

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 23.24.08  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** August 22, 2023  
**Date of Report:** REDACTED

### Issues Investigated

1. Did the District respond appropriately to parent requests to review and revise, as appropriate, the Student's IEP following the termination of the district's contract with the approved private agency on April 27, 2023? [92 NAC 51-007.10E]
2. Did the District provide special education and related services to the student in accordance with the IEP after April 27, 2023? [92 NAC 51-007.02]
3. Did the District provide the parents with appropriate Prior Written Notice for a change of services and placement when the district's contract with the approved private agency was terminated on April 27, 2023? [92 NAC 51-009.05]

### Information Reviewed by Investigator

#### *From the Complainant*

- Email from Special Education Teaching and Learning Consultant to Parent dated May 19 (no time included)
- Email from Parent to Special Education Teaching and Learning Consultant dated July 28, 2023 (no time included)
- Email response from Interim Secretary to the Board to Parent dated August 3, 2023, at 5:25 PM
- Email Board Member representing District to District Administrators dated August 2, 2023, at 5:42 PM in response to an undated email from Parent to Board Members and District Superintendent
- Email from Parent to Board Members and District Administrators undated
- Email Board Member representing District to District Administrators dated August 3, 2023, at 12:57 PM in response to an undated email from Parent to Board Members and District Superintendent
- Email from Director of Special Education to Parent dated August 4, 2023, at 12:38 PM
- Email from Parent to Director of Special Education and Special Education Teaching and Learning Consultant dated August 13, 2023, at 10:18 AM

- Email response from Director of Special Education to Parent (undated) in response to August 13, 2023, at 10:18 AM Email
- Letter of Complaint dated August 22, 2023, received by NDE August 22, 2023
- Interview with Mother on October 6, 2023

*From the School District*

- Evaluation Report dated October 13, 2021
- Individualized Education Program, including Behavior Intervention Plan dated October 6, 2022
- District 2022-2023 School Calendar
- Student Enrollment History, generated on September 19, 2023
- Email response to clarification questions posed by the Complaint Investigator from the Director of Special Education dated between October 2, 2023, at 5:01 PM and October 4, 2023, at 1:56 PM
- Letter of Response dated September 19, 2023; received by NDE September 19, 2023

**Introduction**

The Student in this investigation was eligible for special education as a student with Emotional Disturbance. The Student initially met the criteria for special education and related services in 2015 for Emotional Disturbance and Speech-Language Impairment. The Evaluation Report dated October 13, 2021, noted the Student displayed significant challenges with social skills, difficulty regulating emotions, and was easily upset and disrespectful when things did not go the Student's way. The Student has been enrolled in the District since Kindergarten. During fifth grade, the Student was enrolled in a Level-3 program from October 2017 through April 2018. In sixth through most of the eleventh grade, the Student was enrolled in Level-3 program 1.

On April 27, 2023, the Student's placement at a Level-3 program, as specified in the Student's October 6, 2023, IEP, was terminated. Subsequently, the Parent requested an IEP Team Meeting to discuss the Student attending school and receiving services.

The Student was initially enrolled in an in-district placement comparable to a Level-3 program for the start of the 2023-2024 school year but was accepted into a different Level-3 program shortly into the start of the 2023-2024 school year. The Student's IEP dated October 6, 2023, is the IEP of record.

**Findings of Fact**

1. IEP dated October 6, 2022, lists a Level-3 program as the placement for the student for 25 hours every week for the duration of the IEP.

2. The parent reported in the Letter of Complaint dated August 22, 2023, and during the Interview on October 6, 2023, that on April 27, 2023, she was notified that the Home District's contract with the Level-3 program 1 placement was terminated for the Student and the last day for the Student was April 27, 2023, at this program. The parent reported in the Complaint that she was not told a reason for the termination and that there would not be a meeting. Finally, the parent-reported in the Complaint and during the interview that she was told to contact the Home District for the next steps and the student was the Home District's problem now.
3. The Director of Special Education reported in an email response to the Complaint Investigator on October 4, 2023, that the District was notified on April 27, 2023, that the Student's placement at the Level-3 program 1 was terminated. The Director of Special Education further reported in the October 4, 2023 email that a Level-3 program has the ability to terminate students who they deem are not "a good fit" with their program. They are not required to give advance notice of a student's termination.
4. According to the District's Director of Special Education in an email dated October 4, 2023, following the Student's termination from Level-3 program 1, the District contacted two different Level-3 programs under contract with the District but were notified in late April via phone that they were not accepting students for the remainder of the 22-23 school year. The Director of Special Education explained that it is typical that most schools do not accept students during the 4th quarter according to the October 4, 2023, email response to the Complaint Investigator.
5. The parent reported in the August 22, 2023, Complaint that the Level-3 program 1 social worker assured the Parent that the Home District had been notified and a District representative would reach out to the Parent. The Level-3 program 1 Social Worker additionally advised the Parent that the Student would not be attending school until the District Representative was in contact with the Parent.
6. The parent reported in the August 22, 2023, Complaint and during the October 6, 2023, interview that after approximately two weeks without contact from the District, the Parent left a phone message with a District Teaching and Learning Consultant with Special Education about the Student not receiving the IEP services.
7. According to the October 4, 2023, response from the Director of Special Education to the Complaint Investigator, a staff member (unnamed) from the District's Student Placement office spoke to the Mother on May 18, 2023.

8. According to the Complaint made on August 22, 2023, and phone interview with the Parent on October 6, 2023, when the parent did not receive a return call, on May 19, 2023, the Parent called the District offices and asked to speak to the District Teaching and Learning Consultant with Special Education's Supervisor, again leaving a voice mail about the student receiving IEP services.
9. On May 19, 2023, the District Teaching and Learning Consultant with Special Education sent an email response to the Parent's phone message stating that a meeting would be set up in June. The Director of Special Education stated that the District Teaching and Learning Consultant with Special Education spoke with the Parent on May 19, 2023.
10. According to the Director of Special Education in the October 4, 2023, response to the Complaint Investigator, the District sent referrals for the Student to three Level-3 programs on June 30, 2023.
11. On July 28, 2023, the Parent emailed the District Teaching and Learning Consultant with Special Education stating:

I am becoming extremely worried that there has been no contact or plan of transition put into place for my [child]. [Student] has had no school or plan from [District] since April 27 and school is starting in a couple weeks. [Student] has lost over 15 pounds this summer due to stress and anxiety over suddenly being kicked out of [Level-3 placement] with no notice and having no idea where [student] is going next. I was under the impression from our phone conversation that we would be having a team IEP meeting in June. [Student] cannot be thrown into a typical setting and be expected to succeed. Please let me know what the plan is. It seems [student] has fallen through the cracks and we need a transition plan.

12. The Parent reported during the interview of October 6, 2023, and the August 22, 2023, Complaint that she did not receive a response to the July 28, 2023, email so wrote a formal letter to the District's Board of Education members on August 2, 2023, requesting action by August 4, 2023, at noon. The parent reported in the August 22, 2023, Complaint that two board members responded (Email responses from the Board Members are listed in evidence), but according to the Parent during the interview and in the August 22, 2023, Complaint no one from the District responded until 12:38 PM. (See item 14 below)
13. The Director of Special Education stated that a staff member from the Superintendent's office spoke to the Mother on August 3, 2023, in

response to the Complaint Investigator's email to the Director of Special Education on October 4, 2023.

14. On August 4, 2023, at 12:38 PM the Director of Special Education sent an email to the Parent stating:

[Student] will be enrolled at the [Name of Program] 2023-2024 this year as we do not have a Level 3 school that has accepted [Student]. One of the administrators at [Name of Program] will reach out to you early next week. The name of the Program Director at [Name of Program] is [Name of Program Director]. [Program Director] is being notified of [Student's] placement today.

15. On August 13, 2023, at 10:18 AM the Parent emailed the Director of Special Education, the District Teaching and Learning Consultant with Special Education, and the Superintendent that:

I am providing a follow-up to your email on Aug 4 stating I would receive a call early the next week. This did not happen. I waited a week and three days and have still heard nothing. I have not received a phone call from anyone from [District] and have had no communication about a meeting being set up for my [child] to discuss [student's] transition and appropriate placement. School is starting next week. I am at the point where I am concerned if [District] has the resources to provide my [child] an education.

16. In response to the August 13, 2023, email the Director of Special Education responded that "[Student] is enrolled at [Name of School]. I have added the program director, [Name of program director] to this email so you have [staff] contact information."

17. The Director of Special Education in an email to the Complaint Investigator on October 4, 2023, stated the Student had a placement at the in-district program and services were available beginning on August 17, 2023, the first day of the 2023-24 school year. The only days the Student did not receive services were the days the Mother said the Student was not coming to school and one day when the bus did not bring the Student to school.

18. The Director of Special Education described in an email to the Complaint Investigator on October 4, 2023, that the in-district program where the Student started the 2023-2024 school year is a separate school within the District. The staff at this school have special education certificates, and the students have disabilities. It is the in-district equivalent of a Level 3 school.

19. In the email response from the Director of Special Education to the Complaint Investigator wrote it is the practice that, "Any student that had

not been accepted by a Level 3 school was placed at [the in-district school] during the first week of August so that the students would have a place to attend when school began.”

20. The Director of Special Education stated in an email to the Complaint Investigator on October 4, 2023, that the Student attended school and received services on August 17 and 21, 2023, half a day on August 23, 2023. The Student did not show up on August 18 or 22. The bus was late on August 24, and the Student's mother said the Student had a doctor's appointment on August 25. The Student's mother then chose to have the Student not attend until the Student could attend the Level-3 program 2.
21. During the October 6, 2023, interview with the Mother, she confirmed the dates in Finding of Fact # 18, stating that the in-district school was not a good fit and the students attending the program were very different than the Student and the IEP was not being implemented. The Mother further reported that she had been notified by the Level-3 program 2 at that point so held out her Student until the transition could occur.
22. The Director of Special Education reported that the Student was accepted into another Level-3 program 2 on August 25, 2023.
23. The parent reported during the October 6, 2023, interview that there was no transition meeting between the District and the Level-3 program 2, but the Mother met with the principal of the Level-3 program on her own.
24. The Parent reported during the October 6, 2023, interview that the Level-3 program hours are from approximately 8:45 AM to 1:45 PM but the bus schedule does not allow the Student to attend all hours at the program.
25. The Parent reported during the October 6, 2023, interview that the District did not coordinate transportation and the Parent had to call and make arrangements and tell them that the Student qualified.
26. The Director of Special Education in the Letter of Response dated September 19, 2023, stated, “The District did not provide special education and related services from April 29, 2023- May 26, 2023, as no Level 3 school would serve [Student].”
27. During the October 6, 2023, interview with the Parent, she was not able to recall the first date the Student began at the Level-3 program 2.
28. The Director of Special Education of the District did not respond to a request from the Complaint Investigator as to the first date the Student started at the Level-3 program. Question from the Complaint Investigator, “When did the Student start attending at [Level-3 program 2]? To which the Director of Special Education of the District responded, “[Student's] first day of attendance was (confirming with [Level-3 program 2])”.

29. The parent reported on October 6, 2023, during an interview that an IEP, Notice for an IEP meeting, or a Prior Written Notice has yet to occur for the Student in spite of now being in his second placement since the beginning of the 2023-2024 school year and being terminated from the Level-3 program 1 on April 27, 2023, and not receiving services for the remainder of the 2022-2023 school year.
30. The Director of Special Education of the District did not respond to a request from the Complaint Investigator as to when the Student's IEP had occurred. "Question from Complaint Investigator – "Has the IEP described in the [September 19, 2023] District Response occurred now?" to which the Director of Special Education of the District replied, "Confirming with [Level-3 program 2]"

### **Issue # 1**

Did the District respond appropriately to parent requests to review and revise, as appropriate, the Student's IEP following the termination of the district's contract with the approved private agency on April 27, 2023?

92 NAC 51-007.10 states:

007.10        *The IEP team shall revise the IEP as appropriate to address:*

007.10E      *Other matters.*

#### *Allegations/Parent Position*

According to the Child Complaint filed on August 22, 2023, the Parent wrote that from April 27, 2023, when she was notified that her child was being terminated from the Level-3 program 1 until August 13, 2023, she made multiple requests for an IEP meeting to get special education services and determine the appropriate placement for services.

#### *District Response*

The District responded on September 19, 2023, that they requested placement at other Level-3 schools, but it was so near the end of the school year no other programs were accepting students. The District further responded that they worked throughout the summer to locate a Level-3 program, but it was not until August 25, 2023, that they received confirmation of the Student's acceptance into Level-3 program 2. In the meantime, the Student was enrolled in an In-District Program for the 2023-24 school year while the District continued to seek an outside Level-3 program at the Parent's request. An IEP meeting was in the process of being scheduled when the district learned of the Student's acceptance to the Level-3 program 2 so delayed the IEP to allow their participation. The District reported that Level-3 Program 2 is in the process of

scheduling an IEP meeting, and the Student is currently enrolled in this placement.

### *Investigative Findings*

Documentation and interview with the Parent and District confirm that the Student's termination from Level-3 Placement 1 occurred on April 27, 2023, and other Level-3 Placements did not accept the Student. The District acknowledged that they did not schedule an IEP during this time as they were anticipating holding the IEP in conjunction with a new Level-3 Placement. The parent reported during an interview on October 6, 2023, that an IEP has not yet occurred. The Director of Special Education did not provide any additional information when asked on October 2, 2023, in her October 4, 2023 email response to the Complaint Investigator.

### *Summary and Conclusions*

The District acknowledged that they did not hold the IEP following the Student's termination from Level-3 program 1 as they should have. As well, there is no evidence that an IEP has been scheduled as of this date. The date of the IEP that has been in effect during the Student's changes of placement during the 2022-2023 and 2023-2024 school year is October 6, 2022, and there is no evidence that the annual IEP has occurred either.

Based on the District's offer for Corrective Action, document review, and interview with the District and Parent, the District failed to fully implement the requirements of 92 NAC 51-007.10E. Thus, the following **corrective action is required**.

### *Corrective Action*

#### *Review Procedures*

1. The District needs to review, revise, and/or create procedures and practices related to the District's working relationship and responsibilities when a student is placed in an out-of-district placement for the following:
  - a. Identify a person or role in the District for the Level-3 programs to communicate with regarding termination of services or transfers and the method for sharing this information with Level-3 contracted programs.
  - b. Identify a person or role in the District for a family point of contact to coordinate with when a student changes out-of-district program and method for sharing this information with the family.
  - c. Establish a timeline for parent notification when a change of placement occurs for the student in out-of-district placement.



- d. Establish procedures and timelines for holding IEP meetings and preparing associated Special Education documentation associated with student change of placement.
2. This review of procedures, timelines, and identifying District roles/persons will be completed within 20 days of the date of this report and any resultant changes will be provided to NDE within 45 days of the date of this report.

#### Reconvene the IEP

1. An IEP meeting will be held to update placement and services for the Student in the Level-3 program 2 placement within 20 calendar days from the first day in the new Placement.
2. The new IEP and accompanying documents including Notice of Meeting, Prior Written Notice, and Meeting Minutes will be provided to NDE the day following the IEP meeting. If this meeting has already occurred, the new IEP and accompanying documentation will be provided to NDE the day following the date of this report.

#### **Issue # 2**

Did the District provide special education and related services to the student in accordance with the IEP after April 27, 2023?

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*

The Parent alleged that on April 27, 2023, she was told that it was her responsibility to work with the Home District to receive services for her child. She alleged that from April 27, 2023, through - May 26, 2023, her Student did not receive any special education services.

#### *District Response*

The District responded that they did not provide special education and related services from April 29, 2023- May 26, 2023, as no Level 3 school would serve the Student.

#### *Investigative Findings*

The District response documented that they were not able to secure a Level-3 program for the Student to receive special education services from April 27, 2023, through May 26, 2023, during the 2022-2023 school year. The school

calendar documented the dates that the District did not provide services and the Parent agreed with the dates.

During the 2023-2024 school year the Student began attending the in-district Level-3 program on August 17, 2023, the first day of the 2023-2024 school year in the District. The Parent and District agree the last day the Student attended the in-district Level-3 program was August 25, 2023. The Parent and District agree that the Student was accepted into Level-3 program 2 on August 25, 2023, but the Parent does not remember when the Student started at Level-3 program 2 but stated it had been several weeks. The District did not provide a start date.

#### *Summary and Conclusions*

The District admitted no services were provided for the Student from April 27, 2023-the end of the school year. The Parent and District agree that the Student's last day at the in-district Level-3 program was August 25, 2023. Because the district did not provide a start date for the Student and there is no special education documentation to establish a start date the Complaint Investigator made a decision based on the Student being at the Level-3 program 2 for several weeks and established the start date as September 11, 2023. Based on District response and documentation 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 will offer compensatory education for a minimum of 160 hours of special education services missed due to the Student being terminated from an out-of-district placement on April 27, 2023, through the end of the school year. As well as the school days between September 26, 2023, and October 8, 2023. The Student's IEP Team shall convene an IEP Team meeting within 30 days of the date of this report to develop a mutually agreed upon schedule.
  - a. The IEP team, including the Parent, shall determine the schedule by which the compensatory services will be provided. The schedule for compensatory services must be provided to NDE within 10 calendar days of the IEP Team meeting.
  - b. Compensatory services shall be completed by the end of the 2023-2024 school year. Student absence or refusal of the parent to make the child available shall result in a waiver of service scheduled for that day. Staff absences must be rescheduled. Any compensatory services declined or not used by the end of the school year shall be deemed waived (assuming the district has made a good-faith effort to timely commence and provide all compensatory services.)

- 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 service has been verified.

**Issue # 3**

Did the District provide the parents with appropriate Prior Written Notice for a change of services and placement when the district's contract with the approved private agency was terminated on April 27, 2023?

92 NAC 51-009.05 states:

009.05        *Prior Written Notice*

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

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

009.05A2        *Refused to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.*

*Allegations/Parent Position*

The Parent alleged that she did not hear or receive anything from the district when her Student was terminated from Level-3 Program 1 on April 27, 2023, through August 4, 2023, in spite of multiple attempts to reach them.

*District Response*

The District Responded that a Prior Written Notice was not written or issued in response to the Student's termination from Level-3 Program 1.

*Investigative Findings*

The District response stated that a Prior Written Notice was not written in response to the Student's change in Placement or to discuss a new Placement. Additionally, the District did not respond to Parent requests about the Student's Special Education services or Change of Placement with a Prior Written Notice or meeting.

### *Summary and Conclusions*

Based on the District's response, documentation, and email clarifications with the District, the District failed to fully implement the requirements of 92 NAC 51-009.05. Thus, the following **corrective action is required**.

### *Corrective Action*

1. Within 45 days of the date of this report, the District will work in collaboration with NDE to train all special education district-level staff and contracted Level 3 program staff on the following:
  - a. Roles and responsibilities of the District and the contracted programs
  - b. Procedures and practices when working with contracted programs and the family.
  - c. The responsibilities of the districts are to issue Prior Written Notice and coordinate Special Education actions such as IEP meetings.
2. The District will work collaboratively with the Level 3 programs contracting with and NDE to determine a date for the training described above. A mutually agreed upon date for the training will be provided within 30 calendar days of this report.
3. NDE will develop and provide a recording of the training. The District will provide NDE with a sign-in sheet of those who attended the training within five school days of the training.

### **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:

Mary Lenser, Complaint Specialist  
Sharon Heater, Complaint Specialist  
NDE Office of Special Education  
[nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov)