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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Re: Special Education Complaint # 22-07*

Dear Mr. and Mrs. [REDACTED], [REDACTED] and [REDACTED],

The New Hampshire Department of Education, Bureau of Special Education, has concluded its investigation of complaint # 22-07. 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 each allegation as well as a summary of the investigator's findings of fact based on the evidence submitted by the parties. If an allegation is substantiated, finding of noncompliance with special education law, then there will be a corrective action required of the district to remedy any violations. The corrective action is intended to ensure compliance with IDEA by addressing the needs of the child and appropriate future provision of services for all children with disabilities.

By way of relevant background, the scope of this complaint investigation is from [REDACTED] to [REDACTED]. During this time period there was one Individual Education Plan (IEP), which is relevant to the investigation:

- IEP #1 dated [REDACTED] — [REDACTED], parents did not sign in consent nor did they sign "not in consent."

[REDACTED]

**Allegation #1:** The [REDACTED] has failed to comply with Ed 1120.04 (a)(3).

Ed 1120.04(a)(3) provides, in relative part, that:

An LEA shall obtain informed, written consent from the parent of a child with a disability prior to an annual renewal of the IEP and placement of a child with a disability.

#### Findings of Fact

#### **Allegation #1: Unsubstantiated**

The complainant asserts that the [REDACTED] implemented an IEP without parental consent.

The IEP dated [REDACTED] - [REDACTED], was proposed and given to the parents to provide consent. However, rather than providing a response affirming or denying the IEP, the parents did not respond at all. The district made further attempts to obtain a response from the parents, but were unsuccessful.

According to the parents, they believed that by not signing at all—whether in consent or not—that the last agreed upon IEP<sup>1</sup> would be implemented. However, Ed 1120.06(a), provides that, “[i]f a parent fails to respond within 14 days after the sending of written prior notice . . . the LEA shall implement its proposed changes if the LEA has taken reasonable measures to obtain informed written consent.” Given the districts attempts to obtain parental consent, in this instance, the district was justified to implement the proposed IEP.

**Allegation #2** The [REDACTED] failed to comply with 34 CFR 300.321(c)(2), regarding IEP team attendance.

34 CFR 300.321 (c)(2) provides, in relative part, that:

The public agency must ensure that the IEP Team for each child with a disability includes; Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment).

#### Findings of Fact

#### **Allegation #2: Unsubstantiated**

The Complainant asserts that the district did not have a general education teacher attend a meeting on two separate occasions and did not provide the parent with a written excusal, which is required.

In the original complaint the parent stated that there was not a general education teacher present on two separate occasions; a meeting in the spring and again on [REDACTED]

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<sup>1</sup> Ed 1120.06

(g) If a parent refuses consent for a proposed IEP or placement, the child's most recent agreed upon IEP placement, or both shall remain in effect unless the LEA and parent agree otherwise, until the matters are resolved unless and until a party files for due process, in which case the IEP and placement shall be governed by 34 CFR 300.518

However, the parent was unable to provide which meeting in the spring it was, nor was the parent able to provide any additional detail as it pertained to the meeting.

Without a specific date, the investigation looked at all documents from all meetings which occurred during the spring of [REDACTED]. There were no instances where a general education teacher was not present at a meeting. As such, there simply is not any corroborating evidence to substantiate this particular allegation. As an aside, many of the meetings which were held during the time in question were conducted via Zoom, therefore it is highly possible that it was not made entirely clear to the parents the role of all of the attendees.

In relation to the [REDACTED] meeting, records show that the meeting occurred in person. There was a meeting sign-in sheet, as well as, a meeting excusal form for the general education teacher. The excusal form did not explicitly state the nature of the employee who was being excused from the meeting—in this instance, the general education teacher. However, according to the district, they provided a verbal explanation to the parents as to who was being excused and subsequently, the parents signed the form. The parent did not recall attending the meeting in person, nor did the parent recall signing the excusal form. Regardless, the documentation in this matter is clear.

It is possible that the combination of in-person and remote meetings, as well as the change in staff caused confusion as to all the various roles. As such, the district should have taken the initiative to provide a clearer explanation to the parents as to the implications of the form the parents signed. Likewise, however, the parents should not have signed the excusal form without a full understanding of what the document entailed.

For the reasons set forth above, there is no corrective action required in this matter.

We hope that in the future the district and parent are able work together to resolve any differences that may arise.

Frank Edelblut  
Commissioner of Education  
NH Department of Education