



Frank Edelblut
Commissioner

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
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[REDACTED]

Re: Special Education Complaint # 24-25

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support (“the Department”), has concluded its investigation of complaint # 24-25. 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 indicating 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 background information, the 22-year-old student is enrolled in the [REDACTED] program at [REDACTED] School. The student’s age is relevant to this special education complaint as RSA 186-C:2(I) defines the age range of a child with a disability as “between the ages of 3 and 21, inclusive,” meaning up to 22 years of age. Even though the student is 22-years-old, the violations occurred when the student was 21-years-old and thereby eligible for special education and related services. Moreover, in this particular case, the family and [REDACTED] (“the District”) had a settlement agreement that obligated the District to continue special education and related services for 101 days past the student’s 22nd birthday. As such, the special education complaint process is the appropriate avenue to levy allegations for violations of special education law that take place during that time, even if the student is 22 years old.

The submitted complaint was narrowly tailored to the provision of feeding/swallow individual services provided by a speech language pathologist once a month for 30 minutes. While the student had 2 IEPs

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during the complaint period, the former IEP did not contain any services related to feeding/swallowing. The student's current IEP dated ██████████, was signed in consent on ██████████. The date the IEP was signed in consent is important because the District provided 3 sessions of feeding/swallowing services in February, March, and April ██████████ that occurred prior to the IEP being signed in consent. So, while these sessions certainly benefitted the student, these services happened prior to consent, and therefore the District was not legally obligated to provide them.

Therefore, during the complaint period, the student was entitled to 150 minutes of feeding/swallowing services (5 monthly sessions [excluding July and August] multiplied by 30 minutes per session). However, due to staffing shortages, the District was unable to provide the sessions in September, October, or November ██████████, totaling 90 minutes of missed feeding/swallowing services.

The Department notes that since filing the complaint in early December ██████████, the District had acquired a speech language pathologist to provide the feeding/swallowing services.

Allegation 1—Substantiated

The sole allegation in this matter is that the ██████████ 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 child with a disability in accordance with the child's IEP.

The complainant asserts that the District has not provided the amount of direct services focusing on feeding/swallowing that has been mandated by the student's IEP. The complainant alleges that these inconsistencies and/or absence of service have been occurring since ██████████; however, the complaint period would span from ██████████.

As explained previously, the student missed out on several sessions of feeding/swallowing services due to a shortage of staff. Therefore, this allegation is substantiated because the District failed to provide the those services.

Conclusion

Staffing shortages, particularly in very targeted areas of related services, can put students, families, and school districts in problematic positions. Any interruption in services can be, understandably, frustrating to parents and students, especially those who are approaching the age of 22. Still, children with disabilities are entitled to a free appropriate public education and should expect to receive all services that were determined by the IEP team to be essential to their education. The Department hopes that the IEP team will keep in frequent contact to problem-solve any issues that may occur in the future.

Corrective Action

The ██████████ District will provide 90 minutes of compensatory individual feeding/swallowing services by a speech language pathologist. 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