



Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
25 Hall Street
Concord, NH 03301
TEL. (603) 271-3495

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Special Education Complaint # 24-24

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support (“the Department”), has concluded its investigation of complaint # 24-24. 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 indicating 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.

By way of relevant background information, the 20-year-old student is enrolled in the [REDACTED] program at [REDACTED] School. The student qualifies for special education and related services under 3 different disability categories—Autism, multiple impairments, and visual impairments. According to the student’s Individualized Education Program (IEP), the student requires highly modified instruction in a quiet environment with the assistance of a 1:1 paraprofessional throughout the day for all academic and daily living skills. The student had 2 IEPs during the complaint period: the former spanning from [REDACTED], and the current spanning from [REDACTED].

The submitted complaint was narrowly tailored to the provision of feeding/swallow individual services provided by a speech language pathologist once a month for 30 minutes. This service is identical in both the former and current IEPs. From the period of [REDACTED], the student was entitled to 300 total minutes of services (10 monthly sessions multiplied by 30 minutes per session). However, in reviewing the therapy notes and the [REDACTED] (“the District”) office

attendance, the student missed a total of 4 sessions (120 minutes) during April, September, October, and November [REDACTED]. The September, October, and November [REDACTED] sessions were missed due to a lack of qualified providers being available. Therefore, the District is required to make up these sessions.

However, for the missed April session, it is noted in the investigator's report that the student was absent and yet that was not verified by the District's attendance record. This is important to distinguish because it could impact the District's obligation to make up that missed service. Federal law is not definitive on this subject, but in a policy letter from March 8, 2007, the Office of Special Education Programs (OSEP) provides the following clarification:

We encourage public agencies to consider the impact of a provider's absence or a child's absence on the child's progress and performance and determine how to ensure the continued provision of FAPE in order for the child to continue to progress and meet the annual goals in his or her IEP. Whether an interruption in services constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis.

There are two reasons why the Department considers the April [REDACTED] service important to make up. The first reason is that the student's absence could not be verified by the District's attendance record. The second reason is that each session comprises of 10% of the student's overall yearly allotment. If OSEP instructs public agencies to make these determinations on a case-by-case basis, then the Department considers this April session too impactful to dismiss without irrefutable evidence of the student's absence.

The Department notes that since filing the complaint in [REDACTED], the District has acquired a speech language pathologist to provide the feeding/swallowing services.

Allegation 1—Substantiated

The sole 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.

The complainant asserts that the District has not provided the amount of direct services focusing on feeding/swallowing that has been mandated by the student's IEP. The complainant alleges that these inconsistencies and/or absence of service have been occurring since [REDACTED]; however, the complaint period would span from [REDACTED].

The Department notes the inconsistency with which the student has received the feeding/swallowing service. For example, because the service was not provided in [REDACTED], an additional hour-long session was scheduled in [REDACTED] to make up the missed 60 minutes of services from those [REDACTED] months. This inconsistency can be understandably frustrating to parents and students, especially those who are approaching the age of 22 and will be exiting special education soon. The Department hopes that the IEP team would keep in frequent contact to problem-solve these issues as they arise and keep the best interest of the student as the focus.

Nonetheless, the result of this allegation is substantiated due to the missed April, September, October, and November [REDACTED] sessions, totaling 120 minutes of missed feeding/swallowing services.

██████████

Conclusion

Staffing shortages, particularly in very targeted areas of related services, can put students, families, and school districts in problematic positions. Still, children with disabilities are entitled to a free appropriate public education and should expect to receive all services that were determined by the IEP team to be essential to their education.

Corrective Action

The ██████████ District will provide 120 minutes of compensatory individual feeding/swallowing services by a speech language pathologist. Evidence of the corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by

██████████.

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