



Frank Edelblut  
Commissioner

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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
25 Hall Street  
Concord, NH 03301  
TEL. (603) 271-3495

[REDACTED]

Re: *Special Education Complaint # 24-05*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support, has concluded its investigation of complaint # 24-05. 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 may 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 information, the student has had one Individualized Educational Program (IEP) during the complaint period. This IEP has been active since [REDACTED]. It should be noted that there have been two proposed IEPs since the current IEP technically expired on [REDACTED], but neither of those IEPs have been signed in consent. Therefore, the expired IEP is the one the [REDACTED] District and its receiving school, [REDACTED], have been operating under<sup>1</sup>. The services listed in this IEP include the following:

- [REDACTED], Coordinator, Special Education Teacher; Provider, Special Education Teacher, 5 sessions/biweekly of 90 minutes, in a special education setting.

<sup>1</sup> Ed 1120.04(g) states that “[i]f a parent refuses to consent for a proposed IEP or placement, the child’s most recent agreed upon IEP, placement, or both shall remain in effect unless the LEA and parent agree otherwise, until the matters are resolved unless and until a party files for due process, in which case the IEP and placement shall be governed by 34 CFR 300.518.”

According to [REDACTED] special education programs webpage, “The [REDACTED] provides a continuum of specialized services for students who need additional support to manage social and emotional needs. These include academic classes, resource room, and counseling.” [REDACTED]

[REDACTED] However, [REDACTED] was not able to hire special education teachers to teach these two classes, [REDACTED], for the entire [REDACTED] school year. As a result, alternative arrangements varying from general education classes with 12 or fewer students, online classes, and tutoring were proposed but rejected by the parent/guardian.

### **Allegation 1—Substantiated**

The first and only allegation in this matter is that the [REDACTED] District failed to comply with Ed 1109.03(a), which, in relevant part provides that:

The local education agency (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 did not provide educational services that are mandated in the student’s IEP. Technically, this is true—[REDACTED] classes were not provided to the student as dictated by the IEP. However, the District contends that requests have been made to [REDACTED] to not spell out a specific program of special education service, but instead to write the IEP in terms of specialized instruction by a special educator, but not define the exact program. [REDACTED] has communicated that this is the way they do it and will not write in services as requested by the District. [REDACTED] approach is contradictory to regulatory language that resists committing to specifically titled assessments or programs. For example, in 34 CFR 300.304, regulations require that evaluative assessment tools be “valid and reliable,” “administered by trained and knowledgeable personnel,” and “tailored,” promoting flexibility within available resources and not listing specific tools.

### **Conclusion**

The Department acknowledges that this case is layered because of control that [REDACTED] exerts in the writing of other districts’ IEPs. The fact that [REDACTED] mandated the inclusion of the specific [REDACTED] in the IEP, and then it failed to fill the teaching posts, put [REDACTED] District in an untenable position. Still, the District is ultimately responsible for the language of its IEPs.

Given that the lack of teachers in the [REDACTED] is uncontested by the District and [REDACTED] this matter has also been forwarded to the Bureau of Special Education Support for further review.

### **Corrective Action**

The [REDACTED] District will convene the IEP team to determine what special education, related services, supplementary aids and services, accommodations, and/or modifications are required to support the social and emotional needs of the student to make progress in the general curriculum<sup>2</sup>. Evidence of the

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<sup>2</sup> If the parties cannot agree, dispute resolution procedures such as neutral conference, mediation, and due process exist for this reason. The Department of Education also offers IEP Meeting Facilitators as a service through the Bureau of Special Education Support.

corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by [REDACTED].

The [REDACTED] District will meet with representatives from [REDACTED] to review their internal policies related to special education responsibility 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 Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by [REDACTED].

The [REDACTED] District will provide compensatory support services in English and Math, to be provided by a 1:1 special education paraprofessional or designated tutor, for 160 minutes per school day, effective immediately for the remainder of the school year. However, if there is delay in implementing support, then missed minutes will carry over into ESY or the next school year, whichever is most relevant. These services should take place at [REDACTED] during the school day. Evidence of the corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by [REDACTED].

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

CC: Ms. Nicole Roux, Parent & Co-guardian  
Mr. Richard Sharp, Director of Special Education, Pinkerton Academy  
Dr. Timothy Powers, Head of School, Pinkerton Academy