

## COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.15  
Complaint Investigator: [Redacted]  
Date Complaint Filed: November 5, 2021  
Date of Report: January 4, 2022

### Issues Investigated

1. Did [Redacted] provide special education and related services to the Student in accordance with the IEP? [92 NAC 51-007.02]
2. Did [Redacted] include the IEP team in any changes or revisions made to the Student's IEP? [92 NAC 51-007.09E-F]

### Sources of Information Reviewed by Investigator

#### *From the Complainant*

- Letter of Complaint dated November 2, 2021; received by NDE November 4, 2021

#### *From the School District*

- Letter of Response dated December 7, 2021; received by NDE December 7, 2021
- Multidisciplinary Report (MDT) dated August 26, 2020
- IEP dated August 28, 2019
- IEP dated August 26, 2020
- IEP dated April 28, 2021
- Supervision schedule for the Student
- Individual Safety Plan dated November 1, 2021
- Email correspondence dated December 22, 2021

#### *Other*

- Survey data collected from 7 families within the District

### Introduction

The Student is a 17-year old who is in 10th grade and is identified as a student with an intellectual disability (MDT dated August 26, 2020). The Parents have shared concern with the school district that the Student could be influenced by others in the bathroom or locker room and requested supervision to prevent this issue from recurring. An incident occurred in which the Student was molested by another student while unsupervised in a bathroom. During the course of the investigation, the fact that this may be a more systemic issue was raised and Issue #1 of the complaint was subsequently investigated at a systemic level.

## **Issue # 1**

Did [Redacted] provide special education and related services to the Student in accordance with the 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.

### *Allegations*

The Student was harmed by another student while in the bathroom, unsupervised by special education staff.

### *Parent Position*

The Parent has brought to the attention of the school their concerns about the Student's vulnerability and has understood that any time the Student was in a general education setting, [Redacted] would be supervised and monitored in a 1:1 manner by a special education provider.

### *District Response*

The Student's IEP only states that [Redacted] will have 1:1 support or supervision in a general education classroom.

### *Investigative Findings*

- The Student's current IEP reads: When [the Student] is in a general education classroom a 1:1 para educator/teacher will accompany [Redacted] to help [Redacted] be successful in this setting. IEP dated April 28, 2021
- The supervision schedule provided by the district includes the following:
  - Period 4: [The Student] is with [general education teacher] for P.E. (there are 8 students in the class). The paraeducator starts [the Student] in warmups and makes sure the instructions for the fitness class were given. Then [the general education teacher] pairs up with [the Student] to give 1:1 instruction while he oversees the independent play of the other 7 students. The para leaves and [the general education teacher] works directly with [the Student] and sometimes facilitates peer partner work with [the Student] and a same-age peer.

- Patriot Period: [The Student] is with [general education teacher] (there are 13 students in the class). [The Student] is with [Redacted] same-age peers and not with LS staff at this time.
- Email correspondence with the District confirmed that both teachers referenced above are the general education teacher assigned to the class. Email dated December 22, 2021

### *Summary and Conclusions*

The above facts confirm that the Student was not, in fact, provided 1:1 support and supervision while in a general education classroom from special education staff, and in at least 2 cases each day, the Student was left in a class with only the general education teacher and no 1:1 support as outlined in the IEP.

Further, the language in the current IEP is vague and leaves room for interpretation about what supervision is being provided for the Student's safety. Based on these findings, the District failed to fully implement the requirements of 92 NAC 51-007.02 and the following **corrective action is required**:

1. The District shall reconvene the IEP team and ensure that the language regarding supervision of the Student is clear, ensuring that the Student is provided the special education support required to progress on IEP goals.
2. The District will develop a supervision schedule that reflects the specific staff assigned to the Student for all periods of the day as outlined in the revised IEP.
3. Both documents will be provided to NDE via secure email for review no later than 2 weeks following the receipt of this letter.

### **Issue #1 Systemic**

Did [Redacted] provide special education and related services to all students in accordance with the developed IEPs? [92 NAC 51-007.02]

### *Investigative Findings*

Because it was alleged that the problem with proper support and supervision among students with more significant disabilities affected other students in the District, a systemic investigation was undertaken. All students within the District who have 1:1 assistance or supervision listed within their IEP were identified and a survey was distributed to these students' parents. Following are the findings from that survey:

- Do you believe your Child's IEP is being implemented as written? Yes= 83%, No= 17%
- Do you believe supervision is being provided as outlined in the IEP? Yes= 71%, No= 29%

- Is your child making progress on their IEP goals? Yes= 72%, No= 29%
- Comment:
  - There are times when there is supervision and there are times when there is not. I think my child has not met IEP goals because it seems like my child cannot do what [student] was once able to do. There seems to be a lot of distractions in the classroom. My child does not always respond well to a group setting when it comes to learning.

### *Summary and Conclusions*

Survey data suggest that at least 2 of 7 families have experienced problems with IEP implementation and the resulting progress that would be expected. Based on these findings, the District failed to fully implement the requirements of 92 NAC 51-007.02 and the following **corrective action is required:**

1. The District will provide training to all certified special education staff outlining services for students with more significant disabilities, when and how to reflect 1:1 support and supervision in the IEP, how to provide and document this level of support and supervision, and how these students will be served in bathrooms and locker rooms.
  - a. The training must be conducted within 30 days of the date of this report.
  - b. The training materials will be sent to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov) 10 days prior to the training for approval.
  - c. Sign-in sheets along with the role each attendee serves will be sent to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov) no more than 10 days after the training is held.
2. The Parents of all students with 1:1 assistance or support listed in their IEP will be provided a supervision schedule outlining what staff member is assigned to their student during all 1:1 supervised periods as outlined in the IEP within 60 days of the date of this report.
  - a. Copies of the each supervision schedule and the assigned staff provided to the parents will be sent via secure email to [nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov)

### **Issue # 2**

Did [Redacted] include the IEP team in any changes or revisions made to the Student's IEP? [92 NAC 51-007.09E-F]

92 NAC 51-007.09 states:

007.09E In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the school district or approved cooperative may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

007.09E1 If changes are made to the child's IEP in accordance with 92 NAC 51-007.09E, the school district or approved cooperative must ensure that the child's IEP team is informed of those changes.

007.09F Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in 92 NAC 51-007.09E of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

### *Allegations*

The District removed important supervision language that the Parents had requested to ensure the Student's safety without informing the Parent.

### *Parent Position*

At the beginning of 8th grade (fall of 2019), the Parents informed the IEP team of past behavior in the bathroom wherein the Student had been easily influenced by peers and had taken down his pants. Parents requested that the District ensure that the staff was observing when the Student went in the bathroom and who came in/out of the bathroom. Additionally, the requested a private changing area if the Student were to change to go swimming. The Parents assumed that these supervision requirements had not changed.

### *District Response*

The Parents were present and participated in all IEP meetings wherein any changes were made to the IEP.

### *Investigative Findings*

- The Student's 2019 IEP reads: Parents are concerned that when [the Student] is in the restroom [Redacted] could be influenced by others to have inappropriate behaviors (i.e. pulling pants down).

This happened while attending [Elementary School] and they would like to make sure someone is observing the time and who goes in/out of the restroom. If [the Student] goes swimming or needs to change [Redacted] will need to be in a private changing area with an adult male for assistance. IEP dated August 28, 2019

- This IEP also reads: [The Student] will be in a general education classroom with a 1:1 para educator/teacher in all settings. IEP dated August 28, 2019
- As provided above, the current IEP reads: When [the Student] is in a general education classroom a 1:1 para educator/teacher will accompany [Redacted] to help [Redacted] be successful in this setting. IEP dated April 28, 2021
- Parents were present and participated in both meetings. IEPs dated August 28, 2019 and April 28, 2021.

### *Summary and Conclusions*

It is clear that changes to the wording of this supervision requirement were made over the course of the last 3 IEPs. It is unclear why these changes were made, and it is possible that the Parents were unaware of the intent reduce the level of supervision. However, the Parents were present and participated in each IEP meeting wherein these changes were made, and were, therefore, afforded the opportunity to review and discuss any changes that were made.

Based on the summary and conclusions, the District implemented the requirements of 92 NAC 51-007.09 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:

Brenda Tantow, Complaint Specialist  
nde.speddr@nebraska.gov