

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 22.23.33  
**Complaint Investigator:** [Redacted]  
**Date Complaint Filed:** May 15, 2023  
**Date of Report:** [Redacted]

### Issues Investigated

1. Did the District provide the required prior written notice of change of placement in accordance with 92 NAC 51-009.05 [92 NAC 51-004.03A2]?
2. Did the District ensure that a variety of assessment tools and strategies were used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent (guardian and educational surrogate), and information related to enabling the child to be involved in and progress in the general education curriculum and to determine the contents of the child's IEP? [92 NAC 51-006.02C5]
3. Did the District, at the request of the parent, issue a certificate of attendance obligating the District to continue to provide special education services to the Student [92 NAC 51-004.04]?
4. Did the District provide the Student a summary of academic achievement and functional performance including recommendations on how to assist the Student in meeting postsecondary goals pursuant to 92 NAC 51-006.06E1?

*Note: The Student who is referenced in this complaint spent the 2022-23 school year in the state foster care system. As a result, the term "Parent" or "Parents" throughout this report is used to refer to the Student's court-appointed educational surrogate and/or foster parent.*

### Information Reviewed by Investigator

#### *From the Complainant*

- Letter of Complaint dated May 10, 2023; received by NDE May 15, 2023
- Email correspondence date range May 8 -9, 2023 between the Parent and the District
- Interview with the Student's educational surrogate (the Parent) June 28, 2023

#### *From the School District*

- Letter of Response dated June 9, 2023; received by NDE June 9, 2023
- IEPs dated April 13, 2022; September 19, 2022; and April 26, 2023

- Notices of Meeting dated August 23, 2022, for a meeting held September 19, 2022; and April 24, 2023, for a meeting held on April 26, 2023
- Multidisciplinary Team Report dated April 26, 2023
- Prior Written Notice dated April 26, 2023
- Special Education Summary of Performance dated May 10, 2023
- Official Transcript generated June 2, 2023
- Email correspondence with the District June 29, 2023

## **Introduction**

The Student on whose behalf this complaint was filed graduated in the spring of 2023. Whether the Student should have graduated or taken a certificate of completion and continued to access post-high school transition services is the disagreement at the heart of this complaint. The Student is currently placed in foster care and has a court-appointed educational surrogate as well as a foster parent who served as “the Parents” in this complaint. It is noteworthy that the Student attended 2 different high schools within the District during the 2022-23 school year, due to a change in foster homes in January of 2023.

On June 29, 2023, the Nebraska Department of Education, Office of Special Education, was advised that a Due Process Hearing has been requested in regard to the Student named in this complaint. According to 92 NAC 51-009.11C8, if a written complaint is received that is also the subject of a due process hearing under 92 NAC 55 or contains multiple issues of which one or more are part of that hearing, the Office of Special Education officials shall set aside any part of the state complaint that is being addressed in the due process hearing, until the conclusion of the hearing. Therefore, the following represents the issues raised that are not a part of the Due Process request. An additional issue has been set aside until a due process hearing is held. That issue is as follows:

Issue # 1 - Did The District make placement decisions involving a group of persons, including the parents (or guardian/educational surrogate) and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options? [92 NAC 51-008.01C1]

## **Finding of Fact**

The Student was eligible as a Student with an Emotional Disturbance (primary) and a Speech Language Impairment (secondary) throughout most of the school year (IEP dated September 19, 2022) and eligibility was changed in April of 2023 to Autism (primary) and Speech Language Impairment (secondary). (MDT dated April 26, 2023)

## Issue # 2

Did The District provide the required prior written notice of change of placement in accordance with 92 NAC 51-009.05 and 92 NAC 51-004.03A2?

92 NAC 51-004 states:

004.03A2      *Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with 92 NAC 51-009.05*

92 NAC 51-009.05 states:

009.05      *Prior Written Notice*

009.05A      *Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:*

009.05A1      *Proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education;*

### *Allegations/Parent Position*

The Parent was surprised by the District's proposal at the meeting to provide the Student a diploma at the spring graduation ceremony, stating that this was "the first they had heard of this." The parent did not, however, mention the PWN in the letter of complaint. (Letter of Complaint dated May 10, 2023.)

### *District Response*

Following the IEP meeting, the District issued a PWN to the Parents regarding the decision that the Student would graduate. (Prior Written Notice dated April 26, 2023)

### *Investigative Findings*

- Prior Written Notice of the District's intent to change the educational placement of the Student on the date of graduation was provided to the parent in late April. (PWN dated April 26, 2023)
- The PWN outlined that the Student had met all graduation requirements and had no previously unmet transition needs as their reason for making the placement decision. (MDT dated April 26, 2023)

- The PWN also pointed to the Parent's reasons for disagreeing with the decision "on the basis of [the Student's] funding gap as well as needs related to budgeting, cooking, and cleaning at home."

*Summary and Conclusions*

Because the Parent made their disagreement clear in both the IEP meeting and in writing, the District provided the appropriate documentation to outline the disagreement and the reasons that the District proposed graduation, and why they refused to withhold a diploma and offer post-high school transition services.

Based on the above, the District implemented the requirements of 92 NAC 51-009.05A, and **no corrective action** is required.

**Issue # 3**

Did The District ensure that a variety of assessment tools and strategies were used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent (guardian and educational surrogate), and information related to enabling the child to be involved in and progress in the general education curriculum and to determine the contents of the child'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 [sic] , 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*

As communicated in the Letter of Complaint as well as in an interview with the parent, adaptive testing conducted as part of the re-evaluation was inconsistent across the home and school environments, and the IEP did not address the independent living needs at home. The Student often dictated written work at school, underscoring their limited independence.

### *District Response*

The District-based the IEP on a comprehensive re-evaluation, including input from the Parents. (IEP dated April 26, 2023)

### *Investigative Findings*

- An evaluation was conducted in the spring of 2023 and the following results were included in the MDT dated April 26, 2023:
  - The Student's current grades were considered and across 7 classes, the Student had 4-As, 2-Bs, and 1-D. (MDT dated April 26, 2023)
  - The Student obtained a composite score of 13 (range 1-35). Cognitive testing was conducted using the WAIS-IV and the Student obtained a Full Scale IQ score of 94, which is considered Average.
  - Academic testing was conducted using the KTEA-III. The Student obtained the following composite scores: Math= 90, Reading= 80, Written Expression= 87.
  - Speech testing was conducted using the GFTA-3. The Student obtained standard scores of 40 and 69 related to one specific articulation error.
  - The CELF-5 Metalinguistics and CASL-2 were administered as measures of language. The Student obtained Total scores of 67 and 85 on these measures.
  - The BASC-3 was completed by the Parent and a Teacher to provide a measure of broad behavior. The teacher's ratings were generally average to mildly elevated, while the Parents' ratings were somewhat more significant, especially in the area of externalizing behavior.
  - The ABAS-3 was completed by the Parent and the Teacher to provide a measure of adaptive functioning. The following General Adaptive Composites are provided: Teacher- 97/Average, Parent= 71/Extremely Low.
  - Observation data were also summarized as provided by the speech-language pathologist, and the classroom was also included. Teacher observation indicates very few behavior problems in the school setting.

### *Summary and Conclusions*

The evaluation outlined above constitutes a comprehensive evaluation that identified the Student's strengths and weaknesses. The resulting IEP addressed identified needs through appropriate goals, services, and accommodations. While the Student may have lower adaptive functioning skills in the home setting, to the extent that the Student was able to access and progress in their education means that these weaknesses are not the responsibility of the IEP team.

Based on the comprehensive nature of the Student's re-evaluation, the District implemented the requirements of 92 NAC 51-#006.02C5, and **no corrective action** is required.

### **Issue #4**

Did the District, at the request of the parent, issue a certificate of attendance obligating the District to continue to provide special education services to the Student [92 NAC 51-004.04]?

92 NAC 51-004.04 states:

004.04        *At the request of a parent or guardian, a school district shall issue a certificate of attendance to a student who receives special education services under 92 NAC 51, **who has reached seventeen years of age, and who has not completed his or her individualized education program.** A school district shall allow a student who receives a certificate of attendance under this section to participate in the high school graduation ceremony of such high school with students receiving high school diplomas. A student may receive only one certificate of attendance and may participate in only one graduation ceremony based on such certificate. The receipt of a certificate of attendance pursuant to this section shall not affect a school district's obligation to continue to provide special education services to a student receiving such certificate.*

### *Allegations/Parent Position*

The district did not provide the option of a certificate of attendance that would have enabled the Student to continue accessing special education services. (Interview with the Parent on June 28, 2023)

### *District Response*

Because the Student had completed their IEP, having met all goals and addressed transition needs, and having met all requirements for graduation in the state of Nebraska, the District did not believe that a certificate of

attendance was appropriate, and rather, the Student had met all requirements for graduation and was invited to participate in the graduation ceremony and receive a diploma.

#### *Investigative Findings*

- As outlined above, the Student met credit requirements for graduation and all transition needs identified by the IEP team were addressed.

#### *Summary and Conclusions*

As outlined in the above issues, the District demonstrated that the Student had met the requirements for high school graduation, and this rule, therefore, is not relevant in this Student's case.

Based on the findings in the previous issues, the District implemented the requirements of 92 NAC 51- 004.04, and **no corrective action** is required.

#### **Issue # 5**

Did the District provide the Student a summary of academic achievement and functional performance including recommendations on how to assist the Student in meeting postsecondary goals pursuant to 92 NAC 51-006.06E1?

92 NAC 51-006.06 states:

006.06E      *A school district or approved cooperative shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.*

006.06E1      *The evaluation described in 92 NAC 51-006.06E is not required before the termination of a student's eligibility under this Chapter due to graduation from secondary school with a regular high school diploma, or to exceeding the age eligibility for a free appropriate public education under NEB REv. Stat. 79-1126. For a child whose eligibility terminates under these circumstances, a school district or approved cooperative shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the*

*child in meeting the child's  
postsecondary goals.*

#### *Allegations/Parent Position*

The Parent only commented that the decision to provide a diploma was a surprise when it was raised at the April 24, 2023, IEP meeting. This issue was included not because the Parent alleged that it hadn't been done, but to ensure that the proper procedures were followed by the District upon the decision to change the Student's placement at graduation.

#### *District Response*

In their Letter of Response dated June 9, 2023, the District indicated that the summary was reviewed with the Student and provided on May 10, 2023.

#### *Investigative Findings*

- The District provided a summary as required (Special Education Services Summary of Performance dated May 10, 2023)
- The summary included the following (Special Education Services Summary of Performance dated May 10, 2023):
  - In the area of independent living, the summary states that the Student "is able to clean [their] room, make the bed, vacuum, get the mail, do laundry, put away dishes, cook, and wash dishes."
  - The Student had also applied for a state ID.
  - In the area of Learning, it states that the Student took and passed a personal finance class during the spring semester. The Student was also awarded Student of the Month in October and Student of the Week in March. The Student had completed the FAFSA and qualified for financial assistance.
  - The Student had earned all necessary credits to graduate in the general education environment with appropriate accommodations.
  - Finally, in the area of Work, during the Student's senior year, the Student volunteered at a health clinic, participated on the Unified track team, participated on the disc golf team, and participated in both a dance class and a dance recital. The Student also worked at the school cafeteria for 10 hours per week washing dishes, preparing and serving food.
  - This summary outlined areas that the Student would need continued support including budgeting and paying bills, setting up a bank account, and obtaining a driver's license.



- The summary also outlined accommodations that would be needed in an academic setting including copies of notes, noise reduction strategies, graphic organizers, and extended time
- Finally, in the area of work, the Student would need support with transportation to and from work and/or continued work learning to use local public transportation.

#### *Summary and Conclusions*

The Summary of Performance provided by the District is comprehensive and includes all required information supporting the District's rationale for providing the Student with a diploma.

Based on the review of the Special Education Services Summary of Performance, the District implemented the requirements of 92 NAC 51-006.06E, 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.