

COMPLAINT INVESTIGATION REPORT

Complaint Number: 22.2.01
Complaint Investigator: Redact
Date Complaint Filed: August 2, 2022
Date of Report: Redacted

Issues Investigated

1. Whether the District properly complied the Child Find procedures for timely and appropriate multi-disciplinary evaluations. [92 NAC 51-006.01; 92 NAC 51- 009.04]
2. Whether the District properly complied with the IDEA and Rule 51 requirement to conduct an IEP meeting within thirty (30) calendar days of completion of a multidisciplinary team evaluation and determination of eligibility. [92 NAC 51-007.01; 92 NAC 51- 009.04A2]
3. Whether errors or omissions on the part of the District resulted in a denial of FAPE for eligible students. [92 NAC 51- 004.01]

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated August 1, 2022; received by NDE August 2, 2022
- Complainant Exhibit 1 – Students 1-4
- Complainant Exhibit 2 – Student 5
- Complainant Exhibit 3 – Student 7
- Complainant Exhibit 4 – Student 6
- Complainant Exhibit 5 – Student 8
- Complainant Exhibit 6 – Student 9
- Complainant Exhibit 7 – Student 10
- Numbered Exhibits include the following:
 - Emails between Complainant, parents/guardians, foster parents, Guardians Ad Litem and surrogates and the District
 - Court documents pertaining to individual students named in the complaint
 - Consent to evaluate documents for individually named students
 - Letters directing the District to communicate directly with Complaint on all matters related to education of students named in the complaint.
- Memorandum to Special Education Directors and Supervisors from NDE, Office of Special Education, regarding clarification on guidance for 92

NAC 51 and IDEA 60 Day Timeline for School Age Children, dated December 3, 2019.

- Nebraska Revised Statute 79-215 – Students; admission; tuition; persons exempt; department; duties.
- 92 NAC 51.004 - Responsibility for Special Education Programs
- Summary of information related to the State Complaint provided by Complainant
- Interviews via telephone and zoom with Complainant
- Complainant document of Proposed Remedies & Compensatory Education for Individuals named in State Complaint.

From the School District

- Letter of Response dated August 29, 2022
- District Exhibit 1 – District Calendars for the 2021-22 and 2022-23 school years.
- District Exhibit 2A – 6600-Special Education Policies, Adoption Date: 10/05/2015.
- District Exhibit 2B – District Special Education Handbook 2022, The District's policies and procedures implementing the Individuals with Disabilities Education Act (IDEA) and Nebraska's Rule 51 including identifying, evaluating, and determining eligibility, also known as Child Find, including but not limited to timelines for completion of multidisciplinary evaluations, determination of eligibility, development of IEPs, and provision of Procedural Safeguards.
- District Exhibit 3 – Spreadsheet prepared by the District with the District's summary of Specific Child Find Information pertaining to individual students named in the complaint, including:
 - Date of referral;
 - District's response to referral;
 - Acquisition of permission to evaluate (date consent was received)
 - Schedule for evaluation;
 - Progress of evaluation;
 - Results of evaluation;
 - Determination of eligibility; and,
 - Development of an IEP, if applicable.
- District Exhibit 4A – Student 1
- District Exhibit 4B – Student 2
- District Exhibit 4C – Student 3
- District Exhibit 4D – Student 4
- District Exhibit 4E – Student 5
- District Exhibit 4F – Student 6

- District Exhibit 4G – Student 8
- District Exhibit 4H – Student 9
- District Exhibit 4I – Student 10
 - Numbered Exhibits include:
 - Documents submitted by the District in response to the investigator's request for production of any IEPs developed for named students, including evidence of implementation, progress monitoring, behavior intervention plans (BIP), functional behavioral assessments (FBA), and progress reports, should any exist.
 - Any and all prior written notices (PWN) provided for each named student.
 - Any and all notices of meeting (NOM) provided for each named student.
- District Exhibit 5G – Supplement for Student 6
- District Exhibit 5I – Supplement for Student 9
- District Exhibit 5J – Supplement for Student 10
- District Exhibit 5K – Supplement for Students 1-4
 - Supplementary documents include: Copies of email correspondence, telephone logs including notes, text messages, or other correspondence between staff, parents, or the agency (complainant) pertaining to the identification, evaluation, and eligibility also known as Child Find for each named student; and,
- IEPs for students that were developed after District submitted documents and supplements to document but during the investigation.
- Any additional documentation pertinent to the resolution of the complaint issues. *None submitted*
- District's email request for extension for time to deliver requested documents;
- Interviews via zoom with relevant District staff accompanied by District legal counsel, including:
 - District Director of Special Education
 - Relevant school psychologists
 - Relevant Teaching/Learning Consultants
 - Relevant related service providers (Speech and Language Pathologist, Occupational Therapist)
- District email to investigator indicating offers of compensatory education for students named in the investigation;
- District email to investigator concerning issues for investigation in the complaint.

- District email stating that the District has no additional evidence to submit.

Introduction

Nebraska strives to address the needs of some of the state's most significantly at-risk youth by coordinating public services, including education, for court involved students. This complaint is filed by [REDACTED], a non-profit organization appointed by the Court, as Limited Representation Education Counsel for each of the ten (10) named students. The Complaint alleges that the District has a systemic pattern and practice of failing to conduct timely and appropriate multidisciplinary evaluations, depriving students of timely IEPs, failure to provide PWN regarding its refusal to initiate Child Find Provisions and failure to provide notice of Procedural Safeguards upon request for evaluation. Ten (10) individual students are specifically named as the sample for the allegations of systemic failure. Each of the named students has been investigated.

The parties engaged in mediation for Issue #2 as allowable by 92 NAC 51-009.11C2b. Due to successful mediation, Issue #2 was withdrawn and not investigated included in this report pursuant to 92 NAC 51-009.12G.

Findings of Fact (for all issues)

1. Nebraska Revised Statute Chapter 79 Sections 201-210 governs requirements of compulsory attendance. *79 NRS 201-210*
2. Nebraska Revised Statute Chapter 79 Section 215 governs the responsibility for education when students are in unique situations including students who are involved with the court and placed in residential settings outside the boundaries of their district of residence. *79 NRS 215.*
3. The Nebraska Department of Education (NDE) has general supervisory responsibility to ensure implementation of the Individuals with Disabilities Education Act (IDEA). *92 NAC Chapter 51 (Rule 51)*
4. The NDE Office of Special Education clarified that, based upon clarification from the Office of Special Education Programs (OSEP), Nebraska's Rule 51, 45-school day timeline for evaluation may not supersede the 60-calendar day requirement set forth in the IDEA regardless of school breaks such as summer vacation, holiday breaks and etc. *See NDE, Office of Special Education, December 3, 2019 memorandum to Special Education Directors and Supervisors providing clarification on guidance for Rule 51-009.04 and the IDEA 60-calendar day timeline for school age children.*
5. NDE has provided a comprehensive guidance document pertaining to Child Find and Evaluation policy and procedures. This document suggests that Local Education Agencies (LEAs) consider breaking down tasks and

identifying who is responsible, timeframes, and forms needed for initial evaluations and reevaluations. *NDE Policies and Procedures Guidance Document Chapter 5 (Child Find) and Chapter 7 (Evaluation)*.

6. The NDE Policies and Procedures Guidance Document clarifies that when a child is suspected of having a disability, the district will complete a comprehensive initial evaluation within 45 school days or 60 calendar days (whichever comes first) from the date of parental consent to determine eligibility for special education services. See *NDE P&P Guidance Document Chapter 7*.
7. The District has Special Education Policies in place. The Policies address both Child Find and IEPs. See *District Exhibit 2A*.
8. The District's Special Education Handbook 2022 is a comprehensive document for Implementing Title 92 NAC Chapter 51 and Section 504 of the Americans with Disabilities Act. *District Exhibit 2B*.
9. The District's Special Education Handbook 2022, Initial Evaluation of Students timeline states the following:
 - A. Initial evaluation must be conducted within 60 calendar days after receiving parental consent for the evaluation. 60 calendar days includes school breaks, weekends, vacation, holiday breaks etc.
 - B. Initial evaluations must be completed within 60 days and the school district is required to monitor the completion of the evaluation. This means that the initial evaluation(s) must be completed, and the MDT held within the 60-calendar day period.
 - C. The 60-calendar day period begins the day after the signed Notice and Consent for Evaluation form is received from the parent.
 - D. The special education staff member(s) or psychologist identified on the Notice and Consent for Evaluation form is responsible for monitoring the completion of the evaluation.
 - E. The special education staff member(s) or psychologist identified on the Notice and Consent for Evaluation form is responsible for monitoring the completion of the evaluation.
 - F. Upon receiving written consent from the parent/guardian, the special education staff member or psychologist who met with the parent completes the routing of the form. Using the Special Ed – 60 Day Calendar, determine the date on which the 60-calendar day period ends. Record the date the 60-calendar day period ends on the second line in the upper right-hand corner of the Notice and Consent for Evaluation form. The following steps must be completed immediately so that the evaluation process can be completed in the 60-calendar day period.

- G. A copy of the Notice and Consent for Evaluation form should be made and should be given to the parent/guardian.
- H. If the Notice and Consent for Evaluation form includes an area that will be evaluated by itinerant staff (e.g. Speech, OT, PT, Vision, Hearing), the special education staff member or psychologist who met with the parent is responsible for providing a copy of the completed Notice and Consent for Evaluation form to the special education division email box and all itinerant staff who will be conducting an evaluation. Your Sped Teaching and Learning Consultant can assist you if you don't know who these individuals are for your school.
- I. The original of the Notice and Consent for Evaluation form must be scanned and emailed immediately to the District Special Education Division email. Immediately after sending the email to special education division forward that email to ALL individuals that will evaluate the student. The individual who obtained the consent for evaluation/submitting signed copy to special education division, is responsible for ensuring all evaluators are notified of the signed consent for evaluation. Please refer to the section titled Submitting Special Education Paperwork for directions on how to submit paperwork. Each Notice and Consent for Evaluation form **MUST** be sent to the District Special Education Division email in its own email, not included with other documents and not combined with multiple consents.
- J. If the evaluation is not completed within the 60-calendar day period, the reason for the delay, family issues or school delay, must be noted. Information about the reason for the delay is recorded on the bottom of the original Notice and consent for Evaluation form: If the delay is due to family issues, list the reason(s) for the delay.
- K. If the initial evaluation is over 60 calendar days due to school delay, the IEP team should evaluate whether or not compensatory services are owed to the student.
- L. If the original Notice and Consent for Evaluation form is updated anytime throughout the process, the updated version must be emailed to the District Special Education Division email so all versions and changes are documented and uploaded into Infinite Campus. *District Exhibit 2B.*

10. District Special Education Handbook 2022, Multidisciplinary Evaluation Team (MDT) includes the following:

- A. Initial MDT meetings must be held with the parent/guardian within 60-calendar days of the consent received date.
 - B. If the child is determined to be eligible, an IEP will be developed. The IEP may be held immediately following the MDT.
 - C. If the IEP conference is not held immediately following the MDT, it must be held within 30 calendar days of the MDT. When possible, plan to hold both meetings together. Upon completion of a MDT verification decision, the district shall provide a reasonable notification and conduct an individualized education program within 30 calendar days. *District Exhibit 2B.*
11. District Special Education Handbook 2022, Section C IEP and Placement Procedures reiterates that, once a student has been determined to be eligible for special education services the IEP team convenes immediately following the MDT or no more than 30 calendar days to develop the IEP. *District Exhibit 2B.*
12. The District Special Education Handbook 2022 includes a section on Present Levels of Academic Achievement and Functional Performance (PLAAFP).
- A. The PLAAFP is a summary describing the child's current performance in the areas of need as identified by an evaluation (this may or may not be a formal evaluation). The PLAAFP must:
 - i. Have a direct correlation to the goals;
 - ii. Indicate a starting point for intervention;
 - iii. Provide a "snapshot" of the student, include information from a variety of sources, and be written in understandable terms;
 - iv. Contain current, specific, measurable objective baseline information for each area of need affected by the disability; and
 - v. Summarize the child's current performance and provide the foundation upon which all other decisions in the IEP will be made.
 - B. The PLAAFP is important because it:
 - i. Enables families, children and educators to monitor the child's progress;
 - ii. Summarizes and translates evaluation results into clear, understandable language; and
 - iii. Identifies and prioritizes the specific needs of the child.
 - C. Every Goal in the child's IEP must relate to a need identified in the PLAAFP.

- D. The PLAAFP should clearly indicate a starting point for intervention. Information must be included for all disability areas (e.g., academic, behavioral, social/emotional)
 - E. Additional disabilities, with eligibility date, can be included in the PLAAFP.
 - F. The PLAAFP includes concerns of the Parent and other IEP team members for enhancing educational performance.
 - G. The PLAAFP includes effects of the student's disability on involvement and progress in the general curriculum. *District Exhibit 2B.*
13. The District Special Education Handbook 2022 includes Section: Student's Educational Needs.
- A. Academic, developmental and functional needs of the child:
 - i. This area records the needs of the child in the areas of academic, developmental and/or functional. The needs recorded in this section should be tied to the "Effect of the Student's Disability on Involvement and Progress in the General Curriculum" section as well as to any accommodations identified for Nebraska state assessments the student will take during the term of the IEP. *Complainant Exhibit 2B.*
14. The District Special Education Handbook 2022 includes Section: Extended School Year
- A. The critical question IEP teams must ask regarding ESY services is "Will the learning that occurred during the regular school year be significantly jeopardized if ESY services are not provided?" *Complainant Exhibit 2B.*
15. During interviews, the District Director of Special Education stated that staff were not available to complete MDTs and IEPs within the required timelines.
16. During interviews, school psychologists interviewed stated that they are on 10-month contracts and are offered the opportunity to choose to work additional hours during the time they are not under contract.
17. During interviews, District Teaching and Learning Specialist stated that the school psychologists didn't get started on the evaluations because they were busy and had to prioritize.
18. At the beginning of each school year, the district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction. *92 NAC 51.007.02A*

19. The complainant sets forth a systemic complaint, alleging that the district has a pattern and practice of denying students a free appropriate public education (FAPE) by disregarding timelines concerning initial multidisciplinary team evaluations and individual education programs (IEPs), failure to provide Prior Written Notice regarding refusal to initiate the provisions of Child Find and the provision of FAPE and failure to provide Procedural Safeguards Notice to parents of children upon parental request for evaluation. Ten (10) individual students are named as a sample of students. *See Complaint document.*
20. May 27, 2022 – District last day of the 2021-22 school year for students. *District Exhibit 1.*
21. June 2 – July 23 The District summer school program is available by invitation and addresses students identified with post-pandemic needs, special education extended school year (ESY) and other students invited for various reasons. *District Exhibit 1, also explanation of District Summer School Program by District staff during investigation interviews.*
22. 2022-23 School Year for District
 - A. August 16, 2022 - Elementary Self-Contained Start Day
 - B. August 17, 2022 – Elementary Student Start Day
 - C. August 17, 2022 – Entry Level Middle and Senior High Student Start day
 - D. August 18, 2022 – All Other Middle and Senior High Student Start Day*District Exhibit 1.*
23. **Student 1:**
 - A. November 30, 2021 – Court order appointing Educational Surrogate and [Redacted] as Limited Representation Education Counsel for Student 1 and others due to neglect because the children were not being schooled. *Complainant Exhibit 1, [REDACTED][Redacted] Court Appointment as Counsel.*
 - B. Student 1 is a ward of the state with a court appointed guardian who is the court-appointed educational decision maker for whom [Redacted] serves as counsel. *Complainant Exhibit 1*
 - C. March 17, 2022 – letter requesting full and individual evaluation for Student 1 sent to DISTRICT Director of Special Education via email by court appointed educational surrogate. *Complainant Exhibit 1, Student 1 and District Exhibit 5K.*
 - D. April 12, 2022 – three (3) emails were exchanged between the [Redacted] and Associate In-House Counsel for the District. These emails confirmed that District received and understood the court

order appointing educational surrogate for Student 1 and others.
Complainant Exhibit 1, emails

- E. April 13, 2022 – Associate In-House Counsel for the District provided [Redacted] with Consent for Evaluation forms via email.
Complainant Exhibit 1, emails Student 1 and others.
- F. April 15, 2022 – [Redacted] requests that social / emotional and speech / language be included as part of the evaluation for Student 1 and others. *Complainant Exhibit 1, emails Student 1 and others and District Exhibit 5K.*
- G. April 19, 2022 – Email from Assoc. In-House Counsel for the District to [Redacted] sending revised consent to evaluate based on request for additional areas to be evaluated. *Complainant Exhibit 1, emails Student 1 and others.*
- H. April 21, 2022 – email indicating the District is providing records for Student 1 and others to [Redacted]. *Complainant Exhibit 1, emails Student 1 and others.*
- I. Consent to evaluate received April 27, 2022 through the Limited Representation Education Counsel.
 - i. Date consent received starting the 60-calendar day time period for initial evaluation is not filled in.
 - ii. Date the initial Evaluation period ends is not completed.
 - iii. Documentation of reason evaluation not completed within 60-calendar timeline not completed. *Complainant Exhibit 7, Consent for Evaluation.*
- J. Permission to evaluate form states that the initial evaluation must be completed within 60-calendar days. *District Exhibit 4A.*
- K. June 15, 2022 email from [Redacted] to District Associate In-House Counsel and outside counsel requesting an update on the status of the MDT/IEP team meetings for Student 1 and others. No reply included. *Complainant Exhibit 1, emails.*
- L. June 21, 2022 email again requesting an update on the status of MDT/IEP team meetings for Student 1 and others. No reply included. *Complainant Exhibit 1, emails.*
- M. June 24, 2022 email from District outside counsel to [Redacted] replying to [Redacted] stating that the psychologist was able to get some of the evaluation portions completed before school was out, and the contracted psychologists are finishing up the evaluation.
- N. June 26, 2022 - According to the 60-calendar day timeline for evaluation, evaluation and MDT should be completed for Student 1 by this date. *Investigator calculation*

- O. July 7, 2022 email from [Redacted] to District outside counsel asking when the MDTs will be scheduled because the DHHS case manager reported that the evaluations are complete. *Complainant Exhibit 1, emails.*
- P. July 18, 2022 email from [Redacted] District outside counsel checking back on the MDTs for Student 1 and others. No response included. *Complainant Exhibit 1, emails.*
- Q. August 8, 2022 - Directive from parent/guardian or educational surrogate to communicate directly with [Redacted] regarding all students for whom NC has educational decision-making authority. *Complainant Exhibit 1, Communication with Counsel.*
- R. August 15, 2022 email [Redacted] to District outside counsel asking if the MDTs/IEPs are being scheduled for Student 1 and others. No response included. *Complainant Exhibit 1, emails.*
- S. August 23, 2022 email from [Redacted] to District outside counsel asking if there is an update on the meetings for Student 1 and others. *Complainant Exhibit 1, emails.*
- T. Written permission to evaluate was granted for areas of a) academics; b) intellectual; c) social and emotional; and, d) speech and language. *District Exhibit 4A.*
- U. Boilerplate language on the permission to evaluate form indicates that Procedural Safeguards are provided upon initial referral or parental request for evaluation. The form has no place for the parent to acknowledge receipt of the Procedural Safeguards. *District Exhibit 4A.*
- V. Evaluation was completed July 13, 2022. *District Exhibit 4A, extrapolated from MDT evaluation report.*
- W. MDT verification for Student 1 occurred on August 23, 2022. The comprehensive evaluation summary indicates that, during the 2021-22 school year, Student 1 improved in math and regressed in reading. *District Exhibit 4A.*
- X. Attendance is a significant concern. *District Exhibit 4A.*
- Y. Student 1 falls in the average range for intellectual ability. *District Exhibit 4A.*
- Z. Academics - Student 1 scores in the average range in math but low in reading and extremely low in written expression. *District Exhibit 4A.*
- AA. Speech and Language – Student 1 scores in the average range for receptive and expressive language. However, Student 1 is difficult to understand and had difficulty with producing complex

sentences and articulation and sound production. *District Exhibit 4A.*

- BB. Emotional/Social/ Behavioral development – using the BASC-3 rating scales, completed by Student 1's general education teacher,
- i. Student 1 scored in the Clinically Significant range in ten (10) out of thirteen (13) areas on the BASC-3:
 1. Externalizing problems,
 2. Hyperactivity,
 3. Conduct problems (such as stealing and or lying),
 4. Internalizing problems,
 5. Anxiety (such as worry, nervousness or fear),
 6. Behavior Symptom Index, and
 7. Atypicality (strange behaviors and may seem disconnected).
 - ii. Student 1 scored in the At-Risk range for three (3) remaining areas on the BASC-3:
 1. Depression,
 2. Leadership, and
 3. Study Skills.
 - iii. Student 1 did not score in the average range in any areas. The evaluation summary indicates that an evaluation summary was sent to Student's guardian but never returned.
 - iv. Student 1's PLAAFP statement on the IEP does not mention the BASC-3 scores from teacher evaluation or consider social / emotional / behavioral development in any portion of the IEP. *District Exhibit 4A.*
- CC. Classroom Observations – Student 1 observation did not take place during the regular school year. However, Student did attend District Summer School Program and was observed once during District Summer School Program. *District Exhibit 4A.*
- DD. Section IV Interpretation and Summary of Results: The MDT determined that Student 1 meets the eligibility requirement for both Specific Learning Disability and Speech and Language Impairment in the area of articulation. *District Exhibit 4A.*
- EE. MDT eligibility meeting was conducted for Student 1 on August 23, 2022. *District Exhibit 4A.*
- FF. IEP meeting was conducted for Student 1 on August 30, 2022. *District Exhibit 4A.*

24. Student 2

- A. November 30, 2021 – Court order appointing Educational Surrogate and [Redacted] as education counsel for Student 2 and others due to neglect because the children were not being schooled. *Complainant Exhibit 1, [Redacted] Appointment as Counsel.*
- B. Student 2 is a ward of the state with a guardian who is the court-appointed educational decision maker for whom [Redacted] serves as counsel. *Complainant Exhibit 1 and Summary of Information.*
- C. March 17, 2022 – letter requesting full and individual evaluation for Student 2 sent to District Director of Special Education via email by court appointed educational surrogate. *Complainant Exhibit 1, Student 2.*
- D. April 12, 2022 – three (3) emails were exchanged between the [Redacted] and District Associate In-House Counsel. These emails confirmed that the District received and understood the court order appointing educational surrogate for Student 2 and others. *Complainant Exhibit 1, emails.*
- E. April 13, 2022 – District Associate In-House Counsel provided [Redacted] with Consent for Evaluation forms via email. *Complainant Exhibit 1, emails.*
- F. April 15, 2022 – [Redacted] requests that social / emotional and speech / language be included as part of the evaluation for Student 2 and others. *Complainant Exhibit 1, emails.*
- G. April 19, 2022 – Email from District Assoc. In-House Counsel to [Redacted] sending revised consent to evaluate based on request for additional areas to be evaluated. *Complainant Exhibit 1, emails.*
- H. April 21, 2022 – email indicating the District is providing records for Student 2 and others to [Redacted]. *Complainant Exhibit 1, emails.*
- I. April 27, 2022 consent to evaluate received by the District.
 - i. Date consent received starting the 60-calendar day time period for initial evaluation is not filled in.
 - ii. Date the initial Evaluation period ends is not completed.
 - iii. Documentation of reason evaluation not completed within 60-calendar timeline not completed. *Complainant Exhibit 7, Consent for Evaluation and District Exhibit 4B.*
- J. July 12, 2022 – evaluation completed. *Extrapolated from MDT evaluation summary and team report.*
- K. August 8, 2022 - Directive from parent/guardian or educational surrogate to communicate directly with [Redacted] regarding all

students for whom [Redacted] has educational decision-making authority. *Complainant Exhibit 1, Communication with Counsel.*

- L. August 23, 2022 – Comprehensive evaluation report for Student 2 was completed.
 - i. Student 2 scored in the average range in composite intelligence Index and nonverbal intelligence index and below average in verbal intelligence index.
 - ii. In areas of academic testing, Student 2 scored significantly below average in 3 of 5 areas including reading and math, below average in letter and word recognition and extremely low in written expression.
 - iii. In areas of language development, Student 2 scored in the average range for Expressive language with subtest scores below average in formulated sentences and sentence assembly and average in recalling sentences. Student 2 scored below average in Receptive language with subtest scores in the average range for following directions and semantic relationships and below average score in word classes. Core language score was in the average range.
 - iv. Motor and Sensory/Health/Physical Status were not evaluated.
 - v. In areas of Emotional/Social/Behavioral Development, the Basc-3 rating scale was administered and completed by Student 2's teacher and guardian.
 1. Student 2's teacher rated Student 2 in the average range for all areas except for the learning problems index.
 2. Student 2's guardian rated Student 2 "At Risk" in 9 areas including hyperactivity, conduct problems, externalizing problems, attention problems, atypicality, social skills, leadership, functional communication and adaptive skills.
 3. June 17, 2022, Student 2 was observed during District Summer School Program and not during the actual school year.
 - vi. According to the evaluation report, Student 2 meets the criteria for Specific Learning Disability in the areas of Written Expression, Reading Comprehension, Math Reasoning, and Math Calculation. *District Exhibit 4B.*

- M. August 25, 2022 email from District outside counsel asking [Redacted] to see if the educational surrogate is available to attend an MDT for Student 2 tomorrow, August 26, 2022. *Complainant Exhibit 1, emails.*
- N. MDT meeting for Student 2 was held on August 26, 2022. *District Exhibit 4B.*
- O. August 26, 2022, Notice of Meeting was provided for Student 2's IEP meeting scheduled for August 31, 2022. *District Exhibit 4B.*
- P. August 31, 2022, IEP developed for Student 2. *District Exhibit 4B*

25. Student 3

- A. November 30, 2021 – Court order appointing Educational Surrogate and [REDACTED] as education counsel for Student 3 and others due to neglect because the children were not being educated. *Complainant Exhibit 1, [Redacted] Court Appointment as Counsel.*
- B. Student 3 has a guardian who is the court-appointed education decision maker for whom [Redacted] serves as counsel. *Complainant Exhibit 1, [Redacted] Court Appointment as Counsel.*
- C. March 17, 2022 – letter requesting full and individual evaluation for Student 3 sent to the District Director of Special Education via email by court appointed educational surrogate. *Complainant Exhibit 1, Student 3.*
- D. April 12, 2022 – three (3) emails were exchanged between the [Redacted] and the District Associate In-House Counsel. These emails confirmed that the District received and understood the court order appointing educational surrogate for Student 1 and others. *Complainant Exhibit 1, emails.*
- E. April 13, 2022 – District Associate In-House Counsel provided [Redacted] with Consent for Evaluation forms via email. *Complainant Exhibit 1, emails.*
- F. April 15, 2022 – [Redacted] requests that social / emotional and speech / language be included as part of the evaluation for Student 3 and others. *Complainant Exhibit 1, emails.*
- G. April 19, 2022 – Email from District Assoc. In-House Counsel to [Redacted] sending revised consent to evaluate based on request for additional areas to be evaluated. *Complainant Exhibit 1, emails.*
- H. April 21, 2022 – email indicating the District is providing records for Student 3 and others to [Redacted]. *Complainant Exhibit 1, emails.*
- I. Consent to evaluate received April 27, 2022 through [Redacted].
 - i. Date consent received starting the 60-calendar day time period for initial evaluation is not filled in.

- ii. Date the initial Evaluation period ends is not completed.
 - iii. Documentation of reason evaluation not completed within 60-calendar timeline not completed. *Complainant Exhibit 7, Consent for Evaluation.*
- J. August, 23, 2022 – MDT eligibility meeting for Student 3 with Notice of Meeting (NOM) dated August 22, 2022.
- i. MDT report for Student 3 includes the following:
 - 1. Student 3 is determined eligible under the classification of Speech and Language Impairment (SLI).
 - 2. Intellectual – Student 3’s overall intelligence index falls into the below average range. Verbal intelligence index also falls into the below average range and Nonverbal intelligence index falls within the average range.
 - 3. Academic evaluation – Student 3 is below average in the area of math concepts & applications, low in math computation and reading comprehension and extremely low in letter and word recognition and written expression.
 - 4. Communication (Speech and Language) - Student 3 has significant articulation problems that make it difficult for adults and peers to understand him. Also, Student 3 has a significant history of Chronic Otitis Media, PE tubes, associated with hearing loss. Overall, Student 3’s language scores fall within the average range. Areas for growth are identified as a) following multi-step directions and formulating sentences of differing complexity and appropriate grammar. Articulation therapy and growth since attendance has become consistent should help Student 3 continue to progress.
 - 5. Motor and Sensory/Health/Physical Status were not assessed.
 - 6. Emotional/ Social/ Behavioral Development – The paraprofessional in Student 3’s classroom completed the BASC-3 rating scale on behalf of Student 3. Significant concerns were articulated in the area of depression and the depression scale was in the clinically significant range. Student 3 was in the “at risk” range in seven (7) areas: Internalizing Problems;

Attention Problems; Learning Problems; School Problems; Study Skills; Functional Communication; and Adaptive Skills. Student 3 will often get upset if he doesn't know the answer but tries really hard and does what is asked of him. If unable to understand the concept being taught, Student 3 is willing to do it multiple times.

7. Classroom Observation – Student 3 was observed once during District Summer School Program and not observed during the regular school year. Student 3 was participating and cooperating. When Student 3 was asked to spell a word and struggled, the teacher provided assistance sounding it out then moved on. Student 3 started playing with his eraser, disengaging from the lesson. The paraeducator redirected Student 3 to get back on task. Next, students were asked to write a sentence. Student 3 raised his hand to answer the first word but the teacher chose another student. Student 3 put his head down on his desk and disengaged. Class moved on to a dancing break.
 8. MDT team concludes that Student 3 meets eligibility criteria for SLI in the area of Articulation.
 9. At the end of the MDT meeting on August 23, 2022, NOM is provided for a meeting to develop an IEP on August 30, 2022. *District Exhibit 4C.*
- K. August 30, 2022, IEP is developed for Student 3. *District Exhibit 4C.*
- i. PLAAFP only includes information about speech and language evaluation. No information is included about intellectual, academic and social/emotional evaluations conducted.
 - ii. IEP goals address areas of articulation, math and reading.
 - iii. Student 3 will receive special education services for fifteen (15) minutes, twice per week.
- L. PWN provided at the conclusion of the IEP meeting proposes special education services with the verification of speech-language impairment in the area of articulation with additional academic interventions provided in the general education classroom. The PWN acknowledges that the team has concerns of academic progress that are being addressed in the IEP in areas of Math and Reading and that the district took longer than 60 days to complete

the evaluation which resulted in a delay in the provision of services during the first 3 weeks of school. The team rejected the verification of Specific Learning Disability but determined that Student 3 had not had enough exposure to the academic curriculum to show his true abilities. Tier two interventions will be provided in the classroom in order for Student 3 to succeed academically.

26. Student 4

- A. November 30, 2021 – Court order appointing Educational Surrogate and [Redacted] as education counsel for Student 4 and others. *Complainant Exhibit 1, [Redacted] Court Appointment as Counsel.*
- B. March 17, 2022 – letter requesting full and individual evaluation for Student 4 sent to the District Director of Special Education via email by court appointed educational surrogate. *Complainant Exhibit 1, Student 4.*
- C. April 12, 2022 – three (3) emails were exchanged between the [Redacted] and District Associate In-House Counsel. These emails confirmed that the District received and understood the court order appointing educational surrogate for Student 1 and others. *Complainant Exhibit 1, emails.*
- D. April 13, 2022 – District Associate In-House Counsel provided [Redacted] with Consent for Evaluation forms via email. *Complainant Exhibit 1, emails.*
- E. April 15, 2022 – [Redacted] requests that social / emotional and speech / language be included as part of the evaluation for Student 4 and others. *Complainant Exhibit 1, emails.*
- F. April 19, 2022 – Email from District Assoc. In-House Counsel to [Redacted] sending revised consent to evaluate based on request for additional areas to be evaluated. *Complainant Exhibit 1, emails.*
- G. April 21, 2022 – email indicating the District was providing records for Student 4 and others to [Redacted]. *Complainant Exhibit 1, emails.*
- H. Consent to evaluate received April 27, 2022 through [Redacted].
 - i. Date consent received starting the 60-calendar day time period for initial evaluation is not filled in.
 - ii. Date the initial Evaluation period ends is not completed.
 - iii. Documentation of reason evaluation not completed within 60-calendar timeline not completed. *Complainant Exhibit 7, Consent for Evaluation and District Exhibit 4D.*
- I. Evaluation for Student 4 was completed on July 12, 2022. *District Exhibit 4D.*

- J. MDT eligibility meeting was conducted on August 23, 2022. The comprehensive evaluation was considered that the team determined that Student 4 does not meet the criteria for eligibility in any areas of classification. The MDT document indicates that Student 4 will be considered for a 504 plan. *District Exhibit 4D.*

27. Student 5

- A. November 2020 – Student 5 was referred for evaluation by school staff. Parent rescinded consent for the evaluation on November 22, 2020. *District Exhibit 4E.*
- B. January 31, 2022 – Foster parent for Student 5 contacts the District via email expressing concerns about Student 5's grades, missing work and any behavioral or social concerns as well as anything the school might think needs to be addressed. *Complainant Exhibit 2, Foster mom alerts District re: Student 5 struggling.*
- C. February 1, 2022 – District email indicating that Student 5 missed the deadline to sign up for tutoring. District staff member has met with Student 5 to discuss Student 5's struggles. States that Student 5's thoughts wander or isn't paying attention and then it is difficult to complete work because he doesn't know what to do. Math teacher has been notified to support. Provided a link where weekly lesson plans are posted for students and parents and a suggestion to have Student 5 show parent/guardian his grades on his student portal. *Complainant Exhibit 2, District notes Student 5 has attention difficulties.*
- D. March 9, 2022, email from foster parent following up regarding assessing Student 5 for further services and reminding the District that the GAL has requested school records for Student 5. *Complainant Exhibit 2, Foster Parent follows up on request to evaluate.*
- E. March 10, 2022 – email from District to foster parent for Student 5 relaying a message from the school psychologist and also stating that there is no need for special education. No PWN of refusal to evaluate was provided. *Complainant Exhibit 2, District declines to evaluate Student 2 based on academics.*
- F. March 25, 2022 – Court order placing Student 5 in custody of Nebraska Department of Health and Human Services in a placement to exclude the home of the father until further order of the Court. The Court order included a “no contact” order stating that Student 5's father shall have no contact with Student 5 and appointing [Redacted] as Limited Representation Education

Counsel for Student 5. *Complainant Exhibit 2, Order appointing [Redacted] as counsel.*

G. May 19, 2022 The District received Consent to evaluate making the due date for MDT June 18, 2022.

- i. Date consent received starting the 60-calendar day time period for initial evaluation is not filled in.
- ii. Date the initial Evaluation period ends is not completed.
- iii. Documentation of reason evaluation not completed within 60-calendar timeline not completed. *Complainant Exhibit 2, Student 2 email requesting evaluation and District Exhibit 4E.*

H. July 14, 2022 – email from [Redacted] asking when evaluation and MDT for Student 5 will take place since consent to evaluate was provided May 24, 2022. *Complainant Exhibit 2, Email to District requesting MDT be scheduled.*

I. NOM for MDT and IEP team meeting dated August 10, 2022 for meeting to take place on August 15, 2022. *District Exhibit 4E.*

J. August 15, 2022 – MDT eligibility meeting conducted for Student 5. The team determined that Student 5 is eligible under the SLD classification. The comprehensive evaluation summary includes the following information:

- i. Intellectual – Student 5 obtained a full-scale IQ score within the low average range. Student 5 performed within the average range on the verbal comprehension, visual spatial and processing speed indexes. Student 5 performed within the low average range on fluid reasoning and working memory indexes.
- ii. Academic – Student 5 scored within the average range for reading subtests and below average in math and written expression.
- iii. Communication, Motor and Sensory/Health/Physical Status were not evaluated.
- iv. Emotional/Social/Behavioral development was evaluated using the BASC-3 rating scales
 1. Student 5 completed the self-reporting assessment for the BASC-3.
 2. Student 5 reported Clinically Significant concerns in the areas of Sense of Inadequacy, Attention Problems, and Attitude to Teachers. Student 5 scores indicate that he dislikes school and wishes to be elsewhere. Student 5 may consider his teachers to be unfair, uncaring,

and/or overly demanding. Student 5 reported having significant difficulty maintaining necessary levels of attention, indicating that these problems likely interfere with academic performance. Student 5 reports being dissatisfied with his ability to perform a variety of tasks even when putting forth substantial effort.

3. Student 5 fell into the “At Risk” categories on the Attitude to School and Anxiety scales.
 4. Parent rating scale did not show any clinically significant concerns. Two areas, withdrawal and functional communication fell into the “At-Risk” levels indicating that Student 5 is seemingly alone, has difficulty making friends and/or is sometimes unwilling to join group activities. Student 5 also demonstrates poor communication skills and has difficulty seeking out and finding information on his own.
 - v. Classroom Observations – Actual classroom observations were not conducted as it was conducted during the summer at the District administrative building. An observation was conducted during the evaluation.
- K. At the conclusion of the MDT eligibility meeting, the team determined that Student 5 meets the criteria and is eligible as a student under the classification of SLD in the areas of math calculation, math problem solving and written expression.
- i. Additional recommendations to assist with educational planning include:
 1. Consider after-school tutoring available free of charge
 2. Frequent agenda checks to make sure Student 5 is writing down assignments
 3. Frequent check-ins about progress of assignments (parents are also encouraged to check the parent portal frequently)
 4. Accommodations to assist with attention to task and social-emotional needs. *District Exhibit 4E.*
- L. Court appointed [Redacted] was not included in the meeting. *District Exhibit 4E.*
- M. PWN for Initial Provision of Special Education Services dated August 15, 2022 indicates consent for special education was granted via verbal consent from mom on May 15, 2022. During interviews,

District staff stated that this must be a typographical error because the meeting was held on August 15, 2022. *District Exhibit 4E.*

- N. An IEP meeting was conducted immediately following the MDT meeting for Student 5. The District did not notify or invite [Redacted] to the MDT or IEP meetings. Parent only speaks their native language and an interpreter was present. Court appointed [Redacted] was not included in the meeting. *District Exhibit 4E.*
- O. [Redacted] is the court-appointed limited representation education counsel for Student 5 and did not attend either the MDT or the IEP meetings for Student 5 because [Redacted] was not aware that the meetings were scheduled to take place. *Interview with Complainant [Redacted].*
- P. The first page of Student 5's IEP indicates the primary disability as Speech Language Impairment (SLI) while the MDT states that the student's disability classification is SLD. District staff opined, during interviews, that this was an error. *District Exhibit 4E and Interview with District staff.*
- Q. PLAAFP for Student 5's IEP does not mention results of the BASC-3 rating scales for social emotional development completed as part of the evaluation. *District Exhibit E.*
- R. The PLAAFP does mention other concerns of parents and other IEP team members include:
 - i. Attention to task
 - ii. Anxiety and self-concept
 - iii. Homework completion
 - iv. Organization *District Exhibit E.*
- S. Extended School Year (ESY) - 3 options are listed for consideration on the IEP.
 - i. The student is not eligible. The student is able to maintain the skills needed to progress toward achieving the IEP goals and objectives and is not at a critical point of instruction.
 - ii. The student is eligible (attach the (ESY services plan)
 - iii. Inadequate data available. The IEP Team will reconvene on or before the following date to review the need for ESY.
 - iv. The IEP team checked the box indicating that the student is NOT eligible. *District Exhibit E.*
- T. Student 5 has two (2) IEP goals
 - i. Goal 1 – By this time next year, given instruction and practice, Student 5 will improve writing skills to a 2.5 or higher, as measured by grade level writing rubrics.

- ii. Goal 2 – by this time next year, when given materials at his instructional level, Student 5 will increase his math calculation and math reasoning to 75% accuracy as measured by informal assessments.
- iii. The IEP states that Student 5 will receive his support within a co-taught classroom for writing and math. *District Exhibit E.*

28. Student 6

- A. May 20, 2021, Court order appointing [REDACTED] attorney as the Educational Right Counsel for the minor child Student 6. The court order also recognized that Student 6 has deficits in reading and math and ordered a tutor to assist if needed. *Complainant Exhibit 4, Appointment of [Redacted] as counsel.*
- B. October 28, 2022, via email, Complainant notified the District that [Redacted] has been appointed as education counsel for Student 6 and included the order of appointment. *District Exhibit 5G.*
- C. October 28, 2022, via email, District tells Complainant to work with District in-house counsel. *District Exhibit 5G.*
- D. October 29, 2022, email between District in-house counsel and Complainant clarifying that Student 6 is enrolled in a private school and trying to determine whether Student 6 has an IEP. *District Exhibit 5G.*
- E. November 1, 2022, district sends Complainant records for Student 6 without an MDT or IEP. *District Exhibit 5G.*
- F. November 22, email from District stating that the District has an unsigned consent from 2016 and it does not appear that an evaluation was conducted because the District did not have consent. *District Exhibit 5G.*
- G. April 15, 2022, Complainant provides District with consent to evaluate. *District Exhibit 5G.*
- H. April 15, 2022, the District confirms receipt and acceptance of consent to evaluate for Student 6. *District Exhibit 5G.*
- I. April 15, 2022, the District documented receipt of permission to evaluate Student 6, to determine whether the student was eligible for special education services.
 - i. The Notice and Consent for Evaluation is signed and dated by the parent/guardian on March 31, 2022.
 - ii. The Notice and Consent for Evaluation form has the date received – 4/15/22.
 - iii. The Notice and Consent for Evaluation form has the date the evaluation and MDT are due completed – 6/14/22.

- iv. Student's number is included on the form.
- v. This form does not have space to record the reason, should the evaluation and MDT not meet the required timeline.

District Exhibit 4F.

- J. June 17, 2022, Complainant sent an email to the District reminding the District of the request for evaluation dated April 21, 2022, reminding the District that Student 6 is enrolled at HN, reminding the District that, by [Redacted] calculation, the MDT will be due on June 21, 2022 and asking for confirmation whether the evaluation has been completed and, if so, when the MDT will be held. The email also requested an explanation, if the evaluation has not been completed, why the evaluation was not completed within the statutory timeline. There is no evidence that the District responded to this email. *Complainant Exhibit 4, Emails documenting eval requests and follow-up.*
- K. June 23, 2022, the Complainant again sends an email requesting information on the status of the MDT for Student 6. There is no evidence that the District responded to this email. *Complainant exhibit 4, Emails documenting eval requests and follow-up.*
- L. August 3, 2022, the District Special Education Coordinator sends an email to the District School Psychologist stating that Student 6 evaluation needs to be prioritized. *District Exhibit 5G.*
- M. August 11, 2022, the District school psychologist sent an email to the private school where Student 6 is enrolled stating that the District just received consent to evaluate Student 6 and needs some information to proceed. *District Exhibit 5G.*
- N. August 17, 2022, a District school psychologist contacts the private school and requests to come observe Student 6 on August 23 and complete academic testing on August 25, 2022. *District Exhibit 5G.*
- O. August 17, 2022, a District school psychologist requests to change observation and evaluations to Monday, August 22, 2022. *District Exhibit 5G*
- P. August 19, a District school psychologist contacts the private school requesting names for 2-3 staff (Title I, electives, counselor, etc.) that are familiar with Student 6 and could complete a questionnaire for this part of the evaluation. *District Exhibit 5G.*
- Q. During interviews with the investigator, the District Teaching and Learning Coach for Student 6 stated that she had no idea why no attempt was made to initiate the evaluation for Student 6 during the last 6 weeks of the 2021-22 school year. She had no idea why

the private school where Student 6 was enrolled was not contacted before concerning the MDT for Student 6.

- R. Student 6, living with a family member guardian, attended a private Catholic school during the 2021-22 school year. *Complainant Summary of Information, Student 6.*
- S. Student 6 was evaluated on August 22, 23, and 24, 2022. See dates of evaluations on MDT report dated August 31, 2022. See *MDT and IEP for Student 6 provided by District.*
- T. August 25, 2022, District provided NOM for MDT and IEP meeting for Student 6. Meeting to take place on August 31, 2022. See *MDT and IEP for Student 6 provided by District.*
- U. August 31, 2022, MDT eligibility meeting was conducted and Student 6 determined eligible with classification of SLD.
 - i. Evaluation report dated August 31, 2022.
 - ii. Intellectual – Student 6 was administered the RAIS evaluation which showed a verbal intelligence index of 75(low), nonverbal intelligence index of 114(average) and a composite intelligence index of 94(average).
 - iii. Academic – Student 6 was administered the KTEA-III which showed the following:
 - 1. A standard score of 100 is considered to be average with scores between 85 and 115 in the average range.
 - 2. Letter & Word recognition SS 74
 - 3. Nonsense Word Decoding SS 80
 - 4. Word Recognition Fluency SS 69
 - 5. Reading Comprehension SS 76
 - 6. Math Concepts & Applications SS 95
 - 7. Math Computation SS 85
 - 8. Written Expression SS 77
 - 9. Spelling SS 60
 - 10. The report indicates that the profile of data places Student 6 in the high-risk range for dyslexia.
 - iv. Communication was not assessed.
 - v. Motor
 - 1. Gross motor was not assessed
 - 2. OT evaluation took place on August 22, 2022 assessing fine motor and sensory processing.
 - 3. Student 6 visual motor skills are in the average range compared to same age peers, handwriting skills meet or exceed target expectations for same age peers,

- and no significant differences in sensory processing which would impact participation in educational activities and routines are reported at this time.
- vi. Emotional/Social/Behavioral Development was assessed using the BASC-3 rating scale. Parent, counselor and Teacher all completed the rating scales for Student 6.
 - 1. Parent did not note any concerns based on her profile of ratings.
 - 2. Student 6 counselor and teacher noted some at risk concerns and the teacher noted clinically significant concerns in the area of Anxiety.
 - 3. The summary states that Student 6 sometimes displays behaviors stemming from worry, nervousness and/or fear, withdrawal or sadness and difficulty with school work. Student 6 may struggle with decision-making and study skills at times.
 - 4. The MDT discussed that Student 6 may benefit from support to learn and utilize coping skills to address overwhelming feelings.
 - vii. Classroom Observations - Student 6 was observed in the classroom on August 22, 2022. Student 6 was on task, followed directions and asked questions as needed. She respectfully asked for and received assistance from the teacher.
 - viii. The MDT team determined that Student 6 is eligible as a student with SLD in the areas of basic reading skills, reading fluency, reading comprehension and written expression
 - ix. Student 6's educational needs also include coping skills. See *MDT and IEP for Student 6, provided by District.*
- V. August 31, 2022, PWN for Initial Provision of Special Education Services was provided for Student 6 with a notation that permission was given verbally over the phone on the same date. Parent signature and date are also included on the form. See *MDT and IEP for Student 6 provided by District.*
- W. August 31, 2022, and IEP was developed for Student 6. The form indicating participants at the IEP meeting for Student 6 does not include the Parent or Student. All other required members of the IEP team are included, including representation from the private school and the OT. See *MDT and IEP for Student 6 provided by District.*
- X. All areas of assessment are included in the PLAAFP. *Id.*

- Y. The IEP team determined that Student 6 does not need ESY services, however, if concerns arise the team will revisit the need for ESY. *Id.*
- Z. Student 6 has IEP goal 1 addressing areas of reading skills, reading fluency and reading comprehension as measured by informal assessments.
 - i. Objective 1 - Given a passage at independent reading level, Student 6 will increase reading level to 80 wpm with less than 3 reading errors.
 - ii. Objective 2 – Given materials at instructional level, Student 6 will answer higher order thinking questions about the story with 80% accuracy. *Id.*
- AA. Student 6 has IEP goal 2 - Improve writing in the areas of written expression as measured by writing samples.
 - i. Objective 1 - Given modeling and practice, Student 6 will generate complete sentences, check for error, and have fewer than 3 grammar or punctuation errors in 4/5 writing samples.
 - ii. Objective 2 - Given sight words or spelling words orally, Student 6 will write the words with 80% accuracy in 4/5 writing samples. *Id.*
- BB. Student 6 has IEP goal 3 – By August 2023, Student 6 will demonstrate the ability to accurately recognize level of anxiety through the use of a visual self-rating system as measured by teacher observation.
 - i. Objective 1 – When given practice, visuals, and a toolbox of coping strategies, Student 6 will:
 1. Identify level of anxiety of self.
 2. Select an appropriate strategy to alleviate anxiety of self.
 3. Practice a strategy to reduce anxiety of self.
 4. Increase problem solving skills. *Id.*

29. Student 7

- A. November 12, 2021, Court ordered the appointment of [Redacted] counsel for Student 7, placing Student 7 in a shelter for crisis stabilization and making in-state group home applications for Student 7. *Complainant Exhibit 3, [Redacted] Court appointment as Limited Representation Education Counsel.*
- B. In the District's response to the Complaint, the District states that Student 7 transferred to [Redacted] on December 10, 2021 and has

- not re-enrolled in the District. No additional information for Student 7 was provided by the District. *District response to the Complaint.*
- C. December 22, 2021, email from District Assoc. In-House Counsel to [Redacted] following up with [Redacted] and stating that the District received and fulfilled a records request from [Redacted] in mid-December. The email also confirms that Student 7 is still enrolled with the District assigned to [Redacted]. *Complainant Exhibit 3, Student 7 ROI & Appointment of [Redacted]*
- D. April 1, 2022, letter sent via email to the District Sped Director from guardian ad litem and educational surrogate for Student 7 requesting evaluation for special education services. The letter explains that:
- i. Student 7 was excelling in school and after becoming a victim of sexual abuse, Student 7 grades began to suffer and the Student refused to come to school.
 - ii. Student 7 demonstrates significant depression distrust and anxiety which is believed to be impacting the Student's education.
 - iii. Student 7 has had recent suicidal ideations which have been exacerbated by the Student's schooling.
 - iv. The GAL/Surrogate is requesting a meeting with each person who will be doing an evaluation before Student 7 is evaluated in order to share important information and history.
 - v. The letter acknowledges permission to evaluate is required in writing and requests that this letter be accepted as granting permission to evaluate. *Complainant Exhibit 3, Student 7, Letter to school request MDT.*
- E. April 15, 2022, email from [Redacted] to District, including the request from the GAL/Surrogate for an MDT for Student 7. The email notifies the District that Student 7 has been placed at N group home and is currently attending [Redacted] as a sophomore and reminding the District that Student 7 is a District student. The email requests that the District coordinate with the school district to start the MDT process and asks the District to contact [REDACTED] with any questions or concerns. *Complainant Exhibit 3, Student 7, MDT Request from [Redacted]*
- F. June 17, 2022, email from [REDACTED] to the District requesting an update on the MDT for Student 7 and advising that Student 7 may be released June 17, 2022 to a cousin. *Complainant Exhibit 3, Student 7, MDT Evaluation*

- G. June 17, 2022, email to attorney at firm, District outside counsel, requesting an update on the status of MDT for Student 7. [Redacted] also provides an update stating that Student 7 is currently in [Redacted] but will likely be released to a cousin today (June 17, 2022). The email reminds the District that an initial evaluation was requested on April 22, 2022 and states that [Redacted] hopes to schedule an MDT and IEP for the end of June. The email requests a date and time for the MDT/IEP meeting and includes the GAL and educational surrogate in the correspondence. *Complainant Exhibit 3, Student 7 MDT Evaluation.*
- H. June 22, 2022, District outside counsel replies to [Redacted] that as a follow up to the message sent by [Redacted] on June 17, 2022, “we will schedule an MDT when the evaluation is completed. *Complainant Exhibit 3, Student 7 MDT Evaluation (SM).*
- I. July 28, 2022, Email from [Redacted] to the District Student Placement Supervisor, Student and Community Services, informing the District that Student 7 is residing in the District boundaries in a kinship placement and requesting Student 7 be enrolled in a school other than the school Student 7 would be anticipated to attend based on residence. *Complainant Exhibit 3, Enrollment for Student 7.*
- J. July 28, 2022, email reply to [Redacted] from the District Student Placement Supervisor, Student and Community Services stating that the email with information and request will be forwarded to the specialist at the school where attendance is requested. That individual will look into the request. *Complainant Exhibit 3, Enrollment for Student 7.*
- K. August 3, 2022, a Juvenile Warrant was issued by the Court for Student 7 and parent or guardian or person having custody of the juvenile. A memorandum from the State Probation Officer is included with the Warrant. The memorandum states that Student 7 has been residing in a kinship home within the jurisdiction of DISTRICT since June 17, 2022, that Student 7 left the placement without permission on August 1, 2022 and that Student 7 has not been seen since. See document received by NDE.

30. Student 8

- A. January 14, 2022, Court order appointing [Redacted] and placing Student 8 on probation. The hearing included an interpreter because parents are non-English speakers. The Court order states that Student 8 will follow up with school to determine if an IEP is

needed. The order also includes the requirement for Student 8 to attend all regular sessions of school without unexcused absences or tardies, work to full potential, complete all required projects and/or assignments and be of good behavior while in school; *Complainant Exhibit 4, [Redacted] Court appointment as Counsel.*

- B. February 24, 2022, Release of information for the District to provide [Redacted] with information for Student 8 signed. *Complainant Exhibit 5, Feb 24, 2022 signed release of information and request for evaluation.*
- C. February 24, 2022, Letter from parent of Student 8 to District legal counsel formally requesting a MDT for Student 8 to determine eligibility for special education services. *Complainant Exhibit 5, Feb 24, 2022 signed release of information and request for evaluation.*
- D. March 4, 2022, email from the District to [Redacted] with attached Consent to Evaluate for Student 8 and requesting parent signature and return to District. *Complainant Exhibit 5, District requesting consent on a different form.*
- E. May 10, 2022, Consent to Evaluate signed by parent and returned to the District by [Redacted]. *Complainant Exhibit 5, [Redacted] email May 10 with consent to eval form.*
- F. May 11, 2022, Receipt of Notice and Consent for Evaluation, dated May 2, 2022, is confirmed. *Complainant Exhibit 5, District acknowledging second form receipt on May 11, 2022 and District Exhibit 4G.*
- G. May 12, 2022, email from [Redacted] to the District notifying the District of details of an evaluation and results showing diagnosed with cannabis use disorder and other specified disruptive, impulse control, and conduct disorder. *Complainant Exhibit 5, May 12, information re diagnoses.*
- H. Responding to the complaint, the District states that voice mails were left for Student's parents on July 7, 12, and 20, 2022, in order to schedule an evaluation. No contact logs were provided to support this position. *See District Response to Complaint.*
- I. July 28, 2022, [Redacted] email with District outside counsel following up on MDT and stating that the District has not yet reached Student 8's parent. *Complainant Exhibit 5, [Redacted] emails through Sept 1 re need for evaluation.*
- J. August 8, 2022, [Redacted] email to District outside counsel with an attached order updating the educational surrogate for Student 8 and requesting that [Redacted] and educational surrogate be

advised on how to assist in getting the MDT completed.
Complainant Exhibit 5, [Redacted] emails through Sept 1 re need for evaluation.

- K. August 11, 2022, Letter from parent/guardian or education surrogate directing all communication regarding Student 8's education to the [Redacted] and permit the [Redacted] to call meetings, obtain ongoing access to education records, request and receive notice of all meetings, progress reports for Student 8 and generally communicate on behalf of the parent/guardian/education surrogate. *Complainant exhibit 5, Communication with Counsel letter.*
- L. August 15, 2022, [Redacted] email to District outside counsel advising the District that Student 8 is placed in a group home and asking how to get the MDT scheduled. *Complainant Exhibit 5, [Redacted] emails through Sept 1 re need for evaluation.*
- M. September 1, 2022, the District outside counsel notifies [Redacted] via email that the District was notified in July that Student 8 would be enrolled in [Redacted] which is considered its own school district and therefore, Student 8 is no longer enrolled in DISTRICT. The email informs [Redacted] that [Redacted] should be contacted about the evaluation. *Complainant Exhibit 5, District advising [Redacted] was now responsible.*

31. Student 9

- A. March 10, 2022, Court order appointing [Redacted] and extending appointment of GAL/surrogate and children to remain in the temporary custody of NE Dept. Of Health and Human Services. *Complainant Exhibit 6, [Redacted] Court appointment as Counsel.*
- B. May 2, 2022 Consent to evaluate received through [Redacted].
 - i. Date received from parent and date the 60-calendar day time period for initial evaluation are not filled in.
 - ii. Reason for initial evaluation not being completed within the 60-calendar day period is not completed.
 - iii. Documentation of reason evaluation not completed within 60-calendar timeline not completed. *District Exhibit 4H.*
- C. May 10, 2022, email from Complainant/[Redacted] to District Associate in-house counsel and copied to the GAL/surrogate requesting an update on how things are going and whether the evaluation for Student 9 had started. *Complainant Exhibit 6, [Student 9] May 20 email.*

- D. May 24, 2022, District Associate in-house counsel responding to May 10 email and suggesting the GAL/surrogate contact the school to get information. Also, stating that the District is working to complete evaluations as quickly as possible. *Complainant Exhibit 6, [Student 9] May 24, 2022.*
- E. June 8, 2022, email from [REDACTED] to the District requesting information regarding Student 9's MDT and reminding the District that the consent to evaluate was provided to the District on April 29, 2022 so the MDT meeting should take place by June 28, 2022. *Complainant Exhibit 6, [Student 9] June 8 email.*
- F. June 13, 2022, email from the District's outside counsel with update. The school psychologist relayed that testing is not complete due to absences. The school psychologist has been in touch with the foster parent to set up an evaluation appointment. Foster parent would like evaluation to occur during the District's Summer School Program but Student 9 has been absent. *Complainant Exhibit 6, [Student 9] June 13 from District*
- G. June 13, 2022, [Redacted] reply to District email June 13 regarding MDT. [Redacted] states that the GAL/surrogate should be deciding where the evaluation can be completed rather than the foster parent. The [Redacted] expresses concern that no progress has been made on the evaluation and states that the [Redacted] or GAL will bring Student 9 to a location at an agreed-upon time to complete the evaluation. The [Redacted] suggests the District contact the GAL/surrogate to pursue that option. Finally, the [Redacted] states that Student 9's truancy itself is an indicator that the assessment is appropriate and the [Redacted] is concerned that a failure to vigorously ensure finding a way to evaluate Student 9 is leaving the Student without FAPE and needed supports. *Complainant Exhibit 6, [Student 9] June 13 reply to the District.*
- H. June 27, 2022, the [Redacted] sent an email to the District outside counsel reminding her of the duty to complete an initial evaluation within 60 days and that the MDT is due tomorrow, June 28, 2022. The email states "we have tried repeatedly to have you work with us to ensure we can make Student 9 available and have not received a reply. In a final effort to resolve this, we can have the Student come to [Redacted]. We can have the student transported and available any time July 6th, 7th, or 8th. We can have the Student transported and available in the afternoon of July 13 (1-

4), or anytime July 15th. Please let us know which date and time will work." *Complainant Exhibit 6, [Student 0] June 27 email.*

- I. July 18, 2022, via email, [Redacted] notifies District outside counsel that no response has been received and numerous MDTs are past due. An immediate response is requested. *Complainant Exhibit 6, [Student 9] July 7 inquiry, July 10 follow up and July 21 response.*
- J. July 21, 2022, via email, [Redacted] response to July 18 email stating IT has search for July 7 email and cannot find it. Also reporting that several evaluations have been completed and the District will be reaching out to schedule MDTs once staff have returned. *Complainant Exhibit 6, Nesbitt July 7 inquiry, July 10 follow up and July 21 response.*
- K. August 19, 2022, MDT report completed, educational surrogate was present at the meeting and [Redacted] was not present. Other required members of the team were also included.
 - i. The MDT report states that a meeting was held on May 9, 2022 that included Student 9, foster parent, foster care specialist, in-home therapist, [Redacted], Child and Family Services Specialist, school social worker, school psychologist, special education chair and DISTRICT legal counsel. Concerns included school attendance, anxiety and depression. Student 9 is working with an in-home therapist and an outside therapist. Student 9 experiences panic attacks when in situations with many people and had difficulty sustaining for greater than 30 minutes. Student 9 is working on coping skills to help during these panic inducing situations. Interventions/accommodations developed during this meeting included: identification of safe people within the school, a safe pass, review of schedule, presence of in-home therapist or specialist at school with gradual reduction and working on sleep schedule.
 - ii. Student 9 is sixteen years old (DOB 9-12-2005) and enrolled in 12th grade.
 - iii. Student 9 was referred for evaluation by educational surrogate due to concerns related to a current diagnoses/treatment for anxiety and depression.
 1. Student 9's at the time the report was compiled on August 19, 2022, Student 9's grades are as follows:
 2. F – English
 3. B – Creative Writing

4. F – Modern World History
 5. F – Geometry
 6. F – Anatomy and Physiology
 7. F – Weight Training
 8. F – Culinary Skills
 9. F – Family Living
- iv. Student 9's Attendance
 1. During the 2021-22 school year
 - a. Term 1-26.98 out of 34 days
 - b. Term 2-19.46 out of 44 days
 - c. Term 3-3.49 out of 43 days
 - d. Term 4-3.98 out of 46 days
 2. During the 2020-21 school year
 - a. Term 1-36.54 out of 38 days
 - b. Term 2-33.38 out of 35 days
 - c. Term 3-34.18 out of 38 days
 - d. Term 4-42.51 out of 52 days
 - v. Intellectual – RIAS 2 administered May 12, 2022
 1. Verbal index – 75, 5th percentile
 2. Nonverbal index – 110, 75th percentile
 3. Composite index – 91, 27th percentile
 - vi. Academic – KTEA-3 administered July 25, 2022
 1. Student 9 scored in the average range for Reading and Written Expression
 2. Student 9 scored in the below average range for Math
 - a. Math Concepts and Application SS 81 – Range 75-87 - 10th percentile
 - b. Math Computation SS 70 – Range 64-76 – 2nd percentile
 - c. Math Composite SS 74 – Range 85-111 - 4th percentile
 - vii. Communication and Motor were not assessed
 - viii. Sensory/Health/Physical Status
 1. May 13, 2014 - Documented ADD without Hyperactivity
 2. Also noted by educational surrogate and foster care specialist that Student 9 has anxiety and depression. Student 9 is working with an in-home therapist and an outside therapist.
 3. Student had been prescribed Lexapro and is now prescribed Welbutrin.

- ix. Emotional/Social/Behavioral Development – BASC-3 rating scale completed 5-5-2022 by two (2) different teachers
 - 1. Teacher 1 rating scale indicated concerns in the areas of:
 - a. Anxiety – Clinically Significant
 - b. Depression – Clinically Significant
 - c. Somatization – Clinically Significant
 - d. Internalizing Problems – Clinically Significant
 - e. Learning Problems – Clinically Significant
 - f. Atypicality – Clinically Significant
 - g. Withdrawal – Clinically Significant
 - h. Behavioral Symptoms Index – Clinically Significant
 - i. Attention Problems – At Risk
 - j. Adaptability – Clinically Significant
 - k. Social Skills – Clinically Significant
 - l. Leadership – Clinically Significant
 - m. Study Skills – Clinically Significant
 - n. Functional Communication – Clinically Significant
 - o. Adaptive Skills – Clinically Significant
 - 2. Teacher 2 rating scale indicated concerns in the areas of:
 - a. Attention Problems – At Risk
 - b. Learning Problems – Clinically Significant
 - c. School Problems – At Risk
 - d. Withdrawal – Clinically Significant
 - e. Adaptability – At Risk
 - f. Social Skills – Clinically Significant
 - g. Leadership – Clinically Significant
 - h. Study Skills – Clinically Significant
 - i. Functional Communication – At Risk
 - j. Adaptive Skills – Clinically Significant
- x. Classroom Observation – Student 9 was observed on May 12, 2022 during English class. Twelve students were present and Student 9 was accompanied by a care specialist. Student 9 was working on a writing assignment and was engaged with the activity.
- xi. Summary notes that Student 9's general pervasive mood of unhappiness or depression is of primary concern.
- xii. Student 9 meets the criteria for Emotional Disturbance

- xiii. Student 9 meets the criteria for Other Health Impairment.
District Exhibit 4H.
- L. NOM was provided for MDT and IEP meeting to take place on August 19, 2022. Date the notice was provided was left blank.
District Exhibit 4H.
- M. August 19, 2022, NOM was provided to both parent and guardian for an IEP meeting for Student 9 to take place on August 30, 2022.
District Exhibit 4H.
- N. August 30, PWN for an IEP was provided. *District Exhibit 4H.*
- O. August 30, 2022, NOM was provided to continue the August 30, 2022 IEP meeting until September 7, 2022. *District Exhibit 4H.*
- P. September 7, 2022 the IEP for Student 9 was completed. Student 9 did not attend. *District Exhibit 4H.*
- Q. The IEP team determined that the primary disabling condition for Student 9 would be Emotional Disturbance. *District Exhibit 4H.*
- R. The transition section of the IEP indicates that Student 9 lacks significant credits for graduation during the 2022-23 school year. It states that Student 9 will need to attend the District's Summer School Program during the summer and have a plan for the fall in order to recover the classes needed for graduation. *District Exhibit 4H.*
- S. ESY – this section was left blank. *District Exhibit 4H.*
- T. Goal 1 – Using classroom and teacher instruction, Student 9 will demonstrate improved personal management skills. This will be achieved by Student 9 working on a classroom task for a minimum of 15 minutes. Student 9 is currently able to work for 5 minutes in a class that is preferred as long as no verbal response is required.
- U. Short Term Objectives or Benchmarks – Student 9 will work on classroom tasks for a minimum of 15 minutes daily to demonstrate classroom engagement in all four blocks of instruction daily. *District Exhibit 4H.*
- V. Goal 2 – Math – Given the duration of the IEP, Student 9 will communicate number sense concepts using multiple representations to reason, solve problems, and make connections within mathematics scoring a 2 or better on a four-point scale in 3 out of 5 tasks assigned. Student 9 has currently turned in one assignment for math class and scored a 3.
- W. Given a math assignment in math class, Student 9 will generalize, represent, and analyze relationships using algebraic symbols in

assignments, quizzes, and tests with 80% accuracy. Student 9 is currently at 0%. *District Exhibit 4H.*

- X. Goal 3 – Student 9 will identify and manage feelings on a daily basis. Student 9 will choose a coping strategy to practice. to achieve this goal, Student 9 will identify feelings when an adult checks in with [the Student]. This will be done with 60% frequency. Currently Student 9 is at 0%.
 - i. Student 9 will practice ways to identify methods to reduce anxiety and stress in school situations, from a list of coping strategies the Student would pick one strategy to use to manage this feeling in 2 out of 4 attempts.
 - ii. Student 9 will practice ways to reduce anxiety and stress in a classroom situation using the method that the Student identified in 2 out of 4 attempts. *District Exhibit 4H.*
- Y. The District provided a Contact Documentation log developed by a school psychologist for Student 9. The log is dated May 2, 2022 through June 22, 2022 and has details including the date consent was signed, phone calls, and student absences. *District Exhibit 5I.*

32. Student 10

- A. August 20, 2021, PWN for Initial Provision of Special Education Services for Student 10 was provided by the District.
- B. September 3, 2021, Student 10's parent (father) revoked consent for continued provision of special education and related services via zoom call with the District. Revocation was written by a District staff member who also wrote the father's name and dated the signature portion of the revocation form. *District Exhibit 4I.*
- C. February 8, 2022, Court order appointing [Redacted] for Student 10 and requiring father to sign Release of Information for [Redacted] within 30 days. *Complainant Exhibit 7, [Redacted] Court appointment as Counsel.*
- D. The District provided numerous emails pertaining to Student 10, primarily discussing the Student's status with a 504 plan and transition to having an IEP. *District Exhibit 5J.*
- E. March 10, 2022, Father signed Release of Information for [Redacted] for Education records. *Complainant Exhibit 7, Release of Information.*
- F. April 22, 2022, Notice and Consent for Evaluation was received for Student 10.
 - i. Date consent received starting the 60-calendar day time period for initial evaluation is not filled in.

- ii. Date the initial Evaluation period ends is not completed.
 - iii. Documentation of reason evaluation not completed within 60-calendar timeline not completed. *Complainant Exhibit 7, Consent for Evaluation.*
- G. May 9, 2022, MDT meeting was conducted for Student 10. Student 10 is determined eligible under the classifications of SLD (primary) and OHI (secondary). Report of the MDT includes the following:
- i. Background: Upon enrollment at [Redacted] in the District, Student 10 was eligible for special education services under the classifications of SLD and OHI. Father subsequently revoked consent for services. Student 10 has significant absences, missing 525 class periods during the 2021-22 school year. Student 10 has 5 behavior incidents during the school year for truancy, being disrespectful to adults, and drug possession. Student 10 has an F in all classes except Foods in which the Student has a D.
 - ii. Intellectual: RIAS-2 administered May 2, 2022
 - 1. Verbal intelligence index – 73, 4th percentile
 - 2. Nonverbal intelligence index – 106, 66th percentile
 - 3. Composite intelligence index – 88, 21st percentile.
 - iii. Academic: KTEA-3 administered May 2, 2022
 - 1. Reading Composite: SS 62, 1st percentile
 - 2. Letter and Word Recognition: SS 67, 1st percentile
 - 3. Reading Comprehension: SS 61, 0.5 percentile
 - 4. Math Composite: SS 83, 13th percentile
 - 5. Math Concepts & Application: SS 83, 13th percentile
 - 6. Math Computation: SS 85, 16th percentile
 - 7. Written Expression: SS 40, <0.1 percentile
 - iv. Communication and Motor not evaluated
 - v. Sensory/Health/Physical Status evaluated November 9, 2020 and represented on MDT from previous school district. According to the report, Student 10 has a medical diagnosis of ADHD. There is a note on file signed by Health Care Provider on May 4, 2022.
 - vi. Emotional/Social/Behavioral Development: A behavior rating scale was given to Student 10's father but was not returned. Teachers were unable to complete a behavior rating scale due to Student 10's frequent absences.
 - vii. Classroom Observation: The examiner was unable to complete a classroom observation due to Student 10's

absences. During the assessment, Student 10 sat quietly and was not fidgety. Student 10 listened to and followed directions. The Student occasionally asked questions about the assessment. Student 10 appeared to be distracted by the cell phone. The Student did not appear to put forth full effort when items became difficult for the Student.

viii. The May 9 MDT team determined that Student 10 is eligible under the classifications of SLD and OHI. *District Exhibit 4I.*

- H. May 27, 2022, District associate in-house counsel notifies [Redacted] that Student 10's IEP scheduled for Tuesday 8am (May 31, 2022) will be rescheduled for a time during the District's Summer School Program. *Complainant Exhibit 7, Student 10 email chain.*
- I. June 27, 2022, email from [Redacted] to District outside counsel asking when the IEP meeting for Student 10 will be scheduled. *Complainant Exhibit 7, Student 10 email chain.*
- J. July 1, 2022, District outside counsel replies to [Redacted] that the District has not scheduled a date for the IEP meeting and is checking to see which teachers or staff might be available to hold a meeting this summer. The District will follow up when more information is known. *Complainant Exhibit 7, Student 10 email chain.*
- K. July 6, 2022, [Redacted] email to District outside counsel with a reminder that the District stated that the IEP would take place during the District's Summer School Program. *Complainant Exhibit 7, Student 10 email chain.*
- L. July 28, 2022, [Redacted] email to District outside counsel requesting a copy of the MDT for Student 10 from May 2022. *Complainant Exhibit 7, Student 10 email chain.*
- M. August 22, 2022, NOM for IEP meeting for Student 10 scheduled for August 30, 2022. *Student 10 IEP provided by District.*
- N. August 23, 2022, [Redacted] email from [Redacted] to District outside counsel asking if the IEP has been scheduled and indicating that Student 10's father has requested [Redacted] be present at the meeting. *Complainant Exhibit 7, Student email chain.*
- O. August 24, 2022, Email from District outside counsel asking [REDACTED] for signed release to communicate directly with [REDACTED]. *Complainant Exhibit 7, Student email chain.*
- P. August 26, 2022, via email, [Redacted] sends attachments and states [REDACTED]'s intention to attend the IEP for Student 10 scheduled for August 30, 2022. [Redacted] requests a link for the virtual meeting. *Complainant Exhibit 7, Student email chain.*

- Q. August 25, 2022, parent directs District to communicate directly with [Redacted] as counsel on all education matters concerning Student 10. *Complainant Exhibit 7, Student email chain.*
- R. August 29, 2022, via email, [Redacted] again asks for a link for the virtual meeting scheduled for August 30, 2022. *Complainant Exhibit 7, Student email chain.*
- S. August 30, 7:42 am, via email, District outside counsel sends [Redacted] an invitation for the meeting. *Complainant Exhibit 7, Student email chain.*
- T. August 30, 2022 3:05 pm, via email, District outside counsel tells [Redacted] that no draft IEP is available and if one becomes available it will be forwarded to [Redacted] before the meeting. *Complainant Exhibit 7, Student email chain.*
- U. August 30, 2022, 3:10pm, via email, [Redacted] notifies District outside counsel that the link to connect to the meeting is not working. [Redacted] requests another link be sent via email. *Complainant Exhibit 7, Student email chain.*
- V. August 30, 2022, 3:15 pm, via email, [Redacted] notifies District outside counsel that [Redacted] has successfully joined the virtual meeting. *Complainant Exhibit 7, Student email chain.*
- W. August 30, 2022, PWN and permission for Initial Provision of Special Education Services signed by parent. *IEP for Student 10 provided by District.*
- X. August 30, 2022 IEP meeting for Student 10. All required members of the IEP team attended, including parent/guardian and Student 10.
- i. PLAAFP
 1. States that Student 10 reports that being motivated to get credits and complete coursework this year.
 2. Results of the MDT are represented in the PLAAFP.
 3. Baseline data for problem behavior is represented by past referrals and teacher reports.
 4. A behavior intervention plan (BIP) was developed for Student 10.
 5. Student 10 currently has a job and plans to attend a trade school.
 6. Student 10 is currently not on track to graduate.
 7. ESY – the team determined that Student 10 does not need ESY services, however, if concerns arise, the team will revisit the need for ESY.

ii. IEP goals

1. When given prompts and reminders from teachers and staff, Student 10 will improve personal management skills by completing and turning in coursework 70% of the time or better, for each class, as measured by teacher reporting and gradebook checks.
2. Given prompts and reminders from teachers and staff, Student 10 will improve personal management skills by attending each class daily with less than 3 tardies per week as measured by attendance reports.
3. Given supports from a special education teacher, Student 10 will demonstrate improvement in writing by formulating a grammatically correct sentence (grammar, punctuation, capitalization) with 80% accuracy.
4. Given supports from a special education teacher, Student 10 will improve number sense skills by being able to identify key words and solve a word problem with 80 % accuracy in 4 out of 5 trials.
5. Given reading strategies and passages at the Student's frustration level, Student 10 will improve reading comprehension and decoding skills by returning to the text to locate information and answer comprehension questions about a story with 80% accuracy. *IEP for Student 10 provided by District.*

Y. The District states that Student 10 was invited to participate in the District's Summer School Program but did not attend. *Interviews with Investigator.*

Z. August 31, 2022, via email, District outside counsel advises [Redacted] that the District will be offering compensatory time given the delay in holding the IEP. *Complainant Exhibit 7, Student email chain.*

AA. September 2, 2022, via email with District outside counsel, [Redacted] requests a copy of the final IEP once completed. *Complainant Exhibit 7, Student email chain.*

BB. September 7, 2022, via email, communication between District outside counsel asking if compensatory education will be offered by the District due to the extensive time it took to hold an IEP. *Complainant Exhibit 7, Student email chain.*

33. The District acknowledges that timelines for evaluations, MDT eligibility determinations and IEPs do not meet the required timelines. MDT eligibility determination meetings and relevant IEP meetings have now been conducted and compensatory services offered to relevant students.

Issue # 1

Whether the District properly complied with the Child Find procedures for timely and appropriate multi-disciplinary evaluations. [92 NAC 51-006.01; 92 NAC 51-009.04]

92 NAC 51-006.01 states:

06.01 *Child Find*

006.01A *All children with disabilities residing in the state of Nebraska, including children with disabilities who are homeless children or wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and evaluated and a practical method shall be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.*

006.01A1 *The child find requirements apply to highly mobile children including migrant children*

92 NAC 51-009.04A1 states:

009.04A1 *Referral, notice to parents (See 92 NAC 51-009.05), and parental consent, shall be completed within a reasonable period of time. The initial multidisciplinary team evaluation shall be completed within 45 school days of receiving parental consent for the evaluation*

34 CFR 300.301(c)(1)(i) states:

(c) *Procedures for initial evaluation. The initial evaluation –*

(1)(i) *Must be conducted within 60 days of receiving parental consent for the evaluation*

Nebraska provides direction for coordinating and delineating responsibility for educational services for some of the state's most significantly at-risk students who are also involved with Nebraska's juvenile court system or other state agencies. *SOF 1 and 2*. Generally speaking, when a student is placed in a residential setting, the resident school district or approved cooperative is responsible to ensure that a full and individual evaluation and multidisciplinary team meeting is conducted for each child being considered for eligibility. *SOF 1*. The initial evaluation shall determine whether the child is a child with a disability and the educational needs of the child. *92 NAC 51-006.02B*. School districts and approved cooperatives must ensure assessment of children who transfer from one school or approved cooperative to another school or approved cooperative in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations. *92 NAC 51-006.02C3*.

Allegations/Parent Position

The complaint alleges that the District exhibits a systemic pattern and practice, within the past year, of failing to complete MDT evaluations and determinations within the 60-calendar day timeline required. The complaint also alleges that the District intentionally disregards the timelines required by Nebraska Rule 51 and the IDEA concerning initial MDT evaluations, does not provide PWN of refusal to evaluate students within the required timelines and does not provide the Procedural Safeguards upon parent request for evaluation. The complaint names nine (9) individual students as the sample for this allegation of systemic failure. See: *Formal Complaint document filed by [REDACTED]*. The Complainant, designated as Limited Representation Education Rights Counsel by the court, as well as Guardian ad Litem (GAL) and Surrogate Parents, assigned by the courts, for each of the named students allege that the District has not been responsive to requests for MDTs for significantly at-risk, court involved students in a timely fashion and that the delays have deleterious effects on the students. See documents submitted by Complainant, including court orders, correspondence, and request for compensation. *Complainant Exhibits 1-7 and Summary of Information*.

District Response

The District does not dispute that named students were not evaluated within the timeline required. The District states that the MDTs were not completed due to the summer break and that staff endeavored to complete the evaluations, MDT meetings and develop IEPs for the individual students in August when school resumed. More specifically, the District states that, during the course of this investigation, MDTs have been completed for 7 out of 9 students, excepting

Student 7 who is not enrolled in the District and Student 8 who now resides outside of the District and therefore no duty is owed. *SOF 15, 16, 17 and District Response to the Allegations and Issues Identified in the Complaint.*

Investigative Findings

Issue 1 – The District does not dispute that initial evaluations and MDT meetings were not completed within the 60-calendar day timeline required by NDE and IDEA. *Interviews with District staff, SOF 15, 16, 17, and District Offer of Compensatory Education.* Each student has been individually investigated as follows:

Student 1

As of November 2021, Student 1 is a ward of the state with a court appointed guardian/education surrogate who is the court-appointed educational decision maker for whom the Complainant/[REDACTED] serves as counsel. *SOF 23 A and B.* On March 17, 2022, Student's educational surrogate clearly requested a full and individual evaluation for special education for Student 1. *SOF 23 C.* Nearly one month later, when the District provided forms for Consent to Evaluate, the [REDACTED] and surrogate requested that social/emotional and speech/language be included as part of the evaluation and the District sent revised consent forms including the additional areas of concern. *SOF 22 D-G.* Ultimately, consent to evaluate was received on April 27, 2022 making the timeline for MDT completion June 26, 2022. *SOF 23 I and J.* Forty-nine (49) days into the evaluation timeline, the Complainant requested an update on the status of the evaluation, receiving no reply. *SOF 23 K and L.* Fifty-eight days into the evaluation timeline, two days before the MDT was due to be completed, the Complainant again requested an update on the status of the evaluation. This time, the District responded that some portions of the evaluation were completed before the summer break and that contracted psychologists are completing the evaluation. *SOF 23 M.* Twice during July, the Complainant again reached out to the District requesting an update on the MDTs. No response was received. *SOF 23 O and P.* Student 1's guardian/education surrogate submitted a directive for the District to directly communicate with the [Redacted] regarding all students for whom (Redacted) has educational decision-making authority. *SOF 23 Q.* Twice more during the August, the Complainant requested information on the expected date for Student 1's MDT meeting with the last inquiry made at 8:00 am on August 23, with what appears to be a mad scramble to organize the MDT meeting later the same day (58 days overdue), even though the evaluation was completed on July 13, 2022. *SOF 23 S and V through FF.* Finally, the District did not follow through with completing sections of the Consent for Evaluation form by completing the spaces for Date of consent,

date of MDT and reason for delay if the MDT was not timely completed. SOF 23 l.

With regard to Student 1, the District has violated the procedural timeline for Child Find.

Student 2

Facts pertaining to Student 2 are virtually identical to those for Student 1 with the following exceptions: Details of the evaluation and MDT are specific to Student 2; and, August 25, 2022, the District requested that the Complainant/[REDACTED] contact the educational surrogate to see if she would be available to attend an MDT for Student 2, the next day, August 26, 2022 (60-days overdue). SOF 24 and SOF 24 M.

With regard to Student 2, the District has violated the procedural timeline for Child Find.

Student 3

Facts pertaining to Student 3 are virtually identical to those for Student 1 with the following exceptions: Details of the evaluation and MDT are specific to Student 3. SOF 25.

With regard to Student 3, the District has violated the procedural timeline for Child Find.

Student 4

Facts pertaining to Student 4 are virtually identical to those for Student 1 with the following exceptions: Details of the evaluation and MDT are specific to Student 4 and concluded that Student 4 did not meet the criteria for eligibility. SOF 26.

With regard to Student 4, the District has violated the procedural timeline for Child Find.

Student 5

The District has been on notice that Student 5 is suspected of having a disability and needing special education services. This student was referred for evaluation in November 2020 and, after providing consent for evaluation, Student 5's father rescinded consent for the evaluation on November 22, 2020. SOF 27 A. Subsequently, Student 5 was placed in foster care. On January 31, 2022, Student 5's foster parent contacted the school with concerns about Student 5's educational progress or lack thereof, and requested assistance. SOF 27 B and C. Evidence shows that on March 9, 2022 Student 5's foster parent

followed up on the request for evaluation for Student 5, re-establishing that the District is on notice that Student 5 is still suspected of having a disability and in need of special education services. *SOF 27 D*. The District declined the parent's request for an evaluation via email and neither provided consent to evaluate nor PWN of refusal to evaluate Student 5. Depriving the parent of PWN and the Procedural Safeguards prevented the parent of the opportunity to effectively participate in the decision-making process for the Student, potentially causing a denial of FAPE. *SOF 27 E and Rule 51-009.05*. March 25, the Court appointed the Complainant/[REDACTED] as the education rights counsel for Student 5 and sibling. An interpreter was included in the hearing because the parent(s) are non-English speaking. *SOF 27 F*. Consent to evaluate was received by the District on May 19, 2022 making the MDT due on July 18, 2022. *SOF 27 G*. The MDT was conducted on August 15, placing it out of compliance with the 30-day requirement but in place by the start of the school year. *SOF 27 H, I and J*.

With regard to Student 5, the District has violated the procedural timeline for Child Find.

Student 6

Complainant/[REDACTED] has been the court appointed attorney for the minor child Student 6 since May 20, 2021. *SOF 28 A*. The [REDACTED] notified the District of the appointment and clarified that Student 6 is enrolled in a private school and the [REDACTED] seeks to determine whether Student 6 has an IEP. *SOF 28 B,C and D*. April 15, the District received consent to evaluate Student 6 making the MDT due on June 14, 2022. *SOF 28 G, H and I*. Sixty-three days later, Complainant reminded the District about the request for evaluation and which private school Student 6 attends. The email also requested an explanation, if the evaluation has not been completed, why the evaluation was not completed within the statutory timeline. *SOF 28 J and K*. There is no evidence that the District responded. August 3, 2022, the District Special Education Director contacted a District School Psychologist, letting her know that the evaluation and MDT for Student 6 needed to be prioritized. *SOF 28 L*. August 11, nearly four (4) months after consent to evaluate was received, the District's school psychologist sent an email to the private school stating that the District had just received consent to evaluate Student 6 and needs some information to proceed. *SOF 28 M*. Preparation for evaluation got underway, Student 6 was evaluated on August 22, 23, and 24th, 2022, and the MDT eligibility meeting was conducted on August 31, 2022, two full weeks after commencement of the 2022-23 school year and 78 days overdue. *SOF 28 N, O, P and S through BB*. The District offered no explanation for the delay. *SOF 28 Q*.

With regard to Student 6, the District has violated the procedural timeline for Child Find.

Student 7

The District avers that they have no responsibility for Child Find where Student 7 is concerned because the student relocated to another school outside of the District's boundaries and has not re-enrolled since again relocating to a kinship placement within the District. *SOF 29 B.* Enrollment, however, is not a gatekeeper where Child Find is concerned. *92 NAC 51.006.01A.*

It is not uncommon for court involved students to be highly-mobile. *SOF 29 A.* In order to maintain a level of continuity for these students, Nebraska has developed a framework for understanding where the responsibility for education lies. *79 NRS 215.* Generally speaking, the state of Nebraska provides that a student's resident district does not change when a student moves from one residential setting to another under due to a court placement. *79 NRS 215 (9 & 10).* Therefore, where Student 7 is concerned, the District was responsible for ensuring that the MDT was conducted in a timely fashion.

The District was aware that Student 7 was placed in a residential setting by the court on November 12, 2021 and acknowledged ongoing responsibility for Student 7 by sending records to the school of attendance while continuing to keep Student 7 enrolled in the District school of residence. *SOF 29 A and C. .* On April 1, 2022, the court appointed GAL and educational surrogate for Student 7 requested that Student 7 be evaluated to determine whether eligibility for special education services was in order and explaining that Student 7 is a victim of sexual abuse and is experiencing a significant deterioration of her mental health condition that may be affecting her schooling. *SOF 29 C.* The District likely needed additional information in order to properly request and receive written permission to evaluate and provide PWN and a copy of the procedural safeguards. However, the District is certainly on notice that a request for evaluation has been made; thereby obligating follow up with PWN of intent or refusal to evaluate and provide a copy of the Procedural Safeguards. *Rule 51-009.05.* There is no evidence of any follow-up on the part of the District. April 15, 2022, the Complainant communicated with the District about the request for MDT and also clarifying that Student 7 was currently placed at a group home and attending school outside of the District but is still considered a student of the District. The Complainant asked to be contacted by the District if there were any questions or concerns. *SOF 29 E.* There is no evidence that the District responded to the communication or challenged the District's obligation to conduct the MDT; therefore, leaving the Complainant to assume that the

evaluation would be in progress. On June 17, 2022, the Complainant contacted the District again to check on the progress of Student 7's MDT and to notify the District that Student 7's residence would be changing again, to a kinship placement within the District. *SOF 29 F and G.* The District's outside legal counsel replied that the MDT would be scheduled when the evaluation was completed. The District raised no concern about their responsibility for the evaluation. *SOF 29 F and G.* Finally, as late as July 28, Complainant reached out to the District again to provide information about Student 7's most recent living arrangement within the District and to request that Student 7 be enrolled in a different school within the District. *SOF 29 I.* The District responded that the request would be forwarded to the appropriate specialist for consideration. *SOF 29 J.*

Although the District was receiving ongoing communication from the Complainant regarding Student 7, there is no evidence that District made any effort to cooperate with the Complainant, the court appointed GAL and educational surrogate to ensure completion of the MDT. There is no evidence that the District collaborated with the school Student 7 was attending in order to ensure completion of the MDT. There is no evidence that the District sent any correspondence to the address of the kinship placement, provided to the District by the Complainant, in order to facilitate completion of the MDT.

August 3, 2022, a Juvenile Warrant was issued by the court for Student 7 and the parent or guardian or person having custody of the juvenile. A memorandum, from the State Probation Officer is included with the Warrant, explaining that, on August 1, 2022, Student 7 disappeared from a kinship home at an address within the jurisdiction of the District and has not been seen since. *SOF 29 K.*

Based on the evidence provided and reviewed, the investigator finds that the District had a Child Find obligation for Student 7 and that Complainant had reason to believe that a referral, including consent for evaluation, was accepted by the District, that evaluation was in progress and an MDT meeting anticipated.

With regard to Student 7, the District's inaction is a violation of the Child Find procedures of the IDEA and Rule 51.

Student 8

The District also contends that it is not responsible for Student 8's MDT because Student 8 is residing and attending school outside of the District. *District Response to Complaint.* Complainant was appointed as education rights counsel for Student 8, through a court order, on January 14, 2022. *SOF 30 A.* Relevant to this case, the court ordered follow up with Student 8's school to

determine whether an IEP was needed and required Student 8's parent to sign consent to release educational records to [Redacted] in order to facilitate [Redacted]'s representation. It is important to note that Student 8's parent requires an interpreter because the parent is a non-English speaker. See SOF 30 A. On February 24, Student 8's parent signed the District's Release of Information form and also provided a letter, requesting an MDT evaluation for Student 8. SOF 30 B. The District acknowledged the request and provided the Complainant with the District's Consent for Evaluation form, requesting that Complainant have the parent sign and return the form. SOF 30 B and C. This form was signed by Student 8's parent on May 2, 2022 and the District documented receipt of the document on May 11, 2022, beginning the timeline to complete the MDT within 60-calendar days. SOF 30 E and F. May 12, Complainant provided additional information to be considered as part of the MDT evaluation process. SOF 30 G. With the MDT due by July 10, 2022, the District offers that voicemails were left for Student 8's parent on July 7, July 12, and July 20, 2022, in order to schedule an evaluation. However, the District did not provide any phone logs for these conversations and does not mention whether the messages were in a language that the parent could understand. SOF 30 H. July 28, 2022, two- and one-half weeks after the MDT was due, District counsel replied to Complainant's inquiry about the progress of the MDT and stated that the parent has not yet been reached. SOF 30 I. There is no evidence that the District sought the assistance of the court-appointed [REDACTED], appointed by the court for the purpose of ensuring Student 8's educational rights, including the fact that the parent speaks no English. August 8, 2022, Complainant again corresponds with the District's legal counsel, this time providing another court order updating the educational surrogate for Student 8 and asking the District to please let the [REDACTED] and Surrogate know how they are able to assist in getting the MDT assessment completed. SOF 30 J and K. August 15, 2022, Complainant again reaches out to District counsel with an update on Student 8's most recent placement at a (Redacted) group home and asking how to get the MDT scheduled. SOF 30 L. Finally, on September, 1, 2022, the District's legal counsel notified the Complainant that the District had just informed him that [Redacted] contacted the District in July, indicating that Student 8 would be enrolled there. The email states that Student 8 is no longer enrolled with the District and directs the [Redacted] to contact [Redacted] directly. SOF 30 M. This communication begs the question of why the District never communicated knowledge of Student 8's enrollment in [Redacted] with Complainant during any correspondence during July and August. The District seems to ignore the fact that the timeline for MDT evaluation was overdue on July 10, 2022 with no evidence that any part of the evaluation had ever begun. Additionally, no

evidence was presented to suggest that the District coordinated with the new district in the interest of prompt and efficient completion of the MDT for Student 8 or that student records of any sort were sent to the new school district in order to facilitate a smooth transition of educational services. *Rule 51-009.04.*

Considering the totality of the evidence, it is accurate that the District is currently not responsible for conducting an MDT evaluation for Student 8. However, the District is not absolved of its earlier, unfulfilled, obligation and has violated the Child Find procedures of the IDEA and Rule 51.

With regard to Student 8, the District has violated the procedural timeline for Child Find.

Student 9

March 10, 2022, the Court order appointed the Complainant/[Redacted] as Limited Representation Education Counsel, extended the appointment of the GAL/surrogate and ordered children to remain in the temporary custody of NE Department of Health and Human Services. *SOF 31 A.* The [Redacted] provided consent to evaluate Student 9 on May 2, 2022 making the MDT eligibility determination due on July 1, 2022. *SOF 31 B.* The Complainant contacted the District on May 20, 2022 requesting an update and whether the evaluation had started. *SOF 31 C.* May 24, District's associate in-house counsel responded, suggesting that the GAL/surrogate contact the school to get information and also stated that the District is working to complete evaluations as quickly as possible. *SOF 31 D.* Correspondence between the Complainant/[Redacted] and the District indicates that Student 9's absences, are interfering with evaluation. The Complainant reminded the District that the GAL/surrogate with educational decision-making rights should be deciding where the evaluation can be completed rather than the foster parent, that the [Redacted] or GAL will bring Student 9 to an agreed upon location at an agreed upon time and suggests that the District contact the GAL/surrogate to schedule. The complainant also avers that Student 9's truancy is an additional indicator that the assessment is appropriate and expresses concern that a failure to vigorously ensure finding a way to evaluate Student 9 is leaving the Student without FAPE and needed supports. *SOF 31 E, F and G.* June 27, 2022, Complainant again communicates with the District, offering five (5) dates in July as potential dates that the [REDACTED] or GAL will bring Student 9 for the evaluation. *SOF 31 H.* July 18, 2022, Complainant reminds the District that the MDT is overdue and requests immediate response. *SOF 31 I.* The District responds, on July 21, that several evaluations have been completed and the District will be reaching out to schedule MDTs once staff have returned. *SOF 31 J.* Fifty (50) days after the

MDT was due and after the start of the school year, the MDT determination meeting was conducted. SOF 31 K.

With regard to Student 9, the investigator finds that, the District has violated the Child Find procedures of the IDEA and Rule 51 by failing to meet the required timeline for completing evaluation after written consent is received.

Summary and Conclusions

Nine (9) students were presented for investigation of Issue 1 of this complaint. The District does not contest the conclusion that MDT evaluations did not take place within the 60-calendar day timeline required by the IDEA and Nebraska Administrative Code.

Child Find is an affirmative obligation whereby the schools must locate, evaluate and identify students suspected of eligibility. Although the District asserts that 2 of the students were not the district's responsibility, the evidence presented shows that the District was responsible for ensuring that MDTs for these students were timely conducted.

The District has a comprehensive Handbook, developed and dated 2022 that provides guidance for implementation of Nebraska's Rule 51 and Section 504 of the Americans with Disabilities Act. The Handbook includes a thorough section on Initial Evaluation of Students that explains the timeline and specific procedures to ensure compliance in detail; and yet, the District does not adhere to their own handbook. The District was aware that the 9 students were identified as "at-risk" youth due to their court involvement.

The Complainant and others, including GAL and educational surrogates were known to the District through court orders and other means of communication. Even so, the District did not take the initiative to utilize these individuals and organizations to facilitate completion of the MDTs. Given the totality of the evidence submitted and reviewed, the investigator finds that the District's failure to meet the timeline for one-hundred percent (100%) of the students presented in the sample shows disregard for the affirmative Child Find obligation and the effort of the courts and other agencies to meet the substantial needs of significantly at-risk, court involved youth. The investigator concludes that there is both individual and systemic noncompliance for Issue 1.

Based on the totality of the evidence submitted and reviewed, including the District's failure to meet the timeline for 100% of the named students presented as a sample, the investigator finds a that the District has failed to fully implement the requirements of 92 NAC 51-006.01A, 92 NAC 51-006.02B, 92 NAC 51-006.02C3

and 009.04 resulting in a procedural violation, individual and systemic in nature. Thus, the following corrective action is required.

Corrective Action

Training:

1. All training will be conducted by NDE or NDE selected designee.
2. District staff (in-house counsel and special education leadership and other relevant staff) will receive quarterly training regarding the relationship between courts, court appointed individuals working on behalf of students and schools. Training will include:
 - a. The school's requirement to cooperate with and include court or agency appointed individuals according to the law;
 - b. How to determine which court or agency involved students fall within the District's jurisdiction; and
 - c. Ways to work cooperatively with court or agency assigned individuals or organizations assigned to individual students in order to more effectively meet diverse and complicated needs.
 - d. NDE will assign the trainer for this item, review and approve the training agenda and materials prior to the training and receive a roster of attendees upon completion. Any cost associated with this training will be borne by the District.
3. District staff (in-house counsel and special education professionals) will receive quarterly training on IDEA and Rule 51 requirements for Child Find including:
 - a. The requirement to acknowledge and respond to referrals within a reasonable time and provide PWN of intent or refusal to proceed with evaluation;
 - b. timelines for completing evaluations and conducting MDT determination meetings. (Court or agency appointed individuals or organizations such as education rights counsel, guardians ad litem and surrogates or others may be useful in this process);
 - c. A plan for organizing and follow up to ensure that the District is actively and affirmatively meeting the expectations of Child Find before and after consent is requested and/or obtained. (Court or agency appointed individuals or organizations such as education rights counsel, guardians ad litem and surrogates or others may be useful in this process);
 - d. Ways to cooperate with court or agency appointed individuals or organizations, specifically assigned to individual students in order to meet the diverse and complicated needs of court or agency involved students;

- e. Strategies for ensuring that the needs of highly mobile student including court or agency involved students are met, including a framework and tracking system for follow up and ongoing communication as students transition from place to place. (Court or agency appointed individuals or organizations such as education rights counsel, guardians ad litem and surrogates or others may be useful in this process);
 - f. How the District document the process and follow up for efficient and compliant completion;
 - g. NDE will assign the trainer for this item, review and approve the training agenda and materials prior to the training and receive a roster of attendees upon completion. Any cost associated with this training will be borne by the District.
4. District staff (leadership and other relevant staff) will receive quarterly training regarding response to referrals from parents/guardians/surrogates/Limited Representation Education Rights Counsel or the school. Training will include:
- a. Acknowledging and responding to written or verbal referral.
 - b. PWN and provision of Procedural Safeguards with special attention to **refusal**.
 - c. Efficient use of the referral form to document date consent is received, date MDT is due and the reason should the evaluation not completed within the timeline.
 - d. Prior to training, the District will review Consent to Evaluate forms, make any updates needed and ensure that uniform forms are used throughout the district (discarding others).
 - e. The District will submit the uniform form chosen to NDE for approval and provide NDE with a roster of training attendees upon completion.
 - f. Any cost associated with the training will be borne by the District.

Review of Policies and Procedures:

- 1. District staff will submit the District's Special Education Policies to NDE for review and approval or revision.
- 2. District will revise the District Special Education Handbook 2022, bolstering the section pertaining to Child Find so that it provides procedures and direction regarding the District's affirmative Child Find obligation including:
 - a. a plan to ensure that the District is actively seeking out any and all children within the District's jurisdiction, who may need evaluation

and special education services and how follow up will be conducted.

- b. Connecting the dots between Child Find, Referral, Acceptance/evaluation and consent or Refusal, PWN and Procedural Safeguards, MDT to PLAAFP/IEP.
 - c. Once revised, the Handbook will be submitted to NDE for review and approval or revision. Following approval or revision, District in-house counsel and special education staff will receive training to ensure understanding of and compliance with the provisions of the Handbook.
3. The District will provide a copy of the Parent notice of Procedural Safeguards, utilized by the District, to NDE for approval.
 - a. If NDE does not approve the notice, NDE has the option of requiring the District to use the notice developed by NDE or require revision as needed to the District's chosen form.
 - b. The District will utilize a uniform document throughout the District.
 4. District will develop a plan to ensure that timelines for evaluations and MDTs are completed within the required 60-calendar day timeline irrespective of breaks such as summertime or holidays.
 - a. The plan shall include ways to complete as much of the evaluation as possible prior to natural breaks (e.g., providing teachers and others with surveys sooner, conducting observations sooner, and planning for staff availability during natural breaks).
 - b. The plan will be submitted to the NDE for approval or revision as needed and District staff will be trained accordingly.
 5. In order to address systemic non-compliance, the District will review all files for eligible students and provide the following information, in the form of a spreadsheet, from the 2021-22 school year to the NDE.
 - a. Student
 - b. Date of referral
 - c. Date permission to evaluate received
 - d. Date evaluation completed and MDT conducted
 - e. Whether the evaluation and MDT were completed within the 60-calendar day timeline
 6. All students with evaluations and MDTs not completed within the 60-day timeline will be notified of the violation and given a copy of the procedural safeguards. These students will be offered compensatory education if District noncompliance resulted in missing services.
 - a. All information will be submitted to NDE.

- b. NDE will monitor a random sample of files and/or randomly sample parent/guardian/surrogate/[REDACTED] of students identified with noncompliance.
- c. Follow up data for 2022-23 school year will be provided to NDE at the beginning of the 2023-24 school year to ensure correction.

Issue # 2

Whether the District properly complied with the IDEA and Rule 51 requirement to conduct an IEP meeting within thirty (30) calendar days of completion of a multidisciplinary team evaluation and determination of eligibility. [92 NAC 51-007.01; 92 NAC 51-009.04A2]

92 NAC 51-009.04A2 states:

009.04A2 Upon completion of a MDT verification decision, school districts or approved cooperatives shall provide a reasonable notification and conduct and IEP conference within 30 calendar days. 92 NAC 51-009.04A2. Districts and approved cooperatives must also have an IEP for each child with a verified disability, in effect at the beginning of each school year. 92 NAC 51-007.02A.

Allegations/Parent Position

Complainants presented one (1) student (Student 10) as an example for an allegation of both individual and systemic failure to conduct IEP meetings within 30 days of a MDT determination of eligibility. Complaint document items 22-25. The Complainant/[REDACTED] was appointed by the Court due to Student 10's delinquency. Prior to [REDACTED] involvement, the District had placed Student 10 at a "Level 3" school for behavioral reasons (a school not run by the District where all students must be eligible for special education in order to attend). Student 10's father believed that the only way for his son to attend a regular high school in the District was to rescind his consent to provide special education services. *SOF 32 B*. Upon appointment and discussion with the father, [REDACTED] requested a new evaluation and requested a 504 plan in the interim based on diagnosed disabilities. *SOF 32 E and F*. In May, Student 10 was reverified as a student with a disability (SWD) but no IEP was created despite federal and state law requiring an IEP to be put in place within 30 days of verification. *SOF G*; See also *Complainant's Summary of Information Related to the State Complaint*.

District Response

The District explains that Student 10 transferred to the District from another district in the state with a current IEP in place. The District adopted and implemented the IEP for Student 10 until the Student's father revoked permission for special education services on September 3, 2021. April 22, 2022, the District received signed consent for evaluation and an MDT was held on May 9, 2022. SOF 32 F and G. At that time, the MDT team determined that Student 10 met the criteria for eligibility in two areas of classification: 1) Specific Learning Disability (SLD) and 2) Other Health Impairment (OHI) but did not develop an IEP at that meeting. SOF G. The District states that attempts were made to contact the parent on July 18 and 25 to schedule an IEP meeting but the parent did not answer the calls. On August 22, the District states that contact with the parent was made and an IEP scheduled for and developed August 30, 2022. See *District's Response to the Complaint*.

Investigative Findings

The complainant and District agreed to mediate this issue. The mediation took place over several days, with the last meeting taking place on October 10, 2022. An agreement was reached resulting in this issue being removed from the investigation.

Summary and Conclusions

The resolution agreed to by the parties holds and is enforceable in any State court of competent jurisdiction or in a district court of the United States pursuant to 92 NAC 51-009.12G.

Issue #3

Whether errors or omissions on the part of the District resulted in a denial of FAPE for eligible students. [92 NAC 51- 004.01]

92 NAC 51-004.01 states:

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

FAPE means special education and related services that are provided at public expense, under public supervision, and direction, and without charge; meet the standards of the state and are provided in conformity with an IEP that meets the requirements of the IDEA and Rule 51. *Rule 51-003.24*. The District must make a FAPE available to any child with a disability, within its jurisdiction, who needs special education and related services. *Rule 51-004.02*. To that end, the District has current policies and procedures governing implementation of the IDEA and Rule 51. *Rule 51-004.08*; See also, *District Special Education Handbook 2022*.

The procedural requirements of the IDEA impose a framework designed to guide schools and parents through a complex process, one necessarily tailored to each individual child and intended to ensure that each student has “an educational program reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances.” *M.N. v. Jefferson County Bd of Educ.*, 12 F.4th 1355, U.S. Ct of Appeals (11th Cir. 2021), citing *Endrew F.*, 137 S.Ct. at 1001. There is no equivalency between procedural violation and substantive harm in the IDEA. Instead, the question turns on whether the child’s education would have been substantially different but for the procedural violation. In other words, a procedural problem will not always result in a violation of the substantive guarantee. *M.N. v. Jefferson County Bd of Educ.*, 12 F.4th 1355, U.S. Ct of Appeals (11th Cir. 2021)

It is decided that the District’s errs or omissions addressed in Issues 1 and 2 are procedural violations of the IDEA and Rule 51. Now, the next question is whether the procedural violations, found in Issues 1 and 2, deprived the students of meaningful educational benefit or seriously infringe upon the parents’ opportunity to meaningfully participate in the process, therefore rising to the level of a substantive denial of FAPE. This analysis is determined on a case-by-case basis. *Hjortness v. Neenah Jt. Sch. Dist.* 498 F.3d. 655, U.S. Court of Appeals (7th Circuit 2007).

Investigative Findings

Issue 1

Conducting timely evaluations and MDT determination meetings is a procedural component of the District’s Child Find obligation. Generally, the remedy for a procedural violation is to require and ensure compliance. However, a procedural violation may rise to a substantive denial of FAPE if the procedural problem impeded the child’s right to a FAPE, caused deprivation of educational benefit or significantly impeded the parents’ opportunity to participate in the decision-making process regarding their child. *20 U.S.C. Section 1415(f)(3)(E)(ii)*.

Student 1

The 60-calendar day timeline for completing Student 1's MDT began April 27, 2022 and was due June 26, 2022. *SOF 23 I*. Since Student 1 was verified at the MDT meeting, but for the timeline violation, July 26, 2022 was the earliest date that Student 1 could be expected to have an IEP and that IEP would also be required to be in effect at the beginning of the school year. *Rule 51-007.02A and Rule 51-009.042A*. Since the school year ended on May 27, an IEP developed during the summer break would not be implemented until the beginning of the next school year (August 17, 2022). Student 1's MDT verification was completed on August 23, 2022, nearly one week after the start of the school year and the IEP was developed August 30, 2022, thirteen (13) days into the school year. *SOF 23 W*. The District has offered compensatory services to address these days. *SOF 9 F and 15; and, District Offer of Compensatory Education*.

According to the District's policies and procedures, student's present levels of academic achievement and functional performance portion of the IEP must have a direct correlation to IEP goals and provide a "snapshot" of the student including information from a variety of sources. The PLAAFP necessarily includes results of recent evaluations and concerns of the parent and other IEP team members. *SOF 12 and 13*.

In this case, Student 1's MDT report shows substantial concern in the area of social/emotional/behavioral development. Using the BASC rating scales, Student 1 scored in the clinically significant range in 10 out of 13 areas and at risk in 3 areas with no scores in the average range. *SOF 23 BB*. This information was excluded from the PLAAFP and not addressed anywhere in the IEP. See *District document, Student 1 IEP; See also, Complainant document: Proposed Remedies & Compensatory Education for Individuals named in State Complaint*. In spite of the District's objection, the NDE has broad supervisory latitude to ensure the provision of FAPE, including addressing flaws in an IEP developed during the course of a complaint investigation. *Complainant document: Proposed Remedies & Compensatory Education for Individuals named in State Complaint*. The District's evaluation and MDT for Student 1 is thorough and comprehensive. But for the procedural timeline violations, and a rush to complete the IEP, the IEP team probably would not have missed this important information.

Student 2

The 60-calendar day timeline for completing Student 2's MDT began April 27, 2022 and was due June 26, 2022. *SOF 24 I*. Student 2 was verified at the MDT meeting. The MDT is thorough and comprehensive and the IEP addresses issues identified in the MDT. *SOF 24 O and P*.

The District acknowledges that Student 2 was deprived of educational benefit due to the delays and has offered compensatory services to address these days. *SOF 9 K; and District Offer of Compensatory Education*. No additional compensatory services are required.

Student 3

The 60-calendar day timeline for completing Student 3's MDT began April 27, 2022 and was due June 26, 2022. *SOF 25 I*. Student 3 was verified at the MDT meeting. The evaluation for Student 3 is comprehensive, showing problems in the areas of articulation, academics and social/emotional and behavior. The MDT team verified Student 3 in the area of SLP but did not consider SLD as a possibility. An IEP was developed for Student 3 on August 31, 2022, after the beginning of the current school year. However, upon simple review, it is distinctly noticeable that information from the speech and language assessment but not the academic assessment and/or the social/emotional/behavioral assessment, both showing deficits, were not included in Student's PLAAFP. These areas are, however, addressed in the IEP, contrary to Rule 51 requirement IEP goals be correlated with information in the PLAAFP. The District has offered compensatory services to address services missed based on the IEP but, given the circumstances, this is not sufficient. Once the IEP has been revisited, deficiencies cured and the IEP is revised if necessary, the District should resubmit an offer of FAPE considering any changes that might be made to the IEP that would impact services lost from the beginning of the current school year.

Student 4

Student 4 was not verified as eligible at the MDT meeting conducted August 23, 2022. Accordingly, no IEP was needed.

Student 5

Pointing to the date that permission for evaluation was actually received, the District suggests that FAPE was not denied because the evaluation, while over the 60-calendar day timeline required for completion, was in place for the beginning of the new school year. This position does not present the complete picture.

It is not acceptable for a district to take a passive approach and wait for others to refer a student for special education services. *Compton Unified Sch. Dist. V. Addison, 598 F.3d 1181, U.S. Ct. Of Appeals, (9th Cir. 2010), See , e.g., Cincinnati City Schools, 12 ECLPR 111 (SEA OH 2015)*.

Because Child Find is an affirmative obligation on the part of the school, the district must seek out IDEA-eligible students including watching for red flags

among its students and referring students who may have a disability and need special education.

Here, the District has been on notice that Student 5 might be a SWD in need of special education and related services for over two years. The District referred the Student for an evaluation over 2 years ago and received consent that was later rescinded by the Student's father. *SOF 27 A*. In January 2022, Student 5's foster parent sent the District an email expressing concerns for Student 5's schooling and followed up in March specifically requesting assessment. *SOF 27 B and D*. During this time, the District acknowledged that Student 5 was struggling. *SOF 27 C*. Evidence shows that the District did consider this a request for an MDT evaluation and determination but later reported to the parent that the District had elected not to proceed with an MDT evaluation and determination meeting. *SOF 27 E*. This refusal triggered the requirement to provide PWN of refusal to evaluate and provide the parent with Procedural Safeguards. *Rule 51-009.05 and Rule 51-009.06*. In this case, the District waited for the Court to appoint educational legal counsel, the Complainant/[REDACTED], to get the ball rolling. Even then, the District took no action to evaluate Student 5 until after the timeline for completing the evaluation had passed. Student 5 was verified and an IEP developed at a meeting in August, just before the beginning of the school year. *SOF 27 H, I, J*. Given the totality of the evidence, the investigator finds that the District, did not fulfill its affirmative Child Find obligation, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE and caused a deprivation of educational benefit for Student 5.

The procedural violations pertaining to Student 5, rise to the level of a substantive denial of FAPE and compensatory services are due.

Student 6

Child Find is an affirmative obligation on the part of schools. Therefore, districts must take an active approach to seeking out potentially eligible students and may not use a parent's interference or neglect to excuse the district's responsibility. *M.J.C., a minor child, and Martin v. Special School Dist. No. 1, Minneapolis Pub. Schools, 58 IDELR 288 (U.S. Dist. Ct. Minnesota March 2012)*, See also *Dist. Of Columbia Public Schools, SEA decision (March 2015) (finding that a district's claim that a parent delayed the process by not attending the referral meeting didn't excuse belated evaluation)*. Here, District did not meet its Child Find obligation for Student 6. The District acknowledges that Student 6 was identified as needing an evaluation as far back as 2016 and that the parent impeded the process by not returning consent but did not provide any evidence that the District actively followed up in any way. Subsequently, in

May, 2021, the Court appointed the [REDACTED] as education counsel for Student 6. At this time, the Court also ordered private tutoring for Student 6 to address deficits in reading and math. SOF 28 F. After requesting and reviewing Student's records and corresponding with the District to determine whether Student 6 had an IEP, the parent signed consent to evaluate Student 6 on March 31, 2022 and the District acknowledged receipt on April 15, 2022 making the MDT due on June 14, 2022. SOF 28 G, H, and I.

Evidence shows substantial effort to secure the evaluation on the part of the Complainant and that the District made no effort until August of 2022 when a mad rush to complete the evaluation ensued. SOF 28 J through U. Student 6's MDT verification and IEP development occurred on August 31, 2022, after the beginning of the 2022-23 school year. SOF 28 U.

The investigator finds that the District's failure to actively engage in Child Find, resulted in deprivation of educational opportunity and a denial of FAPE for Student 6.

Student 7

Student 7 has not yet been verified as a SWD. The IEP, as the blueprint for determining FAPE, is not developed until the student has actually been verified as a SWD. Therefore, addressing a denial of FAPE would be premature.

Student 8

There is no evidence that Student 8 has been verified as a SWD. The IEP, as the blueprint for determining FAPE, is not developed until the student has actually been verified as a SWD. Therefore, addressing a denial of FAPE would be premature.

Student 9

The MDT for Student 9 was so late that it was not completed until after the beginning of the 2022-2023 school year. Student 9 was verified as eligible and therefore should have been receiving services at the beginning of the school year. The District acknowledges that Student 9 has been denied a FAPE and has proposed compensatory education for the 2 weeks of service missed at the beginning of the 2022-23 school year. SOF 9 K and District offer of Compensatory Education.

Student 10

Issues pertaining to Student 10 were resolved by the parties.

Summary and Conclusions

For Students 7 and 8, they have not yet been verified as a students with disabilities in need of special education services. The IEP, as the blueprint for

determining FAPE, is not developed until the students have actually been verified as students with disabilities. Therefore, addressing a denial of FAPE would be premature.

The District acknowledges that Student 9 has been denied a FAPE and has proposed compensatory education for the 2 weeks of service missed at the beginning of the 2022-23 school year (SOF 9 K and District offer of Compensatory Education). No additional compensatory services are necessary.

Issues pertaining to Student 10 were resolved by the parties.

For Students 1 – 6 and based on above information, the District failed to fully implement the requirements of 92 NAC 51-003.24 and 92 NAC 51-007.

For Student 5, the District's omissions, violated Child Find and Procedural Safeguards of the IDEA and Rule 51 and significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE and caused a deprivation of educational benefit for Student 5.

The District failed to actively follow through with their affirmative Child Find obligation for Student 6. This failure deprived Student 6 of educational benefit and diminishing Student's ability to progress in the educational setting. Upon court involvement, the Court ordered private tutoring to address Student 6's academic deficits.

Thus, the following corrective action is required.

Corrective Action

Reconvene IEPs

1. The District will reconvene the IEP team for each student listed below within 30 calendar days to accomplish the following:
 - a. Student 1 - will reconvene in order to:
 - i. Revisit results of the MDT
 - ii. Include missing information from the MDT in Student's PLAAFP; and
 - iii. Revise the IEP as needed.
 - b. Student 3 – will reconvene in order to:
 - i. Revisit results of the MDT;
 - ii. Include missing information from the MDT in Student's PLAAFP; and
 - iii. Revise the IEP as needed.
2. The District will include the Complainant in the IEPs for each Student indicated.

3. The District will provide copies of each revised IEPs to Mary Lenser within 45 calendar days of the date of this report.

Compensatory Services

1. The District will provide Student 5 **15 hours of tutoring** outside of school time to compensate for the deprivation of educational benefit resulting from the District's failure to acknowledge and act upon the Student's referral for an MDT between January 31 and March 10, 2022.
 - a. The IEP team including the Complainant will meet no later than 14 days of the date of the Investigation Report to determine a mutually agreed upon schedule for the required compensatory services.
 - b. Compensatory services shall be completed by February 28, 2023. Student absence or refusal of the parent to make the child available shall result in a waiver of service scheduled for that day. Staff absences must be rescheduled. Any recovery services declined or not utilized by February 28, 2023, shall be deemed waived (assuming the District has made a good faith effort to timely commence and provide all recovery services).
 - c. The agreed upon schedule for compensatory services must be provide to Mary Lenser within 5 calendar days of the IEP meeting, but no later than November 15, 2022.
 - d. Service provider logs verifying completion of all compensatory services must be submitted to NDE on a monthly basis until the service is complete and all service has been verified.

Reimbursement

1. The District shall reimburse the DHHS for court ordered tutoring provided for Student 6 and continue paying for tutoring until obligations under the court order have been met.
2. The District will provide verification of reimbursement to Mary Lenser within 60 calendar days of the date of this report.

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:

Mary Lenser
NDE Office of Special Education
nde.speddr@nebraska.gov