

## COMPLAINT INVESTIGATION REPORT

Complaint Number: 20.21.17  
Complaint Investigator: [Redacted]  
Date Complaint Filed: June 1, 2021  
Date of Report: July 11, 2022

### Issues Investigated

1. Did the District ensure that the Toddler's early intervention services placement was made by the Individualized Family Service Plan (IFSP) Team in accordance with 92 NAC 52-007.03A?
2. Did the District ensure that, to the maximum extent appropriate, the Toddler's placement was made in conformity with the natural environments requirement in accordance with 92 NAC 52-007.06?
3. Did the District provide the Parent with prior written notice in sufficient detail to inform the Parent about the action being proposed and the reasons for taking the action within a reasonable time before the District proposed a placement or the provision of early intervention services for the Toddler, in accordance with 92 NAC 52-009.03B?
4. Did the District ensure that the Toddler was offered FAPE early intervention services in accordance with 92 NAC 52-003.08?

An additional issue was identified during the investigation process. Under the Department's general supervisor authority, this issue has been added.

5. Did the District provide the Parent with a copy of the Toddler's IFSP within seven days after the IFSP meetings on May 17, 2021 and May 28, 2021, in accordance with 92 NAC 52-009.02F3?

### Information Reviewed

#### *From the Parent*

- Complaint received by the NDE on June 1, 2021
- Phone interview with Parent on July 12, 2021

#### *From the School District*

- Letter of Response dated June 24, 2021
- Phone interview with District representative and District attorney on July 20, 2021
- District Exhibits 5a through 7 consisting of the following:
  - Exhibit 5a – IFSPs
  - Exhibit 5b – IFSP Meeting Notices and Agendas

- Exhibit 5c – MDT Evaluation Report
- Exhibit 5d – Communications
- Exhibit 5d – Other Communications
- Exhibit 5e – Teacher Letter to Parents re Summer 2021
- Exhibit 5f – Notices of District Decisions
- Exhibit 6 – Important Information Handbook
- Exhibit 6 – Part C Early Intervention Handbook
- Exhibit 6 – Policies – 7000 – Special Education
- Exhibit 7 – 2020-2021 Preschool Enrollment Counts
- Exhibit 7 – Summer School – Staffing Requests

## **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 Toddler 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. Additionally, a phone interview with the Parent occurred on July 12, 2021 and a phone interview with a District representative and District attorney occurred on July 20, 2021.

This investigation is limited to a review of alleged IDEA violations that occurred not more than one year prior to June 1, 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. Toddler is 3 years old and receives early intervention services through an Individualized Family Service Plan (IFSP) under the disability category of Developmental Delay (District Exhibit 5a and 5c).
2. A Multidisciplinary Evaluation Team MDT Report was completed on December 30, 2019 and determined that Toddler has significant delay in the area of communication development. Based on this verification a need for early intervention services was established (District Exhibit 5c).
3. Toddler's IFSP team met on March 11, 2021, for a periodic review of the IFSP (District Exhibit 5a and 5b).

- a. The following individuals attended the meeting:
    - i. The Parent
    - ii. District representative
    - iii. SLP primary service provider
    - iv. Service coordinator
  - b. The services identified on the IFSP included the following:
    - i. Services Coordination for 15 minutes per month. This service was not in the natural environment due to the Parent selecting a remote service option for the Toddler.
    - ii. Speech/Language Services to be provided for 45 minutes per a 6 month period and provided in the natural environment.
4. On April 8, 2021, the following communications occurred between the Parent and District staff:
- a. The Parent texted the service provider to confirm the receipt of a voice mail message left on April 6, 2021, regarding summer preschool and requested more information about the program if the Toddler didn't have to change to an IEP in order to attend.
  - b. The services coordinator and the Parent spoke by phone to discuss the summer preschool.
    - i. The services coordinator confirmed that the Toddler did not have to change to an IEP in order to attend summer preschool.
    - ii. The Parent was informed that the Toddler's SLP primary service provider would not provide services to the Toddler as the Toddler would receive all services at the preschool.
    - iii. The District had several preschool locations.
    - iv. The Parent wished to consider the Toddler attending the District's preschool over the summer (District Exhibit 5d).
5. On April 9, 2021, the following communications occurred between the Parent and District staff:
- a. The services coordinator emailed the Parent with summer dates, times and possible locations for the summer preschool program.
  - b. The Parent emailed the services coordinator stating that the parents wanted the Toddler to attend the District's summer preschool.
  - c. The services coordinator informed the Parent that information would be submitted to sign the Toddler up for summer preschool.
  - d. The services coordinator informed the Parent that an IFSP meeting would need to be held prior to the Toddler starting the summer preschool program to change the service setting and

- ensure the IFSP adequately addressed the Toddler's needs in the preschool environment (District Exhibit 5d).
6. On May 4, 2021, the following communications occurred between the Parent and District staff:
    - a. The Parent emailed staff wanting to know the school where the summer preschool program would be located for the Toddler before confirming placement. The Parent did not want to let go of the current SLP service provider for the Toddler for a service provider that might not be as wonderful.
    - b. District staff did not have information regarding the location of the preschool as that information was not yet available (District Exhibit 5d).
  7. On May 12, 2021, the following communications occurred between the Parent and District staff:
    - a. District staff emailed a letter to the Parent from the summer preschool teacher regarding the preschool program. The Parent was also provided the names of the SLP who would provide the services for the preschool summer program and the teacher for the program.
    - b. The Parent emailed District staff that the Parent knew both educators and felt much better knowing those individuals since the current SLP would not be providing the direct services to the Toddler at the preschool summer program (District Exhibit 5d and 5e).
  8. An IFSP meeting was held on May 17, 2021 by Zoom (District Exhibit 5a and 5b).
    - a. The following team members participated in the meeting:
      - i. The Parent
      - ii. SLP primary service provider
      - iii. District representative
      - iv. Service coordinator
    - b. The District representative discussed the Toddler's transitioning to a preschool classroom for the summer.
    - c. Following the preschool summer sessions the Toddler would again be served in the home base program through August 2021.
    - d. The Parent's main concern was knowing who the SLP and classroom teacher would be for the summer preschool sessions. This was no longer a concern as the Parent was provided this information.

- e. Toddler's IFSP was reviewed and modified to provide the following services:
  - i. Services Coordination for 15 minutes per month with a start date of May 17, 2021 and an end date of August 31, 2021.
    - 1. This service was not in the natural environment due to the Parent selecting a remote service option for the Toddler. The District was unable to provide services in the natural environment at that time. The District would move to in-person visits upon parent request or when conditions warranted the return to in-person services.
  - ii. Speech language services as follows:
    - 1. From 6/1/21 to 6/6/21 Speech/Language Services would be provided for 45 minutes per a 3 month period in the natural environment at home.
    - 2. From 6/7/21 to 7/23/21 Speech/Language Services would be provided for 15 minutes per a 3 month in the natural environment in the public school setting.
    - 3. From 7/24/21 to 8/31/21 Speech/Language Services would be provided for 45 minutes per a 3 month period in the natural environment at home (District Exhibit 5a).
- f. The IFSP team did not discuss whether the Toddler would be served in the natural environment District's summer preschool program (District Exhibit 5a, 5b).
- g. A copy of the IFSP was not sent to the Parent until June 15, 2021 (District Exhibit 5a).
- h. A Notice of District Decision regarding Request (i.e., prior written notice) was not provided to the Parent to provide notice regarding the modifications made to the IFSP.
- 9. On May 18, 2021, the following communications between the Parent and District staff occurred:
  - a. The services coordinator emailed the Parent, attached the signature page for the meeting on May 17, 2021, and included the service minutes for the Toddler through August in the body of the email as follows:
 

Services Coordination – 5/17/21-8/31/21 – 1 per month for 15 min.

Speech/Language Service – 6/1/21-6/6/21 – 10 per 6 month period for 45 min. (Home base setting)

Speech/Language Service – 6/7/21-7/23/21 – 5 per 3 month period for 15 min. (Public school setting)

Speech/Language Service – 7/24/21-8/31/21 – 4 per 3 month period for 45 min. (Home base setting)

- b. A staff member texted the Parent that staff was in the process of confirming the summer preschool program included both general and special education Toddlers.
    - i. The Parent responded by text and stated “I think we’re not going to send [Toddler]. [Toddler] will go to the Y every day and have both [parents] home all summer.”
  - c. The Parent emailed District staff “[a]fter more reflection, and learning about the pre-k program, we have made the decision as a family not to proceed with [District] pre-k. We will support [Toddler] with YMCA summer camps, and both [parents] are home all summer. We would like to continue our plan through August with [SLP].” (District Exhibit 5d).
10. On May 19, 2021 the following communications between the Parent and District staff occurred:
- a. The services coordinator emailed the Parent to acknowledge the request to withdraw the Toddler from the District’s summer preschool.
    - i. The services coordinator had been instructed to reconvene a meeting prior to June 7, 2021, to adjust the Toddler’s service minutes and provide for the home base.
    - ii. The services coordinator requested that the Parent sign the IFSP e-signature page so that the IFSP could be finalized.
    - iii. The Parent was available for an IFSP meeting on May 24, 2021.
  - b. The Parent emailed the services coordinator for clarification and asked “[w]ould [Toddler] have been in the special education pre-k at [school]? Or would [Toddler] have been with also general education too? The teacher and SLP you referred to me are both special education. I would like clarification.”
  - c. The Parent phoned the services coordinator and asked why the Parent had not been told during the prior IFSP meeting that the Toddler would not be served with children in general education over the summer.
    - i. The services coordinator stated that it was not clear at that time whether children with disabilities would be served with peers over the summer.
    - ii. The Parent stated that the Parent did not want the Toddler to attend summer preschool because the Toddler would not be

- served with peers and the Parent did not believe the Toddler would make any progress (District Exhibit 5d).
- d. The Parent emailed District staff asking if the Toddler would be served in a classroom with only special education Toddlers, or in a classroom with general education Toddlers also, since the teacher and SLP are both special education providers.
11. On May 20, 2021 the following communications between the Parent and District staff occurred:
- a. District staff emailed the Parent and stated "[w]e are serving children with and without disabilities in summer preschool. I am not able to disclose information about the specific make up of classrooms. The teacher's name that was sent to you is the one that is assigned to the [school] classroom which [Toddler] would have attended."
  - b. The Parent responded to staff's email and stated, "I'm not asking you to disclose confidential information that would go against FERPA guidelines. I'm asking under Rule 11, which defines inclusive pre-K, are [District] summer pre-k sites a 50/50 split for general education and special education" (District Exhibit 5d).
  - c. The Parent texted the services coordinator expressing concern that the question regarding whether the preschool program was inclusive was not fully addressed.
    - i. The Parent was not comfortable signing the IFSP signature page from May 17, 2021 or moving forward with another IFSP meeting or preschool placement since the Parent's concern had not been addressed by the District.
  - d. The services coordinator and Parent spoke by phone regarding the Parent's concerns (District Exhibit 5d).
12. On May 21, 2021, the following communications between the Parent and District staff occurred:
- a. The Parent texted the services coordinator asking when District staff would be responding to the Parent's question regarding whether the summer preschool program was inclusive.
  - b. The services coordinator spoke by phone with the Parent.
    - i. The services coordinator agreed to support the Parent by following up on the Parent's concern and ensuring parental rights were followed.
    - ii. The Parent informed the services coordinator that the Parent would not sign the IFSP signature page from the May 17, 2021 IFSP meeting and would not attend the IFSP meeting

- scheduled for May 24, 2021 unless the Parent received an adequate response to the question.
- c. District staff emailed the Parent that “[w]e’ve provided the information and under FERPA, we are not able to disclose any further information.”
  - d. The Parent responded by email and stated, “[s]o to be clear, you’re not able to tell me if the program [Toddler] was assigned is inclusive? (District Exhibit 5d).
13. On May 24, 2021, the following communications between the Parent and District staff occurred:
- a. District staff emailed the Parent and stated that “[f]or summer school this year, we have children with and without disabilities. We are not able to disclose the makeup of the classrooms.”
  - b. The Parent responded to staff’s email and stated, “[o]kay, let me ask it this way – will [Toddler] be served in a ‘nature environment’ at [school]. ‘Natural Environment’ defined by federal and state regulations.”
  - c. The Parent emailed District staff and declined to attend the IFSP meeting scheduled that day as the Parent had not received the requested information regarding the Toddler’s summer preschool placement and access to peers. The Parent stated that “[i]t’s reasonable to know what the environment of [Toddler’s] summer preschool will look like. This should not be a difficult question. Not only do we have the right to know, it’s a federal requirement that as a parent we’re informed if [Toddler] will be in a natural environment, with peer models, or a resource setting.”
  - d. The Parent emailed District staff that the Parent had talked with the Nebraska Department of Education and requested an IFSP meeting to address the Parent’s questions.
  - e. The Parent and services coordinator spoke by phone to schedule an IFSP meeting for May 27 or 28, 2021 (District Exhibit 5d).
14. On May 25, 2021, the following communications between the Parent and District staff occurred:
- a. The services coordinator texted the Parent to arrange an IFSP meeting for May 28, 2021.
  - b. The Parent and services coordinator spoke by phone to confirm the IFSP meeting for May 28, 2021. The services coordinator informed the Parent that additional individuals could be invited to the IFSP meeting by the Parent.



- c. The Parent texted the services coordinator asking if the SLP and classroom teacher from the summer preschool classroom the Toddler was assigned could attend the meeting (District Exhibit 5d).
15. On May 27, 2021, the following communications between the Parent and District staff occurred:
- a. District staff emailed the Parent that an IFSP meeting was scheduled for May 28, 2021.
    - i. The summer preschool teacher could attend, but the SLP assigned to the summer preschool program could not.
    - ii. At the previous IFSP meeting the IFSP was developed to reflect the Toddler's attendance at the District's summer preschool.
    - iii. If the Parent no longer wished for the Toddler to attend the summer preschool, the team would need to update the IFSP to reflect services not in the summer preschool program.
  - b. The Parent responded to staff's email and stated:

"The issue for us is that we need to get the answer on whether [Toddler] would be in a natural environment as defined in regulations. When I asked if it was inclusive or a natural environment, I was not given a direct answer.

Further, I also got feedback from [District] personnel that if [Toddler] wasn't in a natural environment, that it would not benefit [Toddler's] progress in speech. If [Toddler] is in a natural environment at [school], then we would be fine moving forward with preschool. If the setting is not a natural environment, defined by regulations, there's a regulatory requirement that a justification be noted on the IFSP as to why a natural environment was not able to happen. So at our last IFSP [meeting], are you stating that [Toddler] would indeed be in a natural environment at [school]? Or was a justification noted? I refused to sign our last IFSP based on not having transparency to that question.

As his parents, we do not have the information to make an informed decision at this time. There are safeguards in place for families, and we will continue to advocate for [Toddler] now, historically, and moving forward.

We look forward to a productive meeting tomorrow." (District Exhibit 5d).

16. An IFSP meeting was held on May 28, 2021, by Zoom at the Parent's request to discuss concerns and questions regarding Toddler's natural environment as it pertained to Toddler's assigned summer preschool classroom.
  - a. The following individuals attended the meeting:
    - i. The Parent
    - ii. Services coordinator
    - iii. SLP primary service provider
    - iv. District representative
    - v. Preschool supervisor
    - vi. General education teacher (District Exhibit 5a, 5b).
  - b. The District representative discussed the natural environment as it pertained to summer preschool.
  - c. The preschool supervisor was present to discuss the preschool setting and answer questions about the natural environment.
  - d. The Parent's concerns regarding the Toddler's natural environment were discussed, including:
    - i. Being able to make informed decisions as parent and knowing the Toddler will be in a natural environment for summer preschool placement.
    - ii. The justification statement on the IFSP regarding natural environment if the Toddler does not attend a natural environment for summer preschool placement.
    - iii. Concern for transition relating to the Toddler having an opportunity in a natural environment.
    - iv. The option to see a preschool classroom over the summer to observe the environment.
    - v. The changes in services coordinators and service providers during the time the Toddler has been in the District's early intervention program.
  - e. The IFSP team discussed that the Toddler would be in a natural environment in summer preschool. The following justification statement would be added to the Toddler's IFSP and was shared with the Parent:

Our preschool programs are inclusive and include children with and without disabilities. Our summer preschool program is of a shorter duration (5 weeks) and we are not able to guarantee the availability of peers without disabilities in the summer preschool

program (held in June and July) as we are during the preschool program held August through May due to limited availability of peers without disabilities wishing to attend during the summer and limited availability of teachers willing to work during the summer. Regardless of the class composition, [Toddler] will receive the IFSP services in the summer preschool classroom. Parent was given the opportunity to choose a setting other than the [District's] summer preschool setting."

- f. The Parent clarified during the meeting that the Parent did not want information about the District's summer school as a whole, but was requesting information related specifically to the environment at the school where the Toddler was assigned.
  - g. The Parent was informed that the make-up of the classroom regarding Toddlers with disabilities and Toddlers without disabilities could not be provided to the Parent.
  - h. The Parent informed the IFSP team that additional time was needed to consider the Toddler's placement for summer services. The Parent did not believe further information or helpful guidance had been provided by District staff to help the Parent make an informed decision.
  - i. The Parent was informed that the IFSP developed on May 17, 2021, would remain in effect with services in a preschool setting until the team reconvened to determine another location for Toddler's services (District Exhibit 5a; Parent Complaint).
  - j. The services to be provided to the Toddler and the setting for the services remained the same as those set forth in the May 17, 2021, IFSP (District Exhibit 5a).
  - k. A copy of the IFSP reviewed during the May 28, 2021, IFSP meeting was not provided to the Parent until June 15, 2021 (District Exhibit 5a).
17. On June 1, 2021, the services coordinator spoke with Parent by phone to discuss summer services.
- a. The Parent was informed that based on the May 17, 2021, IFSP preschool services from June 7 through July 23, 2021, were in place.
  - b. The Parent reported that the Parent would like to change the Toddler's placement back to home based services.
  - c. An IFSP meeting for June 3, 2021, was arranged by the services coordinator (District Exhibit 5d).

18. An IFSP meeting was held on June 3, 2021, by Zoom at the Parent's request.
  - a. The following team members were in attendance:
    - i. The Parent
    - ii. District representative
    - iii. SLP primary service provider
    - iv. Services coordinator
  - b. A District representative was present as the Parent continued to have questions regarding Toddler's summer preschool placement and whether it was a natural environment, and the Parent wished to change Toddler's services back to home based services.
  - c. The Parent's concerns included the following:
    - i. The Parent was concerned about the amount of transitions Toddler has had with staff changes. Toddler's SLP primary service provider is leaving in July.
    - ii. The Parent did not feel adequate information was provided by the District regarding the composition of the summer school classroom for Toddler in order to make the best decisions about service setting.
    - iii. The Parent requested that Toddler's services on the IFSP end on July 19, 2021, as the current SLP primary provider will no longer be with the early childhood department after that date.
    - iv. The Parent did not want a new provider assigned to Toddler as that would be too many transitions for the Toddler (District Exhibit 5a and 5b).
19. On June 3, 2021, A Notice of District Decision Regarding Request (i.e., Prior Written Notice) was provided to the Parent (District Exhibit 5f).
  - a. The Notice informed the Parent of the following requests that were made:
    - i. End Early Intervention Services for Toddler on July 19, 2021, as the current primary provider will no longer be with the early childhood department after that date and the Parent did not want a new provider assigned to the Toddler as it would be too much transition for the Toddler.
  - b. The Notice informed the Parent of the following proposals to be taken by the District:

- i. The District is willing to assign a new provider once the existing provider leaves on July 19, 2021, as the Toddler remains eligible for early intervention services.
    - ii. The District is willing to accept the Parent's request to end services.
  - c. The Notice informed the Parent of the following options which were accepted or rejected:
    - i. The District considered stopping services on July 19, 2021 but rejected that option because the Toddler has not met all of the outcomes stated on the IFSP and has not been determined to be a child no longer in need of early intervention services.
    - ii. The District is willing to accept the Parent's request to end services.
  - d. The Notice informed the Parent that other factors relevant to the District's decision was the Parent's request to end services. However, the Toddler remains eligible for early intervention services.
- 20. On June 15, 2021, the Parent informed District staff that the Parent would not sign the signature page of the IFSP or indicate consent or refusal and reflect this on the IFSP.
- 21. On June 16, 2021, A Notice of District Decision Regarding Request was provided to the Parent (District Exhibit 5f).
  - a. The Notice informed the Parent of the following requests that were made:
    - i. Provide the percentage of Toddlers with disabilities and without disabilities in the Toddler's assigned summer preschool classroom.
    - ii. Indicate if the Toddler will be in a natural environment if Toddler attends the summer preschool, with a ratio of at least 50% of Toddlers without disabilities in attendance.
  - b. The Notice informed the Parent of the following refusals to be taken by the District:
    - i. The District refused to provide the percentage of Toddlers with and without disabilities in the Toddler's summer preschool classroom, as this violates the Family Educational Rights and Privacy Act (FERPA).
    - ii. The IFSP team discussed the summer preschool classroom is considered a natural environment and proposed the

following statement as the justification for the natural environment:

Our preschool programs are inclusive and include children with and without disabilities. Our summer preschool program is of a shorter duration (5 weeks) and we are not able to guarantee the availability of peers without disabilities in the summer preschool program (held in June and July) as we are during the preschool program held August through May due to limited availability of peers without disabilities wishing to attend during the summer and limited availability of teachers willing to work during the summer. Regardless of the class composition, [Toddler] will receive the IFSP services in the summer preschool classroom. Parent was given the opportunity to choose a setting other than the [District's] summer preschool setting."

- c. The Notice informed the Parent of the following options which were accepted or rejected:
  - i. The District considered sharing the percentage of Toddlers with and without disabilities in the summer preschool classroom, but rejected this option as it violates FERPA guidelines.
  - ii. The District accepts the summer preschool classroom as a natural environment and provided the same justification statement set forth above.
- d. The Notice informed the Parent that other factors relevant to the District's decision included:
  - i. The IFSP team meeting on May 17, 2021, to transition the Toddler from services in the home setting to services in the preschool setting at Parent request.
  - ii. On May 18, 2021, the Parent texted the primary service provided and stated "I think we're not going to send [Toddler]. [Toddler] will go to the Y every day and both [parents will] be home all summer."
  - iii. On May 18, 2021, the Parent emailed the services coordinator and stated "Thank you for letting me know. After more reflection and learning about the pre-k program, we have made the decision as a family nto to proceed with [District] pre-k. We will support [Toddler] with YMCA summer camps, and both [parents] are home all summer. We would like to

continue our plan through August with [primary service provider]."

22. The District's plan for the summer was to staff 15 preschool classrooms at various elementary schools within the District with children with disabilities and without disabilities in attendance. This did not happen for a variety of reasons, including lack of staff, shorter duration, and inability to guarantee availability of peers without disabilities (District response; District staff interview).
23. The District's summer preschool classroom where Toddler was assigned to attend did not have any nondisabled toddlers in attendance and was not a natural environment (District staff interview).
24. The Toddler did not attend the District's summer preschool classroom.

#### **Issue #1**

Did the District ensure that the Toddler's early intervention services placement was made by the Individualized Family Service Plan (IFSP) Team in accordance with 92 NAC 52-007.03A?

92 NAC 52-007.03A states:

007.03A The district or approved cooperative shall ensure that the following individuals participate in each initial IFSP meeting and each annual IFSP Team meeting.

- |          |   |
|----------|---|
| 007.03A1 | A person or persons directly involved in conducting the evaluations and assessments in 92 NAC 52-006;                         |
| 007.03A2 | As appropriate, persons who will be providing FAPE early intervention services under this Chapter to the child or family; and |
| 007.03A3 | A representative of the school district or approved cooperative who has the authority to commit resources.                    |

#### *Allegations/Parent's Position*

The Parent asserts that a request was made to include both the teacher and the speech language pathologist assigned to the Toddler's school at the IFSP meeting on May 28, 2021. The teacher attended, but the SLP did not.

### *District Response*

The District asserts that all required IFSP team members were in attendance at the May 28, 2021 meeting.

### *Investigative Findings*

On May 25, 2021, the Parent asked whether the speech language pathologist (SLP) and classroom teacher for the summer preschool classroom could attend the IFSP meeting scheduled for May 28, 2021 (Fact 14). The Parent was informed on May 27, 2021, that the summer preschool teacher was able to attend the IFSP meeting on May 28, 2021, but the SLP assigned to the preschool program was not available (Fact 15). The SLP who was the Toddler's primary service provider attended the May 28, 2021, IFSP meeting (Fact 16). In addition to the SLP, the Parent, the services coordinator, a district representative, a preschool supervisor, and a general education teacher attended the meeting (Fact 16).

### *Summary and Conclusions*

The IFSP process is similar to the IEP process, mandating that meetings be attended by a designated group of individuals and stressing the importance of parental participation. A district must ensure that the following individuals participate:

- The parent or parents
- The services coordinator responsible for implementing the IFSP
- As appropriate, persons who will be providing early intervention services; and
- A representative of the school district or approved cooperative who has the authority to commit resources. 92 NAC 52-007.03A

In this matter, the District included all of the required team members at the IFSP meeting held on May 28, 2021. While the SLP assigned to the summer preschool program was unable to attend, the SLP who was the Toddler's primary service provider and who provided the early intervention services to the Toddler, attended the meeting.

Based on the information discussed above, the District implemented the requirements of 92 NAC 52-007.03A and **no corrective action** is required.

### **Issue # 2**

Did the District ensure that, to the maximum extent appropriate, the Toddler's placement was made in conformity with the natural environments requirement in accordance with 92 NAC 52-007.06?

92 NAC 52-007.06 states:



007.06 Natural Environments

- 007.06A To the maximum extent appropriate, FAPE early intervention services provided by the school district or approved cooperative shall be provided in natural environments including home and community settings in which children without disabilities participate.
- 007.06B The provision of FAPE early intervention services for any infant or toddler may occur in a setting other than a natural environment only when FAPE early intervention cannot be achieved satisfactorily in a natural environment, as determined by the parent and the IFSP Team.

*Allegations/Parents' Position*

The Parent asserts at the IFSP meeting on May 17, 2021, the make-up of the classroom regarding Toddlers with and without disabilities was not discussed. This information was not provided to the Parent and the Parent was unable to make an informed decision regarding whether the placement was a natural environment. School staff agreed that if it wasn't a natural environment, the Toddler wouldn't benefit from attending.

*District Response*

The District asserts that during the 2020-21 school year it maintained a nearly 50% ration of children in its preschool centers with, and without disabilities. This ratio was difficult to establish in the 2021 summer preschool session and the District gave justification for not being able to guarantee that the preschool program would be in a natural environment setting.

*Investigative Findings*

The Parent was contacted by District staff on April 6, 2021, regarding the Toddler's possible attendance at a District's summer preschool program (Fact 4). The Parent's initial questions regarding the preschool summer program pertained to the location and staffing of the program (Fact 4, 5, 6, 7). At the IFSP meeting on May 17, 2021, the District representative discussed the Toddler's transitioning to a preschool classroom summer program. While the Toddler's IFSP was modified at the May 17, 2021, meeting to reflect attendance at a preschool classroom from June 7, 2021, to July 23, 2021, and provided that the preschool classroom was a natural environment in the public-school setting, the IFSP team did not discuss whether the Toddler would be served in the natural environment in the District's summer preschool program (Fact 8).

Following the IFSP meeting, on May 18, 2021, the Parent informed District staff that the Toddler would not be attending the summer preschool program but would instead be attending a program at the YMCA (Fact 9). After being informed that another IFSP meeting would be required to adjust the Toddler's service minutes and provide for the home base, the Parent inquired whether the Toddler would only receive special education, or whether general education would also be provided if the Toddler were to attend the summer preschool program (Fact 10).

The discussion between the Parent and District staff continued to evolve regarding the summer preschool program, including the Toddler's opportunities to interact with nondisabled peers, and whether the summer preschool program was the natural environment for the Toddler (Fact 10, 11, 12, 13, 15). The Parent was informed by the District that it was unable to provide the make-up of nondisabled Toddlers and disabled Toddlers attending the summer preschool program because of the confidentiality requirements of the Family Educational Rights and Privacy Act (FERPA) (Fact 11, 12, 21).

IFSP meetings were held on May 28, 2021, and June 3, 2021, and during which a District staff discussed natural environment as it pertained to summer preschool (Fact 16, 18). The Parent concerns included being able to make informed decisions and knowing that the Toddler would be in a natural environment for summer preschool (Fact 16, 18).

At the May 28, 2021, IFSP meeting, the Parent clarified that the requested information regarding natural environment related specifically to the environment at the school where the Toddler was assigned to attend the summer preschool program (Fact 16). The IFSP school team members discussed that the Toddler would be in a natural environment in summer preschool and shared a justification statement that would be added to the Toddler's IFSP that provided the District could not guarantee the availability of peers without disabilities during the summer preschool program, but that the Toddler would receive the IFSP services in the summer preschool classroom (Fact 16). The statement was provided to the Parent in a Notice of District Decision Regarding Request dated June 16, 2021 (Fact 21). However, for a variety of reasons, the District's summer preschool classroom where the Toddler would have attended did not have any nondisabled toddlers in attendance and was not a natural environment (Fact 22, 23).

#### *Summary and Conclusions*

Part C of the IDEA requires that early intervention services be provided to the maximum extent appropriate in natural environments. 34 CFR 303.126. "Natural

environments” are defined as “settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of 34 CFR 303.126.” 34 CFR 303.26.

The natural environment provision in Part C of the IDEA is similar to the Least Restrictive Environment (LRE) provision found in Part B of the IDEA. Most of the children in the natural environment setting do not have disabilities. The purpose of ensuring that most of the children in a preschool setting are typically developing children is to ensure that infants and toddlers with disabilities have the opportunity to interact on a regular basis with typically developing children. Letter to Johnson, 10 ECLPR 96 (OSEP 2013).

The District’s Part C Early Intervention Handbook acknowledges the LRE requirement and provides:

The term “LRE” or Least Restrictive Environment is not a talking point in transition planning, it is the law. We are required to discuss the definition of LRE with the family and the differences between Natural and Least Restrictive Environment, but when referring to actual LRE and if this is met, we should be documenting and discussing whether the child has the same social and educational opportunities as their non-disabled peers, and that they have the right to attend a setting where the child would attend if he/she did not have a disability.

The IFSP team determines the service setting for each child. The IFSP is required to contain a statement of the natural environments in which early intervention services will appropriately be provided, and include a justification of the extent, if any, to which the services will not be provided in a natural environment. 92 NAC 52-007.04C2; 34 CFR 303.344.

As the facts in this case establish, the IFSP team did not discuss whether the summer preschool program was a natural environment for the Toddler at the May 17, 2021, meeting, although the modified IFSP provided that the preschool classroom was a natural environment in the public-school setting. Although the Parent initially informed the District after the May 17, 2021, IFSP meeting that the Toddler would not be attending the summer preschool program, this did not preclude the Parent from further exploring the summer preschool program for the Toddler and asking staff for more information regarding the natural environment.

At the May 28, 2021, IFSP meeting, the team discussed natural environment, but the District was unwilling to provide specific information to the Parent regarding the number of toddlers with and without disabilities in the summer preschool

classroom where the Toddler was to be placed, as no toddlers without disabilities were planning on participating in the summer preschool program. The District proposed to insert a statement into the Toddler's IFSP, and provided a Notice of District Decision to the Parent to that effect, but the statement failed to inform the Parent that the summer preschool program would not be a natural environment for the Toddler, as toddlers without disabilities would not be participating.

Further, the District's obligation to provide services in a natural environment is based on the Toddler's individualized needs. The fact that the District may be unable to provide a ratio of toddlers with and without disabilities that meets the definition of a natural environment does not alleviate the District's responsibility to provide a natural environment to the Toddler. If the District was unable to provide the Toddler with an inclusive classroom, the District had an obligation to locate an inclusive classroom placement operated by another entity for placement to meet the natural environment obligation.

Based on the information discussed above, the District failed to fully implement the requirements of 92 NAC 52-007.06 and **corrective action is required**.

#### *Corrective Action*

1. The District must develop and provide training to staff in the District involved in providing early intervention services regarding the definition of natural environments, IFSP teams' obligation to discuss natural environment, the requirement to provide early intervention services in natural environments to the maximum extent appropriate, the circumstances when an IFSP can determine that the provision of early intervention services will not occur in a natural environment, and the statement requirement that each early intervention service is provided in the natural environment of the child or a justification as to why an early intervention service will not be provided in the natural environment.
2. The training and trainer(s) must be approved by the NDE Office of Special Education two weeks prior to the scheduled training.
3. The District must provide Amy Bunnell with copies of the training materials and handouts used and participant sign-in sheets within 10 days after the training(s) occurred.
4. The District shall review and revise, if necessary, the policies, procedures and practices regarding the natural environment requirement as soon as possible but in no case more than seven days after each IFSP meeting.

### Issue #3

Did the District provide the Parent with prior written notice in sufficient detail to inform the Parent about the action being proposed and the reasons for taking the action within a reasonable time before the District proposed a placement or the provision of early intervention services for the Toddler, in accordance with 92 NAC 52-009.03B and 480 NAC 3-008.06 #5?

92 NAC 52-009.03B states:

009.03B Prior written notice and procedural safeguards notice

009.03B1 Except for initial evaluation and assessment, prior written notice must be provided by the school district or approved cooperative to parents a reasonable time before the school district or approved cooperative proposes or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of FAPE early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

009.03B2 The notice must be in sufficient detail to inform parents about:

009.03B2a The action that is being proposed or refused;

009.03B2b The reasons for taking the action; and

009.03B2c All procedural safeguards that are available under 92 NAC 52-009, including a description of mediation in 92 NAC 52-009.05, how to file a State complaint in 92 NAC 52-009.06 and a due process complaint in the provisions adopted under 92 NAC 55, and any timelines under those procedures.

009.03B3 The notice must be written in language understandable to the general public; and provided in the native language, as defined in 92 NAC 52-003.17, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

009.03B3a If the native language or other mode of communication of the parent is not a written language, the school district or approved cooperative must take steps to ensure that:

009.03B3a(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

009.03B3a(2) The parent understands the notice; and

009.03B3a(3) There is written evidence that the requirements of 92 NAC 52-009.03B3a have been met.

480 NAC 3-008.06 #5 states:

3-008.06 IFSP Team meeting and Periodic Review: For each initial and Annual IFSP team meeting and Periodic Review, the services coordinator shall:

5. The contents of the IFSP must be fully explained to the parent(s) and parent(s) must give written consent for the implementation of early intervention services as part of the IFSP. The IFSP provides for the written consent of the parent to provide services to the child and family. If the parent(s) does not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. Although the parent may accept or reject any part of the early intervention services or offered, the child will not

receive services until the parent(s) have signed the IFSP. The early intervention services to which parental consent is obtained must be provided as soon as possible, but no later than 30 days from the date of parental consent.

#### *Allegations/Parents' Position*

The Parent asserts that due to the District's failure to provide information regarding whether the summer preschool program offered to the Toddler was in the natural environment, the Parent was unable to make an informed decision regarding placement.

#### *District Response*

The District asserts that it provided the Parent with a District Decision (prior written notice) regarding the summer preschool classroom issues.

#### *Investigative Findings*

On May 17, 2021, an IFSP meeting occurred during which the Toddler's IFSP was modified to reflect the Toddler's attendance at the preschool summer session from June 7, 2021, to July 23, 2021 (Fact 8, 9). After the Parent informed the District on May 18, 2021, that a decision was made not to send the Toddler to the District's summer preschool program, the Parent was informed that another IFSP meeting was necessary in order to update the Toddler's IFSP to reflect that services would not occur in the summer preschool program (Fact 9, 15). The Parent was informed at the May 28, 2021, IFSP meeting and during a June 1, 2021, conversation that the Toddler's IFSP developed on May 17, 2021, would remain in effect with services in the preschool setting until the team reconvened to determine another location for Toddler's services (Fact 16, 17).

The Parent was requested to sign the signature page and consent form for the IFSP after the May 17, 2021 IFSP meeting on several occasions so that the IFSP could be finalized. The Parent informed District staff that the Parent was not comfortable signing the IFSP from the May 17, 2021, meeting as the Parent's concerns regarding natural environment had not been addressed by the District (Fact 9, 10, 11, 12, 20).

A Notice of District Decision (PWN) regarding Request was not provided to the Parent after the IFSP was modified to address the proposed changes made at the May 17, 2021, IFSP meeting (Fact 8). Although the District sent the Parent two subsequent notices of District decisions, those notices did not address the proposed setting change to the District's preschool summer program, or that the

Toddler will not be able to receive early intervention services unless consent is given (Fact 19, 21).

### *Summary and Conclusions*

A district is required to give the parents of a child with a disability prior written notice (PWN) a reasonable time before the district proposes or refuses to initiate or change the identification, evaluation, educational placement or provision of a free appropriate public education (FAPE) to the child. The purpose of the PWN is to inform parents of a district's final action on a proposal or refusal. It is the district's responsibility to make a final decision and implement any determined change. Letter to Lieberman, 52 IDELR 18 (OSEP 2008).

If a parent does not give consent, a school district must make reasonable efforts to ensure that the parent is fully aware of the FAPE early intervention services that would be available and understands that the child will not be able to receive early intervention services unless consent is given. 92 NAC 009.03A3.

The facts establish that the District failed to provide the Parent with a PWN after the IFSP team modified the Toddler's IFSP on May 17, 2021 to reflect attendance at the District's preschool summer program, and resulted in a failure to sufficiently inform the Parent about the action being proposed by the District and the reasons for those actions. Although the Parent declined to sign the signature and consent form of the IFSP modified on May 17, 2021, the District's obligation to provide PWN after the IFSP team modified the Toddler's IFSP on May 17, 2021, was not contingent on the Parent signing the IFSP. The PWN should have informed the Parent that consent was necessary for the Toddler to continue to receive early intervention services and that the child will not be able to receive early intervention services unless consent is given.

Based on the information discussed above, the District failed to fully implement the requirements of 92 NAC 52-009.03B and 480 NAC 3-008.06 #5 and **corrective action is required.**

### *Corrective Action*

1. The District must develop and provide training to staff in the District involved in providing early intervention services regarding all PWN required elements and the circumstances when PWN is required to be provided to parents of children receiving early intervention services.
2. The training and trainer(s) must be approved by the NDE Office of Special Education two weeks prior to the scheduled training.
3. The District must provide Amy Bunnell with copies of the training materials and handouts used and participant sign-in sheets within 10 days after the training(s) occurred.



4. The District shall review and revise, if necessary, the policies, procedures and practices regarding the provision of PWN to parents with children receiving early intervention services.

#### **Issue #4**

Did the District ensure that the Toddler was offered FAPE early intervention services in accordance with 92 NAC 52-003.08?

92 NAC 52-003.08 states:

003.08 FAPE early intervention services means those early intervention services that are part of a free appropriate public education for a child under 92 NAC 51. Such services must meet the requirements of both 92 NAC 51 and 92 NAC 52.

#### *Allegations/Parents' Position*

The Parent asserts that due to the District's failure to provide information, the Parent was unable to make an informed decision regarding whether the District's summer preschool classroom provided a natural environment for the Toddler.

#### *District Response*

The District asserts that the Toddler's IFSPs were designed to provide the Toddler with FAPE.

#### *Investigative Findings*

All of the investigative findings discussed in issues 1, 2, 3, and 5 are incorporated herein by reference.

#### *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. State regulations require that all early intervention services meet the same FAPE mandates for those children who qualify for an IFSP. 92 NAC 52-003.08.

As discussed in Issue 3, the Parent declined to sign the IFSP after it was modified at the May 17, 2021, IFSP meeting. Because parental consent was not received, the District's obligation to provide FAPE early intervention services ceased.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-003.24 and **corrective action is not required**.

An additional issue was identified during the investigation process. Under the Department's general supervisor authority, this issue has been added and is discussed below.

#### **Issue #5**

Did the District provide the Parent with a copy of the Toddler's IFSP within seven days after the IFSP meeting on May 17, 2021 and May 28, 2021, in accordance with 92 NAC 009.02F3 and 480 NAC 3-008.06 #6?

92 NAC 52-009.02F3 states:

009.02F3	A participating agency must provide at no cost to parents, a copy of each...IFSP as soon as possible but in no case more than seven days after each IFSP meeting.
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480 NAC 3-008.06 #6 states:

3-008.06	For each Initial and Annual IFSP team meeting and Periodic Review, the services coordinator shall:
6.	A written copy of the IFSP will be distributed by the services coordinator to each person attending within seven calendar days of the meeting. Parent(s) must give specific consent for distribution of the IFSP document to any individuals or agencies not on the IFSP team. A written copy of the family assessment will also be distributed to the parent within seven calendar days of the IFSP meeting.

#### *Investigative Findings*

The IFSP team met on May 17, 2021, and reviewed and modified the Toddler's IFSP (Fact 8, 9). A copy of the IFSP was not provided to the Parent until June 15, 2021 (Fact 8). An IFSP meeting was held on May 28, 2021 (Fact 16). A copy of the IFSP was not provided to the Parent until June 15, 2021 (Fact 16).

### *Summary and Conclusions*

An IFSP is required to be provided to a parent as soon as possible, but in no case more than seven days after an IFSP meeting. In this case, a copy of the IFSP was not provided to the Parent within seven days after the May 17, 2021, and May 28, 2021, IFSP meetings. While the District had not received the Parent's signature and consent for the modifications made to the IFSP at the May 17, 2021, meeting, the requirement to provide a copy of the IFSP within seven days after an IFSP meeting is not contingent on receiving parent signature.

Based on the information discussed above, the District failed to fully implement the requirements of 92 NAC 52-009.02F3 and 480 NAC 3-008.06 #6 and **corrective action is required.**

### *Corrective Action*

1. The District must develop and provide training to staff in the District involved in providing early intervention services regarding the requirement to provide a copy of the IFSP as soon as possible but in no case more than seven days after each IFSP meeting.
2. The training and trainer(s) must be approved by the NDE Office of Special Education two weeks prior to the scheduled training.
3. The District must provide Amy Bunnell with copies of the training materials and handouts used and participant sign-in sheets within 10 days after the training(s) occurred.
4. The District shall review and revise, if necessary, the policies, procedures and practices regarding the requirement to provide a copy of the IFSP as soon as possible to the parent but in no case more than seven days after each IFSP meeting.

### **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 electronically as soon as possible following the completion of the corrective actions. All documentation of correction must be sent to:

Amy Bunnell, Part C Co-Lead  
NDE Office of Special Education  
Amy.bunnell@nebraska.gov