New Hampshire Department of Education Bureau of Special Education Support

SPECIAL EDUCATION SPECIAL MONITORING REVIEW REPORT Merrimack School District

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Special Monitoring Visit Conducted on July 14, 29, & August 1-3, 2022 **Report Date: August 26, 2022**

Overview of the Special Education Special Monitoring Process

New Hampshire has a responsibility, under federal law, to have a system of general supervision that monitors the implementation of the Individuals with Disabilities Education Act (IDEA) by school districts. The general supervision system is accountable for enforcing IDEA, New Hampshire Statutes, and the New Hampshire Standards for the Education of Children with Disabilities (NH Standards) and for ensuring continuous improvement. As stated in section 616 of 2004 amendments to the IDEA, "The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on -

- (A) Improving educational results and functional outcomes for all children with disabilities; and
- (B) Ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities."

There are eight components that comprise New Hampshire's (NH) general supervision system. It is important to note that although the components are separate, the components connect, interact and articulate requirements to form a comprehensive system. The general supervision system for NH has the following components:

- State Performance Plan (SPP)
- Policies, Procedures, and Effective Implementation
- Data on Processes and Results
- Targeted Technical Assistance and Professional Development
- Effective Dispute Resolution
- Integrated Monitoring Activities
- Sustaining Compliance & Improvement
- Fiscal Management

The Special Monitoring review, pursuant to RSA 186-C:5, is one method that the New Hampshire Department of Education (Department), Bureau of Special Education Support (Bureau) utilizes to implement components of the general supervision system.

The intent of the Special Monitoring review is to improve student outcomes for students with IEPs by:

- Ensuring districts understand and are implementing special education requirements in accordance with the New Hampshire Standards for the Education of Children with Disabilities, New Hampshire State Statutes, and IDEA; and
- Improving special education procedures, and practices.

This method is used "based on reliable information received indicating that there is reason to believe that there is noncompliance with standards". In this case, the Department received such information from the Merrimack School District with respect to an individual employed by the District and the District's belief that the individual failed to document, or falsified, parts of the special education process. In response to this information the Bureau began a special monitoring, in effort to determine if the noncompliance was systemic or isolated to the events relative to the individual. The monitoring activities for this process were two-fold and occurred as expressed below.

First, the Bureau conducted a desk audit of the New Hampshire Special Education Information System (NHSEIS) to review the record of the students for whom the above indicated individual was the person who was primarily responsible for the movement of the special education process. The desk audit provided the Bureau with information about the status of each student's special education process history. The Bureau reviewed the following information:

- IEP status (proposed or finalized)
- Date of parent consent to evaluate
- Evidence of recent progress reports

To determine if the student files were in compliance with Ed 1120.04(K) of the NH Standards, Bureau monitoring team members reviewed students' files onsite at the Merrimack Special Education office at the SAU. Upon review of the files, the Bureau observed the following inconsistencies:

Student Code ¹	Parent Consent to Evaluate date entered in NHSEIS	Evidence of Parent Consent to Evaluate in File
EA	3/1/2021	Yes
EB	11/1/2021	No
EC	12/1/2020	No
EE	5/27/2021	No
EF	12/1/2021	Yes
EG	9/24/2020	No
EH	5/20/2022	Yes
EI	3/9/2021	No
EJ	1/15/2020	No
EK	3/8/2021	No

In addition to the information above, through the desk audit and onsite review, the Bureau found that the dates of the IEPs in NHSEIS corresponded with the hard copies of the IEPs in

¹ Each student file was assigned a code. The codes are not in any way linked to student specific information such as name, school, age, grade, disability category or any other personally identifiable information.

the student files. Additionally, the Bureau verified that that all IEPs were in finalized form and that parent consent was obtained.

Second, the Bureau determined that there would be onsite monitoring activity of other student files, district wide. The Bureau contacted the district to discuss the Special Monitoring review with the school administration and provided guidance regarding the Special Monitoring review form that was used for data collection.

The onsite monitoring activity was conducted on July 14, 29, & August 1-3, 2022, and consisted of 5 Bureau team members, verifying evidence of compliance with the applicable special education laws and standards. This data was collected on the Special Monitoring Assessment form.

The Bureau review members for this Compliance & Improvement Monitoring review included: Amy Jenks, Alexandra Ferraro, Mary Sheehy, Heidi Clyborne and Elizabeth Graichen.

District Demographics

The Merrimack School District is comprised of six schools: James Mastricola Elementary School with a grade span of P, K-4, the Reeds Ferry School with a grade span of P, K-4, the Thorntons Ferry School with a grade span of P, K-4, the James Mastricola Upper Elementary School with a grade span of 5-6, the Merrimack Middle School with a grade span of 7-8 and the Merrimack High School with a grade span of 9-12. The Bureau reviewed files for Merrimack students in all schools.

At the time of the selection of students, the information entered into the New Hampshire Special Education Information System (NHSEIS) indicated that there were 63 Special Educators (commonly referred to as "case managers") responsible for implementing the special education process within the district. The Bureau selected two files for 59 of the Special Educators and there were three (3) Special Educators that only had one student file assigned to them that could be reviewed. The district was provided with the list of 121 students with disabilities representative of the schools based on grade level, disability, gender, special education program, and case manager. Students enrolled in chartered schools were included in the selection.

Recommended Preventive Actions

When reviewing the district's files, the Bureau identified practices that have the potential to become noncompliant. Whereas these practices do not rise to the standard of noncompliance, and therefore require no corrective actions, the Bureau believes that the practices are noteworthy to be addressed.

- In each of files reviewed, the Bureau found that District personnel used a form called "Parent Response to a Special Education Proposal" to comply with the requirements of Ed 1120.04. It appears to be the district practice to use one form to capture consent to one or more parts of the special education process such as parent consent to conduct evaluations, consent to the IEP and parent consent to the determination of the eligibility of the child. As a matter of special education process, the Bureau is not aware of any language in special education statute or standards that would prohibit the district from using the form however, the Bureau strongly recommends that the district discontinue this practice for the following reasons:
 - As indicated below in the student specific findings section of this report, 25 of the files reviewed were files in which Bureau staff indicated that there was no evidence in the file of parent consent to evaluate. This is because the above referenced form was written such that the parent was being asked to consent to a written prior notice, not to the actual evaluations that were being proposed by the team. This is problematic as there is no such requirement for a parent to consent to a WPN.
 - Additionally, the language used on the form ask the parent to indicate 1) I agree 2) I don't agree 3) I agree with exception. Ed 1120.04 of the NH Standards, which provides for the parent to agree in part, was changed in 2017 and now states that the parent may "consent, or refusal of consent or partial consent". This is problematic as the language on the form is inconsistent with the Administrative Standard.
 - Further, for parent consent to IEP and placement, District practice is such that consent is already captured on the IEP and placement pages. This is problematic as the parent has an opportunity to provide a response, in two places, for the same thing, potentially at different times.

If the District keeps the form, the Bureau recommends that it changes the agreement language to align with the NH Standards and that District personnel are trained to use the form, only for those processes for which there is no existing document for parent to indicate consent with a signature.

Monitoring of Special Education Process

Districts are responsible for implementing the special education process in accordance with the Individuals with Disabilities Education Act (IDEA), New Hampshire State Statutes, and the New Hampshire Standards for the Education of Children with Disabilities (NH Standards). The Special Monitoring Assessment highlights applicable requirements of the IDEA and the NH Standards and was used during the monitoring visit. Each area of compliance on the Special Monitoring Assessment clearly outlines whether the area reviewed is either a requirement of the IDEA and the NH Standards. During the monitoring visit, the monitoring team verified the evidence of compliance based on the review of the student file.

Based on this review, the monitoring team identified findings of noncompliance with the IDEA and the NH Standards. The findings include a citation of the laws and or/standards, the area of compliance, the specific component of the regulation, and the required corrective actions, which include timelines for demonstrating correction of noncompliance. Student specific information is not included in the report but will be provided to the district's Special Education Administrator.

There is one component to the corrective action process outlined in this report, it is entitled *"Corrective Action Regarding the Implementation of the Regulations"*. The corrections involve the provision of professional development/training to appropriate staff with regards to areas found to be in noncompliance.

Overview of the Student Specific Findings of Noncompliance

The chart below identifies the area of compliance based on student files that were reviewed by the monitoring team during the onsite visit. The chart is broken down into the **compliance citations** and **area of compliance**. The compliance citations are taken from the federal regulations of IDEA (indicated below as *CFR*) and the language found in the New Hampshire Standards for the Education of Children with Disabilities (indicated below as *Ed*). The chart aligns the regulatory components to the numbered questions in the Special Monitoring assessment. Regulatory components and Special Monitoring assessment numbers are bolded in instances where noncompliance was noted by the Monitoring team.

The **review status** identifies the **number of files reviewed** for the Special Monitoring Assessment question as well as the number of files that were found to be in compliance. For example, "1 out of 3 files demonstrated evidence that a copy of the procedural safeguards, available to the parents of a child with a disability, was given to the parent one time in the school year. For student files A & B, there was insufficient evidence demonstrating compliance with this requirement " This means that 3 files were reviewed and 1 file was found to be in compliance and students A & B were found to be noncompliant.

In cases where there was a finding of noncompliance for a particular student, the chart below identifies the **Corrective Action Regarding the Implementation of the Regulation**. This section will also include a reference to a student file that was used as evidence to support the noncompliance of the regulation, if applicable. This section informs the district of any practices or procedures which need to be corrected as well as trainings for staff to inform them of the corrections as a result of the findings of noncompliance. The required corrective action by the district and a timeline for the corrective action is also provided.

Student Specific Findings of Noncompliance

When determining compliance, the compliance & improvement monitoring team reviews the currently agreed upon/signed IEP at the on-site monitoring visit.

COMPI	LIANCE CITATIONS	AREA OF COMPLIANCE
	a 300.504(a) 20.03(b)	A. Procedural Safeguards
	sessment Question Number Ilatory Component	Review Status
1.	34 CFR 300.504(a) Ed 1120.03(b)	117 out of 121 IEP files demonstrated evidence that a copy of the procedural safeguards , available to the parents of a child with a disability, was given to the parent one time in the school year.
		For students B, K, R & BM there was insufficient evidence demonstrating compliance with this requirement.

First Stage Corrective Action Regarding the Implementation of the Regulations: Provide training to appropriate staff to ensure that a copy of the procedural safeguards, available to the parents of a child with a disability was given to the parent one time in the school year.

COM	PLIANCE CITATIONS	AREA OF COMPLIANCE
	FR 300.306; 34 CFR 300.304 108.01; Ed 1107	B. Evaluation; Determination of Eligibility for Special Education
	Assessment Question Number gulatory Component	Review Status
2.	34 CFR 300.306(a)(1) Ed 1108.01(b)	Upon completion of assessments, 115 out of 121 IEP files demonstrated evidence that a group of qualified professionals and the parent of the child determined whether the child is a child with a disability. For student Z, AJ, BM, CW, DJ, & DP there was insufficient evidence demonstrating compliance with this requirement.
3.	34 CFR 300.306(c)(1)(i)	 116 out of 121 IEP files demonstrated evidence that the team drew upon, information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. For students V, Z, AJ, BM & DP there was insufficient evidence demonstrating compliance with this requirement.
4.	34 CFR 300.304(c)(1)(iv) Ed 1107.04(b)	 116 out of 121 IEP files demonstrated evidence that qualified examiners for specific disabilities as set forth in Table 1100.1, administered the assessment. For students V, Z, AJ, BM & DP there was insufficient evidence demonstrating compliance with this requirement.

5.	Ed 1107.05(a) Ed 1107.05(b)	103 out of 121 IEP files demonstrated evidence of an evaluation report . The report shall include but not be limited to, the results of each evaluation procedure, test, record, or report; a written summary of the findings of the procedure, test, record, or report; and information regarding the parent's rights of appeal in accordance with Ed 1123 and a description of the
		parent's right to an independent evaluation in accordance with Ed 1107.03.
		For students E, H, I, R, U, Z, AB, AE, AJ, AR, BM, CH, CO, CV, CW, DE, DJ, & DP there was insufficient evidence demonstrating compliance with this requirement.

Corrective Action Regarding the Implementation of the Regulations: Provide training to appropriate staff to ensure that the composition of the IEP team to determine eligibility includes a group of qualified professionals and the parent of the child. Training will also need to include components that consist of information regarding having qualified examiners for specific disabilities administering assessments and that the IEP team to determine eligibility draws upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background and adaptive behavior.

Provide training to appropriate staff to ensure that an evaluation report shall include but not be limited to the results of each evaluation procedure, test, record, or report; a written summary of the findings of the procedure, test, record, or report; and information regarding the parent's rights of appeal in accordance with Ed 1123 and a description of the parent's right to an independent evaluation in accordance with Ed 1107.03.

Provide the dates, names of attendees, and a description of the trainings, which defines the district's procedure for complying with this specific rule, to the Bureau within three months from the date of this report.

СОМР	LIANCE CITATIONS	AREA OF COMPLIANCE
34 CFI Ed 112	R 300.503; 20.03	C. Written Prior Notice (Determination of Eligibility)
	ssessment Question Number ulatory Component	Review Status
6.	34 CFR 300.503(b)(1) Ed 1120.03(b)	115 out of 121 IEP files included evidence of Written Prior Notice of the most recent Determination of Eligibility for a child with a disability
		For students BM, CW, DD, DJ, DO, & DP there was insufficient evidence demonstrating compliance with this requirement.
Corrective Action Regarding the Implementation of the Regulations: Provide training to appropriate staff to		

ensure that a written prior notice is completed for a determination of eligibility.

COMPI	LIANCE CITATIONS	AREA OF COMPLIANCE
Ed 112	20.04	D. Parent Consent
	ssessment Question Number Ilatory Component	Review Status
7.	Ed 1120.04(k)	 94 out of 121 IEP files included documents signed by the parent in which the parent gives consent (most recent evaluations and IEP) For students A, B, C, E, K, L, R, V, W, Z, AF, AK, AO, BF. BG. BM, CX, DC, DE, DG, DJ, DK, DM, DP & DQ there was insufficient evidence demonstrating compliance with this requirement (consent to evaluations). For students AP and AR there was no consent needed for any new evaluations.
		For students A, K, Q, BM, DI, DP &, DQ there was insufficient evidence demonstrating compliance with this requirement (consent to IEP).
ensure	Corrective Action Regarding the Implementation of the Regulations: Provide training to appropriate staff to ensure any document signed by the parent in which the parent gives consent in writing shall also be placed in the child's education record including the parent signed IEP and parent consent to evaluate.	

COMF	PLIANCE CITATIONS	AREA OF COMPLIANCE
34 CF Ed 11	R 300.323; 34 CFR 300.324 09	E. Individualized Education Program
Self-A	ssessment Question Number	Review Status
& Reg	gulatory Component	
8.	Ed 1109.01(a)(5)	112 out of 121 IEP files demonstrated evidence of the signature of the parent or, where appropriate, student, and a representative of the LEA stating approval of the provisions of the IEP.
		For students A, K, Q, BM, CZ, DG, DI, DP & DQ there was insufficient evidence demonstrating compliance with this requirement.
9.	34 CFR 300.323(c)(1) Ed 1109.03(a)	For an initial IEP, 27 out of 31 IEP files demonstrated evidence that there was a meeting to develop an IEP for the student conducted within 30 days of a determination that the child needs special education and related services. (90 student files were not of students with initial IEPs <u>or</u> No files were of students with an initial IEP.)
		For students A, X, AH & BO there was insufficient evidence demonstrating compliance with this requirement.
10.	34 CFR 300.324(b)(1)(i) Ed 1109.03(d)	79 out of 90 IEP files demonstrated evidence that the IEP was reviewed at least annually . (<i>31 student files were of students with initial IEPs.</i>)
		For students K, T, AF, AR, AV, BM, CV, CW, DJ, DP & DQ there was
		insufficient evidence demonstrating compliance with this requirement.

Corrective Action Regarding the Implementation of the Regulations: Provide training to appropriate staff to ensure that the signature of the parent or, where appropriate, student, and a representative of the LEA stating approval of the provisions of the IEP is obtained; and meetings to develop an IEP for a student are conducted within 30 days of a determination that the child needs special education and related services. Trainings will also need to ensure that IEPs are reviewed at least annually.

COMP	LIANCE CITATIONS	AREA OF COMPLIANCE
34 CFF Ed 110	300.321(a); 34 CFR 300.322; 3.01	F. IEP Team; Participants in the Special Education Process
Self-As	ssessment Question Number Jatory Component	Review Status
11.	34 CFR 300.321(a)(1) 34 CFR 300.322 Ed 1103.01(a)	107 out of 121 IEP files demonstrated evidence that one or both of the parents are present at the IEP team meeting or are afforded the opportunity to participate
		For students H, K, T, W, AA, AD, BD, BL, BM, BO, CK, DO, DP, & DQ there was insufficient evidence demonstrating compliance with this requirement.
12.	34 CFR 300.321(a)(2) Ed 1103.01(a)	84 out of 111 IEP files demonstrated evidence that the IEP Team included at least one regular education teacher of the child. (<i>Ten</i> <i>student files included evidence that a regular education teacher was excused</i> <i>per 34 CFR 300.321(e), and/or student files included evidence that a student</i> <i>is not and will not participate in the regular education environment.</i>)
		For students A, K, M, N, O, P, Q, T, AA, AK, AL, AM, BF, BG, BM, CN, CP, CU, CW, CX, CY, DA, DI, DJ, DO, DP, & DQ there was insufficient evidence demonstrating compliance with this requirement.
13.	34 CFR 300.321(a)(3) Ed 1103.01(a)	113 out of 121 IEP files demonstrated evidence that the IEP Team included at least one special education teacher of the child, (or where appropriate), at least one special education provider of the child.
		For students K, Q, T, AA, BF, BM, DP, & DQ there was insufficient evidence demonstrating compliance with this requirement.
14.	34 CFR 300.321(a)(4) Ed 1103.01(a)	103 out of 121 IEP files demonstrated evidence that the IEP Team included an LEA representative .
		For students A, C, D, K, M, O, P, Q, T, AA, AI, AJ, AL, AM, AN, BM, DP & DQ there was insufficient evidence demonstrating compliance with this requirement.
15.	Ed 1103.01(d)	If vocational, career or technical education was being considered, 3 out of 4 IEP files demonstrated evidence that the IEP team membership included an individual knowledgeable about the vocational education programs and/or career technical education being considered. (117 student files were of students for whom vocational education/CTE was not considered.)
		For student DP there was insufficient evidence demonstrating compliance with this requirement.

16.	34 CFR 300.322(a)	103 out of 121 IEP files demonstrated evidence that the parent(s)
	Ed 1103.02(a), (c), (d)	received a written invitation no fewer than 10 days before an IEP
		meeting which included the purpose, time, location and identification of
		the participants or the parent agreed in writing that the LEA could satisfy
		this requirement via transmittal by electronic mail or demonstrated
		evidence of written consent of the parent(s) that the notice requirement were waived [Ed 1103.02(b)].
		For students C, K, M, AA, BB, BL, BM, CA, CL, CP, CV, CY, DB, DC, DI, DK,
		DP & DQ there was insufficient evidence demonstrating compliance with
		this requirement.

Corrective Action Regarding the Implementation of the Regulations: Provide trainings to appropriate staff for ensuring that the IEP team included one or both of the parents at the IEP team meeting or are afforded the opportunity to participate, at least one regular education teacher, at least one special education teacher of the child, (or where appropriate), at least one special education provider of the child, and an LEA representative.

Provide trainings to appropriate staff for ensuring that at least a 10-day notice is given to the parent before an IEP meeting, which includes the purpose, time, location and identification of the participants, or the parent agreed in writing that the LEA could satisfy this requirement via transmittal by electronic mail <u>or</u> demonstrated evidence of written consent of the parent(s) that the notice requirement was waived.

Provide the dates, names of attendees, and a description of the trainings, which defines the district's procedure for complying with this specific rule, to the Bureau within three months from the date of this report.

COMPLIA	ANCE CITATIONS	AREA OF COMPLIANCE
34 CFR 3 Ed 1109.	00.320(a)(3)(ii); 01	G. Review and Revision of IEPs (Measuring Progress)
	essment Question Number atory Component	Review Status
17.	34 CFR 300.320(a)(3)(ii) Ed 1109.01(a)(1)	89 out of 102 IEPs demonstrated evidence that the periodic reports were provided to parents on the progress the child is making towards meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards). (For 19 student files, the first reporting period was after the date of the onsite visitation.) For students B, G, J, K, AE, AU, AZ, BK, DJ, DK, DO, DP & DQ there was insufficient evidence demonstrating compliance with this requirement.
	Corrective Action Regarding the Implementation of the Regulations: Provide training to appropriate staff to	
address that periodic reports be provided to parents on the progress the child is making towards meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards).		

COMPLIANCE CITATIONS	AREA OF COMPLIANCE
34 CFR 300.503 Ed 1120.03(b)	H. Procedural Safeguards (Written Prior Notice for IEP)

	essment Question Number atory Component	Review Status
18.	34 CFR 300.503(b)(1) Ed 1120.03(b)	114 out of 121 IEP files included evidence of Written Prior Notice of the most recent IEP for a child with a disability
		For students K, Q, BM, CX, DA, DP, & DQ there was insufficient evidence demonstrating compliance with this requirement.
		Dementation of the Regulations: Provide training to appropriate staff to ne IEP is completed and provided to the parent.
		and a description of the trainings, which defines the district's procedure for Bureau within three months from the date of this report.
COMPLI	ANCE CITATIONS	AREA OF COMPLIANCE
34 CFR 3 Ed 1120.		I. Written Prior Notice (Placement)
	essment Question Number atory Component	Review Status
19.	34 CFR 300.503(b)(1) Ed 1120.03(b)	110 out of 119 IEP files included evidence of Written Prior Notice of the most recent Placement for a child with a disability. <i>(Two student files were of students enrolled in chartered schools)</i>
		For students A, K, Q, BM, CX, DA, DI, DP & DQ there was insufficient evidence demonstrating compliance with this requirement.
		irding the Implementation of the Regulations: Provide training to en prior notice for a placement is completed and provided to the parent.
		and a description of the trainings, which defines the district's procedure for Bureau within three months from the date of this report.