

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.22
Complaint Investigators: [Redacted]
Date Complaint Filed: March 2, 2022
Date of Report: [Redacted]

Issues Investigated

The first issue identified for investigation initially stated: “Did the District conduct a full and individual initial evaluation for the Student, in accordance with 92 NAC 51-006.02B1?” However, the investigation revealed that the Student transferred to the District from an out-of-state district with a current evaluation report finding the Student eligible for special education services. Based on the facts, 92 NAC 51-006.02B1 is not applicable to this matter, and the first issue has been revised to reflect the interstate transfer and evaluation process for a child with a disability.

1. Did the District conduct an evaluation, if determined to be necessary by the District, upon enrollment of the Student transferring from outside the state, in accordance with 92 NAC 51-007.08B1?
2. In interpreting the evaluation data for the purpose of determining eligibility for special education services, did the District draw upon information from a variety of sources, and ensure that information obtained from all sources was documented and carefully considered, in accordance with 92 NAC 51-006.02C14?
3. Did the District properly identify the Student's disability category, in accordance with 92 NAC 51-006.04?
4. Did the District afford the Parents an opportunity to participate in meetings regarding the identification, evaluation, educational placement, and provision of a free appropriate public education in accordance with 92 NAC 51-009.01A?

Information Reviewed

From the Parent

- Complaint received by the NDE on March 2, 2022
- Documents provided by Parent, including, but not limited to:
 1. Progress reports and report cards file
 2. Evaluations file
 3. Information file
 4. Reading file

5. Special education file
 6. Draft Individualized Education Program with Parent comments dated January 31, 2021
 7. IEP team meeting recordings for meetings held on the following dates:
 - a. January 6, 2022;
 - b. January 10, 2022;
 - c. January 12, 2022;
 - d. February 8, 2022;
 - e. February 24, 2022;
 - f. March 15, 2022;
 - g. March 22, 2022;
 - h. March 29, 2022; and
 - i. April 5, 2022
 8. IEP dated February 8, 2022, with Parent comments attached
 9. Notification of Meeting and IEP Meeting Agenda with Parent comments attached
 10. Multidisciplinary Team Meeting Summary dated January 6, 2022
 11. Parent Concerns File
 12. Emails from Parent
- Phone interview with Parent on April 12, 2022

From the School District

- Letter of Response dated March 28, 2022, with the following attachments:
 1. Attachment 1 – Special education director statement
 2. Attachment 2 – Documents and records related to the verification of the Student
 3. Attachment 3 – Documents and records related to the Student's education
 4. Attachment 4 – Records and communications and correspondence with the Complainant
 5. Attachment 5 – Prior written notice documents from the 2021-2022 school year
 6. Attachment 6 – Additional related records
- Phone interview with the District special education director and attorney on April 13, 2022

Introduction

Pursuant to 92 NAC 51-009.1, the Nebraska Department of Education (NDE), Office of Special Education, is required to resolve complaints alleging violations

of the Individuals with Disabilities Education Act (IDEA) that have occurred not more than one year prior to the date the complaint is received.

The complaint was filed on behalf of the Student whose Parent alleged IDEA violations. To conduct this complaint investigation, an outside investigator was used along with a complaint investigator with the NDE Office of Special Education. The documents received from the Parent and the School District were reviewed, and phone interviews were held with the parties.

This investigation is limited to a review of alleged IDEA violations that occurred not more than one year prior to March 2, 2022, the date the complaint was received by the NDE. Any facts that are discussed that occurred outside the one-year time period for this investigation are provided for context purposes only.

Finding of Facts

- 1) The Student is 7 years old, is in the 2nd grade, and receives special education services under the disability category of Multiple Impairments (MDT Report dated January 6, 2022).
- 2) The Student's family moved within the District's boundaries in December 2021 from out of state (Parent Interview).
- 3) The Student was formally enrolled in the District on January 5, 2022, and began attending an elementary school within the District on January 18, 2022 (Written Notice dated January 17, 2022; Email dated 11/3/21).
- 4) Prior to attending the District elementary school, the Student resided out of state and had been homeschooled since December 2019.
 - a) The Student received academic instruction from the Parent four days a week and was provided related services through private agencies arranged by the Parent.
 - b) The Student attended an education group one day a week.
 - c) The Student received 20 hours of Applied Behavioral Analysis (ABA) weekly. (Parent Interview)
- 5) An Evaluation and Eligibility Team Report was completed by an out-of-state district in April 2021 and finalized on May 10, 2021.
- 6) The May 2021 out of state evaluation included the following information and assessments:
 - a) Background Information
 - b) Health
 - i) Hearing Screening
 - ii) Vision Screening
 - iii) Medical Information
 - iv) Parent Information

- c) Vision Assessment
 - (1) Functional Vision Assessment
 - (2) Visual Behavioral and Skills
 - (3) Observations and Interview
 - (4) Expanded Core Curriculum
 - (5) Classroom Implications
 - (6) Summary of Assessment Results (Vision)
 - (7) Recommendations (Vision)
 - (8) Braille Information
- d) Motor Assessment
 - i) Orientation and Mobility
 - (1) Review of prior progress report
 - (2) Orientation and Mobility Evaluation Summary
 - ii) Physical Therapy and Occupational Therapy
 - (1) Parent Input
 - (2) Standardized Testing
 - (3) Behavioral and Background Observations
 - (4) OT Record Review and Observations
 - (5) PT Record Review and Observations
- e) Cognitive Skills/Adaptive Behavior
 - i) Adaptive Behavior Scales
 - ii) Record Review Information
- f) Academic Skills
 - i) Review of prior progress report
 - ii) Academic assessments
 - iii) Parent input
- g) Communication Skills
 - i) Review of prior progress report
 - ii) Assessments
 - iii) Parent input
- h) Social/Emotional Behavioral
 - i) Review of prior progress report
 - ii) Observation
 - iii) Assessments
- i) Transition/Vocational Skills
 - i) Parent input
- j) Observations and Interviews
- k) Learning media Assessment
- l) Expanded Core Curriculum
- m) Classroom Implications

- n) Summary of Assessment Results
 - o) Recommendations
 - p) Braille Consideration
- 7) The May 2021 evaluation determined the Student continued to be child with an exceptionality and continued to need special education and related services.
 - 8) The Parent was not in agreement with the evaluation process or the reevaluation report and requested an Independent Educational Evaluation (IEE) from the out of state district, which was granted (Parent Interview).
 - 9) The Student was evaluated through the Independent Educational Evaluation (IEE) process during summer 2021. The evaluations included the following:
 - a) Physical Therapy Initial Evaluation dated June 30, 2021, completed by an individual with a Doctor of Physical Therapy and included the following information:
 - i) Summary and review of medical history, including current medications
 - ii) Information collected from Parent questionnaire
 - iii) Summary and review of developmental history
 - iv) Summary and review of school history
 - v) Objective findings in the areas of:
 - (1) Balance
 - (2) Equipment
 - (3) Strength
 - (4) Coordination skills
 - (5) Gross motor development
 - vi) Assessment of complexity
 - vii) Recommendations
 - b) Functional Visual Evaluation dated July 6, 2021, completed by a teacher of the visually impaired. The evaluation included the following information:
 - i) Background information, including Parent's perception of functional vision
 - ii) Functional vision, including:
 - (1) Assessment environments and steps
 - (2) Sensory behaviors
 - (3) Appearance of the eyes
 - (4) Visual abilities
 - (5) Visual fields
 - (6) Color perception
 - (7) Ocular motility (vision skills)
 - (8) Literacy and learning media
 - (9) Conceptual and communication skills

- (10) Expanded core curriculum areas of need for instruction
- (11) Visual processing behaviors
- iii) Summary
- iv) Recommendations and suggestions.
- c) Orientation & Mobility Evaluation dated July 6, 2021, completed by a certified orientation and mobility specialist. The evaluation included the following information:
 - i) Observations in various settings:
 - (1) Familiar natural environment
 - (2) Unfamiliar natural environment
 - ii) Parent interview
 - iii) General medical and visual history
 - iv) Evaluation in the following areas:
 - (1) Attending behaviors
 - (2) Receptive/expressive language
 - (3) Posture and gait
 - (4) body image
 - (5) Laterality/directionality
 - (6) Turns
 - (7) Directional/positional concepts
 - (8) Colors
 - (9) Geometric shapes
 - (10) Basic skills
 - (11) Landmarks and clues
 - (12) Cane techniques
 - (13) On campus orientation and mobility
 - (14) Cardinal directions
 - (15) Modified forearm protective techniques
 - (16) Residential area travel
 - (17) Precautions
 - v) Recommendations
 - vi) Functional recommendations
- d) Assistive Technology Evaluation dated July 8, 2021, completed by an individual with qualifications as a Doctor of Occupational Therapy, master's in special education, licensed occupational therapist, and assistive technology professional. The evaluation included the following information:
 - i) Background information, including:
 - (1) General medical history
 - (2) Visual medical history and Parent's perception of functional vision

- (3) Occupational profile
- (4) Self-care
- (5) Functional mobility
- ii) AT assessment, including the areas of:
 - (1) Positioning
 - (2) Gross motor
 - (3) Fine motor/reach
 - (4) Access
 - (5) Switch access
 - (6) Touch screen/iPad
 - (7) Mouse control
 - (8) Keyboarding
 - (9) Communication
 - (10) Vision
 - (11) Auditory
 - (12) Sensory processing
 - (13) Play/environmental control
 - (14) Academic/cognitive learning
 - (15) Reading
 - (16) Writing
 - (17) Cognition
 - (18) Behavioral areas
- iii) Summary and Recommendations
- e) Speech Therapy Initial Evaluation dated July 22, 2021, completed by a certified speech language pathologist included the following information:
 - i) Summary and review of medical history, including current medications
 - ii) Information collected from Parent questionnaire
 - iii) Summary and review of developmental history
 - iv) Summary and review of school history
 - v) Objective findings in the areas of:
 - (1) Language skills
 - (2) Speech / phonological development
 - (3) Standardized language and vocabulary tests
 - vi) Treatment plan
 - vii) Recommendations
- f) Occupational Therapy Initial Evaluation dated July 28, 2021, completed by a licensed occupational therapist that included:
 - i) Summary and review of medical history, including current medications
 - ii) Information collected from Parent questionnaire
 - iii) Summary and review of developmental history

- iv) Summary and review of school history
 - v) Objective findings in the areas of:
 - (1) Hand function
 - (2) Clinical observations
 - (3) Activities of daily living
 - (4) Standardized testing
 - vi) Self-care recommendations
 - vii) Additional sensory recommendations
 - g) Psychoeducational Evaluation dated August 5, 2021, completed by a school psychologist. The evaluation provided the following information:
 - i) A list of specific recommendations
 - ii) A list of data collected from the psychoeducational evaluation period, including:
 - (1) Sight words
 - (2) Quick Phonics Screener (QPS)
 - (3) Functional academic skills
 - (4) Activities of daily living
 - (5) PK-2 competencies
 - (6) PK-2EE competencies
 - (7) Rote knowledge of concepts
 - iii) A compilation of recommendations, Student notes and considerations from other recent evaluations
 - h) Physician's letter dated August 5, 2021, identifying the Student as a patient followed in the Gastroenterology and Liver Care Clinic and providing certain accommodations the Student may need in the classroom.
- 10) The IEP developed by the out of state district dated May 10, 2021, was a draft and recommended services and placement occur at the public school (Parent Interview; IEP dated May 10, 2021; Prior Written Notice dated May 12, 2021).
- 11) The May 10, 2021, IEP was never implemented (Parent Interview).
- 12) The Parent contacted the District in May 2021 to provide advanced notice that the family intended to move into the District's boundaries (Parent Interview).
- 13) On November 16, 2021, the Parent sent an email to District staff regarding the family's pending move scheduled to occur in December 2021 and forwarded 14 attachments pertaining to the Student's IEE evaluation.
- a) Occupational Therapy Initial Evaluation dated July 28, 2021
 - b) Speech Therapy Initial Evaluation dated July 22, 2021
 - c) Physical Therapy Initial Evaluation dated June 30, 2021

- d) September 23, 2021, email summarizing sound testing with attached report
 - e) Goldman-Fristoe Test of Articulation Record Form dated August 4, 2021
 - f) Data and Progress Monitoring Form identifying the Student's performance
 - g) Psychoeducational Evaluation dated November 12, 2021
 - h) VB-MAPP Barriers master Scoring Form with test dates of October 4, 2020, March 9, 2021, and September 15, 2021
 - i) VB-MAPP Milestones Master Scoring Form with test dates of October 4, 2020, March 9, 2021, and September 15, 2021
 - j) Treatment Plan for ABA therapy, speech therapy, and physical therapy dated October 21, 2021
 - k) Vineland-3 Comprehensive Parent/Caregiver Form Report dated September 21, 2021
 - l) Orientation & Mobility Evaluation dated July 6, 2021
 - m) Functional Vision Evaluation dated July 6, 2021
 - n) Assistive Technology Evaluation dated July 8, 2021
- 14) By email dated December 8, 2021, the Parent informed the District that the Parent did not agree with the Draft IEP from the out-of-state district and requested that the team work from the Independent Educational Evaluations (IEEs) to develop an IEP for the Student.
- 15) By email dated December 8, 2021, the District informed the Parent that:
- a) The current and comprehensive IEEs would be used.
 - b) The District would develop a new IEP for the Student that identified the new settings and curriculum.
- 16) By an additional email dated December 8, 2021, District staff informed the Parent that all of the reports received from the Parent had been reviewed and asked the Parent for further input regarding the Student's current communication system, abilities, specific strategies, and tools used, vocabulary and speech generating device.
- 17) By email dated December 9, 2021, the Parent responded to the request for additional Parent input. In addition to providing the requested information, the Parent provided 16 long term goals that the Parent had developed for the Student and had shared with various entities (Parent Interview).
- 18) An initial meeting to determine whether the Student was eligible for special education and related services was scheduled for December 15, 2021. However, this meeting was cancelled due to inclement weather (District Staff Interview).
- 19) The meeting date was subsequently scheduled for December 17, 2021. This meeting also did not occur because the Parent requested that an

Orientation and Mobility (O&M) specialist attend the meeting and that individual was not available on December 15, 2021 (District Staff Interview).

- 20) The District provided the Parent with Written Notice for Multidisciplinary Team Evaluation dated December 15, 2021, and informed the Parent that the District did not propose additional evaluations for the Student prior to the Student's enrollment in the District and that the team would review the existing evaluation data.
- a) An explanation of why the District proposed no additional evaluations included a discussion of current comprehensive evaluations conducted in recent months and Parent input. The District determined the evaluation data provided was sufficient to assist the team in determining the Student's present levels of academic achievement, whether the Student continued to have an educational disability and, if so, the Student's current educational, developmental, and related service's needs.
 - b) The District informed the Parent that it did "NOT propose additional evaluations with [Student] prior to [Student's] enrollment at [the District]. This form serves as notice to Parents that [Student] is being considered for eligibility for verification in the state of Nebraska. The team will review the existing evaluation data."
 - c) The proposal not to evaluate was based on the Student's recent, private evaluations from 2021, input from Parents, and state regulations.
- 21) A Multidisciplinary Team (MDT) meeting was held on January 6, 2022. The Parent participated in the MDT meeting and provided comments and concerns regarding the Student's functioning and needs.
- 22) A Multidisciplinary Team Report dated January 6, 2022, summarized the Student's Present Levels of Academic Achievement and Functional Performance. The summaries provided in the report were generated by District staff qualified in the areas summarized. District Staff Interview.
- a) The Student's Health needs and diagnoses were summarized
 - b) The Student's vision and diagnoses were summarized
 - c) The Student's hearing was summarized
 - d) The Student's cognitive abilities were summarized
 - e) The Student's academic performance was summarized in the areas of:
 - i) Reading
 - ii) Math
 - iii) Writing
 - iv) Communication
 - f) The Student's Social/Emotional/Behavioral needs were summarized
 - g) The Student's fine and gross motor skills were summarized
 - h) The Student's Sensory needs were summarized

- i) The Student's Daily Living Skills were summarized
 - j) The Student's Transition needs were summarized
 - k) Recommendations from the functional vision evaluation were set forth
 - l) The Student's Educational Needs were set forth
 - m) Accommodations and/or Modifications were set forth
 - n) The MDT Report identified that all required evaluation components were met
- 23) The Multidisciplinary Team Meeting Summary identified the disability category of Multiple Impairments and determined the Student needed individual supplemental special education and related services and supports.
- 24) The Multidisciplinary Team Report checklist identified that:
- a) The MDT evaluation was completed in the language and form most like to yield accurate information on what the Student knows and can do academically, developmentally, and functionally, including information provided by the Parent.
 - b) A variety of assessment tools and strategies were used to gather relevant functional, developmental, and academic information about the child.
 - c) Information obtain from the Parent was considered for the purpose of making the verification decision.
 - d) Assessments and other evaluation materials were used for purposes for which the assessments or measures are valid and reliable.
 - e) Instruments used to complete the MDT evaluation had been validated for the specific purpose for which they were used and were administered by trained and knowledgeable personnel.
 - f) Tests were selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or other facts the test purports to measure.
 - g) No single measure or assessment was used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
 - h) The child was assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor skills.
 - i) The evaluation was sufficiently comprehensive to identify all of the child's special education and related service's needs, whether or not commonly linked to the disability category in which the child has been classified.

- j) The team used assessment tools and strategies that provided relevant information that directly assisted person in determining the educational needs of the child.
 - k) In interpreting the evaluation data, the District drew upon information from a variety of sources, including aptitude and achievement tests, Parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.
 - l) The information obtained from all of these sources was documented and carefully considered.
- 25) Supporting documentation for the MDT report included the following reports:
- a) Physical Therapy Initial Evaluation dated June 30, 2021
 - b) Functional Vision Evaluation dated July 6, 2021
 - c) Orientation & Mobility Evaluation dated July 6, 2021
 - d) Assistive Technology Evaluation dated July 8, 2021
 - e) Speech Therapy Initial Evaluation dated July 22, 2021
 - f) Occupational Therapy Initial Evaluation dated July 28, 2021
 - g) Psychoeducational Evaluation dated August 5, 2021
 - h) Gastroenterology and Liver Care Clinic dated August 5, 2021
- 26) The following individuals participated in the MDT meeting on January 6, 2022:
- a) The Parent
 - b) School psychologist
 - c) Three special education teachers
 - d) Behavior facilitator
 - e) Teacher of the Visually Impaired
 - f) Certified orientation and mobility specialist
 - g) Occupational therapist
 - h) Special services coordinator
 - i) Physical therapist
 - j) Principal
 - k) Speech language pathologist
 - l) Assistive technology specialist
 - m) Health resources consultant
 - n) Classroom teacher
 - o) Director of special services
- 27) All individuals, except the Parent, signed that they were in agreement with the MDT report. The Parent signed a separate statement that the Parent participated in the MDT meeting for the Student on January 6, 2022, and agreed that the Student is eligible for services as a student with Multiple Impairments.

- 28) The Parent attended an MDT/IEP meeting on January 10, 2022, and provided input. The meeting agenda identified the purpose of the meeting was to finalize the eligibility determination for special education services and continue to draft the IEP.
- 29) The Parent attended an IEP meeting on January 12, 2022, and provided input. The meeting agenda identified the purpose of the meeting was to continue to prepare for the Student's start date and continue to discuss the IEP draft, and finalize it, if possible.
- 30) The Parent attended an IEP meeting on January 17, 2022, and provided input. The meeting agenda identified that the purpose of the meeting was to continue to prepare for the Student's services at the elementary school and continue to discuss the IEP draft, and finalize it, if possible.
- 31) Consent for Initial Provision of Special Education Services and Initial Placement was signed by the Parent on January 17, 2022.
- 32) The final IEP dated January 6, 22, was sent via email to the Parent on January 17, 2022.
- 33) A Written Notice for Initial Special Education Services and Placement or Change of Placement dated January 17, 2022, informed the Parent that:
 - a) The District proposed to deliver special education and related services to the Student as outline in the IEP.
 - b) The Student met eligibility requirements for special services in the state of Nebraska
 - c) The proposal was based on the Student's private evaluations, Parent input, information pertaining to medical diagnoses and IEP team meeting decision.
 - d) Special education services would begin on January 18, 2022. "The IEP team recognizes that while this IEP (January 17, 2022) is comprehensive in nature, addresses all areas of documented educational need, and was used to determine this placement, the IEP may require further revisions and/or amendments once the service providers have the ability to deliver service and monitor progress."
- 34) The Parent provided an "Addendum A" to the District dated January 17, 2022, which provided:
 - a) The Parent consented to the implementation of the IEP with the understanding that it was not fully developed.
 - b) The Parent wanted the Student in school without further delay.
 - c) The Parent's partial consent did not mean the Parent agreed that the IEP provided the Student with a free appropriate public education (FAPE).
 - d) The Parent reserved the right to challenge the appropriateness of the IEP.

- e) Further development of the Student's IEP, PLAF, a behavior plan, refinement of goals, additional goals and Parent comment and requests to all sections of the IEP were necessary before consensus could be reached.
 - f) The consent by the Parent for the implementation of the IEP recognized that the Student would be safe and that the IEP team had acquired enough information to begin working with the Student.
 - g) All goals and services outlined in the IEP could be implemented with the understanding that they would be open for discussion and can be changed or updated as the team further developed the IEP.
- 35) The Parent inserted and initialed language electronically in the Written Notice dated January 17, 2022, which stated: "Please see IEP Addendum A January 18, 2022: outlining consent and necessary IEP development and revisions to meet [Student's] educational and functional needs.
- 36) By email dated February 1, 2022, the Parent was provided a copy of the Notice for IEP Meeting scheduled for February 8, 2022, the Agenda for the IEP Meeting, and a draft IEP. The documents were provided to the Parent a week before the meeting in an effort to maximize the Parent's participation.
- 37) The Parent attended an IEP meeting on February 8, 2022, and provided input. The meeting agenda identified the purpose of the meeting was to continue to provide a school update and proposed IEP revisions and consider Parental requests.
- 38) By email dated February 15, 2022, the special education director contacted the Parent and offered to hold an administrative conference with the Parent:
- a) District staff could clarify some of Nebraska's special education procedures so that the Parent was comfortable with the MDT and IEP processes.
 - b) Clarify the difference between the MDT and IEP.
 - c) Clarify how independent educational evaluations factor into the District's decision-making and how the Student's IEE information is applied.
 - d) Possibly make recommendations for next steps to occur with the IEP team.
 - e) The conference would not be an IEP team meeting but would include District leadership, the appointed facilitator, and the Parent.
 - f) It was suggested that a representative from the parent training and information center be included so that the Parent had access to resources and information necessary to become familiar with special education procedures in Nebraska.
- 39) The Parent responded by email on February 16, 2022, regarding the suggested conference meeting and indicated the ability to attend the meeting on February 24, 2022.

- 40) The Parent was provided with Written Notice for Multidisciplinary Team Evaluation dated 2/18/22 which informed the Parent that the District proposed to conduct an Adaptive Physical Education Evaluation of the Student based on Parent request.
- 41) By email dated February 21, 2022, the Parent provided the District with written notice of disagreement with the January 6, 2022, MDT report for the Student and informed the District that:
- a) The intent of the notification was to clarify the parameters of agreement regarding the Parent's signature, the date of the signature, to reiterate disagreement with the Student's MDT report and to request that the report be corrected as soon as possible.
 - b) The Parent's signature on the MDT evaluation report was provided as agreement that the Student was eligible for services as a student with multiple disabilities.
 - c) The IEP team and the Parent were in agreement that the Parent was overwhelmed with paperwork, didn't understand, and did not wish to give consent and/or agreement to the MDT report and its content.
 - d) On February 24, 2022, a small group meeting occurred with the Parent to discuss the MDT report and how it's development directly relates to and differentiates from the IEP.
 - e) As the Parent learned about the MDT report and working on the IEP the Parent realized that the report was not fair or appropriate, believed that the document was problematic and needed to be reset.
 - f) The Parent did not agree with the categorization of the Student's documented disabilities and asked that it be corrected to clearly articulate the Student's disabilities and impairments.
 - g) The Student's special education needs in the MDT report need to reach consensus and the present levels of academic and functional performance (PLAFP) did not appropriately address the Student's present levels and/or reflect all of the Student's educational and functional needs.
 - h) The District proposed not to conduct eligibility related assessments and to review existing evaluation data.
 - i) The data provided by the Parent was current and comprehensive; the Parent requested that the Parent and District work together to draw from a variety of sources in the evaluation process so that error is minimized and trust the reports.
 - j) The Parent believed that the MDT report was flawed, requested that it be corrected, and work together revise the report and effectively meet the Student's needs in a timely manner.

- 42) By email dated February 21, 2022, the District informed the Parent that the Parent's written notice of disagreement dated February 21, 2022, had been received and would be included in the Student's MDT records.
- 43) On February 21, 2022, the Parent emailed District staff and the appointed facilitator asking for documents that would assist in a thorough understanding of the Nebraska rules and processes pertaining to the MDT report and IEP documents ahead of the meeting. The Parent understood the administrative meeting was intended to help the Parent understand the MDT and IEP processes, and what information is useful for which document.
- 44) In response to the Parent's request for documents regarding Nebraska rules and processes, a copy of the Parent's Guide to Special Education and the Family Guide to Special Education in Nebraska were resent to the Parent by email on February 21, 2022.
- 45) By email dated February 23, 2022, the Parent informed the District that there continued to be a concern with the categorization of the Student. The Parent stated the MDT report for the Student is not consistent with the Nebraska Department of Education Eligibility Guidelines, as there is no category for Multiple Impairments.
- 46) By email to the Parent dated February 24, 2022, the District clarified that the document referred to by the Parent regarding the eligibility category is a technical assistance document intended to support teams in the decision-making process. While that document uses the word "disability" rather than "impairment," the state regulations by which districts must adhere refers to the eligibility category of "Multiple Impairments," which is reflected in the District's MDT report for the Student. A copy of the regulatory language was included in the email.
- 47) On March 2, 2022, the Parent emailed District staff.
- a) The Parent felt the MDT is misleading and inappropriate for the Student for the reasons set forth earlier.
 - b) The MDT report should be worked through and amended considering the data and the Parent's misunderstanding of the MDT.
 - c) Since the MDT is so closely tied to the IEP, the timing is appropriate.
 - d) If the team cannot work on the MDT the Parent will move forward with a formal complaint.
 - e) The Parent will accept the District's denial and submit a complaint.
- 48) The March 2, 2022, email included an email from the Parent from March 1, 2022, wherein the Parent requested that the MDT report include the psychoeducational report, the ABA Treatment Plan, the Vineland-3, and the articulation report.

- 49) On March 17, 2022, the District emailed the Parent in response to the request to add the additional reports.
- a) The nine separate data files linked to the Student's IEE have been included in the Student's permanent cumulative folder.
 - b) The articulation report, consisting of an email, was not originally received by the District but has been included in the Student's permanent cumulative folder.
 - c) A summary of the Student's Vineland-3 results from the prior school district's reevaluation was provided in the District's 2022 MDT report. Separate Vineland-3 results dated September 21, 2021, shared by the Parent were reviewed by the full IEP team when the records were shared in fall 2021, prior to the MDT. The full reevaluation report from the Student's previous school district and the September 21, 2021 Vineland-3 report have been included in the Student's permanent cumulative folder.
 - d) The ABA Treatment Plan has been included in the Student's permanent cumulative folder.

Issue # 1

Did the District conduct an evaluation, if determined to be necessary by the District, upon enrollment of the Student transferring from outside the state, in accordance with 92 NAC 51-007.08B1?

92 NAC 51-007.08B1 addresses student transfers from outside the state and states:

007.08B1	[The new school district] [c]onducts an evaluation pursuant to Section 006 of this Chapter (determined to be necessary by the new school district or approved cooperative).
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Allegations/Parent's Position

The District provided the Parent with a Written Notice for Multidisciplinary Team Evaluation indicating an initial evaluation would be conducted. The team clarified that the current and comprehensive evaluations conducted as well as Parent input were sufficient to assist the team in determining the Student's present levels and service needs. The District did not propose additional evaluations and indicated that the Student was being considered for eligibility in the state of Nebraska.

District's Response

A written Multidisciplinary Team (MDT) report is not required when a district reviews existing evaluation data to determine whether a child is a child with a

disability. If a district determines there is no need for additional information to determine a child's eligibility and the content of the child's IEP, it may not need to conduct an evaluation.

Investigation Findings

The District received extensive evaluation documentation consisting of the previous out of state district's reevaluation completed in May 2021, and the additional independent educational evaluations (IEEs) conducted by private providers during the summer and fall of 2021 (Facts 5, 6, 7, 9, 13, 22, 25, 33). The District informed the Parent that the current and comprehensive IEEs would be used, District staff reviewed all of the reports received from the Parent, and that it would not conduct additional assessments as the existing documentation was sufficient to determine the Student's eligibility for special education services (Fact 15, 16, 20). The District provided the Parent with Written Notice dated December 15, 2021, of this determination (Fact 20).

While an MDT report was generated by the District dated January 6, 2022, the information in the report consisted solely of summarizing existing data regarding the Student (Fact 22). The summaries provided in the report were generated by District staff who were appropriately qualified to provide the summaries. (Fact 22).

Summary and Conclusions

When a student with a disability transfers from outside of the state during the school year, the new district may decide on a case-by-case basis whether it needs to evaluate the student either to determine the student's eligibility or to develop an IEP for the student. Letter to Anonymous, 72 IDELR 222 (OSEP 2018).

The Nebraska Department of Education has provided guidance to school districts regarding the review of existing data:

Question: Is a MDT written report required when the child's IEP Team has determined through the review of existing evaluation data that the child continues to have a disability and educational needs?

No, a written MDT report is not required when a district utilizes the provisions of 92 NAC 51-006.06 (Review of Existing Evaluation Data) to determine whether a child is a child with a disability or continues to have a disability and the educational needs of the child. However, the district must document that the IEP team conducted a review of existing data and although not required,

many districts have chosen to use the MDT Report to document the IEP team's findings.

Additionally, if the IEP team determines that no additional data are needed to determine whether the child is a child with a disability or the child's educational needs, the district must notify the parents of the determination and the reasons for the determination and the right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the educational needs. Unless requested by the parents, the district is not required to conduct additional assessments.

Topic: MDT Report – Review of Existing Data (NDE Bobbing for Answers, 2013).

In this case, the District determined there was sufficient existing data to determine whether the Student continues to have a disability and the educational needs of the Student and did not conduct any further assessments of the Student. Based on this determination by the District, Written Notice was provided to the Parent dated December 15, 2021, which informed the Parent that the District was not proposing to conduct further assessments but would review the extensive documentation available.

Based on the information discussed above, the District determined no need for further assessments or evaluations were needed, as is permitted within the requirements of 92 NAC 51-007.08B1 and **no corrective action** is required.

Issue #2

In interpreting the evaluation data for the purpose of determining eligibility for special education services, did the District draw upon information from a variety of sources, and ensure that information obtained from all sources was documented and carefully considered, in accordance with 92 NAC 51-006.02C14?

92 NAC 51-006.02C14 states:

006.02C14

In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each school district or approved cooperative shall:

- 006.02C14a Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
- 006.02C14b Ensure that information obtained from all of these sources is documented and carefully considered.

Allegations/Parent's Position

The MDT document is misleading and was not developed with the Parent's full understanding. The team has refused to amend or work on the MDT document with the Parent and agrees only to include the Parent's written explanation of disagreement as part of the report.

District's Response

The District drew upon and carefully considered information from a variety of sources in making an eligibility determination and fully satisfied the requirements of 92 NAC 51-006.02C14.

Investigation Findings

As discussed above under Issue #1, District received extensive evaluation documentation from a variety of sources, including the previous out of state district's reevaluation completed in May 2021, and the IEEs conducted by private providers during the summer and fall of 2021 (Facts 5, 6, 7, 9, 13, 22, 25, 33).

The evaluation team consisted of individuals with the same or similar qualifications as the IEE evaluators and were qualified to interpret the evaluation data (Fact 9, 26). The evaluation documentation came from a variety of sources, consisting primarily from the Parent and the IEE reports, as the Parent was not in agreement with the evaluation process, the evaluation report, or the IEP (which was never implemented) from the out of state district (Fact 8, 10, 11.). The evaluation documentation was reviewed by the evaluation team and was

summarized by individuals qualified to do so (Fact 6, 9, 13, 22, 25, 33). Parent input was provided on multiple occasions in writing (Fact 14, 17, 34, 35, 41, 45, 47, 48, 49). Additionally, the Parent participated in all MDT and IEP team meetings and provided input (Fact 21, 28, 29, 30, 37).

The MDT report identified that the required components for the evaluation process were met (Fact 24) and the IEE evaluation data reviewed by the team reflects the same (Fact 9).

At Parent request, an adaptive physical education evaluation was agreed to by the District after the completion of the MDT report (Fact 40).

Summary and Conclusions

In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, the IDEA requires that each school district draw upon information from a variety of sources, including aptitude and achievement tests, Parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and ensure that information obtained from all of these sources is documented and carefully considered.

A publicly funded independent educational evaluation obtained by a parent must satisfy the evaluation criteria outlined in the IDEA. 34 CFR 300.502. In this case, the Student's IEE was comprehensive, met IDEA criteria, and was appropriately relied upon by the District in determining that further assessments were not necessary.

Based on the information discussed above, the District implemented the requirements 92 NAC 51-006.02C14 and **no corrective action** is required.

Issue #3

Did the District properly identify the Student's disability category, in accordance with 92 NAC 51-006.04?

92 NAC 51-006.04 states:

006.04A School districts or approved cooperatives shall provide special education services only to children with verified disabilities.

006.04H Multiple Impairments

006.04H1 To qualify for special education services in the category of Multiple

Impairments, the child must have concomitant impairments (such as intellectual disability-visual impairment, intellectual disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.

Allegations/Parent's Position

The Parent questioned the categorization of the Student's disabilities and found conflicting materials from federal and state documents regarding the Student's disability category. The Student is multiple disabled and does not have multiple impairments.

District's Response

In Nebraska and under Rule 51, the terms "Multiple Impairments" and "Multiple Disabilities" are used interchangeably and without distinction. The term "Multiple Impairments" is utilized in the District's forms and as a matter of practice because it is the language used in 92 NAC 51.006.04.

Investigation Findings

The Multidisciplinary Team Meeting Summary identified the Student's disability category as Multiple Impairments (Fact 23, 27).

The Parent had a concern regarding the disability category of "Multiple Impairments" because that term was not consistent with the Nebraska Department of Education Eligibility Guidelines (Fact 45). The District clarified that while the Guidelines used the term "Multiple Disabilities" rather than "Multiple Impairment," the state regulations refer to the eligibility category of "Multiple Impairment" which is reflected in the District's MDT report (Fact 46).

Summary and Conclusions

The federal regulations define the disability category of "multiple disabilities" as "concomitant impairments (such as intellectual disability-blindness or intellectual disability-orthopedic impairment), the combination of which causes such severe

educational needs that they cannot be accommodated in special education programs solely for one of the impairments..." 34 CFR 300.8(c)(7). As noted above, Nebraska has the same qualification disability category requirements as the federal requirements but uses the term "multiple impairments" instead.

Whether the term "disabilities" or "impairments" is used to determine whether a student is a child with a disability is not significant. What is significant is the criteria for determining the disability, not how it is labeled. Nebraska utilizes the same criteria for identifying that a student meets the criteria of "multiple impairments" as the federal regulations set forth under the terminology of "multiple disabilities."

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-006.04 and **no corrective action** is required.

Issue #4

Did the District afford the Parents an opportunity to participate in meetings regarding the identification, evaluation, educational placement, and provision of a free appropriate public education in accordance with 92 NAC 51-009.01A?

92 NAC 51-009.01A states:

009.01 A 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.

Allegations/Parent's Position

The Parent did not understand the MDT report or the document's relationship to the IEP. The Parent was overwhelmed with paperwork and did not agree to the MDT report. The MDT report was not developed with the Parent's full understanding.

District's Response

The District engaged in a series of facilitated meetings with the Parent specifically intended to address the Parent's concerns and ensure the Parent's comfort in meaningfully participating in the IEP process. The District further convened an administrative meeting with the Parent to specifically explain the processes utilized in Nebraska and the Parent's rights and ability to participate in those processes. The District significantly exceeded its obligations and consistently engaged with the Parent to address concerns on almost a daily basis.

Investigation Findings

The Parent was proactive in letting the District know that the family would be moving to the District (Fact 12, 13). The Parent has been a strong advocate for the Student and has been fully involved throughout the MDT and IEP process. While two MDT meetings scheduled to occur prior to the Student's enrollment in the District were cancelled, the Parent attended all of the MDT and IEP meetings that occurred for the Student and provided input at those meetings and through written correspondence regarding parent concerns and student needs. (Fact 18, 19, 14, 17, 21, 28, 29, 30, 34, 35, 37, 41, 45, 47, 48, 49).

The Student had been homeschooled by the Parent since 2019 (Fact 4). When it appeared to the District that the Parent may not have a full understanding of Nebraska's special education processes, an administrative meeting, separate from an IEP team meeting, was scheduled with the District staff (38, 39, 43, 44). The purpose of the meeting was to clarify special education procedures so that the Parent was comfortable with the MDT and IEP processes, clarify the difference between the MDT and IEP and clarify how the IEEs factored into the District's decision-making and how the IEE information was applied (Fact 38). The Parent understood the administrative meeting was intended to help the Parent understand the MDT and IEP processes, and what information is useful for which document (Fact 43).

The Parent provided the District with written notice of disagreement to the MDT report, as the Parent felt the report was misleading and inappropriate for the Student (Fact 41). The District informed the Parent that the written notice of disagreement would be included in the Student's MDT records (Fact 42).

On at least one occasion, the Parent requested to receive draft documents prior to meetings to allow the Parent time to review and prepare for each meeting, which the District provided (Fact 36). The Parent signed consent for Initial Provision of Special Education Services and Initial Placement on January 17, 2022 for special education services to begin on January 18, 2022 (Fact 31). The District informed the Parent that the IEP team recognized that further revisions and/or amendments to the IEP may be appropriate, and additional IEP meetings were held to discuss the Parent's concerns and requests (Fact 33, 36, 37).

Summary and Conclusions

Parents are an essential part of any group making the placement decision. 34 CFR 300.116(a)(1); 34 CFR 300.501(c); and 71 Fed. Reg. 46,585 (2006). "Consistent with [34 CFR 300.501(c)], each public agency must ensure that the parents of

each child with a disability are members of any group that makes decisions on the educational placement of their child." 34 CFR 300.327.

Although parents are an essential part of any decision-making group, the ultimately responsibility for ensuring that a student is offered an appropriate program is a district responsibility. If the team cannot reach a consensus, the district must determine appropriate services and provide parents with prior written notice of the offer and of the parents' right to seek resolution of any disagreements by initiating an impartial due process hearing. Letter to Richards, 55 IDELR 107 (OSEP 2010).

The facts in this case clearly establish that the Parent fully participated in the MDT and IEP team processes as an essential member of the team. When consensus regarding the language in the MDT report was not reached, the District included the Parent's objection to the report. Additionally, the District continued to hold IEP meetings at Parent request to discuss the Parent's concerns.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-009.01A and **no corrective action** is required.

Notice to District

Having found that the district is implementing the requirements of 92 NAC 51 in the areas raised in the complaint, the complaint is closed as of the date of this letter.