

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 23.24.14  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** October 16, 2023  
**Date of Report:** REDACTED

### Issues Investigated

1. Did the District appropriately respond to the Parent's request for an IEP meeting? [92 NAC 51-007.10 and 009.05]
2. Did the District provide the Parent the opportunity to meaningfully participate in the IEP process? [92 NAC 51-007.07B1]
3. Did the District convene an IEP meeting without all required IEP team members? [92 NAC 51-007.03]
4. Should the District have and/or did the District conduct a manifestation determination review before changing the Student's placement because of disciplinary removals [92 NAC 51-016.02E]?

### Information Reviewed by Investigator

#### *From the Complainant*

- Letter of Complaint dated October 2, 2023; received by NDE October 16, 2023
- Audio recording and transcript of September 22, 2023, IEP meeting
- Audio recording and transcript of October 26, 2023, IEP meeting
- Accommodation schedule (no date)
- Notice of Meeting dated October 31, 2023
- Emails with District between October 5, 2023, and November 6, 2023

#### *From the School District*

- Letter of Response dated November 3, 2023; received by NDE November 3, 2023
- District's documentation and response to issues raised in the complaint (no date)
- Multidisciplinary Evaluation Team Report (MDT) dated October 1, 2021
- Individualized Education Program (IEP) effective October 3, 2022
- IEP effective September 27, 2023\*
- IEP effective October 31, 2023\*
- Notes Page attached to IEP effective September 27, 2023
- Notice of Meeting dated September 7, 2023
- Notice of Meeting dated October 16, 2023
- Prior written notice (PWN) dated September 22, 2023\*

- PWN dated October 26, 2023\*
- Notice and Consent for Reevaluation dated September 12, 2023; signed October 4, 2023
- Behavior Documentation Log between August 21, 2023, and October 27, 2023
- Behavior Support Plan (no date)
- Visual accommodations and support plan
- Student's 2023-24 Attendance Report
- District's 2023-24 School Calendar
- Emails with Complainant between September 25, 2023, and October 17, 2023

*Documents with an \* next to it were also provided by the Complainant.*

### **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 seven years old and in the first grade for the 2023-24 school year.
3. The school day begins at 8:10 a.m. and ends at 3:20 p.m. The Student has three recesses throughout the day for 15 minutes each.
4. School-wide, if a student does not complete their work, they are required to do so before attending recess. This applies to students with and without disabilities.
5. The Student's most recent evaluation report is dated October 1, 2021. The Student is identified as a student with a disability under the primary classification of Speech Language Impairment.
6. The first day of school for the 2023-24 school year was August 16, 2023. At the time, the Student's IEP dated October 3, 2022, was in effect. At that time, the Student's behavior did not impede their learning or that of others.
7. During the month of August, 12 behavior incidents were documented in a behavior log over the span of seven days. The first behavior incident occurred on the fourth day of school, on August 21, 2023. Of the 12 incidents, 11 incidents were documented as "defiance/disrespect/non-compliance" related incidents; one incident was documented as physical aggression. Additional information regarding the behavior incidents is below:
  - a. August 21, 2023, (two incidents): Neither incident resulted in removal from the classroom or the loss of the ability to participate with the Student's peers

- i. Incident 1: Defiance
  - ii. Incident 2: Physical aggression
- b. August 24, 2023:
  - i. Incident 1: Defiance – Student refused to complete their work. As a result, the Student missed a few minutes of recess.
  - ii. Incident 2: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
- c. August 25, 2023: Defiance – the student refused to complete their work. As a result, student had to complete their work instead of participating in the Friday video.
- d. August 28, 2023: Defiance – Student was taken outside of the classroom for a break.
- e. August 29, 2023:
  - i. Incident 1: Defiance – Student refused to complete their work. As a result, the Student was not allowed to use the iPad to listen to books on the Epic program.
  - ii. Incident 2: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
  - iii. Incident 3: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
- f. August 30, 2023:
  - i. Incident 1: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
  - ii. Incident 2: Defiance - Student refused to complete their work. As a result, the Student missed a few minutes of recess.
- g. August 31, 2023: Defiance – Student refused to return to class after attending speech. After a two-minute break, Student returned to class but refused to complete their work. After a three-minute break, Student still refused to complete their work. At 3:05 p.m., Student was taken to the office where they remained until the end of the school day.

In total, the Student was taken to the office on one occasion, taken outside of the classroom for a break on one occasion, and had privileges restricted on four different occasions.

- 8. A meeting notice dated September 7, 2023, indicated a meeting to develop, review, and/or revise the Student's IEP was scheduled for

September 22, 2023. The notice indicates the Student's academic achievement and functional performance; special education and related services and supplementary aids and services; annual goals; and the Student's participation in the general curriculum would be discussed at the meeting. In addition, the notice indicated what staff members would be present. The school guidance counselor was not listed as one of the staff members to attend. On September 20, 2023, the Parent indicated they would attend the scheduled meeting.

9. Between September 1, 2023, and September 12, 2023, 10 behavior incidents were documented over the span of six days. Nine of the 10 incidents were documented as "defiance/disrespect/ non-compliance" related incidents; one incident was documented as physical aggression. Additional information regarding the behavior incidents is below:
  - a. September 5, 2023: The behavior log includes details of behavior incidents throughout the school day. In the morning, the Student refused to complete their work. As a result, the Student missed a few minutes of recess. In the afternoon, the Student was taken to the office for approximately one hour because they refused to complete their work. While in the office, the Student was permitted to take a break and then completed the work they missed in the classroom.
  - b. September 6, 2023:
    - i. Incident 1: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
    - ii. Incident 2: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
  - c. September 7, 2023:
    - i. Incident 1: Defiance – After refusing to complete their work after taking a break, the Student was sent to the office to complete their work. The Student took multiple breaks in the office before completing their work. In total, the Student was in the office for over 35 minutes.
    - ii. Incident 2: Defiance – The Student hid under the desk and refused to come out after taking a break in the classroom. The Student was taken to the office for another break. While in the office, the Student took multiple breaks, ate their lunch, and completed their work. In total, the Student was in the office for 55 minutes.

- d. September 8, 2023:
  - i. Incident 1: Defiance – After refusing to complete their work after taking a break, the Student was taken to the office to complete their work.
  - ii. Incident 2: Defiance – The Student took a break outside of the classroom.
  - iii. Incident 3: Physical aggression – The Student was physically aggressive towards another student. As a result, the Student was taken to the office for the remainder of the day (approximately 30 minutes).
- e. September 11, 2023: The behavior log includes details of behavior incidents throughout the school day. The incident that occurred in the morning was the only instance in which the Student was removed from the classroom for refusing to complete their work. As a result, the Student was taken to the office. After two, five-minute breaks in the office, the Student completed their work, ate lunch, and returned to class.
- f. September 12, 2023: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.

In total, the Student was taken to the office on six different occasions, over the course of three days; taken outside of the classroom for a break once; missed lunch with their peers twice; and had privileges restricted once.

- 10. On September 12, 2023, a problem-solving meeting was held with the Parent. The purpose of the meeting was to discuss concerns regarding the Student's behaviors and academics. At the meeting, District staff shared with the Parent the accommodations that were being utilized to support the Student's behaviors (*see Findings of Facts #11 and #13(i)*). At the conclusion of the meeting, the District requested consent from the Parent to re-evaluate the Student. The District proposed to conduct intellectual, perceptual, motor, social-emotional, and speech and language assessments, in part.
- 11. A behavior support plan includes the following Tier II interventions to be utilized with the Student:
  - a. Token board and token board visual
  - b. Visual schedule
  - c. Point card to communicate between school and home (requested by Parent)
  - d. Communication cards

- e. Participation in a social skills group
  - f. Fidgets
  - g. Check-out with teacher
  - h. The Student may request a break or the teacher may request that the Student take a break. The Student may leave the general education classroom to the small group classroom next door for a five-minute break. During the break, the Student may play with a fidget. If the Student misses work, the Student will complete the work before returning to class.
12. Between September 13, 2023, and September 21, 2023, 11 behavior incidents were documented over the span of four days. All incidents were documented as “defiance/disrespect/ non-compliance” related incidents. Additional information regarding the behavior incidents is below:
- a. September 13, 2023:
    - i. Incident 1: Defiance – The Student took a break and completed their missing work in the small group room.
    - ii. Incident 2: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student’s peers.
  - b. September 14, 2023:
    - i. Incident 1: Defiance – The Student refused to complete their work. After taking breaks inside and outside of the classroom, the Student still refused to do their work, resulting in missed recess and lunch with their peers. Once the Student completed their work and ate lunch, they returned to class.
    - ii. Incident 2: Defiance – The Student took a break and completed their missing work in the small group room.
    - iii. Incident 3: Defiance – The Student took a break and completed their missing work in the small group room.
  - c. September 20, 2023:
    - i. Incident 1: Defiance – Student refused to complete their work. As a result, the Student missed a few minutes of recess.
    - ii. Incident 2: Defiance – The Student took a break in the small group room.
  - d. September 21, 2023:
    - i. Incident 1: Defiance – The Student took a break and completed their missing work in the small group room.

- ii. Incident 2: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
- iii. Incident 3: Defiance – Student refused to complete their work. As a result, the Student missed the afternoon recess. Once the Student completed their work, they returned to class.

In total, Student missed part of recess on one occasion, all of recess on two occasions, and missed lunch with their peers once.

13. An IEP meeting was held on September 22, 2023. In attendance at the meeting were the Parent, a general education teacher, a special education teacher/provider, and two school district representatives. One person accounted for the special education teacher/provider, the individual to interpret evaluation results, and the individual with special knowledge or expertise regarding the Student (i.e., the Student's speech-language pathologist (SLP)).
14. Relevant portions of the IEP developed at the September 22, 2023 meeting include:
  - a. The IEP is to be in effect beginning September 27, 2023.
  - b. The IEP noted the strengths and concerns regarding the Student that were shared by the Parent. In addition, the IEP noted the Parent requested speech activities be sent home during the summer to which the District agreed.
  - c. The Student's behaviors impede learning. The consideration of positive behavioral interventions and strategies (PBIS) includes:
    - i. Token board; access to break area inside and outside the general education classroom; daily communication card; reading intervention; social skills group; visual schedule; break card; "I need help" card; and when/then flowchart.
  - d. The student has communication needs.
  - e. The student has assistive technology (AT) needs, including the use of visual schedules and cues.
  - f. The Present Level of Academic Achievement and Functional Performance (PLAAFP) section states, in part, that the Student has had 15 classroom/staff-managed behavior incidents and 12 office-managed behavior incidents since the beginning of the school year. Per the Parent's request, a communication card was developed and will be shared daily.
  - g. The IEP contains one annual goal to support articulation.
  - h. Speech special education services are included.

- i. The following program modifications and accommodations are included:
    - i. Visual schedule
    - ii. Use of positive reinforcement strategies
    - iii. Use of visuals to cue expected behaviors/routines
    - iv. Use of fidgets/adapted seating strategies
    - v. Use of visual communication cards (help, break, "I'm good")
    - vi. Access to a break area within the general education classroom
    - vii. Access to a break area outside the general education classroom
15. The Parent provided an audio recording of the September 22, 2023, IEP meeting. Relevant conversations noted include:
- a. District staff pointed out the portion of the draft IEP that includes behavior notations. The Parent stated the IEP meeting needs to only address the Student's speech. District staff said "Okay."
  - b. District staff pointed out the accommodations that will be utilized throughout the school day. The Parent asked if those were for speech. District staff said "No." The Parent stated those could be "skipped."
  - c. The Parent indicated they would sign the IEP once behavior-related information and accommodations were removed. District staff indicated the signature was just for attendance purposes.
  - d. The Parent indicated they were only advised that the Student's speech-related needs would be discussed at the meeting.
  - e. The Parent requested to have summer speech activities sent home with the Student if needed.
16. A PWN dated September 22, 2023, indicates the following, in part:
- a. The Parent asked not to discuss behaviors or behavior-related accommodations at the meeting and requested that information be removed from the IEP.
  - b. The District refused to remove the behavior data and supports as it is the IEP Team's responsibility to discuss and meet the needs of the child as a whole. The District granted the Parent's request not to discuss the behavior-related accommodations but it was still appropriate to include the same in the IEP.
  - c. The District agreed to provide practice activities for the Students during the summer.



17. The PWN and IEP were emailed to the Parent on September 25, 2023. In response, the Parent requested a second IEP meeting to discuss behavior-related concerns.
18. On September 26, 2023, the District replied to the Parent's request for another IEP meeting. The District stated another meeting could be scheduled but it was not proposing any additional services or changes to the IEP. If the Parent would like to reconvene the IEP Team, the District asked that the Parent share the reason so the request could be considered.
19. On September 27, 2023, the Parent emailed the District a letter. The letter stated, in part, that the Parent does not fully understand the IEP process and requests answers to a number of questions. The letter did not include anything regarding scheduling another IEP meeting.
20. On September 29, 2023, the Parent emailed the District another letter containing the Parent's concerns, questions, and a request that behavior-related information be removed from the Student's IEP. The Parent asked that the contents of the letter be included in the Student's IEP. The letter is included as a note in the Student's special education file and attached to the September 27, 2023 IEP.
21. After the IEP meeting, through the remainder of the month of September, nine behavior incidents were documented over the span of six days. All incidents were documented as "defiance/disrespect/ non-compliance" related incidents. Additional information regarding the behavior incidents is below:
  - a. September 22, 2023: Defiance – The Student took a break in the small group room on two different occasions.
  - b. September 25, 2023: Defiance – The Student took a break in the small group room on three different occasions.
  - c. September 26, 2023:
    - i. Incident 1: Defiance – The Student took a break and completed their work in the small group room.
    - ii. Incident 2: The Student took a break in the small group room.
    - iii. Incident 3: The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
  - d. September 27, 2023:
    - i. Incident 1: Defiance – The Student took a break in the small group room.

- ii. Incident 2: The Student took a break in the small group room and was ready to return to the classroom after approximately 45 minutes.
- e. September 28, 2023: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
- f. September 29, 2023: Defiance – Student refused to complete their work. As a result, the Student missed a few minutes of recess.

In total, Students missed part of recess on one occasion.

- 22. On October 2, 2023, the District responded to the September 27, 2023, and September 29, 2023 letters from the Parent. In response, the Parent requested more information on the testing proposed by the District and an IEP meeting.
- 23. On October 4, 2023, the District provided the Parent with the information regarding testing. In addition, the District stated, that depending on what the Parent decides in regards to the re-evaluation, an IEP meeting could be held soon or the IEP Team could wait until the evaluation was completed. The Parent's reply did not address when they would like to have the IEP meeting.
- 24. The Parent provided their consent for the Student's re-evaluation on October 5, 2023. The Parent agreed to all proposed assessments except for intellectual testing.
- 25. On October 9, 2023, the District asked the Parent when they would like to hold another IEP meeting. The Parent responded by asking for the District to respond to the questions included in their email from October 4, 2023. The Parent also indicated they would like a facilitated IEP meeting as soon as possible.
- 26. On October 12, 2023, the District stated it recommends waiting until the evaluation is completed to hold an IEP meeting. In the meantime, the District would secure dates with potential facilitators and to expect a meeting sometime in November. The Parent responded by asking for an IEP meeting to be scheduled in the next week and not wait for the evaluation results.
- 27. On October 16, 2023, the District emailed the Parent stating a facilitated IEP meeting could be held on October 26, 2023. A meeting notice was attached to the email. The meeting notice included the same purpose as the September 7, 2023, meeting notice. The only difference in the notice, aside from the date/time of the meeting, was the school guidance counselor was listed as an individual with special knowledge or expertise

- regarding the Student who would be in attendance. The Parent indicated via email they were available to attend the scheduled meeting.
28. A facilitated IEP meeting was held on October 26, 2023. Most of the IEP remained the same as the previous IEP. Relevant amendments to the IEP include:
- a. The IEP is to be in effect beginning October 31, 2023.
  - b. The IEP notes new parental concerns regarding the use of breaks, math, Student perfectionism, and anxiety at school, in part.
  - c. The same PBIS were listed.
  - d. The same program modifications and accommodations were included with the addition of scheduled breaks to occur before reading and writing.
29. A PWN dated October 26, 2023, indicates the following, in part:
- a. The team reviewed all accommodations, including the use of breaks.
  - b. A new school-to-home communication card was developed.
30. The District provided the IEP and PWN to the Parent on October 30, 2023. In response, the Parent indicated they questioned the placement of some things and some of their parental concerns were not addressed. The Parent indicated their concerns could be discussed at the next IEP meeting.
31. During the month of October, 24 behavior incidents were documented over the span of 16 days. All incidents were documented as “defiance/disrespect/ non-compliance” related incidents. Additional information regarding the behavior incidents is below:
- a. October 2, 2023: Defiance – The behavior log includes details of behavior incidents throughout the school day. All incidents resulted in the Student taking a break in the small group room.
  - b. October 3, 2023:
    - i. Incident 1: Defiance – The Student took a break in the small group room.
    - ii. Incident 2: Defiance – The Student took a break and completed their missing work in the small group room.
  - c. October 4, 2023:
    - i. Incident 1: Defiance – The Student took a break in the small group room.
    - ii. Incident 2: Defiance – The Student took a break in the small group room.
  - d. October 5, 2023:

- i. Incident 1: Defiance – The Student took a break in the small group room.
  - ii. Incident 2: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
- e. October 6, 2023:
  - i. Incident 1: Defiance – The behavior log includes details of behavior incidents throughout the school day. The Student took a break in the small group room at least four times and took a break in the classroom at least twice.
  - ii. Incident 2: Defiance – Student refused to complete their work. As a result, the Student missed a few minutes of recess.
- f. October 9, 2023: Defiance – The behavior log includes details of behavior incidents throughout the school day. The incidents did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
- g. October 10, 2023:
  - i. Incident 1: Defiance – The Student took a break in the small group room.
  - ii. Incident 2: Defiance – The Student took a break in the small group room.
  - iii. Incident 3: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
- h. October 12, 2023: Defiance – The behavior log includes details of behavior incidents throughout the school day. The Student took a break in the small group room at least four times.
- i. October 17, 2023: Defiance – The Student took a break in the small group room.
- j. October 18, 2023: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.
- k. October 19, 2023:
  - i. Incident 1: Defiance – The behavior log includes details of behavior incidents throughout the school day. The Student took a break in the small group room at least four times.
  - ii. Incident 2: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student's peers.

- iii. Incident 3: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student’s peers.
- l. October 23, 2023: Defiance – The incident did not result in removal from the classroom or the loss of the ability to participate with the Student’s peers.
- m. October 24, 2023: Defiance – The behavior log includes details of behavior incidents throughout the school day. The incidents did not result in removal from the classroom or the loss of the ability to participate with the Student’s peers.
- n. October 25, 2023: Defiance – The behavior log includes details of behavior incidents throughout the school day. The Student took a break in the small group room at least two times and missed afternoon recess for refusing to complete their work.
- o. October 26, 2023: Defiance – Student refused to complete their work. As a result, the Student missed a few minutes of recess.
- p. October 27, 2023: Defiance – The Student took at least two breaks in the small group room.

In total, the Student missed part of recess on two occasions and all of the recess on one occasion.

**Issue # 1**

Did the District appropriately respond to the Parent’s request for an IEP meeting? [92 NAC 51-007.10 and 009.05]

92 NAC 51-007.10 states:

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

92 NAC 51-009.05 states:

009.05 *Prior Written Notice*

009.05A *Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:*

009.05A1 *Proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education; or*

009.05A2 *Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.*

*Allegations/Parent Position*

The Parent alleges the District failed to schedule an IEP meeting, despite the Parent making multiple requests for the same (*Letter of Complaint* dated October 2, 2023).

*District Response*

The District asserts it has never been unwilling to hold an IEP meeting. The District responded to each of the Parent's requests for an IEP meeting and held an IEP meeting on October 26, 2023. Furthermore, as the District did not refuse to hold an IEP meeting, prior written notice was not required. (*Letter of Response* dated November 3, 2023.)

*Investigative Findings*

The Parent requested an IEP meeting on four different dates – September 25, 2023; October 2, 2023; October 9, 2023; and October 12, 2023.

The IDEA, nor Rule 51, require a school district to convene an IEP meeting upon parental request. However, if a parent believes that a change is needed for the provision of FAPE, the school district must conduct an IEP meeting or, if the school district refuses to convene an IEP meeting, it must provide PWN explaining why a meeting is not necessary to ensure the provision of FAPE. *Notice of Interpretation*, Appendix A to 34 CFR Part 300, Question 20 (1999 regulations).

The District responded to each of the Parent's requests for an IEP meeting. However, the Parent failed to address the District's requests for clarity on

September 26, 2023, and October 4, 2023, delaying the scheduling of another IEP meeting. In fact, it was the District that followed up with the Parent on October 9, 2023, regarding the request for an IEP meeting. Nonetheless, an IEP meeting was scheduled and held on October 26, 2023, satisfying the Parent's request for the same.

### *Summary and Conclusions*

As the school District responded to the Parent's requests for an IEP meeting and did not reject the Parent's request for same, the District implemented the requirements of 92 NAC 51-007.10 and 009.05, and **no corrective action** is required.

### **Issue # 2**

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

92 NAC 51-007.07B 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 Parent alleges that not all of their concerns have been addressed by the District. In addition, the Parent indicates they need access to all behavior-related documentation in order to be able to meaningfully participate in the development of the Student's IEP. (*Letter of Complaint* dated October 2, 2023.)

#### *District Response*

The District asserts the Parent is an active member of the IEP Team. The Parent's concerns were listened to, discussed, and considered, and, when appropriate, incorporated into the IEP. (*Letter of Response* dated November 3, 2023.)

#### *Investigative Findings*

Since the beginning of the school year, two IEP meetings have been held. The Parent has attended both IEP meetings and has been given the opportunity to share their concerns and input regarding the Student. While the Parent alleges the District has failed to answer all of their questions, provide more information on the Student's day/behaviors, and make changes to the Student's IEP accommodations, the District has made a good faith effort to answer all

questions, consider the Parent's suggestions, and provide behavior-related documentation.

The District is under no obligation to accede to the Parent's demands, nor ensure the Parent comprehends every aspect of the Student's IEP. See *Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132 (8th Cir. 1999); see also *Colonial Sch. Dist. v. G.K.*, 73 IDELR 224 (3d Cir. 2019, unpublished). The Parent's concerns have been heard and incorporated in the Student's IEPs, when appropriate.

### *Summary and Conclusions*

As the Parent has had the opportunity to provide their input, and the District has considered the same, the District implemented the requirements of 92 NAC 51-007.07B1, and **no corrective action** is required.

### **Issue # 3**

Did the District convene an IEP meeting without all required IEP team members? [92 NAC 51-007.03]

92 NAC 51-007.03 states:

#### 007.03 *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;*

007.03A2 *Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);*

007.03A3 *Not less than one special education teacher, or where appropriate, not less than one special education provider of the child;*

007.03A4 *A representative of the school district or approved cooperative who:*

007.03A4a *Is qualified to provide, or supervise the provision of, specially designed*



		<i>instruction to meet the unique needs of children with disabilities;</i>
	007.03A4b	<i>Is knowledgeable about the general education curriculum; and</i>
	007.03A4c	<i>Is knowledgeable about the availability of resources of the school district or approved cooperative;</i>
007.03A5		<i>An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 92 NAC 51-007.03A2 through 007.03A6;</i>
007.03A6		<i>At the discretion of the parent or the school district or approved cooperative, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;</i>

*Allegations/Parent Position*

The Parent alleges that not all required members of the IEP Team were present at the September 22, 2023 IEP meeting. Specifically, the school guidance counselor, who developed and managed the Student's behavior-related accommodations, was not present. As the District planned to discuss the Student's behaviors, the school guidance counselor should have been in attendance. (*Letter of Complaint* dated October 2, 2023.)

*District Response*

The District asserts all required IEP members were in attendance at the September 22, 2023, IEP meeting. Specifically, a general education teacher, a special education provider, an individual who can interpret the instructional implications of evaluation results, a representative of the District, and an individual deemed knowledgeable about the Student were in attendance. Contrary to Parent's beliefs, the school guidance counselor is not a mandatory member of the IEP team. (*Letter of Response* dated November 3, 2023.)

### *Investigative Findings*

At the September 22, 2023, IEP meeting, a general education teacher, a special education provider (who also was an individual who could interpret the instructional implications of evaluation results), a representative of the District, and an individual deemed knowledgeable about the Student were in attendance.

Rule 51 is clear in that individuals who have knowledge or special expertise regarding the Student are *discretionary* members. See 92 NAC 51-007.03A6. Thus, there is no mandate that the school guidance counselor attend the IEP meeting, even though behavior-related needs were addressed. See also *Kent Sch. Dist.*, 117 LRP 43167 (SEA WA 08/10/17) (holding that an occupational therapist was not the mandatory special education teacher or provider and was a discretionary invitee whose attendance need not be excused).

### *Summary and Conclusions*

As the IEP Team consisted of all mandatory members, the District implemented the requirements of 92 NAC 51-007.03, and **no corrective action** is required.

### **Issue #4**

Should the District have and/or did the District conduct a manifestation determination review before changing the Student's placement because of disciplinary removals [92 NAC 51-016.02E]?

92 NAC § 51-016 states:

- 016            *Disciplinary Removal of Children with Disabilities*
  - 016.01A      *For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:*
    - 016.01A1      *The removal is for more than 10 consecutive school days; or*
    - 016.01A2      *The child is subjected to a series of removals that constitute a pattern:*
      - 016.01A2a      *Because the series of removals total more than 10 school days in a school year;*
      - 016.01A2b      *Because the child's behavior is substantially*

*similar to the child's behavior in previous incidents that resulted in the series of removals; and*

016.01A2c *Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.*

016.02E *Manifestation Determination*

016.02E1 *Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district or approved cooperative) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:*

016.02E1a *If the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or*

016.02E1b *If the conduct in question was the direct result of the school*

*district's or approved cooperative's failure to implement the IEP.*

### *Allegations/Parent Position*

The Parent alleges the Student has continuously been removed from the general education classroom. The Parent questions if the removals have resulted in a change of placement and require a manifestation determination review (MDR). *Letter of Complaint* dated October 2, 2023.

### *District Response*

The District asserts that the Student has a behavior support plan that encourages the Student to take structured, timed breaks in order to self-regulate. The District utilizes timed breaks, in accordance with the behavior support plan, and the breaks are not disciplinary in nature. As the Student continues to be involved in the general education classroom, receives their IEP services, and participates with their non-disabled peers, the Student's placement has not changed and an MDR is not necessary. (*Letter of Response* dated November 3, 2023.)

### *Investigative Findings*

As documented above, a large number of behavior incidents have been documented this school year. While the Student's IEP and behavior plan includes the use of timed breaks for the Student to self-regulate, the question is whether any of the "breaks" were disciplinary in nature and constitute a removal.

In a *Dear Colleague Letter*, the U.S. Education Department's Office of Special Education and Rehabilitative Services (OSERS) stated that exclusionary disciplinary measures (e.g., the use of study carrels, time outs, and restrictions in privileges), are not considered disciplinary removals from the current placement, so long as the student is "afforded the opportunity to continue to be involved in and make progress in the general education curriculum, receive the instruction and services specified on their IEPs, and participate with nondisabled children to the extent they would have in their current placement." 116 LRP 33108 (OSERS 08/01/16).

A "time out" is a "behavior management technique that is part of an approved program [that] involves the monitored separation of the student in a non-locked setting and is implemented for the purpose of calming." See, e.g., *Dear Colleague Letter: Restraint and Seclusion of Students With Disabilities*, 69 IDELR 80 (OCR 2016).

In total, the Student had 66 behavior incidents documented from the start of the school year through October 27, 2023. All incidents after September 12, 2023, after the behavior accommodations were implemented, consisted of behavior management techniques included in the Student's IEP or behavior plan. So, while the Student's privileges were revoked (i.e., attending recess with their peers for a period of time), on at least seven occasions over the course of six days, those incidents are not considered a removal, but rather an exclusionary discipline measure. Similarly, the times in which the Student took a break outside of the classroom, or inside the classroom, do not constitute a removal.

Prior to the implementation of the behavior accommodations, between the start of the school year and September 12, 2023, the Student's privileges were revoked on at least seven occasions over the course of five days, and the Student was required to go to the office at least seven times over the course of five days. The revocation of privileges will be treated as exclusionary disciplinary measures rather than a removal. However, the occasions in which the Student was required to go to the office are not considered exclusionary disciplinary measures, as the Student was not given a choice and it was in response to defiant and physically aggressive behaviors.

In total, the Student was required to go to the office on five different dates (i.e., August 31, 2023; September 5, 2023; September 7, 2023; September 8, 2023; and September 11, 2023). The time spent in the office on those five days resulted in the Student being outside of the classroom for at least five hours. Regardless of how many days of removal the five hours amounts to, the Student has not been removed from the classroom for more than 10 days. Thus, the District is under no obligation to conduct an MDR.

#### *Summary and Conclusions*

The Student has not been subjected to more than 10 disciplinary removals during the 2023-24 school year. Thus, the District implemented the requirements of 92 NAC 51-016.02E, and **no corrective action** is required.

#### **Notice to District**

Having found that the district is implementing the requirements of 92 NAC 51 in the areas raised in the complaint, the complaint is closed as of the date of this letter.