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February 27, 2023

[Redacted], Superintendent
[Redacted]
[Redacted]
[Redacted]

[Redacted] and [Redacted]
[Redacted]
[Redacted]

Dear Superintendent [Redacted], [Redacted] and [Redacted]:

As of February 1, 2023, this office was in receipt of a letter of complaint filed on behalf of [Redacted], a student enrolled at the [Redacted] at [Redacted], by [Redacted] and [Redacted], parents of [Redacted]. The complaint included the following allegations.

The parent alleges:

- The District denied the student's education following a suspension and manifestation determination finding that the disciplinary infraction was a manifestation of the student's disability.
- The District failed to return the student to their placement following a finding that the disciplinary infraction was a manifestation of the student's disability.
- The District failed to follow appropriate procedures for students with disabilities following a manifestation determination finding that the disciplinary infraction was a manifestation of the student's disability.
- Details supporting the allegations include the following:
 - The student received a five (5) day suspension for a safe school violation.
 - Parents received three (3) different variations of the incident report.
 - A Manifestation Determination meeting resulted in the following decisions:
 - The infraction was a manifestation of the student's disability.
 - The student did not need a functional behavioral assessment or a behavioral intervention plan.
 - The student would return to school on February 2 following the completion of the suspension.

- An IEP meeting and safety meeting will be held later.
- The school refused to return the student to their placement prior to the infraction.
- The student has not been allowed to return to school despite completing the assigned five (5) day suspension.
- The school will require a Student Services meeting before the student will be allowed to return to school at the [Redacted] and/or [Redacted].
- The [Redacted] has expectations irrespective of special education.
- The school will require a Student Services meeting to be completed before an IEP meeting will be held.
- The Student Services supervisor told the parents that the Student Services meeting would make the determinations regarding the student's placement.
- Parents have not received a copy of the Procedural Safeguards upon parent(s) request.

Based on the allegations, the following issues were identified to be investigated in determining whether the Student has been provided FAPE:

1. Whether the District properly complied with Rule 51 procedures following the student's disciplinary infraction. *92 NAC 51-016; 92 NAC 51.008; 92 NAC 51-009.01, 02, 05; 92 NAC 51-006.*
2. Whether the District's acts or omissions resulted in a denial of FAPE. *92 NAC 004.01.*

Findings of Fact

The Letter of Complaint received February 1, 2023, stated that on January 23, 2023, a student in the [Redacted] had reported to a staff member that the Student was carrying a pocket knife and upon investigation, the Student was suspended for five days. On January 27, 2023, the District held a manifestation determination meeting and determined the behavior incident was due to the Student's disability but a functional behavioral assessment and behavior intervention plan was not needed. It was also decided at that time that the Student would return to the [Redacted] upon completion of the suspension.

At the conclusion of the meeting, the principal of the [Redacted] indicated that another meeting was needed. This follow up meeting with student services determined that the Student could not return to the [Redacted]. It was the

perspective of the [Redacted] and the student services staff that the Student could not be supported at the [Redacted] or at the local high school.

In a Letter of Response dated February 23, 2023, the District stated the following:

- The Student begins and ends each day at [Redacted].
- The Student was accepted into the [Redacted] for which students are required to apply to be considered for participation.
- The Student pulled a knife out of his pocket in a threatening manner on January 17, 2023.
- The knife was reported as 4 inches long when folded allowed the District to remove the child to an interim alternative educational setting.
- A manifestation determination meeting was held on January 27, 2023 and the behavior was determined to be a manifestation of the Student's disability.
- Separate from the manifestation determination meeting was a meeting with student services to determine if the Student should remain in the [Redacted].

Conclusions:

The District made proposals related to each of the issues above. The Office of Special Education provided additional conditions that the District agreed to implement. As a result the following is the resolution that the Office of Special Education and the District have reached:

1. [Redacted] will return [Redacted] to the [Redacted] within 2 calendar days of the date of the final agreement until an IEP team meeting can be convened.
2. [Redacted] will convene [Redacted] IEP team within 5 business days of the date of the final agreement to create accommodations and positive behavioral supports that will allow [Redacted] to safely attend the [Redacted].
 - a. During the IEP, the IEP team will also review [Redacted] Functional Behavior Assessment and his Behavior Intervention Plan to ensure it allows for positive behavioral supports that will allow [Redacted] to safely attend the [Redacted] and the general education classroom at [Redacted].
 - b. During the IEP meeting, the IEP team will consider whether the temporary removal during the suspension in question resulted in a need for compensatory education for [Redacted].
 - c. Copies of the IEP will be sent to NDE within 5 calendar days of the date of the meeting verifying the resolution activities occurred.

3. [Redacted] will review its policies and procedures regarding disciplinary removal of students with disabilities to ensure they comply with Rule 51.
 - a. The review of the policies and procedures must be conducted within 60 calendar days of the date of the final agreement.
 - b. A copy of the notes detailing the result of the review will be sent to NDE within 5 calendar days of the conclusion of the review.
 - i. Any revisions to the policies and procedures required by the review must be submitted to NDE for approval.
 - ii. Any revision to policies based on the review that require Local Board Approval, must be appear on the Board agenda and Board notes verifying approval of the revised policy must be provided to NDE within 10 calendar days of the Board meeting.

Decision and Rationale:

As part of the State Complaint process, Rule 51 (92 NAC 51-007.11C2a) allows the district the opportunity to respond to the complaint including making a proposal to resolve the complaint. Upon review of the issues within the complaint, the Nebraska Department of Education has determined the District's resolutions put forth in this letter have resolved the complaint that was filed and this case is now considered closed. If upon the conclusion of resolution actions described above new issues emerge, a new complaint may be filed.

If you have any questions concerning the information within this letter, please contact Kelly Wojcik at 531-207-9986. As the Director of Accountability, she will be able to respond to any questions you may have regarding the information contained in this report. Christopher Chambers will be following up with the District to ensure the resolution activities have occurred as stated.

Sincerely,



Amy R. Rhone, Administrator/Director
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CC: [Redacted], Director of Special Services
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[Redacted]
[Redacted] NDE Complaint Investigator
Christopher Chambers, NDE Complaint Specialist