



Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
101 Pleasant Street
Concord, N.H. 03301

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: *Special Education Complaint # 22-03*

Dear [REDACTED], [REDACTED] and [REDACTED]

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-03. 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 allegations 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] through [REDACTED]. During the complaint period the following Individual Education Plans (IEPs) were valid:

- IEP 1, dated [REDACTED], signed into partial consent by parent on [REDACTED];
- IEP 2, dated [REDACTED], signed as refused to consent by parent on [REDACTED] and [REDACTED];
- IEP 3, dated [REDACTED], signed in partial consent by parent with refusal to consent to placement on [REDACTED] 1.

Allegation 1- Substantiated

The first allegation is that [REDACTED] failed to comply with 34 CFR 300.321 (a)(2), which, in relevant part, provides that:

(a) The public agency must ensure that the IEP Team for each child with a disability includes:

(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment).

Specifically, the complainant asserts that the district did not have a general education teacher at the IEP team meeting on [REDACTED].

An IEP team meeting was held on [REDACTED]. During that meeting, the general education teacher was allegedly excused, however there is no documentation to support this assertion. At the conclusion of the meeting, the team agreed to resume the conversations at a later date and subsequently scheduled a follow-up team meeting.

The follow-up team meeting was held on the date in question, [REDACTED]. Once again, there was no general education teacher present. When the parent questioned the absence of the teacher, the district responded that since the [REDACTED] meeting was simply an extension of the [REDACTED] meeting, at which the educator was excused, the excusal was likewise extended. While the district did provide a meeting excusal form for the [REDACTED] meeting, it was never signed by the parent.

A required member of the IEP team can only be excused with parental consent. The district's argument that the [REDACTED] meeting was simply an extension of the [REDACTED] meeting is irrelevant and misplaced since the district did not have parental consent to exclude the educator from the [REDACTED] meeting in the first instance.

Allegation 2- unsubstantiated

The second allegation in this matter is that [REDACTED] failed to comply with 34 CFR 300.501(c), regarding parental involvement in IEP placement decisions. This federal regulation, in relevant part, provides the following:

Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

Specifically, the complainant asserts that the district did not provide the parent with an adequate opportunity to observe a program prior to determining placement.

On [REDACTED], the parent was asked by the district if she was interested in observing the learning lab. The parent responded ten days later on [REDACTED], that she would like to observe but was only available to do so on Thursdays between [REDACTED] am and [REDACTED] am. The parties subsequently agreed to an observation to occur on [REDACTED].

[REDACTED]

The parent was informed 2 days prior to the scheduled observation date that in order to participate in the observation, the parent would have to sign in and complete a required privacy form, which the parent agreed to do. The day before the scheduled observation, [REDACTED] the district notified the parent that the observation had been postponed. Apparently the [REDACTED] had expressed opposition to the scheduled observation and the district needed time to consult with legal counsel on this issue.

Ultimately the observation was rescheduled to occur on [REDACTED], and was only twenty minutes (20) in length. The parent was notified of the new date only one day in advance. While the parent expressed concern at the reduced time allowed for the observation—twenty minutes—the parent ultimately agreed to it out of necessity.

The department does not have the authority to determine what would constitute an appropriate length of time for an observation period. The only issue the department can make a determination upon is whether the parent was included in the decision making process, which in this instance, was satisfied.

Conclusion:

The parents have the right to consent to an excusal of a required team member or to postpone the meeting if a team member is not available. Documents show that the parents were not provided such an opportunity. In regards to the observation, the Department was unable to make a ruling related to the allegation, however, that doesn't mean the district couldn't have handled it differently. An alleged issue between the teachers' association and district is not the parent's issue. It is a personnel issue that should not have an impact on student programming. It also was unfair for the parent to be informed only a day prior to the postponing of the observation and again only provided a day notice before the rescheduled observation were to occur.

Although outside the realm of this process, it is clear as indicated by the lack of agreed upon IEPs mentioned above, that there is a significant history of communication breakdown between the district and the parents. Communication difficulties can be exacerbated by situations such as the ones alleged in this complaint. Effective and meaningful communication is imperative for the IEP team to be successful in meeting in effectively meeting the needs of the child.

Corrective Action:

[REDACTED] will review their practices regarding IEP team meeting excusals, to ensure compliance with state and federal regulations and review the policy with all necessary staff. Evidence of this corrective action must be submitted to the Department of Education by [REDACTED]

[REDACTED] will schedule an IEP team meeting to be held within 21 days of the receipt of this letter to discuss whether the 20 minute observation was sufficient for the parent to make a decision or if more time is necessary. Evidence of this corrective action must be submitted to the Department of Education by [REDACTED]



Though we cannot require it, the Department would also like to see the parties create an agreed upon IEP either on their own or with the assistance of a dispute resolution option.

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