

## COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.23  
Complaint Investigators: [Redacted]  
Date Complaint Filed: March 2, 2022  
Date of Report: [Redacted]

### Issues Investigated

1. Did the District develop the Student's IEP in accordance with 92 NAC 51-007.07, and more specifically meet the following requirements?
  - a. Did the Student's IEP team determine that the Student would take alternative assessments and provide short-term objectives as required by 92 NAC 51-007-07A3?
  - b. Did the District provide a description of how the Student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the Student is making toward meeting the annual goals will be provided, as required by 92 NAC 51-007.07A4?
  - c. Did the District consider the use of positive behavioral interventions and supports to address behavior which impedes the learning of the Student or the learning of other students in accordance with 92 NAC 51-007.07B3?
  - d. Did the IEP Team review and revise the IEP, as appropriate, to address information about the Student provided by the Parents, including the Student's anticipated needs or other matters in accordance with 92 NAC 51-007.10?
2. Did the District 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?
3. 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?
4. 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?
5. Did the District fail to provide a free appropriate public education (FAPE) to the Student as required by 92 NAC 51-003.24?

## **Information Reviewed**

### *From the Parent*

- Complaint received by the NDE on March 2, 2022
- Documents provided by Parent, including, but not limited to:
  1. Two recorded phone messages from District staff dated August 24, 2021, and October 15, 2021
  2. February 8, 2022, IEE Refusal & Communication Plan
  3. February 23, 2022, Incident
  4. Nebraska Department of Education Contested Case Docket
  5. Draft Individualized Education Program with parent comments dated January 31, 2021
  6. IEP team meeting recordings for meetings held on January 6, 2022; January 10, 2022; January 12, 2022; February 8, 2022; February 24, 2022; March 15, 2022; March 22, 2022; March 29, 2022; and April 5, 2022
  7. IEP dated February 8, 2022, with Parent comments attached
  8. Notification of Meeting and IEP Meeting Agenda with Parent comments attached
  9. Multidisciplinary Team Meeting Summary dated January 6, 2022
  10. Parent Concerns File
  11. Emails from Parent
- Phone interview with Parent on April 21, 2022

### *From the School District*

- Letter of Response dated April 1, 2022, with the following attachments:
  1. Attachment 1 – Special education director statement
  2. Attachment 2 – Special Education Records
  3. Attachment 3 – Attendance and Incident Records
  4. Attachment 4 – Parent Provided Information
  5. Attachment 5 – Emails and Communications
  6. Attachment 6 – Additional related records
  7. Email received March 22, 2022
- Phone interview with the District's special education director and attorney on April 20, 2022

## **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. Prior to receiving the Parent's letter of complaint, the District filed a Petition for a due process hearing with this office on February 18, 2022. The Petition for a due process hearing addressed the November 2020 triennial reevaluation of the Student and the Parent's request for an Independent Educational Evaluation (IEE). Whenever a written complaint is received that is also the subject of a due process hearing, or there are multiple issues of which one or more are part of that hearing, this office is required to set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. 92 NAC 51-009.11C8. Because some of the issues presented in the Parent's complaint letter were included in the Petition for a due process hearing, this office did not investigate the issues pertaining to the triennial reevaluation process and the Parent's request for an IEE.

To conduct this complaint investigation, an outside investigator was used along with a complaint investigator with the NDE Office of Special Education. The documents received from the Parent and the School District were reviewed. A phone interview with the Parent occurred on April 21, 2022. A phone interview with the special education director and the District's legal counsel occurred on April 20, 2022.

This investigation is limited to a review of alleged IDEA violations that occurred not more than one year prior to March 2, 2022, 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 8 years old, in the second grade, and received special education services under the disability category of Specific Learning Disability (SLD) in the areas of Basic Reading, Math Calculation, and Math Problem Solving. The Student also met the criteria to qualify for special education services as having a Speech Language Impairment (IEP dated November 5, 2021).
- 2) The Student was initially evaluated in December 2014 and was found eligible for special education and related services as a student with a Developmental Delay (MDT Report dated November 5, 2020; IEP dated November 5, 2021).
- 3) The Student was reevaluated and a Multidisciplinary Evaluation Team MDT Report dated November 5, 2020 was provided to the Parents. The Student was evaluated in various areas, including an Occupational Therapy (OT) evaluation, which found that the Student's performance was average when

compared to same-age peers. The Parents attended the MDT meeting and signed as being in agreement with the MDT decision.

- 4) Three IEPs were in place for the Student between March 2021 and March 2022. The Parents participated in each IEP team meeting (Parent Interview).
- 5) The following chart sets forth an overview and comparison of the Student's three IEPs.

IEP dated November 6, 2020	IEP dated November 5, 2021	IEP dated January 18, 2022
The IEP team considered whether behavior impeded the Student's learning and considered the use of positive behavioral interventions and strategies, but determined they were unnecessary.	The IEP team considered whether behavior impeded the Student's learning and considered the use of positive behavioral interventions and strategies, but determined they were unnecessary.	The IEP team considered whether behavior impeded the Student's learning and considered the use of positive behavioral interventions and strategies, but determined they were unnecessary.
<p><b>Goal 1:</b> Speech: By annual IEP review date, through story retell activities, the Student will improve production of the /l/, l-blends, /s/, s-blends, /z/ by having correct tongue placement with 80% accuracy or above as measured by the SLP to improve overall speech skills.</p> <p>Short term objectives are set forth</p> <p>Progress Report</p> <ol style="list-style-type: none"> <li>i. Schedule: B - 9 weeks</li> <li>ii. Evaluation Procedures: Teacher Observation, Oral Performance</li> <li>iii. Persons Responsible: Parent, Classroom Teacher, SPED Teacher, SLP, Student</li> <li>iv. Review dates: 12/18/20, 3/12/21, 5/20/21, 10/15/21</li> <li>v. Statement of progress: Progress reports will be sent home on or around the dates listed above.</li> </ol>	<p><b>Goal 1:</b> Speech: The Student will demonstrate mastery of producing the targeted speech sounds (/s/, s-blends, /z/) with correct tongue placement with 90% accuracy for two consecutive weeks measured by random observations completed by the SLP.</p> <p>No short-term objectives are set forth</p> <p>Progress Report</p> <ol style="list-style-type: none"> <li>a. Schedule: B - 9 weeks</li> <li>b. Evaluation Procedures: Teacher Observation, Oral Performance</li> <li>c. Persons Responsible: Parent, Classroom Teacher, SPED Teacher, SLP, Student</li> <li>d. Review dates: 12/21/21, 3/10/22, 5/19/22, 10/14/22</li> <li>e. Statement of progress: Student's progress will be reported to parents through progress reports.</li> </ol>	<p><b>Goal 1:</b> Speech: By annual IEP review date, given a school day setting, the Student will demonstrate mastery of producing the targeted speech sounds (/s/, s-blends, /z/) with correct tongue placement with 90% accuracy for two consecutive weeks measured by random observations completed by the SLP.</p> <p>No short-term objectives are set forth</p> <p>Progress Report</p> <ol style="list-style-type: none"> <li>a. Schedule: B - 9 weeks</li> <li>b. Evaluation Procedures: Teacher Observation, Oral Performance</li> <li>c. Persons Responsible: Parent, Classroom Teacher, SPED Teacher, SLP, Student</li> <li>d. Review dates: None Listed</li> <li>e. Statement of progress: Student's progress will be reported to parents through progress reports.</li> </ol>

IEP dated November 6, 2020	IEP dated November 5, 2021	IEP dated January 18, 2022
<p><b>Goal 2:</b> Reading: Given decoding instruction and sight word practice, the Student will improve base line grade level passage reading from 34 WRC to 70 WRC by the annual review date.</p> <p>Short term objectives were set forth based on a rate of 1 word a week improvement.</p> <ul style="list-style-type: none"> <li>• Dec 2020 – 43 WRC</li> <li>• March 2021 – 52 WRC</li> <li>• May 2021 – 61 WRC</li> <li>• Oct 2021 – 70 WRC</li> </ul> <p>Progress Report</p> <ol style="list-style-type: none"> <li>Schedule: B - 9 weeks</li> <li>Evaluation Procedures: Teacher Observation, Oral Performance</li> <li>Persons Responsible: Parent, Classroom Teacher, SPED Teacher</li> <li>Review dates: 12/18/20, 3/12/21, 5/20/21, 10/15/21</li> <li>Statement of progress: Progress reports will be sent home on or around the dates listed above.</li> </ol>	<p><b>Goal 2:</b> Reading: Given decoding instruction, phonics ques and sight word practice, the Student will improve base line grade level passage reading from 30 WRC to 72 WRC by the annual review date.</p> <p>Short term objectives are set forth based on a rate of 1 word a week improvement.</p> <ul style="list-style-type: none"> <li>• Dec 2021 – 36 WRC</li> <li>• March 2022 – 45 WRC</li> <li>• May 2022 – 54 WRC</li> <li>• Oct 2022 – 63 WRC</li> </ul> <p>Progress Report</p> <ol style="list-style-type: none"> <li>Schedule: B - 9 weeks</li> <li>Evaluation Procedures: Teacher Observation, Oral Performance</li> <li>Persons Responsible: Parent, Classroom Teacher, SPED Teacher,</li> <li>Review dates: 12/21/21, 3/10/22, 5/19/22, 10/14/22</li> <li>Statement of progress: Student's progress will be reported to parents through progress reports.</li> </ol>	<p><b>Goal 2:</b> Reading: Given decoding instruction, phonics ques and sight word practice, the Student will improve base line grade level passage reading from 30 WRC to 72 WRC by the annual review date.</p> <p>Short term objectives from the previous IEP were moved to the goal.</p> <p>Progress Report</p> <ol style="list-style-type: none"> <li>Schedule: B - 9 weeks</li> <li>Evaluation Procedures: Teacher Observation, Oral Performance</li> <li>Persons Responsible: Parent, Classroom Teacher, SPED Teacher,</li> <li>Review dates: None Listed</li> <li>Statement of progress: Progress reports will be sent home on or around the dates listed above.</li> </ol>

IEP dated November 6, 2020	IEP dated November 5, 2021	IEP dated January 18, 2022
<p><b>Goal 3:</b> OT: By the next annual review date, the Student will demonstrate progress in visual motor skills by writing a sentence of no less than 4 words with appropriate line use and spacing between words 3 consecutive observations by teacher/OT.</p> <p>Short term objectives are set forth.</p> <p>Progress Report</p> <ol style="list-style-type: none"> <li>Schedule: B - 9 weeks</li> <li>Evaluation Procedures: Teacher Observation, Written Performance, Oral Performance</li> <li>Persons Responsible: Parent, Classroom Teacher, SPED Teacher</li> <li>Review dates: None listed</li> <li>Statement of progress: Progress reports will be sent home on or around the dates listed above.</li> </ol>	<p><b>Goal 3:</b> Math: Given instruction, daily drill, and practice, the Student will improve number sense and math skills by the annual review date.</p> <p>Short term objectives provided Student will:</p> <ul style="list-style-type: none"> <li>Write numbers by ones, twos, fives, and tens to 100.</li> <li>Recognize number patterns and write numbers to 120 within a 10-minute period.</li> <li>Complete doubles and doubles plus one facts (25 problems within 5 minutes) on 4/5 trials</li> </ul> <p>Progress Report</p> <ol style="list-style-type: none"> <li>Schedule: B - 9 weeks</li> <li>Evaluation Procedures: Teacher Observation, Written Performance, Oral Performance</li> <li>Persons Responsible: Parent, Classroom Teacher, SPED Teacher</li> <li>Review dates: 12/21/21, 3/10/22, 5/19/22, 10/14/22</li> <li>Statement of progress: Progress reports will be sent home on or around the dates listed above.</li> </ol>	<p><b>Goal 3:</b> Math: Given instruction, daily drill, and practice, the Student will improve number sense and math skills by completing identified benchmarks.</p> <p>Short term objectives from the previous IEP were moved to the goal.</p> <p>Progress Report</p> <ol style="list-style-type: none"> <li>Schedule: B - 9 weeks</li> <li>Evaluation Procedures: Teacher Observation, Written Performance, Oral Performance</li> <li>Persons Responsible: Parent, Classroom Teacher, SPED Teacher,</li> <li>Review dates: None Listed</li> <li>Statement of progress: Progress reports will be sent home on or around the dates listed above.</li> </ol>

IEP dated November 6, 2020	IEP dated November 5, 2021	IEP dated January 18, 2022
<p><b>Goal 4:</b> Math: Given daily drill and practice, the Student will improve number sense and math skills by the annual review by completing benchmarks.</p> <p>Short term objectives provided Student will:</p> <ul style="list-style-type: none"> <li>Count orally by one/s twos, fives and ten to 100</li> <li>Recognize number patterns and write numbers to 100 within 10-minute period.</li> <li>Compute doubles and doubles plus one facts (20 problems in 7 minutes on 4/5 trials)</li> </ul> <p>Progress Report</p> <ol style="list-style-type: none"> <li>Schedule: B-9 weeks</li> <li>Evaluation Procedures: Teacher Observation, Oral Performance</li> <li>Persons Responsible: Parent, Classroom Teacher, SPED Teacher</li> <li>Review dates: 12/18/20, 3/12/21, 5/20/21, 10/15/21</li> <li>Statement of progress: Progress reports will be sent home on or around the dates listed above.</li> </ol>	<p><b>Goal 4:</b> Speech: By annual IEP review date, the Student will produce the postvocalic /r/ - ar, ear, air, er, ire, or, rl in the final word position at the sentence level with 80% accuracy during structured speech tasks.</p> <p>No short-term objectives are set forth</p> <p>Progress Report</p> <ol style="list-style-type: none"> <li>Schedule: B - 9 weeks</li> <li>Evaluation Procedures: Teacher Observation, Oral Performance</li> <li>Persons Responsible: Parent, Classroom Teacher, SPED Teacher, SLP, Student</li> <li>Review dates: 12/21/21, 3/10/22, 5/19/22, 10/14/22</li> <li>Statement of progress: Student's progress will be reported to parents through progress reports.</li> </ol>	<p><b>Goal 4:</b> Speech: By annual IEP review date, the Student will produce the postvocalic /r/ - ar, ear, air, er, ire, or rl in the final word position at the sentence level with 80% accuracy during structured speech tasks.</p> <p>No short-term objectives are set forth</p> <p>Progress Report</p> <ol style="list-style-type: none"> <li>Schedule: B - 9 weeks</li> <li>Evaluation Procedures: Teacher Observation, Oral Performance</li> <li>Persons Responsible: Parent, Classroom Teacher, SPED Teacher, SLP, Student</li> <li>Review dates: None Listed</li> <li>Statement of progress: Student's progress will be reported to parents through progress reports.</li> </ol>

IEP dated November 6, 2020	IEP dated November 5, 2021	IEP dated January 18, 2022
<p><b>Statement of Special Education Services</b></p> <ul style="list-style-type: none"> <li>a. Participation in a developmentally appropriate Kindergarten program with peers.</li> <li>b. Services within the classroom routine/activities and/or in small group/one-on-one setting when necessary.</li> <li>c. Involvement in all activities with peers.</li> <li>d. Services from a resource teacher special educator for 30 minutes a day 5 days a week.</li> <li>e. Services from the speech language pathologist for 40 minutes a week/4 week a month.</li> <li>f. Services by the occupational therapist on a consult basis as a support to staff for accommodations regarding the Student's visual perception with completion of written tasks.</li> </ul>	<p><b>Statement of Special Education Services</b></p> <ul style="list-style-type: none"> <li>a. Participation in a developmentally appropriate second grade program with peers.</li> <li>b. Services within the classroom routine/activities and/or in small group/one-on-one setting when necessary.</li> <li>c. Involvement in all activities with peers.</li> <li>d. Services from a resource teacher, special educator for 30 minutes a day 5 days a week.</li> <li>e. Services from the speech language pathologist for 60 minutes a week/3 week a month.</li> <li>f. Services by the occupational therapist on a consult basis as a support to staff for accommodations regarding the Student's visual perception with completion of written tasks.</li> </ul>	<p><b>Statement of Special Education Services</b></p> <ul style="list-style-type: none"> <li>a. Participation in a developmentally appropriate second grade program with peers.</li> <li>b. Services within the context of the classroom routine/activities and/or in a small group/one-on-one setting when necessary.</li> <li>c. Involvement in all activities with peers.</li> <li>d. Services from a resource teacher, special educator for 30 minutes a day 5 days a week.</li> <li>e. Services from the speech language pathologist for 60 minutes a week/3 week a month.</li> <li>f. Services by the occupational therapist on a consult basis as a support to staff for accommodations regarding the Student's visual perception with completion of written tasks.</li> </ul>



IEP dated November 6, 2020	IEP dated November 5, 2021	IEP dated January 18, 2022
<b>Modifications &amp; Accommodations</b> <ul style="list-style-type: none"> <li>• Seat work printed on colored paper</li> <li>• Working/writing boundaries highlighted or delineated in some way</li> <li>• Work in small groups to absorb new information.</li> <li>• Contingency plan if District returned to E-Learning</li> </ul>	<b>Modifications &amp; Accommodations</b> <ul style="list-style-type: none"> <li>• Seat work presented with high contrast</li> <li>• Working/writing boundaries highlighted or delineated in some way</li> <li>• Work in small groups to absorb new information.</li> <li>• Multiple opportunities for repetitions (extra practice)</li> <li>• Extra time and shortened assignments</li> <li>• Contingency plan if District returned to E-Learning</li> </ul>	<b>Modifications &amp; Accommodations</b> <ul style="list-style-type: none"> <li>• Seat work presented with high contrast</li> <li>• Working/writing boundaries highlighted or delineated in some way</li> <li>• Work in small groups to absorb new information.</li> <li>• Multiple opportunities for repetitions (extra practice)</li> <li>• Extra time and shortened assignments</li> <li>• Use of a specialized pencil grip</li> <li>• Access to fidget band on chair</li> <li>• Movement breaks when needed</li> <li>• Scheduled "brushing" breaks (to be administered by Student)</li> <li>• Use of math manipulatives such as number lines, counters, hundreds chart, unifix cubes, base ten blocks, interactive math apps</li> <li>• Parent provided snacks at teacher discretion</li> <li>• Reminders about "take home" folder</li> <li>• Contingency plan if District returned to E-Learning</li> </ul>
<b>Assessments</b> Student will participate in regular state and district wide assessments.	<b>Assessments</b> Student will participate in regular state and district wide assessments.	<b>Assessments</b> Student will participate in regular state and district wide assessments.

- 6) Prior written notice (PWN) dated November 6, 2020, was hand-delivered to the Parent and informed the Parent that:
- The District proposed to change the Student's special education verification from Developmentally Delayed to SLD.
  - The Student's letter sound and number identification goals would change to basic reading fluency and number sense goals based on the Student's gains in the past year.
  - Speech/language goals would increase based on the Student's gains in the past year.

- d) IEP services time for resource would increase to 30 minutes for 5 days a week.
  - e) Occupational therapy would change to consult.
- 7) Regarding the Student's November 6, 2020, IEP, the Parents' concerns included:
- a) The IEP was not followed.
  - b) The parent input was not accurate, as the Parents were not pleased with the Student's fine motor skills.
  - c) The Parents believed the Student continued to need direct occupational therapy services. Parent Interview.
- 8) On March 25, 2021, District staff texted the Parent that the Student was unable to access prescribed medication as no staff member was in the school office at noon to administer the medications. The Parent sent a text in response and stated the Student does better focusing and concentrating with the medication and told the Student to tell the teacher if this happens again (Letter of Complaint dated March 2, 2022; Text Message dated March 25, 2021).
- 9) A PWN dated August 30, 2021, was mailed to the Parent and informed the Parent that:
- a) The District was responding to the Parent's email dated August 24, 2021, where the Parent requested direct OT services for the Student was provided in previous IEPs.
  - b) The District was refusing to amend the Student's IEP because the data available demonstrated that OT services were not necessary to provide the Student FAPE.
  - c) In the December 18, 2020, progress report the District shared that the Student would be served on a consult basis and the Student had met the OT goal. In the progress reports dated March 12, 2021, and May 20, 2021, the OT stated that she was no longer serving the Student with direct support but was still on the team as a consultant.
  - d) The District considered reinstituting direct OT services as requested by the Parent but rejected this option as it was not supported by the available educational data. Further, the District rejected this option because the Student is entitled to FAPE in the least restrictive environment (LRE) and removing the Student from the general education environment to receive direct OT services would not constitute LRE for the Student.
  - e) Other relevant factors included the Student's current OT needs were being met through classroom accommodations, including the availability of a slant board, loop scissors, colored glue, and pencil grips. OT consultative services to the Student's direct service providers were

sufficient to meet the Student's needs and monitor Student needs and progress in those areas.

- 10) The Parents received a form letter provided to certain elementary school students' parents on September 15, 2021, from the school principal providing that:
- a) The District utilized a screener to determine students in need of intensive instruction to improve their reading skills.
  - b) The Student will be receiving extra support in the area of reading.
  - c) An individual improvement plan was developed for the Student.
  - d) For information or questions, parents were encouraged to contact each child's teacher or the school principal.
  - e) In 2018 the Nebraska Reading Improvement Act was passed that required all students in grades K-3 to be screened three times a year in an effort to identify potential areas of struggle and determine supplemental instruction and intervention.
  - f) The assessment identified one or more areas of difficulty for the Student and stated, "Please know, this does not mean your child(ren) is needing Special Education services." (Empasis original).
- 11) The Parents were concerned that the Student's reading teacher and location changed in mid-October and believed that the additional reading services consisted of special education services, being provided by a paraprofessional (Letter of Complaint dated March 2, 2022).
- 12) Both Parents participated in an annual IEP meeting on November 4, 2021. Parent input was provided, including:
- a) Parent concerns, including math problem solving and counting.
  - b) A draft IEP was reviewed by the team.
  - c) A "robust" discussion occurred on OT support and the team discussed and agreed that OT should remain as consultation (IEP Meeting Notes dated November 14, 2021).
- 13) The Student's IEP was finalized effective November 5, 2021, and an overview can be found in the chart above. The Student's IEP included updated 2021 language regarding the Present level of Academic Achievement and Functional Performance that identified the Student's progress.
- a) In reading, the Student was at the first-grade level and had passed all individual reading checkouts, which was an improvement over the previous year.
    - i) In first grade, the Student was reading about one grade level behind same age peers and struggled to pass individual reading checkouts.
    - ii) The Student is now reading with confidence and fluency and scored 107 word read correct on the most recent reading level passage.

- iii) The Student is averaging 30 words read correct at the second-grade level.
  - b) In math, the Student was assessed on oral counting and was able to count by fives and tens without errors.
    - i) The Student struggled to count by twos.
    - ii) The Student is able to complete the task of counting by fives to 45 without errors. The Student finished this task orally, having the teacher write for the Student.
    - iii) The Student needed a number line to identify even numbers to help write numbers by two.
    - iv) The Student was given three opportunities to fill the 100 chart and the third time was the most successful. The job was very hard for the Student to complete.
    - v) The Student is timed on math facts daily and although not meeting the time limit of 2 minutes 30 seconds the Student is getting faster.
    - vi) The Student continues to need a visual on occasion to complete doubles.
    - vii) The Student still struggled with some number sense language, such as what number is before a number, what number is after a number, one more, and one less.
  - c) In speech/language, the Student was working on producing the /s/ and /z/ sounds with correct tongue placement in reading and speaking.
    - i) An informal articulation screener was used to update the Student's progress on sounds.
    - ii) The screener showed that the Student has errors with vocalic /r/ in the final position of words.
    - iii) The Student had a /d/ and /v/ sound substitution but it was not a consistent substitution.
- 14) A PWN dated November 5, 2021, was hand-delivered to the Parent and informed the Parent that:
- a) The District proposed to change the Student's leveled reading goal and number sense goals based on the Student's gains over the past school year.
  - b) The Student's speech goals would increase based on Student gains.
  - c) IEP services time for resource services would remain the same.
  - d) Speech services will be 60 minutes a week, three weeks a month
- 15) On November 5, 2021, following the November 4, 2021 IEP team meeting, the Parent emailed staff with questions regarding a decrease in certain scores for the Student and how those scores impacted the Student's learning. District

staff answered the Parent's questions and attempted to call the Parent to further explain and answer questions the Parent might have.

- 16) On November 10, 2021, the Student was evaluated by a private occupational therapist. The evaluation identified the Student's deficit areas and goals were developed. The deficit areas that impeded the Student's ability to function within the Student's environment and complete daily tasks at an optimal level included:
  - a) Completion of activities of daily living (ADLs)
  - b) Fine motor coordination skills
  - c) Motor planning
  - d) Central nervous system (CNS) processing/regulation
  - e) Visual motor integration (VMI) skills
- 17) On November 16, 2021, the private occupational therapist who completed the private occupational therapy evaluation signed a recommendation for the Wilbarger Protocol for Sensory Defensiveness, which consisted of instructions for deep-touch pressure, including "brushing" throughout the day. The language to repeat the protocol every 2 hours, and if possible, not less than 5-6 times a day was crossed out. This document was shared by the Parent with the District.
- 18) On November 16, 2021, staff received an email from the Parents listing their concerns regarding the IEP dated November 5, 2021. The Parent's concerns included the accuracy of Parent input, including strengths, concerns, accommodations, and recommendations. The Parent also set forth the Student's comments that math is hard, the Student does not like math and writing and needs less of those subjects, the Student likes calendar, science and specials, and the Student does not realize (the Student) is going fast. The email language from the Parent was placed in a Notes Page document and stapled to the Student's IEP dated November 5, 2021.
- 19) On December 8, 2021, the Parent emailed District staff regarding teasing/bullying that occurred.
  - a) The Student told the Parent that the Student had been teased/bullied by two Students in reading class.
  - b) The two boys teased the Student about not looking like an 8-year-old.
  - c) The Student was upset and hurt.
  - d) The Parent asked that the incident be taken seriously and be monitored.
- 20) On December 9, 2021, District staff emailed the Parent in response to the teasing/bullying incident.
  - a) The matter was investigated by District staff.
  - b) The two boys did not feel they were being mean to the Student.

- c) Both boys admitted to speaking to the Student about the Student's age and whether the Student appeared to be 8 years old.
  - d) The two boys were not angry or teasing the Student.
  - e) The boys stated they would not speak to the Student about it in the future.
  - f) The Student told District staff that the boys had mentioned the Student's age, and how old the Student appeared, but the Student was not worried about the boys' questioning.
  - g) District staff informed the Parent that the matter was closed, but to reach out if there were concerns in the future.
- 21) The Parent sent an email on January 6, 2022, to District staff after receiving the Student's report card and noticed that the Student's math grade had gone down a letter grade.
- a) The Parent stated that the Student was guessing and rushing through the assignments, which had been happening since Kindergarten.
  - b) The Parent asked that the Student be observed to identify why this was happening.
  - c) The Parent requested that executive functioning goals be added to the Student's IEP.
- 22) Both Parents participated in an IEP meeting on January 17, 2022. The purpose of the meeting was to update the parent concern section and the handwriting/OT services.
- a) The Parent discussed "brushing" that occurred at home, and District staff agreed to reach out to the private occupational therapist to determine how often "brushing" should occur at school.
  - b) Parent concerns were discussed, including academic concerns, handwriting concerns, a request for an OT goal, accommodations, being held from lunch and after school, short term memory, fine motor issues, cognitive issues, and accommodations.
    - i) Staff explained during the meeting that the Student was held from lunch and after school on two occasions and it was due more to an attitude issue than an ability issue (IEP Meeting Notes dated January 17, 2021).
  - c) The IEP team had a lengthy discussion regarding the Student's executive functioning needs and determined that the Student did not need specialized instruction but, that accommodations would be added to the IEP to address the Parents' concerns (District Staff Interview).
- 23) The Student's IEP was amended during the January 17, 2022, meeting and an overview can be found in the chart above.
- 24) The District acknowledged that a clerical error occurred with the IEP amended during the January 17, 2022, meeting as the goals on the IEP failed

to list review dates and dates for providing the Parents with the Student's progress reports. The District did not intend to change the review dates set forth on the Student's IEP dated November 5, 2021 (District Staff Interview).

25) PWN dated January 18, 2022, was hand-delivered to the Parent.

- a) The District proposed to keep the Student's reading fluency and number sense goals based on the cores of the most recent MDT Report.
- b) The Student's IEP was updated to include the most recent doctor's evaluations in the areas of vision and occupational therapies, parent concerns and student strengths.
- c) The IEP team considered adding OT and executive functioning goals to the Student's IEP but the team decided that the Student could continue to be successful with accommodations and modifications from general education and resource room teachers.
- d) The Student's speech/language goal would remain the same for the rest of the IEP service year.
- e) IEP service times for resource and supporting services would remain the same.
- f) The action taken by the team was based on records from the special education teacher, occupational therapist, speech pathologist, homeroom teacher, reading teacher, Parents, and shared medical records.
- g) The Student is still reading below level and needs to continue to work on reading fluency, number sense skills and computation fluency.
- h) The focus of the IEP meeting was not directed to changing the Student's individual educational plan goals.

26) The Parent emailed District staff on January 19, 2022, regarding the Student's math worksheet and informed staff that Student told the Parent that the Student was sleepy and weak in class. The Parent asked why the Student did not take a break or have the worksheet assignment shortened.

27) On January 20, 2022, District staff replied to the Parent's January 19, 2022, email and informed the Parent that the Student's teachers had prompted the Student to participate or take a break, but the Student refused to do so.

28) On January 20, 2022, the Parent emailed District staff concerned that if the Student refused to take a break during math, the Parent was not notified at that time, or that day. Additional Parent concerns included:

- a) The math worksheet was again not shortened.
- b) The Student continued to be completely overwhelmed and confused.
- c) The school's lack of communication.
- d) The Parents have not been notified about what was happening at school with the Student.

- e) The Student's reading teacher changed and the Parents have not met her or been able to discuss their concerns with the reading teacher regarding the Student's reading worksheets.
  - f) The Student's math location changed, and the Student is no longer participating in small group for math.
  - g) The Parents did not receive notification that the District has an occupational therapist on staff.
  - h) The Student's pencil grips were taken away because the Student can correctly form letters.
  - i) The Parents were not informed that the Student was kept from going to lunch on time to redo a handwriting assignment or kept after school to redo a math assignment.
  - j) The District predetermined the decision for the Student to receive consult OT and not direct OT services.
- 29) Prior to January 2022, the Student had very few behaviors while at school, and the behaviors that occurred were typical for same age peers. The data showed that the Student was being successful, and at times the Student was able to complete an entire worksheet in class. If the lesson was more challenging, staff would shorten the assigned work and build it up successfully. The Student was having trouble with two-digit subtraction and the assignments were shortened with repetition (District Staff Interview).
- 30) Beginning in January 2022, there were several incidences at school where the Student became upset and shut down. When this occurred the Student typically would fold arms and not talk. The special education director worked closely with District staff to ensure the Student's IEP was being implemented. Almost daily collaboration between District staff occurred, and staff discussed the increased behaviors with the Parent. District staff intended to discuss the Student's increased behaviors at an IEP team meeting scheduled for March 2022 (District Staff Interview).
- 31) The special education director conducted an observation of the Student in the learning environment towards the end of January 2022 and found that during math, the Student was completing assignments in the upper half of the class. Additionally:
- a) The Student was receiving small group instruction in reading in math.
  - b) In reading, the Student was group with other students with similar abilities.
  - c) In math, the Student received whole group instruction and small group work.
  - d) In reading and math, the Student worked with the special education teacher. (District Staff Interview)



- 32) On January 27, 2022, the Parent emailed District staff asking why the Student's reading teacher changed without informing the Parents of the change.
- 33) On February 1, 2022, the Parent emailed District staff regarding another incident at school the previous day. The Parent asked to be informed about the incidents and provided suggestions that might be helpful in the classroom, including shortened assignments and larger font. The Parent asked that the District support the Student's handwriting legibility and provide a rubber band around the Student's chair in reading.
- 34) On February 3 and 4, 2022, the Parent emailed District staff regarding the Student's use of a chewy necklace to help with the Student's sensory needs which was recommended by a private occupational therapist. Staff should have contacted the Parent rather than scold the Student for having the chewy necklace in the Student's mouth and chewing on it at school.
- 35) On February 8, 2022, the special education director was informed by staff that the Student was rude to staff and difficult to work with throughout the day on February 7, 2022 (Email dated February 8, 2022).
- 36) The Parent was informed about the Student's day on February 7, 2022, when two staff members accompanied the Student out of the building at the end of the school day. The Parent felt the staff downgraded, insulted, and blamed everything on the Student. The Parent recounted the discussion with Staff:
- a) The rough day began after morning reading.
  - b) The Student was being naughty and not trying.
  - c) Staff tried things set forth on the Student's IEP.
  - d) The Student used a hand gesture and "slopped down" the Student's writing. (Letter of Complaint dated March 2, 2022).
- 37) On February 8, 2022, the Parent emailed district staff regarding the February 7, 2022, incident with the Student. Parent input regarding the incident included:
- a) Why did the Student have to continue to not be in a good mood all day?
  - b) Why did the District not reach out to the Parents until the end of the day?
  - c) The Student is overloaded, confused, overwhelmed, frustrated, mad, exhausted, and sad, while trying hard.
  - d) The Student is completely lost and confused in math.
  - e) The Student is trying to adjust to another reading teacher this school year.
  - f) Writing is physically and mentally hard for the Student.
  - g) The Student continues to be teased by the same two students.
  - h) The Student has fine motor deficit that's age equivalent to a 4- or 5-year-old which the school ignores or punishes the Student.

- i) Other deficits/disorders greatly impact and impede the Student's learning and now behaviors are coming out.
- 38) A PWN dated February 8, 2022, was provided to the Parent in response to Parent correspondence and requests related to the Student's education.
- a) The Parent requested an independent educational evaluation (IEE) in the areas of occupational therapy, IQ/cognitive and number sense. The District denied this request.
  - b) The Parent requested additional or different accommodations to the Student's IEP. The District denied this request.
  - c) The District determined a communication plan for the Parent was necessary due to numerous and escalating demands made by the Parent on the District for information and services or accommodations. "The substance and tone of your communications has grown increasingly hostile, demanding, and accusatory. Further, the frequency and volume of your communications continue to escalate, and you are directing these communications and requests to numerous staff members in each instance." The communication plan included:
    - i) Communication will be submitted in writing via email or letter
    - ii) The Parent may not contact the Student's teachers, service providers or the District administrator directly and expect a response.
    - iii) Any correspondence directed by the Parent to any staff member or service provider will be forwarded to the special education director who will respond to the Parent's questions and requests for information on a bi-weekly basis unless otherwise required by emergency or law.
    - iv) The quantity and quality of communication vastly exceeded the communication provided to parents of general education students and the District reserved the right to further restrict the Parent's communication privileges or take other action if the Parent abused or violated the terms outlined by the District or otherwise interfered with the educational process.
- 39) The Parent believed that the emails sent to various District staff consisted of concerns and questions regarding the Student's education or incidents that occurred at school and the Parents were not informed, and the communication plan hindered the Parents' involvement in the Student's educational program (Letter of Complaint dated March 2, 2022).
- 40) A letter was provided to the District dated February 14, 2022, from a psychiatric nurse practitioner regarding the Student's medical needs and various recommendations for the school setting, including:
- a) Occupational therapy

- b) A special education reading and math teacher due to the Student's grades and developmental learning issues.
  - c) Small groups
  - d) Time out if things become overwhelming
  - e) "Pushing through" is not the proper technique for the Student
  - f) Communication is key as a team with the Parents and not one person who is not always present in the classroom
- 41) On February 14, 2022, a Student Incident Report was generated by the District regarding the letter received from the psychiatric nurse practitioner and a conversation the special education director had with the nurse practitioner.
- a) The special education director spoke with the private provider regarding the District's obligation to educator children in the least restrictive environment and provide a free appropriate public education.
  - b) The special education director was of the opinion that the private provider did not have all of the information.
  - c) The private provider informed the special education director that the Student will have new evaluations completed.
- 42) On February 15, 2022, the Student informed the Parent that the Student got into trouble at school and did not understand why. The Student was mad and a staff member gave the Student a yellow slip. The Student was frustrated, the assigned classwork was hard and the Student had trouble understanding it. No break was offered and the Student was not in the mood to ask for a break (Parent Note dated March 10, 2022).
- 43) By email dated February 16, 2022, the Parents informed District staff that the Student would stay home that day because of the incident that occurred the prior day at school.
- 44) On February 23, 2022, a Student Incident Report was generated by the District regarding the Student's defiance/non-compliance behavior that occurred that day.
- a) The Student refused to work on math and laid the Student's head down on arms. The Student did not respond when spoken to by a staff member. The Student then started poking at the iPad and becoming rough with it.
  - b) The Student was given an opportunity to take a break or get a drink but continued to sit at the table and not respond.
  - c) The Student was unable to participate in PE because the Student was not wearing tennis shoes and was informed that during the PE time the Student would use the time to complete the math work.
  - d) The Student eventually finished the assigned math work, was praised by staff, and attended music.

- e) The Student was not responsive to adult support for a writing activity and was left to rest at a desk and take a break.
  - f) During the math "wrap-up" practice the Student would not participate and refused to use a number line when practicing math facts. Two staff members stopped to help direct the number line use and were met with crossed arms, turned head and body, and non-verbal responses.
  - g) When requested to work one-on-one with a staff member on math facts the Student would not hand the paper to the teacher.
    - i) The Student was shown repeatedly on the number line the correct answers to certain math fact and the Student refused to use the number line accurately.
    - ii) The Student deliberately hit numbers that were not correct and refused to verbally answer direct questions.
    - iii) This had been an issue previously and the Student was required to fill out a "fix-it" slip.
  - h) Staff was unable to remove the Student as the principal was unavailable and the in-school suspension room was full.
  - i) To earn the Student's way back into the classroom the Student was asked to do three things, which the Student agreed to:
    - i) Answer when an adult was talking to the Student;
    - ii) Use the Student's tools to the best of the Student's abilities; and
    - iii) Do the Student's best work.
  - j) The Student was reminded about the "grow mindset", that even when things are hard to not give up and to do things that are easier, such as sitting up and looking like a learner, and holding the writing paper and focus on the focus point, such as the teacher, book, screen, number line, etc.
  - k) The Student eventually worked on using the number line correctly with a staff member. After practicing 4-5 problems, the Student was again asked to finish the assigned work. The Student refused to do so during the designated time but did finish the last facts one-on-on with a staff member.
- 45) The Parent went to pick up the Student after school on February 23, 2022.
- a) The Student' did not come out to the car so the Parent went into the school to find the Student.
  - b) The Student was in the classroom with a District staff member and was crying and upset.
  - c) The staff member informed the Parent that the Student had "a rough day."

- d) After the Parent and Student left, the Student told the Parent that the Student did not feel safe at school and continued to cry and was upset. The Student told the Parent that:
  - i) Staff members were mean during math when the Student had to do a subtraction worksheet that was hard and confusing to the Student, and no help was provided.
  - ii) A staff member yelled at the Student to put tummy to desk as the Student was "slumped" over the desk.
  - iii) A staff member "yanked" the Student back into the chair and "hastily" pushed the chair in, which hurt the Student.
  - iv) The Student was embarrassed because this occurred in front of peers.
  - v) Because the Student did poorly on the worksheet the staff member took the Student to the resource room during the reading block.
  - vi) The Student was told "don't cry because it won't help."
  - vii) The staff member and Student redid the subtraction worksheet along with a much harder math worksheet (Letter of Complaint dated March 2, 2022).
- 46) On February 23, 2022, the Parent emailed District staff regarding the incident that had occurred that day with the Student.
  - a) The Parents asked why they had not been notified as the incidents were increasing and affected the Student's after school activities.
  - b) The Student was overwhelmed and embarrassed in front of the class.
  - c) The Student failed a math quiz with 47%.
  - d) The Student is not at the 2nd grade level for math
  - e) The Student is being punished for deficits.
  - f) The Parents have not received the Student's report card.
  - g) The Thera-band [fidget band] on the Student's classroom chair is not correctly installed and keeps falling down.
  - h) The Student does not feel safe at school because of what happened that day.
  - i) The Parents will keep the Student home for the next two days.
- 47) The Student informed the Parent that the February 23, 2022, incident occurred over a math worksheet and the Parent viewed the incident as corporal punishment:
  - a) The Student did not receive any help with a math worksheet and got 6 out of 25 correct.
  - b) The teacher yelled at the Student because he was "sloshed over" the desk. The teacher yelled at the Student "back to chair tummy to desk" while pulling back on the Student's shoulder to get the Student to sit up straight and "hastily pushing" in the Student's chair.

- c) The Student said that Student's shoulder hurt.
  - d) The teacher took the Student to the resource room during reading block to redo the math worksheet along with another, harder, math worksheet (Letter of Complaint dated March 2, 2022).
- 48) The special education director immediately investigated the February 23, 2022, incident and found that the teacher had encouraged the Student to participate, and patted the hard cover of the seatback to ask the Student to scoot the chair in. The teacher then moved away when the Student chose not to do so. The investigation concluded that the teacher did not put hands on the Student but encouraged the Student to sit up since the Student had head on desk and chair pushed out. The teacher was primarily encouraging the Student to participate in instruction (District Staff Interview).
- 49) On February 25, 2022, the Parent emailed District staff to explain why the Student had been absent from school.
- a) The Student does not feel safe at school and will not return until this is resolved.
  - b) This was the Parent's third and final attempt to address and resolve the incident that happened on February 23, 2022.
  - c) The Parent sent an email following the communication plan on February 23 but had not yet received a response.
- 50) A PWN dated February 28, 2022, was provided to the Parent in response to Parent correspondence and requests related to the Student's education.
- a) The District addressed the parent's "safety concerns" regarding the Student's current educational placement.
    - i) The District takes safety concerns seriously.
    - ii) A careful and thorough review of the Student's placement, needs and behavior demonstrated the current placement was safe and educationally appropriate.
    - iii) During each incident that the Student engaged in work refusal and exhibited behaviors, the data demonstrated that the work the Student refused to complete was educationally appropriate based on the Student's needs, and appropriately ambitious goals and programming.
    - iv) The accommodations and services provided in the Student's IEP were appropriate and implemented with fidelity.
    - v) The Student's teachers and providers utilized positive behavioral supports and interventions to address the Student's behaviors.
    - vi) The Student's continued participation in the educational placement did not pose a safety or security risk to the Student.
    - vii) The District considered but refused to change to the Student's placement because the data demonstrated the current placement,

goals and services were tailored to the Student's individualized needs and abilities.

- viii) The District considered changing the Student's placement in light of the Parent's concerns but rejected that option because the instances when the Student exhibited work refusal did not demonstrate that the Student's current placement was inappropriate.
  - ix) The data demonstrated that the work refusal incidents were unrelated to the rigor of the work assigned the Student.
  - x) There was no evidence that the Student's continued participation in the current educational placement represented a safety issue or would be inappropriate for the Student. Changing the Student's educational placement would remove the Student from the appropriate LRE.
  - xi) The District would continue to monitor the Student's performance, progress and behavior and convene an IEP team meeting if it became necessary to reconsider placement or consider and adopt further positive behavioral supports and interventions to address the Student's needs.
  - xii) It is important that the Student attend school in order to benefit from the services and accommodations uniquely designed to address the Student's individual needs and able the Student to make appropriate educational progress.
  - xiii) The Student is of mandatory attendance age and the District will continue to mark the Student absent when not in attendance. The District will continue to follow board policy in addressing absences and attendance.
- 51) On March 11, 2022, District staff emailed IEP members requesting times and dates so that an IEP team meeting could be scheduled. Based on team members' availability, the IEP meeting was scheduled for March 25, 2022 (Email dated March 14, 2022).
- a) District staff intended to discuss the Student's increased behaviors that began in January 2022 at this meeting,
  - b) The IEP team meeting did not occur as the Parent withdrew the Student from school and revoked consent for special education services (District Staff Interview).
- 52) On March 14, 2022, the District generated a Student Incident Report detailing a meeting with the Student's Parents to discuss the lack of the Student's attendance at school.
- a) No resolution was reached as the Parent indicated the Student would not be sent to school.

- b) An IEP meeting had been scheduled for March 25, 2022 at Parent request.
  - c) The Student had informed the Parents of an incident that caused the Parent to remove the Student from school.
    - i) A teacher had grabbed the Student's arm, pulled the Student back and then forced the Student's chair forward.
    - ii) The Student was distraught and was nonverbal.
  - d) The special education director investigated the Student's allegations.
    - i) Teachers and staff were interviewed separately and indicated they did not witness what the Student was alleging.
    - ii) The special education director concluded that no corporal punishment occurred.
    - iii) The Student demonstrated refusal type behaviors and the teachers tried to problem solve and encourage the Student to participate.
- 53) By email dated March 15, 2022, the Parent set forth a list of topics to be discussed at the upcoming IEP meeting, and also requested to receive copies of three PWNs consisting of:
- a) PWN – Math placement change when the Student was removed from small group in the resource room
  - b) PWN – Reading changes that occurred in October 2021 and January 2022.
- 54) By letter dated March 16, 2022, following a meeting with the Parent, the District responded to the Parent's concerns and emails received that week.
- a) The Parent informed District staff that the Student not attending school because the Student was subjected to inappropriate physical discipline.
  - b) The District took the allegations seriously and promptly investigated the Parent's claims.
  - c) The District found no merit to a claim that the Student was subjected to inappropriate physical contact by a District employee.
  - d) District staff working with the Student have appropriately and consistently implemented the accommodations and services articulated in the IEP.
  - e) The Parent requested prior written notice documents related to alleged changes to the Student's educational placement. The Student's placement was not changed outside the IEP meeting process.
  - f) The District remains ready, willing, and able to continue to implement the Student's IEP, meet the Student's educational needs and facilitate the Student's continued progress, but to do so, the Student needed to attend school.
- 55) On March 21, 2021, the Parent emailed the District.
- a) The school continued to deny any wrongdoing and continued to blame the Student.



- b) It is in the Student's best interest to remove the Student from public school and homeschool.
- c) The letter received from District staff was hostile, untruthful, and unprofessional.
- d) The Parents should have received PWN for both reading changes and the math change that occurred, which should have been a team decision with Parent involvement.
- e) The scheduled IEP meeting is no longer needed.

56) On March 25, 2022, the Parent signed the Revocation of Consent for Special Education and Related Services form and acknowledged that Parent consent for the Student to continue to receive special education and related services was revoked.

57) A PWN March 25, 2022 was provided to the Parent in response to Parent's decision to revoke special education services. The IEP team intended to meet and update the Student's IEP in the homeschool environment. The District did not support the unilateral decision of the Parent.

58) The Student's 2nd grade report card for first, second and third quarters provided the following relevant information:

<b>Second Grade Course</b>	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>
Math	G (86.5-90)	S (79.5-82)	S (79.5-82)
Social Sciences	G+ (90.5-92)	E (94.5-100)	E (94.5-100)
PE	E (94.5-100)	E (94.5-100)	E (94.5-100)
Music	E (94.5-100)	E (94.5-100)	E (94.5-100)

59) The Parents received a 2nd grade reading report card which provided the following information:

<b>Reading</b>	<b>Exceeds Expectations</b>	<b>Meets Expectations</b>	<b>Needs Improvement</b>
Seatwork (Neat, accurate)			Q1, Q2, Q3
Checkouts/Assessments		Q1, Q2, Q3	
Work Habits (focused, respectful, organized)		Q1, Q2, Q3	

	<b>Goal</b>	<b>Student Score</b>
Fast Fall Benchmark	56	25
Fast Winter Benchmark	84	47
Fast spring Benchmark	101	

60) The Parent received the following IEP progress reports:

- a) 12/18/20: Speech: The Student's progress on goals included:

- i) Goal 1: Speech identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the SLP were set forth.
  - ii) Goal 2: Reading: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth.
  - iii) Goal 3: OT: identified that the goal was met. Comments stated that the Student would only be visited with occupational therapist on a consult basis as the Student no longer qualified for this goal.
  - iv) Goal 4: Math: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth.
- b) 3/12/21: The Student progress on goals included:
- i) Goal 1: Speech: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the SLP were set forth.
  - ii) Goal 2: Reading: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth.
  - iii) Goal 3: Math: identified that the goal was met. Comments stated that the Student is no longer working with occupational therapy to improve fine motor skills as the Student tested out of this additional service.
  - iv) Goal 4: Math: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth.
- c) 5/20/2021: The Student progress on goals included:
- i) Goal 1: Speech: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the SLP were set forth.
  - ii) Goal 2: Reading: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth.
  - iii) Goal 3: OT: identified that the goal was met. Comments stated that the Student is no longer working with occupational therapy to improve fine motor skills as the Student tested out of this additional service.

- iv) Goal 4: Math: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth.
- d) 10/15/21: The Student progress on goals included:
  - i) Goal 1: Speech: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the SLP were set forth.
  - ii) Goal 2: Reading: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth.
  - iii) Goal 3: Math: identified that the goal was met. Comments included observational data from the resource room teacher.
  - iv) Goal 4: Math: identified that little to no progress had been made, but that progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth which stated the Student will continue to struggle with math facts.
- e) 12/21/21: The Student progress on goals included:
  - i) Goal 1: Speech: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the SLP were set forth.
  - ii) Goal 2: Reading: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth.
  - iii) Goal 3: Math: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth.
  - iv) Goal 4: Math: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth.
- f) 3/10/22: The Student progress on goals included:
  - i) Goal 1: Speech: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the SLP were set forth and stated that the information gathered was from therapy data collected in

January and February as the Student had been absent from school since February 23, 2022.

- ii) Goal 2: Reading: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth.
- iii) Goal 3: Math: identified that little to no progress had been made, but that progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the resource room teacher were set forth and stated the Student had been absent and not available to complete progress monitoring probes. The information used in the progress report was from classroom data.
- iv) Goal 4: Math: identified that progress was made, the goal was not met, but progress was sufficient for the Student to meet the goal by the end of the IEP year. Comments by the SLP were set forth and stated the Student had been absent and not available to complete progress monitoring probes, which limited the information available.

#### **Issue # 1**

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

##### *Issue 1a*

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

92 NAC 51-007.07A3 states that an IEP shall include:

007.07A3	<i>For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.</i>
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#### **Allegations/Parent's Position**

The District failed to list short-term objectives for each of the Student's goals on the IEP.

#### **District's Response**

The Student's IEP team determined that the Student would not take alternative assessments and was not required to provide short-term objectives.

### Investigation Findings

In the Student's IEP dated November 6, 2020, short term objectives were set forth for each of the four goals. In the Student's IEP dated November 5, 2021, two of the goals included short term objectives. In the Student's IEP dated January 18, 2022, no goal had short term objectives set forth (Fact 5).

In this case, the IEP team determined that the Student will participate in regular assessments, and the three IEPs all identified that the Student will participate in regular state and district wide assessments (Fact 5).

### Summary and Conclusions

An IEP must describe the special education and related services that will be provided so that a child may advance appropriately toward attaining the annual goals and, when possible, be involved in and make progress in the general education curriculum. 20 USC 1414 (d)(1)(A)(i)(IV).

Alternate assessments based on alternate academic achievement standards are designed for students with the most significant cognitive disabilities. The IDEA only requires short-term objectives for those students who take alternate assessments aligned to alternate achievement standards. The IEP team makes the determination of whether a student can take the regular assessment, with or without accommodations, or whether a student must take an alternate assessment. Letter to Anonymous, 54 IDELR 172 (OSERS 2009).

The Student's IEP team determined that the Student would participate in regular state and district wide assessments. In this case, there was not requirement that the Student's IEPs include short term objectives, although the District did provide short term objectives in two of the three IEPs.

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

#### Issue # 1b

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

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

92 NAC 51-007.07A4 states that an IEP shall include:

007.07A4	<i>A description of how the child's progress toward meeting the annual</i>
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*goals described in 92 NAC 51-00707A2 will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.*

#### **Allegations/Parent's Position**

The District failed to list progress report review dates on the Student's revised IEP.

#### **District's Response**

The District provided a description of how the Student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the Student is making toward meeting the annual goals will be provided as required.

#### **Investigation Findings**

The Student's November 6, 2020 IEP provided on three of the four goals that progress reports would be set home on or around 12/18/20, 3/12/21, 5/20/21 and 10/15/21 (Fact 5). On Goal 3 the November 6, 2020 IEP did not list review dates (Fact 5). The Parents were provided progress reports addressing all four goals on 12/18/20, 3/12/21, 5/20/21 and 10/15/21 (Fact 60).

The Student's November 5, 2021 IEP identified that progress reports would be sent home on or around the review dates listed. The review dates of 12/21/21, 3/10/22, 5/19/22 and 10/14/22 were set forth in the IEP (Fact 5). The Parents were provided progress reports addressing all four goals on 12/21/21. (Fact 60).

The Student's January 18, 2022 IEP identified that progress reports would be sent home on or around the dates listed, but no dates are set forth (Fact 5). The District acknowledged that a clerical error occurred with the IEP amended during the January 17, 2022 meeting as the goals on the IEP failed to list review dates and dates for providing the Parents with the Student's progress reports (Fact 24). The District did not intend to change the review dates set forth on the Student's November 5, 2021 IEP (Fact 24). The Parents received a progress report on 3/10/22 which addressed all four of the Student's goals in the January 18, 2022 IEP (Fact 60).

#### **Summary and Conclusions**

The IDEA requires the provision of written information to parents about students' progress toward IEP goals and objectives and establishes the parental right to

receive reports about their child's progress in special education. Among the required disclosures that must be contained in the IEP is a description of when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. 34 CFR 300.320 (a)(3).

In this case, the failure to identify dates when progress reports would be provided in the Student's January 18, 2022, IEP resulted in a failure to inform the Parents of when periodic reports on the Student's progress would be provided.

### Corrective Action

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

1. The District shall review and revise, if necessary, the policies, procedures, and practices regarding the progress report requirements.
  - a) The District will provide Mary Lenser with notes indicating the results of the review by July 1, 2022.
  - b) If revision to the policies were needed, the District will:
    - i) Provide the revised policies to Mary Lenser 60 calendar days after the date of the Investigation Report for review.
    - ii) Notify Mary Lenser of when the policies will be taken to the local board of education for approval.
    - iii) Provide verification of acceptance of the new policy by the local board of education within 10 days of the Board Meeting.
2. The District shall develop and provide training to special education staff at the elementary school regarding progress report requirements, including providing a description of when periodic reports on progress will be provided. Staff involved in the training should include:
  - a) General education teachers;
  - b) Special education teachers;
  - c) Principals or individuals who may serve as the representative of the school district as described in 92 NAC 51-007.03A4;
  - d) Related service personnel providing services to students with disabilities; and
  - e) Any other school personnel who are responsible for attending IEP meetings who may be responsible for reporting progress toward goals on the IEP
3. The training and trainer(s) must be approved by Mary Lenser two weeks prior to the scheduled training.

4. The District must provide Mary Lenser with copies of participant sign-in sheets or other documentation showing participation at the conclusion of the training(s).

#### Issue # 1c

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

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

92 NAC 51-007.07B3 states that an IEP shall include:

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

The District failed to address the Student's behavior incidences which started occurring on a more frequent basis and utilized corporal punishment to address the Student's behaviors.

#### District's Response

The District considered the use of positive behavioral interventions and supports to address behavior that impedes the learning of the Student or the learning of other students.

#### Investigation Findings

Beginning in January 2022, the Student began exhibiting behaviors that had not been seen by staff previously (Fact 26, 27, 28, 29, 30, 33, 35, 36, 37, 42, 44, 45, 46, 47, 48). Collaboration between District staff occurred on a frequent basis (Fact 30). Staff attempted to redirect the Student when the behaviors occurred (Fact 27, 36, 44, 48, 50, 52).

On one occasion the Parents believed that the District used corporal punishment to address the Student's behavior (Fact 47). The District immediately investigated the allegations and determined that the teacher did not put hands on the Student and encouraged the Student to participate in instruction (Fact 48, 52).



In the PWN dated February 28, 2022, the District informed the Parents that District staff utilized positive behavioral supports and interventions to address the Student's behaviors (Fact 50). The District intended to discuss the increase in the Student's behaviors at an IEP team meeting scheduled for March 25, 2022 (Fact 51). The Parent decided it was in the Student's best interest to not attend school on particular days following behavioral incidences that occurred on February 15, 2022 and February 23, 2022 (Fact 43, 46, 49). The Student's last day of attendance was February 23, 2022 (Fact 49, 28, 52, 54). In March, the Parent withdrew the Student from school and revoked consent for special education services (Fact 55, 56, 57).

The IEP team meeting scheduled for March 25, 2022 did not occur as the Parent felt it was in the Student's best interest to be removed from public school and homeschooled and indicated that the meeting was no longer necessary (Fact 51, 55).

### Summary and Conclusions

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

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

The facts in this case established that the Student's IEP team considered the use of positive behavioral interventions and supports to address behaviors which impedes the learning of the Student or the learning of other students, but determined they were unnecessary. When the Student's behaviors increased, staff utilized positive behavioral interventions and supports in the classroom. Additionally, the District intended to further discuss the Student's behavior at an IEP meeting scheduled for March 25, 2022, but the meeting was canceled at the Parents' request.

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

### Issue # 1d

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

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

92 NAC 51-007.10 states:

- |         |  |
|---------|--|
| 007.10  | The IEP team shall revise the IEP as appropriate to address:   |
| 007.10C | The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1; |
| 007.10D | The child's anticipated needs; or  |
| 007.10E | Other matters.   |

#### Allegations/Parent's Position

The Student's IEP team failed to discuss or address Parent concerns during IEP meetings, including issues regarding executive functioning and occupational therapy goals.

#### District's Response

The IEP Team reviewed and revised the IEP, as appropriate, to address information about the Student provided by the Parents, including the Student's anticipated needs or other matter.

#### Investigation Findings

The Occupational Therapy evaluation results of the November 5, 2020 MDT report found that the Student's performance was average when compared to same-age peers (Fact 3). The Parents signed that they were in agreement with the MDT Report dated November 5, 2020 (Fact 3). The Parents participated in the Student's annual IEP meeting on November 5, 2020, and the Student's IEP dated November 6, 2020 provided that the Student would receive related services by the OT on a consult basis (Fact 5). PWN was hand-delivered to the Parent on November 6, 2020 which informed the Parent that OT would change to consult (Fact 6). The Parents disagreed with the parent input section of the Student's November 6, 2020 IEP, as the Parents were not pleased with the Student's fine more skills and believed the Student continued to need direct occupational therapy services. (Fact 7).

The District further addressed the Parent's request for direct OT services through a PWN dated August 30, 2021 and informed the Parent that the District was refusing to amend the Student's IEP because the data available demonstrated that OT services were not necessary to provide the Student FAPE (Fact 9). During

the annual IEP meeting on November 4, 2021, the team discussed OT services and agreed that OT should remain as consultation (Fact 12, 14). The IEP team further met on January 17, 2022, reviewed the information received from the private OT and discussed OT services (Fact 15, 16, 17, 25). The Student's IEP was amended to provide that the OT would provide services on a consult basis to support staff for accommodations regarding the Student's visual perception with completion of written tasks (Fact 5). The PWN dated January 18, 2022 identified that the Student's IEP had been updated to include the most recent evaluations, including in the area of OT (Fact 25). The Parents believed the District predetermined the decision for the Student to receive consult OT services and not direct OT services (Fact 28).

The District further received a letter from a psychiatric nurse practitioner regarding the Student's medication needs, which included OT (Fact 40). The special education director spoke to the nurse practitioner to explain the District's requirements for the provision of special education services (Fact 41).

On January 6, 2022, the Parent emailed District staff and requested that executive functioning goals be added to the Student's IEP (Fact 21). An IEP team meeting was held on January 17, 2022 and the Student's IEP was amended to provide additional modifications and accommodations intended to address the Parents' concerns regarding the Student's executive functioning needs (Fact 5). The PWN dated January 18, 2021 informed the Parents that the IEP team considered adding executive functioning goals to the Student's IEP but decided the Student could be continued to be successful with accommodations and modifications provided by staff (Fact 25).

### Summary and Conclusions

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

While the Parent believed the District predetermined the decision for the Student to receive consult OT and not direct OT services, the facts reveal the OT evaluation determined the Student no longer qualified for direct OT services and the Parent received notice beginning in November 2020 that the Student no longer qualified for direct OT services.

With regard to the Parents' request for executive functioning goals, the request was reviewed by the IEP team and PWN was provided to the Parents that the team determined executive functioning goals were not necessary for the Student to be successful.

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

## **Issue #2**

Did the District 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?

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 Student's IEP team failed to discuss or address Parent concerns during IEP meetings. The District required the Parents to follow a communication plan.

### *District's Response*

The District afforded the Parents an opportunity to participate in meetings regarding the identification, evaluation, educational placement, and provision of a free appropriate public education.

### *Investigation Findings*

Please see the Investigation Findings set forth under Issue 1d.

The Parent attended each MDT and IEP meeting and provided input at each meeting (Fact 3, 4, 12, 22). The Parents' written concerns to the November 5, 2021 IEP were stapled to the IEP (Fact 18).

In addition to attending the MDT and IEP meetings, the Parent provided input through emails to District staff and meetings with staff and received written responses from the District (Fact 9, 15, 17, 18, 19, 20, 21, 25, 26, 27, 28, 32, 33, 34, 36, 37, 43, 46, 49, 50, 52, 53, 54, 55).

The District determined it was necessary to implement a communication plan with the Parent due to the excessive communications that were occurring from the Parent to multiple District staff members (Fact 38). The communication plan informed the Parent of the protocol that would be used, and the timeline for responses that would occur (Fact 38). The Parent believed the communication plan impeded the Parent's opportunity to participate in the Student's educational program (Fact 39).

### *Summary and Conclusions*

Parents are an essential part of any group making the placement decision. 34 CFR 300.116(a)(1); 34 CFR 300.501(c); and 71 Fed. Reg. 46,585 (2006). "Consistent with [34 CFR 300.501(c)], each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child." 34 CFR 300.327.

Although parents are an essential part of any decision-making group, the ultimately responsibility for ensuring that a student is offered an appropriate program is a district responsibility. If the team cannot reach a consensus, the district must determine appropriate services and provide parents with prior written notice of the offer and of the parents' right to seek resolution of any disagreements by initiating an impartial due process hearing. Letter to Richards, 55 IDELR 107 (OSEP 2010).

A district may set reasonable limits on a parent's communications with school staff when those communications become excessive, derogatory, hostile, or intimidating. However, it must ensure that the parent still has the opportunity to raise concerns about his child's special education program. See L.F. ex rel. K.S.F. and K.S.F. v. Lake Washington Sch. Dist. #414, 120 LRP 1811 (9th Cir. 2020). A communication plan may be a legitimate way to ensure that staff members are not overly occupied with calls and emails from a parent, while still allowing the parents to be fully able to continue to communicate and engage in the educational programming for their children. See North Hills Sch. Dist., 118 LRP 12493 (SEA PA 2018).

The facts in this case established that the Parents fully participated in the MDT and IEP team meetings as essential members of the team. When the Parents disagreed with the team's determinations or believed their input was not accurately reflected in the Student's IEP, the Parents' correspondence was included in the Student's education file. The communication plan did not prevent the Parents from participating in team meetings, nor did it prevent the Parents from communicating their concerns to the District.

Based on the information discussed above, the District implemented the requirements of 92 NAC 51-003.41 and 92 NAC 51-007.03 and **no corrective action** is required.

### **Issue #3**

Did the District provide prior written notice (PWN) to the Parents a reasonable time before the District refused to initiate or change the identification,

evaluation or educational placement, or the provision of a free appropriate public education (FAPE) to the Student, as required by 92 NAC 51-009.05A?

92 NAC 51-009.05A provides that:

009.05 Prior Written Notice

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

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

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

*Allegations/Parent's Position*

The District changed the Student's placement in math and reading from the resource room to the general education classroom.

*District's Response*

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

*Investigation Findings*

The educational placement in each of the Student's three IEPs provided that the Student would participate in a developmentally appropriate program with peers, and that services would be provided within the classroom activities and/or in small group/one-on-one setting when necessary (Fact 5). The Student's educational program utilized direct classroom instruction, small group instruction and one-on-one instruction (Fact 5, 45, 47, 31).

The District provided the Parent with the following PWNs:

- November 6, 2020 PWN proposing to implement the 11/6/20 IEP (Fact 6)

- August 30, 2021 PWN refusing the Parent's request for direct occupational therapy services (Fact 9)
- November 5, 2021 PWN proposing to implement the 11/6/21 IEP (Fact 14)
- January 18, 2022 PWN proposing to amend the Student's IEP (Fact 25)
- February 8, 2022 PWN denying the Parent's request for an Independent Educational Evaluation (IEE) and denying the request for additional or different accommodations (Fact 38).
- February 28, 2022 PWN responding to Parent correspondence and denying certain requests (Fact 50).
- March 25, 2022 PWN responding to Parent's revocation of special education services (Fact 57)

On March 15, 2021, the Parent emailed the District and requested to receive PWNs for reading and math changes that occurred (Fact 53). The Parent made a similar request to receive PWNs for reading and math changes on March 21, 2022 (Fact 55). By letter to the Parents dated March 16, 2022, the District addressed the Parent's request for PWNs related to alleged changes to the Student's educational placement and informed the Parents that the Student's placement was not changed outside the IEP meeting process (Fact 54).

#### *Summary and Conclusions*

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

In this case, the District provided the Parents with PWN after each proposal or refusal to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the Student.

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

#### **Issue # 4**

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?

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.

### *Allegations/Parent's Position*

The District failed to implement the Student's IEP, including failure to provide necessary supports, services, and aids.

### *District's Response*

The District provided special education and related services set forth in the IEP to the Student.

### *Investigation Findings*

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

On March 25, 2021, the Student was unable to access prescribed medication at school as no staff member was available to administer the medications (Fact 8). The Student's IEP did not address administration of medications in the school setting (Fact 5).

The Parents believed the Student qualified for and needed direct OT services (Fact 7, 22, 28). The District determined that the Student did not qualify for direct OT services and informed the Parent on multiple occasion (Fact 9, 11, 12, 13, 21, 24).

The Parents believed that the reading services provided to the Student resulted in a change in placement for the Student due to a change in staff and a change in location for services (Fact 11, 53, 55). However, the additional reading services provided to the Student were provided as general education supplemental instruction and intervention through the Nebraska Reading Improvement Act and did not constitute special education services (Fact 10).

The Parents believed the Student's math instruction resulted in a change in placement as the Student's math worksheets were not shorted, the Student's math location changed, and the Student was no longer participating in small group for math (Fact 28). The Student's IEPs provided that the Student would participate in a developmentally appropriate program with peers and services within the classroom routine/activities and/or in small group/one-on-one setting when necessary (Fact 5). The Student's IEP accommodations included extra time and shortened assignments (Fact 5). An observation by the special education director verified that the Student was receiving small group instruction in math and reading, as well as instruction and assistance from the special education teacher (Fact 31). When a lesson was more challenging to the Student, staff shortened the assigned work for the Student (Fact 29).

The Parents believed certain accommodations were not provided to the Student, including allowing the Student to use a chewy necklace and placing a thera-band around the legs of the Student's chair (Fact 34, 46). The Student's



IEP was amended on January 18, 2022 and access to a fidget band on the Student's chair was added as an accommodation (Fact 5). The Parent emailed the District that the thera-band [fidget band] placed on the Student's classroom chair was not properly installed and kept falling down (Fact 46).

#### *Summary and Conclusions*

After the IEP is written and an appropriate placement determined, the district is obligated to provide the student with the special education and related services listed in the IEP. That includes the supplementary aids and services and program modifications that the IEP team has identified as necessary for the student to advance appropriately toward the established IEP goals, to be involved in and progress in the general curriculum, and to participate in other school activities.

A district must implement a student's IEP with all required components. 34 CFR 300.323 (c). This implementation mandate does not mean that a district must perfectly implement a student's IEP to provide the student with FAPE. A minor discrepancy between the services provided and the services required under the IEP is not enough to amount to a denial of FAPE. See *I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs*, 70 IDELR 86 (8th Cir. 2017).

The District appropriately implemented the Student's IEPs. Although the District failed to administer the Student's medication on one occasion, and staff asked the Student to remove the chewy necklace from the Student's mouth, neither medication administration nor the use of a chewy necklace were a part of the Student's IEP.

The Student's IEP was amended on January 18, 2022 at which time a fidget band was added to the accommodations. The District installed the fidget band on the Student's chair, but the Parent was concerned that it had not been properly installed because it kept falling down. Even if the fidget band was improperly installed, such installation is a minor deviation from providing services to the Student and is not sufficient to amount to a denial of FAPE.

Based on the information discussed above, the District implemented the 92 NAC 51-007.02 and **no corrective action** is required.

#### **Issue # 5**

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

92 NAC 51-003.24 states:

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

*Allegations/Parent's Position*

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

*District's Response*

The District provided FAPE to the Student.

*Investigation Findings*

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

The Parents were concerned that the Student failed a math quiz and the Student is not at the second-grade level for math (Fact 48). However, the Student's second grade report card identified that the Student was average or better in math, social studies, PE and music (Fact 58). The Student's second grade reading report card identified that the Student was meeting expectations in checkouts/assessments and work habits but needed to improve in the area of seatwork (Fact 59). Additionally, although the Student had not reached the fall or winter benchmark goal, improvement was seen in the Student's score (Fact 59).

The Parents received IEP progress reports dated 12/18/20, 3/12/21, 5/20/21, 10/15/21, 12/21/21 and 3/10/22 (Fact 60). Each progress report discussed the Student's four goals and the progress made towards the goals. For all goals, except the two discussed below, the reports informed the parent that progress was being made and although the goals were not met, the progress was sufficient for the Student to meet the goal by the end of the IEP year (Fact 60). The Parents were informed in the 10/15/21 progress report that the Student was making little to no progress on Goal 4, and the comments from the resource room stated that the Student will continue to struggle with math facts (Fact 60). Similarly, the Parents were informed in the 3/10/22 progress report that the Student was making little to no progress on Goal 3 which also addressed the Student's math needs. Comments by the special education teacher stated the Student had been absent and unavailable to complete progress monitoring

probes. The information for the progress report was from classroom data (Fact 60).

The Student's November 5, 2021 provided an update to the Student's Present Levels of Academic and Functional Performance as data was collected which showed that the Student was making progress but continued to struggle in the same goal areas of speech, reading as math, as had been identified in the November 6, 2020 IEP (Fact 5, 13).

The Parent was concerned that the Student was being bullied and teased by several other Students (Fact 19). Upon receiving the allegations, the District investigated the matter and concluded that bullying or teasing had not occurred (Fact 20).

### *Summary and Conclusions*

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

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

A student's passing grades do not always establish the provision of FAPE, nor do failing grades establish a denial of FAPE. The amount of appropriate regular education progress, in terms of passing grades and grade-to-grade

advancement, necessarily depends upon the abilities of each individual student with a disability. *Carter v. Florence County Sch. Dist. Four*, 18 IDELR 350 (4th Cir. 1991), *aff'd*, 20 IDELR 532 (U.S. 1993).

In this case, at each of the three IEP team meetings, the District determined the appropriateness of the Student's goals and accommodations/modifications and made changes as determined appropriate by the IEP team, based on data collected. The Parent was informed of the Student's progress through periodic progress reports. Although the Student may have failed a quiz, or received lower grades on certain assignments, the Student's report cards identified that the Student was receiving passing grades and was making improvements in the areas of math and reading.

Each of the three IEPs implemented by the District provided FAPE for the Student, and District staff implemented the IEPs. Further, the Parents participated in each IEP team meeting, and provided input, both during the meetings, through email correspondence, and in meetings with District staff.

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

#### **Notice to District**

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

Mary Lenser, Complaint Specialist  
NDE Office of Special Education  
nde.speddr@nebraska.gov