



Frank Edelblut
Commissioner

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Deputy Commissioner

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Special Education Complaint # 24-44

Dear [REDACTED]:

The New Hampshire Department of Education, Governance Unit ("the Department"), has concluded its investigation of complaint # 24-44. 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 currently attends the [REDACTED] grade at [REDACTED] the [REDACTED] ("the District"). The crux of this complaint rests on whether the child's Individualized Education Program (IEP) remained active from when the child ended [REDACTED] grade at [REDACTED] [REDACTED] and began attending [REDACTED], or whether the appropriate transition of documentation and paperwork occurred for the child's IEP to be implemented at the new school.

While the complaint period spans [REDACTED], there were procedural errors that occurred outside of the complaint period that have ramifications in this case. Therefore, the Department must reference events that occurred outside of the complaint period in order to develop understanding for the events that occurred within the complaint period. The child's most recently agreed-upon IEP is dated [REDACTED], and that was signed in consent by the parent on [REDACTED] 22. This IEP indicated that the child would receive two sessions per month of speech therapy and 90 sessions per year

of specially designed instruction in reading. The Department will note that it advises against listing services on an annual basis as it does not ensure continuity to the provision of services.

Records show that the child participated in a triennial evaluation in [REDACTED], with assessments completed in academics and communication. The Department will note that there is no evidence of signed permission to administer the assessments. The IEP team convened later that month to discuss the results of the evaluation and determine eligibility for special education. The written prior notice (WPN) for this meeting dated [REDACTED], states that the District proposed that the child was no longer eligible for special education. The parent disagreed with that determination. IEP team meetings held in [REDACTED] also culminated in the District proposing that the child was no longer eligible for special education services. The parent consistently indicated disagreement with the District's proposals. The Department will note that the IEP team meeting in [REDACTED] did not have an accompanying WPN documenting the proposal to terminate special education. The Department could not find evidence that either party pursued dispute resolution procedures like mediation or administrative due process hearing as this prolonged disagreement occurred.

The miscommunication and disagreement continued when the child began attending [REDACTED]. During this time, the child's IEP from [REDACTED] was still active. Therefore, the parent was under the impression that the IEP was still in place as the parent had never agreed to terminating eligibility. The District did not communicate the child's status and appropriately transfer documentation from elementary to middle school. In a memorandum to the Department's complaints investigator, the District acknowledges that an IEP was not developed in [REDACTED] and, as a result, services were not provided during the [REDACTED] school year. A progress report dated [REDACTED], notes that the child had demonstrated mastery on the IEP's speech goal and partial mastery of the reading goal. However, after this complaint was filed, on [REDACTED], the IEP team convened to discuss the child's eligibility and the parent agreed to terminate eligibility. The District proposed 6 to 8, 20-minute Response to Intervention (RTI) speech sessions, one time per week.

Allegation 1—Substantiated

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

Specifically, the complainant asserts that [REDACTED] did not provide the speech services as mandated by the child's IEP during the complaint period [REDACTED].

While the District representatives on the IEP team had proposed terminating eligibility for special education, they were still legally responsible for implementing the IEP until the parent consented to that. As previously established, the District does not refute the fact that special education and related services were not provided in accordance with the child's most recently agreed upon IEP. As a result, the child did not receive a free appropriate public education (FAPE), and the Department substantiates this allegation.

Allegation 2—Unsubstantiated

The second and final allegation in this matter is that the District failed to comply with Ed 1120.04(a), which, in relevant part provides that:

The LEA shall obtain informed, written consent from the parent of a child with a disability prior to providing special education services, conducting an evaluation, renewal of the IEP and educational placement, or changing the nature or extent of the special education and/or related services.

Specifically, the complainant asserts that the District terminated the child's special education and related services without parental consent.

While there is nothing inherently wrong in proposing that a child is no longer eligible, especially when supported by evaluation data, parental participation and consent is a vital part of the special education process. Unfortunately, this disagreement and confusion over eligibility continued for well over a school year, leading to procedural errors in not properly documenting the child's special education status and culminating in the child not receiving services when they were required. So, while there is no indication that the District technically terminated the child's eligibility without parental consent, the lapse in services resulted in a lack of FAPE and the cessation of services feels almost like a termination would. However, when considering the narrowly tailored scope of this allegation, the Department does not substantiate this allegation as eligibility was never terminated without parental consent.

Conclusion

When there are disagreements within the IEP team, sometimes it is best to have a neutral third party weigh in to help settle the issue. If the District really felt so strongly that the child needed to be discharged, then it should have pursued dispute resolution procedures in order to bring about an agreement. This was a case of a disagreement that went on for too long, which resulted in the child missing services that were legally required. The Department hopes that, should the IEP be in disagreement in the future, the District will pursue dispute resolution procedures as necessary to allow the IEP team to work collaboratively, productively, and respectfully in the child's best interest.

Corrective Action

The [REDACTED] District will convene an IEP team meeting to determine if there is a need for compensatory reading and speech services during the time the student was not receiving special education. 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 Written Prior Notices (WPNs) and revise, as necessary, to ensure compliance with state and federal requirements. The District will train relevant staff on these compliant 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