



Frank Edelblut
Commissioner

Christine M. Brennan
Deputy Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
25 Hall Street
Concord, NH 03301
TEL. (603) 271-3495

[REDACTED]

Re: Special Education Complaint # 24-37

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support (“the Department”), has concluded its investigation of complaint # 24-37. 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 attending [REDACTED] in the [REDACTED] (“the District”). During the 2019-2020 school year, the child was enrolled in kindergarten within the District. At the time, the child was provided a 504 Plan due to a diagnosis of attention deficit hyperactivity disorder (ADHD). However, from the beginning of the COVID-19 pandemic in March 2020 until [REDACTED], the child was home-educated. During those years of home-education, the child accelerated through a grade level and was accessing [REDACTED] grade curriculum; however, had the child continued to attend elementary school within the District, the child would be enrolled in [REDACTED] grade with age-related peers.

The parent visited the school and spoke with the director of special education on [REDACTED]. During this visit, the parent verbally requested that the child be evaluated for special education. The director indicated that staff would first observe how the student performed in school, and the parent was encouraged to enroll the child in the [REDACTED] grade. The reasoning behind this suggestion, as reported by

the parent and District, is that delaying the evaluation would allow for staff to assess the child's skills in class.

Days later, on [REDACTED], the parent sent an email to the director of special education, superintendent, and two other district staff members requesting that the child be evaluated for special education. There is no evidence of response to that email by any recipients. A month later, on [REDACTED], the parent submitted a district referral form for special education. The next day, the director of special education confirmed receipt of that referral and offered a meeting date of [REDACTED], to discuss the disposition of referral. The IEP team meeting was held on that date, at which time the IEP team proposed evaluations on the suspected educational disability of other health impairment (OHI).

Allegation 1—Substantiated

The sole allegation in this matter is that the District failed to comply with Ed 1106.01(d), which, in relevant part provides that:

The IEP team must be convened within 15 business dates of receipt of a referral to determine its disposition of the referral.

Specifically, the complainant asserts that the District exceeded the 15-business-day timeline to convene the IEP team to discuss the referral for special education that the parent submitted on [REDACTED].¹

It was only after the parent completed the District's referral form on [REDACTED] that the District responded to schedule the disposition of referral meeting, which occurred within the 15-business-day timeline. However, in New Hampshire, there is no regulation that mandates that a referral must be submitted in writing. Therefore, the parent's initial referral for special education can be considered the verbal conversation that both parties agree occurred on [REDACTED]. Moreover, when the parent submitted a referral in writing on [REDACTED], there was no disposition of referral meeting. As a result, the Department substantiates this allegation.

Conclusion

Oftentimes in special education there is much emphasis placed on having written documentation. However, when conversations such as the one between the parent and director of special education on [REDACTED] occur, it becomes a gray area of what information has been documented and how the special education process has been followed. While the Department understands the District's proposal to observe the child prior to evaluating, it was not documented within the special education process. The Department hopes that situation will better inform the District's policies and procedures regarding referrals moving forward.

Corrective Action

The [REDACTED] District will evaluate the child in all areas of suspected disability within the 60-day timeline unless there is a mutually agreed-upon extension of no more than 30 days. Evidence of the

¹ The complaint submitted to the Department stated that the parent had submitted a referral on [REDACTED]. However, upon investigation into the facts of this case, the actual date the parent sent an email referral to the District was on [REDACTED]. The Department wanted to distinguish between the date mentioned in the filed complaint and the factual outcomes of the investigation.

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 referral intake and processing and revise, as necessary, to ensure compliance with state and federal requirements. All relevant district staff will then be trained on these policies and procedures. 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