



**Frank Edelblut**  
Commissioner

**Christine M. Brennan**  
Deputy Commissioner

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

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

*Re: Special Education Complaint # 24-19*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support, has concluded its investigation of complaint # 24-19. 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 background information, the child is a [REDACTED] student at the [REDACTED], a private approved special education program in [REDACTED]. The local education agency (LEA) responsible for the child is the [REDACTED] District. Beginning in [REDACTED], the child was hospitalized for a period of 9 weeks. The Department's investigator could find no evidence that any legally required instruction—neither the 10 hours weekly of tutoring nor special education services in the IEP—were provided to the child during this period of hospitalization. In fact, there was a contract for tutoring services from [REDACTED] sent to [REDACTED] District's former director of student services ("Former Director") dated [REDACTED], that was never acted upon. There was no indication that the Former Director signed the contract to implement those, or any other, services.

Upon the child's return to school in January, a Written Prior Notice (WPN) dated [REDACTED], states that it was an "administrative decision" that the child be placed on a shortened school day of 3 hours of instruction daily due to disruptive behaviors. There is no documentation in the IEP that reflects an educational placement change to home instruction that contains any parental consent, nor is there any indication that tutoring or special education services were offered within the home environment.

The same WPN dated [REDACTED], proposed "to amend [the child's] IEP dated (no date written) to reflect change in placement to a more restrictive setting of special education day program." Supposedly, there was an IEP team meeting the next day to discuss this proposed change in educational placement. However, there is no evidence of a WPN, Signatures of Attendance or other documents that demonstrate that this meeting actually took place, either in person or virtually.

The child began attending [REDACTED] on [REDACTED]. A proposed IEP Amendment dated [REDACTED] (not signed in consent) stated that the following services would be provided at [REDACTED]:

- Math Instruction by a General Ed Teacher: 1 session/day of 30 minutes
- Literacy Instruction by a General Ed Teacher: 1 session/day of 30 minutes
- Psychoeducation Group Instruction by a Counselor: 1 session/day of 30 minutes
- 1:1 Counseling with a Clinician by a Counselor: 1 session/week of 60 minutes
- Behavior Support by a General Ed Teacher: 1 session/day of 5.6 hours
- Special Education Consultation with staff by the Special Education Director: 2 sessions/month for 30 minutes

It is note-worthy that the IEP Amendment was dated to start back in early [REDACTED]. There is no evidence that any special education services, related services, or accommodations/modifications occurred until the child started at [REDACTED] in [REDACTED].

A written prior notice dated [REDACTED], states, "The [REDACTED] District proposes to amend [child's] IEP dated (no date) to reflect change in placement, recommended emotional/behavioral and academic goals, or services, and eligibility for extended school year services." There is no evidence in that a parent participated in the decision-making or signed in consent for the aforementioned educational placement change and services. However, the child remained at [REDACTED], transported there by the parent, until [REDACTED].

At the heart of this complaint is the lack of parental consent documented in special education paperwork. These are egregious procedural errors. As such, this matter has been referred to the Department of Education's Office of Training and Monitoring for further review.

### **Allegation 1—Substantiated**

The first allegation in this matter is that the [REDACTED] District failed to comply with Ed 1124.02, which, in relevant part provides that:

When a child is removed from the child's current educational placement, the LEA shall provide service necessary to provide the child with a disability an opportunity to progress in the general education curriculum consistent with the child's IEP. Such 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 District did not provide adequate special education services or tutoring while the child was hospitalized for 9 weeks.

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The District was aware that the child was hospitalized and in need of tutoring and special education services because it received a contract from ██████████ in ██████████. However, when asked to produce documentation that the tutoring and special education services were provided, the District could provide no such documentation. As such, the Department must surmise that the child went without the legally required educational services during the hospitalization period.

### **Allegation 2—Substantiated**

The second allegation in this matter is that the ██████████ District failed to comply with 34 CFR 300.114, which, in relevant part provides that:

Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Specifically, the complainant asserts that the District removed the child from the regular educational environment to a shortened 3-hour school day outside the IEP process and without parental permission.

The rationale for the shortened school day as stated in the WPN dated ██████████, suggest that the child's behavior was interrupting the child's learning and that of other children. If that were true and a change in educational placement was warranted, then there should be extensive documentation showing the meeting of the IEP team to discuss possible options. Ed 1111.04(f)(1) requires that both the superintendent of the school district and the parent must agree to the shortening of a school day. There is no evidence to suggest that either party agreed to this arrangement. Additionally, there is no special education documentation reflected any consent to home instruction educational placement. Without any sign of parental consent to this shortened day, the Department must conclude that the child was removed from the least restrictive environment outside of the IEP process and was denied a free appropriate public education (FAPE).

### **Allegation 3—Substantiated**

The third allegation in this matter is that the ██████████ District failed to comply with Ed 1120.04(a)(5), which, in relevant part provides that:

The LEA shall obtain informed, written consent from the parent of a child with a disability prior to changing the nature or extent of the special education or special education and related services.

Specifically, the complainant asserts that the District changed the educational placement and special education services of the child without parental consent.

The special education documentation missing the required parental consent are as follows:

- Amendment dated ██████████ to IEP dated ██████████,
  - Accompanying Educational Placement Proposal to ██████████,
- IEP dated ██████████
  - Accompanying Educational Placement Proposal to ██████████,
- Amendment dated ██████████ to IEP dated ██████████,
  - Accompanying Educational Placement Proposal to ██████████.

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The Department acknowledges that the parent acted as a contracted transporter for the student from ██████████, therefore there is an implied awareness to the change in educational placement. However, that must be considered separate from the legal definition of “consent,” which is that the “parent understands and **agrees in writing** (emphasis added) to the carrying out of the activity for which his or her consent is sought” (34 CFR 300.9). The onus of acquiring written consent falls on the LEA, and that did not occur. As such, the Department finds this allegation to be substantiated.

### Conclusion

Parents are an essential member of a child’s educational team, and informed parental consent is a legal requirement in special education. The Department extends its appreciation to the ██████████ District for its cooperation and transparency with this investigation. The Department is hopeful that attention will be paid to the District’s policies and procedures so that these egregious oversights do not recur.

### Corrective Action

The ██████████ District will provide compensatory tutoring and special education services<sup>1</sup> that covers from when the child was hospitalized up until the child began attending the ██████████. This may require tutoring or services to be completed during the summer of 2024. Evidence of this corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by ██████████.

The ██████████ District will review their internal polices related to obtaining and documenting parental consent 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 ██████████.

The ██████████ District will review the child’s current IEP and educational placement to insure fully documented parental consent for both. Evidence of the corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 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

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<sup>1</sup> The number of instructional hours should include a minimum of 10 hours per week, including special education services determined by the IEP team, as required in Ed 1124.02. Determining compensatory special education and related services is more complex in this case as the IEP dated ██████████ was never signed in consent. However, the IEP team can use a combination of current or former consented-to special education and related services that would allow the child to make progress on annual goals and progress in the general curriculum. If the IEP team cannot agree, then dispute resolution procedures identified in Ed 1122 or Ed 1123 are available to the parties.