



**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]

[REDACTED]

Re: *Special Education Complaint # 23-26*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 23-26. 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.

By way of relevant background, the student has an Individual Education Plan (IEP) dated [REDACTED], signed in consent by the guardians on [REDACTED]. An IEP amendment dated [REDACTED] was proposed, however, no evidence of a response by the guardian was provided during the investigation.

**Allegation 1 - Partially Substantiated**

The sole allegation in this matter is that the School District failed to comply with Ed 1109.03(a), which, in relevant part provides that:

The LEA shall provide special education, related services, supplementary aids and services, accommodations, and modifications to a child with a disability in accordance with the child's IEP.

Specifically, the complainant asserts that the [REDACTED] District failed to follow the student's IEP between [REDACTED].

During the [REDACTED] school year, the student attended the [REDACTED] School in [REDACTED]. Despite the implementation of various approaches, the student struggled to make adequate progress. In [REDACTED], an IEP team meeting was held to discuss the student's needs moving forward and the district's concern regarding their ability to provide a Free and Appropriate Public Education (FAPE) in the district. A written prior notice, dated [REDACTED], proposed amending the student's IEP to reflect a placement in a [REDACTED]. While there is no documentation that the guardians provided a response to the placement proposal, the student did attend the program.

Further, the team agreed to meet in [REDACTED], after the student began in the placement to determine whether any changes needed to be made to the student's IEP. There is no evidence to indicate this meeting ever occurred.

On [REDACTED] the guardians contacted the school district, to express concern over the student's safety which caused them to remove [REDACTED] from the placement. As such, they requested homebased education be provided. On [REDACTED] district held an IEP team meeting to discuss next steps and placement options. One of which was for the student to interview at [REDACTED], as well as an online program with tutoring to begin while a placement was being sought. The guardians initially set up an interview at [REDACTED] but cancelled it and did not return communications to reschedule. The district attempted to communicate with the guardians regarding the placement with no response until [REDACTED] when they heard from an attorney on behalf of the guardians informing the district of their involvement in the matter.

The district provided communications from the tutor to indicate their attempts to provide services to the student. There was minimum involvement from the student throughout the course of the complaint, with the guardians expressing they did not feel it was appropriate for the student and therefore would not make [REDACTED] participate. The guardians were encouraged by the tutor to communicate their concerns with the school district but told the tutor they didn't feel it would make a difference, so they were unwilling to communicate with the school.

The district has held several meetings and provided several options for the student's programming before, during, and after the complaint period. The district recognizes that the homebased education is not ideal for the student and only intended for it to be a temporary option while another placement was sought. However, the district is unable to secure a placement without the guardians' participation and communication in the process.

### **Conclusion:**

The evidence indicates that the district is acting in the best interests of the child to ensure the child has access to a FAPE. However, because there was no evidence of guardian consent for the initial change of placement, the student's IEP was technically not being followed, resulting in the allegation being partially substantiated decision. Despite the last agreed upon IEP not being followed, it could be argued that following that IEP was a denial of FAPE as the child did not make progress with that one. The real crux of the issue is that both sides need to take responsibility and action for the student's education. If there are continuing

[REDACTED]

disagreements with what FAPE looks like for the student, then either party may want to consider an alternative dispute resolution process pursuant to Ed 1122 or Ed 1123.

No corrective action is necessary in this matter as the IEP team met post complaint period and created a plan, including the district agreeing to provide services through [REDACTED] while a long-term placement is sought. We encourage the parties to collaborate to try to get the student in an appropriate placement as soon as possible.

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