

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 22.23.08  
**Complaint Investigators:** REDACTED  
REDACTED  
**Date Complaint Filed:** October 21, 2022  
**Date of Report:** December 20, 2022

### Issues Investigated

1. Did the District implement the Student's Individualized Education Program (IEP), specifically the required services and accommodations related to supervision in the bathroom, during the past 12 months pursuant to 92 NAC 51-007.02?
2. Did the District follow appropriate procedures when proposing or refusing to make changes to the provision of FAPE as described in the Student's IEP during the past 12 months pursuant to 92 NAC 51-009.05?
3. Did the District recruit and hire special education staff who hold appropriate certification and credentials during the past 12 months pursuant to 92 NAC 51 - 010?
4. Did the District appropriately inform all school staff of their responsibilities for implementing the Student's IEP during the past 12 months pursuant to 92 NAC 51 - 007.02D?
5. Did the District include supplementary aids and services into the Student's IEP to allow the student supports needed to participate in field trips during the past 12 months pursuant to 92 NAC 51-007.07C4?
6. Did the District review and revise the Student's IEP in response to bullying incidents during the past 12 months pursuant to 92 NAC 51-007.10E?
7. Did the District respond to the parent's request for an IEP team meeting during the past 12 months pursuant to 92 NAC 51-007.10 and 92 NAC 51-009.05?
8. Did the District respond to the parent's request to access the Student's educational records during the past 12 months 92 NAC 51-009.03?

### Information Reviewed by Investigator

All documents were reviewed but not all were relevant to the issues in the complaint. Note that the specific documents used to make findings and conclusions are cited within each issue.

1. Email from mother to Special Education Director dated January 18, 2022, at 8:35 pm
2. Email from Special Education Director to father dated January 19, 2022, at 7:37 am
3. Email from Special Education Director to mother dated January 19, 2022, at 7:53 am
4. Email from father to Special Education Director and Special Education SLP dated February 28, 2022, at 11:55 am
5. Email from father to Special Education Director dated March 1, 2022, at 6:33 pm

6. Email from Special Education Director to parents dated March 2, 2022, at 7:50 am
7. Email from the father to the Classroom teacher, Special Education SLP, and Special Education Director dated March 3, 2022, at 8:08 pm
8. Email from Special Education SLP to Speech and Language Pathologist dated March 4, 2022, at 8:20 am
9. Email from Speech and Language Pathologist to Special Education SLP dated March 7, 2022, at 12:02 pm
10. Email from Special Education Administrator to Speech and Language Pathologist dated March 7, 2022, at 1:04 pm
11. Email from mother to Special Education Director dated March 28, 2022, at 10:53 am
12. Email from Special Education Director to mother dated March 28, 2022, at 3:00 pm
13. Email from mother to Special Education Director dated March 28, 2022, at 3:26 pm
14. Email from the father to Classroom Teacher and Special Education Teacher dated April 14, 2022, at 11:13 am
15. Email from the mother to the Principal dated April 18, 2022, at 11:36 am
16. Email from the mother to the Principal, Special Education Teacher, and Classroom Teacher dated April 18, 2022, at 6:32 pm
17. Email from the father to Classroom Teacher and Special Education Teacher dated April 22, 2022, at 7:05 am.
18. Email from mother to Special Education Director, Principal, Classroom Teacher, and Special Education Teacher dated April 22, 2022, at 5:05 pm
19. Email from Special Education Teacher to mother and Special Education Director dated April 25, 2022, at 3:19 pm
20. Email from Principal to father dated April 25, 2022, at 5:06 pm
21. Email from father to Principal, and Assistant Principal dated April 26, 2022, at 1:02 am
22. An eight-minute audiotape of a meeting between the parents and persons identified by the parents as Principal and Assistant Principal documents a discussion held on April 27, 2022.
23. Email from father to Principal, Special Education Director, Classroom teacher, Special Education Administrator, Special Education Teacher, Classroom Teacher, and Assistant Principal, dated April 27, 2022, at 3:30 pm
24. Student Physician, Physician Order dated April 28, 2022
25. Email from Special Education Director to mother dated May 13, 2022, at 2:42 pm
26. Email from Special Education Teacher to mother dated May 20, 2022, at 11:57 am
27. Email from mother to Special Education Teacher and father dated May 20, 2022, at 12:42 pm

28. Email from mother to Special Education Teacher, Special Education Director, Ombudsman, and Student and Community Services Chief Officer dated May 23, 2022, at 10:03 am
29. Email from Special Education Director to mother, Special Education Teacher, Ombudsman, and Student and Community Services Chief Officer dated May 23, 2022, at 2:09 pm
30. Email from Special Education Teacher to Special Education Director, mother, Ombudsman, and Student and Community Services Chief Officer dated May 23, 2022, at 4:00 pm
31. A one-minute 57-second audiotape of May 25, 2022, IEP team meeting documents the discussion between the mother and an unidentified school staff person regarding communication.
32. An eight-minute 27-second audiotape of May 25, 2022, IEP team meeting documents the discussion between the mother and unidentified school staff.
33. IEP dated May 25, 2022
34. Email from Father to Principal dated May 26, 2022, at 4:53 am
35. Email from Special Education Director to parents dated May 27, 2022, at 2:52 pm
36. Email from mother to Health Services Director and father dated August 31, 2022, at 3:57 pm
37. Email from Health Services Director to mother, father, Special Education Director, and Ombudsman dated August 31, 2022, at 4:06 pm
38. Email from Principal to father dated September 1, 2022, at 12:06 pm
39. Email from father to Special Education Director dated September 2, 2022, at 12:50 pm
40. Email from Special Education Director to father dated September 2, 2022, at 4:11 pm
41. Email from Principal to parents, Classroom Teacher, Special Education Teacher, Special Education Coordinator, and Special Education Director dated September 26, 2022, at 5:15 am
42. Email from Student Information Services Coordinator to Father dated September 15, 2022, at 9:24 am
43. Email from Father to Student Information Services Coordinator dated September 15, 2022, at 9:41 am
44. Email from Student Information Services Coordinator to Father dated September 15, 2022, at 4:55 pm
45. Email from father to Health Services Director and School Nurse dated September 20, 2022, at 11:24 pm
46. Email from mother to Principal, father, Classroom Teacher, Special Education Teacher, Special Education Coordinator, and Special Education Director dated September 23, 2022, at 10:05 pm.
47. Email from father to Health Services Director dated September 26, 2022, at 1:06 pm
48. Email from father to Health Services Director dated September 27, 2022, at 10:16 am

49. Email from Health Services Director to father dated September 27, 2022, at 3:27 pm
50. Email from mother to Special Education Director dated October 5, 2022, at 9:01 pm
51. Email from Special Education Director to parents dated Oct 7, 2022, at 10:04 am
52. Email from father to Special Education Director dated October 8, 2022, at 10:14 pm
53. Email from Special Education Director to father dated October 10, 2022, at 5:19 pm
54. Email from Special Education Director to parents dated October 12, 2022, at 12:31 pm
55. Email from mother to Principal, Health Services Director, School Nurse, and Special Education Director dated October 12, 2022, at 1:02 pm
56. Email from Special Education Director to mother dated October 12, 2022, at 1:37 pm
57. Email from mother to Special Education Director dated October 12, 2022, at 2:10 pm
58. Email from father to Principal, Superintendent, Ombudsman, Special Education Director, and Health Services Director dated October 12, 2022, at 5:45 pm
59. Email from Special Education Director to father dated October 12, 2022, at 7:33 pm
60. Email from father to Special Education Director, Principal, and Health Services Director dated October 12, 2022, at 11:05 pm
61. PWN dated October 12, 2022
62. Email from father to Special Education Director dated October 13, 2022, at 7:46 am
63. Email from Special Education Director to father dated Oct 13, 2022, at 7:17 am
64. Principal handout regarding October 14, 2022, Nelson's Produce Farm Field Trip, Parental Permission and Release of Liability, and reminder letter
65. Phone message from father to Student Information Services Coordinator dated October 19, 2022, at 8:18 am
66. Email from Special Education Director to mother dated October 19, 2022, at 4:46 pm
67. Email from mother to Special Education Director and Principal dated October 19, 2022, at 9:49 pm
68. Student Physician, physician order dated October 19, 2022
69. Email from Special Education Director to father dated October 20, 2022, at 3:03 pm
70. Email from father to Special Education Director dated October 20, 2022, at 4:20 pm
71. Letter of Complaint received by Nebraska Department of Education on October 21, 2022
72. Email from Public Schools legal counsel to father dated October 21, 2022, at 2:09 pm

73. Email from Special Education Director to parents dated October 21, 2022, at 5:03 pm
74. PWN dated October 21, 2022
75. Email from mother to Student and Community Services Chief Officer dated October 23, 2022, at 5:50 pm
76. Email from Student and Community Services Chief Officer to mother and PE teacher dated October 23, 2022, at 9:45 pm
77. Email from Special Education Director to parents dated October 24, 2022, at 5:47 pm
78. Email from Student and Community Services Chief Officer to parents dated October 25, 2022, at 12:44 pm
79. Email from father to Student and Community Services Chief Officer, dated October 25, 2022, at 1:55 pm
80. Email from father to Special Education Director dated October 28, 2022, at 5:19 am
81. Email from father to Special Education Director dated October 28, 2022, at 6:21 am
82. Email from Special Education Director to father dated October 28, 2022, at 6:17 pm
83. Email from Special Education Director to parents dated November 1, 2022, at 4:48 pm
84. Email from mother to Special Education Director dated November 1, 2022, at 8:04 pm
85. Email from Student Information Services Coordinator to father dated November 2, 2022, at 10:58 am
86. Email from Student and Community Services Chief Officer to father dated November 2, 2022, at 10:57 am
87. Email from father Student and Community Services Chief Officer to dated November 2, 2022, at 11:50 am
88. Health Services Competency Training Documents signed November 2, 2022, and November 14, 2022.
89. Email from Special Education Director to parents dated November 2, 2022, at 1:45 pm
90. Email from mother to Special Education Director dated November 3, 2022, at 12:25 pm
91. Email from Special Education Director to parents dated November 13, 2022, at 12:57 pm
92. Email from father to Special Education Director, Elementary Principal dated November 13, 2022, at 4:42 pm
93. Email from Student Information Services Coordinator to Special Education Director dated November 14, 2022, at 11:37 am
94. Letter of Response from the district dated November 18, 2022
95. Response to Questions from the district dated December 5, 2022
96. Response to Questions from complainants dated December 7, 2022

97. Email from Father to Student Information Services Coordinator dated December 7, 2022, at 6:10 am
98. School Board Policy 5415
99. Response to Questions dated December 7, 2022
100. Response to Final Questions from Complainants dated December 9, 2022
101. The Office of Special Education and Rehabilitative Services (OSERS) published a Dear Colleague Letter to educators and stakeholders on the matter of bullying on August 20, 2013.
102. Student Attendance Records School Year 2021-2022 and School Year 2022-2023
103. District health aide job description
104. Calming Strategy Visual undated
105. Parent Contact Logs dated October 1, 2021 – November 16, 2022
106. List of district IEP team members teaching or professional licenses
107. List of district staff receiving a copy of the student's IEP during the 2022-2023 school year
108. Community Services Logs, referral dates of April 24, 2022, with a review date of 6/14/2022
109. Restroom Log Sheets, dated August 17, 22 – October 31, 2022
110. Daily Log, dated October 20, 2021 – November 11, 2022
111. School-Home Communication Logs dated October 20, 2021 – November 11, 2022
112. Resource Teacher Schedule 2022-2023 School Year
113. Student Support Schedule, undated
114. Restroom Schedule, undated
115. IEP dated August 18, 2021, amended March 2, 2022
116. Table of staff receiving the Student's IEP
117. PWN dated December 6, 2022

In addition to the document review, the following persons were interviewed by telephone as noted below:

- On December 7, 2022:
  - Health Aide at the Elementary School
  - Special Education Teacher at the Elementary School
  - Health Services Director for the District
  - Elementary Building Principal during the 2021-22 school year
  - Special Education Paraprofessional at the Elementary School
  - School Nurse at the Elementary School
  - IEP Facilitator
- On December 8, 2022:
  - District's Student Information Systems Coordinator
- On December 9, 2022:
  - Elementary Building Principal during the 2022-23 school year

## **Introduction**

This report is in response to a complaint filed with the Nebraska Department of Education (NDE) on behalf of the Student by the Parents.

The Individuals with Disabilities Education Act (IDEA) and the Nebraska Administrative Code give NDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by NDE (34 C.F.R. 300.153(c); 92

NAC 51-009.11B5. In this case, only allegations occurring on or after October 21, 2021, were investigated.

It is noted that the Parents have made additional allegations against the District throughout the investigation. Only allegations included in the Letter to the Parents dated October 21, 2022, have been investigated and are included in this report. The Parents are advised to follow the appropriate procedures with the NDE to address any new allegations of noncompliance with the IDEA and Rule 51.

## **Findings of Fact**

The following information was obtained through the interviews and documentation review and is relevant to all of the allegations. Information prior to the investigatory timeline is included for context but not considered for the summary or conclusions for the issues identified.

This investigation involves a seven-year-old student currently enrolled in the first grade at an Elementary School in the district. According to the Parents, the Student is diagnosed with "autism, receptive/expressive language disorder, unspecified disruptive impulse control, and conduct disorder, seizure disorder, wandering in diseases – elopement, aphasia, urinary tract infections, retention of urine, urinary and bladder incontinence, and abnormalities of gait and movement." In addition, the Student is diagnosed with an inherited genetic defect on the EIF2S3 gene.

The Student was initially determined eligible for early childhood special education services beginning on the student's third birthday under the disability category of Other Health Impaired (OHI). During the 2017-18 school year, the student received case management, occupational therapy, and speech therapy through home-based visits. During the 2018-19 school year, the Student transitioned to an Early Childhood Classroom and received Early Childhood Special Education, speech therapy, and transportation services at another Elementary School. The Student continued to be entitled to receive these services during the 2019-20 and 20-21 school years and began attending kindergarten at The Elementary School during the 2021-22 school year.

The Student's most recent reevaluation was conducted on June 3, 2021. At that time, the Student was found to meet the eligibility criteria as a student with Autism. The Student displays significant delays with social communication and interaction, engagement in repetitive activities, resistance to environmental changes, changes in daily routines, and unusual response to sensory stimulation. In addition, delays in the

Student's strength, balance, range of motion, and motor planning were noted. Per the Parent report, the Student also displays significant aggressive behaviors, and prolonged outbursts, and will attempt to elope from the family.

The annual IEP for kindergarten was developed on August 18, 2021, with the Parents in attendance. This IEP allowed for a shortened school day beginning at 11:45 a.m. until 4:05 p.m. during the first two weeks of school so that "the Student's bedtime can gradually be adjusted, and the Student will gradually be able to extend the Student's time at school." The IEP included goals for motor skills to access the Student's educational environment, math, reading, social communication, and social/emotional skills. This IEP required 90 minutes per day of specialized instruction in the general education setting; 30 minutes of speech/language therapy eight times per month; 30 minutes of physical therapy (PT) four times per term; and 30 minutes of occupational therapy (OT) two times per term. This IEP also included a behavior intervention plan (BIP) to address elopement as well as a safety plan requiring the Student to be accompanied by an adult (not the classroom teacher) at all times.

However, the Parents reported that the Student was unable to increase the length of the Student's school day throughout the entire first semester. Documentation and interviews found the principal contacted the Parents on October 4, 2022 by telephone to discuss starting the transition towards a full-day schedule but the Parent did not believe the Student was ready.

Following the holiday break, the Parents did not send the Student back to school at all because of the brother's "critically low neutrophil count, primary immune deficiency, and COVID case uptick." The mother emailed the kindergarten teacher on January 5, 2022, regarding this decision and then shared a medical excusal with school staff on January 18, 2022. The parents indicated they were not going to homeschool the Student, instead requesting paper/pencil copies of schoolwork be provided for the Student.

The August 18, 2021, IEP was amended on March 2, 2022, per the physician's recommendation to allow the Student to attend a shortened school day due to the need for additional sleep in the mornings. On March 8, 2022, the Student began attending kindergarten beginning from 10:40 a.m. until 4:05 p.m. No other changes were made to the IEP at this time.

The District reported the Student's attendance during kindergarten was as follows:

- Total school days = 168
- Modified days of attendance = 78
- Medically excused days = 53
- Absent unexcused days = 29
- Bereavement days = 7
- Full attendance = 1



On May 25, 2022, the annual IEP was reviewed and revised with the Parents in attendance. The IEP continued to include goals for motor skills to access the educational environment, math, reading, social communication, and social/emotional skills. This IEP required 90 minutes per day of specialized instruction in the general education setting; 30 minutes of speech/language therapy eight times per month; 30 minutes of physical therapy (PT) four times per term; and 30 minutes of occupational therapy (OT) two times per term. This IEP continued to include a safety plan requiring the student to be accompanied by an adult to/from the bathroom at all times and was updated to include a specific bathroom schedule and bathroom procedure.

The BIP was deleted from the IEP because the present level of performance noted that no incidents of eloping had occurred during the 2021-22 school year. In addition, the IEP team agreed that the Student would begin attending school full days beginning in first grade during the 2022-23 school year.

During the first quarter of the 2022-23 school year, the Parents shared multiple concerns with school staff and made numerous requests for changes to the provision of FAPE to the student. On November 9, 2022, a facilitated IEP team meeting was held to review and revise the student's IEP in light of the Parents' concerns. However, no consensus was reached, and a second facilitated IEP team meeting was held on December 5, 2022, to continue the discussion but again, no consensus was reached for a new annual IEP. However, the IEP team agreed to amend the May 25, 2022, IEP to clarify the level of support the Student would require with restroom procedures.

A third facilitated IEP is planned for January 2023 to continue the discussion and process of reviewing, revising, and developing a new annual IEP for the student.

#### **Issue # 1**

Did the District implement the Student's IEP, specifically the required services and accommodations related to supervision in the bathroom, during the past 12 months pursuant to 92 NAC 51-007.02?

92 NAC 51-007.02 states:

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

#### *Allegations/Parent Position*

The Parents reported that the district has repeatedly failed to follow the student's IEP in regard to toileting. The Parents explained the Student's IEPs in effect during the past 12 months both require an adult to accompany the Student in the restroom at all times and to wipe the Student. The most current IEP also includes a very specific and detailed restroom plan based on the physician's orders.

The Parents expressed frustration with the school staff's inability to accurately and consistently perform the duties listed in the IEP. The Parents reported the district staff has

repeatedly failed to appropriately wipe the Student after using the restroom and refused to change the Student's urine-soaked clothes on several occasions. The Parents indicated they have audio taped conversations with school staff where they admit they did not wipe the Student during the 2021-22 school year.

The Parents provided four specific dates as examples of the District's noncompliance with following the Student's IEP during the past 12 months:

- On April 12, 2022, the Student was unsupervised in the restroom when another student turned off the lights
- The Parents reported that District staff did not even start wiping the Student until April 14, 2022
- On October 10, 2022, the Student was sent home in urine-soaked clothes with toilet paper in [the Student's] private parts
- On October 13, 2022, the Health aide refused to change the Student's clothes following a toileting accident

The Parents reported the Student has suffered from recurrent urinary tract infections when the Student attended school during the past 12 months. Since the beginning of the 2022-23 school year, the Student has had four urinary tract infections and the Parents believe these infections are the direct result of the staff's refusal to follow the restroom plan described in the IEP.

#### *District Response*

The District reported the Student's IEPs have been implemented as written during the past 12 months. The District staff indicated they have made good faith efforts to provide the services and accommodations required by the Student's IEPs in order to meet the Student's health care needs. The District provided copies of staff and Student schedules as well as the Student's restroom log and the communication log to document these ongoing efforts.

The District believes the school staff has responded to the Parents' concerns by considering the physician's orders when reviewing and revising the Student's IEPs during the past 12 months. They are currently participating in a facilitated IEP process with the Parents in order to enhance communication and clarify their concerns for the Student's health and safety while at school.

#### *Investigative Findings*

Information from the Background is incorporated herein by reference.

Interviews and documentation showed there were two IEPs in effect during the past 12 months. (Item # 33 and Item #115)

The first IEP was developed on August 18, 2021, and amended on March 2, 2022. The Parent and Caregiver Concerns section at the present level includes the following concerns related to self-help skills:

- The Student's Parents have expressed concerns about who will be able to assist [the Student] with self-help, self-care skills, and to problem solve when there are educational and behavioral challenges or frustrations
- Participation in self-help routines such as restrooming (the Student will need adult assistance)

The Educational Needs section at the present level includes the following academic, developmental, and functional needs related to the Student's self-help skills:

- Restroom assistance: The Student may not report that [the Student] needs to use the restroom so staff should have [the Student] try regularly. The Student will need assistance wiping. The Student should not go to the restroom without an adult.

This IEP requires specialized instruction and speech/language therapy in the general education setting OT and PT as related services as well. The District staff reported that the IEP team determined that the restroom assistance could be provided by any staff member and did not need to be a nurse, so no nursing services were added. Health services were not added to the IEP because the restroom assistance was due to a developmental need and not a health need.

The second IEP in effect during the past 12 months was developed on May 25, 2022, and included the same concerns as was previously noted in the August 18, 2021, IEP.

The Educational Needs section in the present level of this IEP includes a very specific schedule and procedure related to using the restroom as noted below:

- Set Restroom Schedule
  1. Upon days arrival
  2. Approximately 2 hours after arrival
  3. After lunch time (depending on the class schedule)
  4. Approximately 2 hours after lunch
  5. 15-10 minutes before dismissal

The Student is also encouraged to advocate to use the restroom anytime [the Student] may need.

- Restroom Procedures
  - An adult is to always accompany the Student in the restroom/doctor's note on 4/28/22
  - The Student may attempt to wipe self first as learning personal hygiene steps, but it must always be followed up by an adult who wipes the Student
  - An adult is to always wipe the Student at each restroom visit/doctor's note on 4/28/22

- An adult is to only use wipes (provided by the family) to wipe the Student in the restroom

This IEP also includes a Safety Plan which requires "Adult support at all times to/from and in the restroom."

This IEP continues to require specialized instruction and speech/language therapy in the general education setting as well as OT and PT as related services. The District staff once again reported that the IEP team determined that the restroom assistance could be provided by any staff member and did not need to be a nurse, so no nursing services were added. Health services were not added to the IEP because the restroom assistance was due to a developmental need and not a health need.

During the first quarter of the 2022-23 school year, the Parents shared multiple concerns with the Elementary School staff regarding supervision in the bathroom and following the restroom procedures both verbally during phone calls and in writing via emails. The mother took the Student home on the morning of October 11, 2022. (Item #102) On October 12, 2022, the Parents and the Special Education Director agreed to amend the Student's IEP to grant the Parents' request for supervision at school by a nurse or home health aide for the remainder of the week, October 13 and 14, 2022. (Item #61) However, the Student was absent from school on both days although the mother and Student met the class at Nelson's Farm for the field trip on October 14, 2022. (Item #110 and Item #111)

The Student did not return to school the following week and on October 21, 2022, The Director of Special Education again agreed to amend the May 25, 2022, IEP to honor the Parents' request to clarify that the adult who is with the student during the school day is an "additional adult" to the classroom teacher and other support staff in the room. (Item #74) Prior written notice was provided to the Parent on October 21, 2022; however, the Student never returned to the classroom as of October 28, 2022, when the complaint was filed with NDE.

The Health Aide for The Elementary has been employed in that position since December 21, 2021. The Health Aide stated that she works with all children in the building and noted the school nurse is only assigned to the building one day per week. Both the School Nurse and the Health Services Director report that the School Nurse is only assigned to the Elementary on Wednesdays and reports to another elementary school on the other school days.

The Health Aide reported the Student used the restroom in the kindergarten/first-grade hallway until January 2022 when the Parents kept the Student home for medical reasons. When the Student was able to return to school in March 2022, the Student began using the restroom in the Nurse's Office and the Health Aide was responsible for assisting the special education paraprofessional anytime the Student used the Nursing Office restroom. The Health Aide indicated the restroom log and communication logs were kept by the special education paraprofessional and she only had direct contact with the Student if the special education paraprofessional had a substitute.

Beginning in the 2022-23 school year, the Parents provided wipes that were to be used with the Student whenever the Student used the restroom. Boxes of wipes and gloves are placed in all of the restrooms the Student may use including the restroom in the hallway between the kindergarten and first-grade classrooms; the restroom in the academic hallway; the restroom near the gym; as well as the restroom in the Nurse's Office.

The Health Aide indicated that on October 13, 2022, the building principal and the Student's mother came to the Nurse's Office to obtain the Student's extra set of clothing because the Student's underwear was wet. The mother was offered the opportunity to assist the Student to change clothes; however, she requested that the Health Aide change the Student's clothes and check for any signs of irritation due to the wet underwear. The Health Aide refused because she did not believe this duty was in her scope of practice as a Health Aide. The mother disagreed and the building principal intervened and had the Parent change the Student's clothes in his office area.

The special education paraprofessional assigned to provide restroom assistance and supervision during the 2021-22 school year was interviewed. She reported assisting the Student in the bathroom of the kindergarten / first-grade hallway as well as the nurse's office during that time frame. She indicated that she verbally reminded the Student of the steps for wiping and only physically assisted when the Student had an accident. The special education paraprofessional did not recall any instance when the Student was alone in the restroom and the lights were turned off during the 2021-22 school year.

Beginning in the 2022-23 school year, the special education paraprofessional reported that she followed the bathroom schedule and the bathroom procedure as described in the Student's IEP. She described having a clipboard containing the bathroom log and a copy of the physician's order describing the procedure to be followed whenever the Student used the restroom and reported both the schedule and the procedure to use wipes were followed daily when the Student was in attendance.

The special education paraprofessional reported that the bathroom and communication logs on October 10, 2022, show that the Student used the restroom at the following times: 8:54 am, 9:40 am, 10:55 am, 12:30 pm, 2:00 pm, and 3:30 pm. The Student told the staff members assisting [the Student] that it hurt when [the Student] went to the bathroom, but it did not hurt when [the Student] was wiped at the 2:00 pm bathroom break. Staff documented this concern in the communication log. (Item #110 and Item #111)

The special education paraprofessional reported the Student was not in the first-grade classroom on October 13, 2022, and she has no knowledge of that situation. The special education paraprofessional stated that she transferred to another position within the District and no longer works with the Student as of November 11, 2022.

The School Nurse reported she was not at the Elementary School during any of the four dates in question. She reported that while she was aware of the Student during the

2021-2022 school year she was not involved in any health or nursing services beyond obtaining the Student's health records. In April, she became more involved when the Parents questioned the quality of care in regard to the Student being wiped.

The Health Services Director states she has helped the student in the restroom on several occasions during the 2022-23 school year when the Student began using the Nurse's Office restroom. She states as a nurse she is comfortable performing the restrooming procedures; however, in a school setting, the procedures being requested with wiping would necessitate a doctor's order. In fact, one of her roles during the 2022-23 school year was collaborating with the medical doctor to write the October 19, 2022 doctor's note so that it could be followed with fidelity in the school setting.

Finally, the School Nurse reported she never observed any time that the student's underwear were dirty or wet. She reported that she is aware of signs of urinary tract infections and never saw any signs of a urinary tract infection nor were any concerns reported to her by school staff.

The special education teacher/case manager for the Student for the past twelve months was interviewed. The special education teacher/case manager reported that during the Student's first-grade year she met the student when the Student arrived in the morning and walked with the Student to the restroom and assisted the Student, then walked with the Student to the classroom.

She reported that during the 2021-2022 school year she made sure the student made it safely to the bathroom and assisted the Student in pulling down their pants and sitting on the toilet. She states that the student would often immediately urinate and want to immediately get up. The special education teacher/case manager reported that she would often stay close by to remind the Student to finish and wipe. She helped the student to wipe if the student rushed and then assisted in pulling up their pants. She reported the student did not report any pain or concerns to her.

She reported that when the procedures for toileting changed, they were updated and that those procedures were implemented as outlined. She reported that she would check in with the special education paraprofessional and the Health Aide to ensure they were consistent. The special education teacher/case manager reports she does not have any direct knowledge of the four incidents the Parents alleged.

The principal during the 2021-22 school year, also reported the Student regularly used the bathroom in the kindergarten / first-grade hallway and only began using the Nurse's Office restroom after the IEP was amended on March 2, 2022. The principal confirmed that the Health Aide's job is to work with all students in the building and that the health aide was never assigned to work with the student in a 1-1 situation. Adult supervision was provided by the team of the Kindergarten Teacher; the Kindergarten Paraprofessional; and the Special Education Paraprofessional.

The principal noted the IEP in effect during the 2021-22 school year only stated that the Student "will need assistance wiping" and that the Student "should not go to the

restroom without an adult". The type of assistance required was not specified so verbal assistance was provided to guide the Student when the Student used the bathroom; physical assistance was only provided when the Student had a toileting accident. The principal reported that the principal was unaware of any incident where the Student was in the restroom alone and the lights were turned off.

The principal reported the school team providing supervision and bathroom assistance consisted of the special education teacher; the special education paraprofessional, and the first-grade classroom paraprofessional.

Beginning on November 12, 2022, following the paraprofessional's transfer, the principal arranged for the special education teacher, two special education paraprofessionals; and a substitute paraprofessional, to support the Student.

The principal also reported no knowledge of the Student being sent home in urine-soaked underwear on October 10, 2022. The principal was unaware that the Student complained of "burning" when urinating and this was communicated to the parents in the Daily Log on this date.

The principal indicated that on October 13, 2022, the Student's mother and the Student were in the office from approximately 8:40 a.m. until 1:00 pm. During that time, the principal attempted to address the mother's concerns through conference calls with other District staff including the director of special education. At some point, the Student used the bathroom with the mother's supervision and ended up with wet underwear. The principal accompanied the mother and Student to the Nursing Office in order for the mother to assist the Student to change into dry clothes.

However, the principal stated that the mother wanted the Health Aide to not only change the Student's clothes but to also check for any signs of irritation due to the wet underwear. The health aide refused this request. The health aide and the mother disagreed, and the principal had the mother and Student come to the principal's office as a private location the parent could use to change the Student's clothes.

Communication logs for the dates the parent reference in their complaint found:

- The April 12, 2022 communication log includes a written note from the Parents stating, "Can we please double-check that the Student's bottom is wiped well? Yesterday the Student had allot [sic] of poop in the Student's underwear. The Student claims the Student wipes themselves at school. The Student has skin breakdown in the butt crack so we need to all make sure the Student is clean and dry." School staff replied to the note on that same date stating, "Yes, we will double-check with the Student in the restroom."

The Parents responded to the school staff's reply on April 13, 2022, by stating, "No do NOT double-check with the Student. The Student requires an adult to wipe the Student's bottom. It is not optional for an adult to wipe them. Dr. note is on file."

- The communication logs written during the 2021-22 school year dated from October 20, 2021, through April 22, 2022, do not include any reference to the Student being left alone in the bathroom or with the bathroom lights being turned off
- The October 10, 2022 communication log includes two notes related to the restroom. The first was written by the paraprofessional and states, "When we took the Student to the bathroom at 2:00 the Student told us that it burned when the Student peed." The second was written by the special education teacher and states, "We are using the nearest restroom as per the Doctor's request"
- The communication log from October 13, 2022 states, "Student and family at school on and off from 8:40 am to 1:00 pm. The student never went to class."

An eight-minute audiotape of a meeting between the Parents and persons identified by the Parents as the principal and an assistant principal documents a discussion held on April 27, 2022. The parties are discussing the following statement in the March 2, 2022, amended IEP: The Student will need assistance wiping. The Student should not go to the restroom without an adult. The mother and the other persons do not have the same understanding of what "assistance wiping" means, includes, or "looks like" for this particular Student. (Item #22)

An eight-minute 27-second audiotape of the May 25, 2022, IEP team meeting documents the discussion between the mother and unidentified school staff. The mother asks why there is current documentation of an adult wiping the Student after the Student used the bathroom and there is no documentation for the rest of the school year. A school staff member responds indicating there was a misunderstanding between what the Parent believed was happening for "assistance wiping" and what the school staff believed was required. The school staff states that the Student has been wiped after going #2 since the beginning of the school year but school staff have only recently started wiping the Student after going #1 in accordance with the doctor's note clarifying the expectations provided to the district at the end of April. (Item #32)

There are two copies of physician orders regarding the Student using the bathroom during the past 12 months. (Item #24 and Item #68) The chart below summarizes the dates and recommendations for each order:

Date / Physician	Summary of Recommendations
April 28, 2022 / Student's medical doctor	An adult needs to wipe the Student after the Student goes to the bathroom at school. The Student needs supervision anytime the Student goes to the bathroom at school.



Date / Physician	Summary of Recommendations
<p>October 19, 2022 / Student's medical doctor developed in consultation with the School Nurse</p>	<p>Please have the Student go to the bathroom as soon as possible, in the nearest location to where the Student is</p> <ol style="list-style-type: none"> <li>1. The mother has provided Pampers sensitive wipes and gloves to be utilized when assisting the Student.</li> <li>2. Please observe when wiping from front to back to ensure appropriate hygiene. Please be sure to gently wipe one labium, then the other.</li> <li>3 Please allow the Student to air dry for 30 seconds before pulling up dry underwear.</li> <li>4. If the Student has any pain with urination, please inspect for any redness, swelling, or foreign body like toilet paper.</li> <li>5. Please notify the Student's Parents or home health care provider if the Student is indicating any discomfort.</li> <li>6. Please ensure the Student's clothing is dry as damp clothing will contribute to pain and redness. The mother will supply changes of clothes.</li> </ol>

*Summary and Conclusions*

92 NAC 51-007-02 states "School districts or approved cooperatives must provide special education and related services to a child with a disability in accordance with the child's IEP."

In this case, there were two IEPs in effect during the past 12 months which were required to be implemented as written.

The first IEP dated August 18, 2021, stated, "The Student will need assistance wiping. The Student should not go to the restroom without an adult." This IEP was in effect during the Student's kindergarten year during the 2021-22 school year.

The Parents reported the Student was left unsupervised on April 12, 2022, and another Student turned off the lights in the bathroom. No documentation was found to support this allegation in the daily communication logs or in staff interviews.

Interviews and documentation support a finding that the District did provide adult supervision in the bathroom throughout the school year.

The Parents allege that the school staff failed to wipe the Student as required by the IEP during the 2021-22 school year. Interviews and documentation found that the Parents and the school staff had very different understandings of what "the Student will need assistance wiping" required. The Parent believed this meant an adult would wipe the Student after using the bathroom every time. The school staff interpreted this to mean verbal directions to wipe for #1 and physical assistance to wipe for #2.

This miscommunication began to be clarified at the April 27, 2022 meeting between the Parents and the principal. The Parent provided physician's orders on April 28, 2022, which stated "An adult needs to wipe the Student after the Student goes to the bathroom at school. The Student needs supervision anytime [the Student] goes to the bathroom at school." Interviews and documentation show the school staff then changed their practice and began to wipe the Student after every bathroom use as the Parents requested.

While this miscommunication is unfortunate, the plain language in the IEP for "The Student will need assistance wiping. The Student should not go to the restroom without an adult" was implemented by staff at the Elementary School. It is noted that when it became clear that the Parent and district staff had different understandings of what was required by the IEP, the Parent proactively obtained clarification from the physician and the LEA staff changed their practice to align with the Parents' request.

At the May 25, 2022, IEP team meeting, the mother was still concerned that school staff had not been wiping the Student the way the mother wanted throughout the entire school year. In order to clarify the expectations, the IEP team added a bathroom schedule and a specific, step-by-step plan for the adult assistance needed by the Student. This plan required:

- An adult is to always accompany the Student in the restroom/doctor's note on 4/28/22
- The Student may attempt to wipe self first as learning personal hygiene steps, but it must always be followed up by an adult who wipes the Student
- An adult is to always wipe the Student at each restroom visit/doctor's note on 4/28/22
- An adult is to only use wipes (provided by the family) to wipe the Student in the restroom

The May 25, 2022, IEP was in effect for the Student in first grade during the 2022-23 school year. Interviews and documentation support a finding that the District did provide adult supervision in the bathroom to date during this school year.

The Parents allege the district failed to follow the step-by-step bathroom procedure because the Student has suffered from four urinary tract infections this school year. The Parents specifically refer to an incident on October 10, 2022, when the Student was sent home in urine-soaked clothes with toilet paper in the Student's private parts and another incident on October 13, 2022, when the Health Aide refused to change the Student's clothes following a toileting accident.

Interviews and documentation found no evidence to support the allegation that the Student was sent home in urine-soaked clothes with toilet paper in the Student's private parts. The communication log dated October 10, 2022, reflects that the bathroom schedule was followed, and that school staff informed the Parents regarding the Student's report of discomfort when urinating on that date.

The mother and Student came to the school on Tuesday, October 13, 2022, to meet and share ongoing concerns in regard to the bathroom procedure with the principal. Interviews and documentation show this meeting lasted approximately four hours and the Student did not participate in school on that day.

Sometime during the meeting, the Student needed to use the restroom and the mother accompanied and supported the Student's use of the bathroom. Unfortunately, the Student's underwear was wet, and the Student needed to be changed. The Parent requested the health aide to change the Student's clothes and check for redness and irritation and the health aide refused this request.

The principal then provided the Parent with a private location for the mother to change the Student's clothes. While it might have been a nice gesture for the district staff to change the Student's clothes, there is no obligation for the LEA to implement the IEP for a Student who is not attending school.

Based on the foregoing, the district implemented the requirements of 92 NAC 51-007-02 in regard to providing the required services and accommodations related to supervision in the bathroom as was required by each of the IEPs in effect at that specific time during the past 12 months and **no corrective action is required.**

## **Issue # 2**

Did the District follow appropriate procedures when proposing or refusing to make changes to the provision of FAPE as described in the Student's IEP during the past 12 months pursuant to 92 NAC 51-009.05?

92 NAC 51-009.05 states:

- 009.05A *Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:*
  - 009.05A1 *Proposes to initiate or change the identification, evaluation, or educational*

*placement of a child or the provision of a free appropriate public education; or*

009.05A2

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

#### *Allegations/Parent Position*

The Parents reported they have made numerous requests for changes to the Student's IEP in emails and during discussions at IEP team meetings; however, the District has refused to honor these requests.

#### *District Response*

The District acknowledged prior written notice (PWN) was not always provided to the Parent as required by 92 NAC 51-009.05A. The special education director stated in an email to the Investigator dated December 9, 2022, at 4:33 pm, "PWN was not issued for the amendment as the changes did not result in a change of the student's identification, evaluation, or placement. In reviewing the documents for this investigation, I have determined that we should have issued a PWN to document all the things the IEP team considered during the May 25, 2022, IEP."

The special education director also explained, "The Parents frequently request PWNs as a way to document agreements - in October we used them as a way to document the adjustment in the specifics of restrooming procedure until an IEP meeting could be held. This allowed them to feel comfortable with sending the Student back to school."

#### *Investigative Findings*

Information from the Background and Issue #1 are incorporated herein by reference.

The LEA provided the Parents with two PWNs during the past 12 months which ended on October 21, 2022, per the filing of the child complaint. The first was dated October 12, 2022, and proposed "sending a home health aide or nurse with the Student to school on October 13 and 14, 2022 to perform any restroom needs or medical care the Student requires. (Item #61)

The special education director noted the PWN was frequently used "to document agreements with the Parents." The PWN dated October 12, 2022, appears to be documenting such an agreement; however, no amendment was made to the May 25, 2022, IEP to reflect this change.

The second PWN was provided to the parents on October 21, 2022, and proposes to "provide an adult with the student at all times during the school day. This will be an adult in addition to the classroom teacher and other support staff in the classroom." (Item #74)

Numerous audiotapes pertaining to adding additional adults to support the Student were reviewed; however, the persons speaking did not identify themselves, so it was unclear as to who was participating in the discussions.

Numerous emails were also reviewed between the Parents and a variety of the district staff. This documentation shows the Parents made multiple requests for changes in services, placement, and the provision of a free appropriate public education (FAPE) for the student. The emails show some of these changes were requested during IEP team meetings and discussed; however, no PWNs refusing any Parents' requests were provided. Further, the emails show that other changes were requested outside of the IEP meeting process, and it is unclear if each request was actually discussed at a subsequent IEP team meeting.

The August 18, 2021, IEP was amended due to medical information shared by the Parents on March 2, 2022, through an agreement between the Parents and the special education director, acting as the LEA representative. This change resulted in the Student attending school for partial days instead of full days but did not result in a change in the amount, location, frequency, or duration of the special education and related services provided to the Student.

On May 25, 2022, the IEP team proposed the deletion of the BIP to address eloping behavior because data showed the Student had made no attempts to leave the classroom or school building during the 2021-22 school year. In addition, this IEP changed the amount of time the student would be attending school from partial days to full days which impacted the amount of special education support which would be needed to implement adult supervision at all times as well as the updated bathroom procedure.

It is noted that the Parents and the District are currently participating in a facilitated IEP process and that an IEP team meeting was held on December 5, 2022. As a result of that meeting, the district provided the parents with a PWN proposing changes to the IEP discussed at that meeting. (Item # 117)

#### *Summary and Conclusions*

92 NAC 51-009.05A requires that LEAs provide appropriate prior written notice to the parents when proposing or refusing to make changes to the identification, evaluation, educational placement, or provision of FAPE to the student.

In this case, the LEA acknowledges it has failed to comply with this requirement for this student.

In addition, 92 NAC 51-007.09E allows the school district or approved cooperative and the parent of a child with a disability to make changes to the child's IEP after the annual IEP meeting for a school year by developing a written document to amend or modify the child's current IEP if they are in agreement to not convene an IEP meeting for the purposes of making those changes. 92 NAC 51-007.09F requires that any changes to the annual IEP may be made by amending the IEP rather than redrafting

the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

In this case, in an attempt to appease the Parents and make them feel "comfortable," the district failed to follow the appropriate procedures when it issued a PWN for an amendment to the student's IEP "until an IEP meeting could be held."

Based on the foregoing, the District failed to fully implement the requirements of 92 NAC 51-009.05A and has displayed a fundamental misunderstanding of the IEP amendment process described in 92 NAC 51-007.09E-F. Thus, the following **corrective action is required**.

#### *Corrective Action*

1. No later than February 1, 2023, the District will conduct a training for all licensed and certificated special education staff and administrators working at The Elementary School regarding the Rule 51 requirements related to amending an IEP as well as when and how to provide appropriate PWN.
  - a. No later than February 15, 2023, the district will provide the NDE with the training materials for approval.
  - b. Within 10 days of the training, the district must provide a copy of the sign-in sheet documenting who attended the training along with their role

#### **Issue # 3**

Did the District recruit and hire special education staff who hold appropriate certification and credentials during the past 12 months pursuant to 92 NAC 51 - 010?

92 NAC 51-010 states:

51-010.01 *School districts and approved cooperatives shall ensure that all personnel necessary to carry out this Chapter are appropriately and adequately prepared and trained including that those personnel have the content knowledge and skills to serve children with disabilities, subject to the requirements of Section 2122 of the Elementary and Secondary Education Act of 1965.*

#### *Allegations/Parent Position*

The Parents alleged that the staff assigned to work with the Student were not qualified to meet the Student's specific needs, especially the Student's health needs. They stated that the school nurse's license was not current and that the staff have not been appropriately trained on how to properly implement the Student's IEP.

#### *District Response*

The District responded that all staff working with the student as a part of the IEP team were currently and appropriately credentialed or certified for their respective roles. The District stated that they work closely with the state to ensure they follow the guidelines for qualified staff. Further, their health and nursing staff were not listed as direct service

providers on the IEP, nor did they have responsibilities for implementing the IEP goals and objectives.

*Investigative Findings*

Information from the Background and Issues #1 and #2 are incorporated herein by reference.

Two IEPs were in effect during the past twelve months and the staff providing services dictate the staff that is investigated for appropriate qualifications. The school nurse is not listed on any IEP for the past twelve months (Item #33, Item #115).

The first IEP was developed on August 18, 2021, and amended on March 2, 2022, and lists the following service providers: Physical Therapist, Physical Education Teacher, Kindergarten Teacher, Special Education Teacher, Speech/Language Pathologist, Occupational Therapist, and Physical Therapist (Item #115).

The second IEP lists a Start Date of May 26, 2022, and lists the Physical Therapist, Physical Education Teacher, Kindergarten Teacher, Special Education/Resource Teacher, Speech/Language Pathologist, Occupational Therapist, and Physical Therapist as service providers (Item #33).

The table below lists the staff providing the services for the Student during the past twelve months along with their role, license, certificate, and date of expiration (Item #95 and Item #106).

<b>Service on IEP Team</b>	<b>Certification or licensure</b>	<b>Expiration</b>	<b>Endorsements</b>
Speech and Language Pathologist	Initial Teaching	8/31/2025	Speech-Language Pathology B-21
General Educator	Standard Teaching	8/31/2023	Elementary K-6; Early Childhood Ed PK-3
General Educator	Professional teacher	8/31/2023	Elementary K-6
Special educator	Standard Teaching	8/31/2024	Elementary K-6; SpEd Generalist K-6

<b>Service on IEP Team</b>	<b>Certification or licensure</b>	<b>Expiration</b>	<b>Endorsements</b>
Physical Therapist	Board Certified Clinical Specialist	6/30/2029	Pediatric Certificate
Physical Therapist	Board Certified Clinical Specialist	6/30/2031	Pediatric Certificate #PE210017
Occupational Therapist	American Occupational Therapy Association	6/30/2024	Certification in Pediatrics
Occupational Therapist	Nebraska License #1315	8/1/2024	Official NBCOT Certification
Physical Education Teacher	Initial Teaching	8/31/2026	Health & PE PK-12; Coaching 7-12,
Guidance Counselor	Professional Teaching	8/31/2032	School Counselor PK-12; Elementary K-6; Instructional Tech Leadership PK-12

*Summary and Conclusions*

According to 92, NAC 51-010.01 school districts shall ensure that all personnel necessary to implement the IEP are appropriately and adequately prepared and trained including that personnel have the content knowledge and skills to serve children with disabilities, subject to the requirements of Section 2122 of the Elementary and



Secondary Education Act of 1965. Further, 92 NAC 51-010.01A states that the instructional personnel shall hold valid Nebraska Department of Education certification, and the special education teacher teaching students with Autism need to have an NDE Approvable Endorsement for Special Education (92 NAC 51-010.0D2). This allows special education teachers certified with a generalist endorsement to serve students with Autism. 92 NAC 51-010.03A states related services personnel shall hold state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which this personnel is providing special education or related services.

It is found that all of the education and related services personnel who were listed on the IEP as providing services to the Student possess the necessary qualifications and hold current licenses or certifications to serve in their respective roles. Further, it is noted that the qualifications of medical personnel were not examined as they were not named as specifically providing services to the student in any of the IEPs.

Based on the foregoing, a violation is not substantiated for recruiting and hiring special education staff who do not hold appropriate certification and credentials during the past 12 months pursuant to 92 NAC 51 - 010. **Corrective action is not required.**

#### **Issue #4**

Did the District appropriately inform all school staff of their responsibilities for implementing the Student's IEP during the past 12 months pursuant to 92 NAC 51-007.02D?

92 NAC 51-007.02D states:

007.02D      *Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.*

#### *Allegations/Parent Position*

The Parents cite three specific instances when alleging that the District failed to inform staff and providers of their specific responsibilities related to implementing the Student's IEP or district policy.

First, when the Student returned to school on March 8, 2022, the Parents alleged the Student was not wiped by an adult until April 14, 2022. They state that their child continued to tell them that the Student is not getting wiped regularly and believe it is plausible as evidenced by the recurrent infections. Further, they report that the principal, reported in May of 2022 that the Student's IEP meant that staff assisted by telling the Student to wipe front to back.

On September 28, 2022, the Student walked from recess to the nurse's office without an adult accompanying the Student. According to the principal, the school security guard was unaware of the Student's IEP. The Parents contend that every single person who is providing health, safety, or educational support needs to be aware of the IEP.

Finally, on October 13, 2022, the health aide stated to the Parent that the IEP was inaccessible to the health aide in spite of being in that position since August 2021.

#### *District Response*

The District responded that the special education director and principal met with the parent on August 3, 2022, to review the Student's needs and support. Based upon the discussions during that meeting, the principal then held a meeting with the special education teacher, general education teacher, and special education administrator on August 11, 2022, to create a staff schedule for implementing the IEP and to determine the individuals who would provide the Student support throughout the school day.

On August 16, 2022, the principal met with the special education paraprofessional to share the schedule and review the IEP. The special education teacher then met with the IEP school staff team members including OT, PT, Speech/Language Pathologist, PE teacher, and guidance counselor prior to the 2022-2023 school year to share the schedule and review the IEP.

The District's special education administrator trained IEP staff members again on October 31, 2022, regarding the Student's IEP.

Finally, after the Parents raised concerns regarding restroom procedures, The health service director provided competency training on November 2, 2022, and again on November 14, 2022, to newly hired staff after the Student's special paraprofessional transferred to another position within the District. This competency training covered the restroom steps outlined in the physician's letter received on October 19, 2022.

#### *Investigative Findings*

Information from the Background and Issues #1, through #3 are incorporated herein by reference.

The August 18, 2021, IEP does not list any staff-specific training necessary to implement the IEP. (Item #115)

The May 25, 2022, IEP does not list any staff-specific training necessary to implement the IEP. (Item #33)

Competency Training Documentation Health Services - Bathroom Assistance for the student shows health services director conducted the training that the special education teacher and two paraprofessionals, successfully completed and signed on November 2, 2022. Two additional paraprofessionals successfully completed their training competency with the health services director and signed upon their completion on November 14, 2022. (Item #88)

Job descriptions for all staff serving on the Students' IEP are consistent with the duties the staff described they performed. (Item #99, Item #103)

The health aide reported to the investigators not having access to IEP documents and that having access would be helpful.

During the interview, the health aide reported that the special education teacher instructed restroom procedures when the Student returned to school in March 2022. The instructions were to assist the Student with wiping and step in and help as needed. The other paras reported they were provided the same instructions based on the current IEP.

The special education teacher reported that the Student's individual goals and objectives, daily schedule, health care plan, behavior plan (when in effect), data collection sheets, and associated student information unique to the Student are kept in a notebook and available to all staff on the Student's IEP school team for reference for the past twelve months.

Documentation shows the special education teacher emailed a copy of the student's IEP to all staff who had responsibilities for implementing the IEP. (Item #116)

Document review and interview covering the past twelve months show that the Student's toileting schedule, toileting procedures, communication log, and backpack with instructional strategies for using the calming strategies along with a timer and sensory items preferred by the Student were carried by para assigned to the Student (Items #104, #109, #110, #111, #114). All paras verified this during the interview.

During the 2021-2022 school year until clarified, the paras, school nurse, and special education teacher reported that the only time the Student was left alone in their memory was when they stepped out to give the Student privacy while changing or using the toilet. They state that they did not leave the area, just waited outside the ajar door to monitor to allow the Student to try to wipe or change self and then stepped in and helped the Student with dressing. They all stated that is what they thought assisting meant in the IEP.

### *Summary and Conclusions*

The Parents made three specific allegations regarding informing all school staff of their responsibilities for implementing the Student's IEP. The first allegation occurring on April 14, 2022, was investigated in Issue 1 and a decision and explanation were provided.

The two remaining allegations occurred during the 2022-2023 school year when the second IEP dated May 26, 2022, was in effect.

The Parents alleged that on September 28, 2022, the Student walked from recess to the nurse's office without an adult accompanying them. The principal reported that the school security guard was unaware of the Student's IEP to which the Parents stated that every single person who is providing health, safety, or educational support needs to be

aware of her IEP. There is no documentation to show that the Student was unsupervised on this date.

In this case, the school security guard is not a member of the student's IEP team, is not responsible for implementing any provision in the student's IEP, and would therefore not have a right to have access to this information.

The final allegation was in regard to an October 13, 2022 incident in which the health aide stated to the mother that the health aide was unaware of the IEP and did not have access to IEP. The health aide confirmed the statement was made to the Parent that the health aide did not have access to IEPs

However, the special education teacher reported that student-specific notebooks for each student on the caseload were securely stored at a location shared with all school staff who are responsible for implementing a particular student's IEP. Each notebook included a copy of the IEP and any health care, and behavior intervention plans along with any additional student-specific information. This has been the special education teacher's practice for the past over-30-year teaching career. While the IEP for the Student was readily available to the health aide according to the special education teacher, it could not be verified if the health aide was specifically shown the location in the special education teacher's classroom.

In summary, the documentation and interview with staff assigned to work with the Student and serving as IEP staff team members show that they were informed about their specific responsibilities to implement the child's IEP and received information and access to the child's specific accommodations, modifications, and supports. Further, they received initial training prior to the Student attending school, corrective feedback to ensure they were implementing the IEP as written, and updated information when the IEP was amended, or Parent requests were made. It is found that the IEP information and specific student information were arranged so that staff had written access to the materials and could hand off the student information per the staff schedule. The communication logs show that this information was used regularly.

Based on a review of documentation and interview, it is found that the district implemented the requirements of 92 NAC 51-007.02D and **no corrective action** is required.

#### **Issue # 5**

Did the District include supplementary aids and services into the Student's IEP to allow the student supports needed to participate in field trips during the past 12 months pursuant to 92 NAC 51-007.07C4?

92 NAC 51-007.07C4 states:

007.07C4

*The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by*

*the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school-age child with a verified disability an equal opportunity for participation in those services and activities.*

#### *Allegations/Parent Position*

The complainants alleged that the Student was not allowed to attend field trips like her peers due to staffing issues.

#### *District Response*

The District responded that even though the Student was attending partial days during the 2021 school year the Student was invited to all field trips. Specifically, for the October 2021 field trip to Nelson's Produce Farm the school made a plan to support the Student on the field trip by identifying a paraprofessional to make sure the Student didn't elope and someone to assist the Student to use the restroom. The principal spoke to the mother on October 4, 2021, regarding the field trip and the plan for student support. At that time, the mother stated someone other than the school would transport the Student to and from the venue. However, the Student did not attend school that day.

The Student was next invited to attend the zoo field trip on May 18, 2022, along with the rest of the class. Again, plans for support were made but the Student was absent from school on May 18, 2022, and did not attend the field trip.

The third field trip offered for the Student's class occurred on October 14, 2022. It was again to Nelson's Produce Farm and the Student was invited. However, the mother transported the Student and met the class at the venue. The mother remained with the Student for the duration of the field trip and transported the Student home. The Student was counted as absent on this date since the Student did not attend school and was supervised by the mother. The staff designated to assist the Student in the restroom and supervise if the Student attended the field trip was reassigned to another group of students since the Parents were supervising and taking the Student to the restroom.

#### *Investigative Findings*

Information from the Background and Issues #1 through #4 are incorporated herein by reference.

The August 18, 2022, IEP shows the following supplementary aids and services (Item #115):

- Safety Plan detailing that the Student "will be accompanied by an adult at all times (an adult in addition to the classroom teacher)
- Student Educational Need for Restroom assistance to try regularly, assist with wiping, go to the restroom with an adult

The principal documented in the phone log that plans were made to provide the supplementary aids and services listed in the August 18, 2021, IEP for the October 4, 2021 field trip (Item #111). Attendance records show the Student was absent on October 4, 2021 (Item #102).

The paraprofessional reported being assigned to provide supervision as outlined in the Safety Plan and Restroom assistance during the May 18, 2022, Zoo field trip but was reassigned when the Student was absent. Attendance records and Communication log show the Student was absent on May 18, 2022, the date of the Zoo field trip (Item #102, Item #111). No written documentation is found that the supervision plan was shared with the family for the May 18, 2022 field trip.

The May 26, 2022, IEP shows the following special supplementary aids and services (Item #33)

- Set Restroom Procedures (which list adult support outside of the classroom and restroom procedures)

Documentation shows the principal sent information about the October 14, 2022, Nelson's Produce Farm Field Trip as well as the Parental Permission and Release of Liability home with the Student on September 22, 2022 (Item #64). A reminder letter about the field trip was sent home on October 13, 2022 (Item #64).

The communication Log on October 14, 2022, confirms that the Parents transported the Student to the field trip and the Student did not return to school afterward (Item #110).

#### *Summary and Conclusions*

After reviewing documentation and interviewing staff it is found that the school made plans to provide supplementary aids and services as listed on the Student's IEP providing nonacademic activities in the manner necessary for the Student to participate in the school-offered field trips during the past twelve months.

Based on the foregoing, the district implemented the requirements of 92 NAC 5151-007.07C4 and **no corrective action is required.**

#### **Issue # 6**

Did the district review and revise the student's IEP in response to bullying incidents during the past 12 months pursuant to 92 NAC 51-007.10E?

92 NAC 51-007.10E states:

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

                    007.10 E        *Other matters.*

#### *Allegations/Parent Position*

The Parent reported that the Student does not want to go to school any longer because of bullying incidents that were occurring during the school day. Other students pick on the Student and call the Student names. The Parents have brought these

concerns to the attention of the school administrators and teachers during both the 2021-22 and 2022-23 school years and have requested to discuss these concerns at meetings. However, the bullying has not been discussed with the IEP team and the Parents have requested changes to the IEP to address bullying that have not been considered.

The Parents specifically described two incidents of bullying during kindergarten involving name-calling and having the lights turned off while the Student was in the bathroom. The Parents specifically described two bullying incidents during first grade where the Student was being threatened to be tied up with a jump rope and another student stealing the Student's lunch during a field trip.

The father shared the bullying incident with the kindergarten classroom teacher and the special education teacher in an email dated April 14, 2022, at 11:13 am and requested a face-to-face meeting. The father clearly states, "Our child is Autistic, not stupid. The Student does not deserve to be made fun of or criticized for playing differently than other neurotypical children." The father expresses that "Under no circumstances will we tolerate \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_ calling the Student "stupid" or "dumb."

The mother sent an email to the principal, the special education teacher, and the kindergarten teacher on April 18, 2022, at 6:32 pm requesting an IEP team meeting. In the email, the mother states, "Bullying is not negotiable. (Item #16) I do not care if kids or teachers do not like [the Student's] playing style. The Student has a medical and educational diagnosis of Autism. Play styles of neurotypical children versus children with Autism are different. The Student has come home on several occasions complaining that \_\_\_\_\_ and \_\_\_\_\_ are making fun of [the Student] and a peer. The Student was told the Student was stupid for wearing headphones, the Student smells, the Student can't walk right, and that everyone laughs at the Student about some chair incident. The Student reports the Student doesn't want to go to PE anymore because \_\_\_\_\_ makes fun of the Student. I was informed at a meeting on the 12th that my child is the center of jokes by 2 specific students. Then on the 13th my child came home sobbing about being called stupid, dumb, and smelly after getting in trouble regarding the same two students that were reported to me the night before."

A one-minute 57-second audiotape of the May 25, 2022, IEP team meeting documents the discussion between the mother and an unidentified school staff person regarding communication. (Item #31) The mother is explaining that the parents take what the Student tells them seriously and states, "Just because somebody didn't witness it, doesn't mean it didn't happen." The mother then states that the Student is having experiences at school that are unhealthy. A school staff member is heard speaking very far away on the audiotape and it is unclear what they are saying; however, the mother responds to the comments by stating that she respectfully disagrees. The mother then explains that this situation does pertain to the IEP and, for the child to receive FAPE, the parent must feel comfortable and receive communication.

### *District Response*

In the District Response to the Allegations dated November 18, 2022, and through staff interviews, the district reports the allegations of bullying during kindergarten and first grade were unable to be substantiated.

The principal spoke to the three students the mother thought were bullying the Student and determined name calling did not rise to the level of bullying, as it did not meet the level of an “ongoing pattern of physical, verbal, or electronic abuse on school grounds” as defined by District Policy \_\_\_ (Item #98).

One student admitted to calling the Student a name, and the principal followed up with a behavior referral, a conference with the student about using kind words, and a conversation with the student’s parents. Although the other two students did not admit to calling the Student a name, the principal followed up with these students in a conference and a conversation with the student’s parents.

The principal also reported an allegation of the Student being threatened to be tied up with a jump rope was investigated and determined that the student misinterpreted pretend play during recess.

As described in Issue #1, the bathroom light incident was not able to be substantiated.

The District reported that the IEP team revised the Student’s IEP at the May 25, 2022 IEP meeting to include a goal and objectives addressing social communication. This was in response to times the Student would misunderstand communication from peers, which the IEP team determined were directly related to the Autism diagnosis.

The allegation of bullying during first grade was determined to be the result of the Student and one of the peers switching lunch boxes with each other during the first-grade field trip. The principal during the 2022-23 school year stated that he was not aware of this Parent concern until the IEP team meeting held on December 5, 2022. The principal noted that the Student came to the field trip with the mother and was directly supervised by her mother during the field trip.

### *Investigative Findings*

Information from the Background as well as Issues #1 through #5 are incorporated herein by reference.

Documentation and interviews show that the Parents did share multiple reports of concerns related to bullying behavior with school staff in both kindergarten and first grade. Both principals investigated these situations and determined they did not meet the definition of “bullying” described in School Board Policy \_\_\_. (Item #98).

Nothing in the IDEA or Rule 51 defines “bullying” or requires any specific procedure to be followed when the parent reports that a student with a disability has been bullied.

However, the Office of Special Education and Rehabilitative Services (OSERS) published a Dear Colleague Letter to educators and stakeholders on the matter of bullying on August 20, 2013. In that letter, the agency made it clear that when bullying causes a



student to not receive educational benefits from their special education and related services, a denial of FAPE has occurred and must be remedied. And, even when bullying does not rise to the level of a denial of FAPE, it can undermine the student's ability to achieve his/her academic potential. (Item #101)

OSERS stated, "Schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with the IEP. The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of bullying, the student's needs have changed such that the IEP is no longer designed to provide a meaningful educational benefit. If the IEP is no longer designed to provide meaningful educational benefit to the student, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student's individual needs and revise the IEP accordingly." (Item #101)

92 NAC 51-007.10E states: The IEP team shall revise the IEP as appropriate to address other matters. In this case, bullying is the "other matter" that is required to be discussed.

Interviews and documentation show that the Student's IEP team met on May 25, 2022, with the Parents in attendance. At least some discussion of the Parents' concerns with the bullying incidents occurred because a social communication goal was added to the Student's IEP as a result of that IEP team meeting, (Item #31, Item #32, Item #33)

There is no documentation to show that the Parents' concerns related to perceived bullying during first grade were discussed at the IEP team meetings held during the 2022-23 school year.

#### *Summary and Conclusions*

In this case, it appears that the Parents shared several instances of behavior they believed to be bullying with school administrators during the 2021-22 and 2022-23 school years. The building principals investigated those specific situations and determined that the behavior did not meet the definition of bullying per School Board Policy.

Regardless, the IEP team met on May 25, 2022, and determined that adding a social communication goal to the IEP was the appropriate action to take at that time. However, it is unclear whether the perceived bullying that occurred during first grade was discussed at any of the IEP Team meetings held during the 2022-23 school year.

Based on the foregoing, the District failed to fully implement the requirements of 92 NAC 51-007.10E. Thus, the following **corrective action is required**.

#### *Corrective Action*

1. The district will specifically include the perceived bullying as an agenda item at the January 2023 facilitated IEP team meeting.
2. The district will provide the NDE with a copy of the meeting agenda along with IEP Team meeting notes documenting the discussion no later than February 15, 2023.

**Issue # 7**

Did the District respond to the parent's request for an IEP team meeting during the past 12 months pursuant to 92 NAC 51-007.10 and 92 NAC 51-009-05?

92 NAC 51-007.10 states:

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

92 NAC 51-009.05 states:

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

*Allegations/Parent Position*

The Parents report they have made many requests for IEP team meetings during the past two school years and the District is not responsive. The Parents specifically identified two instances when the District failed to respond to their requests in an appropriate manner.

In the first instance, the father requested an IEP meeting on April 14, 2022, following a bullying incident the previous day at school. The Parents indicated the District failed to return phone calls and emails regarding this meeting. The Parents reported they were told by the kindergarten classroom teacher that they could only communicate with any of the Student's teachers with the principal present.

The Parents reported that this IEP team meeting was finally scheduled and held on May 25, 2022.

The second instance was a verbal request made to the principal by the mother on August 23, 2022. A meeting was held but it was considered to be a "staffing" by the school personnel who attended, and they did not want to discuss any changes. After multiple requests in September and October to try and schedule a meeting, a facilitated IEP was finally held on November 8, 2022.

*District Response*

The District reported it has always responded to the Parents' requests for IEP meetings. However, the Parents often have meetings with individual or isolated groups of IEP team members (e.g., the principal, the teacher, the director of special education, etc.) to discuss concerns and request changes be made outside of the IEP team process. The District created the following chart to document the specific IEP team meeting requests related to the April 14 and the August 23, 2022 requests:

<b>Date of Request</b>	<b>District's Response</b>
4/14/22 - father requested an IEP team meeting in an email	
	4/15/22 - Principal attempts to contact the mother
4/18/22 – mother requested an IEP meeting in an email	4/18/22 - Principal emails the parents unavailable to talk today and will try again the next day
	4/20/22 – The principal notified the mother the school would gather potential IEP dates from the team
	4/22/22 - Principal notified mother of still gathering dates to meet
4/25/22 - mother stated that she did not want to wait for an IEP meeting and wanted to proceed with a phone call between the kindergarten teacher, sped teacher, and principal to discuss concerns	4/25/22 – IEP is meeting scheduled for the next day
4/28/22- parents again request an IEP team meeting	4/28/22 – Principal begins to collect potential IEP dates
5/3/22 – mother determined they did not want an IEP meeting due to the IEP being appropriate	
5/13/22 – mother requested an IEP meeting to change wording regarding restroom procedures	
	5/16/22 – The district asked who the parents wanted to be invited to the meeting and where they would like the meeting held

<b>Date of Request</b>	<b>District's Response</b>
	5/17/22 Notification of Meeting sent to the parents
	IEP meeting held 5/25/22 with parents in attendance
8/26/22 – mother talked to the principal and requested a meeting to review the IEP	The principal understood the mother's request to be a request to review the current IEP and did not recognize the request as a request for an IEP meeting. The meeting was communicated as a brainstorming meeting. The school team met with the mother and advocates to review the IEP and discuss concerns on 9/1/22. The principal prepared a PowerPoint as a meeting agenda. It was not until after the meeting that the mother raised concerns that it was not an IEP meeting.
9/6/2022 – mother spoke to the Special Education Director and requested an IEP meeting.	The Special Education Director notified the school that an IEP meeting had been requested. School staff started to gather potential dates.
9/7/22 – mother spoke to the principal and requested an IEP meeting to be held after the Autism team observed.	The district made referrals to the state Autism team and observations were scheduled.
9/19/2022 – mother requested an IEP meeting be held before observations were completed.	The IEP was scheduled for October 13, 2022. Father then requested an earlier date, so the meeting date was changed to October 3, 2022.
10/2/22 - The parents canceled the IEP meeting due to a child's illness.	The district then offered October 13, 2022, as a meeting date. The parents declined that date as they were not available.
	The district offered to meet on October 7, 2022. The parents declined, stating that this date did not provide enough notice.
10/6/22- mother requested an IEP meeting with a third party facilitating.	The Special Education Director responded that the district would work with the outside mediator to schedule this. After originally agreeing to facilitate the agency notified the District on October 22, 2022, they would not be able to. The Director of Special Education requested NDE assistance in finding an IEP facilitator. The IEP facilitator was assigned, and the family provided date

Date of Request	District's Response
	options. The facilitated IEP meeting was scheduled for and held on November 8, 2022. The IEP team is scheduled to reconvene on December 5, 2022, which was the earliest date the parents were available.

*Investigative Findings*

Information from the Background as well as Issues #1 through #6 are incorporated herein by reference.

The father sent an email to the kindergarten teacher and the special education teacher on April 14, 2022, at 11:13 am requesting an IEP team meeting to discuss an incident that occurred during the center time the day before. (Item #14)

The school principal responded on April 18, 2022, at 11:36 am in an email to the mother indicating that the principal was sorry they "had not connected" on Friday, April 15, 2022, and was unavailable to call the Parents on Monday, April 18, 2022, but was planning to give them a call to discuss their concerns the following afternoon. (Item #15)

Another email was sent by the mother on April 18, 2022, at 6:32 pm again requesting an IEP team meeting be scheduled to discuss the situation. The mother stated, "Until we can hold an IEP meeting, I do not want my daughter near \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_. If this cannot be done, please let me know and we will keep [the Student] home. I am requesting you provide us with the district's bullying policy. Regardless of whose child is at fault, it is our responsibility to ensure the Student is safe, healthy, and happy. The Student does not feel good about what is going on and neither do we. The Student was thriving for sometime [sic] and now the Student is literally fighting all of us not to go to school. Please let us know when the IEP meeting can be held so we can plan accordingly." (Item #16)

The father followed up about the request for an IEP team meeting on April 22, 2022, at 7:05 am. stating, "Between my email last week and three unreturned phone calls this week I am getting concerned they are not being received. I have left a note in the communication log as well." (Item #17)

Interviews and documentation show the Parents did not send the Student to school after April 22, 2022, for the remainder of the 2021-22 school year. (Item #102)

The District offered to schedule the IEP team meeting on April 26, 2022, but the Parent declined. The District and the Parents were then able to agree on a mutually agreeable date/time and the district provided the Parent with a Notification of an IEP Meeting on May 17, 2022, and the IEP team meeting was held on May 25, 2022. Item #18, Item #19, Item #20, Item # 21, Item #22)

It is unclear if the mother requested an IEP team meeting on August 23, 2022. However, it is clear that the new elementary principal believed the request was for all of the new staff at the Elementary school to meet to review the new May 25, 2022, IEP and prepare for the 2022-23 school year (Item #36, #38, #39, #40).

This meeting was scheduled for September 1, 2022. However, District staff indicated they did not provide the Parents with a Notification of the IEP Meeting for that date because they did not consider it as an IEP team meeting since the IEP had just been reviewed and revised at the very end of the 2021-22 school year and had not yet been implemented for any length of time during the 2022-23 school year.

The meeting was held on September 1, 2022, with the Parents bringing an advocate from PTI Nebraska, the Student's therapist and the Student's home health care providers to the meeting to discuss concerns. Following the meeting, the mother contacted the special education director and formally requested an IEP team meeting (Item #39, Item 40).

Interviews and documentation show that multiple attempts were made to find a mutually agreeable date and time to schedule an IEP team and it appears October 7, 2022, was agreed to for the meeting. The mother sent an email on October 5, 2022, at 9:01 pm stating that the Parents were unable to participate in the scheduled IEP meeting and requesting a facilitated IEP Team meeting be scheduled (Item 40, Item 41, Item 46).

A facilitated IEP meeting was held on November 8, 2022. No agreements were reached, and a second facilitated IEP meeting was held on December 5, 2022. At this meeting, the IEP team agreed to amend services in the Student's IEP and provided the Parent with prior written notice. The IEP team also agreed to schedule a third facilitated IEP in January 2023 to continue the discussion for resolving the Parents' concerns.

### *Summary and Conclusions*

92 NAC 51-007-10 states: The IEP team shall review and revise, if appropriate, a student's IEP whenever there is a lack of expected progress toward meeting the IEP goals, a reevaluation has been conducted, the parent provides new information about the student, there are anticipated needs of the student, or other matters to discuss.

92 NAC 51-007-06 requires that parents of a child with a disability are afforded the opportunity to participate in the IEP Team meeting. This opportunity requires that the parent is notified of the meeting early enough to ensure that they will have the opportunity to attend. Sufficient notice of an IEP meeting is considered to be a minimum of 10 calendar days by the NDE. Next, the meeting must be scheduled at a mutually agreed time and place. Finally, the parent must be provided with a notification of the meeting, which includes the purpose, time, and location of the meeting and who will be in attendance, and inform the parents of their procedural safeguard rights.

In this case, there is evidence to support that the Parents of the Student requested the IEP team to reconvene to consider concerns (new information) provided by the Parents during the past 12 months.

During the 2021-22 school year, the District did respond by scheduling an IEP meeting upon the Parents' request. The initial request was made by the father

on April 14, 2022, and by the mother on April 18, 2022. The District staff contacted the mother within one week to acknowledge the request and attempts were made to find a mutually agreeable date/time and place for the meeting.

On April 25, 2022, the District offered to meet the next day, April 26, 2022; however, this date did not provide the Parents sufficient notice of the meeting. District staff and the Parents agreed to conduct the meeting on May 25, 2022, and the parents were provided with a Notification of the Meeting including the procedural safeguards notice for this date, time, and location on May 17, 2022. While this was not a 10-day notification prior to the meeting, the Parent waived the 10-day notification by attending the IEP team meeting on that date.

During the 2022-23 school year, the Parents requested a meeting on August 23, 2022. The Parent believed this was a request for an IEP team meeting while the school staff believed this was just a parent/teacher meeting to ensure new staff were familiar with the new IEP which had been developed on May 25, 2022. This meeting was scheduled and held on September 1, 2022. The Parents were not provided any formal notification of this meeting because the district did not consider the meeting to be an IEP team meeting.

The Parents brought multiple outside team members to the September 1, 2022 meeting and were upset that the meeting was not considered an "IEP team meeting" by school staff but rather just a "staffing" or "review meeting". The Parents then formally requested that the IEP team reconvene.

Interviews and documentation show efforts between the Parents and the District were made to find a mutually agreeable time and location for the requested meeting. However, the District failed to provide the Parent with a Meeting Notification for the October 7, 2022, IEP Team meeting, which included the purpose of the meeting as well as the procedural safeguards notice.

The October 7, 2022, IEP Team meeting was subsequently canceled, and the Parents requested to participate in the facilitated IEP process. It is noted that the Parents and the District are currently participating in this process.

Based on the foregoing, the District failed to fully implement the requirements of 92 NAC 51-007.06. Thus, the following **corrective action is required**.

*Corrective Action*

1. The district will review and revise, if appropriate, its procedure and practices related to Rule 51 in regard to appropriately responding to a parent request for an IEP team meeting.
2. Notes regarding the findings from the review and revision, if required, will be provided to NDE.
3. Following that review, written guidance will be provided to all special education teachers, case managers, and administrators in the district making them aware of these requirements.
4. Evidence of guidance along with who it was provided to will be provided to NDE.

**Issue # 8**

Did the District respond to the Parent's request to access the Student's educational records during the past 12 months 92 NAC 51-009.03?

92 NAC 51-009.03 states:

009.03            *Opportunity to Examine Records*

009.03A            *The parents of a child with a disability must be afforded, in accordance with the procedures of 92 NAC 51-009.03, an opportunity to inspect and review all education records with respect to: the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.*

009.03B            *Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained or used by the participating agency. The participating agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program or hearing pursuant to 92 NAC 55 or resolution session and in no case more than 45 days after the request has been made.*

009.03D1            *If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.*

09.03E1            *Each participating agency shall provide parents on request a list of the types and locations of education records collected,*



*maintained, or used by the participating agency.*

#### *Allegations/Parent Position*

The Parents alleged that the District failed to provide the opportunity to inspect and review the complete education record set requested on May 26, 2022, within 45 days. The complainants state that the refusal to provide access to these records shows a blatant disregard for the law and a complete lack of transparency.

#### *District Response*

The District responded to the Parents' request for access to the Student's educational records, but unfortunately, due to the volume of records requested and oversight, the records were not provided to the parents in a timely manner. The Parents sent a request for records to the District on May 26, 2022. The request included "any and all items that contain personally identifiable information about the student and/or either parent.

The Parents contacted the District on September 15, 2022, again stating they had not received the records. The Coordinator of Student Information Services issued an apology and accepted responsibility for the oversight on September 15, 2022, and sent two large PDF files of student records, totaling 186 pages, to the Parents. The district also began the review of approximately 12,000 pages of emails, and several hundred pages of other documents that contained the name of the Student or either parent to determine if identifying information of students or family members other than those in the request were included (pursuant to 92 NAC 51-009.03E). In the case of documents or emails containing mention of individuals not included in the request, an additional review was necessary by legal services to determine how to meet the request without disclosing information about other students. As of December 7, 2022, the district stated the request has been completed and provided to the Parents via two flash drives.

#### *Investigative Findings*

Information from the Background and Issues #1 through #7 are incorporated herein by reference.

On May 26, 2022, the Parents mailed a certified record request to five District staff. The parent additionally emailed a copy of this request to the principal. The request stated (Item #34):

I request a copy of all education records in the School District's possession that pertain to the Student. I make this request under the Family Educational Records and Privacy Act (FERPA), 34 C.F.R. Part 99, the Individuals with Disabilities Education Improvement Act (IDEA 2004) and its regulations, 34 C.F.R. Sections 300.501 and 300.610-627.

This request encompasses the identified education records no matter where they may be located, whether the Central Administration Office, the Special Education Office, or any other department or office within the School District. As authorized by Section 300.616 of the IDEA 2004 regulations, kindly also provide

me with a "list of the types and locations of the education records" that are "collected, maintained or used" by the School District.

This request included, but is not limited to, the following items: progress reports, record cards, deficiency notices, correspondence to and from parents and others, awards, standardized test results, staff memos, interoffice memos, incident reports, emails, letters, notes and comments of any kind, including notes of telephone class, multi-disciplinary meetings and observations of the child, bullying investigation, attendance records, including notices of truancy, suspension and expulsion, requests for and notice of Section 504 and IEP meetings, medical and school health records, notes of psychologists, speech and language therapists, resources specialists and other personnel who have provided services to, evaluated or otherwise been involved in or responsible for the provision of a free appropriate education, class schedules, referrals for evaluations, evaluations, and assessments, third-party reports or writings of any kind, notices of placement, and statements of rights that were provided to parents, including notes from multi-disciplinary team meetings and observations of the child, all IEPs and any documents related to the IEPs, videos of alleged security and safety incidents and audiotapes.

I will contact you by phone on 5/27/2022 to find out when the records will be ready to view. Please contact me by email if you have any questions.

The Student Information Systems Coordinator acknowledged that the Office received the request on or about May 27 or May 28, 2022, from the Principal and began gathering the requested records from the district office and an outside agency. The Student Information Systems Coordinator explained that the student-specific records and contact log were gathered and ready to send when the outside agency report arrived.

The Student Information Systems Coordinator stated that it is the practice of the District to provide record requests electronically or in a written format depending on the Parent's preference or the size of the record file. An exception is made with video or audio which is not released due to the presence of persons not included in the record request. Video or audio can be viewed or heard on request at district offices. Further, emails, communication logs, and notes are reviewed prior to release to ensure no identifying information for persons not included in the record request is released.

The Parent emailed the Principal on September 15, 2022, as to the status of the record request. The principal forwarded the Parent's email to the Student Information Systems Coordinator (Item #43).

On September 15, 2022, the Student Information Systems Coordinator responded to an email from the Parent stating, "I was forwarded your email about a request for records that had not been completed for you yet. I do see a request in our system that has not

been filled and want to make sure this is the request you are referencing. The request I have is from ...outside agency." (Item #42)

On September 15, 2022, the Parent replied to the Student Information Systems Coordinator's office and corrected the coordinator of the office that no records had been received to date. (Item #43)

The Student Information Systems Coordinator investigated and discovered that at some point while waiting for the outside agency records to be received a staff person incorrectly marked that the student records were sent to the parents without the outside agency records and marked the request complete.

The coordinator of the office replied to the Parent on September 15, 2022, accepting responsibility and offering an apology for not completing the request within the required timeline. (Item #44)

Two pdf attachments totaling 186 pages of student records were sent on or about September 15, 2022. These records were student specific and included enrollment history, grades, standardized test scores, health records, special education records, progress records, teacher observations, attendance, and contact logs. The Student Information Services Coordinator stated that the correspondence would be reviewed and provided as quickly as possible. (Item #44)

On November 2, 2022, the district emailed the Parents stating that "I am hopeful I will have the review of records done in 3 weeks. After my review, the documents are then subject to legal review." (Item #85)

The District completed its legal review of the records and notified the Parents on December 7, 2022, that a flash drive with available records was ready for them to pick up. (Item # 97)

The District acknowledged they did not meet the deadline and explained why the timeline for providing the records request was not met. The request for records was very broad and went far beyond the standard student record request. The Parents requested any and all items that contain personally identifiable information about the Student, mother, and father, which the District interpreted to include a broad search of all district email addresses. Due to the complexity of this request and because some emails included questions and advice from the district's legal counsel, the District needed to review all of the emails for attorney/client privileged information before providing them to the family. The District did provide the student records to the family on September 15, 2022, but it was the email search that took much longer to process.

On December 7, 2022, at 6:10 a.m. the Parent emailed the District that "I immediately drove to the District building where I was provided a flash drive that contained a total of 2,269 files. A majority of the files are from Pre-K, audio recordings we provided to the District, audio recordings of people unrelated to the student's educational history, or documents that are generic or irrelevant to the Student... We can't get the Student into

a school without relevant records I have been waiting on for the past 196 days." (Item #97)

The table below shows the status of the requested record as of December 7, 2022.

<b>Record Requested</b>	<b>Provided 9/15</b>	<b>Provided 12/7</b>
Progress Reports	x	
Report Cards	x	
Deficiency notices *None located	N/A	N/A
Correspondence to and from parents and others	x	
Awards *none	N/A	N/A
Standardized test scores *due to the grade of the student	N/A	N/A
Staff/interoffice Memos		x
Incident Reports	X	X
emails, letters, notes, and comments of any kind, including notes from telephone class, multi-disciplinary meetings and observations of the child	x	x
Bullying investigations		x
Attendance Records	x	
Notices of truancy, suspension, and expulsion *none reported	x	

<b>Record Requested</b>	<b>Provided 9/15</b>	<b>Provided 12/7</b>
Requests for and notices of Section 504 and IEP meetings *only IEP	X	
Medical and School Health Records	x	
Notes of psychologists, speech and language therapists, resource specialists, and other personnel who have provided services to, evaluated, or otherwise been involved in or responsible for the provision of FAPE	x	X
Class Schedules	x	
Referrals for evaluations	x	
Evaluation and assessments	x	
Third-party reports or writings of any kind		X
Notices of placement and statements of rights that were provided to parents, including notes from multi-disciplinary team meetings and observations of the child, all IEPs, and any documents related to the IEPs	x	
Audio *District did not make audiotapes, only parents provided		X
Videos of alleged security and safety incidents* not provided per district procedure	N/A	N/A

*Summary and Conclusions*

According to 92 NAC 009.03 the parents of a child with a disability must be afforded an opportunity to inspect and review all education records with respect to: the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. Each participating agency shall permit parents to inspect and review

any education records relating to their children which are collected, maintained, or used by the participating agency. The participating agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program or hearing pursuant to 92 NAC 55 or resolution session and in no case more than 45 days after the request has been made.

It is found that the District has established procedures for parents of a child with a disability to inspect and review student educational records related to identification, evaluation, and educational placement of the child. The district has a practice of providing electronic copies of the requested educational records. However, the district acknowledged these records were not provided to the parents until September 15, 2022, which is well beyond the 45-day requirement.

The District acknowledged they did not provide the Parents access to the requested records within 45 days and are out of compliance.

92 NAC 009.03D1 states that if the education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or be informed of that specific information.

It is found that the District has a procedure to protect the confidentiality of other students who may be mentioned in another student's educational record, however, this procedure requires an additional layer of a review or an onsite review. This procedure was not clearly communicated, nor clarified with the parents. The requested materials not provided on September 15, 2022, required an additional layer of the review or could not be distributed. This procedure significantly contributed to the delay in providing the student records to the parent.

Based on the foregoing, the district failed to fully implement the requirements of 92 NAC 51-009.03. Thus, the following **corrective action is required**.

#### *Corrective Action*

1. Offer Parents the opportunity to view the video and listen to the audio at a District site as per District procedures within 15 days.
2. Inform the Parents that videos and audio may include students or individuals not covered by the records request so cannot be copied or shared.
3. Develop a brief summary of the District's procedures to provide to Parents when records request is received to outline the materials that are readily available; how the materials can be provided; and the procedures for viewing the video, listening to the audio, and obtaining emails or staff notes that may include names of other students.
4. Provide assurances to NDE that procedures are in place to provide requests from families for student records in a timely manner.

**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:

Christopher Chambers, Complaint Specialist  
NDE Office of Special Education  
[nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov)