

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 23.24.18  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** December 6, 2023  
**Date of Report:** REDACTED

### Issues Investigated

1. Did the District have reason to suspect the Student may be in need of special education and related services as early as December 7, 2022? [92 NAC 51-006.01]
2. Did the District review and consider information provided by the parent in the development of the multidisciplinary report and eligibility determination [92 NAC 006.07G]?
3. Did the District develop and implement an IEP following the multidisciplinary evaluation team's (MDT) determination that the Student qualified for special education and related services? [92 NAC 51-009.04A2]
4. Did the District provide the Parent the opportunity to meaningfully participate in the IEP process? [92 NAC 51-007.07B1; 51-009.02]
5. Did the District respond to the Parent's request to amend the Student's education records, pursuant to 92 NAC 51-009.03G?

### Information Reviewed by Investigator

#### *From the Complainant*

- Letter of Complaint dated December 5, 2023; received by NDE December 6, 2023
- Interview with Parent on January 17, 2024
- Timeline of events from 2019-20 through 2023-24 school years
- Emails dated February 7, 2023; February 8, 2023; April 30, 2023; August 11, 2023; September 13, 2023; October 11, 2023; October 24, 2023; October 26, 2023
- Letter from Pediatrician dated February 27, 2023, and October 26, 2023
- Revocation of Title 1 Reading services dated March 7, 2023
- Text messages with a substitute teacher in August 2023

#### *From the School District*

- Letter of Response dated December 26, 2023; received by NDE December 22, 2023
- *District's Responses to District Questionnaire*; received by NDE January 17, 2023

- District's Child Find Policy
- Timeline of 2022-23 and 2023-24 school years (no date)
- Private evaluation dated February 15, 2023
- Multidisciplinary Evaluation Team (MDT) Report dated May 1, 2023
- Notice and Consent for Initial Evaluation dated March 3, 2023
- Meeting Notices dated April 19, 2023; May 3, 2023; May 5, 2023; and May 23, 2023
- Prior written notice (PWN) dated May 23, 2023
- Draft IEP dated May 15, 2023
- Assessment scores from the 2022-23 school year
- \*Letter regarding Individual Reading Plan (no date)
- \*Individualized Reading Improvement Plan 2022-23
- Emails with Complainant between February 7, 2023, and May 8, 2023

Documents with an \* next to it were also provided by the Complainant.

### **Findings of Fact**

1. No issues raised in the complaint regarding the Student are currently subject to a due process hearing, nor have these issues been previously decided in a due process hearing.
2. The Student is currently nine years old and in the fourth grade. (Interview with Parent on January 17, 2024).
3. The Student was first placed on a 504 plan in third grade (2022-23 school year) to address vision deficits and allow for testing accommodations. Since then, the Student has remained on a 504 plan. (Interview with Parent on January 17, 2024; District's Responses to District Questionnaire; received by NDE January 17, 2023).
4. The Nebraska Reading Improvement Act (Neb. Rev. Stat. §§ 79-2601 to 79-2607) requires the District to administer an approved reading assessment to students in kindergarten through third grade. If a student tests below the threshold level set by NDE, the student is required to be placed on an individualized reading improvement plan (IRIP).
5. During the Student's first grade year (2020-21), the Student did not meet the threshold set by NDE on the MAP Growth (MAP) reading assessment, requiring the District to develop an IRIP for the Student. (MAP Growth Student Progress Report; Letter of Response dated December 26, 2023; received by NDE December 22, 2023).
6. During the Student's second grade year (2021-22), the Student tested above the threshold on the MAP reading assessment. Thus, the Student no longer required an IRIP. (*Id.*)

7. In the fall of the Student's third-grade year (2022-23), the Student tested above the threshold on the Map. Specifically, the Student scored 187 and the threshold was 178. However, in the winter, the Student tested below the threshold score (Student score: 184; threshold: 185), and an IRIP was, again, developed and implemented for the Student. (*Id.*)The IRIP required the Student to receive "Really Great Reading Phonics" interventions for 20 minutes/day, four days/week. The Parent received notice of the IRIP in January 2023. (Letter regarding Individual Reading Plan).
8. On the night of February 7, 2023, the Parent emailed the District stating, in part, that the Student was seen by their pediatrician, due to the IRIP and concerns about the Student's reading abilities, and the Student was given presumptive dyslexia and dysgraphia diagnosis. The District responded on February 8, 2023, requesting a face-to-face meeting to discuss the Parent's concerns.
9. On February 13, 2023, the Parent indicated in an email the Student was going to be privately evaluated on February 15, 2023, per the Student's pediatrician's recommendation. The Parent stated a meeting could be held following the receipt of the private assessment results, which were anticipated to be provided the week of February 27, 2023.
10. On February 27, 2023, the Parent provided the private evaluation report to the District via email and requested a meeting to discuss the same.
11. The private evaluation report indicated, in part, that the Student's areas of weakness are consistent with dyslexia and the Student exhibits many indicators of dysgraphia.
12. Following the receipt of the private evaluation report, the Student's pediatrician diagnosed the Student with dyslexia and dysgraphia. (Letter from Pediatrician dated February 27, 2023).
13. A meeting was held on March 2, 2023, with the Parents to discuss the private evaluation. At the meeting, the parties agreed to refer the Student for an initial special education evaluation. (Letter of Response dated December 26, 2023; received by NDE December 22, 2023; Interview with Parent on January 17, 2024).
14. On March 3, 2023, the District provided a Notice and Consent for Initial Evaluation. The Notice requested consent for the District to conduct assessments in academic, intellectual, perceptual, and motor areas. The Parent signed the Consent on March 5, 2023, and the District received the signed form on March 6, 2023.
15. On April 19, 2023, the District provided a Notice of Meeting for a meeting to be held on May 1, 2023. The purpose of the meeting was to discuss the

MDT report and determine eligibility for special education and related services.

16. On April 28, 2023, the District provided a draft copy of the MDT report to the Parent via email.
17. On April 30, 2023, the Parent emailed the District requesting, in part, that the draft MDT report be amended. Specifically, the Parent requested:
  - a. The reason for the referral section be amended so that it was clear the Student was diagnosed with dyslexia and dysgraphia based on the results of the private evaluation;
  - b. Removal of the entire observation section because it implied the Student might have ADHD or ADD; and
  - c. The recommendations section be separated into two sections – one for dyslexia and one for dysgraphia.
18. The initial MDT meeting was held on May 1, 2023. At the meeting, the Team discussed the Parent's requested amendments and the Student's eligibility category. The Parent did not want to complete the MDT paperwork at that time. As a result, the Team agreed to reconvene on May 5, 2023, to continue discussing eligibility. (Letter of Response dated December 26, 2023; received by NDE December 22, 2023; Interview with Parent on January 17, 2024).
19. At the MDT meeting, the Parent indicated what fourth-grade teacher they preferred the Student to be assigned to for the upcoming school year. In addition, the Parent requested two students not be placed in the Student's fourth-grade class. The District granted the Parent's teacher request but did not respond to the request for two students to be placed in a different class than the Student. (Parent's Timeline of Events from 2019-20 through 2023-24 school years).
20. The MDT Team reconvened on May 5, 2023, to finalize the MDT report and determine the Student's eligibility category. The Team determined the Student met the eligibility criteria, and identified the Student, as a student with a disability under the primary classification of Specific Learning Disability (SLD). (MDT dated May 1, 2023). At the conclusion of the meeting, the parties scheduled an IEP meeting on May 15, 2023, and a Notice of Meeting was provided to the Parent.
21. The MDT report is dated May 1, 2023. The report includes the following, in part:
  - a. The Parent requested amendments to the MDT report. Specifically, the Parent thought the observation and recommendation sections were written in a manner that implied the Student might have

ADHD or ADD. The MDT Team does not suspect the Student has ADHD or ADD.

- b. In February 2023, the Student received medical diagnoses of dyslexia and dysgraphia, after being privately evaluated.
  - c. Student's cognitive abilities are all within the average range. The student demonstrates deficits in reading and written language, consistent with dyslexia.
  - d. The student did not have a 20-point discrepancy between the best estimate of the Student's cognitive ability and academic achievement, as required to be eligible under the SLD category. However, "[the Student] has demonstrated limited response to reading intervention." Data from the current and private evaluation supports a finding that Student has a specific learning disability.
  - e. The recommendations included recommendations to address the Student's dyslexia and dysgraphia.
22. The initial IEP Team meeting was held on May 15, 2023. In part, the Team determined the Student was in need of 120 minutes of specialized instruction and discussed reading and writing-related IEP goals. (Draft IEP dated May 15, 2023). The Parent requested, in part, that the District utilize the Orton-Gillingham curriculum with the Student. A discussion was had regarding the curriculums used by the District, which did not include Orton-Gillingham. The Parent requested additional time to consider the draft IEP and the Team scheduled a second IEP Team meeting to be held on May 23, 2023. (Interview with Parent on January 17, 2024).
23. The IEP Team reconvened on May 23, 2023. At that time, the Parent refused to consent to the initial provision of special education and related services. (Letter of Response dated December 26, 2023; received by NDE December 22, 2023; Interview with Parent on January 17, 2024).
24. The PWN dated May 23, 2023, indicates the following, in part:
- a. The Parent's request for the Orton-Gillingham curriculum was rejected because the curriculum the District uses follows the structured literacy approach, like Orton-Gillingham.
  - b. The Parent's request for a specific person to administer standardized testing was rejected because the person is no longer employed by the District.
  - c. The Parent's request for a specific person to administer the "Revised Child Anxiety and Depression Scale Assessment" was rejected because the school-wide social-emotional screener will be used.
  - d. The Parents elected to forego the IEP and add accommodations to the Student's 504 plan.

- e. The IEP Team informed the Parents that if they change their mind regarding special education and related services, it can be revisited.
25. As a result of the Parent's refusal to consent to the initial provision of services, the Student's 504 plan was updated to include additional accommodations. (Letter of Response dated December 26, 2023; received by NDE December 22, 2023; Interview with Parent on January 17, 2024).

**Issue # 1**

Did the District have reason to suspect the Student may be in need of special education and related services as early as December 7, 2022? [92 NAC 51-006.01]

92 NAC 51-006.01 states:

006.01            *Child Find*

006.01A        *All children with disabilities residing in the state, including children with disabilities who are homeless children or wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and evaluated and a practical method shall be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services*

*Allegations/Parent Position*

The Parent alleges the District has been on notice since the Student's kindergarten year (2019-20) that the Student has a first cousin with dyslexia. Each school year the Parent mentioned concerns that the Student may have dyslexia, there was an excuse for the Student's reading difficulties. (*Letter of Complaint* dated December 5, 2023.)

*District Response*

The District asserts even though the Student was on an IRIP in the first grade (2020-21), the reading interventions utilized with the Student seemingly worked because the Student did not need an IRIP again until the winter of 2023, during the Student's third-grade year (2022-23). Once the Parent indicated they suspected the Student had a disability in February 2023, the District immediately

sought to meet with the Parent to discuss the same. In addition, once the District received a copy of the private evaluation report, it convened a meeting and sought consent for an initial evaluation. (*Letter of Response* dated December 26, 2023.)

Moreover, the District indicated, that of the staff still employed at the District, only the reading interventionist from the 2020-21 school year recalls being told about the Student's cousin with dyslexia. However, the data, at that time, indicated the Student was making growth with the interventions in place. (*District's Responses to District Questionnaire* (received January 17, 2023).)

### *Investigative Findings*

First and foremost, the investigation time period is limited to events that occurred after December 7, 2022. (92 NAC 51-009.11B5.)

Here, following the winter 2023 MAP assessment, the Student was required to be placed on an IRIP for not meeting the threshold level set by NDE, per the Nebraska Reading Improvement Act. The Student was only one point below the threshold level set. Previously, in the fall of 2023, the Student had met the threshold level and did not require an IRIP or other reading interventions. (Findings of Fact #7).

Following the Parent's email in February 2023, the District was willing to meet the Parent to discuss their concerns. The Parent declined until the private evaluation report was received. Based on these facts alone, the District did not violate its child find duty.

### *Summary and Conclusions*

The Student had performed well prior to the winter 2023 MAP assessment, and once the District was on notice that the Parent had concerns about the Student, the District attempted to discuss those concerns, to which the Parent declined. Thus, the District implemented the requirements of 92 NAC 51-006.01, and **no corrective action** is required.

### **Issue # 2**

Did the District review and consider information provided by the parent in the development of the multidisciplinary report and eligibility determination [92 NAC 006.07G]?

92 NAC 51-006.07G states:

006.07            *Independent Educational Evaluation*

006.07G        *If the parent obtains an independent educational evaluation at public expense or shares with the school*

*district or approved cooperative an evaluation obtained at private expense, the results of the evaluation:*

*006.07G1      Must be considered by the school district or approved cooperative, if it meets school district or approved cooperative criteria, in any decision made with respect to the provision of a free appropriate public education to the child.*

#### *Allegations/Parent Position*

The Parent alleged after they provided the private evaluation to the District, no further action was taken by the District even though the MDT Team determined the Student was in need of special education services. (*Letter of Complaint* dated December 5, 2023.)

#### *District Response*

The District asserts the private evaluation report was considered when determining the Student's eligibility and developing an IEP. (*Letter of Response* dated December 26, 2023.)

#### *Investigative Findings*

Upon receipt of the private evaluation report, the parties held a meeting to discuss the report. As a result, the District sought to obtain consent to conduct an initial evaluation. Following the completion of the District's evaluation, the MDT Team met and determined the Student was a student with a disability in need of special education. The MDT Report specifically states that private evaluation was considered when making that determination.

#### *Summary and Conclusions*

As the District considered the private evaluation, the District implemented the requirements of 92 NAC 51-006.07G, and **no corrective action** is required.

#### **Issue # 3**

Did the District develop and implement an IEP following the multidisciplinary evaluation team's (MDT) determination that the Student qualified for special education and related services? [92 NAC 51-009.04A2]

92 NAC 51-009.04 states:

*009.04      Procedural Timelines*



009.04A Each of the procedural steps necessary to provide a free appropriate public education shall be carried out within the specified time periods.

009.04A2 Upon completion of a multidisciplinary team verification decision, school districts or approved cooperatives shall provide a reasonable notification and conduct an individualized education program conference within 30 calendar days.

#### *Allegations/Parent Position*

The Parent alleges the parties could not agree on the curriculum to be utilized with the Student when developing the initial IEP. As a result, no further action has been taken even though the Student is in need of special education services. (Letter of Complaint dated December 5, 2023.)

#### *District Response*

The District asserts the Student was verified as a student with a disability on May 5, 2023. Following the eligibility determination, two IEP meetings were held in May 2023 to develop an initial IEP for the Student. The IEP was never implemented because the Parents refused to consent to the provision of services. (Letter of Response dated December 26, 2023.)

#### *Investigative Findings*

The MDT Team verification decision was made on May 5, 2023. (Findings of Fact #20). The District held two IEP meetings – May 15, 2023, and May 23, 2023, – to develop an IEP for the Student. (Findings of Facts #22-23). Both meetings were held within 30 calendar days, as required by Rule 51.

#### *Summary and Conclusions*

The District conducted an IEP meeting within 30 days of the MDT verification decision. Thus, the District implemented the requirements of 92 NAC 51-009.04, and **no corrective action** is required.

#### **Issue #4**

Did the District provide the Parent the opportunity to meaningfully participate in the IEP process? [92 NAC 51-007.07B1; 51-009.02]

92 NAC 51-007.07 states:

007.07 IEP Development

007.07B In developing, reviewing, or revising each child's IEP:

007.07B1      *The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.*

92 NAC 51-009.02 states:

009.02      *Parent Involvement in Placement Decisions*

009.02A      *The school district or approved cooperative shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of their child.*

009.02B      *In implementing the requirements of 92 NAC 51-009.02A, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A.*

#### *Allegations/Parent Position*

The Parent alleges the District would not agree to use an Orton-Gillingham-based curriculum. In addition, the Parent requested the Student be assigned to a preferred teacher's fourth-grade class and that two other students not be assigned to the same class. Despite the request, one of the students the Parent requested not to be in the same class as the Student was assigned to the same class. (*Letter of Complaint* dated December 5, 2023.)

#### *District Response*

The District asserts it considered all of the Parent's requests regarding specific staff members being named to provide services to the Student and what curriculum to utilize with the Student. (*Letter of Response* dated December 26, 2023.)

#### *Investigative Findings*

The Parent alleged the IEP developed was not appropriate because it did not require the use of the curriculum requested by the Parent. As a result, the Parent refused to consent to the initial provision of services. (Interview with Parent on January 17, 2024).

First and foremost, a district needs only to consider parent input; a district does not need to accede to parents' demands. *Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132 (8th Cir. 1999).

Neither IDEA nor Rule 51 requires an IEP to identify a specific methodology that a district will use. 92 NAC 51-007.07A10. See *Shakopee Indep. Sch. Dist.*, 52 IDELR

210 (SEA MN 2009) (finding that the IDEA does not require an IEP to include a specific methodology or one that would maximize the student's abilities).

In addition, districts generally have sole discretion in choosing the educational methodology to be used, as long as the methodology provides FAPE. See e.g., *Matthews v. Douglas County Sch. Dist. RE 1*, 73 IDELR 42 (D. Colo. 2018) (the district did not violate the IDEA when it used the Wilson Reading System to provide instruction to a student with dyslexia instead of Orton-Gillingham).

There is evidence the District considered the Parent's concerns and requests in regard to the development of the IEP, as required. (Findings of Fact #24).

The Parent's second allegation regarding the Student's fourth grade school year appears to also have been considered by the District, as the teacher preference was granted. (Findings of Fact #19). However, the IDEA and Rule 51, only require the District to consider the Parent's concerns for enhancing the education of the Student. The Parent does not have a say in the placement of other students in the fourth grade; that is the sole discretion of the District.

Nonetheless, the Parent refused to consent to the initial provision of services relieving the District of the obligation to provide the Student with FAPE under the IDEA.

### *Summary and Conclusions*

The District considered the Parent's requests when developing the Student's IEP and what class the Student would be assigned to for the 2023-24 school year. Thus, the District implemented the requirements of 92 NAC 51-007.07B1 and 51-009.02 and **no corrective action** is required.

### **Issue # 5**

Did the District respond to the Parent's request to amend the Student's education records, pursuant to 92 NAC 51-009.03G?

92 NAC 51-009.03 states:

009.03            *Opportunity to Examine Records*

009.03G        *Amendment of Records at Parent's Request*

009.03G1        *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.*

009.03G2 *The participating agency shall decide whether to amend the information in accordance with the request within a 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 Parent alleges they requested the MDT report be amended because they thought the way it was written was inaccurate or misleading. (*Letter of Complaint* dated December 5, 2023.)

#### *District Response*

The District asserts the Parent's requests for revisions to the MDT report were appropriately responded to and granted, where appropriate. However, the Parent's request for the removal of the observation section from the MDT was not a request to amend the Student's education records. (*Letter of Response* dated December 26, 2023.)

#### *Investigative Findings*

The Parent requested three revisions to the MDT report. Specifically, (1) amend the language in the reason for referral section, (2) divide the recommendation section into two parts, and (3) remove the observation section. (Findings of Fact #17).

The District revised the reason for referral and recommendations sections of the MDT report, as requested by the Parent. The District refused to remove the observation section, pursuant to 92 NAC 51-006.03F2d. (Findings of Facts #21; *Letter of Response* dated December 26, 2023; received by NDE December 22, 2023).

The District provided the Parent with a *draft* of the MDT report. The Parent was permitted to provide their feedback and request changes. The District considered the requests and incorporated the requests within. The draft was a

working document and intended to be edited, where appropriate. The finalized MDT report is an education record that the Parent can request to amend, pursuant to 92 NAC 51-009.03 G1. The Parent has made no requests for amendment of the same.

*Summary and Conclusions*

As the parent has not made a request to amend the finalized MDT report, 92 NAC 51-009.03 does not apply and **no corrective action** is required.

**Notice to District**

Having found that the district is implementing the requirements of 92 NAC 51 in the areas raised in the complaint, the complaint is closed as of the date of this letter.