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[REDACTED]

Re: Special Education Complaint # 24-03

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 24-03. 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 student and the appropriate future provision of services for all children with disabilities.

By way of relevant information, the student has a current Individualized Education Program (IEP) dated from [REDACTED], which was signed in consent by the parent on [REDACTED]. Part of the current IEP stated that the educational placement of the student would be 27 hours per week in regular educational classes at [REDACTED], which the parent agreed to when she signed the IEP in consent. During the late spring of [REDACTED] the parent expressed concern about the student's placement at [REDACTED], and the student's placement became the subject of several IEP team meetings in [REDACTED].

Allegation 1 - Unsubstantiated

The first allegation in this matter is that the [REDACTED] District failed to comply with 34 CFR 300.116(b)(1), which, in relevant part provides that:

The student's educational placement is determined at least annually.

Specifically, the complainant asserts that the District did not consider the student's educational placement at IEP team meetings on [REDACTED].

While the parent expressed valid concerns that [REDACTED] might not have been the appropriate placement for the student, she did so after the IEP and educational placement had already been consented to at the annual IEP review back in [REDACTED]. Therefore, the District did meet its legal obligation in accordance with federal law.

If disputes regarding the student's educational placement at [REDACTED] persist, there are several avenues the parent can explore. The first is best interest or manifest educational hardship¹, which allow the parent to petition the superintendent or local school board for a change in school or district. The second avenue is an administrative due process hearing², which would allow both parties to present their cases to a neutral third-party hearing officer for the purposes of settling the dispute.

Allegation 2 - Unsubstantiated

The second allegation in this matter is that the [REDACTED] District failed to comply with Ed1109.03(a), which, in relevant part provides that:

The local education agency (LEA) shall provide special education, related services, supplementary aids and services, accommodations, and modifications to student with a disability in accordance with the student's IEP.

Specifically, the complainant asserts that school personnel did not provide accommodations related to the student's sensory processing needs in two specific alleged incidents dated [REDACTED].

The current IEP, which spans the two alleged instances, has 39 accommodations. The accommodations pertinent to these two incidents include:

- Provide alternative light sources other than fluorescent whenever possible. If possible, turn down bright lights due to his light sensitivity;
- Whenever possible, make [the student] aware of loud sounds such as fire alarms, horns, videos, etc. so he can prepare for them;
- Provide [the student] with a consistent, predictable daily routine, using visual supports coupled with simple direct language. When possible, prepare [the student] for changes to the classroom routine, giving a logical explanation for changes, and clearly stating any new expectations; and
- Presentation – Other; Clarification of directions/expectations.

¹ "Best interest" refers to the process by which a parent may apply to the superintendent of the student's district of residence if the parent or guardian believes it would be in the best interest of the student to change the student's school or assignment. The superintendent may approve of this request or may deny it. If denied, the parent may request a hearing with the school board of residence to determine if the student is experiencing a "manifest educational hardship," which means that a student has a documented hardship in his or her current educational placement; and that such hardship has a detrimental or negative impact on the student's academic achievement or growth, physical safety, or social and emotional well-being. Such hardship must be so severe, pervasive, or persistent that it interferes with or limits the ability of the student to receive an education. The statute that details these processes can be found here: <https://law.justia.com/codes/new-hampshire/2022/title-xv/title-193/section-193-3/>.

² More information and guides to administrative due process hearings are available on the NH DOE website at www.education.nh.gov/parents-and-students/appeals-and-mediation.

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The incident that occurred on ██████████, took place in a Special Education Learning Lab Class with a teacher who is no longer employed at the school. When the teacher was asked by the student to turn the lights down, the teacher did so, resulting in the lights being turned completely off. The classroom is an interior room with no windows and no other supplementary light sources outside any residual hallway light. The teacher felt that the room could not remain so dark as it was not conducive to work being completed, in addition to safety concerns. Subsequently, the teacher declined to follow through with the student's request. As the student's IEP accommodation stipulates that the lights be dimmed only "if possible," the District was still acknowledging the student's accommodation, even if it could not abide by the accommodation in this particular circumstance.

The incident on ██████████, stemmed from the student's reluctant attendance to an all-school awards assembly, which, due to the student's sensitivities to light and sound, had been over-stimulating. The student, as well as other students who experience sensory issues, were encouraged to attend the end-of-year awards assembly because the administrative team did not feel that these were going to be triggering sounds. Additionally, the student was notified of this change in routine and was given the opportunity to prepare for the louder environment in advance. As stated, the accommodation as stated allows the student to *prepare for* loud sounds whenever possible, but shield the student from them entirely. The District met its obligation to the accommodation while also allowing the student to be included, not excluded, from school events.

Conclusion

The Department understands and appreciates the parent's desire to be an active participant in the IEP team, particularly as it relates to the student's educational placement; however, the special education complaints avenue must finitely review compliance with the law. Dispute resolution through administrative due process would be the parent's other avenue for reaching a consensus with the District. Similarly, with concerns related to the fidelity with which accommodations are being followed, it is important that both parties assume good intent and use this process as a learning experience for future communications. As an aside, the Department would like to acknowledge the student's admirable self-advocacy skills.

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