



Massachusetts Department of Elementary and Secondary Education

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July 29, 2020

Robert Tremblay, Superintendent
Framingham Public Schools
73 Mt. Wayte Avenue, Suite 5
Framingham, MA 01702

Re: Intake PRS 3936
Group Name: All Students
Closure Letter

Dear Superintendent Tremblay:

On June 4, 2020, the Massachusetts Department of Elementary and Secondary Education (“Department”) received a written statement of concern from Ellen Chambers, involving the Framingham Public Schools. The PRS investigation included the following steps:

- Reviewed the statement of concern and supporting documentation;
- Spoke with the Counsel for the District regarding the statement of concern;
- Requested a Local Report from the District;
- Reviewed the District’s Local Report and supporting documentation submitted to the Department on June 23, 2020;
- Reviewed relevant state and federal special education laws and regulations;
- Received and reviewed the complainant’s response to the District’s Local Report, submitted to the Department on June 25, 2020.

The identified concern and a summary of the findings of our investigation follow.

CONCERNS AND FINDINGS

The complainant alleged that the District required parents/guardians to sign an agreement or waiver letter, prior to holding IEP meetings. The complainant alleged noncompliance with 34 CFR 300.328, which states:

Alternative means of meeting participation.

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

Investigation

On June 23, 2020, the District submitted its Local Report (Report) to the Department. The Report included:

- A. A narrative response to the allegation;
- B. Copy of the District's policies and procedures to ensure parent participation in IEP Team meetings;
- C. The District's policies and procedures, initiated during the COVID national health crises, to ensure parent participation in IEP Team meetings;
- D. Copies of two District issued letters given to parents detailing the requirements of conducting a Virtual IEP meetings;
- E. All correspondence (emails, letters, telephone logs) in relation to the allegation.

Background

On March 21, 2020, the United States Department of Education (USED) released a Supplemental Fact Sheet stating that during this national emergency "school districts must provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students." In addition, the Supplemental Fact Sheet specifically addressed IDEA timelines and virtual IEP Team meetings. That guidance advised that "during this unprecedented national emergency, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate [and that] parents and an IEP Team may agree to conduct IEP meetings through alternate means, including videoconferencing or conference telephone calls. 34 C.F.R. §300.328." USED stated "we encourage school teams and parents to work collaboratively and creatively to meet IEP timeline requirements."

The Department, in turn, posted guidance for districts regarding the provision of special education and related services and the implementation of the regulatory timelines during the emergency shutdown in the document CORONAVIRUS/COVID-10 FREQUENTLY ASKED QUESTIONS FOR SCHOOLS AND DISTRICTS REGARDING SPECIAL EDUCATION revised on March 26, 2020 and updated on May 15, 2020. The guidance recognizes that “*school closures may impact the ability of school districts to meet the 30-day timeline for conduct evaluations in addition to the 45-school working day timeline to develop an IEP after receipt of a parent’s written consent to evaluation or reevaluation.*” The Department advised that “*the school teams and parents work collaboratively and creatively to meet IEP timeline requirements*” and Districts “*work with parents to reach mutually agreeable extensions of timelines, as appropriate*”.

Subsequently, during a special education directors’ webinar on May 15, 2020, the Department specifically addressed the use of release forms requiring parents to waive their procedural rights under federal and state special education regulatory requirements. The Department stated that Districts must not obligate parents or legal guardians to sign consent to a broad waiver of rights as a condition for conducting a required IEP Team meeting. Districts and parents can discuss an extension to the regulatory timelines and parents can then provide their agreement to an extension of the timelines that can include annual review IEP Team meetings and evaluations. Districts, upon issuance of the agreement on the extension of a timeline with a parent, “*may not include statements in the waiver indicating that parents are waiving all procedural rights when agreeing to an extension or in order to have a virtual meeting*”.

See COVID Special Education Technical Assistance Advisory 2020-2 Implementation of Special Education Timelines During the COVID-19 State of Emergency issued May 21, 2020 at <http://www.doe.mass.edu/sped/advisories/2020-2covid-ta.html>.

As part of its Local Report, the District submitted copies of two (2) documents issued to district parents/guardians in regard to Virtual IEP Team meetings, in response to the unprecedented time of the national health emergency.

Relevant to this investigation, the District’s first letter to parents in regard to virtual meetings stated that:

Following this meeting, Framingham will try its best, under these extraordinary circumstances, to comply with the special education timelines. However, extended school closure creates new hurdles for compliance. If you have agreed, Framingham will send the IEP and related documents to you via email. If you have not agreed to email, then these document swill be sent to you via regular mail, although there will likely be a delay in the sending of these documents.

In its narrative response to the allegation the District asserts that the language used in the virtual meeting notice to parents, “was not intended as a waiver of procedural rights by parents or as parental consent to extending timelines.” And that, “in order to avoid any ambiguity or concern [the District] has removed this language from its Notice Regarding Virtual Meetings.”

Relevant to this investigation, the District's revised letter to parents in regard to virtual meetings stated that:

Following this meeting, if you have agreed, Framingham will send the IEP ad related documents to you via email. If you have not agreed to email, then these documents will be sent to you vial regular mail.

The District reported that as part of its investigation, it interviewed those District staff members responsible for the scheduling of Virtual IEP meetings and no parent was denied a virtual meeting, if they did not sign the meeting form agreeing to the receipt of IEP documents by email.

The Department's review determined that the District did not deny parents/guardians alternative methods to participate in IEP meetings. The District's notice did not require parents to waive parental rights in order to participate in remote IEP Team meetings. The Department finds that the District complied with *34 CFR 300.328* in this matter.

Based on the information gathered, my inquiries indicate that no violation of education law, regulation or policy has occurred with regard to the specific concern(s) raised. I am advising the complainant of this finding by copy of this letter, and the Department has closed this complaint as of July 29, 2020.

This determination represents the Department's interpretation of the relevant legal requirements in the context of the facts presented. The conclusions reached in this letter do not establish a policy, rule, or precedent that would apply in all circumstances.

While the Department does not consider appeals of its decisions involving alleged noncompliance with state or federal education laws or regulations, should this summary of information be inaccurate in some way, please contact me at Rhonda.Mojkowski@mass.gov.

Please also note that for matters related to special education or Section 504, the parties may seek mediation and/or a hearing through the Bureau of Special Education Appeals (BSEA) on the same issues addressed in this letter. Such a hearing, however, is a new proceeding and is not for the purposes of reviewing the Department's decision in this matter. Any order or decision issued by the BSEA on the issues raised in this concern would be binding.

Please feel free to contact the Department with any additional questions. We appreciate your cooperation in this important matter, and are pleased to have been of assistance.

Sincerely,

A handwritten signature in black ink that reads "Rhonda Mojkowski". The signature is written in a cursive style with a large initial 'R'.

Rhonda Mojkowski, PRS Specialist
Problem Resolution System Office

C: Laura Spear, Director of Special Education, Framingham Public Schools
Philip Benjamin, Counsel for the District
Ellen Chambers, Complainant