

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 23.24.42  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** June 26, 2024  
**Date of Report:** REDACTED

### Introduction

This investigation is being conducted because the Parents believe the District failed to provide the Student with a free appropriate public education (FAPE) between April 18, 2024, and the end of the school year. The Parents stated that the IEP dated April 18, 2024, did not reflect decisions made during the annual IEP team meeting held on that same date and thus the discussed and agreed upon IEP was not implemented following the annual IEP team meeting. Specifically, the Parents reported the following noncompliance by the District:

1. The District did not consider the Parents' concerns for the Student during the review and revision of the annual IEP by not including their written concerns in the IEP dated April 18, 2024.
2. The IEP dated April 18, 2024, provided to the Parents on May 15, 2024, did not reflect the services, supports, and/or goals determined at the April 18, 2024, annual IEP team meeting to review and revise the IEP.
3. The Prior Written Notice provided to the Parents on May 15, 2024, did not reflect decisions agreed upon at the April 18, 2024, annual IEP team meeting to review and revise the IEP.
4. The District did not provide the Parents Prior Written Notice of the April 18, 2024, decisions in a timely manner, specifically on May 15, 2024.
5. The District did not provide FAPE for the Student between April 18, 2024, and the end of the school year due to the IEP dated April 18, 2024, not reflecting decisions made during the annual IEP team meeting, specifically 1) Student will complete a daily self-assessment behavior checklist; 2) Teacher(s) will complete a check-in/check-out chart measuring the appropriateness of conflict resolution skills; 3) programming from the current IEP was discontinued; and 4) Teacher(s) failed to arrange and provide positive social situations including lunch bunch and/or circle of friends activities.

### Issues Investigated

1. Did the District develop the Student's IEP to include Parent concerns? [92 NAC 51-003.31; 92 NAC 51-007.07B1]
2. Did the District provide the Parents a Prior Written Notice recording the IEP team decisions made at the April 18, 2024, annual IEP meeting in a timely manner? [92 NAC 51-009.05A; 92 NAC 51-009.05B]
3. Did the District provide the Student FAPE between April 18 and the end of school in accordance with the IEP? [92 NAC 51-003.24; 92 NAC 51-003.31; 92 NAC 51-007.02; 92 NAC 51-007.07C4]

## **Information Reviewed by Investigator**

### *From the Complainant*

- Letter of Complaint dated June 25, 2024, received by NDE June 26, 2024
- Updated Information regarding the Complaint received by NDE on July 25, 2024
- IEP dated December 7, 2023
- IEP dated April 18, 2024
- Prior Written Notice dated November 8, 2023
- Prior Written Notice dated December 7, 2023
- Prior Written Notice dated April 18, 2024
- Multidisciplinary Team Report dated April 18, 2024
- Teacher Report for Students Receiving Special Education Services Modifications/Accommodations Currently Addressed on the IEP In Effect From December 7, 2023, to December 6, 2024
- Teacher Report for Students Receiving Special Education Services Modifications/Accommodations Currently Addressed on the IEP In Effect From Apr 18, 2024, to Apr 17, 2025
- Email from father to student services director and special education teacher dated April 19, 2024, at 3:17 p.m.
- An email exchange between the student services director and mother dated May 14, 2024, between 8:27 p.m. and 9:11 p.m.
- Email from father to student services director dated May 15, 2024, at 6:52 a.m.
- Email between parents and special education teacher dated May 15, 2024, between 8:30 a.m. and 9:10 a.m.
- Email from father to student services director dated May 28, 2024, at 8:47 a.m.
- Email from student service director to parents dated June 6, 2024, at 11:30 a.m.
- Behavior Intervention Plan for 8<sup>th</sup> grade, undated

### *From the School District*

- District Response dated July 25, 2024
- Email dated August 5, 2024, written by the Director of Special Services to the parents
- Email dated August 13, 2024, written by the Legal Counsel for the District to the Investigator
- IEP dated December 7, 2023
- IEP dated April 18, 2024
- Prior Written Notice dated December 7, 2023
- Prior Written Notice dated April 18, 2024
- Teacher Report for Students Receiving Special Education Services Modifications/Accommodations Currently Addressed on the IEP In Effect From December 7, 2023, to December 6, 2024
- Teacher Report for Students Receiving Special Education Services Modifications/Accommodations Currently Addressed on the IEP In Effect From Apr 18, 2024, to Apr 17, 2025
- Behavior Checklist (Response) dated March 11, 2024, through May 17, 2024

- CICO Revision History 1, 2, 3, and 4, dated March 11, 2024, through March 22, 2024
- CICO data report (Q4 of 2023-2024 school year; Behavior Checklist) "ask for help", "staying on task"
- CICO data report (Q4 of 2023-2024 school year; Behavior Checklist) "class", "staying on task", "appropriate responses to peers and adults", "ask for help"
- CICO Behavior Checklist Google form, undated
- Progress Report dated May 15, 2024
- Screenshot of persons with access to Quarter 4 (2023-2024 school year) Behavior Checklist (Response) "ask for help", "staying on task"
- Recess behavior tracking for the 2023-2024 school year

#### *Interviews with the Parties*

- The Parents and their Legal Counsel were interviewed by the telephone on August 7, 2024
- The District chose not to be interviewed as part of the investigation

#### **Findings of Fact**

1. The Student was an 8<sup>th</sup> grader who has Autism (IEP dated April 18, 2024).
2. Documentation from both parties and the Parent interview found that an IEP team meeting was held on April 18, 2024, to review and revise the Student' IEP, including the BIP.
3. On May 15, 2024, the District provided the Parents with a copy of the IEP and the prior written notice describing the changes made in the IEP at the April 18, 2024, IEP team meeting.
4. The Parents provided emails and confirmed in an interview that these documents did not reflect the discussion and agreements made at the April 18, 2024, IEP team meeting. The Parents stated accommodations and goals that had been agreed to were missing, and provisions that had been in the Student's previous IEP had been removed without the team's agreement to do so. On May 28, 2024, the Parents emailed the district with a detailed list of specific provisions that the IEP team had discussed and agreed to during the IEP meeting on April 18, 2024, but that had been omitted from the IEP document.
5. On June 6, 2024, the 2023-24 Special Services Director emailed the parents stating that revised copies of the prior written notice and IEP were being created to address the items omitted and revised copies of the IEP and prior written notice would be provided to the Parents.
6. The Parents filed a state child complaint on June 26, 2024, as they had not yet received the revised accurate copies of the IEP and prior written notice from the District as promised.
7. The District hired new school administrators for the 2024-25 school year including both the Director of Special Services and the Superintendent. Both of these administrators began employment in the district on July 1, 2024, and had no direct involvement with the allegations of noncompliance being investigated. In the Response to the Allegations dated July 25, 2024, both

administrators reported: "They would have handled the situation very differently than how their predecessors did".

8. The 2024-25 Director of Special Services conducted a self-assessment monitoring based on the allegations made by the Parents upon her employment in the District. The response to the allegations states that based on the review, areas of noncompliance were identified and a conclusion was made that "the district would benefit from creating new procedures and receiving training in the areas of noncompliance".
9. Based on the self-assessment monitoring, the District found that the April 18, 2024, IEP did not accurately reflect the discussions and agreements held during the April 18, 2024, IEP team meeting and that the Parents were not provided with a copy of that IEP until May 15, 2024. The District also acknowledged that the Parent was not provided with an accurate description of changes proposed/refused by the District at the April 18, 2024, IEP team meeting and that this prior written notice was not provided to the Parents until May 15, 2024.
10. In the written response to the allegations, the District acknowledged that the IEP sent to the Parents on May 15, 2024, regarding the meeting on April 18, 2024, was late, did not address the agreement made during the meeting regarding goals and services, and did not address the Parents' concerns.
11. The District proposed corrective action including re-convening the IEP team to review and revise the April 18 IEP document to accurately reflect the discussions held at that IEP team meeting and to provide the Parent with a copy of that IEP and appropriate prior written notice of actions proposed and refused by the District.
12. In addition, while the District believes the Student's IEP was implemented as written following the April 18, 2024, IEP team meeting in regards to check-in/check-out logs, supervision during lunch, and opportunities for "positive social situations", the District acknowledged that documentation of the Student's daily self-assessment behavior checklist was not retained and probably "not done on a regular basis".
13. The District proposed corrective action involving a review of policies, procedures, and practices within the District and the development of written procedures for implementing the requirements of Rule 51. The District would provide training on the written procedures to all special education staff in the District.
14. Interviews and documentation show an updated copy of the Student's IEP and prior written notice was provided to the parents on July 3, 2024. On July 6, 2024, the Parents informed the District and the Investigator that the revised versions of the IEP and prior written notice were still not an accurate reflection of the discussion and agreements made at the April 18, 2024, IEP team meeting.
15. Emails and the Parent interview found that the student's IEP team was again reconvened on August 6, 2024, in an effort to resolve the acknowledged District noncompliance.
16. IEP goal progress reports for the fourth quarter of the 2023-24 school year show the Student was making adequate progress toward the IEP goals.

17. NDE has no record showing any state child complaints or due process cases were filed against the District during the previous five school years.

#### **Issue # 1**

Did the District develop the student's IEP to include parent concerns? [92 NAC 51-003.31; 92 NAC 51-007.07B1]

92 NAC 51-003.31 states:

003.31            *Individualized education program (IEP) means a written statement for a child with a verified disability that is developed, reviewed and revised in a meeting in accordance with Section 007 which specifies the special education and related services necessary to assure the child a free appropriate public education.*

92 NAC 51-007.07B1 states:

007.07            *Individualized Education Program (IEP)*

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.*

#### *Allegations/Parent Position*

According to the State Child Complaint and Parent interview, the Student's Parents believe that the District failed to create an IEP document that addressed their concerns for the Student's education by not including accommodations and goals that had been agreed to at the April 18, 2024, IEP team meeting as well as omitting provisions that had been in the Student's previous IEP without the team's agreement to do so. (Letter of Complaint dated June 25, 2024, and received by NDE on June 26, 2024; Interview with the Parent dated August 7, 2024)

#### *District Response*

The District acknowledged in its response to the allegations that the April 18, 2024, IEP provided to the parents on May 15, 2024, did not accurately reflect the discussion and agreements made during the April 18, 2024, IEP team meeting. (District's Letter of Response dated July 25, 2024)

#### *Investigative Findings*

The District acknowledged noncompliance based on their self-assessment monitoring and proposed corrective action (Letter of Response dated July 25, 2024). Findings 4, 5, 9, and 10 reflect the fact that the Parents were provided with an IEP that did not accurately reflect the discussions and decisions made at the April 18, 2024, IEP team meeting on May 15, 2024. Finding 14 shows the District then sent a second revised copy of the IEP to the Parents on July 3, 2024; however, the Parents found this revised version was still not an accurate reflection of what was proposed at the April 18, 2024, IEP team meeting.

During the Parent interview, the Parents indicated that the proposed corrective action to reconvene the Student's IEP team and to develop an IEP that accurately reflected the discussion and agreements made by the Parents and the 2024-25 IEP team was the appropriate remedy in this case.

#### *Summary and Conclusions*

In this case, a self-assessment monitoring was conducted by the 2024-25 Special Services Director and the District acknowledged the noncompliance alleged by the Parents. Based on the foregoing, the District failed to fully implement the requirements of 92 NAC 51-003.31; and 92 NAC 51-007.07B1 by failing to create an IEP that accurately reflected the discussions and agreements made at the April 18, 2024, IEP team meeting. Thus, the following **corrective action is required**.

#### *Corrective Action*

1. The District is ordered to reconvene the student's IEP team to review and revise the annual IEP, to include parent concerns, additional accommodations and goals agreed to by the Team, and determination of previous accommodations that were removed that are still considered necessary by September 6, 2024.
2. The District will provide the Parent and NDE with a copy of the IEP document that accurately reflects the discussion and agreements made at that IEP team meeting along with copies of detailed team meeting notes reflecting the discussion and agreements within 5 business days of the IEP meeting and no later than September 13, 2024.
3. On or before April 1, 2025, NDE will provide the names of three students whose files (IEPs and meeting notes) will be reviewed to monitor compliance with the requirements of 92 NAC 51-003.31; and 92 NAC 51-007.07B1.

#### **Issue # 2**

Did the District provide the parents a Prior Written Notice recording the IEP team decisions made at the April 18, 2024, annual IEP meeting in a timely manner? [92 NAC 51-009.05A; 92 NAC 51-009.05B]

92 NAC 51-009.05A states:

#### 009.05 *Prior Written Notice*

009.05A *A 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.*

- 009.05B      *Such prior written notice shall include:*
- 009.05B1      *A description of the action proposed or refused by the school district or approved cooperative;*
  - 009.05B2      *An explanation of why the school district or approved cooperative proposes or refuses to take the action;*
  - 009.05B3      *A description of other options the IEP team considered and the reasons why those options were rejected;*
  - 009.05B4      *A description of each evaluation procedure, assessment, record, or report the school district or approved cooperative uses as a basis for the proposal or refusal;*
  - 009.05B5      *A description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;*
  - 009.05B6      *A statement that the parents of a child with a disability have protection under the procedural safeguards of this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained; and*
  - 009.05B7      *Sources for parents to contact to obtain assistance in understanding the provisions of this Chapter.*

#### *Allegations/Parent Position*

According to the State Child Complaint and parent interview, the Student's Parents believe that the District failed to provide appropriate prior written notice following the April 18, 2024, IEP team meeting by inaccurately describing the proposed changes and actions refused as well as not providing the prior written notice in a timely manner. (Letter of Complaint dated June 25, 2024, and received by NDE on June 26, 2024; Interview with the Parent dated August 7, 2024)

#### *District Response*

The District acknowledged in its response to the allegations that the prior written notice resulting from the April 18, 2024, IEP team meeting was not provided to the Parents in a

timely manner and did not accurately reflect the discussion and agreements made during the April 18, 2024, IEP team meeting. (District's Letter of Response dated July 25, 2024)

#### *Investigative Findings*

The District acknowledged noncompliance based on their self-assessment monitoring and proposed corrective action (District's Letter of Response dated July 25, 2024). Findings 4, 5, 9, and 10 reflect the fact that the Parents were provided with a prior written notice on May 15, 2024, that did not accurately reflect the changes proposed by the District following the discussions and agreements made at the April 18, 2024, IEP team meeting. Finding 14 shows the District then sent a second revised copy of the prior written notice to the Parents on July 3, 2024; however, the Parents found this revised version was still not an accurate reflection of what was proposed at the April 18, 2024, IEP team meeting.

During the Parent interview, the Parents indicated that the proposed corrective action to reconvene the student's IEP team and to provide the Parent with timely prior written notice that accurately describes the actions proposed and refused by the district at that IEP team meeting was the appropriate remedy in this case.

#### *Summary and Conclusions*

In this case, a self-assessment monitoring was conducted by the 2024-25 Special Services Director and the District acknowledged the noncompliance alleged by the Parents. Based on the foregoing, the District failed to fully implement the requirements of 92 NAC 51-009.05A; and 92 NAC 51-009.05B by failing to provide the parent with a prior written notice in a timely manner following the April 18, 2024, IEP team meeting which accurately reflected the changes proposed/refused by the District. Thus, the following **corrective action is required**.

#### *Corrective Action*

1. The District will provide the parent and NDE with a copy of the prior written notice document from the IEP meeting required for Issue #1 that accurately reflects the actions proposed and refused by the District within five business days following the IEP team meeting date or no later than September 13, 2024.
- 2.

#### **Issue # 3**

Did the District provide the student FAPE between April 18 and the end of school in accordance with the IEP? [92 NAC 51-003.24; 92 NAC 51-003.31; 92 NAC 51-007.02; 92 NAC 51-007.07C4]

92 NAC 51-003.24 states:

003.24      *Free appropriate public education or FAPE means special education and related services that are provided at public expense, under public supervision, and direction, and without charge; meet the standards of the state including the requirements of this Chapter; include an appropriate*



*preschool, elementary school, or secondary school education in Nebraska and are provided in conformity with an individualized education program (IEP) that meets the requirements of 92 NAC 51- 007.*

92 NAC 51-003.31states:

003.31       *Individualized education program (IEP) means a written statement for a child with a verified disability that is developed, reviewed and revised in a meeting in accordance with Section 007 which specifies the special education and related services necessary to assure the child a free appropriate public education.*

92 NAC 51-007.02 states:

007.02       *School districts or approved cooperatives must provide special education and related services to a child with a disability in accordance with the child's IEP.*

007.02A       *At the beginning of each school year, each school district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction.*

007.02B       *Each school district or approved cooperative shall ensure that an IEP is in effect before special education and related services are provided to a child with a verified disability under this Chapter.*

007.02C       *The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and*

007.02D       *Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.*

92 NAC 51-007.07C4 states:

007.07       *IEP Development*

007.07C       *Services*

007.07C4       *The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide*

*nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities.*

007.07C4a    *Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.*

#### *Allegations/Parent Position*

According to the State Child Complaint and Parent interview, the Student's Parents believe that the District failed to provide the Student with FAPE by not implementing the IEP, including the BIP, developed on April 18, 2024, through the end of the 2023-24 school year. The Parents specifically note that the Student's daily self-assessment behavior checklist, the check-in/check-out chart measuring the appropriateness of conflict resolution skills, 1-1 supervision during lunch, and positive social situations including lunch bunch and/or circle of friends activities were not provided on a regular basis. (Letter of Complaint dated June 25, 2024, and received by NDE on June 26, 2024; Interview with the Parent dated August 7, 2024)

The Parents reported the District has repeatedly failed to implement the Student's IEP over the last several school years and believe there is a pattern of not implementing the IEPs of other Students in the district as well. The Parents believe that any corrective action must include ongoing oversight from NDE as to the implementation of the Student's IEP. (Letter of Complaint dated June 25, 2024, and received by NDE on June 26, 2024; Interview with the Parent dated August 7, 2024)

#### *District Response*

The District's response to the allegations documented that a self-assessment monitoring was conducted for the implementation of the student's IEP from April 18, 2024, through the end of the 2023-24 school year. Based on that review, the District believes the

student's IEP was implemented as written following the April 18, 2024, IEP team meeting in regards to check-in/check-out logs, supervision during lunch, and opportunities for "positive social situations"; However, the District acknowledged that documentation of the student's daily self-assessment behavior checklist was not retained and probably "not done on a regular basis". (District's Letter of Response dated July 25, 2024)

#### *Investigative Findings*

IEP goal progress reports showed the Student was making progress on all IEP goals during the fourth quarter of the 2023-24 school year.

Findings 12 and 13 document that the District acknowledged noncompliance based on their self-assessment monitoring which could not find documentation to show the Student's daily self-assessment behavior checklist was completed on a regular basis and proposed corrective action to address IEP implementation and the corresponding documentation or data.

During the Parent interview, the Parents agreed that written procedures and training for staff regarding the IEP process including development and implementation would address the District's noncompliance. The Parents also acknowledged that compensatory services were not warranted at this time as the Student continued to make progress towards the IEP goals as documented in Finding 16 despite the District's failure to fully implement the student's IEP as written.

Finding 17 found there is no record of any state child complaints or due process cases being filed against the District during the previous five school years.

#### *Summary and Conclusions*

In this case, a self-assessment monitoring was conducted by the 2024-25 Special Services Director and the District acknowledged the noncompliance alleged by the parents in regards to the failure to implement the Student's IEP as written, specifically the Student's self-assessment checklist. Based on the foregoing, the District failed to fully implement the requirements of 92 NAC 51-003.24; 92 NAC 51-003.31; 92 NAC 51-007.02; 92 NAC 51-007.07C4 and thus the following **corrective action is required**.

#### *Corrective Action*

1. By September 23, 2024, the District will develop written procedures regarding:
  - a) Timelines for sending parents written IEPs and accompanying PWNs and timelines for addressing parental concerns;
  - b) Informing relevant staff of their role to implement a student's IEP;
  - c) Tracking IEP services, accommodations, and modifications;
  - d) Identifying reporting timelines in the IEP;
  - e) IEP services start and end dates;
  - f) Incorporating a BIP into an IEP;
  - g) Identifying how and when parents will receive information on their student's IEP progress; and
  - h) The role and responsibilities of a district representative at an IEP meeting.

2. The District's procedures (listed above) must be sent to NDE for review by September 27, 2024.
3. By October 11, 2024, the District will conduct training with all special education staff regarding the following topics:
  - a) The new written procedures;
  - b) The importance of addressing parent concerns under 92 NAC 51-003.31 and 92 NAC 51-007.07B1;
  - c) Rules concerning prior written notice under 92 NAC 51-009.05A; 92 NAC 51-009.05B;
  - d) Writing accommodations and modifications with appropriate duration, frequency, and location; and
  - e) Developing goals that are appropriately ambitious, individualized, and measurable.
4. The District will provide NDE with copies of any PowerPoint presentation and/or handouts related to the training two weeks prior to implementation for approval.
5. The District will provide NDE a copy of the sign-in sheet documenting the names and roles of the persons who were trained within 1 business day of the implementation of the training.
6. To ensure that students receive the appropriate support and intervention as outlined in their Individualized Education Program (IEP), the school district is required to monitor and document progress toward IEP goals at a minimum of once per month. The frequency of monitoring and documentation may be increased based on the specific monitoring tools and strategies selected by the IEP team. This proactive approach is essential for assessing each student's progress and making timely adjustments to their educational plan to support their success. On or before April 1, 2025, NDE will provide the names of three students whose files (Quarterly Progress Reports) will be reviewed to monitor compliance with the requirements of 92 NAC 51-007.07A4. It is noted that the Parents also have the right to file another state child complaint at any time they believe the District is not implementing the student's IEP as written.

Unless otherwise indicated, the corrective action specified must be completed within sixty (60) calendar days of the date of this report. Documentation must be submitted as soon as possible following the completion of the corrective actions. All documentation of correction must be sent to:

Christopher Chambers, Complaint Specialist  
Jim Ageton, Complaint Specialist  
NDE Office of Special Education  
[nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov)