



Frank Edelblut
Commissioner

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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 # 24-58

Dear [REDACTED]

The New Hampshire Department of Education, Governance Unit (“the Department”), has concluded its investigation of complaint # 24-58. 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 entering the [REDACTED] grade at the [REDACTED] within the [REDACTED] (“the District”). The child was initially found eligible for an Individualized Education Program (IEP) in 2021, as a child with a developmental delay.

The IEP team convened on [REDACTED], to discuss the triennial evaluation of special education eligibility. At this meeting, the team proposed evaluations to determine whether the student was eligible for Other Health Impairment (anxiety) or Specific Learning Disability. Those evaluations included: academic performance, observation, communication, health, hearing screening, intelligence, motor ability, social-emotional, and vision screening. The parent gave written consent to these evaluations on [REDACTED], which would mean that the IEP team would need to convene to review the evaluations no later than [REDACTED].

On [REDACTED], the child's case manager reached out to the parent to express concern that the student was having difficulties participating in the evaluations and requested a 30-day extension to complete the evaluations. The parent agreed to the extension, which meant that the new deadline to convene the IEP team was [REDACTED]. Ultimately, the IEP team convened on [REDACTED].

However, despite the extension, the District did not complete the academic performance evaluation, which is an evaluation needed to determine a number of educational disabilities. The parent was not made aware that this evaluation had yet to be completed prior to the [REDACTED] meeting, besides the fact that the parent did not receive a copy of the evaluation report. Typically, regulations require that parents receive copies of examiners' reports at least 5 days prior to the IEP team meeting; however, the parent may waive this right and proceed with a meeting, as was done in this case.¹

So, when the IEP team convened on [REDACTED], it was difficult to deliberate eligibility determination using updated progress information because of that missing academic performance evaluation. At first, the District proposed finding the child eligible under the category of Emotional Disturbance. The parent disagreed and inquired about Specific Learning Disability. The District stated that elements of the intelligence evaluation indicate the child is not eligible, even though the essential academic performance evaluation was missing. Ultimately, the child was found eligible for a Speech Language Impairment and Developmental Delay using evaluation data from his initial evaluation 3 years prior. It is worth noting that neither Speech Language Impairment, Developmental Delay, or Emotional Disturbance were included as areas of concern in the written prior notice (WPN) from the evaluation planning meeting back on [REDACTED].

Allegation 1—Substantiated

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

For re-evaluations, the evaluation process shall be completed within 60 days after the receipt of parental consent to evaluate, or at the conclusion of any extension provided in Ed 1107.01(e).

Specifically, the complainant asserts that the District did not complete a triennial reevaluation. While the complaint acknowledges that the OT, speech and language, and psychoeducational evaluations were completed within the agreed-upon timeline, the complaint states that the academic evaluation, classroom observation, and hearing and vision screenings were not completed within the timeline.

The central issue of this case is that the District did not complete the required evaluations within the 90 total days (60 initial days plus 30 days for the extension) it had to complete them. While there can sometimes be difficulties in getting a student to participate in evaluations, the onus is still on the District to find ways to collect the data on the student's present abilities. Moreover, given that an academic performance evaluation was necessary for the IEP team to determine eligibility for the disability areas that were of noted concern, it was important that the IEP team be in open communication about how to ensure its completion. While the case manager indicated that there were concerns after the first 30 days, it

¹ Ed 1107.04:

(d) The LEA shall provide parents with copies of each examiner's evaluation and assessment report(s) at least 5 days prior to the meeting of the IEP team at which the evaluation and assessment report(s) will be discussed. The LEA shall provide the report(s) by sending the report(s) to the parents via US mail unless the parents and the LEA agree upon another method.

(e) The parent may waive, in writing, paragraph d.

remains unclear to the Department what attempts at problem-solving the original concerns were in the latter 60 days of the evaluation period.

Conclusion

The Department acknowledges that it can be challenging for evaluators when a child struggles to participate in assessments. When this happens, it is important that there is clear communication amongst the IEP team members. This allows for everyone to have an active discussion on how to mitigate the conditions impeding the child's participation and ensure timely completion of the assessment. It is times like these that having the valuable expertise of all the members of the IEP team can benefit the child.

Corrective Action

The [REDACTED] District will convene the IEP team to discuss how best to accurately assess the child's academic performance. Then, the IEP team must convene to review the results and any impacts on the child's eligibility for special education and provisions within the IEP. 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 convene the IEP team to discuss if the inability to complete the evaluation within the required timelines impacted the child's special education and related services. If there was an impact on said services, the IEP team must decide on and implement any compensatory services to make up for any missed learning opportunities. 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 evaluation timelines and revise, as necessary, to ensure compliance with state and federal requirements. This may include developing or revising a policy for when students are not engaging with the evaluation process and should include an element of parental communication. The Department finds the district failed to comply with relevant rules by failing to provide the parent with completed evaluation reports at least 5 days prior to the IEP team meeting. Relevant staff members shall be trained on these updated policies. 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