

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.06
Complaint Investigator: REDACTED
Date Complaint Filed: August 3, 2023
Date of Report: REDACTED

Issues Investigated for Student A

1. Did the District provide special education and related services to the Student upon enrollment? [92 NAC 51-007.02]
2. Did the District develop, review, and revise an IEP that met the unique needs of the Student? [92 NAC 51-007.01, 007.07A5]

Issues Investigated for Student B

1. Did the District provide special education and related services to the Student upon enrollment and as described in the IEP? [92 NAC 51-007.02]
2. Did the District develop, review, and revise an IEP that met the unique needs of the Student? [92 NAC 51-007.01, 007.07A5]
3. Did the District meet the least restrictive environment requirements when scheduling and placing the Student in general classes? [92 NAC 51-008.01]
4. Did the District take the steps necessary to afford the Student an equal opportunity for participation in nonacademic and extracurricular services and activities? [92 NAC 51-007.07C4]

Information Reviewed by Investigator for Student A

From the Parent

- Letter of Complaint dated August 2, 2023; received by NDE August 3, 2023
- School Health Plan, no date
- Prior Written Notice, [temporary suspension of IEP services], February 1, 2023
- Progress report, no date
- Progress report, [goal 3: organizational skills], no date
- Prior Written Notice, [temporary pause in special education services], February 1, 2023
- Student A Progress report, October 25, 2022
- Student A Progress report, March 8, 2023
- Student A Health Plan [P2 of 2], October 27, 2022
- Emails, August 4, 2022-October 27, 2023, From the School District

From the District

- Letter of Response dated August 23, 2023; received by NDE August 23, 2023
- Progress report, October 25, 2022
- Progress report, December 21, 2022
- [Student] PWN, January 31, 2023
- Individual Education Program, January 30, 2022
- Special Considerations, January 30, 2022
- Postsecondary Transition Plan, January 30, 2022
- IEP Goals, January 30, 2022
- Statement of Special Education and Related Services, January 30, 2022
- Parental Consent for Public School District to Access Medicaid Funding (MIPS Consent Form), September 30, 2022
- School Health Plan, no date, unsigned
- Progress report, March 8, 2023
- Multi-disciplinary Evaluation Team MDT Report, September 28, 2022
- Prior Written Notice, [temporary pause IEP Services], February 1, 2023
- School Health Plan, October 1, 2022
- Individual Education Plan (IEP), January 30, 2022
- Special Considerations, January 30, 2022
- Postsecondary Transition Plan, January 30, 2022
- Goals, January 30, 2022
- Statement of Special Education and Related Services, January 30, 2022
- Prior Written Notice Section, re: hold IEP meeting, September 22, 2022
- Parental Consent for Public School District to Access Medicaid, January 30, 2022
- School Health Plan, no date
- Multidisciplinary Evaluation Team MDT Report, September 28, 2022
- Notice and Consent for Initial Placement, September 28, 2022, unsigned
- Notice of Meeting, [review MDT report; determine eligibility], August 15, 2022
- Prior Written Notice, re: temporarily pause [Student's] special education services, February 1, 2023
- Progress report, March 8, 2023
- Progress report, May 18, 2023
- Progress report, October 25, 2022
- Progress report, December 21, 2022
- Stanford Binet Intelligence Scales, Fifth Edition, [Student scores], no date
- Emails, January 30, 2022-May 18, 2023

Information Reviewed by Investigator for Student B

From the Parent

- Letter of Complaint dated August 2, 2023; received by NDE August 3, 2023
- Student schedule, no date
- Daily thread doc for student], no date
- Individual Education Program (IEP), September 28, 2022
- Parental consent for public school district to access Medicaid funding (MIPS consent form), September 28, 2022
- Expectation rating scale, no date
- School health plan, no date
- Multidisciplinary evaluation team MDT report, September 28, 2022
- Return to school letter from ENT clinic, November 10, 2022
- [Student] team meeting agenda, February 27, 2023
- Medical condition description, no date
- [Student]'s team meeting agenda, October 27, 2022
- Letter from RN, October 13, 2022
- [Student]'s visual schedule, no date
- Medical condition information from RN, October 27, 2022
- [Student]'s visual schedule, no date
- Progress report, December 21, 2022
- IEP notes, February 27, 2023
- Super teacher worksheets, no date
- Emails, September 28, 2022-August 23, 2023

From the School District

- Letter of Response dated August 23, 2023; received by NDE August 23, 2023
- School health plan, no date
- Individual education program, September 28, 2022
- Parental consent for public school district to access Medicaid funding (MIPS) consent form), September 28, 2022
- Participation rating scale, no date
- School health plan, no date duplicate
- Multidisciplinary evaluation team MDT report September 28, 2022
- [Student] visual schedule, no date
- Word reading, March 28, 2023
- Math numbers and operations and algebra 2_1, March 31, 2023
- Goal for reading, no date
- January 2023 calendar, no date
- February 2023 calendar, no date
- March 2023 calendar, no date

- Edmark mastery test scoring form, March 2, 2023
- Progress report, December 21, 2022
- Progress report, March 6, 2023
- Progress report, May 18, 2023
- Attachments, email, re: registering [Student], March 27, 2023
- Attachments, email, re: [parent] paperwork, August 18, 2023
- Attachments, email, re: student's IEP's, August 5, 2022
- Attachments, email, re: talk together, August 5, 2022
- Attachments, email, re: Tourette's, October 17, 2022
- Attachments, email, re: cell phones medical, October 25, 2022
- Daily threat doc for [Student], no date
- Attachments, email, re: "[Student] documentation", February 28, 2023
- Attachments, email, re: fwd: case manager change, March 27, 2023
- Notice and consent for initial placement, not signed, September 28, 2022
- Notice of meeting, September 12, 2022
- Emails, August 5, 2022-May 18, 2023

Introduction

On August 3, 2023, the Nebraska Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of two students (Student) residing in the District. Both of the Students attended public school in another state through sixth grade. The Students were homeschooled until they were enrolled in the District in August 2022. The Parent requested that the Department conduct a special education investigation under 92 NAC § 51-009.11C3. The Department confirmed receipt of this Complaint and forwarded the request to the District. Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint. This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.

On August 8, 2023, the Department sent a Request for Response (RFR) to the District identifying the specific allegations in the Complaint to be investigated for each Student and established a Response due date of August 22, 2023. The District submitted materials on August 23, 2023. On August 25, 2023, the District submitted a Response which disputed some but not all of the allegations, provided an explanation, and submitted documents supporting the District's position. The information included in this report that is outside the Complaint period is provided for context only.

Findings of Fact for Student A

1. The Student was 17 years old, enrolled in the 11th grade, and attending public high school when the Complaint was filed.
2. The Parent stated that the Student attended public school through most of the sixth grade until “[their] medical issues became enough that [Parent] pulled [Student] out of school and started homeschooling.” (District Interview, September 6, 2023.)
3. On August 1, 2022, the Principal emailed the Special Education Coordinator and notified them that the Parent had provided the School copies of the Students’ IEPs. The Principal stated they would forward the IEPs to the Special Education Coordinator. (Email from Principal, August 1, 2022.)
4. On August 4, 2022, the District provided the Parent information about completing the registration forms and enrolling the Student in the School. (Email from School, August 4, 2022.)
5. The Parent stated that the Student enrolled in school on August 4th. The Student didn’t attend school until early October because “they [the School] didn’t want to offer any type of schooling in the home or outside of the home pending the special education evaluation. (District Interview, September 6, 2023.)
6. The Principal recalled the conversation they had with the Parent during enrollment. “About the enrolling, I just explained the process. And if they had IEPs, that we would need a copy of the previous IEP before...they started school, just so that we had a plan in place.” (District Interview, September 6, 2023.)
7. When the Principal was asked during interviews whether they ever told the Parent that the Student could not attend school, the Principal responded, “No.” In a written statement presented by the District after the interview, the Principal reported that they told the Parent, “We certainly don’t want to throw them into a situation that will be overwhelming so it would be up to [Parent] when [they] thought they were ready to start school.” (District Interview, September 6, 2023.)
8. The Special Education Coordinator stated:

“It was my understanding that [Parent] wanted us to have more information from testing [Student] was having done.... And, get us that information and then we would draw up a plan...so that there was something in place when they cameWe were waiting for information to be supplied to us from the Parent....I can see I contacted the parent on August 18th, 2022 to make sure that [they] ...did want to proceed with the evaluations at that time. And

[Parent]...requested that the information from [Outside Provider] evaluation be used in the MDTs because we don't want to test something that's already been tested for the validity of the test results. And also for the student and put them through what they've done. Um, so a release of information and records were signed on August 18th and...[Parent] also shared the specific tests that [they]...wanted the district to consider on that." (District Interview, September 6, 2023.)

9. The Special Education Coordinator asserted that the Student's evaluation was considered an initial evaluation for special education "because moving from an outside state to the state of Nebraska-- that first one is considered an initial." The Special Education Coordinator recalled that the IEP meeting took place on September 28, 2022. (District Interview, September 6, 2023.)
10. The Parent recalled informing the staff about the Student's needs. "I told them right away, '[Student] has a lot of medical issues...and ...learning difficulties...specifically ADHD, dysgraphia, anxiety, OCD, Tourette's, along with, um, connective tissue disorder, POTS, Mast Cell Activation Disorder...'[T]hey said, 'Well, we don't want to start services until we can get a new IEP and, uh, SPED meeting done first.' So, like, okay, that seems long, but okay. I guess since we're coming out-of-state and-- and the IEP is two years old." (Parent Interview, September 7, 2023.)
11. When asked during the interview whether the District told the Parent that the Student could not attend school, the Parent responded, "They didn't say 'couldn't', but it came across to me as that's what they wanted to do, so that's what would be done....I don't remember exactly how it was worded. It was just something along the lines of, you know, 'Let's wait for them to attend until services are in place.'" (Parent Interview, September 7, 2023.)
12. The Parent agreed that they told the School "they were okay with [Student] staying at home until the [special education] testing [was done] and the IEP were set up." (Parent Interview, September 7, 2023.)
13. On August 15, 2022, a Multidisciplinary Evaluation Team MDT Report was generated. The date of notice and date of initial verification were recorded as September 28, 2022. "This is an initial Special Education verification according to 92 NAC 51 (Rule 51) and 92 NAC 52 (Rule 52)". (Multidisciplinary Evaluation Team MDT Report, September 28, 2022.)
14. On August 15, 2022, a Notice of Meeting was issued to the Parent. The purpose of the meeting was to review the multidisciplinary report and to

determine the Student's eligibility for special education services. (Notice of Meeting, August 15, 2022.)

15. On September 22, 2022, a Prior Written Notice (PWN) was delivered to Parent, which notified them about the IEP team's proposal to meet and hold an MDT/IEP meeting. "The team and the district are approving this action to ensure [Student] has an individual education plan in place to start school, as well as meeting all dates to stay in compliance." (Prior Written Notice, September 22, 2022.)
16. On September 28, 2022, the Student was found eligible for an Other Health Impairment. The Student was eligible due to a diagnosis of Attention-Deficit Hyperactivity Disorder, combined type (diagnosed in 2022). (Multidisciplinary Evaluation Team MDT Report, September 28, 2022.)
17. On September 28, 2022, a Notice of Consent for Initial Placement was initiated and signed by the Parent. (Notice of Consent for Initial Placement, September 28, 2022.)
18. On September 30, 2022, an IEP meeting was held. The IEP was expected to remain in effect through September 29, 2023. The IEP elements included:
 - a. The Student was described as "very creative and like[s] to build things...very intelligent and humorous...very loving... self-aware...friendly, polite, and articulate. They are very willing to work when they get to express themselves first";
 - b. The Parent expressed concern about the Student's writing "and how that becomes a painful struggle";
 - c. The Statement of Special Education and Related Services reflected that the Student was to receive Special instruction (Resource) for 30 minutes per week, Occupational Therapy services for 20 minutes per month, and sensory breaks as needed;
 - d. The Student planned to achieve a "homeschool diploma" and thus was "not required to take a state assessment through the district...during the year in which the IEP is in effect...as they are still considered homeschool [sic] and are working towards a homeschool diploma"; and
 - e. The Student's modifications and accommodations included:
 - i. Talk-to-text;
 - ii. Typing;
 - iii. Scribe-to not physically write out assignments beyond one or two-word answers;
 - iv. Shortened assignments to demonstrate mastery;

- v. Notes provided;
- vi. Alternative methods of completing assignments;
- vii. Breaks when necessary;
- viii. Alternative setting for assignments, quizzes, and test[s]; and
- ix. Extended time on test[s] and assignments. (Individual Education Program, September 30, 2022.)

19. On September 30, 2022, the Special Education Coordinator notified school staff that the Student's schedule would begin on October 4, 2023. (Email from Special Education Coordinator, September 30, 2022.)

20. A School Health Plan dated October 27, 2022, reflected that the Student experienced dysgraphia and pain associated with Ehlers Danlos syndrome. "The educational concerns... included that [Student]...is unable to write more than 1-2 sentences d/t [due to] the difficulty with the act of writing....This will impact [their] day-to-day learning and how [they] will complete assignments or take notes." (School Health Plan, October 27, 2022.)

21. The English Language Arts Teacher described the Student's writing performance and the accommodations they provided to the Student:

"[Student] does not write...excessively. [They] can do just a couple word answers....[They] would draw for expression for some of [their] classes only just because forming the words, um, was not something [Student] was physically comfortable doing. Um, and I'm okay with that....I don't ...require any of my students to read out loud in class. If they want to talk, they can talk. I just, I try to be as very, as accommodating as I can. [Student] is a very good reader, so as far as reading out loud in class, [they] would do [it] and [they] participated very well in group discussions.... I did not require [them] to do, like, a writing sample. I try to have a writing sample for all my students. That's just not something [Student] would be able to do. That would be where [Student] did the, uh, drawing in exchange for the, writing the words. [Student] preferred to draw." (District Interview, September 6, 2023.)

22. When the English Language Arts Teacher was asked during interviews if they knew that the Parent requested a scribe as an accommodation for the Student, the English Language Arts Teacher responded:

"Um, that's something I asked [Student] about doing, [they indicated they] would rather do the drawing. Um, being able to write for [Student] in class was something I could do, um, or if [Student] wanted to take something home and [would] be more

comfortable with mom doing it, [they] could do that. But as of last year [Student] was much more comfortable with the drawing...I offered [to scribe]. There's not a separate person, but I offered to write for [them]. Uh, [Student] could talk to me and I could write it out.... [Student] has a lot of knowledge in [their] brain and I think [their] preferred method of getting it out is-is to tell the world."
(District Interview, September 6, 2023.)

23. The Social Studies Teacher described the Student as an "A or A minus student. I think more A for me." (District Interview, September 6, 2023.)
24. When asked about the writing expectations in class, the Social Studies Teacher recalled that the Student informed them they couldn't write very much. "...[B]ut [Student] did fill out my tests. Everything else, we did not have [Student] write....it was more of group project thinking...and the [class] all worked on it together, and [Student] typed up [their] answers on the Google Doc, and then we graded it the next day." (District Interview, September 6, 2023.)
25. When asked if they were aware that the Parent requested a scribe as an accommodation, the Social Studies teacher said they didn't recall. When asked if they thought the Student needed a scribe in their class, the Social Studies Teacher stated, "No, because we got, we got through it fine."
(District Interview, September 6, 2023.)
26. The Special Education Case Manager recalled that December 20, 2022, was the last day the Student attended school. "Mom had emailed communication about [Student] needing to take some time to...get their mental health and their physical health back in working through, I guess you could say. Um, they just weren't doing so great, and mom thought sometimes at home without coming to school would be best, and wanted to know [their] options." (District Interview, September 6, 2023.)
27. The Building Case Manager was asked whether the District offered homebound instruction or alternative instructional methods when the Parent indicated the Student would not be attending school. The Building Case Manager stated that they "gave her the options we had for how to do special education services, um, while the student wanted to be homebound...We could have offered, um, Zoom or we could have done, um, where they, they could even come in once, you know, a week or something. We're pretty flexible on the way we can provide services when they're homeschooled. We have a lot of variety of options, um ... But mom declined." (District Interview, September 6, 2023.)
28. The Parent recalled notifying the school in December that the Student would be home "for some time" because of physical and emotional

health issues. The Parent asserted asking the school, "Can [Student] get home-bound services, please? [They] just can't make it into the school....Can [they] do online? Can you do tele-learning for [Student], at least to a [sic] couple of classes?" The Parent recalled that the Principal refused to provide home-bound services. The Principal allegedly replied, "If [Student] is absent so much, it will flag to the state with too many absences." (Parent Interview, September 7, 2023.)

29. The Principal expressed "a worry about the excessive absenteeism law" when the Parent informed the school about the Student's mental and physical issues impeding their ability to attend school. "We did not offer a home-bound program....[Student] can always come to school to...receive their services." (District Interview, September 6, 2023.)
30. The Parent reported they were unaware that pausing special education services would result in the Student's unenrollment from school. "Um, apparently that unenrolled [Student] completely, and that was not my understanding of it at all." (Parent Interview, September 7, 2023.)
31. The Principal asserted they had no conversations with anyone about the Student receiving online instruction. "We talked about several different possibilities because we did have an alternative setting, too. Um, I believe they came to the open house, and [Parent] was reluctant to use that alternative setting, but that that was an option. I know that we discussed all the options for [Student]." (District Interview, September 6, 2023.)
32. On January 5, 2023, the Parent emailed the Special Education Teacher to ask if the Student could access classes via Zoom or if other options were available. (Email from Parent, January 5, 2023.)
33. The Special Education Coordinator asserted that the District offered home-bound instruction while the Student was being homeschooled. "Um, I believe [Case Manager]...discussed the options that we could provide, and one of those options was that we would still provide services. Um, the student could come in for services, we could do them via phone, via phone....or the services could be paused and it's my understanding that was the choice that the parent chose." (District Interview, September 6, 2023.)
34. From January 9, 2023, through January 17, 2023, the Parent received three study guides for a class assignment. (Email from Parent, January 9, 2023, through January 17, 2023.)
35. On January 11, 2023, an internal district email communication from the Principal indicated that the School didn't offer a remote learning option. "My suggestion at this point would be [for Student] to withdraw (with or

without services) and to re-enroll when [they are] ready to try again.”
(Email from School Principal, January 11, 2023.)

36. On January 17, 2023, the Parent emailed the Special Education Teacher to request that they schedule an IEP meeting. The Parent specified they wanted “to set up for [Student] to be out for a time but have [their] IEP still ready for [them] to come back to school Or [sic] to see if there are other options for [them] to receive some services well [sic] [they are] out.” The Special Education Teacher responded that holding a full IEP meeting was unnecessary to suspend services temporarily. Instead, the Parent was advised that a PWN and a written statement reflecting the Parent's request to pause services were adequate to suspend the Student's services temporarily. (Email from Parent, January 17, 2023.)
37. On January 27, 2023, the Parent emailed the Special Education Teacher to formally request a pause to the special education services. “I would like to temporarily suspend IEP services for [Student]. We plan for [them] to return to school when [Student's] physical and mental health improves.” (Email from Parent, January 27, 2023.)
38. On February 2, 2023, a Prior Written Notice (PWN) was delivered to the Parent. The action proposed by the school district was described as:

“[Student's] IEP team is proposing to temporarily pause [their] service in the public school setting at the request of [Parent]. [Parent] has requested a pause in services while [Student] continues [their] homeschooling work and focuses on [their] mental and physical health with the ability to return to services per [their] IEP when healthy enough to return to the public school setting.” (Prior Written Notice, February 2, 2023.)
39. On March 31, 2023, the Principal informed the Parent that the Student was “considered homeschooled so, for now, is not a student.” (Email from Principal, March 31, 2023.)
40. On April 1, 2023, the Parent asserted that a “definite miscommunication” occurred when the Student went on medical leave from school; the Parent stated they didn't realize a medical leave would result in a complete withdrawal from school. (Email from Parent, April 1, 2023.)
41. The Student did not return to school for the remainder of the 2022-23 school year. (Parent Interview, September 7, 2023.)

Issue # 1

Did the District provide special education and related services to the Student upon enrollment?

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.*

007.02A *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.*

Allegations/Parent Position

The Student was enrolled at the beginning of the 22-23 school year and special education services were not provided until October. (Parent Complaint, August 3, 2023.)

District Response

The District is taking remedial measures to improve compliance with 92 NAC 51-007.02. Student A had an expired IEP from 2018 at the time the Student enrolled in the District on August 12, 2022. The District initiated the special education evaluation process and found the Student eligible for special education services on September 28, 2023. The Student began attending school and receiving services on October 3, 2022. The District's Response indicated that comparable services and accommodations should have been provided to Student A until the District could hold an IEP meeting with the Parent to review and revise the expired IEP. (Response to Rule 51 Complaint, August 25, 2023.)

Investigative Findings

Prior to the 2022-23 school year, the Student was home-schooled, and it had been four years since the Student had attended a public school. On August 1, 2022, the Parent provided the School with an out-of-state IEP from 2018. The Student was registered as a home-schooled student on August 12, 2022. On August 15, 2022, the District commenced the process for an initial special education evaluation to determine if the Student had a verifiable disability in Nebraska. Once the Student was found eligible for special education services in Nebraska on September 28, 2022, the District developed an IEP on September 30, 2022, and began implementing services at school on October 3, 2022.

The Parent has asserted that the Principal suggested that the Student not start school until special education services were in place, and the Parent reported that they said ok to this idea. The Principal reported that they informed the Parent that it would be up to the Parent to make the decision as to when the Student started school. There is no evidence in the record that the Parent requested that the Student move from home-schooling to attending the school

during the special education evaluation. School Districts are required to provide special education services to students who have a verified disability within their jurisdiction. In this case, the District verified that the Student had a disability on September 28, 2023, and began providing the required special education services within one week of the Student being found eligible for services.

Summary and Conclusions

The District was not required to provide special education services to the Student before the Student's disability had been verified in Nebraska. The District implemented the requirements of 92 NAC 51-007.02 and **no corrective action** is required.

Issue # 2

Did the District develop, review, and revise an IEP that met the unique needs of the Student?

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 51-007.07A5 states:

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

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

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

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

Allegations/Parent Position

The Parent requested a scribe as an accommodation, homebound or online classes services for the Student and the District denied these requests. (Parent Complaint, August 3, 2023.)

District Response

The District developed, reviewed, and revised an IEP to meet Student A's unique needs pursuant to 92 NAC 51-007.01. The District is taking remedial measures to improve compliance with 92 NAC 51-007.07A5. The District's Response asserted that the District was compliant with the development, review and revision requirements, but acknowledged that the supplementary aids and services and program modifications lacked the frequency, location and duration that special education law requires. (Response to Rule 51 Complaint, August 25, 2023.)

Investigative Findings

The Student's IEP included accommodations for alternatives to the Student writing more than two-word answers such as typing and a scribe. During interviews, the general education teachers were able to describe how the Student accommodations for writing were implemented in their classrooms. The Student was allowed to draw written responses, type larger amounts of text, responded orally, or the teachers offered to scribe for the Student.

In December 2022, the Parent notified the District that the Student was struggling due to physical and mental health concerns, may need to take time off of school and the Parent wanted to know what options would be available to the Student under that scenario. On January 5, 2023, the Parent requested online classes or other options for the Student. On January 17, 2023, the Parent requested an IEP meeting for options available to the Student while the Student would be out of school. The Special Education Teacher and the Parent had a communication exchange via phone; the content of the call is inconclusive as the Parties statements are not consistent. On January 17, 2023, the Special Education Teacher informed the Parent that a PWN pausing special education services would suffice to pause services and did not address the Parent's multiple requests for services, and their request for an IEP meeting.

On January 27, 2023, the Parent requested the District temporarily suspend IEP services while the Student's physical and mental health improved. During interviews, the Parent reported that this was the available option presented to them. On February 2, 2023, the District issued a PWN to temporarily pause special education services and indicated that the IEP team had considered all options. The Parent provided the District with information about concerns for the Student's needs, made multiple requests for other educational options, and requested an IEP meeting. The District did not consider the input of the Parent and did not convene an IEP meeting to review and consider revisions to the IEP, based on the Student needs at the time they were presented to the District.

Summary and Conclusions

A District may not pause special education and related services at the request of a parent or guardian. A parent or guardian may utilize their procedural safeguards to revoke consent for special education services under 92 NAC 51-009.08B4. The District erred when an IEP meeting was not convened to consider what services may have been required due to the needs of the Student. Further, the IEP was not compliant when it lacked the frequency, duration, and location of the supplementary aids and services. The District failed to implement the requirements of 92 NAC 51-007.01 and **corrective action is required**.

Corrective Action

Compensatory Services

1. The Student's IEP Team shall convene an IEP Team meeting within 10 calendar days of the date of this Investigation Report to develop a mutually agreed upon schedule to provide compensatory service including 9.5 hours of special education instruction and 100 minutes of occupational therapy. The IEP Team shall during the required IEP meeting, ensure the supplementary aids and services and program modifications are updated to include the frequency, location and duration of the services.
2. The IEP Team recommended revisions and schedule for compensatory services must be sent to NDE within 2 business days after the IEP Team meeting.
3. Compensatory services shall be completed by March 1, 2023. 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 March 1, 2023 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.

Training

1. The School District must develop and provide training to all relevant staff (general education teachers, special education teachers, related services providers, and administrators) regarding:
 - a. IEP development;
 - b. Requirements for reviewing and revising a student's IEPs when:
 - i. Requested by the Parent; or
 - ii. When the District has new information about a student.

2. The training and trainer(s) must be approved by the NDE Office of Special Education two calendar weeks prior to the training.
3. The school 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).
4. The corrective actions must be completed within 60 calendar days of the receipt of this Investigation Report.

Findings of Fact for Student B

1. The Student was 15 years old, enrolled in the 9th grade, and attending public high school at the time the Complaint was filed.
2. On August 1, 2022, the Principal emailed the Special Education Coordinator to notify them that two new students were enrolling with IEPs, and both students had significant medical conditions. (Internal District Email, August 1, 2022.)
3. On August 4, 2022, the District was in communication with the Parent regarding registration and log-in information. (District email to Parent, August 4, 2022.)
4. The Principal recalled that the Student enrolled in the School with an outdated IEP after being out of school for “three to four years”. The Principal stated, “...[T]he special ed team did the best that they could do...to have the IEP become current and...do the evaluation and get all those things done so that...[Student] was getting age-appropriate accommodations.” (District Interview, September 6, 2023.)
5. The Special Education Teacher reported that the evaluation for special education eligibility was done in September 2022. (District Interview, September 6, 2023.)
6. The Special Education Coordinator was unsure why the Parent believed the Student’s assessments were not completed until March 2023. “Well, there were different assessments. Um, it could be that that [Parent is] referring to different assessments.... [Parent] requested we use the weight down tests....In March was the first time any district or statewide tests were done and that was the, um, NSCAP alternate assessment test. And that’s the date it was scheduled to be done.” When asked if the March assessments were “more curriculum-based, rather than for the eligibility for special education, the Special Education Coordinator responded, “Yes.” (District Interview, September 6, 2023.)
7. The Special Education Coordinator was asked why the Student regularly missed the reading instruction class that took place from 10:30 AM to 11:30 AM. The Special Education Coordinator responded, “I believe [they] came late...because [they] didn’t want to go in there and work with that

teacher and work on that curriculum, is what it appeared to be.” (District Interview, September 6, 2023.)

8. The Building Case Manager attributed doctor appointments as the reason why the Student regularly missed school between 10:30 AM and 11:30 AM. When asked if the school prohibited the Student from attending school at 10:30, the Building Case Manager responded, “No.” (District Interview, September 6, 2023.)
9. When asked whether the teachers had access to the Student’s IEP when they started school, The Building Case Manager stated that all the teachers received an IEP summary. “Um...every teacher that [they] did have were [sic] involved in each of the IEPs that we had, and any team meetings that we had.” (District Interview, September 6, 2023.)
10. On September 12, 2022, a Notice of Meeting was provided to the Parent and signed by the Parent. The notice indicated that the District would hold an Eligibility meeting and plan for an IEP meeting on September 21, 2022. (Notice of Meeting, September 12, 2022.)
11. A Multidisciplinary Team Evaluation Report was issued on September 28, 2023. Notice of the evaluation was provided on September 15, 2022. “This is an initial Special Education verification according to 92 NAC 51 (Rule 51) and 92 NAC 52 (Rule 52)”. (Multidisciplinary Evaluation Team MDT Report, September 28, 2022.)
12. An Individual Education Program (IEP) was held on September 28, 2022.
 - a. Student strengths as creative, having a great imagination, social, and respectful.
 - b. The Parent’s concerns for the Student were that they could not read or write. They struggled with task avoidance and transitioning back to school.
 - c. The school-level team determined that the Student was eligible to receive services on the basis of Other Health Impairment (OHI) due to the diagnosis of Attention Deficit Hyperactivity Disorder (ADHD)
 - d. The Student’s needs included sensory breaks and Assistive Technology (AT) for reading and writing.
 - e. Present Levels of Academic Achievement and Functional Performance indicated that the School was the first public school the Student had attended in a few years.
 - f. The Parent reported that the Student read at a 1st grade reading level, and they requested a shortened day due to the Student’s medical diagnosis. A health plan was created due to health concerns, including Tourette’s.

- g. IEP Goal One: By [the] next IEP date, the Student will reach 3 out of 4 benchmarks for optimal participation in school.
- h. Short Term Objectives:
 - i. Cut a straight and curved line across a piece of paper in 4 out of 5 trials with a min A for optimal separation of sides and hands and eye-hand coordination;
 - ii. Complete interlocking puzzle with no assistance [in] 4 out of 5 trials to increase visual motor and spatial relationship skills;
 - iii. Write two words without a model using correct graphomotor skills;
 - iv. Using sensory strategies will demonstrate appropriate sensory modulation skills in order to sit and participate in 60 minutes of class [sic].
- i. IEP Goal Two: During the duration of this IEP, the Student will increase his reading skills by completing 7 out of 10 benchmarks on 4 out of 5 occasions with 80% accuracy.
- j. Short Term Objectives:
 - i. Identify the given sight words from a word list;
 - ii. Identify the letters of the alphabet and their sounds;
 - iii. Using decoding skills to read word with accuracy, ex...CVC, CVCe [sic], Vowel patterns, Consonant Blends;
 - iv. Determine the meaning of words using context clues;
 - v. Determine if an author's purpose is to entertain, inform or persuade;
 - vi. Identify and describe elements of literary text (characters, setting, conflict, sequence, point of view);
 - vii. Determine the main idea of the story;
 - viii. Use text features to locate information (Titles, headings, illustrations, index, glossary, charts, graphs, maps, timelines);
 - ix. Identify organizational patterns in informational text; and
 - x. Identify semantic relationships (synonyms, antonyms, homophones, homographs).
- k. Services listed on the Student's IEP included Special Instruction in the Resource room, Speech-language Therapy, Occupational Therapy services from September 29, 2022 - September 27, 2023.
- l. Program Modifications & Accommodations included were:
 - i. Allow for travel time;
 - ii. Use of elevator without peers unless it's peer role model if needed if legs are tired [sic];
 - iii. Calculator;

- iv. Sensory breaks;
 - v. Use of resource classroom for assignments and tests;
 - vi. Peer model;
 - vii. Checklists/visual;
 - viii. Break down tasks;
 - ix. Participation points for grading (rubric attached);
 - x. Text to speech. (Individual Education Program, September 28, 2022.)
13. The IEP dated September 28, 2022, did not include the frequency, duration, and location for program modifications and accommodations, and supports for personnel. (Individual Education Program, September 28, 2022.)
14. A PWN for the IEP dated September 28, 2022, indicated: the District proposed to offer Resource support in the Life Skills classroom, Speech, Consultation (Prior Written Notice, September 28, 2022.)
15. The Principal reported they attended "most of the Student's IEPs and recalls a para-professional being discussed. "[Student] received one-to-one instruction with [their] case manager for all [their] core classes. Um, he did go to choir independently and I think... maybe to [Teacher's] class independently. But, no, [Student] did not have a one-to-one para. Um, [Student] did have two classes that [Student] went to independently." (District Interview, September 6, 2023.)
16. On September 28, 2022, the Special Education Coordinator completed a Notice and Consent for Initial Placement. The notice indicated that the Student would be educated in the general education environment and the District would serve the Student in resource. (Notice and Consent for Initial Placement, not signed, September 28, 2022.)
17. A variety of academic work samples were completed. (Work Samples, October 12, 2022.)
18. On October 16, 2022, the Parent shared with the Principal that the Student was utilizing the sensory area in the classroom. (Parent email to District, October 16, 2022.)
19. On October 24, 2022, the Parent emailed the Special Education Coordinator to request changes to the Student's IEP. The Parent indicated they would like to shorten the Student's days due to chronic health conditions. They also shared that they wanted more information about how the Student was supported in their classrooms. (Parent email to District, October 24, 2022.)
20. Student Team Meeting Agenda dated October 27, 2022, indicated the team discussed whether a change in schedule was needed in addition to

a modified day. A question about whether the Science class should be added at the semester was listed. Accommodations needed in the classroom included Audio books, Tics, and RLS [undefined]. (Student Team Meeting Agenda document, October 27, 2022.)

21. The Parent reported that the District did not assess the Student's present levels until April, 2023. When the Parent asked the District why additional testing had not been done, the Counselor told them, "'Well, we can't test when they've already been tested. It would be illegal for us to test them more than, than after [Outside Provider] has already tested them.' And I'm like, 'That is a completely different thing.'" When the Parent was asked how the IEP goals were written if academic goals weren't completed, the Parent stated, "Um, they said that they would, uh, look at [their] abilities and, uh, figure it out more from there." (Parent Interview, September 7, 2023.)
22. The Parent stated the Student had an accommodation that allowed them to type written work that exceeded "a few words...Uh, any more than that, then [they] should be typing, and if it's more than, you know, more than very much at all, then it should be scribed." (Parent Interview, September 7, 2023.)
23. The Parent alleged, "They refused to read stuff to [Student]....[Student] could read maybe one or two words in each sentence." (Parent Interview, September 7, 2023.)
24. The Parent described the Student as experiencing a "high-anxiety level, and [Student]...wasn't calm enough or sure of [them]self enough to really make sure that [they were] understanding what was going on in class. [Student] was not accessing the curriculum. [They were] sitting there warming a chair. So...there were some that were good teachers, and if they had time...they would read to [Student]...but if they didn't notice [Student], [they] would be a wallflower and just [their] time because...there would definitely be too much anxiety to go up and ask for help." (Parent Interview, September 7, 2023.)
25. Parent alleged the District did not provide adequate assistive technology:

"Um, well, they didn't even look into assistive technology for [Student] until the meeting in February. Then, there was somebody there that I guess [they go] to different schools different times, and [they] hooked it up where they could borrow a, um, pen that would read to [Student], and finally, they got that, mm, sometime in March. I mean, they could've looked... they didn't look up any assistive technology. They didn't look up any, um, add-ins to put on his Chromebook. Um, they didn't make sure [Student] had [their]

Chromebook." (Parent Interview, September 7, 2023.) The Parent reported that the Teacher "wouldn't send stuff home", which limited the Parent's ability to see what the [Student] was doing. The Parent asserted that some of the work they saw was "probably right at [Student's] level"; other assignments were "not appropriate." (Parent Interview, September 7, 2023.)

26. The Parent reported that when they requested a para for the Student, the District responded, "'No, we can't do that.'" And I said, "'Well, [Student] needs a scribe for when it's time for writing'," and they said, "'We can't do that all the time. We'll try our best.'" (Parent Interview, September 7, 2023.)
27. The American History/Leadership Teacher reported that the [Student] began attending their class mid-October, during the 2022-23 school year. The Student remained enrolled in their classes through the end of the school year. (District Interview, September 6, 2023.)
28. The American History/Leadership Teacher asserted they were aware of the Student's IEP accommodations because they had "multiple IEP meetings...for [them] throughout the year." The Teacher recalled, "Um, baseline one, the first time and then...multiple check-ins after that." The Teacher recalled that a meeting took place in January and another one took place in March; goals were updated. The meeting also addressed "how we could better serve [Student]...with what [they] needed help with." (District Interview, September 6, 2023.)
29. The American History/Leadership Teacher confirmed that after the March meeting, the Student brought the pen reader to class every day they were at school and actively used it. When asked if there were writing tasks that the [Student] could not accomplish when using the pen reader in class, the Teacher answered, "No...." They added, "Um, I like to do a lot of in class things that [Student] could just...audibly do back toward me. Um, [they]... didn't have to do any projects for me, uh, because...I tried to make it more of a discussion-based for [them]... that way [Student] was able to just get [their] thoughts out to me without having to, you know, write them down or anything like that because I know through [their] IEP that [they] struggled with that." (District Interview, September 6, 2023.)
30. The Parent confirmed they believed the Student's IEP included an accommodation to have assignments read to [them]. "Yeah. [Student] has always had them read to [them] in classes." The Parent stated it was their "understanding that, yes, [Student] needed to have everything read to [them], yeah." (Parent Interview, September 7, 2023.)
31. The American History/Leadership Teacher indicated that the Student needed to bring Chromebook to class few times:

"[Student] did go down and get [the Chromebook] from the, um the resource room....At the beginning of the year [Student] struggled remembering what [their] password was...and how to get onto it...I believe we wrote down on a sticky note what [their] password was...then I don't ever remember [Student] having an issue after that. I would usually guide [them] in the direction of where I wanted him to go with that Chromebook." (District Interview, September 6, 2023.)

32. The American History/Leadership Teacher was asked to list the specific accommodations they provided the Student during class:
- I filled out all of the guided notes for [Student];
 - When other students would be doing guided notes in my classroom, I would already have them prefilled out for [Student] that way [they] could follow them along;
 - [Student] was allowed to take [guided notes] home and then have [Parent] help [them] study them;
 - We lightened the load, so... instead of doing...the full [worksheet], if there was 10 questions, we'd only do four or five, um, because at that point [Student] had a pen reader; and
 - Instead of writing them down---because...I knew that [Student] had struggled with writing--[Student] would just verbally tell me what [their] thoughts were answering the question. Um, and I think that really did well for [Student]...[they] seemed to like the communication aspect of it." (District Interview, September 6, 2023.)
33. The American History/Leadership Teacher reported, "I don't ever remember [Student] needing to use text-to-speech. Um, I do remember...[they] did write down in a Google Doc. [Student] used the speech typing feature of Google Docs." When asked if there were projects that required the use of text-to-speech, the American History/Leadership Teacher responded, "No." (District Interview, September 6, 2023.)
34. The American History/Leadership Teacher was asked how the instructional materials were provided at the correct level for the Student. The Teacher reiterated that they ensured the Student's guided notes were complete so [Student] could study them at home with the Parent. "And then I would consistently check in with [Student] to see...what [their] thoughts were on the whole situation, specifically with the pen reader." (District Interview, September 6, 2023.)
35. The American History/Leadership Teacher stated they don't "necessarily" give students homework. "I like to do all of my things in school. That way if

kids have questions, they can ask me specifically in the moment and then...they're not confused when they go home with it....[it] just works better for me and the students altogether." (District Interview, September 6, 2023.)

36. When asked if the Student received "scheduled sensory breaks", the American History/Leadership Teacher responded, "Um, I wouldn't say they were scheduled. It was kind of more how [Student] was feeling....There were some days where [Student] was...super energized and ready to come to class. And then there were some days...[Student] wasn't as active....[A]ny time [Student] requested to have one though, I was more than willing to let [them] have one...I always let [Student] go...if [they] needed to have one." (District Interview, September 6, 2023)
37. The American History/Leadership Teacher reported that the Student did not have a visual schedule - "like what [Student] was doing the whole day"- in their classroom. "Um...I would personally talk to [Student] about what I would want [them] to accomplish for that day." (District Interview, September 6, 2023.)
38. The Parent reported that on February 27, 2023, a meeting was held.

"Okay...we all decided that we would change classes for [Student]...[they] would be removed from [Teacher's] seventh hour and be put into science class. That did not happen until March 29th...even though we had decided on an action, it took over month to get that action to happen." (Parent Interview, September 7, 2023.)

39. The Parent agreed that the Student had a number of absences. The Parent explained the absences were due to doctor appointments and "a lot of trauma" related to one of the Student's teachers:

"...[Teacher]...was physically forceful with [Student] and would pin [Student] into the room where [Student] could not leave the room. You know, [Student] was like, "Well, I need to go talk to the principal," and [Teacher] would block [Student] from leaving the classroom even though [Principal] said, 'Any time you need to come talk to me, come talk to me.' Um, and... but the paras in that classroom, [Student] overheard them talking about [them] and saying, 'Oh, [their] Tourette's is fake, and [Student's] just doing that to get attention.' Um, and then, after the paras were forced to apologize... to [Student] for that, one continued to be very difficult... and not helpful for [Student]."

40. The Parent alleged that despite the Student's low reading level, the Teacher "insisted that [Student] read everything". The Parent explained,
- "...[S]o [Student's] reading level is end of kindergarten, beginning of first grade reading level. And [Student] was doing math at a second-grade level, so [Teacher] insisted that [Student] read everything on those math worksheets [them]self. Um, and this was backed up by the head of special education at, at [School]. Um, and [Teacher] would also give [Student] work that was outside of [their] ability and insist that [they] do it." (Parent Interview, September 7, 2023.)
41. When asked if the school or teacher knew the Parent didn't believe the instructional materials were appropriate for the Student, the Parent asserted that they raised the concern "several times". "Oh, this was in... toward, like, November, December. That was parent-teacher conferences, so probably was at the end of the semester, parent-teacher conferences.... Or no, this was the second, second IEP meeting. I said, 'What are you doing for phonics?' 'Oh,... I'm not doing phonics yet. We're doing the other....[A]and yes, I, I mentioned it in emails, and in the daily thread, and at parent-teacher conference, which I sent an email after, 'You're not giving [them] the reading instruction that [Student] needs.'" (Parent Interview, September 7, 2023.)
42. The Parent alleged that the school "didn't do any testing to see what [Student] needed...they took the testing that was sent from [Outside Provider], but that's just general. That's not what's your reading level, what you need to do exactly stuff." (Parent Interview, September 7, 2023.)
43. The Principal admitted there was a delay transferring the Student to the science class [they] were supposed to attend:
- "Right. There, there was a delay on that, and I did have to push a little bit to get that going. And...part of the problem with that was that, um, our science teacher was the track coach. And so [Teacher] was gone a lot, and so...you know, if you know anything about special ed kids... I suppose you do but, you know, when things...aren't' consistent and there's not a routine, it makes it very difficult to...get things established in a positive way." (District Interview, September 6, 2023.)
44. The Special Education Coordinator emailed the Parent and shared that the Student would begin their day at 10:30 AM and end at 3:30 PM. (District email to Parent, November 30, 2022.)

45. The Parent followed up with the Teacher about a parent/teacher meeting that took place a week prior. The Parent said that the Student started phonics and Dolch words, but the programs were discontinued because they were too difficult. The Student was showing progress in Failure Free. The Student was provided both scheduled and as-needed sensory breaks. Classroom and technology accommodations were discussed and also stated as being used. (Parent email to District, February 13, 2023.)
46. During interviews, the Principal was asked why the Student was excluded from attending a same-grade field trip with the general education English class. The Principal explained that the Student “was on a different schedule and...not enrolled in that class.” The Student instead received all their core instruction from the Case Manager. “Um, so that’s why [Student] was excluded....[They] weren’t enrolled in the class...so [they] didn’t go.” When asked why the Parent would think the Student should have attended the field trip, the Principal surmised, “Well, I think....[Parent] felt [Student] should have been included just as a social, peer social experience. Um...and I understand that, but it didn’t happen that way because [Student] was not enrolled in the class. [Student] had an alternative curriculum...at [their] level with [their] case manager for English language arts. So [they] were not in that class.” (District Interview, September 6, 2023.)
47. A Student Team Meeting Agenda dated February 27, 2023, indicated the team discussed a modified schedule. (Student Team Meeting Agenda document, February 27, 2023.)
48. When asked if the school received any medical information that explained the Student’s absences, the Principal answered that the “[n]urse floor would have all the documentation on that.” The Principal recalled that the Student was “always off...to appointments in...Omaha at Children’s....Um, but sometimes...[their] absences weren’t due to medical. It would just be [Parent] saying... ‘[They] just can’ do it today.’ And...we would just leave it at that.” (District Interview, September 6, 2023.)
49. IEP notes taken by the Parent on February 27, 2023, indicated that academic present levels and least restrictive environment were discussed. The Dolch list and Barton interventionist were listed as educational screeners, and it was noted that these assessments were not a good fit. Discussion of a daily checklist was noted. The Student was not bringing [their] computer to class. IEP notes, February 27, 2023.)
50. The Special Education Teacher communicated with the Parent and the Student’s school-level team (9 staff members), initiating a daily email

- thread to communicate positives and concerns about the Student. (Email from Special Education Teacher, February 28, 2023.)
51. The Student missed 54% of school days between March 5, 2023, and May 18, 2023. (Email Daily Thread, March 5, 2023 - May 18, 2023.)
 52. A progress report was provided on March 6, 2023. The progress report included goals and comments. The comments section noted that the Student was provided a variety of screeners within the quarter, including Dolch, Failure Free, and Edmark. Using the pre-k Dolch sight words, [Student] demonstrated an ability to identify 27/40 words. The diagnostic reading assessment determined that [Student] was performing at the 1st-grade level. The diagnostic mathematics assessment determined that the Student was performing at the mid-2nd-grade to late 4th-grade level. (Progress report, March 6, 2023.)
 53. On March 21, 2023, the Parent requested that the Student be taught how to access the curriculum on their computer. The Parent also asked if the Student had started the Science class. The Parent anticipated that the Student would join Science at the beginning of the new quarter. (Email Daily Thread, March 21, 2023.)
 54. Staff reported that the Student was prompted to use their computer in class on March 13, 2023. The Student seemed unsure how to log in and use the Text to Chat program. The Student was provided some instruction by the staff. (Email Daily Thread, March 13, 2023.)
 55. On March 27, 2023, the Parent thanked the staff for informing them that the Student would begin Science class on March 28, 2023. (Email Daily Thread, March 27, 2023.)
 56. The Principal notified the Parent that the Student would start attending the new Science class on March 29, 2023. (District email to Parent, March 27, 2023.)
 57. A variety of academic assessments were completed on March 31, 2023. (Academic Assessments, March 31, 2023.)
 58. The Parent requested information about the type of pen reader that the School was using so that the Parent could purchase one at home. (Email Daily Thread, March 31, 2023.)
 59. The Student completed a math assessment to determine present levels. (Email Daily Thread, March 31, 2023.)
 60. The Student left school early and was not able to attend Science class. (Email Daily Thread, March 31, 2023.)
 61. The Teacher informed the Parent that the Student was using the pen reader in Science class. The Parent requested more assistance for the Student with the pen. (Email Daily Thread, March 31, 2023.)

62. In the Email Daily Thread dated April 4, 2023, the Student had worked on a math assessment. (Email Daily Thread, April 4, 2023)
63. On April 12, 2023, the Parent understood that the preliminary testing was completed and asked for a summary of the results. The Parent also asked for basic information regarding the reading and math curriculum and accommodations the Student was receiving. (Email Daily Thread, April 12, 2023.)
64. A progress report was provided on May 18, 2023. The progress report included goals and comments. The comments section noted:
- “[Student] has not been in attendance regularly at school during the 10:30-11:30 time slot when these skills are being taught. [Their] attendance rate for the last quarter was 14% for this time. The first few days that I worked with [them] was assessments and getting to know [them] [sic]. [They] completed a third-grade word list assessment and scored 74% accurate. [They] missed top, man, way, into, and great. [They] can identify most letter [sic] but will struggle with j and y and some phoneme blends. [Student] is not consistent with CVC words. Silent E is a struggle. If [Student] hears information orally, [they retain] it for the short term and can reiterate the main idea of the passage or story. We were unable to work on vowel patterns, CVCe, consonant blends, author's purpose, elements of literary text, organizational patterns in informational text, and semantic relationships.” (Progress report, May 18, 2023.)
65. A progress report indicated that the Student utilized a visual prompt to remember [their] academic schedule. (Progress report, May 18, 2023.)
66. A Health Care Plan on file was designed by the Primary Physician as well as Specialty Physicians (6). The Health Care Plan included a medical history summary, a baseline assessment and medical diagnoses:
- a. ADHD-Combined
 - b. Obsessive-Compulsive Disorder (OCD)
 - c. Tourette's (Health Care Plan, no date.)
67. A visual classroom schedule was provided and included classes starting from 10:30-12:55. (Visual Schedule, no date.)
68. A visual classroom schedule was provided and included classes starting from 1:00-3:25. (Visual Schedule, no date.) (P75)

Issue # 1

Did the District provide special education and related services to the Student upon enrollment and as described in the IEP?

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*

007.02A *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.*

Allegations/Parent Position

The Student was enrolled at the beginning of the 2022-23 school year and special education services were not provided until October. The Student did not receive the supports needed for reading, writing, or technology. The District did not: 1) use appropriate phonics instruction, 2) provide a scribe, 3) provide instruction on use of a Chromebook, 4) provide homework, 5) provide text to speech, 6) provide instructional materials at the correct level for the Student, 7) provide access to assistive technology, 8) allow for scheduled sensory breaks, 9) provide rest breaks when the Student was exhausted, and 10) provide an individual visual schedule. (Parent Complaint, August 3, 2023.)

District Response

The District is taking remedial measures to improve compliance with 92 NAC 51-007.02. Student B had an expired IEP from 2018 at the time the Student enrolled in the District on August 12, 2022. The District initiated the special education evaluation process and found the Student eligible for special education services on September 28, 2023. The Student began attending school and receiving services on October 3, 2022. The District's Response indicated that comparable services and accommodations should have been provided to Student B until the District could hold an IEP meeting with the Parent to review and revise the expired IEP. The IEP team agreed to have the Student attend a science class and this change did not take place until one month later. (Response to Rule 51 Complaint, August 25, 2023.)

Investigative Findings

Prior to the 2022-23 school year, the Student was home-schooled, and it had been four years since the Student had attended a public school. On August 1, 2022, the Parent provided the School with an out-of-state IEP from 2018. The Student was registered as a home-schooled student on August 12, 2022. On August 15, 2022, the District commenced the process for an initial special education evaluation to determine if the Student had a verifiable disability in Nebraska. Once the Student was found eligible for special education services in

Nebraska on September 28, 2022, the District developed an IEP on September 30, 2022, and began implementing services at school on October 3, 2022.

The Parent has asserted that the Principal suggested that the Student not start school until special education services were in place, and the Parent reported that they said ok to this idea. The Principal reported that they informed the Parent that it would be up to the Parent to make the decision as to when the Student started school. There is no evidence in the record that the Parent requested that the Student move from home-schooling to attending the school during the special education evaluation. School Districts are required to provide special education services to students who have a verified disability within their jurisdiction. In this case, the District verified that the Student had a disability on September 28, 2023, and began providing the required special education services within one week of the Student being found eligible for services.

Summary and Conclusions

The District was not required to provide special education services to the Student before the Student's disability had been verified in Nebraska. The District implemented the requirements of 92 NAC 51-007.02 and **no corrective action** is required.

Issue #2

Did the District develop, review, and revise an IEP that met the unique needs of the Student?

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 51-007.07A 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 *A statement of measurable annual goals, including academic and functional goals, designed to:*

007.07A2a *Meet the child's needs that result from the child's disability to enable the child to be*

involved in and make progress in the general education curriculum; or for preschool children, as appropriate, to participate in appropriate activities, and

007.07A2b *Meet each of the child's other educational needs that result from the child's disability.*

92 NAC 51-007.07A5 states:

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

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

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

007.07A5c *To be educated and participate with other children with disabilities*

*and nondisabled
children in the activities
described in 92 NAC 51-
007.07A5*

Allegations/Parent Position

The parent requested a paraprofessional for the Student to be able to fully access the curriculum. Further, the present levels in the IEP was based on written performance and teacher observation and did not include medical information provided by the Parent, any tests to set and evaluate present levels for goals.

These assessments were not completed until the end of March 2023. The reading IEP goals developed for the Student were set for benchmarks and standards that were not what the Student needed. (Parent Complaint, August 3, 2023.)

District Response

The District developed, reviewed, and revised an IEP to meet Student B's unique needs pursuant to 92 NAC 51-007.01. The District is taking remedial measures to improve compliance with 92 NAC 51-007.07A5. The District's Response asserted that the District was compliant with the development, review and revision requirements, but acknowledged that the supplementary aids and services and program modifications lacked the frequency, location and duration that special education law requires. (Response to Rule 51 Complaint, August 25, 2023.)

Investigative Findings

The Parent has alleged that the Student required a paraprofessional to access their education and that the Student's previous IEP from 2018 included this support. There is no evidence in the record that the Parent disagreed with the IEP team's decision on September 28, 2022, to not include this support in the Student's IEP. There is also no evidence that the Parent made a request that a paraprofessional be provided for the Student or added to the Student's IEP during the Complaint period.

The present level of academic achievement and functional performance in the September 28, 2022, IEP includes references to the attached Student school health plan. The school health plan that was included in the Student's IEP included specific and detailed information about the Student's medical needs. The present level of academic achievement and functional performance in the September 28, 2022, IEP did not include baseline data about the Student's reading levels. In addition, the IEP reading goal does not include an instructional level for which instruction is to be provided or what level the Student was to attain.

Summary and Conclusions

Based on the deficient present levels and IEP goal for the Student's reading, the District failed to fully implement the requirements of 92 NAC 51-007.07A. Thus, the following **corrective action is required**.

Corrective Action

Reconvene the IEP

1. Within 10 calendar days of the date of this Investigation Report, the District must reconvene the Student's IEP Team and ensure that:
 - a. The present levels and IEP goal(s) for the Student's reading needs are compliant;
 - b. Goals and/or present levels include current performance baseline data, instructional levels, and the levels by which the IEP goals(s) will be achieved; and
 - c. The program modifications and accommodations and supports to personnel shall be updated to include the frequency, location and duration of the services.
2. The IEP and any associated PWN must be sent to NDE no later than 2 business days after the IEP Team meeting.
3. NDE will provide the District the names and/or student IDs in a request to review files on or before March 1, 2023, to ensure those files include compliant present levels and goals as well as details for program modifications and accommodations including frequency, location, and duration of services.

Training

1. The School District must develop and provide training to all staff regarding IEP development to include present levels of academic achievement and functional performance and IEP goals.
2. The training and trainer(s) must be approved by the NDE Office of Special Education two calendar weeks prior to the training.
3. The school 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).
4. The corrective actions must be completed within 60 calendar days of the receipt of this Investigation Report.

Issue # 3

Did the District meet the least restrictive environment requirements when scheduling and placing the Student in general education classes?

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.*

- 008.01D1 *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 *The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:*
 - 008.01E1 *Is determined at least annually;*
 - 008.01E2 *Is based on his or her individualized education program (IEP); and*
 - 008.01E3 *Is as close as possible to the child's home.*

- 008.01F *The various array of placement options included under 92 NAC 51-008.01D must be available to the extent necessary to implement the individualized education program for each child with a verified disability.*
- 008.01G *Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.*
- 008.01H *In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.*
- 008.01I *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

The IEP team agreed to have the Student attend a science class and this change did not take place until one month later. (Parent Complaint, August 3, 2023.)

District Response

The District met the least restrictive environment requirements when scheduling and placing Student B in the general education classroom in accordance with 92 NAC 51-008.01. The District is taking remedial measures to improve compliance with procedural errors. (*Response to Rule 51 Complaint, August 25, 2023.*)

Investigative Findings

In October 2022, the District and the Parent discussed whether the Student should attend a science class at the new semester. In March 2023, the Parent asked the District if the change to a science class had occurred at the new semester. The change had not occurred and as a result the Student started the science class four weeks later than anticipated. The Student's attendance in the science class was not part of the Student's IEP and there was no documentation that the inclusion of the science class was a change in special education placement.

Summary and Conclusions

Although there was a delay in the Student starting the science class, the change in course enrollment was not a special education placement decision, the District implemented the requirements of 92 NAC 51-008.01 and **no corrective action** is required.

Issue # 4

Did the District take the steps necessary to afford the Student an equal opportunity for participation in nonacademic and extracurricular services and activities?

92 NAC 51-007.07C4 states:

007.07C4

The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in

the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities.

007.07C4a *Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.*

Allegations/Parent Position

The Student was excluded from attending an 8th grade field trip with the general education English class. (Parent Complaint, August 3, 2023.)

District Response

The District took the steps necessary to afford the Student an equal opportunity for participation in nonacademic and extracurricular services and activities in accordance with 92 NAC 51-007.07C4. (Response to Rule 51 Complaint, August 25, 2023.)

Investigative Findings

The Student was not enrolled in the class that went on the field trip that the Parent alleged the Student was denied from attending. There were other 8th

grade students not enrolled in the class that also did not attend the field trip in question. During interviews, the Parent and the District both reported that there had been another field trip opportunity that the Student attended.

Summary and Conclusions

There is no evidence that the District denied the Student access to a field trip for which they were eligible to attend. The District implemented the requirements of 92 NAC 51-007.07C4 and **no corrective action** is required.

Notice to District

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

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