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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
25 Hall Street  
Concord, NH 03301  
TEL. (603) 271-3495

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Re: Special Education State Complaint # 25-06*

Dear, [REDACTED]:

The New Hampshire Department of Education, Governance Unit ("NHED"), has concluded its investigation of special education state complaint # 25-06. Based on the findings of fact in the investigation, NHED is issuing its 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 school district to remedy any violations. 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 was previously enrolled in the [REDACTED] ("the District"). While the student is 18 years old, the parents retain legal guardianship of the student. When the student was enrolled in the District, the student qualified for an Individualized Education Program (IEP) with a primary disability of Autism and a secondary identification of Speech Language Impairment. According to the student's most recent IEP dated [REDACTED], the student requires a 1:1 registered behavioral technician paraprofessional (RBT) support in all academic skills, as well as functional life skills and vocational skills.

[REDACTED]

The student had two prior IEPs within this complaint period: one IEP dated [REDACTED], and an amended IEP dated [REDACTED].

### **Allegation 1—Partially Substantiated**

The first allegation in this matter is that the 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 did not provide monthly consult meetings, a 1:1 RBT paraprofessional, or the communication log mandated by the student's IEP.

#### *Monthly Consult Meetings*

It appears to NHED that the parents met with the special education teacher on an informal basis prior to a monthly consult meeting being added to the services within the IEP. NHED realizes that back in [REDACTED], when the meetings were happening informally, staff communicating to the parents that they needed to change the monthly meetings to quarterly. However, once it was stated in the IEP that the consult meetings needed to occur monthly, the District became responsible for that service. In the IEP dated [REDACTED], this service was listed as a monthly team consult with parents by a special education teacher for 1 session per month for 45 minutes. NHED did not receive any record of the monthly consult meetings taking place after the service was added to the IEP. Therefore, this portion of the allegation is substantiated.

#### *1:1 RBT Paraprofessional*

Prior to [REDACTED], the student's IEP did not specify that the paraprofessional support needed to be an RBT. However, the student's amended IEP dated [REDACTED], obligated the District to provide a paraprofessional who was RBT-certified. At this time, there began a rotation of 3 different RBT paraprofessionals who worked with the student. However, one of those 3 staff members had a certification that lapsed from [REDACTED]. When the District realized this, administrators assisted the staff member in reactivating their certification. The other two staff members who worked with the student had no issues related to their certification, and there were no other indications there were lapses in service between [REDACTED] and the time this complaint was filed. It does not appear to NHED that the student was adversely affected by this brief clerical error. Therefore, this portion of the allegation is not substantiated.

#### *Communication Log*

NHED is accustomed to seeing a communication log listed as an accommodation rather than a supplementary aid or service. However, NHED understands this is a unique circumstance because the RBT paraprofessional supports the student in composing entries in the communication log. While it is listed in the service delivery grid, there is no frequency specified in the IEP, but entries indicate that the communication log was a near-daily occurrence. While the entries spanning [REDACTED] had some larger gaps, from [REDACTED] [REDACTED] showed consistent entries with few gaps. Email communications from [REDACTED] show that the parent and District communicated about the format of the call log, where the parent indicated they approved of the format. NHED can understand why, given the inconsistent entries in the daily communication log coupled with staff changing

informal monthly consult meetings to quarterly, that this might have compounded the parents' frustration regarding updates about their child's educational progress. However, NHED must remain rooted in what was required by the student's IEP at the time. Given that the communication log had some lengthy gaps, which was later remedied, this portion of the allegation is partially substantiated.

### **Allegation 2—Unsubstantiated**

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

The LEA shall obtain informed written consent from the parent of a child with a disability prior to, in relevant part, changing the nature or extent of the special education and/or related services.

Specifically, the complainant asserts that the District changed the student's IEP goal without parental consent.

The IEP dated [REDACTED], and the IEP amendment dated [REDACTED], both included a self-help goal and objectives that addressed toileting. However, at the IEP team meeting which took place on [REDACTED] for the purpose of reviewing and revising a new IEP, the IEP team discussed how toileting was different between home and school. The result of that conversation, per team meeting notes, was that a District staff member was going to send the parents a set of detailed steps on what is done at school. The parent was pleased with that solution, felt positive about the IEP draft, and ultimately signed the IEP in consent on [REDACTED], without the IEP having a self-help goal and objectives addressing toileting. However, the crux of the issue was that the District staff did not send the detailed steps to the parent as agreed upon until [REDACTED], nearly four months later. While the delay would be understandably frustrating to the parents, the District did not alter the student's IEP unilaterally and without parental consent. Therefore, NHED does not substantiate this allegation.

### **Allegation 3—Partially Substantiated**

The third allegation in this matter is that the District failed to comply with 34 CFR 300.320(b), which, in relevant part provides that:

The IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and the transition services needed to assist the child in reaching those goals.

Specifically, the complainant asserts that the transition goals and services implemented by the District are inappropriate for the student's abilities.

The IEP dated [REDACTED], includes a post-secondary employment goal, which states, "Upon completion of high school, [the student] will work part-time in an elementary school completing library jobs such as sorting returned books, organizing, alphabetizing books and re-shelving books." At the IEP team meeting that took place on [REDACTED], this goal was discussed. The parent indicated that the student would enjoy

working within an elementary school environment, particularly if it meant supporting and interacting with staff and younger students. The practical application of this goal led to the student taking a job within a school library, which resulted in a mix of success and challenge.

Later, when the IEP team met in [REDACTED] for the purpose of developing the new IEP, there was no mention of transition within the meeting notes. Yet, in the IEP dated [REDACTED], the post-secondary employment goal was revised to state: "Upon completion of high school, [the student] will work part-time in the area of confectioner completing a variety of jobs including pricing, organizing inventory, packing candy and greeting shoppers." According to the District, the reason for this change was that the student completed a pictorial interest inventory and "food service" was rated as the highest, most interesting category. The parents feel that this change was made without their input as legal guardians and was not discussed amongst the entire IEP team. While the District staff did seek student input in developing the employment goal, this is clearly an area that the parents have strong vision for their child. Given that the student's time left in special education is waning, it is important that the IEP team communicate about all aspects of the IEP, including a crucial area like transition planning. Therefore, this allegation is partially substantiated.

#### **Allegation 4—Substantiated**

The final allegation in this matter is that the District failed to comply with 34 CFR 300.117, which, in relevant part provides that:

The LEA must ensure that each child with a disability participate with nondisabled children in the extracurricular services and activities to the maximum extent appropriate. The LEA must also ensure that each child with a disability has the supplementary aids and services determined by the IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

Specifically, the complainant asserts that the District did not take the steps necessary to afford the student the opportunity to participate in senior year graduation activities.

On [REDACTED], the parents communicated with the student's case manager regarding senior year activities that they would like the student to participate in. [REDACTED]

Neither party referenced an event called the [REDACTED] which would end up having a great emotional impact on the family. When it became clear that the student missed this particular event, the case manager emailed the parents to apologize, writing, "I'm so sorry. I wasn't aware [the student] was supposed to go. In your original email that particular event was not listed. [The student] will attend all other events that you included in your email. There will be an opportunity for [the student] to go next year if it is still something you would like [the student] to do. Again, I'm so sorry for the mix up."

District administration, including the superintendent and assistant superintendent, investigated the events surrounding the student's exclusion from this graduation event. In a confidential

[REDACTED]

memorandum dated [REDACTED], regarding a summary report of the investigation, the superintendent wrote:

[REDACTED]

NHED understands that sometimes mistakes and miscommunications happen. However, the crux of the issue is that the default status was for the student to be excluded from attending this graduation event. Had the parents specifically mentioned this event in their list, only then would the student, presumably, have attended. Rather, federal law and NHED expects that all students, regardless of disability, be included in all aspects of school to the greatest extent possible. Therefore, this allegation is substantiated.

### **Conclusion**

While evidence suggests that District staff made frequent efforts to communicate with the parents both informally and within IEP team meetings, there were still some oversights that negatively impacted the parents' trust in school staff and the special education process. Given that students with significant disabilities are among our most vulnerable populations, it is imperative that school staff and parents function as a true team to provide wraparound support. NHED understands that this can require significant time and effort, which can sometimes be in short supply throughout a demanding school year. Still, NHED will encourage District staff to find ways to support educators and families in times when additional communication is needed.

NHED hopes that this complaint functions as an opportunity to bring the IEP team together to discuss how it can move forward and serve the best interests of the student.

### **Corrective Action Plan**

NHED acknowledges that the student is not currently enrolled in the [REDACTED] District. However, the District must offer to convene an IEP team meeting to discuss the results of this complaint, including but not limited to, proactively scheduling the required monthly consult meetings, the logistics surrounding the communication log, and the student's transition plan and post-secondary employment goal. The parents may decline the IEP team meeting invitation, at which point the District will submit documentation to that affect. 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 review their internal policies and procedures related to the inclusion of students with disabilities in nonacademic settings and revise, as 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 [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