



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 # 23-44*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 23-44. 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 information, the student had two Individual Education Plans (IEPs) during the complaint period:

- IEP 1, dated [REDACTED], signed in consent by the parent on [REDACTED] and remained in effect until [REDACTED].¹ IEP 1 contained the following services:
 - Specialized Instruction in Executive Functioning by a special education teacher, 3 times per week for 30 minutes
 - Specialized Instruction in Reading by a special education teacher, 3 times per week for 30 minutes

¹ IEP 1 remained in effect until the next IEP was signed in consent in accordance with Ed 1120.04(g), which states that if a parent refuses consent for a proposed IEP or placement, the child's most agreed upon IEP placement, or both shall remain in effect.

- Consult Parent/ Special Education Teacher, 2 times per month for 30 minutes
 - Remote—behavior support and executive functioning by a paraeducator, 5 times per week for 2 hours
 - Remote Tutoring by a special education teacher, 5 times per week for 1 hour
- IEP 2, dated [REDACTED], signed in consent by the parent on [REDACTED].

Allegation 1- Substantiated

The sole allegation in this matter is that the School 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 [REDACTED] District has not implemented the student's IEP between [REDACTED].

By way of relevant background information, the school returned to in-person instruction for the [REDACTED] school year following the interruptions of COVID. At that time the parents were concerned about COVID as well as their child's ability to make progress in a school setting due to the student's diagnosis of ADHD. The school felt that the student could receive a Free and Appropriate Public Education (FAPE) in the classroom, but respected the parents' concerns and has allowed the student to receive their education in a home-based placement since then. The student remained enrolled in [REDACTED] and has been accessing the general education curriculum through VLACS and special education services were to be provided remotely by [REDACTED].

The district did not dispute the parent's allegation, admitting that IEP services were not provided between [REDACTED]. The district stated that a lack of willing staff impacted their ability to provide the services. Additionally, the district has shared that the student has been doing well in VLACS without the support and therefore does not necessarily feel that the student requires the support that is contained in the agreed-to IEP.

The district has already agreed to provide compensatory services for the student as well as begin remote instruction.

Conclusion:

There are many nuances to this case that make it difficult to discern whether the student was actually denied FAPE. The Department is unclear why the district agreed to home-based placement if they felt the student could receive FAPE in the school, since a home-based placement is significantly more restrictive. Additionally, if there are beliefs that the student doesn't actually need services to be successful, the district should have revisited eligibility. Despite the potential missteps, the fact remains that the district agreed to the services in the IEP but did not provide them.

[REDACTED]

Corrective Action:

Although the district has agreed to provide compensatory services for the student, an IEP meeting will be held to determine the actual hours of compensatory services that are needed for the student to make progress in the IEP goals. Evidence of this corrective action must be submitted to the Department of Education, Office of Special Education Complaints, 25 Halls Street, Concord NH 03301 by [REDACTED]

The [REDACTED] District will review their internal policies related to Home-Based Instruction placement, to ensure compliance with state and federal requirements. Evidence of this corrective action must be submitted to the Department of Education, Office of Special Education Complaints, 25 Hall Street, Concord, NH 03301 by [REDACTED]

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