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STATE OF NEW HAMPSHIRE
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Special Education Complaint # 23-08

Dear [REDACTED],

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 23-08. 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 each allegation as well as a summary of the investigator's findings of fact based on the evidence submitted by the parties. If an allegation is substantiated, finding of noncompliance with special education law, then there will be a corrective action required of the district to remedy any violations. The corrective action is intended to ensure compliance with IDEA by addressing the needs of the child and appropriate future provision of services for all children with disabilities.

By way of relevant background, the scope of this complaint investigation is from [REDACTED] [REDACTED]. There was one IEP and three subsequent amendments in place which are relevant to the timeframe of this investigation:

- IEP #1 dated [REDACTED], signed in consent by the parent on [REDACTED];
- Amendment #1 dated [REDACTED], signed in consent by the parent on [REDACTED];
- Amendment #2 dated [REDACTED], signed in consent by the parent on [REDACTED]; and
- Amendment #3 dated [REDACTED], signed in consent by the parent on [REDACTED].

Allegation #1: Partially substantiated

The first allegation in this matter is that the [REDACTED] 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 provided the paraprofessional services as required in the IEP between [REDACTED].

The following IEPs and services were relevant to investigate this allegation:

- IEP 1, [REDACTED]—paraeducator for 1 session a day of 6 hours;
- IEP Amendment #1, [REDACTED]—no paraeducator support;
- IEP Amendment #2, [REDACTED]—paraeducator for 1 session a day of 5.25 hours; and
- IEP Amendment #3, [REDACTED]—paraeducator for 1 session a day of 5.25 hours.

At an IEP transition meeting which was held on [REDACTED], the removal of the paraeducator from the IEP was discussed by all parties. According to the Written Prior Notice (WPN), for the change of services, [REDACTED] Charter School would have the personnel to adequately meet the child's needs without specifically providing a paraeducator. Therefore, the parents agreed to this change and paraeducator support was removed from the IEP in amendment #1.

On [REDACTED], IEP amendment #2, which included paraeducator support for 5.25 hours a day was proposed and signed in consent by the parents the next day. The paraeducator support remained unchanged in the subsequent IEP amendment, therefore the investigation into the failure to provide paraeducator support is limited to [REDACTED].

[REDACTED] Charter School and [REDACTED] District entered into an agreement whereby [REDACTED] would hire the paraeducator and [REDACTED] would reimburse the charter school for this service. Evidence indicates that a paraeducator was hired on [REDACTED]. Timesheets provided by [REDACTED] show that the paraeducator worked 8.5 days between [REDACTED]. When the paraeducator had to be absent for an extended period of time, the charter school informed the district that they had alternative staff supporting the student. However, the paraeducator never returned to work with the student. Instead, it appears the alternative staff member remained in the role until [REDACTED]. [REDACTED] provided a school district employee to provide the services from [REDACTED] until [REDACTED]. [REDACTED] hired a new paraeducator for the role on [REDACTED].

There is no evidence of any paraeducator support being provided beginning on [REDACTED] when the parent consented to the amendment, and [REDACTED] when a paraeducator was hired. Invoices from [REDACTED] Charter School to the [REDACTED] District show that, although services were provided beginning on [REDACTED] staffing issues prevented the paraeducator support from being provided consistently as required by the IEP.

[REDACTED]

Allegation #2: Partially substantiated

The second allegation in this matter is that the [REDACTED] 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 provided the related services in the IEP [REDACTED] between [REDACTED]

IEP #1 dated [REDACTED] contained the following related services:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The subsequent amendments did not make any changes to the frequency or duration of the [REDACTED] services.

[REDACTED]

According to service logs for the individual [REDACTED] services, the student was seen for a total of 15 sessions. However, many of the sessions were for longer than 30 minutes. The logs indicate that the student ultimately received the equivalent of 20.5 sessions of individual [REDACTED] therapy.

In addition, the service logs for the group [REDACTED] pathology services indicate the student received 17 sessions. Like the individual sessions, some of the student's group sessions were also longer than the 30 minutes. Given the information on the logs, the student received the equivalent of 25.5 sessions of group [REDACTED] therapy, which is more than what is required in the IEP.

The student's progress reports for the timeframe in question indicate the student made progress on the goals related to [REDACTED]. Therefore, it is unclear if the longer duration and less frequent sessions impacted the student—negatively or positively.

[REDACTED]

[REDACTED]

The logs for [REDACTED] were not as descriptive as the [REDACTED] logs and did not include the duration of the services. There were multiple logs provided with conflicting information. It appears the student was provided between 37 and 43 sessions. All [REDACTED] sessions were provided by a [REDACTED]

The documentation related to [REDACTED] can be improved and, it is clear that the student did not receive services from the provider as listed in the IEP. However, according to the student's progress reports, progress was made related to the [REDACTED] goal in the IEP.

[REDACTED]

The service logs for [REDACTED] were detailed and indicate that the consultation not only occurred for all 6 required sessions, but also exceeded 30 minutes.

[REDACTED]

Documentation related to the [REDACTED] services, indicates that it was regularly scheduled. The student was absent for 6 of the sessions and received the equivalent of 19 sessions, not including the 6 absences. That would indicate that a total of 27 sessions were provided or attempted, which would be consistent with 3 times per month as required.

The progress report in the area related to [REDACTED] indicated some progress.

Allegation #3: Partially Substantiated

The final allegation in this matter is that the [REDACTED] District failed to comply with 34 CFR 300.114(2)(i), which, in relevant part, provides that:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled.

The complainant asserts that [REDACTED] District removed the student from the regular education setting to provide the related services in a more restrictive setting without permission.

As detailed in allegation #2, the related services did not change during the amendments. However, there was an inadvertent change during the 2nd amendment to the IEP which changed the setting for [REDACTED] to a regular education setting. According to the school district, that change was not intentional, even though the change was included in the amendment that the parent consented to.

Aside from 6 of the [REDACTED] services, the services were provided in the appropriate settings, with the majority of the services being provided in general education classroom setting. It is important to mention that the actual location varied based on where the class was meeting, such as outside.



Conclusion

There are obvious areas for improvement, such as documentation, but the most significant area seems to be related to communication and collaboration, between [REDACTED], [REDACTED] and the parent. The district is responsible for the provision of special education and like in many cases, relies on the charter school to keep them informed. Despite multiple IEP meetings and amendments, there still seems to be some breakdown in communication between the parties. In addition, many of the required services were not provided as written in the IEP. However, it is difficult to determine whether the change in service frequency and duration impacted the student's ability to access FAPE—either positively or negatively.

Corrective Action

The [REDACTED] District will work with [REDACTED] Charter School to create a method of communication to ensure that services are provided in accordance with the IEPs in place. Evidence of this corrective action must be submitted no later than [REDACTED]

An IEP team meeting will be held to discuss whether the provision of services impacted the student's ability to access FAPE, as well as to discuss how missed services will be provided going forward. Evidence of this corrective action must be submitted no later than [REDACTED]

Evidence of the corrective actions must be sent to NHED Special Education Complaints
25 Hall Street Concord, NH 0330.

We hope that in the future the district and parent are able work together to resolve any differences that may arise.

Frank Edelblut
Commissioner of Education
NH Department of Education