

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.29
Complaint Investigator: [Redacted]
Date Complaint Filed: May 19, 2022
Date of Report: [Redacted]

Issues Investigated

1. Did the District carry out the procedural requirements necessary to provide a free appropriate public education within the specified time periods outlined in 92 NAC 51-009.04 and 51-007.09A?
2. Did The District take steps to ensure that one or both of the parents of the Student was present and afforded the opportunity to participate in meetings with respect to identification, evaluation, educational placement and the provision of FAPE? [92 NAC 51-007.06 and 009.01]
3. Did The District ensure and document that the Student's IEP team included all the required participants listed in 92 NAC 51-007.03?
4. Did The District develop, review, revise, and implement the Student's IEP? [92 NAC 51-007.01]
5. Did The District provide special education and related services to the Student in accordance with the Student's IEP? [92 NAC 51-007.02]
6. Did The District ensure that, to the maximum extent appropriate, the Student was educated with children who are not disabled and that removal from the regular education environment occurred only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily? [92 NAC 51- 008.01A]
7. Did The District inform each teacher and provider of their specific responsibilities related to implementing the Student's IEP, the specific accommodations, modifications, and supports that must be provided for the Student in accordance with the IEP? [91 NAC 510007.02D]
8. Did The District consider and determine the Student's individual need for Extended School Year services according to 92 NAC 51-007.07C5?
9. Did The District change the placement of the Student because of a violation of the code of student conduct without considering whether the behavior was a manifestation of the Student's disability as outlined in 92 NAC 51-016.02E?
10. Did The District use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information

- about the Student, including information provided by the parent and information related to enabling the Student to be involved in and progress in the general education curriculum as outlined in 92 NAC 51-006.02?
11. Did The District consider the special education and related services and supplementary aids and services that the Student would need, based on peer-reviewed research? [92 NAC 51-007.07A5]
 12. Did The District revise the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum as outlined in 92 NAC 51-007.10?
 13. Did The District ensure that a continuum of alternative placements was available and employed to meet the needs of the Student's special education and related services? [92 NAC 51-008.01D]

Documents Reviewed by Investigator

From the Complainant

- Letter of Complaint dated May 19, 2022; received by NDE May 19, 2022
- Interview with the Parents of the Student completed June 30, 2022
- Letter from Hospital dated February 11, 2021

From the School District

- Letter of Response dated and received by NDE June 20, 2022
- Response to follow-up questions provided July 5, 2022
- Notices of Meeting dated September 22, 2021, and September 30, 2021
- Meeting notes from IEP meeting dated September 24, 2021
- IEP dated October 14, 2021
- Prior Written Notice dated October 21, 2021
- Email correspondence dated July 15, 2022 and July 13, 2022
- Attendance records from the 2020-21 and 2021-22 school years
- Graduation Progress Document for the 2021-22 school year
- Grades and Educational Organization Document 9th-12th grade

Introduction

The Student referenced in this complaint was 12th grader during the 2021-22 school year. The Student has been identified for special education services under the classification categories of Autism, Traumatic Brain Injury, and Other Health Impairment. Because the Complainant concurrently filed a complaint with the Office of Civil Rights, the Complainant asked that the scope of this complaint cover the dates May 19, 2021- November 2, 2021. Consequently, the investigation below will cover only that time period.

The Student sustained a concussion in the summer of 2018 at an athletic practice. Following this concussion, clear symptoms persisted that prevented access to the curriculum. Since that time, the Student has experienced Amplified Pain Syndrome, for which the Student has been removed from school for treatment. Further, light and noise sensitivity have persisted, and anxiety and depression have increased, since the injury. The Student was first provided a Section 504 Plan in the fall of 2018. [The Student] was subsequently found eligible for special education in February of 2021.

Issue # 1

Did the District carry out the procedural requirements necessary to provide a free appropriate public education within the specified time periods outlined in 92 NAC 51-009.04 and 51-007.09A?

92 NAC 51-009.04A states:

009.04A Each of the procedural steps necessary to provide a free appropriate public education shall be carried out within the specified time periods.

009.04 A1 Referral, notice to parents, and parental consent shall be completed within a reasonable period of time. The initial multidisciplinary team evaluation shall be completed within 45 school days of receiving parental consent for the evaluation.

92 NAC 51-007.09 states:

007.09A A meeting to develop an IEP for a child must be held within thirty (30) calendar days of a determination that the child needs special education and related services.

007.09C The IEP team shall review the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved.

Investigative Findings

- The Student was evaluated for special education in February of 2021.
- The Student was found eligible for special education services as a student with Other Health Impairment and an IEP was developed on February 12, 2021 (Multidisciplinary Evaluation Team MDT Report and IEP dated February 12, 2021)
- The IEP team re-convened, considering data provided by outside professionals and amended the Student's eligibility to include Autism,

Traumatic Brain Injury, and Other Health Impairment (IEP dated October 14, 2021)

- The IEP team met on September 24, 2021 and October 14, 2021 and amended the IEP at the October meeting (Meeting notes dated September 21, 2021 and IEP dated October 14, 2021).

Summary and Conclusions

While all timelines referenced in the rules above have been followed, the Student's initial evaluation, eligibility determination, and IEP were developed prior to the one year limit for complaint investigation, so no findings are warranted. During the time period covered by this complaint, no annual review of the IEP would have been required, though the IEP was reviewed twice.

Based on evidence of attendance and participation, the District implemented the requirements of 92 NAC 51-92 009.04A and 007.09 and **no corrective action** is required.

Issue # 2

Did the District take steps to ensure that one or both of the parents of the Student was present and afforded the opportunity to participate in meetings with respect to identification, evaluation, educational placement and the provision of FAPE? [92 NAC 51-007.06 and 009.01]

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

92 NAC 51-009.01A states:

007.06A 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 Position

The Parents object to the fact that they were not asked to sign or "approve" a final IEP for the Student following IEP meetings as they did not feel that all their concerns had been addressed.

District Response

The District is responsible to ensure meaningful participation of parents in the IEP process. The Complainant was invited to, and was a meaningful participant in,

each of the IEP meetings held by the District. The Complainant's concerns were listened to, discussed, and considered by the Student's IEP team at each meeting (specifically the 2 meetings during the time period covered by this complaint) and were summarized by the District in the IEP documents.

Investigative Findings

- IEP meetings were held on September 24, 2021, and October 14, 2021 (Notices of Meeting dated 9/22/2021 and 9/30/2021; Meeting notes dated 9/24/2021; and IEP dated 10/14/2021)
- The Complainant and the Student were physically present and their participation is documented during both meetings. (Meeting notes dated 9/24/2021; IEP dated 10/14/2021)
- During the 9/24/2021 meeting, while discussion is documented, no changes were made to the IEP as the team recognized the need to re-convene. (District response dated 6/20/2022)
- Meeting notes reflect disagreement between the District and the Complainant regarding the Student's least restrictive environment. The Complainant argued for access to courses at home while the district maintained that the Student's least restrictive environment was in the school setting. (Meeting notes dated 9/24/2021)
- The District agreed to hire an IEP facilitator to help resolve the conflict in a subsequent IEP meeting. (Meeting notes dated 9/24/2021)
- The IEP team re-convened with the support of an IEP facilitator on 10/14/2022 and the IEP was amended to reflect new data and concerns. (IEP dated 10/14/2021)

Summary and Conclusions

Documentation is clear that the Parents and the Student were active participants at both IEP meetings held in the time period being investigated. While the law requires the District to afford the parent meaningful participation, it does not assume that the parent is allowed to dictate the special education and related services or the placement of the child as the District maintains the responsibility to ensure that the Student is provided access to the curriculum.

Based on evidence of attendance and participation, the District implemented the requirements of 92 NAC 51-92 NAC 51-007.06 and 009.01 and **no corrective action** is required.

Issue # 3

Did the District ensure and document that the Student's IEP team included all the required participants listed in 92 NAC 51-007.03?

92 NAC 51-007.03A states:

- 007.03A The school district or approved cooperative shall ensure and document that each IEP team includes the following:
- 007.03A1 The parents of a child with a disability.
 - 007.03A2 Not less than one regular education teacher of the child
 - 007.03A3 Not less than one special education teacher, or where appropriate, not less than one special education provider of the child;
 - 007.03A4 A representative of the school district or approved cooperative who
 - 007.03A4a Is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
 - 007.03A4b Is knowledgeable about the general education curriculum; and
 - 007.03A4acls knowledgeable about the availability of resources of the school district or approved cooperative
 - 007.03 A5 An individual who can interpret the instructional implications of evaluation results, who may be a member of the team
 - 007.03 A6 At the discretion of the parent or the school district or approved cooperative, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate

Allegations/Parent Position

During the September 24, 2021, IEP meeting, the general education teacher left the meeting early, meaning that the IEP team was no longer complete.

District Response

During the September 24, 2021, meeting, the Complainant and the Student left the meeting abruptly. No other members of the IEP team left prior to the Student and the Complainant leaving.

Investigative Findings:

- During the September 24, 2021, meeting, documentation reflects the attendance of an English Language Arts teacher, the school principal, the school assistant principal, the school counselor, the special education director, and the special education teacher in addition to both parents and the Student. (Meeting notes dated September 24, 2021)
- A disagreement arose in the September 24, 2021, meeting about the Student's least restrictive environment and the meeting was discontinued to be rescheduled with the support of a state-trained IEP facilitator. (Meeting notes dated September 24, 2021)
- During the October 14, 2021, meeting, the IEP itself reflects the participation of both parents, the Student, 3 general education teachers, the special education teacher, an IEP facilitator, special education director, school principal, school psychologist, and 3 service agency representatives, an advocate the parents (IEP dated October 14, 2021).

Summary and Conclusions

On both occasions, more than the required individuals were present to discuss the Student's needs and to contribute to the development of an appropriate IEP. The conflict over placement (whether or not the Student would be allowed to complete coursework from home) led to the meeting being concluded and the District reaching out to an IEP facilitator to assist in reaching consensus on how best to move forward. The IEP was completed on October 14, 2021, with multiple general education teachers as well as a robust IEP team present to ensure that the IEP met the Student's needs that arose from the disability.

Based on the above, the District exceeded their responsibility to involve appropriate individuals to contribute to the Students IEP. The District

implemented the requirements of 92 NAC 51-007.03 and **no corrective action** is required.

Issue #4

Did the District develop, review, revise, and implement the Student's IEP? [92 NAC 51-007.01]

92 NAC 51-007.01 states:

007.01 An IEP shall be developed, reviewed, revised, and implemented for each child who receives special education and related services.

Allegations/Parent Position

The District failed to develop proper annual goals based on the Student's needs.

District Response

During the time period in question, the District convened the IEP team on September 24, 2021, and October 14, 2021. Both of these meetings were intended to review the Student's current needs and to make any necessary changes to the IEP so the Student could make progress.

Investigative Findings

- The District developed an IEP on February 21, 2021 (IEP dated February 21, 2021).
- The 2 goals included in the IEP addressed improving the student's coping skills to manage anxiety so that the Student could participate in content-level courses. This goal was developed because the Student's post-high school goal was to attend a 4 year college (IEP dated February 21, 2021).
- The Parents were present at this meeting and there is no evidence that the Parents objected to these goals or made any other suggestions (IEP dated February 21, 2021; Letter of Complaint dated May 19, 2022).
- The District re-convened and made changes to the IEP on October 14, 2021 (IEP dated October 14, 2021).
- In addition to the above goal, a goal was added to help the Student improve independent work habits by learning to manage and tolerate distractions (IEP dated October 14, 2021).
- The Parents were present at this meeting, along with an advocate, and there is no evidence that the Parents objected to these goals (IEP dated October 14, 2021; Complaint dated May 19, 2022)
- Nevertheless, from May 19, 2021- October 14, 2021, there were 34 school days. The Student attended 6 full days and 1 partial day during

that time period (Attendance Logs from the 2020 and 2021 school years).

Summary and Conclusions

The Parents participated in the development of both IEPs that were in place during the time period covered by this complaint. As a result, the Parents were aware of the goals in the IEP, goals that were critical for the Student to develop the skills needed to attain the post-secondary goal of attending a 4-year college. Should the Parents have disagreed with the goals proposed, believing they were not appropriate to meet the Student's needs, it was their responsibility to share this concern with the IEP team so that the goals could be discussed and amended as appropriate.

Based on the Parent's participation in the development of both IEPs, the District implemented the requirements of 92 NAC 51-51-007.01 and **no corrective action** is required.

Issue # 5

Did the District provide special education and related services to the Student in accordance with the Student's IEP? [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 Position

The District failed to provide the Student accommodations on the ACT. Further, the District has not completed "transition work" with the Student.

District Response

The Student took the ACT in June of 2021, without accommodations as the ACT had not yet approved accommodations. In September, 2021, the Students again took the ACT with extended time (1.5x the usual amount allotted) across multiple days, proctored by an adult proctor in a quiet environment. Further, the District's transition plan reflected survey data that had been collected, reflecting the Student's goal to attend a 4-year college, a goal supported by the Parents.

Investigative Findings

- The Student has taken the ACT a total of 7 times with the following results: (IEP dated 4/14/2022)
 - July 2018: Composite score of 26

- April 2019: Composite score of 29
- July 2020: Composite score of 31
- April 2021: Composite score of 32
- June 2021: Composite score of 34
- September 2021: Composite score of 33
- October 2021: Composite score of 35
- The Parent sent the following email to district staff on June 12, 2021:
 “Have you heard anything back on [the Student’s] ACT accommodations update that the school was requesting? Is there anything that we can do to help expedite the update? [The Student] took the ACT this morning and didn’t get all of the accommodations that [the Student] was supposed to so we are going to try to get [the Student] signed up for the July exam and are hoping the updated accommodations will be in place by then.” (Email correspondence dated 6/12/2021)
- The District submitted documentation to the ACT including the Student’s IEP on 6/29/ 2021. (Email correspondence dated 6/29/2021)
- ACT approved all accommodations requested except the request to test over multiple days because it had not been included in the IEP. (Email correspondence dated 7/1/2021)
- The District amended the IEP to reflect the discussion about testing across multiple days and resubmitted the revised IEP on 7/6/2021. (Email correspondence dated 7/6/2021)
- Accommodations were approved by ACT on 8/16/2021 (email correspondence dated 8/16/2021)
- The Student completed the ACT with the approved accommodations across several days, completing on 9/24/2021. (Email correspondence dated 9/24/2021)
- On the issue of transition work, the Student’s course of study was designed to provide the student the opportunity for on-time graduation from the high school. (Graduation Progress Document 2021-22 school year and Grades and Educational Organization Document 9th-12th grades)
- The District provided a variety of alternative means for the Student to complete this course of study including Nebraska Online High School, Sencap, Odysseyware, and courses offered at school. (Grades and Educational Organization Document 9th-12th grades)
- The District invited a number of outside providers to the IEP meeting in the fall of 2021 to provide input on the Student’s transition plan.

Summary and Conclusions

ACT accommodations are approved by the ACT board, which works directly with high schools where the test is proctored. The Student took the ACT without

accommodations in June of 2021 because the accommodation request had not been submitted in time for those accommodations to be approved by the date of the test. The ACT was re-administered in September with accommodations.

Further, the District continuously modified the course of study, providing a variety of alternatives to the traditional course of study for a student in the school district in order to support the Student to complete the course of study.

Based on the evidence that the District supported the family in the process of applying for and receiving accommodations for the ACT and proctoring the test with accommodations; as well as the efforts made by the District to support the Student to complete graduation requirements, the District implemented the requirements of 92 NAC 51-007.02 and **no corrective action** is required.

Issue # 6

Did The District ensure that, to the maximum extent appropriate, the Student was educated with children who are not disabled and that removal from the regular education environment occurred only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily? [92 NAC 51- 008.01A]

92 NAC 51-008.01A states:

008.01 The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved service agencies are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Allegations/Parent Position

The Parent's initial concern involved the Student being removed from courses and provided an online platform during an extended time of medical treatment. This issue occurred prior to the May 19, 2021, start date for the issues covered in this complaint.

District Response

During the time period covered by this complaint, the conflict over least restrictive environment reflected different positions from the Parent's original concern. In September of 2021, the Parent advocated for the Student to be

allowed to complete coursework from home while the District maintained that an at-home placement would not allow the District to address the IEP goals, which require a more realistic setting, and therefore, did not constitute the Student's least restrictive environment.

Investigative Findings

- The Student's school attendance has been a documented issue for many years prior to the sustained head injury and the complications that followed. The October 14, 2021, IEP reads, "there are notes from the school nurse since early elementary school regarding illness concerns, particularly related to stomach issues. There are also several notes regarding attendance and letters being sent to [the Student's] parents regarding [the Student's] attendance." (IEP dated October 14, 2021)
- The Student attended a 5-week program to address pain management during the spring of 2021 (Complaint dated May 19, 2022)
- During the spring of 2021, the Student participated in online instruction through an online platform. This work was provided remotely to be completed at home during the Student's medical treatment, and when the medical treatment was completed, in a resource classroom. (District response dated June 20, 2022)
- The Student did not complete some of these courses and consequently, enrolled in an online high school program over the summer to remediate credit from the previous school year. (District response dated June 20, 2022)
- During the September 24, 2021, IEP meeting, the Parent requested access to online programming from home for some of the Student's coursework. (District response dated June 20, 2022; Meeting notes dated June 20, 2022)
- District staff participating in the IEP meeting disagreed and stated that the Student's least restrictive environment, and the best setting to address the Student's IEP goals was in the school setting. (Meeting notes dated September 24, 2021)
- Because consensus could not be reached, the meeting was concluded and the District reached out to an IEP facilitator to participate in a subsequent meeting. (Meeting notes dated September 24, 2021)
- During the October 14, 2021, IEP meeting, discussion is documented and the team concluded that in-school attendance with appropriate

- accommodation constituted the Student's least restrictive environment. (Prior Written Notice dated October 21, 2021).
- Further the Prior Written Notice reflects the District's proposal to consider an additional year (delayed graduation date) or a reduction of the current schedule and the Parents denied both options (Prior Written Notice dated October 21, 2021)
 - Prior to the October 14, 2021, IEP meeting, there had been a total of 39 school days and teachers reported between 20 and 30 absences in each class as of that date. (IEP dated October 14, 2021).
 - The October 14, 2021, IEP presents a graduated approach to increasing the amount of time that the Student would participate in general education classes moving by systematically reducing time spent at home, as well as in a quiet setting where distractions were limited. (IEP dated October 14, 2021, and Prior Written Notice dated October 21, 2021)

Summary and Conclusions

Determining the least restrictive environment for the Student was a difficult task as school attendance was quite sporadic. When the Student was enrolled in online instruction from home, as well as when completing online curriculum in the resource setting, little progress was made and the Student did not complete the necessary courses for high school graduation. Consequently, the District determined that the best environment for the Student to make progress on IEP goals was at school with a graduated increase of how much time the Student spent in the classroom versus quiet environments where independent work was allowed.

Based on the District's clear attempts to make adjustments to the Student's education based on immediate needs and continuing to offer FAPE, the District implemented the requirements of 92 NAC 51-008.01A and **no corrective action** is required.

Issue # 7

Did The District inform each teacher and provider of their specific responsibilities related to implementing the Student's IEP, the specific accommodations, modifications, and supports that must be provided for the Student in accordance with the IEP? [91 NAC 51-007.02D]

92 NAC 51-007.02D states:

007.02D Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP;

and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

Allegations/Parent Position

The Student's mental health declined and the Student no longer wanted to attend school, in part because of statements that teachers and staff made regarding the Student's ability to successfully complete classes with such poor attendance. These comments left the Student feeling unwanted and disliked, according to the Parents. The Parents have asked the district to provide training to teachers "on how to work with [the Student] given [the Student's] disabilities," but the District has refused.

District Response

The District ensured that the Student's case manager and the school psychologist followed up with all teachers, ensuring that they were aware of, and prepared to, undertake their responsibilities in implementing the IEP.

Investigative Findings

- The Student's English Language Arts (ELA) teacher was present at the September 24, 2021, IEP meeting. (IEP meeting notes dated September 24, 2021)
- Three of the Student's general education teachers were present at the October 14, 2021 IEP meeting. These individuals constituted all general education teachers serving the Student at that time (email with the District July 13, 2022)
- All teachers serving the Student have access to the Student's IEP. (Email with the District July 13, 2022)

Summary and Conclusions

During the time period covered by this complaint, the District involved general education teachers in the IEP process. In addition to providing access to the IEP, the District has procedures in place that require case managers and the school psychologist to have communication with general education teachers regarding student's individual needs.

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

Issue # 8

Did The District consider and determine the Student's individual need for Extended School Year services according to 92 NAC 51-007.07C5?

92 NAC 51-007.07C5 states:

007.07C5	Extended School Year Services (ESYS)
007.07 C5a	Each school district or approved cooperative shall ensure that extended school year services are available as necessary to provide a free appropriate public education
007.07 C5b	Extended School Year (ESY) services must be provided only if a child's IEP team determines, on an individual basis in accordance with section 007, that the services are necessary for the provision of a free appropriate public education
007.07 C5c	In implementing the requirements of this section, a school district or approved cooperative may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

Further, 92 NAC 51- 003.23 defines such services as follows:

003.23 Extended school year services means special education and related services that: are provided to a child with a disability, beyond the normal school year of the school district or approved cooperative, in accordance with the child's IEP, at no cost to the parents of the child and meet the requirements of 92 NAC 51.

Allegations/Parent Position

Because the Student was removed from courses during the spring of 2021 when out of school, the Student enrolled in online courses over the summer to remediate credit.

District Response

The District considered and determined the Student's individual need for extended year services and appropriately determined such services were unnecessary.

Investigative Findings

- The 2/12/2021 IEP includes the following goals:
 - [The Student] will improve adaptability and coping skills by utilizing strategies to attend 80% of each class to receive instruction from the content level teacher.
 - Post-secondary goal: After high school, [the Student] would like to apply to a 4 year college in the area of video game design and live in an apartment independently.
- The Extended School Year Services portion of the IEP reads, "This was considered by the IEP team but was deemed unnecessary at the time. (IEP dated 2/12/2021)"

Summary and Conclusions

The IEP reflects the discussion at the IEP meeting about whether or not the Student required extended school year services to receive FAPE.

Although the Student chose to remediate credits from courses that were not completed during the spring of 2021, no specialized instruction or related services were required in order to make progress on IEP goals, specifically because school was not in session. Attendance at school was the requirement for the Student to develop strategies to increase classroom participation and to prepare for participation in a 4-year college.

Based on the fact that no specialized instruction or related services were required outside of the normal school year, the District implemented the requirements of 92 NAC 51-007.07C5 and **no corrective action** is required.

Issue # 9

Did The District change the placement of the Student because of a violation of the code of student conduct without considering whether the behavior was a manifestation of the Student's disability as outlined in 92 NAC 51-016.02E?

92 NAC 51-016.02E1 states:

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

016.02E1a If the conduct in question was caused by or had a direct and substantial relationship to the child's disability; or

016.02E1b If the conduct in question was the direct result of the school district's or approved cooperative's failure to implement the IEP.

Allegations/Parent Position

The Student was removed from courses during the spring semester of 2021 due to inability to attend.

District Response

The Student has no disciplinary history that has been subject to disciplinary action. Removal from courses represented the District's efforts to respond to the unique and changing needs of the Student while considering the need for credit acquisition toward graduation.

Investigative Findings

- The Student has no disciplinary history, nor has the Student ever been subject to disciplinary removal based on behavioral violations.
- During the spring of 2021, (February 15- March 19), the Student was unavailable to attend courses due to intensive medical treatment.
- A letter provided by the Parents to the school reads, "[the Student] will be admitted into the [Redacted] Program at the Hospital on February 5, 2021. The average length of stay in our program is 4 to 5 weeks;

however it is an individualized program and the actual length of stay may vary based on progress toward rehabilitative goals. There is no school component to our program and as a result of the [Redacted] program being such a physically demanding program, children are not able to keep up with their school work while participating in the program. The [Redacted] team strongly recommends that children are not expected to complete school work while enrolled in our program; however, it can be helpful for teachers to give the student a list of essential assignments that will need to make up so the student is aware of expectations and so that the student can work on these as they are able, such as on weekends." (Letter from Hospital dated February 11, 2021)

- The Student was removed from in-person courses and online instruction was provided during this time through an online educational platform as a far more flexible way to access instruction and obtain credit toward graduation. (District response dated June 20, 2022)
- March 19-March 25, the Student was enrolled to attend school and was assigned to the resource room to continue work on the online courses which were, at that time, partially completed.
- From March 29-31, the Student participated in inpatient treatment.
- April 1- May 20, the Student completed courses through an online platform and was supposed to be in the resource room completing these requirements.
- The Student was marked "truant" for 20 consecutive days during the period from April 15- May 20, 2021.

Summary and Conclusions

The majority of the events described above occurred prior to the one-year timeline. However, because the Student was not enrolled in in-person courses on May 20, 2021, this issue has been addressed. It is clear that due to medical needs, the District attempted to provide the Student a more flexible option for credit acquisition during treatment. In no way does this change in service offerings constitute a disciplinary removal that would be subject to manifestation determination requirements.

Based on the fact that no disciplinary action occurred, the District implemented the requirements of 92 NAC 51-016.02E1 and **no corrective action** is required.

Issue # 10

Did The District use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student, including information provided by the parent and information related

to enabling the Student to be involved in and progress in the general education curriculum as outlined in 92 NAC 51-006.02?

92 NAC 51-006.02C5 states:

- | | |
|-----------|--|
| 006.02C5 | School districts and approved cooperatives must ensure a variety of assessment tools and strategies are used to gather relevant functional, developmental and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum that may assist in determining: |
| 006.02C5a | Whether the child is a child with a disability; and |
| 006.02C5b | The content of the child's IEP. |

Allegations/Parent Position

Although input was provided by outside providers as part of the evidence used in the Student's eligibility determination, the District did not reduce work (as had been recommended by medical professionals) and allow the Student to continue enrolled in courses providing in-person instruction and instead, provided online learning options that were self-paced.

District Response

According to the requirement for the District to conduct a complete and individualized evaluation of the Student's needs, including academic and functional needs, the initial evaluation used the following: The Reynolds Intellectual Ability Scales- Second Edition, The Woodcock-Johnson Tests of Achievement- Fourth Edition, the Behavior Assessment System for Children- Third Edition, the Autism Spectrum Rating Scales, and the Social Skills Improvement System. In addition, the District considered the Hospital's Psychological Assessment Report, medical reports, and extensive input and data provided by the complainant.

Investigative Findings

- The February 12, 2021, IEP includes data from the Student's initial evaluation, conducted by the District. Intellectual and academic assessment, behavior rating scales, and 2 autism rating scales were conducted. 2 classroom behavior observations were completed. Additionally, the IEP references medical documentation from the Hospital that describes the Student's medical condition and the features that may impact school performance. Input from school psychologist and school counselor was also incorporated and considered. (IEP dated February 12, 2021)
- The October 14, 2021 IEP added information from private evaluations provided by the parents that included a diagnosis of Autism. The Student's eligibility was changed to reflect a primary category of Autism, secondary of Traumatic Brain Injury, and tertiary of Other Health Impairment. (IEP dated October 14, 2021)
- A Hospital Psychological Assessment was reviewed and documented in the IEP reflecting social-communication needs as well as need for support with restricted and repetitive behaviors. (IEP dated October 14, 2021)
- Additional recommendations made by an outside provider were listed in the IEP. (IEP dated October 14, 2021)

Summary and Conclusions

Data are clear that following initial eligibility, the District incorporated new information provided from the parents and a number of outside providers, and that these data influenced the IEP developed in October for the Student.

Based on ample evidence of various formal and informal data collected and review of these data at IEP meetings, it is determined that the District implemented the requirements of 92 NAC 51-006.02C5 and **no corrective action** is required.

Issue # 11

Did The District consider the special education and related services and supplementary aids and services that the Student would need, based on peer-reviewed research? [92 NAC 51-007.07A5]

92 NAC 51-007.07A5 states:

007.07A5	A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the
----------	--

extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

- | | |
|-----------|---|
| 007.07A5a | To advance appropriately toward attaining the annual goals; |
| 007.07A5b | To be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and |
| 007.07A5c | To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5 |

Allegations/Parent Position

The District failed to provide special education and related services that are effective and based on peer-reviewed research.

District Response

The Student's IEP has been developed directly from evaluation data and from input from the Parents and their medical providers. All special education, related services, accommodations, and modifications are heavily supported by research and widely used across the District, being found effective.

Investigative Findings

- Both the February 12, 2021, and October 14, 2021, IEPs provide 10 minutes per day, 5 days per week of resource support to improve coping skills and identify strategies to better tolerate the general education setting.

- The February 12, 2021, IEP includes the following accommodations and modifications:
 - Small group/individual testing
 - Extended time on tests, over multiple days
 - Test will be read to student as long as it doesn't invalidate testing
 - Student reads test to self out loud
 - Use of calculator
 - Allow breaks, cool down breaks, vary activity
 - Preferential seating
 - Allow student to use resource assistance when necessary
 - Oral directions
 - Chunking
 - Frequent checks for understanding
 - Reduction in work per regular education teacher or handbook
- The accommodations listed in the October 14, 2021, IEP include:
 - Extended time on tests per teacher and/or handbook
 - Allow breaks, vary the activity
 - Use of a calculator
 - Preferential seating
 - Allow student to use resource assistance when necessary
 - Oral directions
 - Chunking
 - Frequent checks of understanding
 - Reduction in work per regular education teacher or handbook
 - Assignments within 48 hours of the original due date without penalty

Summary and Conclusions

The IEP goals listed in the Student's IEP were developed by the IEP team, including the parents, and were focused on reducing the Student's anxiety as well as sensitivity to light and sound so that the Student could more fully participate in the classroom. All the above reflect common and widely-used interventions and strategies that are effective with students with a variety of needs, including anxiety. In this case, the District was not afforded adequate opportunity to help the Student develop the skills needed because of poor attendance.

Based on the development of goals, services, and accommodations that directly address the barriers to the Student's participation at school, and on the availability of research literature supporting these strategies, the District implemented the requirements of 92 NAC 51-007.07A5 and **no corrective action** is required.

Issue # 12

Did The District revise the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum as outlined in 92 NAC 51-007.10?

92 NAC 51-007.10 states:

- 007.10 The IEP team shall revise the IEP as appropriate to address:
- 007.10A Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
 - 007.10B The results of any reevaluation conducted;
 - 007.10C The information about the child provided to, or by, the parents;
 - 007.10D The child's anticipated needs; or
 - 007.10E Other matters.

Allegations/Parent Position

The IEP team failed to monitor the Student's progress toward attaining IEP goals and make instructional changes when necessary.

District Response

During the time period in question, the District convened the IEP team on September 24, 2021, and October 14, 2021. Both of these meetings were intended to review the Student's current needs and to make any necessary changes to the IEP so the Student could make progress.

Investigative Findings

- The February 12, 2021, IEP includes the following goals and objectives:
 - [The Student] will improve adaptability and coping skills by utilizing strategies to attend 80% of each class to receive instruction from the content level teacher.
 - [The Student] will learn strategies to reduce anxiety and go to each class.
 - [The Student] will generalize strategies to the regular education classrooms and stay in the classroom for 50% of each class.
 - [The Student] will apply strategies and attend at least 80% of each class.

- Post-secondary goal: After high school, [the Student] would like to apply to a 4 year college in the area of video game design and live in an apartment independently.
- The October 14, 2021, IEP includes the following IEP goals and objectives:
 - By next annual review, [the Student] will improve adaptability and coping skills by utilizing strategies to attend 80% of each class to receive instruction by the content level teacher.
 - [The Student] will learn strategies to reduce anxiety and go to each class.
 - [The Student] will generalize strategies to the regular education classrooms and stay in the classroom for 50% of each class.
 - [The Student] will apply strategies and attend at least 80% of each class.
 - Increase attendance
 - By next annual review, [the Student] will improve the ability to work independently in a quiet or semi-quiet setting by managing and tolerating distractions 80% of the time by using self-regulation strategies
 - [The Student] will utilize an alternate setting for online classes on M/W/F to start with T/Th being used to meet on-site to practice coping skills.
 - As data supports through home-school communication, days/classes will be added to [the Student's] schedule.
- From May 19, 2021- October 14, 2021, there were 34 school days. The Student attended 6 full days and 1 partial day during that time period. (Attendance Logs from the 2020 and 2021 school years)
- The Student's 6 full and 1 partial day are all recorded in the first 2 weeks of school during the 2021-22 school year. (Attendance Logs from the 2020 and 2021 school years)
- Chronic absences resumed beginning September 7, 2021. (Attendance Logs, 2021-22 school year)
- The District convened an IEP team meeting 13 days later. (Meeting notes dated September 24, 2021)
- When a consensus couldn't be reached, the District hired an IEP facilitator, invited a number of people and convened a meeting 14 school days later. (District Response dated June 20, 2022)

Summary and Conclusions

The Student's pattern of poor attendance is the major target of the IEP, driven by the Student's goal to graduate from high school and attend a 4-year college. Consequently, the overarching goal has been for the Student to attend school so that coping skills and accommodations that are effective in reducing anxiety and better tolerating or accommodating for noise and sound sensitivity could be identified. The 2 IEP meetings held in the fall of 2021 both served to determine how best to increase the Student's attendance so that the IEP goals could be addressed.

Based on the District's ongoing attempts to hold meetings to remove barriers from the Student attending school, the District implemented the requirements of 92 NAC 51-007.10 and **no corrective action** is required.

Issue # 13

Did The District ensure that a continuum of alternative placements was available and employed to meet the needs of the Student's special education and related services? [92 NAC 51-008.01D]

92 NAC 51-008.01 D states:

008.01D Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

008.01D1 The continuum must:

008.01D1a Include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and

008.01D1b Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.

Allegations/Parent Position

The Student was not allowed to complete coursework at home in an effort to reduce distractions, and instead, special education and related services were provided in the school setting.

District Response

The District continually evaluated the Student's progress, performance, and needs and continued to move the Student along the continuum (instruction provided in-person, at home through online platforms, and a graduated increase from home to a quiet setting in the school to participation in general education classes).

Investigative Findings

- On May 19 and 20, 2021, the Student was enrolled at school, and was completing courses provided by the District through an online platform. (Email correspondence with the District dated July 13, 2022)
- The Student was marked Truant both days. (Attendance records for 2020-21 school year)
- The Student and Complainant attended an IEP meeting on September 24, 2021 where disagreement arose as to whether the Student should be allowed to complete requirements at home. (Meeting notes September 24, 2021)
- Because the District did not believe that an at-home placement constituted the Student's least restrictive environment, an IEP facilitator was hired by the District to facilitate the IEP meeting that was scheduled for October 14, 2021. (District response dated June 20, 2022)
- At the October 14, 2021 IEP, the District proposed a graduated schedule that allowed for 3 days each week at home, working on online courses, and 2 days in-person, where IEP goals could be addressed, with the intent to reduce time in alternate settings and increase time in the general education classroom. (IEP dated October 14, 2021)

Summary and Conclusions

Placement versus Location is a commonly misunderstood concept in special education. Placement generally refers to the amount of access a student has to general education peers while Location refers to the actual setting where services are delivered. In the Student's case, placement was changed when the Student attended medical treatment outside of school (prior to the scope of this complaint). The Student's placement was immediately changed again to

the least restrictive environment as soon as the Student's treatment was complete, though attendance prevented access in the spring of 2021. In the fall of 2021, the District made consistent efforts to expose the Student to the least restrictive environment, while recognizing that limited school attendance may be more achievable than full school attendance. The intent to increase the time in general education provides evidence of the District's ongoing willingness to move the Student along the continuum as progress was made on IEP goals. The Parent's allegation that a continuum of alternative placements was not made available is unfounded as the above clearly demonstrates the District's efforts to increase the Student's attendance at school, where IEP goals could be addressed, preparing the Student to achieve the post-high school transition goal to attend a 4 year college.

Based on continuous adjustments to the Student's placement as needs required, the District implemented the requirements of 92 NAC 51-008.01D and **no corrective action** is required.

Notice to District

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