



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]

Re: Special Education Complaint # 24-62

Dear [REDACTED]:

The New Hampshire Department of Education, Governance Unit ("the Department"), has concluded its investigation of special education state complaint # 24-62. 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 turned [REDACTED] years old on [REDACTED], and has retained all legal decision-making authority. The student and parent moved from Florida to New Hampshire in late [REDACTED]. While attending school in Florida, the student had, most recently, an IEP that expired in [REDACTED], which is outside the complaint period. Prior to moving to NH, the student attended a private school without the support of an IEP. Upon moving to NH, the parent enrolled the student in [REDACTED] within the [REDACTED] ("the District").

Within a matter of weeks of their arrival, the parent indicated a desire for an IEP. A transition meeting was held on [REDACTED]. Within the month-long span of time between enrollment and the transition meeting, the student attended school for only a few days due to intense anxiety. Emails between the parent and district officials during the month of [REDACTED] indicate the student continued to struggle with attendance. Eventually, the parent unenrolled the student for the purposes of pursuing home education in

[REDACTED]. During this time of home education, the District was not responsible for providing a free appropriate public education (FAPE).¹

In [REDACTED], the parent once again contacted the school and plans were made for the student to start at the beginning of the second semester on [REDACTED]. By all accounts, the student had every intention of starting classes; however, the student did not report to the school building. The IEP team convened for another transition meeting on [REDACTED]. At this time, the parent signed consent for the evaluations to determine eligibility for special education. After initial concerns that the student was not able to participate in the evaluations due to not being present in school, the District offered to have the student go to the SAU office and have the evaluations completed there.

On [REDACTED], the IEP team convened to review the evaluations and determine eligibility. The student demonstrated average cognitive and academic scores. The team determined that the student was not eligible under the designation of Other Health Impairment. A discussion ensued that the student would likely be eligible under Emotional Disturbance, but the student rejected that category due to a desire to eventually join the military. Therefore, the District proposed that a 504 Plan could be an alternative which would provide adequate accommodations for the student to access education. However, the parent was resistant to that idea. This impasse about how the student could be supported—whether through an IEP or a 504 Plan—led the parent to file this complaint with the Department.

Allegation 1—Unsubstantiated

The sole allegation in this matter is that the [REDACTED] District failed to comply with 34 CFR 300.323, which, in relevant part provides that:

If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency – 1) Conducts an evaluation (if determined to be necessary by the new public agency); and 2) Develops, adopts, and implements a new IEP, if appropriate.

Specifically, the complainant asserts that the District failed to develop an IEP for the student when they moved from Florida to New Hampshire.

Obtaining an IEP and special education services is a structured process. While the student moved to the District with an expired IEP, the District fulfilled its obligation to coordinate a transition and discuss comparable services it could provide while the District conducted an evaluation or develop an IEP. However, the student's attendance was a barrier to the District being able to provide comparable services. The District's obligation to provide comparable services ended when the student was unenrolled for home education. When the parent stated in [REDACTED] that they would like to pursue an evaluation and possible IEP, the District convened the IEP team in a timely manner and met its deadlines to complete

¹ NH RSA 193-A:9 “The resident school district, the board of such district, and any employees of the resident school district associated with a child who is or has been receiving home education are not liable in damages in a civil action for any injury, death or loss to person or property allegedly sustained by that child, the child's parent, or any other person as a result of the child's receipt of home education, including but not limited to, any liability allegedly based on the failure of the child to receive a free appropriate or adequate public education.”

evaluations. Therefore, given that the District attempted to provide services and follow the appropriate process, the Department does not substantiate this allegation.

Conclusion

At the heart of this case is a student who is trying to carve the right path to access a successful post-secondary career in the military. The Department acknowledges that the District has assisted the family with reviewing different educational pathways and supports that fit the student's needs. The Department wants to clearly convey that the District should continue to support the student in understanding the various avenues available. The Department hopes that the IEP team can continue to work collaboratively and in good faith to identify the best avenue for the student.

We hope that in the future the district and family will work together to resolve any differences that may arise.

Frank Edelblut
Commissioner of Education
NH Department of Education