

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.20
Complaint Investigator: [Redacted]
Date Complaint Filed: February 18, 2022
Date of Report: [Redacted]

Issues Investigated

1. Whether the School District failed to identify and evaluate Student as a child with a suspected disability who is need of special education and related services. [92 NAC 51-006.01]
2. Whether the School District failed to conduct an evaluation upon request from the Parent to determine if Student qualifies as a child with a disability under the IDEA. [92 NAC 51-006.02]
3. Whether the School District wrongfully refused to provide an Independent Educational Evaluation (IEE) after Parent's request. [92 NAC 51-006.07]
4. Whether the School District has a policy, procedure, or practice in place the prevents parents from including advocates as members of the IEP team? [92 NAC 51-007.03]

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated February 17, 2022; received by NDE February 18, 2022
- Email Correspondence dated February 4, 2022 – February 9, 2022
- Email Correspondence dated February 9, 2022 – February 11, 2022
- Email Correspondence dated February 16, 2022
- Acadience Student Pathways of Progress Graphs for 2020-21
- Acadience Student Pathways of Progress Graphs for 2021-22
- Kindergarten Report Card for 2020-21
- Grade 1 Report Card for 2021-22
- Telephonic interview with Complainant on March 25, 2022

From the School District

- Letter of Response dated March 16, 2022; received by NDE March 16, 2022
- Statement of Special Education Director dated March 15, 2022
- Email Correspondence dated June 28, 2021
- Email Correspondence dated July 19, 2021

- Email Correspondence dated November 23, 2021
- Email Correspondence dated January 26, 2022 – January 28, 2022
- Email Correspondence dated January 29, 2022
- Email Correspondence dated January 31, 2022
- Email Correspondence dated February 2, 2022 – February 5, 2022
- Email Correspondence dated February 4, 2022 – February 9, 2022
- Email Correspondence dated February 7, 2022
- Email Correspondence dated February 11, 2022
- Email Correspondence dated February 17, 2022
- Email Correspondence dated February 18, 2022
- Prior Written Noticed dated February 3, 2022
- Prior Written Noticed dated February 10, 2022
- District Special Education Policy and Procedure dated February 16, 2021
- Narrative regarding July 19, 2021 email (no date included within)
- Winter 2021 through Winter 2022 MAP scores
- Investigative Question Responses of Special Education Director dated March 24, 2022
- Notice and Consent for Initial Evaluation dated April 4, 2022
- Telephonic Interview with Special Education Director on April 1, 2022
- Reviewed solely for background information:
 - Notice and Consent for Initial Evaluation dated September 12, 2019
 - Notice of Meeting dated November 15, 2019
 - Multidisciplinary Evaluation Team MDT Report dated November 21, 2019
 - Prior Written Notice dated November 21, 2019

Miscellaneous

- Telephonic interview with Complainant's Advocate on March 28, 2022

Note

Some documents were provided by both the Complainant and District. Those documents are listed under "From the School District."

Findings of Facts

1. No issues raised in the complaint regarding Student are currently subject to a due process hearing, nor have these issues been previously decided in a due process hearing.
2. The Student is six years old and in the first grade.
3. In September 2019, when Student was in preschool, Parent requested the Student be evaluated as the Parent was concerned with the Student's progress in the areas of fine motor skills, gross motor skills,

- receptive language, expressive language, and academic skills. Additionally, the Parent had received a diagnosis from an outside entity that stated the Student met the criteria for a diagnosis of autism spectrum disorder and possibly attention deficit hyperactivity disorder (ADHD).
4. In November 2019, the Student was evaluated by the District. The MDT stated, in part:
 - a. The Student does not meet verification criteria for special education services;
 - b. Parent agreed with the MDT decision.
 5. On June 28, 2021, the Parent sent an email inquiring about how kids are selected to attend summer school. The District responded and said teachers request a student attend summer school if they think that a particular student needs it. Parent replied and said, in part, "[Student] did really well last year so [the Student] is on track apparently.
 6. On July 19, 2021, the Parent sent an email to the District regarding the Student's recent incontinence. The Parent stated the Student was having incidents multiple times and asked for advice on how to handle the situation. The District responded and said it would reach back out to Parent after it had a chance to think about it.

Note: The District stated the school nurse reached out to Parent and discussed the problem. District asserts that the incontinence issue was not mentioned again until November 2021 (see Investigative Fact #7).
 7. On November 23, 2021, the Parent informed the District regarding a medical procedure the Student would be getting to resolve the Student's incontinence. The Parent stated the incontinence was of no fault of the Student's but rather a physicality. Note: It is unclear when the medical procedure was performed.
 8. In Winter 2022, the Student took the MAP test. Student's scores were as follows:
 - a. Math RIT Score: 147 (3rd percentile)
 - b. Reading RIT Score: 145 (6th percentile)
 9. On January 25, 2022, the Parent sent an email to the District and stated the following, in part:
 - a. The Student has a diagnosis of autism and ADHD;
 - b. The Student is performing below grade level in math and reading;
 - c. The Student is receiving additional supports, including small group instruction, and one-on-one attention during math;

- d. The Parent requests a complete evaluation of the Student to determine what educational programs and services are needed.
- 10. On January 28, 2022, the Student's classroom teacher responded to the Parent's request for evaluation and asked that the Parent bring in documentation of the Student's diagnoses to "speed up the evaluation process." The classroom teacher stated that if the Parent did not have documentation of the Student's diagnoses, then the Student could start the SAT process. After 6-8 weeks, the SAT team would decide if Student needed to be evaluated. The classroom teacher provided the contact information for District's special education director.
- 11. The Parent replied on January 28, 2022, and stated that the District had the Student's diagnoses on file from three years prior. The Parent again requested that the Student be evaluated.
- 12. On January 29, 2022, the special education director emailed the Parent and stated the following, in part:
 - a. There is no documentation on file of the Student's diagnoses;
 - b. The November 2019, evaluation was still valid unless there were significant changes seen in the Student;
 - c. The Student's general education teacher does not have any present concerns;
 - d. The Student could be placed in the SAT process, if there are concerns. If the SAT committee recommends an evaluation, one will be completed.
- 13. On January 31, 2022, the Parent requested an authorization for release of the Student's records. District provided the paperwork.
- 14. On February 2, 2022, the District emailed the Parent and said it received the Parent's authorization request and asked if the Parent would be willing to meet with school staff, including the Student's previous preschool teacher, regarding the Parent's concerns or questions. Additionally, the District stated that the SAT process may benefit the Student and would like to discuss same with the Parent.
- 15. On February 2, 2022, an advocate for the Parent responded to the District's email and stated that the Parent's email on January 25, 2022, served as the initiation of the formal IEP evaluation process. Additionally, the Parent's advocate provided dates in which they and the Parent would be available for an SAT meeting. The Parent's advocate requested that the preschool teacher not be included in the

- email communication as they are not involved with the Student any longer.
16. The District replied on February 2, 2022, and stated that it reached out to the Parent to determine a day in which they could meet to answer the Parent's questions. Additionally, it stated it would decide what staff would be included on emails and that it would be issuing a PWN soon.
 17. On February 3, 2022, the Parent informed the District via email when she was available to meet and indicated the preschool teacher would not be a beneficial member to the team.
 18. A PWN was issued on February 3, 2022. The PWN stated the following, in part:
 - a. District refuses to conduct a special education evaluation for the Student;
 - b. An evaluation was conducted for the Student in November 2019. The Student did not meet verification criteria for special education services;
 - c. The Student's current teachers do not have concerns with the Student's academic performance or behaviors. Then-current progress included, in part:
 - i. Behavior: Student listens well, follows directions, works quietly in their seat, does not engage in inappropriate behaviors at recess.
 - ii. Reading: Student has grown and made progress since the beginning of the school year
 1. Sight Words: 100% accuracy
 2. Spelling words: 100% accuracy
 3. Listening comprehension: 83%
 - iii. Writing: Student struggled with legibility and using colors that made sense at the beginning of the school year. Now, Student is choosing appropriate colors, adding more details, and writing more neatly.
 - iv. Math: Student has shown some growth since the beginning of the school year. Depending on the lesson, the classroom para may sit with Student to keep them on task.
 19. On February 7, 2022, Parent's advocate emailed District regarding the issued PWN and stated that Parent disagreed with District's decision not to evaluate Student and was requesting an independent education evaluation (IEE).
 20. Parent's advocate sent a follow-up email on February 9, 2022, inquiring as to whether District received the IEE request.

21. A PWN was issued on February 11, 2022. The PWN stated the following, in part:
 - a. District refuses to initiate an IEE at public expense;
 - b. The IDEA and Rule 51 provide a two-year statute of limitations during which parents may raise issues with a District's actions or decisions;
 - c. Student was not evaluated in the last 24 months so there is no evaluation in which Parent may disagree or request an IEE.
22. On February 11, 2022, the District sent the Parent an email stating the following, in part:
 - a. Student was referred to the SAT process;
 - b. District would no longer respond or communicate with Parent's advocate. All questions and requests needed to come from Parent.
23. On February 18, 2022, Parent's advocate emailed District and stated she was aware of the February 11, 2022, email and did not agree with District's decisions and that a state complaint would be filed.
24. On February 18, 2022, Parent filed the state complaint.
25. On February 28, 2022, the SAT process began for Student. (Per telephonic interview on April 1, 2022).
26. As part of the SAT program, Student took the Winter 2022 MAP test again. The same procedure was followed during the retake. However, there were fewer students in the room, as not every student retook the test. Student's scores were as follows:
 - a. Math RIT Score: 169 (46th percentile)
 - b. Reading RIT Score: 177 (80th percentile)
27. During the month of March, District reported that Student was doing well in the SAT program. District was not concerned regarding Student's academic performance. However, District did become concerned regarding Student's behaviors during the last two weeks of March. Student had begun to suffer from incontinence multiples times a week, and sometimes multiple times a day. Additionally, Student's attitude changed towards the classroom teacher and was speaking and responding differently than ever before. (Per telephonic interview on April 1, 2022).
28. On April 4, 2022, District requested Parent's consent to evaluate Student. The notice stated, in part:
 - a. Student has shown progress with interventions of SAT;
 - b. In the last couple weeks, there has been an increase in behaviors at school;

- c. The SAT team believes Student should be evaluated.
29. Parent provided her consent to evaluate Student on April 5, 2022.

Issue # 1

Whether the School District failed to identify and evaluate Student as a child with a suspected disability who is need of special education and related services. [92 NAC 51-006.01]

92 NAC 51-006.01 states:

006.01 Child Find

006.01A *All children with disabilities residing in the state, including children with disabilities who are homeless children or wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and evaluated and a practical method shall be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.*

006.01B *Student Assistance Team (SAT) or Comparable Problem Solving Team*

006.01B1 *For a school age student, a general education student assistance team or a comparable problem solving team shall be used prior to referral for multidisciplinary team evaluation.*

006.01B2 *The SAT or comparable problem solving team shall utilize and document problem solving and intervention strategies to assist the teacher in the provision of general education.*

006.01B3 *If the student assistance team or comparable problem solving team feels that all viable alternatives have been explored, a referral for multidisciplinary evaluation shall be completed. A*

referral shall include information from the SAT or comparable problem solving team, meeting the requirements of 92 NAC 51-006.01B and a listing of the members of the SAT or comparable problem solving team.

Allegations/Parent Position

Parent asserts that the Student should be evaluated for several reasons: (1) the Student's MAP assessment scores in Winter 2022 were below benchmark; (2) the Student is engaging in frequent misbehaviors, including incontinence and attention-seeking behaviors; (3) the Student struggles to stay focused; and (4) the Student has been diagnosed with autism and ADHD, per an outside evaluator.

The Parent does not agree that the Student should not be evaluated now because they were evaluated in November 2019. The Parent states that things changed over the course of two years; the Student is not the same now as they were then.

Similarly, the Parent does not agree with the District's approach of utilizing the SAT process. The Parent contends that since the Student is getting assistance, including specialized testing, it indicates there is a problem. Thus, the Student should be evaluated. (Per interview with Complainant on March 25, 2022, and Letter of Complaint).

District Response

An evaluation should not be conducted on Student because an evaluation is only conducted if there is a basis to suspect a student has a disability and is in need of special education and related services. The District does not suspect the Student has a disability and is in need of special education and related services.

The Student was evaluated in November 2019. At that time, it was determined that the Student was not in need of special education and related services. At the time of the District's response it indicated, there is no data that demonstrates the Student is in need of special education and related services. As nothing suggests the need for special education or related services, the District contends there is a presumption that evaluations are valid for three years pursuant to 92 NAC 51-006.05B. Thus, the evaluation performed in November 2019, is still valid and a reevaluation is unnecessary.

District referred the Student to the SAT program to monitor their progress, address Parent's concerns, and to support the Student through general education supports and interventions. The District did not refer the Student to the SAT program to delay an evaluation. The District would have initiated an evaluation if there was a basis to suspect the need of special education and related services. Instead, the District states the Student is progressing appropriately with the support of general education supports and interventions. (See Letter of Response dated March 16, 2022).

Investigative Findings

The term "child find" is used to describe the affirmative and continuing obligation of school districts to identify, locate and evaluate all children with disabilities residing within the district's jurisdictional boundaries who are in need of special education and related services. 92 NAC 51-006.01.

The threshold for suspicion of a disability is relatively low, and the initial inquiry is not whether the child has a disability or qualifies for special education services, but whether the child should be referred for an evaluation. *State of Hawaii v. Cari Rae S.*, 35 IDELR 90 (D. Haw. 2001).

In this matter, in Parent's email, the Parent requested the Student be evaluated for the following reasons: (1) Student's outside diagnosis of autism and ADHD; (2) Student's low math and reading scores on the Winter 2022 MAP assessment; and (3) the use of supports, including one-on-one support, and interventions.

Outside Diagnoses

In the District's initial response to the Parent, it stated it did not know of the Student's outside diagnoses and requested a copy of same. However, the District should have known of the Student's diagnoses as it was obtained prior to the Student's previous evaluation in November 2019. In fact, the Student's diagnosis was one of the reasons the Student was previously evaluated and it was mentioned in the November 2019, MDT report.

Despite the Student's diagnoses, the Student was not found in need of special education and related services in November 2019. Since November 2019, the Student's diagnosis has not changed. Thus, in this instance, the Student's outside diagnosis is not a determinative factor that Student should be evaluated again, at the time of Parent's request in January 2022.

MAP Scores

The District stated it was not concerned regarding the Student's Winter 2022 MAP scores because Student's classroom teacher observed the Student while they took the MAP assessment and noted that the Student was not giving their

best effort and rushing through the questions. Thus, the District did not believe that the Student preformed to the best of their abilities, nor were the scores an indicator of the Student's cognition.

Furthermore, the Student's classroom teacher was not concerned with the Student's overall progress, all of which was noted in the PWN issued on February 3, 2022. Again, the Student's classroom performance, including their testing scores, were not indicative that the Student needed to be evaluated.

Supports and Interventions

Regarding, the Parent's assertion that the Student was receiving supports and interventions, implying the Student needed extra assistance to progress, the District stated that the Student was receiving reading interventions through the Title 1 program, as many students without disabilities do. (Per telephonic interview with District on April 1, 2022).

Similarly, the Student had access to support from the classroom paraeducator, like all other students in the class. The paraeducator's role is to assist the classroom teacher. The paraeducator was not placed in the classroom for the Student, nor was the paraeducator providing one-on-one support to the Student. Thus, the supports and interventions the Student received were typical supports and interventions students without disabilities receive, when appropriate. (Per telephonic interview with District on April 1, 2022).

Supplementary Reasons

During this investigation, the Parent indicated that she believed the Student needed to be evaluated due to their increase in incontinence and attention-seeking behaviors. It is unclear whether or when Parent indicated these additional concerns to District. Nevertheless, the District stated that the Student's incontinence was not a concern for two reasons: (1) Student was not engaging in incontinence on a regular or frequent basis at school and (2) Student's incontinence was explained by the Parent as a treatable, medical condition; one in which the Student would be receiving treatment for. Similarly, the Student's other behaviors at school were not of concern to the District as the Student generally showed positive behaviors in the classroom and at recess, all of which was noted in the PWN issued on February 3, 2022.

As all of the Parent's reasons for evaluation mentioned above were manageable in the general education setting and did not require special education and related services, the District did not agree to evaluate the Student. However, the District still wanted to address the Parent's concerns so the District suggested the Student become involved in the SAT program.

State rules governing special education permit districts to employ the use of a student assistance team as a proactive system of early intervention for students who demonstrate a need for educational support for learning (also referred to as Response to Intervention (RtI)), as set forth in 92 NAC 51-006.01B.

The Office of Special Education Programs (OSEP) specifically cautioned state directors of special education in a Memorandum issued January 21, 2011, that the RtI process must not be used to delay or deny a timely initial evaluation to determine if a child is a child with a disability and is eligible for special education and related services pursuant to an IEP. See Memorandum to: State directors of Special Education, 56 IDELR 50 (OSEP 2011).

While District's initial response to the Parent's request for evaluation was worded poorly when it stated that the Student could possibly be evaluated after receipt of the autism and ADHD diagnoses and/or after the Student was engaged in the SAT program for six to eight weeks; the District's intent was not to delay an evaluation. Rather, the District did not have reason to suspect the Student was a student with a disability in need of special education and related services. The enrollment in the SAT program was to employ the use of strategies to use for the Student so that they could continue making educational gains. The District assured that at any time it began to suspect the Student was in need for special education and related services, the Student would be referred for an evaluation.

The District suggested in its responses to the Parent and to this complaint that the reason for not evaluating the Student was because it did not suspect a need of special education and related services but that is not the proper analysis. As the court determined in *State of Hawaii v. Cari Rae S.*, the initial inquiry is not whether the student needs special education and related services, but whether the student should be referred for an evaluation. 35 IDELR 90 (D. Haw. 2001).

While any individual reason Parent gave as an indicator of the Student's need to be evaluated may not have been enough of a reason to evaluate the Student, all the reasons pooled together may raise a concern. However, because the Student had been evaluated in November 2019 and did not qualify as a student in need of special education services, the District is afforded a reasonable time to monitor the Student's progress before exploring whether further evaluation is required. See *Ridley Sch. Dist. v. M.R.*, 58 IDELR 271 (3d Cir. 2012).

In this case, although Student struggled on the Winter 2022 MAP test and was receiving reading interventions, it was reasonable for the District to employ the

use of interventions and the SAT program before ordering a second evaluation. See Bd. of Educ. of Fayette Cty. v. L.M., 478 F.3d 307 (6th Cir. 2007) (explaining that school district complied with child-find requirements by implementing various interventions for a student from kindergarten through second grade).

While there is not a finding that the District should have evaluated the Student upon the Parent's request for same, recent events have led the District to order an evaluation for the Student. Specifically, during this investigation, the Student's incontinence became more frequent at school. Additionally, the District reported that the Student's overall demeanor changed towards their classroom teacher. Both behaviors became concerning to the District and the District acted promptly and referred the Student for an evaluation. The Parent provided consent on April 4, 2022.

Summary and Conclusions

Based on the Student's previous evaluation in which they did not qualify for special education services and the opportunity provided to the District to monitor the Student's progress before reevaluating; the District implemented the requirements of 92 NAC 51-006.01 and **no corrective action** is required.

Issue # 2: Whether the School District failed to conduct an evaluation upon request from the Parent to determine if Student qualifies as a child with a disability under the IDEA. [92 NAC 51-006.02]

92 NAC 51-006.02 states:

006.02 *General Evaluation Requirements*

006.02B *Consistent with the consent requirements in 92 NAC 51-009.08A, a parent of a child, the Nebraska Department of Education, another State agency or a local school district or approved cooperative or nonpublic school may initiate a request for an initial evaluation to determine if the child is a child with a disability.*

92 NAC 51-009.05 states:

009.05A *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:*

009.05A1 *Proposes to initiate or change the identification, evaluation, or educational placement of a child or*

the provision of a free appropriate public education; or

009.05A2

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

Allegations/Parent Position

See "Allegations/Parent Position" under Issue #1.

District Response

See "District Response" under Issue #1.

Investigative Findings

Written notice must be given to the parents of a child with a disability a reasonable time before the public agency: (1) proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. 92 NAC 51-009.05. If a request for an evaluation has been made, the district must respond to the request through prior written notice, which includes among other content, an explanation of why the agency proposes or refuses to take the action. If the district believes an evaluation is not necessary because the child is not suspected of having a disability, it must issue written notice to the parent explaining why it is refusing to evaluate the child.

Here, the Parent requested the Student be evaluated. The District allowed the Parent's request, but it did not agree that an evaluation was needed. The District promptly issued a PWN detailing why it refused to evaluate child, as required. The District acted appropriately regarding Parent's request for evaluation.

Summary and Conclusions

As the District issued a PWN detailing why it refused to evaluate the Student, the District implemented the requirements of 92 NAC 51-006.02 and 92 NAC 51-009.05 and **no corrective action** is required.

Issue # 3

Whether the School District wrongfully refused to provide an Independent Educational Evaluation (IEE) after Parent's request. [92 NAC 51-006.07]

92 NAC 51-006.07 states:

006.07 Independent Educational Evaluation

006.07A A parent of a child with a disability has the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with the evaluation obtained by the school district or approved cooperative, subject to the provisions of 92 NAC 51-006.07.

92 NAC 55-004.01 states:

004. Commencement of a special education contested case.

004.01. A parent or local educational agency shall request a hearing by filing a petition under this Chapter within two (2) years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the petition.

Allegations/Parent Position

The Parent requested an IEE because of the District's refusal to evaluate the Student. The Parent attempted to exhaust all options available so that the Student would be evaluated. (Per interview with Complainant on March 25, 2022, interview with Parent's Advocate on March 28, 2022, and Letter of Complaint).

District Response

The District states that it cannot fulfill the Parent's IEE request because it was submitted two years after the initial evaluation of the Student. The District contends a two-year limitation on IEE requests is standard procedure by Nebraska Department of Education. Moreover, as the District is prohibited from initiating due process to defend the sufficiency of the initial evaluation after two years, it cannot be required to fulfill an IEE request submitted after the two-year period. (See Letter of Response dated March 16, 2022).

Investigative Findings

Per 92 NAC 51-006.07, a parent has the right to request an IEE if they disagree with the evaluation obtained by the district. Here, the Parent was not contesting the evaluation that was previously obtained for Student in November 2019. Rather, the Parent requested an IEE because she did not agree with District's

decision not to evaluate Student. As there was no evaluation to disagree with, Parent's request for an IEE was inappropriate.

Moreover, if Parent's request had been appropriate, it is untimely. A district has two options when responding to an IEE request: (1) file a due process hearing showing the evaluation was appropriate or (2) provide the IEE at public expense. 92 NAC 51-006.07D. Per 92 NAC 55-004.01, a due process hearing may only be requested within two (2) years. In this case, District would be barred from requesting a due process hearing as over 26 months had commenced at the time Parent requested an IEE. See, e.g., Atlanta Pub. Schs., 51 IDELR 29 (SEA GA 2008); Bryan County Sch. Dist., 113 LRP 4536, 7 GASLD 84 (SEA GA 2013).

Summary and Conclusions

As Parent's IEE request was inappropriate and untimely, the District is not in violation of the requirements of 92 NAC 51-006.07 and **no corrective action** is required.

Issue #4

Whether the School District has a policy, procedure, or practice in place the prevents parents from including advocates as members of the IEP team? [92 NAC 51-007.03]

92 NAC 51-007.03 states:

- | | |
|----------|--|
| 007.03 | <i>IEP Team Participants</i> |
| 007.03A | <i>The school district or approved cooperative shall ensure and document that each IEP team includes the following:</i> |
| 007.03A6 | <i>At the discretion of the parent or the school district or approved cooperative, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;</i> |

Allegations/Parent Position

The Parent invited a support person to attend the Student's SAT meeting, and to be involved in all discussions with the school, as she feels there is a lot of resistance from the District. The Parent contends that the District's refusal to include the Parent's support person as an impediment to the opportunity to participate in the decision-making process regarding the Student's FAPE. (Per interview with Complainant on March 25, 2022, and Letter of Complaint).

District Response

The District states that parents are permitted to invite third parties to IEP meetings. However, no IEP meeting has been convened for the Student. Rather, District has held an SAT meeting for the Student. The District is not required by the IDEA, Rule 51, or District policy to permit a third party's attendance at said meetings. (See Letter of Response dated March 16, 2022).

Investigative Findings

Rule 51 allows for a "student assistance team" (hereinafter referred to as "SAT team") to be employed before a referral for an evaluation for special education and related services. The purpose of the SAT team is to provide intervention strategies for a student in the general education curriculum. A student involved in the SAT process is not a student that has been previously or currently identified as a student with a disability who needs special education and related services. There are no regulations regarding who must and/or may be included in the SAT team.

Section 92 NAC 51-007.03 governs the participants that are required and permitted on a student's IEP team. An IEP team is convened after a student has been identified as a student with a disability who needs special education and related services. The District's policy mimics Rule 51 and the IDEA's requirements regarding who is included in a student's IEP team.

Here, the Student has not been identified as a student with a disability in need of special education and related services. Instead, the District has initiated the SAT process to assist the Student in the general education curriculum. As there is nothing in the IDEA or Rule 51 that requires a school district to permit a third party's attendance at SAT meetings, the District is not required to permit Parent's advocate to attend SAT meetings for the Student.

Summary and Conclusions

As the Student is not currently identified as a student with a disability in need of special education and related services and the Parent's advocate was only excluded from an SAT meeting, not an IEP meeting, the requirements of 92 NAC 51-007.03 do not apply and no corrective action is required.

Notice to District

Having found that the District is implementing the requirements of 92 NAC 51 in the areas raised in the complaint, the complaint is closed as of the date of this letter.