

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 22.23.27  
**Complaint Investigator:** [REDACTED]  
**Date Complaint Filed:** April 11, 2023  
**Date of Report:** [REDACTED]

### Issues Investigated

1. Did the District use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to inform the content of the Student's IEP? [92 NAC 51-006.02C5]
2. Did the District take steps to ensure that one or both parents of the child with a disability were present or afforded the opportunity to participate in the development of the IEP? [92 NAC 51-007.06A]
3. Did the District provide special education and related services to the Student in accordance with their IEP? [92 NAC 51-007.02]
4. Did the District ensure that placement decisions were made by a group of persons, including the parents and other persons knowledgeable about the child, in accordance with the least restrictive environment requirements and based on the child's unique needs? [92 NAC 51-008.01C1-2]

### Information Reviewed by Investigator

#### *From the Complainant*

- Letter of Complaint dated April 6, 2023; received by NDE April 11, 2023
- Interview with the Complainant and Counsel May 18, 2023

#### *From the School District*

- Letter of Response dated May 3, 2023; received by NDE May 3, 2023
- Multi-Disciplinary Team Report dated May 9, 2022
- Notice of District Decision Regarding Request dated May 11, 2022
- IEP dated May 18, 2022
- Notice of District Decision Regarding Requests dated May 23, 2022
- Notice of District Decision Regarding Requests dated March 23, 2023
- District Communication Log dated August 10, 2022, through March 24, 2023
- Email between District Staff and the Investigator dated March 24, 2023
- Interview with District Staff held on May 22, 2023
- IEP dated May 22, 2023

## Introduction

This complaint was filed on behalf of an elementary-aged student with significant medical needs. The Student has a tracheotomy, uses a wheelchair, is tube-fed, and is entirely non-verbal. The Student requires regular suctioning by a skilled nurse to prevent choking. In addition, the Student needs full physical support to be moved in and out of the chair and for toileting needs. The significant nature of the Student's medical needs is an important factor in understanding the details of this complaint.

## Findings of Fact

1. The Student is 10 years old and in the 4<sup>th</sup> grade (IEP dated May 22, 2023).
2. The Student is eligible as a student with Multiple Disabilities and Deaf-Blindness (IEP dated May 22, 2023).

## Issue # 1

Did the District use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to inform the content of the Student's IEP? [92 NAC 51-006.02C5]

92 NAC 51-006.02 states:

006.02C5	<i>School districts and approved cooperatives must ensure a variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum that may assist in determining:</i>
006.02C5a	<i>Whether the child is a child with a disability under 92 NAC 51-003.08; and</i>
006.02C5b	<i>The content of the child's IEP.</i>

### *Allegations/Parent Position*

In the Letter of Complaint received on April 11, 2023, the Parent alleges that evaluation data used for the Student's most recent re-evaluation and eligibility was impacted by the use of a medication that has side effects and therefore does not represent the Student's actual skills.

### *District Response*

The District considered this concern and did not include any data in the re-evaluation findings which were collected during the time the Student was taking the medication or for one week following the discontinuation of the medication. The District also offered an Independent Educational Evaluation to the Parent upon their disagreement with the findings, an offer that was not accepted.

### *Investigative Findings*

- A Multi-disciplinary Team (MDT) Report reviewing evaluation procedures was provided in a meeting on May 9, 2022 (MDT dated May 9, 2022).
- The Student was found eligible for special education as a student with multiple disabilities and deaf-blindness (MDT dated May 9, 2022).
- The Parent disagreed with the evaluation findings and the verification decision because the student had been taking medication during the evaluation process that led to "sleepiness, digestive tract concerns, concentration problems, confusion, trouble thinking, and communication/speaking difficulties." The Student reportedly started this medication on April 2, 2022, and the dose was doubled on April 9, 2022. The medication was discontinued on April 18 or 19, 2022 (MDT dated May 9, 2022).
- The school nurse reported that side effects from this medication last "on average 48 hours after the last dose." (MDT dated May 9, 2022)
- The Parent believed that side effects were observed for far longer (MDT dated May 9, 2022).
- Evaluation data were collected primarily through observation and review of existing data, and no observation data was included for the week following the discontinuation of medication (MDT dated May 9, 2022).
- The Vineland Adaptive Behavior Scales- Third Edition was completed by the Student's teacher (MDT dated May 9, 2022).
- The Parent completed the Communication Questionnaire on May 5, 2022. (MDT dated May 9, 2022).
- In a Prior Written Notice issued by the District on May 11, 2022, the Parent's request for a new re-evaluation in the areas of cognitive, adaptive, speech-language, vision, hearing, and occupational and physical

therapy was documented (Notice of District Decision Regarding Request dated May 11, 2022).

- In this same Prior Written Notice, the District offered the parent an Independent Educational Evaluation, though the Parent did not accept this offer (Notice of District Decision Regarding Request dated May 11, 2022).

### *Summary and Conclusions*

Upon investigation, it became clear that the issue related to evaluation procedures had less to do with the tools used, and was more focused on the Parent's concern about the validity of the data. The law provides measures should a parent disagree with the findings of an evaluation conducted by the school district. "A parent of a child with a disability has the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with the evaluation obtained by the school district or approved cooperative" [92 NAC 51-006.07A] In this case, when the Parent expressed concern with the findings of the District's evaluation, this offer was made immediately in writing.

Based on the District's offer to fund an independent educational evaluation, the District implemented the requirements of 92 NAC 51- 006.02C5 and 51- 006.07A and **no corrective action** is required.

### **Issue # 2**

Did the District take steps to ensure that one or both of the parents of the child with a disability were present or afforded the opportunity to participate in the development of the IEP? [92 NAC 51-007.06A]

92 NAC 51-007.06 states:

007.06A      *The school district or approved cooperative shall take steps to ensure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:*

007.06A1      *Notifying parents of the IEP conference early enough to ensure that they will have an opportunity to attend; and*

007.06A2      *Scheduling the meeting at a mutually agreed on time and place.*

### *Allegations/Parent Position*

According to the Letter of complaint received April 11, 2023, and confirmed upon interview, the Parent alleges that they were only offered times for the IEP meeting which was after school, and when the Student needed significant care from the Parent, limiting the Parent's ability to participate in the meeting.

### *District Response*

The District provided several dates and times to the Parent before confirming with the 18-member IEP team for the meeting in question, and the parent chose this time. The District initially refused a subsequent meeting. However, when the Parent requested a new IEP meeting in the fall of 2022, the District made repeated efforts to convene the entire team and the Parent was unresponsive or canceled meetings that had been scheduled to discuss the Parent's concerns and the IEP.

### *Investigative Findings*

- The District provided potential times to the Parent in advance of scheduling the meeting and the Parent agreed to the time provided (Notice of District Decision Regarding Requests dated May 23, 2022).
- The IEP meeting on May 18, 2022, was held via Zoom at the Parent's request (Interview with District Staff held on May 22, 2023).
- After the meeting concluded, the Parent requested that the May 18, 2022, IEP be "redone" as the Parent did not feel they were given an opportunity to discuss the goals during the meeting as the Parent was meeting the Student's medical needs (Notice of District Decision Regarding Requests dated May 23, 2022).
- The Parent also requested an IEP meeting during the day when the Parent was not responsible for meeting the Student's needs (Notice of District Decision Regarding Requests dated May 23, 2022).
- The District refused to "redo" the meeting based on frequent breaks provided as the Parent needed. The meeting did not resume until the Parent was ready to continue. The District further reported that there was no new information to consider (Notice of District Decision Regarding Requests dated May 23, 2022).
- The Parent again requested an IEP meeting on September 21, 2022 (District Communication Log dated August 10, 2022, through March 24, 2023).
- Subsequent meetings during the 2022-23 school year have been offered at 10:30 am, a time that the Parent has indicated is more convenient and allows the Parent opportunity to participate (Interview with District Staff held on May 22, 2023).

According to the District's Communication Log dated October 21, 2022-4/14/2023,

- The District made attempts to schedule an IEP meeting either by phone or email on the following dates: October 21, October 23, October 25, October 31, November 3, and November 6. The Parent confirmed a meeting for December 1, 2022.
- The Parent requested that the December 1 meeting be rescheduled for the morning of December 1.
- The District made efforts to reschedule the meeting for December 8.
- The Parent requested on December 6 that the December 8 meeting be rescheduled.
- The District spoke with the parent in-person on December 9 asking for available times and dates for a meeting.
- On December 12, the parent provided 2 dates: January 9 and January 30, 2023.
- The District confirmed the meeting for January 30, 2023, on December 20, 2022.
- The Parent did not attend though the team was gathered on January 30, 2023 (Email dated May 25, 2023).
- On February 28, 2023, the Parent confirmed a meeting on March 30 at 10:30 am.
- The Parent asked that the upcoming IEP meeting be facilitated IEP.
- The Parent was offered April 24, 2023, May 16, 2023, or May 18, 2023, from 8:30-11:00 for a facilitated IEP.
- The Parent chose May 18, 2023.

### *Summary and Conclusions*

While the Parent's initial concern may have been valid and the Parent may not have been afforded the opportunity to fully participate in the development of the IEP in the spring of 2022, since the fall of 2022, the District has made repeated efforts to convene a very large IEP team, either in person or virtually, and the Parent has continuously canceled or not arrived at the agreed upon time to meet.

Based on the District's repeated efforts to find an agreeable date, time, and location (in-person or virtual), the District implemented the requirements of 92 NAC 51-007.06, and **no corrective action** is required.

### **Issue # 3**

Did the District provide special education and related services to the Student in accordance with their 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*

When the Parent came to the school, the school nurse was providing academic support, services ordinarily provided by a teacher or para-professional, which distracted from the Student's constant nursing needs (Letter of Complaint received April 11, 2023).

#### *District Response*

The nurse assigned to the Student has been trained according to the requirements in the District's Nursing Handbook. The handbook outlines that the nurse can provide academic support as long as it does not impact the provision of health services. Further, when the Student has healthcare needs (such as respiratory, feeding, or bathroom needs), all academic instruction stops until the health need has been met. This means that healthcare needs and academic instruction are mutually-exclusive, and for the most part, can be effectively delivered by a nurse.

#### *Investigative Findings*

- The District's Health Services Handbook reads as follows:

#### *Educational Support for one-to-one students*

*Treatment nurses may assist the students they support with educational needs if the IEP manager deems that this is appropriate to the student's individual health plan.*

*The one-to-one nurse would need to have the necessary training to provide this assistance*

*The students' educational plans will be in writing and additional adult support will be provided during times of transfers and toileting.*

*This educational support will be provided only if there are no other ongoing health needs to address with the student at that time.*

#### *Summary and Conclusions*

Given the significant nature of the Student's medical needs, it is clear that the majority of nursing needs prevent the Student temporarily from being able to participate in academic instruction or activities. The special education teacher is the one responsible for educational programming and under the supervision

of the special education teacher, either a paraprofessional or a nurse can provide 1:1 support in learning activities. This fact is allowable by the District's nursing policies.

Based on the provision of services that meet the Student's needs, the District implemented the requirements of 92 NAC 51- 007.02, and **no corrective action** is required.

#### **Issue #4**

Did the district ensure that placement decisions were made by a group of persons, including the parents and other persons knowledgeable about the child, in accordance with the least restrictive environment requirements and based on the child's unique needs? [92 NAC 51-008.01C1-2]

92 NAC 51-008.01 states:

008.01C *In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:*

008.01C1 *The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and*

008.01C2 *The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.*

#### *Allegations/Parent Position*

In the letter of complaint received on April 11, 2023, the parent alleges that the District abruptly reduced the special education services provided to the Student due to staffing shortages.

#### *District Response*

In their response, the District confirmed that the Student's services had been reduced, and confirmed that this was due to staffing shortages. The District explained that a number of school nurses have quit, including contracted nurses.



### *Investigative Findings*

- In a Prior Written Notice issued by the District, on March 3, 2023, the District informed the parent that due to staffing shortages, the Student would only be provided medical services (required full-time by the IEP) 3 days per week (Notice of District Decision Regarding Requests dated March 23, 2023).
- This message was also communicated in an email from the District stating that the revised schedule would begin April 3, 2023 (email dated March 24, 2023).
- The active IEP at the time outlined full-time placement in a special education classroom with 300 minutes, 16x per month of individual and group specialized instruction, and 20 minutes, 9x per month of speech-language services. Additionally, the IEP outlines 450 minutes per day of nursing services (full-time) and transportation to and from school that includes a nurse. (IEP dated May 18, 2022).
- From April 3, 2023, through April 19, 2023, the Student was not provided services on Wednesdays or Fridays. The District calculated that this constitutes 666 special education minutes and 134 speech and language service minutes (Interview with District Staff held on May 22, 2023).
- An IEP meeting was held on May 18 and May 22, 2023, and the District offered compensatory education services for the Student with a special education provider, nurse, and occupational and physical therapist as needed to train new staff (Interview with District Staff held on May 22, 2023).
- Using a formula provided by the Nebraska Department of Education, the District offered  $\frac{1}{2}$  of the amount of time missed as these services will be intensive. The resulting offer of compensatory education is for 333 special education minutes, and 67 speech minutes (Interview with District Staff held on May 22, 2023).

### *Summary and Conclusions*

The IDEA does not relieve school districts of their obligation to provide a free appropriate public education (FAPE), even in the event of staffing shortages. The IEP process is intended to provide a forum for discussing challenges in serving students and to problem-solve issues like these. The reduction of services based on staffing issues, as well as the fact that the IEP team was not involved in placement decisions both constitute violations of the IDEA. Compensatory services are warranted to ensure the provision of FAPE. The District has made such an offer, and once these services have been delivered, this violation will be resolved.

Based on the services denied to the Student due to staffing shortages, and the fact that the IEP team was not involved in a change of placement, the District failed to fully implement the requirements of 92 NAC 51- 008.01. Thus the following **corrective action is required**.

*Corrective Action*

1. The District shall provide at least 50% of the hours missed in compensatory services as such services will be more intensive with just one student.
2. These services shall be supported by whatever-related services are necessary to ensure that the Student can safely and effectively participate.
3. These services shall be delivered in full with documentation provided to NDE by no later than the end of October 2023.

**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:

Theresa Hayes, Complaint Specialist  
NDE Office of Special Education  
[nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov)