

COMPLAINT INVESTIGATION REPORT

Complaint Number: 20.21.11
Complaint Investigator: [Redacted]
Date Complaint Filed: February 26, 2021
Date of Report: April 21, 2021

Issues Investigated

1. Did the School District provide special education and related services to the child in accordance with the child's IEP [92 NAC 51-007.02]?
2. Did the School District provide prior written notice in accordance with 92 NAC 51-009.05?

Documents Reviewed by Investigator

From the Complainant

- Letter of Complaint dated February 26, 2021; received by NDE February 26, 2021
 - Email from the Educational Service Unit (ESU) to the Parents dated January 18, 2021
 - Individualized Education Program (IEP) dated January 18, 2021
- Letter of Complaint dated March 8, 2021; received by NDE March 8, 2021
 - Prior Written Notice dated January 21, 2021
 - Email between the Parents and the District dated February 8, 2021
 - Request for Amendment to Special Education Records and Alternative Service Providers dated February 19, 2021

From the School District

- Letter of Response dated March 17, 2021; received by NDE March 18, 2021
- Supplemental Letter of Response dated April 7, 2021; received by NDE April 7, 2021
- Multidisciplinary Evaluation Team (MDT) Report dated November 14, 2018
- IEP dated May 15, 2020
 - IEP Addendum dated August 19, 2020
 - IEP Addendum dated December 2, 2020
- IEP dated January 18, 2021
- Prior Written Notice dated:

- July 1, 2020
- September 5, 2020
- January 21, 2021
- Letter to the Parents dated:
 - February 19, 2021
 - February 25, 2021
 - March 6, 2021
 - March 16, 2021
- Emails between the ESU, the District, and the Parents dated between January 21, 2021 and February 19, 2021

Introduction

The Student is a third-grade student identified as a student who is deaf/hard of hearing attending a non-public school within the District's boundaries. The Parents filed two formal state written complaints. The first complaint was received by the Nebraska Department of Education on February 26, 2021. The second complaint was received March 8, 2021. The two complaints are addressed and were investigated in this report.

Although the Parents included concerns about the Educational Service Unit (ESU) the district contracts with to provide services to students with disabilities as well as the ethical behavior of the parties involved, these issues were not investigated as they are not specific to Rule 51 or IDEA. To file an ethics complaint, the original needs to be mailed to: Certification Investigations' Office, P.O. Box 94933, Lincoln, NE 68509-4933. The complaint will be reviewed by the Commissioner and if an investigation is authorized, you will be notified by mail.

Findings of Fact

1. An IEP was developed for the Student on May 15, 2020. The description of the Progress Report included for each goal stated, "Parents request a monthly meeting to discuss process."
2. An email was sent to the IEP Team stating the monthly progress report would be canceled due to the IEP meeting for the Student scheduled on January 18, 2021 (Email from the Educational Service Unit (ESU) to the Parents dated January 18, 2021)
3. An IEP was developed for the Student on January 18, 2021 and contained the following:
 - a. Special education and related services:
 - i. Speech-Language Therapy for 30 minutes a day at a frequency of 12 days each month to be provided in the private school

- ii. Services from the Teacher of the Hearing Impaired for 30 minutes a day at a frequency of 25 days a semester provided in the private school
 - iii. Special Education Resource Instruction for 60 minutes a day at a frequency of 5 days a week
 - b. Supplementary aids and services include:
 - i. 18 hours of tutoring
 - ii. A paraprofessional fluent in American Sign Language (ASL) will be provided for support for educational learning. Total Communication approach will be used.
 - c. Five measurable annual goals including goals for the following:
 - i. Verbal expression
 - ii. Vocabulary
 - iii. Sensory regulation
 - iv. Self-help skills
 - v. Oral reading fluency
 - d. Progress Monitoring states that progress reports will be sent home quarterly and that the Parents request a monthly meeting to discuss progress.
- 4. A Prior Written Notice dated January 21, 2021 contained the following:
 - a. Actions proposed and refused by the district:
 - i. Proposal of adding 18 hours of tutoring
 - ii. Refusal of adding an educational sign language interpreter
 - b. Explanation of proposal and refusal:
 - i. "Tutoring was added because the additional support seems to be helping."
 - ii. "A sign language interpreter was refused because there was a lack of evidence indicating that change is needed at this time."
 - c. Other options considered by the team and reason why options were rejected:
 - i. The team considered ending tutoring or increasing the number of hours per week of tutoring. Both options were rejected because the Student was making progress with skills being reinforced with the tutoring.
 - ii. The team considered:
 - 1. "Changing only to para support – this option failed to provide the current sign support with which [the Student] is showing successful growth

2. Changing to only sign support using an educational sign language interpreter – this option failed to provide the para support the team agrees [the Student] requires
 3. Increasing sign support and maintaining para support by changing to educational sign language interpreter who would also provide para duties – this option was determined to not be necessary at this time because [the Student] is making progress, but the team
- d. Description of each evaluation procedure, assessment, record or report used as a basis for the proposal or refusal:
 - i. Information shared by a tutoring company regarding progress the Student has made with skill acquisition since tutoring began
 - ii. Sources to determine an educational sign language interpreter is not necessary due to progress made academically and behaviorally:
 1. Progress toward IEP goals
 2. Academic growth measured by MAP and aimsweb
 3. Observation by Deaf Educators
- e. Other factors relevant to the proposal and refusal
 - i. “Team agreed that an analysis of the data related to skill acquisition will be needed in the future to determine what impact tutoring is having
 - ii. The impact of COVID related mask wearing on communication would likely be restricting growth and development for someone with hear loss yet [the Student] is making gains. That is further context and evidence additional sign support is not needed at this time. However, the district has agreed to advertise for an educational sign language interpreter to collect potential names should that need change. This is being done in response to the concern that this position could be difficult to fill.
5. On February 16, 2021, the Parents emailed the ESU with copies sent to District staff which included a request to amend the IEP to include advertising for an Educational Sign Language Interpreter with a start date of the service to be August 2021 (Emails between the ESU, the District, and the Parents dated between January 21, 2021 and February 19, 2021).

6. On February 19, 2021 the Parents sent an additional email to the ESU and the District requesting a statement be added to the IEP for advertising for an Educational Sign Language Interpreter with a start date for services as August 2021 (Emails between the ESU, the District, and the Parents dated between January 21, 2021 and February 19, 2021).
7. The District sent an email to the Parents which included a letter in response to the February 16 and 19, 2021 emails sent. The letter declined to make amendments to the January 18, 2021 IEP or the Prior Written Notice dated January 21, 2021 (Letter to the Parent dated February 19, 2021).
8. The District sent an email to the Parents which included a letter in response to a February 20, 2021 email from the Parents (not on record). The letter stated the district would not provide a prior written notice regarding the District's refusal to amend the Students IEP and provided an additional copy of the procedural safeguards (Letter to the Parents dated February 20, 2021).
9. On February 26, 2021 the Parents filed the first complaint alleging the district was not implementing the Student's IEP as written (Letter of Complaint dated February 26, 2021)
10. The District sent an email to the Parents which included a letter in response to Parent emails sent March 2, 2021 and February 24, 2021 (not on record). The letter reiterated that records would not be amended and provided rational (Letter to the Parents dated March 6, 2021).
11. The District sent an email to the Parents which included a letter in response to Parent emails sent March 6, 2021 and March 7, 2021 (not on record). The letter addressed the following (Letter to the Parents dated March 16, 2021):
 - a. Concerns raised regarding the Parents frequent communications and the District's response.
 - b. A request the Parents specify what records the Parents were requesting with assurances that the District will arrange access to and copies of those records.
 - c. A denial for the District to meet with the Parents with the understanding that meetings have not been productive and the need for a communication plan.
 - d. Provision of Parental Rights.

12. On March 8, 2021, the parents filed a secondary complaint alleging the District provided inaccurate IEP and Prior Written Notice (Letter of Complaint dated March 8, 2021)

Issue # 1

Did the School District provide special education and related services to the child in accordance with the child's IEP [92 NAC 51-007.02]?

92 NAC 51-007.02 states:

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

Allegations/Parent Position

The District has failed to comply with the statement of special education and related services in the IEP dated January 18, 2021. The Parents requested a progress meeting with individuals working directly with the Student however the meeting that should have occurred February 4, 2021 was never scheduled. (Letter of Complaint dated February 26, 2021)

District Response

The District did not agree to hold weekly progress meetings in the IEP. Throughout the IEP the District clearly distinguishes between that which it is agreeing to provide, quarterly progress reports, and the monthly meetings that the Parents requested on an ongoing basis. (Letter of Response dated March 15, 2021)

Investigative Findings

The IEP dated May 15, 2020 stated, "Parents request a monthly meeting to discuss progress". On January 18, 2021 an email was sent to the team stating that due to the IEP meeting scheduled the meeting to discuss progress would be canceled and rescheduled for February (Email from the Educational Service Unit (ESU) to the Parents dated January 18, 2021). The District was then in the process of investigating a series of allegations made by the Parents about the service providers working with the Student, however, when the ESU attempted to schedule a progress meeting with the Parents in March, the Parents refused to participate (Letter of Response dated March 15, 2021).

Summary and Conclusions

There is nothing contained within the IEP that requires the District to conduct monthly progress reports with the Parents. The statement on the IEP states, "Parents request a monthly meeting to discuss progress." The IEP does not indicate that the meetings would take place.

Rule 51 states that “A description of how the child's progress toward meeting the annual goals described in 92 NAC 51-007.07A2 will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided”. The IEP dated May 15, 2020 and the IEP dated January 18, 2021 specified progress reports would be issued on a quarterly basis (required) and that parents request a monthly meeting (optional).

Based on the summary above, the District implemented the requirements of 92 NAC 51-007.02 and **no corrective action** is required.

Issue # 2

Did the School District provide prior written notice in accordance with 92 NAC 51-009.05?

92 NAC 51-009.05 states:

009.05 Prior Written Notice

009.05A Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:

009.05A1 Proposes to initiate or change the identification, or educational placement of a child or the provision of a free appropriate public education; or

009.05A2 Refuses to initiate or change the identification, or educational placement of a child or the provision of a free appropriate public education.

009.05B Such prior written notice shall include:

009.05B1 A description of the action proposed or refused by the school district or approved cooperative;

009.05B2 An explanation of why the district or approved cooperative proposes or refuses to take the action;

009.05B3	A description of other options the IEP Team considered and the reasons why those options were rejected;
009.05B4	A description of each evaluation procedure, assessment, record, or report the school district or approved cooperative uses as a basis for the proposal or refusal;
009.05B5	A description of any other factors which are relevant to the school district's or approved cooperative's proposal of refusal;
009.05B6	A statement that the parents of a child with a disability have protection under the procedural safeguards of this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained; and
009.05B7	Sources for the parents to contact to obtain assistance in understanding the provisions of this Chapter.

Allegations/Parent Position

The ESU and District failed to provide an accurate IEP and Prior Written Notice. The Parents stated that there was an unfished statement on the Prior Written Notice (PWN) dated January 21, 2021 which they saw as a violation of Rule 51. (Letter of Complaint dated March 8, 2021)

District Response

The District acknowledges that there was an incomplete statement on the Prior Written Notice dated January 21, 2021 and the Parents were provided with a revised PWN which included a conclusion to the statement that had been left open. (Supplemental District Response dated April 7, 2021)

Investigative Findings

The IEP team met and developed an IEP on January 18, 2021. The IEP listed that the Student would receive support from a paraprofessional fluent in American

Sign Language to support educational learning and that a Total Communication approach would be used (Finding of Fact #3).

The PWN included all of the required elements including the District's proposal, refusal, explanations of the proposal and refusal, other options considered, description of the information used as a basis for the proposal and refusal, other factors relevant to the proposal and refusal as well as the procedural safeguards (Finding of Fact #4). The PWN specified that an Educational Sign Language Interpreter was not needed as this time. It also included that the Student needed paraprofessional support which an Educational Sign Language Interpreter could not provide. In addition, the district documented that it would continue to monitor the Student's progress and would advertise for an Educational Sign Language Interpreter so one would be available if the Student's needs changed (Finding of Fact #4).

When the Parents expressed concern about an incomplete sentence provided in the PWN, the ESU also provided a revised PWN adding to it the following "academically and behaviorally: 1. Progress toward [the Student's] IEP goals; 2. Academic growth measured by MAP and aimsweb; 3. Observations by deaf educators" (Supplemental Letter of Response dated April 7, 2021). The Parents also repeatedly requested the District amend the PWN to address the need to advertise for an Educational Sign Language Interpreter (Finding of Facts #5-10).

Summary and Conclusions

A Prior Written Notice must include the following:

1. A description of the action proposed or refused by the district
2. An explanation of why the district proposes or refuses to take the action
3. A description of other options the IEP Team considered and the reasons why those options were rejected
4. A description of each evaluation procedure, assessment, record, or report used as a basis for the proposal or refusal
5. A description of other factors relevant to the district's proposal or refusal
6. A statement of the protections under the procedural safeguards
7. Sources for the parents to obtain assistance

The PWN provided to the Parents dated January 21, 2021 contained all of the required elements as described in 92 NAC 51-009.05. Although there was a statement that was left incomplete for the requirement of "Other options considered by the team and reason why options were rejected", the statement of "this option was determined to not be necessary at this time because [the

Student] is making progress" (Finding of Fact #4) is sufficient to meet the requirements of 92 NAC 51-009.05B4. In addition, the PWN addressed each of the concerns raised by the Parents during the IEP developed on January 18, 2021, including the issue of the Educational Sign Language Interpreter.

Based on above conclusion, the District implemented the requirements of 92 NAC 51-009.05 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 complaints, the complaints are closed as of the date of this letter.