

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.30
Complaint Investigator: REDACTED
Date Complaint Filed: April 3, 2024
Date of Report: REDACTED

Introduction

On January 22, 2024, the Nebraska Department of Education (Department) received a written request for a Special Education Complaint (Complaint) investigation from the Parents (Parent) of a Student (Student) residing in the District. The Student was four years old and attending a preschool at the time the Complaint was filed. The Parent requested that the Department conduct a special education investigation under 92 NAC § 51-009.11C3. The Department confirmed receipt of this Complaint and forwarded the request to the District. Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the Complaint. This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the Complaint.

On April 5, 2024, the Department sent a Request for Response (RFR) to the District identifying the allegations in the Complaint to be investigated on behalf of the Student. It established a response due date of April 19, 2024. With agreement from the Complaint Investigator, the District submitted a response on April 22, 2024, which disputed the allegations, explained, and submitted documents supporting the District's position. The Parent submitted materials on April 25, 2024. The information included in this report that is outside the Complaint period is provided for context only.

Issues Investigated

1. Did the District conduct a re-evaluation of the Student that met the requirements of the IDEA and Nebraska State Rules? [92 NAC 51 006.02C5, 006.02C5a, 006.02C5b, 006.02C9-006.02C14b]?
2. Did the District meet the Multidisciplinary Evaluation Team (MDT) requirements when conducting the re-evaluation for the Student? [92 NAC 51 006.03A-006.03E4, 006.03F3, 006.03F4, 006.03G]?
3. Did the District follow the requirements of IDEA and Nebraska State Rules when determining whether the Student was eligible for special education services? [92 NAC 51 006.04D, 006.04I, 006.04J]?

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated April 1, 2024; received by NDE April 3, 2024
- Parent Dissent Letter dated December 5, 2023
- Physical Therapy Evaluation Report dated November 13, 2023
- Daily Note from Physical Therapist dated January 10, 2024
- Office of Special Services Speech and Language Evaluation Report dated November 14, 2023
- Multidisciplinary Evaluation Team (MDT) Report dated December 1, 2023
- Parent Interview conducted May 9, 2024

From the School District

- Letter of Response dated April 22, 2024; received by NDE April 22, 2024
- Parent Dissent Letter dated December 5, 2023
- MDT Report dated December 1, 2023
- Notice of Meeting dated May 9, 2023
- Notice of Meeting dated November 30, 2023
- Individual Education Program dated May 19, 2023
- Prior Written Notice (PWN) dated May 24, 2023
- PWN dated December 8, 2023
- Consent for Reevaluation dated November 7, 2023
- Occupational Therapy Evaluation Report dated November 13, 2023
- Physical Therapy Evaluation Report dated November 13, 2023
- Office of Special Services Speech and Language Evaluation Report undated
- Self-Advocacy and Gross Motor Rubric 22.23
- Self-Advocacy and Gross Motor Rubric 22.34
- Email from School Psychologist to other District representatives dated November 7, 2023
- Email Exchange between School Psychologist and Speech Language Pathologist dated November 28, 2023
- Email Exchange between the Parent and the School Psychologist dated December 5, 2023
- Email from School Psychologist to the Parent about the MDT dated December 8, 2023
- School Psychologist Interview conducted May 10, 2024
- Occupational Therapist Interview conducted May 10, 2024
- District Representative Interview conducted May 10, 2024
- Speech Language Pathologist Interview conducted May 10, 2024
- Physical Therapist Interview conducted May 10, 2024

Findings of Fact

1. The Student was born prematurely and “has dwarfism and has a history of hydrocephalus” and “frequent falling spells.” The Student “has no significant limitations outside of [their] physical stature limits. [The Student] has received special education services since [the Student] was just over a year of age, with a primary verification of Orthopedic Impairment and a secondary verification of Speech- Language Impairment. [The Student] has been receiving special education services to address skills of self-advocating to address [their] gross motor skill limitations. Educationally related physical therapy services have been provided 15 minutes, four times per year, and [the Student] has been receiving consultative occupational therapy services to address fine motor and self-help skill needs. (Multidisciplinary Evaluation Team (MDT) Report dated December 1, 2023.)
2. A Notice of Meeting for an Individual Education Program (IEP) was created on May 9, 2023, and signed by the Parent on May 19, 2023. (Notice of Meeting dated May 9, 2023.)
3. An IEP dated May 19, 2023, listed the following:
 - a. The Student's strengths were described as confidence, independence, strong social skills, and loving school and learning.
 - b. The Parent described the Student as a social and enthusiastic learner who needed support adapting to environments. The Parent wanted to ensure a smooth transition to kindergarten with appropriate accommodations in place.
 - c. The MDT determination indicated that the Student met the Nebraska Department of Education (NDE) Rule 51 verification “as a child with an Orthopedic Impairment (OI) and secondary verification of Speech-Language Impairment in the area of Language. [The Student] is at risk for potential delays in [their] development due to [their] skeletal dysplasia diagnosis of Achondroplasia.”
 - d. Consideration of the Student's communication needs was deemed unnecessary.
 - e. The Student's Present Level of Academic Achievement and Functional Performance were described as follows:
 - i. The Student demonstrated independence in their preschool environment and participated in activities. The Student's program provided the modifications needed to support the Student's development.

- ii. The Student showed appropriate fine motor skills using proper grasps and favoring their right hand. The Student copied basic shapes but struggled with letters. The Student was independent in the bathroom and used a faucet lever extender to wash their hands. The Student may need adaptive fine motor materials to facilitate success with cutting, coloring, and writing. The Student “benefits from consultative services from an occupational therapist in order to achieve fine motor milestones.”
- f. The Measurable Annual Goal was: “Given support from a classroom teacher, [the Student] will continue to access, participate, and advance through the curriculum at age-appropriate levels 85% of the time as measured by quarterly progress reports by May 2024.”
- g. The Statement of Special Education and Related Services indicated that “Gross motor skills and environmental access will be addressed via consultative physical therapy services. Physical therapy services may include modifications of programming or observation of educationally related gross motor skills once a quarter to identify ongoing needs. [The Student’s] fine motor delay needs will be addressed via consultative instruction from the occupational therapist in a consultative manner for 5 minutes, 4 times per year. Services may include modifications of programming or observation of educationally related fine motor skills.”
 - i. The duration, location, and frequency of the Special Education service of Physical Therapy was listed as:
 - 1. Duration: May 22, 2023, through May 17, 2024;
 - 2. Location: “Regular Early Childhood Program, 10+ h/wk; Services outside EC Program”; and
 - 3. Frequency: 15 minutes/day for four days/year.
 - ii. The duration, location, and frequency of Additional Special Education Services of Occupational Therapy Services was listed as:
 - 1. Duration: May 22, 2023 through May 17, 2024;
 - 2. Location: “Regular Early Childhood Program, 10+ h/wk; Services outside EC Program”; and
 - 3. Frequency: 15 minutes/day for four days/year.
 - iii. The duration and location of the Program Modifications & Accommodations of adaptive writing and fine motor tools, the use of a stool and specialized seating, and “increased time for walking long distance” were listed:

1. Duration: May 22, 2023 through May 17, 2024;
2. Location: "Regular Early Childhood Program, 10+ h/wk; Services outside EC Program"; and
3. Frequency was not listed. (IEP dated May 19, 2023.)
4. May 24, 2023, Prior Written Notice (PWN) described the following:
 - a. The action proposed by the District included continuing Special Education Services due to the Student's orthopedic impairment. A new IEP was created to focus on helping the Student access the curriculum in the preschool setting. The new IEP included both physical and occupational therapy, with a reduction in physical therapy.
 - b. The explanation provided by the District included that the Student would continue to receive Special Education Services in a private early education program. The Student had shown improvement in self-advocacy and navigating their educational environment. The Student required specialized instruction and occupational therapy services.
 - c. The District rejected keeping the physical therapy minutes the same because the Student made progress toward independence. The District rejected increasing occupational therapy minutes "because the Student has made appropriate progress with the current service minutes."
 - d. Progress Reports on IEP goals, classroom performance, therapist reports, and Parent and Teacher reports were used to make the determination. (PWN dated May 24, 2023.)
5. The Student's Self-Advocacy and Gross Motor Rubric 22.23 indicated, "With direct instruction and minimal verbal cueing, [The Student] will improve [their] self-advocating and gross motor skills within [their] educational environment by achieving 10/11 points on the self-advocacy and gross motor rubric on 3 out of 4 consecutive data days by August 2023 (baseline 3/11)." (Self-Advocacy and Gross Motor Rubric 22.23.)
6. The Student's Self-Advocacy and Gross Motor Rubric 23.34 [sic] indicated that "Given support from a classroom teacher, [the Student] will continue to access, participate, and advance through the curriculum at age-appropriate levels 85% of the time as measured by quarterly progress reports by May 2024." (Self-Advocacy and Gross Motor Rubric 22.34 [sic].)
7. On November 3, 2023, a Notice and Consent for Reevaluation was created to propose a multidisciplinary evaluation for the Student as a requirement by Nebraska law every three years. The purpose was to determine the "educational strengths and areas of need, and to

determine special education eligibility." The proposal was based on "teacher input, parent input, service provider input, progress on IEP goals, and [a] review of records." The areas identified as needing to be assessed included perceptual and motor, speech and language, and "other." The Parent indicated that consent was given on November 7, 2023. (Consent for Reevaluation dated November 7, 2023.)

8. On November 7, 2023, the School Psychologist indicated in an email exchange with other District professionals that the Student "previously qualified for speech [-] language services, but does not receive them currently." They also indicated that the "Preschool teacher does not have any social, academic, or speech concerns at this time ... and is unsure if the Student will continue to need OT/PT consult and recommended that the team might want to look at a 504 plan instead" (Email from School Psychologist dated November 7, 2023.)
9. On November 13, 2023, "An occupational therapy evaluation was completed as part of [the Student's] three-year, multidisciplinary re-evaluation. It is important to note that sensory processing skills were not evaluated due to no concerns." The summary of the evaluation indicated that "According to the results obtained from this evaluation, [the Student] demonstrated average performance with fine motor skills. It is recommended that the results of this evaluation be reviewed by the multidisciplinary team to determine [sic]." (Occupational Therapy Evaluation Report dated November 13, 2023.)
10. On November 13, 2023, a Physical Therapist administered the Peabody Developmental Motor Scales – Second Edition assessment. The following was noted in the final report:
 - a. The Student "had been receiving Physical Therapy services on a consultative basis while [the Student] has been in [their] community preschool environment."
 - b. According to the Report, the Teacher noted that "the Student is independent in [their] preschool environment and school. If something is out of [their] reach, [the Student] will gather a step stool or [the Student] advocates for [themselves] and will ask appropriately for assistance. [The Student] has been able to access [their] school curriculum and [their] environment independently over 80 percent of the time."
 - c. In the musculoskeletal/neuromuscular area, the Student's movement was described as unrestricted within the preschool setting. Their knees and hips bent more than usual, which could affect their balance when jumping or running. Despite this, the

Student was described as having normal strength and was able to keep up with peers during activities. The Student's stature was shorter than that of peers but otherwise proportional. The Student's reflexes were described as typical.

- d. In the areas of functional motor skills and object manipulation, the Student was mostly independent in their movement and object use within the preschool setting, although some things, like higher doors and adult-sized chairs, took the Student longer to navigate or required assistance. The Student showed some limitations in running, jumping, and throwing compared to their age group.
 - e. The Student's overall "gross motor quotient" was 81, which placed the Student in the "below average" range. The Student's balance skills were "average," while their locomotion and object manipulation scores were "below average."
 - f. The report indicated that the Student's "access to [their] educational environment has been accommodated with step stools in the classroom and bathroom. In [their] classroom, there is a handle extension on the basin sink and a lower towel dispenser for [the Student] to access."
 - g. The summary of the report indicated the following:
 - i. "[The Student's] School Functional Assessment score meets most of the criterion cut-offs or is within the range of the standard error to demonstrate independence in the classroom compared to other kindergarten to third graders. [The Student's] PDMS-2 scores were in the average to below-average range in comparison to [their] same-age peers. It is worth noting that [the Student's] PDMS-2 scores were hopping, and walking backward heel to toe. [The Student's] PDMS-2 score measures gross motor skills but is not as accurate to capture [their] abilities [sic] to participate independently to access [their] learning environment." (Physical Therapy Evaluation Report dated November 13, 2023.)
11. On November 14, 2023, and November 16, 2023, the Speech-Language Pathologist evaluated the Student at their Preschool. The following information was noted in the report:
- a. The Student received early intervention services from a Physical Therapist and a Speech-Language Pathologist.
 - i. "Parents and teachers no longer report any concerns for [the Student's] speech or language development."

- b. According to the Speech-Language Pathologist, “based on observation, teacher input, and all evaluation data, [the Student’s] receptive and expressive language skills are within the average range compared to same-age peers. Results will be discussed with the multidisciplinary team.” (Office of Special Services Speech and Language Evaluation Report undated.)
12. An email exchange on November 28, 2023, indicated the following:
- a. The School Psychologist was not able to reschedule the adaptive assessment with the Parent. They planned to mention that dismissal from Special Education was an option and a 504 plan might be discussed.
 - b. The Speech-Language Pathologist indicated that the Student’s skills all landed in the average range.
 - c. The Occupational Therapist described the Student’s scores as in the average and above average range for fine and gross motor skills. (Email Exchange dated November 28, 2023.)
13. On November 30, 2023, a Notice of Meeting was drafted to schedule a meeting to review the MDT Report for the Student and to determine, with the Parents’ input, whether the Student qualified for Special Education. (Notice of Meeting dated November 30, 2023.)
14. On December 1, 2023, the MDT Report for the Student indicated that:
- a. The MDT was completed in the Student’s predominant language, English.
 - b. The materials, procedures, and assessments were intended to focus on measuring the Student’s disability, not English skills.
 - c. Information from the Parent was considered.
 - d. A summary of the data obtained was described:
 - i. “Detailed parent input was shared as part of the MDT evaluation. After each component of the evaluation report, the parent stated [they] did not have additional information to add or questions about the content. [The Parent] reported that medical background information was accurate. [The Parent] inquired about taking more time to process the evaluation information with [Parent 2] and inquired about [the] next steps. Parent input was requested and provided as part of the evaluation. This is documented within the multidisciplinary team report.”
 - e. Measurement instruments have been validated for the purpose for which they were used.

- f. Trained staff followed the assessment rules and noted non-standard testing conditions.
- g. Assessments and materials were used for their intended purposes.
- h. Assessments and materials used were designed to assess areas of educational need.
- i. Assessments and materials reflected aptitude or achievement, not impairment.
- j. No single measurement was used to decide the appropriate educational program.
- k. The Student was assessed in all areas of suspected disability.
- l. The evaluation was comprehensive and used sound instruments to assess cognitive, behavioral, physical, and developmental factors.
- m. "The team used assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child."
- n. A variety of sources were used, documented, and considered.
- o. An eligibility determination would not be determined if there was a lack of instruction in reading, math, or English proficiency.
- p. It was determined that there was "No disability verified."
- q. The MDT determination indicated that "On 12/1/2023, the Multidisciplinary Team (MDT) at [the District] met to review educational records, parent input, teacher input, observations, and the gross motor, fine motor, adaptive behavior, and communication assessment results. Upon comparing the evaluation information to the eligibility criteria of the Nebraska Department of Education's Rule 51 Regulations and Standards for Special Education Programs, the team has determined that [the Student] no longer meets the eligibility criteria as a student with an orthopedic impairment requiring special education."
- r. The educational needs were described: "[The Student] needs general education accommodations due to [their] shortened stature such as reduced running requirement and modifications to jumping requirements in structured gross motor times or activities. [The Student] needs accommodations in order to enable functional self-help skills and access [their] educational environment such as step stools in the classroom and restroom, accessible paper towel dispensers, and a handle extension on the sink."
- s. The following members of the MDT were present: Parent, Physical Therapist, Speech-Language Pathologist, District Representative, Occupational Therapist, School Psychologist, Resource Teacher,

and Teacher. The only party that disagreed with the MDT decision was the Parent.

- t. It was noted that if there was a dissenting opinion, that party must submit a separate statement describing their conclusions.
- u. The Parent was provided a copy of the MDT at no cost.
- v. On Supplemental Form 1 of the MDT, the following was noted:
 - i. The Parent indicated that the Student was social, learned quickly, enjoyed routines, and could be cautious in new settings.
 - ii. The Preschool teacher shared that “[the Student] performs within the age [-] appropriate range for social and academic skills at school. [The Teacher] added that [the Student] likes to have extra reassurance, but with some feedback, [the Student] is quickly on [their] way. They have worked on helping [the Student] with problem [-] solving and this is a skill that [the Teacher] mentioned [the Teacher] works on with many of [the Student’s] peers as well. [The Teacher] does not have concerns about [the Student] navigating the classroom environment or requiring modifications that [the Student] is not able to communicate about.”
 - iii. During a classroom observation, the Student worked on a letter activity but was easily distracted by looking around the room. After a recent 2-week absence, the Student seemed to be readjusting. The Student sought Teacher reassurance 14 times in 15 minutes. Despite the distractions, the Student completed the task independently and without behavioral concerns.
- w. In Supplemental Form 2, the School Psychologist Evaluation described the results of the Vineland III Adaptive Behavior Scales. It was noted that the Parent ratings were not obtained due to scheduling conflicts. The Teacher ratings indicated that [the Student’s] score for [their] adaptive skills was average, and all of the sub [-] category scores fell in the average range at school with the exception of motor skills, which fell in the moderately low range when compared to the same aged peers.” The School Psychologist’s summary indicated: “At this time, [the Student’s] overall adaptive skills fall in the average range at school based on observation, teacher input, and standardized adaptive assessment. No other concerns at home or school have been reported. MDT

should use this information to consider [the] continued need for school supports." (MDT dated December 1, 2023.)

15. In an email exchange between the School Psychologist and the Parent, the following was noted:

- a. On December 1, 2023, the School Psychologist summarized the evaluation meeting and reiterated the District's proposal to discontinue Special Education services for the Student. The School Psychologist reminded the Parent(s) that they had one week to submit their dissent.
- b. The Parent responded with: "Are you saying that [the Student] does not have a disability that requires special service provision or accommodations?"
- c. The School Psychologist responded and described that the Team must review the data to determine if there is an adverse impact and a need for Special Education services. (Email Exchange dated December 5, 2023.)

16. On December 5, 2023, the Parent submitted their formal dissent to the decision of the MDT "to indicate our disagreement with [the Student's] recent MDT and the determination that [the Student] is not considered to have a disability based on the recent MDT." The Parent listed the following concerns:

- a. "A current signed, written report from a physician was not included as part of the MDT process. This is a procedural error."
- b. Despite private physical therapy, the Student's gross motor skills were moderately low. The Parent indicated that extra support was required to keep the Student's skills from regressing. The Parent indicated that since the Student is under the age of five years, their development and not just academic performance mattered. According to the Parent, the Student's motor skills should be compared to typically developing Students of similar height and not adjusted for the Student's disability.
- c. Additionally, the Parent indicated that while the Student may appear independent in their current setting, it was important to recognize that this independence depended on accommodations that were not fully detailed in the report. The Parent described that the transition to kindergarten, with taller peers and different physical structures, will pose new challenges that the Student's current accommodations might not solve. The Parent felt that the report minimized the likelihood of the Student needing more extensive accommodations in the future. The Parent indicated that the

Student's current independence, achieved through accommodations, did not mean the Student did not have a disability. The Parent described that the Student's short stature impacts the Student's ability to function in the educational setting. According to the Parent, the idea that the Student could be reevaluated if the Student experienced struggles in kindergarten ignored the potential for emotional harm. The Parent described that bypassing formal processes for accommodations undermined the Student's right to protection from discrimination. The conclusion that the Student did not have a disability that could hinder [their] education was disputed. (Parent Dissent Letter dated December 5, 2023.)

17. On December 8, 2023, a PWN described the action proposed or refused by the District:
 - a. "The team proposes that [the Student] no longer meets 92 NAC 51 (Rule 51) eligibility criteria as a student with an orthopedic impairment and thus [the Student] should be dismissed from special education services."
 - b. The District provided the following rationale for dismissal from Special Education: "To verify as a student with an orthopedic impairment under 92 NAC 51-006.04I, a student must have a severe orthopedic impairment that affects the child's educational performance. This is a two-pronged analysis. [The Student] objectively meets the first prong. [The Student] is a child with Achondroplasia and has a severe orthopedic impairment. However, the multidisciplinary team concluded that [the Student] does not meet the second prong of the test because [their] orthopedic impairment does not adversely affect [their] educational performance." The District indicated that the Student performed well in terms of academics, social skills, and behavior. The Student independently completed many tasks and needed reassurance occasionally. The Student's language skills and comprehension were commensurate with those of their peers. The Student's motor skills were slightly below average in some areas; however, the Student functioned well in their environment. The Student had typical self [-] help skills for their age. The Team believed that the Student's orthopedic condition did not hinder their education. Existing accommodations were sufficient, and the Student did not need specially designed instruction.

- c. The options the District considered and the reasons they were rejected were described. The Parent believed the Student needed special education services due to the many accommodations the Student needed to function in Preschool. The Parent worried that kindergarten would be more challenging. The District agreed that the Student needed accommodations but argued that this alone did not mean the Student needed specialized instruction. The key question was whether the Student could learn with standard instruction and support. The Team believed the Student could. It was important to note that the Student was still considered disabled under Section 504 and would receive accommodations. The Team considered reconvening the MDT meeting “based on the Parent’s statement that the Team did not consider a medical report. The District rejects this option because the purpose of a medical report is to verify a medically diagnosed orthopedic impairment.” The District described that they had the medical documentation of the orthopedic impairment and “is aware that [the Student] continues to go to medical appointments for [their] condition.”
 - d. The action was based on the Team discussion on December 1, 2023, and the evaluations and assessments in the report.
 - e. Other relevant factors indicated that if the Student enrolled in a District public school, a 504 Coordinator “will reach out to the family to schedule a time to document [the Student’s] disability and determine accommodations and modifications required for [the Student] to access [their] educational environment. The MDT report includes recommended accommodations and modifications that parents can share with [the Preschool] for continued use in preschool and kindergarten. If parents have additional medical information they wish to share with the multidisciplinary team, the parents can share that information with the multidisciplinary team to be considered.” (PWN dated December 8, 2023.)
18. On December 8, 2023, the School Psychologist emailed the MDT and the PWN to the Parent with the Parents’ dissent noted. (Email from School Psychologist dated December 8, 2023.)
19. A Daily Note from the Physical Therapist dated January 10, 2024, indicated the Student’s diagnosis of Achondroplasia and the objectives, goals, and data describing the Student’s progress. The assessment portion of the Note indicated the following:
- a. “[The Student] has the characteristics features of Achondroplasia, including delays in gross motor skills when compared to average

height peers. [The Student] has made good progress in therapy ... is making progress at learning more age [-] appropriate gross motor skills ... is more confident in [their] gross motor skills and overall more physically independent in a variety of gross motor skills."

- b. "[The Student] would benefit from physical therapy services to continue to improve [their] base of support in gait and monitor [the Student's] fall risk as well as improving [the Student's] ball skills with both [their] hands and feet. [The Student] would also benefit from improving [their] core trunk strength, especially to allow [the Student] better head control. Additionally, routine monitoring by physical therapy of [their] orthopedic alignment, musculoskeletal functioning, and gross motor development would be beneficial to address any concerns which may develop as [the Student] grows."
- c. "[The Student] will require multiple accommodations to the physical environment when [the Student] enters a Kindergarten setting in the fall. Accommodations are noted in this report above but potentially include the following: Bathroom, 2 [-] step stepstool with handles, faucet extender, alterations to the paper towel dispenser, and soap dispenser. Water fountain: Step stool at the water fountain to allow access. Classroom chair or desk: Possibly elevated seat height from the floor to reach the table, reduced seat depth to allow [the Student's] knees to bend, step stool in front of the chair to allow [the Student's] feet to touch a surface when sitting. Accommodated chair options for art, music, and library classes. Classroom: stepstools in the classroom to allow access to materials higher than 38" from the floor. Lowered coat and backpack hooks (3 M hook) placed at appropriate height. Physical assistance by an adult or multiple-step stools in the cafeteria to allow [the Student] to access a lunch tray and salad bar. Lowered swing on the playground to accommodate [sic][the Student's] 34" height. 4" to 6" play ball for use in PE class. Adaptations for some activities in PE class such as sit [-] ups or moving back and forth on the ground in PE. Stepstools or physical assistance in the library to access books out of reach. Possible accommodations on the stairs for safety when walking within a group. Possible increased time for walking distances in the school halls."
- d. "[The Student's] right foot posture continues to be a concern. [The Student] is bearing weight on the lateral border of [the Student's] right foot, and some right big toe grasp and right forefoot adduction are noted as compensation. [The Student] still lacks core

strength, especially abdominal and neck strength, partially related to the size and lever lengths. [The Student] has some lower extremity alignment issues as well as the shortened extremities which impact [their] ability to perform age-appropriate gross motor skills. [The Student] has made significant improvements in [their] gross motor skill acquisition and has several skills which are close to being at age level however [the Student] generally has skills at the lowest end of the typical range of skills." The Plan for the improvement of the Student's skills included additional physical therapy sessions to help with hopping and skipping. (Daily Note from Physical Therapist dated January 10, 2024.)

20. During interviews with the Complaint Investigator, the Parent shared that a re-evaluation was completed when the Student was in pre-school. The MDT did not qualify the Student for special education services because, in the pre-school setting, the Student did not require special education services. The Parent did not think the process was done correctly and the Parent disagreed that there was not an adverse educational impact for the Student. The preschool had many accommodations for students that were not considered; the team refused to look ahead to what the Student would need when attending kindergarten. The Parent believed that the Student's needs would grow over time, and the school would not consider this. The Parent believed that in kindergarten the Student would require a sink and towel sizing or step stool, lower coat and backpack hooks, a modified desk and chair, a footrest, PE adaptations, and a safety plan for emergencies. They also reported that the Student would need support to access the school environment and the Student might need more time than peers to complete running and skipping tasks. The Parent wanted a 504 plan for the Student but was told by District staff that a 504 plan would not be provided while the Student was attending a private preschool. (Parent Interview conducted May 9, 2024.)
21. During interviews with the Complaint Investigator, the School Psychologist described using multiple sources of information, standardized measures, observation records, and reviewing input from parents and teachers when the MDT team made the eligibility decision for the Student. They also recalled discussing accommodations that were being used at the preschool, and the Student was not eligible for a 504 plan at the time because they were enrolled in a private preschool. (School Psychologist Interview conducted May 10, 2024.)
22. During interviews with the Complaint Investigator, the Occupational Therapist described that the MDT evaluated all areas of education, and

the Student did not need direct specialized educational instruction anymore. Additionally, the Student would not have qualified for other categories based on the assessment results. They recall during the meeting discussing the accommodations that were in place at the time, such as a step stool to have physical access to a restroom. (Occupational Therapist Interview conducted May 10, 2024.)

23. During interviews with the Complaint Investigator, the District Representative who represented the District at the MDT meeting described the MDT Team following evaluation procedures, such as evaluating all areas of concern and meeting as a team to review the results. The Student did not have any qualifying scores. The District Representative recalled that the Private Pre-School Teacher had 'zero concerns for all areas of development.' They also described the Student being able to use their accommodations in the private preschool and were able to advocate for what they needed. The District Representative discussed with the Parent what a 504 plan would look like if the Student ended up enrolling in public school for kindergarten. (District Representative Interview conducted May 10, 2024.)
24. During interviews with the Complaint Investigator, the Speech Language Pathologist reported that the MDT team did a thorough job of using multiple assessments and observations, plus input from the Parent and the Teacher. The Student was performing in their [pre-school] environment with only the need for accommodations. The Parent(s) were provided a PWN that included a statement about a 504 coordinator contacting the Parent to develop accommodations if the Student enrolled in public school. (Speech Language Pathologist Interview conducted May 10, 2024.)
25. During interviews with the Complaint Investigator, the Physical Therapist recalled the MDT team discussing assessment results at the MDT meeting. Specially designed instruction was not needed because the Student met the goals. Continuing to focus an IEP goal on jumping and running skills was not good for the Student's joints. The Student also met the access and advocacy goals. The Physical Therapist reported that the MDT Team discussed accommodations needed. The Parent(s) weren't sure if the Student would attend private or public school for kindergarten; the team said they could implement a 504 plan if the Student enrolled in public school. (Physical Therapist Interview conducted May 10, 2024.)

Issue # 1

Did the District conduct a re-evaluation of the Student that met the requirements of the IDEA and Nebraska State Rules? [92 NAC 51 006.02C5, 006.02C5a, 006.02C5b, 006.02C9-006.02C14b]?

92 NAC 51 006.02C5 states:

006.02C5 *School districts and approved cooperatives must ensure a variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent and information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining:*

006.02C5a Whether the child is a child with a disability under 92 NAC 51-003.08; and

006.02C5b The content of the child's IEP.

92 NAC 51 006.02C9-006.02C14b states:

006.02C9 *School districts and approved cooperatives must ensure no single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.*

006.02C10 *School districts and approved cooperatives must ensure the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing,*

social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

006.02C11 *School districts and approved cooperatives must ensure in evaluating each child with a disability under Section 006, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.*

006.02C12 *The school district or approved cooperative must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.*

006.02C13 *The school district or approved cooperative must use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.*

006.02C14 *In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each school district or approved cooperative shall:*

006.02C14a *Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher*

recommendations, physical condition, social or cultural background, and adaptive behavior; and

006.02C14b *Ensure that information obtained from all of these sources is documented and carefully considered.*

Allegations/Parent Position

The Parent alleged that the School's evaluation process was inadequate and didn't result in a plan that met the Student's needs. (Parent Complaint dated April 3, 2024.)

District Response

"[The District] conducted a comprehensive evaluation that met all the requirements of the IDEA and Nebraska State Rules." (District Response dated April 22, 2024.)

Investigative Findings

Due to scheduling conflicts, the parent was not able to complete an adaptive rating scale during the reevaluation period. The School Psychologist's summary in the evaluation report indicated that the student's overall adaptive skills fell in the average range at school based on observation, teacher input, and standardized adaptive assessment. No other concerns at home or school had been reported.

The Parent expressed concern that medical records were not considered as part of the re-evaluation for the Student. A PWN notice dated December 8, 2023, addressed the Parent's concern, "the purpose of a medical report is to verify a medically diagnosed orthopedic impairment." The District described that they had the medical documentation of the orthopedic impairment and "is aware that [the Student] continues to go to medical appointments for [their] condition." During interviews with the Complaint Investigator, all District staff who participated in the evaluation of the Student were able to describe their use of a variety of tools, observations, and input from the Teacher and the Parent. (MDT dated December 1, 2023; PWN dated December 8, 2023; School Psychologist Interview conducted May 10, 2024; Occupational Therapist Interview conducted May 10, 2024; District Representative Interview conducted May 10, 2024; Speech Language Pathologist Interview conducted May 10, 2024; Physical Therapist Interview conducted May 10, 2024.)

Summary and Conclusions

The District's evaluation was comprehensive and included a variety of assessment tools to assess all of the Student's developmental areas. No single measure was used to make the determination that the Student no longer qualified for special education services.

Based on the investigative record, the District implemented the requirements of 92 NAC 51 006.02C5, 006.02C5a, 006.02C5b, 006.02C9-006.02C14b, and **no corrective action** is required.

Issue # 2

Did the District meet the Multidisciplinary Evaluation Team (MDT) requirements when conducting the re-evaluation for the Student? [92 NAC 51 006.03A-006.03E4, 006.03F3, 006.03F4, 006.03G]?

92 NAC 51 006.03A-006.03E4 states:

- 006.03A *The multidisciplinary evaluation team(including the child's parents) shall be responsible for the analysis, assessment, and documentation of educational and developmental abilities and needs of each child referred for the purpose of individual evaluation. Using the documentation collected and the verification criteria found in Section 006 of this Chapter and the definitions found in 92 NAC 51-006.04, the MDT shall make all verification decisions. Documented information shall be collected to facilitate the development of a statement of present level of development and educational performance on the IEP.*
- 006.03B *For children attending nonpublic schools, an administrator of the nonpublic school or a designated representative of the nonpublic school shall be a member of the MDT.*
- 006.03C *In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determining factor is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 614(a)(5)(A) of the Individuals with Disabilities Education Act of 2004 (See*

Appendix A), lack of instruction in math, or limited English proficiency.

006.03D *If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Section 007 of this Chapter.*

006.03E *Multidisciplinary Evaluation Team Written Report (for all suspected disabilities except specific learning disabilities)*

006.03E1 *The team shall prepare a written report of the results of the evaluation.*

006.03E2 *The report shall include a statement of:*

006.03E2a *Whether the child qualifies as a child with a disability based on the criteria and definition contained in 92 NAC 51-006.04;*

006.03E2b *The child's educational needs;*

006.03E2c *The basis for making the determination; and*

006.03E2d *A listing of the team members.*

006.03E3 *Each team member shall certify in writing if the report reflects his or her conclusion. If it does not reflect his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.*

006.03E4 *A copy of the evaluation report and the documentation of the determination of eligibility shall be given to the parent at no cost.*

92 NAC 51 006.03F3 states:

006.03F3 *Each team member shall certify in writing whether the report reflects his or her conclusions, the team member shall submit a separate statement presenting his or her conclusion.*

92 NAC 51 006.03F4 states:

006.03F4 *A copy of the evaluation report and the documentation of the determination of eligibility shall be given to the parent at no cost.*

92 NAC 51 006.03G states:

006.03G *For a school age child who after initial MDT evaluation does not qualify for special education services or for a child with a verified disability who upon reevaluation no longer qualifies for special education services, a problem solving team shall document a plan to assist the teacher(s) in the provision of regular education.*

Allegations/Parent Position

The Parent alleged that the District denied the Student necessary accommodations. The Student experiences dwarfism, a recognized disability that would require accommodations for the Student to access education. (Parent Complaint dated April 3, 2023.)

District Response

The District met each of the rules in question. (District Response dated April 22, 2024.)

Investigative Findings

Prior to being found not eligible for special education and related services, the Student had been receiving special education services to address self-advocating skills. The Student was also receiving physical therapy services for one hour per year and consultative occupational therapy services to address fine motor and self-help skill needs. The Student's May 2023 IEP documented that the Student demonstrated independence in their preschool environment

and participated in activities. The Student's private preschool program provided the modifications needed to support the Student's development. During interviews with the Complaint Investigator, District staff recalled discussing accommodations that would continue to be needed in the private preschool setting and what might be needed if the Student enrolled in public school.

On November 7, 2023, the Parent provided written consent for the District to conduct a reevaluation. The MDT evaluation report included all of the required elements, and the report noted that the Parent was not in agreement with the decision. The Parent was provided a copy at no cost. The Parent submitted their formal dissent to the decision that the Student no longer qualified for special education services. (Multidisciplinary Evaluation Team (MDT) Report dated December 1, 2023; IEP dated May 19, 2023; Consent for Reevaluation dated November 7, 2023; Parent Dissent Letter dated December 5, 2023; Parent Interview conducted May 9, 2024; School Psychologist Interview conducted May 10, 2024; Occupational Therapist Interview conducted May 10, 2024; District Representative Interview conducted May 10, 2024; Speech Language Pathologist Interview conducted May 10, 2024; Physical Therapist Interview conducted May 10, 2024.)

Summary and Conclusions

The District convened an appropriately formed MDT to reevaluate the student. Assessment results and a written report that included the required elements were reviewed at the MDT meeting and provided at no cost to the Parent.

Based on the investigative record, the District implemented the requirements of 92 NAC 51 006.03A-006.03E4, 006.03F3, 006.03F4, 006.03G, and **no corrective action** is required.

Issue # 3

Did the District follow the requirements of IDEA and Nebraska State Rules when determining whether the Student was eligible for special education services? [92 NAC 51 006.04D, 006.04I, 006.04J]?

92 NAC 51 006.04D states:

006.04D *Developmental Delay*

004.04D1 *To qualify for special education services in the category of developmental delay, the child shall have a significant delay as measured by appropriate diagnostic instruments and procedures in one or more of the following areas*

and, by reason thereof needs special education and related services:

006.04D1a *Cognitive development,*

006.04D1b *Physical development,*

006.04D1c *Communication development,*

006.04D1d *Social or emotional development,*

006.04D1e *Adaptive behavior or skills development, or*

006.04D1f *A diagnosed physical or mental condition that has a high probability of resulting in a substantial delay in function in one or more of such areas.*

006.04D2 *Developmental delay may be considered as one possible eligibility category for children age three through the school year in which the child reaches age eight.*

92 NAC 51 006.04I states:

006.04I *Orthopedic Impairment*

006.04I1 *To qualify for services in the category of Orthopedic Impairment, the child must have a severe orthopedic impairment that adversely affects the child's educational performance.*

006.04I2 *The category includes children with impairments caused by:*

006.04I2a *Congenital anomaly,*

006.04I2b *Impairments caused by disease (e.g.,*

poliomyelitis, bone tuberculosis) and

006.04I2c *Impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).*

92 NAC 51 006.04J states:

006.04J *Other Health Impairment*

006.04J1 *To qualify for special education services in the category of Other Health Impairment, the child must have:*

006.04J1a *Limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems which adversely affects the child's educational performance, such as:*

006.04J1a(1) *Asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome.*

Allegations/Parent Position

The Parent alleged that the School's evaluation process was inadequate and didn't result in a plan that met the Student's needs. (Parent Complaint dated April 3, 2024.) (P2)

District Response

"[T]he MDT team appropriately considered all aspects of an educational environment and developmental skills in an educational context when determining that [the Student's] severe orthopedic impairment does not adversely affect [their] educational performance. Even if the team looked at [the Student's] Achondroplasia through the lens of a developmental delay (006.04D) or through Other Health Impairment (006.04J), the result would have been the same. Despite [the Student's] Achondroplasia, [they] can fully access [their] educational environment physically, socially, and academically. This was fully explained in the PWN and during the MDT meeting." (District Response dated April 22, 2024.)

Investigative Findings

The Student "ha[d] no significant limitations outside of [their] physical stature limits. The Teacher at the private preschool did not have "any social, academic, or speech concerns and described the Student as independent in [their] preschool environment and school" at the time of reevaluation and suggested the possible need for a 504 plan. The Occupational Therapy assessments indicated the Student had an average performance in fine motor skills. The physical therapy assessment results described the Student as having normal strength and being able to keep up with peers during activities. The Student's stature was shorter than that of peers but otherwise proportional. The Student's reflexes were described as typical. The Student's School Functional Assessment score met most of the criterion cut-offs or was within the range of the standard error to demonstrate independence in the classroom compared to other kindergarten to third graders.

On December 1, 2023, the MDT met to review educational records, parent and teacher input, observations, and the gross motor, fine motor, adaptive behavior, and communication assessment results. Upon comparing the evaluation information to the eligibility criteria of the Nebraska Department of Education's Rule 51 Regulations and Standards for Special Education Programs, the team determined that the Student no longer met the eligibility criteria as a student with an orthopedic impairment that required special education. The MDT determined that the Student needed general education accommodations only. On December 5, 2023, the Parent submitted their formal dissent to the MDT about their disagreement with the decision.

The Parents believed the Student needed support adapting to environments and wanted to ensure a smooth transition to kindergarten with appropriate accommodations in place. On December 8, 2023, the District provided the Parent with a PWN detailing the decision that the Student no longer qualified for special education services as the Student's disability did not have an adverse impact on the Student's educational performance at the time. The PWN also indicated that if the Student enrolled in a District public school, a 504 Coordinator "will reach out to the family to schedule a time to document [the Student's] disability and determine accommodations and modifications required for [the Student] to access [their] educational environment. (Multidisciplinary Evaluation Team (MDT) Report dated December 1, 2023; IEP dated May 19, 2023; Email from School Psychologist dated November 7, 2023; Occupational Therapy Evaluation Report dated November 13, 2023; Physical Therapy Evaluation Report dated November 13, 2023; Parent Dissent Letter dated December 5, 2023; PWN dated December 8, 2023; Parent Interview conducted May 9, 2024.)

Summary and Conclusions

Based on the investigative record, the District implemented the requirements of 92 NAC 51 006.04D, 006.04I, 006.04J, and **no corrective action** is required.

Additional Issue

Through the course of the investigation, an additional issue was added. The issue is as follows:

Did the District include the frequency, location, and duration of the supplementary aids and services as required by 923 NAC 51-007.07A8?

92 NAC 51 007.07A8 states:

| | |
|----------|--|
| 007.07A8 | <i>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.</i> |
|----------|--|

Investigatory Findings

Upon review of the IEP dated May 19, 2023, it was found it did not include the frequency by which the accommodations and modifications were to be provided to the Student. (IEP dated May 19, 2023.)

Summary and Conclusions

Although the Student's IEP was missing the required elements, they were still able to successfully participate in the preschool program. As a result, the procedural

error did not result in a substantive issue. Based on the investigative record, the District failed to fully implement the requirements of 92 NAC 51-007.07A8, and **corrective action** is required.

Corrective Action

1. The School District must develop and provide training in IEP development, specifically including the frequency of implementation to all District staff and administrators who develop IEPs.
2. The NDE Office of Special Education must approve the training and trainer(s) two calendar weeks before the training begins.
3. The school district must provide NDE with copies of the participant sign-in sheets or other evidence of attendance the business day following the conclusion of the training(s).
4. On or before February 1, 2025, NDE will request a copy of IEPs for three high school students to verify each student's supplementary aids and services containing frequency, location, and duration to verify correction of noncompliance.

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:

Ginny Howard, Complaint Specialist
Amy Bunnell, Complaint Specialist
NDE Office of Special Education
nde.speddr@nebraska.gov