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DEPARTMENT OF EDUCATION  
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[REDACTED]

*Re: Special Education Complaint # 23-49*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 23-49. 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, a finding of noncompliance with special education law, then there will 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.

During the complaint period, the child had a 504 Plan for accommodations from the start of the [REDACTED] school year. A meeting to review the 504 Plan took place on [REDACTED] where the school and parents discussed whether to evaluate the child for special education or to keep the 504 Plan. In recollecting the meeting, the district remembers the parent opted for waiting on the referral and the parent remembers the district as advocating for seeing how the student performed with the 504 Plan.

While the 504 Plan was active during the autumn [REDACTED] there were numerous emails between the parent and various school personnel regarding concerns that the child was not making adequate progress and that the current 504 Plan was not working. On [REDACTED], the parent sent an email posing the question, "Should they evaluate for special education again?" There was no documentation of a response to that question.

On [REDACTED], the school received a referral for special education evaluation from one of the child's regular education teachers. Subsequently, the Individualized Education Program (IEP) team held a referral meeting on [REDACTED], and the next day generated the evaluation consent form, which the parent signed

on [REDACTED]. The evaluation period culminated in the eligibility determination meeting on [REDACTED], where the child was found eligible for special education services. An IEP was developed on [REDACTED], but there were still some outstanding assessments left to be included in the IEP. The IEP team met on [REDACTED] to discuss the incorporation of the data from those assessments. The parents ultimately signed the IEP on [REDACTED].

### **Allegation 1 – Partially Substantiated**

The first allegation in this matter is that the [REDACTED] District failed to comply with Ed 1106.01(d), which, in relevant part provides that:

The IEP team shall, within 15 business days of the referral for an evaluation for special education, give the parent written prior notice of its disposition of the referral.

Specifically, the complainant asserts that the district did not acknowledge her request for a referral for special education services that she made on [REDACTED].

In interviews with the Department Investigator and in emails sent to school staff, the parent believed she was asking for a referral to special education to consider the evaluation process in September [REDACTED]. Again, in October, the parent expressed, in writing, that a special education referral should be explored, but school staff did not respond to this concern. The school district was able to provide documentation that the referral forms, once they were officially filed by school personnel [REDACTED], were processed in accordance with the 15-day timeline.

### **Allegation 2 – Partially Substantiated**

The first allegation in this matter is that the [REDACTED] School District failed to comply with Ed 1109.06(c), which, in relevant part provides that:

The local education agency (LEA) will, within 21 days of receiving a written request, schedule and convene an IEP team meeting, or provide the parent, guardian, or adult student with written prior notice detailing why the LEA refuses to convene the IEP team.

Specifically, the complainant asserts that she requested an IEP team meeting on [REDACTED] but that meeting did not occur until [REDACTED].

In an email on [REDACTED] requesting an IEP team meeting, the parent requested that the purpose of the meeting be to go over the details and data from additional reports, including a neuropsychological assessment, that were not available at the time the IEP was developed on [REDACTED]. Once the district had the new reports, they scheduled and held the meeting on [REDACTED]. In the weeks between the IEP's development, the parent's team meeting request, and the actual meeting, many emails were exchanged by both the district and parent to indicate ongoing adjustments and discussions related to the IEP stemming from evaluation data. While the time between the date the parent requested the IEP team meeting and the meeting date exceeded the 21 days, extenuating circumstances regarding the district not having received the new evaluation data in time prevented them from honoring the parent's initial purpose for the meeting.

### **Allegation 3 – Unsubstantiated**

The third allegation in this matter is that the [REDACTED] School District failed to comply with Ed 1107.01(c), which, in relevant part provides that:

For initial evaluations, the evaluation process shall be completed within 60 days after receipt of parental consent to evaluate.

The complainant asserts that evaluations were not completed within the 60-day window after giving parental consent.

A consent for evaluation was signed by the parent on [REDACTED] and a meeting to review the results of the evaluation, which involved determining eligibility, was held on [REDACTED]. Therefore, [REDACTED] District met its obligation within the 60-day timeline.

#### **Allegation 4 – Unsubstantiated**

The final allegation in this matter is that the [REDACTED] school District failed to comply with 34 CFR 300.323(c), which, in relevant part provides that:

A meeting to develop an IEP for a child must be conducted within 30 days of a determination that the child needs special education and related services.

The complaint had originally alleged that the meeting did not occur within 30 days of determination, but it is noted that the parent had indicated to the Investigator that the parent wished to “rule out” this allegation. Given the formality of the special education complaint process, the Department must remark upon the allegation. The Department must find this allegation unsubstantiated because the meeting date to determine eligibility was [REDACTED] and the meeting date to develop the IEP was [REDACTED] which falls within the 30-day window allowed for in the federal regulation.

#### **Conclusion**

It appears as though the manner in which the school district handled the parent’s referral request in the early part of the [REDACTED] school year affected the parent’s trust in the district’s handling of special education processes for the remainder of the year. While the [REDACTED] District met its legal timelines to the best of its ability in the spring [REDACTED], seeds of mistrust had been sown, as evidenced by very submittal of these allegations. Tangible documentation and a paper-trail is important in organizing special education departments; however, parents should not have to be experts or lawyers to engage in the process, especially when they use reasonable written communication methods [i.e. email]. School personnel certainly had good reason to examine the effectiveness of the child’s 504 Plan, but a parent’s perspective is a valued voice in the child’s educational team. The Department encourages both parties to assume good intentions and work together to find compromise that has buy-in from everyone as the new school year gets underway.

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