

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.02
Complaint Investigators: [REDACTED]
Date Complaint Filed: August 12, 2021
Date of Report: [REDACTED]

Issues Investigated

1. Did the District develop the Student's IEP in accordance with 92 NAC 51-007.07, and more specifically meet the following requirements:
 - a. Did the Student's IEP team determine that the Student would take alternative assessments and provide short-term objectives as required by 92 NAC 51-007.07A3?
 - b. Did the District provide a description of how the Student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the Student is making toward meeting the annual goals will be provided, as required by 92 NAC 51-007.07A4?
 - c. Did the District provide a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the Student on State and districtwide assessments, as required by 92 NAC 51-007.07A7?
 - d. Did the District provide appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills, and provide the transition services, including courses of study, needed to assist the Student in reaching those goals, as required by 92 NAC 51-007.07A9a?
 - e. Did the District consider the use of positive behavioral interventions and supports to address behavior which impedes the learning of the Student or the learning of other students in accordance with 92 NAC 51-007.07B3?
 - f. Did the IEP Team review and revise the IEP, as appropriate, to address information about the Student provided by the Parents, including the Student's anticipated needs or other matters in accordance with 92 NAC 51-007.10?
2. Did the District include the required members of the multidisciplinary evaluation team (MDT) and the Individualized Education Program (IEP) team when making decisions regarding the Student's needs as required by 92 NAC 51-003.41 and 92 NAC 51-007.03?

3. Did the District comply with the disciplinary requirements for any removal of the Student from the current educational placement for ten or more school days in the same school year, as required by 92 NAC 51-016?
4. Did the District provide prior written notice (PWN) to the Parents a reasonable time before the District refused to initiate or change the identification, evaluation or educational placement, or the provision of a free appropriate public education (FAPE) to the Student, as required by 92 NAC 51-009.05A?
5. Did the District provide a Free Appropriate Public Education (FAPE) to the Student in accordance with 92 NAC 51-003.24?

Information Reviewed

From the Parent

- Complaint received by the NDE on August 12, 2021
- Suspension letter dated April 9, 2021
- Emergency Exclusion School Letter dated April 16, 2021
- Office Clinic Notes dated 4/23/21
- Letter to complaint investigator dated August 25, 2021
- Email to complaint investigator dated August 16, 2021
- Email to complaint investigator dated September 20, 2021
- Police report dated April 9, 2021
- Student Graduation Plan
- Multidisciplinary Evaluation Team MDT Report dated October 29, 2019
- Progress Report dated May 20, 2021
- IEP dated May 6, 2021
- Student timeline from 2008 to June 16, 2021
- Letter to special education director dated June 7, 2021
- Letter to special education director dated June 14, 2021
- Psychiatric Diagnostic Evaluation page 12 of 18 dated April 9, 2021
- Audio phone conversation with principal dated April 12, 2021

From the School District:

- Letter of Response dated September 4, 2021, with the following attachments:
 1. Statement of Special Education Director
 2. Student IEP dated May 6, 2021
 3. Notes from IEP Meeting on May 6, 2021
 4. Notice of IEP Meeting dated April 28, 2021
 5. Notice of IEP Meeting dated April 28, 2021
 6. MDT Report dated April 27, 2021
 7. MDT Report dated October 29, 2019

8. Prior written notice dated April 28, 2021
9. Prior written notice dated May 7, 2021
10. Notice and Request for Consent to Evaluate dated April 20, 2021
11. Documents related to Student's Emergency Exclusion
12. Documents related to Student's Assessment and Evaluation
13. Progress Report dated May 20, 2021
14. Notice of IEP Meeting dated August 25, 2021
15. Attendance and Disciplinary Records
16. Board Policy 6010
17. Board Policy 6030
18. Communications with Complainant
19. Behavior Plan
20. Email from school district attorney dated September 22, 2021, with the following information:
 - a. Text messages dated May 14, 2021
 - b. Notice of Meeting dated August 25, 2021
 - c. IEP dated September 9, 2021
 - d. Prior written notice dated September 14, 2021

Introduction

Pursuant to 92 NAC 51-009.11B5, the Nebraska Department of Education (NDE), Office of Special Education, is required to resolve complaints alleging violations of the Individuals with Disabilities Education Act (IDEA) that have occurred not more than one year prior to the date the complaint is received.

The complaint was filed on behalf of the Student whose Parent alleged IDEA violations. To conduct this complaint investigation, an outside investigator was used along with a complaint investigator with the NDE Office of Special Education. The documents received from the Parent and the School District were reviewed. A phone interview with the Parent occurred on September 20, 2021. A phone interview with the special education director and the District's legal counsel occurred on September 21, 2021.

This investigation is limited to a review of alleged IDEA violations that occurred not more than one year prior to August 12, 2021, the date the complaint was received by the NDE. Any facts that are discussed that occurred outside the one-year time period for this investigation are provided for context purposes only.

Finding of Facts

1. The Student is 17 years old, in the 11th grade, and receives special education services under the disability category of Emotional Disturbance (District Attachment 2 and 6).
2. The Student was evaluated at the Parent's request in September 2019 due to difficulties with attention. The evaluation team determined the Student was not eligible for special education services (District Attachment 7).
3. On April 9, 2021, the Student made a "hit list" containing several students' names while in class and informed students of the list.
 - a. Several students informed the teacher about the "hit list."
 - b. The teacher retrieved the "hit list" from the trash can where the Student had tossed it and provided it to administration.
4. The Parent was informed by a letter dated April 9, 2021:
 - a. The Student was suspended out of school for the week of April 12, 2021.
 - b. The Student made threats that could be considered dangerous to the safety and well-being of other students.
 - c. The Student referenced to a "hit list" which the teacher recovered with a list of student names on it.
 - d. While suspended, the Student was not allowed to be on any District grounds or events.
 - e. During the suspension, the School continued to investigate to determine if further action was necessary.
 - f. A possibility existed that the Student could be reassigned to the alternative education program, expelled until proof that the Student was not a threat to self or others, or expulsion for the remainder of the school year (District Attachment 11).
5. By letter dated April 16, 2021, the Parent and the Student were informed of the following information:
 - a. The Student was excluded from school on an emergency basis because the Student "presents a clear threat to the physical safety of [Student] and others."
 - b. The Student was not allowed to return to school until a licensed mental health professional provided assurance that the Student did not pose an imminent threat to the health or safety of the school community or would not be so disruptive so as to endanger the rights of other students to pursue an education.
 - c. The School was willing to work with the Parent and pay for a mental health evaluation.
 - d. The School would make every attempt to minimize the time the Student was excluded from school.

- e. If the Student was excluded from School for more than five days, the Parent may request a hearing to challenge continued exclusion.
 - f. The hearing procedure for considering the extension of an emergency exclusion was attached to the letter. (District Attachment 11)
- 6. By email to the District dated Friday, April 16, 2021, the Parent provided the District with a psychologist's evaluation dated March 20, 2021 and stated that the evaluation and the MDT report dated 10/29/19 should be sufficient to determine that the Student is eligible for special education (District Attachment 18).
 - a. The psychologist's evaluation was considered by the MDT at the meeting on April 27, 2021 and was attached to the MDT Report (District Attachment 6).
- 7. On April 20, 2021, the Parent and District staff spoke regarding conducting an evaluation of the Student. Based on the discussion, the District emailed a Notice and Consent for Initial Evaluation to the Parent and informed the Parent that the District proposed to conduct a multidisciplinary evaluation of the Student to determine if the Student qualifies for special education services, based on the Parent's request (District Attachment 10 and 18).
- 8. The Parent signed the consent for an evaluation and provided it to the District on April 22, 2021 (District Attachment 18).
- 9. A Notice of Meeting dated April 20, 2021 to review the Multidisciplinary Team (MDT) report was provided to the Parent for a meeting scheduled April 27, 2021 (District Attachment 5).
- 10. The District received a private psychiatric mental health nurse practitioner's Office Clinic Notes dated April 23, 2021 from the Parent which stated:
 - a. The Student saw the psychiatric mental health nurse practitioner on April 9, 2021, the same day as the "hit list" incident.
 - b. The Student was not a threat to others, and was not a danger to self or others.
 - c. There were concerns that the Student had been denied an IEP for so long, given all the diagnoses and concerns that the School had.
 - d. Alternative education was not a solution because it would not meet the Student's special education needs.
 - e. The Student was angry because the Student felt picked on by others. How the Student handled the situation was not appropriate but not harmful.

- f. The nurse practitioner had no concerns for the Student to return to school.
- 11. On April 23, 2021, the principal left a phone message for the Parent stating that the Student could return to school on Monday, April 26, 2021, as the Parent had provided the requested information (Parent Interview).
- 12. Although the Student was allowed to return to school on April 26, 2021, the Parent determined that the Student would remain at home until after the MDT meeting scheduled for April 27, 2021. The Student returned to school on April 28, 2021. (District Response; District Attachment 18; Parent Interview).
- 13. The Student was excluded from school for ten school days:
- 14. Four-day suspension from April 12 through April 15, 2021; and
 - a. Six-day emergency removal from April 16 through April 23, 2021. (District Attachment 11 and 15)
 - i. An MDT meeting was held on April 27, 2021 (District Attachment 6).
 - ii. Participants at the meeting included:
 - iii. Parent
 - iv. Stepparent
 - v. Special education director
 - vi. 504 coordinator/teacher
 - vii. School counselor
 - viii. Special education teacher
 - ix. School counselor
 - x. School psychologist
- 15. The MDT report dated April 27, 2021 provided the following information:
 - a. Summary of data obtained;
 - b. Verification Statement of need for special education services.
 - c. Purpose of Evaluation/Referral Information
 - d. Background Information
 - e. Present Level of Academic Achievement and Functional Performance
 - f. Evaluation and Assessment Results, including results from the 2019 MDT Report
 - g. A private psychologist evaluation dated March 30, 2021 shared by the Parent which included the following information:
 - i. Results of Conner's Comprehensive Behavior Rating Scale
 - ii. Results of Autism Spectrum Rating Scales
 - iii. Results of Personality Assessment Inventory – Adolescent
 - iv. Results of Millon Adolescent Clinical Inventory – II

- v. Overview of sources of information
 - vi. Diagnoses
 - vii. Impression
 - viii. Plan
- h. Information shared by the Parent, including:
 - i. Information from the Student's counselor and medical provider
 - j. Parent concerns regarding behaviors and academics
 - k. The team determined the Student was eligible for special education services as a student with an Emotional Disturbance as the primary disability.
- 16. The Student was diagnosed with Autism and ADHD, which the team determined would be considered secondary verifications.
 - a. All MDT participants indicated they were in agreement with the MDT decision. (District Attachment 6)
 - b. On April 28, 2021, the Parent was provided Prior Written Notice (PWN) by email that informed the Parent:
 - c. The MDT team proposed that the Student qualifies for special education and needs specialized instruction.
 - d. The Student is eligible for special education services as a student with an Emotional Disturbance.
- 17. Significant consideration was given to the possible verifications of Autism and Other Health Impairment (OHI), but the team determined that Emotional Disturbance is currently the primary disability.
- 18. Other factors relevant to the District's proposal included the discussion that occurred for the Student's reentry to the school environment prior to the IEP meeting scheduled for May 6, 2021, and the plan that was established for the Student's reentry. (District Attachment 8 and 18)
 - a. A Notice of Meeting dated April 28, 2021 to develop an Individualized Education Program (IEP) was provided to the Parent for a meeting scheduled May 6, 2021 (District Attachment 4).
 - i. An IEP was developed at a meeting held on May 6, 2021 (District Attachment 2; District Staff Interview).
 - ii. Participants at the meeting included:
 - iii. Parent
 - iv. Student
 - v. Regular education teacher
 - vi. Special education teacher
 - vii. Special education director
 - viii. School psychologist
 - ix. School counselor

- x. Advocate invited by the Parent
19. The IEP dated May 6, 2021 provided the following:
- a. The team found that the Student's behavior impeded learning and addressed the consideration of the use of positive behavioral interventions and strategies by stating that "[t]he team will consider writing a behavior plan to support [Student] and [Student's] behavioral needs so [Student] can have consistent redirection and consequences if needed."
 - i. The team developed a behavior plan for the Student:
 - 1. The Student is allowed two 5-minute break periods per academic school day.
 - 2. The Student must inform the teacher of the need for a break and report to the skills classroom, front office, principal, or activities director's office.
 - 3. The Student will be supervised during the break and return to the academic setting after five minutes.
 - 4. If the Student requires more than two breaks throughout the school day the Parent will be notified and the Student may be sent home under parent discretion.
 - 5. If the Student becomes overly distracting during class the Student will be removed to a less distracting environment in the office.
 - 6. Consequences may be given if behavior does not follow the school handbook.
 - 7. Consequences may entail detentions with the teacher the Student earns a detention from.
 - 8. Behavior will be reported to the Parent biweekly via phone or text. (District Attachment 19)
 - b. Progress will be recorded and shared periodically through progress reports, letters, or phone calls. Review dates include 5/20/21, 10/15/21, 12/17/21 and 3/11/22.
 - c. The Student will receive instruction in the regular education classroom with accommodations and modifications.
 - d. The Student may receive post-secondary planning assistance from a high school resource teacher.
 - e. The Student will take other career awareness assessments and gain information about post-secondary options with grade level peers.
 - i. The District acknowledges that it was unable to engage in comprehensive transition assessment. (District Response)

- f. Three goals were developed:
 - i. Goal 1: Improve on-task behaviors in the general classroom setting from a baseline score of 47% to 55% of the time during a 15-minute period;
 - ii. Goal 2: Reduce non-compliance across all classroom and educational settings from a baseline percentage of 72% to an average of 50% intervals or less, both across all classroom and educational settings.
 - iii. Goal 3: Utilize positive self-talk and coping strategies to handle stressful situations or work demands in which the Student exhibits anxious or withdrawn behavior by maintaining positive emotional regulation for the entirety of the classroom period in all classroom and educational settings. The Student will improve from a baseline score of maintaining a positive attitude from 60% of time to 85% of time as measured by classroom teachers.
- g. Measurement of the three goals is to occur by evaluation procedures/implements including teacher observation and classroom behavior observation (District Attachment 2).
- h. A post-secondary goal identified the Student's education/training goal to attend a trade school for construction and the Student's employment goal to be a frame worker or carpenter.
 - i. The District acknowledges that the transition goal and services were insufficient in light of its obligations.
 - 1. The Student's transition goals only reflected the Student's personal goals for postsecondary employment and education.
 - 2. The IEP did not include measurable goals that would coincide with the Student's goals and permit the District to ascertain the Student's progress in the area of transition.
 - 3. The IEP provided only limited, general services and activities to facilitate the Student's progress toward transition goals. (District Response).
- i. The Course of Study set forth under Post Secondary Goal 1 provides that:
 - i. The Student's course of study is based on meeting graduation requirements.

- ii. The Student is enrolled in all general education classes and will be placed in one resource class consisting of skills development.
 - iii. The Student's class schedules could change if passing grades are not received in identified current classes.
 - iv. The Student's anticipated graduation date is May 2023 upon completion of 240 credits.
 - v. Due to the Student's severe credit issue, the Student is not currently on track to graduate on time and will not graduate with the cohort group.
 - j. The modifications and accommodations to be provided to the Student included:
 - i. Individual or small group instruction (Skills Class)
 - ii. Directions given in small distinct steps
 - iii. Tests/quizzes read aloud in alternate setting
 - iv. Lessened options for multiple choice tests/quizzes
 - v. Access to fidgets
 - vi. Access to resource room for two 5 minute breaks a day
 - vii. Preferential seating
 - k. "Yes" was marked that the Student will participate in regular state and district wide assessments.
 - i. "No" was marked that the Student will participate in regular state and district wide assessments with accommodations.
 - ii. "No" was marked that the Student will participate in state and district wide approved alternate assessment. (District Attachment 2).
 - l. Extended school year services were considered by the IEP team but deemed unnecessary.
20. Between May 7, 2021 and May 20, 2021, neither the Student nor any other students in the District participated in state or district assessments. District Staff Interview.
21. On May 7, 2021, the Parent was provided PWN informing the Parent that:
- a. The team determined that the Student is eligible for special education services as a student with an Emotional Disturbance.
 - b. The Student's diagnosis of Autism and ADHD are considered as secondary verification.
 - c. The District proposes the action because the Student is showing emotional needs due to anxious and impulsive behavior.
 - d. The Student will need supports by classroom teachers and the special education teacher.

- e. Staff will help guide supports and services for the Student.
 - f. Student and Parent input contributed to the District's proposal to provide the Student special education services. (District Attachment 9).
22. The Student's IEP was implemented from May 7, 2021 through May 20, 2021, the last day of school (District Staff Interview).
23. On May 14, 2021, the special education teacher texted the Parent regarding an apparent incident involving the Student which made the Student sad.
- a. The special education teacher used various tactics to assist the Student but the Student was unwilling to discuss the matter with the special education teacher.
 - b. The Parent replied by text to the special education teacher and stated it is best sometimes to just leave the Student alone before the Student becomes upset.
 - c. The Parent informed the special education teacher that an incident occurred during lunch with another student and that it should be monitored.
24. A Progress Report dated May 20, 2021, was provided to the Parent. The three IEP goals were set forth with comments that the Student's "IEP was held on May 6th. Therefore, there is not enough time to assess progress on the baseline goal in the area of [time-on-task, noncompliance, emotional regulation]. We will continue to work on the goal as stated in the IEP and will assess and report [Student's] progress in the fall."
25. On May 28, 2021, the Parent received a letter from the District stating that the Student will not graduate with peers (Parent interview).
26. On June 11, 2021, the Parent emailed the special education director:
- a. The Parent was concerned that the Student was not placed in summer school, as identified on the Student's graduation plan.
 - b. At the IEP team meeting the Parent understood that graduation would not be an issue for the Student, but the Parent has since received a letter stating that the Student "is currently off track to graduate due to academic deficiencies acquired during the 2020-2021 school year" and a plan needs to be developed.
 - c. The Student has a current plan that lists recovery for summer school 2021 and 2022 and during 8th period senior year.
27. The Parent listed questions and requested a response by June 18, 2021. (District Attachment 18)
- a. On June 11, 2021, the special education director responded to the Parent's email received earlier that day and stated that:

- b. The Student is afforded extra protections regarding graduation/credits that the IEP team can address and make decisions as a team.
 - c. During the IEP meeting the team discussed many options regarding the Student's schedule and the classes for the upcoming school year can be discussed with the high school counselor.
 - d. During the IEP meeting the team discussed accommodations that could be considered, including a modified grading scale, but the team made no decision regarding this accommodation. District Attachment 18.
28. On June 14, 2021, the Parent emailed the special education director and stated that the Parent was extremely concerned that the Student was not placed in summer school.
- a. The Parent attached a copy of a graduation plan received on February 8, 2021 which states the Student would attend summer school in 2021 and 2022, and provided that the Student would complete two classes during summer 2021.
 - b. The IEP provides that the Student is not on track to graduate due to severe credit issues.
 - c. The Parent asks how the Student remediates severe credit issues other than through summer school and to be successful the Student requires additional learning time.
 - d. The Student already missed two weeks of summer school support.
 - e. The Parent requested a response by June 18, 2021. (District Attachment 18)
29. On June 15, 2021, the Parent emailed the special education director and requested summer school for the Student, which the Parent indicated had been requested in the previous emails. The Parent requested a response by June 18, 2021. (District Attachment 18)
30. On June 15, 2021, the special education director emailed the Parent recognizing the Parent has additional questions, suggested that a meeting be scheduled to discuss those questions, and requested a time to meet. (District Attachment 18)
31. A Zoom meeting with the Parent and District staff was held on June 17, 2021 during which summer school and the graduation plan were discussed (District Attachment 18; Parent Document; District Staff Interview).
32. On June 17, 2021, the special education director emailed the Parent and asked that the Parent schedule a meeting with the school counselor so that the Student's schedule will be ready for the start of the school year.

The next step will be to hold an IEP meeting early in the school year so that it can be updated to support the Student during the year (District Attachment 18).

33. On August 5, 2021, the parent emailed the special education director regarding various classes in which the Student had not been successful and asked why the Student must take another year of the same subjects. The Parent asked that since the Student has an IEP that the class schedule be reviewed and adjusted to meet the Student's abilities (District Attachment 18).
34. The special education director responded to the August 5, 2021 on the same day and indicated that there were several items to discuss at the upcoming IEP meeting in the fall. The best practice will be for the IEP team to make an individualized plan to support the Student and help the Student meet graduation requirements (District Attachment 18).
35. On August 9, 2021, several emails were exchanged between the Parent and the special education director:
 - a. The Parent asked why the Student was required to meet the standard curriculum requirements.
 - b. The Parent asked about the Student's IEP transition goals.
 - c. The Parent asked whether there will be any grading/schoolwork adjustments in any of the classes as discussed.
 - d. The special education director referred the Parent to the Student's IEP for the transition plan, which could be further discussed at the next IEP meeting. (District Attachment 18)
36. On August 10, 2021, the special education director emailed the Parent indicating that it would be best to have a conversation face-to-face to discuss the Student's plan during the next IEP meeting and make updates as the team feels is appropriate (District Attachment 18).
37. An IEP meeting was held on September 9, 2021, and the Student's IEP was revised.
 - a. In the area of Postsecondary Transition Plan:
 - i. Information was gathered from two assessments filled out by the Student on August 25, 2021.
 - ii. The summary of findings from the assessments showed that the Student would like a job in architecture and construction.
 - iii. The Postsecondary Goal for Education/Training provides that after graduating from high school, the Student will receive on-the-job training at a construction company.

- iv. COPS assessment and Career Cruising were identified as the two transition services for the Student to facilitate movement from high school to postsecondary activities.
- v. The Postsecondary Goal for Employment provides that after high school, the Student will have a full time job within the field of construction.
- vi. The Courses of Study section provides an overview of the credits needed, and the credits completed to meet high school graduation requirements, and the classes to be taken during the 2021-2022 school year.
- vii. The projected graduation date is identified as May 2023.
- b. Two goals were added to address the Student's postsecondary goal of working in the construction field.
 - i. The Student will demonstrate the ability to complete a task within a given time frame and communicate effectively if the Student needs assistance with 80% accuracy on 4 out of 5 classroom observations.
 - ii. The Student will complete the Reading Comprehension, Math and Construction Aptitude Test with 80% accuracy across three consecutive trials.
- c. An additional behavioral goal was added:
 - i. The Student will refrain from technology violations consistent with the high school's handbook from a baseline of 3 violations in a school year to 0 violations on the Student's computer for the 2021-2022 school year.
- d. The IEP team amended the Assessment Participation portion of the IEP to reflect that the Student will participate in regular state and district wide assessments with accommodations.
 - i. Alternate testing location
 - ii. Directions read to the Student
 - iii. Time to take a break
 - iv. Access to a fidget
 - v. Access to the skills room
 - vi. Preferential seating

38.A PWN was provided to the Parent on September 14, 2021.

Issue # 1

a

Did the District develop the Student's IEP in accordance with 92 NAC 51-007.07, and more specifically meet the following requirements:

- a. Did the Student's IEP team determine that the Student would take alternative assessments and provide short-term objectives as required by 92 NAC 51-007-07A3?

92 NAC 51-007.07A3 states:

007.07A *The IEP shall include:*

007.07A3 *For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.*

Allegations/Parent's Position:

The District failed to list short-term objectives for each of the Student's goals on the IEP and failed to discuss a curriculum or learning/training plan.

District's Response

The obligation to list short-term objectives is inapplicable to the Student as the Student is not taking alternative assessments aligned to alternate achievement standards

Investigation Findings

In this case, the IEP team determined that the Student will participate in regular assessments, as the IEP is marked "yes" that the Student will participate in regular state and district-wide assessments. The IEP was marked "no" that the Student will participate alternate assessments (Fact 19).

The IEP team determined that the Student will receive instruction in the regular education classroom with accommodations and modifications (Fact 19).

The Student's May 6, 2021, IEP includes a Course of Study based on meeting graduation requirements (Fact 19).

Summary and Conclusions

An IEP must describe the special education and related services that will be provided so that a child may advance appropriately toward attaining the annual goals and, when possible, be involved in and make progress in the general education curriculum. 20 USC 1414 (d)(1)(A)(i)(IV). The IDEA does not require that an IEP include a specific curriculum or a learning/training plan; IEPs are not expected to be so detailed as to be substitutes for lesson plans. Virginia Dept. of Educ., 257 IDELR 658 (OCR 1985).

Alternate assessments based on alternate academic achievement standards are designed for students with the most significant cognitive disabilities. The IEP team makes the determination of whether a student can take the regular assessment, with or without accommodations, or whether a student must take an alternate assessment. Further, an IEP must state why a child, even with accommodations, cannot take the regular assessment and why the specific alternate assessment is an appropriate fit for a child. Letter to Anonymous, 54 IDELR 172 (OSERS 2009).

The Student's IEP team did not determine that the Student needs to take alternative assessments. Further, the team determined that the Student will receive instruction in the regular education classroom.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-007.07A3 and **no corrective action** is required.

Issue 1

b

Did the District develop the Student's IEP in accordance with 92 NAC 51-007.07, and more specifically meet the following requirements:

- b. Did the District provide a description of how the Student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the Student is making toward meeting the annual goals will be provided, as required by 92 NAC 51-007.07A4?

92 NAC 51-007.07A4 states:

007.07A The IEP shall include:

007.07A4	<i>A description of how the child's progress toward meeting the annual goals described in 92 NAC 51-007.07A2 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.</i>
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Allegations/Parent's Position

The District failed to provide data to determine success or lack of success on each of the Student's IEP goals in the Progress Report dated 5/20/21.

District's Response

The Student's IEP provides a description of how the Student's progress toward meeting the annual goals will be measured. The IEP also provides a description of when periodic reports on progress the Student is making toward meeting the annual goals will be provided.

Investigation Findings

The Student's IEP identified that progress will be recorded and shared periodically through progress reports, letters or phone calls. The review dates of 5/20/21, 10/15/21, 12/17/21 and 3/11/22 are set forth in the IEP (Fact 19). A Progress Report dated May 20, 2021 was provided to the Parent and the report that there had been insufficient time to assess the Student on the three goals identified in the IEP (Fact 24).

The Parent was informed by text from the special education teacher of an incident on May 14, 201 regarding the Student appearing sad and the interventions that were attempted (Fact 23).

Summary and Conclusions

The IDEA requires the provision of written information to parents about students' progress toward IEP goals and objectives and establishes the parental right to receive reports about their child's progress in special education. Among the required disclosures that must be contained in the IEP is a description of 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.

While the District provided a description of how the Student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the Student is making toward meeting the annual goals will be provided, and informed the Parent by text of an incident on May 14, 2021, the Progress Report dated May 20, 2021 failed to provide the Parent with any information regarding the Student's progress towards the annual IEP goals.

Corrective Action

Based on the information discussed above, the District failed to implement the requirements of NAC 51-007.07A4 and **corrective action is required**.

1. The District shall review and revise, if necessary, the policies, procedures and practices regarding the progress report requirements. Information regarding the sufficiency of the policies, procedures, and practices, or changes must be sent to Theresa Hayes for review and approval. Any

changes must be approved by the local school board after being approved by NDE.

2. The District shall develop and provide training to special education staff at the high school regarding progress report requirements and the information that must be collected and reported to parents in progress reports.
3. The training and trainer(s) must be approved by Theresa Hayes two weeks prior to the scheduled training.
4. The District must provide Theresa Hayes with copies of the training materials and handouts used and participate sign-in sheets at the conclusion of the training(s).

Issue 1

C

Did the District develop the Student's IEP in accordance with 92 NAC 51-007.07, and more specifically meet the following requirements:

- c. Did the District provide a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the Student on State and districtwide assessments, as required by 92 NAC 51-007.07A7?

92 NAC 51-007.07A7 states:

007.07A *The IEP shall include:*

007.07A7	<i>A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; and if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why.</i>
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Allegations/Parent's Position

The accommodations in the Student's IEP failed to identify how and when the accommodations would be used.

District's Response

The requirements of 92 NAC 51-007.07A7 do not apply to the Student. The team considered, but rejected as unnecessary, the use of individual accommodations for regular state and district wide assessments.

Investigation Findings

The Student's May 6, 2021 IEP provides that the Student will participate in regular state and district-wide assessments and further provides that the participation will be without accommodations (Fact 19).

Between May 7, 2021 and May 20, 2021, no students within the District participated in state or district assessments (Fact 20).

The IEP team amended the Student's IEP on September 9, 2021, to provide that the Student will participate in regular state and district wide assessments with accommodations, and identified the accommodations to be provided (Fact 37). A PWN was provided to the Parent on September 14, 2021 (Fact 38).

Summary and Conclusions

Each IEP must contain a statement of any individual appropriate accommodations that are necessary to measure a child's academic achievement and functional performance on districtwide assessments. The IEP team makes the determination of whether a student can take the regular assessment, with or without accommodations. Letter to Anonymous, 54 IDELR 172 (OSERS 2009).

In this case the District initially stated, on the Student's May 6, 2021 IEP, that state and district wide assessments would be administered to the Student without accommodations. On September 9, 2021, the IEP team amended the Student's IEP to reflect that the Student would receive testing accommodations. This correction resulted in harmless error by the District.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-007.07A7 and **no corrective action** is required.

Issue 1

d

Did the District develop the Student's IEP in accordance with 92 NAC 51-007.07, and more specifically meet the following requirements:

- d. Did the District provide appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills, and provide the transition services, including courses of study, needed to

assist the Student in reaching those goals, as required by 92 NAC 51-007.07A9a?

92 NAC 51-007.07A9a states:

007.07 The IEP shall include:

007.07A9 *Beginning not later than the first IEP to be in effect when the child turns 16, or younger if deemed appropriate by the IEP team, and updated annually thereafter;*

007.07A9a *Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills.*

[Allegations/Parent's Position](#)

The District failed to include a transition goal in the areas of education/training, employment and independent living.

The District failed to administer a functional vocational evaluation to the Student to identify the Student's strengths, preferences, interests and needs.

The IEP team failed to discuss the needed transition services and courses of study required by the Student and the IEP failed to include post-secondary annual goals and objectives.

The IEP team failed to discuss transition activities for an 18+ program experience as a possibility for the Student and failed to discuss and plan regarding employment.

[District's Response](#)

The District acknowledges that the transition goals and services included in the Student's May 6, 2021 IEP are insufficient in light of its obligations under 92 NAC 51-007.07A9, and the District is taking immediate and effective action to address the deficiencies.

Investigation Findings

The District acknowledged that it failed to engage in comprehensive transition assessments and that the transition goals and services set forth in the Student's IEP dated May 6, 2021 were insufficient (Fact 19).

The District administered two postsecondary assessments to the Student on August 25, 2021 (Fact 37). At an IEP meeting on September 9, 2021, the Student's IEP was amended to add two goals to address the Student's postsecondary goal of working in the construction field (Fact 37). One goal addresses task completion, and the second goal addresses completing an aptitude test (Fact 37).

Summary and Conclusions

Transition services consist of a coordinated set of activities for a student with a disability and must be designed to be within a results-oriented process, focused on improving the academic and functional achievement of a student to facilitate the student's movement from school to post-school activities. Transition services must take into account a student's strengths, preferences and interests and include instruction, related services, community experiences, the development of employment and other post-school adult living objectives. Where appropriate, transition services must also include acquisition of daily living skills and provision of a functional vocational evaluation. 34 CFR 300.43; 92 NAC 51-003.63.

As with all aspects of special education programming, transition services must be provided to meet the individual needs of each eligible student. Letter to Hamilton, 23 IDELR 721 (OSEP 1995). Specific postsecondary goals must be developed by the IEP team for a student, in light of the unique needs of the student as determined by age-appropriate transition assessments of the student's skills in these areas. Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations, 111 LRP 63322 (OSERS 9/1/11).

The District acknowledges that it failed to meet its transition services obligations when the IEP team developed the May 6, 2021 IEP.

Corrective Action

Based on the information discussed above, the District failed to implement the requirements of 92 NAC 51-007.07A9a and **corrective action is required**.

1. The District shall develop and provide training to special education staff at the high school regarding transition services requirements and the information that must be contained in a student's IEP.

2. The training and trainer(s) must be approved by the NDE Office of Special Education two weeks prior to the scheduled training.
3. The District must provide Theresa Hayes with copies of the training materials and handouts used and participate sign-in sheets at the conclusion of the training(s).
4. The District shall review and revise, if necessary, the policies, procedures and practices regarding transition services requirements.
5. The IEP team shall convene within 30 days of the date of this report to review the Student's IEP dated September 9, 2021 and determine whether the transition plan meets all IDEA requirements, and if not, the IEP shall be amended to do so.
 - a. If the IEP is amended, a PWN shall be provided to the Parent within 10 days of the IEP meeting.
 - b. A copy of the amended IEP and PWN shall be provided to Theresa Hayes within 10 days of the PWN being sent to the Parent.

Issue 1

e

Did the District develop the Student's IEP in accordance with 92 NAC 51-007.07, and more specifically meet the following requirements:

- e. Did the District consider the use of positive behavioral interventions and supports to address behavior which impedes the learning of the Student or the learning of other students in accordance with 92 NAC 51-007.07B3?

92 NAC 51-007.07B3 states:

007.07B *In developing, reviewing, or revising each child's IEP:*

007.07B3 *In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions and supports and other strategies to address that behavior.*

Allegations/Parent's Position

The District failed to include a behavior goal on the Student's IEP, even though the Student exhibited various behaviors related to the Student's disability in the school setting.

The Student's behavior plan was not developed from a Functional Behavioral Assessment (FBA), did not teach the Student how to address the behaviors, and the consequences for behaviors were not individualized for the Student but were based on the school handbook.

District's Response

The primary reason the Student was referred for an evaluation under the IDEA was because the Student's behavior impeded learning or that of others. The IEP team considered the use of positive behavioral interventions and strategies and the team adopted program modifications and accommodations consisting of positive behavioral intervention, strategies and supports for the Student.

Investigation Findings

In the MDT report dated April 27, 2021, the team reviewed the assessments conducted, which included assessments pertaining to the Student's behaviors (Fact 15).

In the IEP dated May 6, 2021, the IEP team developed three goals for the Student, all of which address behavioral issues. Goal 1 addresses on-task behaviors; Goal 2 addresses reducing non-compliance; and Goal 3 addresses utilizing positive self-talk and coping strategies to handle stressful situations or work demands (Fact 19). The IEP team also developed a behavior plan for the Student (Fact 19).

Summary and Conclusions:

The IDEA requires that the IEP team, in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports and other strategies (PBIS) to address that behavior.

The IDEA generally gives IEP teams discretion to determine when a behavioral intervention plan (BIP) is necessary for a student to receive FAPE. The IDEA only explicitly mandates the development of a behavioral intervention plan (BIP) in one circumstance pertaining to discipline. 34 CFT 300.530.

The District considered the use of positive behavioral interventions and supports to address behaviors which impedes the learning of the Student or the learning of other students. The IEP team further developed a BIP for the Student.

Based on the information discussed above, the District implemented the requirements 92 NAC 51-007.07B3 and **no corrective action** is required.

Issue 1

f

Did the District develop the Student's IEP in accordance with 92 NAC 51-007.07, and more specifically meet the following requirements:

- f. Did the IEP Team review and revise the IEP, as appropriate, to address information about the Student provided by the Parents, including the

Student's anticipated needs or other matters in accordance with 92 NAC 51-007.10?

92 NAC 51-007.10 states:

007.10 The IEP team shall revise the IEP as appropriate to address:

- 007.10C *The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;*
- 007.10D *The child's anticipated needs; or*
- 007.10E *Other matters.*

[Allegations/Parent's Position](#)

The Student's IEP team failed to discuss or address Parent concerns during IEP meetings, including issues regarding behavior and impulse control.

[District's Response](#)

The Parent did not present any information or concerns that were not discussed at the May 6, 2021 meeting.

[Investigation Findings](#)

The MDT team reviewed the information provided by the Parent when determining whether the Student qualified for special education and related services (Fact 15). The IEP team received and considered Parent input as it developed the Student's IEP (Fact 19).

[Summary and Conclusions](#)

A district must revise a child's IEP, as appropriate, to address any lack of expected progress toward annual goals; the results of any reevaluation conducted; information about the child provided to or by the parents; the child's anticipated needs; or other IEP-related matters.

The IEP Team addressed information provided by the Parents, including the Student's anticipated needs at both the MDT meeting and the IEP team meeting.

Based on the information discussed above, the District implemented the requirements 92 NAC 51-007.10 and **no corrective action** is required.

Issue #2

Did the District include the required members of the multidisciplinary evaluation team (MDT) and the Individualized Education Program (IEP) team when making decisions regarding the Student's needs as required by 92 NAC 51-003.41 and 92 NAC 51-007.03?

92 NAC 51-003.41 states:

003.41 *Multidisciplinary evaluation team (MDT) means a group of qualified professionals and the parent whose responsibility is to evaluate the abilities and needs of a child referred for evaluation and to determine whether or not the child meets the definition of a child with a disability.*

92 NAC 51-007.03 states:

007.03 IEP Team Participants

007.03A *The school district or approved cooperative shall ensure and document that each IEP team includes the following:*

007.03A1 *The parent of a child with a disability or documentation of 92 NAC 51-007.06D;*

007.03A2 *Not less than one regular education teacher of the child (if the child is, or may be, participating in the general education environment);*

007.03A2a *The regular education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development, review and revision of the IEP of the child, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school*

*personnel consistent
with 92 NAC 51-
007.07A5;*

- 007.07A3 *Not less than one special education teacher, or where appropriate, not less than one special education provider of the child;*
- 007.03A4 *A representative of the school district or approved cooperative who:*
- 007.03A4a *Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;*
 - 007.03A4b *Is knowledgeable about the general education curriculum; and*
 - 007.03A4c *Is knowledgeable about the availability of resources of the school district or approved cooperative;*
- 007.03A5 *An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 92 NAC 51-007.03A2 through 007.03A6;*
- 007.03A6 *At the discretion of the parent or the school district for approved cooperative, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.*
- 007.03A7 *Whenever appropriate, the child with a disability.*

Allegations/Parent's Position

The District failed to include the regional autism coordinator in the evaluation process and in determining the appropriate planning to address the Student's behavior and needed supports

District's Response

The District included the required members of the MDT and the IEP team when making decisions regarding the Student's needs. The regional autism coordinator is not a mandatory member of the Student's IEP team.

Investigation Findings

The District provided the Parent with a Notice of Meeting to review the Multidisciplinary Team (MDT) report (Fact 9). The Parent, stepparent, special education director, 504 coordinator/teacher, school counselor, special education teacher and school psychologist participated in the MDT meeting on April 27, 2021 (Fact 14).

The District provided the Parent with a Notice of Meeting to develop an Individualized Education Program (IEP) (Fact 17). At the IEP team meeting on May 6, 2021, the Parent, Student, a regular education teacher and a special education teacher, the special education director, a school psychologist, a school counselor and a parent advocate participated in the meeting (Fact 18).

Summary and Conclusions

The IDEA does not have additional MDT or IEP team membership requirements for students who have been diagnosed with Autism or other diagnoses. An MDT is required to include professionals qualified to evaluate the abilities and needs of a child and determine if the child has a disability pursuant to the IDEA. 92 NAC 51-003. The IEP team is required to have an individual present who is qualified to interpret the instructional implications of evaluation results. 92 NAC 51-007.03.

In this case the members of the MDT were qualified to evaluate the abilities and needs of the Student and determine if the Student has a disability pursuant to the IDEA. The IEP team consisted of the required membership, included a school psychologist and a special education teacher qualified to interpret the instructional implications of evaluation results.

The District included the required members of the MDT and the IEP team when making decisions regarding the Student's needs. Based on the information discussed above, the District implemented the requirements of 92 NAC 51-003.41 and 92 NAC 51-007.03 and **no corrective action** is required.

Issue #3

Did the District comply with the disciplinary requirements for any removal of the Student from the current educational placement for ten or more school days in the same school year, as required by 92 NAC 51-016?

92 NAC 51-016 states:

016 Disciplinary Removal of Children with Disabilities

016.02 Authority of School Personnel

016.02B *School personnel under Section 016.02 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent these alternatives are applied to children without disabilities) and for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change in placement under 92 NAC 51-016.01).*

Allegations/Parent's Position

The Student was suspended for 14 days for writing the first name of two students on a scrap piece of paper and throwing it away.

District's Response

The District's removal of the Student was for 10 school days and occurred when the Student had not yet been identified as a student with a disability and was not entitled to the protections afforded under 92 NAC 51-016.

Investigation Findings

The Student was evaluated at the request of the Parent in September 2019. The evaluation team determined that the Student was not eligible for special education services at that time (Fact 2).

The Student was suspended for four days from April 12 to April 15, 2021 for writing a "hit list" (Fact 3, 4, 13). The Student was removed for an additional six days

from April 16 through April 23, 2021 through the District's emergency removal process (Fact 5, 13). The Parent was informed that the Student could return to school after the 10th day of removal as the Parent had provided the District with a letter from a medical professional stating that the Student was not a danger to self or others (Fact 10, 11). The Parent determined that the Student would remain at home until after the MDT meeting (Fact 12). The Student returned to school the day after the MDT meeting (Fact 12).

The Parent provided the District with a psychologist's report on April 16, 2021, and requested an evaluation on April 20, 2021 (Fact 6, 7). The District provided the Parent with a Notice and Consent for Initial Evaluation based on that request (Fact 7). The Parent signed and returned the consent for evaluation on April 22, 2021 (Fact 8).

Summary and Conclusions

The IDEA provides specific discipline protections to students with disabilities. When a student on an IEP violates a student code of conduct, the student can be removed to an appropriate interim alternative educational setting, another setting or suspension for not more than 10 consecutive school days in a school year without a change in placement occurring. 92 NAC 51-016.

The IDEA allows the parent of a child who has not been determined to be eligible for special education and related services to assert the disciplinary protections in circumstances where a district has knowledge that the child is a student with a disability before the occurrence of the behavior that precipitated the disciplinary action. 34 CFR 300.534(a).

A district will be deemed to have knowledge that the student has a disability if:

The parent has expressed concern in writing to district supervisory or administrative personnel, or to one of the child's teachers, that the child is in need of special education and related services.

The parent has requested an evaluation of the child.

The child's teacher, or other district personnel, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education or to other district supervisory personnel. 34 CFR 300.534 (b); 92 NAC 51-016.06B.

In this case, the Student was removed from the school setting through suspension and the District's emergency removal for 10 consecutive school days during the 2020-2021 school year. The Student was evaluated in 2019, but was not determined eligible for special education services at that time. The Parent

asked the District to evaluate the Student on April 20, 2021, and signed consent to evaluate on April 22, 2021, while the Student was in an emergency removal, which ended on April 23, 2021.

The District had knowledge that the Student was a student with disability when the Parent requested an evaluation for the Student on April 20, 2021. However, the Student was not removed from school for more than 10 consecutive school days after April 20, 2021, and the disciplinary provisions that are applicable once a student is removed for disciplinary reasons beyond 10 days in a school year are not applicable in this instance.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-016 and **no corrective action** is required.

Issue #4

Did the District provide prior written notice (PWN) to the Parents a reasonable time before the District refused to initiate or change the identification, evaluation or educational placement, or the provision of a free appropriate public education (FAPE) to the Student, as required by 92 NAC 51-009.05A?

92 NAC 51-009.05A states:

009.05 Prior Written Notice

009.05A *Prior written notice shall be given to parents of a child with a disability a reasonable time before a school district or approved cooperative:*

009.05A1 *Proposed to initiate or change the identification, evaluation or educational placement of a child or the provision of a free appropriate public education; or*

009.05A2 *Refuses to initiate or change the identification, evaluation or educational placement of a child or the provision of a free appropriate public education to the child.*

Allegations/Parent's Position

The District failed to provide the Parent with PWNs addressing the numerous written requests made to the District, including the provision of summer school.

District's Response

The District provided PWN to the Parent a reasonable time before the District refused to initiate or change the identification, evaluation, or educational placement, or the provision of a free appropriate public education (FAPE) to the Student.

Investigation Findings

The District provided the Parent with PWN on April 28, 2021, after the MDT determined that the Student qualified for special education and related services (Fact 16). A PWN was also provided to the Parent on May 7, 2021, after the May 6, 2021 IEP meeting during which an IEP was developed for the Student (Fact 21).

The Parent had concerns regarding the Student's lack of participation in summer school based on the Student's graduation plan (Fact 25, 26, 28, 29, 33). The special education director responded to the Parent and indicated that the IEP team could discuss options regarding the Student's schedule and classes and a Zoom meeting was held to discuss summer school and the Student's graduation plan (Fact 27, 30, 31, 32, 34, 35, 36).

A distinction must be made between graduation plan's discussion of summer school and extended school year (ESY) services. The graduation plan is not part of the Student's May 6, 2021 IEP (Fact 19). Further, the IEP specifically provides that extended school year services were considered by the IEP team but were deemed unnecessary (Fact 19).

Summary and Conclusions

Pursuant to the IDEA, a district must give parents PWN a reasonable time before it proposes or refuses to initiate or change the identification, evaluation, educational placement or provision of FAPE to a student.

In this case, the District provided the Parent with PWN after the MDT determination of eligibility, and after the development of the IEP. Since the PWN provided to the Parent on May 7, 2021, the District did not propose or refuse to change the identification, evaluation, educational placement or provision of FAPE to the Student through the date the complaint was filed.

Based on the information discussed above, the District implemented the requirements 92 NAC 51-009.05A and **no corrective action** is required.

Issue # 5

Did the District provide a Free Appropriate Public Education (FAPE) to the Student in accordance with 92 NAC 51-003.24?

92 NAC 51-003.24 states:

003.24 Free appropriate public education or FAPE means special education and related services that are provided at public expense, under public supervision, and direction, and without charge; meet the standards of the state including the requirements of this Chapter; include an appropriate preschool, elementary school, or secondary school education in Nebraska and are provided in conformity with an individualized education program (IEP) that meets the requirements of 92 NAC 51- 007.

Allegations/Parent's Position

The Parent alleged the allegations set forth resulted in a denial of a Free Appropriate Public Education for the Student.

District's Response

The District substantially complied with the IDEA requirements and has provided the Student with FAPE. The District recognizes that it has not technically complied with the requirements related to the Student's transition plan, but this issue has only persisted for a brief period of time at the end of the previous school year and the beginning of the 2021-2022 school year. The District is actively working to address this issue and institute appropriate corrective action.

Investigation Findings

Please refer to the Investigation Findings discussed in the previous allegations.

The District implemented the Student's IEP from May 7, 2021 through May 20, 2021, the last day of school (Fact 22).

Summary and Conclusions

Federal and state regulations provide that a free appropriate public education (FAPE) means special education and related services that: 1) are provided at public expense, under public supervision and direction, and without charge to parents; 2) meet the standards of the state educational agency (SEA), including the requirements of the IDEA; 3) include an appropriate preschool, elementary school, or secondary school education in the State involved; and d) are provided in conformity with an individualized education program (IEP). 34 CFR 300.17; 92 NAC 51-007.02.

The U.S. Supreme Court construed the meaning of FAPE in Bd. of Education of Hendrick Hudson Cent. School Dist. v. Rowley, 458 U.S. 176, 198, 207 (1982) and stated: "The statutory definition of 'free appropriate public education,' in addition to requiring that States provide each child with 'specially designed instruction,' expressly requires the provision of 'such ... supportive services ... as

may be required to assist a handicapped child to benefit from special education.' § 1401(17). ..." The U.S. Supreme Court further defined the standard for a FAPE in *Endrew F. v. Douglas County School District*. RE-1, 137 S. Ct. 988 (2017), holding that the educational program for a child with a disability must be one that is "... reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." However, the IDEA does not guarantee any particular level of education and "cannot and does not" promise any particular educational outcome. *Endrew F. v. Douglas County Sch. Dist.* RE-1, 69 IDELR 174 (U.S. 2017) (citing *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982)).

In matters alleging procedural violations, a child did not receive FAPE in those instances where the procedural inadequacies:

1. Impeded the child's right to a FAPE;
2. Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or
3. Cause a deprivation of educational benefit. 34 CFR 300.513.

In this case, the District timely responded to the Parent's request for an evaluation of the Student, and developed an IEP. Although the District failed to fully develop the Student's transition plan, and failed to provide data of progress in the Progress Report dated May 20, 2021, these errors did not deprive the Student of educational benefit or the right to a FAPE. Further, the Parent's opportunity to participate in the decision-making process regarding FAPE was not significantly impeded. The Parent attended both the MDT and the IEP meetings and provided input during both meetings.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-003.24 and **no corrective action** is required.

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:

Theresa Hayes, Complaint Specialist
NDE Office of Special Education
Theresa.hayes@nebraska.gov