

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.07
Complaint Investigator: [Redacted]
Date Complaint Filed: September 3, 2021
Date of Report: [Redacted]

Introduction

The Student referenced in this complaint is a 14-year old, 9th grader who has been diagnosed with autoimmune encephalitis, a condition that has prevented the ability to attend school in-person due to the risk of infection. Prior to the events in this complaint, the Student has been homeschooled and has not been enrolled in the District.

Issues Investigated

1. Did [Redacted] complete a sufficiently comprehensive evaluation to identify all the Students' special education and related service needs? [92 NAC 51§006.02C11]
2. Did [Redacted] obtain parental consent for evaluation within a reasonable time period and complete multidisciplinary team evaluation within 45 school days of receiving consent? [92 NAC 51§009.04A1]
3. Did [Redacted] develop an individualized education program within 30 calendar days of the completion of the multidisciplinary team verification decision? [92 NAC 51§009.04A2]
4. Did [Redacted] deny the Student a free appropriate public education (FAPE)? [92 NAC 51§004.01]

Documents Reviewed by Investigator

From the Complainant

- Letter of Complaint dated September 2, 2021; received by NDE September 3, 2021
- Copy of electronic communication dated March 26, 2021-September 28, 2021
- Phone records dated August 8- September 7, 2021
- Draft IEP dated August 17, 2021
- Interview with the Parents, October 13, 2021

From the School District

- Letter of Response dated October 7, 2021; received by NDE October 7, 2021

- Prior Written Notice dated May 19, 2021; delivered May 24, 2021
- Multidisciplinary Evaluation Team MDT Report Dated May 20, 2021
- Consent to Evaluate, generated April 14, 2021, signed June 2, 2021
- Statement of [Redacted] received October 7, 2021
- Professional Development Materials from District In-service dated September 17, 2021
- School Board Policy regarding Admission of Students (5002) received October 7, 2021
- IEP dated September 22, 2021
- Copy of electronic communication dated between August 20 and October 4, 2021
- Interview with District Staff October 18, 2021
- Notices of Meeting dated May 12, 2021 (for May 20 meeting), August 13, 2021 (for August 17 meeting), September 3, 2021 (for a September 8 meeting that was cancelled), and September 17 (for September 22, meeting)

Issue # 1

Did [Redacted] complete a sufficiently comprehensive evaluation to identify all the Students' special education and related service needs?

92 NAC 51§006.02C11 states:

006.02C11	School districts and approved cooperatives must ensure in evaluating each child with a disability under Section 006, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
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Allegations/Parent Position

The Parents provided the District with a psychological evaluation that had been conducted by a private provider for review, requesting a Section 504 plan that would allow the student testing accommodations.

District Response

The District, upon review of this data, suspected that the Student may be eligible for special education. The District, in consultation with the District's school psychologist, determined that the evaluation provided was adequately

comprehensive to determine the Student's eligibility for special education and determine [Redacted] needs and that no additional testing was needed.

Findings of Fact

1. The Parents provided a copy of a neuropsychological report that the family had requested from an outside agency to the District via email on March 26, 2021 with a request for 504 accommodations (email correspondence dated March 26, 2021).
2. On April 12, the District responded, "with your permission, I would like to share this with our school psychologist and speech-language pathologist to dive in a little deeper to make sure we are providing [the Student] with the appropriate supports and accommodations for the ACT and post-secondary opportunities." (email correspondence dated April 12, 2021).
3. The IEP Team determined that "this panel of assessments was the same as or more extensive than the District's educational experts would have chosen to administer in order to comprehensively evaluate the student in all areas of suspected disability" (District response dated October 7, 2021).
4. An MDT meeting was held on May 20, 2021 and the student was found eligible as a student with an Other Health Impairment (Multidisciplinary Evaluation Team MDT Report dated May 20, 2021).

Investigative Findings

The purpose of a special education evaluation is to determine the following:

- Functional, developmental and academic information about the child (92 NAC 51-006.02C5);
- Educational needs of the child (92 NAC 51-006.02C13);
- The content of the child's IEP (92 NAC 51-006.02C5b); and
- Whether the child is a child with a disability (92 NAC 51-006.02Ca5).

A Multidisciplinary Evaluation Team (MDT) is required to include the parents, as well as a team of individuals, responsible for the analysis, assessment, and documentation of educational and developmental abilities and needs (92 NAC 51-006.03A). In this case, the Director of Special Education and School psychologist accepted the neuropsychological report provided by the Parents as the MDT. As a result, and due to the student previously being homeschooled, the MDT did not include an interpretation of the data, nor did it draw upon teacher recommendations, social or cultural background, or adaptive behavior as required by 92 NAC 51-006.02C14a. The neuropsychological report that was

accepted as the MDT also did not include current observations by teachers and related service providers as required by 92 NAC 51-006.06A1.

Specific to the “analysis” portion required by the MDT, the report included scores for the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V); Kaufman Test of Educational Achievement – Third Edition (KTEA-3); Conners Continuous Performance Test – Third Edition (Conners CPT-3); Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2); among several others. The MDT report did not include an analysis of those scores or a description of what those scores mean for the academic achievement or developmental abilities of the Student. Furthermore, the educational needs section stated the list “is not extensive nor should it be considered all-inclusive; this list is provided to assist the educational team”. The team, however, took it as comprehensive and did not include any additional assessments to determine, for example, the features of the assistive technology recommended to accommodate the Student’s needs.

Summary and Conclusions

Information provided indicates that the District did not follow all procedural requirements of 92 NAC 51-006 which are included in 92 NAC 51-006.02C11. Due to these deficiencies, the evaluation was not sufficiently comprehensive to determine all of the educational needs (including transition needs). As a result, **corrective action is required** and is listed at the end of the report.

Issue # 2

From the date of the request for an initial evaluation, did [Redacted] obtain parental consent for evaluation within a reasonable time period and complete a multidisciplinary team evaluation within 45 school days of receiving consent for the initial evaluation? [92 NAC 51 §009.04A1]

92 NAC 51§009.04A1 states:

009.04A1	Referral, notice to parents, and parental consent shall be completed within a reasonable period of time. The initial multidisciplinary team evaluation shall be completed within 45 school days of receiving parental consent for the evaluation.
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92 NAC 51§006.04K6 states:

006.04K6	The school district or approved cooperative must promptly request parental consent to evaluate the child
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to determine if the child needs special education and related services.

Allegations/Parent Position

The Parents provided evaluation data to the District initially for the purposes of obtaining 504 accommodations. When the District made the Parents aware the Student may be eligible for special education services that may meet [Redacted] educational needs, the parents readily consented to the Student's evaluation being shared with special education providers for review.

District Response

After reviewing the evaluation the Parents' provided, the District generated a Consent to Evaluate, though because IEP meetings were being held virtually, and because the District was not proposing any additional testing, the document was not provided to the Parents for signature until they came in person to sign eligibility documents. A virtual eligibility meeting was held May 20, 2021.

Findings of Fact

1. Findings of Fact from Issue 1 are incorporated herein.
2. A Consent for Evaluation dated April 14, 2021 was generated, though the Parent signature was not obtained until after the Student had been found eligible for special education services. (Consent to Evaluate dated April 14, 2021 and signed by the Parent June 2, 2021).
3. On Tuesday, May 11, 2021, the Parents followed up as they had not heard anything since the April 12 correspondence (email correspondence dated May 11, 2021).
4. The District responded and provided options for a meeting May 19 or May 20, 2021.
5. An MDT meeting was held on May 20, 2021 and the student was found eligible as a student with an Other Health Impairment (Multidisciplinary Evaluation Team MDT Report dated May 20, 2021).

Investigative Findings

It is clear that the District recognized their duty to meet their Child Find obligations and evaluate the student for special education (92 NAC 51-006.01). However, 92 NAC 51-006.04K6 reads: The school district or approved cooperative must promptly request parental consent to evaluate the child to determine if the child needs special education and related services. However, 92 NAC 51-009.08C1a states that consent is not required before "reviewing existing data as part as an evaluation or reevaluation". Due to the District completing the evaluation using a review of records a formal consent may not

have been required. The issue regarding consent however must be looked at in terms of the comprehensiveness of the evaluation completed. As noted in Issue 1, the evaluation was not sufficiently comprehensive and the addition of the required missing pieces required obtaining consent.

Based on the fact that the District only completed a review of records to complete the evaluation, consent was not required thus the district is not found out of compliance. However, the District not obtaining signed written consent for evaluation until after the completion of what it considered to be the evaluation is concerning. As a result, it is highly recommended the District review its policies and procedures regarding consent to ensure the following:

1. The district is obtaining informed consent from the parent of the child before conducting the evaluation.
2. The district has defined "reasonable efforts" to obtain informed consent.
3. The district has defined what is a reasonable time from when a request for an evaluation is made and consent is obtained.

Issue # 3

Did [Redacted] develop an individualized education program within 30 calendar days of the completion of the multidisciplinary team verification decision?

92 NAC 51§009.04A2 states:

009.04A2	Upon completion of a multidisciplinary team verification decision, school districts or approved cooperatives shall provide a reasonable notification and conduct an individualized education program conference within 30 calendar days.
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Allegations/Parent Position

Following the eligibility decision on May 20, 2021, and the District's assurance that an IEP would be developed prior to the start of the upcoming school year, the parents made repeated attempts to initiate a meeting, though the District was unresponsive to their efforts, which ultimately resulted in the IEP not being fully developed until well after school had started. The delays in finalizing the IEP also meant that the Student's course selection was more limited because of the instruction that had been missed.

District Response

Because of the nature of the Student's illness and the fact that the master schedule was not yet complete for the upcoming school year, the District concluded that an IEP meeting would be held prior to the start of school to develop an IEP. A meeting was held to review a proposed IEP. Subsequently, the District proposed completing transition assessment (which is not required until the IEP preceding the Student's 16th birthday) and suggested that the IEP not be finalized until those data were available.

Findings of Fact

1. [Redacted] held a multidisciplinary team meeting and found the Student eligible for special education as a student with an Other Health Impairment on May 20, 2021 (MDT Report dated May 20, 2021).
2. A member of the IEP team suggested scheduling an IEP meeting before the school year ended, but the Director suggested waiting until August (Parent Interview, October 13, 2021).
3. On July 23, 2021, the Parents emailed the Special Education Director to prompt the scheduling of an IEP meeting and were not provided a response. (Email correspondence dated July 23, 2021).
4. On August 3, 2021, the Parents again emailed about the IEP. The District responded and proposed a meeting on August 10 (Email correspondence dated August 3, 2021).
5. The Parent was undergoing surgery on August 10 and asked for another option. The District responded, but did not provide another date (Email correspondence dated August 3, 2021).
6. School started for 9th graders attending [Redacted] students on August 12, 2021 and for all students on August 13, 2021 ([Redacted] Calendar on website).
7. The Parent placed a call and left a voicemail with the Director on August 13, 2021. No return call was received (phone records for the billing period August 8- September 7, 2021).
8. The Director sent an email on August 13 proposing an IEP meeting on Tuesday August 17 at 11:30 am and proposed a start date for the Student of August 18, 2021. This email also prompted the Parent to enroll the Student online. (Email correspondence dated August 13, 2021).
9. The Parent promptly enrolled the Student (interviews with the Parent October 13, 2021 and the District October 18, 2021)
10. [Redacted] provided a draft IEP to the Parents on August 17 at 11:27 am (Email correspondence dated August 17, 2021).

11. An IEP meeting was held at 11:30 am on August 17, 2021 (Draft IEP dated August 17, 2021).
12. The IEP was not finalized and signed at this meeting as the District concluded that transition assessment data were needed (interviews with the Parent October 13, 2021 and the District October 18, 2021).
13. A subsequent IEP meeting was held on September 22 to finalize the IEP (IEP dated September 22, 2021).
14. The IEP was finalized on September 28, 2021 (District Response dated October 7, 2021)

Investigative Findings

According to the above data, from the date of eligibility, 89 days elapsed before an IEP meeting was held and 132 days elapsed before an IEP was finalized. As a result, 7 weeks elapsed while the Student was eligible for special education services.

Corrective Action

Based on the above findings, the District failed to fully implement the requirements of 92 NAC 51-009.04A2. **Required corrective action** is discussed below following Issue #4.

Issue #4

Did [Redacted] deny the Student a free appropriate education (FAPE) as a result of these failures?

92 NAC 51§004.01 states:

004.01 School districts and approved cooperatives shall ensure that all students with verified disabilities... have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs.

Allegations/Parent Position

The Parents provided the District an outside evaluation on March 26, 2021 in hopes of having something in place for the upcoming school year. Their concerns at that time were primarily the Student's test anxiety, [Redacted] need for accommodations, and [Redacted] limited social access that results from [Redacted] illness.

Due to a number of delays and perceived resistance, the District unnecessarily delayed the development of an IEP, which meant that the Student was not able to enroll and begin classes with [Redacted]peers. Additionally, because the Parents were under the impression that the District would be providing the

Student with social studies curriculum during the May 20, 2021 meeting, he was not enrolled in any homeschool curriculum to meet this requirement.

District Response

Once the District had the information it needed (including the finalized master schedule and updated information on the Student's health condition), the District "worked tirelessly" to offer the Student a free, appropriate public education that conformed with [Redacted] needs, [Redacted] curricular programming, and the Complainant's preferences.

Findings of Fact

1. The Parent's initial concerns for [Redacted] were related to [Redacted] test anxiety, need for testing accommodations, and [Redacted] limited social opportunities (Parent Interview, October 13, 2021).
2. Additionally, they raised concerns about [Redacted] self-esteem and the fact that [Redacted] has only one friend that [Redacted] plays video games with virtually, and occasionally sees outdoors (Draft IEP dated August 17, 2021)
3. Evaluation data provided by the parents indicated the Student has a processing speed that falls in the Borderline range and clinically significant executive functioning deficits, and internalizing behavior problems, including symptoms of anxiety, depression, and problems with sustained attention (Multidisciplinary Evaluation Team MDT Report dated May 20, 2021).
4. At the May 20, 2021 meeting, "The unavailability of a master course schedule of the upcoming school year for the Complainants to consider led to the conclusion that the Complainants' intentions for the Student's education and enrollment during the 2021-22 school year could not yet be determined." (Statement of Special Education Director, submitted October 7, 2021)
5. However, the same IEP team determined that "this panel of assessments was the same as or more extensive than the District's educational experts would have chosen to administer in order to comprehensively evaluate the student in all areas of suspected disability" (District response dated October 7, 2021).
6. When the team re-convened in August, a number of classes were considered for virtual participation (AP Psychology, math, and study skills). The IEP was not completed and signed, though there was lengthy discussion of possible courses the Student could enroll in.

Investigative Findings

According to 92 NAC 51§007.07A2 the IEP is driven by measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum. The District noted in their own documents that the evaluation data collected was adequate to determine these needs. However, instead of using the evaluation data to develop an appropriate IEP that addressed the needs outlined by the evaluation and input by the Parents, the District delayed this process because of the Student's current medical treatment and because the high school master schedule was not yet finalized. This delay was unnecessary, and ultimately resulted in an IEP that is driven by available courses offered by the District instead of by the Student's needs.

From March 26- September 28, over 14 weeks of instruction were provided to students enrolled in [Redacted]. From the time of eligibility, over 7 weeks of instruction were provided to those enrolled. The Student was not afforded services to meet the unique needs related to [Redacted] disability during this time. Furthermore, the determination of what services would be provided hinged almost entirely on the master schedule and the available courses and not on the Student's needs.

Summary and Conclusion

Based on the untimely development of an IEP and the limited focus on the Student's actual needs in the IEP development process, the District failed to fully implement the requirements of 92 NAC 51-004.01. Thus the following **corrective action is required** and is listed below.

Corrective Action

Policy and Procedure Review and Revision

1. The District must review and revise its policies and procedures regarding the following:
 - a. Requirements for conducting an initial comprehensive evaluation particularly for students who may be found eligible as students who are other health impaired and ensure that eligibility reports include the following:
 - i. An analysis of scores obtained using formal and informal assessments
 - ii. The educational needs of the child
 - iii. A foundation for the content of the child's IEP including:
 1. Present Levels of Academic Achievement and Functional Performance

2. Accommodations and modifications (including consideration of assistive technology devices and/or services)
 3. Transition assessments and goals for students who are of transition age
- b. Timelines for conducting a comprehensive evaluation and developing an IEP including:
- i. A definition of what the District defines as “reasonable time” for obtaining consent after a request for an evaluation is met
 - ii. Ensuring an IEP is developed within 30 calendar days of the determination a child is eligible for special education and related services
2. The District must submit in writing the determination of the review of policies and procedures indicating the policies and procedures in place are sufficient or highlighting the changes made to the policies and procedures that were modified to Theresa Hays within 30 calendar days of the date of the Investigation Report.
- a. If policy changes were required, the changes must be submitted to the local school board after receiving approval from NDE.
 - b. Provide the date of the local school board meeting for which the policies will be adopted to Theresa Hayes within 10 days of NDE's approval of the policies and procedures.
 - c. A copy of the board action or minutes must be provided to Theresa Hayes within 10 days following the board meeting.

Reconvening the IEP and MDT

1. The District must request consent for a reevaluation. If the district obtains parent consent for a reevaluation the following corrective actions will apply.
2. The MDT shall be reconvened to address the following:
 - a. An analysis of the data received from the assessments conducted by the neuropsychologist
 - b. The assistive technology needs, services and features the Student needs based on the recommendations provided within the previous MDT and the assistive technology evaluation conducted to determine those needs.
 - c. Input from the family as well as observations conducted by the classroom teacher and related service providers

- d. Interpretation of the data including teacher recommendations, social or cultural background, and adaptive behavior
 - e. The signed consent must be provided to Theresa Hayes within 10 days of obtaining the signature. A copy of the completed MDT must be provided to Theresa Hayes within 10 days of the MDT meeting.
3. Within 30 days of the conducting the reevaluation, the IEP team shall meet to do the following:
 - a. Outline the needs of the Student related to the disability as well as the need for transition goals.
 - b. Develop appropriate goals, accommodations, and curricular modifications to address the Student's needs without regard for the master schedule.
 - c. A plan to provide the amount of compensatory services needed due to the delay in the development of an appropriate IEP has resulted in the Student missing a great deal of instruction. This compensatory education should not amount to less than what would be provided should the student enroll in the District.
 - d. The following must be provided to Theresa Hayes within 10 days of the IEP meeting:
 - i. A copy of the IEP
 - ii. A copy of the schedule for providing compensatory services
 - iii. A copy of the service logs showing compensatory services were provided either at the home or within the District

Training

1. The District must provide training to all members of the MDT and IEP teams in the District involving the policies and procedures included in the Policy and Procedure Review and Revision section of the Corrective Action.
2. The District must have training material approved by Theresa Hayes after the policies and procedures have been reviewed and revised, if required, and 14 calendar days prior to the training. If the District would like NDE to complete the training, please contact Theresa Hayes within 45 days of the date of the Investigation Report to determine a date for training to allow an individual to be assigned to the training and training development.
3. Sign-in sheets or other means to verify attendance must be provided to Theresa Hayes 10 days following the training.

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:

Theresa Hayes, Complaint Specialist
nde.speddr@nebraska.gov