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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Re: Special Education Complaint # 24-17*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support, has concluded its investigation of complaint # 24-17. 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, the child has an Individualized Education Program (IEP) that spans from [REDACTED]. The date for the IEP annual review was [REDACTED]. This IEP has been amended twice. The first amendment was in [REDACTED], to change the child's placement to [REDACTED] per the guardians' decision to enroll in this public charter school. The IEP team agreed that special education service, times, and locations would remain the same. The second amendment in [REDACTED] was made to change the child's placement back to [REDACTED] Middle School per the guardians' decision. This time, special education services, times, and locations were amended to total 7.5 hours per week in a special education setting and 25 hours per week in a regular education setting.

The first three allegations within this complaint were substantive in nature, indicating concerns with educational placement, teacher credentialing, and the provision of speech services. The child's educational placement is noted as Resource Room, which, according to the Continuum of Alternative

Learning Environments, is defined as when “[a] child with a disability attends a regular class and receives assistance at or through the special education resource room for no more than 60% of the child’s school day.” This is the educational placement the guardians have consented to. However, their concern is that the Resource Room the child attends frequently overlaps with the staff and physical space of the [REDACTED] Program, which is a separately distinct program for children with more significant disabilities. The consequence is the child and guardians’ perception that the child is part of the [REDACTED] program and, thus, is in a more restricted environment.

In addition to concerns regarding educational placement, the guardians also questioned the credentials of special education teachers at both [REDACTED] and [REDACTED] Middle School. The child did receive special education instruction from an educator who was not fully certified at [REDACTED] however, federal law states that special education teachers at public charter schools are exempt from being fully certified.<sup>1</sup> When the child enrolled in [REDACTED] School, there was a person who was not certified who was mistakenly hired in the role of special education teacher. This person held that role from [REDACTED], so approximately for one month. The District states that the child did not receive special education instruction from this educator, and once the District was made aware of this hiring mistake, changed the educator’s status to that of Special Education Assistant.

The child was withdrawn from [REDACTED] on [REDACTED], and enrolled at [REDACTED] Middle School on [REDACTED]. The District acknowledges that, due to staff shortages, there was no speech pathologist to provide services at [REDACTED] until mid-October. As such, the child did not receive speech services while enrolled there. When the child enrolled in [REDACTED] Middle School, where there was a speech pathologist, the child began receiving speech services in accordance with the child’s IEP, including compensatory services owed from the child’s time at [REDACTED]

The final four allegations in this complaint are procedural in nature. Between [REDACTED], the IEP team held 3 meetings: the annual review on [REDACTED] a meeting to discuss Extended School Year services on [REDACTED], and an amendment meeting on [REDACTED]. The guardians state that they requested an IEP team meeting on [REDACTED], which did not occur until [REDACTED] resulting in a violation of the 21-day timeline mandated by Ed 1109.06(c).<sup>2</sup> However, in reviewing the email sent to the District on June 25th, the investigator found that the email contained a series of concerns, but not a direct request for a meeting. The District replied to the guardians’ email on [REDACTED] asking if they would like to convene the IEP team to discuss these concerns. A meeting was subsequently scheduled for [REDACTED]—a date suggested by the family—21 days later.

Additionally, there were disputes over the written prior notices (WPN) that were the result of proposals discussed at the [REDACTED] meetings. A WPN was generated on [REDACTED] for the [REDACTED] annual review that summarized the IEP developed at the meeting in preparation for the student to transition from elementary to middle school in the fall. Part of the confusion surrounding this WPN

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<sup>1</sup> 34 CFR 300.156(c)(1): “The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school— (i) Has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 CFR 200.56(a)(2)(ii) as such section was in effect on November 28, 2008), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the teacher must meet the certification or licensing requirements, if any, set forth in the State’s public charter school law; (ii) Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) Holds at least a bachelor’s degree.

<sup>2</sup> Ed 1109.06(c): “All activities detailed in Ed 1109.06(b) shall be completed within 21 days following the receipt of the written request for the IEP team meeting.”

stems from the fact that the guardians signed the proposed IEP in partial consent with exceptions, but the follow-up meeting to discuss those exceptions did not occur until weeks later. The guardians were not sure if they were going to proceed with enrolling the child at [REDACTED] or in [REDACTED] Middle School. Additionally, there was an allegation that the WPN generated from the [REDACTED] meeting did not accurately document all the proposed or rejected changes in special education. During the investigation, the family and District continued to disagree over the accuracy of the WPN; however, without a recording or transcript to review, the investigator could not make a determination over the accuracy of the WPN.

The partially consented-to IEP was signed by the guardians on [REDACTED]. The guardians never received a final copy of the IEP that had the LEA's signature. When they went to the SAU to review the child's educational record, they were provided with a copy that had the LEA's signature and was dated [REDACTED]. No explanation was given regarding the delayed signature, so it appears to be an oversight by the District.

Lastly, LEAs are required to provide periodic updates, commonly referred to as a progress note, usually issued in conjunction with report cards, regarding a child's progress on their IEP goals and objectives. As previously established, a new IEP was developed and proposed in late [REDACTED] with the school year ending in a just a matter of weeks. This would be a very limited amount of time to make progress on the new IEP goal and objectives. It is also noteworthy that the speech pathologist who worked on the goals last year no longer works with the District. In the progress note provided to the Department's investigator, there is a paragraph explaining that the guardians and District acknowledged and agreed that progress data was reviewed at the annual meeting on [REDACTED]. Additionally, this progress note appeared to be a form from the [REDACTED] school year, not from the previous school year. This new form, along with the paragraph explaining the data presented at the annual review, suggest that a separate progress note was not composed for the third trimester of the [REDACTED] school year.

### **Allegation 1—Partially Substantiated**

The first allegation in this matter is that the [REDACTED] District failed to comply with Ed 1111.01(a), which, in relevant part provides that:

The local education agency (LEA) shall ensure that, to the maximum extent appropriate, children with disabilities are educated with children who do not have disabilities and that the removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Specifically, the complainant asserts that the District is educating the child in a more restrictive self-contained program without parental consent.

The District maintains that the child is not part of the [REDACTED] program and that there is simply an overlap in staff and physical space between the two programs. However, the Department is concerned that the child is within a more restricted environment as a result of this arrangement. It is not sufficient to utilize the [REDACTED] staff and space to provide "resource room" services and believe this is a less restrictive environment.

**Allegation 2—Substantiated**

The second allegation in this matter is that the [REDACTED] District failed to comply with 34 CFR 300.156(c), which, in relevant part provides that:

Each person employed as a public-school special education teacher in the State who teaches at a elementary, middle, or high school must have obtained full State certification.

The complainant asserts that the District employed an uncredentialed person in the role of a special education teacher.

While the District did not properly verify the credentials of a person hired as a special education teacher, this person did not provide any special education services to the child. Therefore, corrective actions issued for this allegation will be procedural in nature. The Department of Education, Bureau of Credentialing has been made aware of this situation and may choose to pursue further action.

**Allegation 3—Substantiated**

The third 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.

The complainant asserts that the District did not provide speech or special education services for the time the student was enrolled at [REDACTED]. It is unclear if speech services were provided during the student’s enrollment at [REDACTED] Middle School.

Pursuant to RSA 194-B:11(III)(c), when a child is enrolled in a public charter school, “the child and the child’s parents shall retain all rights under federal and state special education law, including the child’s right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child’s IEP.” Therefore, the District was legally obligated to provide speech services at [REDACTED] when the child was enrolled there. However, staff shortages prevented them from providing that service. The Department acknowledges that some compensatory services had begun when the child was enrolled in [REDACTED] Middle School, and expects the District to provide wholly those compensatory services.

**Allegation 4—Unsubstantiated**

The fourth allegation in this matter is that the [REDACTED] District failed to comply with Ed 1109.06(c), which, in relevant part provides that:

The LEA must, with 21 days of receiving a written request for an IEP team meeting, convene the IEP team or provide the parent with a written prior notice detailing why the LEA refuses to convene the IEP team as requested.

Specifically, the complainant asserts that the District exceeded the 21 day deadline because the parent/guardian requested a meeting via email on [REDACTED], and the IEP team did not convene until [REDACTED].

It took the District 18 calendar days to respond to the parent's initial email expressing concerns. Then, once the District responded with the possibility of scheduling an IEP team meeting, that meeting was scheduled for 21 calendar days later. While these practices do not violate the law per se, greater haste would have benefited this child, especially when there were still exceptions to the proposed IEP to be discussed. Additionally, the guardians report frustration with the perceived avoidance when they communicate with the District. This is not ideal and the Department hopes that the District will prioritize resolving these disputes and home communication in the future.

#### **Allegation 5—Partially Substantiated**

The fifth allegation in this matter is that the [REDACTED] District failed to comply with Ed 1120.03(a), which, in relevant part provides that:

The LEA must provide a written prior notice (WPN) within reasonable time, but not less than 14 days, before the LEA proposes a change or refuses to change the referral, evaluation, determination of eligibility, IEP, or educational placement of a child or provision of FAPE to a child.

The complainant asserts that the District did not provide a WPN for an IEP team meeting held on [REDACTED]. Additionally, the complainant asserts that discussions related to proposed or rejected changes to special education were not accurately documented in the WPN for a meeting that occurred on [REDACTED].

The investigation into this allegation was able to confirm that the family did receive the WPNs from the IEP meetings that took place on [REDACTED]. However, there was no record of the received date or method of delivery, which the Department advises the District to review. Systems should exist to provide families with these documents upon their written request, rather than them having to physically gather them from the District office, if that were the case. As for the dispute over the [REDACTED] meeting WPN, there was no way for the investigator to determine if rejected proposals were accurately captured in the document.

#### **Allegation 6—Partially Substantiated**

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

A copy of any document signed by a parent in which the parent gives consent in writing shall be provided to the parent.

Specifically, the complainant asserts that the District did not provide a copy of a proposed IEP requiring consent stemming from the [REDACTED], IEP team meeting.

The guardians were not provided with a copy of the IEP that was signed in consent until more than a month following their signature. While there is no time frame included in this statute, the Department is concerned that the guardians had to visit the District office and review the child's educational record in order to procure a copy of the IEP.

**Allegation 7—Substantiated**

The final allegation in this matter is that the [REDACTED] District failed to comply with 34 CFR 300.320(a)(3)(ii), which, in relevant part provides that:

Periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

The complainant asserts that the District did not provide a progress note for the last trimester of the [REDACTED] school year in concurrence with the issuance of report cards.

Federal law requires that periodic reports on goal progress be concurrent with the issuance of report cards. While the period [REDACTED] is a short amount of time, presumably there was still services being provided that address the speech goal areas, or, at least, an explanation of why the skills had not yet been introduced. The Department understands the District's desire to be efficient. However, it is a common practice for school districts to hold annual review meetings at the end of the school year. This common practice cannot supplant the LEA's responsibility for providing progress notes concurrent with the issuance of report cards as mandated by federal law.

**Conclusion**

The trust between the family and District has been damaged because of delayed communication, missed services, and various obstacles in accessing special education records. The Department hopes that, after going through the special education complaint process pursuant to Ed 1121, the family and District begin with a *tabula rasa* and re-establish a positive rapport.

**Corrective Action**

The [REDACTED] District will review its Resource Room and [REDACTED] Programs for compliance with Ed 1113.10 and Ed 1113.11. If there is no distinction in space or staff, the District must create distinctly separate spaces for these programs. 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]

The [REDACTED] District will review their internal hiring procedures to ensure compliance with state and federal requirements. Evidence of this corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by [REDACTED]

The [REDACTED] District will provide compensatory speech services for the time the student was enrolled at [REDACTED]. Evidence of this corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by [REDACTED]

The [REDACTED] District will transcribe, at minimum, the next IEP team meeting and provide a copy of the transcription for the guardians. If no WPN results from that meeting, then the child's next annual IEP review should also be transcribed. Evidence of this 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 policies and procedures related to providing parents copies of paperwork and revise, if necessary, to ensure compliance with state and federal requirements. The District will provide training on these compliant policies and procedures to relevant staff. 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 review their policies and procedures related to progress notes and revise, if necessary, to ensure compliance with state and federal requirements. The District will provide training on these compliant policies and procedures to relevant staff. Evidence of this 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 family will work together to resolve any differences that may arise.

Frank Edelblut  
Commissioner of Education  
NH Department of Education