



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 # 22-33

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-33. 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 was one consented-to, Individual Education Plan (IEP) in place during the complaint period, which was valid [REDACTED].

Allegation 1 - Partially Substantiated

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 has not provided any IEP services to their child between [REDACTED].

According to the IEP, the following services were to be provided:

- Behavior Management- Special Designed Instruction by a special education teacher, [REDACTED] in a regular education setting; and
- Counseling- Individual by a counselor for [REDACTED] in a regular education setting.

Behavior Management:

The school district provided service logs documenting the Behavior Management services provided between [REDACTED]. The log identified “push-in service during ELA,” meaning the special education teacher would go into the regular education classroom to provide the service. However, the logs did not include specific dates of service, or whether the student participated.

In addition, the case manager emailed the parent on [REDACTED], indicating that the push-in service model was not working, since the student felt like [REDACTED] was singled out by having a special education teacher work with [REDACTED] in the regular education classroom. This email stated that back in [REDACTED], the case manager and student had agreed that the student would attend the [REDACTED] for the service. This change also modified the frequency of the service from daily to weekly and decreased the number of services the student would receive as well. This student attended [REDACTED] one time before refusing to attend at all.

The decision to change the service from the regular education setting to the special education setting was not the case manager and student's decision to make. That decision moved the child into a more restrictive environment and decreased the frequency of the service, all of which would require an IEP amendment and subsequent parental consent to be implemented. These steps were not done, however. Additionally, when the unconsented changes were not successful, the case manager did not return to providing the services in accordance with the IEP.

Counseling Services:

As for the counseling services, the district was able to provide service logs which included the date as well as whether it was an IEP scheduled service or an “as needed” service. The district shared that in the beginning of the school year the services were provided through a contracted provider. However, that provider resigned, and the student began working with the school counselor in [REDACTED]. Overall, the logs indicate the services were provided, albeit the frequency did not always match the requirement within the IEP—at times the frequency was more or less than what was required by the IEP. In general, however, it appears that the services provided balanced out the number of services as required by the IEP. However, the student's progress reports were not indicative that progress was made. As a non-IEP team member, it is not possible to determine whether the lack of progress was related to the inconsistent service delivery.

Although not necessarily relevant to the allegations at hand, it should be noted that the district did attempt to amend the student's IEP—but not until after changes were already implemented. The team had four IEP meetings between [REDACTED], to discuss the IEP. There were no new IEPs or amendments consented to during the complaint period.

[REDACTED]

Conclusion:

The allegations in this matter are more than just whether services were provided and in the appropriate setting, but also the impact that a lack of communication has on the effectiveness of an IEP team. The parent should have been made aware of the difficulties her child was having. Communication and transparency are crucial for effective IEP team collaboration, both of which were missing in this case.

Corrective Action:

The [REDACTED] District will provide training to all special education staff regarding when an IEP needs to be amended and how changes cannot be made without parental consent. Evidence of this corrective action must be submitted to the Department of Education, 25 Hall Street, Concord, NH 03301 by [REDACTED].

A team meeting will be held to determine whether the services not provided in accordance with the IEP prohibited the student from making progress and determine any necessary compensatory education. Evidence of the 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