



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]

Re: Special Education Complaint # 24-45

Dear [REDACTED]:

The New Hampshire Department of Education, Governance Unit ("the Department"), has concluded its investigation of complaint # 24-45. 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 [REDACTED] years old and has an IEP through the [REDACTED] ("the District") for the following areas of disability: [REDACTED]. The student's IEP is dated [REDACTED], and was signed in consent by the parent on [REDACTED]. The consented-to placement on the student's IEP is [REDACTED], a separate approved special education program run by [REDACTED]. However, contracts and emails submitted to the Department's investigator shows that the student receives 6.5 hours per day of Youth Transition Services (YTS) through [REDACTED], which is independent from [REDACTED]. YTS is a contracted service, not a separate approved special

education program, as defined by Ed 1111.03(d).¹ Therefore, the placement that was consented to in the IEP was not the educational placement that the student was actually participating in.

This is an important distinction that is at the heart of this complaint. Federal regulations within the Individuals with Disabilities Education Act (IDEA) establish that an IEP is designed to help support students “be involved in and make progress in the general education curriculum”.² Furthermore, NH administrative rule Ed 306.27(l) specifies, “Students shall engage with and apply English and mathematics graduation competencies during every year they are enrolled in high school even if graduation competencies for English and mathematics have been demonstrated.” Therefore, if a student were enrolled in a NH separate approved special education program, then “all children with disabilities shall have access to equal educational opportunities within their programs and access to and ability to progress in the general curriculum...” as required by Ed 1113.05(g). As the student subject to this complaint was not enrolled in a separate approved special education program, and there is no indication that these classes occurred within the public school setting, the student did not receive access to the general education curriculum as required by state and federal regulations.

Allegation 1—Unsubstantiated

The first allegation in this matter is that the District failed to comply with 34 CFR 300.321(a), which, in relevant part provides that:

The local education agency (LEA) must ensure that the IEP team be comprised of the parents, one regular education teacher, one special education teacher, a representative of the school district, a professional who can interpret evaluation results, the student, when appropriate, and any other individuals with knowledge of the student who may be invited by the parent or school district.

Specifically, the complainant asserts that the District did not have all necessary members at the IEP team meetings during the complaint period.

The meeting in question took place on [REDACTED]. At this meeting, there was the parent, a special education teacher, and a school district representative present. Federal regulation 34 CFR 300.321(a)(2) states that the IEP team must include “[n]ot less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)”. As the student does not participate in the regular education environment, a regular education teacher is not required to constitute the IEP team. Since all legally required persons were present, the Department does not substantiate this allegation.

Allegation 2— Unsubstantiated

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

¹ Ed 1111.03(d): This state rule includes the Continuum of Alternative Educational Environments table. Within this table, a separate approved special education program/school is defined as, “A child with a disability attends a publicly or privately operated special education program/school.”

² 34 CFR 300.320: This federal regulation states repeatedly that the components of an IEP [measurable annual goals, special education and related services, etc.] must be designed to help student “be involved in and make progress in the general education curriculum”.

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

Specifically, the complainant asserts that the District has not provided special education and related services within the student's IEP from [REDACTED]. [REDACTED], would be the first date of the newest complaint period as the complainant had previously filed a special education state complaint regarding the provision of services spanning from [REDACTED].

The District states that there was a reduction of service at [REDACTED] from [REDACTED] [REDACTED]. This meant that services changed from 32.5 hours per week to 27.5 hours per week. The student returned to full-time programming at [REDACTED] on [REDACTED]. The District offered to hire a Registered Behavior Technician (RBT) to serve as the student's 1:1 for five hours per week to make up for this discrepancy. The parent refused this option. While there was a reduction in services, the District had offered an option that would have fulfilled the required amount of services, but that was rejected. In instances when there is disagreement within the IEP team over elements within the IEP, there are dispute resolution procedures such as neutral conference, mediation, and administrative due process that are available through the Department. Since the District cannot and should not provide special education without parental consent, the District could not move forward with the providing the full amount of services. Therefore, the Department does not substantiate this allegation.

Allegation 3—Substantiated

The third allegation in this matter is that the District failed to comply with Ed 1111.03(d), which, in relevant part provides that:

The student may receive their special education program at any of the environments listed in the Continuum of Alternative Educational Environments (Ages 6-21).

Specifically, the complainant asserts that the student was not receiving their special education at a placement that is on the continuum of alternative educational environments.

As previously established, the student's educational placement noted within the IEP is [REDACTED]. This program is a separate approved special education program. However, the student is not actually enrolled within this program. Rather, the student receives 6.5 hours of YTS. While these services may take place within the same facilities as [REDACTED], YTS is not a separate approved special education program and not on the continuum of alternative educational environments. Therefore, the Department can state that the educational programming the student is receiving does not align with the educational placement noted within the student's IEP.

Allegation 4—Substantiated

The final allegation in this matter is that the District failed to comply with 34 CFR 300.101(a), which, in relevant part provides that:

A free appropriate public education (FAPE) must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

Specifically, the complainant asserts that the District did not provide the student with a free appropriate public education.

The student's educational programming of 6.5 hours per day of transition services through YTS did not provide access to the general education curriculum. While there is important inherent value in transition services, it is not a complete substitute for the general education curriculum. Either within the District's agreed-upon high school, or within a separate approved special education program, the student must have access to English and mathematics competencies, at a minimum. As access to the general education curriculum is an essential component of FAPE, and the student was not provided with that access, the student was denied FAPE. Therefore, the Department substantiates this allegation.

Conclusion

While the IEP team clearly sees the value in the YTS program run by [REDACTED], the nature of the program, including staff turnover, has created a level of instability that has clearly bothered the parent enough to file two special education state complaints with the Department. There now may need to be a discussion amongst the IEP team as to which educational placement is most appropriate to provide FAPE to the student—whether that may be a separate approved special education program, a combination of YTS and general education curriculum through the local high school, or some separate alternative the IEP team may discuss. If there is disagreement amongst members of the IEP team, then dispute resolution procedures such as neutral conference, mediation, or administrative due process hearings may be utilized.

Corrective Action

The [REDACTED] District will convene an IEP team meeting to determine the appropriate educational placement that will provide the student with FAPE. The IEP team must also determine the student's courses of study so that they align with state and federal regulations. 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 [REDACTED] District will review their internal policies and procedures related to special education responsibility for students ages 18 to 21 inclusive and revise, as 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]

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