



**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]

*Re: Special Education Complaint # 22-31*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-31. 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].

- IEP 1- dated [REDACTED], amended, signed in consent on [REDACTED];
- IEP 1 amended- dated [REDACTED], signed in consent on [REDACTED] and [REDACTED];
- IEP 2- dated [REDACTED], signed in consent on [REDACTED]

**Allegation 1 - Unsubstantiated**

The first 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 has not provided the accommodations in the IEP. The allegation specifies an accommodation related to classroom seating.

By way of relevant background, the student did not have an accommodation related to classroom seating listed in [REDACTED] IEP prior to [REDACTED] which was not signed into consent until [REDACTED]. Therefore, the timeframe for this allegation is limited to [REDACTED]. The accommodations relevant to the allegation are:

- Seat near peers who are more well controlled and focused; and
- Seat in proximity to the teacher (not necessarily in the front row).

The district generated a log to track the child's seating accommodations to ensure that they were provided in each class. The log provided details about the child's seat in each of the 7 classrooms he accessed. Each classroom provided for the student to sit near the teacher and sit near peers who are well controlled and focused. Based on the evidence provided, there is no indication that the accommodations as they relate to the student's seating were not provided during the relevant time frame.

#### **Allegation 2- Partially Substantiated**

The second 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 has not provided their child with access to a separate setting when the student becomes dysregulated as provided for in the IEP.

By way of relevant background, each IEP during the complaint period included the following accommodation and justification:

- Accommodation: access to the [REDACTED] program when elevated/ dysregulated until return is appropriate.
- Justification for Nonparticipation: When student becomes dysregulated [REDACTED] may need to leave the general education classroom in order to calm down and work through the issues. Once [REDACTED] behaviors are regulated [REDACTED] will return to the classroom.

The district provided documentation that the student accessed the program over 100 times during the complaint period, with each visit ranging between 1 minute to 60 minutes. During the investigation, the parent's specific concern pertained to a single incident on [REDACTED]. On that

occurrence, the student requested to go and was given permission, but was restricted to 5 minutes.

Although the IEP does not specify a length of time the student is to access the room during these periods, it was not common practice to limit the student's time. However, it is difficult to conclude that the single instance of placing a time limit was a denial of a Free and Appropriate Public Education (FAPE).

**Allegation 3- Partially Substantiated**

The third 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 has not provided the necessary supports and services for the child to utilize an organizational method as required by the IEP.

By way of relevant background information, each agreed upon IEP or amendment during the complaint period contained the same goal as it relates to organization:

- Given instruction and support the student will independently utilize a pre-selected organizational method (e.g. binder, single folder, color coding) to organize his paperwork, daily as measured by teacher data collection monthly evaluated each trimester.

The school district provided thorough documentation of data collection related to the organizational goal. It is clear by the data that the requisite instruction was provided in this area. However, the progress reports during the complaint period did not show that the child made progress on the goal. The lack of progress is concerning. As such, the IEP team should have discussed whether the service provided was appropriate or if adjustments were necessary. Although the child did not make progress on the IEP goal, his report cards show that progress was made in all general education academic areas.

**Allegation 4- Substantiated**

The final allegation in this matter is that the [REDACTED] District failed to comply with Ed 1113.08(b), which, in relevant part, provides that:

The LEA shall ensure that every child with a disability has full access to the LEA's general curriculum.

Specifically, the complainant asserts that the [REDACTED] has not provided the child access to the general education curriculum between [REDACTED].

By way of relevant background information, the student had been receiving instruction within the general education setting at the [REDACTED]. However with the parent's consent, the IEP team had decided to try a "dual enrollment" approach and had placed the

student in the more restrictive [REDACTED] for part of the time. When this change occurred, the scheduling of some of the preferred general education classes did not work with the new schedule. However, during the course of the investigation the parent relayed to the investigator that the issue has since been resolved.

**Conclusion:**

Although in large part these allegations were substantiated or partially substantiated and have had little to no impact on the child's ability to access a FAPE individually, it does not mean that there is no overall impact when viewed in totality. What it is clear, however is the communication breakdown between the district and the parent. There needs to be trust and transparency with each member of the IEP team in order to create a collaborative effort to best meet the needs of the child.

**Corrective Action:**

The Department would like the IEP team to have continued discussions regarding the student's progress and discuss the students continued access to FAPE so that any concerns may be addressed without delay.

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