

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.12
Complaint Investigator: [Redacted]
Date Complaint Filed: October 19, 2021
Date of Report: December 17, 2021

Issues Investigated

1. Did the District follow the local policies and procedures for conducting an individualized education program (IEP) Team meeting at parent request or when there was an identified change in the Student's anticipated needs as required by 92 NAC 51-004.08A?
2. Did the District take steps to ensure that the Parent was able to participate in IEP meetings in accordance with 92 NAC 51-007.06?
3. Did the District include a statement in the IEP of program modifications or supports to school personnel necessary to enable the Student to advance appropriately toward attaining annual goals in accordance with 92 NAC 51-007.07A5?
4. Did the District follow the requirements of holding a Manifestation Determination meeting, pursuant to 92 NAC 51-016.02E?
5. Did the District revise or update the Student's IEP as appropriate to meet the Student's anticipated needs or other matters pursuant to 92 NAC 51-007.10?
6. 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?

Documents Investigator Reviewed

From the Complainant

- Letter of Complaint dated October 18, 2021; received by the Nebraska Department of Education (NDE) October 19, 2021
- Emails exchanged between the Complainant and District between September 8, 2021 and October 18, 2021, received by NDE October 19, 2021
- Interview, conducted by NDE December 6, 2021
- Classroom [Redacted] messages, received by NDE December 6, 2021

From the School District

- Letter of Response dated November 16, 2021; received by NDE November 16, 2021
- Initial Evaluation Report dated February 15, 2019
- IEP for the Student dated September 30, 2020
- IEP for the Student dated April 7, 2021
- Notice of Meeting dated September 25, 2020, associated with the September 30, 2020, IEP meeting
- Notice of Meeting dated March 31, 2021, associated with the April 7, 2021, IEP meeting
- Amendment to IEP dated September 9, 2021
- Parent Contact Log from October 1, 2020 through November 11, 2021
- Special Education Contact Log from November 30, 2020 through November 11, 2021
- Emails exchanged between the District and Parent within the period of August 16, 2021 through October 18, 2021
- Student Progress Reports for progress towards IEP goals dated December 11, 2020; March 3, 2021; and May 26, 2021
- Behavioral Incident staff notes from August 16, 2021 through September 17, 2021
- Student Attendance Record from the 2021-22 school year
- Prior Written Notice dated April 7, 2021, associated with April 7, 2021, IEP meeting
- School Staff Questionnaires; Received by NDE December 10, 2021

Introduction

The Mother of the Student filed a State Complaint, on behalf of the Student, against the District on October 18, 2021. Pursuant to 92 NAC 51-009.11, the Nebraska Department of Education (NDE), Office of Special Education, must resolve complaints alleging violations of the Individuals with Disabilities Education Act (IDEA) or NDE Rule 51 which are alleged to have occurred not more than one year before the date the complaint was received.

Background

The Student is five-years-old, and eligible for special education services, under the IDEA and NDE Rule 51. The Student attended a District-run Elementary school for two school years, for early childhood education. The Student's family moved from the District to a neighboring school district, however, chose to apply through the Enrollment Option Program to keep the Student at the same school in the District for kindergarten. The Student was accepted to remain in the District by the District's enrollment office, as an Option Student. The Student

began kindergarten in the fall of 2021. Following a one-day suspension of the Student, on September 20, 2021, the Parent withdrew the Student from the District and enrolled the Student in the district in which the family currently resides.

Issue # 1

Did the District follow the local policies and procedures for conducting an IEP Team meeting at parent request or when there was an identified change in the Student's anticipated needs as required by 92 NAC 51-004.08A?

92 NAC 51-008.08A states, in relevant part:

92 NAC 51-004.08A	The school district or approved cooperative shall develop, adopt and have on file with the Nebraska Department of Education current policies, procedures and forms for special education programs for all resident public and nonpublic school children with disabilities, in accordance with all applicable state and federal requirements. Policies and procedures shall govern identification, evaluation and verification, individualized education program, placement (least restrictive environment), confidentiality, procedural safeguards, comprehensive system of personnel development, transportation, and surrogate parents within the school district or approved cooperative.
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Allegations/Parent Position

The Student's Mother contends that the District denied her repeated requests to convene an IEP Team meeting to address her child's special education needs related to the escalating behaviors the Student was exhibiting.

District Response

The District admits it did not follow its policies and procedures regarding a parent's request to hold an IEP Team meeting. The District contends that the Parent requested an IEP meeting on September 7, 2021. The school counselor informed the Parent on September 13, 2021, that the District was in the process of scheduling an IEP Team meeting. The Student's last day of enrollment in the District was September 17, 2021. The District reported that no IEP meeting was held prior to the Student's dis-enrollment and the District did not provide any

information that indicated it provided the Parent with a prior written notice refusing the Parent's request to hold an IEP Team meeting.

Investigative Findings

- The Parent stated in her original letter of complaint that she requested multiple times in email and phone to convene the IEP team.
- The District (Response to Complaint dated November 16, 2021) admits that the Complainant made a request for an IEP meeting on September 7, 2021.
- Email from Complainant to District dated September 7, 2021, states that the Complainant had made a request with a member of school personnel for an IEP meeting to be scheduled, "ASAP" but the Complainant had not yet heard a response to that request.
- Email from District (school principal) to Complainant dated September 8, 2021, indicates that the school team was planning to meet and discuss a plan of support prior to an IEP Team meeting being scheduled.
- The District (school counselor) communicated with the Parent on September 13, 2021 by email that she had heard from the school psychologist that there would be an IEP Team meeting soon.
- The Student received a one-day out of school suspension on September 20, 2021
- The District admits, in its written response to the complaint, that an IEP meeting was not held prior to the Student's last day in the District, which was September 17, 2021. The District did not provide any documentation showing it had sent Parent a Prior Written Notice refusing her request for an IEP Team meeting. (District Response dated: November 16, 2021).

Summary and Conclusions

The Parent made a request to the District to conduct an IEP Team meeting as soon as possible. This is documented in email exchanges from September 7 and September 8, 2021, between the Parent and the District. The District responded that they would meet as a school team first in order to do some problem-solving and develop a plan of support to address the Student's behavioral needs. On September 13, 2021, the District communicated in an email that they were in the process of coordinating an IEP meeting. The Student was suspended on September 20, 2021, for a behavioral incident which occurred on September 17, 2021. Ultimately, the Parent chose to withdraw the Student from the District and enroll the Student in their resident school district.

The District has acknowledged that it did not follow its own policies and procedures for scheduling an IEP Team meeting, when requested by a parent.

Based on the District's letter of response to the complaint, it did not follow its own policy and procedures for parent requests for an IEP Team meeting. The District failed to fully implement the requirements of 92 NAC 51-004.08A. Thus the following **corrective action is required**.

Corrective Action

1. The District must develop and provide training to listed staff at the School the Student attended regarding policies and procedures for responding to a parent's request for an IEP Team meeting
 - a. The content of the training and trainer(s) must be approved by the NDE Office of Special Education two weeks prior to the scheduled training.
 - b. The District must provide the NDE Complaint Investigator with copies of the participant sign-in sheets, including the role of each participant, 10 days after the conclusion of the training(s).
2. Certain staff who work all or part of the time at the School the Student attended must receive training regarding the District's policies and procedures for responding to a parent's request for an IEP meeting. Staff involved in the training should include:
 - a. General and special education elementary and early childhood teachers;
 - b. Principals or individuals who may serve as the representative of the school district who may serve as a representative of the school district on an IEP Team, as described in 92 NAC 51-007.03A4;
 - c. Related service personnel; and
 - d. Any other school personnel who may receive a parent request for an IEP Team meetings.
3. The corrective actions must be completed within 60 calendar days of the receipt of this Letter of Finding.

Issue# 2

Did the District take steps to ensure that the Parent was able to participate in IEP meetings in accordance with 92 NAC 51-007.06A?

92 NAC 51-007.06A states, in relevant part:

92 NAC 51-007.06A The school district or approved cooperative shall take steps to ensure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate

92 NAC 51-007.09E states:

92 NAC 51-007.09E In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the school district or approved cooperative may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

Allegations/Parent Position

The Parent alleges that she contacted the District on several occasions in September 2021 to request an IEP Team meeting to address the Student's ongoing behavioral concerns. The Parent contends that while an IEP meeting was not convened, the District made changes through an IEP amendment without her participation or agreement to not convene an IEP Team meeting to make IEP changes.

District Response

The District's position is that it provided the opportunity for the Parent to participate in all IEP meetings, by ensuring that meetings were scheduled at a mutually agreed upon dates and times. The District contends that the Parent was invited to and attended all scheduled IEP meetings.

Investigative Findings

- The Parents were invited to and attended all scheduled IEP Team meetings, as documented by Notices of Meeting and attendance of meeting records.
- At the April 7, 2021, IEP Team meeting, the IEP Team recommended that the Student required a behavioral intervention plan, however no behavioral assessments were deemed necessary at that time.
- The Student's current IEP includes behavioral strategies including the use of a visual schedule and "first/then" cards.
- District staff completed an amendment to IEP on September 9, 2021, to include some already documented behavioral supports (IEP dated April 7, 2021) including a visual schedule and "first/then" cards. The amendment document also includes the use of additional behavioral supports, such as a punch card to earn preferred activities and items.

The amendment document outlines an accommodation to exempt the Student from the mask requirement, at school, when the student is, "having a melt-down" or during times when the Student is, "angry" or "frustrated."

- The September 9, 2021, IEP Amendment document states, "[Student's Special Education Teacher] spoke with [Father of the Student] via telephone to discuss the option of not having [Student] wear [the Student's] mask while [the Student] was having a melt-down, or during times [the Student] is angry and frustrated."
- Per interview with Parent, a copy of the IEP amendment document was sent home in the Student's sibling's backpack, on either September 9 or September 10, 2021.
- The District did not provide evidence to show that the Parent agreed not to convene an IEP Team meeting to make changes to the Student's IEP.
- The findings from Issue 1 are incorporated here by reference. The finding from Issue 1 most relevant to Issue 2 is "that she requested multiple times in email and phone to convene the IEP team" and the District agreed the parent had requested an IEP Team meeting.

Summary and Conclusions

The District provided appropriate Notice of Meeting to the Parent for all documented scheduled IEP meetings. The student's IEPs document that the Parent attended and provided input in the IEP planning process, for both the September 30, 2020, and April 7, 2021, IEP Team meetings. Based on the Parent's participation in the IEP meetings, the District implemented the requirements of 92 NAC 51-007.06A

While it is true that the District provided appropriate notice for the Parent to participate in all IEP Team meetings, it is the fall 2021 IEP amendment that is at issue. In the fall of 2021, the Parent made documented requests for an IEP meeting, in emails sent to the principal on September 7 and September 8, 2021. On September 9, 2021, the District completed a document indicated it was an amendment to the student's IEP. The amendment outlined additional behavioral supports for the Student and addressed accommodations for masking (due to the Covid-19 pandemic). In the evidence reviewed, there was no documentation of the parent agreeing not to convene an IEP Team meeting prior to changes being made to the IEP. In fact, to the contrary, the Parent made several attempts during this timeframe to request to convene an IEP Team meeting, in order to participate in the behavior planning process for her child. 92 NAC § 51-007.09E states, "In making changes to a child's IEP after the

annual IEP meeting for a school year, the parent of a child with a disability and the school district or approved cooperative may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP."

Based on the absence of a notice of meeting and District documentation, in communication logs and emails with the parent, the record shows that there was not communication with the Parent which led to an agreement between the Parent and the District to not convene a meeting to complete an IEP amendment. On the contrary, the record shows that the Parent requested, in writing, to convene an IEP Team meeting. The District did not provide the Parent the opportunity to agree not to convene an IEP Team meeting.

In addition, the District did not follow proper procedures pursuant to the special education legal requirements on providing appropriate prior written notice related to proposed changes to the offer of a free appropriate public education (FAPE).

92 NAC § 51-009.05-.05A states, "Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative...proposes to initiate or change . . . the provision of a free appropriate public education"

In this case, the District should have worked with the Parent to come to an agreement of whether or not to convene the IEP Team prior to amending the IEP. On both September 7 and 8th, in emails to the District, the Parent specifically requested that an IEP Team meeting be scheduled. On September 9, 2021, the District put together a document indicating it was an amendment to the IEP. It is unclear when the District provided a copy of the amendment document to the parent or how the District communicated these proposed changes to the IEP to the parent. What is clear is that between September 10, 2021 and September 13, 2021, there was miscommunication and confusion about the accommodation for the Student to the district's mask requirement, which was outlined in the amendment document dated September 9, 2021.

The IEP amendment process includes several, required procedural steps, to ensure proper documentation of proposed changes for the IEP. The documentation should include proposed changes to the IEP, an updated copy of the IEP with the amendments included and a prior written notice documenting the changes. If the parent and the district agree to amend the IEP without an IEP Team meeting, there should also be documentation of this agreement. Based on the interview with the Parent, and absence of documentation to demonstrate that the IEP Amendment, updated IEP, and

prior written notice of the proposed changes were provided to the Parent, it is concluded that the District failed to follow the appropriate steps to amend the Student's IEP.

Based on the findings that the parent and district had not agreed to amend the Student's IEP without an IEP Team meeting and the procedural violation of the District not providing prior written notice for the proposed changes to the Student's IEP, the District failed to full implement the requirements of 92 NAC § 51-007.09E and 92 NAC 51-009.05-.05A. Thus the following **corrective action is required**.

Corrective Action

Policies and Procedures

1. The School District must review and revise, if necessary, the policies, procedures, and practices regarding 92 NAC 51-007.09E and 92 NAC 51-009.05 and 009.05A, to ensure proper documentation for an agreement made with parents not to hold an IEP meeting when completing an amendment, appropriate documentation of an IEP amendment, including the IEP amendment, updating the current IEP, providing prior written notice.
2. The District must provide the results of the review of the policies and procedures, or revised policies and procedures to Jo Gunderson for review.
 - a. If a change in policy was required, the District must inform Jo Gunderson the date of the Local School Board Meeting in which the policy change will be discussed. Board action of the policy must be provided to Jo Gunderson no more than 10 days after the date of the meeting.

Training

1. The District must develop and provide training to listed staff at the School the Student attended to review the District policies and procedures for completing an IEP amendment, including appropriate communication with parents of students with disabilities, including agreeing whether to convene an IEP Team meeting to discuss proposed changes. The training must include procedures for completing an IEP amendment, for communicating with parents, and for how to document the three steps in the IEP amendment process: completing the IEP amendment page, revising the current IEP to reflect the changes, and providing prior written notice documenting agreed upon changes.
 - a. Staff involved in the training should include:

- i. General and special education, elementary and early childhood teachers;
 - ii. Principals or individuals who may serve as the representative of the school district as described in 92 NAC § 51-007.03A4; and
 - iii. Related service personnel; and
 - iv. Any other school personnel who serve as members of IEP Teams.
- 2. The content of 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 the NDE Complaint Investigator with participant sign-in sheets, including the role of each participant, 10 days after the conclusion of the training(s).
- 4. The corrective actions must be completed within 60 calendar days of the receipt of this Letter of Finding.

Issue # 3

Did the District include a statement in the IEP of program modifications or supports to school personnel necessary to enable the Student to advance appropriately toward attaining annual goals in accordance with 92 NAC § 51-007.07A5?

92 NAC 51-007.07A5 states:

007.07A A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on the 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; [t]o be involved in and advance in the general education curriculum and to participate in extracurricular and

	other nonacademic activities; and
007.07A5b	To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5.

Allegations/Parent Position

The Parent's position is that school staff were not adequately prepared, trained, or supported to meet the Student's educational needs. Specifically, the Parent expressed concerns about the Student's general education teacher's training and capacity to support her Student's identified special education needs.

District Response

The District's position is that the Student's IEP dated April 7, 2021, adequately addresses the modifications and supports to school personnel necessary to enable the Student to advance toward attaining their annual goals.

Investigative Findings

- The District (principal) communicated in email to the Parent in part that "I hope that [the Student] is able to receive the support and instruction that [the Student] deserves....I know we were unable to meet some of [the Student's] needs due to limited staffing and unavailability of programming that may have benefited [the Student]." (Email dated September 20, 2021).
- Parent stated in an email to the District (principal) that the Parent believes staff do not know the Student and that the Student is just "being passed around to whoever is available."
- The Student's current IEP makes reference that all "Special education staff and providers will collaborate."
- Email from the District (principal) and the Mother of the Student, states that she, "hopes that [the Student] can get the support and instruction that [the Student] deserves at [the Student's] new school."
- The Student was repeatedly removed from the classroom for behavioral concerns, between August 16, 2021-September 17, 2021, the Student's last day of enrollment in the District.

Summary and Conclusions

In the fall of 2021, the Parent voiced concerns to the District (principal) in an email about the Student's classroom teacher's capacity and training to support a student with the disability of Autism, like her Student.

Based on the information provided through the investigation, issues arose regarding the alignment of IEP supports and services. Those issues pertain to 92 NAC§51-007.07A8.

92 NAC 51-007.07 and 07A8 states, "The IEP shall include . . . [t]he projected date for the beginning of services and modifications described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications..."

Modifications and supports for school personnel are addressed in the Student's IEP, stating, "Collaboration between all special education services." However, this statement is not sufficient to describe the intended purpose for the modifications and supports, or the location, frequency and duration which the supports would be provided.

"What is required is that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP." 71 Fed. Reg. 46,667 (Aug. 14, 2006).

Frequency, location, and duration are key details to provide for staff, who are implementing the IEP, and parents, who need to be clear on the services being provided to their child. In addition, in this case the service delivery statement and accompanying grid show no consultative or indirect minutes attached to the statement of, "Special education staff and provider's will collaborate." Thus demonstrating a misalignment between the identified needs and the services prescribed.

Based on the insufficiency and alignment of the IEP to provide frequency, location, and duration on staff and providers collaborating to meet the Student's needs, the District failed to fully implement the requirements of 92 NAC § 51-007.07A8 and **corrective action is required**.

Corrective Action

1. The District must develop and provide training to listed staff at the School the Student attended on effective IEP development, including

- calculating services appropriate to meet the child's special education needs and following requirements for frequency, location, and duration of special education and related services and modifications.
2. The content of the training and trainer(s) must be approved by the NDE Office of Special Education two weeks prior to the scheduled training.
 3. Staff involved in the training should include:
 - a. General and special education elementary and early childhood teachers;
 - b. Principals or individuals who may serve as the representative of the school district as described in 92 NAC § 51-007.03A4;
 - c. Related service personnel; and
 - d. Any other school personnel who serve as members of IEP Teams.
 4. The School District must provide the NDE Complaint Investigator with copies of participant sign-in sheets, including the role of each participant, 10 days after the conclusion of the training(s).
 5. The corrective actions must be completed within 60 calendar days of the receipt of this Letter of Finding.

Issue #4

Did the District follow the requirements of holding a manifestation determination meeting, pursuant to 92 NAC § 51-016.02E?

92 NAC § 51-016.02E1 states:

92 NAC 51-016.02E1	Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district or approved cooperative) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents
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Allegations/Parent Position

The Parent's position is that the Student was repeatedly removed from the classroom after behavioral incidents which caused the Student to not have access to "academics for over a month and a half."

District Response

The District's position is that they were not required to and chose not to hold a manifestation determination meeting, as the Student only received one out-of-school suspension, on September 20, 2021, therefore the District's regulatory obligation to conduct a manifestation on or before the tenth day of suspension. The Student was removed from the classroom on at least sixteen occasions and was returned to the general education classroom following reteaching of skills and de-escalation.

Investigative Findings

- The Student was removed from the general education classroom on 14 separate occasions, according to Behavioral Incident Reports.
- The Student averaged 40 minutes per disciplinary removal classroom, based on the Behavioral Incident Reports (see table of incidents included in Issue #6 dated (August 16 through September 17, 2021)
- The classroom teacher regularly called for assistance from the school's Positive Action Center (PAC).
- The Student was assigned a one-day out of school suspension after a behavioral incident, which occurred at the end of the school day on September 17, 2021.
- The Student was suspended on September 20, 2021.
- The Student was withdrawn, by the Parent from the District following the issuance of the one-day out of school suspension.

Summary and Conclusions

"... an in-school suspension would not be considered a part of the days of suspension addressed in § 300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement." 71 Fed. Reg. 46,715 (Aug. 14, 2006).

According to the Behavioral Incident Reports, the Student was removed from the classroom setting 14 times. Incident reports describe the Student being removed from the classroom to reteach skills and de-escalation. The shortest reported removal was on August 30, 2021, for ten minutes. The longest

documented removals occurred on August 17, September 3, September 15, for 75 minutes each incident. The pattern of removals indicate that while the Student was removed from the classroom, the Student was reintegrated to the general education classroom following the removals.

The Student was removed from the educational environment on a regular and consistent basis, as a behavioral intervention and consequence for disruptive and aggressive behaviors. While the pattern of removal is significant, according to the Behavioral Incident Reports the Student was removed to calm down and reteach appropriate classroom behaviors, which averaged, 20-45 minutes in length. While the Student did receive a one day of out-of-school suspension on September 20, 2021, the District's requirement to conduct a manifestation determination review was not evoked as the Student was not removed for a period of time at or exceeding the ten day threshold as established by IDEA. Based on the length of time the Student was removed from the educational environment not meeting or exceeding ten days, the District implemented the requirements of 92 NAC 51-016.02E and **no corrective action** is required.

Issue # 5

Did the District revise or update the Student's IEP as appropriate to meet the Student's anticipated needs or other matters pursuant to 92 NAC § 51-007.10?

92 NAC § 51-007.10 states:

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

- | | |
|---------|--|
| 007.10A | Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate; |
| 007.10B | The results of any reevaluation conducted under 92 NAC 51-006.05A; |
| 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 Position

The Mother of the Student's position is that the Student's educational needs were not being met.

District Response

The District maintains that the Student's current IEP dated April 7, 2021, was implemented at the start of the 2021-22 school year. As the Student's behavioral needs became more acute, beginning in the fall of 2021-22 school year, the IEP was amended to include additional behavioral supports to meet the Student's needs. The District indicates it was in the process of scheduling an IEP meeting, but a meeting was not scheduled prior to the parent removing the child from the District.

Investigative Findings

1. The Student receives special education services under the eligibility of Autism Spectrum Disorder. (MDT report dated February 15, 2019).
2. The IEP documents the Student has both educational and behavioral needs. (IEP dated April 7, 2021).
3. Seventeen behavioral incidents are recorded between the dates of August 16-September 17, 2021.
4. To help address the Student's disruptive and physically aggressive behaviors, the Parent requests one-to-one paraprofessional support for the Student. In emails between the District and Complainant, the District pronounces that they do not offer one-to-one paraprofessional support for students.
5. Emails between the District and the Complainant, where the District indicates that other school districts "may have more resources, "to support students with IEPs. (Emails dated September 8, 2021)
6. The Parent asks about one-on-one para support in an email to the District (principal). The Parent notes that the Student's classroom teacher recommended that this could be a good support for the Student (email dated September 8, 2021 from the Parent to the District).
7. The District (principal) responds to the Parent that other districts have one on one para supports for some students on IEPs, but that the District does not provide one on one para support.

Summary and Conclusions

Over the course of the first two months of school in the 2021-22 school year (17 recorded incidents between August 16-September 17, 2021), the Student's behaviors began to escalate. District documentation shows that behavioral incidents for the Student were recorded on a daily basis and on occasion multiple incidents were recorded on the same date, with the exception of no recorded behavioral incidents between the dates of September 8 through September 14, 2021. The behaviors documented included the behaviors of

(screaming, hitting, kicking, flailing, yelling, dropping, refusal to comply with directions, arguing, and throwing items). The incidents were often recorded during times of transitioning away from a preferred activity, such as recess, back to the classroom setting. The Student exhibited a pattern of verbally and physically aggressive behaviors when denied access to preferred items, during transition times, and when redirected by staff.

92 NAC 51-007.07A5 A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: 007.075a To advance appropriately toward attaining the annual goals; 007.075b To be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and 007.075c To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5.

In the fall of 2021, the Parent made repeated requests to convene an IEP meeting to discuss behavioral intervention supports. The District's response was that the internal school support team was meeting regularly to problem-solve the behaviors. The Mother of the Student expressed concerns about available staffing to support the Student's increasing behavioral needs. In email correspondence with the District, the Parent asked why the security guard was being utilized to support the Student. The Parent also questioned the availability of and training of staff to support the Student's behavioral needs. While the District maintained a positive tone in its communications with the Parent, the Principal ultimately suggested to the Parent that the Student's needs might better be served in their resident district, as the Student was an option enrolled student in the District. The District's communication with the Parent demonstrates that it chose to abdicate their role and responsibility in providing the necessary program supports to meet the Student's special education needs. For example, the District directed the Parent to work with the Student's physician to problem-solve behavioral needs (emails between District and Parent dated September 8, 2021). In other email communication, the District proposed to the Parent that the Student could receive more support from a different school district. The Parent responded that it felt like the District had given up on supporting the Student. The District responded to assure the Parent that was not the case, but it was the District Representative's personal opinion that another district could provide more resources and supports which they wanted the

Parent to be able to “take advantage of.” (Email from District to Parent dated September 8, 2021).

It is documented that the Mother of the Student reached out to the District on several occasions to ask for clarification on the Student’s behavioral intervention supports, offer suggestions, and request an IEP meeting to discuss the Student’s on-going and escalating behavioral needs. While the District responded that it would consider an IEP meeting or schedule one, the IEP team was not convened in the fall of 2021.

The District communicated to the Parent, “We have staff inside the classroom (2 adults) but [Student] frequently leaves the room without permission or becomes too disruptive and needs to be removed. We have 600 students and have a few other student[s] who have needs similar or more severe than [Student]. Sometimes all of us are assisting other students, doing a lunch duty, in a meeting, on the phone or our other duties. We are not always available right away when they call.” (Email dated: September 8, 2021).

Communication between the Parent and the District, put the Student and the Parent of the Student in the untenable position of continuing education in the District with insufficient behavioral support, or find a different location for the Student’s special education needs to be met. This while, denying the Parent’s repeated attempts to convene the IEP team. The District did not meet its obligation to revise or update the Student’s IEP based upon the child’s anticipated needs.

Based on the relevant findings that a Behavioral Assessment was not conducted, an IEP meeting was not convened, and Behavioral Interventions were insufficient to meet the Student’s needs, the District failed to fully implement the requirements of 92 NAC § 51-007.10. Thus the following **corrective action is required.**

Corrective Action

Policies and Procedures

1. The District must review its policies, procedures and practices for identifying an increase in student need which would require the convening of an IEP meeting to revise or update based upon the child’s anticipated needs. The School District must review and revise, if necessary, the policies, procedures, and practices regarding 92 NAC 51-007.10.

Training

1. NDE will develop and provide training to all staff at the Student's School on how to recognize an increased student need, through analyzing student data and regular progress monitoring to make updates and revisions to a student's IEP based on a in student needs.
 - a. The District must contact the NDE Complaint Investigator within 14 calendar days of the date of the Investigation Report to complete the following:
 - i. arrange a day and time for the required training which will be conducted virtually;
 - ii. Determine who the contact person will be for arranging the virtual training and disseminating the training information.
 - b. NDE will provide training materials to the District contact within five days prior to the training.
 - c. The District must submit a sign-in sheet or other evidence that each staff member required to participate in the training was present or attended the training.
 - d. All documentation from the training must be submitted within 10 calendar days of the training date.
2. The corrective actions must be completed within 60 calendar days of the receipt of this Letter of Finding.
3. NDE will review 3 files of student who require behavioral intervention supports based upon the student's identified special education needs.
 - a. NDE will provide the names of the students whose files will be reviewed by August, 15, 2022.
 - b. The District will send via secure email the files requested for review within 10 days of the list being provided.

Issue # 6

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:

92 NAC 51-007.07B3	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
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other strategies to address that behavior.

Allegations/Parent Position

The Mother of the Student's position is that the Student's behavioral needs were not being adequately supported or addressed by support staff.

District Response

The District's response is that the Student's IEP and Behavioral Intervention Plan outline the use of Positive Behavioral Interventions.

Investigative Findings

1. Student's most current IEP, indicates in Special Considerations, Student behavior impedes the Student's learning or the learning of others. (IEP dated April 7, 2021).
2. IEP indicates that due to Student behavior, "consideration of positive behavioral interventions, and supports and other strategies to address the behavior (attach Functional Behavioral Assessment and Intervention Plan)." (IEP dated April 7, 2021).
3. The IEP (under Behavioral Assessment and Intervention Plans) lists several strategies to support the Student's behavioral needs. (IEP dated April 7, 2021).
4. The IEP (under Behavioral Assessment and Intervention Plans) indicates that a Behavioral Assessment is not needed at this time. (IEP dated April 7, 2021).
5. Behavioral reports indicate that the Student was exhibiting a pattern of disruptive and physically aggressive behaviors at the start of the 2021-22 school year. (Behavioral Intervention Reports, August 16, 2021-September 17, 2021).

Date	Interventions	Student Behaviors
August 16, 2021	<ul style="list-style-type: none">• student removed from classroom several times• one-on-one support• PAC assists	Assault, no injury
August 17, 2021 (1 st incident)	<ul style="list-style-type: none">• PAC removed student• retaught behavior concern	Classroom disruption, behavior disruptive to the school environment

Date	Interventions	Student Behaviors
August 17, 2021 (2 nd incident)	<ul style="list-style-type: none"> • student directed to in class cool down spot • student removed from classroom to de-escalate and talk about feelings • deep breathing/cool down 	Classroom disruption, behavior disruptive to the school environment
August 18, 2021	<ul style="list-style-type: none"> • student removed from classroom • retaught skills 	Classroom disruption, behavior disruptive to the school environment
August 19, 2021	<ul style="list-style-type: none"> • student removed from the classroom • reviewed appropriate skills • PAC consultation 	Classroom disruption, behavior disruptive to the school environment
August 20, 2021	<ul style="list-style-type: none"> • multiple different methods of explaining why and providing Dojo Points, star chart • given fidgets • called for PAC assistance multiple times • PAC consultation 	Classroom disruption, behavior disruptive to the school environment
August 23, 2021	<ul style="list-style-type: none"> • redirection • held teacher's hand • used a count down • called PAC multiple times • Student conference with Assistant Principal 	Classroom disruption, behavior disruptive to the school environment
August 24, 2021	<ul style="list-style-type: none"> • provided fidgets • redirection • PAC was called several times to remove student • PAC consultation 	Assault, no injury
August 26, 2021	<ul style="list-style-type: none"> • verbal redirection • PAC consultation 	Classroom disruption, behavior disruptive to the school environment
August 27, 2021	<ul style="list-style-type: none"> • redirection 	Insubordination/Non-compliance with behavioral expectations

Date	Interventions	Student Behaviors
August 30, 2021	<ul style="list-style-type: none"> • praise/reward • redirection • loss of [Redacted] points • directed to calm down/think spot • PAC consultation • removed student, set a ten minute timer, problem-solved and student returned to class 	Classroom disruption, behavior disruptive to the classroom environment
August 31, 2021	<ul style="list-style-type: none"> • redirection • classroom evacuated • PAC consultation • reteach behavior concern 	Insubordination/Non-compliance with behavioral expectations
September 3, 2021	<ul style="list-style-type: none"> • redirection • PAC consultation • reteach behavior 	Assault, no injury
September 7, 2021	<ul style="list-style-type: none"> • redirection • student removed from classroom • reteach behavior concern • PAC consultation 	Insubordination/non-compliance with behavioral expectations
September 15, 2021 (1 st incident)	<ul style="list-style-type: none"> • student removed from classroom • redirection • conference with student 	Classroom disruption, behavior disruptive to the classroom environment
September 15, 2021 (2 nd incident)	<ul style="list-style-type: none"> • removed student from classroom • PAC consultation • Conference with student • Parent/Guardian contact made phone conference with parents 	Assault, no injury
September 17, 2021	<ul style="list-style-type: none"> • redirection • student removed from the classroom • one day of out of school suspension 	Assault, no injury

6. Positive behavioral strategies listed in the IEP to support the Student's behavior include: picture schedule, first/then card, punch card which was used to reward the Student for positive behavior, taping areas of

- the classroom to remind the Student to remain in the Student's area, and ability to earn prizes from prize box (IEP Amendment dated September 9, 2021).
7. The Student was suspended on September 20, for an incident which occurred on September 17, 2021. (Behavioral Incident Report dated September 17, 2021 and Attendance Record).
 8. A "child proof safety lock" was installed on the classroom door to stop the Student from running out of the classroom when upset. (IEP Amendment dated September 9, 2021).

Summary and Conclusions

In the fall of 2021, the Student was exhibiting a pattern of challenging behavior which was well documented in email communications between the Parent and the District, as well as in Student Behavioral Incident logs provided by the District. The District completed an IEP amendment on September 9, 2021, to include additional behavioral supports. As referenced in Issue 5, a functional behavioral assessment was not completed for the Student.

The District did consider positive behavioral interventions, however the supports offered to the Student were inconsistent based on the written plan. The April 7, 2021, IEP documents several behavioral intervention strategies, but does not elaborate on when and how staff should apply these strategies to support the student.

The District completed an IEP amendment on September 9, 2021, where additional behavioral interventions were documented, including the use of a visual schedule to help the Student to plan and organize their day, as well as the use of a "First/Then" card and other visual supports. The amendment also documents the use of a "punch card" system, where the Student was earning punches for positive behaviors and provided the opportunity to pick something from the prize box after receiving 20 punches on punch card.

Despite the interventions outlined in the IEP from April 7, 2021, and the subsequent IEP amendment, it is clear that a comprehensive support plan was not in place to adequately meet the needs of the Student. The Student's IEP from April 7, 2021, indicates a need for behavioral interventions, however concludes that a Functional Behavioral Assessment is not necessary. There is no evidence that a Functional Behavioral Assessment was conducted for this Student to determine the function of their challenging behaviors.

92 NAC 003.26 defines Functional behavioral assessment stating, "means the process of gathering information that may be used to maximize the effectiveness and efficiency of behavior support (direct observation must be

included). It involves a description of the problem behavior, the identification of antecedents which occasion the behavior and consequences which maintain it, the function the behavior serves (e.g., attention, communication, task avoidance), and the selection of alternative behaviors will provide the same function.

The purpose of a Functional behavioral assessment is to provide the IEP team with information to aid in the development and recommendation of supports to address a student's behavioral needs. As the Student was exhibiting a pattern of behaviors on a daily basis which resulted in removal from the classroom setting, this should have triggered District staff to conduct an FBA. The Student's needs were not being adequately met by the IEP which was developed in April 2021. Thus the District should have taken a coordinated approach to behavior planning. In this case, conducting an FBA would have been appropriate to assist the IEP team in making recommendations which were based on observations and data collected specific to the Student. The FBA would provide necessary data and observational information to allow the team to define the problem behavior (s) and develop individualized interventions and supports for the Student. The IEP and subsequent amendment include lists of behavioral interventions and strategies, but lacks the specificity necessary of a behavior plan to allow staff to effectively implement the plan.

Behavioral Incident Reports from fall of 2021, document a pattern of behavior where the Student struggles to transition from preferred activities [recess] to non-preferred academic work. Many of the behavioral incidents from the fall of 2021, occur at the same time of day, with similar antecedent events. Interventions and staff responses are varied in the incident reports, which lends credence to the fact that a comprehensive behavior support plan was not in place to support the Student. While the District did consider the use of positive behavioral supports and interventions, the overall effectiveness of these supports were limited due to a lack of coordinated and comprehensive behavior planning.

In this case completing a Functional Behavioral Assessment (FBA) would have been appropriate in order to develop a data-driven hypothesis of the function of the Student's behaviors which would allow the team to select appropriate evidence-based positive behavioral interventions.

Based on the fact that the District's approach to positive behavioral intervention support for the Student was inconsistent, the District failed to fully implement the requirements of 92 NAC § 51-007.07B3. Thus the following **corrective action is required**.

Corrective Action

Policies and Procedures

1. Review, and revise if necessary, the District policies and procedures for conducting FBA's and developing BIP's, specifically, how to identify when these plans would be necessary to support a student's special education needs, when the behavioral planning process should begin, necessary information which should be gathered to develop the plans and the necessary components needed for both the FBA and BIP.
2. The District will follow all corrective action steps related to policy and procedure review as detailed previously in the report.

Training

1. The District must develop and provide training to all staff at the Student's School in the behavioral planning process, including behavioral observation and data collection, how to utilize data to inform interventions and supports using information gathered through the FBA process to develop a behavioral intervention support plan, as well as updating and revising the current 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 School District must provide the NDE Complaint Investigator with copies of the training materials and handouts used and participant sign-in sheets 10 days after the conclusion of the training(s).
4. The corrective actions must be completed within 60 calendar days of the receipt of this Letter of Finding.
5. NDE will review 3 files of student who may require an FBA and/or BIP.
 - a. NDE will provide the names of the students whose files will be reviewed by August, 15, 2022.
 - b. The District will send via secure email the files requested for review within 10 days of the list being provided.

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:

Jo Gunderson, Complaint Investigator
NDE Office of Special Education
nde.speddr@nebraska.gov