

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 23.24.27  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** February 6, 2024  
**Date of Report:** REDACTED

### Issues Investigated

1. Did the District properly implement the Student's IEP according to its terms? [92 NAC 51-007.02]
2. Is the Student's IEP tailored to their unique needs and reasonably calculated to enable the Student to make progress appropriate in light of their circumstances? [92 NAC 51-004.01; 007.07A2; 007.07A5; and 007.07A8]

### Information Reviewed by Investigator

#### *From the Complainant*

- Letter of Complaint dated February 5, 2024; received by NDE February 6, 2024
- Call with Parent on February 9, 2024
- Interview with Parent on March 11, 2024
- Emails with the District between March 10, 2024, and March 19, 2024
- Student's daily schedule

#### *From the School District*

- Letter of Response dated February 23, 2024; received by NDE February 26, 2024
- District's Responses to District Questionnaire; received by NDE on March 11, 2024
- Interview with District on March 21, 2024
- Multidisciplinary Evaluation Team (MDT) Report dated March 8, 2023
- IEPs (with PWNs attached) dated March 8, 2023; February 2, 2024; March 18, 2024
- Notice of Meeting dated January 29, 2024
- Progress reports dated March 24, 2023; June 2, 2023; October 20, 2023; and January 5, 2024
- Reading Support Plans for Spring 2022, Fall 2022, Fall 2023, and Winter 2024
- Assessment scores (e.g., NWEA Map Reading, DIBELS Benchmarks, DIBELS progress monitoring, 95 Percent Group Assessments)
- 2022-23 and 2023-24 reports cards
- 2022-23 and 2023-24 attendance records
- Speech log for the 2023-24 school year
- 2023-24 school calendar
- Justification statement for proposed February 2024 IEP goals
- Schedule of services during the 2023-24 school year

### Findings of Fact

1. No issues raised in the complaint regarding the Student are currently subject to a due process hearing, nor have these issues been previously decided in a due process hearing.
2. The Student is currently nine years old and in the third grade. (IEP dated February 2, 2024).
3. The Student's most recent evaluation report is dated March 8, 2023. The Student is identified as a student with a disability under the primary classification of Other Health Impairment (OHI). The identified areas of need include basic reading skills, reading comprehension, written expression, speech fluency, articulation, and language.
4. The first day of the 2023-24 school year was August 14, 2023. (2023-24 School Calendar). The IEP dated March 8, 2023, was in effect for the Student. Relevant portions of the IEP include:
  - a. The Present Level of Academic Achievement and Functional Performance (PLAAFP) indicates, in part, that the Student is on a reading support plan, per the Nebraska

Reads Improvement Act. Through the reading support plan, the Student receives Tier 2 interventions.

- b. The IEP contains four annual goals to support academics and communication. Specifically:
    - i. Goal 1: "Holding the pencil with a functional grasp for adequate control, [Student] will form all letters of the alphabet appropriately in order to write sentences legibly on 4 of 5 assignments."
    - ii. Goal 2: "By March 2024, [Student] will demonstrate improved communication by meeting the following objectives as measured by SLP data quarterly:
      1. [Student] will articulate voiced and voiceless "th" sounds in words and sentences with 80% accuracy.
      2. When given a sentence stem, [Student] will use the correct past tense verb with 80% accuracy.
      3. When given a sentence stem, [Student] will use the correct auxiliary verb with 80% accuracy.
      4. [Student] will identify moments of dysfluency for other[s] and [themselves] in 4 of 5 opportunities.
      5. [Student] will implement a previously taught fluency enhancing or stuttering modification strategy (e.g. rate reduction, easy on sets, cancellations, etc.) with minimal cuing from the SLP in 4 of 5 opportunities."
    - iii. Goal 3: "By this time next year, [Student] will [k]now and apply letter/sound correspondence and spelling patterns (e.g., consonant and vowels, diphthongs) when reading, writing, and spelling grade-level text, with 80% accuracy as measured by district approved assessments."
      1. This goal references a second-grade standard (LA 2.1.3.a).
    - iv. Goal 4: "By this time next year, [Student] will generate a draft that develops a clear topic suited to the purpose and intended audience and organizational pattern, including a clear beginning, middle, and end 3/5 opportunities given."
      1. This goal references a second-grade standard (LA 2.2.1.b).
  - c. The following special education services are included:
    - i. Special instruction (resource): 80 minutes/week, four weeks/month
    - ii. Occupational therapy (OT): 45 minutes/day, one day/quarter
    - iii. Speech-language therapy: 40 minutes/week, three weeks/month
  - d. A statement regarding the Student's participation with their nondisabled peers states, in part:
    - i. The student will remain in the general education curriculum in the areas of math, reading, spelling, writing, science, social studies, music, art, physical education (PE), guidance, library, and computer.
    - ii. Student receives additional support from the resource room in the areas of reading and writing, speech, and OT services.
    - iii. Science, social studies, spelling, and grammar will be modified in the classroom.
      1. Note: It is unclear what was modified in the classroom.
  - e. Program modifications and accommodations include encouraging the Student to use the nurse restroom for privacy.
5. The Nebraska Reading Improvement Act (Neb. Rev. Stat. §§ 79-2601 to 79-2607) requires districts to administer an approved reading assessment to students in kindergarten through third grade. If a student tests below the threshold level set by NDE, the student is required to be placed on an individualized reading support plan (RSP). In the fall of 2023 and winter of

2024, the Student did not meet the threshold set by NDE on the MAP Growth (MAP) reading assessment, and the Parent was notified of the same. (NWEA MAP Growth - Reading; Letter of Response dated February 23, 2024; Email from District to Investigator dated March 20, 2024).

6. The District explained, that if a student is on an IEP and receives reading services, a separate RSP is not necessary, as the student's needs are met through the IEP. In this case, the Student received both special education reading services and non-special education Tier 2 reading interventions in the Fall of 2023 and Winter of 2024 in an attempt to further close the gap between the Student's actual and expected reading achievement. (Email from District to Investigator dated March 20, 2024). Specifically, the Student received 30 minutes of daily Tier 2 phonics intervention beginning the week of September 11, 2023, for the fall and the week of January 8, 2024, for the winter. (District's Responses to District Questionnaire; Reading Support Plan Fall 2023; Reading Support Plan Winter 2024).
7. A progress report dated June 2, 2023, indicates the Student made progress on all four IEP goals.
8. A progress report dated October 20, 2023, indicates the Student made progress on three IEP goals and made "little or no progress" on their reading-related IEP goal.
9. A progress report dated January 5, 2024, indicates the Student made progress on all four IEP goals.
10. Between August 2023 and January 2024, the Student received the following speech therapy minutes:
  - a. August: Four 20-minute sessions for a total of 80 minutes.
  - b. September: Two 20-minute sessions for a total of 40 minutes.
    - i. During this month, there were two school closures (a holiday and a professional development day) and two days the speech provider was absent.
  - c. October: Four 20-minute sessions for a total of 80 minutes.
    - i. During this month, the speech provider was absent for four days.
  - d. November: Three 20-minute sessions for a total of 60 minutes.
    - i. During this month, the Student was absent one day and the speech provider was absent two days.
  - e. December: Two 20-minute sessions for a total of 40 minutes.
    - i. During this month, there was one school program interruption and the speech provider was absent one day. In addition, the school was on holiday break starting on December 21, 2023.
  - f. January: One 20-minute session for a total of 20 minutes.
    - i. Students returned from holiday break on January 4, 2024. In addition, there were four school closures (three snow days and one holiday) and the speech provider was absent one day.

In total, the Student received 320 minutes of speech services. (Speech Log for the 2023-24 school year). Not including school closures and student absences, the Student did not receive the 160 minutes they were entitled to. (Speech Log for the 2023-24 school year; IEP dated March 8, 2023; 2023-24 Attendance Record; 2023-24 School Calendar).

11. An IEP meeting was held on February 2, 2024, and a new IEP was developed. Relevant portions of the IEP include:
  - a. The IEP contains four annual goals to support academics and communication. Specifically:
    - i. Goal 1 remained the same from the previous IEP.
    - ii. Goal 2: "By this time next year, [Student] will demonstrate improved overall communication skills by meeting the following 4 objectives:
      1. [Student] will articulate the voiced and voiceless "th" sounds in words and sentences with 90% accuracy."

- a. Note: The previous IEP goal required 80% accuracy.
  - 2. "Given a picture to describe, [Student] will use correct irregular past tense verbs 80% of the time.
  - 3. Given a picture to describe, [Student] will use correct auxiliary verbs 80% of the time."
  - 4. "[Student] will independently reduce [their] rate of speech in order to increase his speech fluency at the level of conversational speech during 4 of 5 possible opportunities."
- iii. Goal 3: "By this time next year, [Student] will know and apply phonics and word analysis skills in decoding and encoding (spelling) words with 80% accuracy when given district-approved assessments."
  - 1. This goal references a first-grade standard (LA.1.F.3).
  - 2. Note: Objectives were included.
- iv. Goal 4: "By this time next year, [Student] will write and expand grammatically correct simple sentences and paragraphs with 80% accuracy."
  - 1. This goal references a first-grade standard (LA.1.W.1).
- b. Special education services remained the same with the exception of increasing "special instruction (resource)" time from 80 minutes/week to 240 minutes/week.
- c. The statement regarding the Student's participation with their nondisabled peers remained the same.
- d. Program modifications and accommodations include:
  - i. Shortened assignments;
  - ii. Graphic organizers;
  - iii. Word banks for writing assignments;
  - iv. An adult is to discuss the writing prompt and the Student's response prior to writing;
  - v. Test instructions, questions, and answer choices read aloud; and
  - vi. Extended time as needed on assignments.

The duration is the length of the IEP (e.g., February 5, 2024, through February 4, 2024); the location for all accommodations is "public school;" and there is no "frequency" noted.

12. An IEP meeting was held on March 18, 2024, and a new IEP was developed. Relevant portions of the IEP include:
- a. The PLAAFP states the Student's phonological awareness and decoding skills are monitored at a first-grade level.
  - b. The first three goals are the same as the previous IEP. However, the grade level standard has been removed from goal 3 and the objectives were removed. Goal 4 was updated to say the following: "By this time next year, [Student] will write paragraphs using a variety of sentence types with 80% accuracy."
    - i. This appears to be a third-grade standard. See *Nebraska's College and Career Ready Standards for English Language Arts* (September 2, 2021).
  - c. The IEP states the Student will have eight make-up speech sessions during the second semester. A schedule of when the services will be made up is included within the IEP.
  - d. The academic and speech services remained the same. OT services increased from 45 minutes/day, 1 day/quarter to 60 minutes/day, 1 day/quarter.
  - e. The program modifications and accommodations remained the same with the addition of speech-to-text may be utilized on longer assignments.

**Issue # 1**

Did the District properly implement Student's IEP according to its terms? [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*

The Parent alleges the Student has not received speech services, as is required by their IEP. In addition, the Student did not have a test(s) read to them in the classroom. (Letter of Complaint dated February 5, 2024, and Interview with Parent on February 9, 2024, and March 11, 2024).

*District Response*

The District admits the Student has not received all speech service minutes required by the IEP. Specifically, fourteen therapy sessions, totaling 280 minutes, were missed due to provider absence, school events, or school closures. (Letter of Response dated February 23, 2024).

The District proposed 160 minutes of compensatory services to be provided to the Student by the end of the 2023-24 school year. In addition, the District proposes to hold an IEP meeting in May 2024, to determine if additional compensatory services are necessary. (Proposal to Resolve Complaint dated February 23, 2024).

The District also proposed to review its procedures for tracking speech service minutes and revise them, if necessary. In addition, the District proposed to train its certified special education staff on requirements to implement an IEP and the District's procedures for tracking speech services to ensure services are being provided according to the Student's IEP. Training materials will be provided to NDE prior to the training and the attendance sheet following the training. (Proposal to Resolve Complaint dated February 23, 2024).

*Investigative Findings*

First and foremost, prior to February 2, 2024, the Student did not have an IEP accommodation regarding tests being read aloud to them. Rather, due to the demographics of the school, the common practice is for classroom teachers to read tests aloud to students. Because the Student did not have a specific IEP accommodation regarding tests being read aloud, and the alleged violation of same occurred prior to the implementation of the IEP dated February 2, 2024, there is no finding that the IEP was not properly implemented in that regard.

Secondly, the District has admitted that the Student did not receive all special education speech services. The documentation provided establishes that the Student is entitled to 160 minutes of compensatory services. The District has agreed to provide the same. Thus, the District's proposal to resolve this violation is accepted and detailed below.

*Summary and Conclusions*

The Student did not receive all special education services pursuant to the IEP. Thus, the District failed to fully implement the requirements of 92 NAC 51-007.02. The following **corrective action was proposed** by the District **and accepted** with amendments by NDE.

*Corrective Action*

1. Before the beginning of the 2024-25 school year, the District will train its special education staff on (1) Rule 51's requirements to provide special education and related services to students in accordance with their IEPs; and (2) the District's procedures for tracking the provision of speech services to ensure that those services are being provided according to the student's IEP.
  - a. The District must obtain approval from NDE of the training content at least 14 calendar days prior to the training.

- b. The District must provide NDE with participant sign-in sheets at the conclusion of the training(s).
- 2. The District shall provide 160 minutes of compensatory speech-language services to the Student by the end of the 2023-24 school year.
  - a. The District will provide speech service logs to NDE accounting for all 160 minutes of compensatory services within one week of the conclusion of the 2023-24 school year.
- 3. The District will reconvene the IEP Team by May 17, 2024, to determine if additional compensatory minutes are necessary. If necessary, the IEP Team will develop a schedule for summer school compensatory speech services.
- 4. Prior to the District training required above, the District will review, and revise, if necessary, procedures for tracking the provision of speech services and ensuring that those services are being provided according to students' IEP(s). These procedures will be shared with all staff at the training described above.

**Issue # 2**

Is the Student's IEP tailored to their unique needs and reasonably calculated to enable the Student to make progress appropriate in light of their circumstances? [92 NAC 51-004.01; 007.07A2; 007.07A5; and 007.07A8]

92 NAC 51-004.01 states:

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

92 NAC 51-007.07A 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; or for preschool children, as appropriate, to participate in appropriate activities, and*

	007.07A2b	<i>Meet each of the child's other educational needs that result from the child's disability</i>
007.07A5		<i>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:</i>
	007.07A5a	<i>To advance appropriately toward attaining the annual goals;</i>
	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 in the activities described in 92 NAC 51-007.07A5</i>
007.07A8		The projected date for the beginning of the services and modifications described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications.

*Allegations/Parent Position*

The Parent alleges because the Student did not meet their previous IEP goal(s), the District lowered the goal(s) so that the Student could achieve the same. Specifically, the Student's reading-related goal used to be based on a third-grade reading standard and is now based on a first-grade reading standard. (Letter of Complaint dated February 5, 2024, and Interview with Parent on February 9, 2024, and March 11, 2024).

*District Response*

The District asserts the Student's IEP was updated to address the Student's current skill deficits. As a result, the Student's current IEP assesses the Student on a first-grade probe even though they were previously assessed on a second-grade probe. To address the deficits, the Student's specialized instruction service minutes were increased from 80 minutes/week to 240 minutes/week.

*Investigative Findings*

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the *United States Supreme Court in Board of Education v. Rowley*, 458 U.S.

176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207.

Here, no concern was noted with the procedures regarding the development of the IEP. Thus, the IEP complied with IDEA procedures and the first prong of *Rowley* was met. The parent's allegations concern the substantive nature of the IEPs. Those concerns are addressed below.

#### IEP Goals

The Office of Special Education and Rehabilitative Services (OSERS) and Office of Special Education Programs (OSEP) released guidance stating that IEP goals must align with the state academic content standards for the grade in which the student is enrolled. *Dear Colleague Letter*, 115 LRP 53903 (OSERS/OSEP 11/16/15). IEP "goals should be sufficiently ambitious to help close the gap." *Id.* The IEP team should design the IEP so that a student who is performing below grade level receives the specialized instruction and support services the student needs to reach the content standards for the grade in which they are enrolled. *Id.*

Here, in February 2024, the Student's reading and writing-related IEP goals were changed. The standards the goals reference are first-grade standards even though the Student is in the third grade. While the Student is performing below grade level, their IEP should still set ambitious goals and be based on grade-level content standards. *Id.* For these reasons, it is concluded that the Student's goals were not reasonably calculated to allow the Student to receive an educational benefit and violated the IDEA's substantive requirements, resulting in a denial of FAPE.

At the time of this writing, the Student's IEP has been updated and their writing-related IEP goal is now based on third-grade standards. However, the reading-related goal is still based on a first-grade standard, in conflict with OSERS and OSEPs guidance.

#### Duration, Location, Frequency

Through the course of this investigation, other areas of concern were noted in the Student's IEP. Specifically, the IEP lacks the required details so that the level of the District's commitment to resources is clear regarding the duration, location, and frequency of a given service or accommodation. See 71 Fed. Reg. 46,540, 46,667 (Aug. 14, 2006) (codified at C.F.R. pts. 300 and 301).

The duration is the amount of time an accommodation is provided (e.g., 10 minutes). The location means the type of environment where the accommodation will be provided (e.g., general education classroom, special education classroom, etc.). The frequency of service or accommodation should detail how often the accommodation is provided (e.g., five times per week).

Here, for example, the Student is to have extended time on assignments, as needed. The IEP indicates the duration for this accommodation is the entirety of the IEP term and in the public school setting. With this information, a person unfamiliar with the Student may allow the Student five extra hours to complete an assignment and let the Student do so on the school playground. It is likely that is not what was intended by the IEP Team. Thus, the information provided is not sufficient in describing the District's commitment to this accommodation.

#### Summary and Conclusions

Because the Student's reading-related IEP goal is not based on grade-level standards and the District's commitment to resources is not clear, the District failed to fully implement the requirements of 92 NAC 51-004.01; 007.07A2; 007.07A5; and 007.07A8. The following **corrective action is required**.

#### Corrective Action

1. The District shall convene an IEP meeting within 10 school days of the date of this Investigation Report. At the IEP meeting, the IEP Team must determine appropriate IEP goals that align with



the state academic content standards for the grade in which the student is enrolled and what special education services are required to assist the Student in achieving the same.

- a. In addition, the IEP must include the required detail regarding the duration, location, and frequency of all special education and related services and supplementary aids and services.
2. The IEP and PWN shall be provided to NDE within 5 calendar days of the date the IEP Team is convened.

**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:

Tara Korshoj, Complaint Specialist  
Jordyn Brummund, Complaint Specialist  
NDE Office of Special Education  
[nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov)