



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 # 24-46

Dear [REDACTED]

The New Hampshire Department of Education, Governance Unit ("the Department"), has concluded its investigation of complaint # 24-46. 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 enrolled in [REDACTED] within the [REDACTED] ("the District"). During the complaint period, the child had two Individualized Education Programs (IEP). The child's former IEP expired on [REDACTED]. As a result, the IEP team convened to conduct an annual review on [REDACTED].

At that meeting, a new IEP was developed that would begin on [REDACTED], and all IEP team members were verbally in agreement with the proposed IEP. The IEP was to be put in finalized form and sent home in the child's backpack for the parents to review, sign and return to the school in the child's backpack. The services that were included in the proposed IEP included 2.5 hours weekly in specially designed writing instruction to be provided by a special education teacher, as well as a monthly 15-minute speech consult with a speech language pathologist.

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The parents signed the proposed IEP in consent on ██████████ the day following the IEP team meeting, and put the IEP in the child's backpack as agreed. The problem was that the signed paperwork remained in the child's backpack for more than 14 days. The parents made the superintendent aware of the situation on ██████████. Action was taken by school personnel immediately, who retrieved the IEP and input all paperwork into NHSEIS, the state special education information system. However, on ██████████, the child was absent from school, and the following week was February vacation. As a result, when it came time for services in the new IEP to begin, school was out of session.

Therefore, the Department reviewed if the services mandated by the former IEP were implemented with fidelity. During the time between ██████████, all services were provided except for when there was an assembly, a field trip, a half-day, and a child absence.

When the District returned from February vacation, the District began the process of mailing home copies of the IEP that had been signed in consent. The District acknowledges that there was an error which resulted in the IEP of a different family's child being mailed to the complainant parents. The parents immediately notified the District and action was taken right away by the school principal to come to their house and retrieve that packet and rectify the situation. Although the District has made efforts to find out what happened to the IEP packet meant for the complainant's child, to date that packet has not been found. The District does not know if it was mailed to someone else, or maybe not mailed at all.

Allegation 1—Unsubstantiated

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 the District did not provide special education and related services between ██████████.

The Department reviewed the services legally mandated by the former IEP, which was still active during the time in question. As those services were all provided, there is no violation of special education law that resulted in a lack of a free appropriate public education (FAPE). However, the Department will take this opportunity to encourage the District to review its internal policies and procedures related to obtaining parental consent signatures so as to ensure efficiency and security of transported documents.

Allegation 2—Substantiated

The second allegation in this matter is that the District failed to comply with 34 CFR 300.623, which, in relevant part provides that:

The LEA must protect the confidentiality of personally identifiable information (PII) at collection, storage, disclosure, and destruction stages.

Specifically, the complainant asserts that the District failed to secure PII when it mailed home the IEP and special education-related paperwork of a different student.

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Oftentimes, the mailing of documents is performed by human beings, who can, with no malicious intent, make mistakes. When a mistake happens, it is important that all parties act in good faith to expediently correct it, collect and return documents as swiftly and securely as possible, and review practices and procedures for ways to prevent the mistake from recurring. The Department was pleased to hear that immediately upon learning of the mistake in this case, District staff and the affected families worked together to address this issue. However, it is disconcerting that there is uncertainty if the complainant's packet was ever mailed at all, and if so, to whom. Control of IEP documents that contain highly sensitive personally identifiable information in this district, given this mishap and the backpack incident, may be indicators of a broader problem. In this matter, by way of corrective action, the Department will require an internal review and revision of policies and procedures as a preventative measure.

Conclusion

It appears to the Department that the parents in this case are frustrated by the District's policies and procedures, which are generating a degree of mistrust in the special education process. The Department will encourage the IEP team to convene and establish how they can rebuild trust and work collaboratively in the best interests of the child to promote positive educational outcomes.

Corrective Action

The ██████████ District will review its internal policies related to confidentiality of personally identifiable information and revise, as necessary, to ensure compliance with state and federal requirements. The District will then train relevant staff on said 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 ██████████.

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