

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.01
Complaint Investigator: [Redacted]
Date Complaint Filed: August 9, 2021
Date of Report: [Redacted]
Corrective Action Follow Up: Theresa Hayes

Issues Investigated

1. Did the District notify parents of the IEP conference with enough notice to ensure that they will have the opportunity to attend at a mutually agreeable time and place and did such notice indicate who would be in attendance? (92 NAC 51 §§ 007.06A1, 007.06A2, 007.06B)
2. Did the District ensure a representative of the nonpublic school was present as a member of the IEP team? (92 NAC 51§007.03A8)
3. Did the District improperly disclose personally identifiable student information? (92 NAC 51 §§ 009.03K1 and 009.03K2, 34 C.F.R. §300.610, 34 C.F.R. Part 99)

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint received by NDE August 9, 2021
- Notice of Meeting for the Student dated August 2, 2021
- Notice of Meeting for a nonrelated student dated August 2, 2021
- Email from the District to the Parent dated August 6, 2021

From the School District

- Letter of Response dated September 2, 2021; received by NDE September 2, 2021
- Emails between the District and the nonpublic school dated July 26, 2021 and July 27, 2021
- Calendar invite with attendees who accepted meeting notice
- Communication log between district and parent

Introduction

The Parent of this case filed a previous complaint with the District on June 16, 2021. The investigative report for that case was dated August 13, 2021. In that report, there was one issue in which the investigator had identified that “It is premature to determine whether the parents at issue will be provided meaningful parental participation in educational placement and services that

will be offered" as a result of both parties stating that an IEP to determine these issues was scheduled. Just before the investigative report went out, the Parent filed a new complaint requiring investigation, which is the purpose of the current investigation.

Findings of Fact

1. The District contacted the family "on or about July 26, 2021 to provide notice of the proposed meeting date" for the IEP and informed the parent a facilitator would be arranged for the meeting (Letter of Response dated September 2, 2021).
2. The District generated a Notice of Meeting. The date of the Notice was dated August 2, 2021 and included the name of the proposed facilitator and representative of the nonpublic school along with other members of the IEP team (Notice of Meeting found on SRS, file generated on July 26, 2021)
3. The District held an IEP meeting for the Student to discuss location of special education and related services on August 6, 2021 (Letter of Complaint dated August 9, 2021).
4. The Parent contacted the District on August 6, requesting a complete copy of the Student's educational record (Letter of Complaint dated August 9, 2021).
5. The Parent was unable to reach the Special Education Director and emailed the secretary with the request for a copy of the Student's educational record (Letter of Complaint dated August 9, 2021).
6. The District emailed the Parent the Student's educational record which included a copy of the Notice of Meeting for the August 6, 2021 IEP (Letter of Complaint dated August 9, 2021). This Notice of Meeting is different from either Notice of Meeting found in SRS and did not include the name of the representative from the nonpublic school who was invited to the meeting (Notice of Meeting dated August 2 and received by the parent via email).
7. The District kept a log of who was contacted and agreed to attend the IEP meeting (Calendar invite with attendees who accepted meeting notice).
8. The Parent attended the IEP Meeting and was provided a copy of the Notice of Meeting by the District (Letter of Complaint dated August 9, 2021).

Issue # 1

Did the District notify parents of the IEP conference with enough notice to ensure that they will have the opportunity to attend at a mutually agreeable time and

place and did such notice indicate who would be in attendance? (92 NAC 51 §§ 007.06A1, 007.06A2, 007.06B)

92 NAC 51 007.06 states:

007.06 Parent Participation

007.06A *The school district or approved cooperative shall take steps to ensure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:*

007.06A1 *Notifying parents of the IEP conference early enough to ensure they will have an opportunity to attend; and*

007.06A2 *Scheduling at mutually agreed upon time and place.*

007.06B *The notification under 92 NAC 51-007.06A1 must indicate the purpose, time and location of the meeting and who will be in attendance and inform the parents of the provisions of 92 NAC 51-007.03A6, 007.03A6a and 007.05.*

Allegations/Parent Position

An IEP meeting was requested by the District against the parent's wishes. The Parent received a copy of the Notice of Meeting after a request was made for copies of the Student's educational records. The Notice of Meeting was not received by the Parent until returning home from the IEP meeting. The Notice of Meeting was postmarked August 4, 2021. (Letter of Complaint received August 9, 2021)

District Response:

The District, after preferring to not engage in mediation with the Parent due to the conditions that accompanied the mediation offer, agreed to hold a facilitated IEP as requested by the parent. The District reached out to the Parent on multiple occasions via telephone call concerning the IEP meeting on August 6, 2021 prior to that date (Fact #1, 2, 6, and 7). The District also provided a written notice of meeting that was emailed and sent via postal service. (Letter of Response dated September 2, 2021)

Investigative Findings

The District had generated a Notice of Meeting within the electronic IEP system used (SRS) on July 26, 2021 (Fact 2). The Notice of Meeting was dated August 2, 2021, which is prior to the date of the August 6th meeting (Fact 2).

Although it is clear based on the multiple phone calls made to the Parent and the fact that the Parent attended the meeting demonstrate that notice of the meeting was early enough to allow for participation.

Summary and Conclusions

Based on the Investigative Findings above, the District implemented the requirements of 92 NAC 51 §§ 007.06A1, 007.06A2, 007.06B, and **no corrective action is required**. However, the District is highly encouraged to review the policies and procedures regarding the provision of Notice of Meeting to ensure that Notices are sent to parents sufficiently in advance to ensure parent participation and allow for parents to have knowledge of all participants invited.

Issue # 2

Did the District ensure a representative of the nonpublic school was present as a member of the IEP team? (92 NAC 51§007.03A8)

92 NAC 51§007.03A8 states:

007.03 IEP Team Participants

007.03A8	For a child attending a nonpublic school, a representative of the nonpublic school the child attends. If the representative cannot attend, other methods shall be used to ensure participation by the nonpublic school, including individual or conference telephone calls.
----------	---

Allegations/Parent Position

The Notice of Meeting the Parent received in the mail on August 6, 2021 did not include the name of a representative from the nonpublic school. However, the Parent was handed a hard copy of the Notice of Meeting at the IEP Meeting, which did include a representative of the nonpublic school as well as the name of someone who facilitated the IEP. (Letter of Complaint received August 9, 2021)

District Response

The District communicated with representatives of the nonpublic school in which the Student attends regarding the IEP and sent the required Notice of Meeting. A representative from the nonpublic attended the meeting. (Letter of Response dated September 2, 2021)

Investigative Findings

The District generated a Notice of Meeting within the electronic IEP system used (SRS) on July 26, 2021 (Fact 2). The Notice of Meeting was dated August 2, 2021, which is prior to the date of the August 6th meeting and included the name of the representative from the nonpublic school that was invited(Fact 2).

Although the Notices within the electronic system included the name of the representative of the nonpublic school as required by 92 NAC 007.03A8, the Parent received an electronic copy that did not include the name of the nonpublic representative (Fact 6).

However, it is clear based on the fact that the nonpublic school representative attended the meeting show that issues with the difference between the Notice of Meeting received by the Parent and the Notice of Meetings generated electronically by the District does not rise to the level of a substantive issue rather it is considered a procedural one.

Summary and Conclusions

Based on the investigative findings above, the District implemented the requirements of 92 NAC 51§007.03A8 and **no corrective action** is required.

Issue # 3

Did the District improperly disclose personally identifiable student information? (92 NAC 51 §§ 009.03K1 and 009.03K2, 34 C.F.R. §300.610, 34 C.F.R. Part 99)

92 NAC 51 §§ 009.03K1 and 009.03K2 state:

009.03K Safeguards

- | | |
|----------|---|
| 009.03K1 | <i>Each participating agency shall protect the confidentiality or personally identifiable information at collection, storage, disclosure, and destruction stages.</i> |
| 009.03K2 | <i>One official at each participating agency shall assume responsibility for</i> |

ensuring the confidentiality of any personally identifiable information.

34 C.F.R. §300.610 states:

300.610 *Confidentiality. The Secretary take appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.627*

34 C.F.R. Part 99 – *Family Educational Rights and Privacy.*

Allegations/Parent Position

The Notice of Meeting received by the Parent was for another Student who resides in the District but attends the nonpublic involved in the complaint. (Letter of Complaint received August 9, 2021)

District Response

In the process of sending out information concerning upcoming meetings for students, an agent for the District inadvertently mixed up paperwork and put the wrong students' notification into the wrong envelopes. The District contacted the parent who received the information of the Student in the Complaint and instructed them to destroy the documents. The District received notification this was done. (Letter of Response dated September 2, 2021)

Investigative Findings

The investigator confirmed that an error took place as the District described and that the Student's information sent by mistake to another family was destroyed and accepts the corrective action recommended by the District with minimal changes.

Corrective Action:

Based on narrative provided by the District, the District failed to fully implement the requirements of 92 NAC 51 §§ 009.03K1 and 009.03K2, 34 C.F.R. §300.610, 34 C.F.R. Part 99. Thus the following **corrective action is required**.

1. The District will send out an instructional memorandum to all individuals who are charged with facilitating the mailing of notifications and meeting information to parents that such information should be protected and matches the information that is in the electronic IEP system.
2. Copies of the memorandum sent to the individuals charged with facilitating the mailing of notifications of meetings will be provided to

Theresa Hayes within 10 days of the memorandum being sent.

Documentation should be disseminated and provided no more than 60 calendar days from the date of this report.

3. The District will provide specific training for such individuals which will ensure that improper disclosure does not happen in the future.
4. Copies of training provided to such individuals will be provided to Theresa Hayes two weeks prior to the training for approval. Within 10 days following the training, sign-in sheets of those trained will be provided to Theresa Hayes.
5. The District will take steps to streamline the procedures for sending out information to make future mistakes less likely to occur.
6. Streamlined procedures for sending out Notice of Meeting information to make mistakes less likely to occur will be provided to Theresa Hayes for verification of completion of this action.

Notice to the District

Unless otherwise indicated, the corrective action specified must be completed within sixty (60) calendar days of the date of this report. Documentation must be submitted as soon as possible following the completion of the corrective actions. All documentation of correction must be sent to:

Theresa Hayes, Complaint Specialist
NDE Office of Special Education
Theresa.hayes@nebraska.gov