

COMPLAINT INVESTIGATION REPORT

Complaint Number: 22.23.29
Complaint Investigator: [REDACTED]
Date Complaint Filed: April 13, 2023
Date of Report: [REDACTED]

Issues Investigated

1. Did the District provide the Parents the opportunity to meaningfully participate in the IEP process? [92 NAC 51-007.03A1 and 007.07B1]
2. Did the District inform the Student's teacher(s) and/or provider(s) of their specific responsibilities, including the accommodations, modifications, and supports that must be provided to the Student, in accordance with the IEP? [92 NAC 51-007.02D]
3. Did the District properly implement the Student's IEP(s) according to its terms? [92 NAC 51-007.02]
4. Is the Student's IEP tailored to their unique needs and reasonably calculated to enable the Student to make progress appropriate in light of their circumstances? [92 NAC 51-007.07 and 007.07C4]

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated April 13, 2023; received by NDE April 13, 2023;
- Telephone interview with Parent #1 on May 12, 2023, and May 16, 2023;
- Telephone interview with Parent #2 May 16, 2023;
- Draft Individualized Education Program (IEP) dated April 11, 2023;
- IEP Meeting Questions (*no date included*)
- Questions and Answers regarding the Student dated March 17, 2023;
- Letter regarding Robotics dated January 30, 2023;
- Email dated March 13, 2023;
- Email dated March 27, 2023;
- MAPS testing scores as of March 17, 2023.

The Parent provided documentation that was duplicative of documentation provided by the District. That documentation is not included in the list above.

From the School District

- Letter of Response dated April 28, 2023; received by NDE April 28, 2023;
- District responses to Investigator Questionnaire; received by NDE May 12, 2023;

- Individual Zoom interviews with District's Special Education Director, Junior High School Principal, High School Principal, and Student's Special Education Teacher/Case Manager on May 18, 2023;
- Affidavit of Special Education Director dated April 28, 2023;
- Multidisciplinary Team Report (MDT) dated December 14, 2017;
- Determination Notice dated December 4, 2020;
- IEP dated February 25, 2021;
- IEP dated December 14, 2021;
- IEP dated September 26, 2022;
- IEP dated April 11, 2023;
- Behavior Intervention Plans (BIPs) for the 2021-22 school year;
- BIPs for the 2022-23 school year;
- Progress reports dated March 10, 2021; December 21, 2021; May 20, 2022; and December 19, 2022;
- Receipt of IEP documentation August 2022, September/October 2022, and April 2023;
- Statement from Physical Education Teacher (*no date included*);
- Narratives from staff regarding Student behavior during the 2022-23 school year;
- Point Sheet data during the 2022-23 school year;
- Screenshot of Classroom Dojo;
- Picture of "walk card" accommodation;
- Letter from Parent dated March 17, 2023;
- Email Correspondence between March 20, 2023, and April 21, 2023;

The District provided additional documentation that was not relevant to this investigation. That documentation is not included in the list above.

Findings of Fact

1. No issues raised in the complaint regarding the Student are currently subject to a due process hearing, nor have these issues been previously decided in a due process hearing.
2. The Student is currently fourteen (14) years old and in the eighth grade for the 2022-23 school year.
3. On December 4, 2020, a Determination Notice indicated no additional information was necessary to determine the Student's eligibility for special education services. The existing evaluation that was considered in the determination is dated December 14, 2017. As a result of the 2017 evaluation and the 2020 Determination Notice, the Student is identified as a student with a disability under the primary category of Other Health Impairment.

4. Near the end of the 2021-22 school year, the Student participated in track as an extracurricular activity. At one of the track meets, the Student allegedly hit another student with a stick. The then-current Principal spoke with the Student about the incident. Following the incident, the Student was not permitted to attend the final two track meets not for their behavior but because only a limited number of students were allowed to attend. Specifically, only the top three performers were permitted to attend. The student was not one of the top three performers.
5. There are three IEPs relevant to the period of this investigation. The first IEP was in effect at the beginning of the 2022-23 school year and is dated December 14, 2021. Relevant portions of the IEP include:
 - a. The Student's behavior impedes their learning or that of others. Positive behavioral interventions and supports that are within the IEP include:
 - i. The Student is allowed to take up to three breaks per class. The Student or staff may request a break.
 - b. The IEP contains three annual measurable goals to support organization, behavior, and academics.
 - c. Special education services include:
 - i. Special instruction for 95 minutes/week in the resource room.
 - ii. The statement regarding special education services states the Student is to have 15 minutes/day of special education services in English and 10 minutes/day, 2 days/week (20 minutes/week) of special education services in "resource."
 1. The District explained to the Investigator that "resource" is for organizational skills, general behavior, and homework completion.
 - d. Program Accommodations and Modifications include, in part:
 - i. The Student may stand at their desk instead of sitting.
6. A behavior intervention plan (BIP) was implemented for the 2021-22 school year and was in effect at the beginning of the 2022-23 school year. Relevant portions of the BIP include:
 - a. Target Behaviors:
 - i. Blurts/Noises
 - ii. Refuses to complete work and turn it in
 - iii. Body movement
 - iv. Refusal to sit with belongings ready to start class
 - b. Replacement Behaviors:
 - i. The Student will use coping strategies or a break when frustrated. The Student will ask for a break.

- ii. The Student will be given up to three quick breaks, with teacher permission, to get a drink, go to the restroom, fidget or walk back and forth at the back of the classroom.
7. The first day of school for the 2022-23 school year was August 17, 2022.
8. The Student's case manager delivered copies of the then-current IEP and BIP to the Student's teachers at the beginning of the school year. Teachers were required to sign for receipt of the document. Teachers that were provided with a copy of the IEP/BIP indicated they received a copy to review between the dates of August 13, 2022, and August 27, 2022.
9. The IEP Team met on September 26, 2022, to create a new IEP and BIP for the Student. Relevant portions of the IEP include:
 - a. The Parents have concerns about extracurriculars and inquired if the Student could have a paraprofessional during activities, such as track.
 - b. The Student's behavior still impedes their learning or that of others. The Student requires a new behavior plan. Positive behavioral interventions and supports that are within the IEP include:
 - i. In physical education (PE), when the Student's behaviors hinder themselves or others, the Student is supposed to walk. The Student must tell one of the PE instructors that they are choosing to walk instead of doing the activity.
 - ii. Teachers may offer the Student a 3–5-minute break if the teacher feels the Student is overwhelmed.
 - c. The IEP contains three new annual, measurable goals to support organization, behavior, and academics.
 - d. Special education services increased from 95 minutes/week to 35 minutes/day (175 minutes/week) in "special instruction."
 - i. The statement regarding special education services is the same as the previous IEP except that the Student is to have 20 minutes/day of special education services in "resource."
 1. The District explained to the Investigator that "resource" is for organizational skills, behavior, and homework completion.
 - e. There were no relevant changes to the Program Accommodations and Modifications.
10. A BIP was attached to the IEP. Relevant portions of the BIP include:
 - a. Target Behaviors:
 - i. Blurts/Noises
 - ii. Start seat work independently
 - iii. Transition into class

- b. Replacement Behaviors:
 - i. The Student will raise their hand if they need assistance. The Student will get a point on their expectation card if they only blurt out one time. If the Student needs a break, they will raise their hand to ask for a break. A break includes getting a drink and going to the restroom.
 - ii. The Student will start their assignments on their own.
 - c. An expectation sheet will have yes/no for each of the three expectations listed below (yes = 1 point; no = 0 points). The Student will carry the expectation sheet, for their teachers to fill out. If the Student does not have the expectation sheet, they will not get any points for that class period.
 - d. The expectations are as follows:
 - i. The Student will enter the room appropriately (i.e., be on time, have materials out and ready, look at the board/screen, and start the bell ringer assignment).
 - ii. The Student will seek attention appropriately (i.e., raise a hand to answer a question or ask for help, and avoid whining, moaning, and crying).
 - iii. The Student will work on homework independently (i.e., immediately start the assignment when asked, attempt the assignment before asking for help, raise a hand, and wait patiently if teacher assistance is needed).
 - e. If the Student gets a total of 17/21 for a given class period, they can spend free time with an adult after school or during study hall.
11. The PWN attached to the IEP includes, in part:
- a. The Student is currently involved in robotics. The team discussed the Parent(s) request for para support in extracurricular activities. The request was rejected because the Student "does not require para support at all during [the] school day for daily living skills, behavior, or academics. [The Student] does not require assistance to safely access the general education curriculum."
12. The Student's case manager delivered copies of the new IEP and BIP to the Student's teachers following the IEP meeting. All teachers that were provided a copy of the IEP/BIP indicated they received a copy to review between the dates of September 28, 2022, and October 13, 2022.
13. Between September 27, 2022, and November 29, 2022, the daily expectation sheet was fully completed for only two school days. For all other school days, the expectation sheet was only partially filled out (18

- school days) or not turned in at all (19 school days). There is no indication the expectation sheets were not filled out correctly during this time period.
14. On January 30, 2023, a letter was sent to multiple parents of students participating in robotics, including the Complainants. Included in the letter was a warning that there was a zero-tolerance policy for behavior and there would be consequences for behavior infractions. The consequences were as follows:
 - a. First infraction: The student will be unable to attend the upcoming robotics competition in February and will be unable to stay with the team during the robotics state tournament in March.
 - i. The student may still attend the state tournament but the student's parents would be responsible for driving the student to the tournament and lodging with them.
 - b. Second infraction: The student will not be permitted to attend the state tournament.
 - c. Third infraction: The student will be dismissed from the team.
 15. The Student attended the robotics competition in February 2023.
 16. One week prior to the robotics state tournament in March 2023, the Student got in trouble for putting another student in a locker. As a result, the Student was not permitted to travel and lodge with the robotics team to the state tournament. The Parents drove the Student to the tournament and provided lodging so that the Student may still attend.
 17. Between November 30, 2022, and March 17, 2023, the daily expectation sheet was fully completed every school day except for six days. During this time period, the Student was no longer responsible for carrying the expectation sheet from class to class, as it had proven to be unsuccessful. Instead, teachers shared the expectation sheet with one another during the day. There is no indication the expectation sheets were not filled out correctly during this time period.
 18. Beginning on March 21, 2023, the District began utilizing Classroom Dojo to complete the expectation sheet. Classroom Dojo is an online program that allows teachers to indicate whether the Student was successful in their "expectation areas." The Parents have instant access to the data. When using Classroom Dojo, if the Student does not earn a point for any of the three expectations, instead of receiving a "0" the Student earns a "-1." However, a negative point does not subtract a point. Rather, the Student simply does not gain a point. For example, if the Student enters the room appropriately in six of their seven class periods (receiving six "+1" points and one "-1" point), the Student's total score for that expectation area is six out of seven.

19. On the first day (March 21, 2023) the District used Classroom Dojo, the teachers were indicating each time the Student did not do something they should have. For example, each time the Student did not seek attention appropriately, the teachers indicated a "-1" point. The error was discovered and corrected the next day.
20. Between March 22, 2023, and April 19, 2023, the daily expectation sheet was completed to some degree each school day. However, the data is missing or data was inputted incorrectly on at least 13 of the 16 school days an expectation sheet should have been completed.
21. The IEP Team met on April 11, 2023, per the Parent(s) request, and the IEP was updated. Relevant portions of the IEP include:
 - a. The Parents continue to have concerns regarding paraprofessional support in extracurricular activities.
 - b. The Student's behavior still impedes their learning or that of others. The only relevant change to the positive behavioral interventions and supports included within the IEP was that the Student may use a break card or a signal when they want to walk in PE instead of communicating verbally.
 - c. The IEP contains the same behavior-related goal as the previous IEP and one new goal related to starting tasks with few prompts.
 - d. Special education services decreased from 35 minutes/day to 20 minutes/day in "special instruction."
 - i. The statement regarding special education services is the same as the previous IEP except that the Student is to have 5 minutes/day of special education services in "resource."
 1. The District explained to the Investigator that "resource" includes checking in with the resource teacher before and after school to review the behavior chart and expectations.
 - e. Supplementary Aids & Services include:
 - i. An extra adult will be provided in shop class when dangerous tools are used.
 - f. Program Accommodations and Modifications were amended slightly to include, in part:
 - i. The Student can give a hand signal, break card, or verbally tell the PE teacher that they are going to walk instead of participate in the activity.
22. A BIP was attached to the IEP. The BIP had very few changes from the previous BIP. The relevant changes include:

- a. If the Student takes a break, they may get a drink, go to the restroom, stand by their desk, or go to the resource room.
- 23. The PWN attached to the IEP includes, in part:
 - a. The team rejected the Parent(s) request for a para for extracurricular activities but will reconsider based on what activity the Student chooses to participate in next year.
 - b. The request for a para in PE was rejected so that the Student can advocate for themselves.
- 24. The Student's case manager delivered copies of the new IEP and BIP to the Student's teachers following the IEP meeting. All teachers that were provided a copy of the IEP/BIP indicated they received a copy to review between the dates of April 7, 2023, and April 17, 2023.
- 25. The complaint was filed on April 13, 2023.
- 26. The Student was provided a "walk card" on April 14, 2023.

Issue # 1

Did the District provide the Parents the opportunity to meaningfully participate in the IEP process? [92 NAC 51-007.03A1 and 007.07B1]

92 NAC 51-007.03 states:

007.03 *IEP Team Participants*

007.03A *The school district or approved cooperative shall ensure and document that each IEP team includes the following:*

007.03A1 *The parents of a child with a disability or documentation of 92 NAC 51-007.06D*

92 NAC 51-007.07 states:

007.07 *IEP Development*

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

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

Allegations/Parent Position

The Parents allege that the District did not consider their concerns regarding providing the Student with paraprofessional support for extracurricular activities.

The Parents brought up their concern regarding paraprofessional support at the September 2022 IEP meeting and the discussion was quickly shut down by the then-current School Principal and Assistant Principal. *Per Letter of Complaint and Interviews with Parents.*

District Response

The District asserts the Parents were active members of the Student's IEP team and their concerns were listened to, discussed, and considered at each IEP meeting. Additionally, when appropriate, the Parent(s) concerns were incorporated into the IEP. *Per the Letter of Response dated April 28, 2023.*

Investigative Findings

The IDEA and Rule 51 require that parents be able to meaningfully participate in the IEP process of their child. 34 C.F.R. § 300.321(a)(1); 92 NAC 51-007.03A1. Meaningful participation includes the IEP team carefully considering the parents' concerns regarding the child with an open mind. 34 C.F.R. § 300.324(a)(1)(ii); 92 NAC 51-007.07B1. However, meaningful consideration does not mean "acquiesce." *Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132 (8th Cir. 1999).

At both the September 2022 and April 2023 IEP meetings, the Parents indicated that the Student was in need of paraprofessional support for extracurricular activities, primarily due to the Student's behavior and need for additional supervision. *Per the Telephonic Interview with Parent #1 on May 12, 2023.* At each of the IEP meetings, the IEP team discussed the Parents' concerns, considered their request, and identified the reasons why the IEP team did not believe the Student was in need of paraprofessional support. *Per individual Zoom interviews with District Staff on May 18, 2023.* Regardless of the reasons the IEP team declined to offer paraprofessional support, there was sufficient discussion to suggest the IEP team carefully considered the Parents' concerns and allowed the Parents' to meaningfully participate.

Summary and Conclusions

The Parents meaningfully participated in the IEP process. Thus, the District implemented the requirements of 92 NAC 51-007.03A1 and 007.07B1, and **no corrective action** is required.

Issue # 2

Did the District inform the Student's teacher(s) and/or provider(s) of their specific responsibilities, including the accommodations, modifications, and supports that must be provided to the Student, in accordance with the IEP? [92 NAC 51-007.02D]

92 NAC 51-007.02 states:

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

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

Allegations/Parent Position

The Parents allege the PE teacher(s) was unaware of the IEP accommodation allowing the Student to walk instead of participate in the assigned activity. Additionally, the Student's teachers were unaware that they could provide the Student with a quick break. *Per Letter of Complaint.*

District Response

The District asserts there are procedures in place to ensure general education teachers are aware of their responsibilities related to IEP implementation. The Student's case manager delivered copies of the IEP to all applicable teachers and required all teachers to sign for receipt of the IEP after each IEP amendment. In turn, the teachers reviewed the Student's IEP(s). *Per the Letter of Response dated April 28, 2023.*

Investigative Findings

Districts are required to inform teachers and providers of their specific responsibilities related to implementing a student's IEP. 34 C.F.R. § 300.323(d)(2); 92 NAC 51-007.02D. Absent state rule, there is no set timeframe in which a district must inform its staff of a student's IEP. *Letter to Frumkin*, 121 LRP 32641 (OSERS 09/24/21). Rather, a district must inform staff within a reasonable time after an IEP has been completed. *Id.* Rule 51 does not specify a timeframe in which an IEP must be disseminated by the district.

Here, the Case Manager provided teachers with the Student's IEP and BIP at the beginning of the school year and following the creation of each of the September 2022 and April 2023 IEPs and BIPs. The Case Manager asserts that copies were provided to teachers within a day of the IEP being finalized. *Per individual Zoom interview with Student's Special Education Teacher/Case Manager on May 18, 2023.* In each of the three instances the IEP had to be disseminated to staff, the staff that was provided with a copy of the IEP/BIP

signed for receipt no later than 12 school days after the IEP was implemented. Specifically, staff signatures were obtained within eight school days in August, within 12 school days in September, and within four school days in April.

However, there were at least two teachers that were responsible for implementing the Student's IEP in PE that were not provided a copy of the IEP/BIP within a reasonable time. In fact, one teacher was never provided a copy of the Student's IEP/BIP, and the other was not provided a copy until April 2023. According to the District, the two teachers were working with the Student in PE as early as December 2022. *Per Answers to District Questionnaire received on May 12, 2023.*

Moreover, other than the Case Manager placing a copy of the Student's IEP/BIP in teachers' mailboxes, there is no evidence that teachers were actually informed of their specific responsibilities. Simply, teachers were given access to the IEP/BIP, an entirely different legal requirement than the cited regulation.

As discussed under Issue #3, there is a lack of complete and/or accurate data entry regarding the Student's daily expectation sheet, further indicating that teachers may not have been properly informed of their specific responsibilities related to the Student's IEP/BIP.

Summary and Conclusions

As the District failed to adequately inform all teachers of their specific responsibilities to implement the Student's IEP, the District failed to fully implement the requirements of 92 NAC 51-007.02D, resulting in a procedural violation. Thus, the following **corrective action is required**.

Corrective Action

1. The District must draft a written procedure for how and when it will inform each District staff member of their specific responsibilities to implement a student's IEP. Within this procedure, the District must delineate how it will document that this has been done for each student with an IEP. If the District already has a written procedure to document the completion of these items, the District must revise the procedure to address the violations found in this complaint investigation, particularly how, when, and who will inform each teacher and provider of their specific responsibilities related to implementing a child's IEP; and the specific accommodations, modifications, and supports that must be provided for a child in accordance with the IEP. Simply providing a copy of a student's IEP to District staff is not an adequate procedure.
 - a. Within 60 calendar days of the date of this report, the District must submit this draft procedure to Christopher Chambers for review and

feedback. Once Christopher Chambers approves the procedure, the District must finalize and begin implementing it.

2. The District must develop and provide training to all staff in the District regarding their responsibilities to implement a student's IEP, and the specific accommodations, modifications, and supports that must be provided for a child in accordance with the IEP. Staff involved in the training should include the following:
 - a. IEP Team members;
 - b. General education teachers;
 - c. Special education teachers;
 - d. Principals or individuals who may serve as the representative of the school district as described in 92 NAC 51 § 007.03A4;
 - e. Related service personnel; and
 - f. Any other school personnel who are responsible for overseeing special education legal requirements.
3. The training must be approved by Christopher Chambers two calendar weeks prior to the training.
4. The District must provide NDE with copies of the participant sign-in sheets or other evidence of attendance the business day following the conclusion of the training(s).
5. The training must be conducted by September 15, 2023.

Issue # 3

Did the District properly implement the Student's IEP(s) according to its terms?
[92 NAC 51-007.02]

92 NAC § 51-007.02 states:

007 *Individualized Education Program (IEP)*

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

Allegations/Parent Position

The Parents allege the following implementation issues: (1) the PE teachers do not allow the Student to walk and/or require the Student to walk at a certain pace; (2) the Assistant Principal is supervising class(es) outside of what is required by the IEP; (3) the Student has not been given a break when needed; (4) teachers have not utilized the points system appropriately and/or consistently; and (5) the Student has not been provided a cue card to walk in PE. *Per Letter of Complaint.*

District Response

The District asserts the allegations are unfounded. Specifically, (1) the Principal supervises all students in the industrial tech class because of the use of power tools; (2) the Student's teachers provide the Student a break when requested, albeit the Student rarely requests a break; (3) teachers have used the points system throughout the school year, and (4) the Student was provided a "walk card" following the implementation of the April 2023 IEP. *Per the Letter of Response dated April 28, 2023.*

Investigative Findings

First and foremost, the Parents allege the now-current Principal has supervised the Student outside of what is described in the IEP. The now-current Principal denies the same. There is nothing in the IDEA or Rule 51 that prohibits a district from offering additional supplementary aids and services that are not included in the IEP. Thus, there is no implementation failure in this regard. All other alleged implementation failures are discussed below separately.

Walking in PE/Walking Cue Card

At the September 26, 2022, IEP meeting, the IEP team added a provision to the IEP that allowed the Student to walk in PE instead of participating in the assigned activity. The IEP states the Student must tell the PE instructor they are choosing to walk.

The primary PE Teacher indicated that the Student has never asked or told a PE teacher that they are going to walk instead of participate in the assigned activity. *Per Statement from Physical Education Teacher.* However, there have been instances where a PE teacher has requested the Student walk when they are disruptive or non-compliant. During those instances, the PE teacher only requires the Student to continue to walk; there is no speed requirement. *Id.*

The Parent was asked whether they knew of any instances where the Student informed a PE teacher that they were going to walk. The Parent indicated the Student has never requested to walk. *Per the Telephonic Interview with Parent #1 on May 12, 2023.*

At the April 3, 2023, IEP meeting, the Student indicated they were uncomfortable telling the PE teacher(s) they wanted to walk. As a result, the IEP team determined the Student would be given a cue card to signal they are going to walk in PE. As of April 14, 2023, two days after the April IEP was implemented, the cue card was provided to the Student.

As the Student had not requested to walk in PE during the 2022-23 school year, prior to the April 2023 IEP meeting, there is no implementation failure for the

same. In addition, the cue card, that the Student may utilize to inform PE teachers of their choice to walk, was provided within a reasonable time period after the implementation of the April 2023 IEP. Thus, there is no violation for failing to provide the cue card.

Breaks

Included in all three of the relevant IEPs and BIPs, the Student was allowed to take a break in class. Either the teacher could offer the Student a break or the Student could request a break.

When asked, the District indicated that the Student rarely requested a break; the Parents indicated the Student never requested a break. Additionally, the Parent indicates the Student said a couple of teachers offered them a break but not often.

Little to no documentation was kept by the District regarding when the Student was offered and/or permitted to take a break. However, the documentation that was maintained provided detailed instances in which the Student would walk around the classroom and/or request to go to a different classroom (which teachers permitted). While not explicitly described as a “break,” these instances were times in which the Student did get to take a break.

As the IEP does not specify a specific number of breaks to be provided in a given time period, and there is no indication that the Student was not permitted to take a break, there is no implementation failure for same.

While there is no implementation failure in regard to the Student's breaks, the April 2023 IEP lacks the required detail so that the duration of the break is clear. 34 C.F.R. § 300.320(a)(7); 92 NAC § 51-007.07A8. An IEP must include enough specificity about the amount of services that will be provided “so that the level of the [district]’s commitment of resources will be clear to the parents and other IEP team members.” See 71 Fed. Reg. 46,540, 46,667 (Aug. 14, 2006) (codified at C.F.R. pts. 300 and 301).

The duration of an accommodation is the amount of time an accommodation is provided (e.g., 10 minutes per break). The April 2023 IEP indicates the Student may take a “quick” break. However, it is unclear how the District defines “quick” (e.g., two minutes, five minutes, ten minutes, etc.). Previously, in the September 2022 IEP, the IEP specifies that the Student’s break is only to be 3-5 minutes. The specificity here makes it clear to anyone reading the IEP how long the Student is permitted to take a break.

Points System

During the first nine weeks of the September 2022 IEP was implemented, very little data was collected regarding the Student's expected behaviors because the Student was not turning in their expectation sheet, as was required by the IEP. Rule 51 requires that the IEP team shall revise the IEP to address, in part, the lack of expected progress, the student's anticipated needs, or other matters. 92 NAC 51-007.10.

Here, despite going weeks without collecting data, the District did not shift responsibility to the teachers in order for the Student expectation sheet to be filled out, resulting in the District's inability to monitor progress effectively. See, e.g., *McKay v. School Bd. of Avoyelles Parish*, 66 IDELR 283 (W.D. La. 2015). As the expectation sheet was required to be completed daily, per the IEP, the District did not implement the IEP according to its terms through November 29, 2022.

Once the Student's teachers were responsible for passing the expectation sheet amongst themselves, beginning around November 30, 2022, data was collected and seemingly done so correctly. At that point in time, the District was in substantial compliance with the IEP in regard to completing the daily expectation sheets.

On March 21, 2023, the District began utilizing Classroom Dojo to record the data regarding the Student's expected behaviors. While teachers recorded data, there are numerous errors in the same. Specifically, some teachers input multiple scores on the same day and some teachers don't input a score at all for an expected behavior. The Case Manager indicated they contact the teachers to fill out Classroom Dojo when they haven't done so already and correct duplicate scores when noticed. *Per individual Zoom interview with Student's Special Education Teacher/Case Manager on May 18, 2023.* However, upon reviewing the documentation provided, the data is still riddled with errors. Moreover, many of the daily scores documented by the District could not be verified. Again, the expectation sheet must be filled out daily, per the IEP. The District is unable to monitor Student's progress effectively without accurate, complete data.

Summary and Conclusions

As the District failed to collect sufficient data for a period of nine weeks between September 27, 2022, and November 29, 2022, and the District has failed to collect accurate data between March 21, 2023, and present on the Student's expected behaviors, the District failed to fully implement the requirements of 92 NAC 51-007.02. Thus, the following corrective action is required.

Corrective Action

1. The District shall convene an IEP meeting within 15 school days of the start of the 2023-24 school year. At the IEP meeting, the IEP team must determine and specify the duration of Student breaks.
 - a. A copy of the revised IEP and PWN specifying the duration of Student breaks to Christopher Chambers within 5 calendar days of the meeting.
2. The District must train all of the Students' teachers responsible for inputting data in Classroom Dojo how to properly do so within seven (7) days of the start of the 2023-24 school year.
 - a. The District must provide NDE with participant sign-in sheets at the conclusion of the training(s).

Issue #4

Is the Student's IEP tailored to their unique needs and reasonably calculated to enable the Student to make progress appropriate in light of their circumstances? [92 NAC 51-007.07 and 007.07C4]

92 NAC 51-007.07 states:

007.07 *IEP Development*

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;*

007.07C *Services*

007.07C4 *The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school-age child with a verified disability an equal opportunity for participation in those services and activities.*

Allegations/Parent Position

The Parents allege the Student is in need of paraprofessional support to be able to participate in extracurricular activities. Due to behaviors, the Student was kicked out of track last school year and was prohibited from traveling and staying with the team during the state tournament in Robotics this year. Despite the IEP identifying behavior concerns and the Student's need for extra supervision, the District has denied paraprofessional support because the Student didn't need paraprofessional support in the educational setting and/or the District does not want to hire someone to provide the support.

District Response

The District asserts the IEP team conducted an individualized inquiry to determine whether additional adult support was necessary to provide the Student with an equal opportunity to participate in extracurricular activities. The IEP team determined that paraprofessional support was not required at this time

and that the Student has the same opportunity to participate in extracurricular activities as their peers.

Investigative Findings

The IDEA and Rule 51 require districts to take steps to ensure students with a disability have equal opportunities to participate in nonacademic and extracurricular activities with their nondisabled peers. 34 C.F.R. § 300.107; 92 NAC 51-007.07C4. The steps a district must take include determining appropriate supplementary aids and services for the student to participate in nonacademic and extracurricular activities, if necessary. *Id.*

At the September 2022 IEP meeting, the Parents requested paraprofessional support for the Student during extracurricular activities, due to the difficulties in track during the 2021-22 school year. At that time, the Student was participating in robotics, with no known behavior problems. After discussion, the IEP team determined paraprofessional support was not required because the Student did not require paraprofessional support during the school day or to safely access the general education curriculum.

The IDEA and Rule 51 regulations do not limit the inclusion of supplementary aids and services to participate in nonacademic and extracurricular activities to those that are only required to educate a student with a disability or needed during the school day. See *Independent Sch. Dist. No. 12, Centennial v. Minnesota Dep't of Educ.*, 55 IDELR 140 (Minn. 2010), *cert. denied*, 111 LRP 12933, 131 S. Ct. 1556 (2011).

Here, the District-based its decision regarding paraprofessional support on the wrong assumption - the lack of need for paraprofessional support during the school day had no nexus to whether supplementary aids and services were necessary for the Student to participate in nonacademic or extracurricular activities.

At the April 2023 IEP meeting, the Parents again requested paraprofessional support for the Student during extracurricular activities. At that time, the Student was not enrolled in any extracurricular activities nor did they know what activities they wanted to participate in for the upcoming 2023-24 school year. The IEP team determined paraprofessional support was not necessary at the time but would reconsider once the Student determined what activity they wanted to participate in.

As the Student is not participating in any nonacademic or extracurricular activities at the moment, the Student is not prohibited from participating in nonacademic and extracurricular activities, and the District's decision not to

include supplementary aids and supports was not incorrectly based on educational need, the District's decision to reconvene at a later time is reasonable.

Summary and Conclusions

As the District refused to offer supplementary aids and services for the Student based on lack of educational need in September 2022, the District failed to fully implement the requirements of 92 NAC 51-007.07 and 007.07C4. Thus, the following corrective action is required.

Corrective Action

1. The District must train all special education staff in the District regarding nonacademic services within 60 calendar days of the date of this Letter of Finding. Specifically, what steps, including the provision of supplementary aids and services, must be taken to ensure students with a disability have an equal opportunity to participate in nonacademic and extracurricular activities.
 - a. The District must obtain approval from NDE at least 14 days prior to the training of the training content and trainer(s).
 - b. The District must provide NDE with participant sign-in sheets at the conclusion of the training(s).
2. The District shall convene an IEP meeting within 15 school days of the start of the 2023-24 school year. At the IEP meeting, the IEP team must discuss what supplementary aids and services are necessary, if any, to enable the Student to participate in the extracurricular activity of their choosing.
 - a. If the Student is unable to determine what extracurricular activity they would like to participate in, the IEP team shall reconvene again once the Student has decided.
 - b. The IEP and PWN shall be provided to NDE within 5 calendar days of the date the IEP meeting is convened.

Notice to District

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

Christopher Chambers, Complaint Specialist
NDE Office of Special Education
nde.speddr@nebraska.gov