

COMPLAINT INVESTIGATION REPORT

Complaint Number: 24.25.16
Complaint Investigator: REDACTED
Date Complaint Filed: December 6, 2024
Date of Report: REDACTED

Introduction

The Student resides within the boundaries of the District and attends third grade in an elementary school located within the District. The Student is eligible for services under the Individuals with Disabilities Education Act (IDEA). The Student was recently diagnosed with autism spectrum disorder (ASD) in the summer of 2024 and has previously been eligible for services with an Individual Education Program (IEP) for Intellectual Disabilities (ID).

Issues Investigated

1. Whether the District reviewed existing data, including evaluations and information provided by the parents of the child, current classroom-based, local, or State assessments and classroom-based observations, and observations by teachers and related service providers; and if on the basis of this review, and input from the child's parents, the District determined if additional information or a reevaluation was needed for the Student during the fall of 2024? [92 NAC 51-006.06]
2. Whether the District provided the Student with the special education and related services required in the Student's Individual Education Program (IEP) when determining whether to allow the ABA to accommodate the Student during the school day? [92 NAC 51-007.02]
3. Whether the District allowed the Parents to participate in the Student's IEP team meetings? [92 NAC 51-007.06; 92 NAC 51-009.01 and 009.02].
4. Whether the District met the Least Restrictive Environment (LRE) and free appropriate public education (FAPE) requirements for the Student, in their response to the Parent's request for a one-to-one aide for the school day? [92 NAC 51-008.01]
5. Whether the District provided the Student with FAPE, by discussing the reported bullying of the Student and creating an IEP that is designed to meet the Student's unique needs? [92 NAC 51-007.02A; 92 NAC 51-007.07A2; 92 NAC 51-007.07A5; and 92 NAC 51-007.07A8].

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated November 6, 2024; received by NDE, December 4, 2024
- Notes from Registered Behavior Technician (RBT) dated September 27, 2024, through November 5, 2024
- Emails from Parent to District dated August 13, 2024, through December 12, 2024
- Parent interviews, conducted by the investigator on December 11, 2024, and via emails from the Parent received on January 25, 2025

From the School District

- Letter of Response received December 20, 2024, including a list of staff knowledgeable of the allegations.

Issue #	Information Requested	Information Received (Citation)
1-5	Individual Education Programs (IEPs) developed and/or implemented for the Student during the 2023-2024 and 2024-2025 school years	IEPs dated: <ul style="list-style-type: none">• October 31, 2023• November 6, 2024• December 18, 2024 Notice of Meeting dated: <ul style="list-style-type: none">• October 31, 2023• November 6, 2024
1-5	Prior Written Notices (PWN) from the 2023-2024 and 2024-2025 school years	PWN dated: <ul style="list-style-type: none">• October 24, 2023• November 6, 2024• December 18, 2024
5	Any communication from the Parents to the District or the District to the Parents related to bullying and the Student during the 2023-2024 school year, or the current school year	Emails to/from the parent and district dated May 8, 2024, through December 18, 2024
2	Service Logs kept from the 2024-2025 school year	<ul style="list-style-type: none">• Specialized Instruction Service Logs dated August 8, 2024, through December 13, 2024• Physical Therapy logs dated August 14, 2024, through October 14, 2024• SLP Service Log dated August 13, 2024, through December 13, 2024• OT Service Log dated August 21, 2024, through December 10, 2024• AT Service Log dated September 16, 2024, through October 28, 2024

Issue #	Information Requested	Information Received (Citation)
1	Copies of any evaluative material reviewed by the District during the Fall of 2024	<ul style="list-style-type: none"> • Outside evaluation dated June 19, 2024, with signed consent to release to District July 11, 2024 • Parent request for evaluation dated November 6, 2024 • Consent to re-evaluate dated and signed by the Parent on November 7, 2024, received by the District on November 8, 2024
1-5	Any additional documentation pertinent to the resolution of the complaint issues, including a narrative response from the District for each allegation	<ul style="list-style-type: none"> • RBT sign-in sheets dated September 27, 2024, through November 13, 2024 • Parent contact logs dated October 2, 2024, through November 5, 2024 • Email from District to Parent dated December 16, 2024 • Student's Daily Support Schedule for the 2024-25 School Year • Health Office Visits dated September 3, 2024, through December 10, 2024 • Interview questions answered by pertinent District staff on January 14, 2025

Findings of Fact

1. The Student attends the 3rd grade in the elementary school and is a student with an intellectual disability and autism (IEP dated December 18, 2024).
2. On May 8, 2024, the Parent wrote to the 2nd Grade teacher and stated, "For the past couple of weeks, Student has been saying that boys are pantsing [the Student] in the bathroom, calling [the Student] 'poop boy', and whispering they will punch [the Student] in the eye. I'm just trying to get to the bottom of this. [The Student]'s been saying for the past couple of weeks that [the Student] does not want to go to school because of this...[the Student] is pretty shy [so she does not believe [the Student] has told the teachers]. But I just wanted to see what your thoughts were on this..." (Email from Parent to District dated May 8, 2024)
3. The 2nd-grade teacher wrote back the same day and stated, "I am sorry [the Student] keeps saying this. It is not happening for sure. [The Student] actually goes to the bathroom by [the Student's] self most of the time and is in and out in 3 minutes or less. I'm surprised [the Student] says [the Student] doesn't want to come to school because [the Student] is so happy here and has been working so hard lately." The 2nd-grade teacher

went on to speculate that the Student says these things at home to “get one-to-one attention” with the mother. The 2nd-grade teacher also wrote that “everyone in class is [the Student’s] friend and wants [the Student] to do [the Student’s] best.” On May 8, 2024, the Student’s 2nd Grade Teacher also responded to the Parent’s email concerns related to bullying in the restrooms. She stated that she agreed that the Student is very happy at school and that she checked with each of the students in 2nd grade to see if anyone had been picking on the Student, but no one had anything to report related to these concerns. She also said she asked the Student to show who was being mean in the bathrooms, but the Student just said, “do my business in the bathroom.” (Email from District to Parent dated May 8, 2024)

4. The Assistant Principal also asked the Parent if she would like for the Student to use the single toilet in the nurse’s room for the rest of the school year, just in case. (Email from District to Parent dated May 8, 2024)
5. On May 8, 2024, Parent responded that the Student was “an attention seeker at home” and that she would leave the bathroom decision up to the Student. [Parent email dated May 8, 2024].
6. On June 19, 2024, the Parents obtained an autism diagnosis for the Student from an outside evaluator, that stated that the Student also has moderate Intellectual Developmental Disorder. The medical report also encouraged the Parents to participate in outpatient Applied Behavior Analysis (ABA) therapy, to help address the Student’s difficulties with adaptive behaviors and noncompliance. The medical report also noted several suggestions for academic modifications and interventions for the Student, which notably did not include the use of a one-to-one aide at school.
7. On September 5, 2024, the Parent wrote to the Student’s Special Education teacher to discuss some toileting concerns. In the email, the Parent also noted the Student had told her that there were some kids “being mean to [the Student] at school.” Finally, the Parent wrote that the Student “has an autism diagnosis” and asked if a paraprofessional would be assigned to the Student. (Email from Parent to District dated September 5, 2024)
8. During the fall of 2024, the Parents had access to an outside Applied Behavior Analyst (ABA) from a behavior analyst provider (BCBA). The BCBA sent a Registered Behavior Technician (RBT) to school for the Student, and the RBT accompanied the Student to classes for part of the day, to assist with behavior-related needs, during the fall of 2024. [District

Letter of Response received December 20, 2024, and Parent Interviews dated December 11, 2024]

9. This RBT wrote notes of her work with the Student during the fall of 2024, which she provided to the Parents. The Parents provided copies of these notes with their complaint materials. (Notes from Registered Behavior Technician (RBT) dated September 27, 2024, through November 5, 2024)
10. Service logs dated August-September 2024 show the Student received specialized literacy instruction, specialized instruction in letters and numbers, daily math time, 20 minutes a day of "workstation time", and 15 minutes of "support time" each morning. The logs note that some instruction is in room 209, with a paraprofessional (Literacy, Letters/Numbers, Workstation, and Math). (Specialized Instruction Service Logs dated August 8, 2024, through December 13, 2024)
11. A District Contact Log entry dated October 2, 2024, notes that an email was sent to the Parent to confirm the 9:15 am IEP meeting on October 28, 2024, would work. The log entry notes that one Parent confirmed the meeting date and time.
12. A District Contact Log entry dated October 23, 2024, notes that a paper reminder was sent home in the Student's backpack, to remind the Parents of his upcoming IEP team meeting.
13. A District Contact Log entry dated October 27, 2024, states the District emailed the Parents of the IEP meeting that was scheduled for the next day, but that the Parents did not respond to the email reminder.
14. A District Contact Log entry dated October 28, 2024, states that the Parent called the school at 8:00 am that day, to state they were sick and unable to attend the IEP meeting that day. The district sent an email later that day and rescheduled the IEP for October 31, 2024. However, the Parent responded via email and stated that she would only be able to attend a meeting if it was held on a Monday or a Wednesday.
15. A District Contact Log entry dated October 30, 2024, notes the District called the Parent and offered the IEP meeting for November 6, 2024, at 11:00 am, as a possible rescheduled date. The notes indicate the District stated that one staff member would need to serve as both a general education teacher and school district representative that date, due to staffing conflicts. The notes indicate the Parent agreed to this date, time, and team member's participation.
16. A District Contact Log entry dated November 1, 2024, states that a new IEP team meeting invitation was sent home for the Parent, for the new date and time.

17. A District Contact Log entry dated November 5, 2024, states that two staff members were not going to be able to attend the IEP meeting on November 6, 2024, so the team wanted to reschedule the meeting. However, the entry notes the Parent wanted to keep the meeting for the November 6th date and time, so the District was able to secure classroom coverage for the Student's General Education teacher and two other District staff were able to shift their schedules to accommodate the Parent's preferred date and time for the meeting. The notes also indicate the Parent asked for a Zoom link for the meeting, so she could invite the RBT to attend.
18. A District Contact Log entry dated November 6, 2024, states the Parent invited the RBT/ABA provider to attend the IEP meeting, but the RBT/ABA provider was not able to attend the IEP meeting.
19. The November 6, 2024, IEP notes that both Parents attended the IEP team meeting. This IEP also includes a large amount of "Parental Information, including concerns for enhancing their child's education" on page 3 of the IEP. Notably, the text in this section reads that: "[Parent] requested that Student have a 1:1 para. The IEP team reviewed the previous IEP and current services with parents, explaining that the Student has additional adult support embedded within the current IEP and is proposed to continue those supports moving forward. Team members shared that the Student has portions of the day where the Student is able to be independent and placing an adult with the Student 100% of the time would be more restrictive. The Student is able to transition within the classroom independently and follow whole group instructions without additional adult prompting. The student has adult support for transitions outside of the classroom, bathroom use, and when the teacher gives work to complete independently. The student is extremely social at school and enjoys being with peers. The team celebrated Student's independence in participating in specials, recess, and lunch. Team members shared concerns that the addition of an adult paired with the Student during these times would limit the Student's ability to participate in these activities independently." The notes also stated, "Parents shared that Student recently got a medical diagnosis of Autism. They would like an ABA therapist to be able to continue providing support in the school setting. The Team shared that the RBT's services had been inconsistent at School, but that they would be welcome."
20. The November 6, 2024, IEP (November 24 IEP) lists the Placement selected for the Student as a general education classroom with specialized instruction in the resource room for 90 minutes per day, Occupational

Therapy (OT) with general education students 15 minutes per day for six days per semester, speech-language therapy removed from the general education classroom, 16 days per quarter; and assistive technology outside of the general education classroom, for 1 time per quarter, for 10 minutes.

21. The November 6, 2024, IEP also updated the goals for reading, writing, and math. The Prior Written Notice (PWN) notes that the changes were needed because the Student had made progress on the prior goals. The team also agreed to remove the Student's Physical Therapy (PT) services as the Student is now able to safely move about the building.
22. On November 6, 2024, the Parents emailed a letter to the Special Education administrator, requesting a reevaluation for the Student.
23. On November 7, 2024, the Parent signed a Notice and Consent for Reevaluation. This document notes the reason for the proposal is "based on the [Student's] parents' request to complete an evaluation to determine additional eligibilities." The notes further indicate the Parents requested the reevaluation, to consider an autism eligibility, in addition to the Student's current ID eligibility. The notes indicate the Parents wanted the recent evaluation materials from the outside evaluator, dated June of 2024 to be considered. The notes reflect the outside evaluation materials that were provided to the District. The document further indicates the District would review the Student's academic, intellectual, perception/motor skills, social and emotional skills, and speech and language. The document also indicated the District would review the Student's need for Augmentative Communication/Assistive Technology and states that "consideration of outside medical/evaluation records may be reviewed."
24. On November 8, 2024, one Parent emailed the Student's Principal and asked for a one-to-one aide for the Student. The Parent wrote that "...the MDT stated that the Student does well with a paraprofessional and that the Student does wander." The Parent wrote that the Principal had stated the Student does not wander but the Parent wrote that, "I know my [child]." The Parent also wrote that the Student was being punished for "falsely accusing kids of being mean." The Parent also shared a link for autism resources with the principal, in this email message. The Principal responded to the Parent three days later and simply thanked the Parent for providing the information.
25. On November 18, 2024, the Student's Special Education teacher wrote to the ABA organization and stated that she met with the Parents' outside ABA therapist, and that "...it was decided that [the RBT] will not return to

the school setting for Student and we will continue with the new RBT. We are waiting for his credentialing which should come in very soon, from what I was told."

26. On December 6, 2024, the Parent wrote to the Principal and said the Student came home and reported that a peer had made a gun with his fingers and pretended to shoot the Student. The Parent-reported the Student told her that other children were "being mean to him" at school.
27. Service logs from October-November show the Student received 30 minutes of "Edmin [sic]/tasks" at the end of each day, instead of the support time at the beginning of the day. The Student continued to have workstation time and specially designed instruction for reading, math, letters, and numbers. The work with a paraprofessional continued to be noted on his log, for room 209. [District Service Logs for the Student]
28. Speech-language therapy logs from September- December 2024 show the Student received the SLP services twice a week, with the exception of school holidays/closures, three days the Student was absent, and one day the Student left early.
29. The sign-in logs from the RBT note that she was at the Student's school from September 27, 2024-November 13, 2024. The log does corroborate statements made by the District, specifically that the RBT's attendance was sporadic and irregular. The log does not show one full week of RBT attendance at the Student's school during this timeframe.
30. During interviews, District Administrators reported the school supports all students with social/emotional learning by having the school counselor teach biweekly lessons, with follow-up lessons occurring during morning meetings. The District reported the Student and the peers attended these lessons and further reported that they did not see any evidence of bullying related to the Student. During staff interviews, the Student's Teacher further corroborated that the Student participated well in morning meetings. She shared that the Student could greet peers and answer questions during the lessons. She further noted that the Student was able to find their own "spot" on the floor and transition to morning meetings each day.
31. On December 18, 2024, the Student's IEP team met again. During this meeting, the Team added a self-advocacy goal for the Student. During interviews, the District reported that this was added, to address the bullying concerns that were reported by the Parents.
32. During staff interviews, the Student's Special Education teacher from the fall of 2024 shared nine specific and discreet examples of times that she observed the Student participating well in the classroom, without any

adult support. These times included: morning meetings, transitioning to morning meetings, and listening to whole group instruction while seated at the desk, for some lessons (science, social studies, reading) the Student was able to independently respond to the classroom teacher's questions about things noticed, the Student was able to eat lunch and snacks without an adult sitting alongside for support, Student was able to play at recess and select choice activities without adult support, and the Student was also able to interact with peers at recess without an adult to support. The Teacher also reported that the class was inclusive with the Student and that the children shared crayons with the Student, played with the Student at recess, and sat with the Student at lunch.

33. The Special Education teacher from fall of 2024 also reported during the District interviews, that neither the Student nor anyone in the class reported any bullying of the Student while in her classroom.
34. During her interview with the investigator, the Student's Special Education teacher from the fall of 2024 reported inconsistent behavior and attendance from the outside RBT. Specifically, this teacher reported that the outside RBT only attended a full week of school twice, when she worked with the Student. During the RBT's times with the Student, the classroom teacher reported the RBT "was reluctant to support [the Student] with task completion, she would respond with statements such as 'go ahead, you can do whatever you like,' and the RBT was also unwilling to share her notes with the resource teacher." The classroom teacher further reported that several times, "Students and staff reported to me that the RBT was recording them inside the classroom or outside at recess." Finally, the classroom teacher reported that: "Oftentimes she [the RBT] would not report Student had demonstrated verbal or physical aggression until she was leaving for the day, effectively taking away my opportunity to reteach at the moment and record accurate data." In her interview, the teacher also said that on one occasion a BCBA supervisor came to observe the RBT at work, and that "they had a loud conversation in the back of the classroom, which disrupted the learning environment." The classroom teacher also said, "I reached out to the BCBA...during that conversation, I expressed concerns about the quality of care the Student was receiving. I also asked for a change in the RBT to better fit the Student and school environment. The BCBA requested the opportunity to address the concerns with the RBT again before moving to a switch in personnel, which I agreed to support. "The District administrators reported that they never refused to allow the outside RBT to attend school with the Student. This teacher further reported that the ABA therapist/RBT (RBT) was never

refused entry to the classroom or building, although the RBT was absent several times. The classroom teacher stated that on November 8, 2024, the RBT shared with several school staff that she had found other employment and would not be returning to the school. The classroom teacher said she wrote to the BCBA to inquire about this change of staff, and email records provided by the District corroborate this exchange.

35. The Special Education teacher reported that there were 16 students total in the Student's general education 3rd grade classroom, during the fall of 2024. [Interview with 3rd Grade teacher dated January 14, 2025]
36. The District reported that the Student was fully supported during the school day during the fall of 2024 and stated that the Student received a "combination of supports" which included combined time with the resource teacher, a paraprofessional, a speech-language therapist, and the RBT therapist. [District Response Letter and District Staff Interviews]
37. The Student's IEP team met again on December 18, 2024, for an MDT meeting. During this meeting, the IEP team reviewed the revelation data, and the Parent's information from the outside evaluator, and the MDT team found the Student eligible for services under both autism and ID eligibility. The MDT team also decided that the Student should receive services at a new elementary school in the District, which provided more specialized learning environments than the Student's previously attended local neighborhood elementary school. The IEP team also added a self-advocacy goal for the Student, to assist with social support and peer interactions, during the December 2024, team meeting.
38. After the 2024 winter break, the Student changed school locations and started to receive his educational services at the new elementary school.

Issue # 1

Did the District review the Student's existing data, including all evaluations and information provided by the parents of the child, current classroom-based, local, or State assessments and classroom-based observations, and observations by teachers and related service providers; and if on the basis of this review, and input from the child's parents, the District determined if additional information or a reevaluation was needed for the Student during the fall of 2024? [92 NAC 51-006.06].

Nebraska's state rule 92 NAC 51-006.06 states:

006.06A *Review of Existing Evaluation Data- As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP team and other qualified professionals as appropriate, shall:*

- 006.06A1 *Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom based local or State assessments and classroom-based observations by teachers and related service providers.*
- 006.06A2 *On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:*
- 006.06A2d *Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.*

Allegations/Parent Position

During a call with the investigator and in the narrative complaint document, the Parents allege that the District refused to include the outside autism diagnosis in the Student's IEP. (Letter of Complaint dated December 6, 2024, and Interview with the Parents dated December 11, 2024)

District Response

In the written response documents provided in response to the complaint, the District argued that the IEP team convened on November 6, 2024, that the parents attended this meeting, and that the team reviewed the outside evaluation information and diagnosis at this time. (Letter of Response received December 20, 2024)

Investigative Findings

The Parents' outside autism diagnosis from the outside evaluator was the key data element for this allegation, as the Parents believe the District did not include this information in the IEP and services for the Student. (Letter of Complaint dated December 6, 2024)

While the Parent did mention this autism diagnosis in one email to school staff in September of 2024, there is no evidence in the record that the District received the outside evaluation materials before November of 2024. The IEP meeting notes from the IEP dated November 6, 2024, show that the Parents attended the meeting and discussed their request for the one-to-one aide and the autism diagnosis at that time. The notes do not indicate that the Parent signed a release for the medical information to be shared at that time, nor are there any records that indicate that the medical diagnosis evaluation materials were given to the District's staff during this IEP team meeting. The November 2024 IEP meeting notes further indicate the team did not support the Parents' request for the one-to-one aide but did refer the Student for a reevaluation to gain more information related to the outside autism diagnosis. The Parents also wrote to the District to request a reevaluation and more support for the Student at this time. (Email from the Parents to the District dated November 7, 2024). Next, the consent for reevaluation dated November 7, 2024, shows that the District agreed to evaluate the Student for additional eligibility types after receiving the Parents' request for reevaluation. The Parent signed the requisite consent form, which started the reevaluation process. (Consent for Re-Evaluation signed by the Parent on November 7, 2024, and received by the District on November 8, 2024)

Summary and Conclusions

Overall, the record of provided information, indicates the District did serve the Student with an IEP in effect at the start of the 2024-2025 school year and that the District communicated with the Parents and reviewed the information that they provided to the IEP team in the November 2024 and December 2024 IEP team meetings. Additionally, the District worked with the Parents to reevaluate the Student after the parental consent for reevaluation form was signed.

Based on corroborating information from interviews and in the documents provided by the District, the District implemented the requirements of 92 NAC 51-006.06, and **no corrective action** is required.

Issue # 2

Whether the District provided the Student with Special Education and related services required in the Student's IEP when deciding whether to allow the ABA to accommodate the Student during the school day. [92 NAC 51-007.02]

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.*

Allegations/Parent Position

During a call with the investigator and in the narrative complaint document, the Parents allege that the District refused to allow the Student's RBT to attend school to support the Student and provide for his needed ABA therapy. (Letter of complaint dated December 6, 2024, and call with Investigator dated December 11, 2024)

District Response

In its Letter of Response received December 20, 2024, the District wrote that on September 20, 2024, the District met with the BCBA via Zoom to collaborate regarding an RBT supporting the Student in the school setting. The District also argued that it allowed the RBT to attend school to support the student, and provided a Sign-in/Sign-out log for the school building with RBT attendance information for the dates of September 27-November 13, 2024. The District also noted that the RBT reported to the school that she would not return after finding a different job, in November of 2024. To support this statement, the District also provided an email dated November 18, 2024, in which the BCBA told the District that the RBT would not be working at the school any longer. The BCBA wrote that they were working on credentialing a new RBT for the Student. In the written response, the District also wrote that "Should a new RBT become available from the BCBA, the District would coordinate to support the ABA in the school setting."

Investigative Findings

The Parent alleged that the District refused to allow the RBT to attend school for the Student during the fall of 2024, however, the District produced records to refute this allegation (RBT sign-in sheets dated September 27, 2024, through November 13, 2024). Additionally, neither the October 2023 nor the November 2024 IEP require specific RBT or ABA services as part of the Student's special education program or free appropriate public education (FAPE). The December 18, 2024, IEP is also silent in relation to RBT and ABA requirements for the Student's FAPE.

Despite the District having no IEP requirement to provide an RBT at school, notes on the November 2024 IEP do state that: "Parents shared that Student recently got a medical diagnosis of autism. They would like ABA therapy to be able to continue providing support in the school setting. The team shared that ABA Services have been inconsistent at school, but that they continue to be welcome. Recent ABA conversations indicate that there will be a change to the therapist providing services in school. The team discussed holding a new meeting when the new person has been assigned to ensure that everyone is working toward the same goals and supporting the Student's behavior in class." So, while the Student's RBT may have stopped coming to the school, there is no evidence to support that the District refused to allow the RBT to attend classes. On the contrary, the records presented show the District worked with the BCBA to help assist the Student throughout the fall of 2024.

As such, there is not sufficient evidence to substantiate this allegation.

Summary and Conclusions

Based on the IEPs in effect during the 2023-2024 and 2024-2025 school year, and the documents noted above, the District implemented the requirements of 92 NAC 51-007.02, and **no corrective action** is required.

Issue # 3

Whether the District allowed the Parents to participate in the Student's IEP team meetings. [92 NAC 51-007.06; 92 NAC 51-009.01 and 009.02]

92 NAC 51-007.06 states:

007.06A: *The school district or approved cooperative shall take steps to ensure that one or both parents of a child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:*

007.06A1 *Notifying parents of the IEP conference early enough to ensure that they will be able to attend; and*

007.06B *The notification under 92 NAC 51-007.06A1 must indicate the purpose, time and location of the meeting and who will be in attendance and inform the parents of the provisions of 92 NAC 51-007.03A6, 007.03A6a, and 007.05.*

92 NAC 51-009.01 and 51-009.02 state:

- 009.01A *The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation and educational placement of the child and the provision of FAPE to the child.*
- 009.02A *The school district or approved cooperative shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of their child.*

Allegations/Parent Position

In the Letter of Complaint dated December 6, 2024, the Parent wrote that the District shuts out the Parents' concerns for the Student and the IEP.

District Response

In the Letter of Response received on December 20, 2024, the District argued that the 2023-2024 IEP meeting was held for the Student with the mother present. The District further noted the Parent's concerns were documented in the IEP. Next, the District argued that both Parents attended and participated in the November 2024 IEP team meeting. The District also provided ample records of attempts to schedule this meeting at a mutually agreeable time and place for the Parents [Emails from October 2024]. Finally, the District argued that the Parents both attended the December 18, 2024, IEP meeting and that their concerns were noted in the IEP documents.

Investigative Findings

The Parents shared that their specific concerns that were not addressed by the IEP team were:

- The need for a one-to-one aide;
- That the IEP was not being followed;
- The medial autism diagnosis was not included in the November 24 IEP;
- And that the IEPs did not address the bullying the Student was experiencing at school [Parent emails dated January 25, 2024, and Parent Complaint materials]

Upon review of the last three IEPs (IEPs dated October 31, 2023; November 6, 2024; and December 18, 2024) associated emails (Emails from District to Parent dated October 2, 2024; October 27, 2024; October 30, 2024; October 31, 2024; November 5, 2024; December 5, 2024; and PWNs (dated October 24, 2023), there is no evidence to substantiate that the Parents were not invited to attend IEP team meetings or allowed to participate. Additionally, the records support

the District's position that the Parents' concerns were addressed in the meetings [October 2023 and November 2024 IEP notes for Parent Concerns], though the District ultimately has not agreed to provide the Student with the Parents' requested one-to-one aid.

Ultimately, there is no evidence of a violation of the state parent participation rules.

Summary and Conclusions

Based on IEP documents that show the Parents attended the past three IEP meetings and the District included a review of their concerns, the District implemented the requirements of 92 NAC 51-007.06 and 92 NAC 51-009.01 and 009.02, and **no corrective action** is required.

Issue #4

Whether the District met Least Restrictive Environment (LRE) and free appropriate public education (FAPE) requirements for the Student, with their response to the Parent's request for a one-to-one aide for the school day. [92 NAC 51-008.01]

92 NAC 51-008.01 states:

- 008.01A *The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved services 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 or services cannot be achieved satisfactorily.*
- 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.*

Allegations/Parent Position

In the Letter of Complaint dated December 6, 2024, the Parents alleged that the student needs a one-to-one paraprofessional to access FAPE. The Parents also sent many email messages and requests for a one-to-one for the Student, based

on the autism diagnosis and the fact that the Student has been known to wander. The Parents and MDT also reported that the Student does well with adult prompting and adult attention.

District Response

- In the Letter of Response received on December 20, 2024, and during staff interview questions provided on January 21, 2024, and January 14, 2025, the District argued that the Student is fully supported throughout the school day in the least restrictive environment (LRE). The District reported that in the educational setting, the Student is supported by a Special Education teacher (both in the classroom and in a pull-out setting), an occupational therapist (OT), a speech-language pathologist (SLP), assistive technology consultation (AT), and a paraprofessional. The District also provided staff logs for the Student's support schedule from the current school year (Specialized Instruction Service Logs dated August 8, 2024, through December 13, 2024).

The District also noted the Student had an RBT present for added one-to-one support during much of the fall of 2024 (RBT Sign-in Sheets dated September-November 2024). Additionally, the District argued the Student received toileting support at the health office (District Response Letter and Staff Interviews). Finally, the District argued the Student has shown growth in independence and skill development. The District argued that honoring this growth is imperative for the Student's future and independence (Letter of Response received December 20, 2024).

Investigative Findings

The District and Parents disagree as to how much adult support the Student needs throughout the school day (Parent complaint and IEPs from October 23; November 24 and December 24). The IEP notes from the October 31, 2023, IEP (2023 IEP) show that the Parents inquired about a one-to-one aide at the 2023 IEP team meeting, but that the District replied that, "...to have education in the LRE [the Student] does not require someone with [the Student] at all times (e.g. safety concerns, communication, etc.). All of the Student's work is modified to the Student's level and is provided support through a paraprofessional, small group setting, and resource/speech support." The 2023 IEP also provides the Student with an accommodation of "direct support from a paraprofessional throughout the day during transitions, restroom, and class activities as needed."

The November 6, 2024, IEP (the November 24 IEP) notes that the Student "...is beginning to independently know parts of [the Student's] daily schedule. [The Student] asks for help when [the Student] needs it. Student enjoys interacting with peers..." The Current Classroom Performance and Teacher Comments

section of the November 24 IEP also notes that the Student “benefits from small group instruction with limited distractions.” The notes for Parental Information, Including Concerns for Enhancing the Child’s Education for the November 24 IEP also note that a Parent advocated for more adult support and a one-to-one aide for the Student. The notes further stated the Team reviewed the prior IEP and explained the Student has “additional adult supports embedded within [the] current IEP and is proposed to continue those supports moving forward. Team members shared the Student has portions of [the] day where [the Student] is able to be independent and that placing [the Student] with an adult 100% of the time would be more restrictive.”

Notes from the December 2024 IEP also show the Parents continued to advocate for a 1:1 for the Student. The District continued to deny this request and stated it was overly restrictive based on the Student’s progress and current FAPE needs.

Overall, the Parents did not present evidence as to why the preferred placement violated the Student’s LRE. The District did demonstrate that the Student was achieving success in the offered placement and making progress toward IEP goals.

Summary and Conclusions

Based on the information reviewed for the complaint and the Student’s progress toward 2023 and 2024 IEP goals in the current placement, the District implemented the requirements of 92 NAC 51-008.01, and **no corrective action** is required.

Issue # 5

Whether the District provided the Student with a Free Appropriate Public Education (FAPE), by discussing the reported bullying of the Student and creating an IEP that is designed to meet the Student’s unique needs. [92 NAC 51-007.07A2; 92 NAC 51-007.07A5; and 92 NAC 51-007.07A8].

92 NAC 51-007.07A2 states:

- | | |
|-----------|--|
| 007.07A2 | <i>The IEP shall include a statement of the measurable annual goals, including academic and functional goals, designed to:</i> |
| 007.07A2a | <i>Meet the child’s needs that result from the child’s disability to enable the child to be</i> |

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

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

92 NAC 51-007.07A5 states:

007.07A5 *[The IEP shall include] 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 towards 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.

92 NAC 51-007.07A8 states:

007.07A8 [The IEP shall include] The projected date for the beginning of the services and modifications described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications.

Allegations/Parent Position

In their Letter of Complaint dated December 6, 2024, the Parents alleged that the Student is being bullied at school. A review of the email shows the Parent has notified various District staff of numerous bullying concerns since at least May 8, 2024 (Emails from the Parent to the District dated May 8, 2024, through December 18, 2024). During interviews for this complaint, the Parent also shared that the RBT had told them she had observed students bullying the Student at school and made recordings of some bullying incidents (Interview with Parents dated December 11, 2024).

District Response

In their Letter of Response received December 20, 2024, the District stated they exchanged six email messages with the family about various bullying incidents from May 8, 2024, through December 6, 2024. The District wrote that in light of these concerns, they increased supervision of the Student and peers using a variety of methods including bathroom use individually or in the health office, paraprofessional/special education supervision, and RBT supervision.

Investigative Findings

The Parents and District disagree as to the presence and extent of bullying experienced by the Student during 2024 (BCBA email to Parent dated November 6, 2024, with attached observations of bullying; Parent and Teacher emails dated November 18, 2024; Parent email to Superintendent dated December 4, 2024; Parent email to teacher dated December 6, 2024; Parent emailed follow up interview information dated January 25, 2024). However, bullying is a serious matter that can adversely impact a child's access to their general education curriculum. Harassment occurring due to a student's status of having a disability that adversely affects that student's education may result in a denial of FAPE. Bullying of a student eligible for special education that prevents the student from receiving meaningful educational benefits constitutes a denial

of a FAPE that districts must remedy. As part of its response, the district should convene an IEP team meeting to determine whether additional or different services are necessary so that the Student may access the general education program. The IEP team must revise the student's IEP accordingly. Additionally, state rules are clear that an IEP must be revised to allow students to access extracurricular and nonacademic activities, which are socially impacted times that could be impaired for students with disabilities who are bullied at school.

While there is evidence that the Parent began presenting bullying concerns to the District in writing as early as May 8, 2024, the first IEP team meeting that addressed the Parent's numerous reported bullying concerns in any way was not until December of 2024. At this time, the IEP team added a self-advocacy goal for the Student to address the alleged bullying, which was: "In 36 instructional weeks given opportunities to practice, Student will demonstrate self-advocacy skills during structured teaching sessions by raising hand, asking for help with a problem, or communicating a need in 3 of 5 observed opportunities." However, this goal does not appear to address the alleged incidents of children "being mean" to the Student, calling the Student names, mocking the toileting issues, and making a gun to threaten the Student. The December 2024 IEP only mentioned the Parents' reported "bullying concerns" briefly, and the document does not show that the IEP team discussed the reports or any matters related to bullying of the Student or his involvement with peers in nonacademic or extracurricular activities. While the District argued that it did provide the Student with additional adult support for toileting and during transition times, there is no evidence that the IEP met promptly to address the parent's reported bullying concerns, to ensure the Student's access to general education programs including extracurricular or nonacademic time with peers.

Additionally, the RBT and BCBA notes show that these adults witnessed peers bullying the Student on six different occasions from September 27, 2024, to November 5, 2024. These notes indicate the Student struggled with social cues and did not understand how to play games with other children like kickball, they say the Student did not understand when peers were making fun of the Student or forcing the Student to pick up their trash, do work for them, and other instances of bullying and harassment in the lunch line, on the playground and in the classroom. While it is unclear if the Parents or BCBA provided this information to the District it is reasonable to infer that other District staff could have similarly observed such interactions or inquired about these instances during their work with the BCBA.

Summary and Conclusions

The IEP team did include information related to the need for supplementary aids and services along with the degree to which they are needed and their location. However, based on a lack of IEP documentation reflecting that the team promptly met to discuss the bullying concerns specifically after they were reported by the Parent in May of 2024 and again in September of 2024, the District failed to fully implement the requirements of 92 NAC 51-007. 07A5b. Thus, the following **corrective action is required**.

Corrective Action

1. By March 3, 2025, all special education and administrative staff shall be trained on the requirements for bullying as related to IEP Team meetings and 92 NAC 51-007.07A5b. This training may be in-person or online.
2. The District shall provide NDE, via email, with a draft of any proposed training for NDE's review and approval, two weeks before the training.
3. The District must provide NDE with copies of the participant sign-in sheets or other evidence of attendance, the business day following the conclusion of the training.

Notice to District (If FINDINGS)

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

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