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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 # 25-02*

Dear [REDACTED]:

The New Hampshire Department of Education, Governance Unit ("NHED"), has concluded its investigation of special education state complaint # 25-02. Based on the findings of fact in the investigation, the Department 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 in the [REDACTED] grade at [REDACTED]. The [REDACTED] ("the District") is responsible for providing special education and related services as the child's resident district.<sup>1</sup> The child originally began the

<sup>1</sup> NH RSA 194-B:11(c): "Consistent with section 5210(1) of the Elementary and Secondary Education Act and section 300.209 of the Individuals with Disabilities Education Act, when a parent enrolls a child with a disability in a chartered public school, the child and the child's parents shall retain all rights under federal and state special education law, including the child's right to be provided with a free and appropriate public education, which includes all of the special education and related services included in the child's IEP. The child's resident district shall have the responsibility, including financial responsibility, to ensure the provision of the special education and related services in the child's IEP, and the chartered public school shall cooperate with the child's resident district in the provision of the child's special education and related services."

██████████ school year as a student at ██████████; however, the parents enrolled the child in ██████████ in ██████████.

During the complaint period, the child had an Individualized Education Program (IEP) that spanned ██████████, and that was signed in consent on ██████████. The special education and related services mandated by the IEP within the complaint period included the following:

- Specially Designed Instruction – Reading, Special Educator, 4x30 min/week in a Special Ed Setting;
- Specially Designed Instruction – Written Expression, Special Educator, 3x15 min/week in a Regular Ed Setting;
- Pathology Group, Speech Language Pathologist, 14 session/year of 25 min in a Special Ed Setting; and
- Communications Support. Gen Ed Teacher Coordinator, Paraeducator, Provider, 1 session per day/3 hours in a Regular Ed Setting.

It is important to note that services logs were not provided to the parent of NHED investigator for services completed during Extended School Year (ESY) or during the time of the ██████████ school year that the student attended ██████████.

**Allegation 1—Substantiated**

The first allegation in this matter is that the District failed to comply with Ed1109.03(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 reading and writing services nor paraprofessional support mandated by the IEP from the period of ██████████.

The District acknowledges that the required services were not provided while the student attended ██████████. There were no logs of services or any documentation provided by the special education teacher responsible for the specially designed instruction in reading and writing. While the District was able to show that the paraprofessional was scheduled to be with the student in the classroom for the required amounts of time, there were no child-specific logs to support that.

The District acknowledges that there was no speech language pathologist to provide speech services on a regular basis during this time; however, the services that were missed have been made up for all but 4 hours. NHED will take this opportunity to emphasize that writing service delivery on a yearly basis is not best practice as it does not ensure regular access to needed services.

Given the overall lack of evidence to show that services were provided in accordance with the IEP, NHED does substantiate this allegation.

It is important to note that the District has proposed the following plan for compensatory services to the parents:

- 4.5 hours of compensatory services in speech;
- 71.25 hours of compensatory services in reading; and
- 28.5 hours of compensatory services in writing.

NHED finds this to be an appropriate proposal for compensatory services.

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

The second allegation in this matter is that the District failed to comply with 34 CFR 300.320(a)(3)(ii), which, in relevant part provides that:

Periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

Specifically, the complainant asserts that the District did not provide IEP progress notes for the child during the [REDACTED] school year.

As previously mentioned, there is not sufficient evidence to support that the special education teacher responsible for the specially designed instruction in reading and writing actually provided those services. However, the District was able to provide copies of IEP progress notes related to these academic IEP goals and objectives during the first marking period. This causes NHED to beg the question of what these reports were based on, given that there is a lack of evidence that the services were provided. Additionally, there were no academic progress notes provided to the parents while the child attended [REDACTED]. Moreover, given that there was no speech language pathologist to provide speech services, there was no progress note provided during that first marking period. Once the child transferred to [REDACTED] and began receiving speech services, progress notes were provided. Therefore, the Department considers this allegation to be partially substantiated.

### **Allegation 3—Substantiated**

The final allegation in this matter is that the District failed to comply with 34 CFR 300.303, which, in relevant part provides that:

The LEA must complete the re-evaluation process, including determination of eligibility, on a triennial basis.

Specifically, the complainant asserts that the District did not document determination of eligibility in [REDACTED].

By way of relevant information, the child was evaluated in [REDACTED] by the District. This would then require a 3-year reevaluation necessary by [REDACTED]. At an IEP team meeting in [REDACTED], the District stated that the child should have a neuropsychological evaluation performed. While it is unclear if this evaluation was coordinated as an independent education evaluation pursuant to 34 CFR 300.502 or if it was privately obtained by the parents, the evaluation was completed by [REDACTED].

██████████ 023. The IEP team convened to discuss the results of this evaluation on ██████████. At this meeting, the IEP team agreed that the student continued to qualify for special education as a child with a specific learning disability and speech language impairment. The written prior notice (WPN) from this meeting notes that the IEP team will agree to revisit this evaluation report and determine how it will be used for the purposes of planning the triennial reevaluation.

Then, on ██████████, the IEP team discussed using the NESCA evaluation as the basis for the three-year review of eligibility under the two previous disability categories. However, while the NESCA evaluation included specific subtests of different language-based assessments, the evaluation was performed by a licensed psychologist and not a speech language pathologist, who would be the qualified examiner for communication evaluations. Moreover, the IEP team did not complete the specific documentation required for eligibility determination for the specific learning disability category.<sup>2</sup>

In light of these procedural errors, NHED substantiates this allegation.

### **Conclusion**

This crux of this case rests on a lack of documentation of services. NHED understands that the District is undertaking extensive staff training to address this issue and hopes that will mitigate any issues in the future. Additionally, NHED hopes that increased transparency and communication within the IEP team, including the parents, allows for everyone to participate in the special education process and work collaboratively to resolve any issues that may arise.

### **Corrective Action Plan**

The ██████████ District will review their internal policies and procedures related to IEP implementation, service logs, and data collection and revise, as necessary, to ensure compliance with state and federal requirements. The District will train their special education case managers on these policies and procedures. 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 ██████████ will review their internal policies and procedures related to IEP progress notes and revise, as necessary, to ensure compliance with state and federal requirements. This shall include policies and procedures related to students who attend public charter schools or out-of-district placements. The District will train their special education case managers on these policies and procedures. 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 ██████████ District will convene the IEP team to discuss reevaluation in all areas of suspected disability where additional data is needed and, when all evaluations are completed, convene again to discuss impacts on the student's eligibility and educational programming. The District will then ensure that IEP documents are updated to reflect the appropriate date of the next triennial evaluation, which would be 3 years from completion of these assessments.

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<sup>2</sup> 34 CFR 300.311 (b): "Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions."

[REDACTED]  
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 provide its proposed compensatory services of 4.5 hours of  
speech, 71.25 hours of reading, and 28.5 hours of writing in a manner agreed upon by the IEP  
team. 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]

Sincerely,

Frank Edelblut  
Commissioner of Education  
NH Department of Education