



Frank Edelblut
Commissioner

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
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[REDACTED]

[REDACTED]

Re: Special Education State Complaint # 25-10

Dear [REDACTED]

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 student is enrolled within the [REDACTED] ("the District"). The student qualifies for an Individualized Educational Program (IEP) as a result of multiple disabilities, which include [REDACTED]. These conditions are communicatively and educationally significant for the student. In school, the student prefers accessing information through a combination of visual (interpreting) and auditory input. Due to these medical diagnoses, the student also requires [REDACTED]. Per doctor's orders, the student must have a 1:1 RN or LPN/LNA and a medical emergency action plan that is posted in the classroom.

During the complaint period, the student had two active IEPs. The former IEP spanned [REDACTED], and the current spans [REDACTED]. Both IEPs include the following services relevant to the complaint:

- Interpreting Services by an Educational Interpreter: 1 session/day of 2.6 hours in a regular education setting
- Interpreting Services by an Educational Interpreter: 1 session/day of 4.4 hours in a special education setting
- LNA Services by a School Nurse: 1 session/day of 4.4 hours in a special education setting
- LNA Services by a School Nurse: 1 session/day of 2.6 hours in a regular education setting

The crux of this case is that all the above services are provided by the District through a contract with a third-party agency. Those respective contracts obligate the agencies to provide a substitute in the event that the original provider is absent or unavailable. However, there are still instances when the agency fails to meet its contractual obligation and the student is without the required services. Specifically, this occurred on 8 school days over the 365-day complaint period. Without these services, the student is not safe to attend school, so staff cancellations lead the student to miss portions or the entire school day. This is, understandably, frustrating to the parents and student to endure these last-minute changes. While the District was able to provide evidence that they have developed a contingency plan for when LNA substitutes were not provided as a result of the agency not fulfilling its contractual obligation, it was not able to provide such a plan for when other service providers were unavailable.¹

Allegation 1—Unsubstantiated

The sole 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 failed to provide consistent nursing and 1:1 interpretation services as mandated by the student's IEP.

The District does not dispute the fact that there were days the student was not able to attend school on several occasions due to a lack of service providers. The District has developed several contingency plans in the event the usual 1:1 LNA is not available. However, the interpreter services pose a different challenge to staff in the event the agency does not meet its contractual obligations to provide an interpreter or substitute. It is clear that the District is making a good-faith effort to educate the student, who, despite these infrequent instances of a

¹ The District's contingency plan is as follows: "When [the student's] 1:1 medical personnel is unable to be with him at school, the district has created a backup plan for the current school nurse to become his 1:1 medical personnel and the district nurse will be the substitute for the school nurse. The district also has another backup plan with a contracted RN for coverage when [the student's] medical personnel is absent, if available. When [the student's] current medical personnel is absent, the providing company will also be contacted for backup. When [the student's] 1:1 medical personnel (which is currently an LPN) is absent, the doctor's note [REDACTED] states that LNA can provide these services."

provider not being available, is making progress which is appropriate in light of these circumstances. For these reasons, the allegation is not substantiated.

Conclusion

This is a complex case. This student has significant needs that require constant specialized supports and services. While this finding could have been partially substantiated, the District demonstrated that it has taken every step possible to ensure that the student has access to these supports and services. Still, that does not take away from, or minimize in any way, the parent's frustration. NHED would encourage the IEP team to convene to discuss what other communication mechanisms may be available for the student to access school in the event an interpreter is not available, or if a change in educational placement to a program with staffed nursing and interpretation services is amenable to the parties. Separately, NHED would also encourage the District to meet with third-party agencies to review and remind them of their contractual obligations and discuss recourse for failure to meet those obligations.

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