

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 23.24.03  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** July 12, 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 comply with parent requests to inspect their student's records without unnecessary delay by providing copies? [92 NAC 51-009.03B & 009.03B2b]

### Information Reviewed by Investigator

#### *From the Complainant*

- Letter of Complaint dated July 11, 2023; received by NDE July 12, 2023
- Letter from Private Speech Therapist dated July 31, 2023
- Kindergarten Report Card for the 2022-23 school year
- Narrative notes of complaint issues provided by the Parent, not dated
- Envelope and progress report for 4<sup>th</sup> quarter, 2023, postmarked June 20, 2023

#### *From the School District*

- Letter of Response dated August 3, 2023; received by NDE August 3, 2023
- MDT dated March 22, 2022
- IEPs dated March 22, 2022, and March 15, 2023
- Speech Service Logs dated from September 2022, through May 2023
- Progress Reports dated October 21 and December 21, 2022, and March 17 and May 26, 2023
- Email correspondence with the District dated August 18, 2023
- District Calendar, 2022-23

### Introduction

This report is in response to 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).

In this case, the complaint was received on July 12, 2023, and therefore, only allegations occurring on or after July 13, 2022, were investigated.

### **Findings of Fact**

The following information was obtained through the interviews and documentation review and is relevant to all of the allegations. Information prior to the investigatory timeline is included for context but not considered for the summary or conclusions for the issues identified.

This investigation involves a 6-year-old student who was enrolled in an elementary school within the District as a kindergartener during the 2022-23 school year. According to the Student's most recent MDT, dated March 22, 2022, the Student was first found eligible for services in December 2020, under the category of Speech Language Impairment, and his classification was changed to Developmental Delay in March 2022, as a result of evaluation data that reflected more broad delays meeting preschool standards.

The Student began kindergarten in the fall of 2022 with an IEP in place that had been developed in the spring. This IEP included goals addressing speech and language delays, delays in reading, math, and written language, and a social-emotional goal. The IEP outlined 90 minutes each day of resource services as well as 20 minutes, 2 days each week of speech and language services.

### **Issue # 1**

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

During the previous school year, the Parents became concerned about the lack of progress reflected in the Student's progress reports and observed in natural interactions related to speech and language goals. The Student's general education teacher noted in report cards that the Student was "very difficult to understand, and for his peers to know what [the Student] was trying to say to them." In January of 2023, the Parents sought outside speech therapy in addition to what was being provided at school. (Letter of Complaint dated July 11, 2023)

### *District Response*

After reviewing speech and language documentation, the District agreed that the Student had not been provided with all the services outlined in the IEP. The District determined that the Student had missed roughly 100 minutes of speech and proposed 50 minutes of compensatory education to make up for this deficit. (Letter of Response dated August 3, 2023)

### *Investigative Findings*

- The Student's IEP covering the period of time from the first day of kindergarten (2022) and March 15, 2023, states that the Student will receive 2- 20 minute sessions of speech services each week, totaling 40 minutes per week. (IEP dated March 22, 2022)
- Taken weekly, between the start of school and March 15, 2023, speech therapy logs indicate that the Student received a total of 145 minutes fewer minutes of speech services than the IEP called for. (Speech Service Logs dated September, 2022- May, 2023)
- The March 15, 2023, IEP states that the Student would receive 3- 20 minute sessions of speech services each week, totaling 60 minutes per week (IEP dated March 15, 2023)
- Speech therapy logs indicate that from March 15 through the end of the 2022-23 school year, the Student received 40 fewer minutes of speech services than the IEP called for. (Speech Service Logs dated September, 2022- May, 2023)
- Speech therapy logs identify many reasons for services not being delivered, including days when school was not in session, personal days or sick days taken by the SLP, professional trainings, and other days that do not provide a reason that services were not provided. (Speech Service Logs dated September, 2022- May, 2023)
- Taken together, records indicate a deficit of 185 minutes total during the 2022-23 school year. (Speech Service Logs dated September, 2022- May, 2023)
- Progress reports for the 2022-23 school year indicate "Progress Made, Goal Not Met" on all speech goals, and to the question, *Progress Sufficient to Meet Goal by the End of IEP Year?* Each progress report indicates, "Yes." However, None of the goals were met and progress was minimal (with baseline scores near 60% and progress scores ranging from 50-70%). In many cases, the same goal/benchmark was listed on the new IEP (examples of goals/benchmarks that were unchanged below). (Progress Reports dated October 21 and December 21, 2022, and March 17 and May 26, 2023)

- [The Student] will improve [the Student's] intelligibility by achieving the following benchmarks as judged by quarterly speech samples with 85% accuracy:
  - [The Student] will articulate the final sounds
  - [The Student] will produce all syllables in multisyllabic words.
  - [The Student] will produce non-developmental sounds in words.
- [The Student] will improve [the Student's] expressive language by achieving the following benchmarks with 75% accuracy as judged by quarterly speech samples.
  - [The Student] will use plurals when identifying more than one object in a picture.
- The Student's kindergarten teacher provided input for the IEP held in March. Her comments read, "...it is difficult to understand what [the Student] is saying due to articulation errors; when frustrated with peers his first option is to hit and/or push." Additionally, under the *Adverse Affect on Education* section, the IEP reads, "[the Student's] articulation errors call attention to [the Student's] speech and distract from the message." (IEP dated March 15, 2023)
- The Student's end-of-year report card also showed problems with speaking clearly and in complete sentences for all 4 quarters (Kindergarten Report Card for 2022-23 school year)
- The Student has attended private speech therapy once per week for 45 minutes since January of 2023. (Letter of Complaint dated July 11, 2023)
- These services continued through the summer of 2023 and the Student attended 6 sessions during the summer, while not also receiving school-based services. Baseline data indicated that the Student was producing the L sound at 10% accuracy and the S sound with 50% accuracy at the word level. Following 6 sessions of 45 minutes each, data indicate 70% and 80% accuracy, respectively, at the phrase level. (Letter from Private Speech Therapist dated July 31, 2023)
- The District confirmed that time was missed and proposed 50 minutes of compensatory services to correct the problem. (Letter of Response dated August 3, 2023)

### *Summary and Conclusions*

The above facts demonstrate the District's failure to implement the Student's IEP. It is unclear whether the lack of progress demonstrated is a result of the failure to implement the IEP or the fact that the IEP did not include adequate services to make progress on the goals to begin with, or both. In any case, the District's failure resulted in the Parents seeking outside services for the last 8 months at

their own expense. Data over the summer when just the private services were being provided demonstrate considerable progress. It stands to reason that the District is responsible not only for the minutes not provided according to the IEP, but that the District bears some responsibility for the outside services that have resulted in adequate progress on speech goals.

It is further noted that the services outlined in the IEP reflect the services that the IEP team agrees are needed to make progress on the goals. These services are not dependent on the availability of professionals or factors such as scheduling. If the service delivery schedule provides services on a Friday and the District misses multiple Fridays, it is the District's responsibility to provide those services at another time.

Based on the above findings, the District failed to fully implement the requirements of 92 NAC 51- 007.02. Thus, the following **corrective action is required**.

#### *Corrective Action*

1. The District shall convene the IEP team to develop a schedule to provide 140 minutes (185x 80% to account for weeks that were only 4 days instead of 5) of compensatory speech and language services to the Student within 10 calendar days of the date of this report. Compensatory services are to be delivered at a mutually agreed-upon time **outside regular school hours** (before or after school).
  - a. The schedule for compensatory services must be provided to NDE within 2 business days of the IEP meeting.
  - b. Compensatory services shall be completed by December 31, 2023. Student absence shall result in a waiver of services scheduled for that day. Staff absences must be rescheduled.
  - c. The District must submit service provider logs verifying completion of all compensatory services to NDE by the last business day of each month until the service is complete and all compensatory service has been verified.
2. The District shall reimburse the Parent for services the Parent obtained from January 2023 through the end of the 2022-23 school year.
  - a. The Parent will provide the District with an invoice including exact amounts paid for services obtained within 30 calendar days of the date of the Investigation Report.
  - b. The District will provide reimbursement for all costs in the invoice within 60 calendar days of the date of the Investigation Report.
  - c. The District will provide evidence to NDE of payment made within 60 calendar days of the date of the Investigation Report.

**Issue # 2**

Did the District comply with parent requests to inspect their student's records without unnecessary delay by providing copies? [92 NAC 51-009.03B & 009.03B2b]

92 NAC 51-009.03 states:

009.03B *Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained, or used by participating agency. The participating agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program [sic] and in no case more than 45 days after the request has been made.*

009.03B2 *The right to inspect and review education records includes:*

009.03B2b *The right to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records*

*Allegations/Parent Position*

In the Letter of Complaint dated July 11, 2023, the parent describes that in December of 2022, they asked for documentation of the Student's progress on IEP goals during the previous school year. The District responded that they weren't going to worry about the past and needed to move forward, perhaps adding more special education minutes.

During the March 15, 2023, IEP meeting, the Parent again asked for speech and language logs or notes from the previous school year as well as for the period from August- October 2022, and these documents have not been provided.

### *District Response*

According to email correspondence with the District, the principal did not remember the conversation referenced by the Parent but did not deny that it had taken place.

### *Investigative Findings*

- The Parent requested and was provided a copy of the Student's special education file in the fall of 2022 (narrative of complaint issues provided by the Parent)
- While going through the file, the Parent found Progress Reports that had never been provided from the previous school year, all reflecting minimal progress (narrative of complaint issues provided by the Parent)
- The Parent noted in their Letter of Complaint and then confirmed in interview and in a narrative provided that the Parent had requested speech records and notes from the previous school year as well as from the first few months of the 2022-23 school year and these documents were never provided.
- The last day of school for kindergartners was May 16, 2023 (District Calendar, 2022-23)
- The Parent provided a copy of the Student's progress report from the 4<sup>th</sup> quarter of 2023. The envelope was postmarked June 20, 2023. (Envelope and progress report for 4<sup>th</sup> quarter, 2023, postmarked June 20, 2023)

### *Summary and Conclusions*

While the conversation regarding the Student's previous records was not documented, the Parent identified a number of times that the Parent requested to better understand the Student's lack of progress. The progress reports from the preschool represent an issue that falls outside the timeline for this complaint, but nevertheless, demonstrate the District's pattern of failing to share relevant documentation and data about the Student's special education. The most recent progress report, mailed over a month after school was out, further supports this pattern.

Based on the limited access the Parent had to relevant data and the repeated requests to review speech data, the District failed to fully implement the requirements of 92 NAC 51- 009.03. Thus the following **corrective action is required**.

### *Corrective Action*

1. The District shall promptly provide copies of all documentation (including service logs from the child's entirety of special education) related to the Student's IEP and service delivery to the Parent

- a. This documentation should be provided at no cost to the parent.
  - b. The documentation shall be provided no later than 30 days from the receipt of this Investigation Report.
  - c. The District shall provide evidence of certified mail to NDE within a week of the documentation being mailed or include NDE in the email at the time the documentation is sent.
2. The District shall develop and implement training for all certified special education staff regarding the timely provision of progress reports.
    - a. The District shall provide this training to staff by the end of the first quarter.
    - b. Materials for the training must be provided to NDE two weeks prior to the training for approval.
    - c. Attendance or sign-in sheets shall be provided as evidence of participation in the training within 5 calendar days of the implementation of the training.
    - d. On or before April 1, 2024, NDE will request copies of IEPs and corresponding progress reports to conduct a random file review to ensure that this issue has been corrected systemically by the end of the school year.

**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:

Jordyn Brummund, Complaint Specialist  
Christopher Chambers, Complaint Specialist  
NDE Office of Special Education  
[nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov)