



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 # 23-30

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 23-30. 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 student had an Individual Education Plan (IEP) dated [REDACTED], agreed to by the parent on [REDACTED] and amended on [REDACTED]. The IEP and amendment included the following accommodations which were valid during the complaint period:

- The child will be removed from the regular education classroom during summative assessments, district and state assessments;
- Separate Setting: Non-Embedded (For District Wide Assessment Accommodations);
- Give the child the option of taking an assessment in a small group setting. This may be out of the classroom; and
- Allow the child to take assessments in a small group and/or separate setting when necessary.

Allegation 1- Substantiated

The sole 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 [REDACTED] District failed to provide the student with the required accommodations when [REDACTED] participated in the [REDACTED]. By way of relevant background, the [REDACTED] is a norm-based formative assessment, administered to all students in the district, typically twice per year.

On [REDACTED], the student participated in the [REDACTED], but expressed that [REDACTED] wanted to remain in [REDACTED] classroom while [REDACTED] took the test. Upon review of the results of the assessment, it appeared that [REDACTED] rushed through it—as it was completed in only 3 minutes and 56 seconds. When the special education case manager realized this, the student was given the opportunity to retake the assessment on [REDACTED], in a separate setting.

Conclusion:

Although it appears that the IEP was written with the student's best interests in mind related to assessment accommodations, there were inconsistencies throughout the IEP. The IEP lacked consistent language, thereby making it unclear whether the student had a choice regarding the use of a separate setting. Given the lack of consistent language, it is difficult for the Department to conclude the accommodations were provided as agreed upon.

The Department encourages the IEP team to ensure that any current and future IEPs utilize consistent language so there is no future confusion regarding accommodations.

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