



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]

Re: Special Education State Complaint # 25-01

Dear [REDACTED]

The New Hampshire Department of Education, Governance Unit ("NHED"), has concluded its investigation of special education state complaint # 25-01. Based on the findings of fact in the investigation, NHED is issuing its 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 school 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 information, the student is entering the [REDACTED] grade at [REDACTED] within the [REDACTED] ("the District"). The student has the following medical diagnoses:

[REDACTED] The student was originally referred for special education in [REDACTED], at which time the IEP team determined that, rather than proceed with an evaluation, a 504 Plan be put in place to support the student with accommodations. The parents did not consent to the 504 Plan because they felt that additional support was needed.

Later in [REDACTED], the parents called the school district, after which a disposition of referral meeting was scheduled originally for [REDACTED], but rescheduled to [REDACTED]. It is important to note that districts are responsible for convening the IEP team to discuss a special education referral within 15 days of receipt of a referral, pursuant to Ed 1106.01(d). Since NEHD was not provided the specific date of this phone call, NHED cannot clarify if this disposition of referral meeting occurred within a timely manner.

At the [REDACTED] meeting, the IEP team agreed to proceed with an evaluation. On [REDACTED], the parents signed a consent to evaluate in the areas of Academic Performance, Adaptive Behavior, Communication, General Intelligence, Health, and Social/Emotional Status. Later, on [REDACTED], the parent signed consent for additional evaluations in Hearing and Vision. The parent acknowledged receipt of the evaluation reports on [REDACTED]. However, the District's Assistant Superintendent of Student Services told NHED's investigator that the District performed Hearing and Vision screenings rather than evaluations.

On [REDACTED], the IEP team convened to review the evaluation results and determine eligibility under the categories of Emotional Disturbance, Autism, or Other Health Impairment. A written prior notice (WPN) that documented the District's proposals from this meeting noted that the District did not identify the student as having an educational disability in any of the aforementioned categories. The IEP team discussed a 504 Plan with ancillary Speech and Language services. The parents did not agree with the eligibility proposal nor did they consent to a 504 Plan. The parents filed this special education state complaint to challenge the District's failure to propose eligibility.

Allegation 1—Substantiated

The sole allegation in this matter is that the District failed to comply with 34 CFR 300.306, which, in relevant part provides that:

The local education agency (LEA) shall interpret evaluation data for the purpose of determining if a child is a child with a disability under 34 CFR 300.8.

Specifically, complainant asserts that the District failed to follow determination of eligibility procedures to identify the child as a child with a disability under 34 CFR 300.8.¹

While there were a few procedural errors in this case, the crux of this case rests of the differentiation between speech services as special education versus as a related service. All parties of the IEP team agree that the student has at least one disability. However, the reasoning for not qualifying the student for special education was because the District proposed

¹ 34 CFR 300.8:

(a) *General*—(1) *Child with a disability* means a child evaluated in accordance with §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. (2) (i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part. (ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

that the student did not need special education, only the related service of Speech and Language. However, NHED, in its review of documentation related to the evaluation and determination of eligibility, found that there were several significant issues that were not appropriately considered by the IEP team. For example, evaluations note difficulties in social language, working memory, and social pragmatics, as well as clinically significant levels in behavior and peer issues. Additionally, ratings in the social composite of the adaptive behavior assessment scored in the low to extremely low range. This leads NHED to consider if the student requires specially designed instruction in the areas of social pragmatics and behavior management.² NHED would encourage the IEP team to consider if, given the student's evaluations and teacher feedback, the student requires adapted content, methodology, or delivery of instruction in order to address the student's instructional and functional needs, particularly to access the general curriculum and be included with peers.

In light of the errors regarding the Hearing and Vision evaluations and the child-specific facts not given appropriate consideration by the IEP team, NHED finds this allegation to be substantiated.

Conclusion

NHED acknowledges that IEP teams must consider a multitude of factors when determining eligibility for special education. The parents—an essential member of the IEP team—had repeatedly expressed concerns about the student dating back to [REDACTED]. In this instance, while the proposal for a 504 Plan with Speech and Language as a related service was meant to support the child, NHED believes there is sufficient cause to ask the IEP team to reconsider its decision to find the child ineligible.

Corrective Action Plan

The [REDACTED] District will convene an IEP team meeting to reconsider the eligibility determination. The IEP team must also plan the completion of Hearing and Vision evaluations and discuss their impact to the IEP team decision. The IEP team shall also consider how the delay in determining eligibility can be remediated through compensatory services, if required. Evidence of the corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by [REDACTED]

The [REDACTED] District will review their internal policies related to Hearing and Vision screenings versus evaluations and revise, as necessary, to ensure compliance with state and federal requirements. The District will train relevant staff on the compliant policies and procedures. Evidence of this corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by [REDACTED]

The [REDACTED] District will review their internal policies related to documenting referrals submitted by phone and revise, as necessary, to ensure compliance with state and federal requirements. The District will train relevant staff on the compliant policies and procedures.

² 34 CFR 300.39 (a)(3): Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

[REDACTED]
Evidence of this corrective action must be submitted to the Department of Education Attn:
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.

Sincerely,

Frank Edelblut
Commissioner of Education
NH Department of Education