

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.07
Complaint Investigator: REDACTED
Date Complaint Filed: August 16, 2023
Date of Report: REDACTED

Issues Investigated

1. Did the District include all required team members at the May 15, 2023, IEP Team meeting? [92 NAC 51-007.003; 92 NAC 51-007.004; 92 NAC 51-007.006]
2. Did the District develop an IEP during the May 15, 2023, IEP Team meeting to ensure a free appropriate public education considering the most current Multidisciplinary Team (MDT) Evaluation, medical information, and information from IEP Team participants? [92 NAC 51-004.01]
3. Did the District provide special education and related services to the student in accordance with the IEP in accord with the resolution agreement for complaint 22.23.25? [92 NAC 51-007.02]
4. Did the District consider the Parents' request to correct the Student's records pursuant to the resolution agreement for complaint 22.23.25? [92 NAC 51-009.03G]
5. Did the District consider the Parents' request to access the Student's education records in accord with the resolution agreement for complaint 22.23.25? [92 NAC 51-009.03]
6. Did the District respond to the Parents' request to amend the Student's IEP and reconvene the Student's IEP Team to address the Student's medical concerns following the May 15, 2023, IEP Team meeting? [92 NAC 51-009.05A]
7. Did the District engage in predetermined decision-making outside of the IEP Team meeting that impacted the provision of FAPE? [92 NAC 51-004.01].

Information Reviewed by Investigator

From the Complainant

- Letter to whom it may concern from Internal Medicine/Pediatrics electronically signed on September 26, 2022
- Email from Mother to Principal, District Chief Officer Student and Community Services, District Director of Special Education, Director of the NDE Office of Special Education (OSE), Director of Accountability OSE, District Human Resources Administrator, Bullying and Cyber-bullying Research Associate OSE, dated December 6, 2022, at 1:34 PM
- Email from Special Education Teacher to Mother dated December 1,

- 2022, at 2:21 PM
- Email from Mother to District Director of Special Education, District Associate to General Counsel, District Chief Operations/Talent Office, District Principal Supervisor, Outreach Coordinator PTI dated January 10, 2023, at 8:27 PM
 - Email from Father to District Director of Special Education January 11, 2023, 7:39 AM
 - Email exchange between Father and District Director of Special Education dated between Jan 11, 2023, at 5:02 PM and January 12, 2023, 5:58 AM
 - Email from District Director of Special Education to Father dated January 14, 2023, at 9:41 AM
 - Email from Father to District Director of Special Education, District Director of Health Services, Principal, and a registered nurse dated January 17, 2023, 6:08 PM
 - Email from Father to District Director of Special Education dated January 18, 2023, at 5:28 PM
 - Seizure Action Plan from the REDACTED Clinic dated January 24, 2023, at 9:50 AM
 - Email from Mother to Special Education Teacher dated February 10, 2023, at 11:17 AM
 - Email response dated February 24, 2023, at 1:17 PM from District Director of Special Education to Father in an undated document
 - Email from Father to Principal and Special Education Teacher dated February 27, 2023, at 3:16 PM
 - Email and Letter from District Director of Special Education to Parents dated March 3, 2023
 - Student Progress Report dated March 10, 2023
 - Email from District Director of Special Education to Father dated March 13, 2023, at 3:00 PM
 - REDACTED Verification of Disability dated March 28, 2023
 - Email from District Director of Special Education to Father dated March 29, 2023, at 5:37 PM
 - Email from Father to District Director of Special Education dated March 29, 2023, at 8:12 PM
 - Email from Mother to Principal dated March 30, 2023, at 4:12 PM,
 - Email from Mother to Principal, another person and District Director of Special Education dated March 30, 2023, at 5:19 PM
 - Email from Father to District Director of Special Education and NDE staff dated April 5, 2023, at 8:21 AM
 - Email from District Director of Special Education to Father dated April 5, 2023, at 5:20 PM
 - Email from Father to District Director of Special Education dated April 6, 2023, at 12:21 PM
 - Email exchange between Father and District Director of Special Education

- dated April 7, 2023, at 5:00 PM and 5:12 PM
- Email from Father to District Director of Special Education NDE dated April 7, 2023, at 10:32 PM
 - Letters to whom it may concern dated April 10, 2023, from Student's Pediatrician
 - REDACTED Care Follow Up Note dated April 24, 2023, at 8:00 AM
 - Letter dated May 4, 2023, from Student's Home Health Care agency
 - Letter to the Student's School District from the REDACTED Clinic at REDACTED dated May 8, 2023
 - Email exchange between Mother and District Director of Special Education dated May 8, 2023, between 5:17 PM and 6:46 PM
 - Email from NDE Complaint Investigation Specialist to Mother dated May 9, 2023, at 4:23 PM
 - Email from Father to the Department of Health and Human Services (DHHS) dated May 9, 2023, at 10:19 AM
 - Email from Mother to District Director of Special Education dated May 9, 2023, at 3:18 PM
 - Email from District Director of Special Education to Parents dated May 10, 2023, at 8:09 AM
 - Email from Mother to School Psychologist dated May 10, 2023, at 10:11 PM
 - Email from Father to District Director of Special Education, Director of the OSE, and Parent's Attorney, dated May 10, 2023, at 10:35 AM
 - Email from District Director of Special Education to Parents dated May 10, 2023, at 5:30 PM
 - Notice of Meeting dated May 10, 2023
 - Email from Father, to Director of the OSE, and Director of Accountability OSE, dated May 10, 2023, at 8:57 PM
 - Email from Father to District Director of Special Education, Director of the OSE, Outreach Coordinator PTI, and another person dated May 10, 2023, at 9:27 PM
 - Email from Mother to District Director of Special Education and District's School Support Liaison dated May 11, 2023, at 10:58 AM
 - Email from Director of the OSE to Parents and District Director of Special Education dated May 11, 2023, at 4:35 PM
 - Email from Father to Director of the OSE dated May 12, 2023, at 8:57 AM
 - Phone records from Mother dated May 15, 2023
 - Individualized Education Program dated May 15, 2023
 - Prior Written Notice dated May 15, 2023
 - Email from Father to District Director of Special Education dated May 15, 2023, at 7:50 PM
 - Email exchange between Mother and Waiver Services Coordinator, DHHS dated May 16, 2023, from 9:26 AM to 9:53 AM
 - Email from Mother to School Psychologist, Director of the OSE and Director of Accountability OSE dated May 16, 2023, at 1:12 PM

- Email from District Director of Special Education to Parents dated May 16, 2023, at 4:37
- Email from Mother to District Director of Special Education, Director of the OSE, Director of Accountability OSE, Outreach Coordinator PTI, Waiver Services Coordinator, DHHS, Previous District Superintendent, District Superintendent, and others dated May 16, 2023, at 6:33 PM
- Email from Waiver Services Coordinator, DHHS to Mother dated May 17, 2023, at 8:55 AM
- Email exchange between Mother and Waiver Services Coordinator, DHHS dated May 17, 2023, from 8:55 AM to 9:04 AM
- Letter from Father to unnamed recipient dated May 20, 2023
- Email from District Director of Special Education to Mother dated June 2, 2023, at 12:30 PM
- Letter from Student's pediatrician to whom it may concern dated June 2, 2023
- Email exchange between District Director of Special Education, Parents and Parent's attorney dated between June 2, 2023, 4:21 PM and June 12, 2023, at 3:00 PM
- Letter of Complaint dated August 16, 2023, received by NDE August 16, 2023
- Interview between Parents and Complaint Investigator dated October 7, 2023

From the School District

- Progress Report dated March 10, 2023
- Student Daily Attendance Detail Dates of October 10, 2022, through May 24, 2023
- Compliance Resolution dated April 5, 2023
- Review of Documents as part of Compliance Resolution dated April 25, 2023
- Evaluation Report dated May 4, 2023
- Notice of Individualized Education Program Team Meeting dated May 10, 2023
- Email exchange between Director of the OSE, Parents, and District Director of Special Education, dated between May 11, 2023, 4:35 PM and May 12, 2023, at 8:58 AM
- Email from Special Education Specialist, NDE and Director of the OSE, dated May 12, 2023, at 3:24 PM
- Draft Individualized Education Program dated May 15, 2023, with handwritten notes
- Individualized Education Program dated May 15, 2023
- Prior Written Notice dated May 15, 2023
- Email from Mother and District Director of Special Education and District School Support Liaison dated May 11, 2023, at 10:58 AM

- Progress Report dated May 26, 2023
- Email between Mother and District Director of Special Education dated June 2, 2023, between 12:30 PM and 4:21 PM
- Email from Father to District Director of Special Education dated June 12, 2023, at 7:47 PM
- Email from District Director of Special Education to Mother dated June 12, 2023, at 3:00 PM
- Letter of Response dated September 15, 2023, received by NDE September 15, 2023
- Email from the Mother to the Complaint Investigator dated October 9, 2023, at 11:17 AM and 1:26 PM

Introduction

On April 5, 2023, the Nebraska Department of Education, Office of Special Education (OSE) issued a Resolution and Close Out Letter in response to a March 2, 2023, complaint filed on behalf of a Student enrolled in the District and assigned Complaint 22.23.25. The Resolution included the following:

1. Review of Records for Issues 1–16, providing written documentation to OSE within 20 calendar dates of the April 5, 2023, Resolution letter.
2. 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.
3. Review Policies and Procedures related to each of the 15 issues within the investigation within 20 days of the April 5, 2023, Resolution letter.
4. Compensatory Education based on review of records for Issues 1, 7, 8, 9, 12, 13, and 14.
5. Conduct a reevaluation and provide a copy of the reevaluation to OSE no later than May 5, 2023.
6. Reconvene the IEP Team within 10 calendar days of the completion of the Student's reevaluation to determine the Student's educational placement and the provision of FAPE. The District must provide a copy of the notice of the meeting and revised IEP to OSE the business day following the IEP Team meeting.

On April 25, 2023, the District emailed the document review of the 16 issues to OSE.

A May 16, 2023, letter from OSE clarified timelines for the 22.23.25 Resolution Agreement allowing for the district to complete the student's reevaluation by May 5, 2023, and reconvene the IEP Team within 10 days of completing the student's reevaluation.

An IEP and Prior Written Notice show the district held an IEP meeting on May 15, 2023, without the parents in attendance.

Parents filed a child complaint on August 16, 2023, alleging that the district did not uphold the terms of the April 5, 2023, resolution agreement for all six issues.

Findings of Fact

1. The Resolution agreement document shows, *"The District must provide a copy of the Student's reevaluation to OSE no later than May 5, 2023."*
2. The Student's Father signed the Notice and Consent for Evaluation document on March 8, 2023. The document showed that additional data in the areas of academics, intellectual, perceptual motor, social and emotional, and speech and language would be collected in the Student's reevaluation.
3. The May 5, 2023, Evaluation Report documents that the observations of the student could not be completed due to student absences and that the parents did not complete and return a rating scale related to social/emotional/behavioral development. The report concludes that the student continues to meet eligibility criteria to be identified under the category of Other Health Impairment.
4. The NDE Complaint Investigation Specialist sent an email to the District Director of Special Education on May 8, 2023, stating, *"I am checking in with a reminder that a copy of the student's reevaluation, as indicated in the Resolution Acceptance letter dated April 5, 2023, needed to be submitted to the Office of Special Education by May 5, 2023."*
5. The District Director of Special Education sent a text message to the parents on May 8, 2023, stating, *"The team has finished the student's assessments. We are ready to hold his MDT and IEP. Would you be available at 10am on May 17th for the MDT/IEP? We will hold it either on Teams or at [school]."*
6. The District Director of Special Education sent an Email with this same information to the Mother on May 8, 2023, at 5:17 PM. The Mother confirmed the district's proposed MDT and IEP Team meeting sent via email on May 8, 2023, at 6:46 PM.
7. On May 9, 2023, the Parents file a new complaint with the Office of Special Education stating concerns that the District was not upholding the requirements of the Resolution Agreement for complaint 22.23.25 by scheduling the required IEP meeting for May 17, 2023, when they were required to hold the IEP by May 15, 2023. The new complaint filing was denied based on the requirements provided in the resolution for when a new complaint could be filed.

8. A text between the parents and the Department of Health and Human Services (DHSS) staff canceled an administrative hearing also scheduled for May 17, 2023, explaining, *"Unfortunately, we must request dismissal of this motion with regret, as we are unable to participate at this time. Our reason for this request is that our son's school district has provided us with only one date for an Individualized Education Program (IEP) meeting, which coincides with the scheduled hearing. Given the circumstances surrounding the district's previous acquisition (sic) accusation of education neglect charges, which were subsequently dismissed, it is imperative that we prioritize attending the sole IEP meeting offered to us. Our primary objectives are the student's well being and best interest."*
9. On May 10, 2023, at 8:09 AM the District sent an email to the family stating, *"NDE is requiring that we complete [Student's] MDT/IEP by May 15th. Are you available at 10am on Monday, May 15th?"* The Notice of Meeting listed the following individuals invited and included LEA, General Education Teacher, SLP, Special Education Teacher, Interpreter of Results, OT and PT.
10. On May 10, 2023, at 10:35 AM, the father responded to the 8:09 AM email stating, *"I had to make significant adjustments to my work travel schedule, rearrange child care arrangements, dismiss an administrative phone hearing for [the student] (something he really needs and coordinate the availability of IEP attendees to align with the only date offered by OPS, which is May 17th 2023. And now you're requesting me to reschedule my work schedule yet again? At this point, I'm unsure if that's even possible. If it is, it will come at a considerable expense, and will undoubtedly upset many people, including my Director. Considering [District] false allegations caused sheriff deputies to show up at my workplace to serve me with educational neglect paperwork and custody removal paperwork, I've already missed work dealing with all of these matters. The emotional strain that the district's actions are placing on my family has become increasingly difficult. These actions are spilling into my professional life. Will I be penalized if I cannot accommodate the district's sudden change of plans and reschedule all of our work and personal commitments again? While [the Student] is my top priority, it was the district that agreed to the dates with NDE. With the resources available, such as special education services, in-house legal counsel, and external lawyers, it seems reasonable to expect that better planning and sufficient notice would have been provided since the district proposed the resolution agreement and agreed to the timelines. I find it infuriating that my family and my work are the only ones being forced to bear the brunt of these circumstances. Why*

don't we arrange a meeting involving all of our legal representatives to explore alternative avenues for resolving [my children's] education outside of [District]? This approach could help us reach a definitive resolution and put an end to all matters once and for all?"

11. Emails dated May 10, 2023, between 10:09 AM and 10:52 AM between the NDE Complaint Investigation Specialist, OSE Director of Accountability, Director of the OSE, and NDE's contracted support at Westat indicated that the district had still not responded to the NDE Complaint Investigation Specialist's May 8, 2023, nor provided a copy of the student's reevaluation report as required.
12. A May 10, 2023, 11:51 AM email from the Director of the OSE to NDE's contracted support at Westat confirms that the Director of the OSE and the District Director of Special Education communicated by phone, *"The Director of Special Education will send a response to the Complaint Investigation Specialist after noon today. Ultimately, they conducted the reeval on 5/4 but the report indicated that the child may need to have a different eligibility category and has additional needs so she thought they needed to meet before she sent everything in. I told her to communicate all of this to the response email. I also told her to email the parents and tell them she is shifting the meeting time and let them decide if they want the meeting on May 17th or not."*
13. On May 10, 2023, at 5:09 PM, the District Director of Special Education responded to the NDE Complaint Investigation Specialist's May 8 email providing the reevaluation report completed on May 4. The District Director of Special Education indicated, *"[the parents] did not make [the Student] available for the remaining assessments until May 4, 2023 ([the Student] has not been in school since February)."*
14. On May 10, 2023, at 5:30 PM, the District Director of Special Education responded to the parent via email stating, *"Attached is the Reevaluation Report for [the student]. We will need to proceed on Monday at 10:00 with the IEP meeting as the 15th is the date provided to us as a deadline by NDE. During the meeting we will discuss the recent evaluation results. Do you prefer to meet in person or on Teams? Will your attorney be joining?"*
15. On May 10, 2023, at 8:57 PM, the parents responded to the District Director of Special Education 5:30 PM email and copied the staff at the NDE. The email stated, *"I had previously mentioned this morning that I made adjustments to my schedule that includes rescheduling and canceling various personal and professional commitments in order to accommodate the district's IEP meeting request for May 17, 2023. The*

date was accepted and confirmed on May 8, 2023. We willingly accepted the district's proposed date and exerted considerable effort to satisfy everyone involved. Given the nature of my job, I am entrusted with adhering to stringent deadlines for facility inspections and engaging in meeting with individuals from various locations across the country. It is important to note that the district had more than sufficient time to engage in proactive planning. Demanding that I once again rearrange my entire schedule and itinerary by placing my own job at risk, is both unreasonable and unrealistic. It is both irresponsible and unprofessional to expect my employer, my team, my facility operators, and my family to bear the consequences of the district's failure to plan accordingly. Effective communication through planning, and transparent discussions could have easily prevented the current predicament we find ourselves in, especially considering the resolution agreement and timelines were proposed and agreed upon by the district. Upon further consideration, I regret to inform you that I am unable to make any further changes to my itinerary for 05/15/2023. However, if the district wishes to convene Friday or Saturday evening before my departure on Sunday, we would be open to that possibility. While this option may not be ideal for our family as it would exclude several crucial members of our team and offer us no time for preparation, I acknowledge the significance and priority."

16. On May 11, 2023, at 10:58 AM the Parents contacted the District Director of Special Education requesting an Independent Education Evaluation as the family and medical team hold different perspectives of the student's May 4, 2023, reevaluation. Additionally, the mother requested amendments to the student's educational records regarding the student's 2022–23 school year attendance and clarifying within the student's education records that the mother returned the parent rating scale assessments during the reevaluation process which the district stated were not returned.
17. On May 11, 2023, at 4:35 PM, the Director of the OSE emailed the Parents and the District Director of Special Education stating "NDE confirms receipt of the reevaluation report and understands that it was not provided as required on May 5 due to a misunderstanding that NDE has clarified. NDE has recommunicated the timeline set forth in the complaint report to [District] and [District] is now moving forward based on that required timeline. NDE acknowledges that [District's] initial miscalculation of the timeline is presenting a problem for the parent attending the IEP Team meeting. If both parties agree to extend the deadline for the IEP

Team meeting to May 17, NDE will extend the required deadline in the complaint report to May 17.”

18. On May 12, 2023, at 8:58 AM, the Parents responded to the email dated May 11, 2023 at 4:35 PM stating, “We cannot agree to granting the district additional time based on the district's perceived “misunderstanding” . . . It seems that everyone, except our family, is inclined to disregard the fact that the district levied allegations against us, claiming we failed to collaborate with school authorities, as a means to secure educational neglect charges and custody removal. Despite the dismissal of the accusations, I am unwilling to permit the district to proceed at their own leisure, especially considering the previous abuse of power and dishonesty regarding the events that have unfolded. I hold the belief that the judge will not be sympathetic towards the district's apparent difficulties in meeting deadlines, particularly considering that the request for the IEP meeting was made six months ago. I do not think the judge would accept the notion that the resolution agreement, which explicitly outlined specific dates and timelines, can be subject to interpretation or leniency from the NDE. It is reasonable to expect the judge to prioritize the adherence to agreed upon terms and the timely provision of educational services. The district could turn around tomorrow and involve CPS [Children's Protective Services] and the county attorney again with more accusations thereby disrupting our personal and professional lives causing more trauma to our children and family. It has become crucial that [the Student's] schooling is prioritized. The persistent delays caused by the district must come to an end. Immediate attention should be given to addressing [the Student's] educational needs. It is imperative that we take prompt action to ensure he receives the education he requires and deserves. Our family presents this evening, tomorrow evening or early Sunday morning as available options for the student's [IEP meeting, should the district express any intention to fulfill the terms outlined in the resolution agreement 22.23. We are willing to accommodate these suggested time frames to ensure timely progress is getting [the student] back to an appropriate school setting and adherence to the agreed upon resolution agreement the district entered into with NDE.
19. On May 12, 2023, at 3:24 PM, the District Director of Special Education notified the Director of the OSE that “[District] agrees to extend the timeline. However, since the [Parents] are not in agreement, we will proceed with the IEP meeting on May 15th so we are in compliance with the resolution agreement. Should we plan to proceed if the [Parents] do not participate or should we try to reschedule with them?”

20. The IEP meeting date on the most recent IEP is listed as May 15, 2023. The IEP start date is listed as May 16, 2023.
21. The IEP Participants sign in sheet for the May 15, 2023, IEP Team meeting documented the attendees as General Education Teacher, Special Education Teacher, LEA Representative, Interpreter of Results, SLP, Principal, Special Education Coordinator, Physical Therapist, and Occupational Therapist. It additionally documented that the Parents did not attend.
22. The Prior Written Notice dated May 15, 2023, included the following statement under the section, Description of other factors that are relevant to the school district's proposal, *"The IEP was held on May 15, 2023, in order to stay in compliance with the Resolution Agreement for Complaint #22.23.25 that was agreed upon by [District] and NDE. The family declined to extend the deadline to Wednesday May 17, 2023, and did not participate in the IEP meeting. The IEP notice was sent on May 10, 2023, to the family."*
23. The Mother provided telephone records for her school contact information on May 15, 2023, to demonstrate that the District did not attempt to include the Mother on the call.
24. The Prior Written Notice dated May 15, 2023, proposes to remove the 1-1 nursing services from the student's IEP and to extend the school day from a partial-day program (approximately two hours per day) to a full-day school program (approximately seven hours per day).
25. On June 2, 2023, at 2:30 PM the District Director of Special Education emailed mother that she needed additional information from the parents to make corrections.
26. Mother responded to the District Director of Special Education June 2, 2023, at 4:21 PM and requested a formal hearing in response to district denial to correct records for the Student as requested. On June 12, 2023, at 3:00 PM the district's Director of Special Education responded to the mother that she had not denied the request to correct student records, but stated she needed additional information from the parent to make corrections.
27. June 12, 2023, at 7:47 PM father emailed the District Director of Special Education requesting a formal hearing to correct the Student's educational records.

28. The parents reported they sold their home and moved to another school district in the state of Nebraska in July 2023. The student was enrolled in the new school district for the 2023–24 school year.

29. On October 9, 2023, the Parents reported they had reviewed videos and documentation at the district from the May 15, 2023, IEP meeting which documented that the OT and PT who are listed as attending the IEP meeting on that date, were not in fact in attendance. The Parents have lodged additional complaints with other agencies regarding this issue.

Issue # 1

Did the District include all required team members at the May 15, 2023, IEP Team meeting?

92 NAC 51-007.03 states:

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.*

92 NAC 51-007.04 states:

007.04 *IEP Team Attendance*

007.04A *A member of the IEP team described in 92 NAC 51-007.03A2 shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district or approved cooperative agree, in writing, that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.*

007.04B *A member of the IEP team in 92 NAC 51-007.04A may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:*

007.04B1 *The parent in writing, and the school district or approved cooperative consent to the excusal; and*

007.04B2 *The member submits, in writing, to the parent and the IEP team, input into the development of the IEP prior to the meeting.*

92 NAC 51-007.06 states:

007.06 *Parent Participation*

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 the 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

The Parents alleged that the District convened an IEP meeting on May 15, 2023, when essential members of the IEP Team were unavailable and not in

attendance, including the Parents. They further alleged that the District did not attempt to include the Parent or individuals the Parent invited with knowledge or expertise regarding the child including professionals from the Department of Health and Human Services and the Parent Training and Information Center, the Parent's attorney, and the Student's Home Health team via phone or virtually. The Parents stated that all these IEP members agreed to attend an IEP meeting on May 17, 2023, as originally proposed by the District and accepted by the Parents. The district unilaterally changed the meeting date without providing the parents the opportunity to participate on another date or through phone/video conference. The parents indicated they wanted to attend the IEP team meeting and share information but were unable to due to the district's noncompliance. The Parents believe that the district did not follow the appropriate procedures for setting up the IEP Team meeting for the student and any changes occurring as a result of that meeting should be voided.

The Parents further allege that the May 15, 2023, IEP meeting was not held as portrayed by the documentation provided by the district. They believe not only that the school failed to include qualified IEP Team members but that those IEP Team members did not participate in the May 15, 2023, meeting. The Parents have lodged additional complaints regarding these concerns with other state agencies.

The Parents noted that they have sold their home and moved to another school district during the summer of 2023 as a result of the decisions made at the May 15, IEP meeting because they believe the new IEP poses significant risk to the student's health. However, the student has not yet started school because the new district accepted the May 15, 2023, IEP as the transfer IEP against the parent's requests.

District Response

According to the District Response dated September 15, 2023, the following IEP Team members attended, General Education Teacher, Special Education Teacher, Local Education Agency Representative, Interpreter of Results, Speech-Language Pathologist, Principal, Special Education Coordinator, Physical Therapist, and Occupational Therapist as documented on the May 15, 2023, IEP Meeting Participant Sign In Sheet. They responded that the parents were notified and invited, offering options for virtual participation but they did not attend as documented on the IEP Meeting Participant Sign In Sheet from the May 15, 2023, IEP meeting.

The District explained that NDE instructed the district to hold the IEP Team meeting by May 15, 2023, while the family requested May 17, 2023. NDE agreed

to grant an extension if the family and District agreed to the extension. The District responded that it agreed; however the family did not agree; therefore, the District held the IEP Team meeting on May 15th as NDE required in the April 5, 2023, Resolution Agreement.

Investigative Findings

In this case, the April 5, 2023, Resolution Agreement required that the IEP Team reconvene within 10 days of the completion of the student's reevaluation to determine the student's educational placement and provision of FAPE.

The reevaluation report is dated May 4, 2023; however, because of the district's miscalculation of the timeline, the district requested an extension for the date it must submit the evaluation report to NDE. NDE granted this extension, changing the deadline for the district providing a copy of the reevaluation report to May 5, 2023. This change made it necessary for the IEP Team to meet no later than May 15, 2023. Documentation showed the district did not provide the OSE with a copy of the reevaluation report by the May 5, 2023, due date.

On May 8, 2023, the district sent an email to the Parents proposing to reconvene the IEP Team on May 17, 2023, at 10 AM and the Parents agreed to that meeting date and time according to summarized documentation as well as an interview with the Parents on October 7, 2023. Because the parents agreed with the proposed date and time, the May 17 IEP Team meeting met the requirements of a convenient time and place. The parents were obviously informed of the meeting with enough notice so they could arrange to attend because the family rearranged schedules to attend on May 17, 2023, and confirmed they planned to attend.

Also on May 8, 2023, the OSE emailed the district to remind staff that the deadline to submit the reevaluation report was May 5, 2023.

On May 10, 2023, at 8:09 AM and again at 5:30 PM, the district's Director of Special Education sent emails to the Parents stating that the IEP Team meeting would have to be changed to May 15, 2023, at 10 AM to meet the 10-day IEP Team meeting deadline to comply with the Resolution Agreement as required by the NDE.

The Parents responded to the initial email at 10:35 AM and to the second email at 8:37 PM explaining why this was not possible because they had already arranged for themselves and their representatives to attend the IEP Team meeting on May 17 as originally proposed and confirmed. However, the parents offered several alternative dates that could work for them to attend an IEP

Team meeting including meeting the next day (Friday) or over the weekend so the district could still meet the May 15 deadline.

On May 11, 2023, The Director of the OSE sent an email to both parents and the District Director of Special Education. This email explained that the deadline to conduct the IEP team meeting could be extended to May 17 if both parties agreed.

On May 12, 2023, at 8:58 AM, the Parents sent an email to the district and NDE indicating that they were not willing to grant an extension of the timeline to complete the Resolution Agreement because of the fear of additional allegations of educational neglect by the district. The Parents again proposed three alternate dates to hold the IEP Team meeting that would be before the May 15, 2023, deadline but reported the meeting was not rescheduled.

On May 12, 2023, the District Director of Special Education informed the OSE that the IEP Team meeting would need to be held on May 15, 2023, at 10 AM without the parents in attendance because, while the district was willing to extend the timeline, however, the Parents were not.

However, on May 8, 2023, the Mother confirmed agreement to meet on the proposed May 17, 2023, IEP team meeting date/time. On May 10, 2023, the district unilaterally changed the date of the IEP Team meeting from the originally agreed upon date of May 17 to May 15, 2023, at 10 AM. citing a requirement from the NDE as the basis for the change. However, on May 11, 2023, the NDE clarified their requirements and agreed to grant an extension until May 17, 2023, for the IEP Team to meet, if both parties agreed.

Although the Parents had previously (on May 8, 2023) agreed with the May 17, 2023, meeting date, the Parents sent an email on May 12, 2023, stating they were not in agreement to allow the district to extend the district's timeline to complete the Resolution Agreement because of the district's allegations of educational neglect because of "failure to cooperate with school staff". The Parents offered three alternative dates when they were available to hold the IEP team meeting; however, the district kept the updated scheduled May 15, 2023, date for the IEP Team meeting date stating the NDE was requiring the meeting to be held in accordance with the Resolution Agreement.

The newly proposed date of May 15, 2023, was clearly not a mutually agreeable and convenient time for the Parents to meet for the IEP Team meeting, again, based on the multiple emails explaining their position.

While the Parents reported they did not agree to extend the timeline, it appears this refusal was not related to the May 17, 2023, IEP Team meeting date, but rather due to a fear of the district making another educational neglect report against them. Interviews and documentation show the Parents had clearly arranged to attend the May 17, 2023, IEP Team meeting, and were so highly motivated to attend any IEP team meeting for the student that they offered alternative dates to meet that could still ensure the district met its May 15, 2023, deadline. However, there is no documentation that shows the district attempted to schedule the IEP Team meeting for one of those proposed dates or to negotiate another date.

Documentation and interviews show the district held an IEP meeting on May 15, 2023, at 10 AM without the parents in attendance. No documentation from the district shows they made any effort to contact the Parents with the option to participate virtually or by phone on May 15. The Mother's phone log shows that she received no incoming calls to participate in the IEP meeting. The district did not make any effort to contact the Parents with the option to participate virtually or by phone on May 15. The IEP and Prior Written Notice resulting from the May 15 meeting made significant changes to the student's services, the length of the school day, and the placement of the student.

It is noted that emails and documentation show that while the OSE continued to consistently communicate about existing deadlines, it also advised the district of the importance of including the parents in the decision-making process of the IEP Team meeting rather than simply meeting procedural compliance deadlines. Here, the district was faced with meeting the requirements of the resolution agreement and ensuring parent participation in the IEP Team meeting. OSE's guidance to the district on this conflict was based on the *Doug C. v. Hawaii* case the U.S. Court of Appeals for the Ninth Circuit decided on June 13, 2013, regarding the approach that must be used to determine the proper response when legal requirements conflict with each other.

In *Doug C. v. Hawaii*, the U.S. Court of Appeals for the Ninth Circuit discussed the balance of including the parent in the IEP Team meeting versus meeting the procedural timeline for the IEP Team meeting. The court determined that there are two primary purposes of IDEA: 1) to prepare the child for "further education, employment and independent living." [See 20 USC § 1400(d)(1)(A)], and 2) "to ensure that the rights of children with disabilities and parents of such children are protected." [See 20 USC § 1400(d)(1)(B)].

The court determined that, when balancing these two options, the decision must keep the purpose of the law in mind. The court explained, "When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE."

The district held an IEP meeting on May 15, 2023, without providing the Parents with the opportunity to participate to meet for the requirement in the resolution agreement to conduct an IEP Team meeting. The district did not provide the parents with a mutually agreeable date and time to reconvene the IEP Team to meet the May 15 deadline despite the NDE's agreement to extend the district's timeline to allow the parents the opportunity to participate. The district also did not attempt to schedule the IEP Team meeting at a mutually convenient time and place.

It is noted that the district had already not complied with the April 5, 2023, Resolution Agreement by not providing the OSE with a copy of the student's reevaluation no later than May 5, 2023. The district then compounded this noncompliance by unilaterally changing the date for the scheduled IEP Team meeting from the agreed upon May 17, 2023, to May 15, 2023. In light of this fact, it is unclear why the district chose to further its noncompliance by holding the IEP meeting without following the requirements in 92 NAC § 51-007.06 to ensure that the parents had the opportunity to participate.

Summary and Conclusions

For these reasons, the May 15, 2023, meeting the district held without the parents should not be considered an appropriate IEP Team meeting and, as such, all decisions made at that meeting would be considered null and void so that the IEP that was in effect on May 14, 2023, would be considered the current IEP for the provision of a free appropriate public education for the student.

Because the district did not meet the requirements of 92 NAC 51-007.06A2 with the May 15, 2023, IEP meeting, it is a moot point to further investigate and address whether the IEP Team members who attended the May 15, 2023, IEP Team meeting were appropriately qualified.

Based on the foregoing, the District failed to fully implement the requirements of 92 NAC 51-007.06A2. Thus, the following corrective action is required.

Corrective Action

1. Within 10 days of this report the district must amend the student's educational record to indicate the district held the May 15, 2023, IEP meeting without the parent and all amendments to the Student's IEP the district made at this meeting are not valid.
2. Within 5 business days of the date of this report, the district is ordered to contact the Student's new school district and provide a copy of the IEP in effect on May 14, 2023, as the student's current IEP for the purpose of providing comparable services upon the in-state transfer.
3. The district should copy Christopher Chambers and Tara Korshoj in the communication with the new school district which includes the IEP that was in effect on May 14, 2023.

Issues # 2, 3, 5, 6, and 7

Issue #2: Did the District develop an IEP during the May 15, 2023, IEP Team meeting to ensure a free appropriate public education considering the most current Multidisciplinary Team (MDT) Evaluation, medical information, and information from IEP Team participants? [92 NAC 51-004.01]

Issue #3: Did the District provide special education and related services to the student in accordance with the IEP in accordance with the resolution agreement for complaint 22.23.25? [92 NAC 51-007.02]

Issue #5: Did the District consider the Parents' request to access the Student's education records in accord with the resolution agreement for complaint 22.23.25? [92 NAC 51-009.03]

Issue #6: Did the District respond to the Parents' request to amend the Student's IEP and reconvene the Student's IEP Team to address the Student's medical concerns following the May 15, 2023, IEP Team meeting? [92 NAC 51-009.05A]

Issue #7: Did the District engage in predetermined decision-making outside of the IEP Team meeting that impacted the provision of FAPE? [92 NAC 51-004.01].

Investigative Findings

The findings of Issue #1 are incorporated herein by reference. It is noted that the noncompliance identified regarding the district's attempts to schedule an IEP Team meeting in accordance with the April 5, 2023, Resolution Agreement and the subsequent denial of any parent participation in the IEP process on May 15, 2023, impacts each of these issues.

It is noted that the student transferred to a new school district at the beginning of the 2023-24 school year. As part of the in-state transfer procedures the district sent a copy of the May 15, 2023, IEP as the IEP that was to be accepted and implemented or rejected and comparable services provided until such time a new IEP could be written. However, based on the findings of Issue #1, the May 14, 2023, IEP should have been the IEP sent to the new school district as the basis of the in-state transfer procedures. The provision of FAPE which underlies each of these issues will all be addressed with the development and implementation of a revised IEP based on the IEP in effect on May 14, 2023, through the IDEA transfer procedures at the new school district.

Summary and Conclusions

These issues all relate to the April 5, 2023, Resolution Agreement, and the IEP the district developed on May 15, 2023. Because of the findings in Issue #1, these issues are also moot as they all rely on decisions the district made at the May 15, 2023, noncompliant IEP Team meeting.

No additional corrective action is ordered regarding the district's provision of FAPE to the Student as the corrective actions ordered for Issue #1 are sufficient to address these concerns when the in-state transfer procedures based on the IEP in effect on May 14, 2023, are followed.

Issue #4

Did the District consider the Parents' request to correct the Student's records pursuant to the resolution agreement for complaint 22.23.25?

92 NAC 51-009.03G states:

009.03 states:

- | | |
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| 009.03G1 | <i>A parent who believes that information in education records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of the child may request the participating agency which maintains the information to amend the information.</i> |
| 009.03G2 | <i>The participating agency shall decide whether to amend the information in accordance with the request within a</i> |

reasonable period of time of receipt of the request.

009.03G3

If the participating agency decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal and advise the parent of the right to a local administrative review to be conducted in accordance with 34 CFR 99.22.

Allegations/Parent Position

The Parents alleged in their August 16, 2023, complaint “[District] neglected to conduct a hearing as outlined by FERPA for correcting [Student’s] educational records.”

District Response

The District response dated September 15, 2023, stated, “correction of records was not part of the resolution agreement for complaint 22.23.25.” However, the District acknowledged in its September 15, 2023, response that the family requested the District amend the Student’s May 4, 2023, reevaluation report.

Investigative Findings

The April 5, 2023, Resolution Letter does not include amending the Student’s educational records.

On May 11, 2023, at 10:58 AM the Parent contacted the District Director of Special Education stating,

I am making a formal request for the necessary amendments to the MDT evaluation, accurately reflecting assessments that were not sent to us as recorded by the district April 12, 2023, and April 14, 2023, or that we failed to return them. It is imperative to note that all relevant assessments were accomplished and furnished to the evaluators during the assessment. Should you require copies of the completed assessments or informed delivery confirming no assessments were provided outside the evaluation, please let me know.

[Student’s] attendance records in the MDT and throughout his education records are inaccurate. It is important to rectify these discrepancies, given that [Student’s] enrollment at [school] began on November 28th, 2023, whereas [school] marked [student] absent starting on October 10, 2023. We believe it is necessary to correct this error. We request that [student] attendance accurately reflect the

days when [school] did not have medical orders to provide health services as stated in the IEP, the days when there was no available care providers for [student], days where [student] was ill or had medical appointments excusing [student] absences and the instances when [student] arrived at school but was turned away.

In the event that you decline to rectify the MDT report to align with the factual information, I request the initiation of a hearing to address these crucial corrections regarding [Student's] education records.

On June 2, 2023, the District Director of Special Education sent an email to the Mother requesting evidence that the Parents completed the rating scales and doctor notes to change the attendance records.

The Mother replied to the District Director of Special Education's June 2, 2023, email by writing, *"I have received [District'] denial to correct [Student's] educational records as requested. Therefore, I formally request a hearing Pursuant to 99:20 the Family Educational Rights and Privacy Act (FERPA) and District Board Policy 5202-Access to Student Records "Correction or Amendment of Student Records."*

Later that day the District Director of Special Education replied to the Mother in response stating, *"I have not denied your request, I need further information in order to make a determination regarding your request."*

On June 12, 2023, at 7:47 PM the Father emailed the District Director of Special Education, writing: *"According to FERPA 99.22, it is required that a public school official responsible for making determinations for record corrections not have a direct interest in the outcome...Therefore, we request one final time a formal hearing be held to address correction [Student] education records."*

Summary and Conclusions

Although the Complainant's allegations focused on correcting Student's educational records the Resolution Agreement does not specifically address this and the District responded that the Parents had additionally requested corrections to the reevaluation dated May 4, 2023. As the Student's reevaluation was a part of the April 5, 2023, Resolution Agreement, the Parent's request for correction is appropriate to investigate.

It is found that the Parent believed that information contained in the May 4, 2023, Evaluation Report was inaccurate and incomplete and requested the Evaluation Report be amended. (009.03G1) According to 009.03G2 the District requested additional information prior to amending the information on June 2 however did not specify a timeline for the Parents to provide the documents. To

date, there is no evidence that the Parents have responded to the request for additional information and the District has not notified the Parent of a decision for amending or refusing to amend the Evaluation Report.

Based on review of documents both Parents and the District provided, the District implemented the requirements of 92 NAC § 51-009.03G and no corrective action is required.

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:

Christopher Chambers, Complaint Specialist
Tara Korshoj, Complaint Specialist
NDE Office of Special Education
nde.speddr@nebraska.gov