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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Re: Special Education State Complaint # 25-07*

Dear [REDACTED]:

The New Hampshire Department of Education, Governance Unit ("NHED"), has concluded its investigation of special education state complaint # 25-07. 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 child is enrolled within the [REDACTED] ("the District"). The child has one IEP during the complaint period, dated [REDACTED], which indicates that the child is eligible for special education with the following areas of disability: Autism as the primary, Other Health Impairment (due to anxiety, ADHD, and PTSD) as the secondary, and Specific Learning Disability as the tertiary. During the late-spring of [REDACTED], the child underwent a triennial evaluation to determine continued eligibility for special education. The crux of this complaint rests on the evaluation process and the District's adherence to protocols and timelines.

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

The first allegation in this matter is that the District failed to comply with 34 CFR 300.304, which, in relevant part provides that:

The local education agency (LEA) must provide an evaluation that is sufficiently comprehensive to identify all of the child’s special education and related services needs and that the assessments used must be administered in accordance with any instructions provided by the producer of the assessments.

Specifically, the complainant asserts that the District did not evaluate the student in an area of suspected disability (Emotional Disturbance). Additionally, the complainant asserts that assessments administered were not done so in accordance with manufacturer instructions and therefore led to invalid results.

The first part of this allegation relates to whether the child was evaluated in an area of suspected disability, specifically Emotional Disturbance. The two evaluations that would be required to determine eligibility for Emotional Disturbance are academic performance and social/emotional status.<sup>1</sup> As part of the child’s triennial reevaluation, the parent signed consent on [REDACTED], for the following evaluations: health, hearing/vision, academic performance, cognitive, executive functioning, social emotional, communication, auditory processing, and classroom observation. These evaluations were completed and discussed at IEP team meetings on [REDACTED]. As the District performed the required evaluations for Emotional Disturbance and documented consideration of their results, this portion of the allegation is not substantiated.

The second part of this allegation relates to whether assessments were administered in accordance with manufacturer instructions. The central issue is that, when completing the teacher rating scale form for the Behavior Assessment System for Children—Third Edition (BASC-3), several teachers collaborated to create a single score on the same form, rather than developing individual evaluation scores, as is recommended by the manufacturer instructions. The District’s perspective is that the assessment administration manual suggests that “best practice” is to have individual raters but that completing the form as a group does not invalidate the results. However, the parent disagreed and considered the assessment results invalid. This disagreement served as the foundation for the parent to request an independent educational evaluation (IEE) at public expense.

It is important to note that Pearson, the manufacturer of the BASC-3, has published on its Pearson Clinical Support website guidance that states: “The BASC-3 Manual addresses this [issue of teacher collaboration on a singular form] under *Inconsistency with Other Results* (page 44). Here it states that if there are multiple teachers, it is better to have each do their own.” NHED acknowledges that this language does not explicitly denounce or invalidate teacher collaboration. However, upon careful review of that section of the manual, NHED concludes that the publisher’s original intent was for each individual to complete their own rating scale form so that the examiner could disaggregate data and gather additional information about individual people or environments that affect the child. This would allow the examiner to identify discrepancies, outliers, and form conclusions and propose recommendations derived from the disaggregated results. There is no indication that a composite score provided information to

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<sup>1</sup> Ed 1107.04, Table 1100.1 Required Assessments and Qualified Examiners by Type of Disability

interpret the results. It is important to note that multiple teachers are not required to complete the BASC-3. So, if there are multiple teachers contributing to a child's evaluation, the protocol that would align with the publisher's instructions would be for each teacher to develop their own evaluation score. While NHED acknowledges that the District was attempting to provide more opportunities for teacher input and perspective into the evaluation, it is equally important that any standardized assessment be implemented with fidelity to the manufacturer instructions so that the results can be appropriately relied upon. Therefore, this portion of the allegation is substantiated.

NHED recognizes the parent's right to request an independent educational evaluation (IEE) at public expense upon disagreement with evaluations results. In a special education state complaint of this nature, the agreed-to IEE provides a corrective action and, as such, it does not appear necessary for the District to redo the aforementioned BASC-3 evaluation at this time.

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

The second allegation in this matter is that the District failed to comply with Ed 1107.01(d), which, in relevant part provides that:

The evaluation process shall be completed within 60 days after receipt of parental consent to evaluate.

Specifically, the complainant asserts that the entire evaluation process took from [REDACTED] without an extension granted by the parent.

As previously established, the parent signed consent on [REDACTED], for the following evaluations: health, hearing/vision, academic performance, cognitive, executive functioning, social emotional, communication, auditory processing, and classroom observation. The evaluator who was set to complete the academic and cognitive evaluations experienced a medical issue, which resulted in a delay to these assessments. Both the parent and District agree that this delay was communicated to the parent and that the parent gave verbal consent to extend the evaluation timeline, as permitted by Ed 1107.01(e).<sup>2</sup> However, it is important to note that the rule stipulates "written consent," and there was no record of a form documenting this written consent provided to the complaint investigator.

The IEP team convened on [REDACTED], well within the 60-day timeline, to discuss all other evaluations. The academic and cognitive evaluations were reviewed at a subsequent IEP team meeting on [REDACTED], which would have been the amount of time allowed to extend an evaluation from 60 to 90 days.

NHED acknowledges that evaluation timelines were followed, save the one procedural error that consent was not documented in writing. For that reason, this allegation is deemed partially substantiated.

### **Allegation 3—Unsubstantiated**

The final allegation in this matter is that the District failed to comply with 34 CFR 300.502, which, in relevant part provides that:

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<sup>2</sup> Ed 1107.01(e): "Upon written consent of the parties, the 60 day time limit required by Ed 1107.01(d) may be extended by a specific number of days, not to exceed 30 days."

The LEA shall provide to parents, upon request for an independent educational evaluation (IEE), information about where an IEE may be obtained and the agency's criteria applicable for IEEs.

Specifically, the complainant asserts that the District did not provide the parent with information on where to obtain an IEE or agency criteria when requested on [REDACTED].

It is important to establish the conditions upon which an IEE at public expense may be granted. Federal law stipulates that a parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency.<sup>3</sup> While the public agency may ask for the parent's reason as to why the parent objects to the public evaluation, it may not require that the parent provide an explanation and may not "unreasonably delay" acting on the request.<sup>4</sup> There is currently no federal definition or guidance as to what constitutes an "unreasonable delay".

The parent submitted a letter to the District on [REDACTED], requesting an IEE, and a second letter to the District on [REDACTED], reiterating the request. After that second letter, the District began communicating with the parent regarding which aspects of the evaluations the parent disagreed with, as disagreement over an evaluation is the core tenant of an IEE request. While it is true that the parent is not required to provide an explanation as to why the parent objected to the District's evaluation, it is important that the scope of the IEE be defined by what specific evaluations were subject to disagreement. The parent told the complaint investigator that they stated at an IEP team meeting that they wanted the entire scope of the evaluations redone as part of the IEE request; however, that is not documented in IEP team meeting minutes. There were many emails exchanged by the parent and District discussing the IEE. Ultimately, the IEE was granted, and testing began in the first week of [REDACTED], approximately 8 weeks after the parent's initial request.

While NHED acknowledges that there was, at first, a 16-day time frame where the parent did not hear from the District regarding their request, there was frequent communication about the IEE began after the second letter, which ultimately resulted in the request for the IEE and public expense to be granted. As the parent was not denied access to their rights in the special education process, this allegation is not substantiated; however, NHED will take this opportunity to encourage the District to respond to parental requests in a timely fashion.

## Conclusion

At the heart of this issue is disagreement over evaluations and their impact on the subsequent eligibility determination. NHED acknowledges that the student is undergoing further evaluation through the IEE process, which will provide the IEP team with additional data and information on which it can base its future determinations. If there continues to be disagreement amongst the IEP team, dispute resolution procedures such as mediation or administrative due process may

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<sup>3</sup> 34 CFR 300.502(b)(1): "A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section."

<sup>4</sup> 34 CFR 300.502(b)(4): "If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation."

be utilized. NHED hopes the IEP team will continue to work collaboratively and carefully consider parental input.

### **Corrective Action Plan**

The [REDACTED] District will develop an evaluation timeline extension form to secure written consent from parents in the future event that an extension is necessary. 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 and train relevant staff on the protocols for various assessments used within the District. 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 Merrimack School District will convene the IEP team to discuss the results of the IEE and their impact on the child's IEP and special education and related 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].

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