

COMPLAINT INVESTIGATION REPORT

Complaint Number: 21.22.24
Complaint Investigator: [Redacted]
Date Complaint Filed: March 9, 2022
Date of Report: [Redacted]

Issues Investigated

Systemic

1. Did the District comply with its Child Find obligations under the IDEA as to Students A, B, C and D, and all other similarly situated students at the School, by:
 - a. Conducting an initial special education evaluation after the School and/or the parents of Students A, B, C and D made verbal and/or written requests for an evaluation to the District, as required by 34 CFR §§300.111 and 300.301, and 92 NAC 51-006.02B and 015.03B1;
 - b. Properly implement the three-tier model of student intervention, as required by 92 NAC 51-006.01B, and providing a special education evaluation to the students;
 - c. Conducting special education evaluations in student's native language, as required by 92 NAC 51-006.02C1b, and 006.02C4, or making a determination of eligibility based upon a student's limited English proficiency, as required by 92 NAC 51-006.03C;
 - d. Meaningfully consulting with a representative of the School during the design and development of special education and related services for students with disabilities at the School regarding the Child Find process, as required by 92 NAC 51-015.03D1; and
 - e. Including an administrator of the School or a designated representative as a member of the MDT, as required by 92 NAC 51-006.03B?

Student Specific

2. Did the District conduct a reevaluation of Student E for Autism or ADHD (Attention Deficit Hyperactivity Disorder) at the request of the parents, as required by 92 NAC 51-006.05A?
3. Did the District timely ensure that an IEE was provided at public expense for Student F after a request by the parents of Student F, as required by 92 NAC 51-006.07A, 006.07D and 006.07D2, or initiate a

- hearing to show that its evaluation is appropriate, as required by 92 NAC 51-006.07D1?
4. Did the District develop an appropriate IEP for Student G by providing for services to meet the individual needs of Student G, as required by 92 NAC 51-007.07, rather than services that accommodate the schedule of the District's teachers at the School?
 5. Did the District provide Students A, B, C, D, E, F, and G with a FAPE, as required by 92 NAC 51-004.01?

Documents Reviewed by Investigator

From the Complainants

- Letter of Complaint from the School received by NDE (Nebraska Department of Education) on March 9, 2022;
- Student A document;
- Student D document;
- Letter of Complaint from the Parents of Student D dated March 3, received by NDE on March 9, 2022;
- Email from Special Education Director dated April 15, 2022;
- Emails dated April 12, 2022 and April 13, 2022;
- Email from Special Education Director dated April 18, 2022;
- Letter of Complaint from the Parents of Student F received by NDE on March 9, 2022;
- Email from School Principal dated December 21, 2021, regarding change in MTSS;
- Notice of District Decision Regarding Requests from parents for Student F dated February 8, 2022.
- Request for IEE from parents of Student F dated February 25, 2022;
- Student F document;
- Narrative statements for all students;
- Emails between School and District regarding students identified in complaint;
- Excel spreadsheet of data regarding all SAT students at the School; and
- MTSS notes
- Spreadsheets regarding math and reading interventions.

From the School District

- Letter of Response from District dated April 7, 2022;
- Student A's Multi-Disciplinary Team (MDT) Report dated April 22, 2021;
- Summary and Timeline for Student A;
- Email dated June 8, 2021;
- Report Cards for Student A, 2020/2021 and 2021/2022;

- MTSS Summary, 2019, 2020, 2021, 2022;
- Email dated February 22, 2022;
- SAP Meeting 1 notes for Student B;
- Student B Native Language Sample dated March 5, 2020
- Timeline for Student B;
- Report Cards for Student B;
- Emails dated September 13, 2021 for Student C;
- SAP documents for Student C;
- Report Cards for Student C;
- March, 2022, email from School to District;
- FBA (Functional Behavioral Assessment) and BIP (Behavior Intervention Plan) for Student C;
- Behavior Observation, September 15, 2021 for Student C;
- Emails regarding behavior observations on November 11 and November 17, 2022, for Student C;
- MTSS-B team meeting notes, January 6, 2022, for Student C;
- MTSS-B Team Leader's observation notes and recommendations for Student C, dated March 1, 2022;
- Report from School psychologist regarding Student C dated September 15, 2021.
- Emails from parent of Student D;
- Emails dated November 9, 2021; November 10, 2021; and December 2, 2021;
- Email from the School dated January 20, 2022;
- Email from the District dated January 23, 2022;
- Email from parent of Student D to District's Special Education Supervisor dated March 31, 2022;
- Letter from Student D's pediatrician recommending evaluation and an Individualized Education Plan (IEP);
- Email from Special Education Director dated April 1, 2022;
- Emails dated April 12, 2022, and April 13, 2022;
- Email from parent of Student D dated April 16, 2022;
- Excel Spreadsheet of Student Information regarding SAT from the School;
- Student E's IEP dated March 30, 2021;
- Student E's Progress Reports;
- Student E's Report Cards, school years 2020/2021 and 2021/2022;
- MTSS Summary dated February 11, 2022;
- IEP Review Notes for Student E dated April 4, 2022;
- Case Manager's notes of March 1, 2022, telephone call with parent of Student E;

- Multidisciplinary Team (MDT) Report for Student F dated December 9, 2020;
- Student F's IEP, dated February 7, 2022;
- Notice of District Decision Regarding Request dated February 8, 2022;
- Email from parent of Student F dated December 18, 2021;
- Email from Special Education Supervisor dated December 20, 2021;
- Email from parent to Special Education Supervisor dated December 21, 2022;
- Student F's Progress Reports;
- Email from Principal dated February 7, 2022;
- Email from Special Education Supervisor dated February 8, 2022;
- Email chain dated February 22, 2022;
- IEP for Student G dated November 13, 2020;
- MDT for Student G dated November 23, 2021;
- IEP for Student G dated November 23, 2021;
- Student G's Progress Reports;
- Notice of Change of Placement or Discontinuation dated April 4, 2022.

Interviews Conducted by Investigator

- Telephone interview with School Principal, parent of Student D, parent of Student F.

Introduction

The Nebraska Department of Education received multiple complaints beginning with a complaint filed by a nonpublic school within the District's boundaries alleging systemic Child Find and IEP implementation issues by the District. After the receipt of the systemic complaint, individual complaints alleging the same issues were received. All complaints received were grouped together and addressed within this Investigation Report.

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). One of the complainants in this matter is the Principal of the School.

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 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 that are related

to periods prior to the beginning of the jurisdiction period are for background purposes only.

Findings of Fact (for all issues)

Students Named in the Complaints

1. Student A is an 11-year-old parentally placed nonpublic school student enrolled in the 5th grade at the School, a nonpublic religious school located within the boundaries of the District. The Student attended the School during the second semester of 3rd grade and all of 4th grade. The Student previously attended another non-public religious school for one semester of 3rd grade, and prior to that the Student attended Kindergarten through 2nd grade at an Elementary School in the District where the Student received English Language Learner (ELL) instruction (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; District Documentation).
2. The Student entered the ELL program in Kindergarten as a Level 2. In 3rd grade, Student A was a Level 3 ELL (District Documentation).
3. District records indicate that at least as early as 2nd grade, Student A's teachers expressed concerns with Student A's hearing. Student A failed [Redacted] 2nd grade hearing test, and further examination indicated that both of [Redacted} ears were infected. Later testing indicated that Student A had significant hearing loss in [Redacted} left ear (Letter of Response dated April 7, 2022; District Documentation).
4. Due to concerns with Student A's reading and math skills, the School referred Student A to the SAT to provide interventions to address the concerns (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022).
5. On December 23, 2020, Student A was examined by a hearing specialist which revealed that Student A had a hole in the left eardrum (Letter of Response dated April 7, 2022; MDT Report dated April 22, 2021; District Documentation).
6. In February, 2021, the SAT referred Student A for an initial special education evaluation. Student A was evaluated during March and April, 2021(MDT Report dated April 22, 2021).
7. The District's MDT met to review Student A's evaluations and existing data and filed a Report dated April 22, 2021. The MDT Report indicates that the team "determined that [Student A] does not meet Rule 51 criteria for identification as a student in need of special education services. [Student] A will be referred back to the Student Assistance Team for continued monitoring and support through regular education." (MDT Report dated April 22, 2021).

8. The April 22, 2021, MDT report states that “in making a determination of eligibility, the team ruled out lack of appropriate instruction in reading, lack of instruction in math, and limited English proficiency as determining factors.” However, in the section entitled “Interpretation of Language Results,” the Report states as follows: “In summary, [the Student] shows a variety of strengths and weaknesses in language skills. [The Student] has good ideas and seems to understand the information being presented. [The Student] struggles with using specific vocabulary to convey thoughts and ideas and may not be able to interpret inferred or subtle information correctly. In order to verify as a student with a speech-language impairment, language deficits should be evident in both the native and second languages. Because an interpreter was not available, the SLP was unable to adequately assess [the Student’s] native language skills and therefore is unable to make a true determination about [Redacted] language skills at this time.” (MDT Report dated April 22, 2021).
9. With respect to its determination of eligibility for Student A, the MDT Report explains the results, in part, as follows: “It was not feasible to complete the MDT evaluation in the child’s predominant or native language or other mode of communication (006.02B2); [Student A’s] native language is [a foreign language]. The MDT team did not have access to a [foreign language] interpreter; therefore, assessments were completed in English. The assessments are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests (006.02B4b).”
10. In June, 2021, the District informed the School that the District had contacted a different school district in the state regarding a [foreign language] interpreter who the other district contracts with. The District informed the School they were not sure what it would cost to contract with the interpreter or even if the interpreter was available to contract outside of the other school district (Email to School dated June 8, 2021.)
11. On July 7, 2021, Student A had surgery to repair the hole in the left eardrum (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; District Documentation).
12. Following the MDT’s determination that Student A was not eligible for special education services, Student A was referred back to the SAT for the 2021/2022 school year and is currently receiving services/interventions (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; District Documentation).

13. On November 5, 2021, a Native Language Sample was gathered by a District SLP with a [foreign language] interpreter over Zoom. The District reports the results of this Native Language Sample as follows:
 - a. Student A was not able to converse in [foreign language];
 - b. Student A answered many questions regarding various reading assignments;
 - c. When asked to label nouns and verbs in English and [foreign language], Student A's responses were as follows:
 - i. Nouns: 98% in English, 18% in [foreign language];
 - ii. Verbs: 100% in English, 50% in [foreign language]
14. The District's documentation indicates that the District informed the School that continued interventions need to be followed with Student A at this point. (Emails between the School and the District.)
15. On December 21, 2021, the Principal at the School sent an email to the District's Special Education Supervisor regarding the MTSS process being followed by the School and the District. The Principal indicated that the then current MTSS process was not working due, in part, to the fact that the time provided for the meeting was not enough for the School to discuss all of the students the School wanted to discuss. The Principal indicated that the School had many students that needed to be evaluated and there was not enough time to discuss them. In response, the Special Education Supervisor agreed to stop having the MTSS meetings with the School, and the School could submit MTSS/SAP packets on the students to the District's team for review and the District's team would meet on the same date and time to review the packets and provide recommendations to the School. This new MTSS process began on January 7, 2022. When the District's team held an MTSS meeting, an MTSS Summary report was emailed to the School regarding the students whose information was sent to the District prior to the meeting (Email dated December 21, 2021).
16. On February 22, 2022, the District's Special Education Supervisor sent an email to, among others, the School requesting that the School submit MTSS data for students that the School believed "should be considered for a special education evaluation yet this year by Friday, March 4th. This allows us to complete a special education evaluation, if needed, before the end of the school year. Please do not send us every MTSS plan that you have been working through with students this year. We will only have time for those students whose needs are of most concern and are not making progress with the general education interventions that you have consistently put in place. Remember that

- interventions should be implemented with fidelity for 6-8 weeks before determining educational benefit." (Email dated February 22, 2022).
17. On March 2, 2022, the Principal at the School sent an email to the District's Special Education Supervisor as follows: "Students we feel should be evaluated before the end of the year... and [School Interventionists] will update MTSS forms for them by 3/9. . . . [Student A].
 18. Following the District's February 22, 2022, email to the School, and the School's reply on March 2, 2022, there is no documentation that the District has taken any steps to schedule an MDT meeting for Student A, or to otherwise schedule a special education evaluation for Student A (Review of all District, Complainant and Parent documentation and statements).
 19. Student A's grades for the 2020/2021 school year, and currently through the 2021/2022 school year, are as follows:

STUDENT A'S GRADES

Year/Sem./Quarter	English	Math	Reading	Science	Soc. St.	Spelling
2020/2021	S1	C	B-	C+	F	B
	S2	B	C+	B-	C+	D
	YR	B-	B-	B-	B-	C-
						Vocabulary
2021/2022	Q1	C-	B-	C+	D	C
	Q2	B-	D	A+	D+	F
	Q3	B-	A-	A	C +	B-
	Q4					

(District's Documentation.)

20. Student B is an eight-year-old parentally placed nonpublic school student enrolled in the 2nd grade at the School, a nonpublic religious school located within the boundaries of the District. Student B has attended the School since Kindergarten. (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 9, 2022; District Documentation).
21. At the time that Student B began attending the School during the 2019/2020 year, the Student was non-verbal. Student B would not speak English in sentences but used only one-word responses. Student B was referred to the SAT in August 2019. (Letter of Systemic Complaint dated March 9, 2022; Complainant's documentation.)
22. In November 2019, the School staff addressed Student B's situation with the District through the MTSS team. School Staff believe that Student B is not speaking in English due to Selective Mutism (2019 MTSS Summary.)
23. On March 5, 2020, a Native Language Sample was taken by the District's Speech-Language Pathologist and School Psych Intern from

the School who works with Student B and speaks [foreign language].

The results of the Native Language Sample are as follows:

- a. Throughout the screening, Student B was mostly unwilling to speak to the SLP in English, but he conversed openly with the School Psych in [foreign language].
- b. Student B did appear to understand most of what was spoken in English.
- c. "The results of this screening suggest that [the Student's] language skills in Spanish are more developed than the skills willing to display in English. [The Student] appears to have appropriate receptive language skills in both [foreign language] and English but [the Student] displays much stronger expressive language skills in [foreign language] than English. It also appears that [the Student's] familiarity and comfort level impact [the Student's] willingness to interact in either language. The classroom teacher reports that when an older student who only speaks English comes to class to work with [the Student], [the Student] readily interacts with her. The classroom teacher also shared that [the Student's] willingness to respond to academic skills increases when [the Student] is in a group with peers, [the Student] feels comfortable with but if grouped with less familiar peers [the Student] will not respond unless specifically addressed, and sometimes not even then. It would appear that there may be some delay in [the Student's] acquisition of English but native language skills and cognitive skills seem to be adequate for English language development. It is recommended that [the Student's] English language skills continue to be enhanced and developed and that [the Student] be encouraged to use English in the school environment."

(Student B Native Language Sample dated March 5, 2020.)

24. Student B's teacher reports that at the beginning of the 2020/2021 school year, Student B's parent sent an email to the teacher indicating that Student B is very shy and speaks [foreign language] at home. Student B does not speak in class, but [the Student] appears to understand most things. The Teacher met with Student B and mother, and when the mother saw that Student B would not talk to the Teacher, she said she really had not believed it until then. The Teacher informed the mother that Student B has received some poor grades

- due mainly to the fact that the Teacher was unable to assess [the Student's] abilities due to lack of speaking (District's SAP documents).
- 25. School Staff spoke with the parents and discuss the possibility of having Student B attend a District school part time for ELL services, but the parents rejected this suggestion. Student B's parents took [the Student] to a private SLP for therapy regarding selective mutism (Complainant's Documentation).
 - 26. By the end of 1st grade (2020/2021 school year) Student B made some progress in speaking. Student B would not speak aloud to the class but would talk a little in one-on-one situations (SAP Meeting 1 notes).
 - 27. At the beginning of the 2021/2022 school year, Student B's Teacher and the Principal had a telephone conversation with the mother (and sister who translated). Student B seems to have basic phonemic awareness of letters and sounds. Student B will speak in English in one or two words but not in complete sentences and would not read during class time. Student B did do fairly well with spelling tests (SAP Meeting 1 notes).
 - 28. At the October 8, 2021, Parent-Teacher conference with Student B and the mother and sister, the mother seemed frustrated that Student B will not talk at school. The Mother was adamant that Student B should not be using a gameboard to communicate at school but should be talking. The sister told the Teacher that she talks to Student B in English at home and [the Student] understands her.
 - 29. On November 23, 2021, a District SLP came to observe Student B. The SLP met with Student B's teacher and suggested a few additional interventions, but also said that the School was doing everything that the District would do (SAP Meeting 1 notes).
 - 30. At the February 17, 2022, Parent-Teacher conference the Teacher informed the parent that Student B will not speak in front of the class. Student B has been using the gameboard and it has motivated him to complete assignments on [the Student's] own. The parent indicated that she has seen improvement at home (SAP Meeting 1 notes).
 - 31. Between August of 2021, and March of 2022, Student B showed an improvement in reading frequency at a rate of 1.03 (Letter of Response dated April 7, 2022; District Documentation).
 - 32. On March 4, 2022, Student B's Teacher and service providers indicated that Student B is now talking in English in small groups across settings (SAP 1 Follow-up notes).
 - 33. The District has indicated that the parents of Student B and the School, via the SAT, have not made a verbal and/or written request for Student

B to be evaluated. The documentation does not include a written request, or any documentation of a verbal request, to the District by the parents of Student B for a special education evaluation for Student B. The documentation does contain numerous instances of School staff requesting an evaluation for Student B in meetings with the MTSS team. In addition, in response to the February 22, 2022, email from the District's Special Education Supervisor to the School, identified above, the following email was sent on March 2, 2022, from the Principal at the School to the District's Special Education Supervisor as follows:

"Students we feel should be evaluated before the end of the year... and [School Interventionists] will update MTSS forms for them by 3/9. . . . [Student B]. (Review of all of Complainant's and District's documentation, Letter of Response dated April 7, 2022; Letter of Systemic Complaint dated March 9, 2022; MTSS documentation; March 2, 2022, email.)

34. Following the District's February 22, 2022, email to the School, and the School's reply on March 2, 2022, there is no documentation that the District has taken any steps to schedule an MDT meeting for Student B, or to otherwise schedule a special education evaluation for Student B. (Review of all District, Complainant and parent documentation and statements.)
35. Student B's grades for the 2020/2021 school year, and currently through the 2021/2022 school year, are as follows:

STUDENT B'S GRADES

Year/Sem./Quarter	English	Math	Reading	Science	Soc. St.	Spelling
2020/2021	S1	F	F	C	C	D-
	S2	D	B-	D	A	C
	YR	F	F	B	B	D+
2021/2022	Q1	D	C	D+	B-	C+
	Q2	D-	B	D-	B+	B
	Q3	D	B	D	B+	C-
	Q4					

(District's Documentation.)

36. Student C is a 7-year-old parentally placed nonpublic school student enrolled in the 1st grade at the School, a nonpublic religious school located within the boundaries of the District. Student C began attending Kindergarten at the School during the 2020/2021 year (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; District Documentation).
37. In August 2020, at the beginning of Kindergarten, Student C exhibited certain negative behavior concerns involving peer interactions,

- following directions and attention. In October 2020, the School developed a behavior chart for Student C. By the end of Kindergarten, Student C showed some slight improvements in his behavior. (SAP¹ pre-referral documentation).
38. It was also noted by the School that Student C was struggling academically with Reading in the areas of letter word recognition, sight word recognition, decoding, and fluency.
 39. Beginning in August 2020, Student C was provided with reading interventions in the Resource Room two times per week. At the end of the school year, Student C was recommended for further Resource interventions. Student C knew 18/31 sounds and 3/40 sight words (SAP pre-referral documentation).
 40. In September 2021, the School began having additional concerns with Student C's behavior, specifically with attention in school (SAP pre-referral documentation).
 41. Student C continued to struggle with Reading and continued to receive Reading interventions. Student C scored a RIT score of 122 on MAPS testing, and the School's median score was 155. Student C also was struggling with math. Student C began receiving Math intervention two times per week (SAP pre-referral documentation).
 42. On September 13, 2021, the School made a referral for Student C to the SAT. The referral form indicates that the referral was regarding Behavior (but only one choice could be made on the form), and the priority concerns were noted as attention and avoidance, keeping hands to self and following directions. It was noted that the School psychologist would be assisting the School in preparing an FBA (Functional Behavioral Assessment) and a BIP (Behavior Intervention Plan) (SAP Special Education referral; Complainant's Documentation; emails dated September 13, 2021).
 43. The District's school psychologist did come to the School and observed Student C on September 13, 2021, and assisted the School in preparing an FBA and BIP (Letter o Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; Report from School psychologist dated September 15, 2021).
 44. Student C's MTSS team made a referral to the District's MTSS behavior team to do informal observations of Student C, and the MTSS-B Special Education Team Leader contacted the School in early October, 2021, to schedule an observation. The first observation took place on

¹ "Student Assistance Process", which the District defines as a philosophy as well as a set of guidelines for addressing student concerns and needs.

- November 11, 2021, (this observation was rescheduled 3 times due to either School closures or School Mass schedule or the behavior specialist's schedule). A second observation took place on November 17, 2021 (Letter of Response dated April 7, 2022; MTSS-B notes dated January 6, 2022).
45. Before the Winter break, the parents of Student C had [the Student] evaluated by the doctor, and the doctor diagnosed Student C with ADHD and prescribed medication for [the Student]. The School reports that after receiving the prescribed medication, Student C's behavior has improved and the School is no longer concerned about behavior. However, the school is concerned about Student C's academics (Letter of Systemic Complaint dated March 9, 2022; Documentation; MTSS notes).
46. On December 21, 2021, the MTSS team met and discussed, among others, Student C. The notes from the meeting provide, in relevant part, as follows: "We need to move on [the Student] as we have been providing a lot of interventions and parents and teachers are overwhelmed and frustrated by how far behind, [the Student] is getting. [The Student cannot read on [the Student's] own at all." (MTSS notes from December 21, 2021, meeting.)
47. On January 6, 2022, Student C's MTSS-B team met to discuss previous observations, and several recommendations were made by the behavioral specialist to assist Student C with the behaviors. A third observation took place on January 25, 2022. (Complaint, District's Response, Notes and Emails.)
48. A fourth observation of Student C occurred on March 1, 2022. During this observation, the documentation indicates that Student C showed progress, which the behaviorist attributed to implementation of the behavioral strategies as well as proper medication for Student C. The referral to the behavioral team was closed out March 2, 2022 (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; MTSS-B Team Leaders and recommendation dated March 1, 2002).
49. The District has indicated that the parents and the School, via the SAT, have not made a verbal and/or written request for Student C to be evaluated. The documentation does not include a written request, or any documentation of a verbal request, to the District by the parents of Student C for a special education evaluation for Student C. The documentation does contain numerous instances of School staff requesting an evaluation for Student C in meetings with the MTSS team

- (see e.g., above). In addition, in response to the February 22, 2022, email from the District's Special Education Supervisor to the School, identified above, the following email was sent on March 2, 2022, from the Principal at the School to the District's Special Education Supervisor as follows: "Students we feel should be evaluated before the end of the year... and [School Interventionists] will update MTSS forms for them by 3/9. . . . [Student C] (Review of all of Complainant's and District's documentation; Letter of Response dated April 7, 2022; Letter of Systemic Complaint dated March 9, 2022; MTSS documentation; email dated March 2, 2022).
50. Following the District's February 22, 2022, email to the School, and the School's reply on March 2, 2022, there is no documentation that the District has taken any steps to schedule an MDT meeting for Student C, or to otherwise schedule a special education evaluation for Student C (Review of all District, Complainant and parent documentation and statements).
51. Student C's grades for the 2020/2021 school year, and currently through the 2021/2022 school year, are as follows:

STUDENT C'S GRADES

Year/Sem./Quarter	English	Math	Reading	Science	Soc. St.	Spelling
2020/2021 S1						
S2						
YR	S	NI	S	S		
2021/2022 Q1	C	B-	C-	A	A	F
Q2	D+	C-	F	A	B	F
Q3	B	B	D+	A	A	B
Q4						

(District's Documentation.)

52. Student D is an 8-year-old parentally placed nonpublic school student enrolled in the 2nd grade at the School, a nonpublic religious school located within the boundaries of the District. Student D transferred to the School from a school in another state and was enrolled on October 15, 2021 (Letter of Complaint for Student D dated March 9, 2022; Letter of Response dated April 7, 2022; District Documentation).
53. Student D began receiving special education services in another state at the age of 3 for speech and social behavior services. After the family moved to a different state in 2017, Student D was evaluated and an IEP was developed and implemented through Kindergarten. In May of 2020, at the end of the Kindergarten year, Student D was reevaluated and the IEP team in a different state determined that Student D no longer qualified for special education services and

- terminated [the Student's] IEP. In May of 2021, the parents of Student D requested that [the Student] be evaluated in the area of behavior. Student D was evaluated, and the MDT team in another state determined that Student D was not eligible for special education services at that time. (Complaint for Student D dated March 9, 2022; District's Response, Parent Documentation.)
54. On October 19, 2021, several days after starting at the School, Student D was referred to the SAT and the parents of Student D signed a permission form for a school psychologist to observe Student D and assess behaviors in order to prepare an FBA and BIP. School staff requested that the District's Autism Team conduct an assessment of Student D. (Letter of Complaint for Student D dated March 9, 2022; Letter of Response dated April 7, 2022; parent and District documentation.)
55. On November 9, 2021, an SAP/MTSS meeting was held at which Student D, among others, was discussed by the team. Following the team meeting, the School Principal sent an email to the District's Special Education Supervisor regarding Student D. In this email the School Principal clearly states that she asked for an evaluation for Student D during the MTSS meeting. The Principal also stated her understanding of what she had been told by the team, that in order to have the District's Autism Team come to the school to work with Student D, [the Student] would need to be verified, and Student D could not be verified without six weeks of a behavior chart, an FBA and a BIP, and 6-8 weeks of interventions to see if that works, and then more interventions. The Principal stated her belief that it would be better to move faster with a verification in order to have the Autism Team start working with Student D. The email further provides as follows: "I don't want to push unnecessarily for early eval if there is a way to get the autism team out to help with this, but if it takes a verification, then what do you need from me. Can you give me some guidance?" (Letter of Systemic Complaint dated March 9, 2022; MTSS notes; Email dated November 9, 2021).
56. On November 10, 2021, the District's SLP sent an email in response which states as follows: "Just want to clarify that what was said during our meeting was that there needed to be an FBA and BIP done in order to put in a referral to the [District's] autism team. [The School Psychologist] said he would work on an FBA, with the team's help/input as well as the information he gathered through observations last week.

- The FBA would then guide the development of the BIP.” (Email dated November 10, 2021.)
57. The District’s School Psychologist did observe Student D on November 10, 2021, and on November 12, 2021, prepared an FBA and a draft of a BIP (Letter of Complaint for Student D dated March 9, 2022; Letter of Response dated April 7, 2022; parent and District documentation).
 58. In November 2021, the parents of Student D had [the Student] evaluated by the pediatrician and a psychologist, and Student D was diagnosed with ADHD, attachment disorder and ASD (Autism Spectrum Disorders) (Letter of Complaint for Student D dated March 9, 2022; MTSS notes.)
 59. The Parent of Student D reports that she called the District in December and asked what she needed to do to have Student D evaluated for an IEP, and the District told her she needed to go through the School. This call was documented in an email from Student D’s parent to the School Principal on December 2, 2021, as follows: “I am looking for some direction. I contacted [the District] to see if there was anything I could do on my end to get things going for an IEP for [the Student]. They instructed me first to speak with the Special Education Coordinator at the school to begin the process. I believe when we first got there, we may have signed a document to express our interest to have [the Student] evaluated. Is this correct, or is there something else that I would need to do? If I have completed that first step, I can contact [the District] again and let them know. I apologize, with everything, I am just a little fuzzy on our initial steps when [the Student] first started.” (Email dated April 16, 2022; Email dated December 2, 2021).
 60. On December 21, 2021, the MTSS team met and discussed, among others, Student D. The notes from the meeting provide, in relevant part, as follows: “Parents have requested testing at [the District] at Student services, I see no reason to hold off on doing this one. We have solid data to suggest the need.” (MTSS notes from December 21, 2021, meeting.)
 61. The MTSS team recommended additional interventions and a behavior observation (MTSS notes).
 62. On December 22, 2021, the District’s school psychologist submitted a request to the District’s Autism Team for a member of the team to observe Student D at the School. Due to scheduling conflicts for both the School and District staff, the Autism Team Observation was eventually scheduled for January 27, 2022 (Letter of Systemic

- Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; District's Documentation).
63. On January 20, 2022, the parent of Student D asked the School Principal to obtain a timeline from the District of the actions to be taken by the District with respect to Student D. The District's Special Education Supervisor responded on January 23, 2022, and provided a timeline as follows: An FBA/BIP was created and implemented along with any additional academic interventions; data was collected and a referral to the Autism Team was made on December 22, 2021; and an observation by the Autism Team was scheduled for January 27, 2022. The email also provides, in relevant part, as follows: "Once the observations are completed, we will have additional programming recommendations for [the School]. These will need to be implemented along with data collection to determine growth. A follow-up observation will be made by the Autism Team. This could result in further recommendations or an MDT meeting to discuss the possibility of an evaluation. An outside, medical diagnosis of Autism can be considered if we move to an evaluation however, it would not solely support an educational verification of Autism." (Email from the School dated January 20, 2022; Email from the District dated January 23, 2022).
64. On January 27, 2022, the initial autism observation took place at the School. It was later discovered that Student D had been informed that someone would be observing [the Student] which may have affected behavior and made the observation unreliable, so the team scheduled another observation for February 3, 2022. (Letter of Complaint dated March 9, 2022; Letter of Response dated April 7, 2022).
65. A second observation by the Autism Team took place on February 3, 2022. The SAT met on February 9, 2022, to share observations and to recommend additional interventions as next steps.
66. In its Response, the District has stated that the parents and the School, via the SAT, have not made a verbal and/or written request to the District for Student D to be evaluated. The documentation does not include a written request prior to the filing of the Complaint, but there is documentation of a verbal request to the District by the parents of Student D for a special education evaluation for Student D. The documentation also includes several documented instances of School staff requesting an evaluation for Student D in meetings with the MTSS team (see e.g., above). In addition, in response to the February 22,

- 2022, email from the District's Special Education Supervisor to the School, identified above, the following email was sent on March 2, 2022, from the Principal at the School to the District's Special Education Supervisor as follows: "Students we feel should be evaluated before the end of the year... and [School Interventionists] will update MTSS forms for them by 3/9. . . . [Student D]. (Review of all of Complainant's and District's documentation, District's Response, Complaint, MTSS notes, February 22, 2022, email, March 2, 2022, email.)
67. Following the District's February 22, 2022, email to the School, and the School's reply on March 2, 2022, there is no documentation that the District took any steps to schedule an MDT meeting for Student D, or to otherwise schedule a special education evaluation for Student D, prior to March 31, 2022. (Review of all District, Complainant and parent documentation and statements.)
68. On March 31, 2022, the parents of Student D sent an email to the District's Special Education Supervisor which states, in part, as follows: "I would like to again formally request an evaluation for IEP services. I have included a letter from [Student D's psychologist] expressing the need for an evaluation for [Student D]." (Email dated March 31, 2022, from parents of Student D to District.)
69. On April 1, 2022, the District's Special Education Supervisor responded to the parent and indicated that the District would be sending out a person from the Autism Team to observe Student D again in April. The email also provided the following statement: "With a formal request [sic] an evaluation, the next step for [the District] would be to hold another MTSS team meeting to review [the Student's] data and determine whether this problem-solving team is also in recommendation of an evaluation for special education services." (Email dated April 1, 2022.)
70. On April 12, 2022, the parents of Student D and School staff met with the District for what was originally identified as an SAP/MTSS meeting to "determine an intervention plan/next steps based on student needs.". The District's MDT form indicates that all of the District staff recommended that Student D not be evaluated at that time, but the parents and School staff continued to request an evaluation and not interventions so the District changed the meeting to an MDT meeting to discuss the evaluation. The District indicated that it did not have a consent form at the meeting, and the District requested that the parents provide a copy of Student D's private evaluations. The parent agreed to provide a list of the private evaluations, but she stated that

- she was not aware that this was a requirement for providing the consent to evaluate form. An email from the District's Special Education Supervisor to the School Principal on April 13, 2022, states as follows: "We can't send the consent home until we see the list of evaluations that were recently completed. [The District's School Psychologist] told me today that he has not yet received them. Once he reviews them, we can put together the appropriate assessments on the consent form." The parent of Student D sent the list of evaluations on April 14, 2022. The parent reports that that on April 14, 2022, the parent of Student D received the consent to evaluate, a prior written notice of the District's intent to evaluate, and a notice of procedural safeguards. In a recent email the District reports that Student D's MDT meeting is scheduled for May 16, 2022. (Emails dated April 12, 2022, and April 13, 2022; Email from Special Education Director dated April 15, 2022; Email from Special Education Director dated April 18, 2022.)
71. Student D's grades for the 2020/2021 school year, and currently through the 2021/2022 school year, are as follows:

STUDENT D'S GRADES

Year/Sem./Quarter	English	Math	Reading	Science	Soc. St.	Spelling
2021/2022 Q1						
Q2	B	C	B+	B-	B+	B-
Q3	C+	B-	B+	A-	A	C
Q4						

(District Documentation.)

Systemic (Students A, B, C, D and all similarly situated students)

72. The Complaint Investigator requested information from the School regarding students at the School who were referred to and/or were involved in the SAT process during the relevant period of this complaint investigation. The School provided information on 42 students who are in, or who were in, the SAT process at some point during the relevant time period. The information provided by the School was analyzed, and out of the 42 identified students, there are 21 students who make up a pool of students with relevant information. The remaining 21 students are not considered relevant due to a lack of sufficient information on the student, or that the student made progress through the SAT process, or that the student is already on an IEP, or that the student transferred from the School before relevant information was collected, or that a valid reason(s) exists for providing ongoing interventions to the student (Excel Spreadsheet of Student Information from the School).

73. With respect to the pool of 20 students at the School identified above, the following facts have been determined:
- a. 16 of the 21 students were referred for an evaluation by the School through the SAT process. With respect to these 16 students, the following facts have been found:
 - i. The average number of months from each student's initial referral to the SAT process, to a referral being made by the School, was 13 months, within a range of 1 month up to 47 months.
 - ii. 81% of the referrals were longer than 60 days.
 - iii. Out of these 16 students referred by the School, District staff agreed to schedule an MDT meeting to discuss and schedule an evaluation for 8 of the students.
 - iv. The average number of months between the referral by the School and the evaluation and MDT meeting for the 8 students by the District was 5 months, within a range of 2 months up to 15 months.
 - b. 5 of the 21 students had a parent who requested, on one or more occasions, that the District conduct a special education evaluation for their child. With respect to these 5 students, the following facts have been found:
 - i. The average number of months from the parental request for an evaluation to an MDT1 meeting being held by the District was approximately 13.3 months, within a range of 5 months up to 18 months.
 - ii. 100% of parent requests took longer than two months to conduct the evaluation.
 - iii. Out of these 5 parental requests for an evaluation, 3 evaluations have been conducted to date.
 - c. Out of the pool of 21 relevant students, a total of 11 students received an evaluation.
 - d. The average number of months from the initial referral to the SAT process to an evaluation being conducted for each of the 11 students evaluated, was 17.9 months, within a range of 3 months up to 42 months.

(Excel Spreadsheet of Student Information from the School.)

Student Specific

74. Student E is an 8-year-old parentally placed nonpublic school student enrolled in the 1st grade at the School, a nonpublic religious school located within the boundaries of the District. At the time the Complaint

- was filed, Student E had previously been evaluated by the District and was receiving special education services under an IEP dated March 30, 2021 (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; District Documentation).
75. District documentation indicates that Student E's initial evaluation provides, in part, the following results regarding Student E:
- Student E's Full-Scale IQ (FSIQ) was found to be a 75, which is below the low end of the average range.
 - Student E's processing speed scaled score is a 63, which is significantly below average.
 - Student E's working memory scale score is a 69, which is significantly below average.
- (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; District's Documentation.)
76. Student E's March 30, 2021, IEP provides, in relevant part, as follows:
- The MDT verified Student E as eligible under the disability classifications of Specific Learning Disability (SLD) in the areas of basic reading, reading comprehension, written expression, and basic math, and Speech Language Impairment (SLI) in the areas of language and articulation.
 - Behavior was not noted as a concern on the IEP;
 - Goals were developed for Student E in the areas of Reading, Writing, Math, and Speech-Language.
 - The IEP provided for the following Special Education Services:
 - Individual and Group Special Instruction in the Special Education Room; and
 - Individual and Group Speech/Language services in the Special Education Room.
 - Student E receives Occupational Therapy (OT) as a Related Services under the IEP.
 - Student E was allowed a large number (20) of classroom and testing accommodations.
- (Student E's IEP dated March 30, 2021.)
77. Student E's grades currently through the 2021/2022 school year, are as follows:

STUDENT E'S GRADES

Year/Sem./Quarter	English	Math	Reading	Science	Soc. St.	Spelling
2021/2022	Q1	D-	D	D	A	A
	Q2	F	F	F	A	A
	Q3	D+	F	D-	A	A
	Q4					D+

(District Documentation.)

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

STUDENT E'S PROGRESS REPORTS

Progress Rep.	Reading 1	Reading 2	Writing	Math	Comm. 1	Comm. 2
2020/2021 Q4	3	3	3	3	3	3
2021/2022 Q1	3	3	4	3	3	3
Q2	3	3	3	3	3	3
Q3	4	3	3	3	5	5
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.

(District Documentation.)

79. As noted above, following the development and implementation of Student E's IEP dated March 30, 2021, Student E's grades and Progress Reports do not indicate that Student E was making sufficient progress in all areas of concern (Letter of Systemic Complaint dated March 9, 2022; Student E's Grade Reports; Student E's Progress Reports).
80. School Records indicate that the School asked the parents of Student E to have [the Student] seen by his pediatrician. The parents of Student E took him to the pediatrician for an evaluation. Student E's pediatrician conducted a Vanderbilt Assessment Scales, which is used to help diagnose ADHD in children from the ages of six to 12 years. The results of the Vanderbilt Assessment Scales was not conclusive, so the pediatrician wrote a note to the District recommending that Student E be evaluated educationally for Autism and/or ADHD (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; Documentation).
81. On February 4, 2022, the District received the note from Student E's pediatrician which recommended that the District perform testing such as the ADOS or the BASC. The School requested that the District follow Student E's pediatrician's recommendation to administer the ADOS

- and BASC to Student E (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022).
82. On February 11, 2022, the District sent the February MTSS Summary report to the School which discussed, among others, Student E. The MTSS Summary included the following response with respect to Student E: "We are currently not giving the ADOS to any student in [the District] due to the mask mandate and it is only given within the MDT process when considering an Autism verification for a student. At this time, we have no behavior data to support giving the BASC. If you have this data, we can look at it during our next meeting. [The District's School Psychologist] will send recommendations to support possible executive functioning needs." The School reports that the District informed the School that the parent of Student E would need to request the ADOS (MTSS Summary dated February 11, 2022; Letter of Complaint dated March 9, 2022).
83. District records indicate that in February 2022, Student E's Case Manager made several attempts to contact the parent of Student E to schedule Student E's annual IEP review, which was due by March 29, 2022. On March 1, 2022, the Case Manager spoke with Student E's parent over the telephone to schedule the IEP team meeting. The Case Manager's notes regarding this telephone call states as follows: "[The Parent of Student E] asked if we needed to do more testing because [the Student] had gone to the doctor. (She never formally said that she would like testing done during this conversation it was more like she was asking if that was needed.) I told her I would invite the [District] school psychologist to the meeting so that he can answer any questions she might have. I told her that [the District] already sees [Student E] for all academic areas (reading, writing, and math) as well as language and articulation so it would not really change the way we serve them but that the school psychologist can help answer any questions she has about evaluation." (Case Manager's notes of March 1, 2022; telephone call with parent of Student E.)
84. On April 4, 2022, after the Complaint was filed, the Student's IEP team met for the annual review of Student E's IEP. The District's notes of the April 4, 2022, IEP team meeting indicate, in part, as follows:
- a. "[The School Principal] talked to the doctor who has concerns about autism and suggested the ADOS. Doctor was suggesting a BASC to gather more data and information."
 - b. "Mom, not looking for more services but to pinpoint the services to what [the Student] really needs."

- c. "With any new concern or referral, we have to go through the intervention process."
 - d. "[The School Principal] - I would have a hard time moving straight to an ADOS, not sure I see autism in [the Student]. Don't notice eye contact being a concern at school." (IEP Review Notes dated April 4, 2022)
85. Student E has not received an evaluation for Autism and/or ADHD by the District. (Systemic Letter of Complaint dated March 9, 2022, Letter of Response dated April 7, 2022).
86. Student F is a 10-year-old parentally placed nonpublic school student enrolled in the 4th grade at the School, a nonpublic religious school located within the boundaries of the District.
87. At the time the Complaint was filed, Student F had previously been evaluated and verified by the District (December 9, 2020) and was receiving special education services. Student F's MDT report indicates the following results from Student F's evaluation:
- a. FSIQ - 85 (low average);
 - b. Basic Reading Skills – 83 (below average);
 - c. Reading Comprehension – 81 (below average);
 - d. Written Language – 78 (below average)
- (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; Student F's MDT Report; District Documentation.)
88. The Annual Review of Student F's IEP took place on December 1, 2021 (Systemic Letter of Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; District Documentation).
89. On December 18, 2021, the parent of Student F sent an email to the District's Special Education Supervisor and expressed her concern about Student F's lack of focus and possible ADHD. The Parent indicated that in previous IEP team meetings the parents were not allowed to discuss Student F's lack of focus because it was not a part of Student F's IEP. The parent then stated as follows: "What advice do you have? Do we call the Nebraska Department of Education? I've heard that they say that if a parent requests you can get tested and I assume that was through [the District] but maybe it's through them. Is that something they have to do?" (Email from parent of Student F dated December 18, 2021).
90. In response to the parent's December 18, 2021, email, the Special Education Supervisor sent an email to the parent of Student F dated December 20, 2021, with two suggestions. First, the District could send out the District school psychologist to conduct a time-on-task

observation of Student F to compare to the one taken during [Redacted} evaluation. Second, if the observation shows that Student F is displaying off-task behaviors then the team could discuss MTSS Tier 2 interventions for the School to put in place, before moving to additional formal evaluations (Email from Special Education Supervisor dated December 20, 2021).

91. On December 21, 2022, the parent of Student F sent an email to the Supervisor indicating that they wanted to get the process moving forward and agreed to the time-on-task observation (Email from parent to Special Education Supervisor dated December 21, 2022).
92. On January 5, 2022, the District's school psychologist conducted a time-on-task observation of Student F which indicated that Student F was off-task the same percentage as non-disabled peers (District Documentation).
93. After the time-on-task observation, the parents of Student F requested an IEP team meeting to discuss Student F's reading comprehension and lack of focus in school. A meeting was scheduled for February 7, 2022 (Student F's February 7, 2022, IEP.)
94. Student F's IEP team met on February 7, 2022, to review Student F's IEP. Student F's revised IEP provides, in relevant part, as follows:
 - a. The IEP indicates that Student F is eligible to receive special education services under the disability classification of Specific Learning Disability (SLD) in the area of reading fluency.
 - b. Behavior was not noted as a concern on the IEP;
 - c. Special Considerations. It is noted that the parents of Student F requested an IEP meeting due to their concerns about Student F's reading comprehension and focus in school due to the fact that [the Student] will have "good days" and "bad days" and they are wondering if that is due to focus and attention. They are looking into it with their doctor. Parents requested an evaluation at the meeting and were given a District decision form as interventions have not been started. The IEP team recommended interventions to the nonpublic school. (Emphasis added.)
 - d. Student F's Present Level of Performance indicates the following:
 - iii. January: 4th grade 1st read: 89 CWPM, 98% accuracy (13th percentile, middle of 4th grade level);
 - iv. February: 4th grade 1st read: 88 CWPM, 98% accuracy (12th percentile, middle of 4th grade level);

- v. On the ITBS assessment Sydney took in March of 2021, she scored in the 9th percentile for Total Reading and 6th percentile for ELA Total.

(Student F's IEP dated February 7, 2022)

95. Following the February 7, 2022, IEP team meeting, the School Principal sent an email to the District's Special Education Supervisor asking why an evaluation could not be conducted for Student F (Email from Principal dated February 7, 2022).
96. On February 8, 2022, the Special Education Supervisor responded and stated as follows: "Parents can request an evaluation however, the law requires that [sic] use a problem-solving team process to address concerns before evaluation. (006.01B)" (Email from Special Education Supervisor dated February 8, 2022).
97. On February 11, 2022, the District provided to the parents of Student F a Notice of District Decision Regarding Requests dated February 8, 2022. This is a prior written notice of the District's decision to reject the parents' request for an evaluation for ADD made at the February 7, 2022, IEP team meeting. The District also rejected conducting a Connors 3 assessment. The IEP team recommended interventions to the School. (Notice of District Decision Regarding Request dated February 8, 2022; Emails to parent of Student F dated February 11, 2022.)
98. Student F's grades for the first semester of the 2021/2022 school year, are as follows:

STUDENT F'S GRADES

Year/Semester		English	Math	Reading	Science	Soc. St.	Spelling
2020/2021	Y	B	C	B	A	B+	B
2021/2022	S1	B	B	A	C-	B	B
	S2						

(MDT Report for Student F, dated December 9, 2020, District Documentation.)

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

STUDENT F'S PROGRESS REPORTS

Progress Rep.	Reading 1
2020/2021	Q4
2021/2022	Q1
	3
	Q2
	3
	Q3
	2

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.

(Student F's Progress Reports.)

100. The MAP scores for Student F for the 2021/2022 school year dropped significantly from Fall to Winter (District Decision Regarding Request dated February 8, 2022).
101. On February 22, 2022, the parents of Student F sent an email to the Special Education Supervisor requesting an Independent Educational Evaluation (IEE) for Student F. The supervisor responded and directed the parents to make the request to the District's Special Education Director. The parents sent their request to the Special Education Director who responded and asked the parents to send a letter indicating why they are requesting an IEE and to identify the assessments they were seeking (Email chain dated February 22, 2022).
102. On February 25, 2022, the parents of Student F sent their revised request for an IEE to the Director. On March 2, 2022, the district sent to the parents a letter agreeing to the IEE and a providing a list of approved providers (Email chain dated February 22-March 2, 2022).
103. On March 15, 2022, the parent of Student F emailed some additional questions regarding the IEE process and the release of information document sent by the District and was clearly confused by the process. The parent thereafter contacted one of the providers on the list given to them by the District. The District was notified of the parent's contact with this provider, and the District realized that this provider is one of the District's educational units and does not conduct IEE's. The District notified the parent that this provider could not conduct the IEE of Student F. It was also discovered that District staff had mistakenly given the parents of Student F the wrong list of providers. The parents of Student F expressed their frustration over the many hours they had spent reviewing the list and choosing a provider and indicated that due to the amount of time they had spent on the list, they wanted to use the provider anyway. A new list of providers, which was approximately 14 pages long, was emailed to the parents. (Email chain dated March 15, 2022.)
104. The parents of Student F indicated that due to the mistakes, confusion and frustration over the District's IEE process, the parents

- chose not to go forward with selecting a provider and filed their complaint instead (Letter of Complaint for Student F dated March 9, 2022; Emails from parent).
105. Student G is a 13-year-old parentally placed nonpublic school student enrolled in the 6th grade at the School, a nonpublic religious school located within the boundaries of the District (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; Documentation).
 106. Student G transferred to the School from a public middle school in the District at the beginning of the 2021/2022 school year. At the time of [the Student's] transfer, Student G had previously been evaluated and verified by the District as a student with a disability and was receiving special education services under an IEP dated November 13, 2020. (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 2022; District Documentation).
 107. Student G's November 13, 2020, IEP provides, in relevant part, as follows:
 - a. The IEP indicates that Student G is eligible to receive special education services under the disability classification of SLD in the areas of Reading and Writing.
 - b. Behavior was not noted as a concern on the IEP;
 - c. Student G receives ELL services and will continue to do so;
 - d. Annual Goals were developed for Student G in the areas of:
 - vi. Reading; and
 - vii. Writing.
 - e. The IEP provides for Special Education Services as follows:
 - i. Individual and Group Special Instruction in the special education classroom for 35 minutes per session, 15 times per month
 - f. The IEP provides for accommodations for Student G as follows:
 - i. can have parts read aloud or text to speech (when available).
 - ii. Extended time and tests split into sections. Adults can make sure [the Student] is understanding what [the Student] is doing.
 - iii. Alternate settings for testing/completing work.
 - iv. Paper/pencil version of tests (weekly/unit reading test).
- (IEP of Student G dated November 13, 2020.)
108. On November 23, 2021, Student G's MDT met for Student G's three-year reevaluation to determine continued eligibility and appropriate

programming. The MDT Report dated November 23, 2021, provides, in relevant part, as follows:

- a. Cognitive Assessment System-second edition (CAS-2), administered October, 2018:
 - viii. Attention – 95 (average);
 - ix. Simultaneous – 85 (low average);
 - x. Planning – 77 (poor);
 - xi. Successive – 76 (poor);
 - xii. FSIQ – 78 (poor).
 - e. Comprehensive Test of Nonverbal Intelligence – second edition (CTONI-2), administered October, 2018:
 - i. Pictorial – 105 (average);
 - ii. Geographic – 102 (average);
 - iii. FSQI – 103 (average).
 - f. Kaufman Test of Achievement-third edition (KTEA-III); administered October 2021
 - i. Reading Composite – 63 (very low);
 - ii. Math Composite – 64 (very low);
 - iii. Written Language-62 (very low).
 - g. Measures of Academic Progress (MAP) Growth:
 - i. Reading, Fall 2021 – RIT 184, percentile rank 3rd;
 - ii. Math, Fall 2021 – RIT 164, percentile rank 1st;
 - iii. Written Language, Fall 2021 – RIT 168, percentile rank 1st.
 - h. Nebraska Student – Centered Assessment System (NSCAS): administered 2018 – 2019:
 - i. Third grade – ELA – 2380, 8th percentile (developing);
 - ii. Third grade – Math – 1092, 8th percentile (developing).
109. On November 23, 2021, Student G's IEP team met to develop an IEP for Student G. Student G's IEP provides, in relevant part, as follows:
- a. The IEP indicates that Student G is eligible to receive special education services under the disability classification of SLD in the areas of Reading Fluency, Reading Comprehension, Writing, and Math.
 - b. Behavior was not noted as a concern on the IEP;
 - c. Student G no longer requires ELL services;
 - d. Annual Goals were developed for Student G in the areas of:

- iii. Reading Fluency;
 - iv. Reading Comprehension
 - v. Writing; and
 - vi. Math.
 - e. The IEP provides for Special Education Services as follows:
 - i. Individual and Group Special Instruction in the special education classroom for 25 minutes per session, 18 times per quarter.
 - f. The IEP provides for accommodations for Student G as follows:
 - i. Have parts read aloud or text to speech (when available).
 - ii. Extended time and tests split into sections. Adults can make sure [the Student] is understanding what [the Student] is doing.
 - iii. Alternate settings for testing/completing work.
 - iv. Paper/pencil version of tests (weekly/unit reading test).
 - g. The IEP provides for assistive technology (AT) services for use of a Chromebook for text-to-speech and speech-to-text and the use of a word processor for notes/writing.
 - h. The IEP provides for a greatly expanded list of classroom and testing accommodations for Student G.
- (IEP of Student G dated November 23, 2021.)
110. The District's documentation includes a "Notice of Change of Placement or Discontinuation" dated April 4, 2022, which indicates that Student G's Special Education Services have been changed as follows: "IEP team has explored additional services to help him meet IEP goals and objectives. [Student G] has been given the opportunity to participate in a remote reading group two times a week. [The Student] began in a Rewards group and participated from 9/2/21-to 9/9/21. Rewards is a research-based reading intervention. It was determined that this group was not at the appropriate reading level for [Student G]. As of 9/30/21, [the Student] has been attending a Phonics for Reading group two times per week (another research-based reading intervention). These services have not yet been added to his IEP but will be considered after reviewing end-of-the-year data. [Student G] also receives resource support to work towards the IEP goals 3x a week, at 25 minutes each, in a 1:1 setting. Due to differences in school-wide calendars between [the School and the District], [the Student's] specially designed instruction is listed under services as 18x a quarter." (Notice of Change of Placement or Discontinuation dated April 4, 2022; Documentation.)

111. The District did not schedule and hold an IEP team meeting or sign an amendment with the parent of Student G, to make any changes to Student G's November 23, 2021, IEP (Notice of Change of Placement or Discontinuation dated April 4, 2022; Documentation).
112. Student G's grades for the first semester of the 2021/2022 school year, are as follows:

STUDENT G'S GRADES

Year/Semester	English	Math	Reading	Science	Soc. St.
2021/2022	C	C-	C	B	
	B-	C	C	A-	C+
	C+	C+	D	B+	C

(MDT Report, dated December 9, 2020, District Documentation.)

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

STUDENT G'S PROGRESS REPORTS

Progress Rep.	Reading 1	Writing
2020/2021	Q2	3
	Q3	2
	Q4	3
	2021/2022	Q1
	Q2	

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.

(Student G's Progress Reports.)

114. A review of the documentation provided by the complainants and the District consistently affirm that the District regularly convenes a monthly meeting of the SAT/MTSS team for students at the School, which includes various School staff members including the principal, special education and regular education teachers and interventionists at the School. The documentation also includes numerous emails between District staff and School staff, and other notes or reports, which document, detail, and report discussions related to interventions being designed and implemented for students at the School. The documentation, specifically including signature pages, of the IEPs (Individual Education Programs) developed by the District for Students

- E, F and G, show that School Staff members consistently were invited to, attended, and participated in the IEP team meetings for Students E, F and G (Letter of Systemic Complaint dated March 9, 2022; Letter of Response dated April 7, 20122; Emails regarding MTSS; IEPs for Student E, F and G).
115. A review of the MDT Reports for Students A, E, F and G all consistently affirm that representatives of the School were members of the MDT for Students A, E, F and G (Letter of Response dated April 7, 2022; MDT Reports for Students A, E, F and G).

Issue # 1

Did the District comply with its Child Find obligations under the IDEA as to Students A, B, C and D, and all other similarly situated students at the School, by:

- a. Conducting an initial special education evaluation after the School and/or the parents of Students A, B, C and D made verbal and/or written requests for an evaluation to the District, as required by 34 CFR §§300.111 and 300.301, and 92 NAC 51-006.02B and 015.03B1;
- b. Properly implement the three-tier model of student intervention, as required by 92 NAC 51-006.01B, and providing a special education evaluation to the students;
- c. Conducting special education evaluations in student's native language, as required by 92 NAC 51-006.02C1b, and 006.02C4, or making a determination of eligibility based upon a student's limited English proficiency, as required by 92 NAC 51-006.03C;
- d. Meaningfully consulting with a representative of the School during the design and development of special education and related services for students with disabilities at the School regarding the Child Find process, as required by 92 NAC 51-015.03D1; and
- e. Including an administrator of the School or a designated representative as a member of the MDT, as required by 92 NAC 51-006.03B?

State rule 92 NAC 51 provides as follows:

- 006.01 Child Find
- 006.01B Student Assistance Team (SAT) or Comparable Problem Solving Team
- 006.01B1 For a school age student, a general education student assistance team or a comparable problem solving team shall

- be used prior to referral for multidisciplinary team evaluation.
- 006.01B2 The SAT or comparable problem solving team shall utilize and document problem solving and intervention strategies to assist the teacher in the provision of general education.
- 006.01B3 If the student assistance team or comparable problem solving team feels that all viable alternatives have been explored, a referral for multidisciplinary evaluation shall be completed. A referral shall include information from the SAT or comparable problem solving team, meeting the requirements of 92 NAC 51-006.01B and a listing of the members of the SAT or comparable problem solving team.
- 006.02B Consistent with the consent requirements in 92 NAC 51-009.08A, a parent of a child, the Nebraska Department of Education, another State agency or a local school district or approved cooperative or nonpublic school may initiate a request for an initial evaluation to determine if the child is a child with a disability.
- 006.02C Verification criteria and procedures
- 006.02C1b Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is

clearly not feasible to so provide or administer.

- 006.02C4 School districts and approved cooperatives must ensure materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
- 006.03B For children attending nonpublic schools, an administrator of the nonpublic school or a designated representative of the nonpublic school shall be a member of the MDT.
- 006.03C In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determining factor is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 614(a)(5)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), lack of instruction in math, or limited English proficiency.
- 015.03B1 Each school district or approved cooperative must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in nonpublic, including religious, elementary schools and secondary schools located in the school district or approved cooperative, in accordance with 92 NAC 51-015.03B2 through 015.03B5.
- 015.03D1 To ensure timely and meaningful consultation, a school district or approved cooperative must consult with representatives of nonpublic schools located in the school district or

approved cooperative and representatives of parents of parentally-placed nonpublic school children with disabilities attending such schools during the design and development of special education and related services (FAPE and equitable services) for the children regarding the following:

- 015.03D1a The child find process, including:
 - 015.03D1a1 How parentally-placed nonpublic school children suspected of having a disability can participate equitably; and
 - 015.03D1a2 How parents, teachers, and nonpublic school officials will be informed of the process.

Allegations

The District failed to comply with its Child Find obligations under the IDEA as to Students A, B, C and D, and all other similarly situated students at the School. The District failed to: conduct an initial special education evaluation after the School and/or the parents of Students A, B, C and D made verbal and/or written requests for an evaluation to the District; properly implement its three-tier model of student interventions; meaningfully consult with a representative of the School during the design and development of special education and related services for students with disabilities at the School regarding the Child Find process; conduct special education evaluations in a student's native language; and failed to include an administrator of the School or a designated representative as a member of the MDT.

Complainant's Position

The School is a non-public private religious school which has a number of students currently receiving special education services from the District, and many additional students who are struggling academically and have been referred to the Multi-Tiered System of Supports (MTSS). The School is struggling with understanding the Child Find process utilized by the District to identify and

evaluate students with disabilities who are in need of special education services. The Complainant alleges that the District's MTSS process is too slow and not consistent and the District's process is having the effect of delaying or denying special education evaluations to eligible students. The Complainant alleges that the District has failed to timely conduct special education evaluations for students whose parents have requested an evaluation. The Complainant further alleges that, with respect to Student A, the District failed to conduct Student A's special education evaluation in Student A's native language. Finally, the Complainant alleges that the District has failed to meaningfully consult with a representative of the School regarding Child Find at the School and has failed to include an administrator or a representative of the School on the District's MDT.

District Response

The District's position is that Students A, B, C, and D have been referred to the SAT process by School staff and have been receiving interventions, but, except in the case of Student A, neither the parents nor the School, via the SAT, have requested an evaluation verbally or in writing after the referral to the SAT. The District conducted an initial evaluation for Student A, and the MDT determined that Student A did not qualify for special education services. The District is required to use the SAT process to utilize and document interventions for a student prior to a referral for a MDT evaluation. Once the SAT believes that all viable alternatives have been explored a referral for multidisciplinary evaluation shall be completed. According to guidance from the NDE, Nebraska law does not specify the length of time or number of strategies to be attempted by the SAT. The District, in tandem with School, is working diligently through the SAT process with Students A, B, C, and D.

Summary and Conclusions

Issues #s 1(a) and 1(c)

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 C.F.R. § 300.1(a); 92 NAC 51-006.01A. The IDEA and its implementing regulations, and state rules, use the term "Child Find" to describe the affirmative and continuing obligation of school districts to identify, locate and evaluate all children with disabilities residing within the district's jurisdictional boundaries who are in need of special education and related services. 34 C.F.R. § 300.111; 92 NAC 51-003.07. In Nebraska, each school district or approved cooperative must also locate, identify, and evaluate all children with disabilities who are enrolled by their parents in nonpublic, including religious,

elementary schools and secondary schools located in the school district or approved cooperative, in accordance with 92 NAC 51-015.03B2 through 015.03B5. 92 NAC 51-015.03B1. The child find process must be designed to ensure the equitable participation of parentally-placed nonpublic school children and an accurate count of those children. 92 NAC 51-015.03B2. In carrying out the child find requirements; the school district or approved cooperative must undertake activities similar to the activities undertaken for public school children. 92 NAC 51-015.03B3. The requirements of Child Find apply to, among others, students who are suspected of being students with a disability and who are in need of special education and related services, even though they are advancing from grade to grade. 34 C.F.R. §§ 300.101(a), 300.111(c)(1); 92 NAC 51-006.01A2.

The obligation to evaluate arises when there is a reason to suspect a disability and reason to suspect that the disability is adversely affecting a child's educational performance so that the child needs special education services. The threshold for "suspicion" is relatively low. The key is not whether the child is actually qualified, but whether the child should be referred for an evaluation. Department of Educ., State of Hawaii v. Cari Rae S., 158 F. Supp. 2d 1190, 1194 (D. Hawaii 2001); School Bd. of the City of Norfolk v. Brown, 769 F. Supp. 2d 928, 942 (E.D. Va. 2010). In an opinion from the Ninth Circuit, which is persuasive, if not precedential authority, the court held that a disability is suspected when the district is put on notice that symptoms of disability are displayed by the child. See Timothy O. v. Paso Robles Unified Sch. Dist., 822 F.3d 1105, 1120 (9th Cir. 2016). Notice may come in the form of expressed parental concerns about a child's symptoms, expressed opinions by informed professionals, or less formal indicators, like the behaviors in and out of the classroom. Id. at 1121. A school's ineffective use of interventions and lack of a positive response to interventions may also trigger the child find obligation. Spring Branch Indep. Sch. Dist. v. O.W., 961 F.2d 781, 793-94 (5th Cir. 2020).

Consistent with the consent requirements in 92 NAC 51-009.08A, a parent of a child, the Nebraska Department of Education, another State agency or a local school district or approved cooperative or nonpublic school may initiate a request for an initial evaluation to determine if the child is a child with a disability. 92 NAC 51-006.02B. Upon receipt of a request for an evaluation, the district or approved cooperative must respond within a reasonable timeframe. The response may not be delayed due to the district's Response to Intervention process. See Letter to Ferrara, 60 IDELR 46 (OSEP 2012).

Once the district or approved cooperative has reason to suspect that a student is a child with an IDEA disability and may need special education, it must take

steps to ensure that the child receives a full and individual evaluation. 34 C.F.R. § 300.301(a); 92 NAC 51-006.02B1. The district or approved cooperative must then conduct the initial evaluation within 45 school days of receiving parental consent. 92 NAC 51-009.04A1. The child find process must be completed in a time period comparable to that for children attending public schools in the school district or approved cooperative consistent with 92 NAC 51-006.02. 92 NAC 51-015.03B5. There are two exceptions to the 45 school-day evaluation timeline: (1) if the parent of a child repeatedly fails or refuses to produce the child for the evaluation or (2) a child enrolls in a school served by the school district or approved cooperative after the relevant timeline in 92 NAC 51-009.04A1 has begun and prior to a determination by the child's previous school district or approved cooperative as to whether the child is a child with a disability. 92 NAC 51-009.04A1a. Certainly, there are many occasions when the failure to timely conduct an evaluation can be the fault of the parents and not the district. However, federal regulations and state rules require prompt and timely actions on behalf of public agencies following a referral for a special education evaluation except in the two above-mentioned situations.

In contrast, the process a district or approved cooperative must follow upon receipt of a request from a parent for a special education evaluation, is more directed. In the "Family Guide to Special Education in Nebraska" put out by the Nebraska Department of Education, it provides that "parents can make a written request for a special education evaluation at any time during the district's attempt to provide interventions/support. The school district needs your written consent to complete this evaluation." While it is true, and generally advisable, that parents can make a written request for an evaluation, neither the federal regulations nor State Rule 51 specifically require that the referral, or parental request, for a special education evaluation be in writing. However, parents and school staff should keep in mind that it is more difficult to document a verbal request than it is a written request. With respect to consent, the NDE guidance above accurately states that parental consent for a district to conduct a special education evaluation is required to be in writing. 34 CFR § 300.9; 92 NAC 51-003.09.

The IDEA Federal regulations and State Rule 51 contain provisions with specific timelines regarding an evaluation requested by a parent. State Rule 51 provides that Referral, notice to parents (See 92 NAC 51-009.05), and parental consent, shall be completed within a reasonable period of time. The initial multidisciplinary team evaluation shall be completed within 45 school days of receiving parental consent for the evaluation. (Emphasis added.) The federal regulations provide that the initial evaluation must be conducted within 60 days

of receiving parental consent for the evaluation or if the state establishes a time frame within which the evaluation must be conducted, within that timeframe. 34 CFR §300.301(c)(1). These provisions make sense in light of the fact that an evaluation may only be conducted by a district following receipt of written consent by the parent. While it is true that the NDE, another state agency or a local school district or approved cooperative or nonpublic school may initiate a request for initial evaluation, the evaluation cannot go forward without the consent of the parent. 92 NAC 51-006.02B. In other words, while a referral for an evaluation can be made by a non-parent, there is no specific timeline for the District's response, only that it must be within a reasonable timeframe and not inappropriately delayed by the district's SAT process.

The IDEA and State Rule 51 provide that a school district or approved cooperative must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in 92 NAC 51-009.04A1, unless extended by mutual written agreement of the child's parents and a team of qualified professionals, as described in 92 NAC 51-006.04K2, if, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction as described in 92 NAC 51-006.04K5a, and whenever a child is referred for an evaluation. 34 C.F.R. § 300.309(c), 92 NAC 51-009.04A1 (emphasis added). The IDEA and state rules do not specify a time within which parental consent must be obtained. However, the school district or approved cooperative must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation. 92 NAC 51-009.08A3. Delay by a district in seeking parental consent acts to circumvent the timelines for evaluation, and it is not acceptable for a district to wait several months before seeking consent for an evaluation. 71 Fed. Reg. 46540 (2006). See, e.g., District of Columbia Pub. Schs., 12 ECLPR 109 (SEA DC 2015) (finding that the district denied a first-grader FAPE when it failed to provide his parent with referral and consent forms in response to her oral evaluation request in a timely manner). Thus, school districts "would be well-advised to request parental consent for evaluations as soon as possible." Denver Pub. Sch. Dist. 77 IDELR 57 (SEA CO 2020) (citing Letter to Anonymous, 50 IDELR 258 (OSEP 2008)). The fact that a school may have been implementing interventions with the student during this time, or that the school was experiencing a large number of referrals for evaluation, are not valid excuses for the delay.

This complaint investigation presents a mix of systemic and student-specific issues related to Child Find activities by the District for certain parentally placed nonpublic school children enrolled at the School. The complainants in this

matter include the Principal at the School and parents of children attending the School. Issue 1(a) involves Students A, B, C and D, Issue 1(c) involves Student A, and Issues 1(b), 1(d) and 1(e) involves Students A, B, C and D and all other similarly situated students at the School. All of these students have been referred to, and participated in, the District's SAT/MTSS process, which is a multi-tiered system of student supports that provides interventions for students who are struggling academically at the School. Students A-D will be discussed in turn, followed by a discussion of the broader, systemic, issues involving the similarly situated students at the School. The legal authorities cited above generally apply to all of the students discussed herein.

Student A.

Student A transferred to the School from another nonpublic school at the beginning of the 2020/2021 school year. Student A received ELL services from the District at the previous nonpublic school. The facts indicate that Student A was struggling in school with Math and Reading and was referred to the SAT in the Fall of 2020. In February 2021, the SAT referred Student A for a special education evaluation. Student A's MDT met on April 22, 2021, to determine Student A's eligibility for special education services. The April 22, 2021, MDT Report states that Student A did not meet the eligibility criteria set forth in Rule 51. However, the April 22, 2021, MDT Report states that "in making a determination of eligibility, the team ruled out lack of appropriate instruction in reading, lack of instruction in math, and limited English proficiency as determining factors." However, in the section entitled "Interpretation of Language Results," the Report states as follows: "In summary, [the Student] shows a variety of strengths and weaknesses in language skills. [The Student] has good ideas and seems to understand the information being presented. [The Student] struggles with using specific vocabulary to convey thoughts and ideas and may not be able to interpret inferred or subtle information correctly. In order to verify as a student with a speech-language impairment, language deficits should be evident in both the native and second languages. Because an interpreter was not available, the SLP was unable to adequately assess [the Student's] native language skills and therefore is unable to make a true determination about language skills at this time." The MDT Report explains the results, in part, as follows: "It was not feasible to complete the MDT evaluation in the child's predominant or native language or other mode of communication (006.02B2); [Student A's] native language is [foreign language]. The MDT team did not have access to a [foreign language] interpreter; therefore, assessments were completed in English."

State Rule 51 provides that verification criteria and procedures must be provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to so provide or administer. 92 NAC 51-006.02C1b. School districts and approved cooperatives must ensure materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills. 92 NAC 51-006.02C1b. In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determining factor is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 614(a)(5)(A) of the Individuals with Disabilities Education Act of 2004 (See Appendix A), lack of instruction in math, or limited English proficiency. 92 NAC 51-006.03C.

It is concluded that the outcome of this issue regarding the validity of Student A's evaluation really depends on whether it was feasible to provide and administer the evaluation in Student A's native language. Whether Student A ultimately acquires functional language skills in English is not relevant to whether the April 2021, evaluation was conducted appropriately. The District argues that it did not have a [foreign language] interpreter in the District to interpret the assessments for Student A. However, in June 2021, the District informed the School that the District was aware of a [foreign language] language interpreter who a neighboring district contracted with. The District was able to utilize the services of this [foreign language] interpreter to conduct a Native Language Sample on Student A in November, 2021. This fact appears to mitigate against the District's argument that it was not feasible to have a [foreign language] interpreter for Student A's evaluation. The results of the Native Language Sample taken by the interpreter seven months after Student A's evaluation, indicate that Student A's English skills have improved significantly. This begs the question whether the April 22, 2021, evaluation results accurately reflect Student A's eligibility for special education services, or not. The one conclusion that does appear strongly from the facts of this situation, is that the District failed to follow Rule 51's requirements for conducting a special education evaluation on a non-English speaking student.

Therefore, in view of the facts found above, and conclusions herein, it is concluded that, as to Student A, the District failed to conduct an appropriate initial special education evaluation for Student A by failing to evaluate Student A in Student A's native language, as required by 92 NAC 51-006.02C1b, and

006.02C4. As to Issues No. 1(a), and 1(c) regarding Student A, the District is cited.
Corrective action is required.

Corrective Action

1. Within 10 days from the date of this report, the District will schedule and hold a meeting to do the following:
 - a. Examine the English language skills of Student A to determine whether the evaluation for special education must be conducted in Student A's native language or in English. This determination must not be based on interpreter availability or a backlog of referrals.
 - b. Determine what assessments must be conducted to determine if the student is a student with a disability and what special education and related services the student may need to make progress in the general education curriculum and the Student's goals.
 - c. Obtain informed written consent to conduct the special education evaluation.
 - d. The Consent and notes from the meeting will be sent to Brenda Tantow at nde.speddr@nebraska.gov no later than May 20, 2022 for verification the corrective action was completed.
 - e. The MDT evaluation will be conducted within 60 calendar days of the consent.
 - f. Results of the MDT must be sent to Brenda Tantow at nde.speddr@nebraska.gov within 10 days of the completion of the evaluation for verification the corrective action was completed.
2. Given 30 calendar days from the date of potential eligibility and an IEP is developed for Student A, the IEP team shall determine a plan for compensatory services needed by Student A using the information provided under the heading Calculating Compensatory Services.
 - a. Compensatory services must be completed by March 9, 2023. Student absence or refusal of the parent to make the child available shall result in a waiver of service scheduled for that day. Missed services due to staff absences must be rescheduled. Any recovery services declined or not utilized by March 9, 2023, shall be deemed waived (assuming the District has made a good faith effort to timely commence and provide all compensatory services).
 - b. Schedule for proposed compensatory special education and related services must be agreed upon by the Parent and District. The schedule must be provided to Brenda Tantow at nde.speddr@nebraska.gov within 10 days of the IEP noted in number 2 above.

- c. Services logs must be provided to Brenda Tantow at nde.speddr@nebraska.gov on a monthly basis including verification of denials of service, adjustments to the compensatory education services, and implementation of the services until all compensatory services have been provided.
3. See Corrective Action under Systemic below.

Calculating Compensatory Services

1. Using the initial IEP that was drafted subsequent to the MDT, the IEP Team needs to calculate the total weekly minutes of special education services and each related services that were determined to be needed by the student to receive FAPE.
 - a. Example – If a special education service was documented as 30 minutes per day at five days per week, the minutes per week would calculated to be 150 minutes. This would need to be repeated for each related service required by the IEP.
2. The IEP Team would then need to calculate the total number of minutes of special education services and each related service for which the student did not receive those services. This is calculated by multiplying the weekly minutes for each service in step 1 by 24 (i.e., 36 school weeks less the maximum duration that is allowed to conduct an evaluation and draft an initial IEP).
 - a. Example – The 150 minutes of special education services calculated in Step 1 are multiplied by 24, the resulting product, 3600 minutes, represents the total number of minutes of special education for which the student did not receive those services. This calculation would need to be repeated for each related service required by the IEP.
3. Next, the IEP Team needs to calculate the compensatory service minutes for special education services and each related service for which the student did not receive those services. Using the minutes value calculated for special education services and each related service in step 2, multiple each value by 0.50. Each product represents the amount of compensatory services that need to be provided to the Student. The amount identified here represents compensatory services that can reasonably be provided in addition to the services the student would receive as required by the current IEP taking into consideration the amount of time lost and the amount of time needed to assist the student to recoup what was lost as a result of not having services.

- a. Example – The 3600 minutes of special education services calculated in Step 2 are multiplied by 0.50 to obtain a product of 1800 minutes of compensatory services that need to be provided to the student to address the special education services that were not received by the student. This calculation would need to be repeated for each related service required by the IEP.
4. The values calculated in Step 3 representing the total number of compensatory services minutes for special education services and each related service that need to be provided to the student. The IEP Team is responsible for developing a plan that ensures all compensatory services are provided to the student. All compensatory services should be provided in full by March 9, 2023.

Student B

Student B started attending the School in Kindergarten. The facts indicate that Student B has an extreme reluctance to speak English, which is not his native language, and Student B has been determined to be selective mute. From the fall of 2020, to the Spring of 2022, all reports indicate that Student B's willingness to speak English at school has improved significantly. Student B's sister, who speaks English, reports that she speaks English to Student B at home and [the Student] understands her. The School reports that Student B has begun speaking English in short sentences across all classes. Student B's grades have improved from 1st grade, but not significantly.

The District has indicated that the parents and the School, via the SAT, have not made a verbal and/or written request for Student B to be evaluated. The documentation does not include a written request, or any documentation of a verbal request, to the District by the parents of Student B for a special education evaluation. In fact, Student B's parents have been reluctant to have the School or the District provide any additional services for Student B. The District suggested that Student B attend a District school part time for ELL services, but the parents rejected this suggestion. The documentation does contain numerous instances of School staff requesting an evaluation for Student B in meetings with the MTSS team, and in March 2022, in response to a request by the District for a list of students who needed evaluations. In response to the referrals by the School at the MTSS meetings, the District repeatedly sent Student B back to the SAT process and recommended additional interventions for Student B. Regardless of the motivation, the evaluation was delayed due to the back and forth between the MTSS team and the School. Student B has made progress with selective mutism and has made very slight progress on core subject grades. In English, Reading and Spelling, which clearly involve the use of

the English language, Student B has consistently earned Cs, Ds and Fs. However, in Math, Science and Social Studies, Student B's grades are generally higher.

Based on the District's initial statement that the Student is a "selective mute", which identifies the Student with a condition that could interfere with the Student's ability to access and progress in the general education curriculum, the District's determination to continue the SAT process, actions taken based on the assumption of selective mutism, and the Student's failing grades in reading and spelling, the District needed to either request consent for evaluation based on the School's request or provide a Prior Written Notice (PWN) as to the determination an evaluation would not be conducted. As to Issue No. 1(a) regarding Student B, the District is cited. Corrective action is required.

Corrective Action

1. Within 10 days from the date of this report, the District will schedule and hold a meeting to do the following:
 - a. Obtain informed written consent to conduct the special education evaluation.
 - b. The Consent and notes from the meeting will be sent to Brenda Tantow at nde.speddr@nebraska.gov no later than May 20, 2022 for verification the corrective action was completed.
 - c. The MDT evaluation will be conducted within 60 calendar days of the consent.
 - d. Results of the MDT must be sent to Brenda Tantow at nde.speddr@nebraska.gov within 10 days of the completion of the evaluation for verification the corrective action was completed.
2. Given 30 calendar days from the date of potential eligibility and an IEP is developed for Student B, the IEP team shall determine plan for compensatory services needed by Student B using the information provided under the section heading Calculating Compensatory Services.
 - a. Compensatory services must be completed by October 31, 2022. Student absence or refusal of the parent to make the child available shall result in a waiver of service scheduled for that day. Missed services due to staff absences must be rescheduled. By October 31, 2022, any compensatory services declined by the Parent shall be deemed waived (assuming the District has made a good faith effort to provide all compensatory services).
 - b. Schedule for proposed compensatory services must be agreed upon by the Parent and District. Schedule of the compensatory services must be provided to Brenda Tantow at

- nde.speddr@nebraska.gov within 10 days of the IEP noted in number 2 above.
- c. Services logs must be provided to Brenda Tantow at nde.speddr@nebraska.gov on a monthly basis, including verification of parental denials of service, student absences, service provider absences, adjustments to the compensatory education services, and records noting the implementation of the services until all compensatory services have been provided.
 3. See Corrective Action under Systemic below.

Calculating Compensatory Services

1. Using the initial IEP that was drafted subsequent to the MDT, the IEP Team needs to calculate the total weekly minutes of special education services and each related services that were determined to be needed by the student to receive FAPE.
 - a. Example – If a special education service was documented as 30 minutes per day at five days per week, the minutes per week would calculated to be 150 minutes. This would need to be repeated for each related service required by the IEP.
2. The IEP Team would then need to calculate the total number of minutes of special education services and each related service for which the student did not receive those services. This is calculated by multiplying the weekly minutes for each service in step 1 by 8 (i.e., the number of weeks from the date the complaint was filed through the date of this Report).
 - a. Example – The 150 minutes of special education services calculated in Step 1 are multiplied by 8, the resulting product, 1200 minutes, represents the total number of minutes of special education for which the student did not receive those services. This calculation would need to be repeated for each related service required by the IEP.
3. Next, the IEP Team needs to calculate the compensatory service minutes for special education services and each related service for which the Student did not receive those services. Using the minutes value calculated for special education services and each related service in step 2, multiple each value by 0.50. Each product represents the amount of compensatory services that need to be provided to the Student. The amount identified here represents compensatory services that can reasonably be provided in addition to the services the Student would receive as required by the current IEP taking into consideration the amount of time lost and the amount of time needed

- to assist the Student to recoup what was lost as a result of not having services.
- a. Example – The 1200 minutes of special education services calculated in Step 2 are multiplied by 0.50 to obtain a product of 600 minutes of compensatory services that need to be provided to the student to address the special education services that were not received by the student. This calculation would need to be repeated for each related service required by the IEP.
4. The values calculated in Step 3 representing the total number of compensatory services minutes for special education services and each related service that need to be provided to the Student. The IEP Team is responsible for developing a plan that ensures all compensatory services are provided to the Student. All compensatory services should be provided in full by October 31, 2022.

Student C

School records indicate that at the beginning of Kindergarten, August 2020, Student C began exhibiting some negative behaviors in school. It was also noted that Student C is struggling with Reading, and some reading support was provided. In September 2021, at the beginning of Student C's 1st grade year, the School noted additional and more significant negative behaviors by Student C. Student C was still having problems with Reading, but also began to struggle with Math. In September, 2021, the School made a referral for Student C to the SAT. The referral form indicated that the primary concern for Student C was behavior, but only one choice was allowed on the form. The District's behavior team began conducting a series of observations of Student C in the classroom beginning with two in November 2021. Before the Winter Break in December 2021, the parents of Student C had [the Student] evaluated by the pediatrician and Student C was diagnosed with ADHD and prescribed medication. At the MTSS meeting in December 2021, the School indicated to the team that the team "needed to move on him" because Student C was so far behind in reading and math. After Student C began taking medication, the School noted that his behaviors reduced significantly. The School informed the MTSS team that the School was no longer concerned with Student C's behavior, but they were concerned with academics. The District's behavior team came to the School and observed Student C in January and also in March 2022. After the March observation, the District's behavior team stated that Student C's behaviors were no longer a problem and the referral to the behavior team was closed.

The District has indicated that the parents and the School, via the SAT, have not made a verbal and/or written request for Student C to be evaluated. The

documentation does not include a written request, or any documentation of a verbal request, to the District by the parents of Student C for a special education evaluation for Student C. The documentation does contain numerous instances of School staff requesting an evaluation for Student C in meetings with the MTSS team, and in March 2022, in response to a request by the District for a list of students who needed evaluations. In response to the referrals by the School at the MTSS meetings, the District repeatedly sent Student C back to the SAT process and recommended additional interventions for Student C.

It is difficult to conclude that the District's actions regarding Student C were taken to delay or deny Student C an evaluation. Student C's behavior has admittedly improved significantly since he began taking medication for ADHD, and Student C has made progress on his core subject grades from the second to the third Quarter of the 2021/2022 school year. In the second Quarter, Student C's grades were A, B, C-, D+, F, F. In the third Quarter, Student C's grades were A, A, B, B, B, D+. In view of these facts and absent a parent request, the complaint investigator is reluctant to conclude that the District's refusal to schedule a MDT meeting for Student B is clearly a violation of requirements of Rule 51. At this point it is, again, a close call. It is concluded that if Student C is not able to make progress on his reading, or if his behaviors interfere with his or other students' education, and the School makes a referral to the MTSS team for an evaluation, the District should schedule an MDT meeting for Student B. Of course, if the parent of Student C requests an evaluation, the District should schedule an MDT meeting for Student C or provide PWN of the District's refusal to evaluate.

Therefore, in view of the facts found above, and conclusions herein, it is concluded that, as to Student C, the District did not fail to conduct an initial special education evaluation after the School made verbal and/or written requests for an evaluation of Student C to the District. However, the District did not follow proper procedures when the Parent requested an evaluation to determine whether or not the student was a student with a disability and required special education and related services. The issue of the procedural breach that caused the district's error is being addressed corrective action regarding the policy and procedures update required in corrective action below. As to Issue No. 1(a) regarding Student C, the District is not cited.

Corrective action is not required.

Student D.

Student D was enrolled in the School in October, 2021, and was referred to the SAT within several days thereafter. School staff asked the District to have Student

D evaluated by the Autism Team. In response, the District had the parent of Student D sign an authorization for the school psychologist to observe Student D's behaviors at the school in order to prepare an FBA and a BIP. The parent of Student D reports that she originally thought that she was signing consent to have Student D evaluated by the District. On November 9, 2021, an MTSS meeting was held with the School, and the team discussed Student D. At the meeting, the School Principal requested an evaluation for Student D. The MTSS team did not agree to move to an evaluation, and indicated that in order to have the District's Autism Team work with Student D [the Student] would need to first be verified, and [the Student] could not be verified until an FBA and a BIP were developed and then six weeks of behavior monitoring and 6 to 8 weeks or more of interventions were provided. The District later clarified in an email that what was said at the meeting was that an FBA and a BIP needed to be developed prior to making a referral to the Autism Team. The following day the school psychologist did come to the School to observe Student D, and thereafter prepared and FBA and a draft of a BIP for Student D.

In November 2021, the parent of Student D had [the Student] evaluated by a pediatrician and a psychologist. The results of the evaluations were that Student D was diagnosed with ADHD, attachment disorder and ASD. On December 2, 2021, the parent of Student D called the District's Student Services office and asked what she needed to do in order to have Student D evaluated for an IEP, and the District told her she needed contact the Special Education Coordinator at the School. The parent of Student D contacted the School Principal, who is the Special Education Coordinator at the School, and asked what more she needed to do to have Student D evaluated. At the December 21, 2021, MTSS meeting, the School Principal stated that the parents of Student D had requested an evaluation at the District and she saw no reason to hold off on an evaluation. The MTSS team recommended additional interventions and a behavior observation. The District made a referral to the Autism Team to conduct observations of Student D. In January 2022, the parent of Student D and the School Principal requested that the District provide a timeline of actions that needed to occur in order to have an evaluation. The District informed the School and the parent that what needed to take place was an observation by the Autism Team, then additional programming recommendations for the School that need to be implemented along with data collection to determine growth, then a follow-up observation by the Autism Team, then further recommendations or an MDT meeting to discuss the possibility of an evaluation. The District further informed them that an outside, medical diagnosis of Autism could be considered if the team moved to an evaluation, but it would not solely support an educational verification of Autism. From December through March

of the 2021/2022 school year. The MTSS team moved forward with observations, interventions and data collection for Student D. Student D's Report Card for the second and third Quarters of the 2021/2022 school year indicate that Student D earned mostly As and Bs, and several Cs in core subjects.

In its Letter of Response dated April 7, 2022, the District alleges that the parent of Student D and the School, via the SAT, have not made a verbal and/or written request to the District for Student D to be evaluated. This statement is not correct. The facts clearly indicate that there are several documented instances of School staff requesting an evaluation for Student D in meetings with the MTSS team, as well as in emails. In addition, in response to the District's Special Education Supervisor's February 22, 2022, request to identify all students at the School who need an evaluation before the end of the year, the Principal specifically identified Student D as a student who needs an evaluation. It is true that the documentation does not include a written request for an evaluation by the parents of Student D, via the SAT, prior to the filing of the Complaint.

However, it is concluded that the parents of Student D did make a verbal request to the District for a special education evaluation for Student D on December 2, 2021. It is concluded that following the parent's December 2, 2021, verbal request to the District for an evaluation of Student D, the District did not schedule an MDT meeting to discuss the evaluation, and did not provide prior written notice to the parent regarding a refusal by the District to evaluate Student D. It is noted that on March 31, 2022, after the filing of the Complaint, the parents of Student D sent an email to the District's Special Education Supervisor which states, in part, as follows: "I would like to again formally request an evaluation for IEP services. I have included a letter from [Student D's psychologist] expressing the need for an evaluation for [Student D]." Thereafter, the District did hold an MDT meeting, as requested and received consent from parents conduct an evaluation, and an MDT meeting has been scheduled for May 16, 2022.

Therefore, it is concluded that the District failed to conduct an initial special education evaluation after the School and the parents of Students D made verbal and/or written requests for an evaluation to the District. As to Issue # 1(a) regarding Student D, the District is cited. **Corrective action is required.**

Corrective Action

As a result of an MDT already being scheduled, it is anticipated that the MDT will be conducted as reported and the following corrective action is required.

1. By May 23, 2022, the District will send the results of Student's MDT to Brenda Tantow to verify the MDT took place.

2. Given 30 calendar days from the date of potential eligibility and an IEP is developed for Student D, the IEP team shall determine a plan for compensatory services needed by Student D using the information provided under the heading Calculating Compensatory Services.
 - a. Compensatory services must be completed by October 31, 2022. Student absence or refusal of the parent to make the child available shall result in a waiver of service scheduled for that day. Missed services due to staff absences must be rescheduled. Any recovery services declined or not utilized by October 31, 2022 shall be deemed waived (assuming the District has made a good faith effort to provide all compensatory services).
 - b. Schedule for proposed compensatory special education and related services must be agreed upon by the Parent and District. The schedule must be provided to Brenda Tantow at nde.spddr@nebraska.gov within 10 days of the IEP noted in number 2 above.
 - c. Service logs must be provided to Brenda Tanto at nde.spddr@nebraska.gov on a monthly basis including verification of denials of service, adjustments to the compensatory education services, and implementation of the services until all compensatory services have been provided.
3. See Corrective Action under Systemic, below.

Calculating Compensatory Services

1. Using the initial IEP that was drafted subsequent to the MDT, the IEP Team needs to calculate the total weekly minutes of special education services and each related services that were determined to be needed by the Student to receive FAPE.
 - o Example – If a special education service was documented as 30 minutes per day at five days per week, the minutes per week would be calculated to be 150 minutes. This would need to be repeated for each related service required by the IEP.
2. The IEP Team would then need to calculate the total number of minutes of special education services and each related service for which the student did not receive those services. This is calculated by multiplying the weekly minutes for each service in step 1 by 7 (i.e., 7 weeks is the amount of potential instruction missed had the consent for evaluation been obtained upon Parent request on December 2, 2021 minus the 60 calendar days allowed to complete said evaluation and 30 days to draft an IEP and begin services).

- Example – The 150 minutes of special education services calculated in Step 1 are multiplied by 7, the resulting product, 1050 minutes, represents the total number of minutes of special education for which the student did not receive those services. This calculation would need to be repeated for each related service required by the IEP.
- 3. Next, the IEP Team needs to calculate the compensatory service minutes for special education services and each related service for which the student did not receive those services. Using the minutes value calculated for special education services and each related service in step 2, multiple each value by 0.50. Each product represents the amount of compensatory services that need to be provided to the Student. The amount identified here represents compensatory services that can reasonably be provided in addition to the services the student would receive as required by the current IEP taking into consideration the amount of time lost and the amount of time needed to assist the student to recoup what was lost as a result of not having services.
 - Example – The 1050 minutes of special education services calculated in Step 2 are multiplied by 0.50 to obtain a product of 525 minutes of compensatory services that need to be provided to the student to address the special education services that were not received by the student. This calculation would need to be repeated for each related service required by the IEP.
- 4. The values calculated in Step 3 representing the total number of compensatory services minutes for special education services and each related service that need to be provided to the student. The IEP Team is responsible for developing a plan that ensures all compensatory services are provided to the student. All compensatory services should be provided in full by October 31, 2022.

Systemic (Students A, B, C and D and all similarly situated students at the School).

State Rule 51 provides that for a school age student, a general education student assistance team or a comparable problem-solving team shall be used prior to referral for multidisciplinary team evaluation. 92 NAC 51-006.01B1. The SAT or comparable problem-solving team shall utilize and document problem solving and intervention strategies to assist the teacher in the provision of general education. 92 NAC 51-006.01B2. If the SAT or comparable problem-solving team feels that all viable alternatives have been explored, a referral for multidisciplinary evaluation shall be completed. A referral shall include information from the SAT or comparable problem-solving team, meeting the

requirements of 92 NAC 51-006.01B and a listing of the members of the SAT or comparable problem-solving team. 92 NAC 51-006.01B3. However, as noted above, parents can make a written request for a special education evaluation at any time during the district's attempt to provide interventions/support. 92 NAC 51-006.03F2h(3). If the district or approved cooperative agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child consistent with 34 C.F.R. §§ 300.301 through 300.311 and 92 NAC 51-006. If the public agency declines the parent's request for an evaluation, the public agency must issue prior written notice in accordance with 34 C.F.R. § 300.503, 92 NAC 51-009.05. The parent can challenge this decision by requesting a due process hearing.

The provisions in State Rule 51 regarding the use of the SAT process, do not specify the length of time or number of interventions that a team may or must utilize prior to a referral for MDT evaluation. However, the use of the SAT process to inappropriately delay or deny an evaluation could result in a violation of a student's right to FAPE. The U.S. Department of Education's Office of Special Education and Rehabilitative Services issued a memorandum dated January 21, 2011, entitled: "A Response to Intervention (RTI) Process Cannot Be Used to delay or deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)." Memorandum to State Directors of Special Education OSEP 11-07, 56 IDELR 50 (OSEP 2011). OSEP references 34 C.F.R. § 300.301(b) regarding evaluations, and states that the use of RTI strategies cannot be used to delay or deny a full evaluation. See *El Paso Independent School District v. Richard R.*, 567 F. Supp. 2d 918, 941, 947–48 (W.D. Tex. 2008).

The facts set forth above in the systemic portion of the Investigative Findings clearly indicate that the District's SAT/MTSS practices have had the effect of delaying and/or denying a timely evaluation to students at the School who are in the SAT process or to students whose parents requested an evaluation. The District's current SAT referral procedures result in unreasonable delays in evaluation of students by requiring multiple rounds of interventions, over many months, before approval of the SAT/MTSS team to begin the evaluation process, with 81% of the SAT referrals by the School taking over 60 days to be accepted by the SAT/MTSS team. The numbers are worse for parent requests for an evaluation, where 100% of the parent requests took over 60 days for the District to obtain consent from the parents and an average of 13.3 months to conduct the evaluation.

The data provided by the School and the District regarding the SAT process at the School indicates that for the 21 relevant students at the School (out of 42 total) who were referred to the SAT process during the time in question, there

were 11 students who received an evaluation (8/16 School referrals and 3/5 parental requests). The District's procedures result in unreasonable delays even though the decision to refer for evaluation has already been made by the SAT teams. The data indicate that 100% of the time the evaluation of a student occurred 90 days or longer following the SAT referral, and the average number of months is 17.9. For parent requests, the evaluation occurred over 90 days from the parent request 100% of the time. There are many instances of evaluations being conducted hundreds of days after the initial referral, up to a high of 18 months in one case. Moreover, the District cannot avoid a violation of the 45 school-day timeline for conducting special education evaluations by obtaining informed parental consent just prior to, or on the day that the evaluation is actually conducted. This practice does not comport with the IDEA's requirements for prompt and timely actions to identify, evaluate and determine the eligibility and educational placement of a student with a disability and is clearly contrary to the Federal regulations and State rules, as set forth above. While there is no specific data to prove that a delay in obtaining consent is a consistent practice in the District, the very long delays in conducting evaluations suggests that it is occurring.

Therefore, based upon the above facts and relevant law, it is concluded that the District's practices and procedures regarding the SAT process do have the effect of delaying or denying the provision of special education evaluations to students with disabilities at the School. As to Issue # 1(b) regarding Students A, B, C, D, and all similarly situated students at the School, the District is cited. Corrective action is required.

Corrective Action

1. The District review and revise, if necessary, policies and procedures for ensuring that the District's affirmative identification and evaluation obligations are met within all District schools including (1) timely District decision and response to parent requests for evaluation; (2) timely evaluations arising from parent requests or SAT referrals.
2. The District will provide Brenda Tantow at nde.speddr@nebraska.gov with notes indicating the results of the review and revision, if required, within 30 days from the date of this report.
3. If revisions to the policies were needed, the District will:
 - a. Provide the revised policies to Brenda Tantow 60 calendar days after the date of the Investigation Report for review.
 - b. Notify Brenda Tantow of when the policies will be taken to the local board of education for approval.

- c. Provide verification of acceptance of the new policy by the local board of education within 10 days of the Board Meeting.
4. The District is required to provide training regarding the District obligations regarding Child Find and evaluations which shall include the following:
 - a. The manner in which District staff become aware, or suspect, that a student is a student with a disability who needs an evaluation;
 - b. The federal and state requirements that the SAT process not be used to delay evaluations;
 - c. The different ways that a parent may request an evaluation;
 - d. The requirements for issuing a Prior Written Notice in response to parental request for evaluation; and
 - e. How to maintain documentation of parent requests and provision of Prior Written Notice and Notice of Procedural Safeguards.
5. In addition to those already ordered to be trained in these areas, this training shall be provided to all District and school level general and special education personnel including counselors, instructional coaches, SAT Chairs and SAT members, and special education staff from all nonpublic schools in the District shall be invited to attend. This training shall take place prior to the beginning of the 2022/2023 school year.
6. The District shall provide to NDE the materials for the training two weeks prior to the training for approval.
7. Within seven days of the training, the District must provide to Brenda Tantow at nde.speddr@nebraska.gov sign-in sheets verifying who attended, the role they play and that the training was conducted. The District should also provide a list of staff who was required to participate in the training.
8. By January 15, 2023, the District will provide Brenda Tantow at nde.speddr@nebraska.gov a list of students who were referred to the SAT process and parents/school staff who requested special educational evaluations. The list must include the dates of referral, dates of requests for special educational evaluations, date consent was received by the district, date MDT was held (if applicable), date of PWN (if applicable), rationale for any evaluations denied (if applicable) for verification of evaluations being held within a reasonable time as required.

Issue # 1(d)

Rule 51 provides, in relevant part, that in order to ensure timely and meaningful consultation, a school district or approved cooperative must consult with

representatives of nonpublic schools located in the school district or approved cooperative and representatives of parents of parentally-placed nonpublic school children with disabilities attending such schools during the design and development of special education and related services for the children regarding the child find process, including how parentally-placed nonpublic school children suspected of having a disability can participate equitably, and how parents, teachers, and nonpublic school officials will be informed of the process. 92 NAC 51-015.03D1(a).

The District argues that in the cases of Students A, B, C, and D, the District has not had the opportunity to consult with School on special education and related services for Students A, B, C, or D because these students have not been verified as students with a disability and currently do not have special education services or related services. However, the above-cited rule does not appear to limit itself to only students with verified disabilities, and this issue indicates that it includes all similarly situated students at the School. The District further argues that it has worked very closely with the School to implement the MTSS process and the interventions recommended by that team. The documentation does appear to indicate that the District has had numerous and ongoing communications with staff and administrators at the School regarding these students via meetings, Zoom, email and phone calls. The documentation further shows that up to December 2021, District staff met with School staff monthly to discuss students involved in the MTSS process as a group. However, in January 2022, the Principal of the School was frustrated by the lack of time (one hour) allowed for each meeting of the MTSS and the School requested that these meetings stop as she felt they were not helpful because the School was not able to discuss all of the student concerns it had. The new process beginning in January 2021, is that the School emails a list of students receiving MTSS services, and the School's concerns, to the District for discussion. District staff meet without School staff present and then provide written guidance and interventions to the School for consideration. In view of the fact that the current MTSS process was chosen by the School, the District does not appear to have failed to schedule and hold meetings with the School to consult with the School regarding Child Find.

It appears that the main frustration of the Principal and staff at the School with the District's SAT/MTSS consultation process is a lack of understanding regarding the District's rubric for determining whether a student in the SAT process has been provided with enough interventions, and/or when enough time or lack of progress has occurred, and/or what actions a parent must take, for the MTSS team to agree to evaluate the student. The documentation contains numerous

communications between the School and the District regarding these very questions, and there does not appear to have been an effective effort on the part of the District to make its child find process more clear or understandable to the School. It appears that the problem is not a lack of communication, but a lack of effective communication. Therefore, it is concluded that the facts of this matter, and the documentation reviewed by the investigator, warrant a conclusion that the District has failed to appropriately consult with the School regarding the child find process, including how parentally placed nonpublic school children suspected of having a disability can participate equitably, and how parents, teachers, and nonpublic school officials will be informed of the process. 92 NAC 51-015.03D1(a). As to Issue # 1(d), the District is cited.

Corrective action is required.

Corrective Action

1. Before the end of the 2021/2022 school year, the District shall schedule a meeting with School's regular and special education staff, SAT interventionists and administrators to discuss this Report and the District's conforming rubric for determining whether a student in the SAT process has been provided with enough interventions, and/or when enough time or lack of progress has occurred with a student in the SAT process, and/or what specific actions a parent can take, for the MTSS team to agree to evaluate the student. Within 30 days from the date of this report, the District will provide Brenda Tantow a copy of the current procedures and copies of the notes and/or minutes from the meeting with the School.

Issue # (1)e

State Rule 51 provides that for children attending nonpublic schools, an administrator of the nonpublic school or a designated representative of the nonpublic school shall be a member of the MDT. 92 NAC 51-006.03B. All of the documentation provided by the School and the District clearly indicates that the District has invited the School Principal and other School staff to attend all MDT meetings conducted by the District, and that School staff has attended these meetings. Therefore, it is concluded that the District did not fail to include an administrator of the School or a designated representative as a member of the MDT. As to Issue # 1(e), the District is not cited. **Corrective action is not required.**

Issue #2

Did the District conduct a reevaluation of Student E for Autism or ADHD at the request of his parents, as required by 92 NAC 51-006.05A?

State rule 92 NAC 51 provides as follows:

- 006.05A2 A school district or approved cooperative shall ensure that a reevaluation of each child with a disability is conducted in accordance with the verification procedures in Section 006 of this Chapter if the child's parents or teacher requests a reevaluation.

Allegations

The District failed to conduct a reevaluation of Student E for autism or ADHD at the request of the parents.

Complainant's Position

The School is a nonpublic private religious school which has a number of students currently receiving special education services from the District, including Student E. The parents of Student E took [the Student] to the pediatrician who provide a note indicating that Student E should be evaluated educationally for Autism and/or ADHD using the ADOS and the BASC assessments. The District informed the School that the District is not using the ADOS evaluation for Autism because of the COVID-19 mask mandates, and that the parents need to request it. The parents of Student E did make a request for a reevaluation to Student E's case manager, and she responded that Student E is receiving everything [the Student] can and asked the parents why more testing was needed. A reevaluation of Student E for Autism and/or ADHD has not been conducted by the District.

District Response

The District's position is that neither the parents of Students E, nor the School, have requested a reevaluation of Student E. The District received a letter from Student E's pediatrician on February 4, 2022, requesting that the District conduct the ADOS or the BASC assessments for Autism and ADHD. At the time, the District was not conducting the ADOS due to the District's mask mandate that was still in force. At Student E's April 4, 2022, IEP team meeting, the School and the parents of Student E agreed that MTSS interventions should be utilized before conducting an evaluation of Student E.

Investigative Findings

1. See above Investigative Findings.

Summary and Conclusions

Rule 51 provides that a school district or approved cooperative shall ensure that a reevaluation of each child with a disability is conducted in accordance with the verification procedures in Section 006 of this Chapter if the child's parents or teacher requests a reevaluation. 92 NAC 51-006.05A2. The rules further provide that a reevaluation cannot occur more than once a year, unless the parent and the district agree otherwise, and must occur at least once every three years, unless the parent and the district agree it is unnecessary. 92 NAC 51-006.05B.

On January 4, 2022, the District reinstated its mask mandate due to COVID-19 protocols in effect due to the rise of positive COVID-19 cases in the community. However, the District's mask mandate expired at midnight on February 18, 2022. There is currently no mask mandate in District buildings.

The School's Complaint alleges that the parents of Student E obtained a note from Student E's pediatrician which recommended that the District conduct the ADOS and BASC assessments on Student E regarding a possible diagnosis of Autism and/or ADHD. The District admits that it received this note on February 4, 2022, from the School and informed the School that it was not then conducting the ADOS assessment due to the mask mandate in effect in the District and that the parents of Student E would need to request it. The School and the parents of Student E have stated that the parents did make a request to Student E's case manager to conduct the assessments. The District's response is that neither the School nor the parents of Student E requested a reevaluation of Student E. However, the complaint investigator finds that the School's and the parents of Student E's statements regarding the parents' request to the case manager is credible. Therefore, it is concluded that the parents' request to Student E's case manager for the District to administer the ADOS and the BASC is a request for a reevaluation of Student E. No other interpretation of these facts makes sense under the circumstances.

Moreover, three other factors weigh heavily on this conclusion. First, the parents of Student E specifically requested that the ADOS be administered, which is what they were informed needed to occur for the assessment to be given. Second, the District well knows that the mask mandate in the District ended on February 18, 2022, 19 days prior to the filing of the Complaint by the School. With that amount of time, the District could certainly have arranged with the School and the parents of Student E to at least begin the process of conducting the reevaluation of Student E prior to the filing of the Complaint. And third, even if the ADOS assessment is not appropriate to administer during the mask mandate, the BASC could certainly have been administered by the District without violating the mask mandate. For all of these reasons, the District's

arguments as to why it refused to comply with the parents of Student E's request for a reevaluation are not credible and do not comport with the facts.

Therefore, as to Issue #2, the District is cited. **Corrective action is required.**

Corrective Action

1. The District must review and revise, if necessary, procedures for ensuring that the District's evaluation obligations are met within all District schools regardless of COVID-19 precautions.
2. The District will provide Brenda Tantow at nde.speddr@nebraska.gov with notes indicating the results of the review and revision, if required, within 30 days from the date of this report.
3. The District is required to provide training regarding the District obligations regarding Child Find and evaluation timelines during a pandemic which shall include the following:
 - a. A reminder that evaluations are to be completed within 45 school days or 60 calendar days of receiving consent as no waivers have been allowed.
 - b. Process to complete assessments when mask mandates are in effect.
4. The District shall provide to NDE the materials for the training two weeks prior to the training for approval.
5. Within seven days of the training, the District must provide to Brenda Tantow with the names and roles of the intended presentation participants at nde.speddr@nebraska.gov and sign-in sheets verifying who attended and that the training was conducted.

Due to the facts that at the April 4, 2022, IEP team meeting for Student E, the School and the parents of Student E indicated that they changed their minds regarding their request for a reevaluation at this time, and have agreed to implement interventions in the SAT process to assess Student E's behaviors. While this does not negate the District's violation of the Parent's right to a reevaluation of Student E, it does not appear that corrective action specific to this student would be appropriate under the circumstances. However, in the event the parents of Student E make a request to the District for a reevaluation of Student E, the District must comply with this parental request as required by 92 NAC 51-006.05A2.

Issue # 3

Did the District timely ensure that an IEE was provided at public expense for Student F after a request by the parents of Student F, as required by 92 NAC 51-006.07A, 006.07D and 006.07D2, or initiate a hearing to show that its evaluation is appropriate, as required by 92 NAC 51-006.07D1?

State rule 92 NAC 51 provides as follows:

- 006.07A A parent of a child with a disability has the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with the evaluation obtained by the school district or approved cooperative, subject to the provisions of 92 NAC 51-006.07.
- 006.07D If a parent requests an independent educational evaluation at public expense, the school district or approved cooperative must, without unnecessary delay, either initiate a hearing under 92 NAC 55 to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense, unless the school district or approved cooperative demonstrates at a hearing under 92 NAC 55 that the evaluation obtained by the parent did not meet school district or approved cooperative criteria.

Allegations

The District failed to timely ensure that an IEE was provided at public expense to Student F at the request of [Redacted] parents.

Complainant's Position

The School is a nonpublic private religious school which has a number of students currently receiving special education services from the District, including Student F. The parent of Student F requested an evaluation of Student F for ADD or ADHD at an IEP meeting held on February 7, 2022, and the District rejected the parents' request. On February 22, 2022, the parents requested in writing that the District provide them with an IEE. On February 25, 2022, the parents sent a letter to the District, requesting the IEE. The District agreed to provide an IEE and sent the parent information and a list of providers that the District said were approved by the District. On March 15, 2022, the parents of Student F contacted one of the providers on the list to set up the IEE. Upon discovering that the provider contacted by the parents was an educational unit of the District, the District contacted the parent and informed them that they had been given an outdated list of providers and they would need to find another provider on the new list provided to them. The parents were very confused with the process and frustrated with the District's handling of the IEE request, and due to the mistakes, confusion, and frustration with the District's handling of the IEE request, they filed a complaint against the District.

District Response

On February 11, 2022, the District provided prior written notice to the parents of Student F regarding the District's refusal of the parent's proposal to conduct a reevaluation of Student F for ADD or ADHD. The parents sent an email to the District's Special Education Supervisor to request an IEE on February 22, 2022. The Parents were instructed to contact the District's Special Education Director with their request. On Friday, February 25, 2022, the parents sent a letter to the District's Special Education Director, which the District received on Monday, February 28, 2022. The District responded and agreed to the IEE and provided the parents with a list of approved providers. When the District learned that the parents had chosen a provider that was no longer on the approved list the District informed the parent and sent them a new current list to choose from. The staff member who sent the initial list to the family was new and sent the incorrect list of approved providers to the family. Since that time, parents have not chosen a new provider from the list. The District is ready to go forward as soon as the parents choose an approved provider.

Investigative Findings

1. See above Investigative Findings.

Summary and Conclusions:

State Rule 51 provides that a parent of a child with a disability has the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with the evaluation obtained by the school district or approved cooperative. 92 NAC 51-007.07A. If a parent requests an independent educational evaluation at public expense, the school district or approved cooperative must, without unnecessary delay, either initiate a hearing under 92 NAC 55 to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense, unless the school district or approved cooperative demonstrates at a hearing under 92 NAC 55 that the evaluation obtained by the parent did not meet school district or approved cooperative criteria. 92 NAC 51-007.07D. Each school district or approved cooperative shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the school districts or approved cooperative's criteria applicable for independent educational evaluations. 92 NAC 51-007.07B.

Student F is in the fourth grade at the School and was previously evaluated and verified by the District on December 9, 2020 and is receiving special education

services under an IEP. On December 18, 2021, the parent of Student F contacted the District to ask what she needed to do to obtain an evaluation for Student F regarding [the Student's] lack of focus and possible ADD and ADHD. In response, the Special Education Supervisor sent an email to the parent of Student F dated December 20, 2021, with two suggestions. First, the District could send out the District school psychologist to conduct a time-on-task observation of Student F to compare to the one taken during [Redacted} evaluation. Second, if the observation shows that Student F is displaying off-task behaviors then the team could discuss MTSS Tier 2 interventions for the School to put in place, before moving to additional formal evaluations. The Supervisor did not indicate that the parent of Student F could request a reevaluation, or request an IEE, for Student F. The parent chose to move forward with the observation. On February 7, 2022, the parents requested a reevaluation for Student F, and on February 11, 2022 the District provided prior written notice of its refusal to conduct the reevaluation of Student F. On February 28, the District received the parent's request for an IEE, and on March 2, 2022, District accepted the request and provided a list of providers to the parents of Student F. The District admits that a new employee made a mistake by providing an outdated list of providers to the Parents. The parents chose a provider off the outdated list, and on March 15, 2022, the District was informed that the provider chosen by the parents was an educational unit of the District and could not do an IEE for the parents. The District immediately informed the parents of this fact on March 15, 2022. Thereafter, the parents chose not to go forward with the IEE and filed complaint against the District.

The frustration over the mistakes and waste of time incurred by the parents of Student F with respect to the incorrect providers list given to them by the District is certainly understandable. However, it should be noted that districts are not required to be perfect in all of their dealings with parents and students. Minor discrepancies between the services provided and the services called for by the IDEA do not give rise to an IDEA violation. See e.g., Van Dun ex. rel. Van Dun v. Baker Sch. Dist. 5J, 502 F. 3d 811, 815, 821 (9th Cir. 2007). In reviewing the timing of all of the events surrounding the parent's request for an IEE beginning on February 25, 2022, until they chose not to move forward with the IEE on March 15, 2022, is a time span of 18 days. The time from District's acceptance of the IEE and providing the list of providers to the parents of Student F until the Parents chose to not go forward with the IEE, is 13 days. This 13-day period represents the amount of time the parents and Student F lost in moving forward with an IEE. There is no question that the District is at fault for this time lost by the parents and Student F. However, it is concluded that this lost time period of 13 days when the parents were deciding on a provider due to the mistake by the District, is not so

lengthy, or such an egregious mistake, to warrant a conclusion that the District failed to act in a timely manner with respect to the IEE requested by the Parents of Student F. Therefore, it is concluded that the District did not fail to act in a timely manner to ensure that an IEE was provided at public expense for Student F after a request by the parents of Student F. As to Issue # 3, the District is not cited. **Corrective action is not required.**

Issue # 4

Did the District develop an appropriate IEP for Student G by providing for services to meet the individual needs of Student G, as required by 92 NAC 51-007.07, rather than services that accommodate the schedule of the District's teachers at the School?

State rule 92 NAC 51 provides as follows:

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 to advance appropriately toward attaining the annual goals, to be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5.
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Allegations

In developing the IEP for Student G, the District failed to provide for services to meet the individual needs of Student G rather than services that accommodate the schedule of District's teachers at the school.

Complainant's Position

The School is a nonpublic private religious school which has a number of students currently receiving special education services from the District, including Student G. Student G's November 13, 2020, IEP provides for Special Education Services for Individual and Group Special Instruction in the special education classroom for 35 minutes per session, 15 times per month. Student G's November 23, 2021, IEP provides for Special Education Services for Individual and Group Special Instruction in the special education classroom for 25 minutes per session, 18 times per quarter. The District has indicated that change in service delivery is due to the scheduling differences between the School and District staff who provide special education services to Student G.

District Response

The IEP team developed an IEP for Student G in accordance with Rule 51. Prior to transferring to the School, Student G received 35 minutes of special education instruction 15 times per month at a District public school. These services were typically served in a small group setting with other students with similar needs to Student G. When Student G transferred to the School, his IEP team held an annual IEP meeting on November 23, 2021. The multidisciplinary team also met to conduct Student G's three-year re-evaluation. The IEP team determined that the amount of services that would allow Student G to be involved in and progress in the general education curriculum was 18 times a quarter for 25 minutes. These services are provided to Student G 1:1 as opposed to in a small group setting, therefore, each session is more individualized and more intensive for Student G. Today, Student G is receiving special education services in a 1:1 setting 3 days a week for 25 minutes each session in addition to a small reading group twice a week.

Investigative Findings

1. See above Investigative Findings.

Summary and Conclusions

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.

State Rule 51 provides that 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 to advance appropriately toward attaining the annual goals, to be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities, and 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 51-007.07A5.

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 51-007.02. 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 reviewing the special education services set forth in Student G's 2020, IEP and the services set forth in his current November 23, 2021, IEP the change in service minutes is significant. The District argues that these are the service minutes that the IEP team determined were needed by Student G based upon his current evaluation and MDT Report, and that they are provided in a more intensive 1:1 setting rather than a small group setting. The School argues that his minutes were

reduced and provided over a quarter rather than a month, to simply accommodate the schedules of the District's special education teachers and service providers. There is some support for the Complainant's argument as to the schedule for providing service minutes. The District as much as admitted so in its April 4, 2022, Notice of Change of Placement or Discontinuation regarding Student G, which states that Student G is now receiving services in a 1:1 setting 3 times per week for 25 minutes per session and that this change is due to "differences in school-wide calendars between [the School and the District], [the Student's] specially designed instruction is listed under services as 18x a quarter."

In reviewing Student G's grades and Progress Reports for the second and third Quarters of the 2021/2022 school year, the grades cards and Progress Reports indicate that Student G does appear to be making some progress. Student G's grades in Reading and English went down slightly. Student G is passing all classes with the lowest grade a D in Reading, which is one of the Student's Goal areas. Student G's March Progress Reports indicate that Student G is making good progress on his IEP goals in Reading, Math and Writing. These grades and progress reports may be an indication of why the District increased Student D's services. However, it should be noted that these changes were not made by Student G's IEP team and are not now included in the Student's IEP. As to Issue # 4, the District is cited. **Corrective action is required.**

Corrective Action

1. The IEP Team will reconvene an IEP team meeting, within 20 days of the date of this report, to determine the necessary goals and objectives, related services, and supplementary aids and services needed for Student G to access and progress in the general education curriculum.
2. The District will submit the IEP and the PWN indicating the changes made to Brenda Tantow at nde.speddr@nebraska.gov on, or before, June 1, 2022.
3. On, or before January 15, 2023, NDE will request a list of contact information for students parentally-placed in nonpublic schools who have had annual IEPs between August 15, 2022 and December 15, 2022. NDE will randomly select no more than 10 parents to survey to determine whether parents felt IEP minutes were changed to accommodate the schedules of District special education teachers and service providers. If surveys indicate schedules were changed for this reason, a request will be sent to the District requesting to review IEPs for those students.

Issue # 5

Did the District provide Students A, B, C, D, E, F, and G 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.

Complainant's Position

The actions of the District, set forth above, as to the identified students have denied the students a FAPE. The District has not conducted the MTSS process in a fair and legal way which has caused a violation of Child Find as to Students A, B, C and D. The District has failed to conduct an appropriate reevaluation for Student E at the request of Student E's parents. The District has failed to ensure that an IEE was provided at public expense for Student F at the request of the parents of Student F. The Special Education Service minutes provided for Student G in the IEP were designed to accommodate the schedules of District Staff rather than provide appropriate services for Student G.

District Response

The District's Response indicates that Students A, B, C and D do not have IEP's and, therefore, the District has not taken any action with respect to these students that is a violation of their right to a FAPE. With respect to Students E, F and G, District alleges that the Students have been provided with an appropriate IEP, and that these Students are making progress on the IEP goals set forth in their IEP's.

Investigative Findings

1. 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). Failing to meet child find requirements is a matter of serious concern that can deny FAPE to a student whom a district should have identified. The failure to identify and evaluate may entitle the student to compensatory education . . . Accruing from the time the district first should have suspected the disability. T.B. v. Prince George's County Bd. of Educ., 72 IDELR 171 (4th Cir. 2018); Robertson County Sch. Sys. v. King, 24 IDELR 1036 (6th Cir. 1996, unpublished); Lakin v. Birmingham Pub. Schs., 39 IDELR 152 (6th Cir. 2003); and Department of Educ. v. Cari Rae S., 35 IDELR 90 (D. Hawaii 2001).

It is concluded that the facts and legal authorities set forth above indicate that the District's actions constitute a violation of Student A and D's right to a FAPE. Moreover, it is concluded that the District has made systemic violations of the child find procedures under the IDEA and State Rule 51, set forth above, as to Students A, B, C and D, and all similarly situated students at the School, which have violated their right to a FAPE. Finally, it is concluded that the District's actions as to Students E, F and G have not violated these students' right to a FAPE. The corrective action set forth above is designed to remedy the violations of FAPE found herein.

Notice to District

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

Brenda Tantow, Complaint Specialist
NDE Office of Special Education
Nde.speddr@nebraska.gov