



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]

Re: *Special Education Complaint # 22-05*

Dear [REDACTED] and [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-05. 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 in this matter. If an allegation is substantiated, which means there was 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 [REDACTED] through [REDACTED]. During the complaint period, there was one Individual Education Program (IEP), which was valid from [REDACTED] through [REDACTED], and was signed in agreement by the parent on February 8, 2021. In addition to the typical school year, the IEP had extended school year (ESY) services for the month of [REDACTED], with the exception of the nursing support which was for [REDACTED] as well as [REDACTED].

The following services within the IEP are relevant to this investigation:

- Rehabilitative Assistance/ Nursing by a Nurse LPN, 5 times/ week for 6.75 hours;

There are additional services in the IEP, however given the narrowing of the time of concerns, they were not relevant for the purpose of this investigation.

Allegation 1 - Unsubstantiated

The sole allegation in this matter is that [REDACTED] 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 the district did not provide the services in the IEP—specifically, the required nursing services—between [REDACTED] and [REDACTED].

By way of relevant background, the student is medically fragile and is unable to attend the public school. The student previously attended [REDACTED], but due to Covid-19, the school was unable to remain open. As such, the student became a homebound/hospital bed, based student. Although the student's placement changed to homebound, [REDACTED] provided learning packets for the student through the end of the [REDACTED] school year.

During the spring of [REDACTED], the student was also receiving nursing services in the home as provided by the IEP. However, the student was scheduled for surgery in [REDACTED]. Coincidentally, the student's nursing support was also scheduled to go out on medical leave during the same timeframe. The parents and the school district both agreed that the nursing support service could be discontinued while the student underwent surgery in [REDACTED].

Unfortunately, the student's surgery had to be rescheduled for [REDACTED]. As stated above, the district and parent had already agreed to discontinue the nursing services, however, despite the change in the surgery schedule, this decision was not revisited.

The student underwent surgery in [REDACTED] and, due to medical reasons, experienced an extended hospital stay. She was not released from the hospital until the end of [REDACTED]. As such, the student was unable to access the supports as required in her IEP until the end of that month. By this time however, the individual who had been providing the nursing support was no longer in that position. The district attempted to find a replacement to provide the required nursing support, but was unsuccessful. The district even offered to pay the mother to serve in this role, but the parent declined.

Other services in the IEP were provided to the extent possible, however, the school did not feel that home-based services were the most appropriate for the student. The district proposed a placement at [REDACTED] for the [REDACTED] school, which the parent agreed to. However, right before the start of the school year, [REDACTED] had to rescind the student's acceptance do to staffing shortages. The district was not aware of this until the parent contacted them. The district then immediately began searching for new schools for the student. One particular location was proposed, but the parents declined it as the parents would like a school within a 30 mile radius of where they live. As such, this request limited where the child can be placed.

Conclusion:

At first blush, it would appear as the district failed to provide the services as required in the IEP. However, that is only when the issue is viewed in isolation. When viewed in totality, it is clear that there were extenuating circumstances, far outside of the district's control, which despite the district's best efforts, prevented the district from being able to provide this specific service to the

[REDACTED]

student. The district has been attempting to locate and hire a new nurse, but has been unsuccessful due to severe staffing shortages.

Additionally, the district has made multiple attempts to find a new school placement for the student, one of which fell through due to the school staffing issues and the other one was declined by the parent. While the geographic limitations set by the parents are understandable, as a practical matter, it does make the district's search for a placement more complicated.

Although the Department recognizes these challenges are outside the control of the district, it does not mean that it is dismissing the fact that it is an issue that the required services were not provided. Although not required, the Department strongly urges both the parents and the [REDACTED] to work together to come to a resolution and, if necessary, to seek dispute resolution options to determine a suitable placement for this child. Effective 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