



Frank Edelblut
Commissioner

Christine M. Brennan
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 # 22-24*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-24. 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 four Individual Education Plans (IEPs) and amendments valid, as set forth below with were valid during the complaint period:

- IEP 1, valid [REDACTED], signed into agreement by the parent on [REDACTED];
- IEP 2, valid [REDACTED], signed into agreement by the parent on [REDACTED];
- IEP 3, valid [REDACTED], signed into agreement by the parent on [REDACTED]; and
- IEP 4, valid [REDACTED], signed into agreement by the parent on [REDACTED].

Allegation 1 - Unsubstantiated

The first allegation in this matter is that [REDACTED] failed to comply with Ed 1120.04(a)(5), which, in relevant part, provides that:

[REDACTED]

An 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 [REDACTED] did not provide notice or receive parental consent prior to changing the child's placement.

The complaint period included four agreed upon IEPs and amendments. Each document contained the following identical placement:

- [REDACTED]

The parent expressed concern that, at times, the child was spending less time in a general education setting and alleged that was a change in placement, thus subject to a Written Prior Notice detailing the changes. An affidavit provided by the Director of Education, explained that the [REDACTED] is a state approved self-contained program which is individualized for the students who placed there. The students in the program access the general education classroom when appropriate, but receive a majority of their educational needs within the special education program. The time spent in general education can vary depending on the individual student's ability and needs.

In this case, the agreed upon IEPs all provided for [REDACTED] in the special education program, which [REDACTED]. This would allow for the child to spend the entire school day in the special education setting as necessary. As such, since each agreed upon IEP during the complaint period included the same placement information, there was no need for a notification for a change of placement since it was already an agreed to placement.

Allegation 2- Substantiated

The second allegation in this matter is that [REDACTED] failed to comply with Ed 1120.03(a), which, in relevant part, provides that:

Parent(s) of a child with a disability shall be notified in writing within a reasonable time, but not less than 14 days, before the LEA proposes to initiate or change, or refuses to initiate or change, the referral, evaluation, determination of eligibility, IEP, or educational placement of the child or the provision of FAPE to the child.

The complainant asserts that [REDACTED] did not respond to a request for an auditory processing evaluation made in [REDACTED].

On [REDACTED], the parent attended a meeting that the district referred to as a Multi-Disciplinary Team meeting. During the meeting, the parent requested an auditory processing evaluation. The district agreed and provided the parent with a consent form, which was signed at that time. However, the parent was not provided a Written Prior Notice (WPN) detailing the proposal.

The district concedes that it did not provide a WPN, but asserts that since the meeting was not an IEP team meeting, they did not need to provide the parent with a WPN for the proposal to agree to evaluate. The Department disagrees with the assertion. Any decision to provide further evaluation for a child already identified as a child with a disability should be made by the IEP team. Given the members attending the meeting agreed to the request, and

the meeting attendance included a member with the authority to commit the resources of the school district to conduct the evaluation. As such, the information gathered does not allow the Department to identify the meeting as anything other than IEP team meeting.

In addition to not providing the parent with written notice of the evaluation, the investigation yielded additional violations not included in the original complaint. The district did not meet all of the requirements under Ed 1107, which directly references evaluation procedures under federal law.

- The district did not complete the evaluation within the 60 day timeline as required by Ed 1107.01(d). A meeting should have occurred no later than [REDACTED]; and
- The parent did not receive a copy of the evaluation 5 days prior to the meeting in accordance with Ed 1107.04(d). T

The parents were provided a copy of the evaluation on [REDACTED] only after they filed a complaint with the Department. At that same time the parents were offered the option to schedule a meeting to discuss the evaluation or wait until the annual IEP team meeting.

Conclusion:

Although the first allegation was not substantiated, it is clear there is room for improvement when communicating with the family regarding how the educational placement actually looks. In terms of the evaluation, it is evident that the district is in need of improvement regarding their evaluation procedures. Simply assigning a different name to a meeting does not change the protections afforded to students with disabilities under the Individuals with Disabilities Education Act (IDEA) or the New Hampshire Standards for the Education of Children with Disabilities. For the Department to accept the assertion, would be to go against the letter of the law if not the spirit of the law.

Corrective Action:

[REDACTED] will revisit their district wide procedures regarding evaluations as well as provide training to all professional special education staff on evaluation requirements. Evidence of this corrective action must be submitted to the Department of Education, 25 Hall Street, Concord, NH 03301 by [REDACTED]

[REDACTED] will conduct a team meeting to discuss the evaluation. Evidence of this corrective action must be submitted to the Department of Education, 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