



**Frank Edelblut**  
Commissioner

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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
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Concord, NH 03301  
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[REDACTED]

[REDACTED]

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

[REDACTED]—Director of Student Services

*Re: Special Education Complaint # 24-42*

Dear [REDACTED],

The New Hampshire Department of Education, Bureau of Special Education Support, has concluded its investigation of complaint # 24-42. 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, indicating 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 is a resident of Nashua, NH, but attends the [REDACTED]. The Nashua School District ("the District") has the responsibility to provide a free appropriate public education (FAPE). The student currently has an Individualized Education Program (IEP) dated [REDACTED], that was signed in consent on [REDACTED]. Two days after the parent consented to the IEP, the District received a letter from the parent requesting an independent educational evaluation (IEE). The IEP team convened to discuss the evaluations on [REDACTED] at which point vocational and reading assessments were agreed upon. The written prior notice (WPN) from that meeting indicates that the District has three caveats to the testing:

- District must approve the proposed independent evaluator prior to the start of the evaluation;
- As outlined in District's independent education evaluation policy – the proposed evaluator must hold appropriate license(s) to conduct the evaluations; and

- Once approved by the district – the district agrees to pay for the evaluation subject to the district’s policies for payment of vendors.

Between [REDACTED], there was an extensive search for possible evaluators. However, the District did not have a preexisting list of independent evaluators to perform a vocational assessment. After consulting with the transition coordinator for the Department of Education’s Bureau of Vocational Rehabilitation (“VR”) on this case, the Department will confirm that the availability of certified vocational evaluators is very limited as they are not often used by VR. Emails provided evidence that good-faith efforts were taken by both the District and the parent to find a facility that conducts vocational assessments. However, a challenge was that private agencies that have done them in the past are no longer doing so. For example, Easterseals was contacted and the response was they no longer conduct vocational assessments. Additionally, the District attempted to contact with [REDACTED] [REDACTED] was attempted, but the agency gave no response to the District. The Department is unsure of what additional attempts were made to contact [REDACTED] A.

When it was evident that there was no movement towards obtaining an evaluator, the parent proposed using [REDACTED] located in [REDACTED]. However, the evaluator at this agency is registered in Maine and Massachusetts but not New Hampshire. As a result, the District refused to enter into a contract with this agency to conduct the IEE. Then, at an IEP team meeting on [REDACTED] the District agreed to also conduct assessments in writing and math as part of the IEE. At this point, it has been approximately 7 months since the parent had first requested the IEE.

### **Allegation 1—Substantiated**

The first allegation in this matter is that the District failed to comply with 34 CFR 300.502, which, in relevant part provides that:

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with the one performed by the district, and, upon that request, the district must provide the parent with information on how one may be obtained without unnecessary delay.

Specifically, the complainant asserts that the District failed to provide the parent with information about where a vocational/transitional IEE may be obtained.

The Department understands the value and reasonableness in having an evaluator be licensed within New Hampshire. This criterion is not at issue here. However, in the context of this case, when no other possible choices for evaluators were provided to the parent—even if due in part to there being far fewer vocational evaluators in the state—there became a barrier to the parent preventing the parent from being able to obtain an IEE. Still, the law’s intent is that evaluator information be available to the parent without unnecessary delay. Therefore, the Department substantiates this allegation.

### **Conclusion**

The Department recognizes that the District was responsive and agreeable to the parent’s request for an IEE. The issue at the center of this case is that the District’s was unable to provide the parent with their choices of possible evaluators, which it was obligated to provide. If the District had been able to present

[REDACTED]

the parent with more possibilities for evaluators so as to allow choice, as called for in Ed 1107.03(c)<sup>1</sup>, then, presumably, this situation would not have occurred.

### **Corrective Action**

The Nashua School District shall convene the IEP team to discuss widening the criteria of evaluators so as to provide the parent with choices for possible evaluators for the vocational and academic assessments. This widening may allow evaluators who are credentialed in other states to hasten the completion of the IEE. 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].

The Nashua School District will provide the Department with an update on the status of the student's IEE. 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].

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> Ed 1107.03(c): "The agency criteria determined by the LEA, as described in 34 CFR 300.502(a)(2) and 300.502(e), to the extent that they exceed qualified examiner criteria or establish geographic limitations, shall not be so restrictive that the parent does not have a choice of independent evaluators."