

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.21
Complaint Investigator: [Redacted]
Date Complaint Filed: February 22, 2022
Date of Report: [Redacted]

Issues Investigated

1. Did the District appropriately implement the Student's accommodation for 1:1 paraeducator support set forth in the Student's May 13, 2021, IEP, and thus fail to provide special education and related services to the Student in accordance with the Student's IEP, as required by 92 NAC 51-007.02?
2. Did the District provide the Student with a FAPE, as required by 92 NAC 51-004.01?

Documents Reviewed by Investigator

From the Complainant

- Letter of Complaint received by NDE on February 22, 2022;
- Student's IEP, dated May 13, 2021.

From the School District

- Response from District, dated March 25, 2022;
- Student's IEP, dated March 16, 2020;
- Student's October 1, 2020, FBA;
- Student's October 8, 2020, BIP;
- Consent for 3 Year Re-Evaluation, dated March 25, 2021;
- Behavior Assessment System for Children, Third Edition (BASC-3);
- Autism Spectrum Rating Scales (ASRS);
- Multi-Disciplinary Team (MDT) Report, dated May 13, 2021;
- Student's IEP, dated May 13, 2021;
- Student's WRAP;
- Timeline of Adult Support for Student;
- January 4, 2022, emails;
- January 5, 2022, emails;
- January 11, 2022, email;
- January 13, 2022, email;
- Statement events on January 20, 2022, and documentation, by Students IEP Case Manager, dated January 20, 2022;
- January 23, 2022, emails;

- Student's Report Cards, school years 2020/2021 and 2021/2022;
- Safety Plan, dated February 1, 2022
- Documentation regarding District's termination of Complainant on February 11, 2022;

Interviews Conducted by Investigator

- Telephonic interviews with the Parent.

Introduction

The Student receives special education services from the District under a current IEP which identifies the Student's eligibility as Autism. The Student's May 13, 2021, IEP includes an accommodation for the Student for 1:1 paraeducator support, as needed. The Complainant began serving as the Student's paraeducator on January 4, 2021. Beginning January 4, 2021, and during the 2021/2022 school year prior to January 5, 2022, the Student was provided with 1:1 paraeducator support by the Complainant during the Student's entire school day. Beginning the week of January 5, 2022, the Special Education Supervisor at the Student's school began reducing the amount of time the Student's 1:1 paraeducator spent with the Student because School staff did not believe the Student needed full-time 1:1 paraeducator support. The question for this investigation is whether District's decision to not provide 1:1 paraeducator support during the Student's entire school day has caused the Student to be denied a free appropriate public education (FAPE).

This investigation is limited to a review of alleged IDEA violations that occurred not more than one year prior to February 22, 2021. Any facts that are discussed that occurred outside the one-year time period for this investigation are provided for background information only.

Issue # 1

Did the District appropriately implement the Student's accommodation for 1:1 paraeducator support set forth in the Student's May 13, 2021, IEP, and thus fail to provide special education and related services to the Student in accordance with the Student's IEP, as required by 92 NAC 51-007.02?

State rule 92 NAC 51-007.02 provides as follows:

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

The District failed to appropriately implement the Student's accommodation for 1:1 paraeducator support as set forth in the Student's IEP. The Student's negative

behaviors increased and the Student's educational progress began to decrease following the removal of the 1:1 paraeducator support, which caused the Student to be denied a FAPE.

Complainant's Position

The Student's 2020/2021 and 2021/2022 IEPs provide an accommodation for the Student for "Paraeducator Support (1:1). Prior to January 5, 2022, the Student received 1:1 paraeducator support in all of the Student's classes. Beginning January 5, 2022, the School's newly-hired Special Education Supervisor disregarded the Student's IEP by taking the Student's 1:1 paraeducator from the Student for up to five of the Student's seven class periods each day. The Student began acting out and refusing to do school work when the 1:1 paraeducator support was removed and by the first week in January, 2022, the Student was failing every class except one. The Student's negative behaviors also increased including an incident which resulted in the Student being suspended for five full school days. The District's failure to implement the Student's 1:1 paraeducator support during the Student's entire school day has caused the Student to be denied a FAPE.

District Response

Starting in the Fall of 2020, the Student began exhibiting some defiance behaviors. On August 18, 2020, a Safety Plan was developed for the Student. In October, 2020, a Functional Behavior Analysis (FBA) was conducted and a Behavior Intervention Plan (BIP) was developed for the Student. The Student received paraeducator or teacher support throughout different parts of the Student's day for the remainder of the Fall, 2020, semester. The Complainant was hired by the District and assigned to work with the Student throughout the day, beginning in January, 2021, even though the Student's IEP did not provide for 1:1 support and the Student did not require all day 1:1 paraeducator support to meet the Student's IEP goals. On May 13, 2021, the Student's IEP team met for the Student's annual review, and included paraeducator support as an accommodation and as a supplementary aid in the Student's IEP. The frequency of the 1:1 para support was written as being "as needed," under both sections of the IEP. Beginning in October, 2021, the Complainant's interaction with the Student was detracting from the Student making progress on the Student's IEP goals. The Student's general education teachers and WRAP team indicated that beginning in January 2022, the Student needed to move towards more independence at school because the Student was capable of working independently. In January, 2022, the Special Education Coordinator at the School spoke to the Student's IEP manager to learn if there were any classes where the Student would succeed without 1:1 support. Ultimately, the

Complainant was informed that she needed to work with other students during the second, third, and sixth period classes. The Complainant objected to working with students other than the Student and refused to do so on several occasions, which resulted in a Notice of Performance Concerns from Human Resources. The Student's negative behaviors did not increase after the Complainant began working less often with Student. The Student was making progress on the Student's IEP goals prior to, and after, the District determined that the Student did not need 1:1 paraeducator support in all of the Student's classes. The District has provided the Student with a FAPE.

Investigative Findings

1. The Student is 12 years of age and resides with the Parent within the jurisdictional boundaries of the District. During the relevant time period involved in this complaint investigation, the Student attended an elementary school in the District (the School). (Student's IEPs.)
2. During the time period involved in this Complaint investigation, the Student received special education services from the District under two IEPs dated March 16, 2020, and May 13, 2021. (Student's IEPs.)
3. The Student's March 16, 2020, IEP identifies the Student's eligibility as Emotional Disturbance (ED) and Specific Learning Disability (SLD), and does not include an accommodation for 1:1 paraeducator support for the Student. (Student's March 16, 2020, IEP.)
4. The Student's March 16, 2020, IEP states that the IEP team considered whether the Student's behavior impedes the Student's learning and it was determined that behavior issues would be dealt with in the Goals section of the Student's IEP rather than through a BIP. (Student's March 16, 2020, IEP.)
5. On March 17, 2020, the District provided PWN to the Student's parents that due to unforeseen circumstances associated with the COVID-19 pandemic the School would be closing for an unspecified period of time and the Student would receive educational services remotely for the rest of the school year. (March 17, 2020, PWN.)
6. After school began in the Fall of 2020, the Student began exhibiting some minor defiance behaviors. On August 18, 2020, a Safety Plan was developed for the Student. On October 1, 2020, a Functional Behavior Analysis (FBA) was conducted, and a Behavior Intervention Plan (BIP) was developed for the Student on October 8, 2020. (District's Response, Safety Plan, FBA and BIP).
7. Starting in the Fall of 2020, The Student began receiving paraeducator or teacher support for different parts of the Student's day for the remainder of the Fall, 2020, semester. The support began on

- September 28, 2020, in three of the Student's eight classes. Beginning on October 9, 2020, the Student began receiving support from three different paraeducators in six of the Student's eight classes. (District's Response, District Documentation.)
8. The Complainant was hired by the District as a Special Education PIV Paraeducator, and began serving as the Student's paraeducator, on January 4, 2021. (Complaint, and District's Response.)
 9. The Complainant was assigned to work with the Student throughout the Student's day beginning on January 4, 2021, even though the Student's IEP did not specifically provide for full-time 1:1 paraeducator support. (Complaint and District's Response, May 13, 2021, IEP.)
 10. The District reports that due to many special education students not attending in-person classes because of COVID-19, the School was overstaffed at that point with paraeducators so the Complainant was assigned to the Student in all of the Student's classes. (District's Response, Complaint, District Documentation.)
 11. In March, 2021, the District obtained consent from the Parent to conduct a 3-year re-evaluation of the Student. Assessments conducted included the BASC-3 and ASRS, and previous assessments were reviewed such as the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) and the Nebraska Student-Centered Assessment System (NSCAS). (May 13, 2021, MDT Report.)
 12. On May 13, 2021, the Student's IEP team met to conduct the Student's 3-year reevaluation. Based upon the May 13, 2021, MDT Report, the team determined that the Student continues to be eligible for special education services. The Student's May 13, 2021, IEP identifies the Student's disability as Autism. The IEP includes behavior goals, and for the first time also includes "Paraeducator support (1-1)" an accommodation and as a supplementary aid. The frequency of the 1:1 paraeducator support was written as being "as needed," under both sections of the IEP. (May 13, 2021, IEP.)
 13. During the remainder of the 2020/2021 school year, the Student continued to receive 1:1 paraeducator support during the Student's entire school day. (Complaint and District's Response.)
 14. At the beginning of the 2021/2022 school year, the Complainant continued her assignment as the 1:1 paraeducator for the Student for all of the Student's classes. (Complaint, District's Response.)
 15. Beginning in October, 2021, School records indicate that the Special Education Coordinator and the Student's IEP Manager received reports of negative interactions between the Complainant and the

- Student's special education and general education teachers. The Student's Special Education Teacher expressed concerns with the Complainant "neglecting teacher instructions and suggestions for the Student as well as concerns with her removing the Student from classrooms without warrant." The Student's IEP Case Manager reports that the Student was removed from the Student's math class to the Media Center by the Complainant on a regular basis and missed large amounts of class time. The Case Manager informed the Complainant that the Media Center was no longer an appropriate place for the Student to go for a break as well as putting a time constraint on the breaks. (District's Response, Statement of Case Manager.)
16. In the Fall of 2021, the School developed a Tier 3 support team for the Student identified as the WRAP team. This team provides individualized interventions for students on Tier 3 of the District's Multi-Tiered System of Support for Behavior (MTSS-B). (Student's WRAP Plan.)
 17. For January, 2022, the Student's "WRAP Plan" for the Student was described as: "moving towards working more independently without support of para." (Student's WRAP Plan.)
 18. In December, 2021, a new Special Education Coordinator was hired by the School. (Complaint, District's Response.)
 19. On December 22, 2021, the School lost the services of two of its paraeducators. (District's Response, District Documentation.)
 20. On January 4, 2022, the new Special Education Coordinator started at the School. (Complaint, District's Response.)
 21. On January 4, 2022, the new Special Education Coordinator sent an e-mail to special education staff indicating that the following day there would be "some adjustments to the para schedule as [a para] is moving and [another para] had her baby." The Coordinator asked the Student's IEP manager if there were any of the Student's class periods where the Student did not require 1:1 paraeducator support. (District's Response, District's Documentation.)
 22. In an email dated January 4, 2022, the Student's IEP manager responded and stated: "[The Student] would benefit from support at the beginning and end of the day. [The Student's] seventh period Math class is far too full with a lot of needs for the Student to be without support. [The Student] doesn't need support in fifth and has done ok in science to my knowledge." (District's Response, District's Documentation.)

23. On January 5, 2022, the Complainant's schedule was changed by the School from working with the Student in all classes each day to working with the Student as follows:
- Period 1 - Q3 Vocal Music; Q4 Art;
 - Period 2 - Intervention and Strategies;
 - Period 4 - Reading Labs
 - Period 5 – English;
 - Lunch at same time as Student; and
 - Period 7 - Math.
- (District's Response, District Documentation.)
24. On January 11, 2022, the Special Education Coordinator sent the Complainant the following email message: "2nd Period-Please start going to Room 124 to help with [a student] in [a teacher's] room during English class." (District's Response, Email dated January 11, 2022.)
25. On January 11, 2022, the Complainant sent the Special Education Coordinator the following email: "I am not comfortable leaving [the Student] for any length of time. [Redacted] has been having a lot of difficulty, right now, staying on task, problem solving, or even attempting any work. While I understand that other students need assistance, [the Student] is my top priority and I just don't feel comfortable leaving the Student alone for second, third, and sixth period. The Student was non-compliant, while I was not with them, for third and sixth period. Both teachers reported that the Student refused to work, and sixth period, [Redacted] took another student's chrome book. I texted the Student's mom and she said that the doctor is trying to adjust the meds, and it will take a little while, before [the Student] is on a good track. If I leave [the Student] alone for second, third and sixth period, we will lose anything we have gained, over the last several weeks. I am not comfortable leaving the Student alone, at all, but I will try to continue to help out third period. Second and sixth is a respectful "No thank you", unless we want to add [the Student] to the growing list of non-compliant teens, who have to go to TLC which [the Student] did have to do, today, during sixth period class." (District's Response, Email dated January 11, 2022.)
26. On January 13, 2022, the Special Education Coordinator met with the Complainant and stated that the Complainant needed to work with other students during second, third, and sixth periods. The Complainant objected, arguing that the Student is on the Autism spectrum and needs consistency. The Coordinator explained that the other students are also on the spectrum and need support. During sixth period that

- day, the Complainant did not go to her reassigned classroom, but came into the Coordinator's office and stated that "the Student took off because [Redacted] is upset," and the Complainant left go look for the Student. The Student was found minutes later in the hallway and indicated that [Redacted] had left fifth period upset because [Redacted] had been tardy and had to go last to lunch. The Complainant did not go to her reassigned classroom and could not be found. These events were documented in a January 13, 2022, email from the Special Education Coordinator to the Human Resources Specialist for paraeducators at the District. (District's Response, January 13, 2022, email.)
27. On January 20, 2022, the Special Education Coordinator met with the Complainant and the Student's IEP Case Manager to discuss the Complainant's schedule and her objections. The Complainant felt that the Case Manager was not an unbiased third party and left the meeting without discussing the issues. (District's Response, Statement of Case Manager, dated January 20, 2022.)
 28. In an email dated January 23, 2022, the Student's Case Manager expressed her belief that the Student needed to work towards more independence and increasing self-advocacy skills, which [Redacted] is capable of doing. (January 23, 2022, email)
 29. On January 24, 2022, the Complainant received a Notice of Performance Concerns from the District's Human Resources Specialist regarding her refusal to work with other students as directed by the Special Education Coordinator. (District's Response, District Documentation.)
 30. On February 11, 2022, the District's Human Resource Specialist provided a letter to the Complainant terminating the Complainant's employment with the District, effective immediately. (District's Response, District Documentation.)
 31. After February 11, 2022, the Student has received paraeducator support in first, sixth and seventh period classes.
 32. During the 2019/2020 school year the Student received 2.6 days of out-of-school suspension. (District Documentation.)
 33. During the 2020/2021 school year the Student received 1 day of out-of-school suspension. (District Documentation.)
 34. On September 24, 2021, the Student was involved in a fight with another student and was suspended for two days. (District's Response, District Documentation.)

35. On January 25, 2022, the Student was suspended from school for three days for an altercation with another student. (Complaint, District's Response, District Documentation.)
36. The Student's Safety Plan was updated on February 1, 2022. (District's Response, Safety Plan).
37. The Student's grades for the third and fourth semesters of the 2020/2021 school year were as follows:

Quarter	Math	English	Science	Hum./Soc. Stud.
2020/2021 Q1	D		B	B's
Q2	Covid	Covid	Covid	Covid
Q3	C			C
Q4	C+	C+		
2021/2022 Q1	C+	A	B	B
Q2	C+	D+	B	C
Q3	F	C	C+	D+
Q4				

38. The District prepared quarterly Progress Reports for the Student. The degree of progress reported by the District for the Student during the 2019/2020, 2020/2021 and 2021/2022 school years is summarized in the table below:

Progress Rep.	Reading	Writing 1	Behavior	Math
2019/2020 Q1	3	2	5	2
Q2	4	3	5	2
Q3	4	3	5	2
Q4	1-Covid	1-Covid	1-Covid	1-Covid
2020/2021 Q1	4	2	3	3
Q2	3	3	3	3
Q3	3	2	3	3
Q4	1-Covid	1-Covid	1-Covid	1-Covid
2021/2022 Q1	3	2	4	4
Q2	3	3	2	3
Q3				
Q4				

Progress Codes: 1 - This goal has not been introduced. 2 - The student has not yet demonstrated progress towards achieving this goal. 3 - The student has demonstrated some progress toward achieving this goal. 4 - The student is making sufficient progress toward achieving this goal within the duration of this IEP. 5 - The student has met the criteria for this goal.

39. The District implements three behavioral cool-down strategies for all students. "Option A" involves the student reconnecting with the

- teacher for approximately five minutes, "Option B" involves extended neutralization with the responder for approximately 10 minutes, and "Option C" involves the student needing to go to "The Learning Center" (TLC). During the first semester of the 2021/2022 school year, the Student was taken to TLC a total of six times. After January 4, 2022, until February 11, 2022, the Student went to TLC one time. During the same time period, Option A was used with the Student as frequently before January 4, 2022, as after. (District's Response, District Documentation.)
40. On March 11, 2022, the Student's IEP team met to review and revise the Student's IEP. The IEP team increased each of the Student's goals and updated the accommodations, including removing the 1:1 paraeducator support accommodation. (District Response.)

Summary and Conclusions

The IDEA provides that any party may present a complaint with respect to any matter relating to the identification, evaluation, educational placement, or provision of FAPE to a disabled student. 20 USC §1415(b)(6). The Federal regulations and Nebraska State Rule 51 provide that a state complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 92 NAC 51-009.11. 34 CFR §300.153(c); and 92 NAC 51-009.11B5. The Complainant in this matter is a former paraeducator in the District who worked with the Student. The Complaint does allege that violations of the IDEA and State Rule 51 occurred during the statutory jurisdiction period of this complaint investigation. In view of the statutory jurisdiction of this complaint investigation, any of the findings of fact made herein related to periods prior to the beginning of the jurisdiction period are for background purposes only.

The IDEA provides that students with disabilities who are eligible under the IDEA are entitled to be appropriately identified, evaluated, placed, and have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1(a), and 92 NAC 51-006.01A. "Central to IDEA is the requirement that local school districts develop, implement, and annually revise an individualized education program (IEP) calculated to meet the eligible student's specific educational needs. 20 U.S.C. § 1414(d)." *Thompson R2-J School Dist. v. Luke.*, 540 F.3d 1143, 1144 (10th Cir. 2008). The "IEP is a written statement that sets forth the child's present performance level, goals and objectives, specific services that will enable the child to meet those goals, and evaluation criteria and procedures to determine

whether the child has met the goals." *Ass'n for Cmty. Living in Colo. v. Romer*, 992 F.2d 1040, 1043 (10th Cir. 1993). The goals must enable the child to be involved in and make progress in the general academic educational curriculum and meet each of the child's other educational needs that result from the child's disability. 34 CFR § 300.320(a)(2)(ii); 92 NAC 51-007.07A2.

The Federal regulations and State Rule 51 provide that an IEP must include the projected date for the beginning of the services and modifications described in the regulations and Rule 51, and the anticipated frequency, location, and duration of those services and modifications (emphasis added). 34 CFR §300.320(a)(7), 92 NAC 51-007.07A8. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP. Letter to Copenhaver, 21 IDELR 1183 (OSEP 1994).

The IDEA and State Rule 51 require districts to ensure that students' IEPs are appropriately implemented by each regular education teacher, special education teacher, the related services provider, and any other service provider responsible for its implementation. 34 CFR § 300.323(d). State Rule 51 provides that 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. 92 NAC 51-00 7.02. Although school districts should strive to follow IEPs as closely as possible, the IDEA does not require perfect adherence to a child's IEP. Minor discrepancies between the services provided and the services called for by the IDEA do not give rise to an IDEA violation. *Van Dun ex. rel. Van Dun v. Baker Sch. Dist. 5J*, 502 F. 3d 811, 815, 821 (9th Cir. 2007) ("We hold that when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP"). The Eighth Circuit has adopted this material failure test for implementation of IEPs. See *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 n.3 (8th Cir. 2003).

In this matter, the Complainant has alleged that the District failed to appropriately implement the Student's accommodation for 1:1 paraeducator support as set forth in the Student's May 13, 2021, IEP. Specifically, the Complainant alleges that the School's Special Education Coordinator "disregarded [the Student's] IEP, by taking the 1:1 para away from the Student, for (at times) five of seven full class periods in each school day." The Complainant was the Student's paraeducator during the times in question. The Complaint alleges that this violation began on January 5, 2022, and continued through the date the Complainant was fired by the District on February 22, 2022.

As set forth in the facts above, the Complainant was actually fired on Friday, February 11, 2022, rather than February 22, 2022, as alleged in the Complaint. The Complainant further alleges in her Complaint that the Student's IEP states "that [the Student] requires a 1:1 para." Taken together, the clear intent of the allegations in the Complaint is that the Student's IEP requires the District to provide the Student with a 1:1 paraeducator support for all of the Student's school day.

One of the most important provisions of the IDEA requires that all of the special education and related services provided to a student must be provided in the Least Restrictive Environment (LRE). 34 CFR §300.114(a); 92 NAC 51-008.01A. In view of the fact that providing 1:1 paraeducator support is much more restrictive to a student than support that is not 1:1, or not full-time, the decision to provide full-time 1:1 paraeducator support must be based upon a decision by the IEP team that the student cannot be successful without such a level of support. It should be noted that the Student's May 13, 2021, IEP does not contain any language that could be interpreted in such a way. Moreover, when the Complainant first began providing 1:1 para support to the Student in January, 2021, the Student's then-current March 16, 2020, IEP did not provide for any 1:1 paraeducator support for the Student. Under certain circumstances, it could be argued that providing the Student with 1:1 paraeducator support prior to the development of the May 16, 2021, IEP could be a violation of LRE for the Student. Therefore, it is concluded that the Student's May 13, 2021, IEP does not state that the Student requires full-time 1:1 paraeducator support.

As clearly set forth above, the facts show that the Student's IEP does not identify the frequency of the 1:1 paraeducator support as full-time or including all of the Student's school day. Specifically, the IEP identifies the frequency of the 1:1 paraeducator support as: "as needed." While the term "as needed" is not the best or most specific language that could be used to identify the frequency of this accommodation, it is also true that this term cannot be interpreted as requiring a 1:1 paraeducator in every class the Student attends. Without more specific language, the term must be interpreted as meaning the Student is entitled to the 1:1 paraeducator support calculated to meet the Student's specific educational needs. This could mean part of one class period-all the way to 100% of every class period, depending on the needs of the Student. This begs the question then, what were the needs of the Student for 1:1 paraeducator support at the time of, and after, the development of the May 13, 2021, IEP?

The Complainant argues that the Student's need for full-time 1:1 paraeducator support is evidenced by the fact that the Student's behaviors, goal progress and

grades worsened after her schedule was changed on January 5, 2022. However, a review of the facts set forth above does not support the Complainant's argument. It is true that the Student was involved in a behavior incident on January 25, 2022, which resulted in a three-day suspension, but this was not the first out of school suspension given to the Student while the Student was receiving 1:1 support from the Complainant. Moreover, the number of times the Student needed to go to TLC was dramatically less after the Complainant was no longer providing full-time 1:1 para support to the Student. With respect to the progress being made by the Student on the Student's IEP goals, the facts indicate that the Student's progress actually improved following the change in the Complainant's Schedule. Finally, it is true that the Student's grades in three of the four core classes during Q3 were lower than Q2, with one failing grade. However, between Q1 and Q2 when the Complainant was full-time with the Student the Student's grades also went down, so there is no clear connection between the change in the Complainant's schedule and the Student's grades. There is also no documentation to support the Complainant's allegation that after her schedule was changed in January, 2022, the Student failed most of the classes. Therefore, it is concluded that the facts do not indicate that the Student requires full-time 1:1 paraeducator support in order to be successful in the educational program.

It is concluded that the District appropriately implemented the Student's accommodation for 1:1 paraeducator support set forth in the Student's May 13, 2021, IEP, and thus provided special education and related services to the Student in accordance with the Student's IEP.

Issue # 2

Did the District provide the Student with a FAPE, as required by 92 NAC 51-004.01?

State rule 92 NAC 51-004.01 provides as follows:

004.01 School districts and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which the child reaches age twenty-one, including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs.

Allegations

The District failed to provide the Student with a FAPE.

Parent Position

The School failed to appropriately implement the Student's IEP accommodations for 1:1 paraeducator support which denied the Student a FAPE.

District Response

The District's Response indicates that the Student was provided with a FAPE during the time the Complainant worked with the Student each period, and during the time the Complainant worked with the Student for part of the day, and after the Complainant no longer worked with the Student.

Investigative Findings

See above Investigative Findings.

Summary and Conclusions

In 2017, the U.S. Supreme Court handed down a ruling that made some significant adjustments to the FAPE standard originally announced in the 1982 Rowley case. In *Endrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (U.S. 2017), the Court rejected a line of cases from Circuit Courts that had held that the IDEA FAPE standard requires merely more than de minimis educational progress. The Court held that "a student offered an educational program providing 'merely more than de minimis' progress from year to year can hardly be said to have been offered an education at all." However, when a child is fully integrated in the regular classroom, an IEP typically should provide a level of instruction reasonably calculated to permit advancement through the general curriculum. When a child is not fully integrated in the regular classroom and not able to achieve on grade level, his IEP need not aim for grade-level advancement. "But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." *Endrew F. V. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017).

It is concluded that the facts and legal authorities set forth above indicate that while the Student's May 13, 2021, IEP could have been more specific as to the frequency of the 1:1 para educator support provided for in the Student's IEP, the failure to do so did not deny the Student FAPE. Moreover, it is concluded that removing some of the 1:1 para support from the Student in order to help the Student increase self-advocacy skills and reduce dependence on para support did not violate the Student's right to a FAPE. Therefore, it is concluded that as to Issue Number 2, the District did provide the Student with a FAPE.

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.