



Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

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

[REDACTED]

Re: Special Education Complaint # 23-15

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 23-15. 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.

The scope of this investigation is from [REDACTED], when the student transferred to a public charter school. During this time period, there were two relevant Individual Education Plans (IEP) in place:

- IEP 1- [REDACTED], no evidence provided to indicate date of consent by parents, however there was no argument regarding consent; and
- IEP 2- [REDACTED], signed into agreement by the parent on [REDACTED].

Allegation 1- Substantiated

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.

The complainant asserts that while a resident of [REDACTED], attending [REDACTED] School, the Board-Certified Behavior Analyst (BCBA) services within the IEP were not provided between [REDACTED]—when the child transferred to [REDACTED] School.

By way of relevant background, the student was a [REDACTED] grade [REDACTED] resident who had been attending [REDACTED] school. Pursuant to an agreement with the [REDACTED] District, the student was receiving supports and services through an IEP that was managed by the [REDACTED]. In sum, although [REDACTED] was implementing the IEP, [REDACTED] remained the school district of responsibility.

The service, which remained the same in each relevant IEP, was as follows:

- Consultation with a Board-Certified Behavior Analyst (up to)¹ 10 sessions per school year for 30 minutes with a Behavior Consultant in the Regular Education Setting.

Documentation from the district showed that the consultation services were provided on only three occasions, [REDACTED]. Although there was documentation which indicated that the consultation may have occurred at other times, there was insufficient information to make such a determination. There is also no information to indicate whether the BCBA was part of the student's Manifestation Determination meetings, which were related to the student's behavioral challenges.

Allegation 2- 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.

The complainant asserts that while a resident of [REDACTED], attending the [REDACTED] School, the student's behavior plan in the IEP was not followed between [REDACTED].

The student's IEP included an accommodation that a Behavior Intervention Plan was needed, but the actual plan was not included as part of the agreed-upon IEP. However, the parents did consent to a Behavior Intervention Plan as a separate document from the IEP. This plan included a statement that there would be no changes made without parental consent.

¹ The Department does not support services provided in this matter and will consider the required provision to be all 10 sessions.

Furthermore, the Behavior Plan provided that staff would track the student's behavior and that the student would be rewarded for positive behaviors as well as staff would document antecedent/behavior/consequences on a log when negative behaviors occurred. The team expressed concern that the student was not "buying into" the Behavior Plan and emailed the parents to express this sentiment. The district then discontinued the parts of the behavior plan that they felt were not effective. By discontinuing parts of the plan without parental consent, the district did, in fact, fail to implement the student's behavior plan.

Allegation 3- Partially-Substantiated

The final allegation in this matter is that the [REDACTED] District 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 while a resident of [REDACTED], attending the [REDACTED] School, the behavior plan within the IEP was changed without providing the parents with written prior notice.

The student agreed to a Safety/Behavior Plan that began on [REDACTED], however the parents did not receive notice of the plan until [REDACTED]. In general, unless the actual behavior plan/contract is part of the IEP neither written prior notice or parental consent is required. However, in this case, the prior Behavior Plan states that any changes required parental consent and notice. This did not occur, although, it could be argued that the student safety/behavior contract was not a change to the behavior plan but instead, a different document entirely.

It is important to note that although parental consent is not required for behavior plans or contracts unless the specific document is within the IEP, the parents and guardians should be included in such discussions. It is also not the best practice to require consent to change such documents that are not part of the IEP, as behavior is ever changing and although the approach needs consistency, there needs to be flexibility as behavior evolves.

Conclusion:

The Department recognizes the complexities the district faces when they have to utilize other districts to educate their students. However, it is imperative that the districts work together to ensure that the child's special education needs are met, as well as proper documentation of those needs. It is the responsibility of [REDACTED] to ensure that their [REDACTED] students have access to a Free and Appropriate Public Education (FAPE) and must work collaboratively with the districts their students attend [REDACTED].

[REDACTED]

Corrective Action:

The [REDACTED] District will work with the [REDACTED] District to ensure that the special education needs of the [REDACTED] students are met and implemented with integrity, including but not limited to concerns around record keeping, service implementation, and behavior plans.

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