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STATE OF NEW HAMPSHIRE
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[REDACTED]

[REDACTED]

Jennifer Chmiel—Superintendent, SAU 37
20 Hecker Street
Manchester, NH 03102

Salina Millora—Chief Student Services & Wellness Officer

Re: Special Education State Complaint # 25-10

Dear [REDACTED], Dr. Chmiel, and Ms. Millora:

The New Hampshire Department of Education, Governance Unit (“NHED”), has concluded its investigation of special education state complaint # 25-10. 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 plan required of the school district to remedy any violations. The corrective action plan 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 Manchester School District (“the District”). The child has an Individualized Educational Program (IEP) due to having medically complex needs and developmental delays. The child has [REDACTED]

[REDACTED] This presents as significant delays in activities of daily living, speech and communication, foundational academic skills, and gross and fine motor control. As a result, the child has received homebound educational services based on recommendations from medical providers as determined by the IEP team.

The child had two IEPs during the complaint period, both of which contain the same specially designed instruction relevant to the complaint:

- Specialized Instruction for academic skills, by Special Ed Teacher, 50 sessions/school year of 60 min, Homebound/Hospital based.
- Functional Life Skills – Specially Designed Instruction, by Special Ed Teacher, 75 sessions/school year of 90 min, Homebound/Hospital based

Both the parent and District agree that academic and functional life skills instruction that was to be provided by a special education teacher were not provided between [REDACTED], to [REDACTED], and then from [REDACTED], to present day. Prior to [REDACTED] academic and functional life skills instruction were provided by a special education teacher contracted through a third-party company. This teacher had worked successfully with this student for several years in the homebound educational setting. Then, in [REDACTED], this teacher went on maternity leave. The District had been notified of this upcoming maternity leave in [REDACTED] and had advertised for a long-term substitute but had no success. The earliest they were able to secure a substitute was on [REDACTED].

Then, on [REDACTED], the parent emailed the District and requested that the substitute no longer continue with instruction. The parent felt that the substitute's instructional style did not mesh well with the child and felt that some insensitive comments were made (i.e. asking the child to look at the substitute when the child has a visual impairment). There were hopes that the original teacher would return from maternity leave; however, the third-party company cited a personnel matter, and the teacher never returned. Since the parent's request on [REDACTED] the District has been unable to find a replacement special education teacher to provide the academic and functional life skills instruction. The parent and District both confirm that all other services in the child's IEP have been delivered.

During the time since [REDACTED] the IEP team has convened several times to discuss possible solutions. One attempted solution was to supplement this lack of a teacher by increasing recreational services, which they did, but no long-term agreement was made. The District suggested placing the student in a public school setting for short periods of time, but the parent states that the child's immune system is too fragile to risk being in a larger population. The District also posed the idea of an out-of-district placement, but the parent was not open to that idea. Ultimately, the District and parent continue to communicate about possible solutions.

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 a child with a disability in accordance with the child's IEP.

Specifically, the complainant asserts that the District has not provided specially designed instruction by a special education teacher between the period of [REDACTED], to [REDACTED], including Extended School Year (ESY) instruction, as required by the child's IEP.

The District has demonstrated good-faith efforts to provide continuous services to the child, including advertising months in advance for the original teacher's maternity leave. However, there was an undisputed gap in services between [REDACTED], when

the District did not fulfill its legal obligation to have a special education teacher provide the services. Services resumed for a period of approximately 2 months when the parent then requested that the substitute not return to the home. This created a challenging situation for the District because, under other circumstances such as a traditional classroom environment or an approved special education program, there are no legal provisions that allow for parents to make personnel change requests. However, in this case, the services were being provided in the family's home, so a nonpreferred employee is an untenable situation for all parties.

Following the substitute being asked not to return on [REDACTED], the District has demonstrated commitment to the child by offering other alternatives while simultaneously recruiting for the position. As previously stated, the child's delicate health condition forces the IEP team to think creatively and collaboratively. While the District was responsible for the original gap in services, the latter gap was not due to the District's failure to provide an educator. Therefore, this allegation is partially substantiated.

Conclusion

NHED recognizes the shortage of special education teachers and its impact on NH school districts and families. It is important that the educators serving children have positive rapport and trust with families. However, state and federal special education laws do not imagine a scenario where parents may request a change in a service provider—whether it be a teacher, paraprofessional, or related service professional. While it is common for school districts to accommodate such requests to the extent that they are able, there is no legal mechanism that compels them to do so. This case highlights the importance of collaborative IEP teams who can problem-solve conflicts such as this because interruptions in special education can have lasting impacts on students. NHED hopes that this IEP team can continue to collaborate in good faith to develop the best educational programming for the child.

As an aside, the Department will take this opportunity to note that it does not recommend that special education and related services be designated on a "per school year" basis as it does not ensure continuous access to a free appropriate public education (FAPE).

Corrective Action Plan

The Manchester School District will convene an IEP team meeting to determine what, if any, compensatory services are required for the child. 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]

NHED hopes 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