

COMPLAINT INVESTIGATION REPORT

Complaint Number: 20.21.09
Complaint Investigators: [REDACTED]
Date Complaint Filed: February 2, 2021
Date of Report: March 30, 2021

Issues Investigated

1. Did the District afford the Parents an opportunity to participate in meetings regarding the identification, evaluation, educational placement, and provision of a free appropriate public education in accordance with 92 NAC 51-009.01A?
2. Did the District ensure that the Student's education placement was made by a group of persons, including the Parents and other individuals knowledgeable about the child, the meaning of the evaluation data and the placement options and was made in conformity with the least restrictive environment requirements in accordance with 92 NAC 51-008.01C?
3. Did the IEP (Individual Education Program) Team review and revise the IEP, as appropriate, to address information about the Student provided by the Parents, including the Student's anticipated needs or other matters in accordance with 92 NAC 51-007.10?
4. Did the District provide prior written notice (PWN) to the Parents a reasonable time before the District refused to initiate or change the identification, evaluation or educational placement, or the provision of a free appropriate public education (FAPE) to the Student, as required by 92 NAC 51-009.05A?
5. Did the District fail to provide special education and related services set forth in the IEP to the Student as required by 92 NAC 51-007.02, resulting in a denial of a free appropriate public education (FAPE) to the Student as required by 92 NAC 51-003.24?

Information Reviewed

From the Parent

- Letter of Complaint received by the NDE on February 2, 2021

From the School District

- Letter of Response dated March 2, 2021
- Exhibits 1 through 11C consisting of the following:

- Exhibit 1 – IEP dated February 11, 2020, including IEP amendments dated October 21, 2020 and November 18, 2020;
- Exhibit 2 –
 - Prior Written Notices dated February 11, 2020; Not dated
 - Notice and Consent for Evaluation dated September 8, 2020
 - Notice and Consent for Evaluation sent via US Postal mail February 24, 2021; sent via email February 23, 2021
- Exhibit 3 – IEP meeting notes from IEP dated February 11, 2020
- Exhibit 4 – Progress Reports dated March 6, 2020; May 15, 2020; October 16, 2020; December 11, 2020 and Grade Reports for Quarter 3 and Quarter 4 of the 2019-20 School Year and Quarter 1 and 2 of the 2020-21 School Year;
- Exhibit 5 – Attendance Documents dated August 20, 2019 through March 1, 2021
- Exhibit 6 – Behavioral Data dated October 26, 2020 through November 24, 2020
- Exhibit 7 – Evaluation Report dated February 10, 2015
- Exhibit 8A – Contact Log dated February 1, 2020 through March 2, 2021
- Exhibit 8B – Emails dated February 3, 2020 through February 23, 2021
- Exhibit 8C – Letter from the District to the Parent dated December 8, 2020
- Exhibit 9 – COVID Continuity of Learning Plan
- Exhibit 10 – Special Education Policies
- Exhibit 11A – IEP Meeting Notice dated October 6, 2020
- Exhibit 11B – IEP meeting Notice dated January 30, 2021
- Exhibit 11C – Draft IEP dated February 24, 2021
- Email dated March 22, 2021
- District Calendar

Introduction

Pursuant to 92 NAC 51-009.1, the Nebraska Department of Education (NDE), Office of Special Education, is required to resolve complaints alleging violations of the Individuals with Disabilities Education Act (IDEA) that have occurred not more than one year prior to the date the complaint is received.

The complaint was filed on behalf of the Student whose Parent alleged IDEA violations. To conduct this complaint investigation, an outside investigator was used along with a complaint investigator with the NDE Office of Special Education. The documents received from the Parent and the School District

were reviewed, and additional information was received from the District at the request of the investigator. Two voicemail messages and two emails were forwarded to the Parent inquiring whether the Parent wished to participate in a telephone interview, but no response was received.

This investigation is limited to a review of alleged IDEA violations that occurred not more than one year prior to February 2, 2021, the date the complaint was received by the NDE. Any facts that are discussed that occurred outside the one-year time period for this investigation are provided for context purposes only.

Finding of Facts

1. The Student is 10 years old, in the 5th grade, and receives special education services under the disability category of Autism. (IEP dated February 11, 2020; Evaluation Report dated February 10, 2015).
2. The Student's attendance at District schools includes the following:
 - a. Although enrolled, the Student did not attend a District school from October 2019, to October 21, 2020.
 - b. The Student attended a severe behavior disorders program and accessed remote learning at School B from October 22, 2020, to November 27, 2020.
 - c. Although enrolled, the Student has not attended a District school from November 30, 2020 to present. (Attendance Documents dated August 20, 2019 through March 1, 2021)
 - d. The District's attendance office communicated with the Parent throughout the time the Student was not attending school regarding school attendance requirements. (Contact Log dated February 1, 2020 through March 2, 2021)
3. An annual IEP meeting was held on February 11, 2020, at School A. In addition to the required team members, 11 individuals invited by the Parent were in attendance. (Contact Log dated February 1, 2020 through March 2, 2021)
4. The Student's IEP was revised based on IEP team discussions on February 11, 2020. (IEP meeting notes from IEP dated February 11, 2020)
5. The February 11, 2020, IEP provides the following:
 - a. Student's primary disability is identified as Autism.
 - b. As of February 10, 2020, the Student had been absent from school for 61 days. The Student's last day of attendance at School A was October 17, 2019.
 - c. The Student's Present Levels of Academic Achievement and Functional Performance were identified.

- i. The Student is functioning primarily at Level 5 (abstract symbols, single words) in the classroom setting.
 - ii. Updated information from the Parent is included.
 - iii. Occupational Therapy data from September 2019 is included.
 - iv. The results of a communication screening updated in September 2019 is included.
 - v. The results of an assistive technology evaluation completed in April 2018 is included.
 - vi. Progress monitoring data collected by the special education teacher is included.
 - vii. Classroom behavioral data and observations are included.
- d. Ipad's are a trigger for the Student as a tablet device that does not allow the Student to do what the Student wants will trigger behaviors.
- e. Parent concerns and requests are set forth, including:
 - i. Increase use of words (speech) to communicate
 - ii. Homework sent home for additional skill practice
 - iii. Behavior is increasing
 - iv. Student's safety at school, especially when Student is banging head
 - v. Physical environment at School A
 - vi. Current level of staff support – Parent requested 1:1 para
 - vii. Not comfortable with current safety plan
 - viii. Wants to know why Student has behaviors
 - ix. Requests Extended School Year (ESY) Services
 - x. Student to learn to self-regulate – zones of regulation
 - xi. Request for 1:1 para
 - xii. Request more mats for safety
 - xiii. Concerns regarding helmet sizing and use of it for repeated impact
 - xiv. Wants helmet only used for emergency situations
 - xv. More Student engagement in classroom activities while actively learning
 - xvi. Wants Student to learn to write name and to have more pencil and paper practice
 - xvii. Wants more data and communication sent home than the daily communication book and the quarterly progress reports
 - xviii. Wants staff re-trained on the severe behavior disorders program protocols used with Student

- xix. Concerned about how the Student will transition back to school
- xx. Request for an individual sized helmet prescribed by a physician
- xxi. School staff not implementing the severe behavior disorders program plan
- f. Behavior impedes the Student's learning or the learning of others and an intervention plan is part of the Student's IEP. The Student's behaviors include:
 - i. Hitting and headbutting staff
 - ii. Hitting and headbutting students
 - iii. Kicking staff
 - iv. Injuring staff
 - v. Taking clothes off
 - vi. Spitting
 - vii. Throwing items at staff
 - viii. Taking off clothing
- g. The Student's behavior intervention plan includes:
 - i. Triggers of the behaviors
 - ii. Functions of the behaviors
 - iii. Underlying characteristics of the Student's disability
 - iv. Identified replacement behaviors
 - v. Sensory/biological interventions
 - vi. Reinforcement interventions
 - vii. Structure/visual support interventions
 - viii. Task demand interventions
 - ix. Skills to teach interventions
 - x. School strategies
 - xi. Suggestions for specials or large group tasks
 - xii. Actions when the Student engages in self-injury (e.g., head-banging)
- h. Consultation by the severe behavior disorders program with the classroom teacher and supporting the Student by modeling the behavior plan, measuring fidelity and training others to measure fidelity for 6 hours per week.
- i. Inadequate data was available to determine whether extended school year (ESY) services were necessary. The IEP team will reconvene on or before May 5, 2020, to review the need for ESY.
- j. Special education transportation is required.
- k. The February 11, 2020 IEP provides five goals addressing:

- i. Behavior and safety plan implementation
 - ii. Increasing math abilities
 - iii. Increasing reading abilities
 - iv. Increasing science abilities
 - v. Improving communication skills
 - l. Due to the Student's academic, self-help, sensory/fine motor, communication and behavioral needs, the Student's placement consists of smaller group and individualized setting at an alternative curriculum placement utilizing the Nebraska Alternative standards. The Student eats lunch in the cafeteria with general education students present with the support of paraprofessionals and participates in school assemblies and activities with support as appropriate.
 - m. The Student will begin school on a shortened day with the hours of 8:45 to 10:35.
 - n. The Parent signed as a participant at the IEP meeting. (IEP dated February 11, 2020)
6. Prior Written Notice (PWN) for the February 11, 2020 IEP was provided to the Parent.
- a. The Parent's request for a 1:1 paraprofessional and a 1:1 specialized instructor was denied.
 - b. The IEP team was concerned about the Student's ability to successfully transition to school on a full day as the Student had not been in school since October 2019. It was proposed that a gradual transition back to a full day would best ensure the Student's success.
 - c. A different elementary school (School B) was offered but the Parent asked that the Student remain at the same elementary school (School A).
 - d. The District agreed to contract for 6 hours per week for behavioral support for teacher consultation, direct support for the Student, behavior intervention support and training as well as measuring fidelity to the behavior intervention plan and training for fidelity checking. (Prior Written Notice dated February 11, 2020)
7. The Parent was not in agreement with the February 11, 2020 IEP and asked for another IEP meeting on February 11, 2020. (Letter of Complaint dated January 22, 2021)
8. On February 24, 2020 District staff and the Parent spoke by phone.
- a. The Parent asked for another IEP meeting.

- b. The Parent indicated that since spring break would be occurring soon, the Student might not be sent back to school until after spring break. (Contact Log dated February 1, 2020 through March 2, 2021)
9. On February 28, 2020, a morning conference call occurred between District staff and the Parent.
- a. District staff called to follow up on the ongoing concerns of the Parent and try to find resolution.
 - b. Possible placement at School B was discussed.
 - c. The Parent voiced some dissatisfaction with School B as an option and wanted assurances that the Student's IEP would be followed.
 - d. District staff explained there are procedures in place and expectations regarding IEP services.
 - e. A tour of School B was offered to the Parent to meet the teacher and visit the classroom.
 - f. The Parent wanted to be assured that a new or revised IEP was in place before the Parent would agree to send the Student to school.
 - g. Staff mentioned that the Parent was choosing to keep the Student out of school.
 - h. The Parent stated that the Student was being kept at home because the Parent did not think the classroom at School A was following the IEP.
 - i. District staff would be informed of the Parent's request to revisit the IEP. (Contact Log dated February 1, 2020 through March 2, 2021)
10. A second phone call between District staff and the Parent occurred in the afternoon of February 28, 2020.
- a. The Parent wanted to get the Student into school.
 - b. The Parent agreed to tour School B on March 3, 2020.
 - c. The Parent expressed concerns that the Student's IEP was not being met, was concerned that the Student was not safe at school and had concerns regarding trusting the school and District.
 - d. The Parent was informed that questions could be sent in writing and they would be addressed by District staff. (Contact Log dated February 1, 2020 through March 2, 2021)

11. On March 3, 2020, the Parent called to cancel the tour scheduled at School B and asked that the tour be rescheduled. (Contact Log dated February 1, 2020 through March 2, 2021)
12. District staff emailed the Parent on March 3, 2020 in response to the cancellation of the scheduled tour for School B and asked that the Parent let staff know when the Parent would like to reschedule the tour. The Student remained enrolled at School A, while School B was an option for the Student. (Contact Log dated February 1, 2020 through March 2, 2021)
13. Spring break occurred the week of March 9-13, 2020. (Letter of Response dated March 2, 2021)
14. The District suspended in-person learning for all students beginning on March 16, 2020 due to the COVID-19 pandemic. Parents were informed that paper packets were available for pick up for continued learning. The Parent was informed through an undated PWN that the Student would receive special education services virtually.
 - a. The Parent was informed that services would be delivered virtually via paper packets aligned to content standards and special education curriculum.
 - b. Packet pickup was available March 16, March 30, and April 13. (Prior Written Notice not dated; Letter of Response dated March 2, 2021)
15. On April 6, 2020, the special education teacher sent several emails to the Parent including an email with that week's lesson plan, and an email requesting feedback from parents due to the District moving to distance learning. (Emails dated February 3, 2020 through February 23, 2021)
16. On April 9, 2020, the special education teacher emailed the Parent the week's news and a work packet. (Contact Log dated February 1, 2020 through March 2, 2021)
17. On April 9, 2020 the Parent sent an email to District staff:
 - a. The Parent informed staff that the best means to communicate was by email.
 - b. The IEP team did not come to an agreement at the last IEP meeting and it was not signed, but the Parent understood that the IEP is still in effect for now. The Parent asked for confirmation regarding the Parent's understanding.
 - c. The Parent has been waiting since February 11, 2020 for another IEP meeting to be scheduled and asked what the IEP meeting

- process is during the COVID-19 school closures. (Contact Log dated February 1, 2020 through March 2, 2021)
18. On April 12, 2020, the special education teacher emailed the Parent the week's engagement activities. (Contact Log dated February 1, 2020 through March 2, 2021)
 19. On April 13, 2020, the special education teacher emailed the Parent information regarding a free online resource. The special education teacher could log in and see what each student was working on to gather information on how best to support each student. (Contact Log dated February 1, 2020 through March 2, 2021)
 20. On April 16, 2020, the special education teacher emailed the Parent the week's news and a work packet. (Contact Log dated February 1, 2020 through March 2, 2021)
 21. On April 16, 2020 the Parent emailed District staff.
 - a. The Parent requested an IEP meeting.
 - b. At the February 11, 2020 IEP meeting the Parent stated that the Parent was not satisfied nor fairly heard and requested another IEP meeting at least three times.
 - c. The Parent requested an additional meeting to address academic regressions due to noncompliance with the IEP and FAPE and discuss how to get the Student tutoring, extended learning day, etc.
 - d. District staff had stated on October 7, 2019 that the options would be revisited once the IEP was agreed upon.
 - e. The Parent would like to get the IEP finalized so that the Student can receive an appropriate education and get caught up with the District's assistance.
 - f. At the February 11, 2020 IEP meeting new information, obstacles and ideas were presented but they were not added to the IEP as promised.
 - g. The Parent requested that the Student be retained as the Student has not received an appropriate education.
 - h. The Parent is unable to pick up the packets and asked if District staff could drop off the materials.
 - i. The Parent asked if the District was able to provide technological assistance for the virtual learning, such as iPad or laptop and internet access and assist families who do not have access.
(Emails dated February 3, 2020 through February 23, 2021)
 22. On April 16, 2020, District staff emailed the Parent.

- a. The District is happy to have an IEP meeting to discuss virtual services for the Student and develop a distance learning plan.
 - b. Packets have been emailed to the Parent for the Student to complete at home, but the District is unable to mail packets.
 - c. The IEP meeting would discuss the specifics of the Student's virtual services.
 - d. Since the District has not had an opportunity to implement the IEP from the February IEP meeting the District will not revise the IEP except for a distance learning plan unless the Parent has additional medical information that needed to be added to the IEP.
 - e. The special education teacher will send the Parent digital resources that can be used with the Student. (Emails dated February 3, 2020 through February 23, 2021)
23. On April 16, 2020, the special education teacher for School A emailed the Parent with lessons and activities from the special education teacher, occupational therapist and speech language pathologist that support the Student's IEP goals and objectives at home. (Emails dated February 3, 2020 through February 23, 2021)
24. On April 19, 2020, the special education teacher at School A sent all parents of students in her classroom, including the Parent, an email asking that each parent contact the classroom teacher to discuss services during distance learning and whether each parent wants services during school closure related to COVID-19. (Emails dated February 3, 2020 through February 23, 2021)
25. On April 20, 2020, District staff emailed the Parent responding to various questions and issues presented in the April 16, 2020 email from the Parent.
- a. The District did not receive any questions or unresolved issues from the Parent after the February 28, 2020 phone call.
 - b. The District is happy to hold an IEP meeting to discuss the Student's virtual services, but since District staff has not had an opportunity to implement the current IEP the District will hold another IEP meeting to rewrite the IEP.
 - c. The Parent was requested to provide current IEP concerns and those concerns might be addressed through an amendment.
 - d. The Parent was asked to be specific regarding what new information, obstacles and ideas were not addressed in the Student's IEP.

- e. The District developed a new data collection sheet after the February 11, 2020 IEP meeting, but the District has not had an opportunity to implement it.
 - f. The District does not recommend retaining students if there was no discussion of retention prior to the District moving to an alternate learning environment.
 - g. A list of schools and current teachers was provided to the Parent.
 - h. The Parent was informed that the Student can enroll at School B or remain at School A for the 2020-21 school year. If there is another school the Parent is interested in the class size and available space would need to be determined.
 - i. District staff offered to mail the packets to the Parent.
 - j. Technology assistance is currently not available to elementary families. (Emails dated February 3, 2020 through February 23, 2021)
26. On April 20, 2020, the special education teacher for School A sent an email to the Parent with links for songs to support learning at home. (Emails dated February 3, 2020 through February 23, 2021)
27. On April 26, 2020, the special education teacher for School A sent an email to the Parent with individualized goals and objectives for the Student, as well as home activities to support the learning goals. The occupational therapist attached a document for fine motor and letter practice at home, and the speech language pathologist attached a document regarding WH questions. (Contact Log dated February 1, 2020 through March 2, 2021)
28. On May 4, 2020, the Parent emailed District staff.
- a. Some Students have been loaned laptops for virtual learning and the Parent asked why the Student was denied and has not received the same assistance.
 - b. No printed learning materials for the Student have been received from the District.
 - c. The Student is not receiving educational benefit from the District.
 - d. The Parent is unable to use the emailed materials, as the Parent does not always have reliable access.
 - e. The Parent asked if there is a date for an IEP meeting as the last IEP is incomplete.
 - f. The Parent asked if the District is implementing the 2/11/20 IEP without the Parent's consent. (Emails dated February 3, 2020 through February 23, 2021)

29. On May 6, 2020 the special education director responded by email to the Parent's email dated May 4, 2020.
 - a. The Parent was asked to provide specific areas the Parent would like to have evaluated and a consent form would be emailed to the Parent to sign and return.
 - b. Elementary students have not been provided laptops for virtual learning if they did not previously have one assigned to them.
 - c. Another set of printed packets the District has provided to families would be sent to the Parent.
 - d. The District is holding virtual IEP meetings.
 - e. The District will not be honoring the request to hold a new IEP until staff is able to implement the February IEP. The District has been unable to implement the IEP as the Student has not been in school.
 - f. The Parent was requested to email any additional questions.
(Contact Log dated February 1, 2020 through March 2, 2021)
30. On May 6, 2020 the special education teacher at School A emailed the Parent a video of the teacher reading a book. (Contact Log dated February 1, 2020 through March 2, 2021)
31. On May 7, 2020, the special education teacher at School A emailed the parent that week's news and attached a weekly communication. (Contact Log dated February 1, 2020 through March 2, 2021)
32. On May 10, 2020 the special education teacher at School A emailed the Parent an email with a music therapy video and that week's lesson plans. (Contact Log dated February 1, 2020 through March 2, 2021)
33. The last day of school for the 2019-20 school year was May 15, 2020. (Contact Log dated February 1, 2020 through March 2, 2021)
34. On May 19, 2020, the Parent emailed the special education teacher at School A with concerns and suggestions the Parent would like to be considered and implemented to the Student's IEP dated May 9, 2019. (Contact Log dated February 1, 2020 through March 2, 2021)
35. On August 5, 2020, the Parent emailed District staff.
 - a. The Parent requested that a time for an IEP meeting be scheduled as soon as possible.
 - b. The Parent understood that a meeting is to be scheduled within two weeks of the request.
 - c. The Parent understands that due to COVID scheduling can be difficult, but the Parent would like a meeting scheduled before the start of school.

- d. The Parent has been requesting an IEP meeting for at least six months since February.
 - e. The Parent is not comfortable sending the Student back to school until the Parent's educational and safety concerns have been addressed.
 - f. The Parent and staff at the severe behavior disorders program are available on Tuesday (August 11) or Wednesday (August 12) for an IEP meeting.
 - g. If the dates and times provided by the Parent do not work for staff the Parent asked to be contacted by email to schedule a time that works. (Emails dated February 3, 2020 through February 23, 2021)
36. On August 10, 2020, the special education teacher at school A emailed the Parent in response to the school going virtual for the first quarter.
- a. The special education teacher asked to set up a time to meet that week to give the Parent materials and sign out an iPad for the Student.
 - b. A request for a time that worked for the Parent was made. (Contact Log dated February 1, 2020 through March 2, 2021)
37. On August 11, 2020, the Parent emailed the special education teacher at School A.
- a. Before setting up an appointment to receive materials and an iPad, the Parent felt it was important to have another IEP meeting to adequately address all of the Student's needs and concerns.
 - b. The Parent has been requesting another IEP meeting since the last IEP meeting in February and asks why the Parent has not received an IEP meeting despite multiple requests. (Contact Log dated February 1, 2020 through March 2, 2021)
38. On August 11, 2020 the special education teacher at School A emailed the Parent.
- a. The District has not had an opportunity to implement the Student's current IEP.
 - b. The District plan will be to implement the current IEP remotely and then determine if adjustments are needed.
 - c. The Parent was requested to provide information the Parent believes is missing from the Student's IEP and what specific issues the Parent would like the IEP to address. (Contact Log dated February 1, 2020 through March 2, 2021)

39. On August 14, 2020, the Parent emailed the special education teacher at School A.
 - a. The Parent is still waiting for an IEP meeting to be scheduled.
 - b. The Parent has not received any specialized materials for the Student from the teacher or the District.
 - c. The materials could be emailed to the Student's social worker who could print the materials for the Parent and Student.
 - d. The Parent requested materials from the summer as there was no contact from the District regarding the Student's IEP and summer school. (Contact Log dated February 1, 2020 through March 2, 2021)
40. On August 14, 2020, the special education teacher at School A followed up on the email sent to the Parent on August 10, 2020 regarding setting up a meeting so the Parent could pick up the Student's iPad and other materials. The Parent was informed school would start virtually on August 18, 2020 and the teacher would be teaching during school hours. (Contact Log dated February 1, 2020 through March 2, 2021)
41. On August 15, 2020, the Parent responded to the special education teacher's emails requesting a meeting. The Parent forwarded the response sent on August 11, 2020. (Contact Log dated February 1, 2020 through March 2, 2021)
42. The 2020-21 school year began on August 18, 2020 with remote learning. (District Calendar)
43. On August 27, 2020, the parent emailed the special education director and requested that an IEP meeting be scheduled as soon as possible. (Contact Log dated February 1, 2020 through March 2, 2021)
44. On August 27, 2020, the Parent emailed the principal at School A and asked if the principal could schedule an IEP meeting as the Parent has been requesting a meeting for several months, along with supports but has been denied this request many times. (Emails dated February 3, 2020 through February 23, 2021)
45. On August 28, 2020, the principal at School A responded to the Parent's August 27, 2020 email.
 - a. The parent was referred to the special education director regarding special education issues.
 - b. The school was in remote learning to keep all students healthy and safe.
 - c. It was a great time to implement the Student's current IEP and collect data.

- d. The Parent was invited to stop by the school as the Student's iPad was ready to be used by the Student to join class. (Emails dated February 3, 2020 through February 23, 2021)
46. On August 28, 2020, the Parent emailed the special education director.
- a. The Parent requested a written explanation of the IEP Procedural Safeguards.
 - b. A meeting with the special education director was requested to receive a verbal explanation of the Procedural Safeguards.
 - c. There is no current IEP as the Parent did not agree with the IEP.
 - d. The Parent asked that parental rights be upheld to receive an IEP meeting so that the IEP could be completed.
 - e. The Parent has been requesting educational testing. (Emails dated February 3, 2020 through February 23, 2021)
47. On August 31, 2020, the special education director emailed the Parent.
- a. The Parent was asked to provide the concerns or the areas which the Parent would like to have evaluated and a consent for evaluation form would be provided to the Parent to sign and return.
 - b. The Parent was offered a virtual meeting with the special education director on Thursday (September 3, 2020) or Friday (September 4, 2020). (Emails dated February 3, 2020 through February 23, 2021)
48. On September 1, 2020, the Parent emailed the special education director.
- a. The Parent felt an IEP meeting was warranted due to the new modality of teaching.
 - b. Using an iPad as the primary way of instruction will be difficult for the Parent and Student.
 - c. The special education teacher had previously not allowed the iPad as a reinforcer in the classroom due to the potential for problem behaviors by the Student.
 - d. The Parent has not picked up the iPad at this time and would like an IEP meeting before picking up materials.
 - e. The Parent wants to know the Student's academic and functional level and asked that all options for assessments be sent to the Parent to review.
 - f. The times and dates provided to the Parent for a meeting with the special education director did not work with the Parent's schedule.

- g. The Parent requested that an IEP meeting be scheduled as soon as possible.
 - h. The Parent continued to wait for the physical materials for the Student from spring and summer. (Emails dated February 3, 2020 through February 23, 2021)
- 49. On September 2, 2020, District staff emailed the Parent and offered to bring the Student's iPad and supplies to the Parent so that the Student could be logged into class, as the Parent was concerned about attendance. (Contact Log dated February 1, 2020 through March 2, 2021)
- 50. The Parent responded to the staff member on September 2, 2020 by email.
 - a. The Parent did not sign the February 11, 2020 IEP.
 - b. The Parent has continued to request another IEP meeting since February 11, 2020 and has not been successful in getting a meeting scheduled.
 - c. The Parent needs a formal IEP meeting to discuss concerns prior to receiving the iPad and materials. (Contact Log dated February 1, 2020 through March 2, 2021)
- 51. District staff spoke with the Parent by phone on September 3, 2020 and offered September 3 or September 4 as possible IEP meeting dates. The Parent stated that September 15 or 16 would work as IEP meeting dates. (Contact Log dated February 1, 2020 through March 2, 2021)
- 52. A second phone call occurred on September 3, 2020 between the Parent and District staff. The Parent shared ongoing concerns.
 - a. IEP not being honored.
 - b. IEP meeting has not been scheduled at the Parent's request.
 - c. The IEP is not valid as the Parent did not sign it.
 - d. The Parent does not agree with the current IEP as it is missing supports.
 - e. Safety at home with remote learning and no special education services
 - f. The teacher is not providing academic support and homework has not been provided.
- 53. On September 4, 2020 the Parent spoke by phone with District staff that the Student will not be coming to school until the IEP is situated. (Contact Log dated February 1, 2020 through March 2, 2021)
- 54. On September 8, 2020 the Parent emailed District staff and requested an independent evaluation at public expense. (Emails dated February 3, 2020 through February 23, 2021)

55. On September 8, 2020, District staff emailed the Parent and set forth the evaluation process, including the requirement for Parent consent.
 - a. Once the consent is received and evaluation will be scheduled at the earliest time possible.
 - b. After the completion of the evaluation, an IEP meeting will be scheduled. Logistics regarding the mode of the IEP meeting will be discussed prior to scheduling. (Emails dated February 3, 2020 through February 23, 2021)
56. On September 8, 2020, the special education director emailed the Parent a Notice and Consent for Evaluation which the Parent was requested to sign and return.
 - a. The evaluation will begin once signed consent is received.
 - b. District staff is available to meet with the Parent the following week to discuss the Parent's specific concerns regarding the current IEP.
 - c. The Parent was requested to respond whether the Parent could still meet the following week. (Emails dated February 3, 2020 through February 23, 2021)
 - d. The Notice and Consent for Evaluation is not signed by the Parent. (Notice and Consent for Evaluation dated September 8, 2020)
57. On September 8, 2020 the Parent again emailed District staff.
 - a. The Parent has the right to participate in decisions regarding the Student's education.
 - b. The Student has not and currently is not receiving FAPE and there is no signed current IEP.
 - c. The Parent requested an IEP meeting. (Emails dated February 3, 2020 through February 23, 2021)
58. On September 9, 2020 a voice message was left for the Parent.
 - a. All of the Student's learning materials for the year are in the office for the Parent to pick up at the Parent's earliest convenience.
 - b. An iPad has been set aside for the Student so that the Student can be logged in and ready to go if the Parent chooses to have the Student participate while being safe in the remote setting at home. (Contact Log dated February 1, 2020 through March 2, 2021)
59. On September 10, 2020, the Parent emailed District staff as a follow-up to a phone call on September 3, 2020. The Parent asked for confirmation in writing from District staff that there would not be a

- truancy referral on the Student. (Contact Log dated February 1, 2020 through March 2, 2021)
60. On September 10, 2020, District staff responded to the Parent's email and clarified that on September 3, 2020 staff stated that a county attorney referral for truancy had not been submitted at that time as it was too early in the school year to make a truancy referral. Staff did not state that the District would not be submitting a truancy referral this year on the Student. (Contact Log dated February 1, 2020 through March 2, 2021)
61. On September 10, 2020 District staff spoke with the Parent by phone.
- a. The Parent requested that District staff not talk over the phone but email the Parent.
 - b. A large bag of materials to support the Student was available for the Parent to pick up at the Parent's earliest convenience.
 - c. The Parent asked that the materials be emailed to the Parent and the Student's social worker.
 - d. The Parent requested that District staff scan and email the social worker all of the materials the Student would have received during spring and summer, 2020.
 - e. District staff and the Parent agreed that the materials available for the Student would be delivered to the Student's grandmother's house. (Contact Log dated February 1, 2020 through March 2, 2021).
62. On September 10, 2020, the Parent spoke by phone with District staff regarding picking up materials for the Student. A staff member was available to deliver the materials. The Parent stated that the Parent did not have trust in the District and preferred that the materials be placed in the mail. (Contact Log dated February 1, 2020 through March 2, 2021)
63. On September 14, 2020, the special education director emailed the Parent regarding the request for an independent education evaluation.
- a. A list of approved evaluators was attached.
 - b. The Student will need evaluation in the area of IQ, academic, speech/language and occupational therapy.
 - c. Once the Parent chooses the evaluators payment will be authorized.
 - d. The Parent schedules the appointments with the evaluators.

- e. Once the evaluation is completed an MDT and IEP meeting will be scheduled. (Emails dated February 3, 2020 through February 23, 2021).
64. On September 16, 2020, the Parent emailed District staff.
- a. The Parent thanked staff for authorizing the Parent's February 11, 2020 request for an independent education evaluation.
 - i. The Parent questioned why the information from the evaluation must first be received before scheduling an IEP meeting.
 - ii. There is currently not a complete IEP for the Student as the team did not get through the February 11, 2020 IEP.
 - iii. The February IEP was to address many concerns including safety, education and staffing for the Student.
 - iv. The Parent has been interested in a change of placement due to a lack of trust, communication and concerning statements made by District staff.
 - v. The Parent had concerns about the Student not receiving any services and the contract that was supposed to be signed by the District with a particular institute.
 - vi. The school stated that staff did not want to use the iPad at school since it was a trigger for the Student.
 - vii. With only remote learning being offered by the District currently, the parent requested a plan on how to make this time as effective as possible for the Student.
 - viii. The Parent asked for information regarding how the plan will work for the Student. (Emails dated February 3, 2020 through February 23, 2021)
65. On September 17, 2020, the Parent and District staff spoke by phone for 50 minutes, during which time possible dates and times for an IEP team meeting were discussed, as well as the Parent's concerns, which included:
- a. Safety and padding for the Student
 - b. The Parent wants to spend the day in the classroom when the Student returns to school
 - c. The Parent wants the contract with the severe behavior disorders program renewed.
 - d. The Parent requested all material mailed by Certified Mail.
 - e. The Parent requested a time to meet with District staff to teach the Parent how to teach the Student while in remote learning. (Contact Log dated February 1, 2020 through March 2, 2021)

66. On September 18, 2020, a large box of academic materials and resources from the special education teacher were mailed to the Parent by Certified Mail, including current material and resources and all materials that was emailed to the Parent during April and May 2020 when school was closed due to the pandemic. The Parent was notified by email that the materials and resources were mailed. (Contact Log dated February 1, 2020 through March 2, 2021)
67. On September 18, 2020, the principal for School A emailed the Parent to confirm the Parent's availability to meet on Tuesdays and Wednesdays from 2:30 to 4:30.
 - a. The Parent was asked if there was a specific date that works best to meet and go over the Parent's concerns.
 - b. Staff want to move forward and have the Student back to school to continue to learn and grow.
 - c. A big box of academic material and resources for the Student was mail that day through Certified Mail and it was anticipated the Parent would receive it the following day. (Emails dated February 3, 2020 through February 23, 2021)
68. On September 21, 2020 District staff emailed the Parent.
 - a. The parent was informed that in-person learning would start on September 23, 2020 and the Student could attend in-person.
 - b. The Parent could choose to have the Student access remote learning, if preferred. (Emails dated February 3, 2020 through February 23, 2021)
69. On September 22, 2020 the principal for School A telephoned the Parent to follow up on the materials sent Certified Mail and the special education teacher's email sent on 9/21/20 inquiring about the Student's return to school. The Parent was informed that the Student could return to school on September 23, 2020 for in-person learning five days a week or the Student could participate in the remote learning program instead. (Contact Log dated February 1, 2020 through March 2, 2021)
70. Beginning on September 23, 2020, the District sent door to door transportation to the Student's home. After 10 consecutive days where the Student did not board the bus, transportation stopped attempting to pick up the Student. (Letter of Response dated March 2, 2021)
71. On October 6, 2020 a Notice of Individualized Education Program Team Meeting was provided to the Parent for a virtual meeting to be held on October 14, 2020.

- a. The Parent agreed to the IEP meeting in a call with the superintendent on October 6, 2020.
 - b. The Parent confirmed this date in a phone conversation with the special education director on October 8, 2020. (IEP Meeting Notice dated October 6, 2020)
72. On October 7, 2020, the Parent spoke by phone with District staff.
- a. The Parent did not like the one option of the Student attending School A.
 - b. The Student did not attend school as it was not an appropriate education for the Student. (Contact Log dated February 1, 2020 through March 2, 2021)
73. On October 7, 2020, the Parent spoke by phone with the special education director.
- a. The Parent was given a list of other classrooms similar to the classroom at School A and the teachers assigned to those classrooms.
 - b. The Parent had not received a prescription for a helmet.
 - c. The Parent requested assistance with the Student's work so that the Parent could assist the Student.
 - d. The Parent did not want the student attending school in person or remotely.
 - e. The Parent wanted an IEP meeting in person and requested that the IEP meeting be videoed so that it could be sent to the Parent's support team.
 - f. The Parent did not want a time limit on the IEP meeting as it could last up to 10-20 hours and requested an outside facilitator that the Parent approved.
 - g. The Parent requested the District provide the severe behavior disorders program in the home.
 - h. The Parent requested the IEP team discuss more training and support for District staff by the severe behavior disorders program.
 - i. The Parent requested that a certified teacher be provided 1:1 to the Student. (Contact Log dated February 1, 2020 through March 2, 2021)
74. On October 13, 2020 the Parent phoned District staff about the details for the IEP meeting the following day.
- a. The IEP meeting was set for 2:30 p.m.

- b. Accommodations had been made for the Parent and others to have an in-person meeting with technology provided to the Parent
 - c. Other IEP team members would join remotely.
 - d. The Parent requested an in-person meeting and did not believe the Parent will be attending the meeting.
 - e. The Parent was informed that the current health guidelines were in effect. (Contact Log dated February 1, 2020 through March 2, 2021)
75. On October 21, 2020 the Parent spoke with the special education director by phone and confirmed that the Parent wanted the Student to transfer to School B with services provided remotely. (Contact Log dated February 1, 2020 through March 2, 2021)
76. Based on the phone conversation between the Parent and the special education director, a proposed IEP amendment dated October 21, 2020 was developed.
- a. The Student will access remote learning from the severe behavior disorders program.
 - b. The program will provide a behavior technician to assist the Student with school work.
 - c. The Student will be live streaming into the classroom at School B.
 - d. The transition will last one month after which the Student will transition to School B for in-person learning.
 - e. The data collected during this time will guide the team in any supports necessary for the Student's success at School B. (IEP dated February 11, 2020 and amendment dated October 21, 2020)
77. A PWN was not provided to the Parent as the District believed the IEP amendment did result in a change of educational placement but was only a change in location. (District email dated March 22, 2021)
78. The Student attended the severe behavior disorders program and accessed School B's remote learning from October 22, 2020 to November 27, 2020. (Attendance Documents dated August 20, 2019 through March 1, 2021)
79. Behavioral data was collected while the Student attended the severe behavior disorders program and accessed School B through remote learning from October 26, 2020 through November 24, 2020. (Behavioral Data dated October 26, 2020 through November 24, 2020)

80. On November 18, 2020, based on a phone conversation between the Parent and the special education director, a proposed amendment to the Student's IEP was developed.
 - a. The Student will begin to access instruction in-person at School B on November 30, 2020.
 - b. Additional special education staff will be present at School B to ensure a successful transition. (IEP dated February 11, 2020 including amendment dated November 18, 2020)
81. A PWN was not provided to the Parent as the District believed the IEP amendment did result in a change of educational placement but was only a change in location. (District email dated March 22, 2021)
82. On November 30, 2020 the Student was expected by the District to attend School B in person but did not attend. (Contact Log dated February 1, 2020 through March 2, 2021)
83. The Student has not attended a District school since November 27, 2020. (Attendance Documents dated August 20, 2019 through March 1, 2021)
84. On November 30, 2020 the Parent spoke with the special education director by phone.
 - a. The Parent requested that the District transport the Student to a private therapy center each morning.
 - b. The Parent was informed that the District does not transport students to a private therapy center.
 - c. The Parent was unwilling to send the Student to School B the next day as the Parent had too many unanswered questions.
 - d. The Parent felt the IEP team needed to review the safety plan.
 - e. The Parent wanted 4 hours daily of applied behavioral analysis (ABA) as prescribed by the Student's doctor but was informed by the District that such services would only be provided if the District couldn't implement the Student's IEP.
 - f. The Parent wanted the Student to be placed at a private therapy center that provides ABA but was informed by the District that the private therapy center was not a school. (Contact Log dated February 1, 2020 through March 2, 2021)
85. On December 1, 2020 the Parent spoke with the special education director by phone and stated that the Parent would like an IEP team meeting before sending the Student to School B. (Contact Log dated February 1, 2020 through March 2, 2021)
86. On December 4, 2020, the Parent and special education director spoke by phone.

- a. The special education director proposed certain dates for an IEP team meeting.
 - b. The Parent was no longer able to meet due to needing medical care.
 - c. The director offered to set up an IEP team meeting in January.
 - d. The Parent was not sure an availability to participate in an IEP team meeting in January.
 - e. The Parent requested a safety plan.
 - f. The Parent indicated the Student was showing signs of trauma related to school.
 - g. The special education director informed the Parent that District staff was ready to welcome the Student to School B and was ready to hold an IEP meeting when the Parent was available.
(Contact Log dated February 1, 2020 through March 2, 2021)
87. On December 8, 2020, the District provided a letter to the Parent addressing the Parent's request that the District transport the Student to a private therapy center.
- a. The District is unable to accommodate the Parent's request as it is a parental placement and not part of the Student's IEP.
 - b. The special transportation section from the Nebraska administrative code was provided to the Parent.
 - c. The Student remains enrolled at School B where the school team is prepared to provide the Student with special education and related services. Exhibit 8C.
88. On January 25, 26, 27, 28 and 29, 2021 District staff emailed and left voice mail messages for the Parent inquiring about a date for an IEP meeting. (Contact Log dated February 1, 2020 through March 2, 2021; and Emails dated February 3, 2020 through February 23, 2021).
89. On January 29, 2021, the Parent and District staff spoke by phone.
- a. The call was made to schedule an IEP meeting for the Student.
 - b. The Parent stated the Student was attending the severe behavior disorders program from 9:00 a.m. to 12:00 p.m. daily.
 - c. The Parent was expecting the Student to have one-on-one instruction.
 - d. The Parent wanted to ensure a safety plan was in place for the Student's return to school.
 - e. Since the Student has not been in school for two years the Parent requested that the Student be held back two years.
(Contact Log dated February 1, 2020 through March 2, 2021)

90. On January 30, 2021, the Parent was provided a Notice of Individualized Education Program Team Meeting scheduled for February 10, 2021. (IEP meeting Notice dated January 30, 2021)

Issue # 1

Did the District afford the Parent an opportunity to participate in meetings regarding the identification, evaluation, educational placement, and provision of a free appropriate public education in accordance with 92 NAC 51-009.01A?

92 NAC 51-009.01A states:

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.

Allegations/Parent's Position

The Parent asserts that the last IEP on file is February 11, 2020 but the Parent did not consent to that IEP and it was not finished, as the IEP team did not get through the full IEP or address all of the Parent's concerns. The Parent clearly stated the Parent wanted another IEP meeting at the meeting held on February 11, 2020 and on multiple other occasions but there has not been another IEP meeting held.

District Response

The District asserts that the last IEP meeting was held on February 11, 2020 and that an extensive group of individuals attended at the invitation of the Parent. The Parent actively participated and at the conclusion of the meeting the Parent signed the IEP.

Investigative Findings

An annual IEP team meeting was held on February 11, 2020 (Fact 3). The Parent attended, and along with the regular IEP team members, 11 additional individuals invited by the Parent also were present (Fact 3). During the February 11, 2020 IEP meeting, the Student's IEP was revised based on the IEP team discussions, and was finalized (Fact 4, 5). The District provided the Parent with Prior Written Notice for the IEP (Fact 6).

The February 11, 2020 IEP team meeting was the only meeting scheduled and held during the timeframe of this investigation (Fact 4).

The Parent asserted on multiple occasions that the February 11, 2020 IEP was not finalized and was not the current IEP (Fact 17, 46, 49, 52, 57, 64). The Parent also

emailed the special education teacher at School A on May 19, 2020 with concerns and suggestions the Parent wanted considered and implemented in the Student's IEP dated May 9, 2019 (Fact 34). However, on April 9, 2020 the Parent acknowledged that the February 11, 2020 IEP was the current IEP in effect (Fact 17).

Summary and Conclusions

"Central to IDEA is the requirement that local school districts develop, implement, and annually revise an individualized education program (IEP) calculated to meet the eligible student's specific educational needs."

Thompson R2-J School Dist. v. Luke P., 50 IDELR 212, (10th Cir. 2008).

Parent participation is an essential part of the IEP team process and school districts must make a reasonable effort to ensure that parents are given the opportunity for meaningful participation in the IEP process. However, while parental preference may be one factor that is considered in determining the education program offered by a school district as its provision of a Free Appropriate Public Education (FAPE), the determination is a team decision. If the IEP team cannot reach a consensus with the parent, the district must determine appropriate services and provide parents with prior written notice of the offer of FAPE, as it is the district that is ultimately responsible for ensuring that a student is offered an appropriate program. Letter to Richards, 55 IDELR 107 (OSEP 2010).

The facts set forth above reveal that the District afforded Parent the opportunity to participate and provide meaningful input during the February 11, 2020 annual IEP meeting. Not only did the Parent attend the February 11, 2020 meeting, but 11 other individuals, all invited by the parent, also attended. Although the Parent was not in agreement with the Student's IEP and asserted on multiple occasions that IEP dated February 11, 2020 was not finalized because not all the Parent's concerns were not all addressed, the District provided the Parent with Prior Written Notice setting forth the District's offer of a Free Appropriate Public Education.

The Parent was afforded an opportunity to participate in the IEP team meeting held on February 11, 2020 with respect to the identification, evaluation, and educational placement of the Student and the provision of FAPE to the Student. Based on the information discussed above, the District implemented the requirements of 92 NAC 51-009.01A and **no corrective action** is required.

Issue # 2

Did the District ensure that the Student's education placement was made by a group of persons, including the Parents and other individuals knowledge about

the child, the meaning of the evaluation data and the placement options and was made in conformity with the least restrictive environment requirements in accordance with 92 NAC 51-008.01C?

92 NAC 51-008.01C states:

- 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 the child's disability.

Allegations/Parents' Position

The Parent asserts that Student's IEP needs to address prolonged safety and academic concerns. The Student is unable to learn remotely from home, and no educational benefit has been received.

District Response

The District asserts that that in addition to the usual IEP team members, a wide variety of individuals attended whom the Parent represented had knowledge about the Student. The District never limited the number of individuals invited by the Parent. The Parent actively participated and at the conclusion of the meeting the Parent signed the IEP.

Investigative Findings

At the annual IEP team meeting held on February 11, 2020 all the required IEP team members, including the Parent, were in attendance (Fact 3). Additionally, 11 individuals invited by the Parent were also in attendance (Fact 3). The February 11, 2020 IEP identified that due to the Student's academic, self-help, sensory/fine motor, communication and behavioral needs, the Student's placement consists of smaller group and individualized setting at an alternative curriculum placement utilizing alternative standards (Fact 5).

While the Parent had concerns regarding certain components of the Student's IEP, the Parent had no objections to the Student's placement consisting of a smaller group and individualized setting at an alternative curriculum placement utilizing alternative standards (Fact 9, 10, 21, 28, 35, 37, 44, 46, 48, 50, 52, 57, 64, 65, 72, 73, 84).

Summary and Conclusions

Placement decisions must be 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. Placement decisions must be in conformity with the least restrictive environment (LRE) requirements. Once the IEP is developed, the IEP team makes a placement decision. Letter to Anonymous, 21 IDELR 674 (OSEP 1994).

Least restrictive environment (LRE) requirements mandate that students be educated in regular classroom settings to the maximum extent appropriate. Further, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment may only occur if 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. 34 CFR 300.114; 92 NAC 51-008.01A.

The facts established that the Student's IEP team at the February 11, 2020 IEP meeting included all required team members, including the Parent. Further, the placement identified in the 2/11/20 IEP is provided in the least restrictive environment for the Student, based on the Student's unique needs, and not the Student's disability.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-008.01C and **no corrective action** is required.

Issue #3

Did the IEP Team review and revise the IEP, as appropriate, to address information about the Student provided by the Parents, including the Student's anticipated needs or other matters in accordance with 92 NAC 51-007.10?

92 NAC 51-007.10 states:

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

007.10A Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;

- 007.10B The results of any reevaluation conducted under 92 NAC 51-006.05A;
- 007.10C The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;
- 007.10D The child's anticipated needs; or
- 007.10E Other matters.

Allegations/Parents' Position

The Parent asserts that the Parent did not consent to the February 11, 2020 IEP as it was not finished since the IEP team did not review the entire IEP or address all of the Parent's concerns. The Parent only signed the IEP as a participant. The Parent clearly stated the Parent wanted another IEP meeting at the meeting held on February 11, 2020 and on multiple other occasions but there has not been another IEP meeting held.

District Response

The District asserts that at the IEP team meeting on February 11, 2020, the Parent agreed on the Student's IEP. Since that time, the District has not been permitted to implement the IEP as the Parent has refused to send the Student to school.

Investigative Findings

At the annual IEP team meeting on February 11, 2020, the Student's IEP was revised and updated based on team discussions, including input from the Parent. (Fact 4, 5).

The Parent identified various concerns with the February 11, 2020 IEP, which were documented by the District in the Student's IEP. (Fact 5). Those concerns have not changed substantially over time (Fact 9, 10, 21, 28, 35, 37, 44, 46, 48, 50, 52, 57, 64, 65, 72, 73, 84).

The following chart sets forth the Parent's concerns identified in the February 11, 2020 IEP and the corresponding actions taken by the District to address those concerns.

Parent Concerns	District Response
Increase use of words (speech) to communicate	2/11/20 IEP: Goal 5 addresses improvement of communication skills including requesting a break, answering questions, asking for help, and using 3-4 word utterances.

Parent Concerns	District Response
Homework sent home for additional skill practice	
Behavior is increasing	2/11/20 IEP: Behavior Intervention Plan addresses Student's behavior.
Student's safety at school, especially when Student is banging head	2/11/20 IEP: The school purchased a new padded helmet for the Student which will remain at school for use by the Student if needed. Behavior plan addresses self-injury and head banging.
Physical environment at School A	2/11/20 PWN: The Parent was offered another school for the Student to attend but the Parent would like the Student to remain at School A. 11/18/20 IEP Amendment: The Student will access instruction in person at School B on November 30, 2020.
Current level of staff support – Parent requested 1:1 para	2/11/20 PWN: 1:1 para request denied.
Current safety plan	2/11/20 IEP: Behavior Intervention Plan includes safety procedures.
Wants to know why Student has behaviors	2/11/20 IEP: Behavior Assessment and intervention Plan address triggers and functions of behaviors.
Requested ESY	2/11/20 IEP: The team discussed ESY and the Parent wanted summer school. Inadequate data determined to be available. The IEP team will reconvene on or before 5/5/20 to review the need for ESY.
Student to learn to self-regulate – zones of regulation	2/11/20 IEP: Behavior Intervention Plan in place. Short-term objectives to Goal 1 address the use of self-calming strategies.

Parent Concerns	District Response
Request for 1:1 para	2/11/20 PWN: 1:1 para request denied. 10/21/20 IEP Amendment: A behavior technician will be provided to assist the Student with schoolwork.
Request more mats for safety	2/11/20 IEP: Mats can be placed against a wall or placed on the floor surrounding the quiet area for the Student's safety.
Concerns regarding helmet sizing and use of it for repeated impact	2/11/20 IEP: The school purchased a new padded helmet for the Student and it will remain at school for use by the Student if needed.
Wants helmet only used for emergency situations	2/11/20 IEP: The school purchased a new padded helmet for the Student and it will remain at school for use by the Student if needed.
More Student engagement in classroom activities while actively learning	2/11/20 IEP: IEP goals provide for use of various instructional materials in the structured classroom setting.
Wants Student to learn to write name and to have more pencil and paper practice	2/11/20 IEP: Goal 3 addresses increasing Student's reading abilities by being able to identify, sequence, and trace or copy the letters of the Student's first and last name and match capital and lowercase letters. Occupational therapy consultation provided as a related service.
Wants more data and communication sent home than the daily communication book and the quarterly progress reports	2/11/20 IEP: Parent will receive IEP progress reports quarterly.

Parent Concerns	District Response
Wants staff re-trained on the severe behavior disorders program protocols used with Student	2/11/20 IEP: Severe behavior disorders program consults with the classroom teacher and supports the Student by modeling the behavior plan, measuring fidelity and training others to measure fidelity for 6 hours a week. 2/11/20 PWN: The District will contract with severe behavior disorders program for 6 hours per week for teacher consultation, direct support, behavior intervention support and training as well as measuring fidelity to the BIP and training for fidelity checking.
Concerned about how the Student will transition back to school	2/11/20 IEP: Student will begin school on a shortened day from 8:45 to 10:35. 2/11/20 PWN: The IEP team considered a full day but felt transition back to school for a full day might cause unsafe and aggressive behaviors. 2/11/20 PWN: The Student will add time to the school day gradually with the goal of being on a full day. 10/21/20 IEP Amendment: The Student will access remote instruction from the severe behavior disorders program. 11/18/20 IEP Amendment: The Student will access instruction in person at School B on November 30. Additional special education staff will be present to ensure a successful transition.
Request for an individual sized helmet prescribed by a physician	2/11/20 PWN: Prescribed helmet was denied as the physician did not prescribe a helmet and stated the Student does not need one. A padded helmet has been provided.

Parent Concerns	District Response
School staff not implementing the severe behavior disorders program plan	2/11/20 IEP: Severe behavior disorders program consults with the classroom teacher and supports the Student by modeling the behavior plan, measuring fidelity and training others to measure fidelity for 6 hours a week. 2/11/20 PWN: The District will contract with severe behavior disorders program for 6 hours per week for teacher consultation, direct support, behavior intervention support and training as well as measuring fidelity to the BIP and training for fidelity checking.

(Fact 5, 6, 76, 80).

Summary and Conclusions

An IEP is a written statement for each child with a disability that is developed, reviewed and revised in accordance with federal law. 34 CFR 300.320(a).

“Central to IDEA is the requirement that local school districts develop, implement, and annually revise an individualized education program (IEP) calculated to meet the eligible student’s specific educational needs.” Thompson R2-J School Dist. v. Luke P., 50 IDELR 212, (10th Cir. 2008).

The IDEA does not require a district to obtain a parent's signature on an IEP. 71 Fed. Reg. 46,682 (2006) ("There is nothing in the Act that requires IEP members to sign the IEP, and we believe it would be overly burdensome to impose such a requirement.").

The facts establish that the Student's IEP team, which included the Parent, reviewed and revised the Student's IEP at the IEP meeting on February 11, 2020. The Parent's concerns were noted, and as the chart above identifies, those concerns were addressed in substantial part by the IEP and the subsequent PWN provided to the Parent. Additionally, the two IEP amendments that occurred in October and November 2020 also addressed some of the Parent's concerns.

While the Parent believed the February 11, 2020 IEP was not finalized as the Parent only signed the IEP as a participant in the meeting, the IDEA does not require the District to obtain the Parent's signature. The Parent was provided with PWN which informed the Parent that the District proposed to change the Student's special education services, as set forth in the February 11, 2020 IEP.

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

Issue #4

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

92 NAC 51-009.05A 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/Parents' Position

The Parent asserts that that Student's IEP has been denied or delayed for an extended amount of time causing regression educationally and socially and that a new IEP is needed for the Student.

District Response

The District asserts that Prior Written Notice was provided to the Parent on February 11, 2020, April 17, 2020, and September 8, 2020.

Investigative Findings

The District provided PWN to the Parent on three different occasions during the timeframe for this investigation. The PWN dated February 11, 2020 addressed the District offer of FAPE to the Parent after the conclusion of the February 11, 2020 annual IEP team meeting (Fact 6). An undated PWN informed the Parent of the services that would be provided to the Student during school closure due to the COVID-19 pandemic (Fact 14). Lastly, a PWN dated September 8, 2020

was in the form of a Notice and Consent for Evaluation and addressed the Parent's request for an evaluation (Fact 47, 54, 55, 56, 63).

In addition to the three PWNs discussed above, the District sent the Parent a letter dated December 8, 2020 outlining its refusal to transport the Student to a private therapy center, as requested by the Parent (Fact 84, 87).

The District did not provide the Parent with a PWN when the Parent made multiple requests for an IEP team meeting but informed the Parent orally and by email that an IEP meeting would not be scheduled as the District had not been given the opportunity to implement the Student's February 11, 2020 IEP. (Fact 7, 8, 9, 17, 21, 22, 25, 28, 29, 35, 37, 38, 39, 43, 44, 45, 46, 48, 50).

The Student's IEP dated February 11, 2020 states that ESY would be determined by the IEP team by May 5, 2020 (Fact 5). However, the IEP team did not convene to determine the Student's need for ESY, nor did the District provide the Parent with PWN that an IEP team meeting would not occur, or that ESY services would not be provided.

With parental agreement, the District amended the Student's IEP on two occasions to address the Student's attendance at the severe behavior disorders program and subsequent transition to School B (Fact 76, 80). The District did not provide the Parent with PWN to address each of the IEP amendments, as the District believed the IEP amendments did not result in an educational change in placement for the Student, but only constituted a change in location (Fact 77, 81).

The Student did not begin attending School B on November 30, 2020 (Fact 82, 83). Instead, the Parent requested that the District transport the Student to a private therapy center where the Student could receive ABA therapy (Fact 84). The Parent requested that the Student receive four hours a day of ABA services at the private therapy center (Fact 84). The District provided the parent with a letter dated December 8, 2020 which denied the Parent's request to transport the Student to the private therapy center (Fact 87).

Summary and Conclusions

A district is required to give the parents of a child with a disability prior written notice (PWN) a reasonable time before the district proposes or refuses to initiate or change the identification, evaluation, educational placement or provision of a free appropriate public education (FAPE) to the child. The purpose of the PWN is to inform parents of a district's final action on a proposal or refusal. It is the district's responsibility to make a final decision and implement any determined change. Letter to Lieberman, 52 IDELR 18 (OSEP 2008).

A PWN is required to have the following components:

- A description of the action proposed or refused by the district.
- An explanation of why the district proposes or refuses to take the action.
- A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
- A statement that the parents have protection under IDEA procedural safeguards and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.
- A description of other options that the IEP team considered and the reasons why those options were rejected.
- A description of other factors relevant to the district's proposal or refusal.

34 CFR 300.503(b); 92 NAC 51-009.05B.

When a parent believes that a required component of a student's IEP should be changed or requests an IEP meeting, a district must conduct an IEP meeting if it believes that the change is necessary to ensure the provision of a free appropriate public education (FAPE). Conversely, if a parent requests an IEP meeting and the district does not believe a change is necessary to ensure FAPE, the district must provide PWN to the parent of the refusal, including an explanation of why the district has determined that conducting an IEP meeting is not necessary to ensure the provision of FAPE to the student. 64 Fed. Reg. 12,476-12,477 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20).

In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the child's current IEP. 34 CFR 300.324 (a)(4)(i); 92 NAC 51-007.09E. Prior written notice is required when the IEP is amended to change the student's placement, even when the amendment is made through an agreement with the parent instead of convening the full IEP team. See also COVID-19 Questions & Answers: Implementation of IDEA Part B Provision of Services, 77 IDELR 138 (OSEP 2020).

[Parent Requests for IEP Meeting](#)

The facts show that while the District did provide three PWNs to the Parent between February 2, 2020 and February 2, 2021, the District did not provide the

Parent with PWN when it denied the Parent's requests for an IEP meeting, as required by the IDEA. While the District informed the Parent through email or in phone calls that the reason the District was refusing to hold another IEP meeting regarding the provisions of the February 11, 2020 IEP was because the District had not had an opportunity to implement the IEP and collect data, the information provided to the Parent did not contain all necessary information required by the PWN mandate. In particular, the District's response to the Parent denying an IEP meeting until the District had an opportunity to implement the IEP and collect data failed to inform the Parent of the following information:

- A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
- A statement that the parents have protection under Part B's procedural safeguards and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.

The District had an obligation to provide the Parent with PWN when the Parent requested an IEP meeting on multiple occasions and the District refused the Parent's request to hold another IEP meeting.

IEP Amendments

The facts show that the District did not provide the Parent with PWN on the two occasions when the Student's IEP was amended on October 21, 2020 and November 18, 2020, as the District believed PWN was not required. The District believed that the IEP amendments were simply a change in location, not a change in placement.

The IEP amendment dated October 21, 2020 provided that the Student would access remote learning provided by School B's special education classroom while at the severe behavior disorders program location, with a behavior technician provided to assist the Student with schoolwork. The Student's February 11, 2020 IEP does not provide for a behavior technician to assist the Student. This addition is a change in placement for the Student and PWN is required.

When the Student's IEP was amended on November 18, 2020, the amendment provided that the Student would access instruction in-person at School B beginning on November 30, 2020. The IEP amendment did not continue to provide a behavior technician to assist the Student with schoolwork. The

removal of the behavior technician is a change in placement for the Student and PWN is required.

The District had an obligation to provide the Parent with PWN when the Student's IEP was amended on two different occasions but failed to do so.

Letter Denying Transportation

The Student's February 11, 2020 IEP provides that special education transportation is necessary for the Student. As discussed above, the Student's IEP was amended to reflect that the Student would begin attending School B in-person beginning on November 30, 2020. However, the Student did not attend School B on November 30, 2020, and instead, the Parent spoke by phone with the special education director and asked that the Student be placed at a private therapy center that provides ABA, and that the Student be transported by the District to the private therapy center. The special education director informed the Parent that the ABA services would only be provided if the District couldn't implement the Student's IEP and that the District would not transport the Student to the private therapy center.

On December 8, 2020, the District provided a letter to the Parent denying the Parent's request that the District transport the Student to a private therapy center. While the letter referred to state administrative code regarding special transportation and informed the parent that the Student remains enrolled at School B and the school team is prepared to provide the Student with special education and related services, the letter failed to meet all of the PWN requirements, in that it did not inform the Parent that the District was denying the Parent's request for ABA services and it failed to inform the Parent of the following information:

- A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
- A statement that the parents have protection under Part B's procedural safeguards and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.

The District had an obligation to provide the Parent with PWN when the District denied the Parent's request for transportation and ABA services but failed to do so.

Based on the information discussed above, the District failed to fully implement the requirements of 92 NAC 51-009.05A and **corrective action is required.**

Corrective Action

1. The District shall develop and provide training to staff in the District regarding the required all PWN required elements requirements and the circumstances when PWN is required to be provided to parents.
2. The District must develop and provide training to all special education staff in the District regarding the required elements and circumstances of when a Prior Written Notice is required to be provided to parents.
3. The training and trainer(s) must be approved by the NDE Office of Special Education two weeks prior to the scheduled training.
4. The District must provide Jamie Chambers with copies of the training materials and handouts used and participant sign-in sheets at the conclusion of the training(s).
5. The District shall review and revise, if necessary, the policies, procedures and practices regarding the provision of prior written notice to parents whenever a parent request for an IEP team meeting is denied.
6. A random sample of Prior Written Notices provided to three students will be reviewed on or before January 15, 2022.

Issue #5

Did the District fail to provide special education and related services set forth in the IEP to the Student as required by 92 NAC 51-007.02, resulting in a denial of a FAPE to the Student as required by 92 NAC 51-003.24?

92 NAC 51-007.02 states:

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

92 NAC 51-003.24 states:

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

Allegations/Parents' Position

The Parent asserts that the Student's IEP has been denied or delayed for an extended amount of time causing Student further regression educationally and socially. The Student needs a new IEP so that the Student can return to school. The Parent wishes to avoid the truancy issue experienced in January 2020.

District Response

The District asserts that it has attempted to work closely with the Parent and several agencies to resolve the Parent's concerns so that the Parent will allow the Student to return to school. Each time the District agrees to certain steps to get the Student back to school, the Parent refuses to allow the Student to attend.

Investigative Findings

October 2019 to March 13, 2020

Beginning on October 16, 2019, the Parent elected not to send the Student to School A within the District due to Parent concerns regarding the Student's safety at school and the belief that the Student's IEP, including the behavior plan, was not being followed. (Fact 2, 5).

Although the Student's IEP was revised on February 11, 2020 and PWN was provided to the Parent setting forth the District's offer of FAPE, the Parent did not send the Student to school due to ongoing concerns. (Fact 2, 5, 9, 10).

At the February 11, 2020 IEP meeting, and in subsequent phone calls in late February between the Parent and District staff, a change of schools from School A to School B for the Student was discussed and a tour of School B was arranged for the Parent to occur on March 3, 2020 (Fact 6, 9, 10). However, the Parent cancelled the tour of School B (Fact 11). The Parent was informed that the Student continue to be enrolled in School A and asked the Parent to let staff know when the Parent would like to reschedule the tour of School B (Fact 12).

The Parent informed District staff in late February that since spring break will be occurring soon, the Student might not begin attending school until after spring break (Fact 8). Spring break occurred the week of March 9 through 13, 2020 (Fact 13).

March 16, 2020 to May 15, 2020

On March 16, 2020, immediately following the week of spring break, the District suspended all in-person learning due to the COVID-19 pandemic. Parents were informed that paper packets were available for pick up for continued learning (Fact 14). The Parent was informed that the Student would receive special education services virtually through the use of paper packets aligned to content

standards and the special education curriculum (Fact 14). The Parent was informed of the dates the paper packets of learning materials could be picked up from the school (Fact 14)

As requested, the Parent informed staff that the best means in which to communicate with the Parent was by email (Fact 17). On April 19, 2020, the special education teacher emailed all parents of students assigned to her classroom, including the Parent, and asked each parent to contact her to discuss services during distance learning and to indicate whether each parent wanted to access services during school closure related to COVID-19 (Fact 24).

On April 16, 2020, the Parent emailed District staff that the Parent was unable to pick up the learning packets and asked if District staff could drop off the materials. The Parent also asked whether the District could provide technological assistance for virtual learning (Fact 21). The Parent was informed that the special education teacher would send the Parent digital resources that could be used with the Student and that technology assistance was not available to elementary families (Fact 22, 25).

Throughout April and May 2020, the special education teacher at School A emailed the Parent each week's work for the Student and provided the Parent with free online resources (Fact 15, 16, 18, 19, 20, 23, 24, 26, 30, 31, 32). Additionally, the special education teacher sent the Parent an email on April 26, 2020 outlining the individualized goals and objectives for the Student, as well activities that could be implemented in the home to support the Student's learning goals (Fact 27).

On April 20, 2020, the District offered to email the learning packets to the Parent (Fact 25). However, on May 4, 2020, the Parent stated that the Parent was unable to use the emailed materials, as the Parent does not always have reliable access and indicated that no printed learning materials for the Student had been received from the District (Fact 28).

May 18, 2020 to August 18, 2020

No educational services were offered to the Student from June 2020 to August 2020. The Student's IEP provided that the need for ESY would be determined by the IEP team by May 5, 2020, but an IEP team meeting was not held to discuss ESY eligibility (Fact 5).

August 19, 2020 to September 22, 2020

The 2020-21 school year began with remote learning on August 19, 2020 (Fact 42). In preparation for remote learning, the special education teacher for School A emailed the Parent on August 10, 2020 and followed up with an

additional email on August 14, 2020 asking for a time to meet with the Parent to give the Parent materials and to provide an iPad for the Student (Fact 36, 40). The Parent indicated that before setting up a meeting and receiving an iPad and materials for the Student the Parent requested that an IEP team meeting occur to address all of the Student's needs and concerns (Fact 37, 41). Various emails were exchanged between the Parent and District staff regarding the start of school, the Parent's request for an IEP meeting, and the availability of an iPad and materials for the Student to use to join class remotely (Fact 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 57, 58, 62, 64, 65). At the Parent's request, the District mailed a large box of materials and resources to the Parent including the materials used during spring 2020 on September 18, 2020 (Fact 61, 66, 67, 69).

On September 16, 2020, the Parent informed the District that using an iPad as the primary means for instruction will be difficult for both the Parent and the Student and pointed out that the Student's special education teacher had previously not allow the iPad as a reinforcer in the classroom due to the potential for problem behaviors by the Student (Fact 64). The 2/11/20 IEP recognized that an iPad is a trigger for the Student and could cause behaviors (Fact 5). The Parent requested that a remote learning plan be developed for the Student to make the time as effective as possible and requested assistance from the District to teach the Parent how to teach the Student while in remote learning (Fact 64, 65).

The Parent was concerned about a possible truancy referral regarding the Student and spoke with District staff by phone on September 3, 2020. As a follow-up to that phone call, the Parent emailed and asked for confirmation in writing that there would not be a truancy referral on the Student (Fact 59). District staff responded and clarified that on September 3, 2020 it was too early in the school year to make a truancy referral, and staff did not state the District would not be submitting a truancy referral in the future on the Student (Fact 60).

September 23, 2020 to October 21, 2020

On September 23, 2020, the District began in-person instruction and the Parent was informed that the Student could return to school on September 23, 2020 or the Parent could elect to have the Student participate in the remote learning program (Fact 68). The District sent transportation to the Student's home beginning on September 23, 2020, but the Student did not board the bus. After 10 consecutive days, the transportation department no longer attempted to pick up the Student (Fact 70).

Notice of an IEP meeting was provided to the Parent on October 6, 2020 for a meeting to be held on October 14, 2020, a date agreed to by the Parent (Fact 71). District staff phoned the Parent on October 13, 2020 regarding the details for the IEP meeting scheduled on October 14, 2020. The Parent requested that the meeting be in-person and when informed that the meeting would be held remotely due to current health guidelines in effect, the Parent informed District staff that the Parent probably would not be attending the IEP meeting (Fact 74). An IEP meeting did not occur on October 14, 2020.

During October 2020, District Staff and the Parent discussed the Student attending School B, instead of School A and the District provided the Parent with a list of other classrooms similar to the classroom at School A (Fact 72, 73, 75, 76).

October 22, 2020 to November 27, 2020

On October 21, 2020, the Parent elected to transfer the Student to School B and asked that the Student receive services remotely (Fact 75). Based on a phone conversation with the Parent, the District developed an IEP amendment which provided the Student would access remote learning at School B from the severe behavior disorders program location. The Student was assigned a behavior technician from the program to assist with schoolwork (Fact 76).

The IEP amendment provided that this transition would last for one month after which the Student would transition to School B for in-person learning (Fact 76). The Student attended School B remotely while at the severe behavior disorders program from October 22, 2020 to November 27, 2020 (Fact 78). During this time behavioral data was collected to guide the Student's IEP team at School B (Fact 79).

November 30, 2020 to February 2, 2021

The Student's IEP was amended on November 18, 2020 and provided that the Student would begin accessing in-person instruction at School B starting on November 30, 2020. The District would have additional special education staff present at School B to ensure a successful transition for the Student (Fact 80). Although the Student was expected at School B on November 30, 2020, the Student did not attend (Fact 82, 83). Instead, the Parent and the special education director spoke by phone on November 30, 2020 and the Parent requested that the District transport the Student to a private therapy center each morning and requested that the Student be provided four hours daily of ABA services (Fact 84).

On December 1, 2020, the Parent requested that an IEP meeting be held before sending the Student to School B (Fact 85). On December 4, 2020, the special education director proposed meeting dates for an IEP meeting, but the Parent

was no longer able to meet in December. The special education director offered to schedule an IEP meeting in January, but the Parent was not sure about availability at that time. The Parent was informed that the Student was welcome to attend School B and the District was ready to hold an IEP team meeting when the Parent was available (Fact 86). The Student did not attend School B either virtually or in-person (Fact 2).

In late January 2020, District staff made multiple attempts to contact the Parent in order to schedule an IEP meeting (Fact 88). On January 29, 2021, the parent and District staff spoke by phone and on January 30, 2021 a Notice of Individualized Education Program Team Meeting was provided to the Parent which scheduled an IEP meeting for February 10, 2021 (Fact 89, 90).

Summary and Conclusions

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

The U.S. Supreme Court construed the meaning of FAPE in *Bd. of Education of Hendrick Hudson Cent. School Dist. v. Rowley*, 458 U.S. 176, 198, 207 (1982) and stated: "The statutory definition of 'free appropriate public education,' in addition to requiring that States provide each child with 'specially designed instruction,' expressly requires the provision of 'such ... supportive services ... as may be required to assist a handicapped child to benefit from special education.' § 1401(17). ..." The U.S. Supreme Court further defined the standard for a free appropriate public education in *Endrew F. v. Douglas County School District. RE-1*, 137 S. Ct. 988 (2017), holding that the educational program for a child with a disability must be one that is "... reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." However, the IDEA does not guarantee any particular level of education and "cannot and does not" promise any particular educational outcome. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017) (citing *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982)).

School districts must ensure that extended school year (ESY) services are available if a student's IEP team determines, on an individual basis, that ESY services are necessary to provide FAPE. The term "extended school year

services" means special education and related services that are provided to a student with a disability beyond the normal school year of the district, are provided in accordance with the child's IEP, and are provided at no cost to the parent of the student. 34 CFR 300.106; 92 NAC 51-003.23.

At the beginning of the COVID-19 outbreak in March 2020, the U.S. Department of Education provided guidance to school districts and clarified that if a school closes its doors to stop COVID-19 from spreading, and the district doesn't provide educational services to the student population in general, then "the [local educational agency] would not be required to provide services to students with disabilities during the same period of time." Once school resumes, districts must make every effort to provide special education and related services to the child in accordance with the IEP and would also need to make an individualized determination regarding compensatory education. Questions and Answers on Providing Services to Children With Disabilities During the Coronavirus Disease 2019 Outbreak, 76 IDELR 77 (EDU 2020).

Districts must provide FAPE consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. The U.S. Department of Education recognized that during the COVID-19 pandemic schools might not be able to provide certain in-person services. Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elem., and Secondary Schs. While Serving Children with Disabilities, 76 IDELR 104 (OSERS/OCR 2020). The U.S. Department of Education further recommended that IEP teams consider providing "online or virtual instruction" to students with disabilities excluded from school because of the virus. Questions and Answers on Providing Services to Children With Disabilities During the Coronavirus Disease 2019 Outbreak, 76 IDELR 77 (EDU 2020).

A district's procedural violation of the IDEA may not result in a denial of FAPE when the parents have failed to make efforts to meaningfully participate in the IEP process. See, e.g., *Sytsema v. Academy Sch. Dist.* No. 20, 50 IDELR 213 (10th Cir. 2008) (holding the parents' withdrawal from the IEP process made the district's procedural violation harmless); and *Rockwall Indep. Sch. Dist. v. M.C.*, 67 IDELR 108 (5th Cir. 2016) (Communications showing that the parents of a 10th-grader with an emotional disturbance were unwilling to attend a follow-up IEP meeting unless a Texas district agreed to their proposed placement convinced the 5th Circuit that the parents "broke down" the IEP development process).

February 2, 2020 to March 13, 2020

The facts establish that the Parent chose not to send the Student to school from October through March 13, 2020 due to the Parent's concerns. The District provided the Parent with PWN identifying the February 11, 2020 IEP as the District's offer of FAPE to the Student and the District was ready to implement the Student's IEP. After receiving the District's offer of FAPE, the Parent continued to choose not to send the Student to school.

The facts establish that from February 2, 2020 to March 13, 2020 the Parent chose not to send the student to School and no denial of FAPE occurred.

March 16, 2020 to May 15, 2020

On March 16, 2020, the District suspended in-person learning for all students due to the COVID-19 pandemic. The District continued to provide educational opportunities to the general student population, and to the greatest extent possible had an obligation to provide the Student with the special education and related services identified in the Student's IEP. The Parent was informed that the Student would receive educational services remotely and that materials could be picked up from the school on certain dates.

The District declined to convene an IEP team meeting to discuss possible changes to the February 11, 2020, as it had not had an opportunity to implement the IEP but offered to convene an IEP meeting with the Parent to discuss a remote learning plan during this time. An IEP meeting was not scheduled by the District to discuss a remote learning plan as the District and the Parent could not agree on the purpose of an IEP meeting.

Although the Parent indicated the best means by which to communicate during school closure was by email, the Parent informed District staff that the Parent was unable to pick up the packets of material from the school, and that the Parent was unable to use the emailed materials as the Parent did not always have reliable access to the materials.

The evidence shows that the District did not schedule an IEP meeting to discuss a remote learning plan for the Student and did not provide the Parent with copies of the learning materials as requested from March 16, 2020 to May 15, 2020, resulting in a denial of FAPE.

May 18, 2020 to August 18, 2020

The facts established that the Student's February 11, 2020 IEP did not identify whether the Student qualified for ESY services, as there was insufficient data at the time of the IEP meeting to make a decision. The IEP team was to meet by

May 5, 2020 to discuss ESY, but no meeting occurred, and no determination was made as to whether the Student qualified for ESY services.

The District has been found out of compliance regarding its failure to provide the Parent with PWN regarding ESY services. There is insufficient evidence to make a determination as to whether the Student qualified for ESY and was therefore denied FAPE from May 18, 2020 to August 18, 2020.

[August 19, 2020 to September 22, 2020](#)

The facts establish that the 2020-21 school year began on August 19, 2020 with remote services provided to all students. The special education teacher at School A requested a time to meet with the Parent so that the Parent could receive instructional materials and an iPad for the Student, which would allow the Student to access the remote learning the teacher would provide during regular school hours. However, the Parent requested that an IEP meeting be held before the Parent received the materials and iPad for the Student. The Parent was also concerned about a possible truancy referral because the Student was not attending school.

While the Parent initially stated the Parent did not wish to receive the instructional materials and iPad until an IEP meeting was held, the Parent reminded staff that the use of an iPad as the primary means for instruction would be difficult as the iPad was a potential trigger for problem behaviors by the Student. At the Parent's request, the District mailed a large box with instructional materials and resources to the Parent, which also included the April and May 2020 learning materials. The Parent also requested assistance on how to teach the Student while in remote learning. However, the District did not offer other means by which to access educational services besides an iPad, nor was assistance offered to the Parent. The evidence shows that the District failed to consider the Parent's concerns regarding the use of the iPad and failed to consider the Parent's request for assistance.

The evidence shows that the District failed to offer special education and related services to the Student effective August 19, 2020 to September 22, 2020, resulting in a denial of FAPE.

[September 23, 2020 to October 21, 2020](#)

In-person learning began on September 23, 2020 and the Parent was informed the Student could attend school in-person or elect to attend remotely. The District sent transportation for the Student on a daily basis for 10 days, but the Student did not board the bus, and did not attend school either in-person or remotely.

The Parent and District staff agreed upon an IEP meeting date of October 14, 2020, but the Parent elected not to attend, and the Parent did not send the Student to school. The District offered special education and related services to the Student from September 23 to October 21, 2020 and no denial of FAPE occurred.

October 22, 2020 to November 27, 2020

The District agreed to the Parent's request that the Student attend School B, and beginning on October 22, 2020, the Student began attending remote learning at School B. Rather than attending remote learning in the home setting, the Student attended from the severe behavior disorders program location, as specified in an IEP amendment. In addition, the Student was assigned a behavior technician to assist with schoolwork.

The evidence shows that the District offered special education and related services to the Student from October 22, 2020 to November 27, 2020 and no denial of FAPE occurred.

November 30, 2020 to February 2, 2021

The Student's IEP amendment dated November 18, 2020 provided that the Student would begin attending School B in-person on November 20, 2020. The District anticipated the Student's return to in-person learning on November 30, 2020 with additional special education staff present to ensure a successful transition for the Student. However, the Parent elected not to send the Student to School B and instead requested that the District transport the Student to a private therapy center to receive ABA services.

The District attempted to set up an IEP meeting in December 2020 with the Parent as requested, but when District staff and the Parent discussed possible meeting dates, the Parent was not available in December 2020, and possibly not available in January 2021. On January 30, 2021 an IEP meeting was scheduled for February 10, 2021.

The evidence shows that the District offered special education and related services to the Student from November 30, 2020 to February 2, 2021 and no denial of FAPE occurred.

Based on the information discussed above, the District failed to fully implement the requirements of 92 NAC 51-007.07.02 and 92 NAC 51-003.24 and the following **corrective action is required**.

Corrective Action

1. For the time period of March 16, 2020 to May 15, 2020: The Student's IEP team shall convene a facilitated meeting by May 3, 2021 to review the

Student's need for recovery services due to school closure resulting from the COVID-19 pandemic.

- a. An IEP team, including the Parent, shall determine what recovery services are needed to allow the Student to be at the skill level the Student would have been at if school were in session and determine a schedule for those recovery services to be provided during the remainder of the 2020-21 school year and beginning of the 2021-22 school year. If the district is unable to get the Parent to attend the IEP meeting, the district will document the attempts to contact the parent as required by 92 NAC 007.06D and hold the meeting without the parent.
 - b. Recovery services shall be completed by October 1, 2021. 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 recovery services declined or not utilized by October 1, 2021 shall be deemed waived (assuming the District has made a good faith effort to timely commence and provide all recovery services).
 - c. The schedule for recovery services shall be provided to NDE within 10 days from the date of the facilitated IEP meeting, but no later than May 13, 2021.
 - d. Service provider logs verifying completion of all recovery services must be submitted to NDE monthly until the service is complete and all service has been verified.
2. For the time period of May 18, 2020 to August 16, 2020: At the facilitated IEP team meeting to be held by May 3, 2021, the Student's IEP team shall determine whether the Student qualifies for ESY services during summer break 2021. The data collected for the determination of ESY services must be submitted to NDE within 10 days from the date of the facilitated IEP meeting, but no later than May 13, 2021. If the district is unable to get the Parent to attend the IEP meeting, the district will document the attempts to contact the parent as required by 92 NAC 007.06D and hold the meeting without the parent.
 3. For the time period of August 17, 2020 to September 22, 2020: The Student's IEP team shall convene a facilitated meeting by May 3, 2021 to review the Student's need for recovery services due to school closure resulting from the COVID-19 pandemic.
 - a. An IEP team, including the Parent, shall determine what recovery services are needed to allow the Student to be at the skill level the Student would have been at if school were in session and

determine a schedule for those recovery services to be provided during the remainder of the 2020-21 school year and beginning of the 2021-22 school year. If the district is unable to get the Parent to attend the IEP meeting, the district will document the attempts to contact the parent as required by 92 NAC 007.06D and hold the meeting without the parent.

- b. Recovery services shall be completed by December 1, 2021. 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 recovery services declined or not utilized by December 1, 2021 shall be deemed waived (assuming the District has made a good faith effort to timely commence and provide all recovery services).
- c. The schedule for recovery services shall be provided to NDE within 10 days from the date of the facilitated IEP meeting, but no later than May 13, 2021.
- d. Service provider logs verifying completion of all recovery services must be submitted to NDE monthly until the service is complete and all service has been verified.

Notice to District

Unless otherwise indicated, the corrective action specified must be completed within sixty (60) calendar days of the date of this report. Documentation must be submitted as soon as possible following the completion of the corrective actions. All documentation of correction must be sent to:

Jamie L. Chambers, Complaint Investigation Specialist
NDE Office of Special Education
Jamie.l.chambers@nebraska.gov