



Frank Edelblut  
Commissioner

Christine M. Brennan  
Deputy Commissioner

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

[REDACTED]

Re: *Special Education Complaint # 22-09*

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

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-09. 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 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] – [REDACTED], signed in partial consent by parent on [REDACTED]; and
- IEP 2, dated [REDACTED] – [REDACTED], not signed by the parents.

**Allegation 1- Unsubstantiated**

The sole 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.

Specifically, the complainant asserts that the [REDACTED] has not provided services in accordance with the child's IEP during summer ESY [REDACTED] as well as between [REDACTED] and [REDACTED].

By way of relevant background, the child had been attending the [REDACTED] [REDACTED] for the [REDACTED] school year. This specific placement had been agreed upon in a mediated agreement between the district and the parents.

The child's IEP was due for an annual review and was presented to the parents with the placement remaining at the [REDACTED], as had been previously agreed upon. However, the parents refused consent as it pertained to the placement portion of the IEP. Since the parents refused consent, the previous IEP remained in place.<sup>1</sup> As such, until a new placement could be agreed upon, pursuant to the previous IEP, the child would remain at the [REDACTED].

On [REDACTED], the parents requested the team to allow the child to attend summer programming at the [REDACTED] on a modified schedule of 2 days per week. Additionally, the parents requested that the child receive math and reading tutoring with a specialization in either Orton-Gillingham or Linda Mood Bell. The parent had also requested a team meeting to discuss these particular requests.

Subsequently, a team meeting was held on [REDACTED]. Meeting notes reflect that the parents were in agreement with the goals and objectives as set forth in the IEP, but that they remained concerned with placement at the [REDACTED]. Specifically, the parents were concerned about the child's lack of access to general education students as well as making connections to the community.

This meeting also included a discussion about the modified summer schedule which the parent had requested. The district considered the modified schedule with the child attending the [REDACTED] on Wednesdays and Thursdays, as those were the days he could receive his special education services. However, the advocate for the parents said those days would not work, as the parents had an activity, swim lessons, scheduled for those days, and as such would not be able to attend school. The parents requested that their child be able to attend on Mondays, as the school often does field trips those days, and the parents wanted the child to participate in that activity. However, the district opposed this proposed plan, as it did not allow him to access his individual and group special education services in the IEP.

---

<sup>1</sup> Ed 1120.04

(g) If a parent refuses consent for a proposed IEP or placement, the child's most recent agreed upon IEP placement, or both shall remain in effect unless the LEA and parent agree otherwise, until the matters are resolved unless and until a party files for due process

Therefore, in order to provide the child access to a Free and Appropriate Public Education (FAPE), a four (4) day per week schedule for 6-weeks was proposed by the district. Another team meeting was held on [REDACTED]. According to those meeting notes, the parent's attorney said that the family would not be sending the student to the summer program, as they wanted him to enjoy the summer and not "spend it all on the bus." As such, the child did not participate in the summer program. At this same meeting, the attorney for the parents informed the district that, despite the previously mediated agreement, the child would not be returning to the [REDACTED] for the upcoming school year.

On [REDACTED], a team meeting was held to discuss the child's placement for the upcoming school year. At this meeting, the district agreed to transition the student back into the district however, the district requested time in order to get the required programming for the child in place. As such, the district proposed to keep the child enrolled at the [REDACTED] during the transition time and until the transition back to the district was completed. Alternatively, if the parents were opposed to having the child attend the [REDACTED] during the transition period, the district proposed that they could provide up to 10 hours of tutoring per week to the child as the transition occurred.

Although the parents had not provided a formal rejection of the placement at the [REDACTED] based on former conversations, the district initiated tutoring in order to avoid a disruption to the child's education. Tutoring services began on [REDACTED], the child attended all but two sessions during the complaint period.

Conclusion:

Though there was a lot of pertinent information related to this allegation, the crux of the issue is whether not the child received the services in the IEP and had access to a Free and Appropriate Public Education (FAPE). Based upon the facts and circumstances of this matter, the child did in fact have access to FAPE. It was the parent's decision not to utilize the summer programming, which the parents had previously agreed to. As for the school year, the district was willing to work with the family as it pertained to their placement requests, but wanted to ensure a smooth transition back to the district.

There is no corrective action necessary.

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