

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.11
Complaint Investigator: [Redacted].
Date Complaint Filed: October 20, 2021
Date of Report: [Redacted]

Issues Investigated

1. Did the District provide Prior Written Notice and obtain Consent to evaluate the Student? (92 NAC 51 § 009.05; NAC 51 § 003.09)
2. Did the District ensure and document that for purposes of IEP development, the IEP team included the Parents of the Student, the Student's regular education teacher, the Student's special education provider, and an individual who could interpret the instructional implications of evaluation results? And further, in determining the appropriate placement and services for the Student, did the District consider input from all required team members, including the Parent? (92 NAC 51 § 007.03; 92 NAC 51 § 009.01; 92 NAC 51 § 009.02)
3. Did the District use evaluation data to determine whether the student is a child with a disability and to inform the content of the Student's IEP? (92 NAC 51 § 006.02C5)
4. Did the District develop present levels of academic achievement and functional performance that meet the standard outlined in 92 NAC 51 § 007.07A1?

Documents Reviewed by Investigator

From the Complainant

- Letter of Complaint; received by NDE October 20, 2021
- Email correspondence between the complainant and other school staff, dated August 30- September 7, 2021
- MDT Report dated March 4, 2020
- Interview with the Complainant and school staff December 7 and December 8, 2021

From the School District

- Letter of Response dated November 3, 2021; received by NDE November 8, 2021
- Email correspondence regarding the Student dated August 30- September 29, 2021

- Written Statement from District Mental Health Provider and notes from meetings to develop behavior plan dated September 13 and September 14, 2021
- Written Statement from early childhood special educator
- Developmental Assessment of Young Children- Second Edition (DAYC-2) dated October 6, 2021
- Notice of Meeting dated August 31, 2021
- Consent for Initial Evaluation dated September 1, 2021
- Draft IEP dated September 1, 2021
- Final IEP developed October 5, 2021 and dated September 1, 2021
- Email correspondence with school psychologist dated December 7, 2021
- Email correspondence with Superintendent dated December 7, 2021

Other

- The District K-12 2021-2022 Calendar

Issue # 1

Did the District provide Prior Written Notice and obtain Consent to evaluate the Student? (92 NAC 51 § 009.05; NAC 51 § 003.09)

92 NAC 51-009.05 states:

009.05 *Prior Written Notice*

009.05A *Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:*

009.05A1 *Proposes to initiate or change the identification, evaluation or educational placement of a child or the provision of a free appropriate public education; or*

009.05A2 *Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.*

92 NAC 51- 003.09 reads:

003.09 *Consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; that the*

parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought;

Allegations/Complainant Position

In the IEP meeting, a Consent to Evaluate was obtained from the parents and all boxes were checked, indicating that the District planned to complete academic, intellectual, perceptual and motor, social and emotional, speech and language, and behavioral testing. One of the boxes was not marked on the consent indicating what the parents were consenting to.

District Response: The District proposed evaluation in the IEP meeting and the Parent signed consent. A box was left unchecked, though it was the understanding of the entire team that the Parents were consenting to evaluation.

Investigative Findings

- A Consent for Initial Evaluation was generated stating the following:
 - “School psychologist proposes to use a FBA (Functional Behavior Assessment) in conjunction with other testing already completed,” and further, “School psychologist recommends an FBA after classroom observations and teacher reports of child’s behavior impacting [redacted] learning.” (Consent for Initial Evaluation, dated September 1, 2021)
- All available boxes on the Consent were marked, suggesting that the District planned to complete academic, intellectual, perceptual and motor, social and emotional, speech and language, and other (The psychologist will use her tools necessary to evaluate [redacted] behaviors that are impeding [redacted] learning). (Consent for Initial Evaluation, dated September 1, 2021)
- 2 radio boxes are available to be filled in by the Parent, though neither is checked. One reads, “I... give consent for the multidisciplinary evaluation specified in this notice...” and the other reads, “I... do not give consent for the multidisciplinary evaluation specified in this Notice.” (Consent for Initial Evaluation, dated September 1, 2021)
- The Parent’s signature and date are provided below. (Consent for Initial Evaluation, dated September 1, 2021)

Summary and Conclusions

Several procedural errors were made in the collection of the Consent for Evaluation. First, since the Student was already an identified Student with an IEP, the evaluation requested should have been a re-evaluation instead of an initial evaluation.

Based on the above facts, although a procedural error was made, the Parents were properly informed and provided their consent for evaluation. As a result, the District implemented the requirements of 92 NAC 51 § 009.05; NAC 51 § 003.09 and no corrective action is required.

Issue #2

Did the District ensure and document that for purposes of IEP development, the IEP team included the Parents of the Student, the Student's regular education teacher, the Student's special education provider, and an individual who could interpret the instructional implications of evaluation results? And further, in determining the appropriate placement and services for the Student, did The District consider input from all required team members, including the Parent? (92 NAC 51- 007.03; 92 NAC 51-009.01; 92 NAC 51- 009.02)

92 NAC 51-007.03A states:

007.03 *IEP Team Participation*

007.03A *The school district or approved cooperative shall ensure and document that each IEP team includes the following:*

007.03A1 *The parents of a child with a disability;*

007.03A2 *Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);*

007.03A2a *The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development, review and revision of the IEP of the child, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies, and the*

determination of supplementary aids and services, program modifications, and support for school personnel consistent with 92 NAC 51-007.07A5

007.03A3 *Not less than one special education teacher, or where appropriate, not less than one special education provider of the child*

007.03A4 *A representative of the school district or approved cooperative who:*

007.03A4a *Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;*

007.03A4b *Is knowledgeable about the general education curriculum; and*

007.03A4c *Is knowledgeable about the availability of resources of the school district or approved cooperative;*

007.03A5 *An individual who can interpret the instructional implications of the evaluation results, who may be a member of the team described in 92 NAC 51-007.03A2 through 007.03A6;*

007.03A6 *At the discretion of the parent or the school district or approved cooperative, other individuals who have knowledge or special expertise*

regarding the child, including related services personnel as appropriate;

92 NAC 51- 009.01A reads:

009 *Procedural Safeguards*

009.01 *Parent Participation in Meetings*

009.01A *The parents of a child with a disability must be afforded an 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- 009.02A states:

009.02 *Parent Involvement in Placement Decisions*

009.02A *The school district or approved cooperative shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of their child.*

Allegations/Complainant Position

An IEP meeting was held involving the entire IEP team, though the IEP was left in draft form until a comprehensive evaluation was conducted. That IEP was finalized and changes made in a small meeting that did not involve the Student's parents or the Student's special education provider.

District Response

The Parent called the Superintendent, angry that an IEP had not yet been completed. The Superintendent quickly pulled together a group of people familiar with the Student to "finalize" the IEP.

Investigative Findings

- On August 25, the early childhood special educator took over case management for the Student because she had a "rapport" with the family (Statement from early childhood special educator).
- This individual recommended an emergency IEP meeting by email to "add services and increase [redacted] times but also maintain the LRE best for [the Student]." (email dated August 30, 2021).

- An IEP meeting was held on September 1, 2021 and the following participants were present: Both Parents, the Student's general education teacher, the elementary special education teacher, the preschool Principal, the preschool special education provider, the speech-language pathologist, an occupational therapist, the elementary principal, the school counselor, and the district mental health provider. The early childhood special educator ran the meeting (Draft IEP, dated September 1, 2021 and email correspondence and interview with the Complainant, December 7, 2021).
- During the meeting, a new IEP was drafted that increased the Student's special education and related services, providing access to mental health counseling, and adding goals related to classroom behavior. (Draft IEP dated September 1, 2021).
- This IEP was signed, but printed reading "Draft." (Draft IEP dated September 1, 2021)
- The IEP team also collected Consent to Evaluate (as described above in Issue #1). (Consent for Initial Evaluation dated September 1, 2021)
- Following the IEP meeting, the Student immediately began receiving the additional services reflected in the IEP. (Interview with the Complainant, December 8, 2021)
- The Student's "case manager" was changed on September 7, 2021 from the early childhood provider back to the elementary special educator, who provided services until the Student unenrolled. (Email dated September 7, 2021)
- Meetings were held on September 13 and 14 to devise a behavior intervention plan. This meeting involved the elementary special education provider, the elementary principal, the regular education teacher, and the district mental health provider (Notes from behavior intervention plan meetings dated September 13 and 14, 2021).
- The plan was not implemented as written because the Principal directed the special educator not to implement it (Statement from district mental health provider).
- On October 5, 2021, a meeting was held after contract hours, including the Superintendent, the early childhood director, the early childhood special educator, an elementary special education teacher (who had not worked with the Student) and the elementary principal.
- At this meeting, changes were made to the IEP (including the addition of present levels in the area of sensory and behavior) and a handwritten "FINAL" was written over the crossed off "DRAFT" at the bottom of each page.

Summary and Conclusions

The District's efforts to hold an IEP meeting to discuss the behavior problems that had emerged in the kindergarten classroom constituted an appropriate first step to developing an IEP that met the Student's needs. The District involved a number of people who had knowledge of the Student. However, it was not clear what the role of each of these individuals on the IEP team was as direction on the case was being provided by early childhood staff instead of elementary staff where the student was enrolled. Leadership of the case was shifted to the elementary staff subsequent to the meeting.

Since the IEP was agreed upon by the entire IEP team on September 1, it should not have been printed as a DRAFT, and instead, finalized and signed as the Student's current IEP (which could have been again amended or revised following the collection of evaluation data).

Given that the Student's behavior was the primary concern that drove the IEP meeting and the evaluation, a behavior intervention plan was an important part of the development of the IEP and decisions regarding the use of a behavior plan were the responsibility of the IEP team and no individual (such as the principal) had the authority to prevent its implementation.

The meeting held on October 5 where changes were made to the IEP and it was indicated as "FINAL" did not involve the IEP team (including the Parents, the regular education teacher, or the special education provider of the Student). The involvement of providers who did not have any further role on the IEP team (early childhood educators and a special education teacher who did not work with the student) not only constituted a violation of the IDEA, but also constituted a breach of the Student's confidentiality.

Based on the information above, the District failed to fully implement the requirements of 92 NAC 51-007.03A. Thus corrective action is required based on the understanding the Student is no longer enrolled in the District. **Corrective action is described at the conclusion of this report.**

Issue # 3

Did the District use evaluation data to determine whether the Student is a child with a disability and to inform the content of the Student's IEP? (92 NAC 51 § 006.02C5)

92 NAC 51-006.02C5 states:

006.02C5 *School districts and approved cooperatives must ensure a variety of assessment tools and strategies are*

used to gather relevant functional, developmental and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum that may assist in determining:

006.02C5a *Whether the child is a child with a disability under 92 NAC 51-003.08; and*

006.02C5b *The content of the child's IEP.*

92 NAC 51- 009.04A1 states:

009.04A1 *...the initial multidisciplinary team evaluation shall be completed within 45 school days of receiving parental consent for the evaluation.*

Allegations/Complainant Position

The evaluation that was proposed was not completed and the IEP was developed without the data that would have resulted from evaluation.

District Response

The Student disenrolled within the 45-day period wherein evaluation was being conducted, so the evaluation couldn't be completed.

Investigative Findings

- As discussed above, Consent for Evaluation was obtained on September 1, 2021.
- The Student was unenrolled from the District on October 15th, 2021.
- At this point, 31 school days had elapsed and there had not been any formal evaluations completed.
 - A developmental screener had been partially completed, but was not finished (Developmental Assessment of Young Children, dated October 6, 2021)
 - Some observations had occurred, though, no formal testing that had been planned was completed (checklists or Functional

- Behavior Assessment) (email from school psychologist, December 7, 2021)
- No formal academic testing had been completed (interview with the Complainant, December 8, 2021)
- No formal intellectual testing had been completed (interview with the Complainant, December 8, 2021)
- No formal perceptual and motor testing had been completed (interview with the Complainant, December 8, 2021)
- No formal social and emotional testing had been completed (email from school psychologist, December 7, 2021)
- No formal speech and language testing had been completed (interview with the Complainant, December 8, 2021)
- The District did not complete any of these evaluations and transferred the Student's records to a new school with less than 2 weeks to complete the evaluation. (email from Superintendent, December 7, 2021)

Summary and Conclusions

The District had 14 school days remaining to complete testing in all the areas that they had obtained consent for when the student unenrolled. Limited and incomplete data was included in the Student's file that was transferred to the receiving school district.

92 NAC 51-006.02C3 reads: School districts and approved cooperatives must ensure assessments of children with disabilities who transfer from one school or approved cooperative to another school or approved cooperative in the same academic year and coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible to ensure prompt completion of full evaluations.

The District's transfer of the Student's records to a new school district where providers do not know the Student precludes that District from completing adequate evaluation in such a short period of time, and is neither expeditious or coordinated, and in no way ensured the prompt completion of a full evaluation. This ultimately leads to further delay of appropriate services for the student.

Based on the above, the District failed to fully implement the requirements of 92 NAC 51-51-006.02C5 and 92 NAC 51- 009.04A1. Thus the following corrective action is required. **Corrective action is described at the conclusion of this report.**

Issue #4

Did The District develop present levels of academic achievement and functional performance that meet the standard outlined in 92 NAC 51 § 007.07A1?

92 NAC 51-007.07A states:

007.07A *The IEP shall include:*

007.07A1 *A statement of the child's present levels of academic achievement and functional performance including:*

007.07A1a *How the child's disability affects the child's involvement in and progress in the general education curriculum.*

Allegations/Complainant Position

The present levels of academic and functional performance included in the finalized IEP did not reflect the significant behavior concerns that had been the reason for the IEP meeting in the first place.

District Response

Since the entire IEP team was not present, changes were not made to the draft that had been developed on September 1, 2021.

Investigative Findings

- In the Present Levels of Academic Achievement and Functional
 - Performance section, the IEP reads:
 - Speech and Language Information:
 - [The Student] demonstrates correct production of /sh/ with 75% accuracy in words and in consistent carrier phrases with 60% accuracy. [Redacted] continues to devoice /v/ and needs maximum cues to produce /ch/ in isolation. [Redacted] produces initial /f/ in sentences with 100% accuracy and medial /f/ in sentences with 90% accuracy. [The Student] produces initial /k/ words in sentences with 100% accuracy. [Redacted] is stimutable for /s/ and produces it in initial positions of words repeated 5x each with 65% accuracy and in blends in words with 92% accuracy. As a result of [the Student's] disability, [Redacted] has

difficulty completing speaking tasks related to the general education curriculum. Therefore [the Student] requires specially designed speech-language therapy services.

▪ Occupational Therapy- Sensory Information:

- [The Student] demonstrates sensory-seeking behaviors within the classroom. [Redacted]'s constantly on the move, restless and fidgety, rocks often when seated. [Redacted] has a strong preference for proprioceptive input such as crashing, pushing, falling, and rough housing. [Redacted] also has a strong preference for spinning, jumping, swinging, or rolling. [Redacted] is constantly touching objects and others. [Redacted] shows poor safety awareness and takes excessive risks during play and movement. [Redacted] frequently licks, sucks, or chews on non-food items and will smell non-food items. [The Student] prefers small areas such as under desks and bean bags. [Redacted] is utilizing a weighted lap pad during seated work. [The Student] has difficulty during unstructured times such as PE, music, library, and computers. [Redacted] also has difficulty with transitions- returning to the classroom and also during phonics. [Redacted] prefers fidget toys, fine motor activities, and eating. Challenging behaviors as noted by the classroom teacher: impulsivity, leaving the room, physical aggressions toward peers, hygiene, and [Redacted] ability to sit/participate during undesired activities.
- The second section of these Present Levels were added to the Draft IEP at the October 5, 2021 meeting. (Draft IEP and Final IEP, both dated September 1, 2021)

Summary and Conclusions

The above Present Levels of Academic Achievement and Functional Performance involve information about the Student's current functioning as well as how [Redacted] disability impacts [Redacted] involvement and progress in the general education curriculum.

Based on the information above, the District implemented the requirements of 92 NAC 51-007.07A and **no corrective action is required.**

Corrective Action for Issues 2 and 3

1. The District shall provide training to all certified special education staff, including related services providers, and administrators on the following:
 - a. The IEP process from referral to IEP development and the role of re-evaluation.
 - b. How to use assessment data to inform IEP development.
 - c. Who are the required members of an IEP team and what is the role of each?
 - d. When is it appropriate to include other staff members in IEP team meetings and what is their role?
2. The District shall submit training materials and have them approved in advance of conducting training by the NDE and revised, if required. These materials should be submitted no more than 30 days of the date of the Investigation Report. At that time, a date should be set and individuals providing the training assigned so that training can be developed.
3. Sign-in sheets or other means to verify attendance must be provided to NDE within 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