

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 23.24.15  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** November 1, 2023  
**Date of Report:** REDACTED

### Introduction

This report is in response to a complaint filed with the Nebraska Department of Education (NDE) on behalf of the Student by the Parent and grandmother.

The Individuals with Disabilities Education Act (IDEA) and the Nebraska Administrative Code give NDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by NDE (34 C.F.R. 300.153(c); 92 NAC 51-009.11B5).

In this case, the complaint was received on November 1, 2023, and therefore, only allegations occurring on or after November 1, 2022, were investigated.

The following information was obtained through the interviews and documentation review and is relevant to all of the allegations. Information prior to the investigatory timeline is included for context but not considered for the summary or conclusions for the issues identified.

This investigation involves an eight-year-old third grade student who is enrolled in an elementary school within the District. According to the Letter of Complaint, the Student is eligible for a Section 504 plan due to a blood disorder called Idiopathic Thrombocytopenic Purpura that causes easy bruising and the risk of severe bleeding. The Parent also reports that the Student has been diagnosed with ADHD and anxiety. Further, according to the Letter of Complaint, and verified by District documentation, the Student was found eligible for special education in kindergarten. His IEP during the time period covered by this complaint investigation addressed a Speech Language Impairment and a Specific Learning Disorder.

The Student does not have a history of significant behavioral challenges, though at the start of the 2023-24 school year, the Student demonstrated a significant increase in challenging behavior, including eloping, yelling, standing on tables and other furniture, and throwing objects. The issues raised in the complaint are all related to the ways that the District responded to the increase in behavior challenges, which the Parent believes denied the Student a Free Appropriate Public Education (FAPE).

### Issues Investigated

1. Did the District ensure that the placement decision was 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? [92 NAC 51-008.01C1]
2. Did the District ensure that the placement decision was 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? [92 NAC 51-008.01C2]
  3. Did the District ensure that a variety of assessment tools and strategies were used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum that may assist in determining the content of the child's IEP? [92 NAC 51-006.02C5]
  4. Did the District administer assessments and other evaluation measures as may be needed to produce data by the IEP team under 92 NAC 51-006.06A2? [92 NAC 51-006.06B]
  5. In developing, reviewing, or revising the child's IEP, did the team consider the strengths of the child, the concerns of the parents, the results of recent evaluation data, the academic, developmental, and functional needs of the child, and the use of positive behavior interventions and supports and other strategies to address that behavior? [92 NAC 007.07B]
  6. Did the District ensure that the parent was afforded the opportunity to participate in the IEP meeting by providing notice that indicated the purpose, time, and location of the meeting and who would be in attendance? [92 NAC 51-007.06A&B]
  7. Has the District denied the Student a Free Appropriate Public Education (FAPE)? [92 NAC 51-004.01]

### **Information Reviewed by Investigator**

#### *From the Complainant*

- Letter of Complaint received by NDE November 1, 2023
- Interview with the Complainant December 19, 2023
- Attendance record documented by the Parent for the 2023-34 school year
- IEP dated January 12, 2023
- Behavior Intervention Plan dated September 6, 2023
- IEP Meeting Request dated October 20, 2023, for a meeting November 6, 2023
- Safety Plan dated September 14, 2023
- Release of Information for exchange of information between the District and the grandparent dated October 24, 2023

- Emails exchanged between the Parent, grandparent, and the District, dated October 23- October 25, 2023

*From the School District*

- Letter of Response dated November 22, 2023; received by NDE November 22, 2023
- Interview with District Staff December 19, 2023
- Notices of Meeting dated October 2, 18, 20, 27, and November 2, 2023.
- MDTs dated January 12 and October 20, 2023
- IEPs dated January 12 and November 14, 2023
- Tier 2 Support Tracker
- Team Leader Timeline and Observations dated October 3 and 6, 2023
- Functional Behavior Assessment dated September 6, 2023
- Student Schedule for the date range November 2-7, 2023
- 15-minute data collection tracker
- Daily Tracking dated October 5-10, 2023
- Expectation Totals, Schedule Totals, Student Totals by Day, dated August 28, through October 17, 2023
- Prior Written Notice dated November 2, 7, and 14, 2023
- District's Article 7 Special Education Policy 7000

**Issue # 1**

Did the District ensure that the placement decision was 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? [92 NAC 51-008.01C1]

92 NAC 51-008.01C states:

008.01C      *In determining the educational placement of a 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*

*Allegations/Parent Position*

According to the Letter of Complaint, the Student has been denied the opportunity to be with peers in the Student's learning environment, secluded in

a small classroom and not allowed to participate in recess, breakfast, lunch, or any other activities from early September through November 1, the date the complaint was filed. During this time period, the Student was assigned to a shortened school day for two weeks without input being provided by the Parent or the IEP team. (Letter of Complaint dated November 1, 2023)

#### *District Response*

In their response, the District makes the case that because the Student's behavior was being considered as part of the Multi-Tiered Supports for Students, which is a general education process, and therefore, where and with whom the Student was receiving education was not considered "placement" as referenced by the IDEA, and instead served as general education intervention. (Letter of Response dated November 22, 2023)

#### *Findings of Fact/Investigative Findings*

- Throughout the time period outlined by the Parent, the Student's IEP dated January 12, 2023, included the following services:
  - 10 minutes, 6 times each month direct speech language services in a special education room
  - 40 minutes, 15 times each month specialized instruction in a special education room
  - 15 minutes, 3 times each quarter occupational therapy services in a special education room
- The Service Summary states:
  - *[The Student] will receive reading support during guided reading time and writing support during writing time. [The Student] will also receive speech therapy services. [The Student] will remain in the general education classroom for the remainder of [the Student's] school day... [The Student] participates in all activities, field trips, assemblies, etc. The IEP team considered the need for supplemental aids and services and it was deemed not necessary.*
- The District has a continuum of three different settings that they use for general education students with behavioral needs. One is used for breaks, another for acting out and disruptive behavior and a third which is used for serious behavior that puts a student or others at risk. (Letter of Response dated November 22, 2023).
- From the dates September 12- October 20, 2023, the location where the Student spent time was based on the Student's behavior that specific day. At times, (the District estimated roughly 10% of the time), the Student was in the general education classroom or participating with the general education class in recess, lunch, or other activities. However, as

estimated by the District, 90% of this time was spent in one of the smaller locations, described above, which are used for containment of students with behavior challenges. (Interview with District Staff, December 19, 2023)

- The District held a meeting on October 20, 2023, in which the Parent had limited time before another outside medical appointment. At this meeting, the District proposed a shortened school day of 1.5 hours, which represented the amount of time that the Student could generally attend school without behavior problems (Letter of Response dated November 22, 2023).
- The Parent and grandparent did not object in this meeting as they were surprised by the suggestion and had very limited time. However, the Parent and grandparent drafted an email the next school day outlining their disagreement with this option, recognizing that it did not provide the Student FAPE. (Email sent from the Parent and grandparent to the District on October 23, 2023)
- From the dates October 20- November 2, 2023, the District limited the Student's school day to just two hours. During that time, all the Student's school time was spent in one of the smaller locations described above and the Student did not participate in any general education activities. (Interview with District Staff, December 19, 2023)
- On November 2, the IEP team convened, and the Student was returned to a full day of school, with all time spent in the secondary location. (Letter of Response dated November 22, 2023, and Interview with District Staff on December 19, 2023)
- A statement is provided in a Prior Written Notice issued following the November 2 meeting, which references a discussion of LRE, but the statement is incomplete and does not reflect a change of placement that the District is proposing (Prior Written Notice dated November 2, 2023)

### *Summary and Conclusions*

In January of 2023, the IEP team agreed that the services listed on the IEP constituted the Student's Least Restrictive Environment. For a student who is eligible for special education services, **the IEP team** is the body responsible for making decisions regarding any changes of placement or service delivery. The IEP team has a total of 10 school days to use an alternate location or suspension (according to 016.01A) before they are required to consider whether the behavior in question is a manifestation of a student's disability and to make appropriate changes to the IEP. Therefore, when the Student began demonstrating an increase in challenging behavior, it was the responsibility of the IEP team to convene and develop a plan to address these needs. While use

of general education interventions (such as the MTSS process) can certainly be an option for a student demonstrating new challenging behaviors, this is a decision that should be made by the IEP team as part of a comprehensive review of the IEP, and monitoring of the effectiveness of such interventions is also the responsibility of the IEP team as part of a more comprehensive evaluation of the Student's needs. Until the IEP team convenes and determines that a change of placement or service delivery is warranted, any more than 10 days outside of the environment outlined in the IEP is a violation of the IDEA.

Because the District did not convene the IEP team to discuss the appropriate interventions, location, and duration of services, the District failed to implement the requirements of 92 NAC 51- 008.01C. Thus, **corrective action is required**. Because the issues in this complaint are so closely related, the required corrective action will be summarized at the conclusion of this report.

## **Issue # 2**

Did the District ensure that the placement decision was 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? [92 NAC 51-008.01C2]

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.*

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

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.*

### *Allegations/Parent Position*

According to the Letter of Complaint, the Student has been denied the opportunity to be with peers in the learning environment, secluded in a small classroom and not allowed to participate in recess, breakfast, lunch, or any other activities from early September through November 1, the date the complaint was filed. Any time the Student was not in general education, instruction was provided in a 1:1 instructional model. During this time period, the Student was assigned to a shortened school day for two weeks with little to no interaction with peers. (Letter of Complaint dated November 1, 2023)

### *District Response*

The District contends that the Student's behavior became highly disruptive and even, at times, unsafe for the Student and others, warranting the change to a different location for service delivery. Because the location was used with general education students as part of the MTSS process, the District did not consider this a change of placement. (Letter of Response dated November 22, 2023)

### *Investigative Findings*

- See the Investigative Findings from Issue #1 as relevant to this issue.
- During the time in the alternate locations, the Student worked 1:1 with an adult, and when possible, specialized instruction was provided as well as support to complete class work. The District indicated that at times, when services providers arrived to deliver IEP services, the Student's behavior prevented these services from being delivered. (Interview with District Staff, December 19, 2023)
- On September 29, the Student's class took a fieldtrip, and the Parent chose to keep the Student home for fear of behavioral issues on the fieldtrip (Interview with the Parent and grandparent December 19, 2023)
- Also, during this time period, the school held an assembly. The Student was accompanied by an adult and allowed to participate, sitting to the side of the auditorium with the assigned adult. (Interview with District Staff, December 19, 2023)

### *Summary and Conclusions*

The findings and conclusions from Issue #1 are relevant to this issue as well. In addition to the investigative findings listed above, it is clear that the Student's educational placement from September 12 through November 2, 2023, was a more restrictive environment than the Student's IEP dated January 12, 2023,

outlined. The Student had far more limited access to general education instruction, general education peers, special education services, special education peers, or the typical parts of the Student's previous school day (such as lunch, recess, and other classroom activities). No attempts were documented demonstrating efforts on the part of the IEP team to consider appropriate supplementary aids and services that may assist the Student to participate in general education, and instead, the Student was moved to a more restrictive environment.

Based on these facts, the District failed to fully implement the requirements of 92 NAC 51-008.01. Thus, **corrective action is required** and will be outlined at the conclusion of this report.

### **Issues # 3 & 4**

These issues are closely related, and thus, are addressed together.

#3 - Did the District ensure that a variety of assessment tools and strategies were used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum that may assist in determining the content of the child's IEP? [92 NAC 51-006.02C5]

92 NAC 51-006.02C5 states:

006.02C5      *School districts and approved cooperatives must ensure a variety of assessment tools and strategies are used to gather relevant functional, developmental and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general education curriculum that may assist in determining:*

006.02C5a      *Whether the child is a child with a disability under 92 NAC 51-003.08; and*

006.02C5b      *The content of the child's IEP.*



#4 - Did the District administer assessments and other evaluation measures as may be needed to produce data by the IEP team under 92 NAC 51-006.06A2? [92 NAC 51-006.06B]

92 NAC 51-006.06 states:

006.06        *Review of Existing Evaluation Data*

006.06B        *The school district or approved cooperative shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP team under 92 NAC 51-006.06A2.*

#### *Allegations/Parent Position*

In the Letter of Complaint and supported in a Prior Written Notice issued on November 2, 2023, the parent and grandparent expressed their disagreement with the findings of the FBA, specifically that the function of the Student's behavior was to gain adult attention. The Parent and grandparent instead, believed that anxiety was fueling much of the behavior being observed. While the Student had never been formally diagnosed with ADHD, since kindergarten, the Student had received a number of interventions to support problems typically related to ADHD, problems that seemed to increase at the start of the 2023-24 school year. During this time, the Parent and grandparent have worked to secure an outside psychological evaluation that would be covered by Medicaid and are unable to obtain this evaluation until February of 2024. (Letter of Complaint dated November 1, 2023)

#### *District Response*

The District gathered a variety of sources of data to make decisions for the Student including classroom observations, check-in/check-out data, daily summaries of the Student's activities, and an FBA. (Letter of Response dated November 22, 2023)

#### *Investigative Findings*

- An MDT was conducted in January of 2023. This MDT report included the following:
  - The student's strengths (kind, good friend, usually very happy, works well in small groups, energetic, likes games, likes earning prizes).
  - Academic data (from report cards and intervention data)
  - IEP progress report data
  - Handwriting Without Tears Screener of Handwriting Proficiency
- The January 2023 MDT resulted in the Student being found eligible with a Specific Learning Disorder and a Speech-Language Impairment

- The Student was re-evaluated during September and October of 2023 as reflected by an MDT dated October 20, 2023. Academic evaluation data are as follows:
  - Report Cards from 2022-23 school year
  - Measures of Academic Progress, Fall 2023
  - MTSS reading data from 2021-22 school year
  - IEP goal progress report data
- In addition, to measure Social/emotional functioning, the MDT includes the following statements:
  - *Based on the existing data, no additional behavior assessments were completed... [The Student] participated in an intervention to address the concerns with [the Student's] behavior.*
  - Behavior intervention data from Check-In/Check-Out in which the Student participated in from September 26, 2022- February 24, 2023
  - Behavior intervention data from Check-In/Check-Out intervention which was resumed during the 2023-24 school year.
  - A statement of results from a functional behavior assessment
- Finally, to measure speech-language skills, the MDT includes the following:
  - Evaluation data completed in January 2023 (including parent interview, Goldman-Fristoe Test of Articulation-3 scores, and the Khan-Lewis Phonological Analysis-3 results.
  - IEP progress report data
- The MDT includes the following statement:
  - *The Multidisciplinary Team determined that [the Student] meets the qualifying criteria as a student with an Other Health Impairment according to NDE Rule 51 guidelines. This disability adversely affects the child's educational performance and demonstrates a need for special education services in order for [the Student] to make satisfactory progress in school. [The Student] does not yet have a diagnosis of ADHD but is likely to get one from a finished psychological report from outside the school. [The Student] has exhibited characteristics of ADHD since starting kindergarten at [the District] but behaviors related to this have been managed by Tier 1 and Tier 2 strategies in the past that are not working anymore.*
  - The psychological evaluation referenced above is not scheduled to occur until February of 2024. (Interview with the Parent and grandparent December 19, 2023)

### *Summary and Conclusions*

During the fall of 2023, the Student began to demonstrate a level of behavior that was impacting the Student's educational performance. Of note, the

Student has a documented medical condition, learning disabilities, a speech-language impairment, a history of ADHD-related behaviors documented in previous MDTs as well as parent-reported anxiety, any of which could be related to an increase in problem behaviors.

In response to the increase in problem behavior, the District conducted an FBA and developed a BIP, though did not conduct any formal evaluation (particularly the use of any norm-referenced data) to better understand the Student's social-emotional needs or the source of the behavior. Further, the statement in the IEP notes that the Rule 51 *guidelines* instead of Rule 51 itself were used to determine eligibility. The IEP team ultimately changed the Student's primary identification to Other Health Impaired (based on the **possibility of** an ADHD diagnosis) without any supporting data that confirmed symptoms of ADHD, demonstrated the impact these symptoms have on the Student's educational performance, or identified areas for specialized instruction. The Parent's concerns regarding anxiety are not addressed in any way in the MDT, and the limited data does not provide any clear connection between the Student's disability and needs. Consequently, the evaluation data collected is quite inadequate to make an eligibility determination or to determine the needs of the Student which should be addressed by the IEP.

Based on the limited evaluation data available, the District failed to fully implement the requirements of 92 NAC 51- 006.02 and 006.06. Thus, **corrective action is required** and will be outlined at the conclusion of this report.

### **Issue # 5**

In developing, reviewing, or revising the child's IEP, did the team consider the strengths of the child, the concerns of the parents, the results of recent evaluation data, the academic, developmental, and functional needs of the child, and the use of positive behavior interventions and supports and other strategies to address that behavior? [92 NAC 007.07B]

92 NAC 51-007.07 states:

- 007.07B *In developing, reviewing, or revising each child's IEP:*
  - 007.07B1 *The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.*
  - 007.07B2 *The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the*

*academic, developmental, and functional needs of the child.*

007.07B3

*In the case of a child whose behavior impeded his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions and supports and other strategies to address that behavior.*

### *Allegations/Parent Position*

Because the Parent brought up concerns about FAPE (Letter of Complaint dated November 1, 2023), this issue was added by the investigator to determine if the Student's IEP was appropriately designed to meet the emerging behavioral needs.

### *District Response*

The District worked to develop an IEP that was based on the data gathered through the FBA and the interventions employed during the first two months of the school year. (Letter of Response dated November 23, 2023)

### *Investigative Findings*

- The IEP team convened on November 2, 2023, and began drafting a new IEP. The team then re-convened on November 14, 2023, and finalized a new IEP (Letter of Response dated November 22, 2023)
- The Student's placement was changed to a more restrictive environment in a special school (Letter of Response dated November 22, 2023)

### *Summary and Conclusions*

The District's failure to develop, review, or revise the IEP during the time period covered by this complaint is at the crux of all the findings outlined within the investigation report. Ultimately, the District did convene the IEP team the day after this complaint was filed. Since that time, the District has developed a new MDT and a new IEP, and the Student's placement has been changed.

Although this process could have been more timely, the District ultimately implemented the requirements of 92 NAC 51- 07.07 and **no corrective action** is required.

### **Issue # 6**

Did the District ensure that the parent was afforded the opportunity to participate in the IEP meeting by providing notice that indicated the purpose, time, and location of the meeting and who would be in attendance? [92 NAC 51-007.06A&B]

92 NAC 51-007.06 states:

007.06A *The school district or approved cooperative shall take steps to ensure that one or both of the parents of the child with a disability are present at the IEP conference or are afforded the opportunity to participate, including:*

007.06A1 *Notifying parents of the IEP conference early enough to ensure that they will have an opportunity to attend; and*

007.06A2 *Scheduling the meeting at a mutually agreed on time and place.*

007.06B *The notification under 92 NAC 51-007.06A1 must indicate the purpose, time and location of the meeting and who will be in attendance and inform the parents of the provisions of 92 NAC 51-007.03A6, 007.03A6a, and 007.05.*

#### *Allegations/Parent Position*

The District called a meeting on October 20, following 3 days of suspension. The family was under the impression that this would be a “short re-entry meeting,” and had another appointment scheduled. The school requested to complete the Student’s IEP at this time and was asked to sign a form to waive the 5-day notice of IEP meeting. The Parent signed, feeling rushed, and it was at this time that a shortened school day (just 2 hours) was proposed. The Parent was not prepared for this. (Letter of Complaint dated November 1, 2023)

#### *District Response*

The District initially convened this IEP meeting to complete the Student’s MDT, though once the Parent was there, asked if the Parent was comfortable waiving the 5-day Notice requirement in order to proceed to the IEP. The IEP was not reviewed and instead, an IEP meeting was scheduled for November 6 (and subsequently moved to November 2) and carried over on November 14 to develop the new IEP. (Letter of Response dated November 23, 2023)

#### *Investigative Findings*

- The District provided a Notice of Meeting Request dated October 18, 2023, for a meeting to be held on Friday, October 20, 2023. According to

interviews with the District, this Notice was hand-delivered while the Parent was at the school on October 18, 2023.

- The Parent and grandparent disagree, and attest that this document was handed to the Parent at the start of the October 20, 2023, meeting (Interview with the Parent and grandparent December 19, 2023)
- The Notice indicates that the purpose of the meeting was a Multidisciplinary Team Meeting and included all invited participants.
- The District's current special education policies do not outline any procedures regarding dissemination of Notices of Meeting. (District's Article 7 Special Education Policy 7000).

### *Summary and Conclusions*

The District developed and distributed an appropriate Notice of Meeting that included all required notice requirements, though whether or not this notice was delivered in a timely manner is unclear and there is no documentation to determine when the Notice was provided to the Parent.

Based on the District's failure to have any formal policies or procedures regarding the dissemination of Notice of Meeting to a parent and the lack of documentation that this was actually provided, the District failed to fully implement the requirements of 92 NAC 51- 007.06 and corrective action is required.

### **Issue # 7**

Has the District denied the Student a Free Appropriate Public Education (FAPE)? [92 NAC 51-004.01]

92 NAC 51-004.01 states:

004.01 *School districts and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which the child reaches age twenty-one... have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs.*

### *Allegations/Parent Position*

According to their letter of complaint dated November 1, 2023, the Parent believes that in moving the Student to a more restrictive environment and not allowing access to the services outlined by the IEP, the Student was denied FAPE.

### *District Response*

Throughout the process, the District's efforts and intent were to provide the Student with FAPE. The use of the MTSS process represented the District's effort

to not prematurely and falsely identifying the Student as having a behaviorally related disability. (Letter of Response dated November 22, 2023)

### *Investigative Findings*

- The active IEP at the time that the Student's behavior worsened stated that positive behavioral interventions and strategies were "considered and deemed unnecessary at this time" (IEP dated January 12, 2023)
- Consistent with the above statement, the IEP did not include any goals, services, or supports to address problem behavior of any kind. (IEP dated January 12, 2023)
- Problem behavior was evident immediately when school resumed in August of 2023, and the District put the Student back on the Check-In/Check-Out intervention. (Interview with the District December 19, 2023)
- On September 1, a review of the data indicates that the Student was "not responding" to the intervention. Data were reviewed weekly until November 10, 2023, and each week, data indicated that the Student was "not responding." (Tier 2 Support Tracker)
- A referral was submitted for a Functional Behavior Assessment to be conducted on September 24, 2023 (Team Leader Timeline and Observations dated October 3 and 6, 2023)
- The IEP team convened for the first time on October 20, 2023, and the Parent was not aware that they were attending an IEP meeting. The IEP was not discussed at this meeting. (Interviews with the District and the Parent December 19, 2023)
- The first time the IEP team convened to review the IEP was November 2, 2023. (Interviews with the Parent and the District December 19, 2023, and Letter of Response dated November 22, 2023)
- The Student was served in a placement more restrictive than that outlined by the IEP from September 12- November 14, 2023, (Letter of Response dated November 22, 2023) which constitutes 41 school days according to the District 2023-24 Calendar.
- For 10 of those 41 days, the Student attended only two hours of the 6.5 hours each school day. (Letter of Response dated November 22, 2023)
- The District calendar outlines 177 school days for the 2023-24 school year (2023-24 District Calendar)
- As outlined in issues #3 and #4, the District failed to conduct a comprehensive evaluation of the student to better understand the Student's needs.

### *Summary and Conclusions*

The District was aware and had data that the Student had new needs which were not addressed by the current IEP prior to September 1, 2023, according to intervention data, and yet did not convene the IEP team to better understand these behaviors or to develop a plan until November 2, 2023. During this time, the District changed the Student's placement without convening the IEP team or following the IDEA requirements related to manifestation determination. These failures on the part of the District resulted in nearly a quarter of the Student's third grade year (23.2%) wherein the Student was not served in the Least Restrictive Environment and special education needs were not adequately met. Further, whether or not the current IEP is appropriate is called into question by the limited evaluation data that were gathered.

Based on the amount of time that elapsed before appropriate special education procedures were followed to meet the Student's unique needs related to the disability, the District failed to fully implement the requirements of 92 NAC 51-004.01 in providing the Student FAPE. Thus, **corrective action is required.**

### *Corrective Action*

#### *Procedure Development*

1. The District shall develop formal procedures regarding the appropriate means of dissemination of Notices of Meeting so that there is clear evidence that such Notices have been provided in a timely manner. (Issued 6)
2. A district procedure shall be provided to NDE no later than February 1, 2024, along with evidence that this policy has been disseminated.

#### *Training*

3. The District shall conduct in-person training with all certified special education staff that covers the following topics:
  - a. MTSS and Special Education (Issues 1, 2, & 7)-
    - i. How can MTSS procedures be used for a student who is eligible for special education?
    - ii. What are the requirements under the IDEA if these procedures are used?
    - iii. How to set up appropriate core behavioral practices to support students with disabilities behavioral needs while adhering to placement decisions made by the IEP team?
  - b. Evaluation (Issues 3 & 4)-
    - i. What is a comprehensive evaluation for special education and



- ii. When is such an evaluation warranted?
    - iii. How are different types of evaluation data used to inform eligibility, placement, and the contents of the IEP?
  - c. IEP Development (Issues 1, 2, & 7)-
    - i. Placement-
      - 1. What is "placement"; and
      - 2. How do location, LRE, and services relate to a placement decision?
    - d. Students with disabilities and discipline (Issue 7)-
      - i. manifestation determination requirements,
      - ii. disciplinary removals and placement
    - e. Procedures on providing notice of meeting (Issue 6)
- 4. Training materials shall be presented to NDE no later than February 15, 2024, and the training shall be conducted and completed no later than March 1, 2024.
- 5. The 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).

#### Compensatory

- 6. The District will provide the Student 20 hours of individual tutoring in reading and four 30-minute private speech therapy sessions to compensate for the missed instruction and/or inability to benefit from instruction during the 41 days of school that the Student was not served in an appropriate placement. This accounts to roughly 45 minutes of academic instruction four days each week as well a portion of the 60 minutes per month that were potentially missed. (Issue 7)
  - a. No later than January 19, 2024, the IEP team, including the Parent shall determine the schedule for which the compensatory services will be provided. If the district is unable to convince the Parent to attend the IEP Team meeting, the district will document the attempts to contact the parent as required by 92 NAC 007.06D and hold the meeting without the parent.
  - b. The schedule for compensatory services must be provided to NDE within 10 calendar days of the IEP Team meeting.
  - c. Compensatory services shall be completed by May 15, 2024. Student absence or refusal of the parent to make the child available shall result in a waiver of service scheduled for that day. Staff absences must be rescheduled. Any compensatory services declined or not used by May 15, 2024, shall be deemed waived

(assuming the District has made a good faith effort to timely commence and provide all compensatory services).

- d. The District must submit service provider logs verifying completion of all compensatory services to NDE by the last business day of each month until the service is complete, and all service has been verified.

#### Reevaluation and Reconvene

7. The District will provide the Parent a list of local providers who can conduct a comprehensive psychological evaluation (including cognitive, academic, memory and learning, executive functioning, social-emotional, and behavioral assessment) at district expense. Names of local providers shall be provided to the Parent no later than January 19, 2024. (Issues 3 &4)
8. The Parent must provide the results of the evaluation to the District and to NDE no later than March 19, 2024.
9. No later than April 18, 2024, the IEP Team shall reconvene to consider the new evaluation and determine the appropriate eligibility based on the criteria and definition contained within 92 ANC 51-006.04 and educational needs (92 NAC 51-006.03E2b).
10. The notice(s) of meeting, MDT, IEP and associated PWN must be sent to NDE no later than 10 calendar days after the IEP meeting (Issues 3, 4, &6).
11. By August 1, 2024, a random sample of MDT's, IEPs and Notice of Meeting will be reviewed to ensure:
  - a. MDTs show a comprehensive evaluation conducted and include a statement of eligibility based on the criteria and definition contained within Rule 51 (Issue 3 and 4).
  - b. Placement based on needs of the students (Issues 1 and 2)
  - c. Parents provided notice of meeting based on new procedures (Issue 6)

#### **Notice to District**

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

Jordyn Brummund, Complaint Specialist  
Abbey Cron, Complaint Specialist  
NDE Office of Special Education  
nde.speddr@nebraska.gov