

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.28
Complaint Investigator: REDACTED
Date Complaint Filed: February 26, 2024
Date of Report: REDACTED

Introduction

This report is in response to a complaint filed with the Nebraska Department of Education (NDE) by Parents on behalf of their Student.

The Individuals with Disabilities Education Act (IDEA) and the Nebraska Administrative Code give NDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by NDE (34 C.F.R. 300.153(c); 92 NAC 51-009.11B5).

In this case, the complaint was received on February 26, 2024, and therefore, only allegations occurring on or after February 26, 2023, were investigated.

Information was obtained through a review of documents submitted by the parties and interviews with Parents, Student and relevant District staff. Information regarding events occurring prior to the investigatory timeline or about broad child find processes included for context are not considered for the summary or conclusions for the issues identified.

After their Student's kindergarten teacher raised concerns about their Student's struggles with articulation and speaking fluently during spring parent teacher conferences, parents began discussing these concerns as well as other concerns they were experiencing with their student. Parents requested a that the District conduct a comprehensive evaluation because they suspected that their Student might have disabilities including, but not limited to, language concerns. Shortly before the end of the 2022-23 school year, Student's kindergarten year, Student was verified as an eligible student under the classification of speech/language impairment (SLI). Currently, the Student is in first grade and has an IEP with goals to improve articulation and an MTSS plan to address other language needs.

Parents remain concerned that their Student has other needs that were not adequately evaluated and should be addressed in the IEP. These concerns include, but are not limited to, an unidentified style of speaking that the team, including parents, call "breathy" (also described as mid-word and mid-sentence

unnecessary inhalations), the potential that the student may have autistic tendencies and may be twice exceptional as a student with autism and giftedness.

The Student also has an MTSS (multi-tiered systems and supports) plan that was developed on May 22, the same day that Student's IEP was developed. Parents object to their Student's additional needs being addressed through MTSS instead of having specific goal(s) included in the IEP with clear and consistent progress monitoring to track progress and the effectiveness of the plan.

The District explained that, based on recently acquired information, the District already plans to provide staff development so that, in the future, MTSS plans will not be separate from IEPs.

Issues Investigated

1. Whether the District fulfilled its Child Find obligations by conducting a full and comprehensive evaluation. [92 NAC 51-006.02C5, 006.02C10 and 006.02C11].
2. Whether the Student's current IEP addresses all of the Student's needs, particularly language concerns. [92 NA 51-007.07A1a; 007.07A2; 007.07B1 and 2].
3. Whether the Student's IEP describes how the Student's progress toward annual goals will be measured, when periodic reports on the progress the Student is making toward meeting the annual goals will be provided, and ensuring periodic reports on progress are provided to the parents. [92 NAC 51-007.07A4 and 007.02]
4. Whether the District has procedures to ensure students' IEPs are developed to include goals, special education, related services and supplementary aids and services to meet their needs. [92 NAC 51-004.02; 007.07A2; 007.07A5; and 007.07A8]

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated February 24, 2024; received by NDE February 26, 2024.
- Student MDT report dated May 8, 2023
- Student IEP dated May 22, 2023
- Student Report Card 2022-23 school year
- Student Meeting Notice dated April 6, 2023, for meeting May 8, 2023
 - Student Updated Meeting Request dated May 5, 2023, for meeting May 15, 2023
 - Meeting request dated May 5, 2023, for meeting May 15, 2023

- Student Eval Note dated May 23, 2023, including reference to OSEP Memorandum 11-7: A response to Intervention (RtI) Process Cannot Be Used to Delay-Deny and Evaluation for Eligibility under the IDEA (January 21, 2011)
- Undated Student Language Screener completed by kindergarten teacher and copy sent to Parents via email on April 25, 2023
- Audio recordings
 - Student Dinner Conversation sent to District via email on May 10, 2023
 - Student Great Wolf Lodge sent to District via email on May 10, 2023
 - Student Mystery Game - sent to District via email on May 10, 2023
- Student Handwriting Sample 2 - photo of handwriting sent to the District via email on December 21, 2023
- Student Handwriting Sample - photo of handwriting sent to the District via email on December 21, 2023
- Student Progress Note dated December 22, 2023
- Gmails
 - Request for Student to be evaluated email between the Parents and kindergarten teacher dated March 8, 2023
 - Response to Request for Evaluation email correspondence between Parents and coordinator dated March 9, 2023, through March 16, 2023
 - Meeting Notice with zoom link dated March 28, 2023
 - Student Language Screener Update – emails between the parties dated April 25, 2023, through May 22, 2023
 - May Meeting Notice – Student dated April 26, 2023, for meeting May 8, 2023
 - Student Update emails between the parties December 18, 2023, through February 8, 2024, including Parents concerns about their Student's handwriting (email dated December 21, 2023) and Parents' reminder that they have not received any response to their questions asked on December 18 (email dated February 6, 2024)
 - Student information email from coordinator to Parents dated February 17, 2023.
 - Update from 2023-24 Coordinator – email correspondence between coordinator and parents between October 18, 2023, and November 12, 2023
 - Including Parents' update regarding Student's eyesight, concerns regarding autism and language (including language organization, speech fluency, breathing patterns,

ability to formulate whole thoughts within spontaneous speech, and that Parents think that their Student may be twice-exceptional as a high achieving learner and also having special needs.

- Including Parents' November 7, 2023, request for an IEP meeting and for the Student to participate in the meeting.
- Observational rating scale – blank CELF5 questionnaire with no date
- Interview with Parents and Student on March 28, 2023

From the School District

- Letter of Response dated March 18, 2024
- IEP documents
 - IEP dated May 22, 2023
 - IEP Signature Pages dated May 22, 2023
- Notices of Meeting (NOM)
 - NOM dated March 24, 2023, for meeting scheduled May 5, 2023
 - NOM dated April 26, 2023, for meeting scheduled May 8, 2023
 - NOM dated May 5, 2023, for meeting scheduled May 15, 2023
- Consent for Initial Placement dated May 22, 2023
- Systemic Documentation for four randomly selected students
- Child Find Policies – Special Education Policy 7000
- MTSS Procedures
 - MDT Flowchart
 - MDT Manual – School Age
 - Pre-MDT & Meeting Outline with boxes
 - Student Status Review Form
- Child Find for Student
 - Email Request for Student to be evaluated dated March 8, 2023
 - Email Response to Request for Evaluation dated March 9, 2023, through March 16, 2023
 - Consent for Evaluation dated March 31, 2023
 - MDT 1 Meeting Documentation dated March 31, 2023
 - MDT 1 Meeting Notes dated March 31, 2023
 - Notice of Intent to Evaluate dated March 31, 2023
 - Screener Update and questions dated April 25, 2023
 - MTSS Plan and Meeting Notes dated May 22, 2023
 - Email dated October 9, 2023
 - MTSS Update Email dated October 18, 2023
 - Email dated October 25, 2023
 - MTSS Plan and meeting notes dated November 13, 2023
 - Email dated December 6, 2023

- MTSS Interventions Email dated December 18, 2023
- MTSS Summary dated February 12, 2024
- MTSS Update Email and Answer to... dated February 17, 2024
- Undated Student Language Screener completed by kindergarten teacher and shared with Parent via email on April 25, 2023
- Student Report Card 2022-23 school year
- MTSS Meeting Notes dated February 12, 2024, and December 11, 2023
- MDT Documentation
 - MDT Report dated May 8, 2023
 - MDT 2 Meeting Notes
 - MDT Verification and Signatures dated May 22, 20203
- Evaluation Summary
 - Language Screener Update – email correspondence between the parties between April 25, 2023, and May 22, 2023
 - Email Attachment – Student Language dated April 25, 2023
 - Email Attachment – Student Report Card dated May 25, 2023
 - UCC HF Screener dated April 25, 2023
 - UCC HF Screener – Parents dated April 25, 2023
 - Kindergarten and 1st Grade DIBELS Scores for the 2022-23 and 2023-24 school years
 - SLI – Artic Rubric
- Additional Information
 - 2023-24 1st and 2nd Q Progress Report
 - Student Eval Note from Parents dated May 23, 2023, including reference to OSEP Memorandum 11-7: A response to Intervention (RtI) Process Cannot Be Used to Delay-Deny and Evaluation for Eligibility under the IDEA (January 21, 2011)
 - Corrective Action Training 23.24.15
 - Email from NDE approving MTSS training
- Student MTSS data – Accommodations data dated at intervals between October 27, 2023, and December 8, 2023
- Student Questionnaire dated December 13, 2023
- Interviews with District Staff on April 2, 2023, and April 3, 2023

Findings of Fact

1. Student is currently a first grader and is identified as having a Speech/Language Impairment [MDT 05/05/2023]
2. On March 8, 2023, Parents requested a comprehensive special education evaluation for their Student, including articulation, receptive, expressive language, comprehension, retention of words, thoughts and ideas,

academic/intelligence testing, vision, hearing, social emotional, general intelligence, academic performance and communicative status. [Email dated March 8, 2023]

3. Student's kindergarten teacher acknowledged and shared Parents' concerns and forwarded the referral to the special education coordinator and principal. [Email dated March 8, 2023]
4. Through a series of emails, the District responded to Parents' referral and scheduled a meeting to review existing information and go over what assessments would be needed prior to providing parental consent for evaluation [Email Response to Request for Evaluation dated March 9, 2023]
5. March 31, 2023, Parents met with the District (MDT-1) to review existing information and discuss evaluation. The District requested written consent to evaluate the Student and provided PWN of intent to evaluate the Student. Parents signed and returned consent to evaluate on the same date. [MDT-1 and notes dated March 31, 2023, Consent to Evaluate, Notice of Intent to Evaluate dated March 31, 2023]
6. In a series of emails between April 25, 2023, and May 2, 2023, the parties discussed the progress of the evaluation. [Screener Update and questions dated April 25, 2023]
7. The Student's report card for the first three terms of the 2022-23 school year show that the Student meets or exceeds expectations in all areas assessed. [Student Report Card 2022-23 school year]
8. May 10, 2023, Parents provided the District with three audio recording samples of their Student speaking in a conversation. [Audio Records of Student Dinner Conversation, Great Wolf Lodge, and Mystery Game sent to District via email on May 10, 2023]
9. The Student was verified at MDT meetings on May 8, 15 and 22, 2023. Parents signed permission for initial placement and provision of services on May 23, 2023. [MDT-2 and notes dated May 2, 2023, Parent consent for Initial Services dated May 22, 2023; See also NOM dated May 8, 2023, and May 15, 2023]
10. May 22, 2023, an IEP was developed for the Student. The IEP states that the Student is eligible to receive special education services as a student with SLI in the area of articulation. The IEP includes the following:
 - a. Student requires specialized instruction to accurately produce /r/ and /th/.
 - b. Student also needs direct instruction on providing adequate breath support to support communication skills.

- c. Student demonstrates mid-word and mid-sentence, quick and unnecessary inhalations.
 - d. The IEP has one goal for articulation of /r/ and /voiced/voiceless the.
 - e. The IEP provides an accommodation of extended wait time to allow the Student to process, share and complete thoughts. Cues for “belly breathing” prior to the start of a sentence. Do not penalize for speech errors, word revisions, or phrase revisions on assessments.
11. May 22, 2023, an MTSS plan was also developed for the Student. [MTSS plan and notes dated May 22, 2023] The MTSS is intended to address additional concerns in speech and language by providing tier 2/2+ support. The plan states that the Student has a gap in grammatical structures in oral language. The MTSS goal is stated as follows: “to improve expressive language skills by producing grammatically correct sentences in spontaneous speech.” The Student will participate in one, ten-minute session per week, measured using language samples and reported monthly. The MTSS plan has a place for participants to sign and date. Two District staff members names are typed with space for signatures above but no signatures or dates are included. [Child Find and MTSS listed under District Documentation]
12. District staff reported that the IEP and MTSS plans were developed very close to the end of the 2022-23 school year with little time for implementation. Therefore, the Student was only seen once before the end of the 2022-23 school year. [Interviews with District staff dated April 2, and 3, 2024]
13. After the start of the 2023-24 school year, Parents' requested an update on their Student's MTSS progress. [MTSS Update Email]
14. November 7, 2023, Parents requested an IEP meeting. [Email dated November 7, 2023]
15. November 13, 2023, a second MTSS plan was developed for the Student [MTSS plan and notes]
16. December 18, 2023, The District notified Parents that pacing boards would be used to help the Student produce speech more naturally and in a conversational way and sent two pacing boards home with the Student with instructions for home use. [MTSS Interventions Email]
17. December 18, 2023, Parents reminded the District of their request to have a language goal to the Student's IEP. [Email MTSS Interventions Email]
18. December 18, 2024, Parents reminded the District that they are concerned that the initial evaluation was not comprehensive enough to assess and identify the language concerns and the possibility of autism

- spectrum disorder. [Email MTSS Interventions Email dated December 18, 2024]
19. February 6, 2024, Parents reminded the District that they had not received any responses to questions sent via email on December 18, 2023, and restated the questions. [Email MTSS Interventions email dated February 6, 2024]
 20. February 12, 2024, an MTSS meeting was held for the Student. Parents stated their concern that the school was not seeing concerns in the Student's conversational language at school as Parents are seeing it often at home. Parents requested additional evaluation, requested an IEE, requested that conversation times be adjusted to determine whether afternoon times are more difficult for the Student than mornings; and requested the MTSS plan in writing. [MTSS meeting and notes dated February 12, 2024]
 21. At the February 12, 2024, MTSS meeting, the District provided Parents with an MTSS Summary Page including Student's report card, progress report on IEP goals for two terms and MTSS data. [MTSS Summary dated February 12, 2024]
 22. On February 17, 2024, a few days after the February 12, 2024, MTSS meeting, District staff sent an email to the Parents with an apology for not providing Parents with the information Parents requested (requests were made on December 18, 2023, and February 12, 2024) and included the following:
 - i. We have changed some of the Student's conversation times to the end of the day in order to see if we get a difference in results from the beginning of the day to the end of the day. Attached you will find the Student's latest MDT.
 - ii. Waiting for guidance from my supervisor in regards to autism testing, IEE, etc. As soon as I hear from them I will update you on our next steps.
 - iii. I am finishing up the MTSS report this weekend and will email it to you when complete.
 - iv. The email did not mention scheduling an IEP meeting, providing a copy of the MTSS plan, or Parents' request for additional goals to be added to the IEP and did not provide PWN of proposal or refusal. [District Documents – Child Find – MTSS Update and Answer to Parent Questions]
 23. Student's classroom teacher reported that the Student is not leaving class in the afternoon but is leaving to have conversations with others in the mornings. [Interviews with District Staff April 2 and 3, 2023]

24. The District coordinator reported that no action had been taken regarding the Parents' request for additional testing or IEE due to the complaint being filed. [Interviews with District Staff April 2 and 3, 2023]
25. The District acknowledged using a two-tiered process that results in students having both an IEP team and IEP and an MTSS team and MTSS plan. The District also acknowledged that, approximately, January 1, 2024, the District learned that the two-tiered process did not comply with the IDEA and Rule 51. [District letter of response; Interviews with District Staff April 2 and 3, 2024]

Issue # 1

Whether the District fulfilled its Child Find obligations by conducting a full and comprehensive evaluation. [92 NAC 51-006.02C5, 006.02C10 and 006.02C11].

92 NAC 51-006.02C5 states:

006.02 *General Evaluation Requirements*

006.02C: *Verification criteria and procedures:*

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 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.*

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... 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.*

Allegations/Parent Position

Parents maintain that they requested a comprehensive evaluation of their student because they suspected disabilities, including language concerns. Parents maintain that the district has not fulfilled its Child Find obligation by conducting a full and comprehensive evaluation despite Parents' repeated requests and concerns about their Student's potential disabilities. [Parents' complaint letter received February 26, 2024; Emails between the parties dated October 18, 2023, through November 12, 2023; Student Eval Note dated May 23, 2023; Language Screener Update; Emails between the parties dated December 18, 2023, through February 8, 2024]

District Response

The District maintains that a full and comprehensive evaluation was conducted, that the Student was verified as a student with a speech/language impairment in the area of articulation and that Parents are dissatisfied with the evaluation because, in their minds, the Student also has needs in the area of language. Specifically, the parents are concerned with the Student's breathiness when speaking and their belief that the Student stutters when speaking. [District's letter of response to the complaint dated March 18, 2024]

Investigative Findings

Parents referred their Student for a special education evaluation because they suspect a disability; especially with articulation, receptive, expressive language, comprehension, retention of words, thoughts and ideas. Parents specifically indicated that they were asking for a comprehensive evaluation including academic/intelligence testing, vision, hearing, social emotional, general

intelligence, academic performance and communicative status be included to get a picture of how potential delays may be impacting their Student's learning. The District promptly acknowledged the request and took steps to meet with the Parents to discuss a plan for evaluation. When Parents requested that the District promptly provide permission to evaluation for Parents' signature, the District explained that it would be necessary to meet with the Parents to review existing information and discuss evaluation so that the permission form could delineate details of the evaluation to be conducted. [SOF 2]

On March 31, 2023, at MDT-1, District staff and Parents reviewed existing information and discussed evaluation. The team discussed that the Student was meeting or exceeding standards in the kindergarten curriculum and noted that there were no concerns with academic ability, just how the language and articulation skills may affect the Student moving forward. The MDT team noted that the Student exhibits breathiness and red face at times when trying to communicate thoughts. [District Documents – Child Find –MDT minutes and notes]. The District only requested Parents' written consent to evaluate the Student in the areas of speech/language and social/emotional. Under the category of "other assessments" the District specified that a language screener would determine whether the team would move to a full language testing; articulation as part of speech/language; pragmatics language screener; and social language questionnaire-UCC High F. [SOF 5]

During MDT-1, the District also provided Parents with prior written notice (PWN) of intent to evaluate the student. The Description of Actions Proposed or Refused states that the MDT team has decided that additional assessment is needed to determine eligibility for special education services. [92 NAC 51-009.05B1]. The Explanation of why the District proposes or refuses to take the action states that "the information reviewed by the MDT suggests that additional assessment is needed to address eligibility and programming decisions for the Student." [92 NAC 51-009.05B2] The Description of other options considered and why those options were rejected states that "conducting the initial evaluation without additional assessment was rejected as inadequate to address eligibility and programming decisions for the Student." [92 NAC 51-009.05B3]. The Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action states "prior evaluation report(s), current IEP, progress reports, current classroom performance, and information from district staff and parent(s)." [92 NAC 51-009.05B4]. The Description of any other factors relevant to the actions proposed or refused states that "the MDT proposes to conduct an initial evaluation to determine eligibility and educational needs." [92 NAC 51-009.05B5]. The notice includes a space to document that parents

were provided a copy of the procedural safeguards. [92 NAC 51-009.05B6]. Generally, parents sign or initial in that space acknowledging their receipt. Here, the District's coordinator's initials are typed in the space. [SOF 5]

PWN is required as part of the Child Find Process. [92 NAC 51-007.09.05] Here, the PWN provided to the Parents during MDT 1 in conjunction with the Districts request for permission to evaluate the Student is deficient because it lacks the specificity necessary to accurately reflect what occurred in the meeting. For example: 1) The PWN does not clearly describe the actions proposed and refused; such as describing the areas of evaluation requested, which areas were selected for assessment, which were not and why; 2) does not describe how all areas of evaluation requested were considered for assessment, which areas were assessed, and whether evaluation in some areas was refused and why; 3) does not provide a description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action. (This section generically references prior evaluation reports and current IEPs. However, there is no evidence of the existence of prior evaluations or current IEPs because this is an initial evaluation) (This section is repeated twice on the form); 4) does not provide details of evaluation to be conducted in each area of evaluation requested nor elaborate on whether the assessment will consist of a screener(s) or more comprehensive evaluation for each area of assessment; 5) the PWN document includes a place for Parents to sign or initial their receipt of a copy of the procedural safeguards. This space has the typed initials of a District staff member and does not have either a signature or initials of the Parents. [SOF 5]

The District proceeded with the evaluation. In a series of emails between April 25 and May 2, 2023, the parties discussed the progress of the evaluation. The District explained that it intended to proceed with formal articulation assessment. The District also explained that the language screener looks at how well the student is able to be understood and the student's academic performance. According to the District, the language screener revealed no areas of concern with the Student's expressive and receptive language skills and that there were only two areas of difficulty identified:

- 1) Using nonspecific speech when referring to details in a personal story, and
- 2) Getting to the point when talking during informal conversation.

Parents specifically disagreed with portions of the evaluation thus far, including the District's interpretation of the evaluation and whether the evaluation was sufficiently comprehensive and tailored to address Parents' concerns. While the District didn't see any need for additional evaluation, the team agreed to

proceed with more formal language assessment based upon Parents' request. [SOF 6]

MDT 2 took place on May 8, May 15, and May 22, 2023. During MDT 2, the team discussed and considered the evaluation and verification. According to the notes from MDT 2, the purpose of the MDT 2 meeting was to review social/emotional, language and articulation assessment results, develop plans to address student needs and identify if they meet eligibility to receive special education services. The MDT report describes multiple measures, including language samples provided by the Parents, used to assess various areas. The Student's academic progress is meeting or exceeding expectations and teachers report that the Student has model behavior and is a leader among peers. All members of the team agree that the Student struggles with articulation. [SOF 6, 7 and 8]

In order to assess the Student's current social skills, formal and informal data was collected and reviewed. The Underlying Characteristics Checklist – High Functioning (UCC-HF) was used to assess the Student's behavior as perceived by Parents and teacher. The UCC-HF describes behaviors or characteristics that may be exhibited by individuals with autism spectrum disorders. The team specifically wanted to look at the Student's pragmatic language. Parents and teachers reported that the Student displays the following characteristics:

Social

- Parents reported that their Student has a hard time getting thoughts out and take a long time to tell a story.
- Restricted Patterns of Behavior, Interests, and Activities
- The Student's teacher reported that the Student can display repetitive motor movements by flapping hands when excited about something.
- Parents reported that the Student will repeat words when struggling to put words together.

Communication

- Teacher reported that the Student can be very breathy when talking and uses "um" a lot.
- Parents reported that the Student will stutter at times when having difficulty putting words and ideas together.

Sensory Differences

- Student's teacher reported that the Student sometimes "hums" when working on a task independently. [SOF 6, 7 and 8]

The Social/Emotional Summary states that the Student can struggle with communicating thoughts and ideas to others. The Student will stutter when trying to express thoughts and ideas. This can cause the Student to take longer to share ideas compared with peers. The teacher reported the Student is a role-model in the classroom, works well with peers and is very well organized. [SOF 6, 7 and 8]

According to the MDT report, Parents agreed that a language screener should be completed first before formal language testing. Overall, the team determined that screener did not indicate any areas of concern with the Student's expressive and receptive language skills and the Student is meeting grade level expectations according to the report card. Two areas of difficulty were identified: **1) Using non-specific speech such as "thing" "it" "stuff" when referring to details in a personal story; and 2) Having trouble getting to the point when talking during informal conversation.** The team determined that the Student's language abilities do not appear to negatively impact academic performance. Parents continued to express concerns regarding their Students' fluency, processing, word and phrase repetitions. The team agreed that the student is not demonstrating disfluencies that characterize stuttering and that word and phrase repetitions are also indicators that the Student is continuing to develop organizational skills. [SOF 6, 7 and 8]

After reviewing the information, Parents requested formal language testing. The Clinical Evaluation of Language Fundamentals-5 (CELF-5) Pragmatics Profile is a questionnaire style evaluation. The tool was used to gather information about the Student's social communication (pragmatic) behaviors. The questionnaire was completed by the Student, classroom teacher and Parents. Parents marked 25 areas in the "often" or "always" category. The Student marked 11 areas in the "often" or "always" category and the classroom teacher marked only one (1) area in the "often" or "always" category. Areas of marked by both the Parents and Student include the following:

- Has to ask people to repeat what they have said;
- Has trouble answering questions as quickly as other students;
- Has trouble thinking of (finding) the right word to say;
- Has trouble talking with a group of people;
- Has trouble explaining what was read;
- Has trouble writing down thoughts;
- Has trouble writing complete sentences; and
- Has trouble putting words in the right order when writing sentences.

The area marked by both the teacher and the Parents, “uses poor grammar when talking” is the only area of additional need identified. [SOF 6, 7 and 8]

An oral language sample was obtained in school and from home in May 2023 to gain more information about the Student’s language use, form and content in a real-life context. Notably, the summary states that the Student demonstrated disfluencies such as interjections (e.g. “um”), quick unnecessary mid-word or mid-sentence inhalations, word repetitions (e.g. “that that”) and moments of stuttering (i.e., blocks, repetitions, prolongations). The team also determined that the Student’s grammatical errors are age-appropriate and not considered to be part of the general education curriculum for kindergarten. Parents disagree with the team’s ultimate conclusion that these disfluencies are not atypical. [SOF 6, 7 and 8]

The Language Disorder Assessment Continuum was utilized to evaluate the Student’s language skills. Parents disagreed with the conclusion that there is no adverse effect on communication and stated their belief that the effect on communication should fall into the “moderate range” and that “the language deficits impact the student’s ability to communicate orally, process oral language, read and write.” [SOF 7 and 8]

Based on the results of the additional language evaluation, the report states that “the Student should receive tier 2/tier 2+ support through MTSS to address language in the area of grammar and is necessary for the Student to succeed in the general education curriculum.” The following paragraph was included to describe the student’s voice when speaking:

The Student was observed taking quick, unnecessary inhalations mid-sentence and at times mid-word. Student’s breathing was characterized by tension in the neck and clavicle area while using a clavicular breathing pattern. His inhalations sometimes included phonation, although it was fairly muted. The examiner utilized dynamic assessment practices by providing a brief instruction about speech mechanism, specifically to diaphragmatic breathing and breathing after a complete utterance. Student was able to demonstrate diaphragmatic breathing after 6 attempts. Student was able to utilize this skill when saying single words and sentences. The Student was not able to independently self-monitor mid-word and mid-utterance inhalations. His irregular breathing pattern does not seem to be a result of a vocal fold dysfunction at this time. Student is able to sustain phonation for an average of 13.5 seconds. Student’s vocal quality is clear, without hoarseness or scratchiness. Student is able to maintain pitch without breaks in phonation. Student’s pitch is perceived as

typical for a child of same age/gender. Student is able to modulate volume and has no difficulty completing singing tasks in music class. The examiner concluded that Student's atypical inhalation combined with clavicular breathing is likely a habitual pattern. [SOF 8]

The report notes Parents' concerns that their Student has a hard time getting his thoughts out, can take a long time to tell a story, will repeat words when unable to put words together and will stutter when having difficulty putting words and ideas together. Parents provided audio recordings of their Student's voice, exemplifying their concerns, to the evaluation team. [SOF 8]

The Student's kindergarten teacher reported that the Student can display repetitive movements by flapping hands when excited about something, can be very "breathy" when talking, uses "um" a lot, and sometimes hums when working on a task independently. [SOF 8]

Parents specifically disagreed with one area of the Language Disorder Assessment Continuum that is utilized to evaluate the Student's skills. The rubric placed the Student in the "Normal" range while the Parents thought that their Student should fall within the "Moderate" range reflecting that language deficits impact ability to communicate orally, process oral language, read and write. [SOF 8]

The IDEA and Rule 51 is clear that impairment, in and of itself, will not make a student eligible. In order to find a Student eligible under the IDEA and Rule 51, the eligibility team must determine that the student needs specially designed education and services to access the general education curriculum. [Letter to Clarke, 48 IDELR 77 (OSEP 2007); 43 IDELR 21 (SEA MA 2005)]

Ultimately, during MDT-2, on May 22, 2023, the Student was verified as a student with a disability, eligible for services with the of speech language impairment (SLI) in the area of articulation, an IEP and MTSS plan were developed and Parents signed for initial provision of services on May 23, 2023. [SOF 8]. The District admitted that PWN was not but should have been provided. [Interviews with District staff] Absent PWN for the Student's initial verification, IEP and initial placement, Parents' were effectively denied participation including the right to challenge the Student's evaluation on areas of disagreement.

Child find continued into the 2023-24 school year. After the beginning of the 2023-24 school year, Parents requested an update on Student's progress. Parents' learned that there was an entirely new team at the school and these new individuals were unfamiliar with the Student and the MTSS plan. The IEP was being implemented and Parents noticed that their Student's articulation was

improving. [Interviews with parents, district staff and District Documents Child Find] Parents continued to express their ongoing concerns about their Student's eyesight, potential autism and language development (specifically language organization, speech fluency, breathing patterns, especially the ability to formulate whole thoughts within spontaneous speech). [SOF 12] Parents also expressed concern that their Student could be twice exceptional, excelling in some area and also having special needs. [SOF 12]

On November 7, 2023, Parents requested an IEP meeting. The District responded that they have completed some observations and reviewed the IEP and current accommodations. They have been working on strategies to help the Student better compose oral responses and will consider other strategies if needed. The District replied to the Parents by stating that data is being continuously collected and suggested a meeting in December. [SOF 13]

The District did not convene an IEP meeting in December, as Parents requested, to consider adding a language goal to the Student's IEP, discuss an IEE and obtain a copy of the MTSS plan. Instead, an MTSS meeting was conducted. The purpose of the meeting was to gain input and make decisions regarding the Student's needs including the following concerns:

- The Student tends to repeat thoughts and phrases; needs time to talk and say what he needs to say;
- Struggles to get all thoughts out;
- mainly tends to struggle with spontaneous speech;
- Includes questions intended to analyze the concerns such as when "breathy" answers occur;
- Student gets frustrated when interrupted; and
- Language struggles mainly at home. [SOF 14 notes 12/11/2023]

Even then, Parents' questions were not addressed and answered. [SOF 13-21]

The Child Find process for this Student has continued for more than one full year and is still not complete, primarily due to the fact that the District 1) utilized a 2-tiered approach that bifurcated services between IEPs and MTSS plans; and 2) did not provide the Parents with PWN required by the Procedural Safeguards. [SOF 26] The District did not meet the Child Find obligations of the IDEA and Rule 51.

Based on the District's failure to conduct a comprehensive evaluation in all suspected areas of disability including the provision of PWN at required times during the Child Find process, the District failed to fully implement the

requirements of 92 NAC 51-006.02C5, 006.02C10 and 006.02C11. Therefore, **corrective action is required.**

Issue # 2

Whether the Student's current IEP addresses all of the Student's needs, particularly language concerns. [92 NA 51-007.07A1a; 007.07A2; 007.07B1 and 2].

92 NAC 51-007.07 states:

007.07 *IEP Development*

007.07A: *The IEP shall include*

007.07A1: *A statement of the child's present levels of academic achievement and functional performance, including:*

007.07A1a: *How the child's disability affects the child's involvement in and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children).*

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; and*

007.07A2b: *Meet each of the child's other educational needs that result from the child's disability.*

- 007.07B: *In developing, reviewing or revising each child's IEP:*
- 007.07B1: *The team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.*
- 007.07B2: *The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.*

Allegations/Parent Position

The Student's current IEP does not adequately address all of the Student's needs, particularly language concerns, and relies on a fragmented approach with separate plans, potentially hindering progress. [Parents' letter of complaint received February 26, 2024].

District Response

The District utilized a two-tiered approach to address the Student's needs regarding articulation and the parents' concerns for language. The IEP team saw a clear need for specialized instruction in the Student's verified area of articulation and the IEP has a goal and progress monitoring relating to articulation. Since the IEP team did not see the need for specialized instruction in the area of language (and did not see any discrepancy with the Student's language abilities and those of non-disabled peers) LPS compromised with the parent by utilizing the MTSS process for the Student's language concerns to further track and monitor his abilities to see if there would be fluctuation or change after the evaluation. This resulted in the Student having an IEP team and an MTSS team. Based on the findings from an earlier complaint, LPS understands that it is improper to bifurcate service in this way. This complaint was filed prior to LPS providing approved training to correct this issue. [District letter of response to complaint dated March 18, 2024]

Investigative Findings

Once a student is eligible for special education services, the student's areas of need should be addressed by the IEP team. While SLI is an eligibility classification of the IDEA and Nebraska's Rule 51, services must meet the student's needs and cannot be determined by the student's eligibility category.

The Student was verified on May 22, 2023. Here, the Student's MDT-2 report states that the Student was verified with the classification of SLI only in the area

of articulation. [District Document – Child Find – MDT-2 report and notes] The District's current practices utilize both IEPs and MTSS plans simultaneously for some IDEA eligible students. Based on the Student's MDT report, both an IEP to address articulation, and an MTSS plan to address language concerns, were developed on the same day in May 2023, just days before the end of the school year. PWN was not provided for the MDT verification or the Student's IEP and MTSS plans. [SOF 7-11]

The Student's IEP PLAAFP states that the Student 1) requires special education to accurately produce /r/ and /th/ (articulation) and 2) also needs direct instruction on providing adequate breath support to support communication skills clarified by the statement that the student demonstrates mid-word and mid-sentence, quick and unnecessary inhalations. However, the Student has an IEP with one goal, to improve articulation and accommodations for language concerns as needed. [District Document – IEP]. The Student's has one IEP goal – to improve articulation of /r/ and /th/. [SOF 10]

The Student's first MTSS plan is intended to address additional concerns in speech and language by providing tier 2/2+ support required for the Student to benefit from general education. [SOF 9] The plan states that the Student has a gap in grammatical structures in oral language. The MTSS goal is stated as follows: "to improve expressive language skills by producing grammatically correct sentences in spontaneous speech." The Student will participate in one, ten-minute session per week, measured using language samples and reported monthly. [SOF 11] The District acknowledged that its two-tiered approach resulted in the student having an IEP team and an MTSS team and that, based on recent information, the District is aware that educational planning for IDEA eligible students necessarily happens through the IEP team. [SOF 26]

Due to staff reassignments for the 2023-24 school year, the MTSS plan did not receive the same attention that the IEP received. [Interviews with District staff]. After the beginning of the 2023-24 school year, Parents requested an update on their Student's MTSS progress. Because the District did not produce the MTSS plan or any data showing that the MTSS was implemented and whether the Student was making any progress, Parents continued to be concerned that while they observed progress on the IEP goal of articulation, their Student's additional areas of concern were not being addressed. Parents did not believe that the evaluation was sufficiently comprehensive and were discouraged that the MTSS process did not begin when both the teacher and Parents raised concerns in March of 2023, the Student's kindergarten year. [SOF 13 and 14 and Parents' letter of complaint and Interview]

On November 7, 2023, Parents requested an IEP meeting. [SOF 13] Instead, on November 13, 2023, the District developed a new MTSS plan for the Student, entirely different from the first plan. The Plan states that the area of concern is speech/language and that the learning gap is the Student's ability to express thoughts orally. Parents have concerns with the Student successfully getting thoughts out without needing large breaths. The MTSS goal is for the Student to be able to have conversations with an adult using randomized questions 90% of the time. The Student will receive five-minute sessions five times per week. The MTSS plan is a running document and information from multiple meetings, including November 13, 2023, February 12, 2024, and December 11, 2023, in that order. Notes dated December 11, 2023, state that the main concerns for the Student's speech patterns are that the Student tends to repeat thoughts and phrases; needs the time to talk and complete thoughts; struggles to get all thoughts out; mainly tends to struggle with spontaneous speech; has breathy answers; gets frustrated when interrupted and seems to struggle mainly at home. When the Student is reading out loud in class, there are no major concerns and the speech patterns do not seem to impact academics or ability to share ideas in class. A number of strategies to address the concerns were considered, including using technology for the Student to listen to self, using a pacing board, drawing a line on arm (instead of belly breathing). The purpose of the December 11, 2023, meeting was "to gain input and make decisions regarding the Student's needs" and lists areas of concern: 1) The Student tends to repeat thoughts and phrases; needs time to talk and say what he needs to say; 2) the Student struggles to get all thoughts out - mainly tends to struggle with spontaneous speech; 3) supplies questions intended to analyze the concerns, such as when "breathy" answers occur; 4) the Student gets frustrated when interrupted; and 5) the Student's language struggles occur mainly at home. [SOF 14]

The MTSS plan also notes Parents' ongoing concerns and requests for evaluation to determine whether their Student is twice exceptional and therefore high performing in some areas as well as exhibiting signs of autism. The Parents specifically requested completion of evaluation requested at the initial referral, that the Student's conversation times be switched up to see if afternoons present greater struggle than mornings because Parents are concerned that the school isn't having concerns while Parents are seeing evidence of problems often at home, and that the District provide them with a copy of the MTSS. [SOF 14]

The District and Parents communicated through a series of emails between December 18, 2023, and February 8, 2024. The information in this

communication is not reflected in the MTSS Plan running document. On December 18, 2023, the District sent two pacing boards home for the Student to help the student learn to manage the flow of spoken voice. The District staff let Parents know that the Student had received instruction on how to use the pacing boards and had practiced. District staff commented that, "It was great seeing the Student pause while using the pacing board to think about what they wanted to say next. While using it, Student did not take any 'big breaths' or repeat any phrases. Eventually, we will want the Student to produce speech more naturally and in a conversational way, as well as fading out the visual board and just giving visual reminders – such as tapping on your arm – but that will be later." [SOF 16 – 21]

Parents replied with appreciation, noting that they observed progress with the IEP articulation goal and asked how progress would be monitored to determine the effectiveness of the pacing board. Parents also requested that a language goal be added to the IEP since the MTSS plan drafted May 22, 2023, was not implemented. They reminded the District of their earlier request for clarification on why the request has been rejected, since it is an ongoing concern and was part of the concern for initial evaluation. The Parents stated their appreciation for the accommodations listed on the IEP but shared their concern because the accommodations are provided "as needed" which doesn't tell how often the accommodations are needed and whether he is making progress to reduce the area of concern. Parents would like this to be an IEP goal and hopefully see progress as they have with articulation. Finally, the Parents reiterated concern that the evaluation was not comprehensive enough to get to the core of the language concerns. Parents do like the idea of using technology to record the student and teaching self-evaluation and self-assessment to allow the Student to gain more insight into what is going on inside his head with his language. Parents also reminded the District that, on October 19, 2023, they notified the District that the Student was exhibiting some characteristics of autism that could be connected to the language struggles and that possibly the autism screener was not sufficient. [SOF 15 – 22]

Meeting notes from an MTSS meeting on February 12, 2024, document that 1) Parents were notified that Gifted testing takes place during second grade; and 2) Parents shared their ongoing concern that their Student displays autistic tendencies and that the school is not seeing concerns in the Student's conversational language at school while Parents' are seeing evidence of it often at home. Current requests from Parents are also documented, including evaluation requests; a request for the District to switch up conversation times to see if afternoon times are more difficult for the Student than morning

conversations; and a request for the District to provide Parents with a copy of the MTSS plan in writing. The District did not provide any documentation of a goal for reducing “big breath conversations” nor any progress monitoring including baseline data to measure progress to evaluate the success of using the pacing boards. [SOF 15 – 20]

Summary and Conclusions

The District currently uses a dual team process that bifurcates some students' service between an IEP and an MTSS plan. In early January, the District was made aware that this process did not comply with the IDEA and Rule 51 but has not had a chance to train and implement the new procedures developed to rectify this issue.

When Parents continued to express concerns that their Student's needs had not been effectively identified and addressed, they requested an IEP team meeting to discuss completing the originally requested evaluation, having additional goals added to the IEP and an IEE. The District relied upon the MTSS process to address the concerns instead of the more structured process of the IDEA and Rule 51 that would also include provision of PWN.

MDT-2 verified the Student's eligibility under the classification of SLI in the area of articulation. Specifying that the Student is eligible in the area of articulation inaccurately implies that the Student's IEP may not include receive service in other areas of need.

The Student's PLAAFP stated that the Student had two needs. 1) specialized instruction in articulation and 2) direct instruction to reduce unnecessary mid-word and mid-sentence inhalations. The IEP provided a goal for articulation and accommodations for language as needed. An accommodation provided intermittently “as needed” is not direct instruction and does not include a way to assess whether progress is achieved. An artfully crafted PWN should have explained how these decisions were reached, including why direct instruction would not be considered specialized instruction. **The IEP should have included a goal to address the Student's unnecessary mid-word and mid-sentence inhalations.** General education interventions (such as the MTSS process) can certainly be an option for IEP teams to consider. However, this is a decision that should be made by the IEP team and explained through PWN. Student's MDT report states that the MTSS Tier 2/2+ interventions are necessary so that the Student is able to succeed in the general education. [District Document – Child Find – MDT report] **This is a statement of educational need and should have been included in the IEP.**

In October of the 2023-24 school year, Parents asked for an update on their Student's MTSS progress and discovered that, due to staff turnover, Student's MTSS plan had not received the same attention as the IEP and had never been implemented. Another MTSS plan, entirely different from the first, was developed.

In December, 2023, the District provided the Student with pacing boards for use at school and at home to help the student learn to manage the flow of spoken voice. The District staff let Parents know that the Student was taught how to use the pacing boards and had practiced. District staff commented that, "It was great seeing the Student pause while using the pacing board to think about what to say next. While using it, Student did not take any 'big breaths' or repeat any phrases. Eventually, we will want the Student to produce speech more naturally and in a conversational way, as well as fading out the visual board and just giving visual reminders – such as tapping on your arm – but that will be later."

This is specialized instruction that should accompany an IEP goal developed by the IEP team but was not included in either the IEP or the MTSS plan.

Parents were satisfied with their Student's progress on the IEP articulation goal but requested a copy of the MTSS plan and evidence of implementation and progress. Parents also requested an IEP team meeting to discuss their ongoing concerns in other areas of language, whether additional testing in other areas was needed and to request goals be added to the IEP rather than through MTSS. The District did not convene an IEP meeting; and instead, convened an MTSS meeting. Parents questions and concerns were later partially answered in an informal email from a staff member. **Because the District's relied upon MTSS instead of the IDEA and Rule 51 procedures that apply to IEPs, Student and Parents were deprived of the procedural safeguards afforded to eligible students, including provision of NOM and PWN.**

This case is an example of problems resulting from the lack of continuity with the District's dual team approach. This complaint was filed prior to the District providing approved training to correct this issue. The District has already developed procedures and training to address this issue that have been approved and will be provided by the end of the 2023-24 school year.

Based on the results of this investigation, the District failed to fully implement the requirements of 92 NAC 51-007.07A and B. Thus, the following **corrective action is required.**

Issue # 3

Whether the Student's IEP describes how the Student's progress toward annual goals will be measured, when periodic reports on the progress the Student is making toward meeting the annual goals will be provided, and ensuring periodic reports on progress are provided to the parents. [92 NAC 51-007.07A4 and 007.02]

92 NAC 51-007.07 states:

007.07 *IEP Development*

007.07A: *The IEP shall include:*

007.07A4: *A description of how the child's progress toward meeting the annual goals described... will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.*

92 NAC 51-007.02 states

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

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

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

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

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

Allegations/Parent Position

Parents' are concerned that they have not received clear and consistent progress monitoring data regarding the Student's language development, raising concerns about the effectiveness of the current plan. [Parents' letter of complaint received February 26, 2024]

District Response

Student's IEP states that the articulation goal will be measured by SLP data collection and that progress reports will be provided to the parents quarterly. The IEP also states that the Student will make progress on the articulation goal by receiving direct instruction on the function and anatomy of the speech mechanism (breath support and articulators including tongue, lips and palate)... The district contends that the Parents are concerned with the District's method of progress monitoring the Student's language abilities through the MTSS process and not the IEP goal. The District reiterates that it is in the process of correcting its prior procedure of utilizing a separate MTSS team for students with IEPs. The District maintains that, while the MTSS data collection and monitoring should have taken place in the IEP process, the Student's MTSS plan includes progress monitoring to address "big breaths" but, ultimately, the complaint centers on the parties disagreement regarding whether the Student has a language deficiency. [District Documents - Response to Complaint]

Investigative Findings

The Student's only IEP goal is to improve articulation. The IEP states that the articulation goal will be measured by SLP data collection and that progress reports will be provided to the Parents quarterly. [SOF 9]

Currently, the District, admittedly, uses a noncompliant process resulting in separate IEPs and MTSS plans for some students. MTSS plans are implemented through general education and are not subject to the provisions of the IDEA and Rule 51. [SOF 26]

Summary and Conclusions

The Student's IEP describes how the Student's progress toward annual goals will be measured, when periodic reports on the progress the Student is making toward meeting the annual goals will be provided, and ensuring periodic reports on progress are provided to the parents. [92 NAC 51-007.07A4 and 007.02] The

District and Parents both provided progress reports provided to the Parents in a timely manner in accordance with the IEP.

Based on the evidence reviewed, the District implemented the requirements of 92 NAC 51-007.07A4 and 007.02 and **no corrective action** is required.

Issue #4

Whether the District has procedures to ensure students' IEPs are developed to include goals, special education, related services and supplementary aids and services to meet their needs. [92 NAC 51-004.02; 007.07A2; 007.07A5; and 007.07A8]

92 NAC 51-004.02 states:

004.02 *The school district or approved cooperative shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.*

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; and*

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 supplemental 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: *To be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and*

007.07A5c: *To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5.*

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 District's alleged system limitations preventing the inclusion of language goals within the IEP raise concerns about potential systemic barriers hindering individual support for students with diverse needs. [Parents' letter of complaint received February 26, 2024]

District Response

The District acknowledges the problem regarding separating MTSS plans and IEPs. As soon as the District fulfills requirements, including staff training, the District's procedures will be updated in such a way that complaints like this do not happen again. [District's letter of response dated March 18, 2024]

Investigative Findings

The District maintains that procedures are in place to ensure students' IEPs are developed to include goals, special education, related services, and supplementary aids and services to meet their needs. [District Response to Complaint] However, the District currently uses a dual team process that results in some eligible students having both an IEP (and IEP team) and an MTSS plan (and team). [SOF 26] The MTSS Plans for these students do not ensure FAPE because they are not connected with the students' IEPs, do not provide the protections of the procedural safeguards and are considered general education interventions. [SOF 26 and Interviews with District staff]

The District acknowledges that the dual process is not compliant with the IDEA and Rule 51. [SOF 26] Current procedures have been revised to ensure compliance. Training on the updated procedures has been preapproved and will be provided to staff before the end of the 2023-24 school year. [SOF 26; District Documents – Additional Information – Corrective Action Training]

Files for four students were randomly selected from a list of students classified with SLI. The files included information from referral through verification and development and implementation of IEP. The District's dual team process affected one student. [Systemic Documentation for four randomly selected students]

The Student was verified with another Nebraska LEA, under the classification of SLI and an IEP was developed with speech and language goals and also academic goals meeting areas of need according to verification. [Systemic Documentation for four randomly selected students] When the Student transferred to the District, the District adopted the evaluation and verification and committed to provide special education services through PWN provided to the Parents. Then, the District conducted a new MDT verification meeting and an annual IEP meeting. The team verified the Student under the SLI classification and specified the areas of articulation and language. The team developed a new IEP that included articulation and language in the IEP and math and reading through MTSS. [Id.]

Based on new information received in early January, 2024, the District acknowledges that the current dual plan does not comply with the IDEA and Rule 51.

Summary and Conclusions

The IEP is the document through which an eligible student receives FAPE. The District's current dual process does not ensure FAPE for eligible students who have both an IEP and MTSS Plan because MTSS is implemented through general education interventions that are not subject to the policies, procedures and processes of the IDEA and Rule 51.

The current dual process creates systemic noncompliance extending to eligible students who have both an IEP and an MTSS plan. The District now knows that, irrespective of a child's verification and whether the IEP team believes that a student requires specialized instruction in all areas of concern, all interventions should be developed and determined by the IEP team. The District is taking steps to correct their processes.

Based on the findings of the investigation, the District failed to fully implement the requirements of 92 NAC 51- 004.02; 007.07A2; 007.07A5; and 007.07A8. Thus, the following **corrective action is required**.

Corrective Action

IEE (Independent educational evaluation at public expense)

1. The District will provide parents with information about obtaining an IEE at public expense and options to consider so that they are able to select an evaluator(s) to conduct a comprehensive evaluation in the areas of concern.
 - a. Information must be provided no later than May 3, 2024.
 - b. Provide a copy to NDE at the same time the information is provided to the parents.
2. Within 10 calendar days of the Parent's provision of the IEE results to the district, the district must re-convene the IEP team to consider the result of the independent educational evaluation and amend the Student's IEP accordingly.
 - a. The revised IEP and PWN must be provided to NDE within 5 calendar days of the date of the IEP meeting.
3. By May 31, 2024, the District will identify all students who have been included in the current dual system and have both an IEP and an MTSS plan.

- a. The District will notify the parents of all affected students and schedule IEP team meetings to review and revise the affected student's IEPs to bring them into compliance.
 - i. The District will provide a list of the affected students to NDE.
 - ii. The District will provide a copy of the notification sent to NDE at the same time it is provided to parents.
 - iii. IEP revisions should be completed by October 1, 2024.
- b. The District will make the parents of affected students aware of the protections available through the procedural safeguards and the parents right to utilize the provisions for dispute resolution.
- c. By October 15, 2024, NDE will request 10 files of students impacted by the dual system to verify compliance.

Review of Policies and Procedures

Issue 1 and 4:

1. The District will review and revise Child Find procedures to correct the noncompliance associated with the current dual process and ensure provision of all aspects of the procedural safeguards, including the provision of PWN.
2. The District will provide NDE with the revised procedures by August 1, 2024.

Issue 2 and 4:

1. The District will review and revise all policies and procedures to correct the noncompliance associated with the current dual process and ensure that, for all eligible students, education in all areas of concern, irrespective of disabling classification, will be developed, determined, implemented and overseen by the IEP team including protections of the procedural safeguards, including the provision of PWN.
2. The District will provide the revised procedures to NDE by August 1, 2024.

Training

1. Before the start of the 24-25 school year, the District shall conduct in-person training with all certified special education staff that covers the topics listed below.
2. The training materials must be approved by NDE two calendar weeks prior to the training.
3. The district must provide NDE with copies of the sign-in sheets or other evidence of attendance, the calendar day following the conclusion of the training.

Child Find

1. Rule 51 and District policies, procedures and processes for conducting Child Find.
2. General Evaluation Requirements of 92 NAC 51-006.02.
3. LEA assessment of a parent's referral for evaluation and plan for implementing the general evaluation requirements.
4. Individualized documentation of Child Find including meeting notes, request for permission to evaluate with sufficient detail, and when and how to provide detailed and sufficient PWN.
5. Drafting detailed PWN to reflect what occurred at the meeting.

MTSS and Special Education

1. How can MTSS procedures be used with the IEP process during child find and for a student who is eligible for special education?
2. What are the requirements under the IDEA if these procedures are used, including application of the procedural safeguards.

PWN

1. When must PWN be provided?
2. What are the required elements included in PWN?
3. PWN necessarily includes both proposals and refusals.
4. Detail and specificity required for PWN.

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:

Darsha Pelland, Complaint Specialist
Abbey Cron, Complaint Specialist
NDE Office of Special Education
nde.speddr@nebraska.gov