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STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
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[REDACTED]

[REDACTED]

Jennifer Gillis—Superintendent, SAU 37
20 Hecker Street
Manchester, NH 03102

Salina Millora—Director of Student Services and Wellness

Re: Special Education Complaint # 24-51

Dear [REDACTED], Dr. Gillis, and Ms. Millora:

The New Hampshire Department of Education, Governance Unit (“the Department”), has concluded its investigation of complaint # 24-51. 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 a resident of the Manchester School District (“the District”) but attends the [REDACTED] and also attends the [REDACTED], a program designed to help students with disabilities transition out of high school and prepare for employment, post-secondary education, or career training. The student has an Individualized Education Program (IEP) with a primary disability of Autism and a secondary disability of Other Health Impairment. The IEP is dated from [REDACTED], and was signed in consent by the parent on [REDACTED]. The services outlines in the IEP that are relevant to the complaint are as follows:

Special Education Services

- Mathematics-Specially Designed Instruction by a Special Education Teacher: 3 sessions/week of 30 minutes in a Regular Education Setting

- Reading-Specially Designed Instruction by a Special Education Teacher: 3 sessions/week of 30 minutes in a Regular Education Setting
- Written Expression- Specially Designed Instruction by a Special Education Teacher: 3 sessions/week of 30 minutes in a Regular Education Setting
- Specialized Instruction in Transition by a Special Education Teacher: 1 session/month of 30 minutes in a Regular Education Setting
- Behavior Management-Specially Designed Instruction by a Behavior Consultant: 1 session/week of 30 minutes in a Regular Education Setting

Related Services

- Speech Pathology-Group by a Speech Pathologist: 3 sessions/month of 30 minutes in a Regular Education Setting
- Counseling-Individual by a Behavior Consultant: 1 session/week of 30 minutes in a Regular Education Setting

Support for Personnel

- Consultation to staff from OT by an Occupational Therapist: 2 sessions/month of 15 minutes in a Regular Education Setting

Allegation 1—Partially Substantiated

The first allegation in this matter is that the School 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.

The complainant asserts that the District failed to provide the following services in accordance with the student's IEP during the complaint period: individual counseling, behavior management, occupational therapy consultation, transition, speech therapy, and direct instruction in reading and writing. The complainant also asserts that the District did not provide accommodations in the student's IEP that require a plan for the student to make up missing work and to provide the student with extended time on assignments and projects.

Individual Counseling, Occupational Therapy Consultation, Transition Services, Speech Therapy, Specially Designed Reading and Writing Instruction

There was evidence submitted to the Department that suggests that these aforementioned services were provided in the spring of the [REDACTED] school year. However, when the [REDACTED] school year began, there was a gap in these services from the time the school year started until approximately [REDACTED] when the occupational therapy consult, speech therapy, and specially designed instruction resumed. While there was a gap, the occupational therapist has since provided over 8 hours of consult time to staff based on service logs, exceeding the amount mandated by the IEP. Based on evidence provided, the individual counseling services were provided from [REDACTED] until they were removed from the IEP on [REDACTED]. Additionally, it does not appear to the Department that the transition services were provided until the student was enrolled in the [REDACTED] program in [REDACTED]. Given the age of the

student and the student's varying willingness to participate in these services, it is difficult for the Department to determine what exact compensatory services would be appropriate for the student. The Department understands that the IEP team, including the District's Director of Student Services and Wellness, is in frequent communication regarding compensatory services that resulted from these gaps.

Behavior Management

For this service specifically, the Department could not identify through any invoices or service logs provided to the Investigator, evidence that this service was provided to the student during the complaint period, extending back to the [REDACTED] school year. While an invoice for one session for provided from the behavior consultant to the school district, this was prior to the complaint period.

Missing Work Accommodation

According to the IEP amendment dated [REDACTED], the following accommodation is made available to the student:

[The student] will not be penalized for tardiness. It is medically documented that his frequent tardiness is directly related to his anxiety about school. The school will support [the student] in any work missed due to absences. [The parent] will provide documentation of the need for medical absences when he returns to school.

According to District staff reports, there is a school-wide meeting at the beginning of each school year regarding accommodations and IEPs. Teachers and paraprofessionals have the opportunity to review the accommodations of the students in their classes and participate in a question-and-answer session regarding the implementation of the accommodations. Additionally, any [REDACTED] staff who had specific questions were encouraged to set up meetings with the student's case manager.

So, while the accommodation within the IEP states that the student would be given the time and support to make up any work missed due to tardiness or absence, it does not include any more specific details or how or when or with whom the work would be made up. The District acknowledges that it is in the process of developing a concrete action plan with the parent to consider this.

Allegation 2—Partially Substantiated

The second allegation in this matter is that the District failed to comply with Ed 1107.01(d), which, in relevant part provides that:

For reevaluations, the evaluation process as defined in Ed 1102.02(n) shall be completed within 60 days after the receipt of parental consent to evaluate, or at the conclusion of any extension.

Specifically, the complainant asserts that the district did not complete evaluations within the 60-day timeline.

In a letter to the Department's Investigator, the District's Attorney writes: "The District acknowledges that the IEP team did not complete the evaluation process for the assessments consented to on [REDACTED] [REDACTED] [,] within the allotted time period." The District notes that the student is frequently absent from school and was absent on the day that testing was initially scheduled with a contracted service provider. Missing this assessment date meant that the next available date for completion was delayed for about a month. Additionally, the parent's complaint states that the IEP team was set to convene on [REDACTED],

but could not due to inclement weather. Moreover, there was a miscommunication regarding who—the parent or the District—would obtain the hearing and vision screenings for the evaluation. All told, the District had received permission to conduct evaluations on [REDACTED], and completed the evaluation review meeting on [REDACTED].

The student was struggling during this time, both with school attendance and with meeting competencies, as evidenced by the student's trimester 2 report card. While the District did not meet its 60-day deadline to complete the evaluation process, there were several mitigating factors that contributed to the delay. For this reason, the Department finds this allegation to be partially substantiated.

Conclusion

The Department will acknowledge the staffing challenges within the special education field. However, it is important that all students receive the supports and services obligated by their IEPs so as to receive a free appropriate public education (FAPE). In this case, the IEP team maintained frequent, collaborative communication regarding the student's services and progress, which is to be commended. The Department would like to see the IEP team solidify its plans for supporting the student while at [REDACTED].

Corrective Action

The Manchester School District will convene an IEP team meeting to determine what, if any, compensatory education is required. If the IEP team cannot agree, then there are dispute resolution procedures available to help resolve any disagreements. There should be some formalized documentation of the compensatory service decision in the form of a written prior notice (WPN). The District shall also formalize logistics regarding the student's missing work accommodation to help ensure compliance. 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 Manchester School District will review their list of contracted evaluators and explore possible additions, as necessary, to ensure there are ample options to better achieve compliance with state and federal timelines. 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