

## COMPLAINT INVESTIGATION REPORT

Complaint Number: 20.21.13  
Complaint Investigator: [Redacted]  
Date Complaint Filed: April 13, 2021  
Date of Report: May 17, 2021

### Issue Investigated

1. Did the District take steps to ensure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including scheduling the meeting at a mutually agreed on time and place in accordance with 92 NAC 51-007.06A?

### Information Reviewed

#### *From the Parent*

- Complaint received by the NDE on April 13, 2021 with supporting documents

#### *From the School District*

- Letter of Response dated May 6, 2021
- Attachments 1 through 14 consisting of the following:
  - Attachment 1 – Affidavit of special education director
  - Attachment 2 – IEP documents
  - Attachment 3 – IEP meeting invitations and scheduling communications
  - Attachment 4 – Prior written notice documents
  - Attachment 5 – Response to initial area of investigation
  - Attachment 6 – Response to supplemental area of investigation
  - Attachment 7 – Special education director’s communications dated March 25 and April 6, 2021
  - Attachment 8 – Letter dated March 16, 2021
  - Attachment 9 – Department findings dated April 21, 2021
  - Attachment 10 – Response dated February 19, 2021
  - Attachment 11 – Response dated March 6, 2021
  - Attachment 12 – Notice dated April 15, 2021
  - Attachment 13 – Canceled event dated April 14, 2021
  - Attachment 14 – Communication dated April 12, 2021

## **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 Parents 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 Parents and the School District were reviewed.

This investigation is limited to a review of alleged IDEA violations that occurred not more than one year prior to April 13, 2021, 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 a third-grade student identified as a student who is deaf/hard of hearing attending a non-public school within the District's boundaries.
2. The Student's current IEP is in effect from January 22, 2021 to May 14, 2021.
3. On March 18, 2021, the Parents emailed school staff and provided May 5, 6, 12, and 13 from 12 to 3 as possible dates and time for an IEP meeting.
4. In a letter dated March 25, 2021 addressed to the Parents and sent by email, the special education director addressed several issues with the Parents and proposed April 14, 2021 or April 15, 2021 starting at 12:00 p.m. as possible dates and times for the Student's next IEP meeting. The Parents were requested to contact the special education director at their earliest convenience regarding which of the dates and times would work for them.
5. On April 6, 2021, the special education director emailed the Parents indicating that the District was holding the afternoons of April 14 and 15, 2021 open as potential dates for the Student's annual IEP meeting. The Parents were asked whether either of those dates would work for them.
6. On April 12, 2021, the special education director emailed the Parents that since the District had not heard back from the Parents regarding scheduling the Student's annual IEP review the meeting was scheduled

for April 15, 2021. The Parents were also informed that the special education director would email the Parents a draft of the IEP to review before the meeting.

- a. Attached to the April 12, 2021 email was an invitation to an IEP meeting to be held on April 15, 2021. The email invitation included the ability of the Parents to respond to the invitation with "Yes," "Maybe," or "No."
7. A second email was sent to the Parents on April 12, 2021, with a draft IEP attached to help guide the conversation during the upcoming IEP meeting.
8. By email on April 13, 2021, the Parents informed the special education director that no dates in April worked for the Parents to attend an IEP meeting. Dates for a meeting in May were requested.
9. On April 14, 2021, the special education director emailed the Parents regarding the Student's upcoming IEP meeting. Since the Parents were unavailable during April, the IEP meeting was rescheduled for May 5, 2021 from 12:00-3:00 p.m. The Parents were requested to also hold May 6 from 12:00-3:00 p.m. open so the team could reconvene if more work was necessary to finalize the IEP.
10. By email on April 14, 2021 the Parents were informed that the IEP meeting scheduled for April 15, 2021 was canceled. The email consisted of the meeting notice with the following statement set forth in red text: "This event has been canceled."
11. By email dated April 15, 2021, the Parents were provided notice of invitation to an IEP meeting to be held on May 5, 2021. The email invitation included the ability of the Parents to respond to the invitation with "Yes," "Maybe," or "No." A Notice of Meeting was attached to the email.
  - a. The Notice of Meeting informed the Parents of the meeting date of May 5, 2021, the time of 12:00-3:00 p.m. and the location of the meeting.
    - i. The Notice stated that "[i]f the above date, time or place is not agreeable to you and you would like to change the meeting, please contact: [the special education director]." The special educator director's email address was included.
    2. ii. Page 3 of the Notice allowed the Parents to mark whether they planned on attending the meeting as scheduled, or they were unable to attend the meeting as scheduled and could propose another date, time and location for the meeting to occur.

12. On April 28, 2021, the special education director again emailed the Parents regarding the scheduling of the Student's IEP meeting. Because the Parents were unavailable during April, it was mutually agreed that the IEP meeting would be held on May 5, 2021 from 12:00-3:00 p.m. If the IEP team was unable to complete its work, the IEP team would reconvene on May 6 from 12:00-3:00. The meeting notice was attached to the email.
13. An IEP meeting was held on May 5, 2021 and the Parents were in attendance (special education director affidavit).

**Issue # 1**

Did the District take steps to ensure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including scheduling the meeting at a mutually agreed on time and place? 92 NAC 51-007.06A?

92 NAC 51-007.06A states:

- 007.06A The school district or approved cooperative shall take steps to ensure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:
  - 007.06A1 Notifying parents of the IEP conference early enough to ensure that they will have an opportunity to attend; and
  - 007.06A2 Scheduling the meeting at a mutually agreed on time and place.

*Allegations/Parents' Position*

The Parents assert that the District violated their right to parental participation when it scheduled an annual IEP meeting for April 15, 2021, after they had emailed District staff that they were not available for an IEP meeting in April and provided the District with their available dates in May. (Letter of Complaint dated April 13, 2021)

*District Response*

The District asserts that the Parents did not initially state they were unavailable to meet in April and that it was appropriate to consider earlier dates for the IEP meeting to ensure that the IEP team could complete its work and fully consider the Parents' input within the required timeframe set by state and federal law. Immediately after the Parents stated they were unavailable in April for an IEP

meeting the April 15, 2021 meeting was canceled and the meeting was scheduled for May 5, 2021. (Letter of Response dated May 6, 2021)

### *Investigative Findings*

In March, 2021, the Parents proposed dates in May 2021 for an annual IEP team meeting. However, the District proposed an annual IEP meeting for April 14 or 15, 2021 and sent a Meeting Notice to the Parents for April 15, 2021. (Fact 3, 4, 5, 6, ). The Parents were also provided with a draft IEP for review (Fact 7). On April 12, 2021, the Parents notified the District that they were not available for a meeting in April. Upon receiving this information, the District promptly canceled the April 15, 2021 meeting and rescheduled the meeting for May 5, 2021, which was one of the dates proposed by the Parents (Fact 3, 8, 9, 10, 11, 12, 13). An IEP team meeting was held on May 5, 2021 and the Parents were in attendance (Fact 13).

### *Summary and Conclusions*

The facts set forth above reveal that while the District initially scheduled an IEP meeting for April 15, 2021, upon receiving notice from the Parents that they were not available for a meeting in April, the meeting was promptly canceled and rescheduled for May 5, 2021, which was a date proposed by the Parents. The District took steps to ensure that one or both of the Student's Parents were present at the IEP team meeting, including scheduling the meeting at a mutually agreed on time and place.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-007.06A and **no corrective action** is required.

### **Notice to District**

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