

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.03
Complaint Investigator: [Redacted]
Date Complaint Filed: August 9, 2021
Date of Report: [Redacted]

Issues Investigated:

1. Did the District consult with the private school administrators and/or with parents prior to the decision to change the location for provision of special education services from the private school to a District facility in violation of 92 NAC 51 § 015.03D1d(3)?
2. Were the students denied a free appropriate public education (FAPE) when the decision was made by the District to change the location for provision of special

Information Reviewed by Investigator

From the Complainant:

- Letter of Complaint received by NDE August 13, 2021

From the School District:

- Letter of Response dated September 16, 2021; received by NDE September 16, 2021
- Email to Investigator dated September 30, 2021
- IEPs, Prior Written Notices and Notes for the following Students
 - Student A
 - Student B
 - Student C
 - Student D

Introduction

The Student, who is the subject of the complaint, receives special education services from the District in which the Student resides but attends a non-public school outside of the District's boundaries. Due to the number of complaints received involving the location of services for students attending a non-public school outside of the District's boundaries, a systemic complaint was launched pursuant to the Department's general supervisory and oversight authority. The District provided access to the on-line system used to create and house student IEPs and related special education documents. There are 17 students attending the non-public school who currently receive special education and related services from the District, and 4 IEPs were selected to be reviewed for the purposes of this report.

Findings of Facts

1. Nebraska law provides that parents of parentally placed non-public school students who qualify for special education and special education related services may either receive equitable services from the public school district where the non-public school is physically located or may elect to receive a free appropriate public education (FAPE) from the public school district where the student resides. (92 NAC 51 § 015.03C1b.)
2. Public school districts are only required to hold consultation meetings with representatives of non-public schools and the parents attending such non-public schools for those non-public schools and parents located within the boundaries of the public school (92 NAC 51 § 015.03D1). There is no requirement to hold a consultation meeting with students who are receiving FAPE from the resident district.
3. Parentally placed nonpublic school children who have chosen to receive FAPE from their resident district must have their IEP developed and implemented in accordance with 92 NAC 51 § 007 and 92 NAC 51 § 015.03C1a(1).
4. The IEP should include the date that services will begin and any modification in services along with the frequency, location, and duration of those services and modifications (92 NAC 51 § 007.07A8).
5. Parents of children with a disability must be afforded the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child (92 NAC 51 § 009.01A).
6. Prior to the 2021-2022 school year, the Student at issue and other students reviewed received all special education and related services at the non-public school.
7. On May 24, 2021, the District provided notice that the location of the special education and related services would be provided at an identified elementary, middle, or high school depending on the student's grade level and stated the District would be responsible for transportation to the designated school. The letter also provided that the Parents would be invited to individual IEP meetings "to denote the change in service location" the week of August 9, 2021.
8. On May 5, 2021, the District published a notice in the community newspaper providing public notice to parents and representatives of nonpublic schools within the District boundaries of a meeting to be held on May 12, 2021, to develop the plan for special education services for the 2021-2022 school year and posted a notice to their website.

9. During the month of August, the District held IEPs for each of the Students reviewed. The information regarding the IEPs is as follows:
 - a. IEPs for the Student of which the complaint was filed was held August 12, 2021 and August 23, 2121
 - b. IEP for Student Student B was held August 16, 2021
 - c. IEP for Student Student C was held August 25, 2021
 - d. IEP for Student Student D was held August 18, 2021
10. The District reported that two of the Students who were under review had IEP meetings on August 18 and August 25 and the services within the IEPs were being implement as written (Email from District to Investigator dated September 30, 2021).

Issue # 1

Did the District consult with the private school administrators and/or with parents prior to the decision to change the location for provision of special education services from the private school to a District facility in violation of 92 NAC 51 § 015.03D1d(3)?

92 NAC 51 § 015.03D1d(3) states:

015.03D Consultation

015.03D1

To ensure timely and meaningful consultation, a school district or approved cooperative must consult with representatives of nonpublic schools located in the school district or approved cooperative and representatives of the parents of parentally-placed nonpublic school children with disabilities attending such schools during the design and development of special education and related services (FAPE and equitable services) for the children regarding the following:

015.03D1d

How, where, and by whom special education and related services (FAPE or equitable services) will be provided for

*parentally-placed
nonpublic school
children with disabilities,
including a discussion of:*

015.03D1d(3) *How and when those
decisions will be made.*

Allegations/Parent Position

The parents received a letter from the District notifying them that the District would cease providing on-site special education services at the nonpublic school without consultation (Letter of Complaint received August 13, 2021).

District Response

The District must consult with Nonpublic Schools which are located within the District. The Nonpublic School is not located within the District boundaries as a result, the District did not violate 92 NAC 51 015.03D1. (Letter of Response dated September 16, 2021)

Investigative Findings

All Students included in the investigation were residents of the District for school enrollment purposes. The nonpublic school where the Students attend is not within the boundaries of the District but is located within an adjoining district.

The District advertised a consultation meeting in the community newspaper on May 5, 2021. The consultation meeting occurred, as announced on May 12, 2021. Only two individuals attended the meeting; a member from the District and a member from a nonpublic school within the District boundaries.

The consultation meeting agenda stated that:

“...(children who attend a nonpublic school outside of the attendance boundaries of [District] but live within [District] attendance boundaries) at the choice of the parent, will either be served through their home district on an IEP or through the district the nonpublic school is located, on an equitable services plan”.

The parents of all of the Students included in the investigation have elected to receive FAPE from the District. The District held IEPs for four of the five Students (Student C had an IEP in May) and sent Notices of Meeting to each Students' family to discuss and plan for a change in service location.

Summary and Conclusions

Based on the Investigative Findings, the District implemented the requirements of 92 NAC 51 § 015.03D1d(3) and **no corrective action** is required.

Issue # 2

Were the students denied a free appropriate public education (FAPE) when the decision was made by the District to change the location for provision of special education services in violation of 92 NAC 51 § 015.0311?

92 NAC 51 § 015.0311 states:

015.031 Location of Services and Transportation

015.0311 Services (equitable or FAPE) to parentally-placed nonpublic school children with disabilities may be provided on the premises of nonpublic, including religious schools, to the extent consistent with law.

Allegations/Parent Position

The decision to move special education services from the nonpublic school to the public school is not in the best interest of the Student. The Student struggles with reading and speech and due to the change in service location will pull the student out of English class at the nonpublic school making it likely the Student will fall behind. The Parent also pointed out that both IDEA and Rule 51 state "Services to parentally-placed private school children with disabilities may be provided on the premises of the private, including religious schools, to the extent consistent with the law." (Letter of Complaint received August 13, 2021)

District Response

The District has worked to provide services for students with disabilities utilizing the resources at its disposal. The District has proposed to provide FAPE within the District to the nonpublic students attending outside of the District boundaries and have provided transportation between the Nonpublic and the District which is roughly less than a five minute ride. (Letter of Response dated September 16, 2021).

Investigative Findings

The determination of whether there has been a denial of FAPE requires consideration of two components: substantive and procedural. The question one must answer to determine the substantive standard is whether the IEP was "reasonably calculated to allow the child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District. RE-I*, 137 S. Ct. 988 (2017).

Each of the Students reviewed had special education goals and services individualized to meet their needs. Two Students(Student Student A and Student

Student B) IEPs reviewed showed all special education services being provided in the public school with transportation being provided as a related service to enable each of the student's to access the special education services documented within their IEPs. For the other 2 students (Student Student D and Student Student C), although services were to be provided in the public school, transportation was not included as a related service (IEP for Student D dated August 18, 2021; IEP for Student C dated August 25, 2021). All services are being provided to each of the students as written within the IEPs (Email to Investigator dated September 30, 20210).

Summary and Conclusions

Each of the IEPs' detailed goals, special education and related services tailored to meet individual needs. Based on information from the District (Email to Investigator dated September 30, 2021), the District has been providing services as written in each of the Student's IEPs. As a result, this is a procedural error, not a substantive one.

Corrective Action

Based on PROVIDE RATIONAL, the District failed to fully implement the requirements of 92 NAC 51 § 015.0311. Thus the following **corrective action is required**.

1. Reconvene IEPs for Student D and Student C to indicate the provision of transportation as a related service to allow students to access their special education and related services provided at the public school.
2. Provide copies of the revised IEPs for Student D and Student C within 10 days of the meetings.

Notice to 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:

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