



NEBRASKA DEPARTMENT OF EDUCATION

[Redacted]

[Redacted], Superintendent

[Redacted]

[Redacted]

[Redacted]

[Redacted], NE [Redacted]

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[Redacted]

[Redacted], NE [Redacted]

Dear [Redacted] and [Redacted]:

As of March 17, 2022, this office was in receipt of a letter of complaint filed on behalf of [Redacted], a student enrolled at [Redacted], by [Redacted], parent of [Redacted]. The complaint included the following allegations.

The parent alleges:

1. The District did not consider all relevant information in determining that anxiety and/or a functional neurologic disorder do not have an adverse effect on the Student's educational performance, resulting in the Student being found ineligible for special education.
2. The Parent requested copies of the test results prior to the meeting to determine the Student's eligibility for special education. Some of the documentation was not provided prior to the meeting.
3. Following the meeting, the Parent again asked for copies of the data that had been used in determining eligibility. The district refused, stating that the requested documents are not maintained by the district as student records, and consequently, are not available upon request under state and federal law.

Based on the allegations, the following issues were identified to be investigated in determining whether the Student has been provided FAPE:

1. In determining whether the Student was a student with a disability under 92 NAC 51-003.08, did the District ensure a variety of assessment tools and strategies were 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? 92 NAC 51-006.02C5a
2. Did the District afford the Student's parent an opportunity to inspect and review all education records with respect to the identification,

evaluation, and educational placement of the child; and the provision of FAPE to the child? 92 NAC 51-009.03A

Findings of Fact:

The Letter of Complaint dated March 17, 2022, detailed reasons for which the Parent felt the evaluation that was conducted was not comprehensive and detailed concerns with the following:

- Data provided to the Team by a medical professional regarding the Student's anxiety and the impact it had on the Student's performance
- Focus on the Student performing at grade level and discussed the use of fidgets during testing, but did not consider the use of the fidgets as a result of anxiety which lowered the assessments scores. The team also did not consider the Student's current grades and the number of missing assignments
- Student refusing to attend school due to anxiety and the adverse impact on education
- Interpretation of the Student's scores on the BASC as a result of potential executive functioning issues as a result of anxiety

The Letter of Complaint dated March 17, 2022, also detailed concerns with not having documentation of the evaluations conducted in order to make a fully informed decision at the IEP.

In an email dated March 28, 2022, the District maintains that a comprehensive evaluation was completed for the Student, but as an expression of good faith and in the interest of collaboration put forth the following resolution to the Office of Special Education. According to an email from the District's Legal Counsel dated April 14, 2022, the District also states that the information the Parent is requesting falls into the category of personal notes which is not required to be maintained or shared under the Freedom of Information Act and was destroyed. However, upon further investigation, the District was able to recover the records in question through the scoring software used in generating the evaluation report. Again, a resolution to NDE was put forth by the District.

Conclusions:

The District made proposals related to each of the issues above. The Office of Special Education provided additional conditions that the District agreed to implement. As a result the following is the resolution that the Office of Special Education and the District have reached:

1. The District agreed to grant the Complainant an Independent Educational Evaluation (IEE) at public expense. Further:
 - a. This evaluation must be completed by June 1, 2022
 - b. An IEP team meeting will be convened within 10 calendar days of the District's receipt of the completed IEE. During that meeting, the following will be considered and documented with the revised multidisciplinary team (MDT) report sent to NDE no later than June 21, 2022:
 - i. Results of the IEE (92 NAC 51-006.07G1)
 - ii. Factors included within the eligibility category considered for the student (92 NAC 51-006.04J1a; 006.04 E1a-e) include:
 - c. The medical diagnosis provided by the Parent

- d. Instructional time lost due to anxiety and the possible impact or adverse effect on the Student's education
 - e. The Student's refusal to attend school (school refusal) because of anxiety and the possible impact or adverse effect on education
2. The District agreed to provide the Parent access to requested documentation without delay.

Decision and Rationale:

As part of the State Complaint process, Rule 51 (92 NAC 51-007.11C2a) allows the district the opportunity to respond to the complaint including making a proposal to resolve the complaint. Upon review of the issues within the complaint, the Nebraska Department of Education has determined the District's resolutions put forth in this letter have resolved the complaint that was filed and this case is now considered closed. If upon the conclusion of the Independent Educational Evaluation the Parent is unsatisfied with the results, a new complaint may be filed.

If you have any questions concerning the information within this letter, please contact Kelly Wojcik at 531-207-9986. As the Director of Accountability, she will be able to respond to any questions you may have regarding the information contained in this report. Theresa Hayes will be following up with the District to ensure the resolution activities have occurred as stated.

Sincerely,

A handwritten signature in cursive script that reads "Amy Rhone".

Amy R. Rhone, Administrator/Director
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