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[Redacted]

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

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

Dear [Redacted] and [Redacted]:

The Nebraska Department of Education, Office of Special Education (OSE) received a letter of complaint on March 2, 2023, filed on behalf of [Redacted], a student enrolled at [Redacted], by the Parents. The complaint included the following allegations.

1. The District has refused to revise the Student's IEP upon request of the parents to address medical concerns and the Student's progress toward goals.
2. IEP Team meetings have not included all required members of the team, including individuals the parent invited that have knowledge or special expertise about the Student, and this procedural allegation has denied the Student a free appropriate public education.
3. The District has not appropriately reevaluated the Student within the required timelines.
4. Meetings have occurred without providing proper notice for the meeting.
5. When requested, the District did not provide a copy of the Student's entire education record.
6. The District changed the Student's IEP without providing a Prior Written Notice.
7. School staff has violated confidentiality requirements through communication with Student's medical providers.
8. The Student is not being educated in the least restrictive environment.
9. The Student's IEP has not been implemented as written.
10. The IEP is not meeting the Student's needs.
11. The staff has not been informed of their responsibilities to implement the Student's IEP.
12. Parents have been prevented from meaningfully participating in the Student's IEP.
13. The District has not provided transportation for the Student.
14. The District has not conducted a functional behavioral assessment or included positive behavior interventions and positive behavior supports.
15. The district did not provide access to the Student's IEP to service providers contracted to provide services for the Student, as stated in the Student's IEP.

16. The District has not included extended school-year services as needed by the Student.

Based on the allegations, OSE identified the following issues to be investigated in determining whether the Student has been provided FAPE:

1. Whether District reviewed and revised the Students' IEP based on parent concerns, lack of progress, and other matters pursuant to 92 NAC 51-007.10.
2. Whether the District conducted a reevaluation of the Student every three years pursuant to 92 NAC 51-006.05B2.
3. Whether IEP Team meetings included all required team members pursuant to 92 NAC 51-007.03 and, if a violation is found, whether that violates the Student's right to FAPE under 92 NAC 51-004.01.
4. Whether Parents were provided notice of the Student's IEP Team meetings pursuant to 92 NAC 51-007.06B.
5. Whether the District provided the Parents the Student's educational record upon request pursuant to 92 NAC 51-009.03.
6. Whether the District provided Prior Written Notice a reasonable time before the District proposed to change the provision of free appropriate public education to the Student pursuant to 92 NAC 51-009.05.
7. Whether the District ensured the confidentiality of the Student's personally identifiable information pursuant to 92 NAC 51-009.03K2.
8. Whether the District ensured the Student's educational placement was determined according to 92 NAC 51-008.01.
9. Whether the District implemented the Student's IEP pursuant to 92 NAC 51-007.02.
10. Whether the IEP team developed an IEP to ensure a free appropriate public education pursuant to 92 NAC 51-004.01.
11. Whether teachers, related service providers, and others responsible for the implementation of the Student's IEP were informed of their responsibilities pursuant to 92 NAC 51-007.02D.
12. Whether the District allowed the Parents to participate in meetings related to the placement of the Student and the provision of FAPE pursuant to 92 NAC 51-009.01.
13. Whether the District provided transportation to the Student pursuant to 92 NAC 51-014.01.
14. Whether the District included in the Student's IEP positive behavioral interventions and supports pursuant to 92 NAC 51-007.07B3.
15. Whether the District considered extended school year services pursuant to 92 NAC 51-007.07C5.
16. Whether the District ensured the Student's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service providers who are responsible for its implementation pursuant to 92 NAC 51-007.02C.

The Parents' letter of complaint included a number of allegations that OSE did not have the authority to investigate. Those allegations were:

1. Whether the principal conducted an adequate investigation into an incident regarding the Student and a paraprofessional and whether the District failed to follow the policies of its local board of education do not allege a violation of special education law and cannot be investigated.
2. Compliance with the Americans with Disabilities Act. This complaint can be filed with the Office for Civil Rights (OCR). OSE has previously provided the parent with information on how to file a complaint with OCR.
3. Retaliation and discrimination related to previous complaints filed with OSE and OCR. A complaint on these allegations can be filed with OCR. OSE has previously provided the parent with information on how to file a complaint with OCR.
4. Whether the district has violated its contractual obligation to a contracted provider. The parent does not have the authority to raise this issue. The contracted provider may raise this issue under remedies available under its contract with the district.

OSE informed the Parents and the District it did not have the authority to address these issues in its letter to each party opening the complaint investigation.

Complaint Resolution

In its March 16, 2023, letter to [Redacted] and letter to the district, opening the complaint investigation, OSE indicated that one of the components of the 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 that OSE received on March 2, 2023, included the following:

- The district failed to conduct an IEP Team meeting within 30 days of the parent's December 2, 2022, request to have an IEP Team meeting.
- The IEP Team did not revise [Redacted]'s IEP. The school refused to offer an IEP reasonably calculated to enable [Redacted] to make progress appropriately considering [Redacted] circumstances.
- The district has not held the MDT as required every 3 years. [Redacted]'s last MDT meeting was on September 12, 2019.
- The district did not ensure that the IEP Team included all required members. The LEA for [Redacted]'s August 26, 2022, IEP Team meeting listed [Redacted], but she does not have the authority to allocate district resources. The meeting on

August 26, 2022, had to be stopped to allow [Redacted] to contact [Redacted], the Director of Special Education, to request permission for services requested including frequency for speech and occupational therapy.

- There was no general education teacher in attendance at the August 26, 2022, IEP Team meeting.
- The district failed to provide a meeting notice for the August 26, 2022, IEP Team meeting.
- The district failed to provide [Redacted]'s entire educational record to the Parents upon their request.
- The district denied the parents' December 2, 2022, request to hold an IEP Team meeting. The district provided a prior written notice (PWN) the parents did not agree with stating the rationale for not conducting the IEP Team meeting.
- The school nurse did not obtain medical orders to implement [Redacted]'s IEP until January 11, 2023. She attempted to provide medication [Redacted] is not prescribed. The school nurse called [Redacted]'s physician, [Redacted], without consent.
- [Redacted] is not engaged in [Redacted] education in a meaningful manner. The curriculum is inappropriate and has no interaction with [Redacted] teacher.
- There is no educational support in the classroom. The teacher has requested the 1:1 health contractor to perform educational tasks which are outside of her job duties.
- District staff is not completing the communication log daily as required by the IEP. The district did not provide special education and related services to [Redacted].
- The teacher will not speak to the Parents. The principal has failed to call the parents back multiple times. Neither the teacher nor the principal responds to emails and phone calls. The district has requested that all communication goes through the Director of Special Education, who is not part of [Redacted]'s IEP Team.
- The district is not allowing parents, providers, and Connor's medical team an opportunity to participate in the IEP process.
- The district is not providing transportation to [Redacted] or providing reimbursement for [Redacted] transportation.
- [Redacted]'s IEP stated [Redacted] behavior impedes [Redacted] learning or that of others, however, district staff has not completed a functional behavioral assessment.
- District staff have not made the IEP accessible to contracted 1:1 staff and has not provided these contracted staff with their specific responsibilities to implement [Redacted] IEP.
- [Redacted]'s IEP did not ensure that extended school year services are available to [Redacted] as necessary.

Conclusions

The District made proposals related to each of the issues above. OSE provided additional conditions that the District agreed to implement. As a result, the following is the resolution that OSE and the District have reached:

Review of Records

The District will review Student records for Issues 1–16 and will provide the following written documentation from the review to OSE for verification within 20 calendar days of the date of this letter:

1. Reevaluation of the Student took place every three years or, the district and parent agreed not to evaluate and the district maintained documentation of that agreement.
 - a. Copy of most recent MDT, including the date
 - b. Copy of previous MDT, including the date
 - c. Documentation of any agreement of the district and parent not to evaluate, including the date of the agreement
2. IEP Team meetings included all required team members
 - a. The district will provide OSE a copy of the signature page from the August 26, 2022, IEP Team meeting, showing the names and roles of each attendee.
 - b. The district will provide OSE a copy of the IEP Team meeting notice for the IEP Team meeting on August 26, 2022, to verify the attendance of all required IEP Team members.
 - c. Documentation related to the district's findings of attendance and required next steps.
3. Notices of Meetings provided to parents
 - a. All Notices of Meetings for all IEP Team meetings scheduled between March 2, 2022, and March 2, 2023.
4. Providing educational records upon parental request
 - a. Documentation showing the date the district received the parent's request to inspect and review the Student's records and the record of access showing the date the parent inspected and reviewed the Student's records.
 - b. If the parent requested an explanation and interpretation of any of the Student's records, documentation of the request, and the District's response.
 - c. If the parent requested a list of the types and locations of education records the district collects, maintains, or uses, documentation of the request and the District's response.
 - d. If the parent requested a copy of records, documentation of any fee the district charged to make the copies.
 - e. Documentation showing the district provided parents with a copy of the Student's IEPs in effect between March 2, 2022, and March 2, 2023, at no cost.

5. PWN to ensure documentation of changes to FAPE
 - a. Copies of all PWNs sent for this Student between March 2, 2022, and March 2, 2023
 - b. Copies of all IEPs following a change to the IEP and documentation showing the date the change was implemented.
6. Review student files to ensure confidentiality breaches did not occur.
 - a. Copies of signed consent the family provided for district staff to speak with the student's medical team, including doctors and nurses responsible for providing medical care.
 - b. Documentation of any calls, emails, or other communication with the Student's medical staff including who initiated the communication and the purpose of the communication
7. Review of educational placement
 - a. Documentation of all placement decisions for the Student between March 2, 2022, and March 2, 2023, including:
 - i. Dates of all placement decisions;
 - ii. Identifying the group that made the decision and the role of each group member, including a narrative describing how each group member is knowledgeable about the Student, the meaning of the Student's evaluation option, and the placement options;
 - iii. A narrative of the meeting(s) or meeting notes or recording explaining:
 1. How the placement decision for the Student was made in conformity with the least restrictive environment requirements in 92 NAC § 51-008.01 and based on the Student's unique needs and not on the Student's disability and is as close as possible to the Student's home in the school which he or she would attend if not disabled;
 2. The group's discussion on whether the general education environment could meet the child's needs, with accommodations, modifications, and supports for school personnel;
 3. The description of the group's discussion on the placements along the district's available continuum of alternative placements to meet the needs of students with disabilities for special education and related services; and
 4. The group's consideration of any potential harmful effect on the Student or on the quality of services that the Student needs.
8. Review of records to verify the implementation of IEP.
 - a. All service logs show the provision of special education services, related services, supplementary aids, services, program modifications, and support for school personnel, including the location, frequency, and duration of each.

9. IEP development and FAPE (Includes requirements for Issue 1)
 - a. Conduct an educational benefit review of the Student's IEPs in effect in March 2021, March 2022, and March 2023 and submit it to OSE (OSE will provide the form).
 - b. Copies of Student's IEPs in effect between March 2, 2022, and March 2, 2023 (district to provide for Issue 5)
 - c. Any functional behavioral assessment of the student that informed services or supports the district provided to the Student in IEPs from March 2, 2022, through March 2, 2023
 - d. Behavior intervention plans provided as part of any IEP for the Student from March 2, 2022, through March 2, 2023
10. Informing teachers, related service providers, and others responsible for the implementation of the IEP
 - a. List of teachers and providers required to be informed of their specific responsibilities related to implementing the Student's IEP, including responsibilities for implementing the Student's accommodations and modifications.
 - b. Date and method The district informed each of the listed teachers and providers of their specific responsibilities related to implementing the Student's IEP
11. Allowing Parents to participate in meetings related to the placement of the Student and the provision of FAPE.
 - a. List of all meetings that occurred between March 2, 2022, and March 2, 2023, with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the Student
 - b. All Notices of Meetings for all IEP Team meetings scheduled between March 2, 2022, and March 2, 2023 (district to provide for Issue 3)
 - c. List whether an IEP facilitator was scheduled to participate in any meeting listed in 11.a. and whether the parent chose not to participate in any of those meetings.
12. Transportation
 - a. Service logs documenting transportation provided to the Student, as stated in the Student's IEP
 - b. Dates, if any, transportation services varied from IEP requirements and rationale
13. Positive behavioral interventions and supports.
 - a. Documentation of the ways in which the Student's behavior impedes the Student's behavior or that of others.
 - b. Behavior intervention plans provided as part of any IEP for the Student from March 2, 2022, through March 2, 2023 (district to provide for Issue 10)
 - c. OSE will also review any other positive behavioral interventions and supports within Student's IEPs in effect between March 2, 2022, and March 2, 2023 (district to provide for Issues 5 and 9)
14. Consideration of extended school year services (ESY)

- a. The information included in the Student's current IEP regarding the IEP Team's determination whether the provision of ESY is necessary for FAPE (district to provide for Issues 5, 9, and 13)
 - b. OSE will also review Student's past IEPs in effect between March 2, 2022, and March 2, 2023, for the IEP Team's determination of whether the provision of ESY is necessary for FAPE. If the IEP Team's determination is not in the IEP, the district must provide notes from IEP Team meetings with the IEP Team's determination of whether the provision of ESY is necessary for FAPE
15. IEP accessible to district staff
- a. Documentation showing how each regular education teacher, special education teacher, related service provider, and other service providers responsible for the implementation of the Student's IEP can access the Student's IEP and how the district informed each of them how they can access the Student's IEP.

Training

For each area the District and OSE determine, based on the District's review of files and OSE's verification of the District's review, training is required, the District must also do the following:

1. The District must provide OSE a copy of the training for each of the areas found to be required based on the District's review and OSE's verification listed above to OSE two calendar weeks prior to the training for approval.
2. The District must provide OSE a list of each individual and the role that the District proposes to train for each of the areas found to be required based on the District's review and OSE's verification listed above to OSE two calendar weeks prior to the training for approval.
3. The District must provide OSE copies of participant sign-in sheets or other evidence of attendance the business day following the conclusion of the training.
4. Training, if required, must be provided within 60 calendar days of the date of the Resolution Acceptance letter (date to be determined).

Review Policies and Procedures

The District must provide the following to OSE within 20 calendar days of the date of this letter:

1. A copy of the District's written policy and procedure that pertains to the implementation of each of the 15 issues within the investigation;
2. The District's decision on whether each policy and procedure must be revised, based on the District's record review of each issue; and
3. A draft of the District's proposed revisions to any policy or procedure that must be revised.

OSE will review the written policies and procedures, District's decision on whether the policy or procedure must be revised; and the District's proposed revisions to its written policies and procedures and provide feedback and approval. Once approved, the District must submit verification of revising the written policies and procedures within 35 calendar days of receiving OSE's approval.

Compensatory Education

Based on the review of records, compensatory education may be required for Issues 1, 7, 8, 9, 12, 13, and 14:

1. If compensatory services are needed on any of these issues, the District will provide OSE with the schedule for compensatory services offered to the Family. The schedule should be provided to OSE no later than May 31, 2023.
 - a. The schedule must include the services provided including location, duration, and service provider.
 - b. Compensatory services, if required, must be completed by January 2, 2024. 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).
 - c. The District must submit service provider logs verifying the completion of all compensatory services, if required, to OSE by the last business day of each month until the service is complete and all service has been verified.

Conduct a Reevaluation

The District must provide a copy of the Student's reevaluation to OSE no later than May 5, 2023.

Reconvene the IEP Team

Within 10 calendar days of the completion of the Student's reevaluation, the District must convene the Student's IEP Team to determine the Student's educational placement and the provision of FAPE.

1. The District must provide a copy of the notice of the meeting to OSE when it is provided to the Parents and send a copy of the Student's revised IEP the business day following the IEP Team meeting.

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, the Nebraska

Department of Education has determined the District's resolutions put forth in this letter have resolved this complaint and this complaint investigation is now considered closed. If concerns remain on these issues upon the conclusion of the reevaluation, reconvening of the IEP, and provision of 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. Mary Lenser will be following up with the District to ensure the resolution activities have occurred as stated.

Sincerely,



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