

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.23
Complaint Investigator: REDACTED
Date Complaint Filed: January 4, 2024
Date of Report: REDACTED

Issues Investigated

1. Did the District disclose the Student's personally identifiable information (PII) without obtaining parental consent? [92 NAC 51-009.03J1]
2. Did the District convene an IEP meeting with the appropriate and required IEP team members? [92 NAC 51-007.03A2 and 007.03A8]
3. Did the District appropriately respond to the Parent's request for an IEP meeting? [92 NAC 51- 007.10 and 009.05A]
4. Did the District appropriately respond to the Parent's request for mediation? [92 NAC 51- 009.12B]
5. Did the District provide the Parent the opportunity to meaningfully participate in the IEP process? [92 NAC 51-07.07B1, 007.07B2, and 007.10C]
6. Is the Student's IEP tailored to their unique needs and reasonably calculated to enable the Student to make progress appropriate in light of their circumstances? [92 NAC 51-004.01]
7. Did the District consult in a timely and meaningful way with nonpublic school representatives and representatives of parents of parentally-placed nonpublic school children with disabilities during the design and development of special education and related services for parentally placed nonpublic school children? [92 NAC 51-015.03D]

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated December 6, 2023 (with attachments included); received by NDE January 4, 2024
- Call with the Mother on January 23, 2024
- Interview with Parents on February 6, 2024
- Emails with the District between May 10, 2023, and February 6, 2024
- Prior Written Notice (PWN) dated February 6, 2024

Documents provided that were dated outside of the timeframe of this investigation are not listed above.

From the School District

- Letter of Response dated January 26, 2024; received by NDE January 26, 2024
- District's Responses to District Questionnaire; received by NDE February 7, 2024
- Multidisciplinary Evaluation Team (MDT) Report dated May 5, 2022
- IEPs dated August 23, 2022; March 27, 2023; June 7, 2023; and June 28, 2023
- IEP Meeting Attendance Pages dated March 27, 2023; June 7, 2023; and June 28, 2023;
- PWNs dated August 25, 2022; March 27, 2023; June 9, 2023; June 28, 2023; July 19, 2023; September 4, 2023; October 26, 2023; and December 1, 2023
- Progress Reports dated January 5, 2023; March 21, 2023; May 24, 2023; October 9, 2023; and January 12, 2024
- Notice of Meetings with accompanying Parent signature dated March 14, 2023; May 25, 2023; and June 26, 2023
- Clarification of General Education Teacher Role in a Homeschool Exempt Status Student IEP Meeting from NDE dated September 16, 2023
- Guidance from NDE regarding a general education teacher's attendance at an IEP meeting for a homeschooled student
- Emails with NDE regarding the general education teacher role dated August 31, 2023, through September 20, 2023
- Letter from the Student's doctor dated October 16, 2023
- Letter from the Student's neurologist dated November 21, 2023
- Progress monitoring data kept during the 2022-23 school year
- Timeline of Scheduling Mediation (no date)
- Notes Pages dated May 25, 2023; July 17, 2023; July 19, 2023 (2); and August 1, 2023
- 2022-23 Communication Notebook
- Letter dated October 27, 2023, regarding a communication plan
- Emails with Parents between June 6, 2023, through December 13, 2023
- *Emails with Parents regarding the July 2022 board meeting dated July 12, 2022 through July 14, 2022
- Proof of Publication dated May 25, 2023
- District's Meeting Agenda and Consultation Meeting Decisions dated June 2, 2023

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

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 is taught in a home school setting. (Interview with Parents on February 6, 2024).
3. In Nebraska, "home schools" are exempt schools that do not meet Nebraska's approval or accreditation requirements and are considered private schools. [92 NAC 13 (Rule 13); Nebraska Department of Education Exempt (Home) School Frequently Asked Questions (2023/24 School Year); Nebraska Department of Education Special Education Services to Children with Disabilities (Ages 3-21) Enrolled by Their Parents in Nonpublic Schools, Technical Assistance Document (Revised May 2021)].
4. If a parent elects to home-school their child(ren), Rule 13 requires both parents to submit a form each year indicating so. 92 NAC 13-003.01. The form ("form A") requires each parent to designate a parent representative. *Id.* The parent may either serve as their own representative or designate someone else. *Id.* Both Parents designated the Father as the parent representative of the Student for the 2023-24 school year. (Father's Form A completed August 6, 2023; Mother's Form A completed August 16, 2023).
5. Per Rule 51, "[p]arentally-placed nonpublic school children with disabilities are eligible for the provision of [FAPE] from the school district . . ." [92 NAC 51-015.03C1a]. In conformity, the Student has been evaluated and found eligible to receive special education and related services.
6. The Student's most recent evaluation report is dated May 5, 2022. The Student is identified as a student with a disability under the primary classification of Other Health Impairment (OHI). The report indicates complications in utero and at birth and diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and Autism Spectrum Disorder were considered in determining Student's eligibility.
7. There are four IEPs relevant to the investigation time period. The first IEP is dated August 23, 2022. Relevant portions of the IEP include:
 - a. The IEP is to be in effect and services are to begin on September 7, 2022.
 - b. The IEP contains five annual goals to support communication, physical therapy (PT), and occupational therapy (OT) related needs. Specifically, the goals read:
 - i. Goal 1: "By the end of 36 weeks, when given the letters of [their] first name, [Student] will recognize and name all 6

letters with 100% accuracy in 4 out of 5 observed opportunities.”

- ii. Goal 2: “By the end of 36 weeks, [Student] will correctly point to and/or state 3 corresponding functional communication phrases (such as, but not limited to I want, I need, I feel, etc.) during a structured activity in 3 out of 4 observed opportunities.”
- iii. Goal 3: “[Student] will improve fine motor skills to consistently use a tripod grasp independently with writing utensils in 3 out of 4 observable opportunities.”
- iv. Goal 4: “By the end of 36 weeks, when given 10 tangibles or visuals, [Student] will use one-to-one correspondence in 3 out of 4 observed opportunities.”
- v. Goal 5: “[Student] will perform 3 consecutive single-leg hops on each leg on 3 out of 5 observations in order to improve [their] overall balance and strength in order to participate in play with peers.”

c. The following special education services are included:

- i. Special Instruction (Resource): 30 minutes/day, 2x/week
- ii. Speech: 30 minutes/day, 4x/week
- iii. OT: 30 minutes/day, 1x/week
- iv. PT: 20 minutes/day, 2x/month
- v. Special Instruction (Resource): 30 minutes/day, 2x/week

d. The comment regarding Student’s special education services indicates specially designed instruction will be provided back-to-back at a neutral location. “Academics” is provided for 30 minutes, 4x/week. Two days from “resource” and two days from the school psychologist.

- i. District clarified that “resource” meant the Student would receive specialized instruction from a special education teacher. (District’s Responses to District Questionnaire; received by NDE February 7, 2024).

e. The student qualifies for transportation to and from the neutral location identified.

f. Student does not meet the criteria for ESY services but the IEP Team will revisit ESY eligibility.

8. The PWN dated August 25, 2022, indicates the Student will start receiving services on September 7, 2022, to honor the family’s schedule.

9. Progress on the Student’s IEP goals was documented on January 5, 2023, and March 21, 2023. In January 2023, the Student made progress on all

five IEP goals. (Progress Report dated January 5, 2023). In March 2023, the Student made progress on one IEP goal and met each of the other four IEP goals. The goal that the Student did not meet was the goal targeting the Student's strength and ability to balance. Specifically, in March 2023, the Student was able to perform two consecutive left-leg hops and three consecutive right-leg hops with the support of the wall. (Progress Report dated March 21, 2023).

10. On March 27, 2023, an IEP meeting was held to develop a new IEP for the Student because of their success on their previous IEP goals and Parent's request to reconvene the IEP Team. (District's Responses to District Questionnaire; received by NDE February 7, 2024). Relevant portions of the IEP include:

- a. The IEP is to be in effect and services are to begin April 3, 2023.
- b. The IEP contains four annual goals to support communication, PT, and OT needs. The goal related to Student balance and strength was repeated from the previous IEP (now referred to as Goal 1). The other goals read:
 - i. Goal 2: "When provided activities, [Student] will demonstrate the ability to cross midline on 3/5 attempts."
 - ii. Goal 3: "By the end of 36 weeks, [Student] will independently write the six letters of [their] first name using correct letter formation in 4 out of 5 attempts."
 - iii. Goal 4: "By the end of 36 weeks, [Student] will independently write the numbers 1-10 using correct letter formation in 4 out of 5 attempts."
- c. The only change to the special education services was to "special instruction." Specifically, the IEP states:
 - i. Special Instruction (Resource): 30 minutes/day, 1x/week
 - ii. Special Instruction (Resource): 30 minutes/day, 3x/week
 1. Note: This service line should indicate 35 minutes/day, 3x/week. (District's Responses to District Questionnaire; received by NDE February 7, 2024).
- d. The comment regarding Student's special education services indicates specially designed instruction will be provided back-to-back at a neutral location. "Academics" is provided for 35 minutes, 3x/week, and 30 minutes, 1x/week. Two days from "resource" and two days from the school psychologist.
 - i. District clarified that "resource" meant the Student would receive specialized instruction from a special education

teacher. (District's Responses to District Questionnaire; received by NDE February 7, 2024).

- e. No changes were made to transportation or ESY services.
11. A PWN dated March 27, 2023, indicates the following, in part:
- a. Resource services increased from 30 to 35 minutes to allow the Student more opportunities to practice academic skills.
 - b. Compensatory services will be provided one day per week for missed sessions throughout the school year. The IEP Team will reconvene after four weeks of compensatory services to determine if the Student needs ESY services.
12. Progress on the Student's new IEP goals was documented on May 24, 2023. The Student made progress on all four IEP goals. Specifically, the following was noted on the Progress Report dated May 24, 2023:
- a. Goal 1 (single-leg hops): Student is able to consecutively hop on their left leg two times and right leg three times if their hand is on the wall.
 - b. Goal 2 (cross midline): Student needed minimal tactile cues to keep their body straight when crossing the midline.
 - c. Goal 3 (writing letters of name): Student is able to write three letters of their name with 100% accuracy; one letter with 80% accuracy; one letter with 60% accuracy; and one letter with 0% accuracy.
 - d. Goal 4 (writing numbers 1-10): Student is able to write the number '1' with 100% accuracy; '10' with 60% accuracy; '4' and '8' with 40% accuracy; '3,' '5,' and '7' with 20% accuracy; and '2,' '6,' and '9' with 0% accuracy.
13. On May 25, 2023, a public meeting notice was published in a local newspaper. (Proof of Publication dated May 25, 2023). The notice indicated, in part, that the District would conduct a meeting on June 2, 2023, at 8:30 a.m. "to provide an opportunity for parents and representatives of nonpublic schools to participate in the development of a plan for providing special education services to children with disabilities who attend nonpublic school and home schools within the [District] for the 2023-24 school year."
14. The consultation meeting with parents and representatives of nonpublic schools was held on June 2, 2023. In attendance were the District staff and the Parents. (District's Meeting Agenda and Consultation Meeting Decisions dated June 2, 2023). At the beginning of the meeting, the District provided a paper with answers to the topics required to be discussed by Rule 51. (Letter of Response dated January 26, 2024, and Interview with Parents on February 6, 2024). The District asserts it read

through the answers that were on the paper and asked the Parents if they had any questions. The Parents only asked how much money had been identified in the District's grant for nonpublic schools. (Letter of Response dated January 26, 2024). The Parents allege they were not given the opportunity to provide their input at the meeting. Simply, the paper was read aloud, the Parents signed the attendance sheet, and they left. (Interview with Parents on February 6, 2024).

15. The paper regarding the decisions made at the June 2, 2023 meeting states the following:
- a. "ChildFind will be conducted through advertising in our school newsletter and local paper if one [exists] regarding parents' rights to seek an evaluation. Staff is trained to share information with parents regarding the district's willingness to serve all children with disabilities."
 - b. "The [proportionate share] calculation is provided by NDE based [on] a district's total IDEA grant. The calculation is determined based on the number of students with disabilities attending nonpublic school and exempt homeschools as compared to the number of children with disabilities attending the public school."
 - c. "The district will provide Special Education and Related Services (FAPE) for resident-eligible students according to the needs identified by their IEP team. These services will be provided in the least restrictive environment by qualified personnel. This may include services provided in the public school building, the nonpublic school building, or in the child's home as determined by the IEP team."
 - d. "The district will provide speech services by a licensed and/or certified Speech Language Pathologist to non-resident eligible students in non-public schools either in the nonpublic or in the public-school building. At this time there are no nonpublic school buildings within our district boundaries."
 - e. "If any carryover funds exist, they will be spent consistent with goals, needs, and budget of the next year's IDEA grant. If any nonpublic funds were not expended because no students existed to expend them on, the money will be carried over and spent on public school children with disabilities."
 - f. "No nonpublic representatives attended so there was no disagreement."
16. The District did not provide to the Investigator a written affirmation signed by the representatives of nonpublic schools (i.e., the Parents).

17. On June 6, 2023, in response to the Parent(s) request at the June 2, 2023 meeting, the District emailed the Mother informing them of the amount identified in the District's grant for nonpublic schools. (Letter of Response dated January 26, 2024).
18. An IEP meeting was held on June 7, 2023, to discuss ESY services, per the Parent(s) request for the same. A new annual IEP was developed at the meeting. Relevant portions of the IEP include:
 - a. The IEP is to be in effect and services are to begin on June 13, 2023.
 - b. The PLAAFP was updated to include the student's progress on their IEP goals, as reported in the May 24, 2023 progress report, and Parent(s) then-current concerns. Specifically, the following was noted:
 - i. When the Student is given a visual model of their first name, they are able to free-write four of the six letters correctly 80% of the time. The Student requires cues to trace or write the other two letters in their name. During compensatory services, the Student has maintained the ability to trace or write the letters of their name. However, the Team determined the Student is able to do so only with cues and visual models. The Parents agreed that the Student is only able to write four of the six letters of their name.
 - ii. Progress monitoring data will be collected to determine if the Student is able to write the numbers 1-10 independently or whether they require cues, modeling, and/or prompts to do so successfully.
 - iii. The Parents indicated the Student is confusing letters and numbers.
 - c. The IEP contains the same four annual goals as the previous IEP.
 - d. The only changes to the special education services were to "special instruction" and PT. Specifically, the Student is to receive "special Instruction (Resource)" for 45 minutes/day, 4x/week and PT services are to occur 30 minutes/day, 2x/month.
 - e. No changes were made to transportation or ESY services.
19. A PWN dated June 9, 2023, indicates the following, in part:
 - a. After the Team has collected data on the Student's progress toward goals during compensatory services, the IEP Team will reconvene at the end of June to determine eligibility for ESY.
20. On June 13, 2023, the Director of Special Education emailed both Parents asking if they were available to attend on IEP meeting on June 28, 2023, at 12:00 p.m. On June 14, 2023, the Father responded to the Director of

Special Education stating he was available on June 28, 2023. The Mother was not included in the Father's email. The Mother never responded to the June 13, 2023 email.

21. On June 26, 2023, a Notice of Meeting for the June 28, 2023 IEP meeting was emailed to both Parents. Neither Parent responded to the Notice.
22. On June 28, 2023, an IEP meeting was held. In attendance was the Father, a teacher who fulfilled both the general and special education teacher roles, the Director of Special Education, a speech-language pathologist, and an occupational therapist. (IEP Meeting Attendance Page dated June 28, 2023). The following changes were noted to the IEP:
 - a. The IEP is to be in effect and services are to begin July 3, 2023.
 - b. The PLAAFP was updated to include, in part, how best to support the Student in writing (e.g., markers, bigger letters, etc.) and a statement regarding when special education services would be provided. Specifically, services were to be provided on days of the week the related service providers are in the District and as determined by the IEP Team.
23. A PWN dated June 28, 2023, was provided to the Parents on June 30, 2023, via email. The PWN indicates the following, in part:
 - a. To align with the District calendar, the start date for the 2023-24 school year will be August 14, 2023.
 - b. Special education services will start at 10:15 a.m. due to an increase in "resource" time.
 - i. Note: The Student previously started their day at 10:30 a.m. (Per Interview with Parent on February 6, 2023).
 - c. The Student is not in need of ESY services.
24. The Parents stated during the telephonic interview with the Investigator that the Director of Special Education was "dishonest" at a previous IEP meeting. The Parents were unable to remember what date the IEP meeting was that the Director of Special Education was allegedly dishonest. Nonetheless, because of the perceived dishonesty, the Parents decided that Mother would not attend the next IEP meeting. Once the Parents received the PWN detailing the decisions made at the June 28, 2023, IEP meeting, the Parents discussed the decisions, thought about the decisions, and decided two weeks later that the 2023-24 school year start date and daily start time did not work with the family schedule.
25. On July 12, 2023, the Mother texted the Director of Special Education stating the start date and time the Student would receive services should have been discussed with the Parent first. The Mother requested a schedule written out so that they may determine if it works for the family.

In addition, the Mother stated the Student will start receiving services for the 2023-24 school year on September 6, 2023. (Notes Page dated July 17, 2023).

26. On July 19, 2023, after speaking to the Director of Special Education on the phone, the Mother emailed the Director of Special Education stating, in part, that they wanted to be referred to as the Student's primary teacher on the IEP.
27. Following the communication from the Mother, the District issued a PWN dated July 19, 2023. The PWN stated, in part:
 - a. The District is ready, willing, and able to provide special education services to the Student as determined by the IEP Team at the June 28, 2023, IEP meeting.
 - b. The District is rejecting the Mother's request to reconvene the IEP Team because the required members attended the June 28, 2023 IEP meeting.
 - c. The IEP Team determined the Student's day would begin at 10:15 a.m. instead of 10:30 a.m. because of the increase in special education services. Transportation will arrive to pick up the student at 10:10 a.m.
 - d. The District will inquire about mediation.
28. The District attended a Zoom meeting with NDE on August 2, 2023, to discuss the mediation process. (Timeline of Scheduling Mediation).
29. On August 6, 2023, the Mother asked the Director of Special Education via email what the status of mediation was. The Director responded on August 16, 2023, stating it had contacted an IEP facilitator to determine their willingness and availability to assist the parties. The Mother replied to the Director via email and included the Superintendent and the School Principal in the email. Mother indicated, in part, that they called the mediation center because the District failed to do so. In addition, the Mother stated the Student was receiving tutoring at their expense, expressed their disagreement with the start date of services, and stated "I'm [Student's] General Educator, would you like to see who is listed as this on [Student's] IEP, it's not me."
30. The Director "replied all" to the Mother's email addressing the Mother's statements and included the PWN dated July 19, 2023.
31. Following the Mother's call to the mediation center, the mediation center provided the parties with available dates and times to attend. The parties agreed to attend mediation on September 12, 2023. (Timeline of Scheduling Mediation).

32. On August 24, 2023, the District stopped attempting to acquire an IEP facilitator. (Timeline of Scheduling Mediation).
33. On August 28, 2023, the Mother emailed the District indicating they were the Student's general education teacher and needed to be excused from the previous IEP meeting. The Parent stated the Student would not be made available for special education services until the IEP was corrected and mediation occurred.
34. On August 31, 2023, the District contacted NDE via email to inquire as to who may serve the role of a general education teacher for a home school student. NDE responded stating "The general education teacher could be a qualified individual who is familiar with the curriculum and instructional strategies typically used in the grade level of the student. This could be a certified teacher, an educational consultant, or someone with expertise in the relevant subject matter."
35. In response to the Mother's August 28, 2023 email, the District issued a PWN dated September 4, 2023. Relevant portions of the PWN include:
 - a. The District is ready, willing, and able to provide special education services to the Student.
 - b. The Mother's request to reconvene the IEP Team is rejected because NDE has confirmed that a parent who homeschools a child does not serve as the general education teacher on the IEP team.
36. Mediation was held on September 12, 2023. No agreements were reached. (Interview with Parents on February 6, 2024).
37. On September 13, 2023, the District requested clarification from NDE regarding who may serve the role of the general education teacher on the IEP team of a homeschooled student, due to conflicting information provided to the Parent. NDE responded in a formal letter dated September 16, 2023. The letter stated, in part, on the IEP Team, if a district includes a general education teacher for a student who is homeschooled, "because homeschool is not a regular education environment this IEP Team position should not be held by someone homeschooling the child." The District provided the letter to the Parents on September 21, 2023, via email.
38. On September 21, 2023, the District emailed the Parents stating the Student would be picked up for services on September 26, 2023, at 10:10 a.m.
39. On September 25, 2023, the Mother responded to the District requesting compensatory services as of September 6, 2023. The District replied on September 29, 2023, indicating, in part:

- a. The IEP represents the services agreed to by the team.
 - b. The District has provided PWN on July 19, 2023, and September 4, 2023, identifying that it has been ready, willing, and able to provide services to the Student. Compensatory services will not be provided because the Parents did not make the Student available for services.
40. On October 17, 2023, the Mother emailed the District reiterating the events that occurred since July 19, 2023, and their disagreement with the start date for the 2023-24 school year and the 10:15 a.m. daily start time for services. The Mother attached a letter from the Student's doctor.
 41. The letter from the Student's doctor is dated October 16, 2023. The letter states, in part, that the Student has a sleep disorder that prevents them from falling asleep at a decent time. Thus, the Student is not ready to begin their school day until after 10:30 a.m.
 42. Via email, the Mother requested a response from the District every day between October 19, 2023 and October 22, 2023.
 43. The District responded on October 23, 2023, with attachments of an email previously sent by the Father and the email previously sent by the District on September 29, 2023. The Parents replied stating the Student has been available for services since September 6, 2023, at 10:30 a.m. and reminded the District of the letter from the Student's doctor stating the Student cannot start the day before 10:30 a.m.
 44. Via email, the Mother requested a response from the District every day between October 24, 2023, through October 26, 2023.
 45. The District responded on October 26, 2023, through a PWN. The PWN states, in part:
 - a. The District is refusing to change the start time of the Student's services because the IEP Team, including the Father, determined the Student would start their day at 10:15 a.m. because of the increase in services.
 - b. The District considered the letter from the Student's doctor. However, the information regarding the Student's sleep disorder was not new and the Student's sleep disorder was considered at the June 28, 2023, IEP meeting.
 - c. Once the Student is made available for services, if data indicates the Student is unable to actively participate in services at 10:15 a.m., the District will consider changing the start time of services.
 46. The Mother responded via email on October 27, 2023, stating they are still waiting for a corrected IEP. That same day, the District replied stating the

- IEP represents the services agreed to by the IEP Team and attached a communication plan that the parties were to adhere to moving forward.
47. The Mother emailed the District a letter from a Neurodevelopmental Physician Assistant who has treated the Student since January 2021. The letter is dated November 21, 2023, and states, in part, that the Student needs more therapy provided by the District and that the Student has been denied services due to sleep dysregulation.
48. The District responded on December 1, 2023, through a PWN. The PWN states, in part:
- a. The District is and has been ready, willing, and able to implement the Student's IEP since August 14, 2023.
 - b. The District considered the letter. However, the Student's sleep disorder was considered at the June 28, 2023, IEP meeting and the IEP Team agreed the Student could receive services starting at 10:15 a.m.
 - c. Once the Student is made available for services, if data indicates the Student is unable to actively participate in services at 10:15 a.m., the District will consider changing the start time of services.
49. The Mother emailed the District on December 4, 2023, stating they do not agree with the IEP and that the District is trying to force the Parents to wake up and administer the Student's medicine earlier in the day. The Mother asked who was making IEP decisions from the District. The District responded on December 12, 2023, stating "the district."
50. At the time of this writing, the Student has not received any services for the 2023-24 school year.
51. The District's School Board Policy regarding FERPA indicates, in part:
- a. "A school official is a person employed by the District as an administrator, supervisor, instructor or support staff member . . ."
 - b. "A school official has a legitimate education interest if the official needs to review an education record in order to fulfill his or her professional responsibility."
- (District School Board Policy, 5202 -- Notification of Rights under FERPA 2-23).

Issue # 1

Did the District disclose the Student's personally identifiable information (PII) without obtaining parental consent? [92 NAC 51-009.03J1]

92 NAC 51-009.03 states:

009.03J *Consent for Release of Records*

009.03J1 *Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies in accordance with 92 NAC 51-009.03H1 unless the information is contained in education records and the disclosure is authorized without parental consent under 34 CFR Part 99.*

Allegations/Parent Position

The Parent alleges the District disclosed the Student's PII in two instances. The first instance occurred in July 2023, at a school board meeting. Allegedly, the Superintendent shared what services the Student was receiving. (Letter of Complaint dated December 6, 2023, and Interview with Parents on February 6, 2024).

The second instance was via email to the "backup bus driver." Specifically, the student's PII was disclosed when the Director of Special Education included the backup bus driver in an email and attached a PWN. (Letter of Complaint dated December 6, 2023).

District Response

The District asserts the incident at the school board meeting occurred in July 2022. Nonetheless, the Parent revealed they had a child with a disability receiving services from the District and inquired as to who would be providing services the upcoming school year since the Student would receive services at a local church instead of the school building. The Superintendent indicated who would provide services, in response to the Parent's question. (Letter of Response dated January 26, 2024).

In regards to the second instance, the District asserts the "backup bus driver" is the school principal and the Parent included the principal in the email and asked for the Student's IEP. The District replied "all" in response to the request. As the Parent included the principal in the email, the District did not disclose PII without parental consent. (Letter of Response dated January 26, 2024).

Investigative Findings

The Parent alleges the school board meeting in which the Superintendent disclosed the Student's PII occurred in 2023. The Parent indicated they had email documentation to prove the board meeting in question occurred in 2023 and were asked to provide the same to the Investigator. Upon receipt, it was determined that the board meeting occurred in 2022. Thus, this incident is outside of the complaint investigation period and was not investigated any further.

A district may disclose PII, without consent, if the disclosure is to other school officials whom the district has determined to have a legitimate educational interest. 34 C.F.R. § 99.31(a)(1)(i)(A).

If a district has a policy of disclosing education records under 34 C.F.R. § 99.31(a)(1)(i)(A), it must establish who is considered a “school official” and what constitutes a “legitimate educational interest.” 34 C.F.R. § 99.7(a)(3)(iii).

The Student Privacy Policy Office (SPPO) indicated in a *Letter to Anonymous*, that although the FERPA regulations do not define “school official,” the SPPO interprets the term broadly to include, in part, the school principal. 119 LRP 43556 (SPPO 09/30/19). The SPPO also opined that a school official typically has a legitimate educational interest if they have to review an education record to fulfill their professional responsibilities. *Id.*

First and foremost, the District is permitted to take advantage of the FERPA exception established under 34 C.F.R. § 99.31(a)(1)(i)(A) because its policy delineates who is considered a “school official” and what constitutes a legitimate educational interest. (Findings of Facts #51).

Here, the School Principal was included in an email that contained PII about the Student. (Findings of Facts #29). While the Parent included the School Principal in the email, doing so does not amount to consent to disclose PII. However, given the Principal’s role as a school official, they likely have a legitimate educational interest in the Student’s records. Thus, there are not sufficient facts to conclude that the District violated FERPA by disclosing PII to the School Principal.

It is important to note, that the Parents are under the mistaken belief that if a person is not a member of the Student’s IEP team, they may not access the Student’s education records. Per the regulations cited above, a person need not be on the Student’s IEP Team to gain access to the Student’s education records. See *Letter to Anonymous*, 107 LRP 38484 (FPCO 2006).

Summary and Conclusions

As the School Principal is a school official with a legitimate educational interest in the Student’s records, the District implemented the requirements of 92 NAC 51-009.03J1, and **no corrective action** is required.

Issue # 2

Did the District convene an IEP meeting with the appropriate and required IEP team members? [92 NAC 51-007.03A2 and 007.03A8]

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:*

007.03A2 *Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);*

007.03A2a *The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development, review and revision of the IEP of the child, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with 92 NAC 51-007.07A5.*

007.03A8 *For a child attending a nonpublic school, a representative of the nonpublic school the child attends. If the representative cannot attend, other methods shall be used to ensure participation by the nonpublic school, including individual or conference telephone calls.*

Allegations/Parent Position

The Parent alleges the IEP Team is not comprised of the appropriate members. Specifically, because the Student is home-schooled, the Mother, who provides the Student with their instruction, should be counted as the general education teacher not a teacher from the District.

Because the Mother is the appropriate general education teacher, their attendance is mandatory at IEP meetings. The Mother was not in attendance at the June 28, 2023, IEP meeting. Thus, the IEP meeting did not include the necessary and required members. (Letter of Complaint dated December 6, 2023).

District Response

The District asserts the June 28, 2023, IEP meeting included all of the required IEP members. Specifically, in attendance, in part, was the Father and a general education teacher who is familiar with the curriculum and instructional strategies typically used in the Student's grade level. While the Student is home-schooled, the Mother is not the appropriate "general education teacher," per guidance from NDE. (Letter of Response dated January 26, 2024)

Investigative Findings

Regular Education Teacher

The IDEA requires that the IEP team for a student with a disability include, in part, a regular education teacher of the child if the student is, or may, participate in the *regular education environment*. 34 C.F.R. § 300.321(a)(2); see also 92 NAC 51-007.03A2. A regular education teacher is not required to be a part of the IEP team if the student is not participating, or is not anticipated to participate, in the regular education environment. 71 FR 46540, 46675 (August 14, 2006).

The regular education environment is intended to mean the "regular class." *Id.* at 46666. The "regular class" or "regular education environment" "encompasses regular classrooms and other settings *in schools* [emphasis added] . . ." *Id.* at 46585. The regular education environment/regular class is not intended to refer to a home school classroom or setting.

In this case, the regular education teacher would be someone employed by the District; the Mother is not intended by the IDEA to be considered the regular education teacher of the Student. Because the Student is not educated in the regular education environment, it is the District's discretion whether or not a regular education teacher from the District is present at IEP meetings. At the June 28, 2023, IEP, and all other IEP meetings, a qualified District employee who was familiar with the curriculum and instructional strategies typically used in the Student's grade level was present.

Of importance, the regulations refer to a regular education teacher as a teacher of the student. A regular education teacher who is or *may* be responsible for implementing the portions of the Student's IEP in the school setting is an appropriate person to serve the role of a regular education teacher. See e.g., *Hensley v. Colville Sch. Dist.*, 51 IDELR 279 (Wash. Ct. App. 2009), *cert. denied*, 110 LRP 10834, 130 S. Ct. 1517 (2010); *Z.R. v. Oak Park Unified Sch. Dist.*, 66 IDELR 213 (9th Cir. 2015, *unpublished*).

Parents

The IDEA also requires that the IEP team for a student with a disability include, in part, the parents of the student. 34 C.F.R. § 300.321(a)(1); see also 92 NAC 51-007.03A1. The District must take steps to ensure one or both of the parents are present at the IEP meeting. 34 C.F.R. § 300.322(a); see also 92 NAC 51-007.06A.

Both Parents were given the opportunity to comment on their availability to hold the June 28, 2023, IEP meeting. (Email dated June 13, 2023). The Father responded that he was available on the given date and a meeting notice followed. (Email dated June 14, 2023). The meeting notice was provided to both Parents. (Email dated June 26, 2023). At no time did the Mother indicate she was unavailable to attend the IEP meeting. In fact, the Parents indicated in the interview with the Investigator that they made a conscious decision for Mother not to attend the next IEP meeting. The Father attended the IEP meeting. (IEP Meeting Attendance Page dated June 28, 2023). Simply because the Mother decided at a later time that she did not like the decisions made at the IEP meeting does not mean the IEP Team was not properly convened. See e.g., *West Washington Sch. Corp.*, 114 LRP 52923 (SEA IN 10/08/14) (finding that parental participation requirements were met even though only one parent was present). Thus, the District satisfied its obligation to ensure a parent was present at the IEP meeting.

Nonpublic School Representative

Rule 51 requires that a representative of the nonpublic school the child attends be included in the IEP team. 92 NAC 51-007.03A8. As stated in Findings of Facts #3, home schools are considered nonpublic schools in Nebraska. Therefore, the Student's IEP Team must include a representative of the home school.

NDE has not released any guidance regarding who qualifies as a representative of a student who is home-schooled. However, upon reviewing the form required by Rule 13 to be completed by parents who home-school their child(ren), it was discovered that a parent representative must be designated. Here, both Parents designated the Father as the parent representative of the Student. (Findings of Fact # 4). Thus, absent any further guidance from NDE regarding who can be

considered a parent representative of a home-schooled child, it is determined that, through Form A's designations, the Father is the appropriate representative of the Student. Thus, the District satisfied its obligation to ensure a nonpublic school representative was present at the IEP meeting.

Summary and Conclusions

The June 28, 2023, IEP meeting was convened with the appropriate and required members of the IEP Team. Thus, the District implemented the requirements of 92 NAC 51-007.03A2 and 007.03A8, and **no corrective action** is required.

Issue # 3

Did the District appropriately respond to the Parent's request for an IEP meeting? [92 NAC 51-007.10 and 009.05A]

92 NAC 51-007-10 states:

- 007.10 *The IEP team shall revise the IEP as appropriate to address:*
 - 007.10A *Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;*
 - 007.10B *The results of any reevaluation conducted under 92 NAC 51-006.05A;*
 - 007.10C *The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;*
 - 007.10D *The child's anticipated needs; or*
 - 007.10E *Other matters.*

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

Refuses 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 alleges the District has refused to convene an IEP meeting despite the parent(s) request for same. In addition, the District has refused to revise the Student's IEP despite providing letters from the Student's pediatrician and neurologist regarding the Student's disabilities and sleep disorder. (Letter of Complaint dated December 6, 2023).

District Response

The District asserts the Mother has requested amendments to the Student's IEP throughout the 2023-24 school year and the District has responded appropriately to those requests. (Letter of Response dated January 26, 2024).

Investigative Findings

The IDEA, nor Rule 51, require a school district to convene an IEP meeting upon parental request. However, if a parent believes that a change is needed for the provision of FAPE, the school district must conduct an IEP meeting if the school district believes a change to the IEP is necessary to ensure the provision of FAPE. *Notice of Interpretation, Appendix A to 34 CFR Part 300, Question 20* (1999 regulations). If the school district refuses to convene an IEP meeting, it must provide PWN explaining why a meeting is not necessary to ensure the provision of FAPE to the student. *Id.*

Here, there are two instances in which it may be interpreted that the Parent was requesting an IEP meeting. The first instance was following the June 28, 2023, IEP meeting. Specifically, on July 12, 2023, the Mother indicated their disagreement with the start date of services and indicated the Student would not be available to start services until September 6, 2023. (Notes Page dated July 17, 2023). The Mother did not make a request for an IEP meeting. Nonetheless, the District provided a PWN explaining why a meeting was not necessary to ensure the provision of FAPE. (PWN dated July 19, 2023).

The second instance was on August 28, 2023. Specifically, the Parents refused to make the Student available for services until the IEP was revised and mediation was held. (Email dated August 28, 2023). Presumably, the Parent's assertion that the IEP be revised before the Student would be made available was a request to reconvene the IEP Team. However, the Parent(s) also stated they were waiting for mediation to be held. Because mediation had been scheduled by

this time (see Findings of Facts #31), it was reasonable to conclude that the Mother was not requesting an IEP meeting. Nonetheless, the District provided a PWN explaining why a meeting was not necessary to ensure the provision of FAPE. (PWN dated September 4, 2023).

On October 17, 2023, the Mother provided a letter from the Student's doctor indicating the Student would not be able to start their day prior to 10:30 a.m. because of their sleep disorder. (Findings of Fact #40). The Mother did not request an IEP meeting. However, the District has an obligation to revise the Student's IEP, as appropriate in certain circumstances. See 92 NAC 51-007-10.

Here, the Student's sleep disorder was not new information and was previously considered at the June 28, 2023, IEP meeting, as indicated in the October 26, 2023, PWN. Since the Student's sleep disorder was not new information and was previously considered by the District, the District was under no obligation to revise the Student's IEP. Moreover, the Student's lack of attendance at this point was not because of the Student's actions or needs but because of the Parent(s) refusal to make the Student available. Had the Parent made the Student available for services, even if only after 10:30 a.m., the District may have had an obligation to revise the IEP, but the Parent refused to make the Student available.

It is unfortunate the Student is the one who suffers due to the stubbornness of the parties involved, however, the District was under no obligation to reconvene the IEP Team or to revise the Student's IEP under these circumstances.

Summary and Conclusions

The District appropriately responded to each request from the Parents to reconvene the IEP Team. In addition, the District was under no obligation to revise the IEP upon receipt of the letter from the Student's doctor. Thus, the District implemented the requirements of 92 NAC 51-007.10 and 009.05A and **no corrective action** is required.

Issue #4

Did the District appropriately respond to the Parent's request for mediation? [92 NAC 51- 009.12B]

92 NAC 51-009.12B states:

009.12 *Mediation*

009.12B *The procedures shall ensure that the mediation process:*

009.12B1 *Is voluntary on the part of the parties;*

- 009.12B2 *Is not used to deny or delay a parent's right to a due process hearing under 92 NAC 55, or to deny any other rights afforded under this Chapter; and*
- 009.12B3 *Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.*

Allegations/Parent Position

Per a phone call with the Parent on January 23, 2023, the Parent indicated they did not request for the District to schedule a mediation; the District requested the Parent attend mediation. Following Parent(s) acceptance, Parents alleged that “[District] never set up a mediation.” (Letter of Complaint dated December 6, 2023).

District Response

District asserts it inquired with NDE about the mediation process. After speaking with NDE and learning about mediation and IEP facilitation, the District attempted to gather information regarding an IEP facilitator. In the meantime, the Parent contacted the Mediation Center who then contacted the District. The District agreed to attend mediation on September 12, 2023, and no longer pursued an IEP facilitator. (Letter of Response dated January 26, 2024).

Investigative Findings

Rule 51 indicates that mediation is a voluntary process that may not be used to deny or delay a parent's right to a due process hearing or any other rights under the Rule. 92 NAC 51-009.12B. Rule 51 also states either a parent or a district may contact the Nebraska Office of Dispute Resolution to initiate the scheduling of mediation. *Id.* 009.12A1.

While the Parent did not think the District was timely in scheduling mediation, leading the Parent to believe they had to take matters into their own hands and call the mediation center, the Rule does not require a school district to contact the Nebraska Office of Dispute Resolution to schedule mediation. Moreover, the District is under no obligation to participate in mediation, as it is a voluntary process for both parties. If the District did not schedule a mediation, it cannot be penalized for the same, under these circumstances.

Summary and Conclusions

As there is no timeframe in which mediation must be scheduled and the District was not using mediation to deny or delay Parent(s) right to a due process

hearing, the District implemented the requirements of 92 NAC 51-009.12, and **no corrective action** is required.

Issue # 5

Did the District provide the Parent the opportunity to meaningfully participate in the IEP process? [92 NAC 51-007.07B1, 007.07B2, and 007.10C]

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.*
 - 007.07B2 *The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.*

92 NAC 51-007.10 states:

- 007.10 *The IEP team shall revise the IEP as appropriate to address:*
 - 007.10C *The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1.*

Allegations/Parent Position

The Parent alleges the District does not listen to them “the two most important members [of the IEP Team].” (Letter of Complaint dated December 6, 2023).

District Response

The District asserts the decisions made at the June 28, 2023, IEP meeting were made with the Father's agreement. (Letter of Response dated January 26, 2024)

Investigative Findings

As stated in Issue # 2, the Father was present at the June 28, 2023 IEP meeting. With his involvement, the IEP Team determined, in part, the start date and the start time of services for the 2023-24 school year. In addition, the IEP Team had prior knowledge of the Student's sleep disorder and considered the same when determining the Student's schedule of services. (Investigative Findings, Issue # 3). With that in mind, and the Father's participation at the meeting, it is concluded,

that the Parents were provided the opportunity to meaningfully participate in the IEP process.

A discussion surrounding the appropriateness of the District's actions following the receipt of the letters from the Student's doctor and neurologist is included above under Issue # 3.

Summary and Conclusions

The District considered the concerns of the Parent; the Student's academic, developmental, and functional needs; and information provided by the Parent at the June 28, 2023, IEP meeting. Thus, the District implemented the requirements of 92 NAC 51-007.07B1, 007.07B2, and 007.10C, and **no corrective action** is required.

Issue # 6

Is the Student's IEP tailored to their unique needs and reasonably calculated to enable the Student to make progress appropriate in light of their circumstances? [92 NAC 51-004.01]

92 NAC 51-004.01 states:

004 Responsibility for Special Education Programs

004.01 All providers of special education services shall be under the general supervision of the Nebraska Department of Education for the purpose of meeting the standards of this Chapter. School districts and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which the child reaches age twenty-one, including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs. School districts and approved cooperatives responsibility to ensure the availability of FAPE includes ensuring the availability of FAPE for resident children in detention facilities, correctional facilities, jails, and prisons.

Allegations/Parent Position

The Parent alleged in the complaint that they did not think the Student made ambitious progress on their IEP goals "last school year." The Investigator asked for clarification during the telephone interview. At that time, the Parent

indicated they were referring to the IEP goals that were developed in the spring of 2023. The Parent(s) also stated they think the IEP goals should be harder. (Letter of Complaint dated December 6, 2023, and Interview with Parents on February 6, 2024).

District Response

The District asserts the Student's IEP is tailored to meet their unique needs. At the June 7, 2023, IEP meeting, the IEP Team determined the Student was making progress on each of their IEP goals. Nonetheless, the Team agreed the Student was in need of more specially designed instruction for the 2023-24 school year but not ESY services. Following receipt of compensatory services, the IEP Team reconvened on June 28, 2023, and determined the Student was progressing on their IEP goals and did not qualify for ESY services. (Letter of Response dated January 26, 2024).

Investigative Findings

First, the Parent alleged the Student has not made ambitious progress on the March 27, 2023, IEP goals (Letter of Complaint dated December 6, 2023, and Interview with Parents on February 6, 2024). The IEP contemplates that the Student meets the IEP goals within 36 weeks of its implementation. (Findings of Facts #9). Since its implementation, the Student received services less than seven weeks at the end of the 2022-23 school year and eight compensatory services during the summer of 2023. The Student has not received any services during the 2023-24 school year. (Findings of Facts #50). The IEP has not been implemented long enough nor has the Student has been given the opportunity to progress on their goals to determine whether the Student has made ambitious progress.

Second, the Parent alleged that the IEP goals are not hard enough.

A district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017). The court in *Endrew F.* stated a child's educational program must be "appropriately ambitious" and "every child should have the chance to meet challenging objectives." *Id.*

Here, the March 27, 2023, IEP contained four goals. One goal had been repeated from the previous IEP and the other three were newly developed. (Findings of Facts #9). At the end of the 2022-23 school year, the Student was making progress on all four IEP goals; but had not yet mastered any. (Findings of Facts #11). On June 7, 2023, the IEP Team discussed the Student's progress and found that they continued to make progress on their IEP goals. However, while it appears the Student was progressing quickly on at least three of their four IEP

goals, the IEP Team indicated at the June 7, 2023, IEP meeting that the Student's success with writing their name and numbers 1-10 may be from the use of cues, prompts, and/or visual models. (Findings of Facts #17). The IEP requires the Student to *independently* write their name and numbers 1-10. (Findings of Facts #11). At this point, it is difficult to say how well the Student would have progressed had they received services during the 2023-24 school year, as anticipated. With the information at hand, it appears the Student's IEP is appropriately ambitious in light of their circumstances.

Summary and Conclusions

The Student's IEP is tailored to their unique needs and reasonably calculated to enable the Student to make progress appropriate in light of their circumstances. Thus, the District implemented the requirements of 92 NAC 51-004.01 and **no corrective action** is required.

Issue # 7

Did the District consult in a timely and meaningful way with nonpublic school representatives and representatives of parents of parentally-placed nonpublic school children with disabilities during the design and development of special education and related services for parentally placed nonpublic school children? [92 NAC 51-015.03D]

92 NAC 51-005.03 states:

015.03D Consultation

015.03D1 To ensure timely and meaningful consultation, a school district or approved cooperative must consult with representatives of nonpublic schools located in the school district or approved cooperative and representatives of parents of parentally-placed nonpublic school children with disabilities attending such schools during the design and development of special education and related services (FAPE and equitable services) for the children regarding the following:

015.03D1a The child find process, including:

015.03D1a(1) How parentally-placed nonpublic school children suspected of having a disability can

*participate equitably;
and*

*015.03D1a(2) How parents, teachers,
and nonpublic school
officials will be informed
of the process.*

*015.03D1b The determination of the proportionate
share of Federal funds available to
serve parentally-placed nonpublic
school children with disabilities available
under 34 CFR 300.133(C), including the
determination of how the proportionate
share of those funds was calculated.*

*015.03D1c The consultation process among the
school district or approved
cooperative, nonpublic school officials,
and representatives of parents of
parentally-placed nonpublic school
children with disabilities, including how
the process will operate throughout the
school year to ensure that parentally-
placed children with disabilities
identified through the child find process
can meaningfully participate in special
education and related services (FAPE or
equitable services).*

*015.03D1d How, where, and by whom special
education and related services (FAPE or
equitable services) will be provided for
parentally-placed nonpublic school
children with disabilities, including a
discussion of:*

*015.03D1d(1) The types of services,
including direct services
and alternate service
delivery mechanisms;
and*

015.03D1d(2) *How special education and related services funded by the proportionate amount of federal funds will be apportioned if such funds are insufficient to serve all parentally-placed nonpublic school children; and*

015.03D1d(3) *How and when those decisions will be made.*

015.03D1e *If the school district or approved cooperative disagrees with the views of the nonpublic school officials on the provision of services or the types of services (whether provided directly or through a contract), the school district or approved cooperative will provide to the nonpublic school officials a written explanation of the reasons why the school district or approved cooperative chose not to provide services directly or through a contract.*

Allegations/Parent Position

The Parent alleges the District did not provide them the opportunity to provide their input regarding the consultation meeting with representatives of nonpublic schools. In addition, the Parents indicated the paper that detailed the decisions made at the meeting was inaccurate in that it stated no representatives of nonpublic schools were in attendance so there was no disagreement. (Letter of Complaint dated December 6, 2023).

District Response

The District asserts even though it prepared a paper ahead of time with the decisions on the topics required to be discussed, it collaborated with the Parents during and after the consultation meeting. While the paper incorrectly stated no representatives of nonpublic schools were in attendance, the Parents signed the attendance sheet and were not in disagreement with the decisions made. (Per Letter of Response dated January 26, 2024).

Investigative Findings

Consultation is intended to be a discussion between representatives of nonpublic schools on key issues related to the participation of eligible private school children with disabilities in special education and related services.

Questions and Answers on Serving Children With Disabilities Placed by Their Parents in Private Schs., 80 IDELR 197 (OSERS 2022). An opportunity for all parties to express their views results in an effective consultation. Only after all parties have expressed their views, should the district make any decisions regarding the participation of eligible private school children with disabilities in special education and related services. *Id.* “A unilateral offer of services by a [district] with no opportunity for discussion is not adequate consultation.” *Id.*

Here, the District made a determination regarding the participation of nonpublic school students with disabilities in special education and related services prior to the June 2, 2023 consultation meeting. While the District indicates the Parents had an opportunity to ask questions, there is no indication the decisions were open for discussion, in violation of 92 NAC 51-015.03D.

The District stated in its response to the complaint that the Parents did not disagree with what was discussed at the meeting. The District could have proven this to be true had it obtained the parent’s written affirmation that they participated and were provided the opportunity to express their views and ask questions. While the District did ask that the Parents sign an attendance sheet, the attendance sheet does not prove that timely and meaningful consultation occurred. See *Questions and Answers on Serving Children With Disabilities Placed by Their Parents in Private Schs.*, 80 IDELR 197 (OSERS 2022) (indicating that attendance sheets do not provide evidence that timely and meaningful consultation occurred). The failure to obtain written affirmation from the Parents results in a violation of 92 NAC 51-015.03E.

Moreover, the IDEA and Rule 51 require consultation including discussion on the following key issues: (1) child find; (2) proportionate share of funds; (3) the consultation process; and (4) provision of special education and related services. 34 C.F.R. § 300.134; 92 NAC 51-015.03D.

The consultant plan lacks the determinations required by the IDEA and Rule 51. For example, there is no decision regarding how parentally-placed nonpublic school children suspected of having a disability can participate equitably or how the consultation will operate throughout the school year. (Findings of Fact #14).

Summary and Conclusions

As there was no meaningful consultation, the consultation plan lacked the necessary details, and no written affirmations were obtained, the District failed to fully implement the requirements of 92 NAC 51-015.03D and E. Thus, the following **corrective action is required**.

Corrective Action

1. The District, including administration and special education staff, is ordered to participate in training on timely and meaningful consultation. The training shall address the key issues that must be decided at a consultation meeting, how to provide participants a meaningful opportunity to participate at a consultation meeting, and how to obtain written affirmations from participants.
 - a. Training materials must be sent to NDE for approval 2 weeks prior to the training.
 - b. The training must take place no later than April 1, 2024.
 - c. The District will send verification of attendance, including the name and role of each individual attending, within 7 business days of the training.
2. Within 30 days of the training (or no later than May 15, 2024), the District must invite representatives of nonpublic schools to a consultation meeting.
 - a. If there is a disagreement from a representative regarding the decisions made at the consultation meeting, the District shall abide by the requirements of 92 NAC 51-015.03D1e.
 - b. The consultation plan and written affirmations must be submitted to NDE within 7 business days of the meeting.

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:

Abbey Cron, Complaint Specialist
Theresa Hayes, Complaint Specialist
NDE Office of Special Education
nde.speddr@nebraska.gov