

COMPLAINT INVESTIGATION REPORT

Complaint Number: 20.21.07
Complaint Investigator: [Redacted]
Date Complaint Filed: December 11, 2020
Date of Report: February 5, 2021

Issues Investigated

1. Did the School District make available a continuum of alternative placements to meet the needs of the Student in compliance with Least Restrictive Environment requirements? [92 NAC 51-008.01]
2. Did the School District engage in a pattern of disciplinary removals that constituted a change of placement? [92 NAC 51-016.01]
3. Did the School District provide special education and related services to the Student in accordance with the Student's IEP? [92 NAC 51-007.02]

Documents Reviewed by Investigator

From the Complainant

- Letter of Complaint dated December 10, 2020; received by NDE December 11, 2020

From the School District

- Letter of Response dated January 14, 2021; received by NDE January, 19, 2021
- Individualized Education Program for the Student dated September 11, 2019; December 16, 2019; and February 5, 2019 which included functional behavior assessment data and behavior intervention plans
- Determination of Eligibility dated September 11, 2019
- Behavioral Detail Reports involving the Student for the 2019-20 school year
- Manifestation determinations conducted December 10th, 2019, and February 5, 2020
- Report cards from semesters 1 and 2 of the 2019-20 school year and semester 1 of the 2020-21 school year
- The Student's attendance data for the 2019-20 and 2020-21 school years
- Contact log between the special education provider and the Student's foster parent
- Interview with Special Education Director dated January 26, 2021

Introduction

The Student is a 13 year old, currently enrolled in 8th grade, receiving special education and related services as a student with an emotional disturbance. The

Student enrolled in the District in August of 2019 after spending 11 months in a residential treatment program. The Student has been in state custody since 2014 and the State of Nebraska is the Student's legal guardian and an educational surrogate parent has been appointed (referred to as "the Parent"). In August of 2020, the Parent requested that the school district make a referral to a private school within District boundaries that serves students with emotional and behavioral disorders. The District instead, enrolled the Student in a magnet school for science and technology in the fall of 2019. It is important to note that the current investigation is limited to events occurring between December 11, 2019 and December 11, 2020, though earlier information is provided for the purpose of providing context.

Issue # 1

Did the School District make available a continuum of alternative placements to meet the needs of the Student in compliance with least restrictive environment requirements? [92 NAC 51-008.01]

92 NAC 51-008.01 states:

008.01 A The school district shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities 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.

008.01D 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.

Allegations

The Student had ongoing and serious behavior infractions that led to frequent removals from class or school in the regular school setting. Although the Parent has repeatedly asked for a more restrictive setting, the IEP team has been unwilling to consider the level of placement that the Guardian believes is necessary.

Parent Position

Prior to the events of this complaint, the Guardian made repeated attempts to communicate the significance of the Student's needs and the potential for

serious peer conflict, and dangerous and aggressive behavior. The Student engaged in several significant and aggressive behavior incidents, and on 2 occasions, the school recommended expulsion and then made placement decisions without considering the option of a special school. (Letter of Complaint dated December 10, 2020)

District Response

The Student enrolled in the District with an active IEP from another district wherein the Student was enrolled in a traditional middle school with partial day special education. The District attempted to match the services provided in a similar location. When the Student had repeated behavior problems in that setting, the Student was moved to a more restrictive setting. The District is prepared to consider a more restrictive setting should the Student's behavior demonstrate that the Student needs such a setting. (Letter of Response dated January 14, 2021)

Investigative Findings

The first serious incident of aggression occurred on December 6, 2019 (two days before the date range begins for this complaint) (Behavior Detail Report dated August 27, 2019- March 2, 2020). Although expulsion was recommended by the school, the IEP team determined that the behavior in question was a manifestation of the Student's disability, and therefore, the IEP was amended (Manifestation Determination dated December 10, 2019). The Student's placement was changed to a self-contained setting in a different school (Prior Written Notice of Change of Placement dated December 16, 2019). The Student had a second aggressive behavior incident on February 3, 2020 (Behavior Detail Report dated August 27, 2019- March 2, 2020). The Student's behavior intervention plan was amended and the Student's time in the self-contained classroom was increased, requiring that the Student be systematically re-integrated into general education classes one class at a time each time the Student reached behavior expectations for 5 days (Behavior Intervention Plan dated February 10, 2020). The Student's behavior improved dramatically since that time and no subsequent incidents of serious behavior have occurred (District Self-Investigation, dated January 14, 2021). It is noteworthy that the Student participated in virtual instruction from March 16, 2020 until October 2, 2020. Since October 5, 2020, the Student has participated in a hybrid schedule that has involved in-person instruction for half of the days available and with half the size of student body in attendance (Interview with Special Education Director dated January 26, 2021).

Summary and Conclusions

The District held IEP meetings as necessary to review serious behavior and placed the Student in a more restrictive setting when the Student's behavior warranted it. In the self-contained placement, when the Student again demonstrated serious, aggressive behavior, the IEP team amended the behavior plan and increased special education services temporarily. Since that time, the Student has not had any serious behavior incidents. It is important to note that since returning to in-person instruction in the fall, the Student has been on an abbreviated school schedule and participating in classes with a far smaller class size. The District is scheduled to return to in-person school full time with the full student body in February. Should the Student's behavior decline, the IEP team will need to consider the Student's behavioral needs.

Based on the District's repeated meetings to amend the Student's IEP and the move from a resource to self-contained setting, and the subsequent improvement in behavior data, the District implemented the requirements of 92 NAC 51-008.01 and **no corrective action** is required.

Issue # 2

Did the District engage in a pattern of disciplinary removals that constituted a change of placement? [92 NAC 51-016.01]

92 NAC 51-016.01 states:

016.01	Change of Placement for Disciplinary Removals		
	016.01A	For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:	
		016.01A1	The removal is for more than 10 consecutive school days; or
		016.01A2	The child is subjected to a series of removals that constitute a pattern:
		016.01A2a	Because the series of removals total more than 10 school days in a school year;
		016.01A2b	Because the child's behavior is substantially similar to the child's

behavior in previous incidents that resulted in the series of removals; and

016.01A2c Because of such additional factors as the length of each removal, the total amount of time the child had been removed, and the proximity of the removals to one another.

Allegations

The Student was repeatedly removed from school during the 2019-20 school year following behavior problems that the Guardian had made the school aware of. During these removals, the Student was not provided special education and related services.

Parent Position

The Guardian had made repeated attempts to express to the District the potential for serious and aggressive behavior by the Student and the District made little attempt to form a plan to address such behavior. When these behaviors occurred, the recommendation from the school was that the Student be expelled. The behavior in question was found to be a manifestation of the Student's disability on both occasions, though the Student continued to be removed from school and from the classroom. (Letter of Complaint dated December 10, 2020)

District Response

The District followed disciplinary procedures for each behavior incident, conducted manifestation determination, and had the case reviewed at the district-level. The expulsion recommendation was overturned both times and the Student was returned to school with an amended IEP aimed at better meeting the Student's needs. (Letter of Response dated January 14, 2021)

Investigative Findings

During the 2019-20 school year, the Student was removed for disciplinary reasons as follows (Student Period Attendance Detail August 16, 2019- December 20, 2019 and January 8, 2020-March 4, 2020):

- 9 full days in addition to a number of partial days in in-school suspension as a result of behavior referrals. In-school suspension was held in a separate location, though general education coursework was provided.
- 17 full days of out of school suspension, during which time no educational services were provided to the Student.
- In addition, following the 5 day suspension in December of 2019, the Student's placement had been changed to a more restrictive environment, though the location where these services would be provided had not yet been determined by the District. Consequently, the Student missed an additional 6 days of school while this determination was being made.

These removals (23 days in total) were all between August 14, 2019 and March 13, 2020, at which time the District closed its schools to in-person learning because of the COVID-19 pandemic. Since December 11, 2019 (the start date of this complaint), following is the pattern of disciplinary removals:

- 7 full days of out of school suspension
- An additional 6 due to the District's failure to determine the location where services would be provided in a timely manner.

These removals (13 days in total) all occurred between December 11, 2019 (the start date for this investigation). The incidents resulting in out of school suspension all involved threatening and aggressive behavior, behaviors that the school was notified about prior to the Student's enrollment. (Student Period Attendance Detail August 16, 2019- December 20, 2019 and January 8, 2020- March 4, 2020)

Summary and Conclusions

A series of suspensions occurred during the 2019-20 school year that exceeded 10 cumulative school days. Since December 11, 2019 (the start date for this complaint), this pattern of removal continued, resulting in 13 days removed from school during a school year that was abbreviated by over 2 months.

Based on the pattern of disciplinary removal, the District the District failed to fully implement the requirements of 92 NAC 51-016.01. Thus the following **corrective action is required**.

Corrective Action

1. The District shall make 15 hours of compensatory services available to the Student for 3 days the student missed services due to disciplinary removals during the 2019-20 school year.

- a. 15 hours of compensatory services provided by a fully credentialed special education instructor
 - b. A team comprised of the District representatives and the Parent shall determine the schedule for the provision of compensatory services.
 - c. Compensatory services shall be completed by October 10, 2021. Student absence or refusal of the Parents to make the Student available shall result in a waiver of service scheduled for that day. Staff absence must be rescheduled. Any compensatory services declined or not utilized by October 10, 2021, shall be deemed waived (assuming the District has made a good faith effort to timely commence and provide all compensatory services).
 - d. The schedule for compensatory services shall be provided to NDE within 30 calendar days from the date of this decision (February 5, 2021)
 - e. Service provider logs verifying completion of all compensatory education must be submitted to NDE monthly until all service is complete and all service has been verified.
2. The Student's IEP team shall ensure that the current behavior plan includes input from all members of the IEP team and that a plan is in place both to prevent future dangerous behavior as well as to respond should it occur both to ensure safety and to limit the Student's removal from school.
3. Should the Student's behavior escalate when full time in-person school resumes, the IEP team shall promptly meet and discuss the full continuum of services available to the Student and ensure that placement decisions are made based on the Student's needs.
4. The District must develop and provide training to all staff in the District regarding disciplining students with disabilities. Staff involved in the training should include:
 - General education teachers
 - Special education teachers
 - Principals or individuals who may serve as the representative of the school district as described in 92 NAC 51-007.03A4; and
 - Any school personnel responsible for student discipline
- A. The District must provide the NDE Complaint Investigator Lead with copies of the training materials and handouts used and participant sign-in sheets at the conclusion of the training(s).
- B. Training must be completed within 60 calendar days of the receipt of this Letter of Finding.

5. The District shall review and revise, if necessary, the policies, procedures, and practices regarding disciplining students with disabilities.
6. A random sample of three student files will be reviewed on or before September 10, 2021 to ensure correction has been made. The file review will include:
 - a. IEPs
 - b. Behavior Detail Reports
 - c. Attendance Records
 - d. Manifestation Determination Records

Issue # 3

Did the School District provide special education and related services to the Student in accordance with the Student's IEP?

92 NAC 51-007.02 states:

007.02 School districts must provide special education and related services to a child with a disability in accordance with the child's IEP.

Allegations/Parent Position

During the 17 days of out of school suspension during the 2019-20 school year, the Student was not provided with any special education or related services. Following the school closure that resulted from the COVID-19 pandemic, the Student did not have access to online materials being provided to other students for 7 school days because of a previous incident involving improper use of a computer. (Letter of Complaint dated December 10, 2020)

District Response

The District confirmed that special education and related services aimed at ensuring that the Student continued to make progress on IEP goals were not provided during out of school suspensions. (Letter of Response dated January 14, 2021)

With regard to the technology problems that the Student experienced, the District was notified that the Student could not access his email on March 24, 2020, and the issue was resolved that day. In the fall, the Student was issued an iPad from the District and the previous issue again prevented him from setting up an account on this iPad. The problem was resolved remotely. (Letter of Response dated January 14, 2021)

Investigative Findings

During the 17 days of out-of-school suspension during the 2019-20 school year, the Student was not provided consistent access to coursework that was missed while out of school (Interview with). During the 7 days of out of school

suspension that occurred following December 11, 2019, the Student was not provided special education and related services (Interview with the Parent, dated January 26, 2021).

The Student missed several days (reports conflict as to how many) of instruction due to technology issues when in-person learning ceased due to the COVID-19 pandemic (Interviews with special education director and Parent, both dated January 26, 2021). The first, because he had been denied access to email because of previous behavior involving use of email. The second incident occurred when the Student was issued a new iPad from the District (interview with special education director dated January 26, 2021).

Summary and Conclusions

Simply providing classwork during suspension does not equal the provision of special education and related services. The Student was not provided these services beginning the 11th day of suspension during the 2019-20 school year.

With regard to virtual access during the pandemic, given that the District was facing unforeseen demands on the use of technology, District personnel made efforts to provide the Student instruction in this new format as quickly as was reasonable.

Regulations provide that 10 consecutive days out of school suspension constitutes a change in placement. When the suspensions are cumulative, the regulations consider factors such as whether or not the student's behavior is substantially similar to behavior in previous incidents, the length of each removal, the total amount of time the student has been removed, and the proximity of the suspensions to one another. 34 CFR 300.536

Consequently, on the 11th day, the District is required to provide special education and related services to the Student in accordance with the IEP. the District failed to fully implement the requirements of 92 NAC 51-007.02 during the Student's out of school suspensions. Thus **corrective action is required**, consisting of the same corrective action as set forth in Issue #2.

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:

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