

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.26
Complaint Investigator: [Redacted]
Date Complaint Filed: March 22, 2022
Date of Report: [Redacted]

Issues Investigated

1. In determining the educational placement of the Student, did the District ensure that the placement decision was made by a group of persons, including the parents and other persons knowledgeable about the child in accordance with the least restrictive environment? [92 NAC 51-008.01]
2. Did the District consider a continuum of alternative placements to meet the Student's needs? [92 NAC 51-008.01D]
3. Did the District provide the Student with a free appropriate public education? [92 NAC 51-004.02]

Documents Reviewed by Investigator

From the Complainant

- Letter of Complaint received by NDE March 22, 2022
- Zoom Interview, April 25, 2022

From the School District

- Letter of Response dated April 20, 2020; received by NDE April 20, 2022
- Multidisciplinary Report (MDT) dated September 1, 2021
- Meeting Requests dated February 3, 2022; February 23, 2022; March 25, 2022
- Emails between District Staff, program staff, and parents dated September 8, 2021- March 31, 2022
- Individualized Education Programs (IEPs) dated December 4, 2019; September 11, 2020; September 1, 2021
- Individualized Education Program Amendment dated February 7, 2022
- Notice of Change of Placement dated February 7, 2022
- Notice of District Decision Regarding Requests dated February 25, 2022, and April 1, 2022
- Interviews with District staff conducted April 28, 2022
- Copies of 6 randomly selected IEPs for students attending the District's post-high school transition program

Introduction

The Student is a 19-year-old identified as a student with Autism (MDT dated September 1, 2021). The Student completed high school in the spring of 2021 and has continued in the post-high school program for students age 18-21. The Student was placed at a transition program designed for 18-21 year olds (Placement A) in the fall of 2021. Following an incident of elopement, significant hygiene issues, and a severe behavior incident involving aggression toward staff and students as well as property destruction, the IEP team agreed to a change in placement (Placement B). Placement B represents a more restrictive environment than the previous placement. After 5 days of attendance at the new placement, the Student alleged having been sexually assaulted. The Parent requested a different placement option, though the District refused.

Issue # 1

In determining the educational placement of the Student, did the District ensure that the placement decision was made by a group of persons, including the parents and other persons knowledgeable about the child in accordance with the least restrictive environment? [92 NAC 51-008.01]

92 NAC 51-008.01 states:

008.01 Least Restrictive Environment Requirements

008.01A The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved service agencies, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

008.01C In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:

008.01C1 The placement decision is made by a group of persons, including the parents

and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

008.01C2

The placement decision is made in conformity with the least restrictive environment requirement in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.

Allegations

Once the Student began in the new setting, the Student repeatedly communicated discomfort with the behavior of other students (calling the Student "gay" and touching the Student inappropriately). When the Parent brought these concerns to the District, no other options were provided where the Student's needs could be met.

Parent Position

The Student does not feel safe in the [Placement B] and therefore, the setting is not appropriate to meet the Student's needs.

District Response

The Parent's agreed in the February 7, 2022, IEP meeting that the Student's behavior required a more restrictive setting to prevent further significant behavior incidents. The Parents gave the new placement [Placement B] only 5 days before determining that the placement [Placement B] was inappropriate based on the alleged behavior of other students.

Investigative Findings

- The Student's most recent IEP (IEP dated September 1, 2021) includes the following 3 goals:
 - Given the directions in multi-step directions, [the Student] will demonstrate transition planning in the following areas as measured by the [REDACTED] Transition Planning and Activities Progress Monitoring Chart (29 Point Rubric) by August 31, 2022:
 - Participate in and completing job practices in (5/12) of the Transition sites.
 - Participate in clubs/or community
 - Develop independent living skills
 - Develop self-care skills
 - Develop budgeting skills

- Create and update resume
 - Meet with service agency representative such as HHS, DDS, etc.
 - Self-advocacy
- Given explicit instruction in a structured setting using scaffolding and a hierarchy of prompts, [the Student] will work steadily without interruptions, increasing from a baseline of 2/5 opportunities to 4/5 opportunities as measured by the [REDACTED] Random Time Chart by August 31, 2022.
- Given coping strategies and breaks as needed, [the Student] will use appropriate verbal/non-verbal interactions with peers and staff 2/5 of the time up from a baseline of 4/5 of the time as documented on the [REDACTED] Random Time Chart by August 31, 2022.
- In the fall of 2021, the Student was placed at an 18-21 year old program at [Placement A], a program of the District. (District Response dated April 20, 2022)
- Placement A maintains several community settings and moves the students from one setting to another quarterly to address skill development in the areas of communication, employment, independent living, and recreation. (District Response dated April 20, 2022)
- The Student's first employment setting with Placement A was at a church. (District Response dated April 20, 2022)
- On September 8, 2021, the Student left campus and could not be located, resulting in police involvement. (Email dated September 8, 2021; District Response dated April 20, 2022)
- This behavior had previously been allowed (prior to high school graduation) as an option for the Student to calm when frustrated. (Parent Interview, April 25, 2022)
- The Student's second employment setting with Placement A was at a local Food Bank. (District Response dated April 20, 2022)
- While working at the food bank, the Student had repeated incidents of encopresis and refused to change. (Email dated December 8, 2021)
- This behavior had been observed and addressed in the high school setting with specific intervention and had improved such that "90% of the time he would go take care of business for me." (Email dated December 8, 2021)
- The Student's third employment setting with Placement A was at a District Education Center. (District Response dated April 20, 2022).

- On February 2, 2022, the Student had a severe behavior incident that involved, yelling, spraying cleaning solution in staff member's faces, pulling hair of multiple staff members, biting, hitting, kicking, and property destruction. (District Response dated April 20, 2022)
- Severe behavior incidents like this had been previously documented on occasion when the Student was in high school. (District Response, dated April 20, 2022)
- An IEP meeting was held on February 7, 2022, to review the behavior incident in question. The incident was determined to be a manifestation of the Student's disability. (Manifestation Determination and Review dated February 7, 2022)
- This meeting also served to review the IEP and consider the Student's placement in the transition program for 18-21 year olds. (IEP dated February 7, 2022)
- During the February 7, 2022, meeting, the IEP team unanimously agreed that a more restrictive environment was needed [Placement B] (Notice of Change of Placement dated February 7, 2022)
- Placement B is an NDE certified Level III Special Education program where teachers work with small groups of students who have individual behavior plans. The District contracts with [Placement B] when a more restrictive setting is needed. (District Response dated April 20, 2022)
- The Student started attending the [Placement B] program on February 10, 2022. (District Response dated April 20, 2022)
- Review of 1 file identified by the investigator and 4 other randomly selected files from [Placement A] revealed that transition goals included in all 6 files were largely identical and reflected the entire scope of transition programming. (IEPs provided by the District on May 11, 2022)
Examples of goals include:
 - Given instruction and support, [Student] will demonstrate transition planning from a baseline of 8 activities completed (communicate statements of self-advocacy/self-determination, demonstrate communication and problem solving skills during work-social interactions to 10 activities completed (develop self-care skills, complete transition interview with IEP manager or [Placement A] teacher, participate in [Placement A] sites_ as measured by the [REDACTED] Transition Planning and Activities Monitoring Chart by January 24, 2023.
 - Given the [REDACTED] Transition Planning and Activities Chart, [the Student] will demonstrate transition planning in the following areas:
 - Develop/update resume

- Demonstrate positive communication and problem solving skills during work social interactions
 - Communicate statements of self-advocacy/self-determination
 - Participate in and complete job practices in 4 of 12 of the [Placement A] sites
 - Participate in clubs/or community
 - Develop independent living skills
 - Develop self-care skills
 - Attend a transition conference
 - Develop budgeting skills
 - Obtain materials from post high school institutions related to post-secondary goals
- Given the directions in short, small steps, [the Student] will demonstrate transition planning in the following areas as measured by the [REDACTED] Transition Planning and Activities Progress Monitoring Chart by September 21, 2022:
- Update resume
 - Participate in clubs, in school and/or the community
 - Meet with the Commission specialist
 - Demonstrate positive problem solving skills during work/social instructions
 - Communicate statements of self-advocacy/self-determination
 - Participate in and complete job practices in 9/12 of the [Placement A] job sites
 - Develop independent living skills
 - Develop self-care skills
 - Develop budgeting skills
- Given the [Redacted] Transition and Activities Chart, [the Student] will demonstrate transition planning in the following skill areas by 8/16/2022:
- Update resume
 - Complete job/social skills training in 4 of the [Placement A] program sites
 - Develop self-care skills
 - Develop independent living skills
 - Develop budgeting skills
 - Continue to meet monthly with the VR specialist
 - Attend a transition conference

- Given the [REDACTED] Transition and Activities Chart, [the Student] will demonstrate Transition planning in the following areas by February 28, 2023:
 - Develop resume
 - Update resume
 - Complete a vocational interest inventory
 - Meet with NCVBI Specialist
 - Demonstrate positive problem solving skills
 - Communicate statements of self-advocacy/self-determination
 - Participate in 1-2 [Placement A] job sites
 - Develop independent living skills
 - Develop self-care skills
- The following explanation was provided during interview with district staff (Staff interview conducted April 28, 2022):
 - “This goal is looking at building independence skills. Developing skills in all those areas within [Placement A].”

Summary and Conclusions

Least Restrictive Environment (LRE) requires that placement decisions be based on each Student’s unique needs 92 NAC 51-008.01C2. These unique needs are to be addressed in the development of the IEP, and specifically reflected by the goals outlined in the IEP. According to 92 NAC 51-007.07A2, goals should be designed to meet the child’s needs that result from the child’s disability to enable to child to make progress. In the case of students 16 and older, specific postsecondary goals are also required to prepare the student for postsecondary education, employment, and independent living (92 NAC 51-007.07A9a).

Inspection of other student files reveals a pattern of very broadly developed transition goals for all students. The goals are so similar from one IEP to the next, that it can be assumed that a rubric and/or program is driving the development of these goals and not each students’ unique needs that result from their disability. It should also be noted that the Student’s goals are difficult to read and understand, especially for someone unfamiliar with the [Placement A] program and the 29 point Rubric used by the District. The third goal appears to reflect a regression in skills and not improvement.

The Student’s current IEP goals, in addition to being unclear; only very broadly, if at all, address issues related to elopement, aggression, or encopresis and hygiene, all reasons that a less restrictive environment was rejected by the IEP team. The Student has a documented history of all these behaviors and specific interventions that had been used successfully in the less restrictive environment.

Current goals, and specifically the transition goal, are based on very broad skills, activities, and behaviors that are part of the District's post high school curriculum and program and not specific to the Student's most pressing needs, the unique needs related to the Student's disability (specifically elopement, aggressive outbursts, and encopresis).

Since the Student's current IEP does not address these specific needs, any placement decision on the part of the IEP team is premature. Placement decisions are to be based on the goals and services that address the Student's unique needs, as the Student's placement should reflect the environment that can best address those needs.

Based on the summary and conclusion, the District failed to fully implement the requirements of 92 NAC 51-008.01C2. Thus the following **corrective action is required**.

Corrective Action

1. The District shall reconvene the Student's IEP team within 10 calendar days of the receipt of this investigation report.
 - a. The team should closely consider the Student's unique needs related to the identified disability. Specifically, the team should consider the following:
 - i. Aggressive behavior, elopement, and encopresis; and
 - ii. Consider previous interventions that have been found successful by other service providers within the District.
 - b. Clear, measurable goals, associated with specific programming/services to address the unique needs listed above should be identified.
 - c. Only once the IEP better reflects the Student's unique needs should placement be considered.
 - d. The resulting IEP should be shared with NDE no later than June 30, 2022.

Since a systemic issue has been raised with regard to IEP goals (specifically transition goals), the District shall reconvene the IEP teams for each child currently enrolled at [Placement A] and amend or re-write the IEPs to reflect the unique needs that result from the students' respective disabilities.

2. IEPs for all students enrolled at [Placement A] developed or amended between the date of this letter and September 30, 2022, shall be provided to NDE no later than October 1, 2022, to verify goals address the unique needs of each student receiving services at Placement A.

Issue # 2

Did the District consider a continuum of alternative placements to meet the Student's needs? [92 NAC 51-008.01D]

92 NAC 51-008.01D states:

008.01D Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must: include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.

Allegations

The District only provided one location where the Student could receive services, in spite of the Parent sharing concerns about the Student's safety in this setting.

Parent Position

After attending the new setting [Placement B] for 4 days, the Student reported being inappropriately touched by another student on the school bus. Since the Student no longer felt safe in that setting, the Parent requested other alternatives.

District Response

Four days in the new placement [Placement B] is inadequate to determine if the placement is appropriate to meet the Student's needs. The District attempted to take steps to resolve the Parent's concerns related to specific aspects of the program, and specifically the allegation of sexual assault, but the Parent was unwilling to engage in those efforts.

Investigative Findings

- The Student started attending the [Placement B] program on February 10, 2022. (District Response dated April 20, 2022)

- The following text message exchange occurred on February 15, 2022, between the Student and the Parent and caregiver (Letter of Complaint received by NDE March 22, 2022):
- I'm on my way home with this boy who won't stop saying "Vyrun" or something like that and not respecting my boundaries he touched my private area as I got in the car and kept kicking my chair he pretended to kick me as we left the building and he closed the door on me as I tried to get in shot gun and he kept laughing and saying that I broke the chair and I didn't.
 - The Student's caregiver responded, You talk to staff?
 - The Student responded, He saw it. [Staff member] saw it.
 - The Parent emailed the District stating that the Student would no longer be attending the new setting [Placement B] and requesting that the Student return to the previous placement [Placement A]. (email dated February 16, 2022)
- The IEP team convened on February 25, 2022, to discuss these concerns. The District was unable to substantiate the Student's claims of sexual assault and noted that the Student had not attended the new placement [Placement B] for long enough to determine its appropriateness. (District Response dated April 20, 2022)
- The District offered at that time to facilitate communication between the Parent and the school as well as to develop an additional supervision or safety plan for the Student, but the Parent declined. (District Response dated April 20, 2022)
- Following the meeting, the District issued their refusal to consider a different placement based on the short time the Student had attended the current placement. (Notice of District Decision Regarding Requests dated February 25, 2022)
- A subsequent meeting was held on April 1, 2022, and placement was again discussed. (District Response dated April 20, 2022)
- The District again provided the Parent with written notice of their refusal on April 1, 2022. This document stated the reason for the District's refusal to consider alternative placements was the short period of time that the Student had attended the more restrictive environment. (Notice of District Decision Regarding Requests, dated April 1, 2022)

Summary and Conclusions

It is clear that the District considered a continuum of alternative placements when making the decision to move the Student to a more restrictive environment. The more restrictive environment was selected based on dangerous behaviors, and the Parent agreed with the more restrictive setting at

the time. For this reason, the District fully implement the requirements of 92 92 NAC 51-008.01D, and **no corrective action** is required.

However, as described above, this consideration was made prematurely and will need to be re-considered following the development of a new IEP.

Issue # 3

Did Lincoln Public Schools provide the Student with a free appropriate public education? [92 NAC 51-004.02]

92 NAC 51-004.01 states:

004.01 School districts and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which the child reaches age twenty-one, including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs.

Allegations/Parent Position

See allegations/parent position from previous Issues 1 and 2

District Response

See district response from previous Issues 1 and 2

Investigative Findings

See investigative findings from previous Issues 1 and 2

Summary and Conclusions

Based on the findings outlined in Issue #1, the Student has not been provided special education and related services designed to meet the Student's unique needs. Based on the fact that the Student's IEP does not address the unique needs that have driven placement decisions, the District did not fully implement the requirements of 92 NAC 51-004.01 and corrective action is required.

Required corrective action is included under Issue #1.

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:

Christopher Chambers, Complaint Specialist
Nde.speddr@nebraska.gov