

## COMPLAINT INVESTIGATION REPORT

Complaint Number: 20.21.14  
Complaint Investigator: [Redacted]  
Date Complaint Filed: November 1, 2021  
Date of Report: [Redacted]

### Introduction

The Student in this complaint is a 5-year-old Student who had been receiving early childhood services through the District. Following the Multi-Disciplinary Team (MDT) on November 10, 2020, the Student was determined to be ineligible for special education services. The Parent disputed the results and after an Independent Educational Evaluation (IEE); the Student was determined to be eligible for special education services. However, the Student has not received services because the Parent has not consented for those services. The Parent and District, in their submissions, provided an extensive number of documents to be reviewed that were outside the one-year lookback timeframe for this Complaint. The findings of fact and conclusions of law refer to events from November 1, 2020, through November 1, 2021, the date the Complaint was filed. All the documents submitted were reviewed by the investigator and may be cited in the findings of fact for relevant background but were not considered for any other purpose in the resolution of this Complaint.

### Issues Investigated

Based on the allegations, the Nebraska Department of Education Office of Special Education will determine if the Student has been provided FAPE by investigating the following:

1. Did the District conduct a multidisciplinary evaluation by drawing upon information from a variety of sources pursuant to 92 NAC 51.006.02C14 to assist in determining the following:
  - a. Whether the child was a child with a disability pursuant to 92 NAC 51-006.02C5a;
  - b. The contents of the child's IEP pursuant to 92 NAC 51-006.02C5b and 006.02C14a? (Allegations 1, 2, 5, 6, 7, 8, 9, 19, 20, 21, 22, and 23)
  - c. Develop a plan to assist the teacher(s) in the provision of regular education for a child who does not qualify for special education services pursuant to 92 NAC 51-006.03G?

2. Did the District develop an IEP according to the required timelines for the Student to provide a free appropriate public education including the following? (Allegations 1, 2, 5, 6, 7, 8, 9, 19, 20, 21, 22, and 23)
  - a. A statement of the child's present levels of academic achievement and functional performance pursuant to 92 NAC 51-007.07A1;
  - b. How the child's disability affects the child's involvement and progress in the general education curriculum pursuant to 92 NAC 51-007.07A1a;
  - c. A statement of measurable annual goals pursuant to 92 NAC 51-007.07A2;
  - d. A description of how the child's progress toward meeting the goals will be measured pursuant to 92 NAC 007.07A4;
  - e. A statement of the special education and related services and supplementary aids and services to be provided to the child pursuant to 92 NAC 007.07A5;
  - f. Consideration of whether the child needs assistive technology devices and services pursuant to 92 NAC 007.07B7; and
  - g. Decisions were made on an individual basis pursuant to 92 NAC 51-04.02A
  - h. Conducting an individualized IEP conference within 30 calendar days of the multidisciplinary team verification decision pursuant to 92 NAC 51-009.04A2
3. Did the District conduct the Student's IEP meeting with all required participants pursuant to 92 NAC 51-007.03?
4. Did the District provide special education and related services to the Student in accordance with the child's IEP?
5. Did the District provide the parent an opportunity to participate in the development of the IEP and include the Parent in placement decisions including:
  - a. Ensuring the parent was a part of the IEP team pursuant to 92 NAC 51-007.03A1
6. Consider the concerns of the parent for enhancing the education of their child pursuant to 92 NAC 51-007.07B1;
  - a. Affording the Parent an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE pursuant to 92 NAC 009.01 and 009.02;

- b. Ensuring parental participation including individual or conference phone calls consistent with 92 NAC 51-007.09H pursuant to 92 NAC 51-007.06C;
  - c. Providing notices by electronic mail pursuant to 92 NAC 51-009.07
7. Providing a prior written notice pursuant to 92 NAC 51-009.05?

### **Documents Reviewed by Investigator**

#### *From the Complainant*

- The complaint and all attachments
- Email correspondence between Parent and Complainant
- Additional information submitted by parent on December 3, 2021

#### *From the School District*

- District response dated and received on November 29, 2021
- District evidence submitted at request of investigator
- Email and telephone conversation with District regarding complaint
- Telephonic interview with School Psychologist (12/8/21)

### **Findings of Fact**

1. The Student had been receiving services at the District through the early childhood program (MDT dated January 17, 2019).
2. In November, 2020, a comprehensive evaluation had been completed and multi-disciplinary team (MDT) was convened to determine if the Student remained eligible for special education services (MDT Report dated November 10, 2020).
3. The Parent disagreed with many of the statements in the evaluation reports and was concerned that the District was not considering other information that had been submitted or misunderstood the needs of the Student due to trauma and other challenges the Student faced since birth (Parent objection and response dated June 16, 2021).
4. The Parent would not sign off on the MDT and requested an opportunity to submit a written objection and identify errors in the report before the Parent left the meeting (Prior Written Notice dated October 25, 2021).
5. The MDT was finalized, a Prior Written Notice (PWN) was provided and the Student was dismissed from special education services on February 1, 2021 (Notice of Change of Placement dated February 1, 2021).
6. The Student, who had previously attended [Redacted] (a community preschool program), was transferred to a community preschool where the Student attended three days a week (Email from the Parent dated August 3, 2021; Interview with Psychologist on December 8, 2021).

7. [Redacted] was a very structured early childhood program where the Student thrived (Interview with Psychologist on December 8, 2021)
8. The community based preschool was a more child directed program in which the Student exhibited more behavior difficulties and was removed from the program for a period of time (Multiple emails; Emails from Parent dated March 17, 2021 and August 3, 2021).
9. On March 17, 2021, the Parent requested an independent educational evaluation (IEE) at District expense (Letter from Parent dated March 17, 2021).
10. The District agreed in writing to the IEE and outlined the parameters of the IEE in a letter to the Parent dated March 25, 2021.
11. The Parent submitted a written objection to the MDT reports on June 16, 2021.
12. The IEE was completed and provided to the District. A new MDT meeting was scheduled for June 16, 2021 to review the results of the IEE (MDT meeting agenda dated June 16, 2021).
13. That MDT meeting was cancelled at the request of the Parent (Letter from Parent dated June 16, 2021).
14. Parent wanted time to review the results from the IEE prior to the MDT meeting. (Parent complaint)
15. The District attempted in June and July, 2021 to schedule an MDT meeting, but Parent's schedule would not allow. (6/17/21 and subsequent series of emails between Parent and District)
16. The MDT meeting was finally scheduled for August 13, 2021. (Meeting request 7/6/21)
17. Since Student had been determined ineligible in November, 2020, Student had exhibited more behavior incidents at A community based preschool and the impacts of the attention deficit hyperactivity disorder (ADHD) diagnosis were more apparent. (8/13/21 MDT and 12/8/21 interview with Psychologist)
18. Student was determined eligible for special education services under the eligibility category of development disability (DD). (8/13/21 MDT)
19. An IEP meeting was scheduled for September 9, 2021. Parent attended that IEP meeting but left early. (8/25/21 email to Parent, Parent's complaint, 9/8/21 IEP recording)
20. Parent did not agree with the goals or present levels of performance listed on the IEP. (District's response)
21. Parent requested mediation to assist in developing an IEP for Student. (9/9/21 email response)

22. The District attempted to schedule mediation on September 17 and 30, 2021 but schedules could not coincide; mediation was scheduled for October 4, 2021. (Numerous emails beginning 9/9/21)
23. At the mediated IEP meeting on October 4, 2021, the process started with development of goals for Student. (District response, IEP recording)
24. The meeting ended because Parent wanted a functional behavioral assessment (FBA) and observations of Student completed before the IEP could be finalized. (District response and IEP recording)
25. Parent did not agree to an extension of time for the IEP. (District response)
26. Observations were completed on October 6 and 8, 2021. (Observation reports)
27. Attempts were made to schedule another mediated IEP as soon as possible but the next date was October 15, 2021. (Meeting Notice 10/8/21)
28. There were disagreements about the goals, methodology and services that Student needed. (Parent and District responses)
29. Parent requested an opportunity to write an IEP and submit it to the District for consideration. (Parent and District responses)
30. The District would not agree and since Parent would not extend the time, planned to finish the IEP at that meeting. (Parent and District responses, IEP recording)
31. Parent left the meeting before the IEP was finalized. (IEP recording)
32. Parent was provided with a copy of the finalized IEP and PWN, but would not sign the IEP or provide consent for services. (IEP, 10/25/21 PWN, November 2, 2021 email to Parent)
33. Student has not been receiving special education services since Student was dismissed from Services on February 5, 2021. (District response, IEP 10/15/21)
34. All required members were at the MDT meeting and mediated IEP meetings. (IEP and MDT reports)
35. All meetings were ended when Parent left except for the October 15, 2021 IEP meeting when the IEP was finalized after Parent left. (IEP recordings)

#### **Issue #1**

Did the District conduct a multidisciplinary evaluation by drawing upon information from a variety of sources pursuant to 92 NAC 51.006.02C14 to assist in determining the following:

- a. d. Whether the child was a child with a disability pursuant to 92 NAC 51-006.02C5a;
- b. e. The contents of the child's IEP pursuant to 92 NAC 51-006.02C5b and 006.02C14a? (Allegations 1, 2, 5, 6, 7, 8, 9, 19, 20, 21, 22, and 23)
- c. f. Develop a plan to assist the teacher(s) in the provision of regular education for a
- d. g. child who does not qualify for special education services pursuant to 92 NAC 51-006.03G?

92 NAC 51-006.02C5 states:

006.02C Verification criteria and procedures:

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 (or for a preschool child, to participate in appropriate activities), 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.

006.02C14a Draw upon information from variety of sources, including aptitude of sources, including aptitude and achievement tests, parent input, teacher recommendations,

physical condition,  
social or cultural  
background, and  
adaptive behavior;

92 NAC 51-006.03G states:

006.03      Multidisciplinary Evaluation Team (MDT) Requirements

006.03G      For a school age child who after initial MDT evaluation does not qualify for special education services or for a child with a verified disability who upon reevaluation no longer qualifies for special education services, a problem-solving team shall document a plan to assist the teacher(s) in the provision of regular education.

*The Complainant's Position*

The Parent asserted that the District failed to consider all relevant information from a variety of source when they met as the MDT and determined that the Student was not eligible for special education services. The Parent had provided medical and other evaluations regarding the Student for review by the team. The Parent did not believe the team was considering the impact of the Student's trauma and other challenges on the Student's educational needs.

*The District's Position*

The District completed the MDT (dated November 10, 2020) and determined that the Student was not eligible for special education services. After the Parent requested observations and an independent educational evaluation (IEE), the Student was determined eligible, and an IEP was developed. The Parent has not consented to the provision of special education services for the Student.

*Investigative Findings*

An MDT meeting was held November 10, 2020 regarding eligibility for the Student. The Student was determined ineligible at the conclusion of that meeting. The evaluation completed was a comprehensive evaluation, however, the MDT did not include a plan to assist the teacher(s) in the provision of general education as required by 92 NAC 006.03G. After the conclusion of the MDT meeting, the Parent objected and requested an opportunity to write a statement objecting to the ineligibility of the Student and that the evaluation did not outline the Student's needs. The Student no longer received special education services after the MDT meeting. The November 10, 2020 MDT documented that the Student had made sufficient progress, based on standardized assessments, and the observations.

On February 1, 2021, the MDT held November 10, 2020 was finalized, and the Student was determined ineligible. The Parent submitted an objection to the MDT determination made November 10, 2020, in July 2021. The Parent requested IEEs at public expense and observations, which were completed. The Parent and District reviewed the IEE and observation information. In the Student's placement at the community-based preschool, where the Student was not receiving special education services, the District documented an increase in the Student's negative behaviors. The Parent requested an evaluation to determine eligibility and assessment information to develop an IEP. The District completed an MDT evaluation August 13, 2021, that included the all of the updated information, and determined the Student eligible, as a student with a Developmental Delay, in need of special education services to access and progress in the general education curriculum. Since the previous MDT in November 2020, with the additional information and diagnosis from the IEE, observations and an increase in the Student's negative behaviors at the community based preschool, the Student was determined eligible at an MDT on August 13, 2021, under the category of developmental disability (DD).

#### *Summary and Conclusions*

The aspect of the eligibility the District did not take into consideration during the November 2020 MDT was that the Student was in a highly structured program at [Redacted]. The highly structured program, in conjunction with the IEP, provided the Student support to make progress which should have been documented in a plan to assist the teacher(s) in the provision of general education (8/13/21 MDT and 12/8/21 interview with Psychologist). When the Student entered the community preschool without the support of the IEP or the documented supports required when the Student was found not eligible during the November 2020 MDT, and the lack structural supports previously provided in the [Redacted] environment, the Student began having an increase in negative behaviors. As a result, the Student was unable to access and make progress in the community based preschool.

As a result of the District not documenting a plan to assist the teacher(s) in the provision of regular education, the District has not implemented the requirements of 92 NAC 006.03G, thus the following **corrective action is required**.

#### *Corrective Action*

1. Review, and revise if necessary, policies and procedures for ensuring a plan is documented to assist the teachers in the provision of regular education when a student is found ineligible for special education services.



- a. The District will send documentation of the results of the review within 60 days of the date of this report to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov). If policy revisions were required the District must:
  - i. Provide a copy of the revised policy for review within 60 days of the date of this report to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov). Theresa Hayes will provide acceptance or a request for revisions within 10 days of receiving the revised policies.
  - ii. After the revisions are approved by Theresa Hayes, the District will provide the date for the local school board meeting in which the revised policy will be discussed by the board.
  - iii. A copy of the board meeting minutes will be sent to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov) no later than 10 days after the board meeting.
2. The District will provide training to all early childhood staff members who may be involved in MDT meetings regarding the requirements of documenting a plan to assist teacher(s) in the provision of general education within 60 days of the date of this report.
  - a. Training materials must be sent to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov) for approval 10 days prior to the training being held.
  - b. Sign-in sheets along to verify who attended the training and the role of each member in attendance must be sent to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov) no more than 10 days after the training.
3. The District will send, via secure email, a list of students who were determined no longer eligible for special education to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov) by May 1, 2022.
  - a. NDE will select no more than 3 students from the list in which a file review will be conducted.
  - b. Upon receipt of the list of students to review, the District will send the MDTs including the documentation of a plan to assist teacher(s) in providing general education to the students.

## **Issue #2**

Did the District develop an IEP according the required timelines for the Student to provide a free appropriate public education including the following?  
(Allegations 1, 2, 5, 6, 7, 8, 9, 19, 20, 21, 22, and 23)

- a. A statement of the child's present levels of academic achievement and functional performance pursuant to 92 NAC 51-007.07A1;

- b. How the child's disability affects the child's involvement and progress in the general education curriculum pursuant to 92 NAC 51-007.07A1a;
- c. A statement of measurable annual goals pursuant to 92 NAC 51-007.07A2;
- d. A description of how the child's progress toward meeting the goals will be measured pursuant to 92 NAC 007.07A4;
- e. A statement of the special education and related services and supplementary aids and services to be provided to the child pursuant to 92 NAC 007.07A5;
- f. Consideration of whether the child needs assistive technology devices and services pursuant to 92 NAC 007.07B7; and
- g. Decisions were made on an individual basis pursuant to 92 NAC 51-04.02A
- h. Conducting an individualized IEP conference within 30 calendar days of the multidisciplinary team verification decision pursuant to 92 NAC 51-009.04A2.

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.

92 NAC 51-007.07 states in relevant part:

007.07      IEP Development

007.07A      The IEP shall include:

007.07A1a      How the child's disability affects the child's involvement in and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children);

- 007.07A2 A statement of measurable annual goals, including academic and functional goals, designed to:
- 007.07A4 A description of how the child's progress toward meeting the annual goals described in 92 NAC 51-007.07A2 will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- 007.07A5 A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:
- 007.07A7 A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; and if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why

92 NAC 51-004.02A states:

- 004.02A The determination that a child described in 92 NAC 51-004.02 is eligible under this Chapter must be made on

an individual basis by the multidisciplinary evaluation team.

#### *Complainant's Position*

The District did not timely complete the development of the IEP because they came to the meeting with predetermined goals and plans and did not consider the information and concerns of the Parent. The Parent had no choice but to end the meeting because the Student's needs were not being addressed. The District would not consider the Parent's input when completing the required components of the IEP.

#### *District response*

The MDT was finally completed on August 13, 2021, after repeated attempts to schedule the meeting following completion of an IEE. The first IEP meeting was scheduled for September 9, 2021, to develop the IEP, within the thirty days required. The Parent left the meeting before the IEP was completed. Although the District tried to promptly schedule additional meetings to complete the IEP, a mutually agreed upon date and time was not possible. Finally, during a mediated IEP meeting on October 15, 2021, the District completed the IEP after the Parent departed. The District believed because of the extensive lapse between the MDT and development of the IEP, the IEP needed to be completed that day even if the Parent was not available. All the required components were documented on the IEP. The Parent has not consented to that IEP or provision of services for the Student.

#### *Investigative Findings*

The District scheduled an IEP meeting within thirty days of the MDT. The District admitted to delaying scheduling the IEP due to the confusion regarding who had parental rights; the adoptive parent or the ad litem. The IEP meeting was not completed on September 9, 2021, but was finally completed on October 15, 2021. The delays in completion of the IEP were due to scheduling difficulties with the Parent and the mediator and the Parent's departure from IEP meetings before the IEP was completed. The IEP completed on October 15, 2021 had all the components required in the IEP and Parent's concerns and information were considered in the development of that IEP.

#### *Summary and Conclusions*

The District tried to complete the IEP within the time constraints, but Parent ending the September 2021 meeting early and the continued difficulties with scheduling a mediated IEP and completing the process in a timely manner were out of District's control. The final IEP met the statutory requirements for an IEP.

Based on the District's actions in trying to develop a compliant IEP in a timely manner, there was no violation of 92 NAC 51-007.07A1; 92 NAC 51-007.07A1a; 92 NAC 51-007A2; 92 NAC 51-007A4; 92 NAC 51-007A5; 92 NAC 51-007A7; 92 NAC 51-04.02A; 92 NAC 51-009.04A2. No corrective action is required. However, the District is highly encouraged to put policies and procedures into place regarding who may serve as a parent in situations in which a child has been or is in the process of being adopted to ensure adherence to timelines and communication with appropriate members of the team. It is also highly recommended the District continue to work with the Parent to obtain consent for the initial provision of services which may require hold an IEP to continue to address the concerns of the parent to ensure the Student has special education and related services to meet the Student's individualized needs.

### **Issue # 3**

Did the District conduct the Student's IEP meeting with all required participants pursuant to 92 NAC 51-007.03?

92 NAC 51§007.03 states:

007.03 IEP Team Participants

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 or documentation of 92 NAC 51-007.06D;

007.03A2 Not less than one regular education teacher of the child (if the child is, or maybe, 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 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;
- 007.03A6a The determination of the knowledge or special expertise of any individual described in 92 NAC 51-007.03A6 shall be made by the party (parents or school district or approved cooperative) who invited the individual to be a member of the IEP.

#### *Complaints' Positions*

Parents are required members of the IEP team; the District could not complete the IEP meeting without Parent's presence.

#### *District Response*

The District was obligated to complete an IEP within 30 days of the MDT. Parent left the first IEP meeting before the IEP was completed. The District tried repeatedly to schedule IEP meetings to complete the IEP. The District participated in two mediated IEP meetings on September 13, 2021 and October 4, 2021 without a completed IEP. Finally, at the third IEP meeting on October 15, 2021, the District believed it had an obligation to complete the IEP with or without the Parent's presence.

#### *Investigative Findings*

Parents are required members of the IEP team. Three IEP meetings were conducted to develop an IEP for the Student. The Parent left each meeting before the IEP was completed. Finally, at the last meeting on October 15, 2021, the District informed the Parent at the meeting that the IEP would be completed that day even if the Parent left the meeting before the IEP was completed.

#### *Summary and Conclusions*

Although parents are required members of the IEP team, the District also has an obligation to develop an IEP and implement needed services in a timely manner. The IEP team met three times to develop Student's IEP, but Parent's

decision to leave the first two meetings early required a third IEP meeting. The District, to be in compliance with their obligation to develop a timely IEP, completed the IEP after the Parent left the third IEP meeting. The Parent was involved in the development of the Student's IEP and chose to leave the IEP meeting before the IEP was finalized.

Based on the District's completion of the IEP for the Student after the Parent left the third IEP meeting, the District had the appropriate IEP team members needed to develop an IEP. There was no violation of 92 NAC 51§007.03. **No corrective action** is required.

#### **Issue #4**

Did the District provide special education and related services to the Student in accordance with the child's IEP in violation of 92 NAC 51-009.04A3?

92 NAC 51-009.04A3 states:

009.04A      As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP.

#### *Complainant's Positions*

Throughout this process, the District has not considered the needs of Student when conducting the MDT meeting or developing the IEP. The MDT in November, 2020 improperly determined Student was not eligible and dismissed Student from special education services. Yet again, after the August 13, 2021 MDT, the District failed to properly develop an IEP that met Student's needs. Student continues to be deprived of a FAPE because the District did not consider the needs of the Student.

#### *District's Response*

The District has tried to accommodate the Parent in scheduling and addressing concerns. The District agreed to the LRE, conducted additional observations and participated in three IEP meetings to consider Parent's concerns in the development of the IEP. Finally, the District completed the IEP and provided it to the Parent. The Parent refused to sign it or give consent for the Student to receive services. The District cannot implement the IEP without Parental consent. The only reason why the Student is not receiving services is because the Parent will not sign consent.

#### *Investigative Findings*

An IEP was finally completed on October 15, 2021. The District provided the Parent with a copy of that IEP and prior written notice (PWN). The Parent has not



provided consent for services and therefore, the District has not provided special education services to the Student.

#### *Summary and Conclusions*

The District cannot provide special education services if the Student is not eligible for special education services. Also, the District cannot provide special education services to the Student without Parental consent. Both apply. The Student was dismissed from special education services on February 1, 2021. The Student was determined eligible on August 13, 2021, with the IEP completed on October 15, 2021. The Parent has not provided consent for special education services. The District has not failed to provide special education services, the Parent has not agreed to the provision of those services.

Based on the Parent's refusal to provide consent for provision of services to Student, the District has not been able to implement the October 15, 2021, IEP. There has been no violation of 92 NAC 51-009.04A3. **No corrective action** is required.

#### **Issue #5**

Did the District provide the parent an opportunity to participate in the development of the IEP and include the Parent in placement decisions including:

- a. Ensuring the parent was a part of the IEP team pursuant to 92 NAC 51-007.03A1.

92 NAC 51-007.03A1 states:

007.03 IEP Team Participants

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 or documentation of 92 NAC 51-007.06D

#### *Complainant's Positions*

The District continued with the October 15, 2021 IEP meeting after the Parent requested the meeting end to be rescheduled for another day. Without the Parent's presence at the IEP meeting, the IEP meeting was invalid and should be reconvened at another time when the Parent can fully participate in the development of the educational program for Student.

#### *District's Response*

The District repeatedly tried to schedule IEP meetings when the Parent was able to attend and participate. Three IEP meetings were held, but the Parent left the

meeting before the IEP was complete. Finally, the District felt it had no choice but to finish the IEP even if the Parent left.

#### *Investigative Findings*

The Parent was involved in scheduling all of the meetings involving the Student. The IEP meetings were scheduled at a mutually agreed upon time and place. The Parent left the IEP meeting on September 13, 2021 before the IEP was completed. The second mediated IEP meeting on October 4, 2021 also ended before the IEP was completed. Parent was in attendance at the third IEP meeting on October 15, 2021; Parent left without the IEP completed. Parent requested to write a draft IEP and return that to the IEP team; the District declined that offer. The District informed Parent that an IEP would be completed at the October 15, 2021 IEP meeting with or without the Parent. Parent chose to leave before the IEP was completed.

#### *Summary and Conclusions*

The District acted in good faith in scheduling three IEP meetings with the Parent. They tried to complete the IEP at the first two meetings, the Parent left the meeting and another meeting was scheduled. At the third IEP meeting, the Parent was informed by the District what would happen if the Parent left the meeting early. IEPs are to be drafted at IEP meetings with all IEP team members present. Allowing the Parent to draft an IEP without the involvement of the entire IEP team would be a violation of Rule 51. The Parent had an opportunity to complete the IEP at the October 15, 2021 IEP meeting, the Parent chose to leave before the IEP was completed. The Parent was not denied meaningful parental participation in the development of the IEP. There was no violation of 92 NAC 51-007.03A1. **No corrective action** is required.

#### **Issue #6**

Consider the concerns of the parent for enhancing the education of their child pursuant to 92 NAC 51-007.07B1;

- a. Affording the Parent an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE pursuant to 92 NAC 009.01 and 009.02;
- b. Ensuring parental participation including individual or conference phone calls consistent with 92 NAC 51-007.09H pursuant to 92 NAC 51-007.06C;
- c. Providing notices by electronic mail pursuant to 92 NAC 51-009.07

92 NAC 51-007.06C states:

007.06C If neither parent can attend the IEP meeting, the school district or approved cooperative shall use other methods to ensure parent participation, including individual or conference telephone calls consistent with 92 NAC 51-007.09H (related to alternate means of meeting participation).

92 NAC 51-007.07B1 states:

007.07B1 The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.

92 NAC 51-007.09H states:

007.09H When conducting IEP team meetings and placement meetings and carrying out administrative matters (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a school district or approved may agree to use alternative means of meeting participation, such as video conferences and conference calls.

92 NAC 51-009.01 and 009.02 state:

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.

009.01B Each school district or approved cooperative must provide notice consistent with 92 NAC 51-007.06A1 and 007.06B to ensure that parents of children with disabilities have the opportunity to participate in meetings described in 92 NAC 51-009.01A.

009.01C A meeting does not include informal or unscheduled conversations involving school district or approved cooperative's personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does

not include preparatory activities that school district or approved cooperative's personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

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.
- 009.02B In implementing the requirements of 92 NAC 51-009.02A, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A.
- 009.02C If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district or approved cooperative shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
- 009.02D A placement decision may be made by a team without the involvement of the parents if the school district or approved cooperative is unable to obtain the parents' participation in the decision. In this case, the school district or approved cooperative must have a record of its attempt to ensure their involvement including information that is consistent with the requirements of 92 NAC 51-007.06D.

92 NAC 51-009.07 states:

- 009.07 A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the school district or approved cooperative makes such option available.

*Complainant's Positions*

The Parent did not believe the District considered or valued the Parent's opinions or information regarding the service needs of the Student. The District did not acknowledge the Parent's understanding or concerns about the

Student now or in the future. The Parent believed the District had a preconceived plan for services for the Student. Within the District, it was a one size fits all, and the District failed to consider the Student's history and how that impacted the Student's learning needs. The District used inaccurate emails or telephoned the Parent when the Parent was unavailable or was not able to return the call in a timely manner. Overall, the Parent felt disrespected and ignored with respect to the Student's educational program.

#### *District's Response*

The District tried many ways to communicate with the Parent: email, telephone calls, Zoom meetings, in person. The District continued to use an invalid email to contact the Parent, but once the District was informed that this email was no longer valid, the District contacted the Parent through the new email. The District also tried telephone calls, but when the Parent stated emails were preferred, emails were the mode of communication used. When the Parent requested meetings to be held through Zoom, that request was honored. The District completed observations at the Parent's request; authorized an IEE and considered those results and ultimately determined the Student eligible after review of those results. Before the November 2020 MDT was finalized, the Parent was provided an opportunity to submit a written objection which Parent did in late July 2021. There were three IEP meetings, two that were mediated IEP meetings to allow the Parent to express concerns.

#### *Investigative Findings*

The Parent was involved in all aspects of the evaluation, determination of eligibility, and development of the IEP. The District used multiple methods to communicate with the Parent and to ensure the Parent's participation in meetings concerning the Student. When the Parent requested a different method of communication, that request was accommodated. The Parent participated in all of the meetings involving the Student including the last mediated IEP meeting on October 15, 2021. The Parent chose to leave before the IEP was finalized. The Parent's concerns were considered and addressed even though not all concerns were incorporated in the final IEP.

#### *Summary and Conclusions*

The Parent was informed of all meetings regarding the Student. Alternative methods of communication were provided at the Parent's request for communication and participation in IEP meetings. While there were some e-mails that the Parent may not have received, when the District was informed that the Parent had not received some communication, the District remedied that situation. The Parent actively participated in all of the meetings involving the Student, including the last mediated IEP meeting on October 15, 2021. A

mediator was available at the last two IEP meetings to ensure the Parent's voice and concerns were heard. The Parent's concerns must be heard and incorporated in the IEP, if appropriate; there is no requirement that all of Parent's requests and concerns be included in the IEP. The development of the IEP is a team process. There was no violation of 92 NAC 51-007.07B1 and related rules.

**No corrective action** is required.

#### **Issue #7**

Providing a prior written notice pursuant to 92 NAC 51-009.05?

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. Such prior written notice shall include:

009.05B Such prior written notice shall include:

009.05B1 A description of the action proposed or refused by the school district or approved cooperative;

009.05B2 An explanation of why the school district or approved cooperative proposes or refuses to take the action;

009.05B3 A description of other options the IEP team considered and the reasons why those options were rejected;

- 009.05B4 A description of each evaluation procedure, assessment, record, or report the school district or approved cooperative uses as a basis for the proposal or refusal;
- 009.05B5 A description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;
- 009.05B6 A statement that the parents of a child with a disability have protection under the procedural safeguards of this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained; and
- 009.05B7 Sources for parents to contact to obtain assistance in understanding the provisions of this Chapter.
- 009.05C The notice must be written in language understandable to the general public, and provided in the native language of the parents or other mode of communication used by the parents unless it is clearly not feasible to do so.
- 009.05D2 That the parents understand the content of the notice; and
- 009.05D3 That there is written evidence that the requirements of this section have been met.

*Complainant's response*

The Parent asserted that the District did not provide a proper prior written notice (PWN) until February 1, 2021, even though the November 2020 MDT determined that the Student was not eligible for special education services.

### *District's response*

The District did not provide a PWN until after February 1, 2021 dismissal from special education eligibility because the Parent, at the end of the MDT meeting in November 2020, requested an opportunity to oppose the decision of the MDT. That objection was not provided under July 2021. On February 1, 2021, the Student was terminated from special education and an appropriate PWN was provided to Parent.

### *Investigator's Findings*

A PWN was provided to the Parent at the time the Student was terminated from special education services on February 1, 2021. The determination was made that the Student was not eligible at the November 2020 MDT meeting but since the Parent requested an opportunity to object to the MDT, the dismissal was not completed until February 1, 2021. A PWN that met the requirements was provided to the Parent after the MDT meeting on August 13, 2021 and again after the IEP was finalized on October 15, 2021. No PWNs were provided after the first two IEP meetings because no final decisions prompting a PWN were made.

### *Summary and Conclusions*

The decision on eligibility of the Student was made at the end of the MDT meeting on November 2020. A PWN should have been provided at that time since there was a change in eligibility of Student to provide a written account of the decisions made at that meeting to find the Student not eligible. A delay from the decision being made in November and a prior written notice in February is not considered "reasonable time".

Based on the District delaying the provision of a PWN after the MDT meeting on November 10, 2020 until February 1, 2021, the District is found to have not implemented the requirements of 92 NAC 51-009.05. Thus, the following **corrective action is required.**

### *Corrective Action*

1. Review, and revise if necessary, policies and procedures for providing a prior written notice within a reasonable time before a district changes the identification of a student with a disability.
  - a. The District will send documentation of the results of the review within 60 days of the date of this report to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov). If policy revisions were required the District must:
    - i. Provide a copy of the revised policy for review within 60 days of the date of this report to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov).



- Theresa Hayes will provide acceptance or a request for revisions within 10 days of receiving the revised policies.
- ii. After the revisions are approved by Theresa Hayes, the District will provide the date for the local school board meeting in which the revised policy will be discussed by the board.
  - iii. A copy of the board meeting minutes will be sent to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov) no later than 10 days after the board meeting.
2. The District will provide training to all early childhood staff members who may be involved in MDT meetings regarding the requirements of providing prior written notice within a reasonable time before a district changes the identification of a student with a disability within 60 days of the date of this report.
    - a. Training materials must be sent to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov) for approval 10 days prior to the training being held.
    - b. Sign-in sheets along to verify who attended the training and the role of each member in attendance must be sent to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov) no more than 10 days after the training.
  3. For the students selected for the corrective action for Issue 1, the District will send the prior written notices that were provided in conjunction with the MDTs reviewed.

### **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 Office of Special Education  
[nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov)