



Frank Edelblut
Commissioner

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
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[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Special Education Complaint # 24-36

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support (“the Department”), has concluded its investigation of complaint # 24-36. 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 information, the child is in the [REDACTED] grade at [REDACTED] School in the [REDACTED] (“the District”). The child qualifies for an Individualized Education Program (IEP) under the disability category of Specific Learning Disability. The current IEP notes that reading rate and mathematics are areas of challenge.

During the complaint period, the child had one IEP dated [REDACTED], that was signed in consent by the parent on [REDACTED]. This IEP contains the following special education and related services:

- Written Expression-Specially Designed Instruction by a Special Education Teacher: 4 sessions/week of 15 minutes in a regular education setting;
- Mathematics-Specially Designed Instruction by a Special Education Teacher: 4 sessions/week of 15 minutes in a regular education setting;

- Executive Functioning Skills-Specially Designed Instruction by a Special Education Teacher: 3 sessions/week of 15 minutes in a regular education setting; and
- Academic Support by a Paraeducator: 1 session/day of 2 hours in a regular education setting.

This complaint is bifurcated into allegations that are: (1) procedural, in the failure to provide the parent with an updated proposed IEP draft annually and (2) substantive, in the failure to provide services. First, the District acknowledges in an affidavit provided to the complaint investigator that an IEP team meeting did occur on [REDACTED], to review the child's progress and discuss possible updates to the child's IEP. However, the District acknowledges that the parent was not provided with a draft to review for consent until [REDACTED], 4 days after the child's active IEP had expired. A written prior notice (WPN) dated [REDACTED], acknowledges a new proposed IEP dated [REDACTED], to [REDACTED] [REDACTED] which provides the parent with 14 days to review and provide consent to the proposed IEP pursuant to Ed 1120.04(c).¹

According to the District, the child's special education case manager had a schedule outlining when the child was to receive special education services. However, the complaint investigator could find no supporting documentation such as progress logs, data, checklists, communications, or any findings that confirmed special education services were provided in accordance with the child's IEP in the fall of the [REDACTED] school year. The complaint investigator reviewed the child's special education progress notes to see if data or evidence of services were provided. The progress notes written by the case manager were perfunctory, noting only if the skill was partially demonstrated, attempted, or not yet introduced, without data or indications of periodic checks for understanding. This is in violation of Ed 1109.04(b), which would require the District to maintain written evidence documenting the implementation of individual IEPs.²

It is worth noting that the progress notes written by a different case manager during the child's previous school year did contain the requisite data. This suggests to the Department that this case manager may have not performed all duties assigned and, therefore, the Department will review this matter further outside of this specific complaint.

Allegation 1—Substantiated

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

The local education agency (LEA) annually, shall conduct at or near the end of the term of each IEP, a meeting for the purpose of assessing the effectiveness of the present plan and to design an IEP, including extended school year services when appropriate.

The complainant asserts that the District has allowed the child's IEP to expire since [REDACTED], and had not shared any draft or proposed IEP.

¹ Ed 1120.04(c): "Parents of children with disabilities shall have 14 days after the sending of written prior notice under Ed 1120.03 to sign documents included with the notice to indicate consent, or refusal of consent or partial consent..."

² Ed 1109.04(b): "The LEA shall maintain written evidence documenting implementation of the IEP, including: (1) Special education and related services provided; (2) Supplementary aids and services provided; (3) Programs modifications made; and (4) Supports provided for school personnel implementing the IEP."

While the District did convene the IEP team to review the child's progress, a proposed IEP was not presented to the parent to review and provide consent prior to the expiration of the child's former IEP. The Department acknowledges that a new IEP has since been presented to the parent. However, given that a procedural lapse did occur, the Department deems this allegation to be substantiated.

Allegation 2—Substantiated

The second allegation in this matter is that the [REDACTED] District failed to comply with Ed 1109.03(a), which, in relevant part, provides that:

The 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 did not provide special education services in accordance with the child's IEP in the fall of the 2023-2024 school year.

Evidence provided by the District to support that the special education teacher was providing the child's services was limited to a schedule. Reports by regular education teacher colleagues cast doubt on the fact that the child was provided special education services with any consistency or regularity. The District was unable to provide any additional evidence—service logs, data collection methods, student work samples, etc.—that the child was receiving the special education services mandated by the IEP. While there is reason to believe that the special education teacher was following the assigned schedule of classes, the implementation of services within the regular education setting is not clear. As such, the Department considers the [REDACTED] as the student having received inadequate or no special education services. Therefore, the child was denied a free appropriate public education (FAPE) during this time period. Therefore, the Department deems this allegation substantiated.

Conclusion

The Department acknowledges the District's various efforts to reform processes and make operational improvements to support better student outcomes. The District's efforts to train and monitor its special education case managers will hopefully mitigate that any potential such errors may recur. While this case appears to stem from the actions of a specific case manager, the Department must abide by state regulations and assign appropriate corrective actions to remediate the denial of these services and appropriate future provisions of services for all children with disabilities.

Corrective Action

The [REDACTED] District will review their internal policies and procedures related to annual IEP review and development and revise, as necessary, to ensure compliance with state and federal requirements. The District will train their special education case managers on these policies and procedures. 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 and procedures related to IEP implementation, service logs, and data collection and revise, as necessary, to ensure compliance with state and federal requirements. The District will train their special education case managers on these policies and procedures. 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 provide the following compensatory services by a special education teacher in a setting agreed upon by the IEP team: 660 minutes of specially designed instruction in written expression, 660 minutes of specially designed instruction in math, and 495 minutes of specially designed instruction in executive function skills. The IEP team will determine if additional support in the regular education setting from a paraeducator is required to compensate for missed specially designed instruction. The IEP team may also review if Extended School Year (ESY) services are necessary to provide these compensatory services. Evidence of this corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by ██████████

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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