

## COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.01  
Complaint Investigator: REDACTED  
Date Complaint Filed: July 5, 2023  
Date of Report: REDACTED

### Issues Investigated

1. Did the District implement the student's IEP, specifically the behavior intervention plan (BIP) and accommodations related to behavior, during the 2022-23 school year? [92 NAC 51-007.02]
2. Did the District implement the student's IEP, specifically the special education services, during the 2022-23 school year? [92 NAC 51-007.02]
3. Did the District measure the student's IEP goals as required and provide the parents with periodic reports of IEP goal progress during the 2022-23 school year? [92 NAC 51-007.07A4]
4. Did the District review and revise the student's IEP in response to changes in the student's behavior during the 2022-23 school year? [92 NAC 51-007.01]
5. Did the District follow the required disciplinary procedures when the behavior resulting in suspension was a manifestation of the student's disability? [92 NAC 51-016]
6. Did the District provide the student with access to the general education curriculum? [92 NAC 51-008.01]
7. Did the District follow appropriate procedures when proposing or refusing to make changes to the provision of FAPE as described in the student's IEP, specifically extended school year (ESY) services and specialized instruction in the area of math during the 2022-23 school year? [92 NAC 51-009.05]

### Information Reviewed by Investigator

#### *From the Complainant*

- Letter of Complaint dated June 27, 2023, received by NDE on July 5, 2023
- 2022-2023 Student Learning Plan
- Email between parents and special education teacher dated July 28, 2022
- Emails between parents and special education teacher at 11:11 a.m. and August 8, 2022, at 9:36 a.m.
- Emails between parents and special education teacher dated August 24, 2022, between 8:34 a.m. and 9:09 a.m.

- Email from Middle School Principal to middle school teachers dated August 30, 2022, at 8:31 a.m.
- Multidisciplinary Evaluation Team (MDT) Report dated September 21, 2022
- Emails between parents and special education teacher dated October 20, 2022, between 1:50 and 3:36 p.m.
- Email from Middle School Principal to middle school teachers dated October 20, 2022, at 10:39 a.m.
- First Quarter Progress Report dated October 21, 2022
- Email from father to Individualized Education Program (IEP) team dated November 10, 2022, at 8:43 a.m.
- Email from parent to IEP team dated November 14, 2022, at 12:35 p.m.
- Email from parent to Middle School Principal dated December 1, 2022, at 9:01 a.m.
- Second Quarter Progress Report dated January 6, 2023
- Email from Middle School Principal to middle school teachers dated January 12, 2023, at 7:08 p.m.
- Letter from Middle School Principal to parents dated January 13, 2023
- Email from mother to Middle School Principal dated January 13, 2023, at 12:49 p.m.
- Email chain between superintendent and parents dated January 18, 2023, between 10:03 a.m. and 2:25 p.m.
- IEP dated January 20, 2023
- Email from special education teacher to parents dated January 23, 2023, at 12:58 p.m.
- Emails among IEP team members dated January 24, 2023, at 3:38 p.m. and January 26, 2023, at 9:04 a.m.
- Daily Total Points Earned Chart dated January 26, 2023, through May 5, 2023
- Daily Verbal Outburst Data Chart, dated January 26, 2023, through May 5, 2023
- Emails among special education teacher, parent and IEP team dated January 27, 2023, between 10:14 a.m. and 3:17 p.m.
- Behavior incident report dated January 29, 2023, at 10:34 a.m.
- Child and Adolescent Trauma Screen (CATS)-Youth Report dated February 3, 2023
- Email from special education teacher to IEP team March 9, 2023, at 3:53 p.m.
- Third Quarter Progress Report dated March 30, 2023
- Emails from parent and special education teacher dated between April 12, 2023, at 1:36 p.m. and April 14, 2023, at 3:41 p.m.
- Mathematics Student Profile, exported on April 28, 2023
- AIMSWeb+ Student Profile, exported on April 28, 2023
- Email from special education teacher to parent dated May 8, 2023, at 11:46 a.m.

- Fourth Quarter Progress Report dated May 15, 2023
- Individualized Education Program and Team Meeting Minutes dated May 17, 2023
- Student Math Data Observations dated June 16, 2023
- Email from mother to IEP team dated June 19, 2023, at 2:08 p.m.
- AIMSWeb+ Student Skills Plan 2022-2023 School Year printed on June 22, 2023
- Student Profile, exported on June 22, 2023
- Letter of Complaint dated June 27, 2023, received by NDE July 5, 2023
- Email from the parent to the investigator dated August 15, 2023
- AIMSWeb Skill Overview 2022-2023 School Year
- Student Tool Options Sheet, undated
- Student Point Sheet, undated
- Tool Flow Chart, undated

The parents also provided additional documentation which was determined to be outside the one-year investigation window or not relevant to this investigation. That documentation is not included in the list above.

*From the School District: (note that certain evidence was provided by both the parents and the District)*

- Letter of Response dated August 7, 2023
- IEP dated December 8, 2021
- Prior Written Notice (PWN) dated December 8, 2021
- 2022-2023 Middle School Bell Schedule
- 2022-2023 Reading & Math Interventions WIN A & WIN B Interventions Daily Schedule
- 2022-2023 Student Schedule
- Occupational Therapy (OT) Service logs dated between August 10, 2022-January 31, 2023
- Daily Behavior Sheets from August 15, 2022 - January 12, 2023
- Lunch Bunch consent and schedule dated August 18, 2022
- Parent Communication Log dated from August 18, 2022-December 1, 2022
- Social Communication Data excel spreadsheet dated August 22, 2023, through November 9, 2022
- Speech Therapy Service logs dated between September 1, 2022-January 19, 2023
- MDT Report dated September 21, 2022
- Behavior Data Collection Excel Spreadsheets and Chart Displays dated September 25, 2022-January 12, 2023
- Behavior incident teacher note dated September 27, 2022
- Letter from Middle School Principal to parents dated September 27, 2022

- Release of Information between school and ASD team, parent consent signed October 4, 2022
- Email from Middle School Principal to school staff dated October 20, 2022, between 10:39 and 10:50 a.m.
- First Quarter Progress Report dated October 21, 2022
- November 1, 2023, CAPS implementation timeline
- Staff note regarding behavior dated November 7, 2022, and January 12, 2023
- Teacher note dated November 9, 2023
- Behavior incident teacher note dated November 28, 2023
- IEP dated December 5, 2022
- Second Quarter Progress Report dated January 6, 2023
- Behavior incident teacher note dated January 10, 2023
- Behavior incident teacher note dated January 12, 2023
- Letter from Middle School Principal to parents dated January 13, 2023
- Threat Assessment Meeting notes dated January 17, 2023
- IEP dated January 20, 2023
- Daily Total Point Earned Chart, dated January 26, 2023, through May 11, 2023
- Daily Verbal Outburst Data Chart, dated January 26, 2023, through May 11, 2023
- IEP Goal Excel Spreadsheets dated January 26, 2023, through May 19, 2023
- Emails among school staff titled, New Form Response regarding student "reboot process" dated between January 30, 2023, and June 28, 2023
- Excel Spreadsheets of Reboot data dated between January 30, 2023, and June 28, 2023
- Staff notes dated February 1, 2023, and March 29, 2023
- Continuation of the January 20, 2023, IEP Team Meeting Notes dated February 3, 2023
- OT notes for visits between February 9, 2023, and June 21, 2023
- Third Quarter Progress Report dated March 30, 2023
- Fourth Quarter Progress Report dated May 15, 2023
- Individualized Education Program and Team Meeting Minutes dated May 17, 2023
- MAP Growth Student Progress Report dated Spring 2022-2023
- The Nebraska Student-Centered Assessment System (NSCAS), 2022 Individual Student Report
- The Nebraska Student-Centered Assessment System (NSCAS), Growth Report Spring 2023

- AIMS Web Plus 2022-2023 School Year
- Student Learning Plan 2022-2023 School Year
- Student Point Sheet, undated
- Tool Flow Chart and Student Tool Options Sheet, undated
- Team Communication Goals and Plans, undated
- Para schedule, undated
- Proposal to Resolve Complaint dated July 31, 2023
- Letter of Response dated August 7, 2023, received by NDE August 7, 2023

The district also provided additional documentation that was not relevant to this investigation. That documentation is not included in the list above.

### **Introduction**

The student of this investigation was eligible for special education as a student with Emotional Disturbance during elementary school. By report the student had, a history of behavior incidents that were successfully addressed through behavior interventions and supports before transitioning to middle school. The middle school special education team reviewed and revised the Behavior Intervention Plan to eliminate a seclusion room for the student to go to cool down prior to entering middle school. The addition of a seclusion room was requested repeatedly by the parents throughout the school year but never added to the BIP. Prior to entering middle school, the student received a diagnosis of autism spectrum disorder (ASD). The student was reevaluated and, in October the student's eligibility category was updated to Autism and Speech/Language Impairment in response to the medical diagnosis and a new MDT Report.

During the fall semester the student experienced several behavior incidents, and the IEP team met several times to revise and refine the BIP. In January 2023 the student had a significant behavior incident and, following a meeting by the threat assessment team, the IEP team met and recommended the student be placed in the resource room until such time the student's behavior improved.

Subsequently, the parents requested an IEP Team Meeting to discuss the student attending a separate school that they felt was their last resort for their student to be safe during behavior incidents. This particular school emphasized intensive behavioral intervention and support as well as social emotional skills and academic skills taught at the student's independent levels and self-paced progression through the curriculum. In January 2023 the IEP team determined this more restrictive environment was the appropriate placement for the student.

The student remained in this placement during the spring semester and attended ESY in this setting. Instructional time at the middle school had been considered and increased twice to allow the student to participate in band and math instruction.

### **Findings of Fact**

1. The IEP dated May 17, 2023, documents the Student is currently eleven (11) years old and completed fifth grade during the 2022-23 school year.
2. According to the December 5, 2021, IEP, when the student was in fourth grade, the student was eligible for special education and related services under the eligibility category of Emotional Disturbance (ED).
3. The May 17, 2023, IEP states that a medical diagnosis of autism spectrum disorder (ASD) was made during the summer of 2022 by a Research Hospital and the report was shared with the school district.
4. On August 22, 2022, the IEP team met to review the Behavior Intervention Plan, titled *[Student] Learning Plan 2022-2023*. The plan included using if/then statements for choice, strategies for prior to teaching/learning, use of bad language, schedule changes, and responses for when the student gets upset (leave room to cool down, increased para support). It did not include the use of a seclusion room.
5. On September 21, 2022, a new MDT evaluation was completed that changed the student's eligibility category from Emotional Disturbance to Autism and Speech/Language Impairment.
6. The behavior incident teacher note dated September 27, 2022 and the letter from the Middle School principal to parents dated the same date showed that a significant behavior incident occurred on September 27, 2022, and the student was suspended one day (September 28, 2022).
7. The report titled, *9/27/22 Non-CPI hold* documented that the student had a behavioral incident and a staff member who had not participated in the district emergency restraint procedure training assisted the principal in moving the student from one location in the building to another. It was documented that a deputy spoke with the student during the time of the incident and the student did not return to instruction.
8. According to the November 1, 2022, CAPS implementation timeline documentation showed that a board-certified behavior analyst (BCBA) from a behavioral school was called in to consult following the September 27, 2022, incident. The parents reported that the BCBA had previous experience working with the student.
9. Quarter 1 Progress Reports for six goals were prepared and dated October 21, 2022. It was reported that the student met the behavior goal

of having one or fewer threatening incidents per week. Progress was made for the remaining five goals as noted below:

- a. Goal 2: accessing a sensory program throughout the day to assist with regulation, calming, body awareness, and maximizing attention for classroom activities/self-help skills;
  - b. Goal 3: engaging in writing assignments without behavior;
  - c. Goal 4: multiply or divide 2 one-digit numbers with 90% accuracy;
  - d. Goal 5: use of pragmatic and social skills, and
  - e. Goal 6: produce voiced and voiceless /th/ in all positions of words at sentence level with 80% accuracy.
10. The parents stated they first received the Quarter 1 Progress Notes during the December 8, 2022, annual IEP. The parents also reported that this report and those that followed were a true and accurate depiction of the student's progress.
11. An October 20, 2022, email shared revisions to the BIP created by the consulting BCBA and school team titled CAPs (Comprehensive Autism Planning System methodology) to be implemented effective November 1, 2022. All team members (including the parents) indicated it was an improved plan for the student's behavior. It included Triggers, Skills to Teach Desired Behavior Replacement Behavior, Antecedent Interventions, IEP Modifications, Reinforcements, Responding to Problem Behavior, and data collection method for math, science, literature, PE, language arts, lunch, social studies, WIN (Lego League), Math Intervention, Band, Study Hall, Art, Reading Block, Tech, Music Theory, ROAR, Assemblies and Special Events. Documentation showed that the plan was shared with IEP team members and the team members who would be implementing the plan received training.
12. A document titled, *Discipline 2* showed that the student was suspended for Periods 7 and 8 on November 7, 2022, after having a behavioral incident earlier in the day.
13. An email from the parent dated November 14, 2022, showed the parent expressed concern about the safety of using restraint with the student.
14. The district response reported that the student was using the "take a break" option from the CAPS (BIP) to avoid going to class on a frequent basis. The student's program was revised so that the student had to attend even short periods of time in class before being allowed to leave. District data showed there was an increase in the behavior when the student attended class, but that after a short behavior burst the student attended class.

15. The IEP reconvened on December 5, 2022, to review and develop the annual IEP. A new behavior goal was developed as the student had met the previous goal. Additionally, new goals were proposed for mathematics, social skills, and speech-language. Additionally, the school team developed new behavior data tracking tools.
16. Quarter 2 Progress Report was prepared and dated January 6, 2023. The average number of disruptive outbursts was reported as 13 per day. Goal 2 reported that progress was made, but the goal was not met. For the remaining goals no progress was reported as they were implemented following the December 5, 2022, IEP and there was not adequate data to report progress on January 6, 2023.
17. A significant behavior incident occurred on January 12, 2023, and the student was suspended three days (January 13, January 17, and January 18, 2023). An email was sent by the principal on January 12, 2023, and a letter was sent by the principal on January 13, 2023, notifying the parents of the suspension.
18. In an email from the mother on January 13, 2023, to the principal the mother reiterated her concern for the communication about the timeliness of notification of the January 12, 2023, behavior incident and district response.
19. The school's Threat Assessment Team met on January 17, 2023, following the January 12, 2023, incident and determined that the student presented an active threat to the safety of staff and students. They recommended a temporary placement in the resource room following the suspension. The parents requested that the student participate in at-home learning instead. The school team agreed and provided instructional resources and materials needed.
20. An email between the parents and IEP team on January 18, 2023, showed that the parents requested at-home learning rather than resource room placement. The district reported they honored the parent's request and provided resources and materials for at-home learning.
21. The parents reported they requested an IEP Team Meeting to consider a separate school as an option for placement. The parents stated that the student felt unsafe at the middle school and stated the separate school offered safety. The parents stated that the separate school would offer nearly the same benefits that were available when the student was at the elementary school in regard to safety and fidelity of the use of a seclusion room. The parents stated they felt the separate school would keep the student physically and mentally safe due to the district's inability to use



accommodations and safe room procedures that were previously working for the student.

22. The IEP team met and revised the student's IEP on January 23, 2023, to change the student's placement to a more restrictive environment at a separate school emphasizing behavior interventions and supports starting January 26, 2023.
23. The District reported that the student continued at-home learning for January 20, January 23, January 24, and January 25, 2023, after the suspension ended and prior to beginning at the separate school. Both the parents and district agree no special education services were provided on those 4 days.
24. The IEP team met on February 3, 2023, IEP to continue discussing the student's placement at the separate school and determine criteria for when and under what conditions the student would return to the lesser restrictive environment at the middle school. The meeting notes from this meeting documented the parents' concern for establishing a criterion for the student to "earn" a return back to the middle school. Further, the parents reiterated a concern expressed at the January 23, 2023, IEP decision that the student was losing academic instructional time and academic instruction was provided at a lower grade level at the separate school.
25. Emails among IEP team members between March 9, 2023, and April 27, 2023, showed ongoing discussions about behavioral progress and determination of criteria for the student placement to return to the middle school. The emails showed no decisions were made.
26. The March 30, 2023, Progress Report reported progress during the time the student was at the middle school until the suspension on January 12, 2023, and then placement at the separate school beginning January 23, 2023. The report showed the student had an average of 8 outbursts per day, a reduction from 10 outbursts per day at the middle school prior to the placement change. The Progress Reports showed the student accessed the sensory program 95% of the time at designated times and was working on identifying a need for a break or using one. Data showed the student taking breaks at unscheduled times 57% of the time. The student met the goal for solving problems involving algebraic process by achieving above an 80% average in all operations, except for subtraction. Goal 4 showed implementation and strategies for problem solving and encouraging play, self-talk around situations when provoked. When words are provided the student used the words with target sound in the words and in a sentence at around 35% accuracy. Per observational data, the

student met the goal of responding to peer communications and initiating a conversation 2 times.

27. The May 15, 2023, Progress Report reported progress reported on using strategies during verbal outburst. During 44% of outbursts the student was able to accept help or a break between March 13, 2023, and May 12, 2023. The student made progress averaging 6.5 verbal outbursts per day. The student accessed three scheduled sensory breaks throughout the day. Documentation shows the student worked on lower grade level work at the instructional level as specified by the program at the school; however, the progress reports included progress at grade level as well as lower grades. The student completed work at a lower grade level completing subtraction and addition problems at the first-grade level with 100% accuracy. At the third-grade level, the student subtracted 2-digit numbers to find the unknown with 38% accuracy, single-digit multiplication problems with 95% accuracy, and single-digit division problems with 85% accuracy. Goal 4 showed continued implementation and strategies for problem solving and encouraging play, self-talk around situations when provoked. In structured sentences the student used target sound with 80% or better accuracy. When not focused on the target work, the student averaged 60-65%. The student maintained progress, responding to peer communications five times and initiating a conversation two times.
28. The May 17, 2023, IEP showed that more time with non-disabled peers at the middle school was added and the placement at the separate school was continued. Additionally, the IEP is marked that the student was eligible to attend ESY services at the separate school and ESY services will be talked about in May as to whether the student will attend. The parent's child complaint showed the parents expressed concern regarding a lack of understanding of the student's "true" progress as the learning program showed end of unit scores rather than detailed information regarding the content and skills learned at the separate school. The parents expressed concern that the student's instruction in mathematics was at a third-grade level and that the student should be provided access to the general education curriculum regardless of ability. By report the district and parents disagreed about the whether the student's mathematic scores reflected actual progress.
29. The parents reported in the child complaint that the IEP team met May 23, 2023, to discuss transition from the more restrictive placement back to the middle school. The parents also voiced concerns regarding the lack of

direct instruction and student regression that will impact access to grade level instruction.

30. The parents reported in the child complaint that the IEP team met June 14, 2023, at the separate school to discuss many of the issues outlined in the child complaint including access to grade level instruction, mathematics instruction, transition from the separate school back to the middle school, and compensatory education.

### **Issue # 1**

Did the District implement the student's IEP, specifically the behavior intervention plan (BIP) and accommodations related to behavior, during the 2022-23 school year? [92 NAC 51-007.02]

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.*

#### *Allegations/Parent Position*

The parents alleged that the district failed to use a behavior plan that included a safe seclusion room (Reset Room) despite it being a vital aspect of the student's behavior plan in the past and requesting it be added at all meetings during the 2022-2023 school year. The parents further alleged that this resulted in the district failing to support safety, welfare, and security by allowing untrained staff members to restrain and remove the student unsafely from a hallway and placed staff members in unnecessary danger by not providing a safe seclusion space for de-escalation.

#### *District Response*

The district responded that the Behavior Intervention Plans (BIP) and accommodations related to behavior in effect during the 2022-2023 school year were implemented as written into these IEP documents. Neither the IEP nor BIP included a seclusion room during the 2022-2023 school year. The district described that a seclusion/reset room was used and effective in the past and the parents continued to request adding it to the IEP because of its past effectiveness. The district responded that a seclusion space for de-escalation was brought up and discussed during each 2022-2023 school year meeting and after discussion was not added to the IEP nor BIP as the documentation showed.

The district further responded that the student was not improperly and excessively restrained during the school year. The district responded that

restraint was a last resort strategy of the BIP if other strategies did not stop the student from actively hurting self or others or damaging significant property.

### *Investigative Findings*

There were four IEPs in effect during the 2022-2023 school year dated December 8, 2021, December 5, 2022, January 23, 2023, and May 17, 2023, and each included goals addressing behavior. Progress reports were created quarterly during the 2022-2023 school year relying on data collected.

The Special Considerations section for all IEPs included a statement that “the student may be removed from the regular education setting for unsafe/persistent, disruptive behavior and the use of holds, seclusion room, resource room, activity area, or other area for de-escalation”.

Each of the four IEPs listed “access to a para when needed. Times and consistency determined by the IEP team based on behavioral data collected” A para schedule was provided by the district that showed when the student was assigned a para during instruction. Documentation showed that the para was included in training and revisions to behavioral programs.

There were two BIPs implemented during the 2022-2023 school year. The first was titled, Learning Plan 2022-2023 school year (August 22, 2022) and the second was titled, CAPs (October 22, 2022). Documentation showed that the BIPs were revised to include or refine flow charts, break processes, emotional check-ins, reset process and data collection forms. Completed data collection worksheets, data displays, behavior incidents demonstrate that the BIP and accompanying accommodations were implemented.

### *Summary and Conclusions*

92 NAC 51-007.02 states that 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. In this issue the allegation was specific to the implementation of the behavior intervention plan (BIP) and accommodations related to behavior.

Documentation from meeting notes, the complaint and district response showed the parents did not agree with using other interventions in lieu of a seclusion room for the student's de-escalation. Although the use of a seclusion room for the student's de-escalation was brought up and discussed at each IEP meeting during the 2022-2023 school year it was not a specific intervention included on any of the BIPs or IEPs.

Based on a review of the IEPs and BIPs in effect during the 2022-2023 school year along with data and progress reports, staff schedules, attendance records, the

District implemented the requirements of 92 NAC 51-007.02, and **no corrective action** is required.

## **Issue # 2**

Did the District implement the student's IEP, specifically the special education services, during the 2022-23 school year? [92 NAC 51-007.02]

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.*

### *Allegations/Parent Position*

The parents alleged that the student was denied access to classes or special education service minutes because one component of the BIP allowed the student to go to the library instead of going to class in an effort to keep the student from escalating during frustrating or overwhelming situations. The parents alleged this allowed the student to miss an average of 68 minutes of class per day. Further, allowing the student to go to the library allowed the student to elope through a window. The parent reported that this elopement behavior had been successfully addressed and supported in elementary school through modified tasks, breaks and adult support.

### *District Response*

The district responded that according to attendance records and schedule the student received all other service minutes for each of the four IEPs at both the middle school and the separate school. They further responded that during investigation it was learned that the student did not receive 40 speech minutes as a result of staff and student absences and agree with providing compensatory services for these speech minutes.

### *Investigative Findings*

The findings of Issue One are incorporated herein by reference.

There were four IEPs in effect during the 2022-23 school year. The first IEP was dated December 8, 2021, and included 100 minutes of special education services every week in the general education classroom, along with 20 minutes of occupational therapy direct service for 18 days during the 2022-2023 school year.

The annual IEP review occurred on December 8, 2022, and this second IEP increased special education services to 144 minutes every week in the general education classroom, 20 minutes of occupational therapy direct service for 16

days and 20 minutes of speech-language therapy direct service for 15 days during the 2022-2023 school year.

The third IEP was developed on January 23, 2023, and changed the student's educational setting to a separate school and included 360 minutes of special education each school day and continued 20 minutes of occupational therapy direct service for 16 days and 20 minutes of speech-language therapy direct service for 15 days during the 2022-2023 school year. Services in this more restrictive environment at a separate school were scheduled to start on January 26, 2023. The district offered for the student to attend school in the resource room when the student returned from suspension until starting at the separate school, but the parents stated that they would prefer the student continue to participate in at-home learning. The at-home learning took place on January 20, 23, 24, and 25. The student did not receive special education services on these dates.

Finally, the May 18, 2023, IEP continued the special education, occupational therapy and speech-language therapy service minutes in the separate school but added 30 minutes of special service in the general education resource room for 5 days every week.

Documentation showed that in response to the student choosing to not go to class as part of the BIP the team met and changed the plan to require the student to go to class before choosing to not go.

Teacher and related services schedules and service logs show the student minutes correspond to the IEP service minutes.

#### *Summary and Conclusions*

The district reported that the student did not receive 40 minutes of speech-language therapy due to staff or student absence. Further, the district reported that no special education services were provided to the student on January 20, 23, 24 and 25, the time between when the student was suspended and when the student began attending the separate school.

The parents alleged that the student missed an average of 68 minutes of class or special education service per day when the student exercised the BIP option of not going to class or was in the reset process at the middle school. The IEP specified a range of 100 - 144 minutes of special education service minutes every week and documentation from teacher schedules and behavioral data and reports show that the minutes were provided in the public school through January 12, 2023.

It is verified that no special education services were provided to the student on January 20, 23, 24, and 25.

The time the student spent in the general education classroom is not a service or setting addressed as a part of IDEA and was not investigated.

Based on review of the service minute logs, IEP service minutes, behavior plan specifications, and teacher logs, the District failed to fully implement the requirements of 92 NAC 51-007.02 Thus the following **corrective action is required.**

#### *Corrective Action*

1. The district will offer the student compensatory education for a minimum of 40 minutes speech-language therapy for service missed due to staff or student absences and 116 minutes (144 minutes/week = 29 minutes/day x 4 days = 116 minutes) of special education services for service missed during the school days of January 20, 23, 24, and 25. The Student's IEP Team shall convene an IEP Team meeting within 30 days of the date of this report to develop a mutually agreed upon schedule.
  - a. The IEP team, including the Parent, shall determine the schedule by which the compensatory services to include a minimum of 40 minutes of speech-language therapy and a minimum of 115 minutes of special education instruction will be provided. If the District is unable to convince the Parents to attend the IEP Team meeting, the district will document the attempts to contact the parent as required by 92 NAC 51-007.06D and hold the meeting without the parent.
  - b. The schedule for compensatory services must be provided to NDE within 10 calendar days of the IEP Team meeting.
  - c. Compensatory services shall be completed by DATE. 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 compensatory services declined or not used by DATE shall be by deemed waived (assuming the district has made a good faith effort to timely commence and provide all compensatory services.)
  - d. The District must submit service provider logs verifying completion of all compensatory services to NDE by the last business day of each month until the service is complete and all service has been verified.

### Issue # 3

Did the District measure the student's IEP goals as required and provide the parents with periodic reports of IEP goal progress during the 2022-23 school year? [92 NAC 51-007.07A4]

92 NAC 51-007.07A4 states:

51-007.07 *IEP Development*

007.07A *The IEP shall include:*

007.07A4 *A description of how the child's progress toward meeting the annual goals described in 92 NAC 51-007.07A2 will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;*

#### *Allegations/Parent Position*

The parents alleged that the district did not provide the parents with quarterly progress reports, nor was sufficient data collected to demonstrate progress. The parents reported that although the first quarter progress report had a due date of October 21, 2022, they were first provided the first quarter progress report on December 8, 2022, at the annual IEP.

#### *District Response*

The district responded that it measured the student's progress on each of the IEP goals at least quarterly during the 2022-2023 school year as evidenced by the progress reports provided to the parents. As described in Issue #1 the district monitored the student's behavior goals daily and developed detailed reports each quarter. This data drove changes made to the student's BIP throughout the school year.

#### *Investigative Findings*

The findings of Issues One and Two are incorporated herein by reference.

Documentation provided by the district showed that Quarterly Progress reports were dated October 21, 2022, January 6, 2023, March 30, 2023, and May 15, 2023.



Each of the four IEPs for the 2022-2023 school year indicated that progress reports will be sent home each quarter.

An email exchange dated between April 13, 2023, and April 14, 2023, showed the parent requested behavioral data and the parent received it the next day.

The parent reports on August 15, 2023, that the Quarter 1 Progress Report dated and to be distributed during the end part of October was incredibly tardy. It was not received until the IEP meeting held in December 2022. After learning they had not received the progress report, this was reported this to the superintendent. The parent reported that the superintendent sent an email to all SPED teachers regarding the obligation to stick to a timeline. The parent reported the remaining progress Reports for Quarters 2, 3 and 4 were delivered within a reasonable timeframe.

#### *Summary and Conclusions*

Student progress was reported for each IEP goal in Quarterly Progress Reports created on October 21, 2022, January 6, 2023, March 30, 2023, and May 15, 2023. Each of the goals contained in each of the four IEPs implemented during the 2022-2023 school year specified that progress would be reported each quarter.

Each student goal specified a set criterion for mastery. For the behavioral goals it was shown that adequate data was collected to apply the criteria for mastery. For the mathematics, speech and language, social interaction, pragmatic/ social skills goals the progress was reported in percentage accuracy or mastery criteria by the goal.

It is noted that the Quarter 2 progress report did not include progress for four goals, stating there was not ample data to report on new goals as they were included in the December 8, 2022, IEP and the Quarter 2 Progress Report was prepared on January 6, 2023.

While 92 NAC 51-07A4 requires periodic and regular reports of progress the regulations do not provide guidance to specify a timeframe for distribution. However, it is important to note that the purpose of the IEP goal progress reports is to allow IEP teams, including the parents, to determine if an IEP needs to be reviewed and revised due to lack of adequate progress.

In this case, the student's IEPs required quarterly reporting of progress. The first quarter IEP goal progress reports dated October 21, 2022, were not provided to the parents until the IEP team meeting held on December 8, 2022, which is approximately six weeks from when they should have been provided.

Based on a review of the Quarterly Progress Reports and IEP goals the District failed to fully implement the requirements of 92 NAC 51-07A4. 02. Thus the following **corrective action is required**.

#### *Corrective Action*

1. By October 1, 2023, the District will train all of its special education staff on the following:
  - a. Importance of providing timely progress reports;
  - b. Importance of reviewing and revising progress reports of students and other data available and making changes to an IEP as necessary.
2. The District will send NDE its training materials two weeks before the scheduled training for approval.
3. The District will provide NDE a sign in sheet of those who attended the training within five school days of the training.

#### **Issue #4**

Did the District review and revise the student's IEP in response to changes in the student's behavior during the 2022-23 school year? [92 NAC 51-007.01]

92 NAC 51-007.01 states:

007.01        *An IEP shall be developed, reviewed, revised, and implemented for each child who receives special education and related services.*

#### *Allegations/Parent Position*

The parent alleged that the IEPs and BIPs in place during the 2022-2023 school year were inadequate and resulted in the student moving to the most restrictive placement the student has ever attended. This restrictive placement includes a lack of access to friendships with other peers, participation in band, PE, and art as well as lack of modeling and practicing social skills with non-disabled peers. The parents explained that the movement to this restrictive school was the only safe and feasible option to consider when the district neglected to provide the necessary accommodations and services that had proven to be effective in the past. This is in spite of meeting and revising the IEP and BIP throughout the school year.

#### *District Response*

The district responded that the student's IEP and BIP were reviewed and revised numerous times throughout the school year. The IEP team met in August, October, December, January, May, and June during the 2022-2023 school year for this specific purpose. In August the team met and created the document

titled, “[Student] Learning Plan”. On September 27, 2022, the student had a behavior incident, and the district contacted the BCBA therapist and program director at a separate school that had previous experience with the student and expertise in working with students with autism to review the student’s BIP for revision. Throughout October the IEP team worked with the BCBA to develop the Comprehensive Autism Planning System (CAPS) documents to enhance and refine the student’s BIP. The IEP team met and revised the student’s IEP in December to create new data tracking tools. In January the IEP team made a change of placement for the student to attend a separate school. In May the IEP team met to add time with non-disabled peers at the student’s home middle school in addition to time at the separate school and in June again, the IEP team met to add more time with non-disabled peers at the student’s home school.

### *Investigative Findings*

The findings of Issues One, Two and Three are incorporated herein by reference.

Documentation showed there were four IEPs in effect during the 2022-2023 school year dated December 8, 2021, December 5, 2022, January 23, 2023, and May 17, 2023, and two BIPs implemented August 22, 2022, and October 22, 2022.

Documentation showed a behavioral incident occurred on September 27, 2022.

Documentation showed that the special education teacher contacted the BCBA therapist that the student had worked with in the past to review the BIP.

Documentation showed that the IEP team and BCBA therapist created the Comprehensive Autism Planning System (CAPS) and the BCBA observed the student during the plan creation.

Documentation showed that new behavior data tracking tools were created and included in the December 8, 2022, IEP.

Documentation showed that a behavioral incident occurred January 12, 2023.

Documentation showed that the IEP team met on January 23, 2023, and changed the placement of the student to a separate school focused on more intensive behavior interventions and supports.

Documentation showed that the student’s middle school special education teacher met with the team at the separate school on the average of one time per week during the spring semester after the student’s placement was changed.

Documentation showed that the IEP team met May 15, 2023, to add time with non-disabled peers at the student's home school in response to the student's behavior changes.

Documentation showed that the IEP team met in June to again add more time with non-disabled peers at the student's home school in response to the student's behavior changes.

BIPs plans reviewed showed that they were revised to include or refine flow charts, break processes, emotional check-ins, reset process and data collection forms. Data collection worksheets, data displays, behavior incidents demonstrate that the BIP and accompanying accommodations were implemented.

#### *Summary and Conclusions*

IEPs, BIPs, behavior plans and emails showed that the IEP team met regularly throughout the school year in response to student behavioral events and behavior improvements during the school year.

Behavior data collection sheets, Daily Verbal Outburst data collection graphs, the Student Learning Plan, CAPS and Reset Process, Break Process, Emotional Check in Process, incident reports, threat assessment report, emails among the parents and IEP team members corresponded to noted changes in the student's IEPs and BIPs.

Based on document review of IEPs, BIPs, behavioral incident reports, data, and emails among IEP team members (including the parents), the District implemented the requirements of 92 NAC 51-007.01, and **no corrective action** is required.

#### **Issue # 5**

Did the District follow the required disciplinary procedures when the behavior resulting in suspension was a manifestation of the student's disability? [92 NAC 51-007.016]

92 NAC 51-016 states:

- 016            *Disciplinary Removal of Children with Disabilities*
  - 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:*
    - 016.01A      *The removal is for more than 10 consecutive days; or*

- 016.01A2      *The child is subjected to a series of removals that constitute a pattern:*
- 016.01A2a      *Because the series of removals total more than 10 school days in a school year;*
- 016.01A2b      *Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and*
- 016.01A2c      *Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.*

*Allegations/Parent Position*

The parents alleged that on January 12, 2023, the student was given a three day out of school suspension for assaulting staff and scaring other students in response to the district not providing the necessary behavioral supports and accommodations. They further reported that the student would be placed into the Resource Room full time upon returning from the suspension until the student demonstrated "appropriate behaviors" to return to the classroom. The parents stated that the district was unable to define a clear pathway for the student to return back to the classroom. Additionally, the parents reported that the student felt unsafe at the school and was scared to go back and face classmates. The student stated that the principal never conferenced with the student regarding the incident, nor was informed of the consequences. This directly violated due process procedures for student discipline.

This led the parents to write a response to the suspension stating that the behaviors were a manifestation of disability and concluded that the student could have been spared from this and previous events had the proper facilities,

accommodations and training had been in place. As a result, the parents requested an IEP and asked that the separate school be presented as an option for placement since this school would keep the student physically and mentally safe.

#### *District Response*

The district responded that the student was suspended/removed from the middle school for disciplinary reasons for a total of four school days (September 28, 2022, January 13, 17, and 18, 2023). They stated that a threat assessment team met on January 17, 2023, and based on the data, documentation, and threat assessment analysis, determined that the student presented an active threat to the safety of staff and students at the middle school. The threat assessment team recommended a temporary placement in the resource room following the suspension. The parents requested that the student participate in at-home learning instead. The school team agreed and provided instructional resources and materials needed.

The January 23, 2023, IEP changed the student's placement to a more restrictive environment at a separate school with services to start on January 26, 2023. The district offered for the student to attend school in the resource room when the student returned from suspension until starting at the separate school, but the parents stated that they would prefer the student continue to participate in at-home learning. The at-home learning took place on January 20, 23, 24, and 25. The student did not receive special education services on these dates.

#### *Investigative Findings*

The findings of Issues One, Two, Three and Four are incorporated herein by reference.

Letters from the principal dated September 28, 2022, and January 12, 2023, showed that the student was suspended by the district on September 28, 2022, January 13, 17, and 18, 2023 for behavioral incidents.

A document titled, Discipline 2 showed that the student received the equivalent of 1 day of out of school suspension on November 7, 2022, when the student was sent home for Periods 8 and 9 following a behavior incident earlier in the day.

Documentation showed the family requested the change of placement to the IEP team and the IEP team made the decision to change the student's placement from the middle school to the more restrictive environment at the separate school.

The IEP dated January 23, 2023, showed the student's placement at the separate school.

### *Summary and Conclusions*

Under Rule 51, a change of placement occurs if a disciplinary *removal is for more than 10 consecutive school days* or if the child is *subjected to a series of removals that constitute a pattern* because the series of removals totals more than 10 school days in the school year. In this case the student was removed from five school days during the school year and therefore did not meet the threshold of number of days to hold a manifestation determination meeting.

Matters related to the activities and decisions of the district threat assessment team are addressed by the Nebraska Student Discipline Act and not addressed by IDEA so are not investigated as part of this Department of Special Education Child Complaint.

Based on review of documentation, discipline records, the parent request and the Nebraska Student Discipline Act, the District implemented the requirements of 92 NAC 51-016 and **no corrective action** is required.

It is noted that the district did not disclose the suspension on November 7, 2022. Given the importance of monitoring any student's suspension it is **recommended that the district review how suspensions are recorded.**

### **Issue # 6**

Did the District provide the student with access to the general education curriculum? [92 NAC 51-008.01]

92 NAC 51-008.01 states:

008.01        *Least Restrictive Environment (LRE) Requirements*

008.01A        *The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved service agencies, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*

### *Allegations/Parent Position*

The parents alleged that when the student was placed at the separate school by the student's IEP team, the student was working on third grade level curriculum rather than grade level instruction. While they initially agreed to the student's placement at the separate school, once they learned the student would not have access to grade level curriculum, they told the IEP team members they did not agree with the decision to change placement. They alleged that per Rule 51 all students are provided access to the general education curriculum regardless of ability. By receiving instruction at a lower grade level, the student is falling further behind.

### *District Response*

The district responded that the student had access to the general education curriculum because at all times during the 2022-2023 school year the student was placed in the least restrictive environment.

### *Investigative Findings*

The findings of Issues One, Two, Three, Four and Five are incorporated herein by reference.

The paraeducator schedule showed the student received general education instruction in the fourth-grade general classroom during the fall semester with para support.

The January 20, 2023, IEP documented that the student's least restrictive environment was placement at the separate school.

The separate school information sheet stated:

Students work on academic skills at their independent levels and at their own pace. Academic materials and plans are developed individually for each student, and information about the length and structure of academic time at the separate school is shared with IEP teams prior to placement decisions. The home school districts are responsible for providing most of the academic materials for students. The students participate in an online program called Apex for U.S. History, English, and Science. LCC provides Khan academy and IXL activities for math.

### *Summary and Conclusions*

According to 92 NAC 51-008.001A:

*The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate,*



*children with disabilities...are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*

The January 20, 2023, IEP documented that the student's least restrictive environment was placement at the separate school.

92 NAC 51-008.011 states that "a child with a disability must not be removed from education in age-appropriate classrooms solely because of needed modifications in the general curriculum." As such it is important to recognize that access to grade-level curriculum is tied to placement in the least restrictive environment. In this case the student's least restrictive environment was determined to be the separate school due to the student's behavior interfering with learning.

At the January 20, 2023, IEP meeting the program director at the separate school explained to the team that the school program for the student would focus on behaviors rather than academics. The IEP team decided that at this time, the student's behavior was interfering with learning and that the separate school would be able to help the student to emphasize improved behavior and academic progress would be realized when the student transitioned back to a less restrictive setting.

Based on review of the January 20, 2023, IEP and documentation related to changing the student's placement, the District implemented the requirements of 92 NAC 51-008.01, and **no corrective action** is required.

### **Issue # 7**

Did the District follow appropriate procedures when proposing or refusing to make changes to the provision of FAPE as described in the student's IEP, specifically extended school year (ESY) services and specialized instruction in the area of math during the 2022-23 school year? [92 NAC 51-009.05]

92 NAC 51-009.05 states:

009.05        *Prior Written Notice*

009.05A       *Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:*

009.05A1 *Proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education.*

009.05A2 *Refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education.*

#### *Allegations/Parent Position*

The parents alleged that the student was not provided extended school year services to help remediate regression in the area of math nor provided specialized instruction or compensatory education in the area of math after the student's placement changed to the separate school and the educational structure changed.

#### *District Response*

The district responded that the district followed appropriate procedures when responding to the parent's requests related to extended school year services (ESY) and specialized instruction in the area of math during the 2022-2023 school year. The district stated they never denied ESY to the student. Instead, the district informed the parents that the student was entitled to ESY services at the separate school during the 2023 summer as documented in the student's May 17, 2023, IEP. The district did concede that the Prior Written Notice regarding the provision of ESY may have needed to be more detailed to explain why the student would only receive ESY services at the separate school and not additional ESY services directly relating to math instruction.

In regard to specialized math instruction the district responded that once the parents learned that academic instruction at the separate school would be different from the middle school (academic skill instructional and practice time would be shorter and academic skills would be targeted to each student's independent levels and at their own pace allowing for students to be working at lower grade levels) the parents first stated they did not want the student to attend the separate school and later requested direct instruction and compensatory education. This request was addressed at the May 17, 2023, IEP team meeting and the parents were provided with appropriate prior written notice for changes in the provision of FAPE following that IEP team meeting.

### *Investigative Findings*

The findings of Issues One, Two, Three, Four, Five, and Six are incorporated herein by reference.

The May 17, 2023, IEP documents the Student was eligible to attend ESY services at the separate school and those ESY services would be talked about in May and the parents could decide whether or not the Student will attend school to receive those services.

The Prior Written Notice resulting from the May 17, 2023, IEP was created on May 23, 2023, and delivered to the parents on May 30, 2023. The Prior Written notice does not mention ESY eligibility.

This Prior Written Notice proposed to add direct instruction in math intervention in addition to the Student's regular school day for 30 minutes/day, 5 days/week. The Prior Written Notice stated that the IEP team did consider not providing direct instruction in math in addition to the Student's regular school day, but this option was rejected because additional time is needed to provide more intensive instruction to support the Student's math skills. The Prior Written Notice indicates these decisions were based on current classroom performance, behavioral data, IEPs dated 5/17/2023 and 6/14/2023, as well as information provided by the parents, special education teachers, separate school teachers and staff, speech-language pathologist, and occupational therapist.

### *Summary and Conclusions*

92 NAC 51-009.05A1 and 51-009.05A2 directs that *Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative proposes or refuses to change the...provision of a free appropriate public education of the child.*

The Prior Written Notice resulting from the May 17, 2023, IEP team meeting specific to these two issues states the decisions are based on information from a variety of sources including an IEP dated June 14, 2023, which is almost two weeks after the date of the Prior Written Notice and almost a month following the IEP team meeting where the decision was made. It is unclear how the District could have followed appropriate procedures to provide prior written notice to the parents when the proposed action is based on an IEP that was not even developed at the time. In addition, the District noted in the letter of response dated August 7, 2023, that the district conceded they could have been more detailed to explain math instruction related to ESY services.

Based on the foregoing, a finding is made that the District failed to fully implement the requirements of 92 NAC 51-009.05. Thus, the following **corrective action is required**.

*Corrective Action*

1. By October 1, 2023, the District will train all of its special education staff on the importance of prior written notice when proposing or refusing to make changes to the provision of FAPE.
  - a. The District will send NDE its training materials two weeks before the scheduled training for approval.
  - b. The District will provide NDE a sign in sheet of those who attended the training within five school days of the training.
2. By October 1, 2023, the District will reconvene the student's IEP team to review the necessary specialized math instruction for the student.
  - a. The IEP will be amended as necessary, and a Prior Written Notice will be written to record the decision made.
  - b. The District will provide NDE a copy of the PWN within five school days of the meeting.
  - c. A random sample of 3 student IEPs will be reviewed on or before March 5, 2024, to ensure correction of PWNs has been made.

**Notice to District**

Unless otherwise indicated, the corrective action specified must be completed within sixty (60) calendar days of the date of this report. Documentation must be submitted as soon as possible following the completion of the corrective actions. All documentation of correction must be sent to:

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