



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] - Director of Student Services, [REDACTED]

Re: Special Education Complaint # 22-04

Dear [REDACTED], and [REDACTED]

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-04. 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, 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 [REDACTED] through [REDACTED]. During the complaint period there was one Individual Education Plan (IEP), which was valid from [REDACTED] through [REDACTED], and was signed in agreement by the parent on [REDACTED]. The following services within the IEP are relevant to this investigation:

- Academic Instruction—3x/a week for 1 hour, provided by a special education teacher in the special education setting from [REDACTED]; and
- Speech Pathology Group—1x/ week for 30 minutes, provided by a Speech Language Pathologist in the special education setting from [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 district did not provide the extended school year (ESY) services as provided for in the IEP. Prior to the start of the ESY session, the parent and district engaged in discussions pertaining to the service delivery for ESY. The parties ultimately agreed that the child would receive services at [REDACTED].

On [REDACTED], the parent reached out to the district to ensure that ESY services had begun. That same day, the parent received a response from the district that due to a delay in the criminal history record check that the individual who would be providing the academic instruction was set to begin the next day, [REDACTED]. The district shared the name of the educator and the parent assumed that the individual was a certified special education teacher as required by the IEP. The parent later noticed on the district webpage that the individual in question was a paraprofessional and not a certified educator. The district never took the initiative to directly inform the parents that this fact.

When questioned about the switch in service providers without parental approval, the district explained that in order for the child to receive services by an educator he would have needed to attend the ESY program within the school, rather than at [REDACTED], which the parent did not want. As such, the district's position during this investigation was that since the ESY service was being provided in an alternative setting as a courtesy to the parent, the district was not required to meet the same requirements for a service provider. Additionally, the district asserts that the parent was aware that the service provider was a paraprofessional and did not voice any objection. However, the district is unable to provide any documentation to validate this assertion. What is known is that the student attended 15 of the 17 scheduled sessions with the paraprofessional as the time frame was extended to account for the late start.

Email communications between the parent and district on [REDACTED], expressed concern regarding the lack of speech therapy services being provided as required in the IEP. The district responded to the parent that it, the district, was having difficulty finding an individual to serve this role. During that same communication, the district offered compensatory services to occur in the fall. The parent declined this option over concern that the student might regress. On [REDACTED], the district reached out to the parent to inform her that an appropriate educator had been found and that the speech and language services would be provided during the month of [REDACTED]. As of [REDACTED], the student had received all of the speech services as required by the IEP for ESY.

Conclusion:

The main allegation of this complaint was regarding service delivery. The investigation shows that the student did receive services, what is unclear is whether those services allowed the student to access a Free and Appropriate Public Education (FAPE). However, what is also evident, is the district's lack of best practice regarding parental communication. The district did not reach out to the parent, instead the parent was responsible for reaching out to the district to

[REDACTED]

inquire about the agreed upon services for her child. The only reason the child received the agreed upon services was because the parent initiated communication between the parties.

While it is true that the district did not have to allow for the required services to be provided at the [REDACTED], the decision to do so was made regardless. There is no rule or law which supports the district's analysis that an agreed-to change of placement of the delivery of the required service would likewise allow for a corresponding change in the individual who is responsible for the service delivery. Rather, those are different aspects of the service delivery and each change would require parental consent.

Corrective Action:

The [REDACTED] District will review their practices to clarify what constitutes a change and ensure they have the proper documentation related to any changes, included necessary parental consent. The district will also review their practices and policies with necessary staff to ensure compliance with state and federal regulations. Evidence of this corrective action must be submitted to the Department of Education by [REDACTED]

The [REDACTED] District will have a team meeting with the parents within 21 days of receipt of this letter to determine whether it is necessary to provide compensatory academic services. Evidence of this corrective action must be submitted to the Department of Education by [REDACTED]

Although the Department cannot require it, The [REDACTED] District is strongly urged to consider their current practices related to parent communication. Successful communication is imperative for an IEP team to successfully collaborate in the best interest of the student.

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