

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.26
Complaint Investigator: REDACTED
Date Complaint Filed: February 6,
Date of Report: REDACTED

Introduction

The Student on whose behalf this complaint has been filed is a third-grade student in the District. The Student was enrolled at a different school district prior to the start of third grade and was found eligible as a Student with an Other Health Impairment due to a diagnosis of ADHD and Emotional Disturbance because of previous exposure to trauma in May of 2023. The eligibility decision and initial IEP were developed by the previous school district, though the Student did not attend school from early February through the end of the year, so the IEP was never implemented. The Student transferred to the current school District where school began on August 17, 2023.

Issues Investigated

1. Did the District implement the Student's IEP? [92 NAC 51-007.02]
2. Did the District develop an IEP to ensure progress toward the general education curriculum and the Student's IEP goals? [92 NAC 51-007.07A2; 007.07A5; 007.07A8 and 007.07B3]
3. Did the District ensure that placement decisions were made by a group of persons, including the parents and other persons knowledgeable about the child, the evaluation data, and the placement decisions, and in conformity with the least restrictive environment requirements? [92 NAC 51-008.01C]
4. Does the District have a continuum of alternative placement options available to meet the needs of the student? [92 NAC 51-008.01D]

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated February 5, 2024; received by NDE February 6, 2024
- IEP dated May 10, 2023
- IEP dated October 31, 2023
- Student Report Card, 2023-24
- Interview with the Parent dated April 3, 2024

From the School District

- Letter of Response dated March 4, 2024
- Multidisciplinary Evaluation Team Report dated April 19, 2023
- IEP dated May 10, 2023
- IEP dated August 31, 2023
- IEP dated October 31, 2023
- Prior Written Notice dated August 31, 2023
- Prior Written Notice dated October 20, 2023

- Prior Written Notice dated October 31, 2023
- Referral to day treatment program provided to the Parent on October 20 and 31, but not signed
- Interview with District staff March 23, 2024
- Behavior Detail Reports dated August 21, September 11, and October 16, 2023
- Functional Behavior Assessment 2023/24 school year
- Protective Plan dated August 31, 2023
- Notice and Consent for Initial Placement dated August 31, 2023
- Progress Reports dated October 19 and December 21, 2023
- Student's Daily Schedule
- Student's Report Card, first quarter, 2023-24 school year
- Student behavior plan daily data collection dated September 5- October 18, 2024
- Emails between the Parent and the District dated August 26- January 5, 2024
- Emails between the Investigator and the District dated March 20- March 25, 2024.

Issue # 1

Did the District implement the Student's IEP? [92 NAC 51-007.02]

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.*

Allegations/Parent Position

According to the Letter of Complaint dated February 5, 2024, the Student has "never even been to the special education classroom." The Complainant alleges that the Student's goals were never addressed nor were accommodations provided.

District Response

In their Letter of Response dated March 4, 2024, the District points to the evidence they provided of the implementation of the Student's IEP as well as the recommendations made when the Student required more intensive support. During the interview, the Student's special education teacher and school team emphasized that the Student was receiving far more than the IEP outlined.

Investigative Findings

- The Student's IEP, developed on August 31, 2023, includes the following goals (IEP dated August 31, 2024):
 - ...given direct social skills instruction, guidance through role-playing exercises, and appropriate accommodations, [the Student] will improve social communication skills by being able to identify [the Student's] feelings, express [the Student's] needs, and manage [the Student's] emotions.

- ...given appropriate accommodations, supports, and program modifications, when given a directive or task, [the Student] will remain on task and engaged in the activity for at least 15 consecutive minutes when [the Student] is emotionally regulated.
- ...given appropriate accommodations, supports, and program modifications, when given a directive or task, [the Student] will improve task initiation and completion within the classroom setting.
- The IEP includes the following accommodations: extended time for tests and assignments, breaks/break cards, separate environment for testing, sensory breaks for self-regulation, seat near teacher, visual schedule, chunking academic tasks, quiet workspace (calm down area), check for understanding, and extra time to process and respond. (IEP dated August 31, 2024)
- The IEP commits to 20 minutes of special education service each day as well as 15 minutes of occupational therapy services once per quarter to support these goals. (IEP dated August 31, 2024)
- The special education teacher employed a check-in/check-out intervention with the Student that took 15-20 minutes every morning and afternoon. (Interview with District staff, March 23, 2024)
- During this intervention, the special education teacher worked with the Student to practice the desired behaviors targeted for intervention (deep breathing, walking to the safe seat, morning routine, and boundaries in the classroom). (Interview with the District, March 23, 2024)
- For the remainder of the school day, a paraprofessional was assigned to the Student and spent the entire day with the Student, encouraging on-task behavior, ensuring that the Student was focused and completing class work, and completing the point chart. (Interview with the District, March 23, 2024)
- The District used a daily point chart to provide feedback to the Student related to the goals of the IEP. These points were reported to the Student's parent, who provided access to the Student's preferred video game based on the number of points earned. (Interview with the District, March 23, 2024)
- Point sheets, kept daily, demonstrate that the District broke the Student's day into 10 periods and provided feedback on compliance (Let adults be in charge and Follow directions even when it's hard) at the end of each period daily. The point sheet also includes the following six triage questions that staff could reference to reteach the skills that were being targeted. (Student behavior plan daily data collection dated September 5- October 18, 2024)
 - Which goal am I working on?
 - What can I say when an adult asks me to do something I don't want to do?
 - How long should it take me to follow the adult directions?
 - What will it look and sound like when I am asked to move to the safe seat?
 - When I feel stuck or like a task is too hard, what can I do?
 - Who is in charge at school?

Summary and Conclusions

Based on the data provided, evidence is clear that the Student's IEP was implemented as written and that the District provided resources to support progress on the Student's IEP goals.

As a result, the District implemented the requirements of 92 NAC 51-007.02, and **no corrective action** is required.

Issue # 2

Did the District develop an IEP to ensure progress toward the general education curriculum and the Student's IEP goals? [92 NAC 51-007.07A2; 007.07A5; 007.07A8 and 007.07B3]

92 NAC 51-007.07 states:

- 007.07A *The IEP shall include:*
 - 007.07A2 *A statement of measurable annual goals, including academic and functional goals designed to:*
 - 007.07A2a *Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum*
 - 007.07A2b *Meet each of the child's other educational needs that result from the child's disability*
 - 007.07A5 *A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:*
 - 007.07A5a *To advance appropriately toward attaining the annual goals;*

	007.07A5b	<i>To be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and</i>
	007.07A5c	<i>To be educated and participate with other children with disabilities and nondisabled children</i>
	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>
007.07B		<i>In developing, reviewing, or revising each child's IEP:</i>
	007.07B3	<i>In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions and supports and other strategies to address that behavior,</i>

Allegations/Parent Position

The Parent's allegation (outlined in the Letter of Complaint received by NDE on February 6, 2024) was less about the appropriateness of the IEP and more about its implementation (as outlined in Issue #1). The Investigator added this issue to ensure that the IEP was appropriately developed to meet the Student's needs.

District Response

Upon interview, the District explained that when the Student enrolled in the District, their aim was to provide a "fresh start," so they elected to start the Student attending full days. The special education teacher documented in the IEP the "minimum" that would be provided, believing that the District could "provide more, just not less" than the IEP required.

Investigative Findings

- An IEP was developed in a prior school district on May 10, 2023. (IEP dated May 10, 2023)
- The Student had not attended school since February 7, 2023. (IEP dated May 10, 2023)

- The IEP from the previous district stated that the Student would attend a shortened schedule (8:00-11:00 am each day) and would have a paraprofessional or special education teacher with the Student at all times. (IEP dated May 10, 2023)
- Service time listed on the IEP from the previous school district included 60 minutes daily of special education support, 20 minutes, six times each quarter of occupational therapy services, and 30 minutes daily of mental health counseling. (IEP dated May 10, 2023)
- All accommodations listed in the IEP included frequency, location, and duration as required by rule. (IEP dated May 10, 2023)
- Because the Student did not attend school at the previous district during the spring of 2023, this IEP was never implemented. (Interview with District staff March 23, 2024)
- The Student started school in the current District on August 17, 2023, attending a full day. (Interview with District staff March 23, 2024)
- An IEP meeting was held on August 31, 2023. It was determined that the Student would attend full days. (Interview with District staff March 23, 2024)
- Service time listed on the IEP for the current district included 20 minutes daily of special education services and 15 minutes each month of occupational therapy. (IEP dated August 31, 2023)
- Both Progress Reports during the fall of 2023 indicated "Little to No Progress" on all three IEP goals. (Progress Reports dated October 19 and December 21, 2023)
- An IEP meeting was held on October 20 and October 31, 2023, in which a change of placement was discussed.

Summary and Conclusions

When considering the IEPs developed by the previous district and the current district, both IEPs include all required elements including goals, services, accommodations, and anticipated frequency, location, and duration. When the Student transferred to the current district, the school day was extended, though documented service time was reduced by two-thirds, and mental health counseling was removed from the IEP. When the Student was not making progress, the District did not consider making changes to the IEP, adjusting goals, increasing service time, formalizing a behavior intervention plan as part of the IEP, or adding mental health counseling back to the IEP, but instead, only considered a change of educational placement. While it is clear that the current District was doing more than was documented in the IEP, the IEP should capture what the student actually needs, and therefore, should drive what is being provided. The fact that these interventions were not formalized as part of the IEP process and documented within the IEP means that the District failed to fully implement the requirements of 92 NAC 51-007.07A5 & 007.07B3. Thus, the following **corrective action is required** and will be outlined at the conclusion of this report.

Issue # 3

Did the District ensure that placement decisions were made by a group of persons, including the parents and other persons knowledgeable about the child, the

evaluation data, and the placement decisions, and in conformity with the least restrictive environment requirements? [92 NAC 51-008.01C]

92 NAC 51-008.01 states:

- 008.01C *In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:*
- 008.01C1 *The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and*
- 008.01C2 *The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.*

Allegations/Parent Position

In the Letter of Complaint dated February 5, 2024, the Complainant alleges that the District convened an IEP meeting on October 31, 2023, and put the Student on half days with a recommendation that the Student be moved to a more restrictive placement. The Parent toured the facility and did not believe it was appropriate, based on the age of the students served there and the level of significant behavior exhibited by the other students in the program.

District Response

During an interview with District staff on March 23, 2024, the District described that they provided an application for a short-term placement in a more restrictive environment in hopes of addressing the underlying issues that were likely fueling the behavior problems. The program they were recommending is specifically designed for students with more significant mental health issues and a past history of trauma. The program is a minimum of 90 days and provides support from licensed mental health professionals as well as general and special education. The program has two separate classes, one teacher who serves third through fifth graders and the other who serves sixth through eighth graders. This program serves only three students at a time in each class to ensure that the intensive services are highly specialized to a student's needs. In this program, the boundary school maintains responsibility for the student and makes regular visits, and then works with the providers to successfully transition the student back to the boundary school.

Investigative Findings

- Behavior detail reports outline aggressive and dangerous behaviors exhibited by the Student including throwing a chair, hitting, and kicking staff, head banging,

throwing mud, holding a desk overhead, scratching, bending adults' fingers, swinging a clipboard, kicking doors, and twisting an adult's arm. [Behavior Detail Reports dated August 21, September 11, and October 16, 2023]

- Progress reports during the fall show "Little to No Progress" on each of the three goals targeted. [Progress reports dated October 19 and December 21, 2024]
- An IEP meeting was held to review the Student's behavior and discuss the options being considered including a referral to the program described above and a shortened school day. [Prior Written Notice dated October 20, 2024]
- An application to the program described above was provided to the Parent on October 20, 2024. [Interview with District staff March 23, 2024]
- The Parent toured the program. [Letter of Complaint received by NDE February 6, 2024]
- An IEP meeting was convened on October 31, 2024, to discuss the referral as well as alternatives that would allow the Student to make more meaningful progress on IEP goals. The Parent attended and participated in the discussion. The District recommended the short-term placement as the most appropriate placement to meet the Student's unique needs, though the Parent(s) made clear that they did not agree. The alternative that the District proposed was moving the Student to a half-day schedule where greater support would be provided in an effort to build success. The District provided a plan to increase the Student's school day based on progress. (Interview with District staff March 23, 2024)
- Both parties attempted to schedule subsequent meetings, though the Complainant fell ill and had to have surgery, keeping the family out of school for three weeks. (Letter of Complaint received by NDE February 6, 2024)
- The Student did not return to school following the October 31 meeting. (Email with the District March 25, 2024)
- The District provided a Prior Written Notice to the parent following the meeting outlining their proposal and the steps that they planned to take. (Prior Written Notice dated October 31, 2023)
- According to the "Shortened Days" Guidance Document developed by the Nebraska Department of Education, "Students with disabilities must attend school for the same number of hours and minutes as non-disabled students unless a student individualized education program (IEP) team determines otherwise based on a student's unique, disability-related needs... The NDE Office of Special Education recommends that any offer of a shortened day as FAPE should be for a specific purpose and designed to meet a student's unique needs. A student's IEP should reflect team discussion of the continuum of services and placement, including shortened day and any alternatives considered as appropriate."

Summary and Conclusions

The District demonstrated obvious efforts to include the IEP team, including the Parent in discussions about the placement options being offered. However, the team did not consider and document the discussion of a continuum of services and placements that would carefully consider the Student's least restrictive environment. The District did not

provide alternatives to either a shortened day or a placement on the opposite end of the LRE spectrum (covered in greater detail in Issue #4). Consequently, the District did not adequately consider the Student's LRE in light of the Student's unique needs. As a result, the District failed to implement the requirements of 92 NAC 51-008.01C2, and the following **corrective action is required** and will be outlined at the conclusion of this report.

Issue #4

Does the District have a continuum of alternative placement options available to meet the needs of the student? [92 NAC 51-008.01D]

92 NAC 51-008.01 states:

008.01D *Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.*

008.01D1 *The continuum must:*

008.01D1a *Include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and*

008.01D1b *Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.*

Allegations/Parent Position

The only options provided to the Parent as a result of the Student's aggressive and non-compliant behavior were a shortened school day or placement in a highly restrictive, mental-health-based program, according to the Letter of Complaint dated February 5, 2024.

District Response

During interviews, as the investigator explained the purpose of a continuum of placements, the District acknowledged that they do not have options other than the program they were recommending for this student when it comes to more significant mental health and behavioral needs (Interview with District staff March 23, 2024).

Investigative Findings

- The Student was placed in general education throughout the fall with push-in special education services. (Interview with the District March 23, 2024)
- No efforts were made to provide special education services in any other setting until the recommendation was made to place the Student in a highly specialized, mental health-focused program, or to reduce the Student's school day by half. (Interview with District staff March 23, 2024)
- The District does not have any special classes or special schools and the special education classroom is in a modular building outside the school. (Interview with District staff March 23, 2024)

Summary and Conclusions

The Student's experience demonstrates the absence of a continuum of placements for students with unique needs available in the school district. The purpose of such a continuum is to provide greater support and containment in the boundary school first and exhaust options that would allow a student to remain in the boundary school with both general education and special education peers. Only when that has proven inadequate, should a more restrictive placement be considered. Because such a continuum was not available to the Student, no efforts were made to determine if a more restrictive placement would be effective to provide the level of special education and related services that the Student needed. Investigatory findings from Issue #2 apply in that the IEP was not reviewed or amended throughout the fall until the District recommended a change of placement outside the school. Based on the limited options provided to the Student with regard to educational placement, the District failed to fully implement the requirements of 92 NAC 51-51-008.01D. Further, this failure has resulted in a denial of FAPE to the Student. Thus, the following **corrective action is required**.

Corrective Action:

Procedures

1. By May 6, 2024, the School District must provide to NDE a description of each of the placement options available on their continuum of alternative placement options along with the procedures in place to determine appropriate placements for students with disabilities ensuring the continuum includes all placement options available.

Training

1. The School District must develop and provide training to all special education staff on the following topics:
 - a. Programs for Children who Transfer School Districts or Approved Cooperatives and the problems with not implementing the IEP immediately and subsequent problems of reducing services prior to fully understanding a student's needs. [92 NAC 51-007.08A] (Issue #2)

- b. The role of the IEP in documenting the provision of FAPE which should include the following [92 NAC 51-007.07A2; 007.07A5; 007.07A8 and 007.07B3] (Issue #2):
 - i. A statement of measurable annual goals, including academic and functional goals.
 - ii. Specific supplementary aids and services a student needs to advance appropriately toward attaining the annual goals; to be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children.
 - iii. The projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of those services and modifications
 - iv. Positive behavioral interventions, supports, and other strategies that address behavior, in the case of a child whose behavior impedes his or her learning or that of others.
 - c. A continuum of alternative placements and how to implement and document the use of such a continuum with students with behavior and mental health needs. [92 NAC 51-008.01D] (Issue #4)
2. The training and trainer(s) must be approved by the NDE Office of Special Education two calendar weeks prior to the training.
 3. The District must provide NDE with copies of the participant sign-in sheets or other evidence of attendance on the calendar day following the conclusion of the training.
 4. The corrective action must be completed within 60 calendar days of the receipt of this Investigation Report.
 5. By November 1, 2024, the District will provide NDE with the names of any students who have transferred into the district since the date of the training required above.
 - a. NDE will select 1 file for review of a student who transferred into the district to verify the district's compliance with 92 NAC 007.08A.
 6. By November 1, 2024, to verify the district's compliance with 92 NAC 51-007.07A2; 007.07A5; 007.07A8; 007.07B3 and 008.01D, NDE will review student files including:
 - a. Current IEP
 - b. Service logs indicating the provision of special education and related services and supplementary aids and services.
 - c. Student file requests will include one student in each of the categories below for a subsequent file review:
 - i. Student receiving services in the general education classroom 80% or more of the day.
 - ii. Student receiving services in the general education classroom 40-79% of the day.

- iii. Student receiving services in the general education classroom less than 40% of the day.

Reconvene the IEP

1. Within 10 calendar days of the date of this Investigation Report, the District must reconvene the Student's IEP Team and ensure that the Student has been offered an appropriate placement according to a more robust continuum of alternative placements that includes appropriate supports for the Student's unique needs. [92 NAC 51-008.01C, 92 NAC 51-008.01D] (Issues #3 & #4)
2. The IEP and any associated PWN must be sent to NDE no later than 10 days after the IEP Team meeting.

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:

Micki Charf, Complaint Specialist
Mary Lenser, Complaint Specialist
NDE Office of Special Education
nde.speddr@nebraska.gov