



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 # 22-10*

Dear [REDACTED] and [REDACTED]

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-10. 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. 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), containing the services listed below, were valid:

- IEP 1: dated [REDACTED], signed in consent with exceptions on [REDACTED]¹
 - Academic and Social Behavioral Instruction, 4 sessions per week for 1.75 hours;
 - OT-PT co-treat, 32 sessions per school year for 30 minutes;
 - Speech- OT co-treat, 32 sessions per school year for 30 minutes;
 - Speech Pathology- Individual, 64 sessions per school year for 30 minutes;
 - Occupational Therapy- Individual, 32 sessions per school year for 30 minutes.

¹ The exception stated that, due to Covid, if the school was remote in the fall, then the student's services would be arranged to be provided in the home.

- IEP 2: dated [REDACTED] was a proposed amendment to the current IEP, signed in agreement with exceptions by the parents on [REDACTED].²
 - Academic and Social Behavioral Instruction, 92 sessions per school year for 2.5 hours;³
 - Speech Pathology- individual, 69 sessions per school year for 45 minutes;
 - Occupational Therapist- Individual, 46 sessions per school year for 45 minutes.

The proposed IEP amendment was presented to the parents on [REDACTED]. Pursuant to the law, parents are allowed fourteen (14) days to provide consent, and in this instance, consent was provided on [REDACTED]. It is the Department's understanding that IEP 2 was not able to be implemented until [REDACTED] when parental consent was granted. Therefore, for the [REDACTED] timeframe of the complaint, IEP 1 was in effect.

Allegation 1 - Unsubstantiated

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 school district did not provide the Academic/ Social Behavioral Instruction, Speech and Language Therapy, and Occupational Therapy services in accordance with the child's IEP between [REDACTED] and [REDACTED]. By way of relevant background, at the time of the complaint, the child was enrolled in preschool and receiving special education services in the home.

The following services were provided [REDACTED]

- 5- 90 minute sessions of ABA Services;
- 2-120 minute sessions of ABA Services;
- 4- 45 minute sessions of Speech Therapy Services;
- 1- 60 minute session of Speech Therapy Services; and
- 2- 45 minute sessions of Occupational Therapy Services.

For IEP 1, occupational therapy, speech therapy, and the co-treat therapies are written in the IEP as 32 or 64 sessions per school year. On average, the school year has approximately 36-40 weeks of school, so it is difficult to ascertain if the appropriate amount of those services were provided in a 2 week span.

However, the academic and social behavioral services were to be provided 4 times per week, which would total 8 sessions during this time span rather than the 7 which were provided. While this is less than what is provided for in the IEP, the Department is unable to ascertain whether the missed session and time denied the student a Free and Appropriate Public Education (FAPE).

² The exception stated, "Although we are consenting to the provision of these services in our home, we do not agree that this is the least restrictive environment..."

³ A Written Prior Noticed (WPN), signed in agreement by the parents on [REDACTED], reflects a discussion and agreement that this service would increase up to 2.5 hours, as the student's stamina increased.

The following services were provided [REDACTED] as required by IEP 2:

- 9- 90 minute sessions of Academic/ Social Behavioral Instruction;
- 35-120 minute sessions of Academic/ Social Behavioral Instruction;
- 43-150 minute sessions of Academic/ Social Behavioral Instruction;
- 69- 45 minute sessions of Individual Speech Pathology Therapy; and
- 41- 45 minute sessions of Individual Occupational Therapy.

The IEP service grid designated sessions "per school year," however, the amended IEP which was implemented was for a shorter time period. Regardless, during the time in question, the student received 87 of the 92 sessions of academic/ social behavioral instruction, all of the speech therapy sessions, and 41 of the 46 occupational therapy sessions. Based solely on the amount of services which were provided during this shortened time period, it is arguable that the student, in fact, received more services than were required. The Department did take into consideration the length of the academic/ social behavioral sessions which were provided, however, there was documentation which showed that it was agreed that the session length of this service would be gradually increased to match the student's stamina.

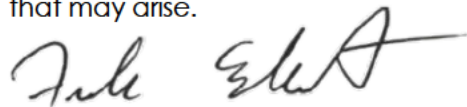
A progress report from [REDACTED], demonstrated that the student had made progress of various degrees in all areas.

Conclusion:

Although there was a lot of information provided to the Department, when reviewed in totality, there was not sufficient evidence to determine that the student was denied FAPE. However, there was evidence that the district and parents were in regular communication and that the district had attempted to accommodate the family, they had even provided some services during school vacations. It is the Department's hope that the regular communication between the parties will be effective moving forward and that the parties are able to work together for the best interest of the student.

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