



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 # 22-26

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-26. 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 limited to [REDACTED] [REDACTED]. Although there were two separate Individual Education Plans (IEPs) applicable to the relevant dates, the services in each IEP as set forth below were identical:

- Intensive Reading/ ELA support by a para-educator 6x/ day for 15 minutes;
- Intensive Math Support by a para-educator 6x/ day for 15 minutes;
- Intensive Behavior Management Support 12x/ day for 15 minutes;
- Reading- Specially Designed Instruction by a Special Educator 1x/ day for 15 minutes;
- Math- Specially Designed Instruction by a Special Educator 1x/ day for 15 minutes.

Allegation 1- Unsubstantiated

The sole allegation in this matter is that the [REDACTED] District 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 [REDACTED] District did not provide para-educator support and specialized instruction on [REDACTED].

By way of relevant background, in preparation of the winter weather season, the district sent out a letter to all parents on [REDACTED]. The letter informed parents of the procedures the district would follow in the event of inclement weather and the need for a remote learning day. The communication also included instructions to check the individual school webpages for building specific requirements for remote instruction.

In addition to the notification sent out on [REDACTED], the Director of Student Services for the SAU, sent a letter to all parents of children with special needs asking whether they consent to online group instruction as well as agree to not record or photograph the sessions to protect the privacy of the other students. The complainant agreed and signed the consent on [REDACTED]. On the same day, the parent also signed the [REDACTED] Department Chromebook/ iPad Loan Agreement in order to utilize a district device for remote instruction days.

The following day, the student's case manager contacted the complainant and let her know that in anticipation of the winter weather on [REDACTED], she was going to send home the iPad for the child to utilize in case of a remote day. The parent responded to the text and thanked the case manager.

On [REDACTED], the [REDACTED] announced that they would utilize a remote instruction day due to inclement weather. The notification from the SAU sent via text/ voicemail on that day stated in relevant part the following:

"...all [REDACTED] Schools will be remote on [REDACTED]. Remote learning schedules will be posted on each school's website"

The district also sent out an email providing the same message with the addition of the statement "If you have any questions, please contact your child's school directly". It is unknown which notification preferences the parent utilizes. Regardless, the parent concedes that she did not attempt to log her child in for remote instruction. The complainant claims that this was because she did not receive instructions with the iPad nor via email from any staff. The notifications for the subsequent remote days used the same language as the initial notice as it pertained to accessing remote instruction.

The complainant alleged that since the district failed to provide her directly with information as to how to access remote instruction on the inclement weather days not remedied after the first day, her daughter was unable to access her education. As part of the review of this matter, the investigator accessed the [REDACTED] school webpage as the notifications instructed and was able to verify there were specific instructions on how to access the online classroom as well as who to contact if

assistance was needed. The investigator was also shown what the child's specific Google Classroom contained, which included a schedule and link to the special education services.

However, there was no evidence provided to indicate the district is in the practice of contacting families individually. Rather the practice was to send a districtwide notification. The districtwide notification clarified what the next steps were to access remote education. Furthermore, there is no evidence that the parent attempted to contact the school either via phone or email on or in between the remote instruction days as the notifications indicated. Similarly, there is no evidence that the school attempted to contact the parent during that time either. As such, the child was considered to be absent for all three remote instruction days. Had the parent attempted or sought assistance to access the remote instruction, the child would have had access to general education as well as their individualized special education services.

The original complaint also mentioned that there were no para-educator supports provided. Although, there was no expectation for para-educator support since the child was considered absent and did not attempt to access their remote instruction, the investigator was able to clarify what para-educator support would have looked like should the student have attended remotely.

Throughout the course of the investigation, it was discovered that para-educators do not work on remote instruction days per their agreement. The Master Agreement between the [REDACTED] and the [REDACTED] School Board states:

H. "The parties agree to negotiate a Memorandum of Understanding for Blizzard Bag days in concert with the other [REDACTED] bargaining units, teachers, and food service."

The Memorandum of Understanding (MOU) does not require para-educators to work on Blizzard bag days, which are the same as remote instruction days. However, given that this would leave a gap in service for students with para-educator support in their IEPs, an alternative plan for support had been put in place utilizing professional staff that otherwise may not provide direct instruction. The Google Classroom for the student in the allegation had links to contact [REDACTED] in addition to the student's general education teacher and special education teacher. All of the staff were scheduled to be available for the duration of the school day to provide support as needed.

Conclusion:

The allegation in this matter is that the child was not provided special education services required by her IEP during the three remote instruction days. Specifically, the parent alleged she was not provided with the necessary information to access remote instruction. However, the information was provided to all students in the inclement weather notification. It is difficult to argue the child was not provided special education services when there was no evidence to indicate an attempt was made on behalf of the parent or child to access it. Had the parent accessed the information provided to all students, the special education services would have been provided. We encourage the parent and district to create a plan going forward to avoid any future confusion.



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