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Re: Special Education Complaint # 24-14

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support, has concluded its investigation of complaint # 24-14. 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 child and the appropriate future provision of services for all children with disabilities.

By way of relevant information, this complaint was filed on behalf of two children of the same family. Both children had Individual Education Programs (IEPs) with their resident local education agency (LEA), [REDACTED] District ([REDACTED]), during the [REDACTED] school year up until the children were unenrolled from the District on [REDACTED]. The parent had explained to [REDACTED] that the reason for this withdrawal was because the children would be attending a private school beginning the 2022-23 school year.

Once the children were unenrolled from [REDACTED] was no longer responsible for special education services. This is reinforced by the fact that the parent stated that the children were to attend a private school, making them parentally-placed under Ed 1112.01. However, unfortunately, one of the children experienced some medical setbacks and the private school revoked enrollment, leading the parent to seek enrollment for the children at [REDACTED] Charter School [REDACTED] during a short period in time from [REDACTED]. This is the time frame upon which this complaint is based.

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During this time, there was confusion about the process of acquiring special education support for the children at ██████████. RSA 194-B:11,III(b) requires that children who attend public charter schools be registered with their resident LEAs and that the LEA and charter school convene an IEP team meeting to discuss how special education services would be provided at the charter school. The parent may have been under the impression that, by sharing the children's previous IEPs with ██████████ ██████████, the supports would be implemented immediately when the children started on or about ██████████. However, this is not the case as services had been effectively terminated when the children unenrolled from ██████████. It is note-worthy that the IEPs for both children had expired in ██████████ and new IEPs had not been signed in consent at the time the children were unenrolled in ██████████. So, whether the children reenrolled in ██████████ or an entirely different district, new referrals would need to be submitted and new IEPs would need to be developed if they enrolled in a public school.

When the parent encountered these obstacles to having the children start school, the Executive Director of ██████████ told the parent on ██████████, that ██████████ was waiting for the children to be registered, presumably so that the IEP team can follow the special education process and meet with ██████████ in accordance with RSA 194-B:11,III(b). The children were reenrolled in ██████████ the next day. Because of the history between the parent and district, ██████████ decided to act outside of the special education process and began providing supports immediately based on IEPs from the previous school year because it benefitted the children.

This complaint is distilled to these facts: the children were unenrolled from ██████████ on ██████████. One of the children did not have an IEP signed in consent until ██████████, and the other child's IEP was signed in consent on ██████████. Any provision of special education between ██████████ and the dates the IEPs were signed in consent was not legally required by ██████████. This includes the provision of paraprofessional support at ██████████ at the time of attempted enrollment in ██████████.

During this investigation, it was discovered that when ██████████ was informed of the children's need for paraprofessionals—it is unclear how that information was shared—the Executive Director allegedly told the parent that the children could not start school until the paraprofessional support was in place. It is worth noting that this is contrary to RSA 194-B:8,I, which prevents charter schools from discriminating against any child with a disability, regardless of whether supports are available.

Allegation 1—Unsubstantiated

The sole allegation in this matter is that the ██████████ District failed to comply with 34 CFR 300.209(b)(1)(i), which, in relevant part provides that:

The LEA shall serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services.

Specifically, the complainant asserts that the ██████████ District did not provide paraprofessional support as mandated by the children's IEPs when they were enrolled at ██████████ Charter School.

As explained in detail above, because the children were withdrawn from ██████████ and parentally-placed in a private school, this ended the obligation for ██████████ to provide special education services. The children were not registered in ██████████ prior to the attempted enrollment in ██████████ meaning that no

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coordination of special education services, including paraprofessional support as mentioned in the allegation, could occur between ██████████ during the complaint period.

Conclusion

The Department understands that the parent was dealt a challenge when the private school revoked enrollment for one of the children. This caused the parent to resort to alternative solutions, including seeking enrollment at ██████████. However, this unfortunate circumstance and the history between the parent and ██████████ do not supersede the laws that govern special education process or the relationship between school districts and their partnering public charter schools. While this allegation is unsubstantiated, the Department recommends that both parties communicate clearly and pre-emptively in the event the parent wants to enroll the children in ██████████ in the future. Also, the Department recommends strongly to ██████████ that it review its policies and procedures related to the special education process and parental consent.

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