



Frank Edelblut
Commissioner

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Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
25 Hall Street
Concord, N.H. 03301

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Re: Special Education Complaint # 22-20

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-20. 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 will 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, the scope of this investigation is from [REDACTED] [REDACTED]. There were two Individual Education Plans (IEPs) which were valid during the complaint period:

- IEP 1 dated [REDACTED]
- IEP 2 dated [REDACTED]

Allegation 1 - Partially Substantiated

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

██████████

The 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 ██████████ has not followed the behavioral interventions in the IEP since the beginning of the ██████████ school year.

By way of relevant background, both IEPs contained the same accommodations related to the student's behavioral needs. However, due to the amount of behaviors and suspensions which the student exhibited— both in school and out of school— the parent felt that the accommodations were not being followed.

The district provided documentation of the implementation of behavioral supports as provided in the IEP. Although, in a Manifestation Determination¹ meeting held on ██████████, the district admitted that, on at least one occasion, not all of the accommodations had been provided. During this meeting, the team also proposed and agreed to seek an out-of-district placement for the student which could better meet his needs.

Allegation 2- Partially Substantiated

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

The 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 ██████████ has not provided the counseling services as outlined in the IEP since the beginning of the ██████████ school year.

The counseling services in IEP 1, dated ██████████ included:

- Counseling-Group by a School Psychologist, ██████████
- Counseling-Individual by a School Psychologist, ██████████

The district acknowledged that between ██████████, the student did not receive the counseling services due to the unexpected departure of the school psychologist. A meeting was held on ██████████ to amend the IEP to account for the missed services. The new IEP, dated ██████████ included:

- Counseling-Group by a Counselor, ██████████

¹ 34 CFR 300.530(e) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine -

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP

- Counseling- Individual by a Counselor, [REDACTED]

The agreed upon changes accounted for the previously missed sessions as well as the provision for future sessions. Documentation provided indicates that the student participated in group counseling twice and individual counseling three times during the complaint period. Although the documentation is not clear, it appeared the individual sessions were not scheduled and the student was asked to attend on random days and times, which often resulted in [REDACTED] refusal to attend.

Allegation 3- Unsubstantiated

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

The 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.

The complainant asserts that the [REDACTED] has not consistently provided the paraprofessional support as required by the IEP since the beginning of the [REDACTED] school year.

Although there were two IEPs which were valid during the complaint period, both provided for the following paraprofessional support:

- Shared paraprofessional by a para-educator for [REDACTED].

Daily logs provided by the district indicated that the student had the required paraprofessional support except for the days the para-educator was absent (8 days) or late (1 day). The district asserts that a substitute provided the support on those days. However, there was no evidence provided to support this assertion. The days that the para-educator was present and that the daily logs were completed, it was clear that the student often received paraprofessional support in excess of the IEP requirement.

Although outside the purview of the complaint period, the team agreed to provide full day paraprofessional support on [REDACTED]


Conclusion:

The Department recognizes the parent's concerns as well as the district's attempts to resolve the concerns. The question then becomes whether or not the student was able to access a Free and Appropriate Public Education (FAPE). However, the IEP team had already answered this question at the [REDACTED] meeting, when the decision was made to place the student out of district. It is the Department's understanding that as of the date of this letter, the student is currently attending [REDACTED]. Given the totality of the information provided, the Department asserts that the decision to place the student at [REDACTED] is an implicit acknowledgement that the student was unable to receive FAPE in the public school.



Corrective Action:

The Department recognizes the actions already taken by the district as sufficient corrective action related to the student's provision of FAPE.

However, it was clear during the investigation that documentation of services could be improved. The district will review their policies regarding IEP implementation documentation and provide proper training to the appropriate staff. Evidence of this corrective action must be submitted to the Department of Education, 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