

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.16
Complaint Investigator: [Redacted]
Date Complaint Filed: December 7, 2021
Date of Report: [Redacted]

Issues Investigated

1. Were the Student's parents afforded an opportunity to participate in the IEP meetings with respect the educational placement of the Student and the provision of FAPE to the Student, as required by 92 NAC 51-009.01A and 009.02A?
2. Were the Student's IEPs developed appropriately for the Student's academic and functional needs under the Student's disability, and accommodations and related services, as required by 92 NAC 51-007.07A2a, 007.07A2b, 007.07A5, 007.07A5c, 007.07A6, 007.07A7, and 007.07B2?
3. Did the Student's IEPs appropriately address the strengths of the Student and the concerns of the parents for enhancing the education of their child, as required by 92 NAC 51-007.07B1?
4. Were the Student's parents denied an opportunity to examine the records with respect to the educational placement of the Student and the provision of FAPE to the Student, as required by 92 NAC 51-009.03A -- 009.03B3?
5. Were the Student's IEPs properly implemented, as required by 92 NAC 51-007.01 and 007.07B3?
6. Did the Student's IEPs place the Student in the least restrictive environment, as required by 92 NAC 51-008.01?
7. Do the alleged violations amount to a denial of FAPE, as required by 34 C.F.R. Sec. 300.101?

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint, with attachments, received by NDE December 7, 2021
- Email January 11, 2022, from Parent, chain between SPED coordinator and Parent; hygiene concerns October 13, 2021, independent living skills, restroom needs; October 5, 2021 IEP meeting
- Email January 11, 2022, from Parent seeks detail about discussion in IEP meetings; commentaries on paraprofessional behaviors and concerns of

- other students; puddle of urine; Student's appearance and condition when came home from school, unclean teeth, unkempt hair, clothing
- Email January 11, 2022, from Parent, photograph of soiled underwear
 - Email January 11, 2022, from Parent, photograph of underarm bruising, about October 2021
 - Email January 11, 2022, from Parent, photograph of piece of splinter taken out of Student's hand when broke computer
 - Email January 11, 2022, from Parent, photograph of Student's unclean face, about November 30, 2021
 - Email January 11, 2022, from Parent, photograph of piece of splinter taken out of Student's had when broke computer
 - Email January 11, 2022, from Parent, photograph of screenshot of Student's notebook
 - Email January 11, 2022, from Parent, photograph of screenshot from SPED Director; will not make changes as requested to IEP
 - Email January 11, 2022, from Parent, photograph of screenshot; job shadow once or twice a week
 - Email January 11, 2022, from Parent, photograph of screenshot, September 13, 2021, Student sat on floor when bell rang, took off shirt; lie on floor; paraprofessional placed chair in front of Student, covered the Student with a coat, asked for help
 - Email January 11, 2022, from Parent, four IMG videos, unable to open despite attempts on two different computers with different access; will regard as offered to show that Student was using behavior notebook, as represented
 - Email January 11, 2022, from Parent, two IMG videos, unable to open despite attempts on two different computers with different access; will regard as offered to show that Student was not disruptive at choir, as represented

From the School District

- Letter of Response dated January 7, 2022; extension to file granted until January 7, 2022, on December 22, 2021
- Email January 10, 2022, from the District's Attorney, with twenty-one attachments (hygiene plan, draft IEP, signature pages, ten progress reports, date for behavior training/FBA -- LG, FBA overview, BIP, Training Intervention Plan, October 13 Parent email, November 16, 2021 PWN and issue of incontinence, October 13, 2021 email SM/Parent, October 13, 2021 memo Parent's description of events, seeking information and personal hygiene charts)

- Email January 10, 2022, from the District's Attorney, with fifteen attachments and four notes (Behavior Specialist notes, worksheet behaviors, QABF score) [Notes from school staff, school staff input noted in PWN October 28, 2021.
- PWN and notes attached [October 5, 2022] parent concern noted that school staff did not notice Student was wet, including notes for toilet training for staff. Staff noted 8 incidents in 8 days of the student urinating not in the bathroom, days where the student receives speech services. It was also noted that the Student urinated on the bathroom floor, Student's schedule indicated that the Student was to use bathroom after lunch
- Email January 10, 2022, from Attorney for School District, with two attachments (paraprofessional schedule and BIP staff training, Student's schedule)
- Email January 10, 2022, from Attorney for School District, with five attachments (MDT, 2021-2022 IEP, 2021-2022 Amended IEP, IEP of February 25, 2020, 2019 IEP)
- Email January 17, 2022, from the District's Attorney, with one attachment (Student's visual book)

Interviews

- Telephone interview conducted with Student's Parents and Grandparent, on January 11, 2022 (Parent Interview)
- Telephone interview conducted with a District representative and counsel on January 13, 2022

Introduction

This matter arises on a State Complaint filed by the Student's Parent, on behalf of the Student, against the District on December 7, 2021. Pursuant to 92 NAC 51-009.1, the Nebraska Department of Education (NDE), Office of Special Education, must resolve complaints alleging violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., (IDEA) which are alleged to have occurred not more than one year before the date the complaint was received.

An outside complaint investigator has conducted this investigation, along with a complaint investigator with the NDE Office of Special Education. Documents and photographs received from the Student's Parent, and documents from the District, were reviewed. Telephone interviews were conducted with the Student's Parents, and Grandparent, as well as with a District representative and counsel.

Allegations of violations alleged that occurred one year prior and up to December 7, 2021, as of the date the Complaint is considered within this report. Matters outside of this window are provided for context purposes only.

Findings of Fact

1. The Student is 17 years old, diagnosed at birth with Down syndrome, and is eligible for special education services under Other Health Impairment (Amended IEP dated November 3, 2021).
2. The Student is currently in the 11th grade (IEP signature page dated November 3, 2021).
3. A Multidisciplinary Evaluation Team Report (MDT) on January 31, 2019, concluded that the Student required verbal cues to clean face and brush teeth, although the Student was managing toilet tasks independently (MDT dated January 31, 2019).
4. The IEP dated February 25, 2020, states that the Student's Parents were concerned about the Student being able to use the restroom; that the Student will independently brush teeth and wash face with 100% accuracy, yet nothing more stated regarding hygiene (IEP dated February 25, 2020).
5. The IEP dated January 22, 2021, states the Student's behavioral issues of sitting on floor and refusing to be redirected. Positive behavior interventions include staff to ignore behaviors, state expectations using 10 words or less, and give rewards for compliance. No FBA or BIP included. No hygiene goals noted except "unfinished learning," for focus on hygiene, and independent living skills, among other things (IEP dated January 22, 2021). The one issue on hygiene arises with "unfinished learning," where the Student was to focus on hygiene, and independent living skills, with the independent living goal to learn to cross street independently (IEP dated January 22, 2021).
6. The IEP dated January 22, 2021, also included speech-language services of 15 minutes a day for eight days a week (IEP dated January 22, 2021, p. 21).
7. The Progress Report dated May 28, 2021, shows the Student did not make progress in any of the Student's goals, to wit: job shadow, reading, sharing information, math, and a goal to cross the street (Progress Report dated May 28, 2021).
8. September 30, 2021, the Student was in choir class wearing dark pants and had an incontinent episode. There was a puddle of urine beneath the Student. The Student's shoes and clothes were wet (Student's Parent Interview, January 11, 2022; Interview, District Representative and counsel, January 13, 2022).

9. The District does not deny incontinence during choir class (Interview, District Representative and counsel, January 13, 2022).
10. The Paraeducator on duty at the time did not immediately notice the incontinence episode. The Paraeducator was on the phone texting about transportation or restroom services. The fellow students formed a circle around the Student to help restrict the gaze of others in the classroom and help the Student to reduce embarrassment (Student's Parent Interview, January 11, 2022; Interview, District Representative and counsel, January 13, 2022 (in part)).
11. There was a previously scheduled IEP meeting to be held on October 5, 2021, to address a typographical error in speech-language noting services eight days a week (Interview, District Representative and counsel, January 13, 2022).
12. Three IEP meetings were then held: October 5, October 28, and November 3, 2021, which then began to address not only the speech-language error, but also the incontinence, the Student's lack of hygiene, and the Student's behaviors (Student's Parent Interview, January 11, 2022; Interview, District Representative and counsel, January 13, 2022 (in part)).
13. The Progress Report dated October 23, 2021, indicated goals were met in job shadow, crossing the street, collecting data, but not met in reading, and sharing personal information (Progress Report, October 23, 2021).
14. A functional behavioral assessment (FBA) and behavior intervention plan (BIP) were created and indicated that the Student sat underneath the sink in the classroom, would lie in hallways, or in a stroller, and refused to move "often for hours at a time" (BIP dated October 28, 2021). It is found these actions took place between the IEP dated January 21, 2021, and the IEP dated October 28, 2021.
15. The Student's Parents participated in the IEP meetings of October 5, October 28, and November 3, 2021 (See Investigative Findings and Summary and Conclusions section, Issue 1, below).
16. The IEP was amended November 3, 2021, after three meetings. A BIP/FBA were considered. New positive behavior supports included to make "school-work more engaging by embedding [the Student's] interests into the assignments," by the use of visuals as often as possible, such as visual schedules and visual choices, by making the Student's day as predictable as possible with pre-teaching if there is to be a schedule or paraprofessional change, by providing a personal calm down spot in a life skills room to allow the Student to regulate rather

- than lying down under tables or in the hallway, by providing a visual book containing visual choices, schedules, and pictures of those people in the Student's support system, by giving the Student time for a response to verbal prompts so the Student is not forced to give quick responses, and by giving the Student choices throughout the day allowing the Student to have more control and independence (Amended IEP dated November 3, 2021, p. 6).
17. The Parents discussed a personal hygiene "goal," the incontinence in choir class and discussed concerns that the Student returned home unkempt; under the IEP the Student "is able to take care of personal needs, such as washing face, brushing teeth, combing hair, and using the restroom, however, [the Student] needs to be prompted to do each task" (emphasis added), with the eventual goal to help the Student develop independence to take care of personal hygiene before work, after lunch, and before leaving for the day, yet without prompting or assistance (Amended IEP dated November 3, 2021, p. 9).
 18. As a result, under the amended IEP dated November 3, 2021, the Student will now be prompted by staff to attend to personal needs, such as washing face, brushing teeth, combing hair, and using the restroom.
 19. As amended in the IEP dated November 3, 2021, educators and staff were provided a service plan, and have been trained, particularly in behavioral training by the behavior specialist, beginning on October 14, 2021, and continuing thereafter. [See Attach 14, Email, of 21 attachments, January 10, 2022].
 20. The Student's Parents have been provided records and notes as requested of meetings, other than sole possession or memory aids, and personnel documents. See Investigative Findings and Summary and Conclusions section, Issue 4, below.
 21. The amended IEP dated November 3, 2021, included speech-language services eight days a quarter, twenty minutes a day, to target conversation skills, pragmatic skills, simple verbal problem solving, and improved thought formation in verbal discourse. (Amended IEP dated November 3, 2021).
 22. Parties are in agreement to move the Student into more general education classes, including journalism, to address issues of least restrictive environment. (Interviews with Complainant and, District Representative and counsel, January 13, 2022).

23. Additional factual findings in greater detail are noted below in the Investigative Findings and Summary and Conclusions sections of each allegation and are incorporated herein.

Issue # 1

Were the Student's parents afforded an opportunity to participate in the IEP meetings with respect the educational placement of the Student and the provision of FAPE to the Student, as required by 92 NAC 51-009.01A and 009.02A?

92 NAC 51-009.01A states:

009.01 Parent Participation in Meetings

009.01A The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

92 NAC 51-009.02A states:

009.02 Parent Involvement in Placement Decisions

009.02A The school district or approved cooperative shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of their child.

Allegations/Parent Position

The Student's Parent contends that the parents were unable to meaningfully participate in the IEP meetings of October 5, October 28, and November 3, 2021. In summary, the position is that while present at the meetings, complete input was not recorded in the eventual November 3, 2021, IEP and, as a result, the Parent refused to sign it. Specifically, the initial IEP meeting was called to discuss speech services, based on the content in the then-current IEP to change services from eight days a week to eight times a quarter. Yet one week before the meeting, the Student had an incontinence issue in the Choir Room, which was unnoticed by a paraprofessional, with a puddle of urine forming beneath the Student, and wet clothing and shoes. Fellow students eventually formed a circle around the Student in support. The paraprofessional was texting on a cellphone during the time. The Student's Parent wanted the IEP to match what was said in the IEP meetings about the incontinence issue, in that the Parent wanted a hygiene goal to show that the Student must receive a restroom break

after lunch and that the Student must be kept clean by a paraprofessional (particularly the Student's face, which often had food crusted on it). Additionally, the Parent's concern is that the parent wanted notes of the incident regarding investigation of the paraprofessional to be disclosed to her as well as a copy of a video taken from the classroom when the incident occurred and that, absent these materials, the Parent could not meaningfully participate. (Parent's Interview, January 11, 2022.)

District Response

The District contends that the Amended IEP dated November 3, 2021 (the Amended IEP resulting from the third meeting) expressed the Student's Parent's concerns, in that a hygiene goal was contained in the IEP, as well as a behavior plan, and that for the three meetings of October 5, October 28, and November 3, 2021, the Student's Parent had a full opportunity to participate, although detailed notes of everything said during the IEP meetings could not be included in the resulting IEP. Nonetheless, the Student's Parents were active members in the IEP Team process and were present in meetings lasting more than two hours, which is reflected in the prior written notice in the 2021-2022 Amended IEP, and the written FBA. The District concurs that the incontinence matter took place, yet that the video was no longer available to them, having been recorded over earlier. Internal reports as to personnel action regarding the paraprofessional cannot be disclosed. (Interview, District Representative and Counsel, January 13, 2022, and District Response, January 7, 2022.)

Investigative Findings

This issue is meaningful parental participation -- that is, that parents are given "an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate." [Honig v. Doe, 484 U.S. 305, 311-122 (1988)]. The parents were given the opportunity to provide meaningful input. They were present at three separate IEP meetings, all seeking to create an IEP for the Student after the incontinence episode. Parentally signed IEP signature pages show the parents attended the meetings. [See First Meeting, October 5, 2021; Continuation of Meeting, October 28, 2021; and Third Continuance of Meeting, November 3, 2021.]

The Student's parent had various emails to District staff after the meetings, all indicating that the parent was continuing to voice and make known the objections. [See Email chain, Parent to SPED Coordinator, and others.] Among other things, the Student's Parent made formal document requests, detailed discussions in IEP meetings, noted commentary on the paraprofessional and what was seen on the video with puddle of urine, and detailed what the Parent

was seeing when Student came home from school with unclear teeth, food on face, unkempt hair, and soiled clothing. [Emails from Parent forwarded to Complaint Investigator, January 11, 2021].

Once again, this is an issue of meaningful participation in the meetings. For instance, meaningful participation was held not to have been denied in IEP meetings when a school district did not provide the parents with documents about their child's proposed classes. See *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 194 (2d Cir. 2005). While records disclosure will be discussed later, as well as whether the IEPs were appropriate, the meaningful participation aspect was not breached. As in *B.D. v. District of Columbia*, 80 IDELR 38 (D.D.C., Dec. 21, 2021) framing an issue regarding disclosure of records as lack of meaningful participation rather than under FERPA (20 U.S.C Sec. 1232), finds little support. *Id.*, p. 12. Disclosure of the alleged records has to be connected to show the parent could not meaningfully participate. *Id.* Here, the Amended IEP dated November 3, 2021, stated that there was a parental concern over an incontinence episode in the classroom, as well as that the Student went home unkempt. [See Amended IEP dated November 3, 2021, p. 9.] Investigative records about the paraprofessional on whose watch the episode occurred, or videos about the incident, do not show a connection that a lack of the records denies the Student's Parents meaningful participation in the IEP meetings. The issue was discussed and was subsequently addressed in the Amended IEP.

Their input was noted in the Amended IEP dated November 3, 2021, in the parental information section. The Amended IEP states that the parents "expressed concerns about ... a lack of attention to [Student's] personal hygiene needs ... [and] about a break in [Student's] daily restroom routine that led to an incontinence situation in choir class which was not noticed by a specific paraprofessional." Amended IEP, November 3, 2021, p. 3. Additionally, the Amended IEP reflects that the parents believed this led to a loss of dignity for their child, and resulted in a breakdown in communication with the school. *Id.* Finally, the Amended IEP goal itself addresses personal hygiene. See Amended November 3, 2021 IEP. It states the Student's parents' "concern with an incontinence issue in the choir room which was not noticed by a specific paraeducator, and about concern that at times [the Student] returns unkempt..." Amended IEP, November 3, 2021, p. 9. This supports that the Student's parents were meaningfully able to participate in the meetings on these issues, and allowed to express their concerns, which were included in the Amended IEP.

Summary and Conclusions

The Student's Parents meaningfully participated in the three separate and continuing IEP meetings which occurred October 5, October 28, and November 3, 2021. The Student's Parents were allowed to express their concerns, which were eventually included in the Amended IEP dated November 3, 2021. Emails show continued parental involvement in the process. Their input was expressed in the resulting Amended IEP dated November 3, 2021, not only in the goals, but in parental information. Based on 92 NAC 51-009.01 A and 92 NAC 51-009.2A, there was no violation of FAPE.

No corrective action is required.

Issue # 2

Were the Student's IEPs developed appropriately for the Student's academic and functional needs under the Student's disability, and accommodations and related services, as required by 92 NAC 51-007.07A2a, 007.07A2b, 007.07A5, 007.07A5c, 007.07A6, 007.07A7, and 007.07B2?

92 NAC 51-007.07A2a, 007.07A2b, 007.07A5c, 007.07A6, 007.07A7, and 007.07B2, in relevant part, state:

007.07 IEP Development

007.07A The IEP shall include:

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

007.07A2 A statement of measurable annual goals, including academic and functional goals, designed to:

007.07A2a Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; or for preschool children, as appropriate, to participate in

- appropriate activities,
and
 - 007.07A2b Meet each of the child's other educational needs that result from the child's disability.
- 007.07A5 A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:
 - 007.07A5c To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5.
- 007.07A6 An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in 92 NAC 51-007.07A5.
- 007.07A7 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...
- 007.07B In developing, reviewing or revising each child's IEP:
 - 007.07B2 The IEP team shall consider the results of the initial evaluation or most recent

evaluation of the child, and the academic, developmental, and functional needs of the child.

Allegations/Parent Position

The Student's Parent contends that the IEP dated January 21, 2021, and the subsequent Amended IEP dated November 3, 2021, are inappropriate. The Parent disputes the Student's hygiene goals, contends a lack of behavioral interventions, and an inappropriate change to speech and language services. The Student's Parent wants the Student to fit in with classmates, and look like the other students, and so not appear to be dirty and unkempt.

District Response

The District's position is that the IEP dated January 21, 2021, and the Amended IEP dated November 3, 2021 are appropriate.

Investigative Findings

The Student is 17 years old, diagnosed at birth with Down syndrome, and eligible for special education services under Other Health Impairment. The Student is currently in the 11th grade. [IEP signature page, IEP dated November 3, 2021].

On about September 30, 2021, the Student was in choir class. [Student's Parent Interview, January 11, 2022]. The Student was wearing dark pants and was incontinent in class. [Interview, District Representative and counsel, January 13, 2021]. A puddle of urine formed beneath the Student, and shoes and clothes were wet. [Student's Parent Interview, January 11, 2022 (based on reliable source information received at the IEP meetings on October 7, October 28, and November 3, 2021)]. The District does not deny the incontinence during choir class. [Interview, District Representative and counsel, January 13, 2022].

The District represents that the paraprofessional on duty, allegedly overseeing the Student, was engaged on a cell phone texting about school related transportation matters and, subsequently, about the need for a custodian to clean up a restroom [Interview, District Representative and counsel, January 13, 2022].

There was no immediate action to the Student standing in the puddle of urine. The Student remained in the classroom participating in wet clothing. [Student's Parent Interview, January 11, 2022]. Concerned fellow students formed a circle around the Student to prevent other people from seeing the wet clothing and urine. [Student's Parent Interview, January 11, 2022].

At some point thereafter the paraprofessional eventually provided assistance to the Student. [Interview, Student's Parent, January 11, 2022, and Interview District

Representative and counsel, January 13, 2022]. The Student's Parent only first became aware of the incident because the Student's sibling told them about it. [Interview, Student's Parent, January 11, 2022]. The District did not contact the Student's Parent until about October 1, 2021. [Interview, Student's Parent, January 11, 2022].

There was a video recorded of the incident, yet the District represents that it no longer retained the events because the video had been "taped over" according to the District's system of recording four days of materials. [Letter of Response dated January 7, 2022]. Nonetheless, during one or more of the IEP meetings of October 5, October 28, and November 3, 2021, the District Administrator stated that the incident events described by the fellow students to the Parent was correct. [Interview, Student's Parent, January 11, 2022]

According to the IEP amended November 3, 2021, the District proposed a goal to help the Student develop independence with regard to personal hygiene, based on the Parents' concern with incontinence in the classroom. It is not alleged by the District that the incontinence did not occur. [District Response, January 7, 2022].

An IEP Team meeting had originally been scheduled to meet on October 5, 2021, to address a possible discrepancy in the IEP dated January 21, 2021. Possible discrepancies included: speech-language services to be eight times a week, rather than eight times a quarter. [Interview, Student's Parent, January 11, 2022, and Interview District Representative and counsel, January 13, 2022]. When the meeting was held, the incontinence then became the primary topic of the meeting. [Interview, Student's Parent, January 11, 2022, and Interview District Representative and counsel, January 13, 2022.] Additional focus was on the Student's behaviors. [Interview District Representative and counsel, January 13, 2022].

Prior to the Amended IEP dated November 3, 2021, during the period covered by the January 22, 2021, IEP, the Student had engaged in behavioral issues. Between the January 22, 2021, IEP and the Amended IEP dated November 3, 2021, the Student sat underneath the sink in the classroom, would lie in the hallways, or in a stroller in class, and refuse to move "often for hours at a time" [Behavior Plan dated October 28, 2021]. The Student would sit down during the school day, lie down in the hallways outside of class, and refuse to move, throw water bottles, glasses, and shoes at staff and students, and throw chairs [Functional Behavior Assessment, undated, yet represented to be in October, 2021, and included in the Amended IEP dated November 3, 2021, p. 3].

There are two relevant IEPs considered:

1. The IEP dated January 22, 2021 (from January 22, 2021 through January 20, 2022); and
2. The Amended IEP dated November 3, 2021 (from November 4, 2021 through November 2, 2022).

The IEP dated January 22, 2021, noted the Student's behavioral issues to be: sitting on the floor, and refusing to be redirected, with positive behavior interventions to be used such as ignoring behaviors and stating expectations, using 10 words or less to give expectation, and then rewards if the Student complies. There was no FBA or BIP. There were no hygiene goals noted. [January 22, 2021 IEP, p. 5].

The one issue on hygiene arises with "unfinished learning," where the Student was to focus on hygiene, and independent living skills, among other things. [IEP dated January 22, 2021, p. 8.] An independent living goal was that the Student would have to learn to cross the street independently and also included speech-language services of 15 minutes a day for eight days a week. [IEP dated January 22, 2021, p. 21].

On May 28, 2021, the Student's Progress Report shows the Student did not make progress in any of the goals. The goals were not met in job shadowing, reading, sharing information, math, and the goal to cross the street.

The Progress Report dated October 23, 2021, showed the Student's goals were met in job shadow, crossing the street, collecting data, but progress was not made in reading and sharing personal information.

The Amended IEP dated November 3, 2021 resulted after three meetings. The purpose of that meeting was identified as was to correct a clerical mistake in the speech-language service plan of 15 minutes a day for eight days a week. [Interview District Representative and counsel, January 13, 2022]. Only then did the various other behavioral and other concerns arise for enhancing the Student's education. [Amended IEP dated November 3, 2021]. A BIP was implemented after an FBA, as noted earlier. New positive behavior supports were included in the IEP, such as to make "school-work more engaging by embedding [the Student's] interests into the assignment, by the use of visuals as often as possible, such as visual schedules and visual choices, by making the Student's day as predictable as possible with pre-teaching if there is to be a schedule or paraprofessional change, by providing a personal calm down spot in a life skills room to allow the Student to regulate rather than lying down under tables or in the hallway, by providing a visual book containing visual choices, schedules, and pictures of those people in the Student's support system, by giving the Student time for a response to verbal prompts so the Student is not

forced to give quick responses, and by giving the Student choices throughout the day allowing the Student to have more control and independence. [Amended IEP dated November 3, 2021, p. 6].

The Amended IEP dated November 3, 2021, also provided for a personal hygiene "goal" due to incontinence in choir class, and Parental concerns the Student returned home unkempt, in that the eventual goal is to help the Student develop independence to take care of personal hygiene before work, after lunch, and before leaving for the day, yet without prompting or assistance. [Amended IEP dated November 3, 2021, p. 9]. However, the next sentence, is interpreted to mean that under the current environment [not as a future goal], the Student "is able to take care of personal needs, such as washing face, brushing teeth, combing hair, and using the restroom, however the student needs to be prompted to do each task." That is, current prompting to perform these tasks is now demanded by the Amended IEP, with an eventual goal towards more independence with the Student's activities of daily living.

Given this foundation, the IEP [January 22, 2021] was inappropriate given the Student's unique needs. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make appropriate progress in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. The Student exhibited behavioral issues, sat under tables, threw objects, would lie in the hallway, and urinated in the choir room. Only after the incontinence in the choir room arose did the IEP Team begin to address these issues with three IEP Team meetings, with the first IEP Team meeting called only to initially revise speech-language services from a clerical error of eight days a week to quarterly.

After three meetings, a new plan [Amended IEP dated November 3, 2021], was put into place. This new plan addressed behaviors with positive support and provided that the Student will wash face, brush teeth, comb hair, and use the restroom with prompts, although an eventual goal is that the Student will be able to perform the tasks independently. However, the amended IEP dated November 3, 2021, is still concerning due to the lack of cohesiveness between the various required components. For example, the IEP states in the Parent Concerns section the need for a daily restroom routine, which is supported and addressed in the Present Levels of Academic Achievement and Functional Performance that the Team proposes the Student has a daily hygiene goal to "develop independence in taking care of personal hygiene before work, after lunch, and before leaving for the day". Such a goal would enable the Student to take care of personal needs such as "washing [the Student's] face, brushing [the Student's] teeth, combing [the Student's] hair, and using the restroom".

Such a goal was created and is Goal 3 (Using a picture schedule, the Student will follow the daily hygiene routine 3 times a day with one prompt for 28/30 consecutive days). There is also a goal (Goal 1) for the Student to set alarms on a personal device. There were two times specified; one for lunch and one for work. The lunch alarm specified the Student would alert the Student to take care of required personal hygiene. The work alarm did not include specifics other than "prepare for work." A third alarm was not discussed or required causing a disconnect between Goal 1 and Goal 3. This is disconnected further when looking at the "Hygiene Charts" created to track Student behavior. Again, two charts are in use; one for after lunch, and one before work. Only the "after lunch" behavior chart indicates the Student should use the restroom.

Although there is a communication goal (Goal 3) that goal does not specifically mention communicating when assistance is needed. The goal states that "In 36 instructional weeks, [the Student] will improve expressive language skills in order to communicate complete, specific, and meaningful thought verbally with 80% accuracy given visual supports based on SLP data and observation". Short-term objectives detail providing personal information, describing items using 3/7 distinctive features, generate solutions to simple problems (including safety awareness and familiar school/work/home routines) and sustain a structured, simple conversation lasting three turns.

Another concern with the Amended IEP dated November 3, 2021, is with the lack of specificity within the supplementary aids and services. This portion of the IEP states that "para support in general education classes for direct supports and to facilitate peer interaction." The "direct supports" are not described or included. Another area needing further clarification given the behavioral concerns is that the Student is allowed "frequent breaks as needed." Again, there is no description of frequency, the amount of time a break is allowed, or the conditions that should be considered when offering the Student a break.

Finally, the Supports for School Personnel states that "Paraprofessionals will be trained in [the Student's] behavior plan and personal hygiene routine." Although paraprofessionals are provided training, the training especially in relation to the behavior plan, should also be extended to all individuals who have contact with the Student including teachers and administrators. There is no provision for training with the characteristics of students with Down Syndrome, or the communication goals in place for the student (Goal 2).

The Behavior Intervention Plan is also concerning (Behavior Intervention Plan dated October 28, 2021). The "Prevention Strategies" are well described and include as stated previously, making school work more engaging by embedding

preferences; providing more reinforcement; using visuals; providing choices throughout the day, etc. The “Strategies to Teach the Replacement Behavior” states, “direct teach where the Student’s time-away spot is” and includes specific teaching strategies. Due to the Student avoiding tasks and activities by sitting in the hallway or under furniture, a replacement strategy of relocating the student to a “time-away” spot does not change or alter the behavior. This is a case in which providing choices, prompting the Student that a transition is coming up may be required. When paired with the lack of specificity of “frequent breaks as needed” contained within the Amended IEP dated November 3, 2021, the IEP Team needs to know and understand the difference between when a break is needed and when sitting in the hall or another location is a behavior requiring intervention.

The new plan [Amended IEP dated November 3, 2021] changed the speech-language services to eight days a quarter, for twenty minutes a day. [Amended IEP dated November 3, 2021, p. 26.] Given the Student’s speech goal to encompass areas such as conversation skills, pragmatic skills, simple verbal problem solving, and improved thought formation in verbal discourse, and absent any evidence that supports any other need for extended services, the service plan for eight days a quarter, for twenty minutes a day is appropriate. [Amended IEP dated November 3, 2021, p. 26]. Deference is given to the educators on this issue. [Endrew F. v. Douglas County Sch. Dist. RE-1, 580 U.S.]

Summary and Conclusions

This issue addresses two IEPs: the IEP dated January 22, 2021, and the IEP Amended November 3, 2021.

After the incontinence episode, and three IEP Team meetings, the IEP Team created the Amended IEP dated November 3, 2021. The October 5, 2021, IEP Team meeting was originally called to correct a typographical error in speech-language services -- it was not called to address the ongoing behavioral issues in the classrooms.

With the ongoing meetings and an Amended IEP, however, the IEP Team created behavior plans, an FBA performed, the Student’s parents’ concerns about hygiene were noted, hygiene supports were enhanced to allow prompts for restroom use and other daily functions with a goal toward independent living. However, due to inconsistencies within the Amended IEP, lack of specificity of the supplementary aids and services, as well as training for staff limited to the paraprofessionals, the IEP is not reasonably calculated to provide the Student FAPE. The behavior intervention plan, which is referenced, but not part of the Amended IEP also does not provide a reasonable replacement

behavior, just a relocation of the behavior. As a result of these deficiencies the November 3, 2021, Amended IEP is not appropriate.

There is a violation of FAPE. **Corrective action is required** on this issue. [92 NAC 51-007.07A2a, 007.07A2b, 007.07A5c, 007.07A6, 007.07A7, and 007.07B2].

The January 22, 2021, IEP is found to be inappropriate because it failed to address behavioral and hygiene issues. The staff documented the Student was going under tables, throwing objects, lying on the floor, being unkempt, having a dirty face, and eventually urinating in the choir room which went unnoticed by staff for a time while the Student stood in a puddle of urine with wet clothing and shoes.

The behavior strategy in the IEP was too ignored. The plan was that when behaviors occurred, staff were to state the expectation, and then give a reward if the Student complied. Due to the IEP not being reasonably calculated to intervene with behavior difficulties and address hygiene concerns, it is a violation of FAPE. The Student lost educational benefit during this period and corrective action is required. [92 NAC 51-007.07A2a, 007.07A2b, 007.07A7, and 007.07B2.] The corrective action is detailed at the end of this report.

Issue # 3

Did the Student's IEPs appropriately address the strengths of the Student and the concerns of the parents for enhancing the education of their child, as required by 92 NAC 51-007.07B1?

92 NAC 51-007.B1 states:

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

007.07B1	The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child
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Allegations/Parent Position

The Student's Parent contends the IEP amended November 3, 2021, is inappropriate because the IEP team did not address the concerns of the Student's Parents as to incontinence, hygiene, and behavior. [Interview, Student's Mother, January 11, 2022.]

District Response

The District's position generally is that the IEP team considered the concerns of the Student's Parents, as documented in the IEP with summary notations

addressing the concerns. [Interview District Representative and counsel, January 13, 2022.]

Investigative Findings

The Investigative Findings for Issues Numbered 1 and 2 are incorporated. This IEP team addressed the concerns of the Student's Parents -- the hygiene needs and incontinence, as well as behaviors, and addressed them in context in the resulting IEP. [Amended IEP dated November 3, 2021, pp. 3, 9.]

Summary and Conclusions

The IEP team considered the concerns of the Student's parents in the three IEP meetings of October 5, October 28, and November 3, 2021. There was no violation of FAPE. [92 NAC 51-007.B1.]

No corrective action is required.

Issue #4

Were the Student's parents denied an opportunity to examine the records with respect to the educational placement of the Student and the provision of FAPE to the Student, as required by 92 NAC 51-009.03A -- 009.03B3?

In relevant part, NAC 51-009.03A -- 009.03B3 reads:

- 009.03 Opportunity to Examine Records.
 - 009.03A The parents of a child with a disability must be afforded, in accordance with the procedures of 92 NAC 51-009.03, an opportunity to inspect and review all education records with respect to: the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.
 - 009.03B Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained or used by the participating agency. The participating agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program or hearing pursuant to 92 NAC 55 or resolution session and in no case more than 45 days after the request has been made.
 - 009.03B2b The right to request that the participating agency provide copies of the records containing the information if

failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and 009.03B1 As used in 92 NAC 51-009.03B, participating agency means any agency or institution that collects, maintains or uses personally identifiable information or from which information is obtained under this Chapter.

009.03B2 The right to inspect and review education records includes: 009.03B2a The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; and

009.03B2c The right to have a representative of the parent inspect and review the records.

009.03B3 A participating agency may presume that the parent has authority to inspect and review records relating to his or her child unless the service agency has been advised that the parent does not have the authority under applicable Nebraska law governing such matters as guardianship, separation and divorce.

Allegations/Parent Position

The Student's Mother seeks copies of all memorandums, notes, and records relating to the investigation of the incontinence episode, including records regarding the paraprofessional on duty at the time of the incident, and documentation of the discussions of the IEP meetings on October 5, October 28, and November 3, 2021.

District Response

The District's position is that, the District provided the Student's parents have not been denied an opportunity to examine the records relating to the educational placement and provisions of FAPE to the Student, and that other records requests were personal notes or personnel notes not subject to disclosure. [Response, January 7, 2022].

Investigative Findings

The District has proceeded through counsel and, upon the representation of counsel, has made a proffer through its Response. When viewed with the Student's Mother's contentions, weight is given to the proffer as to what was requested and denied.

First, the District relies on the Complaint allegations as to what documents were or were not requested, or disclosed.

From this, the request for documentation is for the Assistant Principal's notes of a conversation which was had with the Student's Parent regarding the incontinence episode to act as memory aid to address the matter with the Principal. The request was denied because it was viewed as a memory aid kept in the sole possession of the maker, not revealed to any other person. The District is correct with this contention. Sole possession records are not viewed as educational records. See 34 C.F.R. Sec. 99.3 "Education Record" (b)(1)(education record exception)". [Anchorage Sch. Dist., 69 IDELR 260 (SEA AK 2017)(sole possession exception)].

The next record request to the District was for records relating to action taken against the paraeducator, which the District contends are personnel matters, and not subject to disclosure. Once again, the District is correct. See 34 C.F.R. Sec. 99.3 "Education Record" (b)(3)(i)(education record exception).

The next record request noted in the Complaint is for notes taken from a "designated note taker" regarding the concerns the Student's Parent states, they voiced in the prior week's IEP meeting. [Letter of Complaint dated December 6, unnumbered p. 5.] The District contends that the only request it had for notes was for a staff members notes regarding "formal documentation on the discussion at the IEP meeting that was held last week," which the District received on about October 13, 2021. [Letter of Response January 7, 2022, p. 9.] The District's position for denial of the documents were that notes taken at the IEP meeting the week before, which would have then been for the meeting on October 5, 2021, were personal memory notes. *Id.* Other than this, as proffered by the District, all other requests for records and notes have not been denied. *Id.*

Attachments to the Email from District counsel on January 10, 2022, (15 plus) have been reviewed. Of those, two undated notes from one staff member that may fall into the request for October 5, 2021 notes. Both have been reviewed. Under Letter to Dempsey, 110 LRP 37103 [(November 30, 2009)] it was expressed, that IEP minutes are subject to disclosure, yet "memory-jogger" type of notes are not subject to disclosure, *Id.* NAC 51-009.03B first requires a request. The request in this instance, as proffered by the District, is for the October 5, 2021 notes of the speech therapist. Having reviewed the undated notes that may be the October 5, 2021 IEP notes of it is concluded that the notes are personal "memory-jogger" notes, rather than formal minutes of the IEP meeting. There were no notes from a "designated note taker." Based on the conditions documented in the request, and a review of the above referenced documents, the District's assertion is correct.

Summary and Conclusions

This issue relates to a request by the Student's Mother, as proffered by the District, for notes and records relating to personnel matters and sole possession notes as to the paraprofessional and the incontinence episode, as well as notes from the October 5, 2021 "designated note taker." All of these notes or documents were outside of the definition of education records. As a result, there was no violation of FAPE. NAC 51-009.03A -- 009.03B3.

There is **no corrective action** required.

Issue # 5

Were the Student's IEPs properly implemented, as required by 92 NAC 51-007.01 and 007.07B3?

In relevant part, 92 NAC 51-007.01 and 007.07B3 state:

- | | |
|--------|--|
| 007 | Individualized Education Program (IEP) |
| 007.01 | An IEP shall be developed, reviewed, revised, and implemented for each child who receives special education and related services. In order to fulfill the requirements of 92 NAC 51-007.01 for infants and toddlers, school districts or approved cooperatives shall meet the requirements of 92 NAC 52. FAPE is provided to infants and toddlers with a disability in accordance with an IFSP rather than an IEP. The requirements for contents of the IFSP apply rather than the requirements for the contents of an IEP. All other substantive rights and protections established under special education |

laws apply to infants and toddlers with disabilities receiving FAPE in accordance with an IFSP.

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 other strategies to address that behavior.

Allegations/Parent Position:

The Student's Parent contends that had the Student been given assistance with toileting and hygiene (wash face and clean up prior to choir) then the incontinence episode would not have occurred. [Letter of Complaint dated December 6, 2021, unnumbered p. 3.]

District Response:

The District's position is that the IEPs at the time of the incontinence episode were focused on independence, and did not include toileting or hygiene assistance.

Investigative Findings:

The Investigative Findings for Issues Numbered 1 and 2 are incorporated. The January 22, 2021, IEP is found to violate FAPE because of lack of the behavioral, hygiene, and toileting matters. The IEP, therefore, had no provisions not implemented on the issue because they did not contain appropriate measures.

As a result of the amended IEP dated November 3, 2021, and the lack of provisions within the IEP to handle behavior, hygiene and toileting matters prior to the IEP amendment, implementation during that time period is not considered and the issues are addressed in Issue #2. However, issues occurring after the Amendment IEP dated November 3, 2021, were examined. It was brought to the Investigator's attention that the following issues took place of concern.

1. On November 30, 2021, the Student arrived home November 30 with food and debris on the face, shirt, and glasses Another incident that took place in which the student was one episode involving toileting matters after the IEP was amended in November.
2. The Student was excluded from a concert held in the community during the month of December. The Parent was originally told that the Student chose not to participate, but later was told it was due to "disruptive behavior".
3. The Parent provided the Investigator a photo of soiled clothing (date unknown), with the alleged event occurring after December 7, 2021 (the date the Complaint was filed).

These issues are included due to the relation of these events to those which were addressed within the complaint regarding concerns with the Student's hygiene of which the District is aware.

Summary and Conclusions:

The January 22, 2021, IEP being inappropriate because of the lack of the behavioral, hygiene, and toileting matters, then there was no provision to implement as to toileting, behavior, and hygiene.

However, the November 3, 2021, IEP did address these issues and implementation is at issue. Staff were to be trained regarding using the pictorial cues required for reminders as well as undergo behavioral training to support hygiene needs. Although it is recognized that mistakes happen and the Student is learning to be more independent, the issue is with the Student being sent home in soiled undergarments as well as having soiled face, glasses and shirt, indicating that personal hygiene needs were not met. Also, excluding the Student from a concert due to "disruptive behavior" is an indication the behavior intervention plan was not implemented as written. As a result, there is a violation with the implementation of the amended IEP pursuant to 92 NAC 51-007.01 and 007.07B3.

Corrective action is required and detailed at the end of this report.

Issue # 6

Did the Student's IEPs place the Student in the least restrictive environment, as required by 92 NAC 51-008.01?

In relevant part, 92 NAC 51-008.01 reads:

- 008 Placement of Children With Disabilities
- 008.01 Least Restrictive Environment (LRE) Requirements

- 008.01A The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved service agencies, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- 008.01B Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual multidisciplinary evaluation of the child's development and educational needs.
- 008.01C In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:
- 008.01C1 The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
- 008.01C2 The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.
- 008.01D Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

- 008.01D1 The continuum must:
 - 008.01D1a Include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and
 - 008.01D1b Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.
- 008.01E The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:
 - 008.01E1 Is determined at least annually;
 - 008.01E2 Is based on his or her individualized education program (IEP); and
 - 008.01E3 Is as close as possible to the child's home.
- 008.01F The various array of placement options included under 92 NAC 51-008.01D must be available to the extent necessary to implement the individualized education program for each child with a verified disability.
- 008.01G Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.
- 008.01H In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.
- 008.01I A child with a disability must not be removed from education in age-appropriate regular classrooms solely

because of needed modifications in the general curriculum

Allegations/Parent Position:

The Student's Mother contends that the Student had enhanced behavioral challenges when not in general education classrooms. [Letter of Complaint dated December 6, 2021, unnumbered p. 4-5.]

District Response:

The District agrees, after the FBA and the process, that the Student will be placed in more general education classrooms.

Investigative Findings:

Once again, the Investigative Findings for Issues Numbered 1 and 2 are incorporated. Prior to the Amended IEP dated November 3, 2021, and within the terms of IEP dated January 22, 2021, the Student engaged in inappropriate behaviors, such as throwing self in front of the classroom hallways. [Interview, Student's Mother, January 11, 2022.] The District does not oppose that incidents took place, including with an explanation that loud sounds and behaviors by other students in the special education classes affected the Student and that now, with the FBA/BIP, the Student is moved to new classrooms with a new teacher in the life skills class to reduce the class size. [Interview District Representative and counsel, January 13, 2022.] The Student's Mother is in agreement with the ongoing Amended IEP dated November 3, 2021, by stating "[i]t was ... agreed upon that the schoolwork to get [the Student] into more general education classrooms." [Letter of Complaint dated December 6, 2021, p. 5.]

The change in schedule now includes job shadow, peer/peer mentor, Rec. Sports, English Elective, Fund. English, All Sch. Choir, Journalism, Food/Wellness, OT program, SPED 1 and 2. [Student's Schedule, January 4, 2022.]

Summary and Conclusions:

Given the agreement to move forward between the parties then there is no issue ripe for determination under the Amended IEP dated November 3, 2021. As for the behaviors arising during the two classes while within the terms of the IEP dated January 22, 2021, the Student was not in the least restrictive environment. [92 NAC 51-008.01.] Just as with Issue 2, the Student had been denied educational benefit during these periods.

For these reasons, **corrective action is required** and detailed at the end of the report.

Issue # 7

Do the alleged violations amount to a denial of FAPE, as required by 34 C.F.R. Sec. 300.101?

In relevant part, 34 C.F.R. Sec. 300.101 reads:

300.101 Free appropriate public education (FAPE).

- (a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in Sec. 300.530(d).

Allegations/Parent Position

The Student's Mother contends that Issues 1-6 above denied the Student a FAPE.

District Response

The District responds that FAPE was not denied in any of the matters raised.

Investigative Findings:

The Investigative Findings for Issues Numbered 1, 2, and 6 are incorporated.

Summary and Conclusions

FAPE is denied for Issue 2 (inappropriate IEP, January 22, 2021, and November 3, 2021); Issue 5 (lack of implementation of IEP regarding hygiene and behavior interventions) and Issue 6 (LRE, IEP, January 22, 2021).

Corrective action is required and detailed at the end of the report.

Corrective Action

Compensatory Services and Reconvening the IEP Team

1. The District will reconvene the Student's IEP Team within 30 calendar days of the date of this report. The IEP Team shall review the following documentation:
 - a. Correct the inconsistencies between Goal 1 and 3, discuss adding to Goal 2 information to communicate when assistance is needed.
 - b. Add specificity to the supplementary aids and services for "frequency of breaks" by defining "as needed."
 - c. Redraft the Behavior Intervention Plan to include an appropriate "Replacement Behavior."
 - d. Number of behavioral instances and amount of instructional time missed due to Student sitting underneath the sink in the classroom, laying down in the hallways, or other refusal of

participation during the time between January 21, 2021, and November 3, 2021, when the IEP Team developed the amended IEP.

- e. Document the amount of missed instruction due to behavioral concerns.
 - f. Document how behavioral and hygiene data will be collected and reviewed as well as indications for when the IEP Team may need to be reconvened to address behavior and hygiene issues that may persist.
 - g. Develop a proposal for compensatory services to allow the student to engage in missed services due to behavior issues and the lack of the provision of FAPE during the January 21, 2021, and November 3, 2021, timespan. The proposed compensatory services should include the following:
 - h. Reasonable calculation of time needed to get the student to the knowledge and skill the Student would have been at had services been provided.
 - i. A reasonable calculation of the time the Student can benefit from added services provided the Student and family's schedule.
 - ii. Specific skills that will be addressed based on instruction that was previously missed during the compensatory time as well as any needed accommodations/modifications needed to benefit the Student.
 - iii. If the IEP Team is unable to come to consensus regarding compensatory services required, the District will provide the proposals made along with the information required for consideration in item 1 of the corrective action to nde.speddr@nebraska.gov for review. The Complaint Specialist assigned to follow up with the corrective action will review and either accept one of the proposals or provide specifics of compensatory services based on the information provided for the district to implement.
2. After a proposal of compensatory services is determined by the IEP Team or by NDE, the District will issue the Parent a prior written notice detailing the compensatory services agreed to or issued by NDE. The prior written notice must be provided within 10 days of the date of the IEP Team meeting or no later than 60 days from the date of the investigation report.

3. Compensatory services shall be completed by November 1, 2022. Student absence or refusal of the parent to make the child available shall result in a waiver of service scheduled for that day. Staff absences must be rescheduled. Any compensatory services declined or not utilized by November 1, 2022, shall be deemed waived (assuming the District has made a good faith effort to provide all compensatory services).
4. The schedule for compensatory services shall be provided to NDE within 10 days from the date of the PWN.
5. Service provider logs verifying completion of all compensatory services must be submitted to NDE monthly until the service is complete and all service has been verified.

Review of Policies/Procedures and Training

1. The District will review policies and procedures regarding the implementation of IEPs and the training provided to individuals (teachers, administrators, and paraprofessionals) working with the Student in regard to providing accommodations for hygiene and behavioral needs.
2. Development and implementation of IEPs and Behavior Intervention Plans
 - a. Linking key components of the IEP to ensure components are not in conflict with each other (Goals [including transition goals] provide information consistent with what is included in the present levels of academic achievement and functional performance
 - b. Including specificity to supplementary aids and services to provide clarity of when items such as "frequent breaks" should be implemented and how
 - c. Supports to school personnel include training to all individuals working with the Student, not just the paraprofessionals
 - d. Replacement behaviors detailed within the behavior intervention plan is more than a change of location of the behavior exhibited
3. Documentation of the conclusions made after the review of the policies and procedures and training provided will be sent to nde.speddr@nebraska.gov for review.
4. The District will provide training to staff regarding the implementation of accommodations, modifications, and behavioral interventions documented within IEPs.

- a. Training must be provided to NDE for approval 10 business days prior to conducting the training.
 - b. The District will provide sign-in sheets or other documentation of those participating no later than 10 business days following the training.
- 5. Training specific to meeting the Student's hygiene and behavioral needs will be provided on a quarterly basis or after any reported incidence of Student incontinence.

Notice to District

Unless otherwise indicated, the corrective action specified must be completed within one hundred and ten (110) 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 Specialist
nde.speddr@nebraska.gov