



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 # 23-28

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 23-28. 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 information, the student had an Individual Education Plan (IEP) dated [REDACTED] and signed in agreement by the parent on [REDACTED]. The IEP contained the following services:

- Reading- Specially Designed Instruction, provided by a special education teacher 3 times per week for 30 minutes in a special education setting;
- Written Expression- Specially Designed Instruction, provided by a special education teacher 3 times per week for 20 minutes in a regular education setting; and
- Mathematics- Specially Designed Instruction, provided by a special education teacher in a regular education setting.

Allegation 1- Substantiated

The first allegation in this matter is that the School 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 district did not provide the services in accordance with the IEP between [REDACTED].

However, both the district and parent agreed that the required services were provided until [REDACTED], when the special education teacher [REDACTED]. Therefore, the start date of the initial complaint period was adjusted to reflect this stipulated fact.

The school district provided evidence they attempted to find a temporary special education teacher but were unsuccessful. The district instead utilized a paraeducator who was under the guidance of the [REDACTED] to provide the specialized instruction. However, the parents were not notified of the change until [REDACTED], when the district sent home a letter to all impacted families that the special education teacher [REDACTED]. In the letter, they also stated they found a special education teacher to provide services to the students via remote instruction. There is no indication that the parents were made aware that a paraprofessional was providing instruction prior to the start of the remote instruction.

The parent felt the letter was vague and did not detail how the remote instruction would work for [REDACTED] child and asked for more details. Ultimately the parent did not feel the district provided [REDACTED] with enough information and refused the remote instruction. Pursuant to Ed 306.22(c)¹ the student must have access to full day in person instruction unless certain requirements are met, which was not the case here.

Despite attempts to remedy the staffing issue, the fact remains that the student's IEP was not implemented as agreed upon during the complaint period.

Allegation 2- Substantiated

The second allegation in this matter is that [REDACTED] District failed to comply with Ed 1113.13(c)(4), which in relevant part provides that:

Paraprofessional personnel providing services to children with disabilities shall not instruct a child with a disability.

Specifically, the complainant asserts that the student was provided instruction by a paraeducator under the direction of the [REDACTED].

¹ (c) Distance education may be offered only:

- (1) When inclement weather makes it unsafe to safely transport students to or from in-person instruction; or
- (2) As an option for a parent or guardian making a request for distance education.

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The district indicated that they did have the paraprofessional provide the specialized instruction under the guidance of the ██████████. However, the law is clear that a paraprofessional shall not instruct a child with a disability. The district's reasoning was that pursuant to Ed 1113.12 (b)(3), a paraprofessional may implement a plan designed by the certified teacher. However, there is a fundamental difference between implementing a plan and providing instruction and here the paraprofessional was clearly providing instruction. Additionally, on ██████████, The Bureau of Special Education Support issued FY 18, Memo #2² clarifying the role of the professional. This memo is accessible on the state website.

Conclusion:

The Department recognizes that the district was put in a difficult and unanticipated position when the special education teacher ██████████. We also recognize that the district attempted to provide the required services. However, the way the district attempted to provide the services was inconsistent with state and federal guidelines. In addition, it would have behooved the district to remain transparent with the parents of the impacted students. By not communicating and involving the parents in the problem solving, the trust between the parents and district was likely negatively impacted.

Corrective Action:

The School District will convene an IEP team meeting to discuss the compensatory education needs of the child due to the lack of IEP implementation since ██████████. Evidence of this corrective action must be submitted to the Department of Education, 25 Hall Street, Concord NH 03301 by ██████████.

The School District will review their internal policies related to paraprofessional responsibilities and revise, if necessary, to ensure compliance with state and federal requirements. Evidence of this corrective action must be submitted to the Department of Education, 25 Hall Street, Concord, NH 03301 by ██████████.

Additionally, the School District will convene an IEP team meeting for all students who received services from the paraprofessional not in accordance with their IEP to discuss compensatory education. Evidence of this corrective action must be submitted to the Department of Education, 25 Hall Street, Concord NH 03301 by ██████████.

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

² https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/2020-04/fy18_memo_2_paraprofessional_personel.pdf