



Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
25 Hall Street
Concord, N.H. 03301

[REDACTED]

[REDACTED]

[REDACTED] Superintendent, SAU 42
141 Ledge Street
Nashua, NH 03060

[REDACTED] - Director of Special Education, SAU 42

Re: *Special Education Complaint # 22-37*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-37. Based on the findings of fact in the investigation, I am issuing my written decision as well as providing a copy of the investigator's report.

Below is a description of the allegation, as well as a summary of the investigator's findings of facts based on the evidence submitted by all parties to this matter. If an allegation is substantiated, a finding of noncompliance with special education law, then there will be a corrective action required of the district to remedy any violations of special education law. The corrective action is intended to ensure compliance with IDEA by addressing the needs of the child and the appropriate future provision of services for all children with disabilities.

The scope of this investigation is from [REDACTED]. During this time period, there was one relevant Individual Education Plan (IEP) in place, dated [REDACTED],¹ which had the following services:

- Specially Designed Instruction- Reading, 1 time per day for 45 minutes;
- Specially Designed Instruction- Mathematics, 1 time per day for 45 minutes;
- Specially Designed Instruction- Written Expression, 1 time per day for 45 minutes;
- Specially Designed Instruction- Executive Functioning, 1 time per day for 45 minutes;
- Specially Designed Instruction- 1 time per day for 45 minutes;
- Rehab Assistant Support- Small group, 2 times per day for 45 minutes;
- Speech Pathology Group- 3 times per month for 30 minutes;
- Speech Pathology Individual- 3 times per month for 30 minutes; and

¹ The IEP team agreed to extend the IEP until an out-of-district placement could be found.

- Counseling Group- 1 time per week for 30 minutes.

Allegation 1- Substantiated

The sole allegation in this matter is that the Nashua School District failed to comply with Ed 1124.02, which, in relevant part provides that:

(S)uch services, if provided at the child's home, shall consist of: (a) a minimum of 10 hours/week of instruction, including special education as specified in the child's IEP; and (b) related services as specified in the child's IEP.

Specifically, the complainant asserts that the Nashua School District has not provided her child with the services in the IEP since he was removed from the public school on 1/31/2022.

By way of relevant background, the student is a [REDACTED] grader who had been attending [REDACTED] School in Nashua. The student had previously been determined to be a student with a disability and was receiving services and supports through an IEP.

On [REDACTED] the school reported to the parent that the student had a significant behavioral incident. The behavioral incident originally resulted in the student being sent home for [REDACTED] days. However, upon further review, it was determined that the student would stay out of school for 10 days. Given the circumstances and duration of the student's removal, the IEP team convened on [REDACTED] to discuss the incident and create a plan for moving forward. At that meeting, it was decided, with the parent in agreement, that the public school was no longer able to meet the needs of the student and that an out-of-district placement would be appropriate. The team also decided that in the interim, the student would not return to the public school.

Since the student would not be returning to the public school, tutoring was put in place and agreed upon by the parent on [REDACTED]. The team agreed to provide 10 hours of tutoring per week. However, the IEP team also agreed that, given the student's difficulty with transitions and developing relationships, they would begin by providing 5 hours of services a week to ease the student into the new situation. The parent requested that the focus of the tutoring be in the areas of reading and math—those services were put in place and would occur at the [REDACTED]. At this location there were distractions and the student had difficulty concentrating. Therefore, tutoring services remained at 5 hours per week.

In addition to the reading and math services, the parent requested that speech and language services be incorporated into the in-person instruction. The district denied the parent's request but offered to provide the requested services remotely. However, the student refused to participate in the remote services.


The IEP also required additional services such as counseling and executive functioning instruction. There is no record of the student being offered these services in-person or remotely as required by the IEP. The district acknowledged the need for the speech and language service and the other services listed in the IEP and agreed to provide compensatory services once an out-of-district placement for the student is secured.

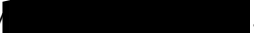


Conclusion:

The law is clear that when a student is receiving instruction in a home-based setting, that it must be 10 hours per-week minimum of tutoring. The facts are clear that the Nashua School District only provided 5 hours per-week, which is below the minimum requirement. Furthermore, the student received only a fraction of the instruction that would have been provided in the school setting according to the IEP. While the Department understands the difficulties associated with the tutoring location, there should have been discussion by the IEP Team about a different location where, perhaps, the student could have been more successful. Regardless, the facts of this complaint show that this student was not provided with a Free and Appropriate Public Education (FAPE) while awaiting an out-of-district placement.

Corrective Action:

The Nashua School District will convene an IEP team meeting to determine compensatory education as well as create an appropriate plan for services while the student awaits a placement. Evidence of the corrective action must be submitted to the Department of Education, 25 Hall Street, Concord, NH 03301 by .

The Nashua School District will provide training to all district special education LEAs regarding the requirements under Ed 1124.02. Evidence of this corrective action must be submitted to the Department of Education, 25 Hall Street, Concord, NH 03301 by .

We hope that in the future the district and parent will work together to resolve any differences that may arise.

Frank Edelblut
Commissioner of Education
NH Department of Education