

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.09
Complaint Investigator: [Redacted]
Date Complaint Filed: October 9, 2021
Date of Report: [Redacted]

Introduction

The Student referenced in this complaint is a 5-year old resident of the district who is eligible by age to be enrolled in the District's general education kindergarten with speech-language and occupational therapy services. However, the parents elected to enroll the Student in a private preschool setting, delaying entry to kindergarten until the fall of 2022.

Issues Investigated

1. Did the District provide special education and related services to the Student in accordance with the child's IEP? [92 NAC 51-007.02]
2. Did the District appropriately consider the Students' placement and location of services according to 92 NAC 51-008.01G?
3. Did the District ensure that all personnel working with the Student are appropriately and adequately prepared and trained to serve the Student, subject to the requirements of Section 2122 of the Elementary and Secondary Education Act of 1965? [92 NAC 51-010.01 and 007.02C]
4. Did the District provide the Parents a copy of the IEP at no cost? [92 NAC 51-007.09D]
5. Did the District meet to consider revision to the IEP according to the Parent's concerns? [92 NAC 51-007.10]
6. Did the District provide the Parents of the Student a copy of the procedural safeguards according to 92 NAC 51-009.06?

Documents Reviewed by Investigator

From the Complainant

- Letters of Complaint received by NDE October 9, 2021
- Email dated November 12, 2021
- Interview with the Parents, November 15, 2021
- Copy of text message correspondence with speech therapist dated September 21- October 1

From the School District

- Letter of Response dated November 4, 2021; received by NDE November 4, 2021
- Psychological Evaluation Report from testing completed November 4, 2020
- MDT dated November 24, 2020
- IEP dated November 24, 2020
- IEP dated August 31, 2021
- Prior Written Notice dated October 5, 2021
- Notice of Meeting for October 8, 2021 IEP meeting, dated October 6, 2021
- IEP dated October 8, 2021
- Progress Report dated October 15, 2021
- Prior Written Notice dated October 25, 2021
- Nebraska Public Health Licensure Unit- Certificate of Licensure issued August 24, 2017, expires August 1, 2022
- Nebraska Educators Certificate issued June 4, 2019, expires August 31, 2024
- Related Service Provider Services logs for the months of September, October, and November, 2021
- Nebraska Technical Assistance documents regarding Least Restrictive Environment (August 2018) and IEP development (March, 2014)
- District Special Education Policies and Procedures adopted July 19, 2021
- Email communication between the District and the Complainant dated September 7- November 3, 2021
- American Speech-Language-Hearing Association (ASHA) Severity/Intervention Matrix for Speech and Language Services
- Interview with the District November 23, 2021.
- Screenshot of information in SRS that did not print on the October 8, 2021 IEP.

Issue # 1

Did the District provide special education and related services to the Student in accordance with the child's IEP? [92 NAC 51-007.02]

92 NAC 51 007.02 states:

007.02 School districts or approved cooperatives must provide special education and related services to a child with a disability in accordance with the child's IEP.

007.02A At the beginning of each school year, each school district or approved

cooperative shall have an IEP in effect for each child with a verified disability.

Allegations/Parent Position

The Student came into the District with an existing IEP and did not receive speech-language services until several weeks into the school year. Further, the Parent had to initiate communication many times to ensure that services were provided as the provider repeatedly “forgot” that the Student was scheduled.

District Response

Following the IEP meeting on August 31, 2021 several practical and logistical issues interfered with the implementation of the Student’s speech-language services such as illness and other District activities. However, ultimately, 9 sessions were offered during the first quarter, consistent with the IEP. In addition, those services were made available 2 days each week after October 11, 2021, as required by the amended IEP.

Investigative Findings

- The District (District A) was made aware of the Student by the Parent on July 30 (District Interview, November 23, 2021).
- The District (District A) requested records from the sending school district (District B) which were received sometime in mid-August (District Interview, November 23, 2021).
- The Student was not enrolled in District A (District Interview, November 23, 2021).
- Teachers returned to their contracts on August 16, 2021 (District Interview, November 23, 2021).
- School started for students in District A on August 19, 2021 (District Interview, November 23, 2021).
- An IEP meeting was held August 31, 2021 (IEP dated August 31, 2021).
- The Parent reached out to providers to develop a schedule on September 7, 2021 (email dated September 7, 2021).
- The August 31, 2021 IEP outlined 15 minutes, 9 times each quarter of speech articulation services and 15 minutes twice per month occupational therapy services (IEP dated August 31, 2021).
- Meetings were scheduled and missed for various reasons on September 21, September 27, and October 1 (text message correspondence with corresponding dates).
- The first quarter ended on October 15, 2021 (Service Log for October).
- Ultimately, the Student received 8- 15 minute speech therapy sessions during the first quarter (15 minute sessions September 7, 14, 24, October 5;

and 15 minute group/15 minute individual sessions October 12, 15).
(Service Logs for September and October)

- An IEP meeting was held on October 8, 2021 (IEP dated October 8, 2021).
- At this meeting, the District acknowledged that service provision had been inadequate and made amendments to the IEP accordingly:
- The revised IEP modified service time to 15 minutes, twice a week of speech therapy and 15 minutes, twice a month of occupational therapy (IEP dated October 8, 2021).
- During the second quarter, because services had been missed and rescheduled several times, a consistent weekly schedule was developed for in-person services every Monday: a 15-minute group and a 15-minute individual session. The additional 15 minutes has served as compensatory services.
- Additionally, every Friday, a 15 minute individual session via Zoom (Service Logs for October and November).
- A laptop computer was provided by the District to the private school so that the Student could access virtual services once per week.
- The Student's first quarter progress report demonstrated progress on the 2 sounds being targeted (/k/ and /g/) from accuracy rates of 65% and 63% respectively to 68% and 78% respectively during the first quarter.

Summary and Conclusions

Once the District was on contract and records had been received from the Student's previous district, the District scheduled an IEP meeting that was held 8 school days after school started. This is a reasonable amount of time to arrange a meeting involving district professionals, the Parents, and a representative from the private school. Following the development of that IEP, the Student's IEP was not implemented with regularity during the month of September. Despite the development of a new IEP, the District was required to provide FAPE to the child (including services comparable to those described in the child's IEP from the previous district or approved cooperative) [92 NAC 007.08A] but did not meet with the parent until September 7, after a new IEP was developed to begin providing services. It is noted that when the pattern of scheduling problems became clear, an IEP meeting was reconvened, service times were increased, and a plan was developed to provide services both in-person and virtually in a consistent manner. In addition, compensatory education was provided that far exceeded the services that had been missed during the first quarter. Furthermore, the Student made progress during the first quarter toward achieving her articulation goals.

Due to the District not providing comparable services as required by 92 NAC 007.08A allowing for services to be implemented at the start of the school year, the District did not implement the requirements of 92 NAC 51-007.02 and **corrective action is required.**

Corrective Action

1. The District shall review their policies and procedures for having an IEP in effect at the beginning of each school year particularly with students who transfer in from another district within the State. These procedures should account for procedures for providing comparable services required by 92 NAC 51-007.08A.
2. The district will provide documentation of the review of policies and procedures to Heather Ottoson as well as changes made to the policies and procedures as a result of the review by February 7, 2022.
 - a. If changes to policy were identified by the district, the district will submit evidence of acceptance of the revised policy by the local school board to Heather Ottoson no later than 10 days after the board meeting.

Issue # 2

Did the District appropriately consider the students' placement and location of services according to 92 NAC 51-008.01G?

92 NAC 008.01A reads:

008.01A The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools or approved services agencies, are educated with children who are not disabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily.

92 NAC 51-008.01G reads:

008.01G Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.

92 NAC 014.02 reads:

014.02 Responsibility of Transportation

014.02A The board of education shall be responsible to provide for the transportation expenses of children with disabilities who are residents of the school district under Neb. Rev. Stat. §79-1129 by:

014.02A1 Paying a parent for transporting his or her child for actual miles traveled and claimed; or

014.02A2 operating vehicles for the purpose of transporting children with disabilities; or contracting for transportation services for children with disabilities; or

014.02A3 Contracting for transportation services for children with disabilities; or

014.02A4 Purchasing services from a common carrier; or

014.02A5 Arranging for such other transportation as is proper and necessary to transport children with disabilities.

014.02B The board of education shall select an efficient and effective means of transportation for the child with a disability at a reasonable cost.

Allegations/Parent Position

The Parent preferred that all special education and related services be delivered at the Student's private preschool because she had difficulty transporting the child to the school during school hours because of her own work schedule.

District Response

The District determined that the Student's least restrictive environment was [Redacted] boundary school in kindergarten with [Redacted] same-age peers. However, the parent elected to enroll the Student in a private preschool instead. The District has provided services both in-person in the Students least restrictive environment and virtually in the private preschool setting. Further, the

District has offered to provide transportation and to provide reimbursement for travel for the services being provided at the school.

Investigative Findings

- The District has stated their belief that the Student's least restrictive environment is in the kindergarten classroom with same-age peers (Prior Written Notice dated October 25, 2021).
- The Parent elected to enroll the Student in a private preschool instead of enrolling in the public school (Parent Interview, November 15, 2021).
- The District provided an offer of FAPE in the August 31, 2021 IEP meeting (IEP, August 31, 2021).
- The IEP team, including the Parent, agreed to the IEP presented in the August 31, 2021 meeting.
- Because several service times were missed or rescheduled, the District attempted to make up these services on other days (Email and text message correspondence).
- The IEP team re-convened on October 8, 2021 and increased the Student's service time to include 2 consistent weekly sessions, one in-person at the District and the other, virtual at the private preschool.
- Following the October 8, 2021 IEP meeting, the District offered to provide transportation for the Student for the weekly in-person sessions held at the District.
- The Parent refused transportation.
- The District subsequently offered to reimburse the Parent for travel from the private preschool to the District.

Summary and Conclusions

The District is able to provide FAPE at the Student's local public elementary school with the Student enrolled as a kindergartener. The disagreement raised in this issues is not about "placement" but about location of services, which is a somewhat different matter. The District has made efforts to provide services in both locations (public and private school) and has also demonstrated willingness to provide transportation if it became a barrier to the Student accessing services. The District has also offered to compensate the Parent for mileage should the family provide transportation on their own. The District is under no obligation to provide services within the private school setting so long as the Student is able to access those services.

Based on the above findings, the District implemented the requirements of 92 NAC 51-008.01 and 92 NAC 51-104.02 and **no corrective action** is required.

Issue # 3

Did the District ensure that all personnel working with the student are appropriately and adequately prepared and trained to serve the student, subject to the requirements of Section 2122 of the Elementary and Secondary Education Act of 1965? [92 NAC 51-010.01 and 007.02C]

92 NAC 51-010.01 states:

010.01 Instructional personnel shall hold a valid Nebraska Department of Education certification, be endorsed in the assigned area.

92 NAC 51-007.02C states:

007.02C The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation

Allegations/Parent Position

The speech-language pathologist reported in an IEP meeting that she does not know what to do with a child who needs articulation-only services for 30 minutes. The Parent is concerned that the Student will not get the services she needs if the provider feels she does not know what to do for a 30-minute speech session.

District Response

Both providers who are working with the Student hold state-approved certification in the relevant service areas. These credentials reflect that the providers have met all training and supervision requirements required by the state of Nebraska to serve as qualified special education personnel. These providers both have access to the Student's IEP through the SRS system, the online IEP storage system used by the District. The comment referenced by the complainant was taken out of context and was intended to communicate the speech-language pathologist's understanding based on her training and experience that 15 minutes one-on-one is an adequate amount of time to provide specialized instruction for speech articulation errors and that anything more was not beneficial based on the Student's age and the fact that only 2 articulation errors are being targeted. When compensatory services were added, resulting in 30-minute sessions, the speech-language pathologist has included the Student in a 15-minute group with peers followed by a 15-minute individual session to maximize the efficacy of these longer sessions.

Investigative Findings

- Both providers listed on the Student's IEP are fully credentialed by the State of Nebraska (Nebraska Educator Certificates issued August 27, 2017 and June 4, 2019).
- Both providers have participated in all IEP meetings held and have had access to the Student's IEP through SRS (IEPs dated August 31 and October 8, 2021 and District Interview November 23, 2021).
- The District arranged for 7–30-minute sessions during the months of October and November, 15 minutes of regular service and 15 minutes of compensatory services (Letter of Response dated November 4, 2021).
- To ensure that these sessions were effective for the Student, 15 minutes of the session were provided in small group and 15 minutes were provided individually (IEP dated October 8, 2021 and District Interview).
- The ASHA Severity/Intervention Matrix for Speech-Language Services recommends that for the Student's profile (Mild severity), a minimum of 15-30 minutes per week is recommended.

Summary and Conclusions

The speech pathologist on the Student's IEP is adequately trained and credentialed according to the requirements of the state of Nebraska. Her comment in the October 8 meeting did not suggest a lack of training, but rather, her understanding of the effectiveness of shorter sessions with greater frequency when correcting speech sounds, and her professional opinion that 15-minute session provided plenty of time to treat and assess the development of 2 speech articulation errors.

Based on the above findings, the District implemented the requirements of 92 NAC 51-010.01 and 007.02C and **no corrective action** is required.

Issue #4

Did the District provide the parents a copy of the IEP at no cost? [92 NAC 51-007.09D]

92 NAC 51-007.09D states:

007.09D The school district or approved cooperative shall provide a copy of the IEP to parents at no cost.

Allegations/Parent Position

The District did not provide the Parent with a copy of the August 31, 2021 IEP until October 1, 2021.

District Response

Because of a printer access issue on the day of the August 31 meeting, who would be sending the finalized IEP to the parent was not clear. As a result, the IEP was not shared. However, as soon as the District became aware that the Parent did not have a copy of the IEP, they promptly provided a digital copy.

Investigative Findings

- The District Special Education Director was unable to print the IEP that was developed on August 31, 2021 and assumed that the speech-language pathologist had shared the IEP (District Interview, November 23, 2021).
- The Parent did not alert the District that she did not have a copy until she placed a phone call on October 1, 2021 (District Interview, November 23, 2021).
- The District provided the Parent with a digital copy of the IEP on October 1, 2021 (Email dated October 1, 2021).
- The Parent signed the October 8, 2021, IEP on that day. Just above the signature, the box is marked, "I have received a copy of the IEP at no cost."
- Later that same day, the District left 2 paper copies of the IEP on the Parent's doorstep (email dated October 8, 2021).
- The Parent confirmed receipt of the IEP in an email dated October 8, 2021.

Summary and Conclusions

The District recognizes its failure to provide a copy of the IEP following the first IEP meeting. However, as soon as they were made aware, they provided it immediately. Following the second IEP meeting, 2 paper copies were hand-delivered to the Parent's home the same day, efforts that are above and beyond what would have been expected of the District.

Based on the above findings, the District failed to implement the requirements of 92 NAC 51-007.09D. Thus the following **corrective action is required**.

Corrective Action

1. The District shall review their policies and procedures for tracking when IEPs have been provided to parents and who is responsible for providing them. These procedures should account for when meetings are held virtually and what will happen in the event that technology problems prevent the team from making the document available at the meeting.

2. The district will provide documentation of the review of policies and procedures to Heather Ottoson as well as changes made to the policies and procedures as a result of the review by February 7, 2022.
 - a. If changes to policy were identified by the district, the district will submit evidence of acceptance of the revised policy by the local school board to Heather Ottoson no later than 10 days after the board meeting.

Issue #5

Did the District meet to consider revision to the IEP according to the parent's concerns? [92 NAC 51-007.10]

92 NAC 51§007.10 states:

- 007.10 The IEP team shall revise the IEP as appropriate to address:
- 007.10A Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;
 - 007.10B The results of any reevaluation conducted under 92 NAC 51-006.05A;
 - 007.10C The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;
 - 007.10D The child's anticipated needs; or
 - 007.10E Other matters

Allegations/Parent Position

At the IEP on October 8, 2021, there was no discussion about transportation being provided by the District. When the District provided a copy of the IEP, they had added district-provided transportation without discussing it with the Parent.

District Response

The Parent had made arrangements to transport the Student weekly on the day services had been scheduled. A brief discussion occurred at the IEP meeting about what would happen in the event that the family's transportation was unavailable, and left unresolved. In an effort to "extend an olive branch," following the meeting, the District added their offer to provide transportation when needed to the Prior Written Notice that accompanies the IEP.

Investigative Findings

- The Student's IEP from August 31, 2021 and October 8, 2021 indicated that the Student is not eligible for transportation as a related service. (IEPs dated August 31, 2021 and October 8, 2021).
- Following the meeting, the District added the following to the Prior Written Notice that accompanies the IEP before delivering it to the Parent:
 - "A district employee will be available to provide transportation for [the Student] from private preschool outside of the district to and from [the District] when parents are not able to make transportation arrangements."
- The Parent emailed the District later that weekend stating, the Parents, "are not comfortable with [the Student] being transported to and from [Redacted] preschool with a stranger. Nor are we comfortable pulling [Redacted] away from [Redacted] familiar environment to sit in a vehicle for a longer period of time than what [the Student] would be receiving therapy for. Can you provide me with other options?"
- The District responded, "Transportation options have been addressed and clearly outlined in [the Student's] IEP and Prior Written Notice. (Email correspondence dated October 12, 2021).
- Following the Parent's refusal of transportation services, the following was included in the IEP notes:
 - "Amendment to IEP 10-18-21. Per written request received via email dated 10-12-21. The parent option to have the district transport will be removed. Updated statement: Parents have agreed to transport [the Student] to [the District] for services one day a week. Parents will be reimbursed for transportation costs."

Summary and Conclusions

The IEP team determined in both meetings held in the fall of 2021 that the Student was not eligible for transportation as a related service. The District's offer, which was arranged subsequent to the IEP meeting, was reflected in the Prior Written Notice. This does not reflect a change made to the IEP, but rather, the District's good faith effort to remove any barriers to the Student accessing services. As soon as the Parent gave input, their input was considered and documented. The District revised the IEP based on the parent input, however due to issues with how the IEP system prints, the amendments made within the IEP were not printed and visible to the parent.

Based on the above findings, the District implemented the requirements of 92 NAC 51-007.09E. **Corrective action is not required.** However, it is recommended

the District ensure that notes added to the IEP are printed and made available to the parents to ensure clarity of the process.

Issue #6

Did the District provide the parents of the student a copy of the procedural safeguards according to 92 NAC 51-009.06?

92 NAC 51-009.06A states:

009.06	Procedural Safeguards Notice
009.06A	A copy of the procedural safeguards available to the parents of a child with a disability shall be given by the school district or approved cooperative to the parents only one time a school year, except that a copy shall also be given to the parents
009.06A1	Upon initial referral or parental request for evaluation;
009.06A2	Upon request by a parent;
009.06A3	Upon receipt by the school district or approved cooperative of the first occurrence of the filing of a complaint under 92 NAC 51-009.11 and the first occurrence of filing a special education due process case under 92 NAC 55

Allegations/Parent Position

Because the District had not provided a copy of the Procedural Safeguards, the Parent was unaware of what she could do to resolve her concerns.

District Response

It is the practice of the District to provide Procedural Safeguards with the IEP each time it is sent home. Because of the oversight in sending the IEP home subsequent to the first meeting, the Parent was not provided a copy of Procedural Safeguards until the October 8 IEP was delivered to her home. The copy provided was outdated and included only odd pages.

Investigative Findings

- The IEP dated November 24, 2020 reads, "I have been offered a copy of my parental rights at no cost." Below it notes that the document was signed by the parent on November 24, 2020 (IEP dated November 24, 2020).

- A copy of Parent Rights was delivered to the Parent's doorstep on October 8, 2021 along with the amended IEP, however, the document provided was an outdated version (2012 instead of 2018) and only odd pages were included (District Interview, November 23, 2021).
- The Parent alerted the District of this error (Email correspondence dated October 8, 2021).
- On October 14, a letter was provided to the Parent from the Superintendent and a copy of the Procedural Safeguards was included (Letter dated October 14, 2021).
- On October 18, a copy of the current Procedural Safeguards was included in an email sent to the Parent (email correspondence dated October 18, 2021).
- Procedural Safeguards were again provided in an email sent by the District on October 25, 2021 (Email correspondence dated October 25, 2021).

Summary and Conclusions

It is clear that the error on the part of the District with regard to mailing a copy of the initial IEP home also meant that the Procedural Safeguards were not provided at the beginning of the year. However, documentation signed by the Parent suggests that the current Procedural Safeguards were offered 4 times within a one-year period, which far exceeds the requirements set out by the law. The Parent did not ask the District for a copy, however, when the Parent made the District aware of the error, corrected Procedural Safeguards were provided.

Based on these findings, the District implemented the requirements of 92 NAC 51§009.06A and **no corrective action** is required.

Issue #7

Did the District notify the Parents of the IEP pursuant to 92 NAC 51-007.06A1?

92 NAC 51-007.06A 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 the parents of the IEP conference early enough to ensure that they will have an opportunity to attend.

Allegations/Parent Position

The District made changes to the IEP without allowing the Parent meaningful participation. Subsequently, the District refused an IEP meeting requested by the parent to discuss her concerns.

District Response

The Parent was afforded meaningful participation in both IEP meetings held during the 2021-22 school year. The concerns raised following the second meeting were redundant and had been addressed just days before by the IEP team through amendments to the IEP.

Investigative Findings

- The Parent was present and participated in both IEP meetings held (IEPs dated August 31, and October 8, 2021).
- The Parent's input and concern about September service delivery is reflected in amendments made to the October 8, 2021 IEP meeting (IEP dated October 8, 2021).
- The Parent sent 2 emails 2 school days following the IEP meeting asking various questions all related to topics addressed in the IEP meeting held on October 8, 2021 (Email correspondence dated October 12, 2021). Concerns included:
 - "missed visits," which had been addressed through compensatory services that were scheduled.
 - Transportation, which the District had offered, the parent refused, and the District amended the statement
 - Small group vs. individual service delivery
- The District responded to the first of the emails with the information requested (Email correspondence dated October 12, 2021).
- The Parent requested an IEP meeting in an email stating, "I would like to have an IEP meeting to address concerns and change the transportation statement prior to [the Student's] next service time. I am requesting to hear back from you by noon today about this matter and an IEP meeting set prior to noon on Tuesday." (Email dated Monday, October 18, 10:39 am).
- The District refused an additional meeting, stating that all the concerns the Parent was raising had been addressed in the recent meeting. This refusal was formalized in a Prior Written Notice dated October 25, 2021.

Summary and Conclusions

The District held an IEP meeting on October 8, 2021 in an attempt to resolve all the issues that had been raised by the Parent. At this meeting, the Parent was afforded meaningful participation and a number of amendments to service

time, frequency, location, and method of delivery were made as a result of the Parent's input. In addition, the District subsequently offered transportation if needed. The Parent's repeated emails raising questions on the same topics was redundant and the request for an additional meeting was not reasonable given the needs and progress of the Student and the recent changes made to [Redacted] IEP.

Based on these findings, the District implemented the requirements of 92 NAC 51-007.06A1 and **no corrective action** is required.

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:

Heather Ottoson, 619 Coordinator
Brenda Tantow, Complaint Specialist
Office of Special Education
nde.speddr@nebraska.gov