

COMPLAINT INVESTIGATION REPORT

Complaint Number: 22.23.15
Complaint Investigators: [Redacted]
[Redacted]
Date Complaint Filed: December 13, 2022
Date of Report: [Redacted]

Issues Investigated

1. Did the district hold an IEP meeting during the 2022-2023 school year without providing appropriate notice or alternate means of parent participation? [92 NAC 51-009.01]
2. Did the district follow appropriate procedures when making changes in the student's educational placement and special education services as described in the Student's IEP during the 2022-2023 school year? [92 NAC 51- 009.02]
3. Did the district offer to hold a meeting with the parents when proposing an IEP amendment during the 2022-2023 school year? [92 NAC 51- 007.09]
4. Did the district hold a manifestation determination within 10 school days of changing the student's placement based on a disciplinary removal during 2022-2023? [92 NAC 51- 016.02C]

Information Reviewed by Investigator

All documents were reviewed but not all were relevant to the issues in the complaint. Note that the specific documents used to make findings and conclusions are cited within each issue.

From the Parent

1. Letter of Complaint dated December 13, 2022, received by the Nebraska Department of Education December 13, 2022
2. Student IEP Agenda, dated October 19, 2022
3. Individualized Education Program, dated October 19, 2022
4. Prior Written Notice dated October 25, 2022
5. Notice of Meeting (NOM) dated November 30, 2022
6. Individualized Education Program (IEP) dated, December 2, 2022
7. Student IEP Agenda, dated December 2, 2022
8. Prior Written Notice, dated December 2, 2022
9. Email from the parent to the Resource Teacher dated December 5, 2022, at 11:27 a.m.

From the District

1. Positive Behavior Support Plan dated August 17, 2022

2. Email from student to Principal dated August 26, 2022
3. Behavior Detail Report, dates inclusive of August 30, 2022 – November 31, 2022
4. Multidisciplinary Evaluation Team MDT Report dated October 19, 2022
5. Student IEP Agenda, dated October 19, 2022
6. Individualized Education Program, dated October 19, 2022
7. Prior Written Notice dated October 25, 2022
8. Staff communications dated, October 31, 2022 – December 22, 2022
9. Notice of Meeting (NOM) dated November 30, 2022
10. Email from the Resource Teacher to the parent dated December 1 at 9:02 a.m.
11. Email from student to a student dated Dec 2, 2022, at 9:42 a.m.
12. Email from student to a student dated Dec 2, 2022, at 9:43 a.m.
13. Email from Principal to parent dated December 2, 2022, at 11:13 a.m.
14. Email from student to Assistant Principal dated Dec 2, 2022, at 12:16 p.m.
15. Email from student to Assistant Principal dated Dec 2, 2022, at 12:17 p.m.
16. Email from student to Assistant Principal dated Dec 2, 2022, at 12:19 p.m.
17. Email from student to Assistant Principal dated Dec 2, 2022, at 12:22 p.m.
18. Email from student to Assistant Principal dated Dec 2, 2022, at 12:23 p.m.
19. Individualized Education Program (IEP) dated, December 2, 2022
20. Student IEP Agenda, dated December 2, 2022
21. Prior Written Notice, dated December 2, 2022
22. The updated attached letter from the Resource Teacher to the parent is included in an email from the Resource Teacher to the parent dated December 2, 2022, at 5:21 p.m.
23. Policy 3039 Threat Assessment, dated December 5, 2022
24. Email from the parent to the Resource Teacher dated December 5, 2022, at 11:27 a.m.
25. Email from student to Principal dated August 26, 2022, forwarded to the Special Education Director on December 6, 2022, at 3:20 p.m.
26. Email from parent to Assistant Principal dated December 13, 2022, at 12:21 p.m.
27. Progress report dated December 21, 2022
28. District Response dated January 10, 2023
29. 6050 Special Education Procedures, revised May 17, 2021
30. 5-12 Student-Parent Handbook 2022-2023, Sections 2-14

In addition to the document review, the following persons were interviewed by telephone as noted below:

- On January 20, 2023:
 - Assistant Principal, High School
 - Resource Teacher, High School
- On December 17, 2022:

- o Parent

Introduction

This report is in response to a complaint filed with the Nebraska Department of Education (NDE) on behalf of the student by the parent.

The Individuals with Disabilities Education Act (IDEA) and the Nebraska Administrative Code give NDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by NDE (34 C.F.R. 300.153(c); 92 NAC 51-009.11B5). In this case, only allegations occurring on or after December 13, 2021, will be investigated.

Findings of Fact

The following information was obtained through the interviews and documentation review and is relevant to all of the allegations.

This investigation involves a fifteen-year-old student currently enrolled in the ninth grade at the High School in the district. The student receives special education services as a student with emotional disturbance (ED). The student receives special education and related services provided by the district through an IEP dated December 2, 2022.

While the student had received special education services in another school district in the past, the student did not receive special education services when enrolled in the district as an 8th grader. Beginning in 9th grade the student was referred for a special education evaluation by the district. He was evaluated and a Multidisciplinary Evaluation Team MDT Report dated October 19, 2022, found the student qualified for special education and related services as a student with an emotional disturbance. An initial IEP was developed and implemented on October 19, 2022, with special education minutes implemented at the high school. A second IEP was written and implemented on December 2, 2022, changing the student's educational placement to t an online accredited high school with 15 minutes of special education services a week provided virtually.

Issue # 1

Did the district hold an IEP meeting during the 2022-2023 school year without providing appropriate notice or alternate means of parent participation pursuant to 92 NAC 51-009.01?

92 NAC 51-007.06A states:

007.06 *Parent Participation*

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

or are afforded the opportunity to participate, including:

- 007.06A1 *Notifying parents of the IEP conference early enough to ensure that they will have an opportunity to attend; and*
- 007.06A2 *Scheduling the meeting at a mutually agreed on time and place.*

92 NAC 51-009.01 states:

009.01 *Parent Participation in Meetings*

009.01A *The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.*

009.01B *Each school district or approved cooperative must provide notice consistent with 92 NAC 51-007.06A1 and 007.06B to ensure that parents of children with disabilities have the opportunity to participate in meetings described in 92 NAC 51-009.01A.*

Allegations/Parent Position

The parent alleged that an IEP meeting was called by the district on November 29 for December 1, 2022, and that it was not possible to make arrangements to attend that quickly because of work obligations and legal proceedings that conflicted with the scheduled time. The parent reported that rescheduling was requested several times by the parent, and stated it was a parent's right to attend a child's IEP meeting. In spite of that, the meeting was held without parent participation.

District Response

The district responded that the parent was provided multiple opportunities to participate in the student's December IEP meeting. The parent informed the school that the parent would like to schedule the meeting "pending waiting on notifications from work for time off" but no alternate times were ever provided during the multiple attempts to hold the meeting. The district reports that the parent refused to attend meetings and did not offer times or dates that would work.

The district also reported the parent had informed multiple staff members on November 30, 2022, that the parent would not attend any IEP meetings. The IEP team offered the opportunity for the parent to meet at the time the parent had come into the school to

sign option paperwork (to change schools) on December 1, 2022, but the parent declined. The district reported that after multiple attempts to schedule a meeting with the parent, they notified the parent(s) on December 1, 2022, that the IEP meeting would be held on December 2, 2022, at noon in the high school conference room.

Investigative Findings

Two IEPs were held during the 2022-2023 school year, October 19, 2022, and December 2, 2022. October 19, 2022, was the annual review of goals and included the MDT Evaluation.

A Notice of Meeting (NOM) document dated September 28, 2022, was written for the October 19, 2022, indicating review of the MDT evaluation results and writing an initial IEP for the student. The NOM had a bubble filled that the parent planned to attend the meeting as scheduled. It showed that it was electronically signed by the parent.

The October 19, 2022, IEP showed the parent attended the IEP meeting. The parent signed that the district had taken the necessary action to ensure that the proceedings of the IEP were understood, and the parent had received a copy of the IEP and was offered a copy of the parental rights.

The October 19, 2022, IEP recorded parental input in the special considerations, and in the MDT report.

The Prior Written Notice from the October 19, 2022, was electronically delivered on October 25, 2022, and reports team decisions.

The resource teacher reported that the student was not progressing in general education classes and behavior was not improving and determined to call an IEP to discuss whether the services and placement were appropriate for the student on or about November 28, 2022. The resource teacher reported that an incident that occurred recently reinforced the urgency to meet the IEP but was not the trigger to call the IEP team together.

The resource teacher reported contacting the team, including the parent to set a time to meet on or about November 29, 2022. The resource teacher reported that video and phone conferencing were offered. The resource teacher further reported that the parent stated to several of the teachers that the parent would not come to another IEP meeting.

The resource teacher distributed a Notice of Meeting (NOM) document dated November 30, 2022, which was written for a December 1, 2022, IEP meeting to review or revise the IEP due to the escalating nature of the student's behavior.

The parent returned the NOM checking the "I am unable to attend the meeting as scheduled and I would like to schedule the meeting at the following date, time, and place box". The response was "pending waiting on notification from work for time off."

The district reported they did not hold the IEP meeting on December 1, 2022, due to the parent not being able to attend. They report when the parent did not propose a new time nor respond to alternate proposed times, they sent an email dated December 1, 2022, at 9:02 a.m. from the Resource Teacher to the parent

I understand that you have informed us on more than one occasion (on the phone with me and to the Principal: that you will not be attending any of the student's IEP meetings, which is unfortunate because we value your input. We have scheduled another IEP meeting for 12/2/22 at 8:30 a.m. in my classroom like our last meeting. We hope you decide to join us, however, if you do not attend we, as the student's IEP team, are going to make decisions regarding the student's plan without your input. We hope to see you at the meeting tomorrow. The attached document is the Notice of Meeting.

An email from the Principal to the parent reports

It has not [sic] become imperative that we meet regarding the student immediately. The team is able to meet at noon today, 2:00 today, or 4:00 on Friday 12/2/22.

As the parent of a special education student, you do have the right to meaningfully participate as a member of the student's IEP team. However, that does not mean that you have the right to obstruct the school district's reasonable attempts to schedule and hold team meetings. The courts have held that a special education parent who repeatedly demands that a school district reschedule an IEP meeting is functionally refusing to meet and in those circumstances, the team can meet in the parent's absence. You have now demanded that the school reschedule three different meetings without offering any time which you would be willing to meet.

This is now the fourth time that we have tried to schedule a meeting and it has become very apparent that the student needs to have the team make the best decision for the student regarding the student's education. We appreciate your input but will be meeting between now and this afternoon.

The IEP and PWN dated December 2, 2022, show that the IEP team met to discuss the concerns. The documents further show that the parent, nor the student attended the meeting.

A December 2, 2022 email from the Resource Teacher to the parent at 5:21 p.m. states

The IEP team met today to discuss the student's educational plan. Prior Written Notice is attached to this email along with your Parental Rights. The high school will begin the process of enrolling the student in an online high school. If you or the student would have time to locate the Chromebook, that will be what is provided by the school for the student to access the online program. The school will also utilize the student's school email to communicate with the student regarding when the program is ready for the student and links for the Zoom meetings with school staff. Just to clarify, the student will not come to campus on Monday or in the future. Programming will be off campus and the student will not participate in classes on the high school campus.

The Prior Written Notice from the December 2, 2022, was electronically delivered December 2, 2022, and reports team decisions.

The parent stated disagreement with the decision of the December 2, 2022, IEP in a December 5, 2022, at 11:27 a.m. from the parent to the Resource Teacher.

Summary and Conclusions

92 NAC 51-007.06A1 states the district must meet the criteria of, "Notifying parents of the IEP conference early enough to ensure that they will have an opportunity to attend." 92 NAC 51-009.01A-B further states that the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the educational placement of the child and the provision of FAPE to the child.

In this case, the district provided 14 school days, adequate notice for the October 19, 2022, MDT and initial IEP meeting, and documented parent input into the IEP development.

In the case of the December 2, 2022, IEP, it is found that the timeline between calling and holding the meeting was much shorter, 3 school days. The resource teacher (an IEP team member) called for an IEP and made multiple attempts to find an agreeable time to include the parent in the IEP meeting over a three-day period after a holiday break. It is reported but not corroborated that offering video and phone conferencing were offered. It is shown that the family and district had access to technology communication and used it in the past to meet and for education.

Rule 51 states that notice of meeting for a called IEP must provide reasonable notice. NDE defines notice as “written information provided to the parent of a child with a disability a reasonable time before the school district or approved cooperative proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education.” 92 NAC 51-009.08A3, 009.08A4a, 009.0892, and 009.08C2a, states that the district must document its attempts to obtain parental consent using the procedures in 92 NAC 51-007.06 if a mutually agreeable time is not forthcoming when an IEP team member calls an IEP meeting.

Since the student recently completed an initial evaluation qualifying for special education services 92 NAC 51-009.08A3, 009.08A4a, 009.0892, and 009.08C2a were used to determine reasonable notice.

In this case, the district stated the student’s continued behavior and lack of school participation and progress were rapidly deteriorating and the IEP team needed to meet. Notice for the December 2, 2022 meeting was provided two days ahead of the meeting on November 30, 2022. It is noted that the district made numerous attempts to be flexible with the parent to schedule the meeting over a three-day period for the IEP meeting, however, the parent indicated that each time would not work without offering an alternate time.

Based on the foregoing, the district implemented all of the requirements of 92 NAC 51-007.06A1, NAC 51-009.01A, 92 NAC 51-009.01B, NAC 51-009.08A3, NAC 51-009.08A4a, NAC 51-009.08C2a, NAC 51-009.0892 in regard to providing notice to parents and providing parents an opportunity to participate in IEP regarding evaluation and provision of FAPE for the October 19, 2022, and December 2, 2022 meetings and **no corrective action** is required.

Issue # 2

Did the district follow appropriate procedures when making changes in the student's educational placement and special education services as described in the Student's IEP during the 2022-2023 school year pursuant to 92 NAC 51-009.02?

92 NAC 51-009.02 states:

009.02 *Parent Involvement in Placement Decision*

009.02A *The school district or approved cooperative shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of their child.*

- 009.02B *In implementing the requirements of 92 NAC 51-009.02A, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A.*
- 009.02C *If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district or approved cooperative shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.*
- 009.020D *A placement decision may be made by a team without the involvement of the parents if the school district or approved cooperative is unable to obtain the parent's participation in the decision. In this case, the school district or approved cooperative must have a record of its attempt to ensure their involvement including information that is consistent with the requirements of 92 NAC 51-007.060.*

Allegations/Parent Position

The student's parent alleges that the student's educational placement was changed from high school enrollment to enrollment in one class in a virtual high school program. Further, the special education service minutes were reduced, and a new IEP goal was added all without parental participation.

District Response

The district responded that the parent was initially involved in the initial evaluation and development of the initial IEP. The district contends that the district and parent(s) were in communication about the student's behavioral and academic concerns between the initial IEP and December 2, 2022. The district called the IEP to discuss the student concerns and provided several opportunities for the parent and student to participate in the IEP meetings to discuss placement and services specifically, November 30, December 1 and 2 were all offered as dates with multiple different times in person, virtually or by phone when the parent stated that the times were not possible and did not offer alternate times to meet.

Investigative Findings

Information from the Background and Issue #1 are incorporated herein by reference.

The October 19, 2022, IEP location of services is listed as Public Schools, specifically the high school for 15 minutes per day, five days, every week following the school calendar.

These services will be delivered in an inclusive setting due to the student's difficulty with self-regulation and work completion and the student will receive consultative occupational therapy services as well. No frequency of consultative services is listed.

The October 19, 2022, PWN stated,

The team considered continuing with general education without special education support. This was rejected due to the student not making sufficient gains in the general education setting with the interventions provided.

Further,

The team considered that placement in Special education would be different for the student but noted that there are greater benefits for the student when he is provided with personalized support. The team determined that placement and additional support are needed for the student's success. The student is more capable of achieving academic success and with the resources of an IEP, he should be able to experience academic success at the high school level.

Sixteen Behavior referrals are reported by the district from the time the IEP was implemented on October 19, 2022, and November 30, 2022.

The December 2, 2022, IEP agenda shows a comparison between Quarter 1 and Quarter 2 academic performance.

Class	Quarter 1 %	Quarter 2 % to date	Projected class grade %
Algebra	73%	27%	50%
Housing and Interior Design	87%	49%	68%
Nutrition and Food	83%	26%	54%
Intro to Construction	Not reported	Not reported	74% due to excessive absences
Intro to Auto Mechanics	Not reported	Not reported	85%
Physical Science	Not reported	26%	Not participating or turning in assignments
World Culture	Not reported	Not reported	42%
English 1	Not reported	28%	47%

The December 2, 2022, IEP agenda records concerns for sleeping in class, refusing sensory strategies (Behavior Intervention Plan) organization skill deficits, threatening peers which had escalated since the October 19, 2022, IEP, inappropriate use of technology, emotional dis-regulation, and disrespectful adult interactions, and potential loss of high school credits.

The December 2, 2022, IEP location of services is listed as Homebound/Hospital for 15 minutes every week, four weeks, and every month following the school calendar. The academic placement is listed as an online accredited high school. These services will be offered via zoom with appropriate school staff and the student will receive consultative occupational therapy services as well. No frequency of consultative services is listed.

The December 2, 2022, PWN stated

The team considered the student remaining in the regular education program and increasing special education services and support. The team rejected that because of the significant regression in the student's academic work and significant increase in negative behaviors during the month of November and into December. The team also considered placement into the Alternate Education Program to change the programming to a more supportive and structured setting. The team rejected that decision due to the significant negative interaction between the student and another student in the Alternative Education Program. The parent is opposed to placement in the Alternative Education Program but ultimately the rest of the team feels strongly that moving the student into a virtual learning environment is in the best interest of the student and the student's educational needs.

The December 2, 2022, PWN reports that "The parent was notified of meetings on 11/30/22, 12/1/22 at 8:30 a.m. and 12/2/22 at 8:00 a.m., 12:00 p.m., 2:00 p.m., and 4:00 p.m. and chose to not attend. The IEP team met on 12/2/22 at 4:00 p.m."

The December 2, 2022, IEP states, "The school district is proposing to change the student's placement to a virtual learning environment due to the student's persistent inability to successfully function in the general education environment, with services and supports. In addition to sleeping in class, avoiding work, and disrupting class, the student has threatened students and staff with physical and sexual violence.

The Resource Teacher reported that the service minutes were reduced based on a conversation with the student and parent that the demand of all the classes was anxiety producing so the IEP team meeting reduced the coursework and subsequent

special education minutes temporarily so the student could build a successful momentum to increase the time.

Summary and Conclusions

92 NAC 51- 009.02A-D reinforces the importance of districts including the parent of a child with a disability as a member of the IEP when making decisions about the educational placement and services of their child including individual or conference telephone calls, or video conferencing. However, 92 NAC 51-009.02D describes that the district record attempts to ensure involvement in the decision-making process when changing placement or services.

Several factors were considered in determining if the parents were included in the decision-making process regarding placement and services change. It is found that the parent was involved in the October 19, 2022 placement and services discussion and decision making and the parent's input was recorded in the PWN dated December 2, 2022, based on previous IEP discussions. It is noted that the student's behavior and academic problems were documented as rapidly getting worse and the district acted quickly to call an IEP meeting.

The finding and summary of Issue #1 show the attempts the district took to involve the parent in the decision-making process.

Based on the foregoing, the district implemented all of the requirements of 92 NAC 92 NAC 51- 009.02A-D in regard to including the parents in the decision-making process for changing the educational placement and services for the student and **no corrective action** is required.

Issue # 3

Did the district offer to hold a meeting with the parents when proposing an IEP amendment during the 2022-2023 school year pursuant to 92 NAC 51- 007.09?

NAC 51- 007.09 states:

007.09 *IEP Meeting*

007.09E *In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the school district or approved cooperative may agree not to convene an IEP meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.*

007.09H *When conducting IEP team meetings and placement meetings and carrying out administrative matters (such*

as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a school district or approved cooperative may agree to use alternative means of meeting participation, such as video conferences and conference calls.

Allegations/Parent Position

The parent alleged that the district called an IEP meeting to change the IEP on December 2, 2022, and was not given adequate notice to make arrangements to attend.

District Response

The district responded that they did not propose an IEP amendment during the 2022-2023 school year. Instead, they held two IEP meetings, October 19, 2022, and December 2, 2022. The October 19, 2022, IEP was the MDT evaluation meeting to determine eligibility and create an IEP. The December 2, 2022, IEP was called by the district.

Investigative Findings

Information from the Background and Issues #1 and #2 are incorporated herein by reference.

The student's IEP held on October 19, 2022, listed the dates effective as October 26, 2022, to October 18, 2023.

A second IEP for the student was held December 2, 2022, and listed the dates effective as December 2, 2022, to December 1, 2023.

The district reported that the training they received from NDE is that when a change of placement is under consideration the IEP is rewritten rather than amended, changing the effective service dates.

Summary and Conclusions

While the IEP team has the option of making changes to a child's IEP after the annual IEP meeting for a school year by amending the IEP rather than rewriting it in full if, the parent of a child with a disability and the school district agrees not to convene an IEP meeting for the purposes of making those changes. In this case, the district requested an IEP to discuss changes to the IEP due to concerns about the student. Further, the district reported they were following the guidance they received from NDE to rewrite the IEP when a change of placement was made.

Reasonable notice of the October 19, 2022, IEP meeting was not identified as a concern by the parent.

Reasonable notice of the IEP December 2, 2022 meeting was investigated in Issue 2 and is not reinvestigated or restated here.

Based on the foregoing, the district implemented all of the requirements of 92 NAC 51-007.09 in regard to making changes to the student's IEP in a reasonable timeframe, and **no corrective action** is required.

Issue #4

Did the district hold a manifestation determination within 10 school days of changing the student's placement based on a disciplinary removal during 2022-2023 pursuant to 92 NAC 51-016.02C?

92 NAC 51-016.02 states:

016.02 *Authority of School Personnel*

016.02C *For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 92 NAC 51-016.02E, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, except as provided in 92 NAC 51-016.02D.*

016.02E *Manifestation Determination*

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

- 016.02E1a *If the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or*
- 016.02E1b *If the conduct in question was the direct result of the school district's or approved cooperative's failure to implement the IEP.*

Allegations/Parent Position

The parent alleges that the student receives special education services as a student with emotional disabilities and that the behaviors are a result of the student's disability. The student's educational placement was changed due to the student's behavior at an IEP meeting without allowing the parent to be present and was not allowed on school property as a result of disciplinary measures.

District Response

The district responded that it did not hold a manifestation determination meeting because there was not a disciplinary removal resulting in a change of placement. Instead, the IEP team changed the student's placement to a virtual learning environment that aligned with the student's individualized needs and provided the student with free and appropriate education (FAPE) in the student's least restrictive environment. The change of the student's placement was based upon the totality of the circumstances and data regarding the student's performance and needs, not a disciplinary removal. As indicated in the IEP, the IEP team made the decision to change the student's placement to a virtual learning environment due to the data available which included: the student's persistent inability to successfully function in the general education environment, with services and supports, and due to the student's behaviors, such as sleeping in class, avoiding work, disrupting class, and threatening students and staff with physical and sexual violence.

Investigative Findings

Information from the Background and Issues #1, 2, and 3 are incorporated herein by reference.

The Behavior Detail Report for the 22-23 school year from the first of the school year to November 30 show each twenty-four recorded behaviors with a total of 1 and $\frac{3}{4}$ day of

out-of-school suspension (OSS). It is recorded that special education services were provided for 1 day of out of school suspension.

It is reported that In school suspension is supervised by a certified teacher and students have access to schoolwork, accommodations, and services.

Date	Event	Resolution
8/30/22	Computer Misuse	One day ISS, served
9/1/22	Skip Homework Hour	1-hour detention, served
9/15/22	Skip Homework Hour	1-hour detention, served
9/15/22	Disobedience	½ hour detention, served
9/19/22	Skip Homework Hour	1-hour detention, served
9/21/22	Disobedience (accumulated 4 detentions for skipping Homework Hour	1 day ISS, served
10/13/22	Unexcused Tardy	½ hour detention, served
10/17/22	Unexcused Tardy	½ hour detention, served
10/19/22	Skip Detention	1 day ISS, served
10/26/22	Skip Homework Hour	1-hour detention stayed in office, served
10/31/22	Skip Homework Hour	1-hour detention stayed in office, served
11/2/22	Skip Homework Hour	1-hour detention stayed in office, served
11/3/22	Skip Homework Hour	1-hour detention stayed in the office
11/3/22	Computer Misuse	1 day ISS
11/4/22	Unexcused Tardy	½ day detention, served OSS 11/8/22
11/8/22	Cell Phone/Electronic Device – would not turn in the cell phone; ISS rules	1 day OSS with special education services
11/14/22	Skip Homework Hour	1-hour detention stayed in the office
11/15/22	Skip Homework Hour	1-hour detention stayed in the office
11/16/22	Insubordination (disobedience)	OSS for ¾ day
11/17/22	Skip Homework Hour	1-hour detention served in ISS
11/21/22	Skip Homework Hour	1-hour detention
11/22/22	Skip Homework Hour	1-hour detention
11/28/22	Skip Homework Hour	1-hour detention
11/30/22	Skip Homework Hour	1-hour detention

Summary and Conclusions

According to 92 NAC 016.02C, 92 NAC 016.02E, and U.S. Department of Education Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions dated July 19, 2022, a manifestation determination is necessary when the disciplinary actions remove a student from services reach 10 days to determine if the actions constitute a change in placement. It is verified that in all but one day of disciplinary action, the student was provided special education services. For one day of Out of School Suspension, it is not verified that the student received special education services, but it does not meet 10 days. It is determined that the IEP team initially met in October to review evaluation findings and determined the student was eligible for services and developed an initial IEP. The IEP team was called together again in December when the district had data showing the student's academic and behavioral concerns were not adequately addressed by the IEP. The December 2, 2022, Prior Written Notice documents the discussion of service and setting changes and decisions made.

Based on the foregoing, the district did not need to implement the requirements of 92 NAC 016.02C and 92 NAC 016.02E in regard to holding a manifestation determination to determine if the student's educational placement was changed and **no corrective action is required.**

Notice to District

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