

COMPLAINT INVESTIGATION REPORT

Complaint Number: 20.21.14
Complaint Investigators: [Redacted]
Date Complaint Filed: May 10, 2021
Date of Report: [Redacted]

Issues Investigated

1. Did the District ensure that the Student was assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities, in accordance with 92 NAC 51-006.02C10?
2. Did the District ensure that the Student's evaluation was sufficiently comprehensive to identify all of the Student's special education and related services needs, whether or not commonly linked to the disability category in which the Student was classified, in accordance with 92 NAC 51-006.02C11?
3. Did the IEP Team review and revise the IEP as appropriate to address information about the Student provided by the Parents, including the Student's anticipated needs or other matters in accordance with 92 NAC 51-007.10?
4. Did the District fail to provide a Free Appropriate Public Education (FAPE) to the Student in accordance with 92 NAC 5-003.24?

Information Reviewed

From the Parent

- Letter of Complaint received by the NDE on May 10, 2021
- Exhibits A through D consisting of the following:
 - Exhibit A – MDT Meeting Agenda dated 11/7/19
 - Exhibit B – SLP Initial Examination dated 2/6/20
 - Exhibit C – IEP meeting agenda dated 3/11/20
 - Exhibit D – Private psychologist evaluation dated 10/12/20
- Email dated June 24, 2021

From the School District

- Letter of Response dated June 14, 2021
- Exhibits A through T consisting of the following:
 - Exhibit A – MDT Report dated 1/31/18
 - Exhibit B – MDT Report dated 11/7/19
 - Exhibit C – Rule 55 Petition dated 12/23/19
 - Exhibit D – IEP dated 11/8/19
 - Exhibit E – Prior Written Notice dated 3/11/20

- Exhibit F – Progress Report dated 5/29/20
- Exhibit G – Notice of Meeting dated 10/5/20
- Exhibit H – Progress Report dated 10/23/20
- Exhibit I – IEP dated 10/30/20
- Exhibit J – Progress Report dated 1/1/21
- Exhibit K – Progress Report dated 3/12/21
- Exhibit L – Notice of Meeting dated 3/15/21
- Exhibit M – Prior Written Notice dated 3/31/21
- Exhibit N – Notes Page dated 3/31/21
- Exhibit O – Progress Report dated 3/31/21
- Exhibit P – Prior Written Notice dated 4/6/21
- Exhibit Q – Prior Written Notice dated 3/25/20
- Exhibit R – Notice of Meeting dated 2/24/20
- Exhibit S – Letter requesting IEE dated 12/5/19
- Exhibit T – Email requesting clarification dated 12/7/19

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 Parent 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 Parent and the School District were reviewed, and a phone interview with the Parent occurred on June 24, 2021.

This investigation is limited to a review of alleged IDEA violations that occurred not more than one year prior to May 10, 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. Student is 13 years old, in the 7th grade, and receives special education services under the disability category of Speech-Language Impairment (District Exhibit A, I).
2. A Multidisciplinary Evaluation Team MDT Report was completed on January 31, 2018 and was conducted as a three-year reevaluation of the Student (District Exhibit A). The Student's primary disability was determined to be a Speech Language Impairment. The Student was evaluated in the following areas:
 - a. Articulation

- i. The Fisher-Logemann Test of Articulation Competence (FLTAC) was administered, and the Student correctly articulated all sounds during the test.
 - b. Language
 - i. The Clinical Evaluation of Language Fundamentals-5 (CELF-5) was administered, and the scores indicated the Student was in the low-average to below-average range.
 - ii. A non-standardized assessment was used to determine specific grammatical structures the Student was using correctly and incorrectly.
 - iii. Incorrect use of grammatical structures and difficulty following multi-step directions could negatively impact the Student's ability to use and understand language in the general education classroom.
 - c. Fluency
 - i. The Student had previously demonstrated non-fluent speech but had used fluent speech for the previous two years. Fluency was rated at 99% fluent.
 - d. Voice
 - i. The Student demonstrated age-appropriate voice skills.
- 3. At the request of the Parent, the Student was evaluated to determine whether the Student met the criteria for a Specific learning Disability (SLD). A Multidisciplinary Evaluation Team MDT Report was completed on November 7, 2019 (District Exhibit B). It was determined that the Student did not meet the criteria for a SLD, as all of the Student's composites were in the average range. The Report determined that the Student continued to have educational needs in language in the areas of comprehension, working memory and sentence formulation. The Student was evaluated in the following areas:
 - a. Achievement Assessment
 - i. The Kaufman Test of Achievement-Third Edition (KTEA-III) was administered, and the following scores were achieved:
 - 1. Reading Composite – 97 (Average)
 - 2. Math Composite – 103 (Average)
 - 3. Writing Composite – 88 (Low Average)
 - b. MAP Testing
 - i. The fall 2019 MAP testing results indicated the Student performed in the average range for reading and math.
 - c. Language Assessment
 - i. Four tests of the CELF-5 were administered and a Core Language Score of 82 was derived, which placed the Student in the

borderline/marginal/at-risk range of language functioning. The following tests were administered:

1. Word Classes
 2. Formulated Sentences
 3. Recalling Sentences
 4. Semantic Relationships.
 - ii. Three tests of the Receptive Language Index were administered and a Receptive Language Index score of 91 was achieved, which placed the Student in the average range of language functioning. The following tests were administered:
 1. Word Classes
 2. Following Directions
 3. Semantic Relationships
 - iii. Three tests of the Expressive Language Index were administered and a Expressive Language Index score of 76 was achieved, which placed the Student in the low/moderate range of language functioning. The following tests were administered:
 1. Formulated Sentences
 2. Recalling Sentences
 3. Sentence Assembly
 - iv. Three tests of the Language Context Index were administered and a Language Context Index score of 93 was achieved, which placed the Student in the average range of language functioning. The following tests were administered:
 1. Word Classes
 2. Understanding Spoken Paragraphs
 3. Word Definitions
 - v. Three tests of the Language Memory Index were administered and a Language Memory Index score of 83 was achieved. The following tests were administered:
 1. Following Directions
 2. Formulating Sentences
 3. Recalling Sentences
4. An IEP meeting was held on November 7, 2019. An IEP was finalized at the meeting and signed by the Parent.
- a. The Student was found to meet the verification criteria as a student with a Speech-Language Impairment.
 - b. The Student was found to struggle with language concepts in the area of comprehension, semantic relationship, memory skills and sentence formulation.

- c. The IEP goal identified for the Student provided that “[g]iven direct instruction and feedback [Student] will increase [Student’s] language skills by 20% as measured by progress monitoring.”
 - d. Four short-term objectives were identified for the Student:
 - i. Student will increase comprehension skills to 85%.
 - ii. Student will crease sentence formulation skills to 70%.
 - iii. Student will increase memory skills to 70%.
 - iv. Student will increase understanding of semantic relationships to 80%.
 - e. The Student received speech language therapy for 15 minutes per day, 2 days a week. (Exhibit D)
5. Prior Written Notice was provided to the Parent on November 7, 2019.
- a. The District refused to add IEP supports in Math as requested by the Parent as the Student was performing average to above average in the classroom and there were no indications that the Student struggled with math.
 - b. The District rejected IQ testing and executive function information as requested by the Parent because IQ testing is only needed to determine special education eligibility if academic scores are below 85 and none of the Student’s composite scores were below 85. The information was not needed to determine special education eligibility. (Exhibit D)
6. On December 5, 2019, the Parent requested an Independent Educational Evaluation (IEE) at public expense for the Student. The Parent did not believe the evaluation completed by the District was comprehensive. District Exhibit S.
- a. District staff emailed the Parent on December 7, 2019 and requested additional information from the Parent regarding which assessments the Parent disagreed with, and what additional assessments the Parent believed should have been conducted (District Exhibit T).
 - b. On December 9, 2019, the Parent responded to the District’s request for additional information regarding the IEE request (District Exhibits C and S).
 - i. The Parent disagreed with the District’s evaluation because members of the District’s staff acted unprofessionally and were incapable of conducting the necessary assessments in an objective and competent manner.
 - ii. The Parent further requested additional assessment tools be utilized.
 - c. In a letter dated January 3, 2020, the District provided the Parent prior written notice denying the Parent’s request for a publicly funded IEE and informed the Parent that the District would initiate an administrative hearing to show its evaluation was appropriate (District Exhibit C).

- d. The Parent withdrew the request for an IEE as the Parent was willing to pay for the evaluation and the District dismissed its hearing request (Parent Interview; District Response).
7. An IEE consisting of an SLP Initial Examination was conducted by a private speech language pathologist on February 6, 2020 (Parent Exhibit B).
 - a. The evaluation was conducted at the Parent's request due to the Student's difficulty with learning in the academic setting.
 - b. The Parent was the informant of case history information.
 - c. The Parent was interested in attaining appropriate accommodations that could be implemented to support the Student's growth and learning in the school setting.
 - d. The primary concern of the Parent was language and learning difficulties.
 - e. Various assessments were administered, including:
 - i. The Comprehensive Test of Phonological Processing-Second Edition (CTOPP-2).
 - ii. Clinical Evaluation of Language Fundamentals-Fifth Edition (CELF-5) consisting of Structured Writing and Reading Comprehension subtests.
 - iii. Quantitative Reading Inventory-Sixth Edition (QRI-6).
 - iv. Based on the formal and informal assessment measures, the Student presented with a receptive/expressive language disorder specifically characterized by phonological processing difficulties, expressive language deficits, and poor working memory.
 - f. The SLP Initial Examination report set forth recommendations, which are discussed in in the chart below.
8. An IEP team meeting was held on March 11, 2020 to consider the results of the IEE from the private provider (Parent Exhibit C; District Exhibit R).
9. The District issued a Prior Written Notice (PWN) dated March 11, 2020 which was provided to the Parent on March 25, 2020. The PWN addressed the recommendations set forth in the IEE dated February 6, 2020.

Private SLP Initial Examination Recommendations	3/11/20 Prior Written Notice Responses to Recommendations
Student should receive speech language therapy 1-2 times per week.	IEP team accepted recommendation: <ul style="list-style-type: none"> • These services were being provided to Student. • Student had a goal for memory and comprehension.

Private SLP Initial Examination Recommendations	3/11/20 Prior Written Notice Responses to Recommendations
Teachers should make sure directions are understood through frequent checks.	IEP team accepted recommendation: <ul style="list-style-type: none"> • This was a reasonable accommodation to help Student make meaningful educational progress.
Teachers should simplify complex directions of more than 2 steps.	IEP team accepted recommendation: <ul style="list-style-type: none"> • This was a reasonable accommodation to help Student make meaningful educational progress.
Add consultation minutes to IEP to make sure the Student knows how to use assistive technology to accomplish writing tasks like conventions and grammar suggestions	IEP team accepted recommendation.
Adjust study hall to collect more data and address Student needs.	IEP team accepted recommendation.
List steps/procedures for multi-step problems.	IEP team rejected recommendation: <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • The math teacher did not report a concern for Student's ability to complete multi-step math problems and Student preferred to do mental math. • The District's evaluation and Student scores indicated average math skills. • Student attended the highest ability math group and performed well.

Private SLP Initial Examination Recommendations	3/11/20 Prior Written Notice Responses to Recommendations
<p>Post clearly numbered steps, and/or give the Student a desk-copy model of steps needed to solve problems.</p>	<p>IEP team rejected recommendation:</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • All students in the District have access to a folder resource to use as a reference. • The District's evaluation and Student scores indicated average math skills. • Student attended the highest ability math group and performed well.
<p>Use graphic organizers to organize information while reading or to help breakdown math problems into steps.</p>	<p>IEP team rejected recommendation:</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • The math teacher did not report a concern for the Student's ability to break down math problems. • All students have access to a math curriculum folder resource. • The District's evaluation and Student scores indicated average math and reading skills. • Student attended the highest ability math group and performed well.

Private SLP Initial Examination Recommendations	3/11/20 Prior Written Notice Responses to Recommendations
Create separate worksheets for word problems and number problems in math.	<p>IEP team rejected recommendation</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • The math teacher did not report a concern for the Student's ability to use the current worksheets students use to complete math problems. • The District's evaluation and Student scores indicated average math and reading skills. • Student attended the highest ability math group and performed well.
Allow use of adaptive technologies, especially for written assignments.	<p>IEP team rejected recommendation</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • All 6th grade students have access to a Chromebook.
Provide visual aids.	<p>IEP team rejected recommendation</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • The math teacher did not report that the Student needed visual aids. • The District's evaluation and Student scores indicated average math and reading skills. • The Student attended the highest ability math group and performed well.

Private SLP Initial Examination Recommendations	3/11/20 Prior Written Notice Responses to Recommendations
Provide peer note taker as needed.	<p>IEP team rejected recommendation</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • The math teacher did not report a concern with the Student's ability to take notes. • The Student's reading and math MAP scores were in the average range. • The Student attended the highest ability math group and performed well.
Highlight materials for emphasis including highlighting key words in story problems.	<p>IEP team rejected recommendation</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • The math teacher did not report a concern with Student's ability to identify key words in story problems. • The District's evaluation indicated average math skills. • The Student's MAP scores were in the average range. • The Student attended the highest ability math group and performed well.

Private SLP Initial Examination Recommendations	3/11/20 Prior Written Notice Responses to Recommendations
<p>Allow compensatory strategies (e.g., proofreading assistance in writing).</p>	<p>IEP team rejected recommendation</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • The District's evaluation indicated average writing skills. • All 6th grade students have access to a Chromebook. • The team agreed to add consult services to assess whether Student knows how to use spellcheck and proofreading on google docs.
<p>Provide frequent checks for accuracy when Student is doing class work. Set a certain number of problems to complete and check these before Student is permitted to continue. Encourage Student to begin to check Student's own work to promote self-monitoring.</p>	<p>IEP team rejected recommendation</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • The District's evaluation indicated average math skills. • The teacher reported no observation that Student needed this type of assistance. • The teacher shared that Student does most of the math work in study hall and the teacher is not Student's study hall teacher. • Based on individual student need and data, Student would be assigned a study hall with a specific teacher to determine if Student needs frequent checks on accuracy.

Private SLP Initial Examination Recommendations	3/11/20 Prior Written Notice Responses to Recommendations
Provide extended time on assessments.	<p>IEP team rejected recommendation</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • The math teacher did not report that Student needs more time to complete assessments. • The District's evaluation did not indicate a need for extended time, nor did Student's math MAP assessment. • High stakes testing, e.g., NSCAS and MAP are not timed.
Provide a separate, distraction free location to take assessments.	<p>IEP team rejected recommendation</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • The math teacher did not report that Student needed a distraction free environment. • Student's MAP scores were in the average range. • The Parent stated in the meeting that Student does not have an attention problem and does not need a distraction free environment.

Private SLP Initial Examination Recommendations	3/11/20 Prior Written Notice Responses to Recommendations
Allow for shortened assignments to limit load on working memory.	<p>IEP team rejected recommendation</p> <ul style="list-style-type: none"> • The independent evaluator gave no context for this recommendation. • The math teacher did not report that Student needed shortened assignments and more time to complete assignments. • The District's evaluation indicated average math, writing and reading skills. • Student's reading and math MAP scores were in the average range. • Student attended the highest ability math group and performed well.

10. In October 2020, the Parent obtained a second IEE from a private psychologist, as the Parent didn't believe the Student was receiving the appropriate help needed at school. Parent Complaint.

- a. An evaluation report was issue by a private licensed psychologist on October 12, 2020 (Parent Exhibit D).
 - i. The IEE did not identify any assessments or evaluations conducted by the private psychologist.
 - ii. The Student was given two DSM-5 Diagnoses:
 1. Autism Spectrum Disorder, without accompanying intellectual impairment, Level 1.
 2. Language Disorder, by history.
- b. The private evaluator set forth recommendations, which are discussed in the chart below.

11. An IEP annual review meeting was held on October 29, 2020. An IEP was finalized at the meeting and signed by the Parent (District Exhibits G and I).

- a. The private psychologist's evaluation results were shared with the IEP team and identified that Student was diagnosed with Autism.
- b. Student continued to meet the verification criteria as a student with a Speech-Language Impairment.

- c. Student was found to struggle with language concepts in the area of comprehension, semantic relationship, memory skills and sentence formulation.
 - d. The IEP goal identified for Student provided that “[g]iven direct instruction and feedback [Student] will increase [Student’s] language skills by 10% as measured by progress monitoring.”
 - e. Three short-term objectives were identified for the Student:
 - i. Student will increase working memory skills to 80%.
 - ii. Student will crease problem solving skills to 50%.
 - iii. Student will increase comprehension skills to 90%.
 - f. The Student received speech language therapy for 15 minutes per day, 2 days a week.
 - g. Program modifications and accommodations included:
 - i. Allow for verbal retakes of tests according to school policy.
 - ii. Student may ask for a break during class or tests.
 - iii. Teachers should make sure directions are understood through frequent checks.
 - iv. Teacher should simplify complex directions of more than 2 steps.
 - h. Additional program modifications and accommodations were added to the IEP on March 31, 2021:
 - i. When Student takes a test the teacher will walk through missed questions to check for understanding. If Student scores below 85% a retake will be offered.
 - ii. Student will be cued to use the entire time to complete a test/assessment.
12. A PWN was issued dated October 29, 2020, and mailed to the Parent on that date (District Exhibit I).
- a. Requests by the Parent during the IEP meeting on October 29, 2020 were considered by the IEP team.

Parent Requests	10/29/20 Prior Written Notice Responses to Parent Requests
Request that word problems be laid out for Student.	IEP team rejected request: <ul style="list-style-type: none"> • No data supported the request • Student’s MAP scores were in the average range and the Student had a B in math class. • This request was considered the previous year and the team had no data to support the request.
Request that Student be allowed to have retakes verbally if needed on tests.	IEP team accepted request according to school policy:

Parent Requests	10/29/20 Prior Written Notice Responses to Parent Requests
	<ul style="list-style-type: none"> The Student could retake tests verbally but would need to make arrangements before or after school to do so.
Request that Student be allowed to take breaks as needed.	IEP team accepted request: <ul style="list-style-type: none"> The Student was able to request breaks if needed.
Request by email dated 11/5/20 that accommodation of a daily schedule be stopped.	IEP team accepted request.

b. Recommendations by the private psychologist in the IEE were considered by the IEP team.

Private Psychologist Evaluation Recommendations	10/29/20 Prior Written Notice Responses to Recommendations
Request a meeting to add the diagnoses of Autism Spectrum Disorder to Student's IEP.	IEP team accepted recommendation: <ul style="list-style-type: none"> An IEP team meeting was held. The team offered to complete an evaluation for autism which would include the educational context, but this offer was declined by the Parent. The IEP team agreed to note on the IEP that the Student had been diagnosed with Autism.
Student would benefit from receiving services at school for students with poor communication skills across settings.	IEP team accepted recommendation: <ul style="list-style-type: none"> Student is verified as a student with a Speech-Language Impairment in the area of Language and receives speech therapy at school.
Consider using social stories by Carol Gray to encourage the building of social skills, adaptability and functional communication.	IEP team rejected recommendation: <ul style="list-style-type: none"> No data supported the recommendation

Private Psychologist Evaluation Recommendations	10/29/20 Prior Written Notice Responses to Recommendations
Changes and transitions can be described and processed in advance, including events such as substitute teachers, schedule changes, vacation days, etc.	IEP team rejected recommendation: <ul style="list-style-type: none"> No data supported the recommendation
Consider pursuing Cognitive-Behavioral Therapy with a clinician that specializes in working with children with Autism and functional communication needs.	This was a recommendation for parents.
Build Student's vocabulary and language skills to help Student gain control over successful expression of emotions and thoughts.	IEP team accepted recommendation: <ul style="list-style-type: none"> Student is verified as a student with a Speech-Language Impairment in the area of Language and receives speech therapy at school.
Consider accommodations at home for working memory needs.	This was a recommendation for parents at home.
Consider speech language therapy in the community.	This was a recommendation for parents at home.
Consider pursuing an Occupational Therapy evaluation.	School offered an occupational therapy evaluation and Parent declined as Parent indicated an evaluation had been obtained from a private provider.

13. An IEP meeting was held on March 31, 2021 at Parent request to consider adding accommodations to Student's IEP (District Exhibits L and N).

14. A PWN dated March 31, 2021 was mailed to the Parent on April 12, 2021 and addressed adding accommodations to Student's IEP (District Exhibit M).

IEP Team Considerations	3/31/21 Prior Written Notice Responses
District proposed to add an accommodation to Student's IEP to provide for verbal cueing prior to taking a test that Student should slow down and take time.	IEP team accepted proposal: <ul style="list-style-type: none"> • Proposal is based on Parent request. • Staff confirmed that Student occasionally rushes on tests, specifically on MAP tests. • SLP reported that Student rushes through progress monitoring at times.
District proposed to add an accommodation to Student's IEP to remind Student to come in before and/or after school for reteaching on any test on which Student grades an 85% or less the first time the test is taken.	IEP team accepted proposal: <ul style="list-style-type: none"> • Proposal is based on Parent request. • Staff agreed this is an appropriate accommodation for Student as the Parent reported Student does not independently initiate time to come in before/after school with teachers.
Parent request that tests be reduced in academic rigor for Student	IEP team denied request: <ul style="list-style-type: none"> • It would be academically inappropriate for Student based on Student skills and classroom performance.
Considered reading tests to Student.	IEP team denied proposal: <ul style="list-style-type: none"> • Teachers report that Student has strong test scores. • Teacher observations confirmed that Student has all A's and B's in classes.
Considered taking no action regarding Student rushing through tests, based on fact that Student has excellent grades and test scores.	IEP team denied proposal: <ul style="list-style-type: none"> • Option rejected based on large part on Parent preference for verbal curing.

IEP Team Considerations	3/31/21 Prior Written Notice Responses
Considered modifying Student's curriculum.	IEP team denied proposal: <ul style="list-style-type: none"> • Proposal was inappropriate for Student. • Test scores and IEP progress monitoring showed that Student was appropriately placed academically.

Issue # 1

Did the District ensure that the Student was assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities, in accordance with 92 NAC 51-006.02C10?

92 NAC 51-006.02C10 states:

006.02C10	School districts and approved cooperatives must ensure the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
-----------	--

Allegations/Parent's Position

The Parent asserts that the District failed to conduct a full evaluation in October 2019, which resulted in the Parent obtaining two independent educational evaluations. The evaluation completed by a private psychologist diagnosed the Student with Autism. Both IEEs contained recommendations which the District did not implement.

District Response

The District asserts that its staff fully assessed the Student in all areas of suspected disability.

Investigative Findings

The District completed a three-year reevaluation of the Student on January 31, 2018. The Multidisciplinary Evaluation Team MDT Report evaluated the Student in the areas of articulation, language, fluency, and voice, and used a variety of formal and informal assessments (Fact 2). At the request of the Parent, the District evaluated the Student in

November 2019 to determine whether the Student met the criteria for a SLD (Fact 3). A variety of formal and informal assessments were utilized, and at an IEP meeting it was determined the Student did not meet the criteria for SLD (Fact 4 and 5).

In addition to conducting the above-mentioned evaluations, the District considered the two independent evaluations which were provided by the Parent. The District held IEP meetings to consider each of the independent evaluations and addressed the private providers' recommendations through PWN (Fact 6, 7, 8, 9, 10, 11, and 12).

Summary and Conclusions

The IDEA defines "evaluation" as those procedures used to determine whether a child has a disability and the nature and extent of the child's need for special education and related services. Each district "must conduct a full and individual initial evaluation" before providing special education and related services to a child with a disability. 34 CFR 300.301 (a). An evaluation or reevaluation under the IDEA serves two purposes: identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and helping IEP teams identify the special education and related services the student requires. 71 Fed. Reg. 46,548 (2006).

If a parent shares an evaluation obtained at private expense, the district must consider the results of that evaluation when making decisions involving the provision of FAPE to the child (provided that the IEE meets district criteria). 34 CFR 300.502 (c)(1).

The facts set forth above reveal that the District evaluated the Student in all areas of suspected disabilities during the reevaluation that occurred in 2018, and in the additional evaluation in 2019 that was conducted at Parent request to determine whether the Student had a SLD. Although the District's evaluations were conducted more than one year prior to the Parent's complaint, the facts surrounding the evaluations are necessary for a full understanding of the evaluations conducted by the District and utilized by the IEP team to address the Student's disabilities and develop an IEP.

Further, the IEP team met to consider each of the two IEEs provided to the IEP team by the Parent. Although the first IEE was conducted and considered by the IEP team outside of the one-year timeframe for this investigation, the second IEE conducted by the private psychologist is within the timeframe for this investigation.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-006.02C10 and **no corrective action** is required.

Issue # 2

Did the District ensure that the Student's evaluation was sufficiently comprehensive to identify all of the Student's special education and related services needs, whether or

not commonly linked to the disability category in which the Student was classified, in accordance with 92 NAC 51-006.02C11?

92 NAC 51-006.02C11 states:

006.02C11	School districts and approved cooperatives must ensure in evaluating each child with a disability under Section 006, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
-----------	--

Allegations/Parents' Position

The Parent asserts that the evaluations completed by the District did not address the Student's difficulty spelling, understanding written math problems, trouble getting answers to school work on paper, anxiety at school, and other issues. Had the IEEs not been conducted the Parent would not have known the depth of the Student's learning disability or that the Student has Autism.

District Response

The District asserts that the two evaluations conducted by the District consisted of a variety of assessment tools and strategies which were sufficiently comprehensive to identify all of the Student's special education and related services needs.

Investigative Findings

As discussed above in Issue 1, the District completed a three-year reevaluation of the Student on January 31, 2018. The Multidisciplinary Evaluation Team MDT Report evaluated the Student in the areas of articulation, language, fluency, and voice, and used a variety of formal and informal assessments (Fact 2). At the request of the Parent, the District evaluated the Student in November 2019 to determine whether the Student met the criteria for a SLD (Fact 3). A variety of formal and informal assessments were utilized in both evaluations conducted by the District.

Summary and Conclusions

An evaluation must be sufficiently comprehensive to identify all a student's special education and related services needs whether or not commonly linked to the disability category in which the child is classified. 34 CFR 300.304 (c)(6). As long as the requirements of the IDEA are satisfied, the selection of particular testing or evaluation instruments is left to the discretion of state and local educational agencies. Letter to

Baumtrog, 39 IDELR 159 (OSEP 2002); and Letter to Anonymous, 20 IDELR 542 (OSEP 1993).

The facts established that the evaluations conducted by the District were sufficiently comprehensive to determine the Student's special education and related services needs.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-006.02C11 and **no corrective action** is required.

Issue #3

Did the IEP Team review and revise the IEP as appropriate to address information about the Student provided by the Parents, including the Student's anticipated needs or other matters in accordance with 92 NAC 51-007.10?

92 NAC 51-007.10 states:

- 007.10 The IEP team shall revise the IEP as appropriate to address:
- 007.10A Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;
 - 007.10B The results of any reevaluation conducted under 92 NAC 51-006.05A;
 - 007.10C The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;
 - 007.10D The child's anticipated needs; or
 - 007.10E Other matters.

Allegations/Parents' Position

The Parent asserts that two different IEEs were provided to the District, one of which was conducted by a psychologist whose recommended accommodations should be considered as the private evaluator has more education in the Student's needs.

District Response

The District asserts that it considered the recommendations set forth in the IEEs provided by the Parent, accepted many of the IEE recommendations and provided specific rational for each rejected recommendation.

Investigative Findings

As discussed above in Issue 1, the District considered the two independent evaluations which were provided by the Parent. The District held IEP meetings to consider each of

the independent evaluations and addressed the private providers' recommendations through PWN (Fact 6, 7, 8, 9, 10, 11, and 12).

Summary and Conclusions

If a parent shares an evaluation obtained at private expense, the district must consider the results of that evaluation when making decisions involving the provision of FAPE to the child (provided that the IEE meets district criteria). 34 CFR 300.502 (c)(1). While a district must consider the results of an IEE, it has no obligation to adopt the evaluator's recommendations or conclusions. See, e.g., *T.S. v. Board of Educ. of the Town of Ridgefield*, 20 IDELR 889 (2d Cir. 1993); *G.D. v. Westmoreland Sch. Dist.*, 17 IDELR 751 (1st Cir. 1991); *R.Z.C. v. North Shore Sch. Dist.*, 73 IDELR 139 (9th Cir. 2018, unpublished).

The facts establish that the District considered the recommendations in each of the two IEEs and determined whether the recommendations were appropriate for the Student in the school setting. The Parent was provided with PWN which identified which recommendations were accepted or rejected, and the rationale for the IEP team's decision. While the IEP team was obligated to consider the IEE results and recommendations, there is no obligation that the District adopt any or all of the evaluator's recommendations or conclusions.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-007.10 and **no corrective action** is required.

Issue #4

Did the District fail to provide a Free Appropriate Public Education (FAPE) to the Student in accordance with 92 NAC 51-003.24?

92 NAC 51-003.24 states:

003.24 Free appropriate public education or FAPE means special education and related services that are provided at public expense, under public supervision, and direction, and without charge; meet the standards of the state including requirements of this Chapter; include an appropriate preschool, elementary school or secondary school education in Nebraska and are provided in conformity with an individualized education program (IEP) that meets the requirements of 92 NAC 51-007.

Allegations/Parents' Position

The Parent asserts that the Student is a B average student and has excellent behavior, so the District doesn't see a need to assist the Student. The Student is capable of so much more if the Student has the help needed. The Student gets very frustrated with grades because the Student knows the information better than is shown, which makes

the Student not want to try. The few accommodations being requested are necessary for the success of the Student's education and confidence.

District Response

The District asserts that it has provided, and continues to prove, a free and appropriate public education to Student.

Investigative Findings

In an email to this investigator dated June 24, 2021, the Parent identified with more specificity the additional accommodations requested for the Student. Each of these accommodations is set forth below in the following chart, along with the District's responses identified above in the facts.

Parent Accommodation Request Email dated 6/24/21	District Response
Student struggles with comprehending word problems in math. When information is pulled out of the story problem and the Student is told what to do the Student has no problem doing it.	A request that word problems be laid out for the Student was considered and rejected in PWN dated 10/29/20 (Fact 12).
Parent has asked for a printed schedule for all of the Student's tests or big projects but has not been provided this information. Parent wants a schedule provided once a month or each week that the Student can put in a folder and review.	The provision of a daily schedule to the Student was agreed to but was stopped based on an email received by the District from the Parent on 11/5/20 (Fact 12).
Parent requests that all oral presentations be optional for the Student, where the Student can elect to present privately to the teacher.	No evidence that IEP team reviewed this request. IEP team considered and rejected that tests be read to Student in PWN dated 3/31/21 (Fact 14).
Parent requests more time with the speech pathologist to work on language, eye contact and verbal loudness of speech.	Private SLP Initial Examination Recommended Student receive speech language therapy 1-2 times per week, which the IEP team accepted in the 3/11/20 PWN (Fact 9). 10/29/20 PWN identified Student receives speech language services as a student with a Speech-Language Impairment (Fact 12).

Parent Accommodation Request Email dated 6/24/21	District Response
Parent requests that Student be offered the resource room to use for a quiet environment to complete tests, large projects or to study. Have the teacher in the resource room verbally explain questions if Student is struggling to understand.	The provision of reading tests to Student was considered and rejected in the PWN dated 3/31/21 (Fact 14). Student would be assigned a study hall with a specific teacher to determine if Student needs frequent checks on accuracy. 3/11/20 PWN (Fact 9).
Parent requests that Student be allowed to leave the classroom for a short break if feeling overwhelmed.	A request that Student be allowed to take breaks as needed was considered and agreed to in the PWN dated 10/29/20 (Fact 12).

The IEP team also convened at Parent request on March 31, 2021 to consider adding accommodations to the Student's IEP (Fact 13). Parent was provided with PWN which addressed the accommodations added to the Student's IEP by the team (Fact 14).

Summary and Conclusions

Federal and state regulations provide that a free appropriate public education (FAPE) means special education and related services that: 1) are provided at public expense, under public supervision and direction without charge to parents; 2) meet the standards of the state educational agency (SEA), including the requirements of the IDEA; 3) include an appropriate preschool, elementary school, or secondary school education in the State involved; and d) are provided in conformity with an individualized education program (IEP). 34 CFR 300.17; 92 NAC 51-007.02.

The U.S. Supreme Court construed the meaning of FAPE in *Bd. of Education of Hendrick Hudson Cent. School Dist. v. Rowley*, 458 U.S. 176, 198, 207 (1982) and stated: "The statutory definition of 'free appropriate public education,' in addition to requiring that States provide each child with 'specially designed instruction,' expressly requires the provision of 'such ... supportive services ... as may be required to assist a handicapped child to benefit from special education.' § 1401(17). ..." The U.S. Supreme Court further defined the standard for a free appropriate public education in *Endrew F. v. Douglas County School District. RE-1*, 137 S. Ct. 988 (2017), holding that the educational program for a child with a disability must be one that is "... reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." However, the IDEA does not guarantee any particular level of education and "cannot and does not" promise any particular educational outcome. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017) (citing *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982)).

The facts set forth and discussed in Issues 1 through 4 established that the District properly evaluated the Student, developed an appropriate IEP, and considered the Parent requests for various accommodations for Student. No single individual can make a unilateral determination regarding the educational services that will be provided to the Student; all decisions must occur through the IEP team process. The IEP team reviewed Parent requests, IEE recommendations, and provided the Parent with PWN regarding team decisions. The IEPs developed for Student allowed Student to make progress appropriate in light of the Student's circumstances.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-003.24 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 complaint, the complaint is closed as of the date of this letter.