

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 23.24.04  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** July 18, 2023  
**Date of Report:** REDACTED

### Issues Investigated

1. Did the District follow appropriate procedures in changing the Student's current school for a disciplinary removal during the 2022-2023 school year? [92 NAC-51-016.01A1]
2. Did the District follow appropriate Child Find procedures to identify and evaluate a child suspected of being a child with a disability and in need of special education and related services during the past 12 months? [92 NAC-51-006.01A2]
3. Did the District conduct a manifestation determination meeting within 10 school days of the District's decision to change the placement of a child with a disability because of a violation of a code of student conduct during the 2022-2023 school year? [92 NAC 51-016.02E1]
4. Did the District provide educational services to an eligible child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP during the past twelve months? [92 NAC 51-016.02D1]

### Information Reviewed by Investigator

- Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions: OSEP Q&A 22-02, U.S. Department of Education, July 19, 2022.

### *From the Complainant*

- Behavior Detail Reports dated August 19, 2022-September 12, 2022
- Email between Parent and Director of Special Education dated between October 27, 2022, at 11:56 AM and October 31, 2022, at 11:52 AM
- Multidisciplinary Evaluation Team MDT Report dated December 20, 2022
- Email from Parent to Director of Special Education dated Feb 10, 2023, at 8:08 AM
- Email between Senior Specialized Juvenile Probation Officer and Parent dated Feb 10, 2023, between 9:59 and 10:36 AM
- Email between Parent and Director of Special Education between Feb 10, 2023, at 4:52 PM and Feb 11, 2023, at 9:40 AM
- Letter of Complaint dated July 18, 2023, received by NDE July 18, 2023

*From the School District*

- Behavior Details dated August 10, 2022, August 22, 2022, August 23, 2022, August 26, 2022, August 29, 2022, September 1, 2022, September 2, 2022, September 8, 2022, September 9, 2022, September 12, 2022, and May 23, 2023
- Behavior Documentation dated August 19, 2022-September 12, 2022
- Letter from Principal dated September 13, 2022
- Notice and Consent for Initial Evaluation (Prior Written Notice) dated November 2, 2022
- Multidisciplinary Evaluation Team MDT Report dated December 20, 2022
- Individual Education Program (IEP) dated January 20, 2023
- Notice and Consent for Initial Placement (Prior Written Notice) dated January 20, 2023
- Special Education Services Documentation dated January 25, 2023 - May 16, 2023
- Prior written notice dated February 13, 2023
- Progress Report dated March 9, 2023
- Progress Report dated May 23, 2023
- Individual Education Program (IEP) dated August 7, 2023
- Prior Written Notice dated August 7, 2023
- Emails among the Student's IEP team dated between August 8, 2023, at 4:55 PM and August 9, 2023, at 5:32 PM
- Letter of Response dated August 11, 2023, received by NDE August 11, 2023

**Introduction**

The Student of this investigation attended an alternative school following an expulsion on September 12, 2022, for the remainder of the 2022-2023 school year. At the time of the expulsion, the Student was not eligible for special education. The Student was later determined to be eligible for special education and related services under the eligibility category of Emotional Disturbance on December 20, 2022, and an IEP was developed and implemented on January 20, 2023.

Prior to being expelled, the Student was sent to the office twelve times between the start of the school year and his expulsion. By report, the Student had behavioral issues during elementary school and had been medically diagnosed with ADHD Combined Type, Conduct Disorder, and Mood Disorder. The Student was discussed at the school's Problem-Solving Team meetings on August 16, 23, and 30, 2022 and the Student visited with the school counselor on August 22, 2022, and September 12, 2022.

The Student was referred for a special education evaluation on October 27, 2022, and the Multidisciplinary Evaluation Team Report (MDT) determined the Student to be eligible for special education. Special Education services were delivered to the Student at the alternative school for the remainder of the school year. The Student

will start the new school year at a Level III school, attend the Student's home school, and participate in extra-curricular activities as well.

### **Findings of Fact**

1. District behavioral referral data showed August 19, 2022, for inappropriate pictures.
2. District behavioral referral data showed August 22, 2022, for vaping.
3. District behavioral referral data showed August 22, 2022, for refusing to participate in MAP testing.
4. District behavioral referral data showed August 23, 2022, for playing with scissors.
5. District behavioral referral data showed August 26, 2022, for airdropping inappropriate pictures.
6. District behavioral referral data showed August 26, 2022, for work refusal.
7. District behavioral referral data showed August 29, 2022, for horse play.
8. District behavioral referral data showed September 1, 2022, for name-calling.
9. District behavioral referral data showed September 2, 2022, for loud, attention-seeking disruptive behavior.
10. District behavioral referral data showed September 8, 2022, for name-calling.
11. District behavioral referral data showed September 9, 2022, for playing a game during a test.
12. District behavioral referral data showed a September 12, behavior incident leading to a report for unlawful activity to Student causing concussion resulting in expulsion for the remainder of the first semester and second semester.
13. An expulsion letter was sent to Parents from the principal and superintendent on September 13, 2022
14. The Parent and District reported the Student was enrolled at an alternative school at the Juvenile Justice Center.
15. A letter dated October 28, 2022, was written by a medical doctor stating, "[Student] is being treated for ADD/impulsivity and mood disorder. These conditions can impair his success in the classroom. Any reasonable accommodations that can be made to help with [Student] classroom success would be appreciated."
16. An email from the Parent to the Director of Special Education dated October 27, 2022, at 11:56 a.m. requested a special education evaluation.
17. On October 31, 2022, the Parent contacted the director of the Director of Special Education at 10:08 AM in an email writing that she was attaching a letter from a medical doctor stating that the Student is being treated. Additionally, she wrote,

We had talked about child find. I had spoken with both [previous principal] and [current principal] about [Student] having anger problems/ADHD. I had spoken with [previous

principal] for sure about [Student] and adhd multiple times since [Student] was in 6<sup>th</sup> grade. [Student] was referred to counseling and we spoke with [school counselor] about it also who was sending reports back to school. With all this should [Student] have been sent for evaluation before if [Student] could have benefited from some intervention? A lot of [Student] problems in class came from impulsiveness and being disrespectful/disruptive. I didn't realize that an IEP can be used for behavioral reason to help kids stay in class help them work towards their problems.

18. On October 31, 2022, at 11:52 AM the Director of Special Education contacted the Parent in an email writing that the doctor's letter was being forwarded to the school psychologist and that the school psychologist would contact the Parent about the evaluation process.
19. A Prior Written Notice (PWN) dated November 2, 2022, consented to evaluate the Student for special education with a reason given as school history of behavior concerns. The PWN showed the Parent signed consent on November 2, 2022.
20. The Multidisciplinary Evaluation Team MDT Report dated December 20 proposed eligibility for Emotional Disturbance after considering Other Health Impaired. The report showed that the Student's cognitive abilities fell in the average range and the Student performed in the average range across all academic areas, concluding there was no reason to suspect an intellectual disability nor a specific learning disability at this time. The Student's reading, mathematics, and writing abilities fell in the average range. Behavioral records and teacher input indicated incidences of inappropriate language, disruptive behavior, and physical aggression. The BASC-3 results indicated the Student struggled with externalizing problems (hyperactivity, aggression, conduct problems), internalizing problems (depression, somatization), school problems (attention & learning), atypicality, and adaptive skills (adaptability, social skills, study skills, functional communication, activities of daily living) across most school and parent raters. The Emotional Disability Decision Tree (EDDT) indicated that the Student struggled to build/maintain interpersonal relationships, displays inappropriate behaviors/feelings under normal circumstances, exhibits a general pervasive mood of unhappiness or depression, and displays physical symptoms/fears associated with school. A letter dated 10/28/2022 indicated medical diagnoses of ADD/impulsivity and mood disorder. The Parent reported the Student takes medication for these medical diagnoses.
21. The Prior Written Notice dated January 20, 2023, reported that the mother requested a goal for learning empathy, and it was reported on the PWN that it was added to the IEP.

22. January 20, 2023, IEP was written and included three goals for social skills and services for 20 minutes, one day every week along with four accommodations.
23. February 9, 2023, IEP meeting minutes reported that the team proposed that a Level III school be considered, and the notes report it was being considered by the team but no decision was reached.
24. An email dated February 10, 2023, at 8:08 AM from the Parent to the Special Education Director, Special Education Teacher, and Juvenile Justice Worker questioned whether a manifestation hearing or something similar needed to occur now that the Student is eligible for Special Education. Further, if the Student's conduct was determined to be associated with the disability should the Student be returned back to regular school.
25. The Director of Special Education reported calling the Parent on February 13, 2023, to follow up on the February 10, 2023, email. The Director of Special Education documented in notes from the call that the Parent the following:
  - a. did not think the Level III school was appropriate for the Student;
  - b. The Student did not mind attending the alternative school;
  - c. The Student would like to finish the year at the alternative school; and
  - d. requested additional work if the Student completed the work at the alternative school.
26. The February 13, 2023, Prior Written Notice documented that the Student would remain at the alternative school at the Parent's request rather than continue to consider the Level III placement.
27. The Quarterly Progress report on March 9, 2023, for the three IEP goals showed that:
  - a. When given scenarios and a self-created social scale, the Student's accuracy was 25% in answering questions with goals of 70%
  - b. The Student identified and expressed the emotional states of being angry 50% of the time with a goal of 70% of the time as measured by teacher charting; and
  - c. The goal of empathy had not been introduced yet.
28. District behavioral referral data showed May 23, 2023, for disparaging/profane/obscene language directed to staff.
29. The Quarterly Progress reported on the May 25, 2023 Progress reported for the three IEP goals showed that
  - a. When given scenarios and a self-created social scale, the Student's accuracy was 55% in answering questions with a goal of 70%;
  - b. The Student was 54% accurate in identifying emotional states of being calm and angry with a goal of 70% of the time; and
  - c. The Student was able to verbalize empathy 60% of the time when given different situations with a goal of 66% of the time.

30. The Parent and District reported during interviews that the Student had more absences at the end of the school year from the alternative school.
31. The District reported that they analyzed the Student's behavior incidents for patterns and found that the Student's behaviors in past years were primarily low-intensity behaviors and occurred primarily with one teacher leading the team to determine it was a personality issue rather than a pattern of behaviors. When questioned they stated they did not remember anyone stating that the student should have qualified for special education in earlier years. They also reported the success of the Check In/Check Out system in preventing behavior incidents.
32. The Student is now at the high school level. The IEP team has placed the Student in a Level III placement. Upon completion of the school day at the Level III program at 1:30 p.m., the Student attends the High School for the remainder of the day to receive additional instruction and behavioral support and to apply the skills learned in a regular school environment. -- I have attached his current IEP, the PWN associated with the IEP, and email correspondence reflecting that the Parent agreed with the placement.
33. The IEP dated August 7, 2023, showed the Student receiving special education services at a Level III school to receive intensive instruction in appropriate social skills and emotional regulation in a highly structured setting with a low teacher-to-pupil ratio. Following the 1:30 p.m. dismissal from the Level III school, the Student will attend the high school for the remainder of the day to receive additional instruction and behavioral support and apply skills learned in the regular school environment. The Student will be given a chance to try out for football and participate in after-school practice. Documentation showed the Parent signed the PWN on August 7, 2023, following the IEP.
34. Emails dated between August 8-9, 2023, showed the IEP team reached consensus for the Student's school day for the 2023-2024 school day.

**Issue # 1**

Did the District follow appropriate procedures in changing the Student's current school for a disciplinary removal during the 2022-2023 school year? [92 NAC 51-016.01A1]

51-016.01 *Change of Placement for Disciplinary Removals*

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*

- 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*

*Allegations/Parent Position*

The Parent alleged that the District should have evaluated the Student as far back as elementary school and if the Student had an IEP in place the outcome would have been different. The Parent stated that the District had knowledge that the Student had a disability and that even though the Student had not yet been found eligible for special education the school should have reconvened to consider the placement once found eligible. Instead, the District stated the Student needed to finish out the year of punishment.

*District Response*

The District responded that the Student was not a Student eligible for special education services and protections at the time of the expulsion on September 12, 2022, and therefore not eligible for treatment under Rule 51.

*Investigative Findings*

The MDT showed that the Student was not eligible for special education until December 20, 2022. The letter stating the Student had a disability by the medical doctor was dated October 27, 2022, and an evaluation followed. Subsequently the Student was found eligible for special education and related services as a child with Emotional Disturbance on December 20, 2022. The IEP dated January 20, 2023, showed the team met after the Student was found eligible for special education services and placement was considered along with needed services.

*Summary and Conclusions*

92 NAC 51-016.01 describes regulations related to changing the placement of a Student eligible for special education services for disciplinary removals. In this case, the Student was placed at an alternative school following an expulsion on September 13, 2022. The Student was not eligible for special education services at the time of the removal so treatment by Rule 51 is not applicable. Although the

investigation regarding whether the District had knowledge the Student had a disability (Issue 2) the Student was not removed from the Student's school for any days prior to September 12, 2022. Finally, Rule 51 related to changing the placement of a Student eligible for special education services for disciplinary removals does not apply in regard to the Student's placement in the alternative school because the placement was not made based on Rule 51 and the current placement was considered as part of the January 20, 2023, IEP team meeting.

Based on a review of the documentation and timeline of events surrounding the expulsion and special education eligibility, the District implemented the requirements of 92 NAC 51-016.01A1, and **no corrective action** is required.

## **Issue # 2**

Did the District follow appropriate Child Find procedures to identify and evaluate a child suspected of being a child with a disability and in need of special education and related services during the past 12 months? [92 NAC 51-006.01A2]

92 NAC 51-006.01 states:

006.01 *Child Find*

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

006.01A2 *The child find requirements also apply to a child who is suspected of being a child with a disability under 92FAC 51-003.08 and in need of special education, even though the child is advancing from grade to grade.*

### *Allegations/Parent Position*

The Parent alleged that The school had knowledge that the Student was a child with a disability based on statements made by people who were in supervisory positions during the IEP that was later completed. This showed that the District had knowledge that the Student had a disability and should have been evaluated based on Child Find Regulations and IDEA.



### *District Response*

The District responded that they did not have reason to suspect the Student had a disability or a need for special education prior to the Parent(s) request. The Student was in the 8th grade at the time of the behavioral incident and had never had an IEP. The Student did not have any diagnosed medical condition that would suggest the Student may be in need of special education until October 27, 2022. The Student had prior behavior incidents in the past and the Student was discussed during the school's Problem-Solving Team on August 16, 2022, August 23, 2022, and August 30, 2022, but the incidents discussed did not cause the team to suspect a disability nor were the incidents adversely impacting the Student's education. The District further cited that preventative interventions such as a Check-In/Check-Out process had proven successful so did not recommend more intensive interventions.

### *Investigative Findings*

The findings of Issue One are incorporated herein by reference.

No evidence was found during the document review or interview that the Parents or District had previously referred the Student for a special education evaluation dating back to when the Student first enrolled in the District for kindergarten. By report, the Student had successfully used a Check In/Check Out system during the second semester of seventh grade to address: 1) coming to class prepared, 2) completing assignments on time, and 3) following expectations. The Student had been referred to the school's Problem-Solving Team during the 2022-2023 school year prior to the expulsion and the Student was discussed three times regarding work completion and off-task behavior. In all cases, it was determined that the Student's behavior was not adversely impacting the Student's education and was not in need of specialized instruction.

### *Summary and Conclusions*

92 NAC 51-006.01A describes the obligation of school districts to identify and evaluate all children with disabilities residing in the District. Further, 92 NAC 51-006.01A2 states that these obligations extend to Students even though they are advancing from grade to grade. In this case, the Student's grades were not of concern and the Student was advancing from grade to grade. The Parent reported that these behavioral issues go back as far as elementary school. As well she reported that the Student was referred to a counselor in fifth grade, but not for a special education evaluation. Finally, the District reported that while the Student had been discussed in the Problem-Solving Team meetings it was never recommended by the team that the Student be referred for special education evaluation. Further, the U.S. Department of Education clarified that a child's participation in a multi-tiered system of supports comparable to referral to the Problem-Solving Team or using an intervention such as the Check In/Check Out system is not sufficient to provide the LEA with knowledge that allows the child and

parent to assert IDEA's discipline protections. (Q&A 22-02, U.S. Department of Education, July 19, 2022)

Based on the information reviewed, the District implemented the requirements of 92 NAC 51-006.01A2, and **no corrective action** is required.

**Issue # 3**

Did the District conduct a manifestation determination meeting within 10 school days of the District's decision to change the placement of a child with a disability because of a violation of a code of student conduct during the 2022-2023 school year? [92 NAC 51-016.02E1]

92 NAC 51-016.02 states:

016.02        *Authority of School Personnel*

51-016.02E    *Manifestation Determination*

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

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

### *Allegations/Parent Position*

The Parent alleged that under provisions in 34 C.F.R. § 300.530(e) the school did not conduct a Manifestation Determination Review within 10 days after requesting special education services, stating this applied to a child that has not yet been found eligible for special education and related services. Further, the school did not reconvene every 45 days seeking instead to continue the expulsion. They stated that the Student needed to finish out the year of punishment.

### *District Response*

The District responded that a Manifestation Determination meeting was not conducted following the District's decision to expel the Student on September 12, 2022, because the Student was not identified as a Student with a disability at the time nor was it suspected that the Student had a disability at that time.

### *Investigative Findings*

The findings of Issues One and Two are incorporated herein by reference. Issue One found that the Student was not eligible for special education at the time of the expulsion and Rule 51 was not applicable for the Student. Issue Two found that the District satisfied the requirements for child find, regularly reviewing the Student's behavior through the school's Problem-Solving Team and not suspecting a disability.

### *Summary and Conclusions*

92 NAC 51-016.02E1 addresses the authority of a school district to change the placement of a child with a disability because of a violation of a code of Student conduct. It requires that the child's IEP team must 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 if the conduct in question was caused by or had a direct and substantial relationship to the child's disability (92 NAC 51-016.02E1 a). In this case, the Student did not have an IEP at the time of the expulsion so 92 NAC 51-016.02E1 was not applied.

According to 92 NAC 51-016.02E2, the conduct must be determined to be a manifestation of the child's disability. Again, the Student was not eligible for special education as a child with a disability at the time of the violation of the code of Student conduct. Further, as determined in Issue 2 the School District did not have reason to suspect the child was in need of special education and related services at the time of the Student's behavior.

During an interview, the Parent questioned if after the Student was found eligible for special education Rule 51 would apply after the tenth day in the alternative school. In this case, the Student's placement at the time of the eligibility determination was the alternative school and the Student had not been suspended from the alternative school.

The Parent additionally asked the District about applying for the 45-day alternative interim placement (34 CFR 300.530 (g)) on behalf of the Student. According to this federal regulation school personnel may remove a Student to an interim alternative educational setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability or if the child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA. In this case, the Student was not suspected of having a disability at the time of the behavioral incident on September 12, 2022, at the time of the expulsion, and was evaluated upon receiving a medical diagnosis along with a parent request for evaluation on October 27, 2022.

Although the Student was later evaluated and found eligible for special education and related services the District did not have an obligation to conduct a Manifestation Determination meeting upon eligibility, nor to reconvene every 45 days.

Based on the Student not being suspected of having a disability at the time of the behavior incident which required the alternative educational setting, the District implemented the requirements of 92 NAC 51-016.02E1, and **no corrective action** is required.

#### **Issue #4**

Did the District provide educational services to an eligible child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP during the past twelve months? [92 NAC 51-016.02D1]

92 NAC 51-016: *Disciplinary Removal of Children with Disabilities*

016.02: *Authority of School Personnel*

016.02D *A child with a disability who is removed from the child's current placement pursuant to 02 NAC 51-016.02C or 016.02G must:*

016.02D1: *Continue to receive educational services as provided in 92 NAC 51-004.001, so as to participate in the general education curriculum, although in another setting, and to progress*

toward meeting the goals set out in the child's IEP; and

#### *Allegations/Parent Position*

The Parent alleged that the Student was removed from the Student's school setting and placed in an alternative school in spite of being found eligible for special education services as a child with Emotional Disabilities and the behavior being a manifestation of the Student's disability as shown by the medical diagnoses. The Parent alleged that at the alternative school, the Student was not able to participate in the general education curriculum with classmates from the Student's school.

#### *District Response*

The District responded that the Student's placement was at the alternative setting at the time the Student was determined eligible to receive special education services as a child with an emotional disturbance. The District met its responsibility by providing access to the general education curriculum individually and online at the alternative school and special education services at the alternative school with a special education teacher.

#### *Investigative Findings*

The findings of Issues One, Two, and Three are incorporated herein by reference. The letter sent by the District to the Parents following the expulsion showed the Student's educational placement was the alternative school at the time of the Student's eligibility for special education services. The January 20, 2023, IEP showed that the Student's educational placement was considered, and the IEP team agreed with the placement at the alternative school. The IEP further described the Student's access to and accommodations for the general education curriculum in the IEP. Teacher service logs and the Parent reports that the special education met with the Student for 20 minutes of direct instruction weekly to work on the three IEP goals for social skill development. The District reported that the Student continued to progress in the grade level content while at the alternative school and successfully completed 8<sup>th</sup> grade and is on track to graduate in 2027.

#### *Summary and Conclusions*

Based on the review of the Initial IEP, service logs, and discussion with the Parent and District, the District implemented the requirements of 92 NAC 51-016.02D, 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.