

COMPLAINT INVESTIGATION REPORT

Complaint Number: 22.23.09
Complaint Investigator: REDACTED
Date Complaint Received: October 21, 2022
Date of Report: December 19, 2022

Issues Investigated

1. Did the District develop an IEP that considers the results of evaluation data, the academic, developmental, and functional needs of the Student related to the Student's disability? [92 NAC 51-007.07B2]
2. Did the District ensure that the IEP team included all required members as outlined in 92 NAC 51-007.03?
3. Did the District provide special education and related services to the Student in accordance with the IEP? [92 NAC 51-007.02]
4. Did the District ensure that each teacher was informed of his or her specific responsibilities related to implementing the Student's IEP; and the specific accommodations, modifications, and supports that must be provided for the Student in accordance with the IEP? [92 NAC 51-007.02D]

Additionally, the following systemic issues were investigated:

1. Did the District provide special education and related services to all students in accordance with IEPs in their respective math classes? [92 NAC 51-007.02]
2. Did the District ensure that math teachers were informed of their specific responsibilities related to implementing each student's IEP; and the specific accommodations, modifications, and supports that must be provided for each student in accordance with the IEP? [92 NAC 51-007.02D]

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint received by NDE October 21, 2022
- Email correspondence dates ranging from October 13- December 6, 2022
- Phone call with the Complainant December 5, 2022

From the School District

- Letter of Response dated November 16, 2022; received by NDE November 16, 2022
- Notice of Review of Existing Evaluation Data and Parental Right to Request Additional Assessment for Determination of Continued Eligibility for Special Education Services; dated September 30, 2021
- Notices of Individualized Education Program Team Meeting for meetings scheduled September 27, 2022, and October 4, 2022
- Individualized Education Program dated October 4, 2022
- Student Daily Attendance Detail for dates ranging from December 14, 2021, through November 11, 2022
- Grade 05 Report Card for the 2021-22 school year

- Attendance and Grade Summary for Term 1 of the 2022-23 school year
- Special Education Provider Schedule for Term 1 of the 2022-23 school year
- Student Schedule for Terms 1-4 of the 2022-23 school year
- Team Members with access to the Student's IEP in Infinite Campus
- List of all students with an IEP enrolled at the school who take a general education course
- Accommodations List for all students on IEPs at the school (Received with District Response, November 16, 2022)
- Spreadsheet sent to general education teachers in addition to IEPs regarding student needs
- Interview with District Staff conducted Tuesday, November 29, 2022
- Interview with District Staff conducted Monday, December 12, 2022
- Detailed math grades for the fall of 2022
- Email correspondence with District Staff on December 13, 2022

Other Information Gathered

- Survey data collected from a pool of 13 parents regarding the services provided to 9 students enrolled in general education math.

Introduction

This complaint was filed on behalf of a 6th-grade student who is eligible for special education as a student with an Other Health Impairment based on a medical diagnosis of ADHD; as well as a Speech and Language Impairment. In the letter of complaint, the Complainant referenced problems with IEP implementation that have impacted both the Student in question and other students, specifically in one math class. As a result, a brief survey was conducted of the parents of 9 other 6th-grade students with IEPs who have the same math teacher.

Issue # 1

Did the District develop an IEP that considers the results of evaluation data, the academic, developmental, and functional needs of the Student related to the Student's disability? [92 NAC 51-007.07B2]

92 NAC 51-007.07B2 states:

007.07B2	<i>The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.</i>
----------	--

Allegations/Parent Position

The Student's IEP has not been followed.

District Response

The IEPs dated October 21, 2021, and October 4, 2022, include evaluation data from a variety of sources, and the information is outlined on the PLAAFP pages. That information was used in the development of the rest of the IEP (Letter of Response dated November 16, 2022).

Investigative Findings

- Review of Existing Data conducted September 30, 2021, includes the following statement (Notice of Review of Existing Evaluation Data and Parental Right to Request Additional Assessment for Determination of Continued Eligibility for Special Education Services; dated September 30, 2021):
 - *"As a result of this review, it was determined that no additional information was needed and the reason for this determination is: [The Student's] IEP team met to discuss [the Student's] current verification, present levels of performance, and supports needed to be successful in the classroom. After reviewing all documents, the team discussed that a review of existing data shows he continues to verify as a student with speech-language impairment and other health impairment, due to a diagnosis of ADHD."*
- The Present Levels of Academic Achievement and Functional Performance (PLAAFP) in the most recent IEP include the following (IEP dated October 4, 2022):
 - Progress report data on previous goals from May and September 2022
 - MAP Test Data from the Spring and Fall of 2022 in Math, Reading, and Science
 - Concerns of the Parent and other IEP team members (including writing, self-advocacy, organization, work completion and turn-in, staying on task, using accommodations, legibility of handwriting, can be easily distracted, articulation).
- The current IEP includes the following as educational needs (IEP dated October 4, 2022):
 - Flexible scheduling
 - Clarification and repeating of directions
 - Time to process information
 - Highlighter
 - Graphic organizers
 - Consumables
 - Sentence starters when needed
 - Visuals
 - Chunking of information/breaking down multi-step directions/concepts
 - Breaks during long instruction/testing when needed
 - Cloze notes when needed
 - Preferential seating if needed
 - Access to portable keyboard device if needed
 - Checking of understanding of accessibility features on iPad
- The current IEP includes the following as modifications or supports for school personnel (IEP dated October 4, 2022):
 - Consultation with an occupational therapist when needed
- The current IEP includes the following with regard to participation in State and District-wide assessments (IEP dated October 4, 2022):
 - Flexible scheduling
- The current IEP includes the following Goals (IEP dated October 4, 2022):
 - In 36 academic weeks, given adult support, accommodations, and instruction, [the Student] will increase writing skills from a beginner to a

proficient level as shown using a rubric when providing 2-3 details that support and expand the main idea and applying these skills to writing a 5-6 sentence paragraph with appropriate sentence structure and organization in 3 out of 4 quarters.

- In 36 academic weeks, given adult support and practice, [the Student] will improve personal management skills as shown through teacher observations, reporting, and grades by scoring a 2 or higher on an assignment and completing work and turning it in with fewer than 5 missing assignments in a quarter.
- By the end of the IEP period, [the Student] will improve [the Student's] articulation abilities in a variety of settings by self-monitoring [the Student's] speech to ensure [the Student] is accurately stating the /r/ sounds when reading and talking with 85% accuracy as measured by observation and charting by the speech therapist.
- The current IEP outlines the following services (IEP dated October 4, 2022):
 - Speech/language therapy 20 minutes, 3 times each month in the special education setting.
 - Resource support 20 minutes, 10 times each month in the general education setting
 - Occupational Therapy 15 minutes, once per quarter in the general education setting.

Summary and Conclusions

The October 4, 2022, IEP includes a number of sources of data that inform the accommodations, goals, and support for personnel and services listed in the IEP. Specifically, any concerns raised by the Parent at the IEP meeting are addressed within the IEP. These findings suggest that evaluation data was properly used to inform the development of the IEP.

However, some of the conflicts that have arisen are likely due to the fact that a number of the accommodations listed on the IEP are unclear, creating misunderstanding between the parent and the District about what the Student is actually receiving. For example, the accommodation "flexible scheduling" is vague. It is unclear when and how flexible scheduling will be implemented and under what conditions. A number of the accommodations also include the caveat "if" or "when needed." It is unclear how that need is determined and whether the IEP team agrees on when this accommodation will be used.

Based on a comprehensive review of the IEP, the District failed to fully implement the requirements of 92 NAC 51-007.07B2 and thus, the following **corrective action is required**:

Corrective Action

1. Within 30 calendar days, the District shall reconvene the IEP team and clearly outline and define the accommodations that are needed for the Student to access the general education curriculum. The IEP shall be re-written using clear and specific language regarding when and where, under what conditions, and by whom each accommodation will be provided avoiding "when needed" and "if" caveats.

- a. A copy of the revised IEP with updated and clearly defined accommodations along with the prior written notice detailing the changes will be provided to Mary Lenser by January 31, 2023.
2. A random sample of three student IEPs will be reviewed on or before September 20, 2023, to ensure correction has been made.

Issue # 2

Did the District ensure that the IEP team included all required members as outlined in 92 NAC 51-007.03?

92 NAC 51-007.03 states:

007.03 IEP Team Participants

007.03A *The school district or approved cooperative shall ensure and document that each IEP team includes the following:*

007.03A1 *The parents of a child with a disability or documentation of 92 NAC 51-007.06D*

007.03A2 *Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);*

007.03A2a *The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development, review, and revision of the IEP of the child, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with 92 NAC 51-007.07A5*

007.03A3 *Not less than one special education teacher, or where appropriate, not less than one special education provider of the child;*

- 007.03A4 *A representative of the school. District or approved cooperative who:*
- 007.03A4a *Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;*
 - 007.03A4b *Is knowledgeable about the general education curriculum; and*
 - 007.03A4c *Is knowledgeable about the availability of resources of the school district or approved cooperative.*

Further, 92 NAC 51-007.04 states:

007.04 IEP *Team Attendance*

- 007.04A *A member of the IEP team described in 92 NAC 51-007.03A2 through 007.03A5 shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district or approved cooperative agree, in writing, that the attendance of such a member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.*
- 007.04B *A member of the IEP team in 92 NAC 51-007.04A may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:*
 - 007.04B1 *The parent, in writing, and the school district or approved cooperative consent to the excusal; and*
 - 007.04B2 *The member submits, in writing, to the parent and the IEP team, input into the development of the IEP prior to the meeting.*

Allegations/Parent Position

The Parent alleges that at the most recent IEP meeting, most participants left after just 5 minutes, and the remainder of the meeting was held between the parent and 2 other school individuals (Letter of Complaint, received by NDE October 21, 2022).

District Response

An IEP meeting was originally scheduled for September 27, 2022, virtually. When the Parent joined the virtual meeting on that date, the Parent stated that an in-person meeting was preferred. The District offered some options and the Parent selected October 4 at 8:45 am. The District noted that teachers begin teaching at 9:15, so an earlier meeting would be preferred so that all general education teachers could participate. The Parent instead, agreed to excuse all general education teachers at 9:10 from the meeting. The Parent then arrived 10 minutes late to the October 4 meeting. As previously agreed, the general education teachers were excused at 9:10 after providing input (Letter of Response, dated November 16, 2022).

Investigative Findings

- Notices of the meeting indicate an originally scheduled virtual meeting on September 27, 2022, and a rescheduled meeting on October 4, 2022 (Notices of Meeting dated August 29, 2022, and September 27, 2022, respectively).
- Though general education teachers were excused to teach at 9:10, no formal excusal was completed to document the Parent's verbal agreement to have a general education teacher excused from the IEP meeting (Interview with District Staff conducted November 29, 2022).

Summary and Conclusions

Rule 51 states that at least one general education teacher is required as part of the IEP team. The purpose of their participation is to provide input into the development, review, and revision of the IEP including behavioral interventions, supplementary aids and services, program modifications, and supports they may need to implement the IEP. While the Parent may have verbally agreed to excuse these members from the meeting, the issues raised in this complaint are all related to the general education setting, and problems may have been prevented had general educators been present to participate in the development of the IEP.

Based on the above, the District failed to fully implement the requirements of 92 NAC 51-007.04. Thus, the following **corrective action is required**.

Corrective Action

1. The District shall conduct training that includes all school and district administrators as well as all special education case managers reviewing the requirements for the composition of an IEP team and the procedures for excusal when appropriate.
 - a. This training should be provided by January 31, 2023.
 - b. Training materials must be provided to Mary Lenser for approval two weeks prior to training or by January 17, 2023
 - c. Attendance sign-in sheets or other verification of attendance including name and role of attendees will be provided to NDE as proof of training by no later than February 5, 2023.
2. A random sample of three student IEPs will be reviewed on or before September 20, 2023, to ensure correction has been made.

Issue # 3

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

92 NAC 51-007.02 states:

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

Allegations/Parent Position

The Parent alleges that the Parent has had discussions with teachers that the Student can turn in late work. The math teacher refused to allow the Student to turn work in past the due date.

District Response

The District generally has flexible practices with regard to all students turning in late work up until mid-term or quarter deadlines, which represent the end of a grading period (Interview with District staff November 29, 2022).

Investigative Findings

- The student's current IEP does not include any provision for the acceptance of late work. (IEP dated October 4, 2022)
- In the 44 school days prior to the date, this complaint was filed, the Student missed 7 full days and 7 partial days of school. (Attendance record for the fall of 2022)
- During this same time period, the Student submitted one of nine math assignments. Seven assignments are marked "missing" and one other is marked "incomplete." (Detailed math grades for the fall of 2022)
- The Parent sent an email on October 13, 2022, outlining continued concerns with the Student's math teacher, though did not formally request an IEP. (Email correspondence with District Staff on December 13, 2022)
- The following day, on October 14, 2022, the Parent again sent an email specifically asking when an IEP would be scheduled. (email dated October 14, 2022)
- The District responded and offered October 18 or October 24 as dates to meet (Email correspondence with District Staff on December 13, 2022)
- The Parent met with the Principal and the Student's case manager on both dates (October 18 and 24) and the District believed the concerns had been resolved, however, neither of these meetings was formal IEP meetings. (Email correspondence with District Staff on December 13, 2022)
- A mediator for the District reached out to the Parent on November 7 and November 9, 2022, to attempt to schedule a mediation between the District and the Parent. (Email correspondence with District Staff on December 13, 2022)
- The Parent agreed to meet on November 11, 2022, but then did not attend. (Email correspondence with District Staff on December 13, 2022)
- The District emailed on November 16, 2022, offering November 29 for an IEP meeting. The Parent agreed. (Email correspondence with District Staff on December 13, 2022)
- The District sent reminders and a draft IEP on November 18 and November 28, 2022. (Email correspondence with District Staff on December 13, 2022)

- The Parent did not attend the IEP meeting scheduled for November 29, 2022. (Email correspondence with District Staff on December 13, 2022)
- Additionally, the Parent agreed to mediation on November 28, 2022, and did not attend. (Email correspondence with District Staff on December 13, 2022)

Summary and Conclusions

While flexible practices may have been implemented in the past, the Student's IEP does not specifically provide for the acceptance of late work. While the IEP team may need to consider whether this is an important accommodation to formalize as part of the IEP, it does not constitute a violation of the current IEP.

Further, the Student's poor attendance means that he has not been available for instruction, a factor that is important to consider in developing accommodations that are related to the Student's disability. Regular school attendance is crucial to all students learning and can have an especially significant impact on math.

The District has shown a timely response and offers to meet with the Parent to resolve these concerns, though it is clear that these conversations need to take place within the context of an IEP meeting. The District attempted to resolve issues outside this context initially, though eventually, made repeated attempts to reconvene the IEP team in an effort to clarify the Student's needs and resolve conflict. The Parent has not cooperated with these attempts.

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

Issue #4

Did the District ensure that each teacher was informed of his or her specific responsibilities related to implementing the Student's IEP; and the specific accommodations, modifications, and supports that must be provided for the Student in accordance with the IEP? [92 NAC 51-007.02D]

92 NAC 51-007.02D states:

007.02D *Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.*

Allegations/Parent Position

Because the Parent alleged that the Student's math teacher has not implemented the Student's IEP, this investigator sought to ensure that the teacher had been made aware of the Student's IEP and the teacher's specific responsibilities related to IEP implementation.

District Response

The District has several procedures used annually to ensure general education teachers are aware of their specific responsibilities related to IEP implementation for all students receiving special education services.

Investigative Findings

- On August 15, 2022, the Student's general education teachers were all provided access to the Student's IEP in Infinite Campus (the District's student information system) (District Response dated November 16, 2022).
- General education teachers are expected to review students' IEPs prior to the beginning of the school year
- On August 16, 2022, an email was sent to all staff working with the Student by the Student's IEP case manager. This email drew the teacher's attention to the Student's IEP.
- A follow-up email was sent on August 31, 2022, informing these same teachers of the specific accommodations, modifications, and supports in the Student's IEP. This document reads "These accommodations are mandatory and must be followed per the student's plan"
 - The accommodations listed include Text to Speech/ Read Aloud, Computation Support, Visuals, and preferential seating (Accommodations List received November 16, 2022).

Summary and Conclusions

The above reveals repeated efforts on the part of the District to make the Student's general education teachers aware of his IEP and the specific accommodations outlined in the Student's IEP. The concerns that the Parent has raised are not accommodations that have been included in the Student's IEP, and therefore, were not required of the general education teacher.

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

Issue # 5

Did the District provide special education and related services to all students in accordance with IEPs in their respective math classes? [92 NAC 51-007.02]

92 NAC 51-007.02 states:

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

Allegations/Parent Position

See allegations from Issue 4.

District Response

See District Response from Issue 4.

Investigative Findings

A survey was sent by email to 13 parents of 9 students with IEPs who have the same math teacher. This survey asked the following questions:

1. Does your child have needs in math that are included in their IEP?

2. Have special education and related services been provided as outlined in your child's IEP in their math class as appropriate?
3. Do you have any additional comments about your student's experience in math, specifically related to their need for accommodation or modification as outlined in their IEP?

Three responses were provided. Two of the 3 respondents reported no problems, though one respondent responded "no" to question #2 and provided the following comment to question #3:

He is not participating and is telling us that no one is helping him at all.

Summary and Conclusions

While response findings are limited, it is clear that there is a minimum of one other student who is enrolled in a math class with the teacher who has been identified as part of this complaint as providing inadequate support.

Based on this response, it is likely that systemic problems exist within the District with regard to the implementation of 92 NAC 51-007.02 specifically within the math class identified. Thus the following **corrective action is required**.

Corrective Action

1. The District shall conduct comprehensive file reviews of all IDEA-eligible students participating in this teacher's math classes. The District shall also consider each student's eligibility, individual needs, and IEP and determine if the IEP appropriately addresses these students' needs in math. IEP meetings shall be held for any of these students for whom IEP accommodations are unclear or not adequately specified and revised to make the required accommodations clear for all IEP team members.
 - a. A summary of the results of the comprehensive review must be submitted to Mary Lenser for verification of completion by February 28, 2023.
 - b. The summary must include actions taken based on the review and timelines for when the district will complete any actions determined necessary by the review.
2. The teacher in question shall participate in individualized training to ensure that IEPs are properly implemented in the math class.
 - a. Materials verifying training that took place must be provided to Mary Lenser by January 31, 2023.

Issue # 6

Did the District ensure that math teachers were informed of their specific responsibilities related to implementing each student's IEP; and the specific accommodations, modifications, and supports that must be provided for each student in accordance with the IEP? [92 NAC 51-007.02D]

Allegations/Parent Position

See allegations from Issue 4.

District Response

See District Response from Issue 4.

Investigative Findings:

The District has in place clear procedures to ensure that general education teachers are informed and aware of their individual responsibilities with regard to the implementation of IEPs within their classrooms. These procedures include the following:

- Prior to the start of the school year, general education teachers are provided access to students in their classes' IEPs in Infinite Campus (the District's student information system). (District Response dated November 16, 2022)
- General education teachers are expected to review students' IEPs prior to the beginning of the school year. (District Response dated November 16, 2022)
- Case managers email all staff working with students on their caseload in an effort to draw teachers' attention to the IEPs they are responsible for.

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

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

Mary Lenser, Complaint Specialist
NDE Office of Special Education
nde.speddr@nebraska.gov