

COMPLAINT INVESTIGATION REPORT

Complaint Number: 22.23.28
Complaint Investigator: [Redacted]
Date Complaint Filed: April 13, 2023
Date of Report: June 12, 2023

Issues Investigated

1. Whether the District afforded Parents an opportunity for meaningful participation in meetings for S28A and S28B [92 NAC 51-009.01 and 02].
2. Whether the District developed, reviewed, and revised IEPs to meet S28A's and S28B's unique needs pursuant to 92 NAC 51-007.01; 92 NAC 51-007.07A1 and 2; 92 NAC 51-007.07B1-3; 92 NAC 51-007.09B and C and 92 NAC 51-007.10.
3. Whether S28A's and S28B's IEPs were in effect and implemented according to the requirements set forth in Rule 51 pursuant to 92 NAC 51-007.01; 92 NAC 51-007.02A; and 92 NAC 51-009.04A3.
4. Whether the District's errors, or omissions, result in a denial of FAPE pursuant to 92 NAC 51-004.01.
5. For S28B, the Nebraska Department of Education Office of Special Education will also determine whether the District ensured placement is made by a group and in conformity with the least restrictive environment pursuant to 92 NAC 51-008.01.

Information Reviewed by Investigator

From the Complainant

1. Letter of Complaint dated April 13, 2023; received by NDE April 13, 2023.
2. 202708.jpg S28B: Health Care Professional (HCP) order requesting a neuropsychological evaluation dated Feb. 21, 2023
3. 202740.jpg S28B: HCP (neurology medical doctor) referral for EEG video monitoring dated Feb. 21, 2023.
4. 202824.jpg Instructions from HCP re: medications - the screenshot does not specify to which student it pertains.
5. 202841.jpg S28B: HCP office visit note Feb. 21, 2023.
6. 202930.jpg S28A: Preventative exam summary (PES) - page 1 of 5 - Aug. 10, 2022 – report generated Jan. 4, 2023 concerns about behavior, viewing pornography and masturbation, medications reviewed, mild intermittent asthma but has been pretty good lately, problem areas reviewed.
7. 203054.jpg S28A: Preventative Exam Summary page 3 of 5 – Aug. 10, 2022

8. 203104 jpg S28A: Preventative Exam Summary page 4 of 5 – Aug. 10, 2022
9. 203203 jpg S28A: Preventative Exam Summary page 5 of 5 – Aug. 10, 2022 – report generated Jan. 4, 2023.
10. 203254 jpg S28B: Preventative Exam Summary – page 1 of 7 – Jan. 4, 2023 – report generated Jan. 5, 2023 – review history, medications and problem list.
11. 203338 jpg (and duplicate) S28B: Preventative Exam Summary – page 2 of 7 – Jan. 4, 2023 – report generated Jan. 5, 2023 – parent indicates S28B is academically successful at school and is trying to figure out why 2 PE classes and more self-care classes.
12. 203408 jpg S28B: Preventative Exam Summary – page 3 of 7 – Jan. 4, 2023 – report generated Jan. 5, 2023 – patient interview and exam findings
13. 203439 jpg S28B: Preventative Exam Summary – page 4 of 7 – Jan. 4, 2023 – report generated Jan. 5, 2023 – anticipatory guidance, assessment and plan.
14. 203501 jpg S28B: Preventative Exam Summary – page 5 of 7 – Jan. 4, 2023 – report generated Jan. 5, 2023
15. 203517(2) jpg (and duplicate) S28B: Preventative Exam Summary – page 6 of 7 – Jan. 4, 2023 – report generated Jan. 5, 2023
16. 203504(2) jpg (and duplicate) S28B: Preventative Exam Summary – page 7 of 7 – Jan. 4, 2023 – report generated Jan. 5, 2023 – care plan goals = well managed ADHD.
17. 203551(2) jpg (and duplicate) S28B: Occupational Therapy (OT) treatment notes March 23, 2023 –
18. 203606 (2) jpg (and duplicate) – S28B: OT treatment notes March 31, 2023 – HD.
19. 203624 (2) jpg (and duplicate) – S28B OT treatment notes April 3, 2023.
20. 203650 – S28B: OT treatment notes April 14, 2023.
21. 203709(2) jpg (and duplicate) S28B: OT treatment notes April 21, 2023
22. 203827(2) jpg (and duplicate) S28B: 2023 class schedule
23. 212933 jpg S28B: PWN refusal to provide ABA therapy at school
24. 212951 jpg S28B: PWN pg 2.
25. In addition to the documents provided, both Parents/Complainants were interviewed via Zoom on May 18, 2023.

From the School District

1. Letter of Response dated May 8, 2023; received by NDE May 8, 2023.
2. Written Statement - Complaint Research and Resolution by Special, Education Director not dated; received by NDE May 8, 2023.
3. S28A Educlimber Incidents Data 2022-2023
4. S28A Educlimber Incidents Data 2021-2022

5. S28A Class Schedule 2022-2023 and 2021-2022
6. Phone log 2022-2023 pertains to both students, including issues related to bed bugs and ABA for S28A who receives outside therapy but parent wants ABA therapy provided at school.
7. March 10, 2023, Email from District to parents providing PWN attached.
8. March 25, 2023, Email between father and principal pertaining to transition planning, Individualized Education Program (IEP), Health and Human Services (HHS), Applied Behavioral Analysis (ABA). Parent expressing concern that school is calling HHS to report family, that students are being questioned about future living arrangements, and the request for ABA therapy being denied.
9. March 29, 2023, Email between District and father re: S28A's chromebook use. S28A attempting to access inappropriate content on the computer and taking things that don't belong to him.
10. S28A document reflecting meetings scheduled.
11. S28A – Note from mom to school revoking permission to communicate (school and HCP) dated March 2018.
12. S28A Autism Spectrum Disorder (ASD) Referral form Jan. 2022
13. S28A ASD Permission form January 2022 – Parent/Guardian permission for Release of Information signed by parent Jan. 28, 2022 and district Jan. 31, 2022.
14. S28A 2021-2022 ASD Network Collaboration notes
15. S28A Determination Notice March 27, 2023 – Notice provided April 5, 2023, signed by parent April 6, 2023 – continues to meet eligibility criteria in the categories of ID (Intellectually Disabled) and OHI (Other Health Impaired) (Attention Deficit Hyperactivity Disorder [ADHD]) - no additional testing necessary – see other relevant information with other diagnoses – Present Levels of Academic achievement and Functional Performance (PLAAFP) does not address concerns regarding pornography, masturbation, theft but report from HCP talks about behavioral health concerns and medication for these issues.
16. S28A Alternate Assessment 2021 - eligible for Alt. Assessment.
17. S28A Alternate Assessment 2022 - eligible for Alt. Assessment.
18. S28A Alternate Assessment 2023 - eligible for Alt. Assessment.
19. S28A IEP April 2021- April 2022.
20. S28A March 8, 2023: Parent input for 2023 IEP.
21. S28A IEP March 27, 2023.
22. S28A Notice of Meeting (NOM) dated March 6, 2021 for IEP to take place March 12, 2021.
23. S28A NOM dated March 24, 2022 for IEP to take place April 6, 2022.

24. S28A NOM dated March 8, 2023 for review of MDT verification of eligibility and IEP development to take place March 27, 2023.
25. S28A Prior Written Notice (PWN) of Refusal to provide outside ABA therapy at school with outside ABA therapist in school environment. Reason: student is making reasonable progress toward IEP goals and service requested is not indicated as needed. Also, see other factors... Dated March 9, 2023 and delivered March 10, 2023.
26. S28A Asthma Plan.
27. S28A Doctor notes – Feb. 28, 2023 request for ABA therapy at school as well as home and 2022 request for no sugar or caffeine as it interferes with efficacy of medication prescribed.
28. S28A Progress note Oct. 29, 2021 – includes behavior, Physical Therapy (PT), visual motor and perception, math and reading.
29. S28A Progress note Oct. 31, 2022 – includes PT, math, reading.
30. S28A Progress note Dec. 31, 2021 – includes PT, math, reading – this progress note is for Dec. 31, 2022 so not sure if the date on the heading is a typo. Mistake in documents submission corrected by the District.
31. S28A Progress note Dec. 31, 2022 – includes PT, math, reading.
32. S28A Progress note March 29, 2022 – includes behavior, PT, visual motor and perception, math and reading.
33. S28A Progress note March 30, 2023 – includes PT, math and reading.
34. S28A Progress note May 31, 2022 – includes PT, math and reading.
35. S28B Schedule 2021-2022.
36. S28B Schedule 2022-2023.
37. S28B Phone log 2022-2023.
38. S28B Parent/father email expressing DHHS and clothing concerns.
39. S28B Maternity leave note dated April 2023.
40. S28B Meetings scheduled document – DHHS coordinator
41. S28B Parent note revoking permission to communicate between school and HCP dated March 2018.
42. S28B Multi-Disciplinary Team (MDT) Report. November 2020
43. S28B Alt. Assessment Nov. 2021
44. S28B Alt. Assessment Oct. 2022
45. S28B IEP May 2021
46. S28B IEP Nov. 2021, including PT, visual motor/visual perception/self-help, reading, math, life skills and social skills.
47. S28B IEP Oct. 27, 2022 – including PT, visual motor/visual perception/self-help, reading, and math.
48. S28B Notice of Meeting (NOM) Nov. 2020
49. S28B NOM Oct. 2021

50. S28B NOM Oct. 2022
51. S28B NOM Oct. May, 2022
52. S28B NOM Feb. 2023
53. S28B PWN May 2022 – ESY not needed
54. S28B PWN Feb. 2023 – change schedule for PE
55. S28B April 25, 2023 – nurse documentation of health information shared by parent.
56. S28B Doctor's note Feb. 2023
57. S28B Seizure Plan Feb. 2023
58. In addition to the documentation submitted by the District, the following District staff were interviewed via Zoom on May 18 and 19, 2023: District Special Education Director and Local Education Administrative (LEA) representative in Student's IEP meetings, Special Education teacher of Students 28A and 28B, representative general education teachers participating in Student's IEP meetings, Adaptive PE teacher.
59. Follow up interview with Special Education teacher on May 22, 2023.
60. S28A IEP April 6, 2022 through April 5, 2023.

Introduction

On April 13, 2023, the Nebraska Department of Education (the Department) received a written request for a special education complaint investigation from the parents (Complainants) on behalf of their two students (S28A and S28B) enrolled in the School District. The Complainant requested that the Department conduct a special education investigation under Nebraska's Rule 51 and the Individuals with Disabilities Education Act (IDEA).

The complaint included allegations that do not pertain to Rule 51 and the IDEA, therefore, falling outside of the investigator's jurisdiction. Allegations relevant to this complaint were synthesized into five issues and the Complainant was notified of other avenues of redress for their additional concerns.

The School District submitted a *Response* on May 8, 2022, disputing the allegations set forth in the complaint, providing an explanation, and submitting documents in support of the School District's position. Complainants provided screenshots of documents supplementing the complaint and Complainants as well as relevant individuals from the School District were interviewed via Zoom.

Per the Department's standard operating guidelines, neither party had access to the materials provided to the Complaint Investigator by the opposing party.

Findings of Fact pertaining to S28A

1. S28A is an eighth-grade student enrolled with the district (Parent's letter of complaint dated April 13, 2023).

2. According to Nebraska's Rule 51 regulations and standards for special education, S28A meets the criteria for eligibility as a student with an Intellectual Disability (ID) and also Other Health Impairment (OHI) due to a medical diagnosis of ADD/ADHD (*District Information #14*).
3. March 2018, Parents revoked consent for district staff and student's HCP to communicate with one another (*District Information #10 and #40*).
4. The school has an asthma action plan for S28A, developed by the student's HCP. The plan gives instruction for use of an inhaler based on as needed according to the severity of the symptoms using green, yellow and red traffic signal style description (*District Information #25*). Each of the education professionals interviewed who work directly with S28A were interviewed, aware of S28A's asthma condition and were able to articulate understanding of the plan (*District Information #57*). S28A has a history of attempting to view inappropriate content on chrome books assigned to the student by the school (Parent's letter of complaint dated April 13, 2023; *Parent Information #6, #10, #25; District Information #1, 8, 11, 13, and 57*).
5. S28A has a history of taking things that do not belong to him (Parent's letter of complaint dated April 13, 2023, *District Information #2, 3, 8, 14, 57*).
6. S28A has a history of physical and verbal aggression (Parent's letter of complaint dated April 13, 2023; *Parent Information #25; District Information #1, 18, 19, 20, 14, 27, 31, 59*).
7. During the 2021-2022 school year, the district's discipline/incident reporting system shows that 4 incident reports were completed for S28A. Two of the incidents involved physical aggression and inappropriate language and two were technology violations (*District Information #1, and 3*).
 - a. Nov. 18, 2021, S28A punched, kicked, and bit 3 staff members and used inappropriate language toward staff members and law enforcement. S28A received in-school suspension.
 - b. December 7, 2021, S28A refused to take a walk, deep breaths or cool down. S28A used profanity, hit, kicked, spit and threw items at staff. S28A also threatened "to bring an AK15 to school to shoot us all." S28A received out-of-school suspension.
 - c. Jan. 26, 2022, S28A was discovered viewing inappropriate videos on YouTube (noted that this is a repeat offense for S28A). Student's device was confiscated until further notice. Staff had a conference with S28A regarding the inappropriate behavior.

- d. April 11, 2022, S28A was caught googling “naked women music” during free time in tech class. S28A lost technology privileges.
- 8. During the 2022-2023 school year, the district's discipline/incident reporting system shows that 4 incident reports were completed for S28A (*District Information #1 and 2*).
 - a. Nov. 4, 2022, technology violation - S28A was looking up naked women on his school computer. The incident was discussed with S28A and he will not be allowed to have his computer for the time being.
 - b. Nov. 21, 2022, minor defiance/non-compliance – S28A became frustrated with an activity and left class to go to another location. S28A began to escalate verbally, tipped over a table and went to the calm down room, slamming the door. After about 15 minutes, staff were able to get S28A to open the door, talk about what happened, possible reasons adding to his frustration and agreed to ask for a break the next time before getting so frustrated. S28A received detention.
 - c. Nov. 28, 2022, major – theft – S28A took another student's Air Pods off the charging station in the commons area. S28A received detention.
 - d. January 6, 2023, major – physical aggression, during reading, S28A stopped working and received a directive from staff “I'll wait until you're ready to work” and staff then ignored the problem behavior. S28A escalated and began throwing things. Other students were removed from the class and S28A continued to escalate with physical and verbal aggression. S28A calmed down during that class period and expressed that he was mad because, this morning, his mom wouldn't let him get his birthday presents from the car. S28A lost privileges as a consequence of the behavior.
- 9. March 3 and 30, 2022 – S28A was referred to the ASD Network upon parent request (*District Information #1, 11, 12, and 13*). The ASD Network collaboration notes and action plan describe the following:
 - a. Plan to address concerns related to verbal and physical aggression, inappropriate self-touch and viewing inappropriate content online.
 - b. The referral indicated that the mother reached out because of struggles with behavior at home.
 - c. March 30, 2023, data supports that S28A is doing well at school.
 - d. Changes in medication for S28A.
 - e. Parents state that defiance is currently not a concern at home.

- f. Parent is concerned that S28A may be “bottling things up at school or on the bus ride home causing outbursts at home.
 - g. Mother avoids taking S28A and other siblings to the store with her because the children ask for more things than she is prepared to purchase.
 - h. Parent says that S28A's after school behavior is predictable based on attitude and demeanor when getting off of the bus after school.
 - i. Concern regarding consistency and frequent changes in medication.
 - j. Family includes mom, siblings, and step-father. Mom has not been open to having others come into the home to help. A neighbor helps from time to time so mom can have a break. DHHS has been involved in the past, so there is some caution with having others involved. Parents revoked permission for the school to talk with doctors, counselors, or others when the school reached out to learn more about medication. Mom reports that trust was broken and is still being worked on.
 - k. S28A has made comments about hurting others since 4th grade but no mention of weapons. Prior to Winter Break, S28A made a statement that was perceived as a terroristic threat. An officer who was in the building spoke to S28A and let said “we can't talk about that.” (*District Information #12 and 13.*)
10. S28A's IEP dated April 6, 2022, in force until April 5, 2023, provides the following:
- a. Strengths: S28A is a good friend and cares about others around him. A28A likes structure and routine. S28A is able to follow simple one-step directions. He likes to help others. S28A comes to class ready to work, most of the time in a good mood, and gets his work done on time. He wants to learn. S28A participates well when asked. S28A is very polite and has a fun personality. He does a nice job following along by listening attentively during instruction. S28A is always first to class and has a smile on his face.
Mom states that S28A always helps others, likes hugs, likes to joke around, and tries new things.
 - b. Parent Concerns: Mom would like to see S28A continue to have success. Mom reports S28A struggles with expressing himself, impulse control, and doesn't handle uncomfortable situations. Transition concerns: Mom isn't sure about what S28A might be able to do when he is graduated. He may grow in his skills. S28A will not go to counseling with Holly Fuhr at Blue Valley Behavioral Health from now

until August when he goes back to do a check-in. S28A is medically diagnosed with Autism, ADHD, ODD, Disruptive Mood Dysregulation Disorder, and Insomnia. He also has asthma and uses an inhaler when needed.

- c. During the 2021-2022 school year, S28A's behavior has greatly improved and behavior goal has been met. Only 3 or 4 instances of physically aggressive or threatening behavior prior to the Christmas break and none after that. PBIS strategies work well for S28A and will continue to be provided.
 - d. S28A needs to continue to work on expressive and receptive communication and needs support for different social situations.
 - e. S28A has developed many positive relationships with peers.
 - f. S28A receives PT and has made progress with gross motor skills.
 - g. S28A receives OT and has made great growth with visual perceptual and fine motor skills.
 - h. Reading is very difficult and math is a strength. Though S28A needs a great deal of assistance, he works hard in academic subjects.
 - i. S28A participates in PE with accommodations, performs well in class and has progressed well in pushing physical skills and is more willing to try new things than in years past.
 - j. S28A's post-secondary goals include a desire for on-the-job training working at the police department or a department store and live as independently as possible. Continued daily supports for medical and personal needs are needed.
 - k. S28A will participate in the state and district wide approved alternate assessment with accommodations.
 - l. PWN of action proposed or refused by the district includes:
 - i. Adding transition planning because student will be 14 during the next calendar year.
 - ii. Remove goals related to behavior and regulating emotions because goals have been met.
 - iii. Update academic goals.
 - iv. Work on functional life skills (hygiene for the workplace, researching jobs, etc) and daily living skills (laundry, vacuuming, dishes, etc.,)
 - v. Ready to reduce time for PT and OT due to great progress
11. Nov. 9, 2022, S28A's HCP (physician's assistant) provided a note requesting no caffeine or sugar for S28A due to diagnoses of behavioral issues and medications (*District Information #26*).
12. Progress notes for the April 6, 2022 IEP indicate progress toward IEP goals.

13. Feb. 28, 2023, parents sent S28A to school with a letter from S28A's HCP (PA-C) requesting that S28A receive outside ABA therapy at school with outside ABA therapist in the school environment (*District Information # 1, 26, 57*).
14. NOM dated March 8, 2023 for IEP meeting March 27, 2023 to review MDT eligibility.
15. PWN of Refusal to provide outside ABA therapy at school with outside ABA therapist in the school environment prepared March 9, 2023 and delivered March 10, 2023.
16. March 27, 2023, during a duly constituted, properly convened meeting, an IEP for S28A, developed and remaining in force until March 25, 2024, provides the following:
 - a. Strengths - Academic: S28A tries hard each day in class. He wants to do well and works hard to stay on track. He stays engaged and enjoys answering questions. He is receptive to help when needed. He seems to like to use technology when it can be related to topics of interest. Social: CS28A is a good friend and cares about others around him.
Behavioral: S28A is friendly and has a pleasant, happy demeanor. S28A has the desire to please and has always done what is asked of him. Employment: S28A is interested in learning about employment at Walmart. Student completes chores at home and can follow directions from a list.
Education/Training: S28A wants to know more about training at Walmart.
Independent living: S28A brushes his hair and teeth here at school. He is able to use deodorant on his own. S28A stated he is good at video games, Art and PE. He also says he is good at following directions and completing his jobs at school. Mom states that S28A always helps others, likes hugs, likes to joke around, and tries new things.
 - b. Parent Information # including concerns: CS28A states he needs to follow the rules (stealing) and reading. Mother continues to have concerns with S28A and his computer usage at school. S28A is attending counseling with a behavioral health agency every other week. Mother reports that when talking to S28A's doctors, doctors have reported that their recommendation is for S28A to live at home. No current concerns about transition. S28A is medically diagnosed with Autism. ADHD, ODD, Disruptive Mood Dysregulation

Disorder, and Insomnia. S28A also has asthma and uses an inhaler when needed.

- c. MDT determined that S28A continues to meet Nebraska Rule 51 criteria as a student with an ID and also meets verification criteria under the category of OHI.
- d. S28A is currently an alternate-assessment student.
- e. S28A has had a good year so far. Only 4 incidents of looking up inappropriate content online and only one incident of physical aggression. The team states that this is a massive improvement. S28A thrives when praised, earns some free time, and has positive interactions with peers and adults. S28A love working toward something. Most often when frustrated, it's due to something being taken away or not being allowed to do something. S28A is able to verbally state what he wants and how he feels for the most part, unless escalated but that has only happened once this year. S28A's behavior is effectively managed through close supervision and managing access to devices with online access and the use of positive behavioral interventions and supports (PBIS).
- f. S28A needs to continue to work on overall expressive and receptive language, needs support in social situations and needs prompts, cues and visuals to aide in understanding social expectations and rules.
- g. Reading is difficult and math continues to be a strength and favorite subject.
- h. S28A needs and receives paraeducator support during general education classes.
- i. S28A participates in PE with accommodations. He is progressing and working hard and is consistent with mood and behavior and is ready to work. Still progressing in social skills and behavior with peers.
- j. PT: S28A has been receiving PT services to address concern with bilateral coordination, balance and strength. S28A has met PT goals and with detailed explanation, the team recommends S28A be dismissed from educational-based PT services at this time.
- k. OT: S28A has received consultative OT services to address concerns with fine motor skills and visual perception. With detailed explanation, it is recommended that S28A no longer receive educational OT services as he possesses functional adaptive writing and computer skills.

- l. Postsecondary transition plan updated. Needs to continue working on independent living skills and desires OJT with the goal of working at Walmart with a job coach.
 - m. Includes projected course of study anticipating social graduation with peers and continued programming options after social graduation.
 - n. Goals updated to reflect goals in reading and math only with special instruction (resource) speech-language therapy and para support when in the general education classroom.
 - o. PWN provides an explanation of proposals in the IEP, elimination of the PT goal and discontinuation of PT and OT services.
17. Feb. 28, 2023, S28A's HCP (PA-C) made a written request that S28A receive ABA therapy at school as well as home due to diagnoses of behavioral issues and medications. S28A brought the note to school and gave it to District staff. (*District Information #1, 24, and 26.*)
18. Telephone logs, emails and logs of scheduled meetings do not reflect that parent requested to meet with the school team prior to the commencement of the 2022-2023 school year (*District Information #1, 5, 9.*)
19. Parent did not specify any particular individual who received parent's verbal or written request for a meeting prior to the commencement of the 2022-2023 school year (Parent's letter of complaint dated April 13, 2023, *Parent Information #1-25.*)
20. Staff interviewed had no recollection of parent's request for a meeting prior to the commencement of the 2022-2023 school year and stated that if a verbal request had been made, the request would have been written down and provided to special education staff (*District Information #57.*)
21. Parents provided screenshots of a preventative exam summary (PES) from S28A's HCP dated Aug. 10, 2022 with the report generated Jan. 4, 2023. The report states that parent has concerns about behavior, viewing pornography and masturbation. S28A's numerous medications were reviewed and it is noted that S28A has mild intermittent asthma but has been pretty good lately. Problem areas were reviewed as were diagnostic test results and the care plan indicates the S28A has well controlled ADHD. Page 2 of 5 was not included in the screenshots provided by parents and parents also stated that the PES has not been shared with the District.

Findings of Fact pertaining to S28B

- 22. S28B is a 6th grade student enrolled with the district (Parent's letter of complaint dated April 13, 2013).

23. According to Nebraska's Rule 51 regulations and standards for special education, S28B meets the criteria for eligibility as a student with an Intellectual Disability (ID) (*District Information #41, 44, 45, and 46*).
24. March 13, 2018, the District received a note from Parents dated March 7, 2018 revoking consent for the District and HCPs to communicate with one another (*District Information #40*).
25. S28B's most recent MDT verification was completed on Nov. 4, 2020 and reflects a primary disabling condition of ID (*District Information #41*).
26. An IEP was developed for S28B by a duly constituted, properly convened team on November 1, 2021, and remained in force until Oct. 31, 2022. This IEP provides: (*District Information #45*.)
- a. Strengths: S28B is an extremely hard worker and always comes in ready to work. He does well interacting with both staff and peers. He is kind and likes to work with others. S28B loves to hang out with his friends and always does his best. S28B does a great job meeting expectations. . Mom reported that S28B loves hugs, smiles, he adapts to changes, and he is a lovable child.
 - b. Parent Information #: Mom reports that he can be hard to understand him because he will clench his teeth. He can speak very softly. He also is struggling with tattling. At home, S28B has impulse control issues and he will hit siblings instead of expressing what he needs.
Medication update: Growth hormone, started the end of February 2021. S28B works with a PA under Dr. Sala (in Lincoln) Dakota is seeing a neurologist on November 2, 2021. S28B takes a seizure medication.
 - c. Behavior does not impede learning.
 - d. S28B needs to improve functional communication skills.
 - e. Goals for 1) PT; 2) Visual motor, visual perception and self help; 3) Reading; 4) Math; 5) life/social skills.
 - f. S28B will receive paraeducator support as needed.
 - g. S28B will meet with his neurologist on Nov. 2, 2021. Parent will discuss concerns related to impact of medications and the potential affects on daily functioning, including fatigue, communication and focus. Parents have revoked permission for school staff and HCP to communicate with one another.
27. An IEP was developed for S28B by a duly constituted, properly convened team on Oct. 27, 2022, remaining in force until Oct. 26, 2023, (*District Information #46*). This IEP provides:

- a. Strengths: S28B is an extremely hard worker and always comes in ready to work. He does well interacting with both staff and peers. He is kind and likes to work with others. S28B loves to hang out with his friends and always does his best. S28B does a great job meeting expectations. He loves doing jobs around the building and is always willing to help an adult out. Mom reported that S28B loves hugs, making friends, helping and does well with routines.
 - b. Parent Information #: Mom reports that he can be hard to understand him because he will clench his teeth. He can speak very softly. He also is struggling with tattling. At home, S28B has impulse control issues and he will hit his siblings instead of expressing what he needs. He also struggles with boundaries. Medication update: Growth hormone, started the end of February 2021. Dakota has a follow up appointment next week. They will likely increase his medication. Mom reports that S28B may appear drowsy shortly after the increase in medication. S28B takes a seizure medication. Mom reports that S28B no longer takes a medication that impacts his shakiness. This medication was interacting with the growth hormone and seizure medication.
 - c. Assistive technology or devices are provided for S28B. Weighted utensils in the lunchroom, use of a calculator to help solve basic math facts, math manipulatives, weighted pencil and larger- sized crayons for better hand grip, visual aides for letter formation and for cues/prompts, and highlighted paper.
 - d. S28B has goals for 1) PT; 2) Visual Motor and Self Help in the academic environment; 3) Reading; and 4) Math.
 - e. DS28B will receive his reading and math in the resource room at his instructional level. These subjects will be driven by special education services using various teaching models; 1 on 1 and/or small group settings. Speech services will be co-taught with the SPED teacher on a weekly basis to focus on functional language skills. Modifications in subjects such as science and social studies will be made so that they are closer to his level of instruction. Occupational Therapy and Physical Therapy will be indirect or direct within the regular classroom or a one-on-one setting depending on S28B's needs.
 - f. S28B will take the Alternate Assessment
 - g. S28B will receive paraeducator support as needed.
28. Complainants provided screenshots of a five-page Preventative Exam summary dated January 4, 2023 with the report generated Jan. 5, 2023. The exam reviewed S28B's history, including allergies to medications and 5

prescription medications. During the exam, the Parent reported that S28B is successful at school and that Parent is trying to determine why S28B has two PE classes and more self-care classes. It is not noted that Parent reported concerns about seizures or tremoring.

29. S28B's class schedule for the 2022-2023 school year includes the following (*District Information #34 and 35*):
 - a. Adaptive Physical Education (APE) five days per week from 8:59 am until 9:45 am.
 - b. Music five days per week from 10:09 am until 10:55 am.
 - c. Life Skills class five days per week from 1:55 pm until 2:41 pm.
30. During the 2021-2022 school year and until Feb. 2023, S28B participated in a rotation of P.E., and music with his general education peers. S28B also participates in an Adaptive P.E. class focusing on developing skills in a small group or individually. February 2, 2023, Parents sent S28B to school with a note from S28B's HCP (orthopedist) requesting that S28B participate in only one APE class and to contact the clinic with questions or concerns. S28B's schedule was revised to eliminate general education PE with peers and substitute music with peers on the alternate rotation.
31. February 6, 2023, S28B's IEP team met to discuss APE and PE. The team determined that S28B would continue APE and, during the alternating schedule of general PE and Music, S28B would attend Music daily instead of the usual rotating schedule of APE and regular PE. PWN was provided.
32. Parent provided a screenshot of HCP (neurology MD) referral for a neuropsychological evaluation and also EEG video monitoring dated Feb. 21, 2023. There is no indication that the District is aware that these evaluations will take place (*Parent Information #2, 3 and 25; District Information #57 and 58*).
33. The District possesses a Seizure/Convulsion School Action Plan prepared by the HCP (neurology MD) and dated Feb. 21, 2023. The plan provides details about S28B's condition, what to watch for and how to respond. Parents report that the Plan requires limited screen time of no more than two hours per day. However, the plan makes no mention of limiting computer or screen time (*District Information #1 and 56*).
34. District staff report that, based on Parent's concern, S28B's computer and other screen time is limited to no more than thirty minutes per day and no more than fifteen to twenty minutes at a time (*District Information #57*).
35. District staff receive annual seizure awareness training through Vector Solutions. Staff described the information in detail including how to recognize and respond to a broad spectrum of seizures (*District Information #1 and 57*).

36. District staff report that there have been zero occasions when staff observed symptoms indicative of a seizure (*District Information #57*).
37. 4/25/2023 2:00 PM Parent called the school nurse to provide an update on S28B's health condition. Parent stated that S28B had appointment with neurology including an EEG showing an increase in seizure activity. The Parent wants the school to be aware that they are increasing S28B's medications and he may be more tired at school. The nurse asked the Parent what medications he was on and what would be changing. The only medication the Parent mentioned was an increase in Trileptal, which is S28B's seizure medication. The Parent states that she just wanted us to know we may see increased tiredness in student. This nurse asked, three times, whether there is anything specific that the school needs to be aware of or any extra precautions that the school needs to take. Parent stated that there is nothing extra that the school needs to do. The nurse understood and informed staff working with S28B. (*District Information #54.*)
38. Staff interviewed report that S28B is cooperative, friendly and liked by others. No behavioral concerns were reported. (*District Information#57.*)
39. Staff interviewed report that there are no concerns for S28B's safety based on disability, including that S28B travels safely in all situations at school, participates safely in school activities and has paraeducator support as needed. (*District Information#57.*)

Issue#1

Whether the District afforded Parents an opportunity for meaningful participation in meetings for S28A and S28B [92 NAC 51-009.01 and 02].

92 NAC 51-009.01 states:

009.01 *Parents must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. This includes providing the parent with appropriate notice of the meeting and a description of what is not included within the definition of a meeting.*

92 NAC 51-009.02 states:

009.02 *Parents shall be involved in placement decisions involving their child/children. If the parent is unable to participate in the meeting, the District or approved cooperative shall use other methods to ensure parents' participation. If unable to secure parents' participation, the team may make the determination and is*

required to keep documentation of attempts to secure parental participation.

Allegations/Parent Position

Parents' letter of complaint, document dated March 31, 2023 and received by the Nebraska Department of Education April 13, 2023 alleges that, during the 2021-2022 school year, S28A's mother requested the Autism Network be involved to assist with S28A's behaviors but the Special Education Director and Special Education Teacher told her it was not needed. The complaint also alleges that the district did not respond when the student's mother requested a meeting to discuss S28A before the start of the 2022-2023 school year. Additionally, following a request from S28A's HCP (PA-C), parents take issue with the District's refusal to provide ABA therapy to S28A during the school day.

In the complaint, Parents allege that S28B's daily schedule was changed without notice or parental participation.

District Response

The District states that, following an investigation with staff and reviewing telephone/communication logs and emails, the district has no knowledge of parent's request for a meeting prior to the start of the 2022-2023 school year, either written or verbal (*District Information #1 and 57*). The district denies parent's allegation of refusing parent's request, during the 2021-2022 school year, to involve the Autism Network to address S28A's behaviors and provided documentation of referral and follow up by the Autism Network in response to parent's request (*District Information #11, 12 and 13*). Additionally, the district acknowledges the request for S28A to receive ABA therapy during the school day and provided PWN of refusal. The District's "response to complaint" states that, not only was PWN of refusal provided but the IEP team discussed this decision with the parent at a subsequent IEP meeting.

The District stated that S28B's daily schedule was changed, only once, to reflect a request parents' request via note from S28B's HCP (*District Information #1, 35, and 53*). S28B was enrolled in an alternating schedule of PE and music. In response to the request, the District withdrew S28B from general education PE and replaced that class with music (*District Information #1, 35, 53, 55 and 57*).

Overall, the District asserts that Parents have been afforded ample opportunity to participate in meetings for S28A and S28B and have done so (*District Information #1, 5-9, 11-14, 18, 19, 20-23, 26, 36, 37, 39, 41, 44-51*).

Investigative Findings

In the complaint dated March 31 and received by the Department on April 12, 2023, Parents raise a number of allegations implicating Parents' right to participate in meetings where decisions are made regarding their students, S28A and S28B.

First, Parents complain that during the 2021-2022 school year, the District refused their request to involve the Autism Network to address behavioral concerns for S28A (*Parents letter of complaint dated April 13, 2023*). The District provided documentation to refute this allegation (*District Information#11, 12 and 13*). A referral document indicates that the parent reached out because of struggles with behavior at home and the school also reported that S28A will look up inappropriate content on the computer and engages in inappropriate self-touch (*District Information#11*). Parents provided written consent for information to be shared between the District and the Autism Network to facilitate collaboration (*District Information#12*). Notes and Action Plan 2021-2022 document collaboration meetings on March 3, 2022 for the Team followed by Team collaboration with Parents on March 30, 2022.

Additionally, Parents allege that the District was unresponsive to their request for a meeting prior to the beginning of the 2022-2023 school year and S28A was enrolled in two PE classes in contrary to Parent's objection. (*Parents' complaint document*.) However, parents did not provide any evidence of a verbal or written request for a meeting or suggest that any existed. In defense of this allegation, the District denies that S28A is enrolled in two PE classes and submits the Student's daily schedule as evidence. The District also provided emails between Parents and the District, communication logs and documentation of meetings scheduled. (*District Information#5 and 9*). No correspondence requested a meeting prior to the beginning of the 2022-2023 school year and no staff had any recollection of a verbal request which, according the District, would have been documented if received.

Parents also contend that the District changed S28B's schedule without notifying Parents or allowing them to participate in consideration of the change (*Parents' complaint document*). Contrary to Parents' allegation, the District avers that the only change to S28B's schedule occurred after Parent's sent S28B to school with a note from a HCP requesting that S28B have only one APE class (*District Information#1, 34, 35, 53, 55 and 57*). The District explained that S28B receives APE individually or in a small group to focus on individual needs and participated in regular PE with same age peers for social opportunities and participating in team activities (*District Information#1, 53 and 57*). The District states that they were unaware of Parent's objection to the schedule until S28B

brought a note from home, written by his HCP requesting that S28B participate in only one APE class per day (*Parent Information #1, 53, 55, 57*). The District provided NOM for a meeting to discuss this request and PWN of the decision to continue APE and PE on alternating days and to substitute music for PE on days when S28B participated in APE (*District Information#1, 51, 53 and 55*).

Finally, there is no dispute that the District denied Parent's request to provide S28A with ABA therapy from an outside provider at school during school hours. The request was received on February 28, 2023, in writing, from S28A's HCP (PA-C). (*Parent Information # 23 and 24; District Information#6 and 24*). The District provided PWN of this refusal (*District Information#24*); however, the details surrounding this request and refusal are interesting.

In 2018, Parents revoked permission for any direct communication or shared information between the District and HCPs for both S28A and S28B (*District Information#10 and 40*). Since that time, Parents prefer to summarize information from HCPs or provide the District with notes drafted by the HCPs. If the District has questions or thoughts regarding HC information, parents prefer to act as intermediaries relaying the information as they see fit (*Parent Information # 25*).

The District's PWN refusing the request is thorough, was prepared on March 9 and delivered to Parents via email March 10, 2023. However, there is no evidence that Parents had the opportunity to participate in any meeting pertaining to this decision. (*Parent Information # 23; District Information#6, 14, 19, 20, 23, 24.*) During the same week, the District did provide NOM, dated March 8, 2023 for S28A during which continued MDT verification would be discussed and a new IEP developed. While the District's Response to the Complaint, dated May 8, 2023, states that, after the District had formally refused Parents' request, the discussion of ABA therapy provided by an outside provider at school during school hours continued at the March 27, 2023 MDT and IEP meeting, nothing in the NOM, IEP or PWN following the March 27, 2023 meeting mentions anything continuing the discussion of Parents request for ABA therapy. During interviews, neither staff nor parents mentioned any communication with Parents relating to the request for ABA therapy except the written request from the HCP and PWN of refusal provided to Parents by the District. (*Parent Information # 25; District Information#57 and 58.*)

Summary and Conclusions

Parents were provided ample opportunity to participate in meetings for S28A and S28B with one exception. Parents were not afforded an opportunity to participate in meetings to consider and determine whether S28A needed ABA

instruction from an outside provider at school during school hours because the District reviewed the request and provided PWN of refusal and did not include this topic for discussion in S28A's upcoming MDT and IEP meeting.

Because the District did not include the Parents in discussions resulting in the District's decision to refuse the request for ABA therapy from an outside provider, at school, during school time and issued PWN of refusal absent parent participation at the same time an IEP team was being planned to revisit S28A's MDT eligibility determination and develop a new IEP, the District failed to fully implement the requirements of 92 NAC 51-009.01. Thus, the following **corrective action is required**.

Corrective Action

Reconvene the IEP

1. Prior to the commencement of the 2023-2024 school year, the District will reconvene the IEP team, including Parents, to discuss whether S28A needs to receive ABA service from an outside provider at school during the school day.
2. Evidence of the meeting including the following will be provided to NDE, Division of Special Education Services no later than the first day of school for the 2023-2024 school year.
 - a. Notice of Meeting
 - b. Prior Written Notice
 - c. Revised IEP and/or notes from the meeting capturing the discussion of the provision of ABA.

Training

3. The District must develop and provide training to staff members regarding when an IEP meeting must be held.
4. Participants to the training must include the following:
 - a. General Education Teachers
 - b. Special Education Teachers
 - c. LEA Representatives
5. Training materials must be provided to NDE for approval two weeks prior to the training.
6. Sign-in sheets or other verification of attendance must be provided the day following the training.

Issue#2

Whether the District developed, reviewed, and revised IEPs to meet S28A's and S28B's unique needs pursuant to 92 NAC 51-007.01; 92 NAC 51-007.07A1 and 2; 92 NAC 51-007.07B1-3; 92 NAC 51-007.09B and C and 92 NAC 51-007.10.

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.*

92 NAC 51-007.07A1 states:

007.07A *The IEP shall include:*

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

007.07A2 *The IEP shall include a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs resulting from the disability to enable the child to be involved in and make progress in the general education curriculum and to meet each of the child's other educational needs resulting from the child's disability.*

92 NAC 51-007.07B1-3 states:

007.07B *In developing, reviewing or revising the child's IEP:*

007.07B1 *The IEP team shall consider the strengths of the child and concerns of the parents for enhancing the education of their child;*

007.07B2 *The IEP team shall consider the results of the initial or most recent evaluation of the child and the academic, developmental and functional needs of the child.*

007.07B3 *In the case of a child whose behavior impedes his or her learning or the*

learning of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior.

007.07B6 *The IEP team shall consider the communication needs of the child...*

007.07B7 *The IEP team shall consider whether the child needs assistive technology devices and services.*

92 NAC 51-007.09B and C states:

007.09B *After the initial IEP meeting, each eligible student shall have an IEP in effect at the beginning of each school year.*

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

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 *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

Parents allege that S28A was inappropriately enrolled in two PE classes and that the District failed to implement the asthma plan prepared by S28A's HCP and provided to the District. *(Parent letter of complaint received April 13, 2023).*

Additionally, Parents maintain that the District is not addressing S28A's behavioral issues related to physical and verbal aggression, viewing inappropriate content on school issued electronic devices and taking things

that don't belong to the Student Id. Parents contend that S28A should receive ABA therapy in the school setting to address behavior as requested in a note from S28A's HCP(PA-C). Id.

Parents allege that S28B is frequently in the presence of another student who had a physical altercation with S28B on the school bus in August 2022 and due to this situation, S28B is fearful at school. Id.

Parents declare that, helping with the backpack program and recycling results in S28B "doing too much" and that school activities lack structure that S28B needs during the school day. Id. According to Parents, S28B was enrolled in two PE classes during the 2021-2022 school year and the 2022-2023 school year until S28B's orthopedic HCP wrote a recommendation excusing S28B from regular PE. Id. Parents are concerned that school staff are not listening to doctor's notes or recommendations, are refusing to following the HCP's seizure plan for S28B which limits computer time and tablet use, and lack the ability to recognize when S28B is having seizures. Parents aver that S28B's neurologist HCP is requesting additional evaluation due to increased tremors and more possible seizures that are going unnoticed. Id.

For both students, Parents complaint states that the District failed to create behavior plans or safety plans that Parents deem necessary Id.

District Response

In its response, May 8, 2023, the District contends that parents are mistaken. The District asserts that S28A has not been enrolled in two PE classes and that the S28A's asthma plan is known to teachers and others who are prepared to implement it as needed. In contravention to Parent's allegation, the District states that, upon Parent's referral the Autism Network has been involved for S28A. The District declares that the request for ABA therapy during school hours was considered for S28A and that progress toward IEP goals and the use of PBIS is sufficient making ABA therapy during school hours unnecessary. The District provided Parents with PWN of refusal and asserts that the decision was discussed with parents at S28A's subsequent IEP meeting. (*District Information#1, 24 and 57.*)

The District acknowledges an altercation on the bus that involved S28B and asserts that the issue has been effectively resolved (*District Information#1 and 57*). Furthermore, the District contends school staff are trained and implementing asthma and seizure plans as written when the need arises. Id. The District admits that S28B was enrolled in two PE classes, one APE and also general PE. Id. However, the District states that it had no knowledge of Parents' concern about the schedule until the District received a note from S28B's HCP requesting a

change in the schedule and, upon receipt of the note, acted promptly to accommodate the request. *Id.*

Investigative Findings

In this case, both students have IEPs duly constituted, properly convened, reviewed and revised within appropriate timelines, in force at the beginning of the school year and the District has provided evidence of responsiveness to Parents' questions and concerns. (District Information#1, 18, 19, 20, 22, and 23.)

Parents raise concerns about their students' participation in PE/APE (*Parent letter of complaint received April 13, 2023*). Contrary to Parents' allegation, S28A's class schedule for the past two school years does not reflect enrollment and participating in two PE classes during the same school year (*District Information#4*). In its Response to the Complaint dated May 8, 2023, and staff interviews May 18 and 19, 2023, the District denies that S28A was enrolled or attending two PE classes. No evidence has been submitted to the contrary. S28B was enrolled in an APE and a PE class for the 2022-2023 school year. There is no evidence that the District had knowledge of Parent's objection to this schedule until February 2, 2022, when S28B brought a note from his HCP requesting only one PE class per day. The issue was resolved to Parents' satisfaction in a meeting, with Parents, on February 6, 2022.

S28A is diagnosed with asthma and has a plan to address this condition at school. (*Parent Information # 25; District Information#25*). Parents allege that the District ignores notes from HCPs and does not implement the asthma plan for S28A or the seizure plan for S28B. (*Parent letter of complaint received April 13, 2023*). The district refutes these allegations by providing a copy of the asthma plan for S28A and the seizure plan for S28B and when interviewed, S28A's teachers and other IEP members are aware of and able to discuss the plan. (*District Information#1, 25 and 57.*) The District reports that a copy of S28A's asthma plan is provided to accompany S28A on any outings outside of the school building and that there have been no occasions, during the year preceding the complaint, when S28A struggled with symptoms of asthma. (*District Information#1 and 57.*) Parents did not provide any examples when the plan was not followed or S28A struggled with asthma during school hours or activities. (*Parent letter of complaint received April 13, 2023; Parent Information including #25*). The District also provided a copy of S28B's seizure plan developed by the HCP and provided through Parents. (*District Information#57.*) Parents reported that S28B's HCPs have recommended limiting S28B's screen time to two hours because of seizures. (*Parent letter of complaint received April 13, 2023*). The District reports that, during the school day, S28B has a maximum screen time of thirty minutes per day across multiple sittings with ten to fifteen

minutes maximum per sitting. (*District Information #57.*) Staff receive seizure training annually and can articulate any symptoms of seizures that might be observed for S28A. Staff report that they have not noticed anything suggesting that S28A might be experiencing a seizure while at school. (*District Information #1 and 57.*) Finally, Parents submitted multipage Preventative Exam Summaries from HCP for each student to the investigator but stated that these PES were not provided to the District. Parents also reported that, while the District has been notified that S28B's HCP has referred S28B for additional evaluation, information from the referral visits is not yet available. (*Parent Information # 25*).

Parents maintain that the District is not addressing S28A's behavioral issues related to physical and verbal aggression, viewing inappropriate content on school issued electronic devices, inappropriate self-touch for self-gratification and taking things that don't belong to the Student. (*Parent letter of complaint received April 13, 2023*). Countering Parents' allegations, the District provided documentation from the 2021-2022 and 2022-2023 school years indicating that S28A has made substantial progress related to physical and verbal aggression at school and that, based on that progress, PBIS strategies are sufficient to help S28A manage emotions so that behavioral goals are no longer necessary on the IEP. (*District Information #1, 2, 3, 11, 12, 13, 14, 18, 19, 20, 27, 28, 29, 31.*) Both parties agree that, given opportunity, S28A would attempt to access inappropriate content on school electronic devices. (*Parent Information # 25; District Information #1, 12, 13, 18, 20, 57 and 59.*) The District maintains that one-to-one supervision and removal of S28A's privilege to have a personally assigned chromebook available to use sufficiently manages these concerns. (*District Information #1, 2, 3, 57.*) Furthermore, when S28A needs to use an electronic device at school he uses a staff member's device together with the staff member's oversight. (*District Information #1 and 57.*) There is no dispute that, upon occasion, S28A engages in self-stimulating sexual behavior. The District agrees that, the school resource officer has visited with S28A to discuss appropriate behavior and explain legal issues and consequences of these behaviors. *Id.* The District explains that since this has been discussed with S28A, it has not been a problem at school. (*District Information #1, 2, 3, 11, 12, 13 and 57.*) These concerns were also addressed by the Autism Network in collaboration with Parents in March 2022 and an action plan was developed. (*District Information #11, 12, and 13.*) Most recently, the District considered Parents' request for S28A to receive ABA therapy from an outside provider, at school, during the school day. (*District Information #1, 24 and 26.*) The District considered the request and provided PWN of refusal based on the school team's consideration but without a meeting providing Parents and opportunity to participate. (*District Information #24, 19, 23, 20.*) Evidence does not support the

District's assertion that, within a few weeks following the District's provision of PWN of refusal, the request was discussed at an IEP meeting, including Parents. (*District Information#20 and 23.*)

Parents declare that helping with the backpack program and recycling results in S28B "doing too much" and that school activities lack structure that S28B needs during the school day. (*Parent letter of complaint received April 13, 2023*). The District contends that these activities take place during S28B's life skills class which takes place five days per week for forty-five minutes. District Information#1 and 57. District staff explained that on one day, students spend approximately thirty minutes packing the backpacks and, on another day, the class spends approximately fifteen minutes delivering the packs. *Id.* These activities practice skills such as counting the correct items and placing them in the packs which utilize his gross motor skills. *Id.* Communication skills and clarity of speech are also practiced during this exercise. *Id.* The life skills class is listed on S28B's class schedule and the IEP team determined this class is appropriate for his goals. (*District Information#1, 34, 35, 45, 46.*)

Parents are concerned that S28B's tremors and seizures are worsening due to the school schedule and activities and that the District is not addressing these concerns. (*Parent letter of complaint received April 13, 2023*). The District has taken a proactive stance by providing seizure response training for all staff and renewing that training annually. (*District Information#1 and 57.*) Staff are able to articulate what has been learned in this training and details of S28B's seizure plan. (*District Information#57.*) Staff have not observed any symptoms that indicate seizures are or have been occurring at school and Parents have not provided any examples to the contrary. (*District Information#1 and 57; Parents information.*) S28B's IEP provides accommodations to address his tremors. (*District Information#45 and 46.*) Staff described these accommodations and when they are provided during interviews with the investigator. (*District Information#57.*) District staff have not observed an increase in frequency or intensity of tremoring and, based on observation in all school settings, believe that S28B is able to move about the school with peers in all settings. Once again, Parents have not provided any details that would support a different conclusion at this time. Parents have provided information showing that S28B has been referred to specialists for more evaluation on seizures and tremoring. (*Parent Information # 2 and 3.*) During interviews, Parents shared that these evaluations are ongoing and that they do not expect results for some time. (*Parent Information # 25.*)

In August, 2022, while riding the school bus, S28B was involved in a physical altercation with another student. (*Parent letter of complaint received April 13, 2023; District Information#1 and 57.*) Parents assert that S28B is unsafe at school

because he is still in the presence of the other student during school time. (*Parent letter of complaint received April 13, 2023*). This altercation is documented and acknowledged by the District. The offending student no longer rides the same school bus that S28B rides. (*District Information#1 and 57.*) However, because this is a small school, both students are in the building at the same time and undoubtedly cross paths. *Id.* The District states that S28B's IEP provides paraeducator supervision and assistance which ensures additional altercations do not occur. (*District Information#1, 45, 46 and 57.*) Since nine months have passed and the 2022-2023 school year has come to a close with no evidence of additional altercations or threats thereof, the investigator concludes that the District has effectively resolved this issue.

With the exception of considering the request for ABA therapy provided during school time by an outside provider (discussed in Issue #1), during IEP meetings, the teams, including Parents, developed goals reasonably calculated to meet student's unique and individual needs; including considering the use of PBIS to address behaviors which impede the learning of the Students or learning of other students. (*District Information#18, 19, 20.*) S28A mastered behavioral goals on his IEP and the District provided ample evidence that behavioral challenges are effectively managed using supervision and PBIS strategies for all students. (*District Information#1, 2, 3, 13, 18, 20, 27, 31, and 57.*) The evidence provided supports the IEP team's determination that goals to address behavior at school are not necessary at this time.

Present levels of academic achievement and functional performance and parent input on S28B's IEPs indicate that S28B is cooperative, kind, has friends and gets along well with others. There is no evidence suggesting that S28B needs goals to address behavior or a behavior intervention plan (BIP).

Summary and Conclusions

With the exception of Parents' request for S28A to receive ABA therapy from an outside provider at school during the school day (addressed in Issue 1), Students' IEPs have been duly constituted, properly convened, reviewed, revised and implemented in a timely fashion. These IEPs include PLAAPs and measurable annual goals, including academic and functional goals designed to meet Students' needs resulting from disabilities and enabling Students' to be involved and make progress in the general education curriculum, participating in the alternate assessment and to meet each of the Students' other educational needs resulting from disabilities.

Based on evaluation of the evidence, the District implemented the requirements of 92 NAC 51-007.01; 92 NAC 51-007.07A1 and 2; 92 NAC 51-007.07B1-3; 92NAC 51-007.09B and C and 92 NAC 51-007.10 and **no corrective action** is required.

Issue#3

Whether S28A's and S28B's IEPs were in effect and implemented according to the requirements set forth in Rule 51 pursuant to 92 NAC 51-007.01; 92 NAC 51-007.02A; and 92 NAC 51-009.04A3.

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.*

92 NAC 51-007.02A states:

007.02A *At the beginning of each school year, each school district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction.*

92 NAC 51-009.04A3 states:

009.04A3 *As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP.*

Allegations/Parent Position

In the complaint dated March 31, received by the Department April 12, 2023, Parents allege that the asthma plan for S28A and the seizure plan for S28B are not being followed. They assert that District staff are not trained to properly recognize S28B's seizures, that the District is not limiting computer and tablet use in contravention of the seizure plan and that the District tried to stop S28B's physical therapy. Parents aver that S28B's tremors and seizures are increasing due to the District's lack of consistency. According to Parents, S28B has been referred for additional medical evaluation to address tremors and seizures and Parents are awaiting those results. (*Parent letter of complaint received April 13, 2023*).

District Response

The District's response to the complaint states that the District nurse maintains a copy of S28A's asthma plan and has communicated this plan with S28A's

teachers and service providers. Additionally, the district contends that the District nurse sends a copy of the plan on every field trip or other event away from the building in which S28A participates. Finally, the District declares that there are no situations where S28A's plan was not followed or any circumstances where S28A had any kind of asthma symptoms or asthma emergency and points out that Parents have not supplied any details alleging an instance where the asthma plan was not implemented. (*District Information#1 and 57.*)

The District disagrees with parents allegations pertaining to S28B's seizure plan. District staff, including staff working with and around S28B receive annual seizure training through Vector Solutions. These staff have not observed any seizures with S28B. The District does not contend that Parents provided the District with the seizure plan from a medical doctor. In response to the complaint and in personal interviews, the District, including individual staff members, asserts that the plan is on file and all staff working with S28B are knowledgeable about the plan. Finally, District's response points out that the plain language of the seizure plan does not mention limits on computer or tablet use and that computer and tablet use has been limited based on parent's concerns. However, based on Parent's concern, S28B's computer or tablet use is limited to no more than thirty minutes per day and no more than fifteen to twenty minutes at a time. District staff also state that they are aware of S28A's tremors and accommodations are provided as indicated in the IEP. (*District Information#1 and 57.*)

Investigative Findings

The facts of this case indicate that Parents' have not provided any evidence to support their allegations for this issue. On the other hand, the District has provided ample evidence that Students' IEPs were in effect and implemented according to the requirements of Rule 51 and the IDEA, including asthma and seizure plans and a recent IEP for S28B providing PT as a related service for thirty minutes, two days per month. (*District Information#1, 2, 3, 14, 18, 20, 25, 27-33, 41, 44, 45, 46, 54, 56, 57, 58, 59.*) Years ago, Parents revoked permission for communication between Students' HCP and the District. While this is certainly the Parents' right, since that time, Parents have selectively relayed communication between the District and Students' HCP to the detriment of their Students. (Parent Information # 25; District Information#10 and 40.) For example, Parent's mistakenly assert that S28B's seizure plan recommends reduced use of computer or tablet. (*District Information#56.*) This is simply not an accurate statement. Regardless, S28B spends a maximum of thirty minutes per day using the computer or tablet and no more than fifteen minutes per sitting. (*District Information#57.*) This is one- and one-half hours less than the two hours per day

that Parents assert S28B's HCP recommends. Parents also contend that, contrary to the HCP's recommendation, S28A was enrolled in two PE classes per day. (Parent letter of complaint received April 13, 2023). S28A's daily schedule proves otherwise. (District Information #4.)

Here, the District explained, in detail, how plans for asthma and seizures, drafted by HCPs are followed (District Information#1 and 57). Intending to support their allegations, Parents submitted medical reports to the investigator that have never been provided to the District. (*Parent Information # 2-4 and 6-16*). Besides the fact that the information contained in these reports does not support Parents' claims, the District is not accountable for information withheld. Finally, Parents have disclosed that S28B has been referred, by HCPs, to specialists for additional evaluation related to seizures and tremoring. (*Parent Information # 25.*) However, by Parents' own admission, the results of these evaluations is not yet known to Parents, let alone the District. Once available, should Parents decide to share this information with the District, S28B's IEP team will necessarily consider the information and review and revise S28B's IEP as needed.

Summary and Conclusions

Examination and analysis of the evidence reveals that Students' IEPs were in effect and implemented according to the Requirements set forth in Rule 51 and the IDEA.

Based on the evidence in this case, the District implemented the requirements of 92 NAC 51-007.01, 92 NAC 51-007.02A and 92 NAC-009.0a4A3 and **no corrective action** is required.

Issue #4

Whether the District's errs, or omissions, result in a denial of FAPE pursuant to 92 NAC 51-004.01.

92 NAC 51-004.01 states:

004.01 *All providers of special education services shall be under the general supervision of the Nebraska Department of Education for the purpose of meeting the standards of this Chapter. School districts and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which the child reaches age twenty-one, including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs.*

Allegations/Parent Position

Parents offer an assortment of allegations but have not specifically alleged that S28A and S28B have been denied a FAPE (*Parent letter of complaint received April 13, 2023*).

District Response

The District's Response to Complaint dated March 31, 2023 and received April 12, 2023, maintains that no violations, procedural or substantive have occurred related to the education of S28A or S28B and produced documents intended to support its position. Furthermore, the District argues that, should the investigation determine that an error or omission has occurred, such errors or omissions are procedural in nature and do not result in the denial of a FAPE. The District admits receiving Parents' request for ABA therapy, from an outside provider, at school, during the school day intended to address S28A's physical and verbal aggression, seeking to view inappropriate content on school issued electronic devices, self-gratifying sexually stimulating behavior and taking things that don't belong to the Student. (*District Information#1.*) The District provides details of review of the request and provision of PWN of refusal. (*District Information#24.*) The District also states that, following provision of PWN of refusal, the District discussed this request at S28A's IEP meeting a few weeks later. (*District Information#1.*)

Investigative Findings

Procedural violations may amount to a denial of FAPE when the violation impeded the student's right to FAPE; significantly impeded the parent's right to the opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or caused a deprivation of educational benefits. The District was in the midst of conducting a MDT verification review for S28A when the request was received through S28A's HCP (PA-C), for ABA therapy from an outside provider, at school, during the school day. In the midst of unilaterally considering and refusing Parents' request, the District's NOM for MDT verification meeting and IEP meeting immediately preceded the District's PWN of refusal instead of including consideration of the request as a topic of discussion for the upcoming IEP meeting, including Parents. While the District considered the request and provided PWN of refusal, Parents were not offered an opportunity to participate in a meeting where the decision was made. This action on the part of the District, denied Parents the opportunity for meaningful participation related to Parents' request.

Summary and Conclusions

Based on finding that the District did not include Parents in the meeting to determine whether the request for ABA therapy was needed, the District failed

to fully implement the requirements of 92 NAC 51-004.01. Thus, the following **corrective action is required.**

Corrective Action

If the IEP Team determines that ABA therapy is needed, for the period of time between March 17, 2023 until the end of the 2022-23 school year: The Student's IEP Team shall convene an IEP meeting before the start of the 2023-24 school year to develop a mutually agreed upon schedule to provide three hours of compensatory service for ABA therapy.

1. The IEP team, including the Parent shall determine the schedule for which the 3 hours of compensatory services will be provided. If the district is unable to convince the Parent to attend the IEP Team meeting, the district will document the attempts to contact the parent as required by 92 NAC 007.06D and hold the meeting without the parent.
2. The schedule for compensatory services must be provided to NDE within 10 calendar days of the IEP Team meeting.
3. Compensatory services shall be completed by date. Student absence or refusal of the parent to make the child available shall result in a waiver of service scheduled for that day. Staff absences must be rescheduled. Any compensatory services declined or not used by date shall be deemed waived (assuming the district has made a good faith effort to timely commence and provide all compensatory services).
4. The District must submit service provider logs verifying completion of all compensatory services to NDE by the last business day of each month until the service is complete and all service has been verified.

Issue#5

For Student S28B - the Nebraska Department of Education Office of Special Education will also determine whether the District ensured that placement is made by a group and in conformity with the least restrictive environment pursuant to 92NAC 51-008.01.

92 NAC 51-008.01 states:

008.01 *Least Restrictive Environment (LRE) Requirements*

008.01A *The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved service agencies, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with*

disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

008.01B *Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual multidisciplinary evaluation of the child's development and educational needs.*

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

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

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

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

800.01D1 *The continuum must:*

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

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

008.01E states:

008.01E *The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:*

008.01E1 *Is determined at least annually:*

008.01E2 *Is based on his or her IEP; and*

008.01E3 *Is as close as possible to the child's home.*

008.01F: *The array of placement options included must be available to the extent necessary to implement the IEP.*

008.01G: *Unless a child's IEP requires some other arrangement, the child must be educated in the school he or she would attend if not disabled.*

008.01H: *In selecting the LRE, consideration must be given to any potential harmful effect on the child or on the quality of services needed.*

800.01I: *A child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.*

Allegations/Parent Position

Parent's complaint states that S28B's class schedule was changed without notice, lacks necessary structure, provides too much time participating in recycling and the backpack program and that S28B was moved to a more restrictive environment with less time in the general education setting. Parents also contend that S28B was enrolled in two PE classes until a HCP wrote a note requesting that S28B only attend one APE class per day. (Parent letter of complaint received April 13, 2023).

District Response

The District's denies these allegations in their response dated May 8, 2023, and states that according to the IEP, S28B receives special education instruction in the resource room for fifty minutes, five days per week. The majority of S28B's education occurs in the general education setting with general education peers. Furthermore, the District avers that S28B's schedule was only changed after Parent's provided a request to reduce PE class from S28B's HCP. The District states that, until that time, the District had never received any communication indicating that Parents' dissatisfaction with S28B's schedule prior to receiving this complaint. (*District Information#57.*)

Investigative Findings

The District provided ample evidence that S28B's schedule was not modified until Parents requested, through a note from S28B's HCP (PA-C), that S28B participate in only one PE class per day. (*District Information#1, 34-36, 51 and 53.*) Parents allege that S28B's tremors and seizures are worsening because of the physical exertion but that concern is not included in information from any of S28B's HCPs. (*Parent Information # 1, 2, 3 and 10-16.*) Parents' provided screenshots of PMEs conducted for both students (Aug. 10, 2022 for S28A and Jan. 4, 2023 for S28B) to the investigator as evidence. However, parents reported that this information has never been provided to the District. (*Parent Information # 25.*)

Health information for S28B is complicated. The District received some health care information through the Parents and, occasionally, notes from various HCPs. (*District Information#41, 44, 45, 46, 54, 55, 56.*) However, the District was not provided information from a PME for S28B occurred on Jan. 4, 2023 with the report generated on Jan. 5, 2023. Though IEPs report that S29B takes seizure medication the seven-page PME report from PME dated Jan. 4, 2023 is thorough but makes no mention of seizures. Feb. 2, 2023, the District received a note from different HCP (orthopedic) requesting S28B participate in only one APE class per day at school finishing with please contact the clinic with questions/concerns.

Prior to the request, S28B was enrolled and attending APE daily and an alternating schedule of regular PE and Music daily. (*District Information#1 and 57.*) Based on Parents' request, the District convened an IEP meeting, including Parents, decided to modify S28A's schedule to remove regular PE class and substitute additional Music class for general PE, and provided PWN of the decision. (*District Information#53 and 57.*) S28A's PE teacher was interviewed and stated that general PE was beneficial for S28A because it provided an opportunity for social interaction and practice with team rules for the activities. Id. The PE teacher also reported that S28B is well liked by peers in the general PE

class and that S28B had made progress in strength, stamina and coordination with participation. (*District Information#57.*) District staff, including the PE teacher, report that none have ever observed any symptoms of seizure activity for S28B. *Id.* APE is specifically tailored to address skill deficits indicated in S28B's IEP and is provided individually or in small groups. (*District Information#1 and 57.*) Because Parents revoked permission for communication between Students' HCPs and the District, the benefits and drawbacks of participating in both APE and general PE were not able to be considered including the HCP. (*District Information#40.*) This request was discussed, agreed upon and resolved to Parents' satisfaction by changing S28Bs schedule to eliminate general PE. (*Parent Information # 1 and 25; District Information#1, 36, 53 and 57.*)

Furthermore, on Feb. 21, 2023, less than two months after the PME, a different HCP (neurology MD) at a different facility referred S28B for a neuropsychological evaluation noting that the evaluation is needed for IEP, Noonan Syndrome, ADHD, Autism and Seizures. (*Parent Information # 2 and 3.*) Thorough examination and evaluation of the evidence in this case shows that S28B's IEP team determined placement in accordance with Rule 51 and that no changes have occurred except Parent's requested schedule change.

Summary and Conclusions

Parents provided no evidence supporting their claim that S28B's class schedule has been changed without notice, that the schedule lacks necessary structure, or that S28B was moved to a more restrictive setting resulting in less time in the general education setting.

Based on this information, the District implemented the requirements of 92 NAC 51-008.01 and **no corrective action** is required.

Notice to District (If FINDINGS)

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