



Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
25 Hall Street
Concord, N.H. 03301

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Special Education Complaint # 23-36

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 23-36. 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 original IEP, dated [REDACTED], was amended nine times, six of which were during the complaint period, [REDACTED]. The amendments and relevant services are included in the investigative report, and pertain to the following services:

- Direct Instruction—Reading coordinated by a special education teacher and provided by a paraeducator for 3 sessions per week of 15 minutes in a regular education setting;
- Direct Instruction—Writing coordinated by a special education teacher and provided by a paraeducator for 3 sessions per week of 15 minutes in a regular education setting; and

- Direct Instruction—Math coordinated by a special education teacher and provided by a paraeducator for 2 sessions per week of 15 minutes in a regular education setting.

Allegation 1 - Partially Substantiated

The sole allegation in this matter is that the School District failed to comply with Ed 1113.12(c) which, in relevant part provides that:

Paraprofessional personnel providing services to children with disabilities shall not:

- (1) Design programs;
- (2) Evaluate the effectiveness of programs;
- (3) Assume responsibilities of a teacher or a substitute teacher; or
- (4) Instruct a child with a disability.

Specifically, the complainant asserts that the [REDACTED] School District utilized a paraprofessional to provide direct instruction between [REDACTED].

Upon further investigation, the IEP amendment dated [REDACTED], which was signed in consent by the parent on [REDACTED], removed the paraeducator as the provider. Therefore, the allegation will focus on the services provided between [REDACTED].

The agreed upon IEP and relevant amendments support the parent's allegation that a paraeducator was providing direct instruction. During the investigation, the district stated that it was an oversight and was not how the services were implemented nor intended to be implemented. The services were intended to be paraeducator support for the student in the general education classroom, under the supervision of a special education teacher to reinforce previously taught skills as well as support during general education instruction. The district asserts that the IEP did not correctly clarify how the paraeducator was to be used in the student's programming, instead mistakenly alluding that the paraeducator was provided direct instruction.

The paraeducator, general education teacher, school principal, and case manager all provided affidavits attesting that at no time did the paraeducator provide direct instruction. Rather, the paraeducator did provide support to the student in the general education setting as well as reinforcement of already taught skills.


Conclusion:

It is clear that there were miscommunications within the IEP team regarding the paraeducator's role and how it was portrayed in the IEP. However, the affidavits provided, indicate that the paraeducator provided only the duties as permitted under state rules. With that caveat, the parent believes the student was denied direct instruction by a certified educator and ultimately denied a Free and Appropriate Public Education (FAPE). The Department would typically require an IEP meeting to determine whether the child was impacted by the miscommunication, but there are other factors that must be considered. Notably, there were nine amendments during the IEP period. Constantly changing the IEP will undoubtedly have an impact upon the child's progress—positive or negative—and must be considered.

Although not required nor enforceable, the Department encourages the IEP team to consider the impact of frequent amendments and the potential impacts they might have on the child's overall ability to make progress.



Corrective Action:

The School District will provide training to all relevant staff on the permitted duties of paraeducators and how to include paraeducator support in the IEP to avoid future confusion. Evidence of this corrective action must be submitted to the Department of Education, 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

¹ The Department understands that there will be staff turnover, including administratively in the coming months and would suggest ensuring new hires are included in the training.