

## COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.30  
Complaint Investigator: [Redacted]  
Date Complaint Filed: May 23, 2022  
Date of Report: [Redacted]

### Introduction

Two complaints were filed against the District within a short period of time. As a result, the complaints were investigated together handling both the individual student issues and alleged systemic issues.

### Issues Investigated

#### Systemic Issues

1. Did the District predetermine students' placement at the Placement A denying parents' meaningful participation in students' education plan? [92 NAC 51-007.06; 92 NAC 51-008.01C1; 92 NAC 51-009.01; 92 NAC 51-009.02]
2. Did the District properly determine placement of students based on their least restrictive environment (LRE)? [92 NAC 51-008.01]
3. Did the District provide prior written notice before changing the provision of students' free appropriate public education? [92 NAC 51-009.05]

#### Student A Issues

1. Did the District deny parents' meaningful participation in Student's education plan by failing to schedule the IEP meeting at a mutually agreed on time and place and providing notice early enough so that parents may attend? [92 NAC 51-007.06]
2. Did the District base Student's postsecondary goals upon age-appropriate transition assessments? [92 NAC 007.07A9a]
3. Did the District fail to include measurable postsecondary goals in Student's IEP? [92 NAC 007.07A9a]
4. Has the District failed to monitor Student's progress on their IEP goals? [92 NAC 007.07A]
5. Whether Student's IEP is reasonably calculated to enable Student to make progress appropriate in light of their circumstances, specifically by determining goals that adequately address Student's needs [92 NAC 007.07]
6. Did the District provide the Student with a free appropriate public education? [92 NAC 51-004.02]

## Student B Issues

1. Did the District design Student's IEP to ensure it met the child's needs resulting from the disability pursuant to its terms within [92 NAC 51-007.07A2]
2. Did District provide Student with a free appropriate public education? [92 NAC 51-004.02]

## Information Reviewed by Investigator

### From the Complainant – Student A

- Letter of Complaint dated May 22, 2022; received by NDE May 23, 2022
- Telephonic interview with Complainant A on July 5, 2022
- Telephonic interview with Complainant A on July 20, 2022

### From the Complainant – Student B

- Letter of Complaint dated May 26, 2022; received by NDE May 27, 2022
- Telephonic interview with Complainant B on July 7, 2022

### From the School District

- Letter of Response dated June 17, 2022; received by NDE June 17, 2022
- Zoom interview with District's Director of Special Education and Special Education Supervisor on July 6, 2022
- Supplemental Response to the Investigators Questions during the Zoom Interview; received July 13, 2022
- Response to the Investigators Follow-up Questions for the District dated July 11, 2022; received July 14, 2022
- Response to July 20, 2022 Request regarding PWN dated July 22, 2022; received by NDE July 22, 2022

### Systemic Documents

- Written summary regarding Placement A (no date included within)
- Eligibility Criteria for Placement A (no date included within)
- Information regarding the Berniklau Education Solutions Team (BEST) program
- Information regarding the Graduation Pathways program
- Narrative regarding "high school opportunities"
- Narrative regarding Yankee Hill Education Center
- District Special Education Policy (no date included within)
- Transition Assessment Options – DRAFT dated July 2022
- List of names of all students with disabilities attending any of the 18-21-year-old programs available within the District
- IEPs of ten randomly selected students

- Numerous Meeting Requests for the ten randomly selected students
- Numerous PWNs for the ten randomly selected students, including:
  - Notice of Intent to Evaluate for Students D and I
  - Notice of Change in Placement or Discontinuation for Students D, H, and I

#### Student A Documents

- Notice of Intent to Evaluate dated November 10, 2021
- Consent for Individual Evaluation dated December 13, 2021
- MDT dated December 13, 2021
- IEP dated March 24, 2021
- IEP dated December 13, 2021
- IEP Amendment (in progress) dated December 13, 2021
- Progress report dated October 15, 2021
- Progress report dated May 25, 2022
- Transcript for years 2017 through 2021
- Meeting Request dated November 4, 2021
- Meeting Request dated December 13, 2021
- Meeting Request dated March 25, 2022
- Meeting Request dated May 19, 2022
- PWN dated December 13, 2021
- Transition Rating Scale – Form J completed by Complainant (no date included within)
- Transition Rating Scale – Form J completed by District dated April 29, 2022
- Transition Rating Scale – Form S completed by Complainant (no date included within)
- Transition Rating Scale – Form S completed by District dated April 29, 2022
- Reading Free Inventory dated 2021
- Reading Free Inventory dated 2021-2022
- The District's Special Education Supervisor's notes regarding timeline of events
- Email correspondence dated March 23, 2022
- Email correspondence dated May 18, 2022
- Email correspondence dated October 25, 2022
- Email correspondence dated May 24, 2022
- Email correspondence dated June 28, 2022

#### Student B Documents

- MDT dated October 24, 2019

- IEP dated October 14, 2020
- IEP dated October 11, 2021
- IEP Amendment dated October 11, 2021
- Progress report dated May 25, 2022
- Transcript for years 2017 through 2021
- PWN dated April 26, 2022
- The District's Special Education Supervisor's notes regarding timeline of events
- Email correspondence dated October 15, 2021
- Email correspondence dated March 4, 2022
- Email correspondence dated April 28, 2022
- Email correspondence dated April 29, 2022
- Email correspondence dated May 4, 2022
- Email correspondence dated May 24, 2022
- Email correspondence dated May 24, 2022 through April 26, 2022

Note: A number of other documents that were not relevant to this investigation were provided by the District. That documentation is not included in the lists above.

## **Findings of Facts**

### **Systemic Documents**

The Individual Education Programs (IEPs) of ten randomly selected students were provided. The ten randomly selected students will be referred to as Student C, D, E, F, G, H, I, J, K, and L. The relevant details of each of the ten IEPs are below.

1. Student C (Age at time of IEP: 19; IEP Date: 11/23/2021)
  - a. Disability: Intellectual Disability
  - b. Parent Information: The transition to [Placement A] has been okay.
  - c. Projected Course of Study
    - i. 2021-2022 School Year: Placement A
    - ii. 2022-2023 School Year: Placement A
    - iii. 2023-2024 School Year: Placement A
  - d. LRE Statement: [Student C] will receive special education services while participating in [Placement A] where [they] have the opportunity to experience a variety of vocational venues.
  - e. No PWN was issued prior to the implementation of this IEP.
2. Student D (Age at time of IEP: 19; IEP Date: 12/9/2021)
  - a. Disability: Intellectual Disability
  - b. Parent Information: No comments regarding placement.
  - c. Projected Course of Study
    - i. 2021-2022 School Year: The District high school

- ii. 2022-2023 School Year: Placement A
  - iii. 2023-2024 School Year: Placement A
- d. LRE Statement: [Student D] will participate in special education classes with curriculum not available in general education classrooms. To the fullest degree appropriate, [Student D] will participate in general education classes with accommodations as needed. [Student D] will participate in a Unified PE with disabled and non-disabled peers.
- e. A PWN was issued on May 25, 2022, and indicated the following, in part:
  - i. Proposed change:
    - 1. [Student D] requires a less restrictive environment in order to meet IEP goals and objectives.
  - ii. Other options considered:
    - 1. Continuing placement was rejected because the placement no longer meets [Student D's] educational needs
    - 2. [Student D] has completed [their] high school requirements and will be attending [Placement A] post high school.
  - iii. Other relevant factors:
    - 1. [The District] stands, ready, willing, and able to continue a free, appropriate special education for which [Student D] remains eligible.
- 3. Student E (Age at time of IEP: 19; IEP Date: 3/1/2022)
  - a. Disability: Intellectual Disability; Other Health Impairment
  - b. Parent Information: No comments regarding placement.
  - c. Projected Course of Study
    - i. 2021-2022 School Year: Placement A
    - ii. 2022-2023 School Year: Placement A
    - iii. 2023-2024 School Year: Placement A
  - d. LRE Statement: [Student E] receives special education services while participating in [Placement A] where [they] have the opportunity to experience a variety of vocational venues.
  - e. No PWN was issued prior to the implementation of this IEP.
- 4. Student F (Age at time of IEP: 20; IEP Date: 1/20/2022)
  - a. Disability: Emotional Disturbance
  - b. Parent Information: Parents are happy with the progress [Student F] has made and the good transition [they] had this semester at a new site.

- c. Projected Course of Study
  - i. 2021-2022 School Year: Placement A
  - ii. 2022-2023 School Year: Placement A
  - iii. LRE Statement: [Student F] receives special education services while participating in [Placement A] where [they] have the opportunity to experience a variety of vocational venues.
  - iv. No PWN was issued prior to the implementation of this IEP.
- 5. Student G (Age at time of IEP: 20; IEP Date: 10/28/2021)
  - a. Disability: Multiple Disabilities (Intellectual Disability; Visual Impairment)
  - b. Parent Information: [Student G] likes to work at the food bank but there is lots of movement.
  - c. Projected Course of Study
    - i. 2021-2022 School Year: Placement A
    - ii. 2022-2023 School Year: Placement A
  - d. LRE Statement: [Student G] receives special education services while participating in [Placement A] where [they] have the opportunity to experience a variety of vocational venues.
  - e. No PWN was issued prior to the implementation of this IEP.
- 6. Student H (Age at time of IEP: 17; IEP Date: 10/6/2021)
  - a. Disability: Multiple Disabilities (Intellectual Disability; Autism)
  - b. Parent Information: Would like to receive further information about [Placement A] to prepare for [Student H's] next steps in education.
  - c. Projected Course of Study
    - i. 2021-2022 School Year: The District high school
    - ii. 2022-2023 School Year: Placement A
    - iii. 2023-2024 School Year: Placement A
    - iv. 2024-2025 School Year: Placement A
  - d. LRE Statement: [Student H] will participate in special education classes with curriculum not available in general education classrooms. To the fullest degree appropriate, [Student H] will participate in general education classes with accommodations as needed.
  - e. No PWN was issued prior to the implementation of this IEP.
  - f. As of this writing, no PWN has been issued regarding Student H's projected change of placement to Placement A for the 2022-2023 school year.
- 7. Student I (Age at time of IEP: 19; IEP Date: 9/29/2021)
  - a. Disability: Autism

- b. Parent Information: No comments regarding placement.
  - c. Projected Course of Study
    - i. 2021-2022 School Year: Placement A
    - ii. 2022-2023 School Year: Placement A
  - d. LRE Statement: [Student I] receives special education services while participating in [Placement A] where [they] have the opportunity to experience a variety of vocational venues.
  - e. No PWN was issued prior to the implementation of this IEP.
  - f. The District provided a PWN regarding Student I's change in placement for the 2021-22 school year. It stated, in part:
    - i. Proposed change:
      - 1. [Student I] requires a less restrictive environment in order to meet IEP goals and objectives. [Student I] will be attending [Placement A] for the 2021-2022 school year.
    - ii. Other options considered:
      - 1. Continuing placement was rejected because the placement no longer meets [Student I's] educational needs
    - iii. Other relevant factors:
      - 1. [The District] stands, ready, willing, and able to continue a free, appropriate special education for which [Student I] remains eligible.
8. Student J (Age at time of IEP: 18; IEP Date: 4/28/2022)
- a. Disability: Intellectual Disability
  - b. Parent Information: No comments regarding placement.
  - c. Projected Course of Study
    - i. 2021-2022 School Year: Placement A
    - ii. 2022-2023 School Year: Placement A
    - iii. 2023-2024 School Year: Placement A
    - iv. 2024-2025 School Year: Placement A
  - d. LRE Statement: [Student J] will receive special education services while participating in [Placement A] where [they] have the opportunity to experience a variety of vocational venues.
  - e. No PWN was issued prior to the implementation of this IEP.
9. Student K (Age at time of IEP: 19; IEP Date: 11/29/2021)
- a. Disability: Autism
  - b. Parent Information: Parents did not attend the IEP meeting.
  - c. Projected Course of Study
    - i. 2021-2022 School Year: Placement A

- ii. 2022-2023 School Year: Placement A
    - iii. 2023-2024 School Year: Placement A
  - d. LRE Statement: [Student K] receives special education services while participating in [Placement A] where [they] have the opportunity to experience a variety of vocational venues.
  - e. No PWN was issued prior to the implementation of this IEP.
10. Student L (Age at time of IEP: 18; IEP Date: 9/22/2021)
- a. Disability: Autism
  - b. Parent Information: No comments regarding placement.
  - c. Projected Course of Study
    - i. 2021-2022 School Year: The District high school
    - ii. 2022-2023 School Year: Placement A
    - iii. 2023-2024 School Year: Placement A
  - d. LRE Statement: [Student L] is enrolled in the Life Skills Program.
  - e. No PWN was issued prior to the implementation of this IEP.
  - f. As of this writing, no PWN has been issued regarding Student L's projected change of placement to Placement A for the 2022-2023 school year.

#### Student A

1. No issues raised in the complaint regarding Student A are currently subject to a due process hearing, nor have these issues been previously decided in a due process hearing.
2. Student A is currently 19 years old and in the 12th grade.
3. Student A has obtained all of the necessary graduation credits. However, Student A has continuing transition needs and is eligible for District's 18-21-year-old transition services.
4. An IEP meeting was held on March 24, 2021. The IEP includes, in part:
  - a. Eligibilities: Other Health Impairment, Deaf-Blindness, Speech Language Impairment
  - b. Special Considerations
    - i. Parent information and concerns:
      1. Parent requested that [Student A] transition to [the District high school] to receive the full four years of high school and two years of the 18-21-year-old [Placement A] program. [Student A] needs to stay at one site. Lots of transitions are hard for [Student A] to handle. Parents feel strongly that [Student A] should stay at [the District high school] during [their] [Placement A] years. They don't think any of the sites will be meaningful for [Student A].



c. Area of Need - Reading

i. Present Level of Performance (PLAAPF):

1. Strengths: [Student A] is an excellent reader! [Student A] has a strength in word accuracy. When the selection is longer than 2-3 sentences [they] struggle with comprehension questions. This is because the amount of processing time [they] need.
2. Needs: [Student A] needs to continue working on reading comprehension skills.

ii. Reading Comprehension Goal: Given instruction and accommodations in the Reading classroom with adaptations/accommodations/adult assistance for full accessibility, [Student A] will improve [their] Reading Comprehension skills, increasing from a baseline of 75% accuracy to 85% accuracy, on work completed, as measured by [their] formative and summative scores in Synergy, by March 23, 2022.

1. Start Date: 3/24/2021; End Date: 3/23/2022
2. Evaluation Progress Report Schedule: Quarterly
3. Applies to ESY
4. Objectives/Benchmarks:
  - a. Objective 1: Given instruction and accommodations in the Reading classroom, [Student A] will improve [their] Reading Comprehension skills, increasing from a baseline of 75% accuracy to 80% accuracy, on work completed, as measured by [their] formative and summative scores in Synergy, by September 3, 2021.
    - i. Target Date: 10/15/2021
  - b. Objective 2 contained the same language as Objective 1 except Student A was to increase from a baseline of 81% accuracy to 85% accuracy.
    - i. Target Date: 3/23/2022

d. Area of Need - Math:

i. PLAAPF:

1. Strengths: Math is a definite strength for [Student A]. [They] pick up new concepts well (with practice) and

already have a sound foundation in basic math skills and concepts.

2. Needs: [Student A] needs direct, repeated practice with new concepts in order to reach mastery.
- ii. Math Skills Goal: Given accommodations and instruction in the HS Mathematics classroom, [Student A] will continue developing mathematics skills in the area of operations and related concepts, increasing from a baseline of 26 digits on the Level 2 MBSP to 4 digits on the Level 3 MBSP as measured by monthly MBSP probes by 3-23-22.
  1. Start Date: 3/24/2021; End Date: 3/23/2022
  2. Evaluation Progress Report Schedule: Quarterly
  3. Applies to ESY
  4. Objectives/Benchmarks: The objectives contained the same language as the goal except it identified different baselines/targets to achieve in a certain time period.
    - a. Objective 1: Student A will increase from a baseline of 26 digits on Level 26 MBSP to 32 digits on the Level 2 MBSP (Note: Level 26 should read Level 2).
      - i. Target Date: 5/20/2021
    - b. Objective 2: Student A will increase from a baseline of 32 digits on Level 2 MBSP to 38 digits on the Level 2 MBSP.
      - i. Target Date: 12/22/2021
    - c. Objective 3: Student A will increase from a baseline of 38 digits on Level 2 MBSP to 4 digits on the Level 3 MBSP.
      - i. Target Date: 3/23/2022
- e. Area of Need - Transition:
  - i. PLAAFP:
    1. Needs: Increase transition activities.
  - ii. Transition Goal: Given support/assistance, [Student A] will complete transition activity increasing from a baseline of 3 activities (completed Transition Interview during [their] 12th grade year, met with service agency such as A&D waiver, met with Commission of the blind representative) to 6 activities (complete Supported Job Practice class related to sorting, job skills, communication supported by an adult,

communicate statements of self-advocacy and complete Transition Interview during [their] 12th (T1) grade year), as documented by [District] Transition activity chart, by March 23, 2022.

1. Start Date: 3/24/2021; End Date: 3/23/2022
2. Evaluation Progress Report Schedule: Quarterly
3. Objectives/Benchmarks: The objectives contained the same language as the goal except it identified different baselines/targets to achieve in a certain time period.
  - a. Objective 1: Student A will increase from a baseline of 3 activities to 4 activities (complete Supported Job Practice class related to sorting, job skills, communication supported by an adult).
    - i. Target Date: 5/20/2021
  - b. Objective 2: Student A will increase from a baseline of 3 activities to 5 activities (communicate statements of self-advocacy).
    - i. Target Date: 12/22/2021
  - c. Objective 3: Student A will increase from a baseline of 3 activities to 6 activities (complete Transition Interview during [their] 12th (T1) grade year).
    - i. Target Date: 3/23/2022

f. Transition Section

- i. Assessment Results including Age-Appropriate Transition-based Assessments:
  1. Transition Assessment #1: During the Informal Transition Assessment Interview, [Student A] expressed that [they] want to work at a job as a waitress. [They] said [they] want to learn how to do this with on-the-job training also by asking someone how to do this job. [They] said in the future [they] will work at a [local restaurant]. [They] want to live with [their] parents and grandparent's home in Lincoln in the future.
  2. Transition Assessment #2: Life Skills Curriculum Assessment Rubric reflect strengths in daily living reading skills and math skills at the Proficient level. [Student A's] primary course of study is focused in Life

Skills and will meet graduation requirements through the IEP.

- ii. Measurable Post-Secondary Goals Based on Appropriate Transition Assessments:
  - 1. Education/Training: After graduation, [Student A] will complete job training at on-the-job training a restaurant.
  - 2. Employment: After graduation, [Student A] will be a worker in supported employment with an adult agency at [local restaurant].
  - 3. Independent Living Skill: After graduation, [Student A] will live with [their] parents and grandparents' home.
- iii. Projected Course of Study:
  - 1. 2020-2021 School Year
    - a. Diploma Options: Painting, LS Reading 180, LS Math for HS, Adaptive Music, LS Supported Job Practice, LS Home Living
  - 2. 2021-2022 School Year
    - a. Diploma Options: During the 12th (T1) grade year, [Student A] will complete: 18-21-year-old [Placement A] program: Clerical stocking, cleaning, packing.
  - 3. 2022-2023 School Year
    - a. Diploma Options: During the 12th (T2) grade year, [Student A] will complete: 18-21-year-old [Placement A] program: Clerical stocking, cleaning, packing.

g. Service Summary

- i. Statement of Special Education and Related Services:
  - 1. [Student A] will receive resources support in the areas of reading, math, and life skills and supplementary adult support as needed. [They] will also receive speech-language support in the area of language. [Student A] receives occupational, physical, hearing, vision, and orientation and mobility support as well.
  - 2. [Student A] will need to be at the same site in the 18-21-year-old program, Placement A, for at least one year.
- ii. Explanation of the extent to which the student will not participate in general education classes and activities:

1. [Student A] will participate in special education classes with curriculum not available in general education classrooms.
- iii. Special Education Services:
  1. Special Instruction: 16x/month, 120 minutes/session (special ed room)
  2. Speech/Language Service: 3x/month, 20 minutes/session (special ed room)
- iv. Related Services:
  1. Transportation: 0x/week, 0 minutes/session (special ed room)
  2. Orientation and Mobility: 4x/year, 15 minutes/session (special ed room)
  3. Physical Therapy: 2x/quarter, 15 minutes/session (special ed room)
- v. Supplementary Aids/Services
  1. Nursing care management
    - a. 30 minutes/1x year (public school)
  2. [Student A] should be oriented to new educational environments
    - a. 15 minutes/1x year (public school)
  3. Nursing
    - a. 10 minutes/5x week (public school)
  4. [Student A] utilizes equipment to access [their] learning environment
    - a. As needed (any location within the educational setting)
- vi. Supports for School Personnel
  1. An orientation and mobility specialist will be available to consult with the team regarding orientation and safety
    - a. 10 minutes/quarterly
  2. A teacher of the deaf and hard of hearing will share information about [Student A's] hearing loss, its impact on academic and social development, assistive technology equipment and strategies to support [them].
    - a. 20 minutes/monthly
  3. A member of the deaf-blind will be available for consultation

- a. As needed
- 4. Adult support
  - a. As needed
- 5. The occupational therapist will be available to [Student A] and [the] IEP team members regarding [Student A's] self-help and educational fine motor skills.
  - a. As needed
- 6. A vision teacher will be available to consult with staff on possible adaptations for [Student A] and to review and interpret any new vision information obtained.
  - a. 10 minutes/quarterly
- vii. Extended School Year Services (ESY)
  - 1. Special Instruction: 960 minutes/week (special ed room)
    - a. Start Date: 6/1/2021; End Date: 6/4/2021
  - 2. Special Instruction: 1200 minutes/week (special ed room)
    - a. Start Date: 6/7/2021; End Date: 6/11/2021
- 5. No PWN was issued following the creation and implementation of the March 24, 2021 IEP.
- 6. A progress report was issued on October 15, 2021. The progress report stated, in part:
  - a. Reading Goal:
    - i. 5/21/2021:
      - 1. Masterly Level – 4 (sufficient progress)
      - 2. Score: March - 100%; April - 80%; May - 100%
      - 3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A's progress
    - ii. 10/15/2021
      - 1. Masterly Level – 4 (sufficient progress)
      - 2. Score: September – 100%; October 75%
      - 3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress
  - b. Math Goal:
    - i. 5/21/2021:
      - 1. Masterly Level – 3 (some progress)
      - 2. Score: March – 24 on Level 2; April – 30 on Level 2; May – 33 on Level 2

3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress
  - ii. 10/15/2021
    1. Masterly Level – 4 (sufficient progress)
    2. Score: September – 21 on Level 3; October – 26 on Level 3
    3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress
- c. Transition Goal:
  - i. 5/21/2021:
    1. Masterly Level – 4 (sufficient progress)
    2. Score: Completed 2 activities
    3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress
  - ii. 10/15/2021
    1. Masterly Level – 4 (sufficient progress)
    2. Score: Completed 2 activities
    3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress
7. A Meeting Request dated November 4, 2021 indicated an MDT meeting was scheduled for December 13, 2021 at 3:15 AM to 4:15 PM (Note 3:15 AM should have read 3:15 PM). The Parents of Student A confirmed the meeting date/time on October 29, 2021 via phone. The Meeting Request was signed by the Parents of Student A on December 17, 2021.
8. A Notice of Intent to Evaluate dated November 10, 2021 indicated the following, in part:
  - a. Explanation of proposed/refused action:
    - i. A review of current assessment date and/or new assessment data is needed to address eligibility and programming decisions for [Student A].
  - b. Description of other options considered:
    - i. Waiving the reevaluation or conducting the reevaluation without additional assessment were rejected as inadequate to address eligibility and programming decisions for [Student A]

9. The Parents of Student A signed a form titled "Parent Consent for Individual Evaluation" on December 13, 2021. The form stated, in part:
  - a. The MDT team will review previous formal assessment, informal adaptive behavior assessment, IEP progress monitoring data, intervention data, classroom observation, classroom performance/grades, curriculum assessments, state and district assessments, medical information and input from parents, teachers, and district staff.
10. Student A was reevaluated on December 13, 2021. The evaluation determined, in part:
  - a. Student A meets the written verification requirements as a student with an Other Health Impairment, who is Deaf/Blind, and with a Speech Language Impairment in the area of language.
11. A Meeting Request dated December 13, 2021, indicated an IEP meeting was scheduled for December 13, 2021, at 4:15 PM. Parents confirmed the meeting via Zoom on December 13, 2021. The Meeting Request was signed by Parents of Student A on December 17, 2021.
12. An MDT team meeting was held on December 13, 2021. Parents of Student A were in attendance.
13. A prior written notice (PWN) was issued on December 13, 2021. Parents of Student A signed the PWN on December 17, 2021. The PWN stated, in part:
  - a. The MDT team has determined no additional formal assessments are needed.
14. An IEP team meeting was held on December 13, 2021. Parents of Student A were in attendance. The IEP stated, in part:
  - a. Special Considerations:
    - i. Parent information and concerns remained the same as the March 24, 2021, IEP.
  - b. Area of Need – Reading:
    - i. PLAAFP:
      1. March 24, 2021, Reading Comprehension Goal  
Progress:
        - a. Progress: Progress made. Goal not met.
        - b. Level Achieved: 79% accuracy
      2. The strengths and needs remained the same as the March 24, 2021, IEP.
    - ii. Reading Comprehension Goal: Given instruction and accommodations in the Reading classroom, [Student A] will improve [their] Reading Comprehension skills, increasing from a baseline of 79% accuracy to 85% accuracy at a 2nd grade



level, on work completed, as measured by Reading A-Z, by December 12, 2022.

1. Start Date: 12/13/2021; End Date: 12/12/2022
2. Evaluation Progress Report Schedule: Quarterly
3. Applies to ESY
4. Objectives/Benchmarks: The objectives contained the same language as the goal except it identified different baselines/targets to achieve in a certain time period.
  - a. Objective 1: Increasing from a baseline of 79% accuracy to 82% accuracy by December 12, 2022
    - i. Target Date: 5/25/2022
  - b. Objective 2: Increasing from a baseline of 83% accuracy to 85% accuracy by December 12, 2022
    - i. Target Date: 12/12/2022

c. Area of Need – Math:

i. PLAAFP:

1. March 24, 2021, Math Skills Goal Progress:
  - a. Progress: Goal has been met or exceeded.
  - b. Level Achieved: 26 digits level 3
2. The strengths and needs remained the same as the March 24, 2021, IEP.

ii. Math Skills Goal: The goal was the same as the previous IEP goal except the baselines/targets changed. Student A was to increase from a baseline of 16 digits on the Level 4 MBSP to 30 digits on the Level 4 MBSP by December 12, 2022.

1. Start Date: 12/13/2021; End Date: 12/12/2022
2. Evaluation Progress Report Schedule: Quarterly
3. Applies to ESY
4. Objectives/Benchmarks: The objectives contained the same language as the goal except it identified different baselines/targets to achieve in a certain time period.
  - a. Objective 1: Increasing from a baseline of 16 digits on Level 4 to 23 digits on Level 4 by December 12, 2022.
    - i. Target Date: 5/25/2022

5. Objective 2: Increasing from a baseline of 24 digits on Level 4 to 30 digits on Level 4 by December 12, 2022
  - a. Target Date: 12/12/2022
- d. Area of Need – Transition:
  - i. PLAAFP:
    1. March 24, 2021 Transition Goal Progress:
      - a. Progress: Progress made. Goal not met.
      - b. Level Achieved: Completed 1 activity
    2. The needs remained the same as the March 24, 2021 IEP but specific activities Student A should complete were added.
  - ii. Transition Goal: The goal was the same as the previous IEP except the baselines/targets changed. Specifically, Student A was to increase from a baseline of 4 activities to 7 activities (complete Career Development-Work Skills class related to job skills, communicate statements of self-advocacy and complete Transition Interview during 12th (T2) grade year).
    1. Note: Per the March 24, 2021, IEP, Student A had previously completed three identified transition activities. The three previously completed activities were identified again with the inclusion of “completed Support Job Practice class” to Student A’s baseline for a new total of four completed activities.
    2. Start Date: 12/13/2021; End Date: 12/12/2022
    3. Evaluation Progress Report Schedule: Quarterly
    4. Objectives/Benchmarks: The objectives contained the same language as the goal except it identified different transition activities to achieve in a certain time period. The baselines/targets remained the same.
      - a. Objective 1: Student A will increase from a baseline of 4 activities to 7 activities (complete Career Development-Work Skills class related to job skills).
        - i. Target Date: 5/25/2022
      - b. Objective 2: Student A will increase from a baseline of 4 activities to 7 activities (communicate statements of self-advocacy).
        - i. Target Date: 10/14/2022
      - c. Objective 3: Student A will increase from a baseline of 4 activities to 7 activities (complete

Transition Interview during [their] 12th (T2) grade year).

i. Target Date: 12/12/2022

e. Transition Section

i. Assessment Results including Age-Appropriate Transition-based Assessments:

1. Transition Assessment #1: During the Informal Transition Assessment Interview, [Student A] expressed that [they] want to work at a job making jewelry. [They] said [they] want to learn how to do this with on-the-job training also by researching on a laptop [They] said in the future [they] will work in a factory. [They] want to live with [their] parents and grandparent's home in the future.
2. Transition Assessment #2: Life Skills Curriculum Assessment Rubric reflect strengths in daily living reading skills and math skills at the Proficient level. [Student A's] primary course of study is focused in Life Skills and will meet graduation requirements through the IEP.

ii. Measurable Post-Secondary Goals Based on Appropriate Transition Assessments:

1. Education/Training: After graduation, [Student A] will complete job training at on-the-job training a jewelry factory.
2. Employment: After graduation, [Student A] will be a worker in supported employment with an adult agency at a jewelry factory.
3. Independent Living Skill: After graduation, [Student A] will live with [their] parents and grandparents' home.

iii. Projected Course of Study:

1. 2021-2022 School Year
  - a. Diploma Options: Jewelry, 3-D Art, LS Reading, Math Concepts, Unified Music, LS Career Development-Work Skills, Unified PE
2. 2022-2023 School Year
  - a. Diploma Options: During the 12th (T2) grade year, [Student A] will complete: 18–21-year-old [Placement A] program: Clerical stocking, cleaning, packing.

f. Service Summary

- i. Statement of Special Education and Related Services:
  1. [Student A] will receive resources support in the areas of reading, math, and life skills and supplementary adult support as needed. [They] will also receive speech-language support in the area of language. Speech Language Therapy services may be provided by a Speech Language Pathologist Assistant under the supervision of a certified Speech Language Pathologist. [Student A] receives occupational, physical, hearing, vision, and orientation and mobility support as well. [Student A] needs adult support for mobility, distractions for anxiety about what physically is bothering [them], bathrooming, and communication throughout [their] day.
  2. While in the 18-21 Transition Program [at Placement A], [Student A] needs to stay at the same site with consistent staff to meet [their] needs.
- ii. Explanation of the extent to which the student will not participate in general education classes and activities:
  1. [Student A] will participate in special education classes with curriculum not available in general education classrooms. To the fullest degree appropriate, [Student A] will also participate in general education classes with accommodations as needed.
- iii. Special Education Services:
  1. Special Instruction: 16x/month, 100 minutes/session (special ed room)
  2. Speech/Language Service: 3x/month, 15 minutes/session (special ed room)
- iv. Related Services:
  1. Transportation: 0x/week, 0 minutes/session (special ed room)
- v. The Supplementary Aids/Services remained the same.
- vi. Supports for School Personnel remained the same except an orientation and mobility specialist was removed and a physical therapist (PT) was added. The PT provision stated:
  1. The Physical Therapist is available to [Student A] and [the] IEP team regarding gross motor skills
    - a. 10 minutes/quarterly
- vii. ESY services were to be determined at a later date.

15. No PWN was issued following the creation and implementation of the December 13, 2021, IEP.
16. A Meeting Request dated March 25, 2022, indicated a meeting was scheduled for April 21, 2022, at 2:15 PM to discuss transition for the 2022/23 school year, per parent request. The Parents of Student A confirmed the meeting on March 23, 2022, via phone. The Meeting Request was signed by the Parents of Student A on April 21, 2022.
17. A meeting was held on April 21, 2022. The Parents of Student A were in attendance. No formal documentation was created at this meeting and it is unclear what discussions were had or if any agreements had been reached.
18. On April 26, 2022, the District sent home forms S and J of the Enderle-Severson Transition Rating Scale for Parents of Student A to complete. The District's special education teacher was going to complete the same forms. It is unclear when the Parents of Student A returned the forms to the District.
19. On May 18, 2022, the Parents of Student A requested an IEP meeting to talk about Student A's placement. The District informed the Parents of Student A they would arrange a meeting with the Parents and the IEP team. The Parents of Student A informed the District that Monday (May 23, 2022) "works best."
20. On May 19, 2022, the District provided a Meeting Request indicating a meeting was scheduled for May 23, 2022, at 2:30 PM to discuss placement for next year.  
On May 20, 2022, the District special education teacher emailed the Parents of Student A and included the scores of the Enderle-Severson Transition Rating Scale. The scores included were the scores from the District's special education teacher's Form J; not the Parents scores. The District indicated that Form S does not have a score. "It is a check list."
21. A meeting was held on May 23, 2022. The Parents of Student A were in attendance.
22. A draft IEP Amendment was created at the May 23, 2022, meeting. The draft IEP contains the same contents as the December 13, 2021, IEP except for a few things. In part, statements regarding the Parents of Student A requesting that Student A remain at the District high school and a statement that Student A will in fact stay at the District high school for the 2022-2023 school year were added. In addition, the IEP states [Placement A] staff will come to [the District high school] to observe [Student A] and look into having [Student A] attend [Placement A] in the afternoon for opportunities. Additionally, the transition-based assessments

utilized was updated to include the use of the Enderle-Severson Transition Rating Scale Forms J and S. Student's post-secondary goals were updated based on those forms.

23. On May 24, 2022, District staff emailed the Parents of Student A and stated that the IEP team should reconvene to make sure Student A's IEP goals support the decision to stay at the District high school. The District asked if the Parents of Student A would be available on May 25, 2022. The Parents of Student A did not respond to the District's email request.

24. A progress report was issued on May 25, 2022. The progress report stated, in part:

a. Reading Goal:

i. 12/22/2021

1. Masterly Level – 1 (goal has not been introduced)
2. Score: IEP recently held. No data.
3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress

ii. 3/10/2022

1. Masterly Level – 4 (sufficient progress)
2. Score: January – 100%; February – 100%; March – 80%
3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress

iii. 5/25/2022

1. Masterly Level – 4 (sufficient progress)
2. Score: April – 100%; May – 100%
3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress

b. Math Goal:

i. 12/22/2021

1. Masterly Level – 1 (goal has not been introduced)
2. Score: IEP recently held. No data.
3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress

ii. 3/10/2022

1. Masterly Level – 3 (some progress)
2. Score: January – 20; February – 21; March 19 on level 4

3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress
- iii. 5/25/2022
  1. Masterly Level – 3 (some progress)
  2. Score: April – 23; May – 17 on level 4
  3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress
- c. Transition Goal:
  - i. 12/22/2021
    1. Masterly Level – 1 (goal has not been introduced)
    2. Score: IEP recently held. No data.
    3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress
  - ii. 3/10/2022
    1. Masterly Level – 3 (some progress)
    2. Score: Completed 3rd quarter
    3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress
  - iii. 5/25/2022
    1. Masterly Level – 4 (sufficient progress)
    2. Score: Completed 4th quarter Career Dev. Class and communicating self-advocacy during [their] 12th (T1) grade year.
    3. Note: The note included was a note about the Covid-19 pandemic. No notes were included regarding Student A' progress

25. On June 28, 2022, District staff again asked the Parents of Student A for their availability to discuss Student A's IEP goals. At the writing of this report, the Parents of Student A have not responded to the District's request and the IEP is still marked "draft."

#### Student B

1. No issues raised in the complaint regarding Student B are currently subject to a due process hearing, nor have these issues been previously decided in a due process hearing.
2. Student B is currently 20 years old and in the 12th grade.

3. Student B has obtained all of the necessary graduation credits. However, Student B has continuing transition needs and is eligible for District's 18-12-year-old transition services.
4. Student B was last evaluated on October 24, 2019. The evaluation determined, in part:
  - a. Student B meets the written verification requirements as a student who is Deaf/Blind and with a Other Health Impairment.
5. An Individualized Education Program (IEP) meeting was held on October 11, 2021. The IEP includes, in part:
  - a. Special Considerations:
    - i. Parent Information: Consistency is very important for [Student B] across all settings. People who work with and routines that [they] are doing throughout the day should be as consistent as possible.
  - b. Student B is deaf or hard of hearing.
    - i. Student B is significantly delayed in all developmental areas due to multiple impairments.
  - c. Transition
    - i. Projected Course of Study:
      1. 2021-2022 School Year:
        - a. Diploma Options: During the 12th (T1) grade year, [Student B] will complete (in part): Unified Music, Unified PE to assist the goal of Community Inclusion Experiences  
Note: The classes identified are classes offered only at the District high school.
      2. 2022-2023 School Year:
        - a. Diploma Options: During the 12th grade (T2) year, [Student] will complete: Transitional Work Experience (sorting, assembly, packaging deliveries) in a program such as Placement A to assist the goal of Community Inclusion Experiences.
  - d. Service Summary
    - i. Statement of Special Education and Related Services
      1. [Student B] will receive specially designed instruction through a variety of service delivery models based on [their] performance and needs. The service delivery models could include: individual instruction outside of the general education classroom in order to receive



- specialized instruction, co-teaching in the resource or classroom setting. [Student B] will receive resource, speech, OT, PT, vision, hearing, and orientation and mobility services to meet their] needs. Speech Language Therapy services may be provided by a Speech Language Pathologist Assistant under the supervision of a certified Speech Language Pathologist. [Student B] needs adult support for mobility, feeding, bathrooming, accessing learning environment and facilitating communication throughout their] day.
2. While in the 18-21 Transition Program [Student B] needs to stay at the same site with consistent staff to meet [their] needs.
    - ii. Explanation of the extent to which the student will not participate in general education classes and activities:
      1. [Student B] will participate in special education classes with curriculum not available in general education classrooms.
    - iii. Participation in non-activities with non-disabled peers:
      1. [Student B] participates in Unified P.E. class with adult assistance
  6. No PWN was issued following the creation and implementation of the October 11, 2021, IEP.
  7. On February 14, 2022, an IEP meeting was scheduled for March 2, 2022. It is unclear who requested the meeting or when. The Parents of Student B stated that the purpose of the meeting was to talk about Student B's transition services. Specifically, whether Student B would attend Placement A or not.
  8. An IEP meeting was held on March 2, 2022. No formal documentation was created at this IEP meeting. However, the District provided internal notes from the meeting. The notes stated, in part:
    - a. Need a plan what [Student B's] day will look like next year at Placement A.
    - b. Parents tour sites then schedule another meeting.
    - c. April 4, 2:15 p.m. transition meeting
  9. The District emailed the Parents of Student B and the rest of the IEP team on March 4, 2022. The email stated the concerns the Parents expressed regarding Student B attending Placement A.
  10. On March 24, 2022, the District emailed the Parents of Student B regarding the tour scheduled at Placement A for April 1, 2022.

11. On March 31, 2022, Parents of Student B asked to reschedule. Additionally, they asked for a list of all the sites at Placement A to determine if Placement A was appropriate for Student B's high needs. The District provided the list of sites and inquired as to the Parents of Student B's availability.
12. The IEP meeting scheduled for April 4, 2022, was cancelled and rescheduled for April 18, 2022.
13. On April 14, 2022, after the District continued to try to schedule a site tour of Placement A, the Parents of Student B indicated they did not want to tour Placement A.
14. On April 18, 2022, the District responded and stated they would discuss Student B's plan for the next year at the IEP meeting later that afternoon and that Placement A would still be a part of that discussion.
15. An IEP meeting was held on April 18, 2022. No formal documentation was created at this IEP meeting. However, the District provided internal notes from the meeting. The notes stated, in part:
  - a. 2022-23 Plan
    - i. Slow transition to Placement A
    - ii. [District high school] ½ day then Placement A site ½ day
    - iii. Another meeting within 2 weeks
16. On April 26, 2022, the District provided the Parents of Student B with a sample schedule and service itinerary. Note: The District did not provide the sample schedule and service itinerary to the Investigator.
17. Parents of Student B responded to the District and stated, in part:
  - a. Had Parents known Student B's paraeducator was not willing to move to Placement A with Student B, the conversations that followed would have been different.
  - b. The setting at the District high school is the least restrictive and most appropriate option for Student B and provides Student B with the opportunity to be involved with peers close in age.
  - c. The proposed Placement A schedule, and more, can be accomplished at the District high school.
  - d. Keeping Student B at the District high school will result in the most meaningful experience for their final year.
18. A "Notice of District Decision Regarding Requests" dated April 26, 2022, was provided to the Parents of Student B via email on April 28, 2022. The notice stated, in part:
  - a. Reason the school district proposes/refuses action:
    - i. The District refuses Student B to attend the District high school for the 2022-23 school year because "an 18-21 program does

not exist at [the District high school]. [Student B] has attended more than 4 years and has completed 305 of the 245 credits necessary to graduate from high school in [the District]."

- ii. The District proposes that Student B attend Placement A. "Students that complete the required graduation credits transition to Placement A . . . ." "[Placement A] is [Student B's] LRE given factors related to being with age-appropriate peers and [their] transition goals."

b. Considered the following options:

- i. Attend 18-21 at [the District high school] – this option was rejected by [the District] as an 18-21 program does not exist.
- ii. Attend 18-21 at Placement A – this option was accepted by [the District] as [Student B] has completed the necessary graduation requirements for [the District] high schools. Students that complete the required graduation credits transition to Placement A.

19. Parents responded to the email with the attached PWN and stated there was little consideration for Student B's individual needs and that the predetermination of Student B's placement in Placement A is not acceptable.

20. On May 3, 2022, Parents met with the District's Associate Superintendent and Special Education Director. The District was encouraged to schedule another IEP meeting to discuss Student B's placement for the 2022-23 school year.

21. On May 11, 2022, an IEP meeting was scheduled for May 18, 2022.

22. An IEP meeting was held on May 18, 2022. Student B's IEP was amended. The only change to Student B's IEP was the parent concerns contained within the "Special Considerations" section, the projected course of study for the 2022-23 school year within the "Transition" section, and a statement within the "Service Summary" section. The changes included, in part:

a. Projected Course of Study:

i. 2022-2023 School Year:

- 1. Diploma Options: During the 12th grade (T2) year, [Student B] will complete (in part): Unified Music, Unified PE to assist the goal of Community Inclusion Experiences.

Note: The classes identified are classes offered only at the District high school.

b. Statement of Special Education and Related Services:

- i. On 5/18/22 [Student B's] team met and [Student B] will stay at [the District high school] next year and complete [their] last year of school.

23. The District provided the finalized IEP Amendment to the Parents of Student B on May 24, 2022. A PWN was not created or provided.

### **Systemic Issue #1**

Did the District predetermine students' placement at the Placement A denying parents' meaningful participation in students' education plan? [92 NAC 51-007.06; 92 NAC 51-008.01C1; 92 NAC 51-009.01; 92 NAC 51-009.02]

92 NAC 51-007.06 states:

#### **007.06      *Parent Participation***

007.06A      *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, including:*

007.06A1      *Notifying parents of the IEP conference early enough to ensure that they will have an opportunity to attend; and*

007.06A2      *Scheduling the meeting at a mutually agreed on time and place.*

92 NAC 51-008.01C states:

008.01      *In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:*

008.01C1      *The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and*

92 NAC 51-009.01 states:

#### **009.01      *Parent Participation in Meetings***

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

92 NAC 51-009.02 states:

009.02     *Parent Involvement in Placement Decisions*

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

- 009.02B     *In implementing the requirements of 92 NAC 51-009.02A, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A.*

**Allegations/Parent Position**

The Parents of Student A assert that the District tells all parents that their child will attend Placement A whether it is an appropriate placement or not. The District informs parents of their child's placement within Placement A in July without any input from the parents. Specific to Student A, the Parents assert that the District's special education director informed them via phone that Student A could remain at the District high school for the 2021-22 school year but they would have to attend Placement A for the 2022-23 school year (per Parent A's Letter of Complaint dated May 22, 2022).

The Parents of Student B assert that the District predetermines placement at Placement A and there are only two sites in which a student with low incidence disabilities, similar to Student B, could possibly attend. Placing students like Student B at Placement A does not take into account students individual needs (per Parent B's Letter of Complaint dated May 26, 2022).

**District Response**

The District contends that a move from the regular high school to Placement A is not a change in placement. Similar to a move from elementary school to middle school and middle school to high school, it is a natural progression. Instead, the District states that the only change is the location in which services are provided. The courts have established that a placement is not a location. Thus, no change in placement has occurred (per The District's Response to July 20, 2022 Request dated July 22, 2022).

Nonetheless, any decision to place a student at Placement A is made by the IEP team. The District does not predetermine placement at Placement A (per Letter of Response dated June 17, 2022).

## Investigative Findings

### Sub-Issue A: Change in Placement

The District argues that a change in placement does not occur when a student attends Placement A because it is a “natural progression.” Thus, an analysis regarding whether or not a change in placement occurs once a student is placed at Placement A is necessary.

A change in location is not always a change in placement. However, a change in location may give rise to a change in placement if the change in location substantially alters the student's educational program. 71 Fed. Reg. 46,588 (2006). See *Letter to Tymeson*, 81 IDELR 23 (OSEP 2022); *Round Rock Indep. Sch. Dist. v. Amy M.*, 78 IDELR 285 (W.D. Tex. 2021); *Salt Lake City Sch. Dist.*, 122 LRP 10085 (SEA UT 11/10/21); and *Letter to Fisher*, 21 IDELR 992 (OSEP 1994).

The determination as to whether a change in placement has occurred must be made on a case-by-case basis. The following factors are relevant in this analysis:

- Whether the educational program set out in the child's IEP has been revised;
- Whether the child will be able to be educated with nondisabled children to the same extent;
- Whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and
- Whether the new placement option is the same option on the continuum of alternative placements.

*Letter to Fisher*, 21 IDELR 992 (OSEP 1994).

### Factor 1

Placement A is a program for students ages 18-21 with low cognition scores and whom have met all graduation requirements but would benefit from additional transition, vocational, and life skills services. Within Placement A, there are several community settings in which students rotate between quarterly based on their individual transition goals and current level of abilities.

If placed at Placement A, special education and related services are provided at the community site instead of at the regular high school. Each community site is employed with District staff, including a special education teacher and paraeducators. The District stated that the community sites are not equipped with one-on-one supports. Provided a student did not require one-on-one

support, enrollment at Placement A likely would not require a change to a student's educational plan as the community sites are equipped with classrooms in which students can receive their special education and related services.

#### *Factor 2*

Only students with a disability, ages 18-21 may be placed at Placement A; no nondisabled students or students under the age of 18 may be placed there. There is no opportunity to be educated with nondisabled students to the same extent had a student remained at the District high school.

#### *Factor 3*

As students are not “housed” at the regular high school and there is a focus on gaining vocational skills, the daily schedules of students attending Placement A differs from their schedule had they remained at the District high school. For example, while attending the District high school for the 2021-2022 school year, Student A's schedule included, in part, enrollment in a jewelry class, art class, unified music class, and unified PE class. If Student A were to attend Placement A during the 2022-23 school year, their schedule included only enrollment at Placement A where they would work on clerical, stocking, cleaning, and packing skills. Student A would no longer have the opportunity to enroll in a jewelry, art, or unified music and PE classes. This is the case for all students attending Placement A – there are no opportunities to participate in nonacademic and extracurricular services.

#### *Factor 4*

In *Letter to Spitzer-Resnick, Swedeen, and Pugh*, 59 IDELR 230 (OSEP 2012), the Office of Special Education Programs (OSEP) stated that educational time spent in age-appropriate community-based settings that include individuals with and without disabilities should be counted as time spent inside the regular classroom. Of the IEPs reviewed, most of the students were in the special education classroom for the majority of their school day at the District high school. Considering the guidance, a student's placement would likely change to a less restrictive placement than if they remained at the District high school because they would be spending time with individuals with and without disabilities within the community sites rather than being in a special education classroom for the majority of the day. While it may be a less restrictive setting, Placement A is a different placement on the continuum of alternative placements.

Depending on the situation, most of the *Letter to Fisher* factors are met when considering placement at Placement A. Thus, if a student is to attend

Placement A instead of the District high school, a change in placement has occurred.

#### Sub-Issue B: Predetermination of Placement

When asked what the placement options are for students ages 18-21-years-old, the District indicated the following:

1. Placement A consists of several community settings in which students can rotate between based on their individual transition goals and current skills. The District stated that students who have significant cognitive delays and who need intense instruction in life skills, math, reading, and vocational skills, in part, are eligible for placement at Placement A.
2. Placement B is a "contract only" placement. The District stated Placement B consists of students ages 8 to 21 whom need a restricted LRE due to severe behavioral problems. The students require adult supervision at all times.
3. Placement C is a new program. The District stated students with a learning disability who need accommodations or students who are struggling to meet graduation requirements or who may have dropped out previously are typically placed at Placement C. This program allows for students to attend in the morning, afternoon, or evening.
4. Placement D is a program for students who have significant behavior problems and need intense behavioral support. The District stated students with Other Health Impairments, an Emotional Disturbance, or Autism are amongst those students placed at Placement D.
5. Included in the documents provided to the Investigator, the District did not specifically state that the regular high school was a placement option for students ages 18-21-years-old. Instead, the District stated students can gain vocational skills through high school electives. When asked to clarify, the District stated the regular high school is somewhere a student can be placed.

Placements B, C, and D are not appropriate placements for students similarly situated to Students' A-L. That leaves Placement A or the regular high school as placement options.

The Investigator requested that the District provide a list of all students in the District who were attending any of the District's 18-21-year-old programs. Upon furnishment of the list, the Investigator was to randomly select ten students and the District was to provide the IEPs of the ten students for review. The District did not provide one list of students who were attending any of the 18-21-year-old programs. Instead, the District provided multiple lists of students with and without



disabilities at each of the 18-21-year-old programs for the 2020-21, 2021-22, and 2022-23 school years. The Investigator requested the District consolidate the lists so that there was only one list that only included students with disabilities. The District provided one list of (presumably) the students with disabilities in the District that are attending one of the 18-21-year-old programs. The list was comprised of 124 students; ten students from that list were randomly selected.

Of the ten randomly selected students, for the 2021-22 school year, seven attended Placement A (Students C, E, F, G, I, J, and K), two attended the District high school and were eligible to attend Placement A (Student D and Student L), and one attended the District high school and was not eligible to attend Placement A (Student H). For the 2022-23 school year, all ten students are projected to be placed at Placement A.

Given that seven of the randomly selected students were attending Placement A for the 2021-22 school year, it is difficult to determine whether any of the seven students' placement was predetermined solely by looking at their IEPs. Moreover, the placement decision had to have been made sometime during the 2020-21 school year. Any decisions or actions that took place at that time are outside of the scope of this investigation. With that in mind, only the three students whom attended the regular high school during the 2021-22 school year were considered further.

Upon review of the three students' IEPs whom were not at Placement A during the 2021-22 school year (Student D, H, and L), there was little information to indicate what discussions were had, if any, in regards to their future placement at Placement A. The District failed to issue a PWN following the IEP meeting and before the implementation of the IEP (see Systemic Issue #3). Had a PWN been issued for any of the three students, it may, and should, have included information regarding the placement decision. Without more information, it is difficult to determine whether Student D, H, and L's placement was predetermined by the District. However, it is very suspect that all ten students randomly selected are/will be attending Placement A.

As the District documentation was lacking to show whether there was predetermination or not, after selecting the random sample and reviewing each student's IEP, all of the student lists provided by the District previously were compared to one another to see how many of the 124 students with disabilities were attending Placement A. Of the 124 students, five (4%) are attending Placement B, eight (6%) are attending Placement C, and 105 (85%) are attending Placement A. Six (5%) students could not be accounted for on any of the other lists that were previously provided by the District and it is unclear where

they are placed. It is concerning that at least 85% of the Districts 18-21-year-old student population is attending Placement A. This may be an indication that the District requires all students to attend Placement A instead of considering the District high school.

If district members unilaterally decide a student's placement in advance of an IEP meeting, predetermination occurs. At the IEP meeting, team members must have an open mind and must meaningfully consider the parents' input. See, e.g., *R.L. and S.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11th Cir. 2014); and *H.B. v. Las Virgenes Unified Sch. Dist.*, 52 IDELR 163 (C.D. Cal. 2008), *aff'd*, 54 IDELR 73 (9th Cir. 2010, unpublished) (holding that the superintendent's announcement at the start of an IEP meeting that the team would discuss the student's transition to public school showed that the district predetermined the student's placement).

Upon further review of documents provided by the District, a document that consisted of notes regarding the timeline of events for both Student's A and B was reviewed. The notes indicated that on approximately April 21, 2021, the District's special education director "contacted parents to let them know that their student would transition to [Placement A] for the 2022-23 school year." The Parents of Student A were asked about this conversation. The Parents of Student A indicated that they received a phone call from the District's special education director regarding a possible Covid outbreak within the special education department. It was during that discussion that the special education director declared that Student A could attend the District high school for the 2021-22 school year but Student A will be going to Placement A the following school year. There was no further discussion following this declaration as the Parents reported they felt bullied and did not want to engage in an argument at that time. The District's admission that it contacted parents, outside of an IEP meeting, and stated their child would be transiting to Placement A was inappropriate and is an indicator of predetermination.

Moreover, the PWN sent to the Parents of Student B that stated (1) the District high school does not have an 18-21-year-old program and (2) students that complete the required graduation credits transition to Placement A is very concerning and an indicator that the District predetermines a student's placement at Placement A (see Student B Findings of Facts #18).

Anytime a change in placement is considered, the IEP team, as a whole, should make the decision. Furthermore, while Placement A may be a great option for many of the 18-21-year-old students at the District, it should not be the only

placement option available. Some students should remain at the District high school, if their unique needs call for such placement.

The District has acted inappropriately in determining, by itself, that Placement A is the appropriate placement for a student. Going forward, the IEP team should make a determination based on the unique needs of each student.

#### Summary and Conclusions

Based on the percentage of students within the District attending Placement A, the ten random sample of students, conversations with parents of Student A and Student B, documents provided by the District, and the lack of other placement options, it appears the District predetermines placement at Placement A for all students similarly situated to Students A-L regardless of their unique circumstances. Thus, the District failed to fully implement the requirements of 92 NAC 51-007.06; 92 NAC 51-008.01C1; 92 NAC 51-009.01; and 92 NAC 51-009.02 and **corrective action is required**.

#### Corrective Action

1. The District must train all special education staff in the district regarding predetermination and parental participation in IEP team meetings within 30 calendar days of the date of this Letter of Finding.
  - a. The training materials must be approved by Theresa Hayes at least 14 days prior to the training.
  - b. The District must provide Theresa Hayes with copies of the participant sign-in sheets including the name and role of the participants at the conclusion of the training(s).
2. The District shall specify what the continuum of alternative placements options are for students ages 18-21. All special education staff in the district must be provided a copy of the continuum so that staff are aware of the placement options.
  - a. The continuum shall be provided to Theresa Hayes within 30 days.
3. The District shall reconvene the IEP teams of Students A-L and determine whether Placement A is an appropriate placement within 30 days. Any changes to a student's educational program shall be documented in the IEP and through a PWN, if necessary.
  - a. Copies of the revised IEP and PWN must be sent to Theresa Hayes within 30 days.
4. A random sample of ten ages 18-21 students' IEPs will be reviewed on or before April 1, 2023, to verify that a full continuum of placement options are considered.

## **Systemic Issue #2**

Did the District properly determine placement of students based on their least restrictive environment (LRE)? [92 NAC 51-008.01]

92 NAC 51-008.01 states:

### **008.01      *Least Restrictive Environment (LRE) Requirements***

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

008.01C      *In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:*

008.01C1      *The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and*

008.01C2      *The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.*

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

- 008.01D1a *Include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and*
- 008.01D1b *Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.*
- 008.01E *The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:*
  - 008.01E1 *Is determined at least annually;*
  - 008.01E2 *Is based on his or her individualized education program (IEP); and*
  - 008.01E3 *Is as close as possible to the child's home.*

#### Allegations/Parent Position

Complainants allege that students are not in the least restrictive environment when placed at Placement A because they do not have access to age-appropriate peers (per Parent A's Letter of Complaint dated May 22, 2022). Moreover, if placed at Placement A, students will not have an opportunity to participate in unified classes; an opportunity they are provided if they attend the District high school (per Parent B's Letter of Complaint dated May 26, 2022).

#### District Response

The District asserts that Placement A is the location in which students will be with their same age peers because other 18-21-year-old children are placed there (per Letter of Response dated June 16, 2022). If a student whom is 18-21-years-old attends the District high school they do not have the opportunity to be around other nondisabled peers because typically 18-21-year-old students graduate at the end of their senior year. At Placement A, the students have access to nondisabled adults in the community sites and that is equivalent to

nondisabled peers for the 18-21-year-old age group (per Response to the Investigators Follow-up Questions for the District dated July 11, 2022)

### Investigative Findings

Placement A, at the time of this writing, has ten different community sites that students with disabilities 18-21-years of age may be placed. Each of the ten sites are actual places of business within the District. As the sites are places of business, persons within the community are employed there. For example, one of the sites is an elementary school. The elementary school employs, in part, teachers, paraeducators, and administrative, janitorial, and cafeteria staff. The students that are placed at Placement A work alongside the employees at each of the community sites, if able.

In *Letter to Spitzer-Resnick, Swedeen, and Pugh*, OSEP stated that educational time spent in age-appropriate community-based settings that include individuals with and without disabilities should be counted as time spent inside the regular classroom. 59 IDELR 230 (OSEP 2012).

The allegation in the complaint centered around whether students placed at Placement A were able to be educated alongside their nondisabled peers while at Placement A. Complainants were concerned that students at Placement A were in one of the most restrictive settings because other nondisabled peers were not attending Placement A; their nondisabled peers are only placed at the District high school. While other nondisabled students whom are enrolled in high school are not able to attend Placement A, *Letter to Spitzer-Resnick* explains what a student's LRE is in community-based settings. *Id.*

Here, the community sites within Placement A include individuals with and without disabilities. Thus, the time spent within those community sites and with those individuals is considered time spent in the regular classroom, the least restrictive setting. For those students placed at Placement A, they are not stripped of a lessor restrictive setting simply by attending Placement A.

### Important Notes

#### *Note 1*

In the event the students placed at Placement A are not interacting with individuals with and without disabilities, the IDEA and State LRE provisions still apply. The IEP team must determine the appropriate placement and interaction with others based on the LRE requirements and the student's individualized needs.

#### *Note 2*

Students ages 18-21 who remain at the District high school are not in a more restrictive setting solely because there may not be other 18-21-year-olds. A student who turns 18 is not suddenly without same-age peers just because the rest of the students are 17; same with a student who is 19, 20 or 21. The analysis regarding their LRE is time spent in the regular classroom; not time spent with other 18-21-year-olds.

#### *Note 3*

Upon review of Student A, Student B, and the ten randomly selected students IEPs, it was discovered that the LRE statement is deficient and not individualized. Of the IEPs reviewed, there were three LRE statements made repeatedly and without variance:

1. [Student] will participate in special education classes with curriculum not available in general education classrooms.
  - a. This LRE statement was present in Student A's March 24, 2021 IEP and all of Student B's IEPs.
2. [Student] will participate in special education classes with curriculum not available in general education classrooms. To the fullest degree appropriate, [Student] will also participate in general education classes with accommodations as needed.
  - a. This LRE statement was present in Student A's December 13, 2021 IEP and Student D and H's IEPs.
3. [Student] will receive special education services while participating in the [Placement A program] where [they have] the opportunity to experience a variety of vocational venues.
  - a. This LRE statement was present in Student's C, E, F, G, I, J, and K IEPs. These "boilerplate" LRE statements do not demonstrate an individualized determination was made regarding each student's participation in the general education setting, as required by 92 NAC 51-008.01 (A). Because the LRE statements do not show individualized determinations, the District will be required to complete corrective action.

#### Summary and Conclusion

Placement at Placement A allows students to interact with individuals with and without disabilities and is considered time spent within the regular classroom. Thus, students placed at Placement A are not necessarily in a more restrictive environment simply because they are placed at Placement A. In this regard, the District implemented the requirements of 92 NAC 51-008.01 and no corrective action is required.

As the District has failed to include individualized determinations regarding a student's LRE, the District failed to fully implement the requirements of 92 NAC 51-008.01(A). **Corrective action is required.**

#### Corrective Action

1. The District must train all special education staff in the district regarding the drafting of individualized LRE statements within 60 calendar days of the date of this Letter of Finding.
  - a. The training materials must be approved by Theresa Hayes at least 14 days prior to the training.
  - b. The District must provide Theresa Hayes with copies of the participant sign-in sheets including the name and role of the participants at the conclusion of the training(s).
2. The District shall reconvene the IEP teams for all students with disabilities between the ages of 18 and 21 and amend the LRE statement to ensure that it is individualized to the specific student.
  - a. A random sample of ten students' IEPs will be reviewed on or before April 1, 2023, to verify that LRE statements are individualized.

#### Systemic Issue #3

Did the District provide prior written notice before changing the provision of students' free appropriate public education? [92 NAC 51-009.05]

92 NAC 51-009.05 states:

- |          |  |
|----------|--|
| 009.05A  | <i>Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:</i>                       |
| 009.05A1 | <i>Proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education; or</i>            |
| 009.05A2 | <i>Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.</i> |
| 009.05B  | <i>Such prior written notice shall include:</i>  |



- 009.05B1 *A description of the action proposed or refused by the school district or approved cooperative;*
- 009.05B2 *An explanation of why the school district or approved cooperative proposes or refuses to take the action;*
- 009.05B3 *A description of other options the IEP team considered and the reasons why those options were rejected;*
- 009.05B4 *A description of each evaluation procedure, assessment, record, or report the school district or approved cooperative uses as a basis for the proposal or refusal;*
- 009.05B5 *A description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;*
- 009.05B6 *A statement that the parents of a child with a disability have protection under the procedural safeguards of this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained; and*
- 009.05B7 *Sources for parents to contact to obtain assistance in understanding the provisions of this Chapter.*

#### **Allegations/Parent Position**

Complainants did not make any allegations regarding PWNs.

#### **District Response**

The District states two arguments in regards to when PWN is required: (1) PWN is required when there is a change to the identification, evaluation, or educational placement of a student and (2) the IEPs, which include the required elements of a PWN, are a PWN.

The District stated that when the identification, evaluation, or educational placement of a student was proposed or rejected a PWN was issued. As an example, the District specifically mentioned the PWN issued following Student A's most recent evaluation.

The District also asserted that an IEP can be used as a PWN. As an example, the District looked at Student A's December 13, 2021 IEP and specifically mentioned the language within the IEP that would satisfy the PWN requirements (per Response to July 20, 2022 Request regarding PWN dated July 22, 2022).

#### Investigative Findings

The District was asked whether it provided PWN before changing the provisions of a students' free appropriate public education. The District responded and stated it had and referenced the appropriate statute regarding PWN (92 NAC 51-009.05). However, while the statute references four situations in which a PWN is required – proposal or refusal to initiate or change the (1) identification, (2) evaluation, (3) educational placement, or (4) provision of FAPE, the District only responds specifically to scenarios one, two, and three.

While the District is correct that a PWN must be issued if a change to the identification, evaluation, or educational placement is proposed or refused, a PWN must also be issued if a student's FAPE is changed.

The August 15, 2008 *Letter to Heidi Atkins-Lieberman* from OSEP states:

*Under 34 C.F.R. 300.17(d), FAPE means, among other things, special education and related services that are provided in conformity with an IEP that meets the requirements of federal regulation at 34 C.F.R. 300.320 through 300.324. Therefore, a proposal to revise a child's IEP, which typically involves a change to the type, amount, or location of the special education and related services being provided to a child, would trigger notice under 34 C.F.R. 300.503.*

Using Student A as an example, pursuant to the March 24, 2021 IEP, Student A was to receive the following special education services: (1) special instruction 16 times a month for 120 minutes per session and (2) speech/language services three times month for 20 minutes per session. Student A was to receive the following related services: (1) orientation and mobility four times a year for 15 minutes per session and (2) physical therapy two times a quarter for 15 minutes per session. Student A's special education and related services changed in their December 13, 2021 IEP. Student A was to receive (1) special instruction 16 times a month for 100 minutes per session and (2) speech/language services three times a month for 15 minutes per session. Student A was no longer going to

receive related services in the area of orientation and mobility or physical therapy. All in all, Student A was going to receive 320 minutes less of special instruction every month, 15 minutes less of speech/language services every month, and no related services. These changes to Student A's special education and related services constitute a change in FAPE. Despite the change, the District did not issue a PWN.

The District states the requirements of a PWN are satisfied by the IEP itself. The requirements of a PWN are: (1) a description of the action proposed or refused by the school district; (2) an explanation of why the school district proposes or refuses to take the action; (3) a description of other options the IEP team considered and the reasons why those options were rejected; (4) a description of each evaluation procedure, assessment, record, or report the school district used as a basis for the proposed or refused action; (5) a description of other factors that are relevant to the school district's proposal or refusal; (6) a statement that the parents of a child with a disability have protection under the procedural safeguards and the means by which a copy of a description of the procedural safeguards can be obtained; and (7) sources for parents to contact to obtain assistance in understanding the provisions. 92 NAC 51-009.05(B).

Student A's December 13, 2021 IEP does not contain enough detail to satisfy the PWN requirements in regards to Student A's change in FAPE (i.e., the change to Student A's special education and related services). There is nothing in the IEP that states (1) why Student A's special education and related services were decreased/no longer provided, (2) what other options were considered in regards to Student A's special education and related services, (3) what factors were relevant to the decision to decrease/no longer provide Student A's special education and related services, (4) a statement that the parents have protection under the procedural safeguards and (5) sources for parents to contact to obtain assistance in understanding the provisions.

Based on the District's response regarding when a PWN is required, it is clear it does not consider a PWN necessary when a provision of FAPE is changed. The District's documentation related to Student B and the ten randomly selected students further proves this. No PWN was issued following the implementation of Student B's October 11, 2021 IEP even though their special education services changed from the October 14, 2020 IEP. No PWN's were issued prior to the implementation of the IEPs of the ten randomly selected students unless the student's placement was changing. It is highly unlikely all ten students' provision of FAPE remained the same from each of their previous IEPs.

## Important Notes

### *Note 1*

In the District's example as to how the IEP meets the requirements of a PWN, it stated that a statement regarding parents' protections under the procedural safeguards is included within the IEP. Specifically, on page three, a yes or no checkbox must be marked next to the following language: "I/We have received a copy of Rights and Responsibilities Regarding Identification and Placement of Students in Special Education." This is not a statement informing parents that they have protection under the procedural safeguards. Instead, this is a declaration that a copy of the procedural safeguards has been provided. When an actual PWN is issued by the District, the statement required by the statute is included.

### *Note 2*

The District provided four "Notices of Intent to Evaluate" for three different students (Student A, Student D, and Student I). The contents of the four Notices were nearly identical. Additionally, each Notice indicated the following: "Waiving the reevaluation or conducting the reevaluation without additional assessment were rejected as inadequate to address eligibility and programming decisions for [Student]." Despite the Notice indicating it was necessary to conduct additional assessments, no additional assessments were conducted for two of the students (Student A and Student I). PWNs, which includes a Notice of Intent to Evaluate, should contain accurate and sufficient detail to allow parents to participate in an informed way.

### *Note 3*

The District provided four "Notices of Change of Placement or Discontinuation" for three different students (Student D, Student H, and Student I). With the exception of Student H, three of the Notices contain very similar language that lacks specificity. For example, all three Notices indicate that continuing the student's placement was "rejected because the placement no longer meets [Student's] educational needs." The Notices contain no further information as to why the previous placement no longer meets the student's educational needs. PWNs should contain sufficient detail to allow parents to participate in an informed way. In the event the IEP contains sufficient detail to satisfy the requirements of the PWN, there is no error. However, the District should be cautious and ensure that that is the case.

## Summary and Conclusions

As the District has failed to issue a PWN following a proposed change to a student's FAPE, and the IEPs do not contain the required elements of a PWN, the

District failed to fully implement the requirements of 92 NAC 51-009.05. Thus, **corrective action is required.**

#### Corrective Action

1. The District must train all special education staff in the district regarding notification requirements within 60 calendar days of the date of this Letter of Finding. Specifically, when PWN is required, what must be included in the PWN, and the level of specificity needed in a PWN.
  - a. The training materials must be approved by Theresa Hayes at least 14 days prior to the training.
  - b. The District must provide Theresa Hayes with copies of the participant sign-in sheets including the name and role of the participants at the conclusion of the training(s).
2. A random sample of ten students' IEPs and accompanying PWNs will be reviewed on or before April 1, 2023, to verify that the PWN requirements are met and that it contains sufficient detail.

#### Student A Issue #1

Did the District deny parents' meaningful participation in Student's education plan by failing to schedule the IEP meeting at a mutually agreed on time and place and providing notice early enough so that parents may attend? [92 NAC 51-007.06]

92 NAC 51-007.06 states:

#### 007.06 Parent Participation

007.06A *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, including*

007.06A1 *Notifying parents of the IEP conference early enough to ensure that they will have an opportunity to attend; and*

007.06A2 *Scheduling the meeting at a mutually agreed on time and place.*

#### Allegations/Parent Position

The Parents of Student A assert that they are only ever given two to three time slots, usually around 2:15 or 2:30, to select from for an IEP meeting. The 2:15-2:30 timeslots are difficult for the family to attend. They have never been asked if that

timeframe is feasible or offered alternative time slots. Additionally, the Parents state they are notified of IEP meetings but not always in the timeframe required (per Letter of Complaint dated May 22, 2022).

#### District Response

District contends that the Parents of Student A have attended every IEP meeting and have received adequate notice of same. In the event where the meeting notice is dated the same day as the IEP meeting, there was email correspondence between the District and the Parents regarding the date and time of the IEP meeting. When there are scheduling difficulties, it is due to the Parents failing to respond to emails or phone calls from the District. In regards to the 2:15-2:30 timeslot, the District states it was unaware this was a difficult time for the Parents as they have never requested different meeting times (per Letter of Response dated June 17, 2022).

#### Investigative Findings

There have been four meetings held in the year preceding the filing of the state complaint. The details of each meeting are detailed below:

1. December 13, 2021 – MDT meeting
  - a. Meeting Request dated November 4, 2021
  - b. Date/Time of Meeting: December 13, 2021 at 3:15 p.m.
  - c. Notes: The Parents of Student A confirmed meeting date/time on October 29, 2021 via phone
  - d. The Parents were in attendance
  - e. Meeting Request signed by the Parents on December 17, 2021
2. December 13, 2021 – IEP meeting
  - a. Meeting Request dated December 13, 2021
  - b. Date/Time of Meeting: December 13, 2021 at 4:15 p.m.
  - c. Notes: The Parents of Student A confirmed meeting via Zoom
  - d. The Parents were in attendance
  - e. Meeting Request signed by the Parents on December 17, 2021
3. April 21, 2022 – Transition services for 2022-23 school year
  - a. Meeting Request dated March 25, 2022
  - b. Date/Time of Meeting: April 21, 2022 at 2:15 p.m.
  - c. Notes: The Parents of Student A confirmed the meeting on March 23, 2022 via phone
  - d. The Parents were in attendance
  - e. Meeting Request signed by the Parents on April 21, 2022
4. May 23, 2022 – Placement for 2022-23 school year
  - a. Meeting Request dated May 19, 2022
  - b. Date/Time of Meeting: May 23, 2022 at 2:30 p.m.

- c. Notes: The Parents of Student A requested the meeting on May 18, 2022 via email and indicated May 23, 2022 as a possible meeting date (see Student A Findings of Facts #19)
- d. The Parents were in attendance
- e. It is unclear whether the Parents signed the Meeting Request.

As evidenced by the District's documentation, the Parents of Student A were in agreeance with the dates/time of each of the four meetings and were provided with ample notice of all of the meetings except for the December 13, 2021 IEP meeting. The December 13, 2021 IEP meeting was scheduled following the MDT meeting, which is common practice amongst IEP teams, and the Parents agreed to hold the meeting at that time. Moreover, the Parents were in attendance at each of the four meetings, further indication that the Parents were not denied meaningful participation.

In the future, if the Parents prefer a different date or time then what is offered by the District, the Parents should indicate such so that a feasible date/time for both parties may be selected.

#### Important Note

Numerous meeting requests were provided that contained a parent signature. The parent signature was often dated sometime after the IEP meeting was held. While a meeting request is not required to be signed, it is an odd practice to have the meeting request signed after the IEP meeting. It is in the District's best interest to have the meeting request signed prior to the meeting. This enables the District to prove a parent was notified of a meeting in advance.

#### Summary and Conclusions

As District provided ample notice of each of the four meetings and the Parents were in attendance at same, the District implemented the requirements of 92 NAC 51-007.06 and **no corrective action** is required.

#### Student A Issue #2

Did the District base Student's postsecondary goals upon age-appropriate transition assessments? [92 NAC 007.07A9a]

92 NAC 51-007.07A9 states:

007.07        *IEP Development*

007.07A      *The IEP shall include:*

007.07A9      *Beginning not later than the first IEP to be in effect when the child turns 16, or younger if deemed appropriate by the*

*IEP team, and updated annually thereafter:*

007.07A9a      *Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills*

#### **Allegations/Parent Position**

The Parents of Student A assert that Student A's transition goals are not based on age-appropriate transition assessments. The only assessments completed were a transition interview and a picture interview that is very outdated. The assessments used are poor assessments and did not result in attainable or true goals desired by Student A.

The Parents state that the District inquired with one of the Parents friends regarding what transition assessments would be appropriate for Student A. The Parents are concerned that Student A's educators, the experts, do not know what transition assessments are appropriate (per Letter of Complaint dated May 22, 2022 and telephonic interview with Parent A on July 5, 2022).

#### **District Response**

District states age-appropriate transition assessments were used to develop Student A's postsecondary goals. Specifically, an age-appropriate picture interest inventory was used. This type of assessment is often used for students who have limited reading skills or who benefit from visual information to gain context. After the Parents of Student A expressed concern with the utilization of the picture interest inventory, the District assessed Student A with the Enderle-Severson Transition Rating Scale assessment. This assessment is used for students with moderate to severe disabilities. District states both of the assessments used were appropriate for Student A (per Letter of Response dated June 17, 2022).

The District clarified in the telephonic interview on July 6, 2022 that the "friend" Parents of Student A mentioned in the complaint was the former director of special education. The District reached out to them in a professional manner, and as an expert, and inquired about transition assessments.



### Investigative Findings

Both of Student's March 24, 2021 and December 13, 2021 IEPs are subject to this investigation. The same transition assessments were utilized prior to developing Student A's transition plan/goals. Only the transition assessments utilized for the December 13, 2021 IEP are discussed in detail below.

Prior to the December 13, 2021 IEP, the District conducted an informal transition interview. The informal interview questions and answers were included on a document titled "Reading-Free Inventory." The Reading-Free Inventory assessment consists of ten job-related pictures. None of the pictures on the document were circled. It is unclear if the District considers the informal interview and the picture interest inventory as one assessment or two. The District did not mention the informal interview in their response to the complaint and the IEP only mentions the informal interview. Given so, it is determined that the informal interview is the assessment that was utilized with Student A.

The interview consisted of four questions: (1) what job do you want after graduating; (2) how will you learn how to do this job; (3) where do you plan to work; and (4) where do you want to live. Student A answered each of the informal interview questions. Student A stated they wanted to make jewelry. They would learn how to make jewelry by researching on a laptop or someone could show them. They planned to make jewelry in a factory. Finally, Student A stated they would live with their parents and grandparents. The IEP reflects post-secondary goals based on Student A's answers given during the informal interview.

Additionally, the IEP states that the District completed the "Life Skills Curriculum Assessment Rubric." It is unclear what this rubric consists of as it was not provided to the Investigator. The IEP indicates that the completed rubric reflected strengths in reading and math skills. As this was the only language included in the IEP, and without the rubric itself, it is unclear how this assessment aids in determining postsecondary goals for Student A.

In April 2022, the District and the Parents of Student A completed the Enderle-Severson Transition Rating Scale assessment. This was offered after the Parents expressed concern with the assessment used prior to the December 2021 IEP meeting. Both the District and the Parents completed forms J and S.

After completion of Form J, answers were tallied so that a score can be attributed to each of the five categories (i.e., employment, recreation and leisure, home living, community participation, and post-secondary education). Student A's strength was recreation and leisure. Student A's lowest scores were community participation and post-secondary education. Form S does not

provide a score after completion. It is unclear how the results of forms S will influence Student A's postsecondary goals.

The results of Form J and S were included in the draft IEP that has yet to be finalized. The draft IEP has amended postsecondary goals so that not only will Student A receive training and get a job related to jewelry but now Student A may also receive training and get a job related to "helping people." It is unclear what that entails. Nonetheless, as the draft IEP has yet to be finalized at the time of this writing, the contents of such are not determinative to the findings in regards to this issue.

The IDEA does not mandate any particular transition assessment tool. However, a student interview, without more, is insufficient. See *Forest Grove Sch. Dist. v. Student*, 2014 63 IDELR 163 (2014) (holding that a "brief discussion" with a student is not the sort of "formalized assessment" contemplated by the IDEA).

Regardless of the appropriateness and measurability of the postsecondary goals in Student A's IEP, the assessments used to develop those goals were not appropriate. The District should have used more than a student interview to determine Student A's postsecondary goals.

#### Important Note

Inspection of other student files indicates the District often uses the informal interview as a transition assessment along with other transition assessments. The District stated in the telephonic interview that it is no longer recommending the use of the informal interview moving forward – a sound decision. Given the high rate of use of the informal interview, the District is encouraged to review the transition assessments used for eligible transition-planning students to ensure a variety of appropriate transition assessments were used.

#### Summary and Conclusions

Based on the District's failure to use a variety of assessments to determine Student A's postsecondary goals, the District failed to fully implement the requirements of 92 NAC 007.07A9a. **Corrective action is required.**

#### Corrective Action

1. The District must train all special education staff in the district regarding transition assessments within 30 calendar days of the date of this Letter of Finding. Specifically, what transition assessments are appropriate for a given student, how many assessments should be utilized for a given student, and how to develop measurable postsecondary goals with the results of the assessments.

- a. The training materials must be approved by Theresa Hayes at least 14 days prior to the training.
  - b. The District must provide Theresa Hayes with copies of the participant sign-in sheets including the name and role of the participants at the conclusion of the training(s).
2. The District shall conduct new, appropriate transition assessments for Student A within 10 calendar days after the training.
3. The District shall convene an IEP meeting within 10 calendar days after the new transition assessments have been completed and update Student A's postsecondary goals and transition plan accordingly.
  - a. The IEP should reflect all transition assessments used and include enough specificity so it is clear how the transition assessment relates to postsecondary goals.
  - b. The postsecondary goals should include enough specificity so that it is clear what kind of education/training/employment are desired.
  - c. The postsecondary goals should be realistic and based on Student's unique circumstances.
  - d. In no event should the IEP meeting for Student A occur later than 50 calendar days of the date of this Letter of Finding.
4. A random sample of ten students' IEPs will be reviewed on or before April 1, 2023, to verify that transition assessments are completed and used in the development of post-secondary goals.

### **Student A Issue #3**

Did the District fail to include measurable postsecondary goals in Student's IEP?  
[92 NAC 007.07A9a]

92 NAC 51-007.07A9 states:

007.07        *IEP Development*

007.07A      *The IEP shall include:*

007.07A9      *Beginning not later than the first IEP to be in effect when the child turns 16, or younger if deemed appropriate by the IEP team, and updated annually thereafter:*

07.07A9a      *Appropriate measurable postsecondary goals based upon age appropriate transition*

*assessments related to  
training, education,  
employment, and,  
where appropriate,  
independent living skills*

#### Allegations/Parent Position

The Parents of Student A assert that the postsecondary transition goals are vague and are not measurable. Additionally, the annual transition goal is confusing. The Parents of Student A stated they “don’t even know what [the goal] means” (per Letter of Complaint dated May 22, 2022 and telephonic interview on July 20, 2022).

#### District Response

District stated that Student A’s IEP goals may not have been measurable. A prior complaint and investigation revealed a systemic issue with the District’s transition goals. As part of its corrective action, the District is required to reconvene the IEPs of all students attending Placement A to ensure the goals were individualized and measurable. Student A’s IEP falls into this corrective action. The District is in the process of amending IEPs, including Student A’s, to ensure the transition goals are appropriate (per Letter of Response dated June 17, 2022).

#### Investigative Findings

This issue is two-fold. Both the annual transition-related goal and the postsecondary goals contained in the “transition” section of the IEP need to be addressed.

##### Sub-Issue A: Annual Transition-Related Goal

As the District stated in their response, the District is currently under a corrective action plan regarding the transition goals included in their student bodies IEPs. Student A’s transition goal falls under the corrective action plan and will be amended to ensure it is individualized and measurable. Given such, further investigation and discussion is unnecessary.

##### Sub-Issue B: Postsecondary Goals

Pursuant to 92 NAC 007.07A9a, once a child reaches the age of 16, the IEP must include (1) measurable postsecondary goals based upon age-appropriate transition assessments related to the education, training, employment, and, if appropriate, independent living skills. As discussed in Student A, Issue #2, the postsecondary goals were not based upon age-appropriate transition assessments. Thus, the postsecondary goals are not appropriate postsecondary goals.

## Summary and Conclusions

Based on the lack of use of age-appropriate transition assessments, the postsecondary goals are not appropriate. The District failed to fully implement the requirements of 92 NAC 007.07A9a and the **corrective action is required**.

## Corrective Action

1. The required corrective action is included under Student A, Issue #2.

### Student A Issue #4

Has the District failed to monitor Student's progress on their IEP goals? [92 NAC 51-007.07A]

92 NAC 51-007.07 states:

007.07        *IEP Development*

007.07A       *The IEP shall include:*

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

007.07A1a       *How the child's disability affects the child's involvement in and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children);*

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

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

|           |  |
|-----------|--|
|           | <i>appropriate activities, and</i>   |
| 007.07A2b | <i>Meet each of the child's other educational needs that result from the child's disability;</i>   |
| 007.07A4  | <i>A description of how the child's progress toward meeting the annual goals described in 92 NAC 51-007.07A2 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.</i> |

#### Allegations/Parent Position

The Parents of Student A assert that the “transition goals are not measurable and data is not currently kept on them” (per Letter of Complaint dated May 22, 2022).

#### District Response

District contends that each of Student A's annual IEP goals describe how the goal will be monitored (e.g., the reading comprehension goal will be measured and monitored by their formative and summative scores in Synergy and through Reading A-Z) and the District progress monitors all of Student A's annual IEP goals accordingly (per Letter of Response dated June 17, 2022).

#### Investigative Findings

The statement made in the complaint in regards to the progress monitoring, or lack thereof, of Student A's “transition goals” is not clear. Specifically, it is unclear if the “transition goals” Complainant referred to are the postsecondary goals located in the “transition section” or if it is the annual transition-related goal. Given such, this issue has two components: (1) the progress related to Student A's postsecondary transition goals and (2) the progress related to Student A's annual IEP goals.

#### Sub-Issue A: Postsecondary Transition Goals

As stated in Student A, Issue #3, postsecondary goals are to be related to the education, training, employment, and, if appropriate, independent living skills.

The postsecondary goals must be measurable and should be related to what the student will accomplish after high school rather than during high school. Unlike postsecondary goals, annual goals are to aid a student towards making progress during high school. There should be a correlation between the annual goals and the postsecondary goals. See *Letter to Pugh*, 69 IDELR 135 (OSEP 2017).

Here, while Student A's annual transition-related goal is poor and subject to a corrective action plan, the annual goal was developed to aid Student A in meeting their postsecondary transition goals.

The IDEA and State regulations require periodic progress reports on annual IEP goals. 34 CFR § 300.320(a)(3) and 92 NAC 51-007.07A4. Despite the regulations only mentioning progress reporting on annual goals, OSEP has stated that given there should be a correlation between the postsecondary goals and the annual goals, it is necessary to report on a student's progress in meeting postsecondary goals when reporting on the annual goals. *Letter to Pugh*, 69 IDELR 135.

The determination as to whether Student A's periodic progress reports contained the necessary information to report measurable progress, including progress on Student A's postsecondary goals, is discussed below in Sub-Issue B.

#### Sub-Issue B: Annual IEP Goals

Note: The District provided two documents containing all five progress reports to the Investigator – October 15, 2021 (which also included the May 2021 report) and May 25, 2022 (which also included the December 2021 and March 2022 reports). The progress reports are discussed individually below.

Student A's IEPs required quarterly progress monitoring on the annual IEP goals. The District submitted progress reports for May 21, 2021, October 15, 2021, December 22, 2021, March 10, 2022, and May 25, 2022, in conformance with the IEP.

Each progress report included a "mastery level" score ranging from one to five. Each score was defined in the following way:

- ⇒ Score of 1: This goal has not been introduced.
- ⇒ Score of 2: The student has not yet demonstrated progress towards achieving this goal.
- ⇒ Score of 3: The student has demonstrated some progress towards achieving this goal.
- ⇒ Score of 4: The student is making sufficient progress toward achieving this goal within the duration of the IEP.
- ⇒ Score of 5: The student has met the criteria for this goal.

Additionally, each progress report included a “score.” The score was comprised of Student A’s then-current score related to each IEP goal. For example, Student A’s reading comprehension goal required Student A to achieve a certain accuracy percentage. The progress report “score” indicated Student A was 100% accurate on their reading comprehension for the month of May 2022.

Finally, the progress report included a “comments” section. On every progress report, for every annual goal, the comment section only included language regarding the Covid-19 pandemic. There were no comments regarding Student A’s progress or any direction regarding how to interpret the “score” (see Student A Findings of Facts #6 and #24).

While the District submitted progress reports on a quarterly basis, the progress reports were poor in detail and did not always coincide with the PLAAFP of the IEP; leaving many questions as to Student A’s actual progress. Specifically, between May 2021 and May 2022, there are at least six progress reports that need further explanation for a proper understanding of Student A’s progress. Each of the six instances are detailed below:

#### *May 21, 2021 Progress Report*

1. Transition Goal: The “score” indicated Student A “completed 2 activities.” It is unclear what two activities Student A completed. A comment regarding what activities were completed is necessary for an understanding of Student A’s progress towards their transition goal.

#### *October 21, 2021 Progress Report*

1. Reading Comprehension Goal: For the month of September, Student A received a score of 100% accuracy. For the month of October, Student A received a score of 75% accuracy. At the time of implementation, Student A’s baseline was 75%. Despite Student A obtaining 100% accuracy and then regressing back down to their previous baseline of 75%, Student A was marked as making “sufficient progress.” The District should have included an explanation as to why the District indicated Student A was still making sufficient progress despite their scores varying so much.

Moreover, other than the October score, Student A received three 100% scores and one 80% score between March and September. Despite the huge increase in scores, in the December 13, 2021 IEP, the District indicated that Student A’s baseline was only 79%. It is unclear how Student A’s baseline was determined to be 79% when four of the five scores they received were above 79%. The reported new baseline score was not explained in the December 2021 IEP and there are no comments



within the progress reports to support a new baseline of 79%. In fact, the PLAAFP, other than the baseline score, is the exact same language as the March 2021 IEP. One is not able to reasonably conclude how the District determined Student A's reading comprehension levels with the information provided in the progress report.

2. Transition Goal: Like the May 2021 progress report, the "score" indicated Student A "completed 2 activities" and Student A was marked as making sufficient progress. It is unclear if Student A completed two additional activities since the May 2021 progress report or if they had still only completed two activities in total. If Student A had not completed two additional activities since May 2021, it is unclear why the District reported Student A was still making sufficient progress when no additional progress was actually made in five months' time. If Student A completed two additional activities, it is unclear what two activities Student A completed. A comment giving further detail is necessary for an understanding of Student A's progress towards their transition goals.

Moreover, the December 13, 2021 IEP states in the PLAAFP section of the transition goal that Student A completed one activity. This is contradictory to the progress reports. During the telephonic interview with the District on July 6, 2022, the District was asked how many activities Student A completed. After inquiring with other staff, the District stated Student A had completed two activities. However, if Student A had completed two activities, Student A's baseline for the December 13, 2021 transition goal should have stated they had previously completed five activities. Instead, it stated Student A completed four activities in total. Given the discrepancies, it is unclear what progress Student A has completed on the transition goal.

#### *March 10, 2022 Progress Report*

1. Math Skills Goal: Under the score section, the following was included: "Jan. 20, Feb. 21, March 19 on level 4." One can reasonably interpret that Student A received a score of 20 digits in January, 21 digits in February, and 19 digits in March. However, it is unclear what level Student A received a score of 20 in January and what level Student A received a score of 21 in February as the level was not included in the progress report for those months. Further comment and specificity would aid in the understanding of the scores contained in the progress report. Additionally, Student A appears to be fluctuating in their scores. While the fluctuation is minor, further explanation would be helpful.

2. Transition Goal: The “score” stated “completed 3rd quarter.” It is unclear what that means and this “score” is not measurable to Student’s transition-related goal which requires the completion of activities. Again, further comment on Student A’s progress would aid in the understanding of their progress and may even provide a unit of measurement, which is required.

#### *May 25, 2022 Progress Report*

1. Reading Comprehension Goal: Between January and May 2022, Student A received a score of 100% accuracy in four of the five months. The May progress report indicated Student A was making sufficient progress (mastery level 4). Looking at the progress report, it is unclear why Student A, who was scoring well above the target of 85%, wasn’t given a mastery level “5” (i.e., met goal) instead of a score of 4 (sufficient progress). A comment regarding this scoring would have been appropriate and helpful for an understanding of Student’s progress.
2. Transition Goal: The “score” stated Student A completed 4th quarter career development class and communicated self-advocacy. By itself, this statement is not measurable as the transition related goals requires the completion of activities. It can be inferred that Student A completed two of the transition-related activities but the progress report should be specific and state that.

#### Summary and Conclusion

As the progress reports lack detail, including measurable data, so that one may understand whether Student A was progressing, as expected, the progress reports provided are deficient. Had the progress reports included more detail, including relevant comments within the “comment” section, Student A’s progress on their annual goals may have been clearer.

Further, pursuant to *Letter to Pugh*, the progress reported for the annual transition-related goal lacks the details needed in order to understand what progress, if any, Student A has made towards their postsecondary transition goals. It is unclear if Student A has made any progress towards achieving their postsecondary transition goals.

In conclusion, the progress reports provided by the District lacked the necessary detail to be able to fully understand Student A’s progress. Thus, the District failed to fully implement the requirements of 92 NAC 51-007.07A. **Corrective action is required.**

### Corrective Action

1. District must train all special education staff in the district regarding measurability and specificity of progress reports within 60 calendar days of the date of this Letter of Finding.
  - a. The training and trainer(s) must be approved by Theresa Hayes at least 14 days prior to the training.
  - b. District must provide Theresa Hayes with copies of the training materials and handouts used and participant sign-in sheets at the conclusion of the training(s).
2. District shall submit a new progress report detailing Student A's progress on each of their IEP goals within 30 calendar days of the date of this Letter of Finding. The progress report shall include comments to support the mastery level and scores indicated within the report and include enough information so that it is clear whether or not Student A is making progress towards their postsecondary transition goals. If the Covid-19 pandemic note is no longer relevant, it should be removed.
3. A random sample of IEPs and accompanying progress reports of three students will be reviewed on or before April 1, 2023 to ensure measurability of progress reporting requirements are being met.

### Student A Issue #5

Whether Student's IEP is reasonably calculated to enable Student to make progress appropriate in light of their circumstances, specifically by determining goals that adequately address Student's needs [92 NAC 007.07]

92 NAC 51-004.02 states:

004.02        *The school district or approved cooperative shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.*

### Allegations/Parent Position

The Parents of Student A allege that the goals in Student A's IEP are all very similar and that statements on page 12 of Student A's IEP are not being addressed (per Letter of Complaint dated May 22, 2022).

### District Response

District agrees that Student A's transition goals may not have been reasonably calculated to make progress in light of Student A's circumstances. The District is required to complete corrective action, per a prior complaint, to amend the transition goals of the students attending Placement A. Student A's IEP falls into

this corrective action and their transition goals will be amended to enable them to make progress in light of their circumstances.

District asserts that Student A's other IEP goals were reasonably calculated to enable Student A to make progress in light of their circumstances. Specifically, the IEP team has determined Student A needs to continue to work on their reading comprehension and math skills. Student A's reading comprehension goal is reasonably calculated to aid Student A in improving their reading comprehension when reading more than two to three sentences. Student A's math goal is reasonably calculated to aid Student A in understanding new math concepts. Student A's progress reports show that they consistently reach mastery level on their IEP goals which is indicative of Student A making progress in light of their unique circumstances (per Letter of Response dated June 17, 2022).

#### Investigative Findings

During the one year leading up to this complaint, Student A has had two implemented IEPs. Each IEP had a reading comprehension, math skills, and transition goals. Additionally, there were postsecondary goals. Each of the goals in both of the IEPs are discussed in detail below.

#### Reading Comprehension Goal

##### *Part 1: PLAAFP, Progress, and Need*

Student A's reading strengths and needs indicated in the PLAAFP section are identical in the two IEPs (see Student A Findings of Facts #4(c)(i) and #14(b)(i)). Additionally, the IEP goals read nearly the same. One difference is Student A's baseline and target percentages (see Student A Findings of Facts #4(c)(ii) and #14(b)(ii)). In March 2021, Student A accurately comprehended a given text at a 75% rate. In December 2021, Student A accurately comprehended a given text at a 79% rate. It is unclear how the District determined the 79% rate (see Student A, Issue #4 Investigative Findings).

The statement of PLAAFP should be updated periodically to ensure that it accurately reflects the student's present levels of performance for the current IEP. See *Bucks County Montessori Charter Sch.*, 75 IDELR 289 (SEA PA 2019). A statement of PLAAFP that is unclear or ambiguous could result in a denial of FAPE. *Clovis Unified School District*, 109 LRP 69459 (SEA CA 10/19/09).

Here, the PLAAFP in both IEPs states Student A "struggles with comprehension questions" if the selection is longer than two to three sentences and that they need to "continue working on reading comprehension skills." Student A's then-current baseline was also included. Taking the statements in the PLAAFP and the progress reports together, Student A's progress is unclear. Of the ten individual

months progress was recorded for Student A, they received a score of 100% seven times, a score of 80% two times, and a score of 75% one time. When averaging the ten scores, Student A appears to be accurately comprehending a given passage at a 94% rate; not a 79% rate as the District reported. Despite Student A's high scores, they have never "met" their reading comprehension goal and the target percentage that Student A must achieve has hardly increased. The statements contained in the PLAAFP, or the progress reports, could have included more detailed information so that there was an accurate description of Student A's reading comprehension skills or how the baseline percentage rate was calculated. Instead, the PLAAFP appears to have been copied and pasted from the March 2021 to December 2021 IEP and the progress reports contain no notes.

Given there is a discrepancy at what level Student A is actually performing, considering only the information contained within Student A's file, it is unclear if the reading comprehension goal is targeting an area of need for Student A.

#### *Part 2: Objective Measurability of the Goal*

Student A's March 24, 2021 goal reads: "Given instruction and accommodations in the Reading classroom with adaptations/accommodations/adult assistance for full accessibility, [Student A] will improve [their] Reading Comprehension skills, increasing from a baseline of 75% accuracy to 85% accuracy, on work completed, as measured by [their] formative and summative scores in Synergy, by March 23, 2022."

Student A's December 13, 2021 goal reads: "Given instruction and accommodations in the Reading classroom, [Student A] will improve [their] Reading Comprehension skills, increasing from a baseline of 79% accuracy to 85% accuracy at a 2nd grade level, on work completed, as measured by Reading A-Z, by December 12, 2022."

IEP goals should be objectively measurable. *Bridges v. Spartanburg County Sch. Dist. Two*, 57 IDELR 128 (D.S.C. 2011). A well-written goal should pass the "stranger test" – a person unfamiliar with the IEP can implement the goal, implement the assessment of the student's progress on the goal, and determine whether the student's progress was satisfactory. *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006).

As written, neither the March or December IEP reading comprehension goals pass the "stranger test." Specifically, in the March IEP, it is unclear what grade level Student should be tested at. In both the March and December IEPs, it is unclear what kind of material Student should be given to read (a story, a short passage consisting of two to three sentences, a sentence, etc.). The District

states in their response to the complaint that the Student struggles with reading comprehension when reading passages longer than two to three sentences; the PLAAFP in both IEPs indicates the same. However, neither the March or December IEP goals specify that Student A's reading comprehension should be tested using longer reading passages. As there are multiple questions on how to test Student A's reading comprehension in both IEPs, neither reading comprehension goals are objectively measurable.

While the goals are vague, it does appear that Student A has been progressing and, thus, has not been denied FAPE. *T.G. by Mr. and Mrs. T.G. v. Midland Sch. Dist. 7*, 112 LRP 5634 (C.D. Ill. 01/27/12) (finding that a minor flaw in the way a goal is written is unlikely to result in a denial of FAPE, unless it causes a district to fail to provide the student with the instruction or services needed to progress.)

#### Math Skills Goal

##### *Part 1: PLAAFP, Progress, and Need*

Student A's math skills goals are nearly identical in both IEPs (see Student A Findings of Facts #4(d)(ii) and #14(c)(ii)). In March 2021, Student A was performing at a baseline of 26 points on Level 2 MBSP in the area of operations and related concepts. In December 2021, Student A's baseline increased to 26 points on Level 3, far exceeding the previously set target. As the goal was met, the goal was updated so that the set target is higher than it was previously. Since that time, Student A continues to make progress (see Student A Findings of Fact #24(b)).

While the math skills goal appears to be appropriate, it is important to note that the PLAAFP contained the exact same language in both IEPs, other than Student A's then-current baseline. The District is cautioned to update the PLAAFP accordingly so that Student A's strengths and needs are better described.

##### *Part 2: Objective Measurability of the Goal*

Student A's March 24, 2021 goal reads: "Given accommodations and instruction in the HS Mathematics classroom, [Student A] will continue developing mathematics skills in the area of operations and related concepts, increasing from a baseline of 26 digits on the Level 2 MBSP to 4 digits on the Level 3 MBSP as measured by monthly MBSP probes by 3-23-22."

Student A's December 13, 2021 goal reads: "Given accommodations and instruction in the Mathematics classroom, [Student A] will continue developing mathematics skills in the area of operations and related concepts, increasing from a baseline of 16 digits on the Level 4 MBSP to 30 digits on the Level 4 MBSP as measured by monthly MBSP probes by 12/12/22."

As written, neither the March or December IEP math goals pass the “stranger test.” Specifically, in both the March and December IEP, it is unclear what math operations Student should be tested on (i.e., addition, subtraction, multiplication, division) and it is unclear what is meant by “related concepts.” Additionally, in the December IEP, it is unclear what it means to increase “digits.”

The District was asked for further explanation regarding the use of points (referenced in the March 2021 IEP) and digits (referenced in the December 2021 IEP). The District stated it was not sure if those were interchangeable terms but that Student was to complete problems and would receive points if they indicated the correct digit. Presumably, that means if Student A was given a math problem and the correct answer was 10 and Student A answered correctly, they would receive two points. If Student answered incorrectly and indicated the answer was 12, presumably, Student A would only receive one point.

Without the explanation from the District, it is not clear how to test Student A on their math skills by reading the IEP goal. However, while the math goals are vague, it does appear that Student A has been progressing and, thus, has not been denied FAPE.

#### Transition Goal

The appropriateness of the transition goal used for many of the students within the District has already been addressed in a previous complaint. Thus, Student A’s transition goal will not be analyzed further. Per the corrective action associated with the previous complaint, the District is required to amend Student A’s transition goal so that it reflects Student A’s unique needs.

#### Postsecondary Goals

As discussed in Student A, Issues #2 and #3, the postsecondary goals were not based upon age-appropriate transition assessments and Student A’s postsecondary goals are not appropriate postsecondary goals.

#### Important Notes

##### *Note 1*

There were many instances where the contents of Student A’s IEPs and progress reports were sloppy, contained errors, or used incorrect grammar. For example:

- a. The short-term objectives for each of the annual goals contained two different dates within the same objective (see e.g., Student A Findings of Facts #4(c)(ii)(4)(a) and #4(c)(ii)(4)(a)(i) – indicated a target date of 9/3/21 and 10/15/21). The actual target date that



the short-term objective should be completed should be the only date included within same.

- b. Many errors were noted within the IEPs (see e.g., Student A Findings of Facts #4(d)(ii)(4)(a) – indicated Student's baseline was level 26 when it should have read level 2).
- c. The short-term objectives for Student A's transition goals did not contain a different baseline number, like every other short-term objective within Student A's IEPs (see e.g., Student A Findings of Facts #4(e)(ii)(3)(a) and #4(e)(ii)(3)(b) – Student A's baseline remained at three activities while the target increased by one increment for each short-term objective). The baseline should increase, as the target number increased, so there is no confusion.
- d. The transition section of Student A's IEP did not use correct grammar (see e.g., Student A Findings of Facts #4(f)(ii)(1) – stated Student A “will complete job training at on-the-job training a restaurant”).
- e. Student A's progress report did not align with the progress reported in the IEP (see Investigative Findings #4, Sub-Issue 2).

Moving forward, the District should pay careful attention and proof-read the IEP before finalizing it to ensure it is free of errors and does not contain contradictory information within.

#### *Note 2*

Under the “Special Education and Related Services” statement of Student A's IEPs, it states a number of supports Student A will receive (see Student A Findings of Facts #4(g)(i) and #14(f)(i). In the March 24, 2021 IEP, Student A is to receive support in (1) reading, math, and life skills; (2) supplementary adult support; (3) speech language therapy; (4) occupational; (5) physical; (6) hearing; (7) vision; and (8) orientation and mobility.

Under “special education services,” Student A receives “special instruction” for their reading, math, and life skill needs and speech/language for their speech therapy needs. Under “related services,” Student A receives orientation and mobility support and physical therapy. There was no special education or related services for Student A's occupational therapy, hearing or vision needs.

The District was asked about the missing supports and stated the hearing and vision needs are under the “accommodations/modifications” section of the IEP. Presumably, the District is referring to the use of microphone-hearing assistive technology, enlarged materials, and other accommodations provided to Student A that relate to Student's hearing/vision. The District also stated that the occupational therapy support for Student A is under the “supports for school



personnel" section. It states, "the occupational therapist will be available to [Student A] and the IEP team members regarding [Student A's] self-help and educational fine motor skills."

It is confusing that the IEP states numerous supports Student A needs under the "special education and related services statement" but does not account for some of the needed supports under the corresponding sections of the IEP. Moreover, if Student A is in need of occupational therapy, that support should be listed under related services not "supports for school personnel." The District is cautioned that the special education and related services statement should only include the actual special education and related services supports Student A needs. Any accommodations, modifications, and/or supports for school personnel should either (1) not be included in the statement as one can misinterpret it and be under the incorrect impression that Student A should be receiving additional special education and related services or (2) should not refer to them as "supports" but rather accommodations, modifications, etc. so that it is clear what they actually are.

#### Summary and Conclusion

As Student A's progress reports and PLAAFP are deficient, it is unclear what Student A's level of need is. Notwithstanding, Student A's IEP goals lack objectivity. Thus, the District failed to fully implement the requirements of 92 NAC 007.07. Thus, **corrective action is required.**

#### Corrective Action

1. Pursuant to Student A, Issue #2, the District is required to convene an IEP meeting to update Student A's postsecondary goals. At that IEP meeting, using the updated progress report (required in the corrective action of Student A, Issue #4) and any other relevant information, the IEP team shall:
  - a. Update Student A's PLAAFP so that it gives an accurate, detailed description of Student A's present levels.
  - b. If the IEP team determines that Student A would still benefit from a reading comprehension and math skills goal, the goals should be updated accordingly. If different or additional goals are appropriate, the IEP team shall determine what goals are appropriate and implement same. All IEP goals shall contain enough specificity that the goals are objectively measurable.
  - c. The IEP shall be free from errors and contradictory information.
  - d. The statement under special education and related services shall not include statements of support that do not fall under special education and related services. If additional statements are

included, it should be clear that the “supports” are actually accommodations, modifications, etc.

### **Student A Issue #6**

Did the District provide the Student with a free appropriate public education?  
[92 NAC 51-004.02]

92 NAC 51-004.02 states:

004.02        *The school district or approved cooperative shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.*

Allegations/Parent Position

See allegations/parent position from previous Issues.

District Response

The District asserts that a child receives FAPE if their IEP is reasonably calculated to allow the child to make appropriate progress in light of their unique circumstances. As evidenced by Student A's progress reports, Student A continues to make progress in light of their unique circumstances and has not been denied FAPE (per Letter of Response dated June 17, 2022).

Investigative Findings

See investigative findings from Student A Issues #2, #3, #4, and #5.

Summary and Conclusion

Based on the findings outlined in Student A Issues #2, #3, #4, and #5, the District failed to fully implement the requirements of 92 NAC 51-004.02. **Corrective action required.**

Corrective Action

Corrective action is included in Student A Issues #2, #3, #4, and #5.

### **Student B Issue #1**

Did the District design Student's IEP to ensure it met the child's needs resulting from the disability pursuant to its terms within [92 NAC 51-007.07A2]

92 NAC 51-007.07A2 states:

007.07        *IEP Development*

007.07A       *The IEP shall include:*

- 007.07A2      *A statement of measurable annual goals, including academic and functional goals, designed to:*
- 007.07A2a      *Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; or for preschool children, as appropriate, to participate in appropriate activities, and*
- 007.07A2b      *Meet each of the child's other educational needs that result from the child's disability*

#### Allegations/Parent Position

Parent B stated they were concerned that Placement A was not an appropriate placement for Student B for a number of reasons: (1) Student B would no longer have access to their communication partner; (2) Student B would no longer be involved in unified music and PE classes; (3) neither of the two sites associated with Placement A, and deemed appropriate for Student B, were actually appropriate; (4) one of the sites was far away from Student B's home, raising concerns of transportation and (5) the same site was far away from medical facilities that Student B may need access to (per Letter of Complaint dated May 26, 2022 and telephonic interview with Parent B on July 7, 2022).

Parent B did not raise any concerns regarding the contents of Student B's IEP other than the potential change in placement and the appropriateness of same (per Letter of Complaint dated May 26, 2022).

#### District Response

District contends that Student B's October 11, 2021 IEP was appropriate, measurable, and derived from Student B's educational needs and disabilities. As such, the IEP met the requirements of 92 NAC 51-007.07A2.

It was decided at the IEP meeting, in which the October 11, 2021 IEP was drafted, that Placement A would be an appropriate placement for Student B to attend during the 2022-23 school year. Parents disagreed with this placement because Student B would not have access to their communication partner. To accommodate Student B, District was willing to train additional paraeducators that would be an appropriate fit for Student B. Ultimately, the IEP team came to a consensus and, given Parents strong preference, determined it was in Student B's best interest to continue at the high school and not attend Placement A. Student B's current IEP reflects such placement (per Letter of Response dated June 17, 2022).

#### Investigative Findings

Upon review of Student B's file and discussions with both parties, it became clear that Parent B's complaint in regards to the appropriateness of Student B's IEP was only regarding the appropriateness had Student B's placement been changed to Placement A. At the writing of this report, the parties have agreed that Student B may remain at the District high school and will not be attending Placement A. Student B's IEP reflects same.

As Student B's current IEP accommodates the concerns Parent B noted in the complaint and indicates Student B's placement at the high school, Student B's IEP is appropriately designed to meet their needs resulting from their disability.

#### Summary and Conclusions

The District implemented the requirements of 92 NAC 51-007.07A2 and **no corrective action** is required.

#### Student B Issue #2

Did District provide Student with a free appropriate public education? [92 NAC 51-004.02]

92 NAC 51-004.02 states:

004.02        *The school district or approved cooperative shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.*

#### Allegations/Parent Position

The Parents of Student B asserts that the District predetermined Student B's placement when it insisted on Student B attending Placement A during the 2022-23 school year. As Student B's placement was predetermined, there was a denial of FAPE (per telephonic interview on July 7, 2022).

### District Response

District contends that Student B continues to make progress on each of their IEP goals. The goals are uniquely tailored to Student B's needs based on their disability and needs. Student B's IEP is reasonably calculated to allow them to make progress appropriate in light of their circumstances (per Letter of Response dated June 17, 2022).

### Investigative Findings

The Parents of Student B assert that at the March 2, 2022 IEP meeting the District had already determined that Placement A was the appropriate placement for Student B. The Parents of Student B felt like they did not have a choice where Student B would attend school and no discussion ensued between the IEP team members regarding the other eligible placements. Instead, the District declared Placement A was the appropriate placement and was only willing to discuss what sites within Placement A would be suitable for Student B.

Only two sites were deemed suitable, both of which were "housed" in elementary schools. The Parents inquired as to what Student B's day would look like at the sites. The District was unable to answer the Parents questions but was willing to give a tour of the two Placement A sites.

After much back and forth regarding scheduling, the Parents ultimately decided they were not interested in touring the Placement A sites as they did not think the sites were suitable for Student B.

On April 19, 2022 another IEP meeting was held. The parties were unable to agree where Student B would attend school for the 2022-23 school year.

On April 26, 2022, the District issued a notice stating that Student B could not attend the District high school for the 2022-23 school year because there was no 18-21-year-old program (see Student B Findings of Facts #18), despite the fact that Student B attended the District high school for 2021-22 school year. Additionally, the notice stated that students who complete the required graduation credits transition to Placement A (see Student B Findings of Facts #18).

The contents of the notice raise concern with the District's practices, specifically predetermination, for students who are eligible for the 18-21-year-old program. First, if the District high school does not offer an 18-21-year-old program, why was Student B attending the District high school after they turned 18? Secondly, the District's statement in the notice that students transition to Placement A once they complete their graduation credits is evidence that the District is in fact

predetermining placement for students who are eligible for the 18-21-year-old program (see Investigative Findings for Systemic Issue #1).

On May 18, 2022 another IEP meeting was held. The District conceded to Parents requests that Student B remain at the high school and Student B's IEP was updated to reflect same.

While Parents asserted in the complaint that the District predetermined Student B's placement when it declared Student should attend the Placement A for the 2022-23 school year, Student B's IEP was never updated in regards to that placement. Further, Student B's current IEP reflects the placement that the Parents desired. Thus, the Parents suffered no actual injury.

#### Summary and Conclusions

The District implemented the requirements of 92 NAC 51-004.02 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:

Theresa Hayes, Complaint Specialist  
NDE Office of Special Education  
Nde.speddr@nebraska.gov