



Frank Edelblut
Commissioner

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Special Education Complaint # 24-11

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support, has concluded its investigation of complaint # 24-11. 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 may 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.

As an initial matter, it is important to note that there is a significant amount of history between the two parties by way of dispute resolution procedures. That being stated, the parents and [REDACTED] District did agree on [REDACTED], after participating in an administrative due process hearing the day prior, that a residential placement was the appropriate educational setting for the child pursuant to 34 CFR 300.116.

For the purposes of this complaint, the Department is confined to the Individualized Education Program (IEP) as it is written and consented to. The current IEP is dated as active from [REDACTED], with the educational placement listed as the separate approved special education program/school located at [REDACTED].

[REDACTED]

The services mandated by the IEP are as follows:

- Special Education Services
 - Behavior and Social Skills by a Special Education Teacher: 1 session/week of 55 minutes; [REDACTED]
 - Writing Specialized Instruction, small group: 1 session/week of 55 minutes; [REDACTED]
 - Social Skills Group by a Counselor: 1 session/week of 60 minutes; [REDACTED]
- Related Services
 - Individual Occupational Therapy by an Occupational Therapist: 4 sessions/month of 30 minutes; [REDACTED]
 - Individual Speech Pathology by a Speech Language Pathologist: 1 session/week of 30 minutes; [REDACTED]
 - Transportation by Special Education Transporter: 2 sessions/day of 75 minutes; [REDACTED]
 - Individual Counseling by a Counselor: 1 session/week of 30 minutes; [REDACTED]
 - Nursing Services by a School Nurse: 1 session/day of 5 minutes; [REDACTED]
- Support for Personnel
 - Consultation between Counselor and School Staff: 1 session/month of 30 minutes; [REDACTED]
 - Consultation to Staff from OT: 1 session/month of 30 minutes; [REDACTED]

All the services listed above were also listed in the IEP as Extended School Year (ESY) services to be provided from [REDACTED].

Allegation 1—Unsubstantiated

The allegation in this matter is that the [REDACTED] District failed to comply with Ed1109.03(a), which, in relevant part provides that:

The local education agency (LEA) shall provide special education, related services, supplementary aids and services, accommodations, and modifications to child with a disability in accordance with the child's IEP.

Specifically, the complainant asserts that the District did not provide the services as required in the child's IEP.

Service logs for all the services listed in the IEP were provided to the Department's independent investigator and are summarized in the investigator's report. There were notations of instances where the child received the service, refused the service, or was absent. Summarily, all services in the current IEP have been provided in accordance with the law. However, this allegation does not encompass the parent's full grievance.

The crux of this complaint stems from a dispute: the parents wanted to change the IEP to reflect what both parties agreed to when they agreed that a residential placement was needed, and the District declined to change the IEP to reflect the services of a residential placement until one had been secured. Adding to the parents' frustration is that they found a program—[REDACTED]—which

accepted the child. Although, for reasons that are unclear from the record, the District did not immediately agree to that specific school, possibly because the District is obligated to investigate options that are “as close as possible to the child’s home” in accordance with federal law.¹ While not immediately acting on this acceptance and enrolling the child, the District has not refused [REDACTED] as a possible contender for educational placement. Nor should the District use this letter or the outcome of this special education complaint as justification for not selecting [REDACTED] should the IEP team feel that is the most appropriate residential placement for the child. However, the special education complaint process cannot circumvent the decision-making process of the IEP team, of which the parents are a vital member and should be treated as such.²

Conclusion

The Department understands that there is a difference in the amount, frequency, and type of services that are allocated in the child’s current IEP and what may be available at a residential placement. However, the only document that the [REDACTED] District is required to uphold is the consented-to IEP. With that being said, the Department encourages the District to act with all due haste to secure enrollment in a residential placement, as both parties have agreed is needed for the child.³

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

¹ 34 CFR 300.116(b)(3): In determining the educational placement of a child with a disability, each public agency must ensure that the child’s placement is as close as possible to the child’s home.

² 34 CFR 300.116(a)(1): In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

³ The Department takes this opportunity to acknowledge that the District provided the following update: The child for whom this complaint has been filed has started at an unspecified residential program on [REDACTED].