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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Re: Special Education Complaint # 24-28*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support (“the Department”), has concluded its investigation of complaint # 24-28. 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 background information, the student is a [REDACTED] grade student attending [REDACTED] School within the [REDACTED] (“the District). The student had one Individualized Education Program (IEP) during the complaint period, which was dated from [REDACTED]. There was an amendment to this IEP signed in consent by the father on [REDACTED]. The student has bilateral sensorineural hearing loss, which impacts the student’s ability to access all aspects of the curriculum, including the areas of reading, language arts, math, executive functioning, and social/behavioral.

The IEP contains 3 different types of services: 1 25-minute session weekly in speech, 4 30-minute sessions weekly in language instruction, and 4 30-minute sessions weekly in math instruction. The crux of this portion of the complaint is the gaps in services caused by providers’ absences due to illness or medical leave. Between [REDACTED], the student missed 9 sessions totaling 225 minutes of speech services. The special education teacher who provides the language and

math instruction was out for the entire week of [REDACTED]. This resulted in the student missing those sessions, totaling 120 minutes in both language and math services.

The other portion of this complaint stems from the student's classroom teacher(s) not implementing accommodations and modifications that are mandated by the student's IEP. A Teacher of the Deaf performed 4 classroom observations—although it is notable that 2 of the observations occurred after the complaint was received by the Department. The Teacher of the Deaf utilized a checklist to track which accommodations and modifications were implemented in the observed lessons. Of the 14 accommodations and modifications cited in the complaint, there were 3 that were not seen during the classroom observations by the Teacher of the Deaf. The accommodations that were not observed were as follows: allow the student to move within the room to a position where the student could see and hear optimally; create a discrete signal/cue for the adult to give the student when the student makes a speech error; and, have the student repeat directions/instructions to ensure comprehension. The observer noted that while the student did not move around the room, the teacher provided instruction in close proximity to the student and used prompting to obtain the student's attention. Additionally, the observer noted the student was not asked to repeat directions/instruction but followed directions the first time given. Regarding the discrete signal/cue, the observer did not detail further if the teacher and student have created a signal or if the signal was simply not used in the observed lessons because no errors were made. The parents' perspective is that there is no signal and that many of the student's accommodations and modifications are not done on a consistent basis. It is also the parents' perspective that the classroom environment created by the teacher(s) is uncomfortable and anxiety-inducing. The Department acknowledges that it is unable to observe every lesson, so it must utilize the evidence collected to evaluate this allegation.

### **Allegation 1—Substantiated**

The sole allegation in this matter is that the [REDACTED] 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.

Specifically, the complainant asserts that the District has not provided speech in accordance with the IEP. Additionally, the complainant alleges missed academic services dated the week of [REDACTED]. The complainant also asserts that accommodations and modifications are not being followed per the IEP.

The Department recognizes that illnesses can happen and acknowledges that the District, [REDACTED] provided compensatory services for the missed language and math instruction by adding 10 extra minutes to sessions once the teacher returned the next week. The Department is satisfied with that corrective solution and will impose no further action regarding the language and math instruction.

As mentioned previously, the student missed 9 sessions totaling 225 minutes of speech services. The District does not dispute this fact, and therefore the Department considers this portion of the allegation substantiated.

The implementation of the student's accommodations and modifications is, on the whole, in compliance with the IEP. However, the lack of established or observed nonverbal signal/cue, coupled with the lack of speech services, indicate that the student was not given the tools necessary to access educational content.

While 1 accommodation out of 48 seems insignificant, the fact remains that the student required this essential support that was not provided.

The parents' submitted complaint indicates that the student feels shamed and degraded. While the investigator's findings were of overall compliance with the IEP, the Department urges the IEP team to work on reestablishing a relationship of trust and positive rapport. The implementation of accommodations and modifications for students with hearing impairments should not make them feel uncomfortable or singled out.

### **Conclusion**

The Department strongly encourages that the District review the educational services guidelines published by the National Association of State Directors of Special Education entitled *Optimizing Outcomes for Students who are Deaf or Hard of Hearing (Third Edition)*. The Department also strongly encourages the District to provide district-wide targeted technical assistance on optimizing outcomes for students who are deaf or hard of hearing through the New Hampshire Department of Education or through private consultants. Furthermore, given that the school year is more than half-way completed, the Department suggests that the District begin proactively training educators for the upcoming school year on the student's communication needs and plan.

This student has years of education remaining in the District. As such, the Department suggests that the IEP team utilize the outcome of this special education complaint to move forward in a collaborative, mutually supportive manner to serve the best interests of the student. Parents are an integral part of the IEP team, and their input should be valued and considered.

### **Corrective Action**

The [REDACTED] District will provide 225 minutes of compensatory speech services. 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, including the student's classroom teacher(s), to review the social/emotional supports included in the IEP and to align the phrasing and implementation of the student's accommodations and modifications with the *New Hampshire Educational Service Guidelines for Students who are Deaf and Hard of Hearing*. 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