

Agreement Between the
New Hampshire Department of Education
and the
New Hampshire Department of Health and Human Services
Relative to
Students with Disabilities
Ages Birth to Twenty-One

Parties:

This agreement is between the New Hampshire Department of Education (hereinafter referred to as “Education”) and the New Hampshire Department of Health and Human Services (hereinafter referred to as “Health and Human Services”).

Statement of Purpose

To assure that students with disabilities ages birth to twenty-one (21) are provided appropriate education and educationally-related services under the auspices of the Department of Education, as well as such other services as may be available through the Department of Health and Human Services, in order to promote their individual learning, growth and well-being.

II. Definitions

A. "Area Agency" shall mean a non-profit corporation in the State of New Hampshire which is designated by the Commissioner of Health and Human Services to provide services to persons who are developmentally disabled in a specific geographic region. Health and Human Services shall be considered the Area Agency in the absence of a designated local agency. The Commissioner of Health and Human Services may delegate specific functions of that Area Agency responsibility to local agencies in the absence of specific designations. Area Agencies shall be subject to the supervision of the Division of Developmental Services within Health and Human Services.

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- B. "Community Mental Health Program" shall mean a non-profit corporation in the State of New Hampshire which is designated by the Commissioner of Health and Human Services to provide community mental health services in a specific geographic region. Community Mental Health Programs shall be subject to the supervision of the Division of Behavioral Health within Health and Human Services.
- C. "Developmental Disability" shall mean developmental disability as defined in New Hampshire RSA 171-A:2, V, as it may be amended from time to time.
- D. "Local Education Agency" (LEA) shall mean the local school district.
- E. "Educationally Related Services" shall mean transportation and such developmental, corrective, and other supportive services as are required by an individualized education plan to assist an educationally disabled child to benefit from special education. Educationally related services may include speech pathology and audiology, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities, counseling services including rehabilitation counseling, medical services for diagnostic or evaluation purposes, school health services, social work services in schools, and parent counseling and training.
- F. "Individualized Education Plan (IEP)" shall mean a written plan developed by an LEA that provides necessary special education and/or educationally related services to a child with an educational disability in an approved program. RSA

186-C:2, III.

III. Goals

- A. To assure that infants and toddlers with developmental delays or at risk for substantial developmental delay ages birth to their third birthday are provided appropriate services as may be available through Health and Human Services to meet their developmental needs.
- B. To assure that children ages three (3) to twenty-one (21) are provided, at no cost to their parents, appropriate special education and educationally related services.
- C. To assure that eligible children ages three (3) to twenty-one (21) are provided appropriate health care and social supports not covered by "B." above as may be available through Health and Human Services.
- D. To assure transitions between service delivery systems as children approach ages three (3) and twenty-one (21) and that to the greatest extent possible individuals receive needed and appropriate services without delay.

IV. Delineation of Intent

The parties intend that this agreement will facilitate the efforts of each Department:

- A. To cooperate in providing appropriate services to children ages birth to twenty-one (21) through Education and Health and Human Services.
- B. To implement the requirements of the Federal District Court in the matter of Garrity vs. Sununu as they relate to both members of the class as defined by that court and other children with developmental disabilities ages birth to twenty-one (21) in the State of New Hampshire.
- C. To cooperate in cost-effective service provision.

- D. To cooperate in the elimination of duplicated services.

V. Specific Roles, Responsibilities, and Actions to be Taken

- A. Services to be provided to make available a continuum of care and developmental programs shall include the following:

(1) The Department of Education shall have the responsibility to:

- a. Coordinate special education with the general curriculum and instruction activities;
- b. Make information about national and statewide trends available to LEAs;
- c. Identify cost effective alternative programs;
- d. Develop cost and service benchmarks for special education which may be used by LEAs to measure the effectiveness of their program; and
- e. Provide technical assistance to LEAs in carrying out their responsibilities to students with disabilities.

(2) Local school districts shall be responsible for the provision of special education and educationally related services to all educationally disabled students in accordance with RSA 186-C:9. These students shall attend an approved program which can implement the student's IEP which may include as appropriate for the student:

- a. Physical education;
- b. Vocational education;
- c. Audiology;
- d. Counseling services;

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- e. Early identification at age of three (3) or before;
- f. Medical diagnostic services;
- g. Occupational therapy;
- h. Parent counseling and training;
- i. Physical therapy;
- j. Psychological services;
- k. School health services;
- l. Social work services in schools;

- m. Speech pathology/therapy;
 - n. Transportation;
 - o. Adaptive equipment;
 - p. Residential school placement; and
 - q. Such other services as may be required under federal or state law.
- (3) Health and Human Services shall be responsible for the provision of family centered early supports and services to infants and toddlers with developmental delays or at risk for substantial developmental delay ages birth to their third birthday. Services shall be provided in accordance with the Memorandum of Agreement between Education and Health and Human Services under Individuals with Disabilities Education Act (IDEA), Part C, PL 105-17. These services shall include the following as may be appropriate for the child and family:
- a. Service coordination;

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- b. Audiology;
- c. Family training, counseling and home visits;
- d. Medical diagnostic and evaluation services;
- e. Occupational therapy;
- f. Physical therapy;
- g. Psychological;
- h. Special instruction;
- i. Speechllanguage;
- j. Social work services;
- k. Nutrition services;
- l. Nursing services;
- m. Health services necessary to enable a child to benefit from Family Centered Early

Supports and Services;

- n. Vision services;
- o. Transportation; and
- p. Assistive technology devices.

(4) Health and Human Services shall be responsible for the provision of the following services to children ages three (3) to twenty-one (21) who are eligible for developmental services and/or behavioral health services as may be individually appropriate, subject to availability of funding, or to children ages three (3) to twenty one (21) who are served through the division for

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children, youth and families as may be individually appropriate and be available from a certified provider:

- a. Service coordination;
- b. Family support including respite care to families;
- c. Professional and medical care beyond medical diagnostic services, including psychiatric care, medication, hospital care, and family counseling;
- d. Home and vehicle modifications;
- e. In home nursing and other health supports;
- f. Foster care or other residential services pursuant to a court order for children who are subject to RSA 169-B, RSA 169-C, and RSA 169-D;
- g. Residential services for children who require admission to a nursing facility; and
- h. Such other services provided by Health and Human Services as may be appropriate and are not the responsibility of Education under V (A) (2) or state or federal law.

B. Medicaid to Schools:

Health and Human Services shall administer a program to facilitate Medicaid reimbursement

for services provided by LEAs to Medicaid eligible students in accordance with an JEP. Health and Human Services shall set Medicaid reimbursement rates for the program in consultation with Education. The Medicaid to schools program shall provide technical assistance to LEAs regarding

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participation in the program including consultation to streamline the reimbursement process.

C. Local coordination and transition planning:

- (1) Mechanisms for the referral of individuals between the respective local service systems shall be established and include as a minimum the following:
 - a. Development of local cooperative working relationships and communication between the LEA and the Area Agency, Community Mental Health Program, and DCYF Staff to provide for appropriate shared staff training and shared knowledge of program content within respective service systems; and
 - b. Client information sharing in the most efficient, cooperative manner within the constraints of the confidentiality policies of the respective LEAs, agencies and programs.
- (2) Mechanisms for the identification of children or students potentially eligible for other services as they approach ages three (3) and twenty-one (21) to assure continuity of care and sufficient lead time and information for service providers to develop and implement appropriate services.
- (3) For students beginning no later than age sixteen (16), and at a younger age if determined to be appropriate, a statement of needed transition services. If appropriate, a statement of the services or linkages needed from Health and Human Services shall be included in a student's IEP.

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D. Availability of professionals to work together across programs:

- (1) Education and Health and Human Services shall each assign staff members to work together to develop inter-departmental staff resources and staff training opportunities. This shall address at a minimum the following:

- a. Coordinated staffing structures in service delivery;
- b. Cooperative staff training programs;
- c. Shared staffing arrangements;
- d. Reciprocal staff certification procedures; and
- e. Consultation to local teams in implementation of complex services needed by school age children with multiple agency involvement.

E. Referral procedures and individual service planning:

- (1) Children with developmental disabilities may voluntarily enter the Developmental Services system through the Area Agency in accordance with He-M 503, Eligibility and the Process of Providing Services.
- (2) Children with severe emotional disturbances may voluntarily enter the Behavioral Health system through the Community Mental Health Program in accordance with He-M 401, Eligibility Determination and Individual Service Planning.
- (3) Children with developmental disabilities or severe emotional disturbances ages three (3) to twenty-one (21) shall enter the special education system through the LEA in accordance with New Hampshire Standards for the Education of Students with Disabilities.

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- (4) As interagency services for birth to twenty-one (21) year old students may be required as specified in the agreement, those children shall be referred by the Area Agency/Community Mental Health Program or LEA to the corresponding local Area Agency/Community Mental Health Program or

LEA.
- (5) Evaluation, diagnostic, and other records shall be exchanged when appropriate for delivery of service and when allowed by confidentiality policies.

VI. Monitoring Functions

- A. The Commissioners, or their designees, shall meet at least annually to clarify specific

roles, responsibilities, and actions to be taken by their respective departments and to revise this agreement as necessary.

B. Due process:

- (1) Rules outlined in the Procedural Safeguards Chapter of the New Hampshire Standards for the Education of Students with Disabilities (ED 1125) and the Complaint Procedures (ED 1127) shall apply to all IEP reviews.
- (2) The Client Rights Protection Procedures of Health and Human Services shall apply to all individual service agreement disputes involving area agencies or community mental health programs.
- (3) Children served by Health and Human Services may have other avenues to make complaints such as those provided in the Medicaid program or by statute or rule governing child protection or juvenile services programs.

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C. Education shall monitor delivery of special education and educationally related services through:

- (1) On-site program approval;
- (2) Evaluation of student data contained in SPEDIS;
- (3) Review of out of state placements in unapproved state programs via the Individual Program Approval Process;
- (4) Complaint investigations;
- (5) Tracking issues raised in impartial due process hearings; and
- (6) Tracking issues raised in alternative dispute resolution mechanisms.

D. Health and Human Services shall monitor needs of children who require special education and educationally related services through individual case monitoring.

E. In consultation with the Office of the Attorney General, the departments shall jointly monitor the State's compliance with the James O. consent decree.

VII. Special Education Rates

- A. The Departments shall jointly establish rates for private providers of special education services pursuant to RSA 186-C:7, III and RSA 21-N:5, I, (g). Allowable room and board costs shall be incorporated into the rates.
- B. A private provider of Special Education Services making a request for reconsideration or appeal of the rates established jointly by the Departments in accordance with applicable rules.

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VIII. Subagreements

Where appropriate, the departments shall develop subagreements to carry out the responsibilities delineated in this agreement. The subagreements shall be in accord with the provisions of this agreement and subject to the approval of the Commissioners of Education and Health and Human Services.

IX. Construction of Agreement

- A. Nothing in the agreement shall be construed as relieving the liable LEA of its responsibility to develop and implement an IEP or as relieving any LEA or the Departments of Health and Human Services or Education of fulfilling their obligations under the law.
- B. To the extent anything in this agreement shall conflict with state or federal law, now or in the future, state or federal law shall govern and the remaining portions of the agreement shall remain in effect.

X. Dispute Resolution Mechanism

- A. The dispute resolution procedure is intended to provide a means whereby any disputes or questions regarding the administration of the Agreement or the respective financial and programmatic responsibilities of the departments which are parties to the Agreement can be resolved. It is further the intent of the parties that this mechanism will assist the parties in effectively meeting their obligations as set forth in the Agreement.

