

COMPLAINT INVESTIGATION REPORT

Complaint Number: 22.23.17
Complaint Investigator: [Redacted]
Date Complaint Filed: January 3, 2023
Date of Report: [Redacted]

Issues Investigated

1. Did the District ensure that all personnel working with the Student 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 ESEA, 1965 as well as training specifically related to the use of a service animal? (92 NAC 51-010.01 and 51-007.07A5)
2. Did the District develop, review, revise, and implement an IEP designed to meet the child's needs that result from the child's disability, including input from the Parents? [92 NAC 51-007.01, 007.06, 007.07A]
3. Did the District revise the IEP as appropriate to address any lack of expected progress toward annual goals and input from the parents? [92 NAC 51-007.10]
4. Did the District develop an appropriate transition plan, including postsecondary goals and transition services as outlined by 92 NAC 51-007.07A9?
5. Did the District include in the IEP a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting those goals will be provided? [92 NAC 51-007.07A4]
6. Did the District address the Student's need for a service animal through a statement of the related services, supplementary aids and services, and the program modifications or supports for school personnel that would enable the child to advance appropriately toward attaining the annual goals, be involved in and progress in the general education curriculum, participate in extracurricular and other nonacademic activities and participate with other children with disabilities and nondisabled children? [92 NAC 51-007.07A5]
7. Did the District ensure that to the maximum extent appropriate, the Student was educated with children who are not disabled and that the Student's removal from the less restrictive environment occurred only when the nature or severity of the disability is such that education in the less restrictive environment with the use of supplementary aids and services could not be achieved satisfactorily? [92 NAC 51-008.01A] and/or did the District use disciplinary removal for more than 10 days or constituting a pattern of removal without convening the IEP team? [92 NAC 51-016]

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated January 2, 2023; received by NDE January 3, 2023
- Interview with the Parent held February 9, 2023
- Email from the Parent dated February 6, 2023

From the School District

- IEPs dated January 20 and April 5, 2022
- Progress Reports dated March 10 and May 7, 2022
- Emails between the Parent and District Staff dated December 29, 2021- April 19, 2022.
- The Student's course schedule and attendance for the second and third quarters of the 2021-22 school year
- Teacher Certification document dated January 31, 2022
- Service Animal Training Part 1 (Canvas Modules)
- Email correspondence between the Teacher and [Redacted] dated March 26, 2021
- [Redacted] Service Animals dated January 2022
- Policy 3046 Animals at Schools, dated July 29, 2022

Introduction

The current complaint focuses on the period of time from January 4, 2022, through the Student's high school graduation, which occurred on May 29, 2022. Following the graduation ceremony, the Student took a certificate of completion and has continued receiving post-high school transition services funded by the District in a different setting. The Student is eligible for special education as a student with an Other Health Impairment due to congenital hydrocephalus and a seizure disorder. The Student receives speech, occupational therapy, physical therapy, and transportation as related services. The Student obtained a service dog in August of 2021. The service dog agency required 3 months in the new home placement before the dog was to attend school. The dog began attending in January 2022. The primary task that the service dog provides to the Student is alerting and responding to seizures.

Issue # 1

Did the District ensure that all personnel working with the Student 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 ESEA, 1965 as well as training specifically related to the use of a service animal? (92 NAC 51-010.01 and 51-007.07A5)

92 NAC 51-010.01 states:

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.

92 NAC 51-007.07 states:

007.07A *The IEP shall include:*

007.07A5 *A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications **or supports for school personnel** that will be provided to enable the child:*

007.07A5a *To advance appropriately toward attaining the annual goals;*

007.07A5b *To be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and*

007.07A5c *To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5;*

Allegations/Parent Position

The teacher serving as the Student's case manager was not appropriately credentialed in the state of Nebraska as a special education teacher.

Further, the Parent requested 60 hours of training for the paraprofessional hired to support the Student and her service dog and the District did not comply with these training recommendations.

District Response

The Student's case manager was previously certified as both an early childhood and an elementary educator. The case manager then enrolled at a local university to obtain the required coursework while being eligible for a provisional license in the state of Nebraska. All requirements for this provisional licensure were met prior to the start of the 2021-22 school year and the teacher submitted all required materials to NDE. Because of staffing issues at NDE, the certificate was not issued in a timely manner.

With regard to paraprofessional training, the parent requested a great deal of time outside of school hours for staff training to handle the service dog. The District was willing to honor the Parents' reasonable requests in order to ensure that the Student could meaningfully benefit from the service animal at school. However, the amount, times, and locations of the requested training were not feasible for District staff. The District went above and beyond to ensure that staff was adequately prepared to support the Student and service animal, recognizing that the Student was the animal's handler.

Findings of Fact

Teacher Certification

- The case manager supporting the Student throughout the 2021-22 school year enrolled at the [Redacted] in the spring of 2021. (email correspondence between the Teacher and [Redacted] dated March 26, 2021)
- A course requirement timeline was prepared so the Teacher could meet all requirements within the provisional period. (email correspondence between the Teacher and [Redacted] dated March 26, 2021)
- This email expressly states, "You do qualify for a SPED provisional endorsement. Let me know if you get hired, and I will send you instructions to apply for that provisional with NDE." (email correspondence between the Teacher and [Redacted] dated March 26, 2021)
- The teacher subsequently completed the application for a provisional certification, which was submitted during the summer of 2021 (Interview with District Staff dated February 2, 2023)
- The Nebraska Department of Education experienced unusual staff turnover and developed a considerable "backlog" of certificates to issue (Interview with District Staff dated February 2, 2023), a fact that was confirmed by NDE.
- The backlog resulted in the certificate not being issued until January of 2022, though the Teacher had submitted all required paperwork prior to the start of the school year and had begun coursework. (Interview with District Staff dated February 2, 2023)

Teacher and paraprofessional training

- The Parent requested 60 hours of training for the paraprofessional working with the Student and service dog (Letter of Complaint dated January 2, 2023)
- The Parent provided online training modules that were self-paced and satisfied a portion of the above requested 60 hours. These materials were provided on August 7, 2021. (Email from the Student's case manager dated February 14, 2023)
- The Student's case manager completed the online modules before the second semester began and the para-professional who was assigned to the Student completed these modules within 2 weeks of being hired. (Interview with District Staff dated February 2, 2023)
- It was requested that the additional training hours (35 hours total) were to be held "in a variety of settings." (Letter of Complaint dated January 2, 2023)
- The paraprofessional completed training in the school hallways and classrooms, and subsequently at a Walmart located 45 minutes from the school, and at a McDonalds, both after school hours (Interview with District Staff dated February 2, 2023)
- The Student's case manager went to a dance recital 50 miles from the school during the evening, as well as to a local farming store to train with the service dog. (Interview with District Staff dated February 2, 2023)
- The training materials were geared toward a service dog's handler (in this case, the Student). (Interview with District Staff dated February 2, 2023)
- The District did not have a policy on service animals in schools at the time of this request. (Email with Student's case manager dated February 14, 2022)
- Title II of the Americans with Disabilities Act requires that a service animal must "be under the handler's control," and that the "full responsibility for care and supervision" of the animal is on the handler or owner.
- A draft policy was developed based on ADA requirements. This document reads:
 - "Student's responsibilities: A service dog must be individually trained to do work or perform tasks for the benefit of the person with a disability. The care and supervision of a service dog is the responsibility of the student, such as:
 - A. A service dog must be under the control of its handler, the student with a disability, via voice controls, signals, or other effective means" ([Redacted] Service Animals dated January 2022)
- According to School District Policy, which was developed and adopted in July of 2022 "The owner or handler of a service animal is solely responsible for the supervision and care of the animal, including any feeding, exercising, and clean up while the animal is in a school building or on school property.

The student's parent or guardian is responsible for providing for the supervision and the care of the animal in the event that his or her student is not able to do so. The school district is not responsible for providing any care, supervision, or assistance for a service animal." (Policy 3046 Animals at Schools, dated July 29, 2022)

Investigative Findings

The first portion of this issue is related to documentation within the state system that the teacher working with the Student was not adequately credentialed. While technically, the teacher's certificate had not been posted on the NDE website until January 31, 2022, the teacher had met all requirements for certification and the delay was the responsibility of the Nebraska Department of Education and does not reflect violation on the part of the District.

The second part of this issue is related to specific training for District staff who were implementing the Student's IEP. This training was requested by the Parent and is geared toward the handler of the service animal. District policy, consistent with ADA requirements, makes clear that the owner or handler is *solely responsible for the supervision and care of the animal*. As a result, the District bears no responsibility for becoming trained as handlers themselves. School District staff went above and beyond in their willingness to participate in out-of-school training in order to be fully prepared to implement the Student's IEP and ensure access to the general education curriculum, extra-curricular or nonacademic activities, and nondisabled peers while also providing access to the service animal.

Summary and Conclusions

Based on the fact that the teacher had met all requirements for certification, and on the District's good faith efforts to become familiar with the handler's responsibilities related to the service animal, the District implemented the requirements of 92 NAC 51-010.01 and 51-007.07, and **no corrective action** is required.

Issue # 2

Did the District develop, review, revise, and implement an IEP designed to meet the child's needs that result from the child's disability, including input from the Parents? [92 NAC 51-007.01, 007.06, 007.07A]

92 NAC 51-007.01 states:

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

007.06 *Parent Participation*

007.06A *The school district or approved cooperative shall take steps to ensure that one or both of the parents of the*

child with a disability are present at the IEP conference or are afforded the opportunity to participate.

007.07 *IEP Development*

007.07A: *The IEP shall Include:*

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

007.07A3 *For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;*

Allegations/Parent Position

In the Letter of Complaint (dated January 2, 2023), the Parent raised a number of concerns related to the development of the IEP. Specifically, the parent alleges that goals included in the IEP are not measurable, there are no benchmarks included on some goals, and benchmarks that do not match the goal on others.

District Response

The District held 2 formal IEP meetings as well as several other meetings involving smaller groups in an effort to address the Parents' concerns.

Findings of Fact

- IEP meetings were held on January 20 and April 5, 2022.
- Both parents were in attendance and participated in both meetings (IEPs dated January 20 and April 5, 2022)
- The January 20, 2022, IEP includes the following annual goals:
 - By the annual review, given an explanation of differing communication styles, [the Student] will demonstrate an understanding by identifying at least 3 unique and 3 shared non-spoken forms of communication, spoken forms of communication, and social-emotional values. (No objectives are listed)
 - By the annual review, [the Student] will increase reading and language skills by completing the following benchmarks/objectives below in 7 out of 10 opportunities each.
 - Complete comprehension questions/activities independently in 8/10 opportunities
 - Grammatically correct sentences, adding adverbs and adjectives to enhance sentences

- By the annual review, [the Student] will increase math skills by demonstrating the following benchmarks/objectives below in 7 out of 10 opportunities each.
 - Multiplication/division 7,8,9- memorized, others using chart working toward memorizing measurement
 - Telling time to the minute on an analog
 - Money concepts, counting, spending/earning
 - Identify correct operations to use when solving a story problem
 - Complete multiple-step problems
- By the annual review, [the Student] will tell adults at school when [the Student] is feeling anxious/anxiety and when [the Student's] temperament is changing to something that may need guidance 80% of the time.
 - Self-identify when feeling anxious
 - Tell the reason why
 - Implement coping skills for a duration determined upon her self-identifying needs/feelings
 - Reactions to events/circumstances will be relevant to the size of the problem
 - Has the ability to express emotions to multiple adults in a variety of environments
- On April 5, 2022, the IEP team again convened and revised the IEP. The following revisions are noted (IEP dated April 5, 2022):
- Post-secondary transition goals and services were revised (see issue #4 for a detailed description)
- The April 5, 2022, IEP included the same 4 annual goals previously outlined, and added the following:
 - [The Student] will utilize schedules to plan self-care, employment, and educational and recreational activities.

Investigative Findings

The 2 IEPs provided document 2 IEP meetings held in just over 2 months' time and demonstrate the District's willingness to review, revise, and consider parent input in the IEP process during the late winter and spring of 2022. The first 3 goals are measurable and include criteria for achievement. The fourth goal and 5th goals (added in April) are not so clearly measurable, and no clear measurement methods are outlined.

Three of the 4 goals in the first IEP and 3 of 5 in April reflect benchmarks to attain goals. Finally, Annual Goal 2 does include a discrepancy in measurement with the goal stating 7/10 and the benchmark, 8/10. This last issue likely reflects a typo.

It is important to note that the IEP is a document that is intended to be developed by the entire IEP team, so if individual members (such as the Parents) don't

understand a goal or notice typos or sections that are not addressed on the document, the IEP meeting provides a format for clarifying, editing, and revising the document to ensure clarity for all members.

Summary and Conclusions

Based on the fact that 2 of the 5 goals lack clarity with regard to measurement, the District failed to implement the requirements of 007.07A2. Thus the following corrective action is required.

Corrective Action

1. Within [10] calendar days of the receipt of this investigation report, the District must reconvene the Student's IEP team and review the goals in the current IEP to ensure that they are all measurable and those data collection procedures are clearly specified for each annual goal.
 - a. Copies of the revised IEP with signatures of those in attendance shall be provided to NDE within 5 calendar days of the meeting.
 - b. A random sample of 3 student IEPs will be reviewed on or before December 1, 2023, to ensure correction has been made.
2. The School District must develop and provide training to all certified staff responsible for monitoring IEP goals within 60 calendar days of the date of this report. The training should outline the features of measurable annual goals and data collection procedures for the measurement of progress and progress reporting.
 - a. The training must be approved by the NDE Office of Special Education two weeks prior to the training.
 - b. Copies of the participant sign-in sheets or other evidence of attendance shall be provided to NDE within 5 calendar days of the date of the training.

Issue # 3

Did the District revise the IEP as appropriate to address any lack of expected progress toward annual goals and input from the parents? [92 NAC 51-007.10]

92 NAC 51-007.10 states:

- 007.10 *The IEP team shall revise the IEP as appropriate to address:*
- 007.10A *Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;*
- 007.10B *The results of any reevaluation conducted under 92 NAC 51-006.05A;*
- 007.10C *The information about the child provided to, or by, the parents as described in 92 NAC 51-006.06A1;*

007.10D *The child's anticipated needs; or*

007.10E *Other matters*

Allegations/Parent Position

The Student exhibited repeated behavioral “meltdowns” during the late winter and spring of 2022, which could have been avoided if the staff was taking the suggestions provided by the Parent.

District Response

The Student's behavior escalated in spite of staff training on de-escalation techniques, access to breaks, and support from staff members with whom the Student had years of positive relationship history. After informal meetings were held, the IEP team re-convened in April specifically to address some of the concerns raised by the parent.

Findings of Fact

- Progress reports for the 3rd and 4th quarters of 2022 reflect progress on most goals identified in the IEP. (Progress Reports dated March 10 and May 7, 2022)
- IEP meetings were held twice during this period of time and the IEP was revised, including changing the transition goals based on new information. (IEPs dated January 20 and April 5, 2022)
- Goal 4 on both 2022 IEPs is most closely related to the challenging behaviors that impacted the Student's progress toward the end of the school year. It reads:
 - By the annual review, [the Student] will tell adults at school when [the Student] is feeling anxious/anxiety and when [the Student's] temperament is changing to something that may need guidance 80% of the time.
 - Self-identify when feeling anxious
 - Tell the reason why
 - Implement coping skills for a duration determined upon her self-identifying needs/feelings
 - Reactions to events/circumstances will be relevant to the size of the problem
 - Has the ability to express emotions to multiple adults in a variety of environments

Investigative Findings

The District clearly demonstrated its willingness to meet, discuss, and revise the IEP according to the Student's changing needs, especially as it related to the service dog. The significant behavioral outbursts did escalate toward the end of the school year, and because the goal designed to address this behavior was not measurable (addressed in Issue #2), it was difficult to make data-based decisions

about how to intervene with this behavior. So the problem with escalating behavior had less to do with a willingness and efforts to revise the IEP and more to do with the behavioral goal not being appropriately designed to meet the Student's needs.

Summary and Conclusions

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

Issue #4

Did the District develop an appropriate transition plan, including postsecondary goals and transition services as outlined by 92 NAC 51-007.07A9?

92 NAC 007.07 states:

007.07 *IEP Development*

007.07A: *The IEP shall include:*

007.07A9 *Beginning not later than the first IEP to be in effect when the child turns 14 and updated annually thereafter*

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

007.07A9b *The transition services (including course of study) needed to assist the child in reaching those goals;*

Allegations/Parent Position

The transition goals and services are not designed to help the Student develop social skills, job skills, and life skills in preparation for post-high school transition.

District Response

The District provides transition services aimed at improving "soft skills," social skills, and employment skills. Some of the activities that are undertaken by students

include organizing and selling concessions at school basketball games, on-the-job training at local sites, and daily social emotional, and behavioral skills.

Findings of Fact

- The January 20 and April 5, 2022 IEPs each reflect transition assessments conducted August 25 and September 14, 2021 and reference interviews, written questionnaires, and journaling that were used to develop postsecondary goals.
- The Present Levels of Academic Achievement and Functional Performance reflect the following, all presumably related to independent living:
 - Language functioning at or below the first percentile
 - Pragmatic language weaknesses
 - Support needed to keep iPad safe and dry
 - Support needed to open toothpaste tube and brush teeth
 - Visual-motor integration scores below the first percentile
- The January 20, 2022, IEP includes the following post-secondary goals:
 - Education/Training: After graduation, [the Student] plans on continuing [the Student's] education through the ESU's transition program.
 - Employment: After high school, [the Student] will gain allowance through [the Student's] chore app and with [local business].
 - Independent Living: The current transition assessment results were considered and the IEP team determined that a postsecondary goal in Independent Living is not appropriate at this time.
- The January 20, 2022, IEP includes the following transition services:
 - Transition Service 1: I will complete transitional activities weekly.
 - Transition Service 2: I will begin to go to college and career fairs with my peers. I will begin to do career explorations.
- While the IEP form provides a place for the team to indicate which postsecondary goal each service supports, none are marked.
- The April 5, 2022, IEP includes the following post-secondary goals:
 - Education/Training: Upon exiting high school [school name] programming, [the Student] plans on attending the [specific program]. [The Student] will become a service dog trainer.
 - Employment: [The Student] will attain a job at [business] as a service dog trainer.
 - Independent Living: The current transition assessment results were considered and the IEP team determined that a postsecondary goal in Independent Living is not appropriate at this time.
- The April 5, 2022, IEP included the same transition services and added a third (below) though each was linked to goals in all 3 transition areas (though no goal was provided for independent living).

- [The Student] will participate in daily instruction in social skills, self-advocacy skills, and self-care skills.
- When asked what “transition activities” were, the teacher stated, “we work concessions, put together concessions for basketball games, on-the-job training opportunities (such as the vet), even things like holding the door for someone. Skills that are marketable in the workplace. Labeling emotions, appropriate social-emotional behavior in the classroom.” (Interview with District Staff dated February 2, 2023)
- The teacher also described participation in college and career fairs twice yearly, meetings with vocational rehabilitation, and training on “anger management in different environments, how to recognize bullying, following directions, recognizing and labeling emotions, cooking, cleaning, organizing projects, creating speeches and presentation, creating flyers and posters, wipe off flat surfaces, vacuum, sweep, dishes, and other household tasks. We discussed financial literacy, writing skills, mailing letters, answering questions with detail, etc.” (Email from case manager dated February 15, 2023)

Investigative Findings

The transition plan in the January IEP does not include a post-secondary education goal rather it states that the Student will continue education in the 18-21 program available with the ESU. The education goal should describe what will happen with the Student's education after completion of the 18-21 program. There are places in the IEP where the Student's limited independent living skills are clear and then the IEP states that a goal in this area is not needed. The transition services described are vague and not clearly linked to areas of post-high school transition. The transition activities described are designed for the program as a whole and do not appear to be individualized for the unique needs of the Student, which result from the Student's disability, and which are directly related to post-high school transition goals.

The IEP revised in April specifies appropriate postsecondary goals for education/training and employment more clearly but continues to directly state that goals with regard to independent living are not warranted. In direct conflict with this statement are services that are directly linked to independent living goals. However, with the Student continuing in the 18-21 program, there is no course of study described as the Student progresses until aging out of the program. The transition plan document does not reflect thoughtful consideration of the Student's unique needs to assist the Student in achieving post-secondary goals.

Summary and Conclusion

Based on deficiencies in the Student's transition plan, the District failed to fully implement the requirements of 92 NAC 51-007.07A9. Thus the following **corrective action is required**.

Corrective Action

1. Within 10 calendar days of the receipt of this Investigation Report, the District must reconvene the Student's IEP and ensure that the transition plan is based on transition assessment data, an appropriate course of study is documented through the Student aging out, and that the transition services are clearly linked to assisting the Student to achieve the postsecondary goals.
 - a. The IEP and associated PWN must be sent to NDE no later than 10 days after the meeting.
 - b. A random sample of 3 student IEPs will be reviewed on or before December 1, 2023, to ensure correction has been made.
2. The School District must develop and provide training to all certified staff who work with students 14 years and older within 60 calendar days of the date of this report. This training shall address the process of transition planning in each of the 3 identified areas of transition and developing goals, services, and a course of study to support a comprehensive transition plan.
 - a. The training must be approved by the NDE Office of Special Education two weeks prior to the training.
 - b. Copies of the participant sign-in sheets or other evidence of attendance shall be provided to NDE within 5 calendar days of the conclusion of the training.

Issue # 5

Did the District include in the IEP a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting those goals will be provided? [92 NAC 51-007.07A4]

90 NAC 007.07A4 states:

007.07A: *The IEP shall include:*

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

Allegations/Parent Position

The progress reporting section of the IEP does not indicate when progress toward attaining annual goals will be reviewed.

District Response

The District did not provide a response to these allegations.

Findings of Fact

- The District's IEP template includes a space under each goal that describes the way progress will be reviewed and reported to parents. Under the heading for "Schedule," the IEP indicates B- 9 weeks, meaning that progress reports will be provided every 9 weeks of school. A space follows for "Review Dates" and has been left blank on all goals. (IEPs dated January 20 and April 5, 2022)
- Progress reports were provided on March 10 and May 7, 2022. These progress reports reflected progress on most goals, which was supported by data (both numeric and observation). (Progress reports dated March 10 and May 7, 2022)

Investigative Findings

Indeed, the exact dates for progress reporting are not listed on the IEP, though that level of detail is not required by Rule 51. Instead, the frequency with which those reports will be provided is listed, reflecting periodic reporting that occurs with the issuance of report cards. Furthermore, detailed progress reports that demonstrate progress by reporting data were provided according to the schedule outlined in the IEP.

Summary and Conclusion

Based on the above, the District implemented the requirements of 92 NAC 51-007.07A4, and **no corrective action** is required.

Issue # 6

Did the District address the Student's need for a service animal through a statement of the related services, supplementary aids and services, and the program modifications or supports for school personnel that would enable the child to advance appropriately toward attaining the annual goals, be involved in and progress in the general education curriculum, participate in extracurricular and other nonacademic activities and participate with other children with disabilities and nondisabled children? [92 NAC 51-007.07A5]

92 NAC 51-007.07A5 states:

007.07A *The IEP shall include:*

007.07A5 *A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child,*

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

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

Allegations/Parent Position

The District agreed to train in order to support the Student and service dog, though did not communicate effectively, delaying the dog's ability to attend school. Further, the service dog was limited to the special education room because the "only trained handler was the sped teacher." These training limitations resulted in the Student having limited access to the dog in the school setting.

District Response

As outlined in Issue #1, the District made many efforts to receive the training designed for handlers. The teacher and paraprofessional completed all training modules in a reasonable and timely manner. The amount, location, and time of day that additional training was requested were not always feasible for District staff, though multiple efforts were made, involving extensive travel outside of school hours to participate in this requested training.

Investigative Findings

- The January 20, and April 5, 2022 IEPs include the following in the Program Modifications and Accommodations section:
 - Transportation: "[The Student's] service dog [Dog] will also be transported. This will occur twice a day.

- o Service Dog: As of current, [the Student] will have a service dog, [Dog] with [the Student]/will be readily accessible. The IEP team determines that assisting the student in handling [the Student's] own service animal is necessary for the Student to receive FAPE, then such assistance may be required as special education or related service. [The District] staff will provide guidance for [the Student] to become more independent, and will aid the student under these circumstances: The primary [District staff] for the service animal may offer guidance for [the Student] as [the Student] does develop ... independence in giving cues to the service dog. Otherwise, the primary will cue the service dog when necessary. The primary (sped teacher) has already been trained with the cues/signals."

Summary and Conclusions

The IEP includes a reference to the need for transportation (a related service) for the service dog. The modifications and/or accommodations necessary for the Student to receive FAPE are also outlined, including a detailed description of the role of District staff when the Student needs assistance.

Based on a review of the IEP, the District implemented the requirements of 92 NAC 51- 007.07A5, and **no corrective action** is required.

Issue # 7

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

92 NAC 51-008.01 states:

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

Because the allegation made by the parent included concerns related to both the least restrictive environment and disciplinary removal, the following regulation was added to the investigation and the District provided input as part of the investigation process.

92 NAC 51-016 states:

016.01 *Change of Placement for Disciplinary Removals*

016.01A *For the purpose of removals a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:*

016.01A1 The removal is for more than 10 consecutive school days; or

016.01A2 *The child is subjected to a series of removals that constitutes a pattern*

Allegations/Parent Position

The District made the decision to seclude the Student in the office for the last 2 weeks of school because the relationship between the Student and special education staff had become so eroded that the Student was having repeated behavioral "meltdowns." During these 2 weeks, the Student did not have access to the service dog.

District Response

As the end of the school year approached, the Student experienced an escalation in aggressive outbursts. The school principal, who has received CPI training, was called down each time one of these outbursts occurred. On one occasion, the case manager had been kicked between the legs, scratched, and hit, requiring a doctor's visit. Physical restraint was required on more than one occasion. The principal was also being hit and spit on. Finally, on April 14, 2022, the Student attacked the school nurse, with whom the Student had a close relationship and had never had an aggressive outburst. The Student did considerable damage in the nurse's office and scratched the nurse. The school principal informed the Superintendent and parents that the Student would spend the last 2 weeks of school in the front office with the principal.

Findings of Fact

- During the Student's senior year, the Student began experiencing increasing behavior outbursts, and, "we started to put [the Student] in ISS for a short time right next to my office with a window... [the Parent] was very much against this procedure, so I didn't use it very much." (Statement from the principal, dated January 18, 2023)

- An unusually aggressive incident involving the school nurse occurred on April 14, 2022 (Interview with District Staff dated February 2, 2023)
- The school principal informed the Parent that for the remainder of the school year, the Student would be placed in the front office where the principal would be responsible for the Student's supervision and care. (Interview with District Staff dated February 2, 2023)
- During the 9 school days that the Student spent in the front office, the Student did not bring the service dog (by the family's choice) and did not participate in general education courses. (Interview with District Staff dated February 2, 2023)
- The Student's case manager provided schoolwork that was completed in the office. For every 10 minutes of work, the principal provided a break. (Interview with District Staff dated February 2, 2023)
- The Student ate lunch in the lunchroom and went to track during this time period. (Interview with District Staff dated February 2, 2023)
- The District denies any other instances of removal from the classroom for disciplinary reasons during the 2021-22 school year. (Interview with District Staff dated February 2, 2023)
- The Parent also noted that the Student was placed in In-School Suspension in the front office sometime earlier in the school year, though was unable to produce the dates this occurred. (Interview with the Parent, February 9, 2023)

Investigative Findings

The escalation in the Student's behavior in the last months of the 2021-22 school year warranted a new level of intervention and certainly posed a safety risk for both staff and other students. However, when disciplinary removals from a student's least restrictive environment exceed 10 consecutive days or "constitute a pattern" of removal that exceeds 10 school days, the District is, in essence, unilaterally changing a student's placement, a decision that, by law, must be made by the entire IEP team. The law is clear about the steps that must be taken as a student approaches 10 days of disciplinary removal (including manifestation determination, prior written notice, and the continued provision of services on the 11th day). The removal at the end of the school year was 9 days total, though, by their own admission, the District had used this procedure earlier in the school year. Because the Student's escalating behavior compromised the safety of the Student and others, it was the District's responsibility to convene the IEP team, conduct a functional behavior assessment, and develop a behavior plan that effectively addresses the environmental factors, antecedents, and consequences related to the behavior. When aggressive and dangerous behavior persists following these clearly outlined steps taken by the IEP team, a change of placement can be considered by the IEP team.

Summary and Conclusion

Based on the removal of the Student from the least restrictive environment on the part of the District without the involvement of the IEP team, the District failed to fully implement the requirements of 92 NAC 51-008.01, 009.05B, and 016.01. Thus the following **corrective action is required**.

Corrective Action

1. The School District must develop and provide training to all certified staff and all administrative staff who work with students and supervise teachers within 60 calendar days. This training should outline the requirements of the IEP team when it comes to disciplinary removals, manifestation determination, prior written notice, and functional behavior assessment/behavior planning as part of the IEP process.
 - a. The training must be approved by the NDE Office of Special Education two weeks prior to the training
 - b. Copies of the participant sign-in sheets or other evidence of attendance shall be provided to NDE within 5 calendar days of the conclusion of the training.

Notice to District

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

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