

COMPLAINT INVESTIGATION REPORT

Complaint Number: 20.21.15
Complaint Investigator: [Redacted]
Date Complaint Filed: May 14, 2021
Date of Report: July 12, 2022

Issues Investigated

1. Did the District take steps including the provision of supplementary aids and services to provide nonacademic and extracurricular services and activities necessary to afford the student an equal opportunity for participation in those services and activities pursuant to 92 NAC 51-007.07C4?
2. Did the District provide special education and related services to the Student in accordance with the Student's IEP pursuant to 92 NAC 51-007.02?

Documents Reviewed by Investigator

From the Complainant

- Letter of Complaint dated May 13, 2021; received by NDE May 14, 2021
- Email correspondence with Complainant
- Telephone interview with Complainant June 23, 2021

From the School District

- Letter of Response received by NDE June 10, 2021
- IEP for the Student for the 2020-21 school year
- Telephone interviews with school staff June 24 and 25, 2021

Introduction

Pursuant to 92 NAC 51-009.11B1, 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) or Rule 51. To conduct this complaint investigation, an outside investigator was used by the NDE Office of Special Education. The documents received from the Parent and the School District were reviewed.

A complaint was filed on behalf of the Student, who was a 3rd grader attending the District at the time the complaint was filed. The Student is eligible for special education services as a student with an Other Health Impairment and a Hearing Impairment and is diagnosed with Muscular Dystrophy. The Student's primary language is sign language. The Student receives special education services in a

resource setting and paraprofessional support, as well as speech, occupational therapy, physical therapy, and services from the teacher of the hearing impaired.

Issue # 1

Did the District take steps including the provision of supplementary aids and services to provide nonacademic and extracurricular services and activities necessary to afford the student an equal opportunity for participation in those services and activities pursuant to 92 NAC 51-007.07C4?

92 NAC 51 states:

007.C4 The school district shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities.

Allegations

The Parent alleges that on the night of May 11, 2021, the District violated the Student's IEP by not providing paraprofessional support during a spring concert as outlined in [redacted] IEP.

Parent Position

The Parent believes that the District's failure to provide a paraprofessional to support the Student prevented the Student's full participation as the adult assigned to the Student did not act as an "extension of the music director." The Parent contends that the Student left the stage because the Student "didn't know what [the Student] was supposed to be doing." Furthermore, because no paraprofessional support was provided, the Parent believes that Student's safety was at risk because following the concert, the District was unaware of the Student's whereabouts and had to send a text message to confirm that the Student had gone home with the Parent.

District Response

Because the Student's regularly assigned paraprofessionals were unavailable the night of the event, the District assigned the Student's general education teacher, who has formerly worked as the Student's paraprofessional, and who is fluent in sign language, to provide support for the Student the night of the concert. When the Student left the stage, the teacher knew that the Student

had gone to sit with the Parent and sent a text message when the student did not return with the Parent as expected to ensure that the Parent had the Student in the Parent's care.

Investigative Findings

- The Student is identified for special education as a student with an Other Health Impairment (Muscular Dystrophy) and a Hearing Impairment. (IEP dated September 16, 2020)
- The Student's primary language is sign language (interview with Parent, June 23, 2021).
- The night of May 11, 2021, a spring concert was planned for all 2nd-4th grade students (Letter of Complaint dated May 13, 2021).
- The 2nd-4th grade students learned songs that were performed along with actions during their music class, which is held every other day and the Student participates in regularly (Interviews with school staff, June 24 and 25, 2021).
- The music teacher taught all students signs to accompany several of the songs performed in order to make the content of the performance more accessible to the Student (Interviews with school staff, June 24 and 25, 2021).
- The day of the performance, a practice was conducted and the Student engaged in ongoing refusal behavior (taking out hearing aids, sitting down, and refusing to comply), resulting in the paraprofessional from removing the Student from the rehearsal several times (Interviews with school staff, June 24 and 25, 2021).
- When the Parent picked the Student up from school the day of the performance, the Parent was informed that the Student had not participated well in the rehearsal (Interviews with school staff, June 24 and 25, 2021).
- The Parent brought the Student to the concert and left the Student in the cafeteria with the Student's classmates (Interview with general education teacher, June 25, 2021).
- The Parent went to the auditorium and sat in the front row just a few feet from where the Student was standing when the production began (Interview with the Parent, June 23, 2021).
- The Student's general education teacher came and sat next to the Parent as the students entered the stage, sitting directly in front of the Student (Interviews with the Parent and the general education teacher, June 23 and 25, 2021).

- The Parent asked where the Student's paraprofessional was (Interviews with the Parent and the general education teacher, June 23 and 25, 2021).
- The teacher responded that she did not know (Interviews with the Parent and the general education teacher, June 23 and 25, 2021).
- This left the Parent unclear that the general education teacher was providing the services that night normally provided by the paraprofessional (Interviews with school staff, June 24 and 25, 2021).
- This was the general education teacher's only responsibility for the evening (Interviews with school staff, June 24 and 25, 2021).
- The students performed for a total of 30-40 minutes (Interviews with the Parent, June 23, 2021, and with school staff, June 24 and 25, 2021).
- The Student's general education teacher assisted the Student twice during the performance, prompting the Student to stand and to move to where the Student was supposed to be during a transition. The teacher prompted the Student both with sign and physically (Interview with general education teacher, June 25, 2021).
- Roughly 10 minutes before the conclusion of the concert, the Student signed to the Parent, the Parent motioned for the Student to come, and the Student stepped off the stage and sat next to the Parent. (Interviews with the Parent, June 23, 2021, and with school staff, June 24 and 25, 2021).
- The general education teacher elected not to intervene, not wanting to draw undue attention to the Student and understanding the Student's limited ability to sustain attention and that the Student was likely overstimulated (Interview with general education teacher, June 25, 2021).
- Because the teacher saw the Student with the Parent, the teacher assumed that the Parent would return the Student to the cafeteria to be checked out and stood on the stage, directing the other students to the cafeteria (Interview with general education teacher, June 25, 2021).
- The Parent left the building with the Student (Interviews with the Parent, June 23, 2021, and with school staff, June 24 and 25, 2021).
- Approximately 10 minutes later, the teacher sent a text message to verify that the Student had safely left the building with the Parent (Interviews with the Parent, June 23, 2021, and with school staff, June 24 and 25, 2021).

Summary and Conclusions

As quoted above, the IDEA requires that districts "take the steps necessary to afford students an equal opportunity for participation in nonacademic and extracurricular services and activities." This includes informing students of these

opportunities, outlining in the IEP what supplementary aids and services will be provided, and then providing them in a manner that allows the student equal opportunity to participate with nondisabled peers.

The spring concert provided a culmination of learning activities that had been going on for months and which the Student was fully included in as the Student was exposed to the songs and actions and the Student's teachers and peers incorporated sign language into several of the songs that were ultimately performed. The Student's disability contributes to difficulty with sustained attention and a tendency to become overwhelmed in highly stimulating environments. The Student needed behavioral supports including prompting and breaks earlier in the day during rehearsal, which constituted supplementary aids and services provided by the paraprofessional during the school day. These same supports were provided the night of the concert by the adult assigned to the Student.

When the parent motioned for the Student to come sit next to her toward the conclusion of the concert, the teacher made a reasonable assumption that the Student had reached the limit of the Student's ability to participate on stage and was safe with the Parent. While the Student may not have participated for the entirety of the concert, the Student was clearly afforded equal opportunity for participation in the general education music class with nondisabled peers, through the incorporation of sign language with all students across 3 grade levels, and through the needed behavioral supports (prompting both through sign language and physical, and breaks) in rehearsal and the final performance. The District took clear steps to support the Student's participation and provided supplementary aids and services aimed at maximizing the Student's performance. Furthermore, the Student's participation was meaningful and appropriate given the Student's disability.

Finally, given that the Parent motioned for the Student to join her, the teacher's assumption that the Student was safe with the Parent was reasonable. The fact that she reached out by text message when the Student didn't return to the cafeteria supports the teacher's efforts to ensure the Student's safety.

Based on the summary and conclusions above, the District met the requirements of 92 NAC 51-007.07C4 and **no corrective action** is required.

Issue # 2

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

The services outlined in the Student's IEP, dated September 16, 2020 were not provided to the Student during the spring concert held on May 11, 2021.

Parent Position

The Student's classroom teacher did not provide the needed supports during the spring concert to ensure the Student's participation.

District Response

When the District learned that a paraprofessional was unavailable to provide the Student with needed supports, the Student's current general education teacher, who knows the Student and the Parent and who is fluent in sign language was assigned to provide this support. The teacher attempted to draw minimal attention to the Student while still providing the prompting and behavior supports that the Student needed.

Investigative Findings

- The Student's IEP (dated September 16, 2020) reads: [The Student] will receive special education paraprofessional support. The special education para will know and use sign language to support [the Student] during the general education classroom.
- The IEP (dated September 16, 2020) further reads: [The Student] will have a special education paraprofessional who knows and/or is being instructed in sign language for school activities.
- The Student's general education teacher attended the concert, sat in the front row, and supported the Student using sign language and physical prompting as needed to allow the Student to participate during most of the concert (Interview with general education teacher, June 25, 2021).
- The teacher went up onstage when necessary to prompt the student to move to the appropriate space (Interview with general education teacher, June 25, 2021).
- When the Student left the stage with just 10 minutes remaining, the general education teacher saw the Parent receiving the Student and assumed that the Parent was calling the Student to her because the Student was overstimulated (Interview with general education teacher, June 25, 2021).

Summary and Conclusions

For the night of the spring concert, the District took clear steps to ensure that the Student had a 1:1 adult assigned to meet the Student's needs during the duration of the evening. The adult assigned is fluent in sign language and knows the Student well, having worked with the Student for several years and in multiple roles. That individual did not have any other responsibilities, and sat in the front row, prepared to support the Student as needed. The Student clearly became overstimulated in the large auditorium, surrounded by loud noises, and with an audience. The last few minutes when the Student left the stage functioned similarly as the breaks the Student needed earlier in the day.

Based on the evidence, the District provided the 1:1 support services outlined in the Student's IEP dated September 16, 2021, The District appears to have met requirements of 92 NAC 51-007.02 and **no corrective action** is required.

Notice to the 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.