



TEL 402.471.2295
FAX 402.471.0117



P.O. Box 94987
Lincoln, NE 68509-4987



education.ne.gov



[Redacted]

[Redacted], Superintendent
[Redacted]
[Redacted]
[Redacted], NE [Redacted]

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[Redacted], NE [Redacted]

Dear Mr. [Redacted] and Ms. [Redacted]:

On March 9, 2023, the Nebraska Department of Education, Office of Special Education (OSE) received a letter of complaint filed on behalf of [Redacted], a student enrolled at [Redacted], by [Redacted], Jeriko's parent. The complaint included the following allegations:

- The student's IEP is not being implemented to best serve [Redacted] needs.
- The parent requested an IEP meeting and was told that they (parents) were unable to request one and that everything was in place to help the student succeed with the school year.
- During an IEP meeting, the school shared the following:
 - The student is missing many assignments.
 - The student is in some classes, including classes for which the Student receives special education services.
 - The student is missing a great deal of class due to going to the nurse's office frequently.
 - [Redacted] Special Education Coordinator, a member of the Student's IEP team, told the Student "I don't think you need special education, I think you are just lazy." The Special Education Coordinator then asked the Student to clarify [Redacted] understanding of the statement. The student responded, "I don't need special education because I am lazy."
 - When Parents referenced Student's disabilities identified in the comprehensive psychodiagnostic evaluation that parents had provided to [Redacted]ry, the Special Education Coordinator stated that he had never seen nor heard of the evaluation and it was revealed that the evaluation was misfiled.
- During parent/teacher conferences, the Student's Humanities teacher asked the Parent if Student was still receiving services in her class. She stated that Student's special education teacher was no longer coming into class to assist Student and had not been coming since the beginning of the semester. Subsequently, the special education teacher explained that this was a miscommunication but told

Parent that she agreed that it was a good choice to NOT receive help in Humanities.

- The student's communication log shows that the Student was allowed to sleep through Humanities on February 23, 2023, and March 2, 2023. The parent reached out to the Special Education Coordinator on February 24, 2023, and has not received any response as of the time the complaint was filed.
- Since the last IEP meeting, the Student is struggling emotionally and is exhibiting more behaviors because [Redacted] doesn't feel worthy of help.

Issues Identified for Investigation

Based on the allegations, OSE identified the following issues to be investigated:

1. Whether the District conducted a thorough evaluation of the Student including information provided by parents pursuant to 92 NAC 51-006.02C5.
2. Whether the District developed, reviewed, and revised IEPs to meet Student's unique needs pursuant to 92 NAC 51-007.01; 92 NAC 51-007.02; 92 NAC 51-007.07A1; 92 NAC 51-007.07B1 and 2; and 92 NAC 51-007.10.
3. Whether Student's IEP was in effect and implemented according to the requirements set forth in Rule 51 pursuant to 92 NAC 51-007.02A, 92 NAC 51-007.09(B) and (C) and 92 NAC 51-009.04A3.
4. Whether the District's errors, or omissions, result in a denial of FAPE pursuant to 92 NAC 51-004.01.

Complaint Resolution

In its March 21, 2023, letter to Ms. [Redacted] and letter to the district, opening the complaint investigation, OSE indicated that one of the components of complaint investigation requires OSE to permit the district to propose a resolution to OSE to resolve the complaint. The district has proposed a resolution to OSE to resolve the complaint and OSE has accepted that resolution. OSE Issues this written decision that addresses each allegation in the complaint and contains findings of fact and conclusions; and the reasons for OSE's final decision. OSE will follow up on this final decision ensuring and verifying that the district completes all resolution activities within stated timelines.

Findings of Fact

The Letter of Complaint, dated March 9, 2023, stated the Student was found eligible as a student with a specific learning disability in the areas of written expression and reading. It also stated the Student also has severe Attention Deficit Hyperactive Disorder (ADHD), Posttraumatic stress disorder (PTSD), and sleep disturbance (Letter of Complaint dated March 9, 2023).

At the School's Open House at the beginning of the school year, the Parent requested an IEP Team meeting and was told by the Special Education Coordinator, an IEP Team meeting couldn't be requested and that the School had everything in place to help the Student succeed during the school year (Letter of Complaint dated March 9, 2023).

When the IEP Team met, it was made clear the Student was missing multiple assignments and failing multiple classes, including classes in which the Student's IEP indicated the Student was to receive special education services (Letter of Complaint dated March 9, 2023). During the meeting, the Special Education Director called the Student lazy, which the Student repeated back (Letter of Complaint dated March 9, 2023). The father inquired about the Student's disabilities and the comprehensive psychodiagnostic evaluation that the mother provided to the school (Letter of Complaint dated March 9, 2023). The Special Education Coordinator indicated district staff had not seen or heard of this outside evaluation (Letter of Complaint dated March 9, 2023). A district investigation later revealed the outside evaluation had inadvertently been misfiled, but the MDT team had considered it and documented its consideration.

During Parent/Teacher Conferences, the Student's Humanities teacher asked the Parent if the Student was still receiving special education services. The Student's Humanities class consists of reading and writing and requires support as indicated in the Student's IEP. According to the Humanities teacher, [Redacted], the special education teacher, was no longer coming into class, as documented in the IEP, to assist Jeriko and hadn't been since the beginning of the semester. The communication log showed that the Student was allowed to sleep through Humanities class. (Letter of Complaint dated March 9, 2023)

In its Letter Proposing a Resolution to this complaint to OSE, dated March 30, 2023, the District stated it conducted its own investigation into this complaint and found the following:

- The IEP Team did not develop a behavior intervention plan (BIP) during the Student's January 19, 2022, reevaluation which described the Student's issues of struggling academically along with avoidance behaviors including sleeping in class and going to the nurse's office frequently.
- From the beginning of the 2022–23 school year until February 4, 2023, the District did not provide the Student's IEP minutes in their entirety.
 - The Student's IEP specified special education services 18 times per month for 60 minutes each session.
 - The Student received only 50-minute sessions.
- The Multidisciplinary Team (MDT) reviewed the outside psychodiagnostic report the Elementary School conducted. OSE received copies of the MDT and came to the same conclusions.
 - The MDT report contained references to the psychodiagnostic report.
 - The MDT found the Student eligible as a student with other health impairment.
 - The outside psychodiagnostic report the Parents inquired about was inadvertently placed in the Student's regular education file rather than in the special education file following the MDT's consideration.

Conclusions:

The District made proposals related to each of the issues identified for investigation in this complaint. OSE provided additional conditions that the District agreed to implement. OSE also reviewed district documentation to verify the number of missed minutes of special education services and the MDT report that referenced the MDT's review of the outside psychodiagnostic report. Following is the resolution that OSE and the District have reached:

1. Issues 3 and 4:
 - a. The District will convene the Student's IEP Team to develop a plan to provide the Student with 1,080 minutes of compensatory services by June 30, 2023.
 - i. The IEP Team meeting will be held within 10 calendar days of this letter.
 - ii. The District will provide the proposed schedule to OSE within 5 business days of the IEP Team meeting.
 - iii. The District will provide service logs for the dates and duration of compensatory services to OSE at the conclusion of the provision of compensatory education.
2. Issues 2 and 4:
 - a. After the IEP Team meeting described in #1, the District must conduct a **new** FBA within 10 calendar days.
 - b. Within 10 calendar days of conducting the new FBA, the IEP Team will reconvene to develop an appropriate Behavioral Intervention Plan (BIP) for the Student and determine whether the Student must receive compensatory services due to the delay in implementing a BIP.
 - i. The District will provide the following to NDE within 5 business days of the IEP Team meeting:
 1. A copy of the FBA
 2. A copy of the BIP
 3. A copy of the IEP Team meeting agenda
 4. A copy of the PWN indicating the services and/or goals changed in light of the BIP.
 - ii. If the IEP Team determines the Student needs compensatory services, the District will provide OSE with the schedule for compensatory services the IEP Team determined.
 1. The District must provide the IEP Team's decision on compensatory services and, if applicable, the schedule to NDE within 5 days of the IEP Team meeting.
 - a. The schedule must include the services to be provided including frequency, location, duration, and service provider.
 2. Compensatory services, if required, must be completed by June 30, 2023. Student absence or refusal of the parent to

make the child available shall result in a waiver of the service schedule for that day. Staff absences must be rescheduled. Any compensatory services declined or not used by January 2, 2024, shall be deemed waived (assuming the district has made a good-faith effort to timely commence and provide all compensatory services).

3. The District must submit service provider logs verifying completion of all compensatory services, if required, to NDE by the last business day of each month until the service is complete and NDE has verified all provided services.

3. Issue 3:

- a. The District will develop a procedure for how staff will document the provision of special education services, related services, supplementary aids and services, program modifications, and supports for school personnel.
- b. The District will provide NDE with this draft procedure for approval within 90 calendar days of the date of this letter.
- c. The District will train its special education staff on the following:
 - i. Procedures for documenting the provision of special education services, related services, supplementary aids and services, program modifications, and support for school personnel;
 - ii. How and when to conduct an FBA;
 - iii. Requirements for developing a BIP.
- d. The training must be provided to all special education coordinators and assistant principals by September 30, 2023.
 - i. The District will provide NDE with training materials 2 weeks prior to the training.
 - ii. The District will provide NDE with sign-in sheets from this training within 5 business days of the training.
- e. The District will provide follow-up training to all staff who serve or may serve on an IEP team by November 22, 2023.
 - i. The District will provide NDE with training materials 2 weeks prior to the training.
 - ii. The District will provide NDE with sign-in sheets from this training within 5 business days of the training.

4. Issue 1:

- a. During the training described above, the District will also remind and train the staff who deal with student records on the correct policies regarding the storage and filing of special education records and evaluations.
- b. The District will provide NDE with sign-in sheets from this training within 5 business days of the training.

Decision and Rationale

As part of the State Complaint process, Rule 51 (92 NAC § 51-007.11C2a) allows the district the opportunity to respond to the complaint including making a proposal to OSE to resolve the complaint. Upon review of the issues within the complaint, OSE has determined the District's resolutions, as articulated in this letter have resolved the complaint that was filed, and this investigation is now considered closed. If concerns remain on these issues upon the conclusion of the IEP Team meetings for the compensatory services, revision of the FBA, BIP, and provision of all determined compensatory services, a new complaint may be filed.

If you have any questions concerning the information within this letter, please contact Kelly Wojcik at 531-207-9986. As the Director of Accountability, she will be able to respond to any questions you may have regarding the information contained in this report. Christopher Chambers will be following up with the District to ensure the resolution activities have occurred as stated.

Sincerely,



Amy R. Rhone, Administrator/Director
NDE Office of Special Education
P.O. Box 94987
Lincoln, NE 68509-4987
531-207-9978
amy.rhone@nebraska.gov

CC: [Redacted], Director of Special Education, [Redacted]
Kelly Wojcik, NDE/OSE Director of Accountability
[Redacted], NDE Complaint Investigator
Christopher Chambers, NDE Complaint Specialist