



Frank Edelblut
Commissioner

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: *Special Education Complaint # 22-08*

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

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-08. 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 each allegation as well as a summary of the investigator's findings of fact based on the evidence submitted by the parties. 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. The corrective action is intended to ensure compliance with IDEA by addressing the needs of the child and appropriate future provision of services for all children with disabilities.

By way of relevant background, the scope of this complaint investigation is from [REDACTED] to [REDACTED]. During this time period there was one Individual Education Plan (IEP) which is relevant to investigation:

- IEP #1 dated [REDACTED] — [REDACTED], parents did not sign in consent, nor did they sign "not in consent."

Allegation #1: The first allegation in this matter is that the [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.

Findings of Fact

Allegation #1: Unsubstantiated

As an initial matter, the Complainant asserts that the [REDACTED] did not provide any special education services, supports, or accommodations, as required, during the complaint period—[REDACTED] through [REDACTED].

The crux of the issue in this matter is that the [REDACTED] is not offering a remote instruction option for the [REDACTED] school year. The parents had requested either a remote option for their child or that the district provide home-based services. The district denied the request since the required services can be provided to the child in-person, at the school. The parents are not comfortable sending the child to the school and the district is unwilling to provide home-based services. Therefore, the parties are at an impasse and the child is not receiving any of the required services.

The Department is not aware of attempts by either party to seek alternative dispute resolution regarding this matter. Given the deadlock that is currently in place, the Department would strongly encourage both sides to consider entering into alternative dispute resolution so that progress can be made to provide the child with the required services.

Allegation #2 The [REDACTED] failed to comply with 34 CFR 300.321(c)(2), regarding IEP team attendance.

34 CFR 300.321(c)(2), provides, in relative part, that:

The public agency must ensure that the IEP Team for each child with a disability includes; Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment).

Findings of Fact

Allegation #2: Unsubstantiated

The Complainant asserts that the district did not have a special education teacher attend the IEP team meeting on [REDACTED]

The Team Meeting sign-in sheet shows that [REDACTED] a special education teacher, was present at the meeting in question. [REDACTED] is also the case manager in this matter. As such, the parents assert that [REDACTED] was at the meeting because she was the case manager and was therefore, not serving in the role of a special education teacher. However, in this case, as in many districts, the case manager is also the special education teacher and the individual can serve a "dual role" at such meetings. Therefore, the district did have a special education teacher at the meeting as required.

It is worth noting that the confusion may have been caused, in part, by the brief attendance of two unknown people at the meeting. The parents were unaware of what exact roles those particular individuals served and the district did not provide the parents with an explanation. Apparently, these two individuals were only present at the meeting for a brief time—a few minutes at most—before leaving. As such, it is understandable why this might have created confusion to the parent as to who was attending the meeting.

Regardless, the bigger issue in this matter is that both parties are struggling to communicate with each other and when that occurs, it is the child that suffers. As such, it is worth taking a moment to remind the parents and the district that when there is a disagreement and the parties are unable to come to an agreement on their own, the Individual with Disabilities Education Act (IDEA), as well as State rules, provide for alternative dispute resolution (ADR) options. Although this alternative process cannot be required, as stated above, the Department strongly encourages the parties to consider the alternative options available to assist in resolving this ongoing dispute.

For the reasons set forth above, there is no corrective action required in this matter.

We hope that in the future the district and parent are able work together to resolve any differences that may arise.

Frank Edelblut
Commissioner of Education
NH Department of Education