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Commissioner

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

[REDACTED]

RE: Special Education Complaint # 24-38

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support (“the Department”), has concluded its investigation of complaint # 24-38. 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 student is in the [REDACTED] grade at [REDACTED] 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 and mathematics are areas of challenge. The student was diagnosed with dyslexia in [REDACTED]. In [REDACTED], the student moved from the [REDACTED] to the [REDACTED] District.

When a student transfers school districts over the summer, the new district would convene an IEP team meeting to develop a new IEP for the student as the new school year begins. When students transfer school districts during the school year, the new district must do its best to honor the existing IEP until the IEP

team meets to adopt the existing IEP or to develop a new IEP.¹ In both circumstances, it is important for the IEP team to meet expediently so that the student is supported without disruption. In this case, the student was registered in the District on [REDACTED]. At this time, the step-parent reached out to the District personnel requesting an IEP team meeting to discuss the transition between districts and schools. The step-parent did not receive a response from District staff at that time, nor when the step-parent emailed again on [REDACTED]. When the step-parent emailed again on [REDACTED], District staff responded and an IEP team meeting was scheduled for [REDACTED]. The District states that they made several attempts to contact the child's biological mother to schedule a meeting during this time.

From [REDACTED], the IEP team decided to implement the child's IEP from the previous school district, dated [REDACTED]. The services within that IEP are as follows:

- Reading – Specially Designed Instruction by a Special Education Teacher: 4 sessions of 45 minutes/week in a Special Education Setting;
- Mathematics – Specially Designed Instruction by a Special Education Teacher: 2 sessions of 30 minutes/week in a Regular Education Setting; and
- Academic Support by a Paraeducator: 1 session of 30 minutes/day in a Regular Education Setting.

The Department reviewed the documentation maintained by the case manager that contained a daily schedule and a brief note of what concepts were being covered. Examples of such entries include "[REDACTED] Grade Reading Group [Child's Name] decoding and comp of science vocabulary" and "[REDACTED] Grade Math [Child's Name] -Support executive functioning during instruction, -Additional instruction during follow up activity". While these pages confirm the case manager's schedule and planning time, they do not contain any specific work or notes regarding assignments pertaining to progress or lack of progress for the child. Additionally, this document does not correlate with the District's submitted affidavit of March 25, 2024, which stated that the case manager did not maintain a daily log. There was no documentation submitted that confirms the child received the paraeducator support mandated by the IEP.

In this complaint, there were two IEP team meetings that were the basis of these allegations. The first meeting occurred on October 2, 2023, where participants were listed as the parents and case manager. There was no regular education teacher, as required by law, nor was there a District representative knowledgeable of the availability of resources (commonly referred to as an LEA representative). There is also no documented excusal of either of these members. Additionally, the meeting on December 8, 2023, included the parents, a regular education teacher, the case manager, but no LEA representative.

Allegation 1—Substantiated

The first allegation in this matter is that the School District failed to comply with Ed1109.06(c), 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.

Specifically, the complainant asserts that the District did not schedule an IEP team meeting within 21 days of the parent's request on August 8, 2023. The complainant states that the IEP team meeting did not occur until October 2, 2023.

¹ 34 CFR 300.323(e)

The District does not dispute the facts surrounding this allegation. The time between the step-parent's request for an IEP team meeting on [REDACTED], and the meeting that occurred on [REDACTED], spans 55 days. Due to this delay, the Department deems this allegation substantiated.

Allegation 2—Partially Substantiated

The second allegation in this matter is that the School 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.

Specifically, the complainant asserts that the District did not provide special education services or related services mandated by the IEP from [REDACTED]. Additionally, the complainant is concerned that accommodations were not provided because regular education teachers were not aware of the student's IEP.

While there is reason to believe that the special education teacher was following the assigned schedule of classes, the documentation submitted to the Department's investigator does not confirm that specially designed instruction was provided. Therefore, the Department deems this portion of the allegation substantiated.

Regarding the portion of the allegation that accommodations were not provided because regular education teachers were not aware of the student's IEP, the District uses PowerSchool as a student information system. In PowerSchool, the child was designated as having an IEP, allowing regular education teachers to access a copy of the IEP and subsequently implement accommodations. While the regular education teacher mentions that the student was taught how to use a reading pen, and teachers had access to the student's IEP in PowerSchool, there is insufficient evidence to conclude that the student received all accommodations within the IEP on a regular basis. Therefore, this portion of the allegation is partially substantiated.

Allegation 3—Substantiated

The third allegation in this matter is that the School District failed to comply with 34 CFR 300.323(e), which, in relevant part provides that:

If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either—(1) Adopts the child's IEP from the previous public agency; or (2) Develops, adopts, and implements a new IEP.

The complainant asserts that the District did not provide comparable services to the child and failed to develop a new IEP when the student moved to the SAU.

As previously established, the student transferred to the District in [REDACTED]. However, the IEP team did not meet until [REDACTED], to discuss the development of a new IEP. Additionally, there is not sufficient documentation to support that comparable services were provided in the interim. Therefore, the Department substantiates this allegation.

Allegation 4—Substantiated

The fourth allegation in this matter is that the School District failed to comply with 34 CFR 300.321(a), which, in relevant part provides that:

The LEA must ensure that the IEP team be comprised of the parents, one regular education teacher, one special education teacher, a representative of the school district, a professional who can interpret evaluation results, the student, when appropriate, and any other individuals with knowledge of the student who may be invited by the parent or school district.

Specifically, the complainant asserts that the District did not have all necessary members at the IEP team meetings that occurred on [REDACTED].

For both meetings, essential IEP team members were not present. Both meetings lacked an LEA representative, who is meant to provide expertise related to resources available to students who may be struggling, which may include specialized interventions, allocation of additional staff, or possible out-of-district placement, as needed. While some special education case managers may sign in to the meeting as an LEA representative, the case manager in this case did not. This impeded the decision-making efficiency of the IEP team because the case manager had to consult with District administration following the meeting regarding Orton-Gillingham reading instruction and compensatory services. Additionally, the [REDACTED] meeting lacked the participation from a regular education teacher, whether physically present in the meeting or in writing. Based on these facts, the Department substantiates this allegation.

Allegation 5—Substantiated

The final allegation in this matter is that the School District failed to comply with Ed1120.03(a), which, in relevant part provides that:

A parent must be notified via 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.

Specifically, the complainant asserts that the District did not provide a WPN prior to implementing, or documenting the refusal to implement, proposed changes from an IEP team meeting dated [REDACTED].

At the [REDACTED] meeting, the IEP team had substantive conversations about changes in the student's IEP that required documentation in a WPN. A WPN was created and dated [REDACTED]. This would make sense given that changes would be implemented quickly. However, the mother emailed the case manager on [REDACTED] stating that she had not yet received a WPN from the [REDACTED] meeting. It is not clear if the mother received a response from the case manager. The student's father and step-mother received a copy of the WPN via postal mail delivered on [REDACTED]. However, documents were not sent to the mother. It is clear that the WPN was provided in a delayed fashion without providing the parents with sufficient notice of changes to the provision of FAPE. Therefore, the Department substantiates this allegation.

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 new student intake and processing 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 implementing accommodations 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]

The [REDACTED] District will review their internal policies and procedures related to ensuring require IEP team members attendance 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 provide 600 minutes of specially designed instruction in math by a special education teacher in a setting agreed upon by the IEP team. This is in addition to the 25 hours of compensatory Orton-Gillingham reading services by an OG-certified instructor. 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 [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