child's placement without the consent of state or local school officials “do so at their own financial risk,” and are entitled to reimbursement “only if a federal court concludes both that the public placement violated IDEA and that the private school placement was proper under the Act) (citing Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 15 (1993)).

142. In order to obtain reimbursement, Parents must have incurred actual out-of-pocket expenses for the related services for which they seek reimbursement. Diaz-Fonseca v. Puerto Rico, 451 F.3d 13, 40 (1st Cir. 2006). “As the term ‘reimbursement’ suggests, tuition reimbursement is a backwards-looking form of remedial relief; “[r]eimbursement merely requires the [defendant] to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP. It goes without saying that those ‘expenses’ must be actual and retrospective, not anticipated.” Id.; see also Roe v. Healey, 78 F.4th 11, 16 (1st Cir. 2023) (Reimbursement of educational expenses is limited to money spent by parents for education-related expenditures that the state ought to have borne).

143. “Compensatory education is a surrogate for the warranted education that a disabled

child may have missed during periods when [REDACTED] IEP was so inappropriate that he was effectively denied a FAPE. However, compensatory education is not an automatic entitlement but, rather, a discretionary remedy for nonfeasance or misfeasance in connection with a school system's obligations under the IDEA." C.G. v. Five Town Cmty. Sch. Dist., 513 F.3d 279, 290 (1st Cir. 2008) (citations omitted); see also (Me. Sch. Admin. Dist. No. 35 v. Mr. R., 321 F.3d 9, 17-18 (1st Cir. 2003) (A claim for compensatory education is generally for "further services, in compensation for past deprivations" of IDEA benefits). Compensatory education is an equitable form of relief. Pihl v. Massachusetts Dep't of Educ., 9 F.3d 184, 188-89 (1st Cir. 1993). An award of compensatory education should "aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA." Reid v. Dist. of Columbia, 43 IDELR 32 (D.C. Cir. 2005); see also Manchester Sch. Dist., IDPH FY-04-10-38 (N.H. SEA May 17, 2004) ("Claims for compensatory education have traditionally been based upon lengthy periods of school district failure to provide a student with a free appropriate public education." Compensatory educational services are not warranted when there is "no evidence that the District was dilatory in any way, and at all times made good faith effort to complete the IEP process and respond to Parent's concerns").

144. As a matter of law, the District is not required to provide medical care in a residential setting. 34 CFR 300.104. Parents' request for reimbursement for a TB test is a medical service for which the District is not responsible. PE 32.

145. To the extent Parents are seeking reimbursement for replicating a placement (i.e., room and board expenses set forth in PE 33-35), those requests were made beyond the 90 day statutory limitations period set forth in RSA 186-C:16-b, II and are therefore barred by the statute of



limitations.

146. Parents' request for reimbursement for housing expenses, au pair expenses and smoke detectors exceed the scope of what is permissible under the IDEA. See e.g. Florence City Bd. of Educ., 68 IDELR 177 (Ala. SEA Jun 30, 2016) (reimbursement for items such as utilities, rent and renter's insurance are not permitted by the IDEA); Nieves-Marquez v. Puerto Rico, 353 F.3d 108, 124 (1st Cir. 2003) (Tort-like money damages, as opposed to compensatory equitable relief, are not available under the IDEA. "Awards of compensatory education and equitable remedies that involve the payment of money, such as reimbursement to parents for expenses incurred on private educational services to which their child was later found to have been entitled, remain available").

147. Parents have not provided sufficient evidence of their out-of-pocket expenses for the items for which they seek reimbursement and therefore, their request for reimbursement fails. Chavez v. New Mexico Pub. Educ. Dep't, 621 F.3d 1275, 1284 (10th Cir. 2010) (upholding the district court's decision that reimbursement was not available because parents had provided insufficient evidence of their out-of-pocket expenditures to support any possible award of reimbursement); see also Howard County Pub. Schs., 115 LRP 26037 (Md. SEA Feb. 13, 2015); In re: Student with a Disability, 119 LRP 31902 (N.Y. SEA March 1, 2012); see also Exhibit C (excerpts from District's request for production, requesting documents pertaining to reimbursement and Parents' response that documents would be provided as part of the 5-day disclosures).

148. As a matter of law, if a parent opts out of a particular curriculum component, they are required to provide the alternate curriculum at their expense. RSA 186:11, IX-c. Parents opted out of the [REDACTED] sex-ed/health curriculum and are responsible for the costs associated with their



Dated: May 6, 2024



# EXHIBIT A

Date : 3/1/2022 11:10:33 AM  
From : [REDACTED]  
To : [REDACTED]"  
Cc : [REDACTED]  
Subject : Re: Vision exam for [REDACTED]

[REDACTED]

I believe it was reviewing the other non-school reports that you shared that we were going to consider at the 3/17 meeting. I have your signed consent form for the PT and OT report, but not Dr. [REDACTED]. Please sign and return these forms for Dr. [REDACTED].

I don't suspect that [REDACTED] has a visual impairment (VI) as an educational disability as this is for students who are blind, functionally blind, have low vision, Cortical vision impairments, etc. My understanding was the OT recommended [REDACTED]s to have an eye exam to look beyond acuity, to eye tracking, jerky eye movement, saccades, etc. to help us determine how these may impact [REDACTED]s learning. I communicated with many optometrist offices and 3 said they can complete exam's looking at these aspects of vision. Teachers of the Visually Impaired work with students with VI and can complete functional vision assessments, but this is not appropriate for [REDACTED], nor do they examine the areas noted in the OT report; these are looked at by optometrists

Has [REDACTED]s regular eye doctor ever brought up these issues or recommended further investigation?

I have placed in the mail, consent forms for [REDACTED] and Dr. [REDACTED]s for your consideration.

Thank you, please let me know if you would like me to set set up a vision assessment for ST

[REDACTED]

On Mon, Feb 28, 2022 at 2:12 PM [REDACTED]

wrote:

Hi [REDACTED]

I appreciate your looking into this now.

# EXHIBIT B

Date : 1/10/2022 7:37:56 AM

From : [REDACTED]

To: [REDACTED],  
[REDACTED]

Subject : Re: [REDACTED] to present [REDACTED] assessment Tuesday 1pm

I can join for 1 pm.

Thank you,

[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

From: [REDACTED]

To: [REDACTED]  
[REDACTED]

Date: Sun, 9 Jan 2022 12:41:50 -0500

Subject: [REDACTED] to present [REDACTED] assessment Tuesday 1pm

Hello

Last summer [REDACTED] hired [REDACTED] to complete a Risk Assessment as the Risk Assessment from 2020 by [REDACTED] hired by [REDACTED] no longer represents [REDACTED]'s risk or needs.

Tuesday at 1 [REDACTED] will present this report for the first time. It's a zoom meeting and this is short notice, for all of us after a long wait.

That said, until [REDACTED] presents [REDACTED] findings to us and we can discuss [REDACTED] report and ask questions via [REDACTED], [REDACTED] hasn't been free to speak with us as [REDACTED]'s parents. We invite you to join, and hope after this meeting [REDACTED] would be willing to have any more communication needed - respecting [REDACTED] time must be compensated to do so. But perhaps this meeting will be enough info too.

Please let me know if Tuesday works and you'd like to join

[REDACTED]

[REDACTED] The content of this email is confidential and intended for the recipient specified in the message only. It is strictly forbidden to share any part of this message with any third party without a written consent of the sender. If you received this message by mistake, reply to this message and follow with its deletion.

# EXHIBIT C



**STATE OF NEW HAMPSHIRE**  
**STATE DEPARTMENT OF EDUCATION**

[REDACTED] School District

IDPH-FY-24-03-042

**[REDACTED] SCHOOL DISTRICT'S FIRST  
REQUEST FOR PRODUCTION OF DOCUMENTS**

NOW COMES [REDACTED] School District (“District”), by and through its attorneys,

[REDACTED], and respectfully requests that Parents produce the following:

**Instructions**

You have a duty to attempt in good faith to make a complete response to this request, and to voluntarily furnish all records that are responsive to this request. Please order your response by the Paragraph Number of the Request and designate which Request or Requests to which the document produced is responsive. Your good faith duty includes the duty to designate any document that is being withheld, and to specify the legal basis for withholding the document. This includes a duty to describe the nature of the document with sufficient detail such that a good faith judgment can be made by the District and, if necessary, a Hearing Officer, as to whether your objection or claim of privilege is justified. . . .

20. Invoices for any and all outside services Parents are seeking reimbursement for, as well as proof of payment of the same.
21. Any and all documents proving that Student received the services Parents are seeking reimbursement for.
26. .Any and all documents supporting Parents’ request for reimbursement of “all aspects of ‘residential treatment’ with ‘arms length suspension’ they provided while student was not in residential placement.”
27. Any and all documents demonstrating that Student actually received “all aspects of ‘residential treatment’ with ‘arms length suspension’ they provided while student was not in residential placement.”

28. Any and all invoices for “all aspects of ‘residential treatment’ with ‘arms length suspension’ they provided while student was not in residential placement” which Parents are seeking reimbursement for, and proof of payment of the same. . . .

Respectfully Submitted,

[REDACTED] DISTRICT

By and through its attorneys,

[REDACTED]

Dated: March 22, 2024

By: [REDACTED]

[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent to Parents.

Dated: March 22 2024

[REDACTED]