

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 22.23.10  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** November 8, 2022  
**Date of Report:** January 5, 2023

### Issues Investigated

1. Did the District implement the Student's out-of-state IEP and provide related services to the Student in accordance with the IEP? [92 NAC 51-007.02; 92 NAC 51-007.02A; and 92 NAC 51-007.08B].
2. Did the District conduct an appropriate evaluation for the Student? [92 NAC 51-006.02 and 92 NAC 007.08B1].

### Information Reviewed by Investigator

#### *From the Parent*

1. A parent letter, re: complaint, Received November 8, 2022
2. Parent/Guardian Consent of for Evaluation, 9/28/22
3. Informal fluency assessment, no date
4. District letter to Parent, re: retention decision, 10/3/22
5. District letter to Parent, re: retention decision, 10/7/22
6. NSCAS assessment results, 2022-2023
7. Meeting Notice, re: IEP & multidisciplinary team (ADT), 9/19/22
8. Parent statement, re: disagreement with team decision, no date
9. Prior Written Notice, re: out-of-state IEP transfer and change of placement, 9/28/22
10. The complaint, re: Title 92, Chapter 28, 10/3/22

#### *From the School District*

1. Letter of Response from District Superintendent, dated Letter of Response from District Director of Accountability, dated 11/21/22
2. District Response, 12/6/22
3. Parent NDE report requested documentation landing page, December 2022
4. District Special Education Procedures, no date
5. MDT evaluation process: Out of State Process (link), no date
6. IEP Process: Initial IEP, no date (link), no date
7. Special Education Procedures Manual, no date
8. Out of state transfer page 152-, no date
9. Sped procedures and paperwork cheat sheet, no date
10. 5100 enrollment of students, no date
11. Parent contact log, no date
12. Parent resource supports, no date
13. Contact log, no date
14. Student work samples, 11/18/22
15. Student history-all assessments, 2022-2023
16. Grade 3 unit 3 district math CFA, no date
17. Fall conferences, no date
18. Blank
19. District Primary Mathematics Diagnostic Interview, no date
20. Student profile, re: math, Fall 2022-23
21. Student profile, re: reading, Fall 2022-23
22. The family report, re: batch PDF summary,
23. Blank
24. The family report, re: batch PDF summary
25. 2nd Grade ELA Standards and Indicators, no date
26. Attendance report, 9/26/22-11/30/22
27. School Elementary, Student enrollment profile, no date

28. Multidisciplinary team (MDT), 12/7/22
29. Parent/Guardian Consent for Individual Evaluation
30. Notice of Change of Special Education Services, 4/8/20
31. Multidisciplinary team (MDT), 2/25/21
32. Meeting Notice, re: annual IEP and MDT, 9/12/22
33. Former district IEP Meeting Notice, 11/9/21
34. Former district Individualized Education Program (IEP), 11/23/21
35. Former district Student Profile Snapshot, 11/23/21
36. Former district Alternate Assessment Worksheet, 11/24/21
37. Former district ESY Data Documentation, 11/24/21
38. Participants, re: Student's IEP, 11/23/21
39. IEP Objectives, 11/23/21
40. IEP amendments, no date
41. Interviews of staff, 12/14/22
42. District Response, 12/2/22
43. Report Selections, re: McGraw Hill Wonders 2017
44. Requested documentation landing page, December 2022
45. Invitation to complete the questionnaire, 11/23/22
46. email, re: school Student transfer request, 9/23/22
47. email: requesting info for returning student, 8/17/22
48. email, re: phone message, 8/19/22
49. email, re: IEP (Student-3rd), 9/15/22
50. email, re: IEP meeting notice, 9/9/22
51. email, re: IEP meeting to schedule, 9/1/22
52. email, re: IEP mtg (Student-3rd), 9/27/22
53. email, re: IEPs, 8/25/22
54. email, re: para Times, 8/15/22
55. email, re: rating scales to be completed, 11/28/22
56. email, re: Student, IEP copy, 8/15/22
57. email, re: IEP (Student-3rd)
58. email, re: IEP meeting to schedule, 9/1/22
59. email, re: IEP meeting, 8/22/22
60. email, re: Student, 9/28/22
61. email, re: Student IEP from the former district, 8/17/22
62. email, re: Student team, 8/18/22
63. email, re: Student, 8/29/22
64. email, the Parent stopped in regarding the issue, 8/18/22
65. email, Resource Teacher's to-do list..., 8/12/22
66. Recording Form, re: oral reading, 8/16/22
67. Recording Form, re: oral reading, 10/21/22
68. Blank
69. Recording Form, re: oral reading, 10/21/22
70. Blank
71. Recording Form, re: oral reading, 10/24/22
72. Blank
73. Recording Form, re: oral reading, 12/1/22

### **Introduction**

On November 8, 2022, the Nebraska Department of Education (the Department) received a written request for a special education complaint investigation from the Parent of a student (Student) residing in the District. The Parent requested that the Department conduct a special education investigation under 92 NAC 51-009.11C3. The Department confirmed receipt of this Complaint and forwarded the request to the District. Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of

receipt of the complaint.[1] This timeline may be extended if the Parent and the School District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint. On November 21, 2022, the Department sent a Request for Response (RFR) to the School District identifying the specific allegations in the Complaint to be investigated and establishing a Response due date of December 6, 2022.

The District submitted a Response on December 6, 2022, providing an explanation, and submitting documents in support of the District's position. The District disputed the allegations and requested that the complaint be dismissed. The Department considered the District's request to dismiss the complaint and determined that there was sufficient evidence to proceed with the investigation. Because Rule 51 does not address the retention of students, the investigation did not include this portion of the Parent's allegation.

### Findings of Fact

1. During the 2019-2020 school year, the Student was enrolled in one of the District's elementary schools as a kindergartener. The Student's out-of-state IEP was implemented, pending the completion of the initial Nebraska evaluation process. The school team also expressed concerns with the parents related to the Student's age. With a birthdate of September 26, 2014, the Student did not meet the identified Nebraska kindergarten entrance age of 5 years old on or before July 31st of the calendar year in which the school year for which the child is seeking admission begins per Nebraska Revised Statute 79-214." At the end of the 2019-2020 school year, the Parent declined the District's recommendation that the Student be retained and repeat their kindergarten year. **(D1-D2)**
2. On February 25, 2021, the District completed the initial evaluation process and the Student was found eligible for special education and related services due to a specific learning disability. **(D4, D108-D118)**
3. The Student transferred to another state in April of 2021 and "it appears that the Student was educated out-of-state for the rest of the 2020-2021 school year and the entire 2021-2022 school year." The Student returned to the District on the first day of school on August 10, 2022. The Student was enrolled as a third grader. **(D2, D93)**
4. On August 19, 2022, the Parent contacted the District with concerns about the IEP services the Student was receiving. **(D166, D202)**
5. "The Student's IEP team initiated services as a move-in student from another state under the out-of-state IEP dated November 23, 2021." This IEP included the following provisions:
  - a. Accommodations-strategies to improve attention to directions, flexible seating, opportunities for turn-taking and social skills, movement breaks, providing specific positive feedback, token economy, calm down space, and opportunities to be a helper and offered choices;
  - b. Specialized instruction- 120 minutes per week for literacy, 120 minutes per week for math, and 90 minutes monthly for mental health; and
  - c. Placement-general education class at least 80% of the time. **(D2, D123-D139)**The District provided comparable services to the services described in the November 23, 2021, out-of-state IEP for the math instruction and increased both the literacy instruction by 80 minutes per week and the mental health instruction by 30 minutes per week, **(D3, D150)**
6. The 2022-2023 beginning of the year assessments indicated the Student had the following present levels of academic performance:
  - a. spell kindergarten-level words with 46% accuracy and spell first-grade-level words with 24% accuracy;
  - b. read 8 words per minute correctly when reading at the third grade-level passage; and
  - c. 63% accuracy when completing math problems at the second-grade level and 47% accuracy when completing math problems at the third-grade level. **(D18, D30-D41, D24-32, D48-57, D58-83)**
7. "On September 28, 2022, a legally convened IEP Team that included the Parent, met to review the current IEP and to gain consent for special education evaluation...and, ongoing progress in the general education classroom and on IEP goals was shared with the parents." **(D2, D4, D103-D105, D120-D121)**

8. On September 28, 2022, the District issued a Prior Written Notice (PWN) that described the District's decision to place the Student in second grade. The PWN also includes that the IEP team could not reach a consensus due to both Parents' disagreement with the decision to retain the Student and the District Representative made the final determination. **(P15-P16)**
9. On September 28, 2022, the Parent wrote the following statement on the Notice of Team Meeting, "I disagree with the IEP team's decision to move my child out of 3rd grade into second grade. The Principal at the School has a personal problem about the Student being in the 3rd grade and keeps on picking at us. This letter is to the director of special education." **(C13-C14)**
10. Prior to the 2022 fall conferences, the Student's classroom teacher spoke with the Parent and shared concerns about the Student's enrollment in the third grade. These concerns included:
  - a. behaviors such as not sitting in chairs correctly, making noises, sleeping, and avoiding using the restroom;
  - b. the Student was the youngest in the class by one-two years, and struggled academically;
  - c. the Student shared, "I can't read, spell or do math" and wanted to be in the second grade. **(D41-D46, Staff 1, P2, 2:32)**
11. On October 3, 2022, the District's Special Education Director provided the Parent with a letter describing the District's decision to uphold the School's decision to retain the Student and change the Student's grade placement from third grade to second grade. The reason for retention was attributed to, "the Student's academic and socio-emotional functioning is far behind current peers and would fit better within 2nd grade." **(P6)**
12. On October 7, 2022, the District's Associate Superintendent provided the Parent with a letter that also upheld the school's decision to retain the Student. **(D8-D9)**
13. On October 17, 2022, the Student's grade placement was changed from third grade to second grade. **(D93)**
14. The Student received weekly instruction in reading, writing, math, and social skills as follows:
  - a. Specialized Literacy Instruction (200 minutes/weekly);
  - b. Specialized Math Instruction (120 minutes/weekly); and
  - c. Mental Health (90 minutes/monthly).
 The Student's special education case manager and general education teacher both demonstrated knowledge of the Student's accommodations as outlined on the IEP and provided examples of how the accommodations were provided in the school setting. **(D4, D15, D18-D21, Staff 1, P3-P6, 3:30-10:22, Staff 2, P1-P6, 1:36-11:08)**
15. On November 8, 2022, the Parent filed a Complaint.

**Issue # 1**

Did the District provide special education and related services to the Student in accordance with his IEP?

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.*

007.02A *At the beginning of each school year, each school district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction.*

92 NAC 51-007.08 states:

007.08 *Programs for Children who Transfer School Districts or Approved Cooperatives*

007.08B *Transfer from outside the state – If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a school district or approved cooperative in Nebraska, and enrolls in a new school within the same school year, the new school district or approved cooperative (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the*

child's IEP from the previous school district or approved cooperative), until the new school district or approved cooperative:

007.08B2                      *Develops, adopts, and implements a new IEP, if appropriate, that meets the requirements of 92 NAC 51-007.*

*Allegations/Parent Position*

The Parent alleged that the Student did not receive the support and related services in accordance with the IEP when the Student moved into the District from another state. The Parent further alleged that the District did not consider the Parent's input before retaining the Student in second grade. The Parent asserted that the Student was not afforded the opportunity to access appropriate, third-grade level instruction and that District staff showed no regard for the Student's IEP.

*District Response*

The District asserted that an IEP was in effect and had been implemented by providing the Student with special education and related services per 92 NAC 51-007.02. The District provided the Student with a free and appropriate education as a transfer student from another state per 92 NAC 51-007.08B by providing special education services comparable to those described in the prior District's IEP, dated November 23, 2021.

*Investigative Findings*

Upon the Student's enrollment on August 10, 2022, the District implemented the Student's out-of-state IEP and provided comparable services and accommodations while the Student was undergoing an evaluation to determine Nebraska eligibility for special education.

*Summary and Conclusions*

The District implemented the requirements of NAC 51-007.02 and 92 NAC 51-007.08B, and no corrective action is required.

**Issue #2**

Did the District conduct an appropriate evaluation for the Student?

92 NAC 51-006.02 states:

006.02                      *General Evaluation Requirements:*

006.02A                      *The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.*

006.02B                      *Consistent with the consent requirements in 92 NAC 51-009.08A, a parent of a child, the Nebraska Department of Education, another State agency or a local school district, or an approved cooperative or nonpublic school may initiate a request for an initial evaluation to determine if the child is a child with a disability.*

92 NAC 51-007.08B states:

007.08B1                      *Conducts an evaluation pursuant to Section 006 of this Chapter (determined to be necessary by the new school district or approved cooperative).*

*Allegations/Parent Position*

The Parent alleged that the District did not sufficiently evaluate the Student. " I know that they hadn't tested (them) or anything prior to them moving (the Student) back to the second grade." (**Parent, P1, 16:46**). The Parent noted that the District used assessment results they received from the prior District. "Well,

they had one from the prior District), but that's the only one they were going off of is the one from (prior state). They had not one [IEP] in Nebraska at that time." **(Parent, P1, 17:15)**

#### *District Response*

The District asserted that a special education evaluation was initiated at the time the Student was enrolled in the District and was in the process of completing a comprehensive evaluation.

#### *Investigative Findings*

The District conducted a special education evaluation on February 25, 2021, before the Student left the District to reside out of state. Upon the Student's return to the District on August 10, 2022, the District conducted a variety of curriculum-based and districtwide assessments to determine the Student's present level of performance. The District also noted that the Student's evaluation had not been updated by the out-of-state district. On September 28, 2022, consent was received by the Parent to conduct a new special education evaluation. Consent was received, the evaluation was completed, and reviewed with the Parent at an eligibility meeting on December 7, 2022, which is within the allowable timeline to conduct a special education evaluation.

#### *Summary and Conclusions*

Based on the above investigative findings, the District did not violate IDEA and does not need to provide corrective actions. The District implemented the requirements of 92 NAC 51-006.02 and 92 NAC 007.08B1 and no corrective action is required.

#### **Notice to District**

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