

COMPLAINT INVESTIGATION REPORT

Complaint Number: 22.23.12
Complaint Investigator: [Redacted]
Date Complaint Filed: December 6, 2022
Date of Report: [Redacted]

Issues Investigated

1. Whether or not the District had an IEP in effect and implemented special education services as described in the Student's IEP. [92 NAC 51-007.02 and 92 NAC 007.02A];
2. Whether or not the District's use of disciplinary removals such as classroom removals and detention constituted a change of placement for the Student. [92 NAC 51-016]; and
3. Whether or not the District developed an appropriate IEP to meet the Student's needs. [92 NAC 51-007.07A2, 92 NAC 51-007.07A5, and 92 NAC 007.07B3]

Information Reviewed by Investigator

From the Parent

1. Letter of Complaint dated December 5, 2022; received by NDE December 6, 2022
2. Emails from the District to Parent(s) dated between September 13, 2022, and December 5, 2022
3. Interview with Parent and Student conducted on January 9, 2023

From the District

1. Letter of Response dated and received by NDE, January 4, 2023
2. Individual Education Programs (IEP) dated:
 - a. August 31, 2022
 - b. December 5, 2022
3. Progress reports dated:
 - a. October 14, 2022
 - b. December 21, 2022
4. Functional Assessment dated October 20, 2022
5. Behavior Intervention Plan dated October 24, 2022, and updated on December 5, 2022
6. District 2021-2022 School Calendar, Approved February 10, 2021; Amended April 12, 2022
7. The document, District 2022-2023 School Calendar Approved February 16, 2022; Amended May 11, 2022

8. Student Attendance Record for the 2022-23 School Year beginning June 27, 2022
9. Student Interval Attendance for the 2022-23 School Year beginning June 28, 2022
10. Sample Student Self-Monitor Sheet for "A Day" and "B Day" Schedules
11. Sample Student Information Sheet for Teachers
12. Emails re: Behavior dated August 30, 2022, through December 8, 2022
13. Emails between Parent and District dated September 6, 2022, through December 6, 2022
14. Notices of Meeting dated
 - a. August 23, 2022
 - b. November 11, 2022
 - c. November 28, 2022
15. Behavior Log for the Student dated December 14, 2021, through December 21, 2022
16. Notice and Consent for Reevaluation dated October 26, 2022:
 - a. Parent signature dated November 9, 2022
 - b. Signed consent received by District November 10, 2022
17. Multidisciplinary Evaluation Team (MDT) Report dated September 9, 2020
18. Counselor Dashboard 4.3 showing Student attendance and schedule for the 2022-23 School Year printed January 3, 2023
19. Historical Grades for the Student printed January 3, 2023
20. Missing Assignments for the 2022-23 School Year printed January 3, 2023
21. Interviews with District personnel conducted on January 11, 2023

Introduction

On December 6, 2022, the Nebraska Department of Education (the Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the District. The Parent requested that the Department conduct a special education investigation under 92 NAC 51-009.11C3. The Department confirmed receipt of this Complaint and forwarded the request to the District. Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint. This timeline may be extended if the Parent and the School District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint. On December 20, 2022, the Department sent a Request for Response (RFR) to the School District identifying the specific allegations in the Complaint to be investigated and establishing a Response due date of January 4, 2023. The District submitted a Response on January 4, 2023, provided an explanation, and submitted documents in support of the District's position.

Findings of Fact

1. The Student is twelve years old and is in the 7th grade. The Student attends a middle school in a public school setting (IEP dated August 31, 2022).
2. The Student is eligible for special education as a child with Other Health impairments (OHI). The Student's medical history includes attention deficit disorder (ADHD), inattention, and hyperactivity/impulsivity in the very elevated range; the Student's defiance and aggression scored in the high average range. The Student has also taken medication for Anxiety and Obsessive Compulsive Disorder (OCD) (MDT dated September 9, 2020).
3. During interviews, the Student shared, "*...only a couple teachers are giving me breaks...some teachers have different standards...Some teachers allow me to be on my phone, some teachers allow me to play computer games. And some teachers don't give it at all...Band, not usually... physical education.*" During follow-up responses, the Student indicated that they did not feel that they needed a break during the music classes or physical education. (Parent and Student Interview conducted January 9, 2023)
4. According to discipline data ranging in dates from November 18, 2021-May 9, 2022, the Student received the following violations:
 - a. disrespectful-2 times;
 - b. defiance-2 times;
 - c. refusing to follow directions- 2 times;
 - d. hitting, bullying, name-calling-2 times;
 - e. harassment-1 time; and
 - f. disruption-2 times
5. According to attendance sheets dated June 6, and 2022-January 2, 2023, the Student's attendance data states:
 - a. The Student was absent from English class 6 excused periods and was tardy one time;
 - b. The Student was absent from Family Consumer Science(FCS) class 3 excused periods;
 - c. The Student was absent from Engage Career and Life Center class 2 excused periods;
 - d. The Student was absent from Social Studies class 3 excused periods;
 - e. The Student was absent from Science class 3 excused periods;
 - f. The Student was absent from JH Band class 4 excused periods;
 - g. The Student was absent from JH Choir class 2 excused periods;
 - h. The Student was absent from PE class 2 excused periods;
 - i. The Student was absent from Math 7 class 2 excused periods;

- j. The Student was absent from Exploration of Health class 1 excused period;
 - k. The Student was absent from Intro to Business class 1 excused period;
 - l. The Student was not absent from the Study Skills 7 class;
 - m. The Student was absent from Advisory class 5 excused periods; and
 - n. The Student was not absent from Case Manager's class.
6. On August 30, 2022, the Family Consumer Science teacher stated that the Student "*... is struggling to stay on task in class. When redirected, they often struggle to stop the behavior and go back to work/stay on task. The Student has been asked to move to a new seat/location to prevent talking or distracting classmates around the Student during class. When asked to move the Student has tried to argue (about moving seats) or made loud comments. ...I would like [the Student] to be successful in FCS and also enjoy coming to class. Any input as to how I can best help the Student would be greatly appreciated.*" (Email between teacher and parent dated August 30, 2022)
 7. According to the IEP dated August 31, 2022, the Student's strengths are as follows:
 - a. *"The Student is a nice kid;*
 - b. *The Student does a great job of following directions;*
 - c. *The Student is very creative;*
 - d. *The Student shares ideas in class; and*
 - e. *The Student likes to stay active with game activities."*
 8. Information from the most recent evaluation conducted included in the IEP dated August 31, 2022, stated that according to the Conners-3 under the Defiance/Aggression category, the Student scored "*very elevated in the area of inattention.*" This indicates the Student "*is most likely experiencing demonstrating at least some of the characteristics at both home and school of poor concentration/attention or difficulty keeping his mind on work, making careless mistakes, being easily distracted, giving up or becoming bored easily, or avoiding schoolwork.*"
 9. The IEP dated August 31, 2022, describes the Student as, "*Nice kid...does a great job of following directions and participating in class...answers questions and shares ideas in class...is creative and thinks outside the box.*" The Parent(s) described their concerns for the Student as, "*keeping the Student on the right track...improving impulse and behavior control.*"
 10. The special factors section for behavior stated, "*Per mom's request we have agreed to start the school year 2022-2023 without using the behavior*

- sheet. Last year during the 4th quarter when using the sheet was not a success. (sic) IEP team agreed to this." (IEP dated August 31, 2022)
11. The Present Level of Academic Achievement and Functional Performance for the Student indicated that the Student is, "completing grade level work in all subject areas. [Student] has resource support (para and resource teacher) in some...classes. [Student] is working on making good decisions and realizing consequences from the negative decisions. Current grades: English: F&CS: 84%, Social Studies: 100%, Science: 100%, Choir: 100%, Band: 100%, PE: 70%, Math 7: 100%, Health: [Student] is able to work independently. At this point conversing with the Parent, we are not starting the school year on a behavior plan/sheet. We want [Student] to have a fresh start and to demonstrate appropriate behavior in the classes. Current teacher observations and concerns about behavior include: disruptive, not following directions, etc. [Student] participates in regular PE and is participating in junior high cross country this fall." (IEP dated August 31, 2022)
 12. The annual goal stated, "[Student] will remain in the classroom 100% of the time during the school day with no office referrals." (IEP dated August 31, 2022)
 13. The program modifications and accommodations included the duration and location, but not the frequency, and included the following:
 - a. allow to test in a smaller environment to decrease distractions;
 - b. allow to take movement breaks as needed to decrease distractions;
 - c. shorten requirements on written assignments, (determined by teacher); and
 - d. black hole card, (Teacher). (IEP dated August 31, 2022)
 14. The special education and related services description stated, "[Student] will receive specially designed instruction through a variety of service delivery models based on their performance and needs. The service delivery models include co-teaching in the general education classroom, station teaching in the general education classroom, individual or small group instruction outside of the general education classroom, and consultation between special education teachers and general education teachers. In the event of a school closure due to unforeseen circumstances, remote services will take place 20 minutes: 1 day/week." (IEP dated August 31, 2022)
 15. The IEP dated August 31, 2022, Supplemental Form 1: Behavior Intervention Plan (BIP) stated, "a behavior intervention plan was also

written on 10/7/2020 at the IEP meeting. This Behavior Plan was rejected at the IEP meeting on September 14th, 2021. IEP team agreed."

16. The Prior Written Notice included with the IEP included a description of the action proposed or refused by the school district, or the approved cooperative and stated: "Actions proposed were to continue with accommodations/modifications to change service minutes if school is not in session for any reason, change the current goal to be better measured, to delay any behavior sheet/plan until we need to make adjustments based on future behavior." (IEP dated August 31, 2022)
17. An explanation of why the district or approved cooperative proposes or refuses to take the action stated: "The team agreed to the necessary changes made to the IEP. Team agreed to keep the limited accommodations/modifications, to change the IEP goal, change service minutes and to delay implementation of a behavior sheet/plan. Team agreed that this will allow [Student] to be successful." (IEP dated August 31, 2022)
18. A description of other options the IEP team considered, and the reasons why those options were rejected state, "The team did not reject any options as they are in the best interest of [Student]." (IEP dated August 31, 2022)
19. A description of each evaluation procedure, assessment, record, or report the school district or approved cooperative uses as a basis for the proposal or refusal stated, "Team reviewed current grades/observations demonstrated by [Student]. Reviewed MAP assessment results, parent/teacher input, present levels of performance, etc." (IEP dated August 31, 2022)
20. A description of any other factors relevant to the school district's or approved cooperative's proposal or refusal states, "Will schedule a meeting with the team and administration if a behavior consequence plan/sheet needs to be implemented." (IEP dated August 31, 2022)
21. On September 9, 2022, Block 6 teacher sent the following email to the Parent stating, "I sent you an email about [Student's] negative behavior. When a student is sent to the office because he or she refuses to follow directions, they do not earn their twenty points. In my class [Student] has to stop talking when I am talking. [Student] has to stop hitting the pillar pads. [Student] has to stop hanging on the nets. Today they asked to go to the Nurse at the beginning of class. I asked [Student] what was wrong. They told me it was none of my business. I allowed them to go and required [they] bring back a note from the Nurse. [Student] came back and iced their knee during class. They did not lose any points today. If

[they] follow directions and put in a good effort in this class, [Student] will bring up their grade.” (Emails between the Parent and Teacher dated between September 2, 2022, and September 7, 2022)

22. On September 12, 2022, when asked to share a document with the teacher and Parent, the Student started talking back to the teacher and made an inappropriate gesture. The Student was asked to step out into the hall to have a conversation with the teacher, but the Student just ignored the teacher. The Student was given a couple of reminders but continued to be defiant. The teacher walked the Student to the Principal’s office. (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)
23. The Student was not able to complete a hand-sewing sample, so the Student was given alternate assignments to complete. The Student was off-task during work time and needed multiple reminders to work. The Student remained disruptive. At the end of the period, the Student grabbed another student’s pillow and tried to pull it out of the other student’s hands. The Student was near three hot irons with multiple students nearby. The student was then asked to leave. (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)
24. After multiple redirections for talking over the teacher during class, the Student was removed from class. While taking a test, the teacher prompted the Student on three separate occasions to stop making noises and to stop gesturing to classmates. The teacher directed the Student to complete the test in a different classroom. (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)
25. The Student received detention on September 23, 2022. The teacher stated, “That is exactly the conversation that I have with [Student]. I also addressed the other potential comments with the other student. I am sorry I didn’t contact you, but [Student] is serving detention tonight.” (Emails between the Parent and District dated September 23, 2022)
26. From September 23, 2022 - December 22, 2022, the Student was assigned eight 30-minute detentions. The detentions took place after school. (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)
27. On September 23, 2022, the PE teacher reported, “In class, today, [Student] told another student to shut the F-Bomb up.” (Emails between the Parent and District dated September 23, 2022)
28. On September 27, 2022, the Student refused to run in PE and told the teacher to shut up. The Student was assigned detention. (Email between the Parent and District)

29. On October 10, 2022, the Student struggled with being compliant during Science. The Student was moved to two separate locations away from other students to attempt work. The Student continually needed redirecting and prompting to begin work. (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)
30. On October 13, 2022, the Student was to take an AR test in an Advisory class. The Student tried to take an AR test on a book the Student already read. When the Student learned they could not take the test, they became angry and spoke very disrespectfully to the Teacher. The Teacher directed the Student to either leave the classroom or speak to the Principal. The teacher went to the office and notified the Principal of the Student's behavior. (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)
31. On October 13, 2022, the PE teacher stated" there were three redirects during stretching. The Student called another student a 'moron.' The last part of the class, the Student was OK. No class removal was needed." (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)
32. On October 13, 2022, the Student was sent out of Family Consumer Science class. The Student was not able to complete several projects. According to the teacher, "[Student] was off task during work time and needed multiple reminders to work and not play in the wagon. [Student] was loud and distracting to other students. At the end of class when it was time to clean up, [Student] grabbed another student's pillow and tried to pull it from their hands. [Student] did this near 3 hot irons with multiple students nearby." During class on the previous day, the Student received multiple redirections. The Student continued to distract others and told the teachers they were not going to complete the task. The Student was sent out of class. (Emails between the Parent and District)
33. A progress report dated October 14, 2022, indicated that the Student had made progress, but the goal was not met. Comments on the progress report noted, "As of 10-10-22, [Student] has 6 office referrals. Most of them pertain to not following class directions and being disrespectful. It is important for [Student] to make good choices as we get into the 2nd quarter." (Progress Report dated October 14, 2022)
34. According to the District's Missing Assignment Data from October 17, and 2022-November 1, 2022, the Student had the following number of missing assignments per course:
 - a. English 7- 4 missing assignments;
 - b. Math 7- 32 missing assignments;

- c. Science 7- 2 missing assignments; and
 - d. Social Studies 7- 4 missing assignments. (Missing Assignments for the 2022-23 School Year printed on January 3, 2023)
35. On October 17, 2022, the Advisory Teacher reported that after three redirects, the Student was not on task and made gestures to mock the teacher during class. The Student also used a pen to make suggestive gestures with their mouth. When the teacher encouraged [Student] to try a little harder the Student made the comment that the teacher had "already given them a 43% in class so what was the point." (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)
 36. On October 17, 2022, the Student put their hands around two students' hips. The teacher prompted the Student 9 times in 15 minutes to stop talking and touching others. The teacher asked the Student to go into the hallway because the Student wouldn't stop talking. In the hallway, the Student argued with the teacher, but eventually went back into the classroom and sat down. (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)
 37. On October 17, 2022, the principal emailed the Parent and requested that the Parent attend a meeting during conferences to discuss the Student.
 38. On October 18, 2022, the Student was continually distracting other students during PE. The Student did not follow the teacher's directions, so the Student was asked to step out into the hallway. The Student went back into the classroom and started chewing gum. When the teacher told the Student to spit out the gum, the Student said, *'it doesn't matter because the class was almost over.'* (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)
 39. On October 18, 2022, the Student was disruptive by yelling loudly during Choir. When the Student was asked to be quiet, the Student made an inappropriate gesture. The Student's actions prompted the teacher to send the Student to the office. (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)
 40. On October 18, 2022, the Parent sent an email to the Principal stating, "*...I will be at the school Thursday and we'll see how that meeting goes but at the moment I'm not happy with the way things are going for my Student. Student's IEP is not doing anything beneficial for the Student at the moment so that needs to change as well.*"
 41. On October 19, 2022, during English class, an adult who was seated at the Student's table prompted the Student on several occasions to follow directions. Two teachers and the principal also supported the Student to

attend to their tasks. The Student did not heed the redirections and therefore failed to complete any classwork. (Behavior Log for the Student dated December 14, 2021, through December 21, 2022)

42. The Parent reported that on October 20, 2022, they *“met with the school at their request after they chose to conduct a behavioral observation. At this time, I expressed that I did not feel the Student's IEP was functional and requested a meeting to re-evaluate...I said that [Student] is failing 3 classes and so something was not working and I would like to meet and come up with new ideas...I was denied at that time a request for a new IEP meeting. Instead, they wanted to re-evaluate [Student's] behavior...and this would help them decide if staying at the School would be an option or if [Student] would need to switch schools.”* (Letter of Complaint dated December 5, 2022)
43. The Functional Behavior Assessment dated October 20, 2022, described the Student's problem behavior as: *“...refuses to follow adult and peer directives-begins to say inappropriate/mean things to adults and sometimes peers when [Student] doesn't want to do it. [They] will purposefully distract peers and refuse to stop...mocks teachers.”*
44. The Peer Relations scale was rated in the High Average Range by Student's Parent, 5th-grade teacher, and Therapist while the 4th-grade teacher's score was in the Elevated Range. The ratings indicate potential concerns in the Social Skills domain: t: lack of acceptance by peer group. Especially outside the school setting, difficulties with interpersonal relationships were evident. (Functional Analysis dated October 20, 2022)
45. On October 22, 2022, the Parent was notified that after multiple attempts to redirect them, the Student was sent out of Family Consumer Science. Due to missing assignments, the Student's grade was calculated as 56%. (Emails between the Parent and the District)
46. The Behavior Intervention Plan dated October 23, 2022, (updated on 12/5/22) stated *“[Student's] Target behavior indicated [Student] refuses to follow adult and peer directives-begins to say inappropriate/mean things to adults and sometimes peers when [Student] doesn't want to do it. [Student] purposefully distracts peers and refuses to stop, mocks teachers. An FBA was completed and the function of the target behaviors are: Escape from demands + Peer attention.”*
47. The Behavior Intervention Plan (BIP) stated *“staff will set clear classroom expectations that are posted for the Student and other students to see. The Student will be seated away from distracting peers and near an adult. When possible the case manager or paraprofessional will be in close proximity. Staff will give the Student responsibilities to keep [them] busy*

and give leadership. The staff will meet with the Student first thing in the morning to get a feel of how [they] are doing and choosing a reinforcement for the day. A change that was noted from the updated meeting was because of the new IEP goal, [Student] will pick up a Self-Monitoring Sheet from a teacher in the morning. [Student] will rate their own behaviors and compare to the teacher ratings to help [them] demonstrate the ability to recognize expected and unexpected behaviors." (BIP dated October 23, 2022)

48. Reinforcement-based strategies include: "...staff will run a time for 20 minutes. Upon timer sounding, [Student] has not engaged in disruptions, [Student] may play computer games for 5 minutes. [Student] will receive a verbal reminder of when 20 minutes are up so [they] know how long [they] need to work and comply with requests before earning a 5-minute break. Staff will teach and prompt [Student] to raise [their] hand and request a break whenever [they] become upset or frustrated as replacement skills. For consequences the staff will prompt - [Student] to go to the hallway for any instance of disruption or disrespect. If yelling in the hallway [Student] will be prompted to go to the office. [Student] will spend 5 minutes there and can return when [they] apologize. If [Student] does not apologize after 5 minutes, the timer is reset for another 5 minutes. After two attempts [Student] will go to the office to process with the administrator and then will go back to the classroom and apologize." (BIP dated October 23, 2022)
49. The data collection process for the Behavior Intervention Plan stated the staff will record disruptions as well as earned computer breaks throughout each class period as well as [Student] BIP Tracking." (BIP dated October 23, 2022)
50. On October 25, 2022, the District mailed the Student's IEP progress report to the Parent.
51. On October 26, 2022, a Notice and Consent for Reevaluation was sent to the Parent. The District proposed "to reevaluate [Student] because the team would like to move it up to gather more information and help with behavior support."
52. The Parent stated in the Complaint that "On October 27, 2022, I was emailed by the Counselor...that they were looking at [Student]'s behavior tracking and [Student] had a great day in English, Science, and Social Studies. Counselor said there were some 'hiccups' in other classes but they were seeing good progress." (Letter of Complaint dated December 5, 2022)

53. On November 10, 2022, the Parent sent a text to the School stating "The mediator should have contacted the school yesterday after I spoke to her. She said she has to start with the [Teacher] and her 1st opening is going to be next week but I also asked if the team doing [Student's] new evaluations should finish [their] evaluation and we have those results first before the IEP. There are a few conversations going with me right now and it seems like the school isn't all in communication with each other about this process at this time."
54. On November 11, 2022, a Notice of Meeting was sent to the Parent to develop, review, and/or revise the Student's IEP and discuss the following:
- a. your child's academic achievement and functional performance;
 - b. any special education and related services and supplementary aids and services which your child may require;
 - c. appropriate annual goals; and
 - d. the extent of your child's participation in the general curriculum and/or necessary modifications.
55. An IEP meeting was held on December 5, 2022. Both Parents attended.
56. The IEP dated December 5, 2022, stated that the Student strengths are as follows:
- a. Student redirects behavior when asked in math class;
 - b. The student has a great singing voice and understands what needs to be done;
 - c. Student likes to stay active with game activities during P.E.;
 - d. The student is very creative and thinks outside the box in Social Studies;
 - e. The student is super sharp and understands science concepts;
 - f. Student takes feedback well after redirection in band; and
 - g. The student is doing well in technology class.
57. The IEP stated that the Student needs to follow directions after the first redirection. The Student needs to use work time in class during Social Studies. In English class, "*behavior has changed with it being a constant struggle in class.*" The plan stated the Parents feel the teachers need to "*keep [Student] on the right track,*" new medication that was updated on December 5, 2022, with a larger dose in the morning because [Student] was struggling mid-morning and during the afternoon. According to Parents, "*The last period is difficult.*" The Parents indicated they are hopeful about improving impulse/behavior control. "*The student's go-to-teacher is the advisory teacher and they talk to [Student] every day.*" The Parents stated that they would like each teacher to give the Student more responsibility. (IEP dated December 5, 2022)

58. The Conners-3 Parent and Teacher Form Scores included in the December 5, 2022, IEP, indicated that the Student's inattention was very elevated. *"This indicates that the Student is most likely experiencing/demonstrating at least some of these characteristics at both home and school:*
- a. poor concentration/attention or difficulty keeping [Student] mind on work;*
 - b. making careless mistakes;*
 - c. being easily distracted;*
 - d. giving up or becoming bored easily; and*
 - e. avoiding schoolwork."*
59. The Hyperactivity/Impulsivity Scale of the Conners-3 for the Student was very elevated, which indicated the Student was likely experiencing high activity levels, restlessness and/or impulsivity, difficulty being quiet, interrupting others, or becoming easily distracted. The Conners-3 Scale indicated that the Student rated in the high-average range on the Defiance/Aggression Scale. This indicated that there were likely at least some concerns relating to characteristics of being argumentative, defying requests from adults, having poor control over anger/aggression, being physically/verbally aggressive, showing violent and/or destructive tendencies, and being manipulative or cruel. (IEP dated December 5, 2022)
60. The Student's present level of academic performance indicated that the Student was completing grade-level work in all subject areas. The Student had resource support in some of the Student classes and the resource room was available to them. The student comprehended what they read, and they did well in subjects of interest. Accommodations included shortened writing tasks can be shortened and movement breaks. Due to the Student's distractibility to themselves and their peers and the subsequent impact on learning, the team agreed to implement a behavior plan to track daily behaviors and breaks for data collection. (IEP dated December 5, 2022)
61. The measurable annual goal stated, *"[Student] will demonstrate on-task behavior in the general education setting for 75% of intervals during a 20-minute period, with an adult reminder, in 4/5 trials, as measured by observation and data. [Student] will be given a reasonable reward [Student] choice) if [Student] can accomplish this for the day. [Student]'s progress will be measured through behavior documentation and a self-monitoring sheet."* No short-term objectives were noted. (IEP dated December 5, 2022)

62. An additional annual goal was for the Student to “*demonstrate the ability to recognize expected and unexpected behaviors as well as part of their self-monitoring system with 70% accuracy as compared to teacher ratings of behavior*”. The short-term objective stated, “[Student] will be responsible and independently fill out how [they] are feeling and rate [their] behavior. Teachers will also fill out how the class period went. [Student] will pick up their sheet in the morning and return it to the teacher at the end of the day so a copy can be sent home. If [Student] forgets, a copy will be provided....” (IEP dated December 5, 2022)
63. The Statement of Special Education and Related Services in the December 5, 2022, IEP, stated “[Student] will receive specially designed instruction through a variety of service delivery models based on [Student] performance and needs. The service delivery models may include co-teaching in the general education classroom, station teaching in the general education classroom, individual or small group instruction outside of the general education classroom, station teaching in the general education classroom, individual or small group instruction outside of the general education classroom, and consultation between the special education teacher and general education teachers. In the event of a school closure due to unforeseen circumstances, remote services will take place 20 minutes; 1 day/week.” (IEP dated December 5, 2022)
64. The Program Modifications and Accommodations included duration and location, but not frequency, and stated the following:
- a. allow to test/work in a smaller environment to decrease distractions;
 - b. allow taking movement breaks as needed to decrease distractions. Reinforce appropriate behavior during movement breaks; and
 - c. shorten requirements on written assignments. (IEP dated December 5, 2022)
38. The Prior Written Notice dated December 5, 2022, described the actions proposed as the following:
- a. update [Student]'s IEP goals;
 - b. discuss [Student] behaviors and documentation;
 - c. review/update accommodations/modifications;
 - d. review special education services and minutes; and
 - e. discuss placement options.
39. The IEP team agreed to update the Student's goals. The goals are as follows:
- a. [Student] will demonstrate on-task behavior in the general education setting for 75% of intervals during a 20-minute period, with one adult reminder, in $\frac{4}{5}$ trials;
 - b. [Student] will be given a reward of their choice; and

- c. [Student] will demonstrate the ability to recognize expected and unexpected behaviors as well as rate their own behavior as part of a self-monitoring system with 70% accuracy as compared to teacher ratings of behavior. (IEP dated December 5, 2022)
39. The IEP team agreed to the goals as they correlate with information that was discussed during the FBA meeting. (IEP dated December 5, 2022)
 40. After the December 5, 2022, IEP meeting, the District and staff started to collect behavior-related data and provided the Parent with updates. (Interview with District Personnel conducted on January 11, 2023)
 41. The Progress Report dated December 21, 2022, stated "*the evaluation procedures used will be teacher observation, time sample, and others for the on-task behavior goal.*" The Progress Measurement section states that the Student made progress but the goal was not met but progress was sufficient to meet the goal by the end of the IEP year. Under the comment section, it was noted that the average percent of the reward is 36/49 or 73%.
 42. The second goal was for the Student being able to recognize expected and unexpected behaviors as well as rate their own behaviors as part of the self-monitoring system being evaluated by teacher observation. The Student made progress toward the goal but did not meet the goal. The report stated that the Student will be able to make sufficient progress by the end of the IEP year. Comments noted were that the Student was given the monitor sheet if they didn't get it before class. As of December 11, 2022, the Student has only turned in 2 of the sheets, the percentage being 22%. (Progress Report dated December 21, 2022)
 43. The Student received the following grades for the first semester of 2022:
 - a. English 7- F;
 - b. Exploration of Health- B-;
 - c. FCS 7- F;
 - d. JH Band- C+;
 - e. JH Choir- A;
 - f. Math 7- F;
 - g. PE 7- F;
 - h. Science 7- D+; and
 - i. Social Studies 7- C-. (Counselor Dashboard 4.3 showing Student attendance and schedule for the 2022-23 School Year printed January 3, 2023)
 44. During interviews, the School Principal reported the Student had not been assigned in-school suspension. "*...I think there were times where the Student was in the office area... the length of a period ...I would contact the, um, special education teacher... and they would come down and check in on [Student],*

make sure they had the support ... needed, make sure they had assignments and Chromebook and all of those types of things...most times when [Student] came to the office, I would sit. I would have a conversation... try to understand what took place... get ...to a position where [Student] was ready to go back into the classroom... they would enter back into the classroom." (Interview with District Personnel conducted January 11, 2023) The District records provided did not indicate that the Student had received in-school suspensions during the Complaint period.

Issue #1

Did the District have an IEP in effect and implement special education services as described in the Student's IEP?

92 NAC 51-007.02 states:

007.02 *School districts or approved cooperatives must provide special education and related services to a child with a disability in accordance with the child's IEP.*

007.02A *At the beginning of each school year, each school district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction.*

Parent Allegations

The Parent alleges the District did not provide the Student with needed accommodations and modifications such as movement breaks, self-assessment sheets, and shortened assignments. The parent also alleged that the Student's behavior plan was not used. (Letter of Complaint dated December 5, 2022)

District Response

The District had an IEP in effect at the beginning of the school year for the Student, and the District provided the Student with special education and related services as set forth in the IEP. (Letter of Response dated January 4, 2023)

Investigative Findings

The Student's IEP in effect during the Complaint period provided for the Student to have access to a BIP, accommodations for movement breaks and shortened writing assignments, and starting in December 2022 self-assessment sheets. During interviews, all of the Student's classroom Teachers were able to describe in detail how the accommodations for the Student were being implemented in their classrooms. Teachers described the use of movement breaks as, *"The Student gets to...sit at the table if they choose. We allow the Student to play video games, things of interest... I give all my kids plenty of time, I give brain*

breaks...the last 15 minutes...kids are allowed to work with a partner, get up, go sit back in my comfy chairs." (Interview with District Personnel conducted January 11, 2023) "...when I've asked the Student if they need breaks, a lot of times it's, "No." And when they have taken breaks, it's playing a game [video]... the Student gets a lot of movement breaks within the class. It's just naturally broken up into sections. and they do move around the room, um, as needed and things like that. I have standing desks that are available for students, which I don't think they have ever used...but those are all an option and I make that available to students." (Interview with District Personnel conducted January 11, 2023)

The Student's classroom Teachers described the implementation of "shorten requirements on written assignments, as determined by teacher" as: "there's four questions, and three of them are long, and one of them's short, I'll say, '[Student] you answer one or two of the four questions, or do 50% of them, and we'll call this good.'" (Interview with District Personnel conducted January 11, 2023) "For English, they haven't had a big writing assignment...they'll work on a hypothesis, and it's like one or two sentences, and they work on it together and they do group work, and then they discuss it as a whole group. And then they'll go into it like the introduction." (Interview with District Personnel conducted January 11, 2023)

With the Parent's agreement, the self-assessment monitoring sheets that the Student used in 6th grade were discontinued by the IEP team, in August 2022. On December 5, 2022, the IEP team revised the October 23, 2022, BIP and included self-monitoring assessment sheets to be used by the Student. The self-monitoring sheets were reviewed and discussed with the Special Education Teacher on a daily basis. The Student's classroom teachers and Special Education Teacher consistently described the use of monitoring sheets with the Student in early December 2022. (Interview with District Personnel conducted January 11, 2023) Further, the Student's classroom Teachers were able to describe their implementation of the additional components of the BIP: posting clear classroom expectations, seating the Student away from distracting peers and near an adult, and providing leadership opportunities for the Student and offering breaks.

Summary and Conclusions

The accommodations and modifications, as described in the Student's IEP, and the Student's BIP were implemented as written. The District implemented the requirements of 92 NAC 51-007.02 and 92 NAC 007.02A and **no corrective action** is required.

Issue #2

Did the District's use of disciplinary removals such as classroom removals and detention constitute a change of placement for the Student?

92 NAC 51-016 states:

- 016.01A *For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:*
 - 016.01A1 *The removal is for more than 10 consecutive school days; or*
 - 016.01A2 *The child is subjected to a series of removals that constitute a pattern:*
 - 016.01A2a *Because the series of removals total more than 10 school days in a school year;*
 - 016.01A2b *Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and*
 - 016.01A2c *Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.*

Parent Allegations

The Parent alleged that the Student was often removed from the classroom and not allowed back into class and that the student was often kept after school for detentions. (Letter of Complaint dated December 5, 2022)

District Response

The District did not violate 92 NAC 51-016, as this rule only applies to disciplinary removals that total more than ten school days within one school year. Because the Student was removed on a disciplinary basis from class for short periods of time, the provisions of 92 NAC 51-016 are not applicable. When totaled together, such disciplinary removals are, at most, the equivalent of two days during the 2022-2023 school year. Furthermore, removals such as five to ten-minute breaks in the hallway are listed as consequences in the behavior intervention plan implemented on October 24, 2022. (Letter of Response dated January 4, 2023)

Investigative Findings

The October 24, 2022, BIP outlined the steps teachers should follow to motivate positive behavior and decrease negative target behavior. The steps included requesting the Student to step into the hallway or go to the office when warranted by the Student's behavior. The Student and Classroom Teachers reported the Student rarely used the hallway for this purpose. The Principal reported the Student was in the office on a couple of occasions, was provided with learning tools, and only for a portion of class time. The Student's absences from classes were almost all excused absences. There is no record of the Student receiving in-school suspensions. The Student was assigned and served eight 30-minute sessions of after-school detention. The time the Student spent in the office and the after-school detentions were not in or out-of-school suspensions and were not disciplinary removals.

The U.S. Department of Education's Office of Special Education and Rehabilitative Services requires LEAs to provide services during periods of removal to a child with a disability who has been removed from their current placement for 10 school days or less in that school year, only if it provides services to a child without disabilities who is similarly removed. 34 C.F.R. § 300.530(d)(3). Although not required, LEAs are encouraged to provide services during such short-term removals to assist children with disabilities to continue to make progress toward their IEP goals and to prevent them from falling behind. Based on the findings of the investigation, the District's removals of the Student from the classroom into the hallway or to the School office were infrequent. These removals did not occur for more than 10 school days in a school year and did not constitute a pattern of behavior. Further, on a couple of occasions, the Student spent time in the office, and they were provided access to instructional materials.

Summary and Conclusions

The consequences assigned to the Student did not constitute a change of placement. The District implemented the requirements of 92 NAC 51-016A1 and 92 NAC 51-016A2 and **no corrective action** is required.

Issue #3

Did the District develop an appropriate IEP to meet the Student's needs?

92 NAC 51-007.07A2 states:

007.07A2 *The IEP shall include a statement of measurable annual goals, including academic and functional goals, designed to:*

007.07A2a *Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; or for preschool children, as appropriate, to participate in appropriate activities, and*

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

92 NAC 51-007.07A5 states:

007.07A5 *The IEP shall include a statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school*

personnel that will be provided to enable the child:

- 007.07A5a *To advance appropriately toward attaining the annual goals;*
- 007.07A5b *To be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and*
- 007.07A5c *To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5.*

92 NAC 007.07B3 states:

- 007.07B3 *In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, supports, and other strategies to address that behavior.*

92 NAC 007.07A8 states:

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

Parent Allegations

The Parent alleges the Student is failing 5 classes but only has 1 IEP goal, has multiple missing assignments, and that no one is communicating with the Parent or helping the Student. (Letter of Complaint dated December 5, 2022)

District Response

The District ensured that each IEP in effect during the relevant period included measurable annual goals designed to meet the Student's needs that resulted from the Student's disability. The Student's functional, academic, and educational needs related to the Student's disability are all behavioral in nature. Thus, the Student's annual goals appropriately addressed the Student's behavioral needs, and the IEP team considered the use of positive behavioral interventions and supports and other strategies to address that behavior. (Letter of Response dated January 4, 2023)

Investigative Findings

The Student's August 31, 2022, IEP included one IEP goal related to behavior, accommodations for breaks, and shortened written assignments, and the IEP team agreed to discontinue the use of the self-monitoring sheet that was previously used. The August 31, 2022, IEP did not include the frequency with which the program modifications and accommodations were to be implemented. The Student received one detention at the beginning of September 2022, and two more detentions at the end of the month. The Student's behavior continued into October and the Student was assigned three more detentions during the first two weeks of October 2022. In mid-October 2022, the Principal contacted the Parent about the School's concerns about the Student's behavior and the Parent requested a reevaluation.

The District conducted a Functional Behavior Assessment (FBA), dated October 20, 2022, and the IEP team met on October 24, 2022, to develop a BIP for the Student. The BIP included positive behavioral strategies such as posting clear expectations, seating the Student away from distracting peers and near an adult, providing leadership opportunities for the Student, and offering breaks. On October 26, 2022, the District requested the Parent's consent to conduct a reevaluation regarding the behavior concerns. On November 11, 2022, the

District invited the Parent to an IEP meeting to review and revise the Student's IEP. The IEP meeting was held on December 5, 2022, and the Student's BIP was updated to include additional the additional support for self-monitoring sheets, the original IEP goal was revised and a new IEP goal was added. The December 5, 2022, IEP did not include the frequency with which the program modifications and accommodations were to be implemented.

After the December 5, 2022, IEP meeting, the Student was provided with self-monitoring sheets, the classroom Teachers started documenting their concerns for the Student's behavior and progress, and the District provided the Parent with updates. There were no accommodations in the Student's IEP that required the District to provide the Parent with regular communication above the quarterly progress reports. The District convened three IEP meetings during the first semester of the 2022-23 school year; to review the results of the FBA and develop a BIP that included positive interventions and supports, and made revisions to the BIP when more support was needed. The Student's teachers were able to describe how they implemented the positive behavioral interventions and accommodations for the Student. The District developed an IEP designed to meet the Student's needs that resulted from their disability to enable them to be involved in and make progress in the general education curriculum. The IEP team considered the use of positive behavioral interventions, supports, and other strategies to address the Student's behavior and included appropriate supports in the IEP.

Summary and Conclusions

The District had in place an appropriate and responsive IEP based on the Student's changing needs. The District implemented the requirements of 92 NAC 51-007.07A2, 92 NAC 51-007.07A5, and 92 NAC 007.07B3. However, the District failed to implement 92 NAC 51-007.07A8 when the frequency for which the IEP program modifications and accommodations were to be provided to the Student was omitted. Thus, **corrective action** is required.

Corrective Action

1. Within 10 calendar days, the District shall reconvene an IEP meeting to review and revise the frequency in which the Student's IEP program modifications and accommodations are required to be implemented.
 - a. A copy of the revised IEP including the frequency of the program modifications and accommodations should be provided to NDE within 5 calendar days of the IEP meeting.
2. Within 30 calendar days, the District shall develop NDE-approved staff training materials for the use of 'frequency' in IEP development.

- a. Training should be provided to all district staff responsible for the implementation of IEPs.
- b. The District shall provide the NDE with a copy of the training materials 2 weeks prior to conducting the training.
- c. Copies of sign-in sheets verifying the attendance of participants including the name and role shall be provided to NDE within 10 calendar days of the training.

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:

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