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STATE OF NEW HAMPSHIRE
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Special Education Complaint # 23-09

Dear [REDACTED],

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 23-09. 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 in place dated [REDACTED], signed in consent by the parent on [REDACTED].

Allegation #1: 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:

[REDACTED]

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 and para-professional support agreed to in the IEP since the start of the 2022/2023 school year.

The following services were relevant to investigate this allegation:

- 1:1 Paraeducator [REDACTED]
- 1:1 Paraeducator [REDACTED]
- Speech Pathology [REDACTED]
- Occupational Therap [REDACTED]
- Physical Therapy [REDACTED]

As an initial matter, the Department has a long-standing recommendation against writing services per a school year, as it is difficult to ensure that services are provided consistently to guarantee the student's access to Free and Appropriate Public Education (FAPE) at all times. Given the way the IEP is written, the Department will use the standard 180 school day as reference for frequency.

Paraeducator Support

The Department is unsure why the service is only for [REDACTED] days as that is significantly less than a standard school year. However, the district was unable to provide any documentation related to the provisions of paraeducator support, which should have totaled [REDACTED] hours per school day.

Speech Pathology

The services for [REDACTED] days would theoretically be provided [REDACTED] days. It would be expected that services delivered [REDACTED] times per year would have been provided 5-7 times during the 13 school days during the complaint period.

Daily reports and Medicaid reimbursement documents indicate that speech therapy was provided in accordance with the IEP, as the student received 7 sessions during the complaint period.

Occupational Therapy

Similar to the speech pathology provision, it would be expected that the student would have received between 5 and 7 sessions of Occupational Therapy. Although the student's daily logs only indicate that 2 sessions were provided, the OT logs indicate the student received 4 sessions. Although this is less than what is expected, it is not likely that the missed session(s) resulted in a denial of FAPE. However, it should be noted that these 4 services were provided on the following dates: [REDACTED] rather than spread out during the complaint period.

Physical Therapy

This service is for [REDACTED] times per school which would theoretically be provided 1 out of every 4 days. As such, during the [REDACTED], it would be expected that services which were to be delivered [REDACTED] times per year would have been provided approximately 3 times during the time in question.

The documentation provided by the district indicates that a 15-minute session, provided by a Physical Therapy Assistant occurred on [REDACTED] and a session by a Physical Therapist occurred on [REDACTED]. Additionally, the IEP states the service provider is to be a physical therapist, not a physical therapy assistant.

Allegation #2: Substantiated

The second allegation in this matter is that the [REDACTED] District failed to comply with Ed 1120.04(a)(5), which, in relevant part, provides that:

An LEA shall obtain informed, written consent from the parent of a child with a disability prior to changing the nature or extent of the special education or special education and related services.

Specifically, the complainant asserts that the [REDACTED] district has placed her child in a self-contained special education classroom for the entire school day without parental consent since the start of the [REDACTED] school year.

The student's IEP provides that all services and related services are provided in a special education setting. The total of these services amount to the duration of a full school day. However, the educational placement page does not reflect that amount and instead stated that the student would spend 2.5 hours per day in the special education setting and 4 hours per day in the regular education setting.

Given the way the IEP was written as per year, it was not easily identifiable for the parents that the service grid did not match the placement proposal. Therefore, the parents were under the impression that their child spent the majority of the day in the regular education [REDACTED] classroom, as that was what they consented to on [REDACTED].

The district admitted that the educational placement page that was consented to was incorrect, but this fact went unnoticed until the complaint was filed. A meeting was held on [REDACTED], after the complaint period, and the IEP was amended to correct the placement page.

Conclusion

The Department takes this opportunity to reiterate that the practice of writing services on a per year basis is not best practice and recommends that [REDACTED] District review this practice going forward. In addition, there were other errors within the IEP that impacted this decision, such as the discrepancy in placement as well as the days per year of service verses the number of school days. These errors, intentional or mistaken, have the ability to impact a student's overall access to a Free and Appropriate Public Education in the Least Restrictive Environment (LRE).

Additionally, transparency between school districts and the families of some of our most vulnerable students is critical to foster a culture full of collaboration and trust between the parties. Lack of staffing and support should be communicated so that there is an understanding of the situation, and an appropriate plan can be made moving forward. The Department recognizes staffing shortages as well as the responsibilities related to IEP implementation, however it also recognizes the importance of communicating the shortages with the families.

Corrective Action

The [REDACTED] District will provide training to all special education staff regarding IEP documentation and how to determine service frequency in the IEP to ensure FAPE all school year. 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