

COMPLAINT INVESTIGATION REPORT

Complaint Number: 22.23.32
Complaint Investigator: [Redacted]
Date Complaint Filed: May 9, 2023
Date of Report: [Redacted]

Issues Investigated

1. Did the District change the Student's placement when the Student was sent home and suspended from school due to behavior concerns? [92 NAC 51-016.01]
2. Was the District required to conduct a manifestation determination review for the Student because of disciplinary removals? [92 NAC 51-016.02E]
3. Did the District provide special education and related services to the Student in accordance with their IEP? [92 NAC 51-007.02]

Information Reviewed By Investigator

From Complainant

1. Letter of Complaint received by the Nebraska Department of Education May 9, 2023
2. Email from Parent to Complaint Investigator dated June 21, 2023
3. Interview with Parent

From the School District

1. Letter of Response dated May 30, 2023
2. Multidisciplinary Evaluation Team (MDT) Report dated November 19, 2020
3. Notice of Meeting for IEP scheduled March 18, 2022, dated March 17, 2022
4. Individualized Education Program (IEP) dated March 18, 2022
 - a. Progress Report, October 14, 2022
 - b. Progress Report, December 19, 2022
 - c. Progress Report, May 18, 2022
5. Attendance log dated September 22, 2021, through September 22, 2022
6. Computer Loan Agreement and Notes page dated October 5, 2020
7. Notes page re: half day scheduled dated March 18, 2022
8. Parent to School emails dated August 15, 2022, through January 31, 2023
9. Text from Parent to teacher dated October 7, 2022
10. Behavior Data dated February 9, 2022, through March 21, 2022,
11. Incident summary dated December 5, 2022
12. Intervention chart, notes, and action plan dated December 2, 2021, through December 1, 2022
13. Letter re: follow up to ASD team observation, no date
14. Assistive technology screenshots

15. Prior Written Notice dated January 31, 2023
16. Revocation of Consent for Special Education and Related Service, January 31, 2023
17. Prior Written Notice: Revocation of Consent for Special Education and Related Services, January 31, 2023
18. Social story
19. Updated Behavior Plan Notes Page dated March 29, 2023
20. Home Note visuals dated August 17, 2022, through November 4, 2022
21. District ASD Regional Team Partnership Notes/Action Plan, December 1, 2022
22. Student portfolio
23. Interviews with District Staff

Introduction

On May 9, 2023, the Nebraska Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the District. The Parent requested that the Department conduct a special education investigation under 92 NAC § 51-009.11C3. The Department confirmed receipt of this Complaint and forwarded the request to the District. Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint. This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint. On May 15, 2023, the Department sent a Request for Response (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a Response due date of May 29, 2023.

The District submitted a Response on May 30, 2023, which disputed the allegations, provided an explanation, and submitted documents in support of the District's position. The District submitted additional documentation on June 19, 2023. The information included in this report that is outside the Complaint period is provided for context only.

Findings of Fact

1. On October 30, 2020, the Student was found eligible for Autism (Multidisciplinary Evaluation Team MDT Report dated October 30, 2020). The Student was 8 years old at the time the Complaint was filed.
2. On October 5, 2020, the District Notes Page indicated: "[Student] has begun to have great success with consistent use of [their] communication device (iPad) at school. After meeting with [Parent] and the Speech-Language Pathologist, we are in agreement that transitioning this device

to home would add benefits to [Student's] daily life. An agreement has been signed by [Parent], and the device will begin going home with [Student] after school, on weekends, and over holiday breaks beginning Wednesday, October 14th, 2020." (Computer Loan Agreement and Notes Page dated October 5, 2020.)

3. On March 29, 2022, the District Notes Page indicated: "[Student's] [Parent] approached the team about extending the time frame [Student] remains in a phase. [Parent] suggested [Student] stay in a phase for 2-3 weeks. The team met and decided on the following plan, effective today 3/29/2022." (Updated Behavior Plan Notes Page dated March 29, 2023.)
4. The Student's 2022-23 attendance records indicated:
 - a. On September 20, 2022, the District called the Parent after the Student "kicked [District Staff] 5x, scratched arm, face, ripped library books during jobs, ripped papers, climbed on top of the library cart. [Student] indicated [they] wanted to go home." [Parent] "chose to take [Student] home. [Student] left at 9:20 am." The Student's average attendance in September was 94%. (Attendance log dated September 22, 2021, through September 22, 2022.)
 - b. On October 31, 2022, the District called the Parent after the Student pulled push-pins off the wall and "successfully stuck [District Staff] twice, penetrating the skin." The Student also "poked, hit, and kicked [District Staff]." The Parent "decided to take [Student] home for the day." The Student's average attendance in October was 95%. [Student] left [sic] at 9:05." (Attendance log dated September 22, 2021, through September 22, 2022.)
5. On October 7, 2022, the Parent emailed the Special Education Teacher and informed them that a new app on the family iPad had been installed and they were: "setting up my communications with [Student]." (Parent Email to District dated October 7, 2022.)
6. Parent records indicated they: "had been called to the school to either get [Student] or be with [them] in the building." (Parent Email, June 21, 2023.)
7. On November 1, 2022, the Parent kept the Student home for a mental health day. (Attendance log dated September 22, 2021, through September 22, 2022.)
8. On November 8-November 9, 2022, the Parent and District Staff agreed to keep the Student home while the District Staff potty trained the student. (Attendance log dated September 22, 2021, through September 22, 2022.)
9. On November 29, 2022, the District sent the Student home at 10:00 a.m. because of an "aggressive kick". The Student "kicked [District Staff] in the face and hit and scratched [them]..." and "started wrecking things". The

Student's average attendance in November was 82%. (Attendance log dated September 22, 2021, through September 22, 2022.)

10. On December 2, 2022, the Parent kept the Student home for a mental health day. The Student's average attendance in December was 93%. (Attendance log dated September 22, 2021, through September 22, 2022.)
11. The District Computer Loan Agreement specified: "This equipment is, and at all times remains the property of [District] and is herewith lent to the student for educational purposes only for the Academic School year. Students may not deface or destroy this property in any way. Inappropriate use of the machine may result in the student losing his/her right to use this computer. The equipment will be returned to the school when requested by [District] or sooner; if the student withdraws from [District] prior to the end of the school year. (Computer Loan Agreement and Notes page dated October 5, 2020.)
12. The Parent signed the District Computer Loan Agreement. (Computer Loan Agreement and Notes page dated October 5, 2020.)
13. On March 8, 2022, the Parent emailed the District Staff: "Since nothing seems to be changing, I would suggest, effective Monday, March 14, 2022, we begin the half-day sessions. What time the half day ends are open for discussion; 11:30 is fine, but if you think a later time works, then lmk [sic]. I considered the idea of M/W/F as half days and then T/T full, but am wondering if that is confusing. Thoughts?" "Does [Student] miss out on OT/PT? Just trying to plan what needs to be filled in if [Student] is on all half days."
 - a. The Parent stated: "IDK [sic] if I need to document what I plan to do with [Student] at home as well, or how that works, so will need to be advised."
 - b. "I am assuming [They] will struggle to figure it out initially, but am hoping once [Student] realizes what is going on, [They] potentially can decompress a bit, we can clear the air and see what's up." (Email between Parent and District dated March 8, 2022.)
14. On March 18, 2022, the annual IEP meeting was held and the IEP was updated (Individual Education Plan dated March 18, 2022).
 - a. The IEP was signed by the Parent (Individual Education Plan dated March 18, 2022).
 - b. The special considerations on the Student's IEP indicated that the Student seems to enjoy school. Strengths included motor skills and a "strong imagination which leads [them] in play both for typical and nontypical toys". (Individual Education Plan dated March 18, 2022.)
 - c. The special considerations indicated the Student can complete up to 3 tasks independently, and "will quickly transition from a preferred activity to a non-preferred [sic] activity with little to no

- prompting or behaviors." (Individual Education Plan dated March 18, 2022.)
- d. The Student's IEP indicates that the Parent expressed concern about the Student's elopement; the Student has eloped from the home "on multiple occasions." The Parent "would like to see [them] have better control with [their] sensory needs & would like [them] to be able to communicate when [Student] needs sensory input and emotions. The Parent would like to work toward more communication with [Student's] AAC device [iPad] both at home and school." (Individual Education Plan dated March 18, 2022.)
 - e. The Student's IEP documented that the team considered the Student's communication needs; the team concluded that the Student will have an AAC device available to [them] "throughout [their] entire day." The team also considered the Student's need for assistive technology services or devices and concluded that the Student will benefit from the use of an assistive communication device "throughout [their] school day." (Individual Education Plan dated March 18, 2022.)
 - f. The Present Level of Academic Achievement and Functional Performance indicated that the Student had "displayed increasing aggressive behaviors towards both staff and peers this semester....[They] often [kick] and [hit], but will occasionally bite." The Student was described as "destructive towards property and materials by ripping materials, throwing materials, throwing items, kicking items, destroying the classroom, kicking furniture, and climbing on the furniture." (Individual Education Plan dated March 18, 2022.)
 - g. The Present Level of Academic Achievement and Functional Performance indicated: "Beginning March 14th, 2022, (via [Parent's] written permission), the Student began [their] half-day schedule in Phase 1. The [Student's] school day attendance will follow the plan written in [their] behavior plan, which has been shared with the team. Staff will track behaviors daily using the rubric provided in the plan. If at any point [Student] needs to move backwards to a certain phase the team will meet to discuss strategies to help [them] be successful." (Individual Education Plan dated March 18, 2022.)
 - h. The Present Level of Academic Achievement and Functional Performance indicated the following educational needs:
 - i. Social-emotional;
 - ii. Communication;
 - iii. Fine motor/sensory regulation;
 - iv. Gross motor;
 - v. Self-help; and

- vi. Academics." (Individual Education Plan dated March 18, 2022.)
 - i. The Student's IEP included annual goals in "PHYSICAL THERAPY": "Within one IEP year, [Student] will improve [their] strength, body coordination, eye-hand coordination skills, and other large motor skills to participate and interact with similar-aged peers during PE and recess..." and the Student "...will demonstrate increased fine motor skills to increase [their] independence in the educational setting..." (Individual Education Plan dated March 18, 2022.)
 - j. The Student's IEP included an annual goal in "Communication 2021": "By November 2022, given communication opportunities, [Student] will increase communication with peers and teachers..." The short-term objectives were as follows:
 - i. "When greeted by others, [Student] will wave, verbalize "hi"/"bye" or activate a greeting button on [their] AAC device at least 1 time per day with only 1 teacher prompt 50% of opportunities.
 - ii. When given a visual choice of 2 items and provided with a label of the items, [Student] will imitate the name of the item that [They] [prefer] at least 90% of opportunities.
 - iii. When given a visual choice of 2 familiar items without a verbal label of the items, [Student] name the item that [They] [prefer] at least 50% of opportunities.
 - iv. When given a programmed set of buttons to read pages in a familiar storybook with [Their] AAC device, [Student] will respond to a visual prompt to take turns reading with a peer 3/5 opportunities." (Individual Education Plan dated March 18, 2022.)
15. The Student's IEP included an annual goal in "Social 2021": "[Student] will increase [their] social interactions with others by meeting 2/2 benchmarks in 4/5 trials by November 2022." The short-term objectives in Social 2021 were as follows:
- a. Using [their] AAC device or vocalization, [Student] will ask peers to play with [them] at least 3x weekly with no more than 1 prompt from an adult;
 - b. [Student] will be able to independently sit and participate in circle/calendar time with [their] peers for up to 10 minutes with no more than 1 prompt from an adult; and
 - c. [Student] will initiate or return greetings via vocalization, AAC device, or gesture, with no more than 1 prompt from an adult. (Individual Education Plan dated March 18, 2022.)
16. The Student's IEP included an annual goal in "Lifeskills 2021": "[Student] will improve [their] daily living skills by meeting the benchmarks below in 4/5

trials by November 2022. The short-term objectives in “Lifeskills 2021 “were as follows:

- a. [Student] will demonstrate socially appropriate bathroom behaviors with the use of visuals (ex: latching stall door, managing clothing before opening stall door, exiting bathroom when finished, etc.);
 - b. [Student] will request toilet when needed via vocalization or AAC device;
 - c. [Student] will advocate for a break when needed by using a communication device (AAC or other) or vocalization with no more than 1 prompt from an adult; and
 - d. [Student] will complete at least 75% of the attached teeth brushing analysis independently.” (Individual Education Plan dated March 18, 2022.)
17. The Student’s IEP included an annual goal in “Math 2021”. (Individual Education Plan dated March 18, 2022.)
18. The Student’s IEP included an annual goal in “Reading 2021”. (Individual Education Plan dated March 18, 2022.)
19. A “Statement of Special Education and Related Services” indicated that the Student would receive “Special Instruction (Resource)”. “Additional Special Education Services” to be provided were:
- a. Speech-language therapy;
 - b. Physical Therapy; and
 - c. Occupational Therapy Services. (Individual Education Plan dated March 18, 2022.)
20. The Student’s IEP included the following “Supplementary Aids and Services”:
- a. Paraprofessional support is present when resource support is not to help [Student’s] learning. (Individual Education Plan dated March 18, 2022.)
21. The Student’s IEP included the following “Program Modifications & Accommodations”:
- a. Gain attention before giving directions or presenting verbal information;
 - b. Verbal directions should be kept short and concise;
 - c. Visuals and picture sequences may help [Student] comprehend and follow through with verbal directions;
 - d. Name common objects and actions throughout [Student’s] day to increase vocabulary skills;
 - e. Model simple sentences for [Student] to imitate during social interactions and play;
 - f. Speak in simple sentences with a slow speaking rate;
 - g. Sensory breaks will be built into [Student’s] daily schedule;
 - h. Encourage the use of [their] AAC device to communicate with others throughout [their] school day;

- i. Adaptive seating; and
 - j. Sensory support as needed. (Individual Education Plan dated March 18, 2022.)
22. The Student's IEP included a Supplemental Form with a behavior plan outline:
- a. Phase 1: the Student's arrival was scheduled to take place at 8:10 a.m., with a pick-up by the Parent at 12:00 pm; (Individual Education Plan dated March 18, 2022.)
 - b. Phase 2: the Student's arrival was scheduled to take place at 8:10 a.m., with a pick-up by the Parent at 1:20 pm; (Individual Education Plan dated March 18, 2022.)
 - c. Phase 3: the Student's arrival was scheduled to take place at 8:10 a.m., with a pick-up by the Parent at 1:40 pm; (Individual Education Plan dated March 18, 2022.)
 - d. Phase 4: the Student's arrival was scheduled to take place at 8:10 a.m., with a pick up by the Parent at 2:30 pm; and (Individual Education Plan dated March 18, 2022.)
 - e. Phase 5: the Student's arrival was scheduled to take place at 8:10 a.m., with a pick-up by the Parent at 3:30 pm. (Individual Education Plan dated March 18, 2022.)
23. On May 18, 2022 progress monitoring was reported on the Student's annual goals.
- a. Progress on the physical therapy goal: "Progress Made, Goal Not Met." (Progress report dated May 18, 2022.)
 - b. Progress on the fine motor skills goal: "Progress Made, Goal Not Met." (Progress report dated May 18, 2022.)
 - c. Progress on the communication goal: "Progress Made, Goal Not Met." A comment clarified that due to the shortened schedule, "[Student] has not participated in small group reading with peers this quarter." The Student could "read simple story books with [the] AAC device when prompted during therapy sessions." (Progress report dated May 18, 2022.)
 - d. Progress on the social goal: "Little or No Progress". Comments clarified that the Student was not yet attending school during "free time" hour; upon the Student's return to school "in the fall/winter term", the goal should be worked on during "social time." An additional comment noted that the Student was "now back to school for snack time and doing very well! However [Student] leaves before [their] class participates in the circle." (Progress report dated May 18, 2022.)
 - e. Progress on the life skills goal: "Progress Made, Goal Not Met." (Progress report dated May 18, 2022.)
 - f. Progress on the math goal: "Progress Made, Goal Not Met." (Progress report dated May 18, 2022.)

- g. Progress on the reading goal: "Progress Made, Goal Not Met."
(Progress report dated May 18, 2022.)
24. On October 14, 2022, progress monitoring was reported on the Student's annual goals.
- a. Progress on the physical therapy goal: "Progress Made, Goal Not Met." (Progress report dated October 14, 2022.)
 - b. Progress on the fine motor goal: "Little or No Progress." (Progress report dated October 14, 2022.)
 - c. Progress on the communication goal: "Progress Made, Goal Not Met." Comments included: "[Student] will sometimes look up when greeted by familiar teachers and peers, but needs maximal support to respond with a wave or AAC button to return greetings. [Student] is not as willing or able to make choices through imitation this year, with only occasional verbalizations used this quarter. [They] will make choices using [their] AAC system when prompted. We will continue to work on verbal imitation this next quarter." (Progress report dated October 14, 2022.)
25. Progress on the social goal: "Little or No Progress." Comments indicated that the Student was not joining class that year, "...except for about 10 minutes in the morning during morning announcements and calendar time." The Student had "chosen not to go into [their] classroom for the past 10 school days." The Student "was able to return greetings with maximum prompts either verbal or through [their] AAC device, about 10% of the time." (Progress report dated October 14, 2022.)
26. Progress on the life skills goal: "Little or No Progress". Comments indicated that the Student was not requesting bathroom breaks vocally, or on the AAC device. When dysregulated, the Student had "been requesting to go home..." and would "... often exhibit destructive behavior first instead of requesting a break." (Progress report dated October 14, 2022.)
27. Progress on the math goal: "Little or No Progress". A related comment clarified that the Student had been receiving only 5 minutes of math instruction each day. (Progress report dated October 14, 2022.)
28. Progress on the reading goal: "Little or No Progress" (Progress report dated October 14, 2022.)
29. On December 5, 2022, following a behavioral incident at school, the District met with the Parent. The incident summary indicated that the District Administrator had a "brief discussion of the incident and...informed [Parent]: [sic] or tomorrow, let's keep [Student] home and go from there and we'll try again the next day." The District Administrator also explained to the Parent that they would "mark the absence as Family for attendance reasons. [Parent] said that was okay and the following day, [sic] 12/6/22 [Parent] emailed [District Administrator] and [District Staff] that [they] would be keeping [Student] home for the foreseeable future." (Incidents Summary dated December 5, 2022.)

30. On December 6, 2022, the Parent emailed the District: "Based off of yesterday's events and the great distress [Student] was in after [they] got home, I've decided the school is not the place for [Student] (mentally/emotionally) at this time...I will keep [Student] home until after the new year; if it is in the interest of the school to work with [Student] again, we can discuss if a re-entry plan is feasible at that time. I'm not sure how this long of a hiatus plays out for your records, but [their] Dr. will can [sic] fax over a note stating [Student's] on a recommended mental health break if that is what you need to maintain some sort of a 'professional' paper trail of events." (Email between Parent and District dated December 6, 2022.)
31. On December 19, 2022, progress monitoring was reported on the Student's annual goals.
- a. Progress on the physical therapy goal: "Progress Made, Goal Not Met." (Progress report dated December 19, 2022.)
 - b. Progress on the fine motor goal: "Progress Made, Goal Not Met." (Progress report dated December 19, 2022.)
 - c. Progress on the communication goal: "Progress Made, Goal Not Met." Comments included: "Due to behavior concerns, [Student] is no longer participating in small group reading with [their] peers...[they] will use [their] AAC system to read books that have been programmed into [their] device... [They are] not yet responding verbally or through [their] AAC device when prompted." (Progress report dated December 19, 2022.)
 - d. Progress on the social goal: "Little or No Progress". Comments included: "[Student] will spontaneously return greetings via vocalization, AAC device, or gesture, but it is very inconsistent. Due to [their] increased behaviors, there has been no progress currently." (Progress report dated December 19, 2022.)
 - e. Progress on the math goal: "Little or No Progress". A comment indicated: "Due to increased behaviors [Student] has not been able to make any progress in math this quarter. [They are] not able to participate in math skills." (Progress report dated December 19, 2022.)
 - f. Progress on the reading goal: "Little or No Progress". A comment indicated: "Due to increased behaviors [Student] has not been able to make any progress in math [sic] this quarter. [They are] not able to participate in reading skills." (Progress report dated December 19, 2022.)
32. On January 27, 2023, the Special Education Director/Elementary Principal emailed the Parent to inform them that the District had been made aware that the Student had been registered for homeschooling. The Special Education Director/Elementary Principal indicated that when the Parent signs the forms, the District would provide "the most recent IEP, the

- prior written notices, and the revocation of services forms." (Email from District to Parent dated January 27, 2023.)
33. On January 30, 2023, the Parent agreed to pick up the forms the following day (January 31, 2023). (Email from the Parent to the District dated January 30, 2023.)
 34. On January 31, 2023, the Parent signed a Revocation of Consent for Special Education and Related Services. (Revocation of Consent for Special Education and Related Services dated January 31, 2023.)
 35. On January 31, 2023, a Prior Written Notice: Revocation of Consent for Special Education and Related Services was provided to the Parent. The Prior Written Notice stated: "... the district will discontinue all special education and related services for your child effective upon the issue date of this letter. At [sic] this time, the services and education support agreed to in your child's most current Individual Education Program (IEP) will no longer be available to your child. State and federal regulations provide protections and procedural safeguards for parents of students with disabilities; a statement of those protections and procedural safeguards (Parental Rights in Special Education) is enclosed with this Prior Written Notice. By your revocation of consent, your child will no longer be entitled to special education and related services and protections under the IDEA and relation provisions of the Nebraska Rule 51. Your child will be treated as a general education student in all aspects, including in the event of any disciplinary action. Your revocation of consent releases the district from liability for providing your child with a free appropriate public education (FAPE). If, at any time following the revocation, you wish to have your child considered for special education and related services, you may contact staff at your child's school with your request for evaluation. (Prior Written Notice: Revocation of Consent for Special Education and Related Services dated January 31, 2023.)
 36. On February 1, 2023, a Prior Written Notice (PWN) was provided to the Parent.
 - a. The PWN indicated the Parent had opted to withdraw the Student from school and to revoke consent for special education services. The District proposed to discontinue all special education services. The District proposed discontinuation of services because: "Due to increased behaviors in the winter semester of 2022, [Student's] days were shortened, per [Their Parent's] request, to give [them] a break from the full-time school hours." The PWN indicated that the Student was remaining at school until 2:40 p.m. at the end of the 2022 year. (Prior Written Notice dated February 1, 2023.)
 - b. The PWN indicated that: "[Parent] requested at the beginning of the 2022 Fall Semester that [Student] start school with attending from 8:10 am-12:00 pm. As a team, we decided that this was in the best interest of staff and family, with the intention of increasing

[their] days when [Student] was ready. Increased behaviors continued at the start of the year, and many accommodations and supports were put into place to support [Student].” (Prior Written Notice dated February 1, 2023.)

- c. The PWN indicated that: “Other options considered by the IEP team were to decrease [Student’s] time at school until the behaviors decreased and then slowly increase [their] time based on [their] success at school. This option was rejected because [Student’s] parents decided and have revoked consent for services to homeschool [Student]. (Prior Written Notice dated February 1, 2023.)
 - d. The PWN indicated that on December 31, 2022, the Parent emailed the District to communicate that the family had decided to homeschool the Student “and have revoked consent for services.” (Prior Written Notice dated February 1, 2023.)
37. During interviews, the Special Education Teacher indicated that the AAC device that had been used by the Student, at school, and at home, had developmentally inappropriate content installed. The Special Education Teacher and the Special Education Director confirmed that they had not previously discussed the questionable content with the Parent prior to the request that the AAC device be returned to school. (Interviews with District Staff)
38. During interviews, the Parent confirmed that some of the content on the AAC device had been installed by them as the topics were relevant to the Student’s family. Other content may have been installed by the Student’s sibling. (Interview with Parent)

Issue # 1

Did The District change the Student’s placement when the Student was sent home and suspended from school due to behavior concerns?

92 NAC 51-016.01 Change of Placement for Disciplinary Removals states:

016.01A *For the purpose of removals of a child with a disability from the child’s current educational placement under Section 016, a change of placement occurs if:*

016.01A1 *The removal is for more than 10 consecutive school days; or*

016.1A2 *The child is subjected to a series of removals that constitute a pattern;*

- 016.01A2a *Because the series of removals total more than 10 school days in a school year;*
- 016.01A2b *Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and*
- 016.01A2c *Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.*

Allegations/Parent Position

The Parent-reported they were asked to remove the Student from the school 5-7 times because the Student was struggling with their behaviors. The Student was suspended due to continued behaviors. Parent Complaint, May 9, 2023.

District Response

The District disputed the allegation. The District did not change the Student's placement under 92 NAC 51-016.01 because the Student was not removed from [their] educational placement for more than 10 school days in a school year.

Investigative Findings

District and Parent records both indicated that the School notified the Parent five times about the Student's behavior at school. On these occasions, the Parent either chose to take the Student home for the day or stayed with the Student at school. The School recorded the Student as absent due to "family reasons."

Summary and Conclusions

The Student was not subjected to removals from school, due to behavior, for more than 10 school days in a school year; nor was there a pattern of removals that constituted a change in placement for the Student. The District implemented the requirements of 92 NAC 51-016.01 and **no corrective action** is required.

Issue # 2

Was The District required to conduct a manifestation determination review for the Student because of disciplinary removals?

92 NAC 51-016.02E Manifestation Determination states:

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

016.02E1a *If the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or*

016.02E1b *If the conduct in question was the direct result of the school district's or approved cooperative's failure to implement the IEP.*

016.02E2 *The conduct must be determined to be a manifestation of the child's disability if the school district or approved cooperative, the parent and relevant members of the child's IEP team determine that a condition in either 92 NAC 51-016.02E1a or 016.02E1b was met.*

016.02E3 *If the school district or approved cooperative, the parent and relevant members of the child's IEP team determine the condition described in 92*

NAC 51-016.02E1b was met, the school district or approved cooperative must take immediate steps to remedy those deficiencies.

Allegations/Parent Position

The parent reported they were asked to remove the Student from the school 5-7 times because the Student was struggling with their behaviors. The Student was suspended due to continued behaviors. (Letter of Complaint dated May 9, 2023.)

District Response

The District disputed the allegation. The District was not obligated to conduct a manifestation determination review for the Student under 92 NAC 51-016.02E because the Student was not removed from [their] educational placement for more than 10 school days in a school year. (Letter of Response dated May 30, 2023.)

Investigative Findings

The Student was not removed from school for more than 10 school days in a school year, nor was there a pattern of school removals that constituted a change in placement.

Summary and Conclusions

The District was not required to implement the requirements of 92 NAC 51 016.02E and **no corrective action** is required.

Issue # 3

Did the District provide special education and related services to the Student in accordance with the Student's IEP?

92 NAC 51-007.02 states:

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

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

007.02A1 *From the end of the school year which a child reaches age 3, until the child's sixth birthday, the*

IEP team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in 92 NAC 52 (including an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills for children with an IFSP who are at least three years of age), and that is developed in accordance with the IEP procedures. The IFSP may serve as the IEP of the child if using the IFSP as the IEP is agreed to by the school district or approved cooperative and the child's parents.

- 007.02B *Each school district or approved cooperative shall ensure that an IEP is in effect before special education and related services are provided to a child with a verified disability under this Chapter.*
- 007.02C *The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and*
- 007.02D *Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.*

Allegations/Parent Position

The Parent alleged that the School Director requested that the Student's AAC device be immediately returned to school due to the Student being absent from school. The AAC is in the Student's IEP, the Director knows it is the Student's primary means of communication, and there was no other solution or support suggested. (Letter of Complaint dated May 9, 2023.)

District Response

The District disputed the allegation. The District provided the Student with special education and related services in accordance with [Student] IEPs as required by 92 NAC 51-007.02. The Student's IEP did not provide for the Student to receive special education and related services in the home, but rather provided for the

Student to receive assistive communication technology in [Student's] IEP placement at [their] neighborhood school "throughout [Student's] school day." When the District's administration learned that there were inappropriate images and videos on the school device uploaded at home, the District requested that the device be returned. The device would be made available again consistent with the Student's IEP if the Complainant avails the Student of services from the District. (Letter of Response dated May 30, 2023.)

Investigative Findings

The Student's IEP dated March 18, 2022, did not include any provisions for the AAC device that was used at school to also be provided at home. Further, the Parent had previously signed a computer loan agreement that included the provision that the District could require the return of the equipment if inappropriate use of the device was discovered. On December 6, 2022, the Parent notified the District that the Student was not going to attend school for the foreseeable future and would be on an extended mental health break. On January 27, 2023, the District notified the Parent that they had been made aware that the Student had been registered for homeschooling. On January 31, 2023, the Parent provided the District with written revocation of consent for the District to provide special education services to the Student.

Summary and Conclusions

The Parent notified the District that the Student was not going to attend school, registered the Student for homeschooling, and revoked consent for the District to provide special education services to the Student. Given these circumstances, the District was not required to implement the requirements of 92 NAC 51-007.02, and **no corrective action** is required.

Notice to District

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