

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 23.24.11  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** September 20, 2023  
**Date of Report:** REDACTED

### Issues Investigated for Student A

1. Did the District's disciplinary removal of the Student constitute a change of placement? [92 NAC 51-016.01].
2. Did the District develop, review, revise, and implement the Student's IEPs? [92 NAC 51-007.10; 92 NAC 51-007.02].
3. Did the District make special education placement determinations based on the Least Restrictive Environment (LRE) requirements? [92 NAC 51-008.01; 92 NAC 51-009.02].
4. Did the District provide a response to reasonable requests from the Parent for explanations and interpretations of educational records? [92 NAC 51-009.03B2a]

### Issues Investigated for Student B

1. Did the District's disciplinary removal of the Student constitute a change of placement? [92 NAC 51-016.01].
2. Was the District required to conduct a manifestation determination review when the Student was suspended from school? [92 NAC 51-016.02].
3. Did the District develop, review, revise, and implement the Student's IEPs? [92 NAC 51-00710; 92 NAC 51-007.02].
4. Did the District make special education placement determinations based on the LRE requirements? [92 NAC 51-008.01; 92 NAC 51-009.02].
5. Did the District provide a response to reasonable requests from the Parent for explanations and interpretations of educational records.?[92 NAC 51-009.03B2a]

### Issues Investigated for Student C

1. Did the District's disciplinary removal of the Student constitute a change of placement? [92 NAC 51-016.01].
2. Was the District required to conduct a manifestation determination review when the Student was suspended from school? [92 NAC 51-016.02].
3. Did the District develop, review, revise, and implement the Student's IEPs? [92 NAC 51-00710; 92 NAC 51-007.02].

4. Did the District make special education placement determinations based on the Least Restrictive (LRE) requirements? [92 NAC 51-008.01; 92 NAC 51-009.02].
5. Did the District provide a response to reasonable requests from the Parent for explanations and interpretations of educational records.? [92 NAC 51-009.03B2a]

### **Information Reviewed by Investigator**

Information shared by both parties is included in the list of documents reviewed from the District.

#### *From the Parent*

1. Letter of Complaint received by the Nebraska Department of Education September 18, 2023
2. Parent Interview from October 30, 2023
3. Letter from BCBA dated September 15, 2023

#### *From the School District*

1. Letter of Response dated October 19, 2023
2. Student B, Student A, Student C Cafeteria Incident dated September 12, 2023
3. Emergency Exclusion Letter dated September 15, 2023
4. Interview with District Staff dated October 30, 2023

#### *Student A*

1. Multidisciplinary Team Report (MDT) dated January 24, 2023
2. Functional Behavioral Assessment (FBA) dated January 10, 2023
3. FBA Profiler for Student A dated January 17, 2023
4. IEP dated January 26, 2023
5. Behavior Intervention Plan (BIP) dated January 27, 2023
6. Service logs dated August through December 2022 and January through May 2023
7. Letter from Agency dated September 15, 2023
8. CICO/Fishing for Good Behavior dated September 2, 2022, through May 18, 2023
9. Special Education Progress Report dated October 13, 2022; December 20, 2022; May 18, 2023
10. Student Discipline Profile dated November 3, 2022; September 12, 2023
11. Email between District and Parent dated November 22, 2022, through September 19, 2023
12. Student Report card for the 2022-23 school year
13. Notice of Meeting dated September 18, 2023

14. Proposed IEP Agenda dated September 20, 2023
15. Period Student Attendance Profile for the 2023-204 school year
16. Facilitated IEP Meeting video from September 20, 2023

#### Student B

1. Multidisciplinary Team Report (MDT) dated May 10, 2023
2. Individualized Educational Program (IEP) dated May 10, 2023
3. Draft IEP dated October 25, 2023
4. Videos
  - a. Student B's IEP from May 10, 2023
  - b. A meeting was held on September 8, 2023, for Student B and Student C
5. Functional Behavior Assessment (FBA) dated May 10, 2023; October 16, 2023
6. Behavior Intervention Plan dated October 16, 2023
7. Prior Written Notice (PWN) dated May 10, 2023
8. Service logs dated January through May 2023
9. Email between Parent and District dated August 29, 2023, through October 3, 2023
10. Student Discipline Profile dated August 31, 2023
11. Notice of Meeting dated September 18, 2023
12. Proposed IEP Agenda dated September 20, 2023
13. Period Student Attendance Profile for the 2023-24 school year
14. Manifest Determination and Review dated September 27, 2023

#### Student C

1. Individualized Educational Plan (IEP) dated November 3, 2022; November 23, 2022
2. Draft IEP dated September 20, 2023
3. Service Logs dated August through December 2022; January through May 2023
4. Multidisciplinary Team Report (MDT) dated October 20, 2022
5. [School] Second Grade Learning Report 2022-2023
6. Period Student Attendance Profile for the 2022-23 School Year
7. Emails between Parent and District dated October 29, 2022, through November 3, 2023
8. Prior Written Notice (PWN) dated October 20, 2022; November 3, 2022
9. Behavior Intervention Plan (BIP) dated November 3, 2022; October 9, 2023
10. Parent Interview from October 30, 2023
11. Emergency Exclusion Letter dated September 15, 2023
12. Notice of Meeting dated September 17, 2023, and September 18, 2023

13. Proposed IEP Agenda dated September 20, 2023
14. Student Discipline Profile for the 2022-23 school year
15. Manifestation Determination Review dated September 26, 2023
16. Video of facilitated IEP meeting on September 20, 2023
17. Video Conference to discuss placement, no date
18. Interview with District staff dated October 30, 2023
19. Samples of Visual Supports for Student C

## **Introduction**

On September 20, 2023, the Nebraska Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of three students (Students) residing in the District. All three Students attended the same public elementary school in the District. Student A was in the second grade; Student B was in kindergarten; Student C was in the third grade. The Parent requested that the Department conduct a special education investigation under 92 NAC § 51-009.11C3. The Department confirmed receipt of this Complaint and forwarded the request to the District. Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint. This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.

On October 3, 2023, the Department sent a Request for Response (RFR) to the District identifying the specific allegations in the Complaint to be investigated for each Student and established a Response due date of October 18, 2023. The District submitted all materials by October 18, 2023. The Response disputed all the allegations, provided an explanation, and submitted documents supporting the District's position. The Parent also submitted additional materials to the Investigator for review on October 18, 2023. The information included in this report that is outside the Complaint period is provided for context only.

## **Findings of Fact for Student A**

1. Student A is 7 years old and is eligible for Other Health Impaired (OHI) and Speech/Language Impairment (SLI) (MDT dated January 24, 2023).
2. In September 2022, Student A received 1000 minutes of special education services. Two days were listed as NS [No Show] (Service logs dated August through December 2022).
3. On September 15, 2023, the District was provided a doctor's letter and a copy of the evaluation report from an Outside Agency (Letter from BCBA dated September 15, 2023).

4. From September 26, 2022, through May 18, 2023, the Student participated in a daily Check-In/Check-out process (CICO/Fishing for Good Behavior, September 26, 2022, through May 18, 2023).
5. In October 2022, Student A received 745 minutes of special education services. Three days were listed as A; three days were listed as NS (Service logs dated August through December 2022).
6. A Special Education (SPED) Progress Report dated October 13, 2022, described progress made toward the reading goal with that progress being sufficient to meet the goal by the end of the IEP year.
7. Progress was made on the behavior goal for the three described behaviors, with an overall average of 87%; sufficient progress was made to meet the goal by the end of the IEP year.
8. Student A was 67% accurate on the pronoun goal for language. Progress was made and deemed sufficient to meet the goal by the end of the IEP year (SPED Progress Report dated October 13, 2022).
9. In November 2022, Student A received 830 minutes of special education services. Four days were listed as A; three days were listed as NS (Service logs dated August through December 2022).
10. On November 3, 2022, a Student Discipline Profile indicated Student A received a disciplinary referral for theft, resulting in writing an apology and loss of recess. The Student Discipline Profile also indicated the Parent was contacted by email (Student Discipline Profile dated November 3, 2022).
11. In an email exchange between the Superintendent and the Parent on November 22, 2022, the Superintendent agreed to allow the Parent to view the video of Student C's behavior on Zoom while the Superintendent is present (Email Exchange dated November 22, 2022).
12. In December 2022, Student A received 620 minutes of special education services. Three days were listed as A; eight days were listed as NS (Service logs dated August through December 2022).
13. A SPED Progress Report, dated December 20, 2022, described the progress made toward the reading goal by reading 25 letter sounds per minute and four whole words in one minute. This progress was identified as sufficient to meet the goal by the end of the IEP year.
14. Progress was made toward meeting the behavior goal with an 87% average for the overall goal; progress was sufficient to meet the goal by the end of the IEP year.
15. Student A met their language goal on pronouns; progress was sufficient to meet the goal by the end of the IEP year (Progress Report dated December 20, 2022).

16. In January 2023, Student A received 900 minutes of special education services. Two days were listed as A; six days were listed as NS (Service Logs dated January through May 2023).
17. On January 10, 2023, the Parent requested documents pertaining to Student A, and on January 20, 2023, the School Psychologist sent an email with five documents attached to the Parent: "Attached are the draft forms of [Student A's] MDT Report, IEP, FBA, BIP, and point card data. The MDT and IEP aren't as far along as we were hoping due to the snow days." (Email from Parent dated January 10, 2023; Email from School Psychologist dated January 20, 2023.)
18. On January 10, 2023, a Functional Behavior Assessment for Student A indicated Student A does well in small group reading instruction and Student A tries their best. The referring/targeted behavior was for stealing. The behavior occurs during transitions and happens mostly in Specials. Student A admits when they have taken something. The results of the FBA indicated a BIP was developed to address the behavior analyzed in the FBA. The plan described what staff will do to support alternative behaviors (Functional Behavioral Assessment dated January 10, 2023.)
19. On January 17, 2023, an FBA Profiler for Student A indicated:
  - a. "Task Avoidance/Off-Task (at risk-[Parent])- [Student A] may tend to avoid, ignore, or otherwise fail to accomplish required or expected tasks including homework, daily chores, etc.;
  - b. Defensive Reaction (at-risk parent, teacher)- [Student A's] behavior may be related to a need to defend [themselves] from a perceived threat, challenge, or rejection which may or may not have been intended. Typical behaviors of this nature include verbal or physical aggression and/or abrupt social withdrawal. This behavior can be the result of a somewhat paranoid perception of social situations and is often viewed by others as an unexpected overreaction to harmless teasing, meaningless comments, etc. Suggested interventions include[d]:
    - i. Help [Student A] to more accurately perceive social situations;
    - ii. Help [Student A] feel safe, accepted, and supported;
    - iii. Intervene quickly when it appears [Student A] may feel criticized or potentially embarrassed;
    - iv. Temper any potentially critical remarks in order to avoid a possible overreaction. (FBA Profiler dated January 17, 2023.)
20. Student A's report card from the first semester of the 2022-2023 school year indicated in the area of reading, Student A was at the Beginning

level. In the area of mathematics Student A ranged from Beginning to Proficient. In the area of social skills, Student A was proficient or emerging in the following areas:

- a. Proficient-shows respect for property;
  - b. Proficient-develops successful peer relations;
  - c. Proficient-resolves conflicts peacefully; and
  - d. Proficient-practices digital citizenship.
  - e. Proficient-asks for help when needed;
  - f. Proficient-completes/returns homework on time;
  - g. Emerging-shows respect for adults;
  - h. Emerging-shows respect for peers;
  - i. Emerging-using time wisely;
  - j. Emerging-works independently;
  - k. Emerging-listens attentively; and
  - l. Emerging-produces quality work. (Student Report Card for 2022-23 School Year.)
21. On January 24, 2023, a Multidisciplinary Team (MDT) Report indicated “[Student A] was referred for a re-evaluation to determine continued verification and appropriate programming. [Student A] was verified as a child with a Speech/Language Impairment in February 2020.” Student A was diagnosed with ADHD. Student A was given the Autism Diagnostic Observation Schedule and received a total score of 4 which fell in the non-spectrum range. (MDT Report dated January 24, 2023.)
22. On January 24, 2023, the MDT verified Student A’s primary verification was Other Health Impairment according to NDE Rule 51 guidelines. Student A was verified for a Speech/Language Impairment as a secondary verification. (MDT Report dated January 24, 2023.)
23. On January 24, 2023, a Prior Written Notice indicated the team updated Student A’s testing information. The team “proposed to change Student A’s verification to Other Health Impairment and a secondary verification of Speech Language Impairment. [District] also proposed new present levels of performance and updated goals for reading, math, behavior, and speech-language.” (Prior Written Notice dated January 24, 2023.)
24. On January 26, 2023, the Parent sent a follow-up email to the District describing the Parent’s understanding of the draft documents that will be shared with the Parent, which included: a draft of the IEP, a draft of the BIP, and an updated version of the behavior chart (Email from Parent dated January 26, 2023.)
25. On January 26, 2023, an IEP meeting was held which indicated;

- a. Special considerations stated Student A's strengths were: “[Student A] is compassionate, friendly, social with adults and peers, enjoys helping others, increasing in [their] reading skills, willing to try new things, resilient, wants to please, motivated by positive praise, happy, curious, tender-hearted and kind.”
- b. Parent concerns indicated Parent, “had noticed some behaviors impacting [Student A's] success in school based on behavior charts. [Parent] would like appropriate plans in place to help [Student A] be successful and maintain success.”
- c. Results from the most recent evaluation indicated Student A met verification criteria for Other Health Impairment as a primary verification and Speech/Language Impairment as a secondary verification.
- d. In the area of reading according to the Acadience Reading Assessment, Student A scored the following;
  - i. Nonsense Word Fluency-10<sup>th</sup> percentile;
  - ii. Nonsense Word Fluency-Whole Words Read-20<sup>th</sup> percentile;
  - iii. Oral Reading Fluency Words Correct-7<sup>th</sup> percentile;
  - iv. Accuracy-8<sup>th</sup> percentile;
  - v. Reading Composite Score-7<sup>th</sup> percentile; and
  - vi. The MAP Reading Assessment-1 percentile.
- e. In the area of mathematics, according to the MAP Assessment, Student A scored at the 1<sup>st</sup> percentile;
- f. In the area of behavior, the IEP team deemed necessary the following interventions and strategies:
  - i. Developmentally appropriate social materials and instruction;
  - ii. Adult verbal and visual prompts for the use of appropriate behavior skills;
  - iii. Ongoing consultation with the resource staff, building staff, and school psychologist;
  - iv. Daily communication with Parents;
  - v. Social skills instruction;
  - vi. Modeling, role-playing activities;
  - vii. Incentives for appropriate behavior; and
  - viii. Consequences of inappropriate behavior. (IEP dated January 26, 2023.)

26. An Individualized Education Program dated January 26, 2023, indicated Special Considerations which included communication needs for expressive language support, provided in individual, small, and large



- group settings. Special considerations also included assistive technology for text-to-speech during testing. (IEP dated January 26, 2023.)
27. An Individualized Educational Program dated January 26, 2023, indicated annual goals for Student A included reading, math, behavior, self-management, transition, and speech/language. (IEP dated January 26, 2023.)
28. An IEP dated January 26, 2023, indicated Supplementary Aids and Services/Accommodations included:
- a. "Breaks and opportunities for movement, 20 minutes daily in the general education classroom;
  - b. Math supports-manipulatives, 100's chart. Etc., 40 minutes daily in the general education classroom;
  - c. Modified/reduced assignments, 30 minutes daily in the general education classroom;
  - d. Prompting before transitions and changes of activity, 10 minutes daily in the general education classroom;
  - e. Break down assignments into smaller chunks, 20 minutes daily in the general education classroom;
  - f. Text-to-speech, 40 minutes quarterly in the general education classroom;
  - g. Flexible seating, 300 minutes daily in the general education classroom;
  - h. Take tests and assessments in a smaller group with fewer distractions, 40 minutes weekly in the general education classroom;
  - i. Behavior chart, 300 minutes daily in the general education classroom;
  - j. Extended time on tests, 40 minutes weekly in the general education classroom; and
  - k. Preferential seating (near the teacher, away from distractions), 300 minutes daily in the general education classroom." (IEP dated January 26, 2023.)
29. An IEP dated January 26, 2023, indicated Supports for School Personnel included support to the classroom teacher for speech-language intervention strategies, 20 minutes quarterly starting 01/23/2023 (Individualized Educational Program, January 26, 2023).
30. On January 27, 2023, the Behavior Intervention Plan (BIP) identified the following primary problems:
- a. "Self-Management;
  - b. Following Directions; and
  - c. [sic] [Transitioning]." (BIP dated January 27, 2023.)

31. An Intervention Plan dated January 27, 2023, contained prevention strategies which included:
  - a. "Teacher proximity;
  - b. Teacher/Peers accompany during transitions;
  - c. Data card;
  - d. 4-1 positive to negative feedback;
  - e. Give choices;
  - f. Prompting before transition or change of activity;
  - g. Break down assignments into smaller chunks; and
  - h. Opportunities for movement." (BIP dated January 27, 2023.)
32. In February 2023, Student A received 1020 minutes of special education services. Three days were listed as NS. (Service Logs dated January through May 2023.)
33. In March 2023, Student A received 1080 minutes of special education services. Two days were listed as A; three days were listed as NS. (Service Logs dated January through May 2023.)
34. In April 2023, Student A received 1080 minutes of special education services. Two days were listed as NS. (Service Logs dated January through May 2023.)
35. On May 6, 2023, the Parent sent a list of recommended edits for the IEP accompanied by questions about accommodations, the BIP, and the behavior chart to the Case Manager (Email from Parent, May 6, 2023).
36. In May 2023, Student A received 745 minutes of special education services. One day was listed as A; nine days were listed as NS. (Service Logs dated January through May 2023.)
37. On May 18, 2023, the IEP Progress Report for Annual Goals described the following:
  - a. In the area of reading:
    - i. In both the March and May descriptions, the mastery level for this goal was described as the student demonstrating some progress toward meeting this goal. Student A's accuracy increased from 47% in March to 54% in May. Student A's words per minute increased from 12 to 14. In the area of math:
  - b. In the area of math:
    - i. Math computation skills goal
      1. In March, the Student was described as not yet demonstrating progress.
      2. In May, the Student was described as making progress by solving 90% of the specific math computations.

- c. Math number recognition goal
    - i. In March, the Student was making progress toward this goal by increasing their number knowledge.
    - ii. In May, the Student was described as making sufficient progress by identifying 94/100 numbers and is on track to meet the goal by the end of the IEP year.
  - d. In the area of behavior:
    - i. Maintaining space and asking permission to touch belongings
      - 1. In both March and May, the Student met the criteria for this goal.
  - e. Following adult directions
    - i. In March, the Student met the criteria for the goal. In May, the Student was described as making progress toward meeting this goal.
  - f. In the area of Speech-Language
    - i. Irregular Plurals
38. In March, the Student was 30% accurate with their irregular plurals, demonstrating some progress. In May, the student maintained 30% accuracy and was described as making sufficient progress toward meeting the goal by the end of the IEP year. (Progress Report dated May 18, 2023.)
39. A Period Student Attendance Profile, School Year 2022-2023 for Student A indicated Student A was absent eight excused days, and was absent for medical reasons for 20 days for a total of 28 days. (Period Student Attendance Report for the 2022-23 School Year.)
40. In August 2023, Student A received 620 minutes of special education services. Twelve days were listed as NS. (Service Logs dated January through May 2023.)
41. 39. On August 25, 2023, the Parent sent an email with 12 questions regarding Student A. (Email from Parent dated August 25, 2023.)
42. On August 29, 2023, the District sent an email to the Parent regarding a communication plan:
- School staff members received emails from you within the last few days with lots of questions (9 questions in one email and 12 in another) and requests for reports or additional documentation. While we encourage communication, there is only so much written communication that our staff members have time for. We need our teachers to focus their time on effectively working with all students in their classroom, and thus, we feel the need to have a communication plan with you.

So we are going to ask teachers to forward your emails to [Principal] and myself. We will try to respond at least once per week (probably on Fridays). I wanted you to be aware of this just in case you send questions to a staff member, you will need to allow us the time to reply (sic).

The Parent responded that they deleted some applications and understood the expectations.

The District replied with:

I would think you might want to keep the apps for reminders and announcements as they have nothing to do with this plan, but of course that is your choice. I simply said your questions will be forwarded to [Principal] and I. The concern is the large number of questions that you want written responses to, those answers are going to take time and the teachers won't always have that much time to dedicate to one student. (Email Exchange dated August 29, 2023, through August 30, 2023.)

43. On August 29, 2023, the District provided a response to the Parent's emailed questions. (Email from Principal dated August 29, 2023.)
44. In September 2023, Student A received 1240 minutes of special education services. Six days were listed as A; two days were listed as NS. (Service Logs dated January through May 2023.)
45. On September 6, 2023, the District emailed the following to the Parent:

As we explained before, we are going to have a plan in place as far as communication. Your emails will be blocked from staff members other than [Principal], [SPED Director], and myself. Staff members have been instructed not to communicate with you other than the checklists that are being sent home. Based on the fact that you clearly had a third party involved in a conversation with [Principal] this morning without informing him that this was the case, I have instructed [Principal] not to communicate with you unless it is absolutely necessary.

Your requests are beyond reasonable and we can't dedicate all our resources to you and your three children, there are 325 other students at [School] who deserve a positive learning environment. You continue to ask us what the District is going to do to prevent your children's behaviors from happening or what strategies we will

use to redirect them. We will try to redirect them, we will try to problem-solve, we will try to work with them. If you would support us on this rather than disagree with us on just about everything we do, that would also be helpful. It is clear based on the things your children say that they know that you don't support the school staff members (*sic*).

You have made it very clear that you do not agree with some school disciplinary steps and you have the right to voice that during IEP meetings, and then the IEP team can weigh in as well. But we can't and we won't have an IEP every time these behaviors occur (*sic*).

We are going to continue to do the best we can given the crisis in Special Education Staffing this state and this country are facing. One of the ways we do that is to support our staff members who are working with very difficult circumstances and thus I feel it is necessary to take these extreme steps in this particular case. I believe that your reaction to incidents your children have are causing a hostile work environment for our staff members and I am going to do everything I can to prevent that, thus the communication plan.

I would be willing to meet with you, [Attorney] and [Attorney] to discuss this matter further as to avoid some difficult conversations during an IEP. Until we get this part addressed, we are not going to see much improvement in your children's behavior in my opinion (*sic*). (Email from District dated September 6, 2023.)

46. On September 9, 2023, the Parent responded to an email to the District and asked: "May I see the room that is being used for my children?" The District responded: "I might be able to find an appropriate time to do that (outside of the school day). It is not much of a room as it is an old office, and it is not their regular placement but rather a place where they will go when they need to be removed from the rest of the schools in order to provide a positive learning environment for others." (Email Exchange dated September 9, 2023.)
47. On September 12, 2023, Student A was involved in an incident in the cafeteria with their siblings and behaviors continued with Student A in the conference room. Student A's role in the incident included the following actions: smashing food, yelling profanities, making threatening comments,

pouring water on the carpet, encouraging a sibling to kick a staff member, ripping down a flag and swinging the flag stick, and telling gruesome stories. (Student B, Student A, Student C Cafeteria Incident dated September 12, 2023.)

48. On September 12, 2023, the Superintendent emailed the Parent regarding an incident:

We wanted to inform you of an incident this morning involving [Student B, Student A, and [Student C]. [Student C] was angry in the cafeteria during breakfast, this agitated [Student B] and [Student B] threw [their] tray. [Student B, Student C, and Student A were very upset and had to be removed from the cafeteria.

We had each student in a separate room. [Student B's] plan was followed, [Student B] calmed down and eventually went back to class as we discussed. [Student A] has made multiple statements about killing people and cutting a person's head off in your house as well as burying the body. [Student C] has remained in the time-out room all morning as [Student C] was not in a disposition where [they] could return to class. We will continue to try to work with each student. (Email from District dated September 12, 2023.)

49. On September 12, 2023, the Parent replied with what Student A shared at home:

[Student A] reported [Student A] was scared seeing what the teachers were doing to [their] brothers and started saying naughty things to get them to stop and leave them alone.

[Student A] says [Student A] says (sic) [Student A] tries to use [their] words for help or when [Student A] struggles but no one listens to [Student A]. [Student A] says school is hard and [Student A] does not know what to do in her class. (Email from Parent dated September 12, 2023.)

50. In response to Parent questions, on September 12, 2023, the District replied: "All three students were taken to separate places from the cafeteria as they clearly were not able to be in a classroom."

"[Student A] also became upset at breakfast."

The District mentioned: "We did restrain the kids as they were out of control. If you don't want us to do that the other option is for us to call law enforcement."

"Unfortunately, we are not going to be able to allow [Student B, Student C, and Student A] in the cafeteria until 7:50AM. They will be given time to eat breakfast but we don't have the amount of staffing required to supervise your children prior to 7:50AM. This is in effect tomorrow (Wednesday, Sept. 13<sup>th</sup>, 2023) and will remain in effect until we notify you otherwise." (Email from District dated September 12, 2023.)

51. The Parent responded via email the same day: "Can you help me understand why drastic measures are being taken now excluding them from eating breakfast at school as they have been doing for the past 4 years...". (Email Exchange dated September 12, 2023)
52. In another email dated September 12, 2023, the Superintendent cited a need for an Emergency Exclusion for three days for all three students citing an "...extreme disruption of the learning environment...". The Parent replied with the following question: "Can you help me understand what you are talking about when you say extream (*sic*) disruption to the learning environment, yet they have been in isolation a majority of today in rooms completely away from the learning environments?" The District responded they would follow up with documentation. (Email Exchange dated September 12, 2023)
53. On September 12, 2023, a Student Discipline Profile indicated Student A received a major disciplinary referral for threats of harming/attacking which resulted in emergency exclusion due to threats and physical aggression for a 3-day suspension. (Student Discipline Profile dated September 12, 2023.)
54. On September 13, 2023, the Superintendent emailed the Parent:

Yesterday (9-12-23) [Student C, Student A, and Student B] became out of control in the cafeteria during breakfast and had to be removed. We placed them in three different rooms and had staff members work with each of them separately. As a result of this and several other behaviors they have displayed we do not feel it is safe for other students to be in classes with them. We will send separate Emergency Exclusion letters to you describing and listing the behaviors we have witnessed as well as some disturbing comments they have made.

In summary, we believe that all three students need intense therapy. We believe that due to the stress in their living environment they are at a breaking point. Each of them have threatened to kill others (students and staff members), [Student B] repeatedly says there is no food and no money. [Student A] describes cutting off someone's head with a chainsaw and burying the body, and between the three of them the learning environment at [School] has been drastically affected.

This week a family pulled their child from [School] and stated that your family was one of the primary reasons. A second family has formally reached out to me with the same concern. Staff members have disclosed that they are having struggles with mental health as a result of what they are experiencing when working with your family.

[District] would like to see these three students go through an independent psychological evaluation and will cover the expense to do so if you agree to this. In order to protect the safety of others and to allow for a safe learning environment at [School] for the other students I believe that we need to educate [Student C, Student A, and Student B] at an alternate location (possibly the [School]). We are also going to have to involve law enforcement as the behaviors are escalating. We realize that we need to schedule IEP's to discuss this further so we are reaching out to [Parent], [Attorney] and [Attorney] to see if we can find a time on Monday, Sept. 18<sup>th</sup> that works. The students will not be able to return until this meeting has taken place.

I believe the behaviors these students are displaying are their way of begging for help. I believe their living environment at home is causing them a tremendous amount of stress and trauma. I do believe that the students are a threat to the safety of others but it is at no fault of their own. The fact that all three students in the household are displaying behaviors that are extremely concerning combined with the fact that their [Sibling] also displayed these behaviors when [Sibling] was a student of ours indicates that this is not a safe situation. I believe that if any of these students got their hands on a weapon they would use it to harm someone. I must protect the physical safety and mental well-being of students and staff members and thus will take drastic measures to do so.



We will follow-up with individual letters discussing the Emergency Exclusion of each student with more specific documentation of their behaviors and comments that have us so concerned about their well-being and the well-being of those around them. (Letter from Superintendent dated September 13, 2023.)

55. On September 14, 2023, the Parent emailed the District with the following question:

“Am I to understand from your email the kids (*sic*) suspensions are continued and they are not allowed to come on Monday or Tuesday since I am unable to meet those days (*sic*)?” The Superintendent responded the following day with: “And yes, due to the fact that you are not able to meet on Monday or Tuesday and due to the severity of the situation we need to extend the Emergency Exclusion through Wednesday. Further documentation will follow now that the Emergency Exclusion is extending past five days due to the fact you are not available to meet on Monday or Tuesday.” (Email Exchange dated September 14, 2023, through September 15, 2023.)

The Student Discipline Profile with a disposition date of September 13, 2023, lists an Emergency Exclusion for three days for “Threats of Harming/Attacking)”. (Student Discipline Profile dated September 13, 2023.)

56. On September 15, 2023, the Superintendent wrote a letter to the Parent regarding the Emergency Exclusion that references Nebraska statute and included:

...[Student A] is excluded from school, effective immediately. The emergency exclusion is necessary because the student's conduct presents a clear threat to the physical safety of [themselves] or others and is so extremely disruptive as to make temporary removal necessary to preserve the rights of other students to pursue an education. I gave you further details in my previous letters on this matter. You are further advised that I have determined that this emergency exclusion shall extend beyond five days. We had desired to hold IEP meetings on September 18<sup>th</sup>, but you had a scheduling conflict and preferred to meet on September 20<sup>th</sup>, thus causing the exclusion to be extended beyond five days.

The letter described the hearing process and a waiver to waive or request a hearing. (Emergency Exclusion Letter dated September 15, 2023.)

57. On September 15, 2023, the Parent submitted a letter dated September 10, 2023 from a BCBA that described triggers and recommendations for [Student C]. (Email from Parent dated September 15, 2023; Letter from BCBA dated September 15, 2023.)
58. On September 18, 2023, a Notice of Team Meeting for an IEP was scheduled via Zoom and was confirmed by the parent via email. Invites for the IEPs were also sent on this date. (Notice of Team Meeting dated September 18, 2023)
59. On September 19, 2023, the Parent provided the District with an evaluation that had been conducted for Student A in April of 2022. (Email from Parent dated September 19, 2023.)
60. On September 20, 2023, the Proposed IEP Agenda described the topics for the meeting and included parent concerns. The parent concerns listed are:
  - a. "Relationship with SRO and law enforcement";
  - b. "Lack of fidelity checks that IEP and BIP are being followed";
  - c. "Lack of appropriate interventions";
  - d. "...punishment rather than proactive positive responses (maybe a token system";
  - e. "Rewards are not frequent enough";
  - f. "1 to 1 adult support is needed";
  - g. "Improved communication with staff";
  - h. "Packets trigger behavior"
  - i. "Goals focused on behavior change care (sic) are needed";
  - j. "Suspension adversely impacts; kids prefer to be home and are afraid to go to school";
  - k. "Requested FBA; what is happening with this?";
  - l. "Use of isolation;
  - m. "Staff engages in power struggles"; and
  - n. "Manifestation Determination; behaviors are a function of the disability." (Proposed IEP Agenda dated September 20, 2023.)
61. Ending on September 20, 2023, the Period Student Attendance Profile for the 2023-24 school year listed six days of emergency exclusion. The reports listed 12-period reason codes and types. (Period Student Attendance Profile for the 2023-24 School Year.)
62. On September 20, 2023, at a facilitated IEP meeting for Student C, Student A was discussed. The Superintendent asked the Physician the following; "[Student A's Parent] denied any present or past homicidal ideation, plan,

intent, or attempts. However, recent comments within the last few weeks would indicate otherwise. [Student A] specifically described things. Um, so my question is, would there be a benefit to an updated psychological assessment to address the homicidal talk and the profanity that, that we've witnessed in the last couple of weeks?" (Video of Facilitated IEP Meeting [Student C] dated September 20, 2023.)

63. The Physician replied, "We can definitely get an updated neuropsychological evaluation, um, and maybe even benefit, um, a child psychiatry [sic] evaluation as well if, if any, if there's any of these, um, ideations that's happening more recently." (Video of Facilitated IEP Meeting [Student C] dated September 20, 2023.)
64. The Superintendent stated, "Okay. And I, I would just add we understand cost could be a factor, and the school would be willing to, um. To help with that or to cover it." (Video of Facilitated IEP Meeting [Student C] dated September 20, 2023.)
65. On September 30, 2023, the Parent stated the following: "[Student A] was having, um, behaviors. I had requested an IEP, we still have not done [Student A's] yet...they told me that they were going to put [Student A] in room 307, or...in a room, [Student A] would have to start out in a room where [they] would have to be determined, um, to be ready, in a good head space to go to [their] regular classroom. And if [they weren't] then [they] would remain in that room in isolation until [they were]. And that was back on September eight...but that wasn't in [their] IEP, um, for [Student A] to be in an isolation room. There was no notice of meeting provided that that change was happening for [Student A]. (Parent Interview dated October 30, 2023.)
66. On October 30, 2023, the Parent stated, "[Student A], they had only suspended [sic] for three days and then they let [Student A], um, go back after that suspension had ended.
67. During a Parent interview on October 30, 2023, the Parent stated, "I had requested an IEP, we still have not done [Student A's] yet. I believe we're scheduled for [Student A's] first IEP this Wednesday the first." (Parent Interview, Part 1, October 30, 2023.)

### **Student A Issue # 1**

Did the District's disciplinary removal of the Student constitute a change of placement? [92 NAC 51-016.01].

92 NAC 51- 016.01 states:

- 016.01A *For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:*
  - 016.01A1 *The removal is for more than 10 consecutive school days; or*
  - 016.01A2 *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 School has suspended the Student, improperly calling the suspension an "emergency exclusion" (Letter of Complaint received by NDE September 19, 2023).

*District Response*

[Student A] was emergency excluded on September 13, 2023. [Student A] returned to school on September 21, 2023. This exclusion totaled 6 school days. Prior to this exclusion, [Student A] was not removed from [their] placement, thus the disciplinary removal of [Student A] did not constitute a change of placement and the District was not required to conduct a manifestation

determination. At the conclusion of the exclusion, on September 21, 2023, [Student A] returned to the placement outlined in [their] IEP. (Letter of Response dated October 19, 2023.)

### *Investigative Findings*

Due to behaviors that occurred on September 12, 2023, Student A received a 6-day emergency exclusion from September 13, 2023, through September 18, 2023.

### *Summary and Conclusions*

Based on the fact that Student A was not suspended for more than ten school days in a school year, the District implemented the requirements of 92 NAC 51-016.01, and **no corrective action** is required.

### **Student A Issue # 2**

Did the District develop, review, revise, and implement the Student's IEPs? [92 NAC 51-007.10; 92 NAC 51-007.02].

92 NAC 51-007.10 states:

- 007.10A *Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;*
- 007.10B *The results of any reevaluation conducted under 92 NAC 51-006.05A;*
- 007.10C *The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;*
- 007.10D *The child's anticipated needs; or*
- 007.10E *Other matters.*

92 NAC 51-007.02 states:

- 007.02A *At the beginning of each school year, each school district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction.*
- 007.02B *Each school district or approved cooperative shall ensure that an IEP is in effect before special education and related services are provided to a child with a verified disability under this Chapter.*

007.02C *The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and*

007.02D *Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.*

#### *Allegations/Parent Position*

The School has failed to draft and implement an appropriate IEP for the Student. (Letter of Complaint received by NDE September 19, 2023.)

#### *District Response*

The District reviewed, revised, and implemented [Student A's] IEP. As a result of the new verification, [Student A's] IEP team developed a new IEP and BIP dated January 24, 2023. [Student A] demonstrated progress in each of [their] goals. The IEP team recognized this regression earlier in the school year when [Student A] was emergency excluded. The team was ready to review and revise [Student A's] IEP on September 20, 2023; however, [Student A's] IEP team has been unavailable to meet because several key members have been involved in 19 hours of IEP meetings over the course of 8-9 days working on [Student C's] IEP. Because [Student C's] IEP has taken so many hours, [Student A's] has not yet been updated. (Letter of Response dated October 19, 2023.)

#### *Investigative Findings*

The IEP dated January 26, 2023, for Student A, included all required components including information about the present level of performance, goals aligned to Student A's current level of functioning, and appropriate accommodations and supports needed for Student A. On May 6, 2023, the Parent sent a list of recommended edits for the IEP accompanied by questions about accommodations, the BIP, and the behavioral chart to the Case Manager. There is no record that the District addressed the Parent's concerns in May 2023, by either convening an IEP meeting to consider the Parent's request for revisions to the IEP or providing the Parent with Prior Written Notice of its decision to not review and revise the IEP.

### Summary and Conclusions

Since there is no record that the District addressed the Parent's concerns in May 2023, by either convening an IEP meeting to consider the Parent's request for revisions to the IEP or providing the Parent with Prior Written Notice of its decision to not review and revise the IEP, the District failed to fully implement the requirements of 92 NAC 51-007.10. Thus, the following **corrective action is required**.

### Corrective Action

1. Within 10 calendar days of the date of this Investigation Report, the District must reconvene Student A's IEP Team and ensure the Parent concerns related to Student A's IEP are addressed.
2. The IEP and any associated PWN must be sent to NDE no later than 10 days after the IEP Team meeting.

### Student A Issue # 3

Did the District make special education placement determinations based on the Least Restrictive Environment (LRE) requirements? [92 NAC 51-008.01; 92 NAC 51-009.02].

92 NAC 51-008.01 states:

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.*

008.01B *Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual multidisciplinary evaluation of the child's development and educational needs.*

008.01C *In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:*

008.01C1 *In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:*

008.01C1 *The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and*

008.01C2 *The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.*

008.01D *Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.*

008.01D1 *The continuum must:*

008.01D1a *Include instruction in regular classes, special classes, special schools, home instruction and*



*instruction in hospitals and institutions; and*

008.01D1b *Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.*

008.01E *The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:*

008.01E1 *Is determined at least annually;*

008.01E2 *Is based on his or her individualized education program (IEP); and*

008.01E3 *Is as close as possible to the child's home.*

008.01F *The various array of placement options included under 92 NAC 51-008.01D must be available to the extent necessary to implement the individualized education program for each child with a verified disability.*

008.01G *Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.*

008.01H *In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.*

008.01I *A child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.*

92 NAC 51-009.02 states:

009.02A *The school district or approved cooperative shall ensure that a parent of each child with a disability is a*

*member of any group that makes decisions on the educational placement of their child.*

009.02B *In implementing the requirements of 92 NAC 51-009.02A, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A.*

009.02C *If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district or approved cooperative shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.*

009.02D *A placement decision may be made by a team without the involvement of the parents if the school district or approved cooperative is unable to obtain the parents' participation in the decision. In this case, the school district or approved cooperative must have a record of its attempt to ensure their involvement including information that is consistent with the requirements of 92 NAC 51-007.06D.*

#### *Allegations/Parent Position*

The School has proposed to isolate the Student away from all of their peers. (Letter of Complaint received by NDE September 19, 2023.)

#### *District Response*

[Student A] current IEP calls for [them] to be in the general education environment except for 30 minutes each day when [they] receive specially designated instruction in a special education classroom. [Student A's] IEP has not changed nor has [their] placement. (Letter of Response dated October 19, 2023)

#### *Investigative Findings*

According to the IEP dated January 26, 2023, Services/Accommodations included breaks and opportunities for movement, 20 minutes daily in the general education classroom, flexible seating, 300 minutes daily in the general education classroom, and preferential seating, 300 minutes daily in the general education classroom. The Statement of Special Education and Related Services stated Student A will receive specially designed instruction through a variety of delivery models based on student performance and needs. The service delivery

models included: co-teaching in the general education classroom and individual or small group instruction outside of the general education classroom.

From September 26, 2022, through May 18, 2023, Student A participated in a daily Check-In/Check-out process. Student A would check into Room 307 to meet with a staff member each morning at the beginning of the school day to determine if Student A was ready to go to class. If Student A was not ready to go to class, Student A would stay in Room 307 until Student A was ready. The Parent stated the Check-In/Check-out process happened to make sure Student A was in a “good headspace.”

The District described Student A’s use of the break space or Room 307 as a space where staff could check in with Student A to determine if they were able to compile with directions and ready to go to class. The IEP goal for compliance included instruction for following adult directions. Further, the IEP provided for specially designed instruction to occur in both the general and special education settings.

*Summary and Conclusions*

Based on the IEP which allowed for SDI to occur outside the general classroom, the District implemented the requirements of 92 NAC 51-008.01; 92 NAC 51-009.02, and **no corrective action** is required.

**Student A Issue #4**

Did the District provide a response to reasonable requests from the Parent for explanations and interpretations of educational records? [92 NAC 51-009.03B2a]

92 NAC 51-009.03B2 states:

- 009.03B2            *The right to inspect and review education records includes:*
  - 009.03B2a        *The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records*

*Allegations/Parent Position*

The School has prohibited the Parent from having any contact with anyone at the school except for administrators. (Letter of Complaint received by NDE September 19, 2023.)

### *District Response*

Each time one of the students in this Complaint has a behavior issue, the parent is informed. Then, immediately the parent demands unreasonable amounts of information within an unreasonable amount of time. Each time the parent emails the school district, [Parent] includes numerous administrators and teachers and often accuses the staff of not working with the students correctly. The tones of the parent's emails lead to staff feeling panicked and the need to respond to [Parent] immediately. This results in the school staff dropping what they are working on to quickly follow up on the parent's questions in the level of detail [Parent] is requesting. Then when the teachers do this, they receive more questions and accusations in return. As a result, the District instituted a communications plan with the parent whereby [Parent] could submit [their] questions to administrators at the District. The administrators would gather the information requested by the parent and respond later in the week. The District never denied the parent information; but merely controlled how often and to whom [Parent] requested the information. (Letter of Response dated October 19, 2023).

### *Investigative Findings*

On August 25, 2023, the Parent sent an email with 12 questions regarding Student A. On September 6, 2023, the District emailed the Parent and notified them that they would be placed in a communication plan and unless it was urgent, a designated staff person would reply to Parent emails once per week. During interviews, the Parent reported that they were scared to ask questions. Student A's IEP did not include the accommodation for daily home school communication.

### *Summary and Conclusions*

Student A's IEP did not include daily home/school communication as an accommodation. As such, providing the Parent with information about responses to questions weekly was not unreasonable. The District implemented the requirements of 92 NAC 51.009.03B2a, and **no corrective action** is required.

### **Findings of Fact for Student B**

1. Student B was 5 years old and was eligible for Developmental Delay according to the IEP dated May 10, 2023. (IEP dated May 10, 2023.)
2. On May 10, 2023, an IEP meeting was held for Student B with all of the legally required participants including the Parent who attended virtually. (IEP dated May 10, 2023.)
  - a. Special Considerations included: "[Student B] is outgoing and is friendly to others.";

- b. Parent indicated: "they work on numbers and letters, flashcards, at home and they see a difference in those skills improving...They have visual charts at home to know what they need to do for chores to help out. [Student B] struggles with behaviors at home...[Student B] will be starting meds for ADHD this summer through the doctor...[Parent] said [Student B] is still working on writing [their] name at home. [Parent] said most of the time [they] can understand what [Student B] is saying and [they] speak clearly, there are just word endings that [Student B] misses."; (IEP dated May 10, 2023.)
- c. Results of most recent evaluations indicated [Student B] met verification criteria as a student with Developmental Delay according to the MDT dated May 10, 2023. The IEP team considered if [Student B's] behavior impedes learning but was deemed unnecessary at the time as well as assistive technology services (IEP dated May 10, 2023.)
- d. "Student B has auditory overresponsiveness. Witness 8 saw difficulty with self-regulation." (Video of Student's IEP from May 10, 2023.)
- e. Witness 8 administered behavior rating scales to Student B. Witness 8 stated "There's not a lot of huge elevations here. Um, externalizing behaviors would be things like hyperactivity and aggression. So, we're seeing a little bit of elevation on both of those...from more hyperactivity from the [P]arent and more aggression from the [T]eacher. (Video of Student's IEP from May 10, 2023)
- f. The Summary of Present Levels of Academic Achievement and Functional Performance indicated Student B's annual goal for participation/social skills was "During Structured and unstructured activities, [Student B] will successfully improve [their] participate/social skills as measured by teacher report, informal observations, etc. In 80% observed opportunities for the following benchmarks throughout the duration of the IEP school year
  - i. [Student B] will follow adult requests within 10 seconds in 80% of observed opportunities. (Baseline 40%);
  - ii. [Student B] will transition throughout [their] daily routine independently using a variety of strategies in 80% of observed opportunities. (Baseline 40%) (could include: check schedule, observe peers, model peer behavior, retell expectations.); and;

- iii. [Student B] will participate during large group activities by waiting to be called on for [their] turn in 80% of observed opportunities. (Baseline 40%)" (IEP dated May 10, 2023.)

g. The Service Summary indicated:

[Student B] will receive specially designed instruction through a variety of service delivery models based on [their] performance and needs. The service delivery models could include co-teaching in the general education classroom, individual or small group instruction outside of the general education classroom in order to receive Specialized Instruction, and consultation between special education providers and general education teachers... In the fall of 2023-2024 school year, [Student B] will transition to a school age program and is eligible to continue services. To the extent practicable, research based, specialized instruction/strategies will be provided through a combination of regular classroom, small group, and individual instruction. Time spent outside of the regular classroom may be required for evaluation and specific therapy activities...student will participate in physical education with non-disabled peers with no accommodations or modifications. [Student B] participates in non-academic activities (I.e., field trips) and physical activities with non-disabled peers. No accommodations or modifications are necessary. (IEP dated May 10, 2023.)

- h. Specially designed instruction includes individual and group instruction in the general education classroom, 14 times per quarter, for 15-minute sessions beginning May 11, 2023. No accommodations were necessary. (IEP dated May 10, 2023.)
2. On May 10, 2023, a Multidisciplinary Team (MDT) Report indicated that the Parent requested an evaluation for Student B. "[Parent] reported that [Student B] has begun medication for ADHS symptoms with a suspected diagnosis of ADHD. [Student B] has an evaluation scheduled in July and pending results, [Parent] asked for OHI to be added as a secondary disability if results are confirmed from the medical evaluation." (MDT Report dated May 10, 2023.)
3. On the Developmental Assessment of Young Children [Student B] received the following scores:
  - a." Social Emotional - 70-standard score;

- b. Adaptive –99-standard score;
  - c. Physical/Motor-83 standard score; and
  - d. Cognitive-83 standard score.” (MDT Report dated May 10, 2023.)
4. Interpretation of Results indicated; “During the evaluation process, [Student B] found it difficult to remain focused and patiently listen to information that became increasingly more complex, before impulsively reacting and making [their] choices. We took a few short breaks and [Student B] was reminded several times to look over [their] choices or to think carefully before responding. This may explain why [Student B] scored higher on the Expressive Communication section than on the Auditory Comprehension section...[Student B’s] lower score on the Auditory Comprehension section is most likely a direct result of [their] inability to remain focused and concentrate on the task at hand.” (MDT Report dated May 10, 2023.)
  5. On May 10, 2023, the Parent of Student B attended and signed the Multidisciplinary Team Report in agreement. (MDT Report dated May 10, 2023.)
  6. On May 10, 2023, a Functional Behavior Assessment was conducted for [Student B]. Strengths included; “[Student B] is able to form great relationships with teachers. [They] can be a very sweet [child]. [They] often tell[s] staff, ‘I love you.’ and likes to be a helper.” The undesirable behavior includes; “Pretends to drive a truck while making loud beeping noises.” Precipitating factors included mental health concerns. Undesirable behaviors occurred during non-preferred task or activity times, transition periods, and adult attention restricted/elsewhere, and attention from teachers/distractions. (FBA dated May 10, 2023.)
  7. On May 10, 2023, a Prior Written Notice stated; “The [D]istrict proposes that [Student B] be verified as a student with a Developmental Delay. The [D]istrict also proposes that [Student B] receives specialized instruction in the area of specially designed instruction for [their] social emotional needs. [School] proposes [Student B] have an Individual Education Plan to meet [their] educational needs.” The action is based on the results from the Multidisciplinary Team evaluation dated May 5, 2023. (Prior Written Notice dated May 10, 2023.)
  8. In August 2023, Student B received 220 minutes of special education services. 14 days were listed as NS. (Service Logs dated January through May 2023.)
  9. On August 29, 2023, the District emailed the Parent about an incident that took place the previous Friday. The District described the language that [Student B] used and the threatening comments that were made. The District shared:

The good news is that no other student heard these comments which reduces the interruption to the educational process. We would typically consider an Emergency Exclusion for a student in this situation. We ultimately decided not to do this, but do hope you will speak with [Student B] about using this language in school. We are also trying to redirect [them] when this language is used. It is also my understanding that [Student B] has had a pretty good start to the school year other than this incident. Hopefully [their] positive start continues. If I am in your situation I would be asking me why you didn't hear about this yesterday when we became aware of it. The answer to that question is that due to all the emails our staff members received from you that included [Attorney], I wanted to consult with our attorney about the best way to handle communication going forward. Thus the delay to today. I instructed [Principal] to work with me today to make a plan going forward in regard to communication. I will send you more information about that process in a separate email. (Email from District dated August 29, 2023.)

10. On August 29, 2023, the District sent an email to the Parent regarding a communication plan:

School staff members received emails from you within the last few days with lots of questions (9 questions in one email and 12 in another) and requests for reports or additional documentation. While we encourage communication, there is only so much written communication that our staff members have time for. We need our teachers to focus their time on effectively working with all students in their classroom and thus we feel the need to have a communication plan with you.

So we are going to ask teachers to forward your emails to [Principal] and myself. We will try to respond at least once per week (probably on Fridays). I wanted you to be aware of this just in case you send questions to a staff member, you will need to allow us the time to reply (sic).

11. The Parent responded that they deleted some applications and understood the expectations. The District replied with:

I would think you might want to keep the apps for reminders and announcements as they have nothing to do with this plan, but of course that is your choice. I simply said your questions will be forwarded to [Principal] and I. The concern is the large number of questions that you want written responses to, those answers are



going to take time and the teachers won't always have that much time to dedicate to one student. (Email Exchange dated August 29, 2023, through August 30, 2023.)

12. On August 31, 2023, a Student Discipline Profile described an incident of defiance/disrespect in which Student B was assisted to "...the office to wait for the end of the day." The following information was provided:
  - a. "Meltdown started at 2:30";
  - b. "[Student B] has only sat in the hall with [Teacher] because [Student B] was screaming cuss words with students in the room. Otherwise, if [Student B] is not following directions after multiple reminders, they will go to Think Time per our PBIS protocol"; and
  - c. "[Student B] has never left the room before today." (Student Discipline Profile dated August 31, 2023.)
13. In September 2023, Student B received 185 minutes of special education services. 13 days were listed as A; two days were listed as NS. One day was listed as: "Services offered, did not show". (Service Logs dated January through May 2023.)
14. On September 5, 2023, several staff members debriefed with [Student B] and utilized stuffies and stories to describe emotion. (Email from Principal dated September 5, 2023.)
15. On September 5, 2023, Parent requested that the Principal: "...refrain from revisiting incidents from the previous day with [Student B]. The Parent also requested an IEP meeting, a BIP, and appropriate plans for interventions.

The Principal responded:

It will be necessary for [Student B] to fix the problem that [they] created, clean up the room that [they] trashed or process through the behavior that happened. If [they] are capable of solving this before [Student B] leaves for the day, great. Otherwise it may be necessary to finish this the next day. This restorative process is an important part to our behavior process.

The Parent added:

[Principal], while this may be district policy and seem like the appropriate thing to do [STUDENT B] is a child with ASD and it can actually create the opposite effect than what you may intend, this would be INCREASING BEHAVIORS AND TRIGGERING THEM TO OCCUR EVEN MORE. Additionally, processing through events without understanding [their] needs and how it relates to [their] disability is only setting them and the District up for failure. You can not treat them like a normal neurotypical child and ignore [their] disability.

[Their] medical team has asked me to email you as a District to convey [Student B's] needs in refraining from revisiting the incidents that have occurred. Medically under a therapeutic approach [Student B's] team of medical experts in [their] needs will work on helping him learn skills and appropriate behaviors in correcting after an incident. AT this time [STUDENT B'S] needs and [their] disability is what matters for [them] in school not what the district feels needs to happen without consideration to [their] disability and the needs that encompass that. Additionally, this is why I requested and IEP meeting to discuss this further and simply asking that we refrain from revisiting incidents that occur until we are able to have this discussion and the district understand [STUDENT'S] NEEDS more clearly and what works in helping [them] the best. (Email Exchange dated September 5, 2023.)

16. On September 5, 2023, the Parent emailed:

Due to the emergency exclusion today I would like the district to come up with a plan to deal with the behaviors [Student B] is demonstrating in a positive health manner that does not consist of continual suspensions, isolation, and reduced scheduling as these are not positive behavior interventions.

I would like to request this plan be developed and in place that works for [Student B] with [their] needs, at [their] level, with [their] ability, while we are awaiting an IEP meeting for [Student B] as I have requested. I do not feel waiting to have a plan that is appropriate in place is fair for [Student B] nor does it meet [their] needs, and it appears current interventions are not working. (Email from Parent dated September 5, 2023.)

17. Student B was emergency excluded from September 6, 2023, through September 8, 2023, for inappropriate language and kicking. The Principal shared:

Given the disruption to the learning environment for so many other students, I have determined that we needed to emergency exclude [Student B] to give us time to make another plan that is less disruptive to the educational environment of [School]. We will reach out to you when we have this plan updated. (Emergency Exclusion Letter dated September 6, 2023.)

18. On September 6, 2023, the District emailed the following to the Parent:

As we explained before, we are going to have a plan in place as far as communication. Your emails will be blocked from staff members other than [Principal], [SPED Director], and myself. Staff members have been instructed not to communicate with you other than the checklists that are being sent home. Based on the fact that you clearly had a third party involved in a conversation with [Principal] this morning without informing him that this was the case, I have instructed [Principal] not to communicate with you unless it is absolutely necessary.

Your requests are beyond reasonable and we can't dedicate all our resources to you and your three children, there are 325 other students at [School] who deserve a positive learning environment. You continue to ask us what the District is going to do to prevent your children's behaviors from happening or what strategies we will use to redirect them. We will try to redirect them, we will try to problem-solve, we will try to work with them. If you would support us on this rather than disagree with us on just about everything we do, that would also be helpful. It is clear based on the things your children say that they know that you don't support the school staff members (*sic*).

You have made it very clear that you do not agree with some school disciplinary steps and you have the right to voice that during IEP meetings, and then the IEP team can weigh in as well. But we can't and we won't have an IEP every time these behaviors occur (*sic*).

We are going to continue to do the best we can given the crisis in Special Education Staffing this state and this country are facing. One of the ways we do that is to support our staff members who are working with very difficult circumstances and thus I feel it is necessary to take these extreme steps in this particular case. I believe that your reaction to incidents your children have are causing a hostile work environment for our staff members and I am going to do everything I can to prevent that, thus the communication plan.

I would be willing to meet with you, [Attorney] and [Attorney] to discuss this matter further as to avoid some difficult conversations during an IEP. Until we get this part addressed, we are not going to

see much improvement in your children's behavior in my opinion (sic). (Email from District dated September 6, 2023.)

19. On September 8, 2023, a meeting was held to discuss Student B and Student C. Witness 1 stated the following regarding transitioning back to school; “[Student B] will use the check-in and check-out to start the day...[they’ll] start out one-on-one with a staff member just to make sure [Student B] is prepared to go to class. It should be a very brief time...once that staff member determines that yes, [they’re} ready to go to [their] regular classroom. And [they’ll] continue in the regular classroom. If [Student B] struggles, if we have the language outbursts or whatever, then [they] would go back into that particular room. I don’t have the room number in front of me, but we’ve identified a room in the building that we’re gonna use.” (Video of Meeting held on September 8, 2023.)
20. On September 9, 2023, the Parent responded to an email to the District and asked: “May I see the room that is being used for my children?” The District responded: “I might be able to find an appropriate time to do that (outside of the school day). It is not much of a room as it is an old office and it is not their regular placement but rather a place where they will go when they need to be removed from the rest of the schools in order to provide a positive learning environment for others.” (Email Exchange dated September 9, 2023.)
21. On September 12, 2023, the Superintendent emailed the Parent regarding an incident:

We wanted to inform you of an incident this morning involving [Student B, Student A, and [Student C]. [Student C] was angry in the cafeteria during breakfast, this agitated [Student B] and [Student B] threw [their]tray. [Student B, Student C, and Student A were very upset and had to be removed from the cafeteria.
22. We had each student in a separate room. [Student B’s] plan was followed, [Student B] calmed down and eventually went back to class as we discussed. [Student A] has made multiple statements about killing people and cutting a person's head off in your house as well as burying the body. [Student C] has remained in the time-out room all morning as [Student C] was not in a disposition where [they] could return to class. We will continue to try to work with each student. (Email from District dated September 12, 2023.)
23. On September 12, 2023, the Parent responded with questions; they also shared comments about the home and school. In an email later in the day, the Parent-reported:

[Student C] reports that [Student B] started copying [Student C] and when the teacher took [their] tray [Student B] knocked over a tray. [Student C] reported when they took [Student B] trays [Student B] started running away. [Student C] stated the teacher then grabbed [Student B] and [Student B] started screaming.

[Student C] stated [they] got upset when they grabbed [Student B] and then went to help [Student B]....

[Student B] reports [they] didn't want to talk about it anymore but the school teachers keep making them.

[Student B] reports [Student B] was scared of the teachers and trying to run really really fast cause [Student B] is not safe they are gonna grab them and they did and grabbed their [sibling] [their] words (sic). (Email from Parent dated September 12, 2023.)

In response to Parent questions, on September 12, 2023, the District replied:

"All three students were taken to separate places from the cafeteria as they clearly were not able to be in a classroom." "[Student B] was in a room and fell asleep for a bit. When [they] woke up [they] demonstrated being calm and ready to learn so [they] went to [Teacher's] room at sometime around 9am." The District mentioned: "We did restrain the kids as they were out of control. If you don't want us to do that the other option is for us to call law enforcement."

Unfortunately, we are not going to be able to allow [Student B, Student C, and Student A] in the cafeteria until 7:50AM. They will be given time to eat breakfast but we don't have the amount of staffing required to supervise your children prior to 7:50AM. This is in effect tomorrow (Wednesday, Sept. 13<sup>th</sup>, 2023) and will remain in effect until we notify you otherwise.

24. The Parent responded via email the same day: "Can you help me understand why drastic measures are being taken now excluding them from eating breakfast at school as they have been doing for the past 4 years...". (Email Exchange dated September 12, 2023.)
25. On September 12, 2023, the District informed the Parent that: "Due to an extreme disruption of the learning environment at [School], I am Emergency Excluding [Student B, Student A, and Student C] for three days (Wednesday, Sept 13<sup>th</sup>-Friday, Sept 15<sup>th</sup>, 2023). We will follow up with more

documentation in the next day or two as there is a great deal of information we need to sort through. (Email Exchange dated September 12, 2023.)

26. The Parent responded via email the same day: "Can you help me understand why drastic measures are being taken now excluding them from eating breakfast at school as they have been doing for the past 4 years...". (Email Exchange dated September 12, 2023.)
27. A September 13, 2023 letter to the Parent stated that the three students "...became out of control in the cafeteria during breakfast and had to be removed. We placed them in three different rooms and had staff members working with each of the separately. As a result of this and several other behaviors they have displayed we do not feel it is safe for other students to be in classes with them." The District shared: "The students will not be able to return until this meeting has taken place." (Email from District dated September 13, 2023.)
28. On September 14, 2023, the Parent emailed the District with the following question: "Am I to understand from your email the kids suspensions are continued and they are not allowed to come on Monday or Tuesday since I am unable to meet those days (*sic*)?" The Superintendent responded the following day with: "And yes, due to the fact that you are not able to meet on Monday or Tuesday and due to the severity of the situation we need to extend the Emergency Exclusion through Wednesday. Further documentation will follow now that the Emergency Exclusion is extending past five days due to the fact you are not available to meet on Monday or Tuesday." (Email Exchange dated September 14, 2023 through September 15, 2023.)
29. On September 15, 2023, the Superintendent wrote a letter to the Parent regarding the Emergency Exclusion that references Nebraska statute and included:

...[Student B] is excluded from school, effective immediately. The emergency exclusion is necessary because the student's conduct presents a clear threat to the physical safety of [themselves] or others and is so extremely disruptive as to make temporary removal necessary to preserve the rights of other students to pursue an education. I gave you further details in my previous letters on this matter. You are further advised that I have determined that this emergency exclusion shall extend beyond five days. We had desired to hold IEP meetings on September 18<sup>th</sup>, but you had a scheduling conflict and preferred to meet on September 20<sup>th</sup>, thus causing the exclusion to be extended beyond five days.

The letter described the hearing process and a waiver to waive or request a hearing. (Emergency Exclusion Letter dated September 15, 2023.)

30. On September 15, 2023, the Parent submitted a letter dated September 10, 2023 from a BCBA that described triggers and recommendations for [Student B]. (Email from Parent dated September 15, 2023; Letter from BCBA dated September 15, 2023.)
31. On September 15, 2023, the Parent indicated that [Student C and Student B] were due for a manifestation determination. The Parent's email included the following removals from school due to behavior:
  - a. 8/31/23- School called me to come and help with behaviors and sent [Student B] home early due to behaviors.
  - b. 9/5/23- I was called to the school to pick up [Student B] the principal stated [Student B] was suspended for the rest of the day due to behaviors
  - c. 9/6/23- I was called to the school to pick up [Student B] the principal stated [Student B] was being suspended until Monday 9/11/23
  - d. 9/7/23- continued suspension
  - e. 9/8/23- continued suspension
  - f. 9/13/23- suspended email sent excluding [Student B] after school 9/12/23
  - g. 9/14/23- continued suspension
  - h. 9/15/23- continued suspension
  - i. 9/18/23- continued suspension 9/15/23 email provided extending
  - j. 9/19/23- continued suspension
  - k. 9/20/23- continued suspension as meeting held will be held at 1 pm email provided (Email from Parent dated September 15, 2023.)
32. The September 18, 2023, a Notice of IEP Meeting was emailed to the Parent along with invitations to IEPs. (Notice of Meeting dated September 18, 2023.)
33. On September 20, 2023, the Proposed IEP Agenda described the topics for the meeting and included parent concerns. The parent concerns listed are:
  - a. "Relationship with SRO and law enforcement";
  - b. "Lack of fidelity checks that IEP and BIP are being followed";
  - c. "Lack of appropriate interventions";
  - d. "...punishment rather than proactive positive responses (maybe a token system";
  - e. "Rewards are not frequent enough";

- f. "1 to 1 adult support is needed";
  - g. "Improved communication with staff";
  - h. "Packets trigger behavior"
  - i. "Goals focused on behavior change care (sic) are needed";
  - j. "Suspension adversely impacts; kids prefer to be home and are afraid to go to school";
  - k. "Requested FBA; what is happening with this?";
  - l. "Use of isolation;
  - m. "Staff engages in power struggles"; and
  - n. "Manifestation Determination; behaviors are a function of the disability." (Proposed IEP Agenda dated September 20, 2023.)
34. Student B's attendance profile for the 2023-24 school year indicated that Student B was emergency excluded from school due to behavior issues for 10 school days between September 7, 2023, through September 20, 2023. (Period Student Attendance Profile for the 2023-24 School Year.)
35. On September 27, 2023, a Manifestation Determination meeting indicated the total number of suspension days prior was 10. A suspension for 4 additional days for the following:
- The emergency exclusion is necessary because the Student's conduct presents a clear threat to the physical safety of [themselves] or others and is so extremely disruptive as to make temporary removal necessary to preserve the rights of other student to pursue an education...
36. The conduct in question was the direct result of the district's failure to implement the Student's IEP. (Manifest Determination dated September 27, 2023.)
37. On October 2, 2023, the District sent a permission form for an FBA for [Student B]. (Email from District dated October 2, 2023.)
38. On October 16, 2023, the District developed a FBA and BIP. (FBA and BIP dated October 16, 2023.)
39. During the investigation, the District provided the Investigator with a draft IEP for Student B dated October 25, 2023. (Draft IEP dated October 25, 2023.)
40. On October 30, 2023, during a Parent interview, the Parent stated;" [Student B] began to display behaviors that we had not seen in preschool, um, to the extent that [sic] were happening here, which led me to request an IEP meeting for [Student B] based off of behaviors that were coming around...and then when [Student B] started getting suspended, I asked for like, what's the plan? How are we gonna help [Student B] with these behaviors." (Interview with Parent dated October 30, 2023.)



**Student B Issue # 1**

Did the District's disciplinary removal of the Student constitute a change of placement? [92 NAC 51-016.01].

92 NAC 51- 016.01 states:

- 016.01A *For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:*
  - 016.01A1 *The removal is for more than 10 consecutive school days; or*
  - 016.01A2 *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 School has suspended the Student improperly, calling the suspension an "emergency exclusion." (Letter of Complaint received by NDE September 19, 2023.)

### *District Response*

The emergency exclusion which began on September 13, 2023, originally did not constitute a change of placement as it was originally supposed to end on September 15, 2023. However, when the exclusion was extended, it did constitute a change of placement because it resulted in [Student B] being out of school for more than 10 school days. The exclusion ended on September 21, 2023. [Student B] was emergency excluded again on September 25, 2023. (Letter of Response dated October 19, 2023.)

### *Investigative Findings*

Attendance records for Student B indicated they were emergency excluded from school due to behavior issues for 10 school days between September 7, 2023, through September 20, 2023. There is evidence in the record that Student B was excluded from school due to behaviors for two additional days in September 2023, that are not documented in the attendance profile (Emergency Exclusion Letter dated September 6, 2023.) The Parent notified the District on September 15, 2023, that Student B had been suspended for 10 school days and requested a manifestation determination review meeting (Email From Parent dated September 15, 2023.) The Parent's records included three days in which the School called the Parent to pick up Student B from the School before the end of the day due to behavior. (Email From Parent dated September 15, 2023.)

### *Summary and Conclusions*

The disciplinary removals of more than ten days constituted a change of placement for Student B. The District already reconvened the Student's IEP to determine what accommodations/modifications and/or behavioral supports were needed and were reviewed by the Investigator. In addition to actions already taken to resolve the identified noncompliance regarding the requirements of 92 NAC 51-016.01, the following **corrective action is required**.

### *Corrective Action*

1. The School District must develop and provide training to all relevant staff who assign discipline to students regarding disciplinary removal for students with disabilities. Staff involved in the training should include any of the groups of staff that may make the same violation(s) as found in the Investigation Report.
2. The training and trainer(s) must be approved by the NDE Office of Special Education two calendar weeks before the training.
3. The school district must provide NDE with copies of the participant sign-in sheets or other evidence of attendance the business day following the conclusion of the training(s).

4. The corrective actions must be completed within [60] calendar days of the receipt of this Investigation Report.
5. The District must ensure discipline data is up to date for NDE to review on or before March 17, 2024.
  - a. NDE will request a random sample of manifestation determination meeting notes for students who were suspended for 10 days or more.

**Student B Issue # 2**

Was the District required to conduct a manifestation determination review when the Student was suspended from school? [92 NAC 51-016.02].

92 NAC 51-016.02 states:

- 016.02A *School personnel may consider any unique circumstances on a case-by- case basis when determining whether a change in placement, consistent with the other requirements of subsection 016.02 of this Chapter, is appropriate for a child with a disability who violates a code of student conduct.*
- 016.02B *School personnel under subsection 016.02 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent these alternatives are applied to children without disabilities) and for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 92 NAC 51-016.01).*
- 016.02B1 *After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the school district or approved cooperative must provide services to the extent required under 92 NAC 51-016.02D.*

- 016.02C *For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 92 NAC 51-016.02E, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, except as provided in 92 NAC 51-016.02D.*
- 016.02D *A child with a disability who is removed from the child's current placement pursuant to 92 NAC 51-016.02C or 016.02G must:*
- 016.02D1 *Continue to receive educational services, as provided in 92 NAC 51-004.01, so as to enable the 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; and*
  - 016.02D2 *Receive, as appropriate, a functional behavior assessment, behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.*
  - 016.02D3 *The services described in 92 NAC 51-016.02D1, 016.02D2, 016.02D4, and 016.02D5 may be provided in an interim alternative educational setting.*
  - 016.02D4 *A school district or approved cooperative is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to*

*a child without disabilities who is similarly removed.*

016.02D5 *After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under 92 NAC 51-016.01, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in 92 NAC 51-004.01, so as to enable the 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.*

016.12D6 *If the removal is a change of placement under 92 NAC 51-016.01, the child's IEP team determines appropriate services under 92 NAC 51-016.02D.*

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:*

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

016.02E3      *If the school district or approved cooperative, the parent, and relevant members of the child's IEP team determine the condition described in 92 NAC 51-016.02E1b was met, the school district or approved cooperative must take immediate steps to remedy those deficiencies.*

016.02F      *If the school district or approved cooperative, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must:*

016.02F1      *Either conduct a functional behavioral assessment, unless the school district or approved cooperative had conducted a functional behavioral assessment before the behavior that resulted in a change of placement occurred, and implement a behavioral intervention plan for the child; or if a behavioral intervention plan has already been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and*

016.02F2      *Except as provided in 92 NAC 51-016.02G, return the child to the placement from which the child was removed, unless the parent and the school district or approved cooperative agree to a change of placement as*

*part of the modification of the behavioral intervention plan.*

- 016.02G *School personnel may remove a child to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:*
- 016.02G1 *Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative;*
  - 016.02G2 *Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative; or*
  - 016.02G3 *Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative.*
  - 016.02H *On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative shall notify the parents of that decision, and provide the parents the procedural safeguards in 92 NAC 51-009.*

### *Allegations/Parent Position*

The School has not held a manifestation determination review meeting. (Letter of Complaint received by NDE September 19, 2023.)

### *District Response*

A Manifestation Meeting took place on September 27, 2023. The manifestation team determined that the conduct that resulted in the emergency exclusions on September 12 and 25, 2023, was not a manifestation of [Student B's] disability. (Letter of Response dated October 19, 2023.)

### *Investigative Finding*

During the 2023-24 school year, Student B was excluded from School for more than 10 school days in a school year. A Manifestation Determination meeting was not conducted when the exclusions from school constituted a change in placement. After the complaint was filed, a Manifestation Determination meeting was held for Student B on September 27, 2023.

### *Summary and Conclusions*

The District excluded Student B from school due to behavior for more than 10 school days in a school year and did not convene a Manifestation Determination meeting during the complaint period. The District failed to fully implement the requirements of 92 NAC 51-016.02. Thus, the following **corrective action is required**.

### *Corrective Action*

1. The District shall review and revise, if necessary, its policies and procedures regarding Manifestation Determination Review.
2. The District will provide NDE with notes indicating the results of the review by date.
3. If the District determines revisions to its policies are needed, the District must provide the revised policies or procedures to NDE [60] calendar days after the date of the Investigation Report for review.
4. If the District determines it needs to revise board policy to address the violations in the Investigation Report, notify NDE of when the policies will be taken to the local board of education for approval.
5. If the District proposes to revise board policies, provide NDE with verification of acceptance of the revised policy by the local board of education within 10 calendar days of the Board Meeting.
6. The School District must develop and provide training to all relevant staff who implement policies and procedures for manifestation determination reviews for students with disabilities. Staff involved in the training should



include any of the groups of staff that may make the same violation(s) as found in the Investigation Report.

7. The training and trainer(s) must be approved by the NDE Office of Special Education two calendar weeks before the training.
8. The school district must provide NDE with copies of the participant sign-in sheets or other evidence of attendance the business day following the conclusion of the training(s).
9. The corrective actions must be completed within [60] calendar days of the receipt of this Investigation Report.

### **Student B Issue # 3**

Did the District develop, review, revise, and implement the Student's IEPs? [92 NAC 51-007.10; 92 NAC 51-007.02].

92 NAC 51- 007.10 states:

- 007.10A *Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;*
- 007.10B *The results of any reevaluation conducted under 92 NAC 51-006.05A;*
- 007.10C *The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;*
- 007.10D *The child's anticipated needs; or*
- 007.10E *Other matters.*

92 NAC 51- 007.02 states:

- 007.02A *At the beginning of each school year, each school district or approved cooperative shall have an IEP in effect for each child with a verified disability within its jurisdiction.*
  - 007.02A1 *From the end of the school year in which a child reaches age 3, until the child's sixth birthday, the IEP team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in 92 NAC 52 (including an educational component that promotes school*

*readiness and incorporates pre-literacy, language, and numeracy skills for children with an IFSP who are at least three years of age), and that is developed in accordance with the IEP procedures. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is agreed to by the school district or approved cooperative and the child's parents.*

007.02B *Each school district or approved cooperative shall ensure that an IEP is in effect before special education and related services are provided to a child with a verified disability under this Chapter.*

007.02C *The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and*

007.02D *Each teacher and provider described in 92 NAC 51-007.02C must be informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.*

#### *Allegations/Parent Position*

The School has failed to draft and implement an appropriate IEP for the Student. (Letter of Complaint received by NDE September 19, 2023.)

#### *District Response*

The District reviewed, revised, and implemented [Student B's] IEP. [Student B] has had difficulty with [their] behaviors, which have resulted in more than one emergency exclusion. [Student B's] IEP team was prepared to meet on September 20 to review and revise [their] IEP/BIP. However, several key members of [Student B's] IEP team, including the parent, have spent over 19 hours over the course of 8-9 days revising [Student C's] IEP/BIP. [Student B's] IEP team was able to convene for the first time on October 18, 2023. (Letter of Response dated October 19, 2023.)

### *Investigative Findings*

The IEP dated May 10, 2023, for Student B, included all required components including recent evaluation information, the present level of performance information, goals aligned to Student B's current level of functioning, and appropriate accommodations/supports needed for Student B. On May 10, 2023, the Parent attended and signed the Multidisciplinary Team Report in agreement. According to Parent interview transcripts, the Parent stated they requested an IEP meeting for Student B because of Student B's behaviors that were happening before the suspensions started to occur. District records indicated the Parent requested an IEP meeting for Student B on September 5, 2023. Student B was suspended again on September 6, 2023. A planning meeting was held on September 8<sup>th</sup> because there was no plan to return Student B to school. The Student did not return to School during the Complaint period and the IEP team was working to schedule an IEP meeting.

### *Summary and Conclusions*

During the complaint period, the District had a compliant IEP in effect. The District implemented the requirements of 92 NAC 51-007.02, and **no corrective action is required**.

### **Student B Issue #4**

Did the District make special education placement determinations based on the LRE requirements? [92 NAC 51-008.01; 92 NAC 51-009.02].

92 NAC 51-008.01 states:

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.*

008.01B *Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual*

*multidisciplinary evaluation of the child's development and educational needs.*

008.01C *In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:*

008.01C1 *The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and*

008.01C2 *The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.*

008.01D *Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.*

008.01D1 *The continuum must:*

008.01D1a *Include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and*

008.01D1b *Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.*

- 008.01E *The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:*
  - 008.01E1 *Is determined at least annually;*
  - 008.01E2 *Is based on his or her individualized education program; and*
  - 008.01E3 *Is as close as possible to the child's home.*
- 008.01F *The various array of placement options included under 92 NAC 51-008.01D must be available to the extent necessary to implement the individualized education program for each child with a verified disability.*
- 008.01G *Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.*
- 008.01H *In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.*
- 008.01I *A child with a disability must not be removed from education in age- appropriate regular classrooms solely because of needed modifications in the general curriculum.*

92 NAC 51-009.02 states:

- 009.02A *The school district or approved cooperative shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of their child.*
- 009.02B *In implementing the requirements of 92 NAC 51-009.02A, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A.*
- 009.02C *If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district or*

*approved cooperative shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.*

009.02D *A placement decision may be made by a team without the involvement of the parents if the school district or approved cooperative is unable to obtain the parents' participation in the decision. In this case, the school district or approved cooperative must have a record of its attempt to ensure their involvement including information that is consistent with the requirements of 92 NAC 51-007.06D.*

#### *Allegations/Parent Position*

The School has proposed to isolate the Student away from all their peers. (Letter of Complaint received by NDE September 19, 2023.)

#### *District Response*

[Student B's] IEP called for [them] to receive specially designed instruction in the general education classroom. [Student B's] placement was in the general education classroom. Since the start of the school year, [Student B] has had a check-in/check-out process to ensure [Student B] is ready to start [their] day and to see if [Student B] needs anything before starting school. This is not something new that was implemented because of the disciplinary actions. Relating to Room 307 being a "bare-walled room," [School] utilizes PBiS ("Positive Behavioral Interventions and Supports") to assist students. One of the positive behavioral supports the school district offers is to have the student leave class to go to a quiet focus room to reset. This process allows the student to process their emotions in a private space while also allowing the rest of the class to not be disturbed. [Student B's] placement was never changed to Room 307. Rather, Room 307 was a space where [Student B] could go to reset if [Student B] was disturbing the rest of the class. (Letter of Response dated October 19, 2023.)

#### *Investigative Findings*

According to the IEP dated May 10, 2023, the Statement of Special Education and Related Services indicated, that Student B will receive specially designed instruction through a variety of service delivery models based on Student B's performance and needs. The service delivery models could include co-teaching in the general education classroom, and individual or small group instruction outside of the general education classroom in order to receive specialized instruction and consultation between special education providers and general education teachers.

*Summary and Conclusions*

Based on the IEP which allowed for SDI to occur outside of the general education classroom, the District implemented the requirements of 92 NAC 51-008.01, and **no corrective action** is required.

**Student B Issue #5**

Did the District provide a response to reasonable requests from the Parent for explanations and interpretations of educational records.? [92 NAC 51-009.03B2a]

92 NAC 51-009.03B2a states:

009.03B2a      *The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records.*

*Allegations/Parent Position*

The School has prohibited the Parent from having any contact with anyone at the school except for administrator. (Letter of Complaint received by NDE September 19, 2023.)

*District Response*

Each time one of the students in this Complaint has a behavior issue, the parent is informed. Then, immediately the parent demands unreasonable amounts of information within an unreasonable amount of time. Each time the parent emails the school district, [Parent] includes numerous administrators and teachers and often accuses the staff of not working with the students correctly. The tones of the parent's emails lead to staff feeling panicked and the need to respond to [Parent] immediately. This results in the school staff dropping what they are working on to quickly follow up on the parent's questions in the level of detail [Parent] is requesting. Then when the teachers do this, they receive more questions and accusations in return. As a result, the District instituted a communications plan with the parent whereby [Parent] could submit [their] questions to administrators at the District. The administrators would gather the information requested by the parent and respond later in the week. The District never denied the parent information; but merely controlled how often and to whom [Parent] requested the information. (Letter of Response dated October 19, 2023).

### *Investigative Findings*

On September 6, 2023, the District emailed the Parent and notified them that they would be placed in a communication plan due to the frequency of questions and communication from the Parent, and unless it were urgent, a designated staff person would reply to the Parent emails once per week. During interviews, the Parent reported that they were scared to ask questions. Student B's IEP did not include the accommodation for daily home-school communication.

### *Summary and Conclusions*

Student B's IEP did not include daily home/school communication as an accommodation. As such, providing the Parent with information about responses to questions on a weekly basis was not unreasonable. The District implemented the requirements of 92 NAC 51.009.03B2a and **no corrective action** is required.

### **Findings of Facts Student C**

1. Student C was 8 years old and was eligible for Autism and Other Health Impaired according to the IEP dated November 3, 2022 (IEP dated November 3, 2022.)
2. In September 2022, Student C received 1240 minutes of special education services. Two days were listed as NS. (Service Logs dated August through December 2022.)
3. In September 2022, an Autism Spectrum Rate Scale (ASRS) was administered to Student C. Assessment results indicated Student C had very elevated scores in the following categorial areas:
  - a. Social/Communication;
  - b. Unusual Behaviors;
  - c. Peer Socialization;
  - d. Atypical Language;
  - e. Behavior Rigidity; and Sensory Sensitivity. (MDT dated October 20, 2022.)
4. Student C's report card for the first semester of the 2022-2023 school year indicated Student C's academic skill in the area of language arts were in a range from proficient to advanced. Social skills scores indicated Student C was in the progressing range for showing respect for adults, peers, and property, and following rules. Work/study skills scores indicated Student C was in the progressing range for the following:
  - a. Uses time wisely;
  - b. Asks for help when needed;
  - c. Works independently;



- d. Listens attentively;
  - e. Produces quality work; and
  - f. Completes/returns homework on time. ([School] Second Grade Learning Report 2022-2023.)
5. On September 9, 2022, September 12, 2022, and September 21, 2022, observations of Student C occurred by the School Psychologist. "Overall, [Student C] did well during the observations. A few things that are build [sic] in to help ensure [Student C's] are: behavior chart, adults checking in on [Student C], positive praise, and building in breaks. [Student C] appeared to become frustrated during independent work. [Student C] would start to shut down (refuse to talk, grunting, head down). However, during the observations, [Student C's] teachers were able to help [Student C] through this and got [Student C] working." (MDT Report dated October 20, 2022.)
6. On September 26, 2022, the Parent and Teacher completed the FBA Profiler which indicated the following behaviors:
- a. Broad internalizing concerns such as stress, anxiety, or depression;
  - b. Social withdrawal, social isolation, and situation avoidance; and
  - c. Disruption behaviors which indicated disturbing others, interrupting or drawing others off-task, (MDT Report dated October 20, 2022.)
7. Attendance records from September 9, 2021, through May 18, 2023, indicated Student C was excused for 2 absent days, had 7 excused appointment days, 10 medical excused days, and 4 days absent due to suspensions. ([School] Period Student Attendance Profile for the 2022-2023 Year.)
8. On September 26, 2022, the FBA Profiler completed by the Parent and Teacher suggested the following interventions:
- a. "Escape/Avoidance;
    - i. Provide tangible reinforcements (rewards);
    - ii. Reward effort or participation rather than outcome;
    - iii. Avoid tasks that are clearly beyond [Student C's] capabilities; and
    - iv. Provide gentle prodding and encouragement.
  - b. Anxiety Reduction;
    - i. Provide acceptable outlets for stress (such as a toy or ball to squeeze;
    - ii. Allow frequent breaks or 'time-outs' when [Student C] chooses;
    - iii. Encourage [Student C] to share [their] feelings of anxiety with others; and

9. Avoid placing [Student C] in potentially stressful situations." (MDT Report dated October 20, 2022.)
10. In October 2022, Student C received 740 minutes of special education services. Three days were listed as NS. (Service Logs dated August through December 2022.)
11. On October 29, 2022, the School Psychologist emailed a draft of Student C's MDT report. A copy of the FBA and the BIP were included. (Email from School Psychologist dated October 29, 2022.)
12. On October 20, 2022, a Multidisciplinary Team (MDT) Report indicated the Parent requested that an evaluation be completed to "determine if [Student C] may verify as a child with Autism on August 18, 2022. On August 24<sup>th</sup>, [Parent] requested that a Functional Behavioral Assessment (FBA) be added to [Student C's] evaluation. On August 24, [Parent] requested that academic language, occupational [(OT)], and physical therapy [(PT)] be added to the evaluation. The District proposes to conduct the Autism, FBA, OT, and PT assessments. The District is rejecting the request for academics and language assessment because they were conducted in April 2022." (MDT Report dated October 20, 2022.)
13. On October 20, 2022, the Parent stated at a Multidisciplinary Team Meeting stated; "[Student C] has physical and audio tics disorder. [Student C] is being assessed and monitored under the care of Neurology for possible Tourette's." (MDT Report dated October 20, 2022.)
14. On October 20, 2022, the MDT reached a consensus that [Student C] exhibited the following disabilities: Autism, and Other Health Impairment. All team members including the Parent agreed. (MDT Report dated October 20, 2022.)
15. On October 20, 2022, a Prior Written Notice stated, "It is proposed to change [Student C's] primary verification from a child with an Other Health Impairment (OHI) to a child with Autism. OHI will be [Student C's] secondary verification." The team proposed the change due to assessment results dated October 20, 2022. (Prior Written Notice dated October 20, 2022.)
16. In November 2022, Student C received 560 minutes of special education services. Four days were listed as A; three days were listed as NS. (Service Logs dated August through December 2022.)
17. On November 3, 2022, a Prior Written Notice stated: "The District proposed to update the data card, add a Behavior Intervention Plan, and update goals and update accommodations. [District] proposed to take these actions because [Student C] has shown behaviors that need a behavior intervention plan. Also, due to testing we need to update [Student C's]

goals and [their] accommodations." (Prior Written Notice dated November 3, 2022.)

18. A Behavior Intervention Plan for Student C was dated November 3, 2022, and was scheduled to be reviewed on November 23, 2023. This plan described the following: primary problems, a summary of functional behavioral hypotheses, prevention strategies, instruction to teach, replacement behaviors, steps to follow, a data collection plan, and an alternate discipline plan. (BIP dated November 3, 2022.)
19. On November 23, 2022, an IEP meeting was held with all of the legally required participants attending the meeting;
  - a. Special considerations included:
  - b. Student strengths indicated; "[Student C] is a compassionate student. [Student C] wants to help others in the classroom and outside of the classroom...is creative and enjoys coloring...is a problem solver.... observant and independent.... enjoys puzzles...building and telling stories."
  - c. Parent concerns included; "sensory aversion at home. Demonstration-increased movement-fidgety, overloaded with lights, overload stimulants, go into the room with the lights off, color or draw in the dark, weighted blanket, build a fort, or lay in the fort. [Student C] has tics-could turn to Tourette Syndrome, movements-head movements, hand tapping, or noises." (IEP dated November 23, 2022.)
  - d. Results of the most recent evaluation indicated; "According to the MDT dated 10/20/2022, [Student C] meets verification criteria as a student with autism as a primary and OHI as a secondary. This disability adversely affects the child's educational performance and demonstrates a need for special education services in order for [Student C] to make satisfactory progress in school."
  - e. Results of the Acadience Test indicated;
    - i. Nonsense Word Fluency Correct Letter-27 percentile;
    - ii. Nonsense Word Fluency Words Read-40 percentile;
    - iii. Oral Reading Fluency-Words Correct-13 percentile;
    - iv. Accuracy-Retell-6 percentile; and
    - v. Reading Composite score-6 percentile.
  - f. Results of the MAP Test indicated;
    - i. Mathematics-44 percentile;
    - ii. Language-77 percentile and
    - iii. Reading-99 percentile.

- g. Student C has a Behavior Intervention Plan: “Positive behavior supports included use of developmentally appropriate social materials and instruction, adult verbal and visual prompts for the use of appropriate behavior skills, on-going consultation with the resource staff, building staff, on-going consultation with school psychologist ...daily communication with parents. Also, direct social skills instruction is provided through scheduled and spontaneous Interactions...Modeling, role-playing activities, videotape feedback/recording, and planned generalizations of social skills will be included.” (IEP dated November 3, 2022.)
- h. Consequences for inappropriate behavior included;
  - i. “Adult redirection immediately after inappropriate behaviors, prompts for appropriate behavior, provision of choices, and developmentally appropriate wait time;
  - ii. Use of options for cool down when inappropriate behaviors and prompts for appropriate behavior continue;
  - iii. Use of chill zone with open, closed, or secured door dependent on behavior;
  - iv. Opportunities for adult-directed problem-solving regarding inappropriate behavior; and
  - v. Opportunities to complete work missed during the misbehavior.”
- i. “Progress monitoring will be completed through data card recording of the use of target skills. Daily progress is communicated to parents as are specific target skills and consequences via the daily point card being sent home for signature.” (IEP dated November 3, 2022.)
- j. Progress on the prior IEP goal indicated the annual goal for compliance and self-management, progress was made but not met for both goals.
- k. Present level of performance indicated that strengths for Student C were following directions overall with an average of 99%, safe hands and feet had an average of 97% according to [their] behavior point card;
- l. The present level of performance indicated Student C’s needs showed the following behaviors:
  - vi. Property restructuring;
  - vii. Physical aggression;
  - viii. Verbal profanity,
  - ix. Shut down/non-compliance; and

- x. Needed support with asking for help, accepting no, and accepting help. (IEP dated November 3, 2022.)
- m. The annual goal for compliance stated, "Given visuals and social skills instructions, [Student C] will follow directions within 5 minutes of the direction given as measured by daily point card by November 2, 2023."
- n. The annual goal for self-management stated, "Given visuals and social skill instruction, [Student C] will increase self-management skills by respecting others' space (by keeping, hands, feet, objects to self/by using appropriate language) from a current baseline of 94% to 98% as measured by daily point card by November 2, 2023." (IEP dated November 3, 2022.)
- o. The Service Summary indicated [Student C] will receive special instruction in the general education classroom 4 times a week for 15-minute sessions and in the Special Education Resource Room 6 times each month for 20-minute sessions each.
- p. Accommodations/Modifications included:
  - i. Shortened or adaptive assignments;
  - ii. Information is broken down into meaningful parts
  - iii. Have extra time to complete assignments/tests;
  - iv. Work on assignments and take tests outside of the classroom in a small group or one-on-one for fewer distractions;
  - v. Have tests and assignments other than reading aloud;
  - vi. Use visual supports provided when possible;
  - vii. Sensory breaks or input;
  - viii. Reteaching as needed;
  - ix. Allowed to use resource assistance when necessary;
  - x. Use positive reinforcements, and provide verbal praise often;
  - xi. Check often for understanding;
  - xii. Teach skills in various settings;
  - xiii. Timer when transitioning;
  - xiv. Highlighting important words during a test or assignment;
  - xv. Visual schedule;
  - xvi. Test review sheet used for tests;
  - xvii. Flexible seating;
  - xviii. Priming;
  - xix. Limiting vocal prompts and verbal communication during escalations;
  - xx. Limiting audience when escalated;

- xxi. Do not engage in processing behaviors after an activating event but instead wait until [Student C] is in a calm space; and
  - xxii. Send homework home to complete if triggers more behaviors. (IEP dated November 3, 2023.)
20. In December 2022, Student C received 660 minutes of special education services. Three days were listed as A; eight days were listed as NS. (Service Logs dated August through December 2022.)
  21. In January 2023, Student C received 970 minutes of special education services. Three days were listed as A; six days were listed as NS. (Service Logs dated January through May 2023.)
  22. On January 6, 2023, the Parent emailed the District requesting to be notified when Student C begins struggling. (Email from Parent dated January 6, 2023.)
  23. On January 9, 2023, the Principal responded to a January 6, 2023, Parent email request for an individual summary from each person involved in the incident on the 6<sup>th</sup>. The Principal attached a summary of the BIP and interventions used and cited that, "We feel it is unrealistic to have each staff member respond individually." On January 9, 2023, the Parent responded with: "I do not understand why I am not able to get an individual summary from those involved regarding what occurred and what interventions each used." The parent shared that the incident went on for hours and they would like to know how staff intervened, not just a description of the behaviors exhibited by Student C. The Principal responded that a conversation could happen but that a written summary "...from every adult involved is over and above what is reasonable." The parent requested a written statement as opposed to a conversation. (Email Exchange dated January 9, 2023, and January 10, 2023.)
  24. On January 11, 2023, the Superintendent emailed the Parent a summary of the events from January 6, 2023, regarding Student C. The summary included behaviors and actions taken by adults. "Staff followed the BIP and IEP as previously furnished." The parent responded the following day sharing that had they been in communication with the Parent sooner, a suspension may not have resulted. (Email Exchange dated January 11, 2023.)
  25. In February 2023, Student C received 1050 minutes of special education services. Three days were listed as NS. (Service Logs dated January through May 2023.)

26. In March 2023, Student C received 1120 minutes of special education services. Two days were listed as A; three days were listed as NS. (Service Logs dated January through May 2023.)
27. In April 2023, Student C received 960 minutes of special education services. Two days were listed as NS. (Service Logs dated January through May 2023.)
28. In May 2023, Student C received 680 minutes of special education services. Nine days were listed as NS. (Service Logs dated January through May 2023.)
29. No Service Log data was listed for Student C for August 2023 and September 2023. (Service Logs dated January through May 2023.)
30. On August 25, 2023, the Resource Teacher alerted the Parent of behaviors and strategies that were related to [Student C] that day. The Parent sent an email with 12 questions regarding Student C. (Email Exchange dated August 25, 2023.)
31. On August 29, 2023, the District sent an email to the Parent regarding a communication plan:

School staff members received emails from you within the last few days with lots of questions (9 questions in one email and 12 in another) and requests for reports or additional documentation. While we encourage communication, there is only so much written communication that our staff members have time for. We need our teachers to focus their time on effectively working with all students in their classroom and thus we feel the need to have a communication plan with you.

29. So we are going to ask teachers to forward your emails to [Principal] and myself. We will try to respond at least once per week (probably on Fridays). I wanted you to be aware of this just in case you send questions to a staff member, you will need to allow us the time to reply (sic). The Parent responded that they deleted some applications and understood the expectations. The District replied with:

I would think you might want to keep the apps for reminders and announcements as they have nothing to do with this plan, but of course that is your choice. I simply said your questions will be forwarded to [Principal] and I. The concern is the large number of questions that you want written responses to, those answers are going to take time and the teachers won't always have that much time to dedicate to one student. (Email Exchange dated August 29, 2023 through August 30, 2023.)

30. On August 30, 2023, the Principal emailed the Parent to let them know that [Student C] was having a rough day. The documentation describes that the Student was afforded breaks and a visual and, "Per IEP, resource staff didn't engage with [Student C] during this time and set a 5-minute timer in order to track [their] goal of following directions within five minutes."

Behaviors included refusal, running out of the building and into the tree line, climbing on a table, scribbling in math book, throwing pencils, attempting to call 911, running around the room, and throwing other classroom objects. (Email from Principal dated August 30, 2023.)

31. On September 6, 2023, the District emailed the following to the Parent:

As we explained before, we are going to have a plan in place as far as communication. Your emails will be blocked from staff members other than [Principal], [SPED Director], and myself. Staff members have been instructed not to communicate with you other than the checklists that are being sent home. Based on the fact that you clearly had a third party involved in a conversation with [Principal] this morning without informing him that this was the case, I have instructed [Principal] not to communicate with you unless it is absolutely necessary.

Your requests are beyond reasonable and we can't dedicate all our resources to you and your three children, there are 325 other students at [School] who deserve a positive learning environment. You continue to ask us what the District is going to do to prevent your children's behaviors from happening or what strategies we will use to redirect them. We will try to redirect them, we will try to problem-solve, we will try to work with them. If you would support us on this rather than disagree with us on just about everything we do, that would also be helpful. It is clear based on the things your children say that they know that you don't support the school staff members (*sic*).

You have made it very clear that you do not agree with some school disciplinary steps and you have the right to voice that during IEP meetings, and then the IEP team can weigh in as well. But we can't and we won't have an IEP every time these behaviors occur (*sic*).



We are going to continue to do the best we can given the crisis in Special Education Staffing this state and this country are facing. One of the ways we do that is to support our staff members who are working with very difficult circumstances and thus I feel it is necessary to take these extreme steps in this particular case. I believe that your reaction to incidents your children have are causing a hostile work environment for our staff members and I am going to do everything I can to prevent that, thus the communication plan.

I would be willing to meet with you, [Attorney] and [Attorney] to discuss this matter further as to avoid some difficult conversations during an IEP. Until we get this part addressed, we are not going to see much improvement in your children's behavior in my opinion (sic). (Email from District dated September 6, 2023.)

32. On September 9, 2023, the Parent responded to an email to the District and asked: "May I see the room that is being used for my children?" The District responded: "I might be able to find an appropriate time to do that (outside of the school day). It is not much of a room as it is an old office and it is not their regular placement but rather a place where they will go when they need to be removed from the rest of the schools in order to provide a positive learning environment for others." (Email Exchange dated September 9, 2023.)

33. On September 12, 2023, the Superintendent emailed the Parent regarding an incident:

We wanted to inform you of an incident this morning involving [Student B, Student A, and [Student C]. [Student C] was angry in the cafeteria during breakfast, this agitated [Student B] and [Student B] threw [their]tray. [Student B, Student C, and Student A were very upset and had to be removed from the cafeteria.

We had each student in a separate room. [Student B's] plan was followed, [Student B] calmed down and eventually went back to class as we discussed. [Student A] has made multiple statements about killing people and cutting a person's head off in your house as well as burying the body. [Student C] has remained in the time-out room all morning as [Student C] was not in a disposition where [they] could return to class. We will continue to try to work with each student. (Email from District dated September 12, 2023.)

34. On September 12, 2023, the Parent responded with questions; they also shared comments about the home and school. In an email later in the day, the Parent-reported:

[Student C] reports that a lid to their water bottle broke upsetting them. [They] stated they poured [their] drink on [their] tray at which point the teacher took their tray away. [Student C] reports that [Student B] started copying [Student C] and when the teacher took their tray [Student B] knocked over a tray. [Student C] reported when they took [Student B's] trays (sic) [Student B] started running away. [Student C] stated the teacher then grabbed [Student B] and [Student B] started screaming.

[Student C] stated he got upset when they grabbed [Student B] and then went to help [Student B] when 4 teachers grabbed [Student C] 2 of which were holding their legs and 2 holding their head and carried [them] to the focus room (sic).

[Student C] reported they had not thrown anything, or destroyed anything when the 4 teachers grabbed [them] carrying [them] to the focus room (sic).

[Student C] reports [they] didn't want to talk about it anymore but the school teachers keep making them (sic). (Email from Parent dated September 12, 2023.)

35. An additional Parent email described that their children did not get breakfast because their trays were taken away. The Parent also inquired if the plan that was created the previous week was used for [Student C]. (Email from Parent dated September 12, 2023.)

In response to Parent questions, on September 12, 2023, the District replied:

"All three students were taken to separate places from the cafeteria as they clearly were not able to be in a classroom."

"[Student C] intentionally poured their juice all over the table as [Student C] was angry so the monitor removed their tray and things went from there."

The District mentioned: "We did restrain the kids as they were out of control. If you don't want us to do that the other option is for us to call law enforcement."

Unfortunately, we are not going to be able to allow [Student B, Student C, and Student A] in the cafeteria until 7:50AM. They will be given time to eat breakfast but we don't have the amount of staffing required to supervise your children prior to 7:50AM. This is in effect tomorrow (Wednesday, Sept. 13<sup>th</sup>, 2023) and will remain in effect until we notify you otherwise.

The Parent responded via email the same day: "Can you help me understand why drastic measures are being taken now excluding them from eating breakfast at school as they have been doing for the past 4 years...". (Email Exchange dated September 12, 2023.)

On September 12, 2023, the District informed the Parent that: "Due to an extreme disruption of the learning environment at [School], I am Emergency Excluding [Student B, Student A, and Student C] for three days (Wednesday, Sept 13<sup>th</sup>-Friday, Sept 15<sup>th</sup>, 2023). We will follow up with more documentation in the next day or two as there is a great deal of information we need to sort through.

36. The Parent replied with the following question: "Can you help me understand what you are talking about when you say extream (*sic*) disruption to the learning environment, yet they have been in isolation a majority of today in rooms completely away from the learning environments?" The District responded they would follow up with documentation. (Email Exchange dated September 12, 2023.)
37. A September 13, 2023, letter to the Parent stated that the three students "...became out of control in the cafeteria during breakfast and had to be removed. We placed them in three different rooms and had staff members working with each of the separately. As a result of this and several other behaviors they have displayed we do not feel it is safe for other students to be in classes with them." The District shared: "The students will not be able to return until this meeting has taken place." (Email from District dated September 13, 2023.)
38. On September 14, 2023, the Parent emailed the District with the following question: "Am I to understand from your email the kids suspensions are continued and they are not allowed to come on Monday or Tuesday since I am unable to meet those days (*sic*)?" The Superintendent

responded the following day with: "And yes, due to the fact that you are not able to meet on Monday or Tuesday and due to the severity of the situation we need to extend the Emergency Exclusion through Wednesday. Further documentation will follow now that the Emergency Exclusion is extending past five days due to the fact you are not available to meet on Monday or Tuesday." (Email Exchange dated September 14, 2023, through September 15, 2023)

During the Parent Interview the Parent indicated; "there was no determination manifest [sic] made for [Student C] either." (Interview with Parent dated October 30, 2023.)

39. On September 13, 2023, the Parent requested that video and audio from August 28-September 12 be preserved. (Email from Parent dated September 13, 2023.)
40. On September 15, 2023, the Superintendent wrote a letter to the Parent regarding the Emergency Exclusion that references Nebraska statute and included: ...[Student C] is excluded from school, effective immediately.

The emergency exclusion is necessary because the student's conduct presents a clear threat to the physical safety of [themselves] or others and is so extremely disruptive as to make temporary removal necessary to preserve the rights of other students to pursue an education. I gave you further details in my previous letters on this matter. You are further advised that I have determined that this emergency exclusion shall extend beyond five days. We had desired to hold IEP meetings on September 18<sup>th</sup>, but you had a scheduling conflict and preferred to meet on September 20<sup>th</sup>, thus causing the exclusion to be extended beyond five days.

39. The letter described the hearing process and a waiver to waive or request a hearing. (Emergency Exclusion Letter dated September 15, 2023.)
40. On September 15, 2023, the Parent indicated that [Student C and Student B] were due for a manifestation determination. (Email from Parent dated September 15, 2023.)
41. On September 17, 2023, there was a Notice of an IEP meeting, and invites for all three students were emailed. (Notice of Meeting dated September 17, 2023.)
42. On September 20, 2023, a draft IEP was created. (IEP Draft dated September 20, 2023.)
43. On September 20, 2023, the Proposed IEP Agenda described the topics for the meeting and included parent concerns. The parent concerns listed are:

- a. "Relationship with SRO and law enforcement";
  - b. "Lack of fidelity checks that IEP and BIP are being followed";
  - c. "Lack of appropriate interventions";
  - d. "...punishment rather than proactive positive responses (maybe a token system";
  - e. "Rewards are not frequent enough";
  - f. "1 to 1 adult support is needed";
  - g. "Improved communication with staff";
  - h. "Packets trigger behavior";
  - i. "Goals focused on behavior change are (sic) are needed";
  - j. "Suspension adversely impacts; kids prefer to be home and are afraid to go to school";
  - k. "Requested FBA; what is happening with this?";
  - l. "Use of isolation;
  - m. "Staff engages in power struggles"; and
  - n. "Manifestation Determination; behaviors are a function of the disability." (Proposed IEP Agenda dated September 20, 2023.)
44. For the school year 2022-2023, Student C's Student Discipline Profile indicated Student C exhibited: "Threats of Harming/Attacking", threw cereal, threw an eraser, threw pencils, kicked [Witness 2], and came with a pencil towards [Witness 3]. (Student Discipline Profile for the 2022-2023 School Year.)
45. For the school year 2022-2023, [School] Student Discipline Profiles indicated Student C experienced the following:
- a. On October 7, 2022, a physical restraint for physical aggression and defiance-phone call to Parent;
  - b. On January 9, 2023, an out of school suspension-1 day for threat of physical attack;
  - c. On August 24, 2023, an out of school suspension-½ day for disrespect (chronic/elevated);
  - d. On August 25, 2023, an out of school suspension-1 day for defiance (chronic/elevated);
  - e. On August 30, 2023, an out of school suspension-1 day for physical aggression;
  - f. On August 31, 2023, a conference with Parent for defiance and disrespect-minor;
  - g. On September 5, 2023, a conference with Parent for defiance and disrespect-minor;
  - h. On September 6, 2023, an emergency exclusion-2 days for insubordination-major; and

- i. On September 13, 2023, an emergency exclusion-3 days for physical aggression-major. ([School] Student Discipline Profile for the 2023-2024 School Year.)
46. On September 26, 2023, a Manifestation Determination meeting indicated that the total number of suspension days that happened during that school year was nine prior to the number of days considered for the latest incident. The number of suspension days considered for the latest incident was four. The IEP team considered the following:
  - a. Evaluation and diagnostic results;
  - b. Observation of Student C;
  - c. Disciplinary results;
  - d. Information provided by Parents;
  - e. Current academic results;
  - f. Current IEP & placement;
  - g. Attendance records; and
  - h. School staff reports. (Manifest Determination dated September 26, 2023.)
47. On September 26, 2023, the Manifest Determination and Review team members concluded:
  - a. "An IEP meeting is needed;
  - b. It is necessary to conduct a direct Functional Behavioral Assessment; and
  - c. It is necessary to review the current behavior plan for [Student C]." (Manifest Determination dated September 26, 2023.)
48. On October 9, 2023, a Behavior Intervention Plan indicated the plan was based on an FBA. The plan addressed the following behaviors:
  - a. Work refusal/avoidance;
  - b. Aggression; and
  - c. Elopement;
  - d. Intervention/Prevention strategies which included;
    - i. "Break tasks down into small concrete steps;
    - ii. Planned ignoring of off-task behaviors;
    - iii. Adult proximity;
    - iv. Check for comprehension of directions with a positive redirect and use of visual supports;
    - v. PECS Visual Supports;
    - vi. Small breaks during seated work;
    - vii. Behavior card;
    - viii. Scheduled breaks;
    - ix. 4-1 positive to negative feedback with built-in rewards;
    - x. Errorless learning-anticipated problems and pre-correcting;

- xi. Reduce work;
  - xii. Monitor visual presentation (mask parts of the work) of work so that it isn't overwhelming'
  - xiii. Set clear expectations and prepare for transitions throughout the day. Use frequent reminders of incentives. (Prepping and priming);
  - xiv. An alternate spot to work or calm (provide choices), with limited distractions;
  - xv. Visual timers and verbal countdowns for transitions;
  - xvi. Snacks to help regulate; and  
Staff will position [Student C] away from doors in classrooms, staff will use body positioning to prevent elopement from the room or building. (BIP dated October 9, 2023.)
49. According to a District video of an IEP meeting for Student C, held on September 20, 2023, The Physician stated, "I have been taking care of [Student C] since March of 2022...And I have seen [Student C] come a long way... but I also diagnosed [Student C] with ADHD and an autism spectrum disorder." (Video of Facilitated IEP Meeting for [Student C] dated September 20, 2023.)
50. On September 20, 2023, at a facilitated IEP meeting for [Student C], Witness 1 stated; "the district is prepared to have all three children return tomorrow whether we complete the IEP's today or not. But again, more discussion to be had in [Student C's] that I think sheds light on that...but our intent is that all three kids are in school tomorrow." (Video of Facilitated IEP Meeting for Student C dated September 20, 2023.)
51. At the facilitated IEP meeting held on September 20, 2023, the Parent stated regarding behavior data collections; "...when we were talking about the charts and the data, I had said that I was worried that the -it's not being accurately documented, because an example is when [Student C] was struggling on that day the [they]- of the reading packet, and I think it was [Staff Member] took [Student C] to wherever. And that-[Student C] had all pluses but wasn't even in those classes. [Student C] was struggling all morning and went to a morning math class after 11, and I'd said I-that data would be off because [Student C's] getting pluses but [Student C's] not even there. That should be minuses, 'cause [Student C] was struggling in a different room trying to get [Student C] to comply with completing that." (Video of Facilitated IEP Meeting for Student C dated September 20, 2023.)
52. The Parent also stated; 'Given the things that, like, has occurred,...should we have some kind of behavior goal related to what we've been seeing,

to show whether the-our BIP is working, or when we develop that, or whatever? That relates to, you know, discontinuation of suspensions...Would there...would Do we need to create some kind of behavior goals to mimic what we see to show if they're gaining the skills and improving, or if they're continuing to decline?" (Video of Facilitated IEP Meeting for Student C dated September 20, 2023.)

53. A video conference was held to discuss placement, and prior written notice for Student C (no date) in which [Witness 21] stated; "I would also, um, what I would like to write would be, um, an idea that came up in my mind would be, if [Student C] could, uh, achieve 20 consecutive days or reasonable comparative criteria, [Student C] would be integrated into a, um, either the general education classroom or a general education." (Video Conference to discuss placement, no date.)
54. On October 30, 2023, during a Parent interview, the Parent stated Student C; "didn't get allowed to return to school until October 16<sup>th</sup>, [Student C] had been out of school the entire time...[Student C] wasn't even in school...the majority of the quarter, a couple of weeks in August there, and then mostly primarily out other than four days in September and over half August." (Interview with Parent dated October 30, 2023.)
55. On October 30, 2023, during an interview with the District, the Special Education Director stated; "the District blocked out this whole chunk of time. They planned on three IEP meetings. But the Parent basically, um said that [they] actually could not attend the IEP meetings until September 20<sup>th</sup>. So the emergency exclusions took place until September 20<sup>th</sup>." (Interview with District dated October 30, 2023.)
56. The District provided samples of the visual supports provided to Student C during the complaint period. (Samples of Visual Support for Student C.)
57. According to [Student C's] teachers, "if [Student C] was non-compliant, the teachers would give a single prompt, start a timer, and then walk away. Additional single prompts would be given to warn [Student C] of remaining time. If [Student C] was escalated, [Student C's] teachers would try not to talk to [Student C] at all, and if necessary, they would give simple directions one at a time. [Student C] was pre-warned/primed by referring to [their] behavior chart. For example, "in two minutes you will have to clean up," or "Next on the schedule is \_\_\_\_." [Student C] would receive choices and rewards frequently for doing appropriate behaviors." (District email dated November 3, 2023.)

### **Student C Issue # 1**

Did the District's disciplinary removal of the Student constitute a change of placement? [92 NAC 51-016.01].



92 NAC 51- 016.01 states:

- 016.01A *For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:*
  - 016.01A1 *The removal is for more than 10 consecutive school days; or*
  - 016.01A2 *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 School has suspended the Student improperly calling it an "emergency exclusion." (Letter of Complaint received by NDE September 19, 2023.)

*District Response*

The emergency exclusion which began on September 13, 2023, originally did not constitute a change of placement as it was originally supposed to end on September 15, 2023. However, when the exclusion was extended, it did constitute a change of placement because it resulted in [Student C] being out

of school for more than 10 school days. The exclusion ended on September 21, 2023. (Letter of Response dated October 19, 2023.)

### *Investigative Findings*

Attendance records for Student C indicated they were emergency excluded from school due to behavior issues for 11.5 school days between October 7, 2022, through September 20, 2023. The Parent emailed the District asking for clarification regarding the District email that Student C's suspension was continued and Student C was not allowed to come back to school from September 20, 2023, through September 21, 2023.

### *Summary and Conclusions*

Discipline removals of more than ten days constituted a change of placement for Student C. There is no record that the District provided special education services to Student C during the 1.5 school days Student C was suspended beyond 10 school days. The District offered special education services for Student C after the Complaint had been filed. The District failed to fully implement the requirements of 92 NAC 51-016.01.

Based on the Manifest Determination and Review dated September 26, 2023, Student C was suspended/emergency excluded for more than ten days, the District failed to fully implement the requirements of 92 NAC 51-016.01. Thus, the following **corrective action is required**.

### *Corrective Action*

The District offered special education services for Student C after the Complaint had been filed.

1. The District must submit service provider logs verifying the completion of the 1.5 days of compensatory services to NDE within [10] calendar days of the investigative report being issued.
2. The School District must develop and provide training to all relevant staff who assign discipline to students regarding disciplinary removal for students with disabilities. Staff involved in the training should include any of the groups of staff that may make the same violation(s) as found in the Investigation Report.
3. The training and trainer(s) must be approved by the NDE Office of Special Education two calendar weeks before the training.
4. The school district must provide NDE with copies of the participant sign-in sheets or other evidence of attendance the business day following the conclusion of the training(s).
5. The corrective actions must be completed within [60] calendar days of the receipt of this Investigation Report.

## **Student C Issue # 2**

Was the District required to conduct a manifestation determination review when the Student was suspended from school? [92 NAC 51-016.02].

92 NAC 51-016.02 states:

- 016.02A *School personnel may consider any unique circumstances on a case-by- case basis when determining whether a change in placement, consistent with the other requirements of subsection 016.02 of this Chapter, is appropriate for a child with a disability who violates a code of student conduct.*
  
- 016.02B *School personnel under subsection 016.02 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent these alternatives are applied to children without disabilities) and for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 92 NAC 51-016.01).*
  - 016.02B1 *After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the school district or approved cooperative must provide services to the extent required under 92 NAC 51-016.02D.*
  
- 016.02C *For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 92 NAC 51-016.02E, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures*

*that would be applied to children without disabilities, except as provided in 92 NAC 51-016.02D.*

016.02D *A child with a disability who is removed from the child's current placement pursuant to 92 NAC 51-016.02C or 016.02G must:*

016.02D1 *Continue to receive educational services, as provided in 92 NAC 51-004.01, so as to enable the 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; and*

016.02D2 *Receive, as appropriate, a functional behavior assessment, behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.*

016.02D3 *The services described in 92 NAC 51-016.02D1, 016.02D2, 016.02D4, and 016.02D5 may be provided in an interim alternative educational setting.*

016.02D4 *A school district or approved cooperative is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.*

016.02D5 *After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive*

*school days and is not a change of placement under 92 NAC 51-016.01, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in 92 NAC 51-004.01, so as to enable the 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.*

016.12D6 *If the removal is a change of placement under 92 NAC 51-016.01, the child's IEP team determines appropriate services under 92 NAC 51-016.02D.*

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:*

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

NAC 51-016.02E1a or 016.02E1b was met.

016.02E3 *If the school district or approved cooperative, the parent, and relevant members of the child's IEP team determine the condition described in 92 NAC 51-016.02E1b was met, the school district or approved cooperative must take immediate steps to remedy those deficiencies.*

016.02F *If the school district or approved cooperative, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must:*

016.02F1 *Either conduct a functional behavioral assessment, unless the school district or approved cooperative had conducted a functional behavioral assessment before the behavior that resulted in a change of placement occurred, and implement a behavioral intervention plan for the child; or if a behavioral intervention plan has already been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and*

016.02F2 *Except as provided in 92 NAC 51-016.02G, return the child to the placement from which the child was removed, unless the parent and the school district or approved cooperative agree to a change of placement as part of the modification of the behavioral intervention plan.*

016.02G *School personnel may remove a child to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is*

*determined to be a manifestation of the child's disability, if the child:*

- 016.02G1 *Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative;*
- 016.02G2 *Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative; or*
- 016.02G3 *Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Nebraska Department of Education or a school district or approved cooperative.*
- 016.02H *On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative shall notify the parents of that decision and provide the parents the procedural safeguards in 92 NAC 51-009.*

*Allegations/Parent Position*

The School has not held a manifestation determination review meeting. (Letter of Complaint received by NDE September 19, 2023.)

### *District Response*

A Manifestation Meeting took place on September 26, 2023. The manifestation team determined that the conduct that resulted in the emergency exclusions was not a manifestation of Student C's disability. (Manifestation Determination dated September 26, 2023.)

### *Investigative Findings*

During the 2023-2024 school year, Student C was excluded from School for 10 school days in a school year at the time the Complaint was filed. A Manifestation Determination meeting was not conducted during the Complaint period. After the complaint was filed, a Manifestation Determination meeting was held for Student C on September 26, 2023.

### *Summary and Conclusions*

The District excluded Student C from school due to behavior for 10 school days in a school year and was not required to conduct a Manifestation and Determination Review as the disciplinary removals were not for more than 10 school days. Based on these findings, the District implemented the requirements of 92 NAC 51-016-02, and **corrective action is not required.**

### **Student C Issue # 3**

Did the District develop, review, revise, and implement the Student's IEPs? [92 NAC 51-00710; 92 NAC 51-007.02].

92 NAC 51-007.10 states:

- 007.10A *Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;*
- 007.10B *The results of any reevaluation conducted under 92 NAC 51-006.05A;*
- 007.10C *The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1;*
- 007.10D *The child's anticipated needs; or*
- 007.10E *Other matters.*

92 NAC 51-007.02 states:

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



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

#### *Allegations/Parent Position*

The School has failed to draft and implement an appropriate IEP for the Student (Letter of Complaint received by NDE September 19, 2023.)

#### *District Response*

The District reviewed, revised, and implemented [Student C's] IEP. The MDT team agreed that [Student C] met the criteria to verify as a student with Autism. An IEP team met on November 3, 2022, to develop a revised IEP and BIP for [Student C]. According to [Student C's] IEP progress report from the fourth quarter of the 2022-23 school year [Student C] did extremely well. Like the other students, this quarter [Student C] has struggled with [their] behaviors and has been emergency excluded from school several times. In response, [Student C's] IEP team met on September 20, 2023, to review and revise [Student C's] IEP and BIP to ensure that [Student C] has appropriate services and supports. [Student C's] IEP team met for approximately 19 hours over the course of 8-9 days to develop [their] new IEP and BIP. Those new documents have been provided in the enclosures. [Student C] returned to school on Tuesday, October 17, and has had a successful week. (Letter of Response dated October 19, 2023.)

#### *Investigative Findings*

During the Complaint window, no record indicated that the Parent made a request to review or revise the IEP prior to the September 20, 2023, IEP meeting. After the Complaint period, the District met to review and revise the IEP on September 26, 2023.

### Summary and Conclusions

Based on the fact there is not a record that the Parent requested to review or revise the IEP during the Complaint window, the District implemented the requirements of 92 NAC 51-007.10; NAC 51-007.02, and **no corrective action** is required.

### Student C Issue #4

Did the District make special education placement determinations based on the Least Restrictive (LRE) requirements? [92 NAC 51-008.01; 92 NAC 51-009.02]

92 NAC 51-008.01 states:

- 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.*
- 008.01B *Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual multidisciplinary evaluation of the child's development and educational needs.*
- 008.01C *In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:*
  - 008.01C1 *The placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and*
  - 008.01C2 *The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-*

*008.01 and based on the child's unique needs and not on the child's disability.*

008.01D *Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.*

008.01D1 *The continuum must:*

008.01D1a *Include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and*

008.01D1b *Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.*

008.01E *The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:*

008.01E1 *Is determined at least annually;*

008.01E2 *Is based on his or her individualized education program; and*

008.01E3 *Is as close as possible to the child's home.*

008.01F *The various array of placement options included under 92 NAC 51-008.01D must be available to the extent necessary to implement the individualized education program for each child with a verified disability.*

008.01G *Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.*

008.01H *In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.*

008.011 *A child with a disability must not be removed from education in age- appropriate regular classrooms solely because of needed modifications in the general curriculum.*

92 NAC 51-009.02 states:

009.02A *The school district or approved cooperative shall ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of their child.*

009.02B *In implementing the requirements of 92 NAC 51-009.02A, the school district or approved cooperative shall use procedures consistent with the procedures described in 92 NAC 51-007.06A, 007.06B, and 009.01A.*

009.02C *If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district or approved cooperative shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.*

009.02D *A placement decision may be made by a team without the involvement of the parents if the school district or approved cooperative is unable to obtain the parents' participation in the decision. In this case, the school district or approved cooperative must have a record of its attempt to ensure their involvement including information that is consistent with the requirements of 92 NAC 51-007.06D.*

#### *Allegations/Parent Position*

The School has proposed to isolate the Student away from all their peers. (Letter of Complaint received by NDE September 19, 2023.)

#### *District Response*

The IEP that [Student C] had at the start of this school year called for [them] to receive services in both the special education classroom and the general education classroom. (Letter of Response dated October 19, 2023.)

*Investigative Findings*

Student C's IEP called for Student C to receive specially designed instruction in the general education classroom. Student C's placement was in the general education classroom. The accommodations for Student C listed sensory breaks or input, reteaching as needed, allowing for the use of resource assistance, when necessary, flexible seating, limiting the audience when escalated, and working on assignments and taking tests outside of the classroom in a small group or one-on-one for fewer distractions.

*Summary and Conclusions*

Based on the IEP, which allowed for special education support to occur outside of the general education classroom, the District implemented the requirements of 92 NAC 51-008.01.

**Student C Issue #5**

Did the District provide a response to reasonable requests from the Parent for explanations and interpretations of educational records.? [92 NAC 51-009.03B2a]

92 NAC 51-009.03B2a states:

009.03B2a      *The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records.*

*Allegations/Parent Position*

The School has prohibited the Parent from having any contact with anyone at the school except for administrators (Letter of Complaint received by NDE September 19, 2023.)

*District Response*

Each time one of the students in this Complaint has a behavior issue, the parent is informed. Then, immediately the parent demands unreasonable amounts of information within an unreasonable amount of time. Each time the parent emails the school district, [Parent] includes numerous administrators and teachers and often accuses the staff of not working with the students correctly. The tones of the parent's emails lead to staff feeling panicked and the need to respond to [Parent] immediately. This results in the school staff dropping what

they are working on to quickly follow up on the parent's questions in the level of detail [Parent] is requesting. Then when the teachers do this, they receive more questions and accusations in return. As a result, the District instituted a communications plan with the parent whereby [Parent] could submit [their] questions to administrators at the District. The administrators would gather the information requested by the parent and respond later in the week. The District never denied the parent information but merely controlled how often and to whom [Parent] requested the information. (Letter of Response dated October 19, 2023).

#### *Investigative Findings*

On September 6, 2023, the District emailed the Parent and notified them that they would be placed on a communication plan, and unless it were urgent, a designated staff person would reply to Parent emails once per week. During interviews, the Parent reported that they were scared to ask questions. Student C's IEP did not include the accommodation for daily home-school communication.

#### *Summary and Conclusions*

Based on Student C's IEP not having daily home/school communication as an accommodation, limiting the District's responses to questions on a weekly basis was not unreasonable. The District implemented the requirements of 92 NAC 51.009.03B2a and **no corrective action** is required.

#### **Notice to District (If FINDINGS)**

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:

Sharon Heater, Complaint Specialist  
Mary Lenser, Complaint Specialist  
NDE Office of Special Education  
[nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov)