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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
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[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Re: Special Education Complaint # 24-29*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support, has concluded its investigation of complaint # 24-29. 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 student is a current [REDACTED] grader attending [REDACTED] on a shortened school day, while also receiving remote tutoring and specialized instruction. The student resides at [REDACTED] and is in custody of the Division of Children, Youth, and Families (DCYF). The student has been in various foster homes and living arrangements since [REDACTED]. However, Manchester School District ("the District") has been identified by the court as the district of liability. The student was identified in [REDACTED] as a student qualifying for special education and related services under [REDACTED] of Emotional Disturbance and Other Health Impairment with diagnoses of ADHD – combined type, and Unspecified Trauma and Stressor-Related Disorder. The student's initial Individualized Education Program (IEP) was developed in [REDACTED] and was amended several times to adjust to the student's changing educational placements. Both parents had legal custody terminated in [REDACTED], which led to the appointment of an educational surrogate in late [REDACTED]. This special education state complaint was filed by the student's educational surrogate stemming from two major concerns: 1) the surrogate found the student's

educational records to be lacking and 2) the student went without educational programming or specialized instruction as mandated by the student's IEP for much of the fall of the ██████ school year.

### **Allegation 1—Substantiated**

The first allegation in this matter is that the Manchester School District failed to comply with 34 CFR 300.101(a), which, in relevant part provides that:

A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

Specifically, the complainant asserts that the District prevented the student from accessing a free, appropriate public education during the 2023-2024 school year.

The student resided at ██████ during the student's ██████ grade year and through the summer of ██████. However, ██████, for a reason unknown to the Department, could not accept the student for ██████ grade academics, so the student required new educational placement to begin the ██████ grade. The District had not coordinated this during the summer. Still, the student began ██████ grade without being enrolled in any high school and without any tutoring or specialized instruction.

When the student was placed in a foster home located in ██████ in ██████, the IEP team convened to discuss what possible high schools could support the student. ██████ ██████ to enroll the student on a modified school day, and the District would provide additional tutoring and specialized instruction via tutoring at the student's home. Unfortunately, those tutoring services were not without obstacles: hiring delays resulted in a switch to remote services, which were further delayed until ██████ because the District had to provide the student with a laptop to access the remote services.

Upon appointment of an educational surrogate by the Department, the District has been responsive to the input of the surrogate. Still, as previously mentioned, this student went without educational programming and specialized instruction as mandated by the student's IEP for over 3 months. Thus, the student was denied a free appropriate public education. As such, the Department substantiates this allegation.

The Department notes that the student's most recently proposed IEP has been partially consented to because the educational surrogate believes the services in the IEP do not sufficiently meet the social/emotional needs to the student, especially given the student's post-secondary plans to serve in the armed forces and pursue a trade.

### **Allegation 2—Partially Substantiated**

The second allegation in this matter is that the Manchester School District failed to comply with Ed 1120.04(a), which, in relevant part provides that:

The local education agency (LEA) shall obtain informed, written consent from the parent of a child with a disability prior to providing special education services, conducting an evaluation, renewal of the IEP and educational placement, or changing the nature or extent of the special education and/or related services.

Specifically, the complainant asserts that the District did not obtain consent on IEP amendments dated [REDACTED], or on the IEP dated [REDACTED].

The student's mother's custodial rights were terminated in [REDACTED], and at that time the student's father was granted a 90-day extension to determine compliance. During this period, the judge did not appoint an educational surrogate pursuant to Ed 1115.03(g)<sup>1</sup>

Regarding the [REDACTED] amendments, there is no record of parental signature. However, pursuant to Ed 1120.06(a), when amending a student's IEP, if there is no parental response within 14 days of the receipt of a written prior notice detailing the proposed changes, the District is allowed to proceed with implemented those changes.<sup>2</sup> Still, such an action requires documentation of efforts to obtain consent, including phone call attempts and certified mail receipts.<sup>3</sup> No such documentation was provided to the Department as part of this investigation. Therefore, this portion of the allegation is substantiated.

The District was able to provide the Department's investigator with a copy of the [REDACTED] IEP that was physically signed by the student's father, thereby documenting parental consent. Therefore, this portion of the allegation is unsubstantiated.

### **Allegation 3—Substantiated**

The third allegation in this matter is that the School District failed to comply with Ed 1115.02(a), which, in relevant part provides that:

Any employee of an LEA [...] or any other person who knows or believes that a child's parent is not known, or is not able to be located, or that the child is under legal custody of DCYF, or any person who knows or believes that a court has issued a written order for a surrogate parent, shall initiate the appointment of a surrogate parent.

Specifically, the complainant asserts that the District failed to request a surrogate parent within a reasonable timeframe.

The court sent a notice to the District that the student's permanency plan had been changed to adoption on [REDACTED]. Once that notice had been received by the District, the District should have immediately requested the appointment of an educational surrogate rather than wait over a month. When it did in [REDACTED], a surrogate was appointed the very same day. Had this been done earlier in [REDACTED] when the notice had been received, expecting the same immediacy of appointment, the student could have had representation during the IEP team meetings held on [REDACTED], during which the student's educational programming and placement were discussed.

While the Department understands that the District wanted to collect data documenting attempts of contacting the parent, administrative rules state that once the District is aware that the student is in the custody of DCYF, the District is responsible for initiating a request for the appointment of an educational

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<sup>1</sup> Ed 1115.03(g): "A judge overseeing the case of a child who might be or is a child with a disability may appoint a surrogate parent for a child."

<sup>2</sup> Ed 1120.06(a): "If 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."

<sup>3</sup> Ed 1120.06(b): Reasonable measures shall include: (1) Documentation of telephone calls to the parent made or attempted and the results of those calls; and (2) Copies of correspondence sent to the parent and any responses received. Correspondence shall be sent certified mail, return receipt requested.

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surrogate. Thus, the incorrect procedure was followed, and, therefore, the Department substantiates this allegation.

### **Conclusion**

Students who are in the custody of DCYF are some of the State's most vulnerable. As such, as challenging as it may be, it is essential that all the efforts taken to secure informed consent are documented with fidelity and transparency. Therefore, if and when the student's educational decision-making authority changes and records are reviewed, it is clear to all involved who is in agreement with the student's placement and services. The Department is concerned that the educational surrogate serving the student had difficulty accessing the student's cumulative educational record when it was requested. Again, while the Department acknowledges the challenges that arise when students have mercurial home situations, it is exactly these vulnerable students who require the utmost diligence in record-keeping.

### **Corrective Action**

The Manchester School District will provide 600 minutes of specially designed instruction in reading, 600 minutes of specially designed instruction in mathematics, and 300 minutes of specially designed instruction in writing as compensatory services. Given the student's background and interests, the Department encourages the District to consider how these compensatory services might be supported more effectively through some of the State's career and technical education programming. These compensatory services should be in addition to the special education and related services and any Extended School Year services already mandated by 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 ██████████

The Manchester School District will review their internal policies and procedures related to special education responsibility and revise, where necessary, to ensure compliance with state and federal requirements. Evidence of this corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by ██████████.

The Manchester School District will review their internal policies and procedures related to requesting educational surrogates, where necessary, to ensure compliance with state and federal requirements. Evidence of this corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by ██████████.

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