

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.29
Complaint Investigator: REDACTED
Date Complaint Filed: March 25, 2024
Date of Report: REDACTED

Introduction

This investigation is being conducted because the parent believes the district failed to provide the student with a free appropriate public education (FAPE) by failing to provide the special education services required at the November 30, 2023, IEP team meeting and by failing to reevaluate the student based upon declining grades. The parent(s) believe the district's failure to comply with these requirements created a negative educational impact on the student's high school transcript.

Issues Investigated

1. Did the district provide special education and related services to the student in accordance with the IEP during the 2023-24 school year as required by 92 NAC 51-007.02?
2. Do the supplementary aids and services documented within the student's IEP include the location, duration, and frequency required by 92 NAC 51-007.07A8?
3. Did the district provide consent for a reevaluation based on the parent's request as required by 92 NAC 51-009-04A?

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated March 21, 2024; received by NDE March 25, 2024
- interviews with the parent on May 8 and May 13, 2024
- Individual Education Program (IEP) dated September 21, 2021
- IEP dated September 30, 2022
- IEP dated November 16, 2023
- Emails dated March 10, 2024, through March 22, 2024, between the parent and the Special Education Teacher, the Director of the Virtual School, the Counselor for the Virtual School, and the General Education Teachers of the classes where the student was earning declining grades during the 2023-24 school year
- Emails dated March 25, 2024, between the parent and the special education teacher

- Emails dated April 30, 2024, and May 1, 2024, between the parent and the special education teacher
- Microsoft Meeting Invitation for Summary of Performance IEP team meeting on May 9, 2024

From the School District

- Letter of Response dated April 22, 2024
- Email dated May 10, 2024, from the Director of Special Education to the Complaint Investigator answering written interview questions
- Individual Education Program (IEP) dated September 30, 2022
- Student Services Contact Log dated between August 9, 2023, and April 16, 2024
- Daily Attendance Report dated between August 17, 2023, and April 17, 2024
- Parent Contact Log dated between August 18, 2023, and April 18, 2024
- IEP dated November 16, 2023
- Special Education Teacher Contact Log dated between September 22, 2023, and April 26, 2024
- IEP Goal Progress Reports dated October 8 and December 21, 2023, and March 8, 2024
- Notice of Review of Existing Evaluation Data and Parental Right to Request Additional Assessment for Determination of Continued Eligibility for Special Education Services dated November 30, 2023
- Parent Letter with the subject line "RE: Grade change request for Marine Bio 1, Earth Science 4, and US History 2"
- Student's transcript printed on April 15, 2024
- Student's report card for the 2023-24 school year

Background Information

This complaint is in regard to an 18-year-old student currently enrolled in the 12th grade at the Virtual School in the local education authority (LEA). The student is scheduled to graduate on May 21, 2024, with a high school diploma and plans to attend a technical school to study diesel mechanics to pursue post-secondary education.

Per parent interview, the student was initially found eligible for special education in the fifth grade in the state of Wisconsin under the disability category of Other Health Impairment and has received special education support services through an IEP to date. The student was enrolled in person for grades kindergarten through sixth grade. The student attended the Wisconsin Virtual Academy for seventh and eighth grades. The student initially transferred into the LEA on August 20, 2021, and attended ninth and tenth grades in person at the local

high school. The student enrolled in the LEA's virtual school program in the eleventh grade.

It is noted that several additional requirements of Rule 51 were identified as areas of concern based on the documentation provided by the LEA. These concerns were specifically addressed during the investigation of Issue #1.

Issue # 1

Did the district provide special education and related services to the student in accordance with the IEP during the 2023-24 school year as required by 92 NAC 51-007.02?

92 NAC 51-007 states:

- 007 *Individualized Education Program (IEP)*
 - 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.*
 - 007.09 *IEP Meeting*
 - 007.09C *The IEP team shall review the child's IEP periodically, but not less frequently than annually, to determine whether annual goals for the child are being achieved.*
 - 007.10 *The IEP team shall revise the IEP as appropriate to address*
 - 007.10A *Any lack of progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate*

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 (FAPE) to the child.

Allegations/Parent Position

Based upon the Letter of Complaint and interviews, the parent alleged that the student failed to receive the special education services required by the two IEPs in effect during the 2023-24 school year. The Special Education Teacher was supposed to make weekly contact with the student to support organizational skills for the online classes the student was enrolled in during the twelfth grade. The parent believes that the special education support was offered sporadically during the school year but was not consistent and, as a result, the student earned below-average grades in three courses during term 3 of the senior year. The parent believes that the Special Education Teacher should have communicated to the parent when the student failed to consistently respond to offers to schedule the weekly special education services and should have reconvened the IEP team to address the lack of student progress towards his IEP goals during the third term.

District Response

According to the school district's written response, the current Virtual School is a blended, virtual school for students in grades K-12. Eleventh and twelfth-grade students are all online and connect two to three times per week per course for live, online instruction with their teachers. There are also online office hours for extra support and in-person support that students can attend. Students who are falling behind or failing a course are required to attend in person. The remainder of the time, students are to complete lessons and assignments daily for each course, following the course pacing guide. Students are able to transition back to a traditional school at any time. Special education services are provided virtually unless an IEP team determines a student requires homebound services. Communication between teachers and students is done virtually via email or through video call. In-person time is also available each week for students who need additional assistance.

The LEA reported the process for virtual services is that the teacher and student schedule meeting times for the number of services the student is supposed to receive. The Special Education Teacher attempted to contact the student through phone calls and online Team Meetings numerous times through the 2023-24 school year in trying to schedule these services. However, the student rarely responded back to the teacher. The district believes it has been "ready, willing, and able" to provide special education services as required by the student's IEP during the 2023-24 school year.

A review and reconsideration of the student's poor term 3 grades was conducted at the parent's request but district administrators ultimately concluded that the IEP accommodations had been provided and the grades were an accurate reflection of the student's achievement in each of the three courses.

Investigative Findings

- The IEP dated September 30, 2022, was in effect at the beginning of the 2023-24 school year through November 16, 2023. This IEP required 30 minutes per week of specialized instruction in the special education setting to address one goal.
- The current IEP was developed on November 16, 2023, and went into effect on November 17, 2023. This IEP required 20 minutes per week of specialized instruction in the special education setting.
- The parent reported during an interview and the district acknowledged in an email that prior written notice for the change in services was not provided to the parent as required following the November 16, 2023, IEP team meeting.
- Documentation shows that both IEPs in effect during the 2023-24 school year included the same goal for utilizing organizational strategies to complete school work scoring "approaching proficient (2.5) or higher as measured by an academic task or assessment." Three short-term objectives were identified for this goal including 1) navigating, uploading, and completing assignments 90% of the time; 2) self-edit work for mechanical errors in written work, using reading strategies to complete comprehension questions, and math calculation skills on all typical assignments scoring "approaching proficient (2.5) or higher"; and 3) engage the teacher or learning facilitator by attending online support sessions and scheduling virtual sessions for additional support needed for re-teaching of strategies or additional learning questions.
- IEP Goal Progress Reports document the student was making adequate progress towards the goal and the short-term objectives at the end of the first, second, and third quarters of the 2023-24 school year.
- However, the parent reported that IEP Goal Progress Reports had not been received during the entire 2023-24 school year and that awareness that there was a problem resulted from learning of the poor grades through grade card reports. The parent believes that the IEP team should have been reconvened at the end of both term 2 and term 3 based on the student's grades of "D" in Marine Biology 1, US History 2, and Earth Science 4, which all fell below the approaching proficiency or 2.5 level.

- A Special Services Contact Log entry dated March 22 and an email to the parent from the special education teacher on March 25, 2024, explained that numerous attempts had been made to contact the student over the course of the school year. A total of 15 emails had been sent to the student with only one response and a total of seven Teams meetings had been scheduled with the student only attending one of them.
- The parent responded to the Special Education Teacher via email on March 25, 2024, stating:

I monitor [the student's] emails and I have not seen any teams meeting where you stated you were setting up meetings to meet with [the student] on a weekly basis. As [the student's] IEP teacher, I would expect that if you weren't receiving any feedback from the student then the next best step would be to reach out to the parent (myself) like now if you say you weren't connecting with [the student]. There has honestly been no effort like you say you do on your end. I'm normally patient with transition but there is no excuse with the lack of communication. [The student] requires more time and attention and overall this school has set him up to fail.
- The Special Education Teacher responded back to the parent via email on March 25, 2024, apologizing for the lack of communication and noted the parent would be added to all future email correspondence with the student.
- According to the student's transcript, the student earned a below-average grade of "D" for one course the previous school year in the Virtual School setting but earned three grades of "D" during the first three quarters of the current school year.
- Both the parent and district staff acknowledge in emails that the student is scheduled to graduate from the public school with a high school diploma on May 21, 2024.
- Both the parent and the LEA acknowledge in emails that an IEP team meeting was scheduled at the parent's request for May 9, 2024, to address post-secondary transition and education.

Summary and Conclusions

The September 30, 2022, IEP in effect at the beginning of the 2023-24 school year required 30 minutes per week of specialized instruction and the November 16, 2023, IEP required 20 minutes per week of specialized instruction. It is noted that the district failed to comply with 92 NAC 51-007.09C which required IEPs to be

reviewed and revised by the IEP team at least annually. In this case, the IEP was reviewed and revised more than 45 days beyond the annual review date.

When the IEP was reviewed and revised on November 16, 2023, the special education services were reduced from 30 minutes per week to 20 minutes per week. The parent indicated that she was unaware of this reduction in services and documentation showed the district failed to provide the parent with appropriate prior written notice as required by 92 N.A.C. 009-05A1.

Documentations show that the Special Education Teacher did make phone calls and scheduled at least seven online Team Meetings in an attempt to provide the required special education services during the 2023-24 school year but these attempts were not made weekly and proved to be generally unsuccessful as the student did not participate in scheduled Team Meetings and did not return phone calls during term 1, term 2, and term 3. The Special Education Teacher did not make any effort to contact the parent regarding the situation in an attempt to resolve the student's lack of participation in the offered services. Based on the foregoing, the school district failed to comply with 92 N.A.C. 51-007.02 by not consistently providing the required special education instruction to the student during the 2023-24 school year and making no efforts to remedy the ongoing lack of participation by the student.

It is also noted that the Special Education Teacher continued to report that the student was making adequate progress towards the IEP goal even though the data showed this was clearly not the case during term 3 when the student failed to meet the short-term objectives to show progress was adequate for the student to achieve the IEP goal. Based on this finding, noncompliance with 92 N.A.C. 51-007.10A which requires that IEP teams be reconvened to review and revise an IEP, as necessary, a student's IEP based on the lack of progress towards the IEP goals is identified.

Rule 51 requires IEPs to be implemented as written. In addition, Rule 51 requires IEPs to be reviewed and revised, as necessary, at least annually, or more often if the student is not making adequate progress towards achieving the identified IEP goals. Rule 51 also requires that parents be provided with appropriate prior written notice whenever the school district proposes making changes to the provision of a free appropriate public education (FAPE) which would include changing the special education services provided to a student.

In this case, the district failed to review the September 30, 2022, IEP until November 16, 2023, which is beyond the annual requirement. The district then

failed to provide the parent with appropriate PWN regarding the proposal to reduce the special education services provided to the student from 30 minutes per week to 20 minutes per week following the November 16, 2023, IEP team meeting. Interviews and documentation show the district failed to provide these required special education services during the entire 2023-24 school year. Finally, the district failed to report the student was not making adequate progress towards the IEP goal based on failing to achieve the short-term objectives during term 3 thus triggering the requirement to review and revise, as necessary, the student's IEP.

Based on the foregoing, the District failed to fully implement the requirements of 92 NAC 51-007.09C, 92 N.A.C. 009-05A1, 92 NAC 51-007.02, and 92 N.A.C. 51-007.10A. Thus, the following **corrective action is required**.

Corrective Action

1. The district is ordered to provide training to all special education teachers serving students in a virtual school setting prior to the beginning of the 2024-25 school year regarding the requirements to
 - a. Implement the IEP as written,
 - b. Annually review and revise, as necessary, a student's IEP
 - c. Review the student's IEP when inadequate progress is being made toward achieving the identified goal
 - d. Provide the parent with appropriate prior written notice a reasonable amount of time when proposing to change the provision of FAPE
2. It is noted that individual corrective action is not being ordered as the student successfully met the requirements to graduate from the public school at the end of the 2023-24 school year despite the district not implementing the IEP as written. A change of the term 3 grades is not being ordered as Rule 51 does not address course grades but instead focuses on the student making adequate progress toward achieving the identified IEP goals.

Issue # 2

Do the supplementary aids and services documented within the student's IEP include the location, duration, and frequency required by 92 NAC 51-007.07A8?

92 NAC 51-007 states:

007.07 *IEP Development*

007.07A8 *The projected date for the beginning of the services and modifications*

described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications

Allegations/Parent Position

During the May 8, 2024, interview, the parent alleged that the LEA failed to describe the frequency, location, and duration of each service and accommodation required by the student's IEPs in effect during the 2023-24 school year. The parent believes this led to a misunderstanding of the services and accommodations that were required to be provided and ultimately resulted in the student earning grades of "D" in three courses during the twelfth grade.

District Response

The district stated in the LEA response to the allegations:

The District maintains that frequency, duration and location was provided for the supplementary aids and services as required, as the supplementary aids and services listed were to be provided in all courses and available at all times to the student. The specific language of the IEP states that the modifications, accommodations, or supplementary aids "will be implemented throughout the school day, for the duration of the IEP." The District acknowledges that the format is not the format preferred by NDE, where there is a separate frequency, duration, and location notation for each, individual accommodation or supplementary aid listed. The District provided training, which was approved by NDE, to all staff.

The LEA district noted that training was provided to all staff as part of the corrective action plan but that IEPs did not have to be amended as part of the corrective action. The District's plan was to correct the format of each of the IEPs at their annual IEP review date over the course of the next school year.

Investigative Findings

- The investigative findings from Issue #1 are incorporated herein by reference.
- September 30, 2022, IEP includes the following accommodations: Audio materials; Provide additional instructions (as requested by the student); Copy of teacher notes/CLOZE notes; Visual and audible cues for redirection; Extended Time; Frequent breaks; Small group testing (as requested by the student); Text-to-speech; Calculator; Calculation supports (number line, multiplication chart, formula card); Graphic

organizers /Visuals. It is noted that the accommodations do not include a frequency, duration, or location for each of these accommodations.

- The November 16, 2023, IEP includes the following accommodations: Clarification of directions; Checks for understanding; Copies of notes (Canvas); Extended Time; Graphic organizers; Calculator. It is again noted that the accommodations do not include a frequency, duration, or location for each of these accommodations.
- During the May 13, 2024, interview, the parent reported the IEP was amended at the IEP team meeting held on May 9, 2024, to include the frequency, location, and duration of each of the accommodations. In addition, the parent reported the LEA central office staff would be conducting another review and reconsideration of the student's final grades in the three identified classes.
- NDE Child Complaint 23.24.10 has a finding of noncompliance regarding 92 NAC 51-007.07A8 and includes corrective action for training and reconvening each student's IEP team to correct the noncompliance.

Summary and Conclusions

There were two IEPs in effect during the 2023-24 school year and both included accommodations that were to be provided to the student. However, neither IEP document specified the frequency, duration, or location for each of these accommodations as required by 92 NAC 51-007.07A8.

The LEA was required by the NDE to implement a corrective action plan subsequent to the development of the student's IEP on November 16, 2023. The corrective action plan required training for all staff as well as a plan to update all students' IEPs to be in compliance with 92 NAC 51-007.07A8. The LEA's plan to achieve compliance was to update each individual student's IEP at the next annual IEP team meeting; however, in this case, the student was expected to graduate from the public school with a diploma prior to the next annual IEP team meeting. For this reason, the student's IEP was never updated to be in compliance with 92 NAC 51-007.07A8 as required by NDE.

Based on the foregoing, the District failed to fully implement the requirements of 92 NAC 51-007.07A8 for this student during the 2023-24 school year despite a finding of noncompliance by the NDE during the 2023-24 school year. Thus, the following **corrective action is required**.

Corrective Action

1. The district is ordered to provide the NDE with a copy of the student's amended IEP dated May 9, 2024, documenting the frequency, location, and duration of each specific accommodation in the IEP document so

that this most recent IEP can be used as a basis for the development of an appropriate 504 accommodation plan during post-graduate education and training.

2. Since the LEA has already provided training to all staff on the requirements of 92 NAC 51-007-04A, no additional training is being ordered. Instead, the LEA will provide all special education staff with a summary of the requirement and a directive that all IEPs must include the frequency, location, and duration of each specific accommodation no on the first day of the 24-25 school year.
 - a. The LEA will provide NDE with a copy of the summary of the requirement and the directive sent to staff by August 16, 2024.
 - b. The LEA will provide NDE with a sample of three IEPs per school building to document compliance with 92 NAC 51-007-04A no later than September 30, 2024.

Issue # 3

Did the district provide consent for a reevaluation based on the parent's request as required by 92 NAC 51-009-04A?

92 NAC 51-009.04 states:

009.04 *Procedural Timelines*

009.04A1 *Referral, notice to parents (See 92 NAC 51-009.05), and parental consent, shall be completed within a reasonable period of time. The initial multidisciplinary team evaluation shall be completed within 45 school days of receiving parental consent for the evaluation.*

Allegations/Parent Position

Based on emails, the Letter of Complaint, and an interview on May 8, 2024, the parent believes the LEA did not appropriately respond to her email dated March 10, 2024, requesting a “reevaluation and reconsideration” of the student's grades of “D” in three online courses which negatively impacted his transcript.

District Response Position

According to the LEA response, the LEA believes the request from the parent was not a request for a special education evaluation but instead a request for a review and reconsideration of the student's grades in three specific online

courses during term 3. This review was completed and a response was sent to the parent in a timely manner.

Investigative Findings

- The most recent reevaluation of the student was conducted at the November 16, 2023, IEP team meeting. A Notice (PWN) of Review of Existing Evaluation Data and Parental Right to Request Assessments for Determination of Continued Eligibility for Special Education Services dated November 30, 2023, was provided to the parent indicating the student continued to be eligible for special education and related services under the disability category of Other Health Impaired due to a medical diagnosis of attention deficit hyperactivity disorder (ADHD). The PWN stated the student wanted to work on procrastination and would benefit from weekly support to keep on track with classes and stay on track for graduation.
- The parent sent an email to school district staff on March 10, 2024, with the subject line "RE: Grade change request for Marine Bio 1, Earth Science 4, and US History 2" and requested *"a reevaluation along with reconsideration" on the final grades in regard to the identified courses.*
- Per the LEA response and emails, the LEA responded to the parent's request by conducting a "reevaluation and reconsideration" of the final grades based upon a review of student work, grade books in Canvas and Infinite Campus, and district grading practices by district leadership in the three courses.
- The Director of the Virtual School sent an email to the parent dated March 22, 2023, indicating a determination was made to not change the student's grades in any of the three classes and that the student's grade continued to be recorded as a "D". The email explained that the student was provided extended time, allowed multiple attempts to resubmit assignments based upon teacher feedback to the student. However, the email noted the student generally did not resubmit assignments based on feedback. The email included examples of feedback such as:
 - *"Wrong document, please resubmit"*
 - Answered "IDK?" for every question
 - *"Submitted blank document- please resubmit"*
 - *"Parts 1 and 2 are blank, you need to write a summary of the section, not restating something it said. For example, it did say.... in the section. But what was Reganomics? What was it about? How*

did it work? Who was the moral majority? Why were they important?"

- The March 22, 2024, email also explained that students in the Virtual School were expected to spend approximately 1-1.5 hours per day on each course during the term noting that approximately 37 – 55 hours should have been spent on each class. However, the students only spent 7 hours and 23 minutes on the Earth Science 4 class; 8 hours and 44 minutes on the Marine Biology I class; and 9 hours and 18 minutes on the US History 2 class.
- March 22, 2024, the email also identified some strategies for a “strong finish” for the student during his last quarter of high school including:
 - Take notes on course content and slow down when reading/learning daily content
 - Review feedback in the Canvas gradebook for the student to use and resubmit assignments.
 - Look at the assignments/work that the student is turning in in Canvas to ensure completion of assignment requirements.
 - Print and regularly check passing guides for formative and summative assignments.
 - Attend in-person/online support sessions if not satisfied with grades to connect with teachers
 - Attend online resource sessions with the Special Education Teacher to go through teacher feedback and make improvements.
- The parent responded to the determination in an email dated March 25, 2024, stating:

After careful review of [the student's] final grades we have both decided that the grades were not warranted with good merit. [The student] was not given the proper guidance clarification and or extended time as indicated per [the] IEP special education needs. [The student's] assigned IEP also has not followed up with [the student] since the IEP meeting on 11/30/2023 as he [the special education teacher] agreed to do every week per the conversation at the meeting.
- During the May 8, 2024, interview, the parent-reported no request was ever made for additional testing to determine if the student continued to be eligible for special education or to obtain additional information to assist the IEP team in developing an IEP to provide FAPE to the student. The parent's request was specifically a “reevaluation and

reconsideration" of the student's grades in the three specific online courses during term 3.

Summary and Conclusions

The term "reevaluation" has a specific meaning in regard to Rule 51. It specifically refers to the ongoing process used by LEAs to ensure they are meeting the child find requirements and appropriately identifying students as children with disabilities. In this case, the parent clarified during an interview that no request was ever made in regard to the student's eligibility for special education services as these had been affirmed through the most recent reevaluation of the student conducted on November 16, 2023.

Instead, the parent sent an email to school district staff on March 10, 2024, requesting "*a reevaluation along with reconsideration on the final grades*" in regard to the grades reported for Marine Biology I, American History 2, and Physical Science 4 during term 3" and the LEA responded by conducting such an investigation.

As a result of that investigation, the district sent the parent an email dated March 22, 2024, explaining the outcome of the "*reevaluation and reconsideration*" of the grades earned in the three identified classes. The email concluded that the student's grades would not be changed and included several strategies to be used during term 4 so the student could "finish strong". It is noted that the strategies were already required by the student's current IEP.

The parent was not in agreement with the decision and filed a child complaint with the NDE regarding the implementation of the student's IEP as a reason for the low grades and the results of that investigation are described in Issue #1 of this report.

Based on the foregoing, the District did not fail to fully implement the requirements of 92 NAC 51-009-04A for this student during the 2023-24 school year, and **no corrective action is required**.

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:

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