

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 22.23.37  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** June 13, 2023  
**Date of Report:** REDACTED

### Issues Investigated

1. Did the District provide special education and related services to the Student in accordance with the IEP? [92 NAC 51-007.02]
2. Did the District provide support for school personnel to enable the child to progress in the general education curriculum, participate in extracurricular and other nonacademic activities, and participate in the least restrictive environment? [92 NAC 51-007.07A5]
3. Did the District consider the use of positive behavioral interventions and supports and other strategies to address the Student's behavior? [92 NAC 51-007.07B3]
4. Did the District provide a notification that indicated the purpose, time, and location of the meeting and who would be in attendance? [92 NAC 51-007.06B]
5. Did the District protect the confidentiality of the Student and the Student's records? [92 NAC 51-009.03K1]

### Information Reviewed by Investigator

#### *From the Complainant*

- Letter of Complaint dated May 10, 2023; received by NDE June 13, 2023
- The second Letter was dated July 1, 2023; received by the investigator on July 25, 2023
- An interview with the Parents and their advocate was held on June 25, 2023

#### *From the School District*

- Letter of Response dated and received by NDE June 30, 2023
- Notice and Consent for Re-evaluation dated November 2, 2022
- Multidisciplinary Team (MDT) Report dated January 9, 2023
- MDT Prior Written Notice dated January 9, 2023
- Individualized Education Plan (IEP) dated October 25, 2021
- IEP dated October 19, 2022
- IEP dated November 17, 2022
- IEP dated February 6, 2023
- IEP dated March 28, 2023
- Behavior Intervention Plan (BIP) dated November 17, 2022
- Functional Behavior Assessment (FBA) dated January 9, 2023
- BIP dated February 6, 2023
- FBA dated March 28, 2023
- BIP dated March 28, 2023
- BIP Fidelity Checks dated March 13 and April 6, 2023
- Notice of IEP Meeting dated October 25, 2021
- Notice of IEP Meeting dated October 5, 2022
- Notice of IEP Meeting dated October 21, 2022
- Notice of Meeting for Eligibility dated January 6, 2023
- Notice of Meeting for Eligibility dated January 22, 2023
- Notes from February 6, 2023, meeting
- Notes from March 28, 2023, Meeting

- 22-23 Assigned Special Education Staff and Support for School Personnel
  - Agendas from School Level Team Meetings dated November 16 and 21, 2023, and February 8, 2023
- 22-23 Communication to Staff
- The Student's 21-22 Course Schedule
- The Student's 22-23 Course Schedule
- Visuals Used
- Lanyard Visual
- Social Story
- 22-23 Service Logs dated August to February, and February to May of the 22-23 school year
- Speech Language Service logs for the 2022-23 school year
- Speech Language Datasheets
- Folder "Daily Sheets"
- Processing Sheets
- Progress Reports dated October 20, 2022; January 6, March 16, and May 26, 2023
- 2022-23 Report Card
- Communication Logs 1 and 2, ranging from November 16, 2022- May 19, 2023
- MDT Recording Narratives (Principal's and Special Education Director's, both dated June 19, 2023)
- Email Correspondence between the Parent and the District (also captured on the above Communication Logs)
- Email correspondence between the Investigator and the District dated July 24- August 1, 2023.

### **Introduction**

This report has been developed to document the investigation of a complaint filed with the Nebraska Department of Education (NDE) on behalf of the Student by the Parents.

The Individuals with Disabilities Education Act (IDEA) and the Nebraska Administrative Code give NDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by NDE (34 C.F.R. 300.153(c); 92 NAC 51-009.11B5).

It is to be noted that the Parents filed both a Rule 51 and a Rule 27 complaint in tandem. Because some of the issues raised in the Letter of Complaint are better addressed under Rule 27, a separate investigation has been assigned to address these issues. This report will focus solely on the Rule 51 issues raised.

### **Findings of Fact**

The following information has been obtained through investigation procedures, including a review of the Student's most recent MDT, IEPs developed and implemented within the timeframe outlined above, as well as other documentation provided by the parents and the District. The Student whose special education and related services are the focus of this complaint was enrolled in one of the District's middle schools during the 2022-23 school year. The Student has been found eligible with a primary disability of autism. The Student receives special education services to support participation in general education, with some limited pull-out services as well as speech and language as a related service. As part of the Student's IEP, a BIP has been developed and frequently amended throughout the school year, informed by an FBA conducted in January of 2023.

## Issue # 1

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

When asked specifically about their implementation concerns, the Parents clarified (during interview) that their concern was not actually about the implementation of the IEP but rather, was specific to the development of the BIP. As a result, Issue 1 was altered to include the following:

Did the District develop, review, and revise an IEP which specified the special education and related services necessary to assure the child a free appropriate public education [92 NAC 51-007.01]?

92 NAC 51-007.01 states:

007.01 *An IEP shall be developed, reviewed, revised, and implemented for each child who receives special education and related services.*

### *Allegations/Parent Position*

Interviews with the Parents revealed that their concern was not actually that the IEP was not being implemented, but that they believed that the general approach of the BIP was punitive and not proactive and that this approach did not meet their child's needs.

### *District Response*

In their Letter of Response dated June 30, 2023, the District described that during the 2022-23 school year, the Student had 5 different IEPs that "remained largely the same" with regard to goals and services throughout the school year.

### *Investigative Findings*

- Investigative Findings for Issues 2 and 3 apply.
- Four IEP meetings were held during the 2022-23 school year on the following dates: October 19 and November 22, 2022; February 6 and March 28, 2023. Each time, minor revisions were made to the IEP, resulting in 5 different IEPs throughout the school year. (IEPs dated as mentioned, as well as previous IEP dated October 25, 2021)
- The first IEP provided 110 minutes of specialized instruction (Resource) each week and 15 minutes of Speech-Language Therapy, 5 days each month. (IEP dated October 25, 2021)
- All other IEPs throughout the school year provided 80 minutes of specialized instruction (resource) and 15 minutes, 5 days each month of Speech-Language Therapy. (IEPs dated October 19 and November 17, 2022, and February 6 and March 28, 2023)
- Goals across all IEPs addressed executive functioning and social skills, social communication, use of self-monitoring strategies, and appropriate expression of emotions. (IEPs dated October 25, 2021, October 19 and November 17, 2022, and February 6 and March 28, 2023)

- The Parents stated, referring specifically to a rubric used as part of the BIP “Generally, we agreed with the IEP goals. The rubric is very appropriate to monitor progress on functional communication skills.” (Parent Interview held July 25, 2023)
- The Parent(s) objection regarding the IEP was due to their problem with the words “violence,” “threat,” and “safety reasons” in the IEP and accompanying documentation. (PWN dated March 31, 2023)
- The District replaced this language with “unexpected language” in the spring of 2023. (PWN dated March 31, 2023)
- The Parents also requested increased speech time in the IEP (Parent Interview held July 25, 2023, and PWN dated March 31, 2023).
- The District rejected this request as progress indicated that the Student was making progress on speech goals. (PWN dated March 31, 2023)
- Service Logs and daily data collected related to the BIP indicate that the Student was provided all services outlined in the IEP in a consistent manner.

*Summary and Conclusions*

The above reflects the District's efforts to consider the Parent's input and concerns and to make adjustments to the IEP and BIP as appropriate to meet the Student's needs. Even if the Parent(s) did not fully agree with the District's approach to managing the Student's behavior, the District showed ongoing efforts to consider the Parent(s) concerns and to make adjustments where appropriate to ensure that the Student was making progress and receiving a free appropriate public education (FAPE).

Based on the data provided, the District implemented the requirements of 92 NAC 51- 007.01, and **no corrective action** is required.

**Issue # 2**

Did The District provide support for school personnel to enable the child to progress in the general education curriculum, participate in extracurricular and other nonacademic activities, and participate in the least restrictive environment?

92 NAC 51-007.07A5 states:

- |           |   |
|-----------|---|
| 007.07A   | <i>The IEP shall include:</i>   |
| 007.07A5  | <i>A statement of the special education and related services and supplementary aids and services based on peer-reviewed research, to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:</i> |
| 007.07A5a | <i>To advance appropriately toward attaining the annual goals;</i>  |
| 007.07A5b | <i>To be involved in and progress in the general education curriculum and to participate in extracurricular</i>   |

*and other nonacademic activities; and*

007.07A5c

*To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5*

#### *Allegations/Parent Position*

In their Letter of Complaint received by NDE on June 13, 2023, the Parents alleged that "there has been a significant lack of consistency in the provision of support, with frequent changes in personnel and insufficient training resulting in further disruption to [the Student's] educational experience... [the Student] requires specific support to support [the Student's] academic and communicative progress considering [the Student's] medical autism diagnosis and educational autism verification."

#### *District Response*

The Student has been served by the same primary service providers throughout the school year. Understanding the importance of consistency in expectations and enforcement of a BIP, the District made every effort to develop specific and easily understood visuals that led staff in responding to the target behaviors.

#### *Investigative Findings*

- The Student's case manager is certified in the State of Nebraska as a special education teacher and has received additional training in working with individuals with autism. (Letter of Response, dated June 30, 2023)
- The speech-language pathologist working with the Student is also appropriately credentialed and has specific and extensive training in working with Students with autism (Letter of Response, dated June 30, 2023)
- The behavior specialists who have been involved in conducting FBA and the development and implementation of the BIP are both appropriately credentialed school psychologists with expertise in behavior intervention and autism spectrum disorders.
- The Student's case manager as well as both behavior specialists participated in training provided by the District specifically addressing the needs of students with autism on February 25, 2020, and October 11, 2021. (email correspondence between the Investigator and the District dated August 1, 2023, and 22-23 Assigned Special Education Staff and Supports for School Personnel)
- The Student's "IEP at a Glance" was shared with general education teachers on August 14 and November 8, 2022, and January 3, 2023. (22-23 Communication to Staff dated June 23, 2023)
- The Student's BIP included the use of visual supports, including a lanyard worn by all adults working with the Student outlining the steps included in the BIP. (Letter of Response dated June 30, 2023, and copies of visuals used and lanyard visual)
- The Student's case manager provided updates to general education teachers on the Student's BIP at team meetings held on November 16 and 21, 2023, and February 8, 2023. (Agendas from School Level Team Meetings dated November 16 and 21, 2023, and February 8, 2023)

- Additional communication about the BIP is documented on October 13, 16, 17, 19, November 21, December 20, 2022, and February 19, 2023. (22-23 Communication to Staff dated June 23, 2023)
- On February 15, 2023, the case manager modeled the implementation of the new behavior plan in every class period for the entire period. (22-23 Communication to Staff dated June 23, 2023)
- In order to ensure fidelity of implementation, the District's behavior specialist conducted fidelity checks in 2 classrooms on March 13, 2023. Subsequently, feedback was provided in writing to general education teachers and a face-to-face meeting was held to share findings with the case manager and school psychologist to share observations and ensure fidelity. (Email correspondence between the Investigator and the District on August 1, 2023)
- Finally, the Student met the behavior goal addressed by the BIP in both the 3<sup>rd</sup> and 4<sup>th</sup> quarters. (Progress Reports dated March 16 and May 26, 2023, and Email correspondence between the Investigator and the District on August 1, 2023)

*Summary and Conclusions*

The evidence provided above demonstrates ongoing efforts on the District's part to develop an effective BIP and provide all needed support to staff related to its implementation. Their efforts include written documentation, verbal explanation, visual supports, modeling, fidelity checks, and opportunities for conversation. Indeed, the effectiveness of the BIP is underscored by the fact that the Student met behavior goals that were addressed by the components of the BIP.

Based on the facts above, the District implemented the requirements of 92 NAC 51- 007.07A5, and **no corrective action** is required.

**Issue # 3**

Did The District consider the use of positive behavioral interventions and supports and other strategies to address the Student's behavior?

92 NAC 51-007.07B3 states:

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| 007.07B  | <i>In developing, reviewing, or revising each child's IEP:</i>   |
| 007.07B3 | <i>In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, supports, and other strategies to address that behavior.</i> |

*Allegations/Parent Position*

During the Parent Interview held on July 25, 2023, the Parents described that they believed the Student "was having more punitive responses rather than proactive practices that were teachable moments." They went on to describe their objection to the Student being removed from class based on certain comments to process the impact these comments had on others.

*District Response*

The crux of the Student's behavior plan was based on "unexpected and sometimes concerning" comments that the Student was making in class. These comments were often "shocking and typically interrupted the class."

### *Investigative Findings*

- In October 2022, the school where the Student was enrolled received a bomb threat. Students were sent home and the police came to investigate. The next day on the bus, the Student was quoted saying, "It would be the perfect day to blow up the school because the police are not here." (Letter of Response dated June 30, 2023)
- During the fall of 2022, the Student was removed from class on 4 occasions; September 30, October 13, October 17, and October 28. (Letter of Response dated June 30, 2023)
- Based on these removals, the IEP team convened on November 17, 2022, to develop a BIP to address these behaviors. (IEP dated November 17, 2022)
- This behavior plan included a number of positive strategies including positive attention, a token economy, and access to prizes with the money earned in the token economy. (IEP dated November 17, 2022)
- Immediate improvement was observed in the frequency of these disruptive comments in class, with a reduction from an average of 6 per class period to an average of 3. (Progress Report dated January 6, 2023)
- The BIP was updated, though still included all the above on February 6, 2023. (Behavior Intervention Plan dated February 6, 2023)
- Progress report data suggests that the Student met the behavioral goal that was outlined in the November IEP in March of 2023 and that the behavior would continue to be monitored for the remainder of the current IEP (Progress Report dated

### *Summary and Conclusions*

The Parents outlined their concerns around specific verbiage used in the Student's records and the Student's removal from class for teaching around significantly disruptive comments. The BIP that was implemented throughout the school year shows clear evidence of positive strategies used to increase desired behaviors and reduce undesired behaviors. Nothing about the District's descriptions of the Student's behavior was inaccurate or punitive, and these words describe behavior in similar ways to the descriptions used in general education for similar behavior, which may be the subject of school disciplinary procedures. Rather than subjecting the Student to disciplinary procedures, the District used an instructional approach that helped the Student better understand why such comments were inappropriate. The District showed good faith in making changes to documents at the request of the Parents, and ultimately, demonstrated the effectiveness of the BIP when the Student met behavior goals for the 3<sup>rd</sup> and 4<sup>th</sup> quarters.

Based on the evidence provided, the District implemented the requirements of 92 NAC 51-007.07B3, and **no corrective action** is required.

### **Issue #4**

Did The District provide a notification that indicated the purpose, time, and location of the meeting and who would be in attendance?

92 NAC 51-007.06B states:

#### *007.06 Parent Participation*

007.06A *The school district or approved cooperative shall take steps to ensure 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 they will have an opportunity to attend; and*

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

007.06B      *The notification under 92 NAC 51-007.06A1 must indicate the purpose, time, and location of the meeting and who will be in attendance and inform the parents of the provisions of 92 NAC 51-007.03A6, 007.03A6a, and 007.05.*

007.03 *IEP Team Participants*

007.03A      *The school district or approved cooperative shall ensure and document that each IEP team includes the following:*

007.03A6      *At the discretion of the parent or the school district or approved cooperative, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;*

007.03A6a      *The determination of the knowledge or special expertise of any individual described in 92 NAC 51-007.03A6 shall be made by the party (parents or school district or approved cooperative who invited the individual to be a member of the IEP.*

*Allegations/Parent Position*

During the February 6, 2023, IEP meeting, the District invited a "stranger" to the meeting who apologized that the individual had never met the Student. The Parents did not know the person, though felt obligated to continue with the meeting.

*District Response*

The District has a team of 2 behavior consultants. The 2 work together to meet the needs of students in the district with behavioral needs. When one of the consultants, who had agreed to attend the meeting called in sick, the District chose to invite the other consultant in order to provide behavioral expertise in the case of this Student who had recently undergone functional behavior assessment, and whose behavior intervention plan was being reviewed and possibly, amended.

*Investigative Findings*

- A Notice of Meeting was provided on January 31, 2023, that described the purpose, time, and location of the upcoming IEP meeting. It also listed all members who had been invited including under "Other Attendee," "District Behavior Consultant." (Notice of Meeting dated January 31, 2023)



- On the morning of the scheduled meeting, which had already been rescheduled twice, the person named on the Notice of Meeting called in sick. The District chose to invite another Behavior Consultant to provide expertise related to behavior interventions being used with the Student. (Letter of Response dated June 30, 2023)
- The meeting began with introductions of each person in attendance, including the District's second behavior specialist. (Letter of Response dated June 30, 2023; confirmed in Parent Interview held July 25, 2023)
- Fidelity checks on the BIP that were developed in this meeting were conducted by this same individual on March 13, 2023. (Fidelity Checks dated March 13, 2023)
- Subsequently, this behavior specialist met with team members to discuss the observations of the fidelity checks and improve the fidelity of implementation of the BIP. (Email correspondence between the Investigator and the District on August 1, 2023)

#### *Summary and Conclusions*

In the rules, the IEP team outlines the roles of specific members who should be present to ensure that a student's needs are accurately represented. The rules go on to outline the District's right to invite related service providers with **special expertise** to participate on the IEP team. This individual's role is not necessarily to provide direct services to the Student, but instead to provide support and consultation to staff working with the student. The participation of someone in this role was not only appropriate but necessary in this Student's specific case to ensure that an effective BIP was developed and implemented with fidelity. Finally, nowhere does it state in the rules that parents must *consent* to the individuals invited, only that they be notified. The "District Behavior Consultant" listed on the Notice of Meeting satisfies this requirement.

Based on the above, the District implemented the requirements of 92 NAC 51- 007.06B and 007.03A6, and **no corrective action** is required.

#### **Issue # 5**

Did The District protect the confidentiality of the Student and the Student's records?

92 NAC 51-009.03K1 states:

009.03K1	<i>Each participating agency shall protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages.</i>
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#### *Allegations/Parent Position*

According to their Letter of Complaint dated May 10, 2023, the Parents believe that the participation of a behavior specialist that did not have personal knowledge of the Student (IEP meeting held February 6, 2023) was a violation of the Student's right to confidentiality.

A second issue raised in the letter of the complaint alleges that the Student's MDT meeting held on January 9, 2023, by Zoom was recorded without their permission. Further, an interview with the Parents suggested that when they inquired about the recording, the District was slow to provide the recording and ultimately provided a link that the Parents could not access.

#### *District Response*

In their Letter of Response dated June 30, 2023, the District described that they employ 2 behavior specialists to conduct functional behavior assessments and to consult on individual student behavioral needs and the development of behavior intervention plans. On the day of the meeting, the primary behavior specialist who had worked with the Student called in sick. As

a result, the District invited the other behavior specialist in order to ensure that that expertise was represented.

With regard to the second issue, the Letter of Response dated June 30, 2023, indicated that the recording of the meeting had been unintentional. When they became aware that the meeting had been recorded, the District took all necessary steps to ensure that the recording was treated like any other educational record, shared with the parents, and kept in a secure location.

#### *Investigative Findings*

- See findings for Issue #4 for details regarding the participation of the behavior specialist in the February 6, 2023 meeting.
- An MDT meeting was held on January 9, 2023 (MDT dated January 9, 2023)
- The following is taken from Communication Log 1, date range November 16, 2022- April 6, 2023:
  - On January 11, 2023, a message was received by the District from the Parents' advocate that read, "Good morning—I noticed our MDT meeting was being recorded. Are all of our meeting recorded? I wanted to confirm [the Student]'s parents would have access to those recordings?" (Communication Log 1 and Special Education Director's Narrative dated June 19, 2023)
  - The District provided the following response, "I understand that there was a message that the meeting was being recorded, but I (the host) did not record the meeting intentionally and do not know where to locate the recording on my computer after checking multiple locations."
  - The Parents (or their representatives) responded, "The option to record is typically included when setting up a Zoom meeting. Please confirm we will have access to the recording and that all future meetings will not be recorded without our permission."
  - The school principal responded on January 13, 2023, with, "Thank you for bringing it to our attention that the Zoom meeting was being recorded. Please know that this is not a practice that we do in [District] nor will it be something that will occur moving forward with other Zoom meetings. We apologize for any confusion this may have caused. Here is a video link to the MDT from Wednesday {Link}. If you are not able to access it, please let us know."
- The District confirmed that a setting was selected that automatically recorded meetings. (Principal's MDT Recording Narrative dated June 19, 2023)
- The people who had access to the recording were all in attendance at the meeting and the file was subsequently shared with the Director of Special Education to preserve as an educational record. (Principal's MDT Recording Narrative dated June 19, 2023)
- The recording has been stored in a digital folder on the account of the special education director, who is the only person with access. (Special Education Director's Narrative, dated June 19, 2023)
- During an interview with the Parents, they confirmed that they have been unable to access the recording, though have not alerted the District of this. (Parent Interview held on June 25, 2023)

#### *Summary and Conclusions*

First, with regard to the participation of the second behavior specialist in the IEP meeting, the rule clearly states that the District has the right to invite *other individuals who have knowledge or special expertise* regarding the child to an IEP meeting. This does not mean that the individual

has to know and have worked with the Student personally, but rather that they can offer expertise that other members of the IEP team cannot. The participation of a behavior specialist was good practice not only for the development of the behavior intervention plan but also for the fidelity of implementation. It is clear that this individual had a clear purpose for participating and therefore, information shared with this individual did not constitute a breach of confidentiality.

With regard to the recording of the meeting, it is clear that the District took adequate steps to ensure that the recording was treated as any other educational record, and has been kept confidential.

Based on the findings above, the District implemented the requirements of 92 NAC 51- 009.03K1, 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.