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DEPARTMENT OF EDUCATION
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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Special Education Complaint # 24-18

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support, has concluded its investigation of complaint # 24-18. 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 children with disabilities.

By way of relevant information, the student is a [REDACTED] at [REDACTED] School who has an Individualized Education Program (IEP) with the primary disability category of Other Health Impairments and a secondary disability category of Speech/Language Impairment. The student has been diagnosed with [REDACTED]. These diagnoses are relevant because they affect the student's sleep patterns, school attendance, and duration of bathroom breaks, in addition to overall executive function.

As part of the special education services to address executive functioning skills, the student is enrolled in a class called [REDACTED], which is taught by a special education teacher to address students' IEP goals and objectives, twice per day for 40 minutes each session. The student, due to the aforementioned disabilities, is frequently tardy to school, which impacts the student's attendance in the Foundations of Learning class and the special education services therein. The student's [REDACTED]

progress report on the executive functioning goal in the IEP states that the student missed 39 sessions due to attendance. However, the student, who is enrolled in primarily honors-level classes, had an assignment completion that ranged from 87% to 100% across academic classes and reportedly used a Google spreadsheet to keep track of assigned work. This progress report also details that the student had mastered one objective and demonstrated improvement on two other objectives associated with the executive functioning goal. It is important to note that the direct instruction on executive functioning is also included in the student's transition plan, a component of the IEP that considers what special education and related services need to be offered in high school so as to support the student's post-graduation plans.

In the student's IEP that spans [REDACTED], the transition plan includes the executive function direct instruction, career exploration with the guidance department, coping skills direct instruction with a counselor, and pragmatic language direct instruction with a speech language pathologist. It has already been established that tardiness to school impeded access to some of the executive function services. There was evidence to suggest that career exploration was supported through various activities including Naviance career exploration, course selection support, PSAT and SAT exams with accommodations, and support with composing college essays and applications. Evidence confirmed that the student received the required counseling services. However, due to lack of staff, there has been no speech language pathologist to provide the pragmatic language instruction.

The student has 2, 30-minute sessions per week of group speech services mandated by the IEP. On [REDACTED] the District notified parents via an emailed letter that the District had a vacancy for a speech language pathologist and that they were hoping the student could begin services via telehealth upon the provider's completion of background check paperwork. There was no evidence to suggest that the telehealth services were ever provided. Moreover, the District emailed the parent on [REDACTED], stating that the District continued to track all missing speech services and would make up all missed services once they acquired a provider. This communication clearly indicates that speech services have not been provided.

Allegation 1—Partially 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:

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] has not provided speech services or executive functioning services in accordance with the student's IEP.

The portion of the allegation related to the provision of speech services is substantiated since the District states that, due to staffing shortages, these services have not been provided during the [REDACTED] school year. The portion of the allegation related to the provision of executive functioning services is unsubstantiated for two reasons: 1) the legal obligation to provide the sessions has been met, and 2) the student has not been impeded from making progress in the general curriculum even with sessions missed due to tardiness. The Department hopes that the District will support the student with any and all tardiness related to the student's medical needs by reviewing the time, frequency, or duration of those services.

Allegation 2— Partially Substantiated

The second allegation in this matter is that the [REDACTED] District failed to comply with 34 CFR 300.43(a)(2), which, in relevant part provides that:

The transition services means a coordinated set of activities for a student with a disability that is based on the individual student’s needs, taking into account the student’s strengths, preferences, and interests.

Specifically, the complainant asserts that the transition services being offered to the student are generic to all students and do not cater to the student’s individual needs.

The Individuals with Disabilities Education Act (IDEA) states that transition services are “designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities...”¹ The transition plan included in the student’s IEP includes specially designed instruction in executive functioning, pragmatic language, and coping skills, as well as career exploration supports from the guidance department that may be available to all students through structured activities, scheduled appointments, etc. As stated in the previous allegation, there are inherent problems when the specially designed instruction mandated by the IEP is either frequently missed or unavailable. This leaves the student with the limited amount of specially designed instruction that is accessible and then the supports that are generally available to all students. As such, the Department believes the overall structure and language of the transition plan as written in the IEP meets the legal definition. However, the actual implementation falls short as several of the individualized portions of the transition plan cannot be accessed.

In the process of investigating this complaint, the Department found that the parent had requested an amendment to the student’s IEP to add various supports through transition services on [REDACTED] and the District took a month to respond with possible dates for a meeting to discuss. Had the parent requested an IEP team meeting, which an IEP amendment does not always require, the District would have been obligated to respond to this request within 21 days pursuant to Ed 1109.06(c). Taking a month to respond with possible dates seems to delay the valid discussion the parent desired to have. The outcome of the meeting on [REDACTED], was an action plan with concrete steps attached as an addendum to the investigator’s report.

Conclusion

Transition services are meant to improve achievement in post-graduation activities. Success in college, especially for students with disabilities, is a vital conversation to have, especially since students with disabilities graduate college at rates approximately 20 percentage points less than non-disabled peers.²

¹ 34 CFR 300.43(a)(1): Transition services means a coordinated set of activities for a child with a disability that— Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

² The New England Secondary School Consortium (NESSC) Common Data Project 2022 Annual Report provides transparent, comparable data about high school and college outcomes from across the New England states. NESSC reports a 6-year college graduation rate of 44% for students with disabilities compared to a rate of 69% for non-disabled peers for years spanning 2015-2021. Additionally, the U.S. Department of Education’s National Center for Education Statistics (NCES) conducts longitudinal studies tracking beginning postsecondary students. The NCES reports a 6-year college graduation rate of 49.5% for students with disabilities versus a 68% rate for non-disabled peers in years spanning 2011-2017.

While parties may have disagreements about what transition services may be in an IEP, and may utilize dispute resolution procedures such as neutral conference, mediation, or due process hearing to resolve those disagreements, the high school years are pivotal in setting students with disabilities up for long-term success. As such, the Department encourages the District to evaluate the transition services and guidance it offers students with disabilities to maximize post-secondary education success.

Corrective Action

The [REDACTED] District will provide all compensatory speech services that have been missed during the complaint period. 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 policies related to scheduling IEP team meetings to be in accordance with state and federal guidelines. 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].

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