



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]

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

[REDACTED]— Interim Director of Special Education

Re: Special Education Complaint # 23-27

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 23-27. 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 had 1 proposed Individual Education Plan (IEP) and 2 subsequent amendments which were proposed during the complaint period.

- IEP 1, dated [REDACTED] not signed in consent by the parent(s);
- Amendment 1, dated [REDACTED] signed in consent by the parent on [REDACTED]; and
- Amendment 2, dated [REDACTED] signed in consent by the parent on [REDACTED]¹

¹ Consent was not provided until 1/6/2023, which is outside the complaint period.

Allegation 1- 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 Nashua School District has not provided the support services agreed upon in the IEP since the child began attending the [REDACTED]

The student was identified as a child with a disability in [REDACTED]. However, since the parent did not consent to the original IEP as proposed, pursuant to 34 CFR 300(b)(4)², the district was not obligated to provide services, obtain implied consent, be penalized, or convene an IEP team meeting. Although not required, on [REDACTED], an IEP team meeting was held and an amendment to the original IEP was proposed. The parent consented to the proposal on [REDACTED], which then began the district's obligation to provide special education services. For the reasons stated above, the district was not responsible for special education prior to [REDACTED].

Therefore, between [REDACTED], the student should have received the following services:

- Social Skills- specially designed instruction by a counselor for 1 session per week of 30 minutes in a special education setting;
- Speech Pathology- Group by a speech Pathologist for 3 sessions per month of 30 minutes in a special education setting;
- Consultation to staff for Speech and Language by a Speech Language Pathologist of 1 session per month in a regular education setting;
- Support for functional skills for a rehab assistant/ para in a group by a paraeducator for 4 sessions per day for 30 minutes in a regular education setting; and
- Paraeducator for a general education teacher for 12 sessions per day of 30 minutes in a regular education setting.

² If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency -

(i) May not use the procedures in [subpart E of this part](#) (including the mediation procedures under [§ 300.506](#) or the due process procedures under [§§ 300.507](#) through [300.516](#)) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP under [§§ 300.320](#) and [300.324](#) for the child.

██████████

The district contracted with ██████████ for the student to receive ██████ counseling service from ██████████. However, when asked for documentation, the counselor only provided an overall summary of the time spent with the student. There is no documentation to indicate the frequency or duration of the services.

As for speech, the student received all but one session of speech between ██████████ ██████████. However, the student received 5 sessions of speech between ██████████, which he was not entitled to at that point, resulting in the student receiving more speech services than required.

There is no evidence the student was provided a paraeducator during any of the complaint period ██████████. In fact, the parents had to find an ██████████.

Conclusion:

The Department is knowledgeable about the ongoing staffing shortages significantly impacting special education paraeducators. However, what is not clear is the efforts the district made to find a paraeducator. There was no evidence provided during the investigation to indicate that good faith efforts were made on behalf of the district to find support for the student. Instead, the parents were put in the position to secure ██████████.

Corrective Action:

The School District will convene an IEP team meeting to:

- Address the lack of a paraeducator and if the student requires compensatory education related to the lack of support, as well as if parental compensation is owed for their part in providing the service.
- Whether the child made progress on the goal supported by the counseling services to determine whether compensatory education is necessary in that area as the poor record keeping made it unclear whether those services were provided.
- Create a plan going forward to ensure the child's needs are being met.

Evidence of this corrective action must be submitted to the Department of Education, 25 Hall Street, Concord NH 03301 by ██████████.

The School District will review their internal policies related to special education documentation for students ██████████, and revise, if necessary, to ensure compliance with state and federal requirements. 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