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STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Special Education Complaint # 24-13

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support, has concluded its investigation of complaint # 24-13. 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 may 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 students with disabilities.

By way of relevant information, the student had two Individualized Education Programs (IEPs) during the complaint period—the former IEP was amended in [REDACTED], and the current IEP was developed in [REDACTED], and amended in [REDACTED]. The student's former IEP was amended in late [REDACTED] because of numerous disciplinary infractions, the majority of which were for skipping class or being found in a restricted area. As a result, the student's IEP includes a modification that requires the student to always have an escort while outside of the classroom. The crux of this complaint stems from the [REDACTED] District's implementation of that modification, the subsequent suspensions which occurred from the student's behavior in school, and whether the District completed a manifestation determination meeting in accordance with federal law.

Allegation 1—Unsubstantiated

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 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 [REDACTED] did not implement the modification that the student must always have an escort while outside of the classroom.

In [REDACTED], the student’s case manager sent several internal emails providing explicit instruction to staff about how the student’s modification for an escort was to be implemented. Specifically, there was to be clear communication between staff when the student had appointments within the building, that the student would be escorted to and from those appointments, and there was a procedure of requesting an escort during bathroom breaks and things of that nature. This strategy was effective for the majority of the school year, but there were some incidences when the student would simply leave class without permission. These implementation strategies are referenced in the current IEP and there is ample evidence to show that the school district consistently implemented the requirement of an escort while the student was outside of the classroom leading into [REDACTED].

Allegation 2—Substantiated

The second allegation in this matter is that the [REDACTED] District failed to comply with 34 CFR 300.530(e), which, in relevant part provides that:

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the IEP team must review all relevant information to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student’s disability, or if the conduct in question was the direct result of the LEA’s failure to implement the IEP.

Specifically, the complainant asserts that [REDACTED] did not hold a manifestation determination meeting after the student was suspended.

School staff communicated via email from [REDACTED] that the student’s most recent suspension brought the total number of suspended days to 9, which, to them was “close enough to do a manifestation meeting.” On [REDACTED] an IEP Team Meeting Notice for an IEP review and manifestation determination was created, and a meeting was scheduled for [REDACTED], via Google Meet. However, the District could not provide any documentation that this meeting ever occurred.

There were additional suspensions as the year went on. In [REDACTED] the student received two days of in-school suspension. In [REDACTED] the student received 5 days of out-of-school suspension. On [REDACTED], an IEP Team Meeting Notice for an IEP review and manifestation determination was once again created and a meeting via Google Meet was scheduled for [REDACTED]. Again, there was no evidence that this meeting occurred.

While school and district staff admit that such prolific suspensions require a manifestation determination meeting in accordance with federal law, there appears to be a disconnect in actual practice. With no

record of the manifestation determination meetings having occurred, the Department has no choice but to substantiate this allegation. If these meetings did occur, but there was no documentation to present to the investigator of this allegation, the Department recommends that the District re-evaluate its policies and procedures for record-keeping in these matters.

Allegation 3—Substantiated

The third allegation in this matter is that the [REDACTED] District failed to comply with Ed 1124.02, which, in relevant part provides that:

When a child with disabilities has been removed from the child's current placement for more than 10 days in a school year, the LEA shall provide service necessary to provide the child with a disability an opportunity to progress in the general education curriculum consistent with the child's IEP. Such services, if provided at the child's home, shall consist of: (a) a minimum of 10 hours/week of instruction, including special education as specified in the child's IEP; and (b) related services as specified in the child's IEP.

Specifically, the complainant asserts that the District did not provide tutoring or special education services during changes of educational placement of more than 10 days.

The 11th day of out-of-school suspension for the student during the [REDACTED] school year was [REDACTED] which would prompt the need to provide tutoring and special education services in the IEP. Additionally, the District was obligated to provide tutoring and special education services during the interim home placement beginning [REDACTED]. Those services had not been arranged by the time the parent filed the complaint with the Department [REDACTED]. Thus, this allegation is substantiated.

Conclusion

The purpose of a manifestation determination meeting is for the IEP team to determine if the behaviors leading to disciplinary action are directly caused or substantially contributed to by the student's disability; if so, the IEP team must consider the implementation of or sufficiency of the IEP. Had there been manifestation determination meetings back in [REDACTED], when school staff indicated they were necessary, this student may have received necessary support earlier.

The Department understands that the student is currently awaiting placement at an out-of-district, private approved special education program, a process that can take weeks, if not months, to complete. This is why the coordination of tutoring and special education services for interim placements is so essential. The IEP team had decided in [REDACTED] that an out-of-district placement was appropriate, understanding that this process can be lengthy. As such, the District should have been pursuing service providers for the interim home placement in the event that a spot in an out-of-district placement was not secured over the summer.

Corrective Action

The [REDACTED] District will convene an IEP team meeting to evaluate the sufficiency of the social, emotional, and therapeutic services & supports allotted for in the student's IEP. 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]

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The ██████████ District will review their internal policies related to special education responsibility and revise, if necessary, to ensure compliance with state and federal requirements. Policies related to disciplinary records/tracking and manifestation determination should receive critical focus. Evidence of this corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by ██████████

The ██████████ District will provide any compensatory education, including tutoring and special education services, that stem from the student's suspensions¹ during the ██████████ school year (exceeding 10 days) and the wait for an out-of-district placement ██████████
Evidence of the corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by ██████████

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

¹ In-school suspension does not count toward the 10 days of removal from educational placement if the student could both participate in the general education curriculum and receive special education services listed in the IEP.