

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.16
Complaint Investigator: REDACT
Date Complaint Filed: November 6, 2023
Date of Report: REDACT

Issues Investigated

1. Did the District implement the Students' IEPs as designed? [92 NAC 51-007.02A, 92 NAC 51-007.07A8, 92 NAC 51-007.07B3]
2. Did the District develop an IEP that met the unique needs of the Student? [92 NAC 51-007.07A1; 007.07A2; and 007.07A5]

Information Reviewed by Investigator

From the Complainant

1. Letter of Complaint dated November 6, 2023; received by NDE November 6, 2023
2. Complaint, Student, November 6, 2023
3. IEP, Student, May 24, 2023
4. Prior Written Notice, Student, May 24, 2023
5. Parental Consent for Public School District To Access Medicaid Funding, Student, May 24, 2023
6. Document, nonverbal code, no date
7. Functional Behavioral Assessment (FBA) Summary and Behavior Intervention Plan (BIP), Student, September 20, 2023
8. Progress Report, Student, October 27, 2023
9. Multidisciplinary Evaluation Team (MDT) Report, Student, May 10, 2021
10. Draft Independent Evaluation Summary, Student, August 30, 2023
11. Draft IEP, Student, November 16, 2023
12. Student's Daily Behavior Report Card Rubric, no date
13. Prior Written Notice, Student, September 8, 2023
14. Document, Parental Concerns, no date
15. Zoom Recording, 10.3.23 IEP meeting Zoom recording, October 3, 2023
16. Emails between Parent and District dated May 10, 2021, through November 16, 2023
17. Parent Interview dated December 13, 2023

From the School District

1. Letter of Response dated December 1, 2023; received by NDE December 1, 2023
2. Multidisciplinary Evaluation Team MDT Report, May 10, 2021

3. Private Therapist Evaluation dated August 30, 2023
4. Progress Reports dated:
 - a. October 28, 2022;
 - b. March 24, 2023; and
 - c. May 24, 2023
5. Individual Education Program (IEP) dated;
 - a. April 24, 2023;
 - b. April 27, 2023;
 - c. May 24, 2023;
 - d. November 5, 2023
 - e. November 16, 2023;
 - f. November 28, 2023
6. Prior Written Notice dated;
 - a. November 5, 2023;
 - b. November 28, 2023;
 - c. October 30, 2023; and
 - d. September 8, 2023
7. Student Report Cards
 - a. 22-23 4th Quarter
 - b. 23-24 1st Quarter
8. Student Success Tracker dated October 2023 through December 2023
9. Functional Behavioral Assessment (FBA) Summary and Behavior Intervention Plan (BIP) dated November 16, 2023, and September 20, 2023
10. Student Break Plan dated August 2023
11. Student Fall 2023 Schedule
12. Student Fall 23-24 Measures of Academic Progress (MAP) scores
13. Student Behavior log from March 28, 2023, through November 16, 2023
14. Student Official Transcript dated November 21, 2023
15. Student's Daily Behavior Report Card Rubric
16. Accommodation List dated October 2023
17. IEP Snapshot for IEP dated May 24, 2023
18. Concussion Injury Timeline dated September 11, 2023, through September 28, 2023, with a print date of December 1, 2023
19. Student Assignment Tracker dated August 14, 2023, through November 27, 2023
20. Big Questions for the Team, May 2023
21. Staff Training for Student's IEP Implementation dated November 21, 2023
22. Staff Training Attendance for Student's IEP Implementation dated November 21, 2023

23. Emails between Parent and District staff dated May 10, 2023, through November 29, 2023
24. Parent edits to Current IEP and BIP (comments dated November 19, 2023)
25. Discrimination Complaint from Parent dated October 5, 2023, November 20, 2023
26. Decision on Complaint dated November 27, 2023, and signed by ADA and Section 504 Coordinator on November 30, 2023
27. District Staff Interviews dated December 14, 2023

Introduction

On November 6, 2023, the Nebraska Department of Education (Department) received a written request for a special education complaint investigation from a Parent (Parent) of a Student (Student) residing in the District. At the time of the Complaint, the Student was in the 9th grade and attending a public school in the District. The Parent requested that the Department conduct a special education investigation under 92 NAC § 51-009.11C3. The Department confirmed receipt of this Complaint and forwarded the request to the District. Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint. This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.

On November 20, 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 December 1, 2023. The District submitted a response on December 1, 2023, which disputed the allegations, provided an explanation, and submitted documents supporting the District's position. The information included in this report that is outside the Complaint period is provided for context only.

Findings of Fact

1. When the Complaint was filed, the Student was in 9th grade and attending a local public high school.
2. The Student qualified for special education services as a student with a disability in the area of Other Health Impairment for Attention Deficit Hyperactivity Disorder (ADHD). (Multidisciplinary Evaluation Team MDT Report, May 10, 2021.)
3. From January 24, 2022, through November 2, 2023, a District Log included the following entries:

- a. "November 2, 2023-Disruptive Behavior [Student] Classroom Disruption/Threatening Behavior;
 - b. October 30, 2023-[Student] not present in 7th-hour geography...found [them] in the bathroom until 1:45 p.m. [Student] had not checked in to class...notified [Student and Parent] that [Student] will be placed on a no pass list and will have to use the restroom in the nurse's office and will have to check in [their] phone if the behavior continues;
 - c. On September 25, 2023-[Student] was escorted to the office...had left...classroom upset and emotional... [Student] stood above another student and said to [them], 'Do you want to fight?'...arguing about fantasy football... [Teacher] held a mediation...assigned [Student] to ISS, Disruptive Behavior...Classroom Disruption-Threatening Behavior;
 - d. On August 24, 2023-[Student's] cell phone was confiscated by [Teacher] 5th-hour class, [Student] did not follow the classroom procedure for turning the phone in... will have consequences for cell phone privileges for [Student], [P]arent was contacted, Insubordination;
 - e. On April 12, 2023- [Student] was sent back to PE from the office but did not go to class, [they] went to the restroom and stayed in there for 30 minutes...Parent contacted. Insubordination;
 - f. On March 27, 2023-5-day absence letter was sent;
 - g. On January 31, 2023-3 tardies, conference with [S]tudent;
 - h. On December 7, 2022-5-day absence letter sent; and
 - i. On January 24, 2022-Tested positive, remote learner." (Log Entries, January 24, 22-November 2, 2023.)
4. On April 27, 2022, an annual IEP was held, and the Parent attended the meeting. The IEP indicated:
- a. "Student's strengths: [Student]...is kind and caring student who strives to please [their] teachers and peers. [Student] has a very big heart and always wants others to feel accepted... [Student] has been working very hard this last year on regulating [Student's] emotions and has seen significant improvement in this area. [Student] utilizes [their] check-ins with [Student's] preferred adult supports when needed to prevent issues in the classroom. [Student] works well with others and has found adults [Student] prefers to problem-solve with;
 - b. Parent information...Parents have expressed that [Student] benefits from extreme motivators (rewards), linking assignments/tasks to

- areas of interest, and working in [sic] quiet environment. [Student] has made big gains this year in [their] emotional regulation but continues to benefit from support. Parents have expressed that [Student's] areas still needing growth include organization, follow-through (unless reward is attached), decreased intrinsic motivation, focus, multi-step tasks, avoidance behaviors, following through with [Student's] plan correctly (gets to [their] break spot but forgets all the required steps), being "okay" with not getting [their] way;
- c. Verification Statement...Adverse Effects: [Student's] [ADHD] and poor executive functioning skills significantly and consistently impact [Student's] progress both academically and emotionally. [Student's] issues of inattention, inability to focus, and impulsivity have consistently impacted [their] learning based upon assessment and teacher data. [Student] has difficulty keeping materials organized, completing and turning in assignments according to timelines, and adjusting to changes in routine that impact [their] behavior patterns;
 - d. Assessment Results and Interpretations: NSCAS 2021, ELA RIT Score-212, Math RIT Score-220, Winter 2022-Math-225 (52nd Percentile), Reading-211 (35th Percentile), Science-210 (52nd Percentile);
 - e. Current Grades...Computer 7-82%, English 7-87% (3 missing assignments), Study Skills 96%, Life Science-70% (5 missing assignments), Word History-76% (2 missing assignments), Pre-Algebra 7-69% (2 missing assignments), and Explore Shop-98%;
 - f. If Behavior Impedes Learning: [Student] has been identified as a student who benefits from behavior support while at school. [Student] has identified at least 2 adults [they feel] comfortable problem-solving with. [Their] current plan when a break is needed-
 - i. Self-identify or the teacher suggests a break;
 - ii. State [they need] a break;
 - iii. Walk to resource room or preferred adult office;
 - iv. Take the time needed to regulate;
 - v. Conference about the what/why of big emotions and
 - vi. Return to class when ready;
 - g. Measurable Annual Goal [Reading]: By April 2023, when given a grade-level reading passage from the general education curriculum, [Student] will demonstrate comprehension by answering questions related to the reading with at least 80% accuracy as measure [sic] grade-level or resource staff 4 out [sic] 5 times observed each quarter-Statement of Progress: Student progress will

be reported through quarterly progress reports, parent-teacher conferences, and phone calls/emails as needed;

- h. Measurable Annual Goal [Homework Completion]: By April 26, 2023, [Student] will improve [their] homework completion from a baseline of 78% of homework completed and turned in by their original due date to 85% of assignments by their original due date each quarter observed as measured by the classroom teacher, resource staff, and completion contracts-Statement of Progress: Progress will be reported through quarterly progress reports, parent-teacher conferences, and phone calls/emails as needed; and
 - i. The Program Modifications & Accommodations had a duration range of April 27, 2022, through April 26, 2023, and frequencies were not included in the frequency column:
 - i. [Student] will have a safe place to go to when upset or when a break is needed;
 - ii. Frequent check-ins as needed for homework and behavior;
 - iii. Alternate location for work and tests as needed;
 - iv. Shortened reading assignments as needed;
 - v. Limited copying assignments;
 - vi. Typing assignments in place of paper/pencil work;
 - vii. Test read aloud when appropriate;
 - viii. Checklist for long-term assignments;
 - ix. Written and verbal directions;
 - x. Calculator;
 - xi. [G]uided notes/notes provided if needed in addition to regular notes; and
 - xii. [N]ote-taking instruction. (IEP, April 27, 2022.)
5. On March 24, 2023, a Progress Report indicated progress on the following goals:
- a. The reading goal; "When given a grade-level reading passage from general education curriculum, [Student] will demonstrate comprehension by answering questions related to the reading with at least 80% accuracy as measure [sic] by grade-level or resource staff 4 out of 5 times observed each quarter." The Progress Measurement indicated progress was made, but the goal was not met. [Student] was able to demonstrate comprehension by answering questions to the reading with at least 80% accuracy as measured by grade level or resource staff. (Progress Report, March 24, 2023.)

- b. Goal Homework Completion; "... [Student] will improve [their] homework completion from a baseline of 78% of homework completed and turned in by their original due date to 85% of assignments by their original due date each quarter observed as measured by the classroom teacher, resource staff, and completion contracts." The Progress Measurement indicated little or no progress was made. (Progress Report, March 24, 2023.)
6. On April 24, 2023, an annual IEP meeting was held with the Parent attending. The IEP indicated:
 - a. Student Strengths included; "The Student has a very big heart and always wants others to feel accepted and enjoys building relationships...works hard when [they have] a preferred task/activity and enjoys a challenge in those preferred areas.
 - b. Parent concerns were: "[Student] struggles with regulating [their] emotions and appropriately responding to feelings of frustration and reasoning. [Student] can become easily overwhelmed by auditory stimuli and works well in a very quiet environment. [Student] has recently become more aware of [their] inability to regulate [their] emotions and understands that [they have] a mood disorder and is taking medication to help [them] regulate [their] emotions... [Student] has come up with a nonverbal code system with [their] outside therapist to help with check-ins. [Student] often more openly shares [their] emotions with the people [they feel] safest with and is able to process with those people once regulated;" (IEP, April 24, 2023.)
 - c. The Student's Attention Deficit Hyperactivity Disorder and poor executive function skills impact [Student's] progress both academically and emotionally;
 - d. Assessment results indicated on the NSCAS 2022-2023 assessment that the Student's winter ELA RIT score was at the 26th percentile. The Math RIT score was at the 20th percentile (IEP, April 24, 2023.)
 - e. Grades-English 8-75%, American History-74%, Advanced Pre-Algebra-71%, Physical Science-68%; (IEP, April 24, 2023.)
 - f. The measurable annual goal for reading included; "When given a grade-level reading passage from general education curriculum, [Student] will demonstrate comprehension by answering questions related to the reading with at least 80% accuracy as measured by grade-level or resource staff improving from 3 out of 5 times observed, to 4 out of 5 times observed each quarter. Student progress will be reported through quarterly progress reports, parent-

teacher conferences, and phone calls/emails as needed.”; (IEP, April 24, 2023.)

- g. The measurable annual goal for homework completion included; “[Student] will improve [their] homework completion from a baseline of 60% of homework, completed and turned in by their original due date in core classes to 85% of assignments by their original due date quarter observed as measured by the classroom teacher, resource staff, and completion contracts. Evaluation Procedure/Instruments: Teacher Observations, Written Performance, Parent Report.” (IEP, April 24, 2023.)
- h. “[Student’s] Attention Deficit Hyperactivity Disorder (ADHD) and poor executive functioning skills significantly and consistently impact [Student’s] progress both academically and emotionally. [Student’s] issues of inattention, inability to focus, and impulsivity have consistently impacted [their] learning based upon assessment and teacher data. [Student] has difficulty keeping materials organized, completing and turning in assignments according to timelines, and adjusting to changes in routine that impact [their] behavior patterns.”; (IEP, April 24, 2023.)
- i. The Program Modifications and accommodations had a date range of April 26, 2023, through April 24, 2024, and did not include any frequencies in the frequency column:
 - i. “[Student] will have a safe place to go to when upset or when a break is needed;
 - ii. Frequent check-ins as needed for homework and behavior;
 - iii. Alternate location for work and tests as needed;
 - iv. Shortened reading assignments as needed;
 - v. Limited copying assignments;
 - vi. Voice-to-text for writing assignments;
 - vii. Typing assignments in place of paper/pencil work;
 - viii. Test read aloud when appropriate;
 - ix. Checklist for long-term assignments;
 - x. Written and verbal directions; and
 - xi. Calculator.”; (IEP, April 24, 2023.) and
- j. A description of the action proposed or refused by the school district stated, “[Student’s] team met to discuss progress toward [their] annual IEP goals as well as classroom progress. [Their] team discusses and approves the following actions:
 - i. [Student’s] reading goal with [sic] will remain the same based on [their] inconsistent achievement but showing ability to

meet [their] goal in the resource setting with adult supervision;
and

[Student's] homework completion goal was discussed, and the team proposed lowering [their] goal from 85% completed/turned in on time to 75%. The team decided to team it at 85% per [Parent's] request to continue to push [Student] to have high expectations." (IEP, April 24, 2023.)

7. On May 19, 2023, the Parent emailed the District requesting a meeting: "We know that a new IEP plan has been signed/completed, but in reflection of how this year has played out, we feel that the plan is not sufficient. As verbalized via a phone conversation with the Former Case Manager yesterday, I am feel (sic) very frustrated and disappointed with how this year is concluding." The Parent listed their concerns:
 - a. "Huge amount of late work (notified of last Friday)";
 - i. "Feel that this is evidence of inadequate accommodation";
 - ii. "Inefficient strategies for work completion";
 - iii. "Perception of [Student] only as a behavior problem; lack of consideration or understanding of [their] medical/mental health condition";
 - iv. "Lack of accommodation understanding with all teachers or need for greater transparency, clearer guide in IEP";
 - v. "Need for new, clearer IEP goals that reflect action towards [Student's] personal limitations with school success." (Email from Parent, May 19, 2023.)
8. On May 21, 2023, the Former Case Manager emailed the Parent, letting the Parent know, "We would (sic) more than willing to set up a time to meet with you...I have been working on compiling data over this weekend that I have collected throughout the school year as well as looking for patterns in homework completion. I have a list of questions for you that would help me create a better plan for [Student] moving forward as well as a list of possible goal ideas that better address [their] homework completion and independent work time at school." (Email From Former Case Manager, May 21, 2023.)
9. On May 23, 2023, the Parent acknowledged answering the questions posed by the Former Case Manager. (Email from Parent, May 23, 2023.)
10. An Individualized Education Program (IEP) was developed on May 24, 2023, and signed by the Parent on that same date. All required participants were present except for a regular education teacher, whose absence was approved by the Parent and the District.

- a. The Student's strengths were listed as working hard on preferred tasks, being creative, excelling with hands-on tasks, and working well with structure.
- b. The Parent shared that the Student has been struggling with emotional regulation and has become more aware of their inability to regulate those emotions. The Parent noted the Student was taking medication to help with emotional regulation. The Parent also noted there are stressors at home that are impacting the Student at school. The Parent described the following concerns:
 - i. "Huge amount of late work";
 - ii. "Inefficient strategies for work completion";
 - iii. "[L]ack of consideration of [their] medical/mental health condition"; and
 - iv. "Lack of accommodation understanding with all teachers or need for greater transparency, clearer guide in IEP."
- c. The Student qualifies for special education in the area of Other Health Impairment for ADHD.
 - i. "[Student's] Attention Deficit Hyperactivity Disorder (ADHD) and poor executive functioning skills significantly and consistently impact [Student's] progress both academically and emotionally. [Student's] issues of inattention, inability to focus, and impulsivity have consistently impacted [their] learning based upon assessment and teacher data. [Student] has difficulty keeping materials organized, completing and turning in assignments according to timelines, and adjusting to changes in routine that impact [their] behavior patterns."
- d. A break plan is listed in the area of consideration of positive behavioral interventions and strategies.
- e. For the 2022-2023 school year, the Student's Present Level of Academic Achievement and Functional Performance was described as follows:
 - i. The student attends regular education classes and receives resource support.
 - ii. The student has made progress in grade-level reading comprehension with at least 80% accuracy on three out of five occasions across curriculum areas.
 - iii. The student is struggling to complete work on time, does not like homework, and gets distracted during independent work time; The Student uses study hall to complete work.
 - iv. Student benefits from a to-do list.

- v. Student spends too much time in the restroom, which impacts work completion.
 - vi. Student's grades in English, History, and Extended Math are all above 70%. Their grades in Advanced Pre-Algebra and Earth Science are above 60%. One mark in Relationships is below 50%.
- f. The Measurable Annual Goal was described: "When provided with a planner, [Student] will fill out a daily assignments (*sic*) and the due dates for those assignments for all classes with teacher prompt starting at a baseline of 0 out of 5 times a week to 5 out of 5 days a week with one or less teacher prompt measured by special education staff."
- i. The following short-term objectives were listed:
 - 1. "Student is currently at a baseline of 0/5 days with teach prompt to fills (*sic*) out planner in order to meet [their] goal of 5/5 days a week with 1 or less teacher prompts [Student] will need to meet the following bench marks (*sic*)".
 - a. "By the end of quarter 1, [Student] will fill out [their] planner with teacher prompt 4/5 days per week."
 - b. "By the end of quarter 2, [Student] will fill out [their] planner with teacher prompt 3/5 days per week."
 - c. "By the end of quarter 3, [Student] will fill out [their] planner with teacher prompt 2/5 days per week."
 - d. "By the end of quarter 4, [Student] will fill out [their] planner with teacher prompt 1/5 days per week."
- g. Special Instruction in the Resource classroom will be scheduled for 25 minutes per day for five days per week and will begin on May 29, 2023.
- h. The following Program Modifications and Accommodations had a duration range of May 29, 2023, through May 22, 2024, and did not include any frequencies in the frequency column:
 - i. "Extended time for project (1-2 days depending on length of assignment); Assistance to break project into chunks to complete by specific extended due dates";

- ii. "Shortened writing assignments (75% of the assignment length); Shorten by 75%? (sic) Shorten to 75% ex: ¾ of a page rather than a page";
- iii. "Timeline/chunking of assignments for long-term assignments (any assignment with due date longer than 3 days from day assigned)";
- iv. "Daily assignment tracker (planner/calendar)";
- v. "Alternate distraction-free work environment to be utilized during independent work time as needed";
- vi. "Limit assignments with a copy/paste format (ex: study guided, copying sentences, etc.)";
- vii. "Guided notes with fill-in-the-blank format";
- viii. "Access to audio option for reading assignments more than 10 pages (novels)";
- ix. "Use of a break during independent work time (talk a walk, sit with head down, color/draw, music, etc.) throughout the day";
- x. "Correct/redo assignments for partial credit to track understanding of state standards";
- xi. "Shortened or alternate daily assignments (ex-3 out of 5 ?'s on math minutes for algebra, verbal response to current event)";
- xii. "Built in break in schedule to use for self-regulation – use of non-verbals to take a time-limited break – 5 minutes, as needed. (Approved breaks, walk, sit, designated quiet place";
- xiii. "Use of scribe (as needed) for school or homework when experiencing dysregulation";
- xiv. "Extended time for tests (verbally answered, scribe, etc.); (IEP, May 24, 2023.)
- xv. Progress Report indicated the Student made progress, but the goal wasn't met for reading and
- xvi. Progress Report indicated the Student made little or no progress and the goal wasn't met for homework completion. (Progress Report, May 24, 2023.)

11. The May 24, 2023, Prior Written Notice described Student's new goal around the planner, a definition of how the break-space will be used, and new accommodations. The following requests were rejected: modification of all assignments, no outside homework, use of an incentive chart, and use of the office for independent work time. A variety of

information sources were used to help make the decisions. (Prior Written Notice, May 24, 2023.)

12. On July 19, 2023, the Parent requested documents from the District regarding the Student's previous MDT. The Former Case Manager responded with the requested information on the following day. (Email Exchange, July 19, 2023.)
13. On August 10, 2023, the Parent emailed the Former Case Manager to update [them] on the testing the [Student] had completed in the summer. The Parent stated, "In trying to be proactive, would you like to schedule a meeting at a date following the 8/30 results meeting to review how [Student's] results may or may not match up with [their] revised IEP?" (Email From Parent, August 10, 2023.)
14. An independent evaluation summary from August 30, 2023, described two diagnoses: ADHD and General Anxiety Disorder. [Student] was re-evaluated due to emotional and academic challenges. The report described [Student] as a student who struggled with regulating emotions and impulsivity and dislikes school. A gap between ability and achievement in writing is noted. Assessments indicated difficulties in attention and various areas. Recommended strategies included visual aids, extended time for tasks, and mindfulness. The following organizational strategies were mentioned: chunking information and using mnemonic devices. Recommendations for self-regulation included praising effort and minimizing distractions. Anxiety management suggestions included open discussions about emotions, assigning responsibilities, and setting realistic goals. Creating a well-structured learning environment and collaboration between school and family were noted as important for supporting [Student's] academic and emotional well-being. (Independent Evaluation Summary, August 30, 2023.)
15. A daily behavior report card rubric was created for the Student. (Daily Behavior Report Card Rubric, no date.)
16. On September 7, 2023, a Licensed Psychologist sent an email stating, "I am attaching a draft of recent evaluation results, diagnosis, and recommendations. The complete report will be provided early next week. Please let me know if you have any questions or concerns." (Email From Licensed Psychologist, September 7, 2023.)
17. The Prior Written Notice from September 8, 2023, described the purpose of the meeting as to discuss the results of outside evaluations. The team examined a variety of accommodations, a break contract, and a success contract. Considering the recent external evaluation, the idea of starting

- the three-year evaluation process early was rejected. (Prior Written Notice, September 8, 2023.)
18. On September 8, 2023, the Former Case Manager emailed the parent with the PWN and a tentative plan to work with [Student] on Monday to create the contracts discussed in the meeting. (Email from Former Case Manager, September 8, 2023).
 19. On September 10, 2023, the Parent emailed the Special Education Director about communication regarding the work the Student is supposed to complete. "Finding the appropriate information for each teacher is challenging because teachers post information in different places, Power School is not updated." The Parent also stated, "[Student needs consistency. We aren't getting that." (Email from Parent, September 10, 2023.)
 20. On September 11, 2023, the Former Case Manager emailed the Parent to let them know that [Student] was in the restroom during their planned break time. The Former Case Manager mentioned that they were not able to complete the contracts because the School Psychologist was absent. (Email from Former Case Manager, September 11, 2023.)
 21. On September 11, 2023, [Student] experienced a concussion. (Problem Timeline, September 11, 2023.)
 22. On September 12, 2023, the Staff received an email from the Special Education Director which stated, "[Student] sustained a concussion Monday night during the football game...The concussion protocol has been initiated... [Student] must reduce all screen time. Assignments should be given on paper. [Student] is also allowed extended time to complete [their] assignments/quizzes/tests so [they] can rest and heal as needed. When [Student] begins classes, [Student] should not be looking at a smart board. Please allow [Student] breaks to rest in the nurse's office as needed throughout the day as well." (Email from Special Education Director, September 12, 2023.)
 23. On September 12, 2023, the Parent sent an email to the Former Case Manager which stated, "To help us all have a grip & clear expectations on how to get [Student] to complete missed homework, can we have agreed upon extended due dates (per concussion protocol & IEP) labeled on the At A Glance doc for this week?" (Email From Parent, September 12, 2023)
 24. On September 13, 2023, the Former Case Manager emailed the Parent, recommending that the break contract be paused while the Student recovers from a concussion. (Email from Former Case Manager, September 13, 2023.)

25. On September 13, 2023, the Former Case Manager and the Parent exchanged emails on the topic of the concussion and symptoms, homework, screen exposure, extra time for assignments, medication changes, and other medically related items. (Email Exchange, September 13, 2023.)
26. On September 13, 2023, the School Psychologist emailed a classroom teacher seeking consultation on the Student. (Email from School Psychologist, September 13, 2023.)
27. The September 20, 2023, Functional Behavioral Assessment (FBA) Summary and BIP indicated:
 - a. The student was described as a creative, artistic, and motivated Student who excels at hands-on projects.
 - b. The following behaviors were listed as impacting behavioral and academic performance:
 - i. "Extended bathroom breaks (More than 10 minutes)";
 - ii. "Not bringing necessary materials to class";
 - iii. "Frequently out of seat";
 - iv. "Sleeping in class";
 - v. "Off task on tech devices";
 - vi. "Misplacing work";
 - vii. "Skin picking";
 - viii. "Wandering halls during instruction and work time";
 - ix. "Drawing/coloring during instruction/work time";
 - x. "Work refusal (stating 'I'm not doing this')."
 - c. The following preventative and intervention strategies were used:
 - i. "Built-in break";
 - ii. "Guided notes";
 - iii. "Online homework tracker";
 - iv. "Shortened assignments";
 - v. "Listening to music to avoid distractions";
 - vi. "Access to alternative work environment";
 - vii. "Break plan for emotional regulation";
 - viii. "Week at a glance";
 - ix. "Phone as bathroom pass";
 - x. "Bathroom in nurses (sic) office";
 - xi. "Success tracker";
 - xii. "Resource staff present in classes";
 - xiii. "Non-verbal redirects";
 - xiv. "Verbal/video answers in place of written responses"; and
 - xv. "Access to audio and/or text read to [Student]."

- d. Written expression, emotional regulation, and medical diagnoses were listed as skill deficits and contributing factors.
- e. Behavior Analysis was described:
 - i. Behavior 1 in the general education classroom or the resource room: “[Student] refuses to work, ignores the request, argues with the teacher, uses electronics, or seeks to leave the classroom.” The antecedent is: [Student] is given an academic task or an instruction.” The consequence is: “The task is not completed.”
 - ii. Behavior 2 in the general education classroom or the resource room: “[Student] might argue and escalate behaviors to the point where [Student] is yelling, cursing, and/or demonstrating physical aggression.” The antecedent is: “Being told that [Student] cannot do something [Student] wants to do.” The consequence is that [Student] becomes highly dysregulated and demonstrates difficulty following instructions from adults.”
 - iii. Triggers for [Student] were listed:
 - 1. “Lack of sleep/being overly tired”;
 - 2. “Completing academic work independently”;
 - 3. “Adjusting to changes in [Student’s] medication”;
 - 4. “Requests to cease use of technology (including cell phone, laptop, airpods, etc.)”;
 - 5. “Requests to initiate non-preferred activities”;
 - 6. “Being told ‘no’”;
 - 7. “Auditory over-stimulation”;
 - 8. “Feeling ‘different’ and/or embarrassed as a result of IEP accommodations”;
 - and
 - 9. “Having large amounts of late work that needs to be completed.”
 - iv. Target problem behaviors were listed:
 - 1. “Noncompliance with instructions (especially those relating to non-preferred academic tasks).”
 - a. “verbal refusal: attempting to argue/negotiate with instructions”;
 - b. “physical refusal: passively and/or ignoring prompts and instructions or walking away”;
 - c. “distractibility: becoming focused on what others are doing or utilizing the technology available in

- the classroom (i.e., laptop) to scroll baseball sites, YouTube, etc.”
2. Emotional dysregulation can result in the following problematic behaviors:
 - a. “being ‘off-task’;
 - b. “scrolling through baseball websites”;
 - c. “taking extended bathroom breaks”;
 - d. “leaving the classroom without permission”;
 - e. “not reporting to designated learning environments when it is expected”;
 - f. “sitting with [Their] head down’; and
 - g. “arguing with adults.”
 3. The intensity of the behavior was described:
 - a. “MILD: Disruptive but not dangerous (most often this is true of [Student]).”
 - b. “MODERATE: Verbal/physical threats and/or destructive to the physical environment (more disruptive than physically aggressive).”
 4. “Behaviors became more frequent and severe beginning the second semester of the Student’s 8th grade year. [Student] engages in both mild and moderate intensity behaviors. Problematic behaviors have increasingly impacted/impeded [their] academic success. Mild episodes of problematic behavior can last multiple periods out of the school day. These behaviors can occur on a daily basis (dependent upon triggers) but, in general, may occur one time per week. Moderate-intensity behaviors that include periods of heightened dysregulation may last anywhere from 5 to 30 minutes. Moderate-intensity behaviors occur one to two times per month. “
 5. The hypothesized function of behavior was listed as seeking to obtain the attention of adults or peers or seeking a preferred or desired activity. Things that are avoided or escaped are described as undesired adult or peer attention, non-preferred activities, and tasks that are “difficult, easy, physical, boring” and require varying degrees of effort.
 6. The hypothesis as to why the target behaviors are occurring is: “During designated ‘work time’ in the

general education classroom, if/when [Student] is feeling dysregulated and academic demands are placed on [Student], [Student] exhibits target problem behaviors as a means of escaping and/or avoiding a non-preferred activity or task."

- f. The BIP listed prosocial replacement behaviors:
 - i. "Teaching [Student] to verbalize times when [Student] needs assistance with academic tasks";
 - ii. "Having [Student] select what kind of assistance he needs at the time (i.e., moving to a quieter space in the classroom, going to the resource room, and/or receiving one-on-one assistance";
 - iii. "Having [Student] state [Student] is feeling dysregulated prior to engaging in problematic behaviors";
 - iv. "Encouraging [Student] to ask for breaks or other interventions when [Student] is dysregulated."
- g. "[Student] does not currently have behavior goals; however, when [their] IEP is updated, these will be added."
- h. Team interventions were listed:
 - i. "Asking [Student] if [Student] needs a break";
 - ii. "Offering a quiet environment if [Student] feels overstimulated/overwhelmed";
 - iii. "Knowledge of coping skills (such as mindfulness activities) that [Student] is learning in therapy";
 - iv. "Utilizing the nonverbal code system recommended by [their] therapist as a discrete means of asking for help";
 - v. "Implementing strategies from [Student's] therapist that help [them] to process emotions when [Student] is told 'no' or does not get [their] way";
 - vi. "Asking [Student] if [Student] needs help getting started with an assignment, completing work, etc."; and
 - vii. "Providing [Student] with choices about work completion/level of involvement by the teacher (i.e., would you like me to read this to you?)."
- i. The following If/Then statements were described:
 - i. If Student "transitions with peers to [Student's] designated location appropriately, then give token and specific verbal praise."
 - ii. If the Student "refuses to transition with peers when instructed, then use planned ignoring until peers leave. Provide verbal

re-direction, giving 2 choices. Allow 5 minutes for Student to comply with transition instruction.”

- iii. If the Student “engages in completing work, then [provides] with words of encouragement and verbal praise.”
 - iv. If the Student “begins to argue with an adult in the classroom and does not comply with instructions provided, then redirection will be provided with a neutral tone. Choices about completion of the task will be provided.”
 - v. If Student “de-escalates and follows instructions, then verbal and/or nonverbal praise [will be] provided (i.e., a smile, a nod, ‘nice work,’ etc.”
 - vi. If the Student “continues to escalate, then [an] adult will offer whether a student would like to take a break to re-focus and regulate [themselves] emotionally.”
 - vii. If Student “takes break appropriately or [Student] is able to call [themselves] down and re-focus, then [Student will be] provided with verbal/nonverbal praise [and] reinforcement.”
 - viii. If the Student “refuses to take a break [and] continues to escalate emotionally, then [Student [will be] instructed to take a 5-minute break in the office to calm [and] re-focus.”
 - ix. If the Student “requires more than 5 minutes, another 5 minutes will be provided. [Student] may decide that [Student] is ready to return to class on [their] own prior to the additional 5 minutes being up. After a total of 10 minutes, Student will be instructed to return to [their] assigned classroom.”
 - x. If the Student “needs more than 10 minutes to calm [themselves] and re-focus, then [Student] will be required to make up missed class time beyond the 10 minutes either before school, during lunch, or after school.”
 - xi. If the Student “is unwilling to take a break on [their] own accord and [Student] is creating a disruptive or potentially unsafe learning environment for others, then the administration will be notified and assist in de-escalation. Such action will be deemed an office referral.”
- j. The following data will be collected:
- i. “Data from Success Tracker”;
 - ii. “Time out of class”;
 - iii. “Office referrals”; and
 - iv. “Anecdotal data from teachers/case manager.” (FBA/BIP, September 20, 2023.)

28. On September 27, 2023, the Director of Special Education sent an email to the Parent which stated, "I would like to schedule a meeting with all of you and [Student] so that we can ensure we are all on the same page as far as communication and expectations are of [Student] and the school." (Email from Director of Special Education, September 27, 2023.)
29. On September 27, 2023, the Parent emailed the Case Manager regarding late homework assignments, which stated, "I understand that an extension of the due date was provided because of [Student's] concussion, but there was no accommodation made per [Student's] IEP. Can you please explain to us what constitutes an appropriate assignment to be shortened?" (Parent Email, September 27, 2023.)
30. An email exchange between the former Case Manager, the Parent, and the Spanish teacher on October 2, 2023, discussed accommodations and missing assignments in Spanish. (Email Exchange, October 2, 2023.)
31. On October 3, 2023, the Case Manager shared the Success Tracker with the Parent via email. (Email From Case Manager, October 3, 2023.)
32. On October 3, 2023, the Parent emailed the Case Manager about the meeting scheduled on October 3, 2023, which stated, "It is also an opportunity for [Parent, Student] and I to gain a better understanding of how the school is implementing [Student's] IEP with the concerns we have been sharing intermittently since our last meeting." (Parent Email, October 3, 2023.)
33. On October 5, 2023, the Director of Special Education emailed an Unknown Party about the 0,1,2 points idea. (Email from Director of Special Education, October 5, 2023.)
34. On October 5, 2023, the School Psychologist sent an email to the Parent which stated, "I would like to get really clear regarding details about the plan we are implementing to help ensure that we are all on the same page. Starting out I think it's important that [Student] can experience success on a rather immediate basis rather than having to wait for a week or something before [Student] gets to see the benefits from positive choices. Let's decide how many points [Student] needs to earn on a daily basis...what do we think about the percentage of reduced homework? I am wondering about a 50% reduction of homework...Do we need to revisit the amount of outstanding work that [they] have left to complete?" (Email From School Psychologist, October 5, 2023.)
35. On October 5, 2023, the School Psychologist sent an email to the Parent which stated; "Attached is a detailed listing of behaviors that align with specific point...[chart created provides] a great snapshot of the behaviors

that we are looking for to assign points." (Email From School Psychologist, October 5, 2023.)

36. On October 12, 2023, the Parent emailed the District describing the adjustments the Parent made to the math assignment: "If I read it correctly, I believe it's 28 questions. To get [them] started, I have accommodated the assignment by doing half. I have picked out around half of all groupings of questions so that [Student] is completing a variety of the questions. I wrote the accommodation on [Student] math paper, but to ensure we are on the same page, I am sharing it with you here as well...this is an accommodation that was discussed as appropriate in our last meeting." (Email from Parent, October 12, 2023.)
37. On October 12, 2023, an email from the Parent to the Case Manager stated, "Due to ongoing concerns at home and with school...[Parents] are considering some other treatment options for [Student], which may mean living outside of our home." (Email From Parent, October 12, 2023.)
38. On October 12, 2023, the Former Case Manager responded to the Parent: "I appreciate you reaching out. [Student] came to work in my room today during math today and asked to have it shortened (totally acceptable and appropriate). I told [Student] I would look at it with [them], but [they] asked if [they] could fix [their] test instead of working on [their] assignment. [Student] worked hard to fix [their] test. [Student] just left before we could go over the shortened amount. I apologize that did not get put in [their] planner for today." (Email from Former Case Manager, October 12, 2023.)
39. On October 12, 2023, the Parent emailed the School Psychologist and mentioned they had not received the consent or input forms for the three-year evaluation process. They also referenced an email they were going to carbon copy to the School Psychologist as an example of the lack of consistency from teachers. (Email from Parent, October 12, 2023.)
40. On October 13, 2023, the School Psychologist emailed the Parent and included a parent input form as a way for the Parent to "share all the concerns in one place." The School Psychologist acknowledged the Parent frustrations with consistency and that the first version of the success plan was not effective. "[School Psychologist] did complete an FBA for [Student] that indicated the function of [their] behavior is escape/avoidance." (Email from KIM, October 13, 2013.)
41. A document listed the following Parent concerns: IEP implementation, communication, missing work, homework tracker, questions about an FBA and behavior plan, teacher comments, breaks, FERPA, and the down's list. (Parent Concern Document, no date.)

42. The October 27, 2023, Progress Report described a goal: "When provided with a planner, [Student] will fill out daily assignments and the due dates for those assignments for all classes with teacher prompt starting at a baseline of 0 out of 5 times days [sic] a week to 5 out of 5 days a week with one or less (sic) teacher prompt measured by special education staff." It was noted that the Student met the quarter 1 benchmark: "[Student] has hit [their] benchmark of filling out [their] planner with teacher prompts 4/5 days each week 4/8 weeks observed. [Student] has independently filled out [their] planner 7 times this quarter." (Progress Report, October 27, 2023.)
43. On October 29, 2023, the Parent emailed the District with concerns regarding the Student's success plan, earning accommodations, and the consistency of implementation. The Parent stated: "I would like to ask if a functional behavior assessment has been conducted." (Email from Parent, October 29, 2023.)
44. On October 30, 2023, the Science Teacher emailed the Parent alerting them that the [Student] was still failing science. The Science Teacher indicated when they would be available for [Student] to come in to get caught up. (Email from the Science Teacher, October 30, 2023.)
45. On October 30, 2023, the Parent emailed the Science Teacher and included a screenshot of the homework tracker used for [Student], indicating that certain assignments were not listed on the tracker and, because of that, they were not completed. (Email from Parent, October 30, 2023.)
46. On October 30, 2023, the Special Education Director sent an email to the Parent which indicated, "The special education team met today to see if there is a way for us to modify schedules and caseloads to consider this request from [Parents]...This would not be a change to [Student's] IEP, but it would be a prior written notice to consider this action." (Email From Special Education Director, October 30, 2023.)
47. On October 30, 2023, a PWN indicated, "[Student's] mother has requested that [Student] have a new case manager. The School District proposes to fulfill this request at this time." (Prior Written Notice, October 30, 2023.)
48. On November 1, 2023, the Previous School Psychologist emailed the School Psychologist seeking guidance around the FBA and BIP for Student. (Email from Previous School Psychologist November 1, 2023.)
49. On November 5, 2023, the Parent emailed the Special Education Coordinator, providing time and date options for a meeting. The Parent made the following requests:

- a. "Instead of a meeting for the PWN, we feel that a new IEP meeting is needed with input and support from [Student's] new case manager, potentially [New Case Manager]. [Student's] grades/academic performance and behavior concerns seem to be appropriate areas for goals to be added."
 - b. "We would like to request a Functional Behavior Assessment to support a behavior plan and/or goals due to [Student's] behaviors having an educational impact. We feel that supporting goals and plans are critical."
 - c. "Prevention is everything, as we learned from last Thursday's events. We would like a solid behavior plan in place. Additionally, we need to focus on what is causing the behavior."
 - d. "We would like a copy of all notes/documentation on [Student]."
 - e. "I have created this Google Doc for all courses. We would like to know how, with fidelity, the 14 accommodations/modifications listed in [Student's] IEP have been put into place for all classes. If you prefer me to send this out to all teachers, I am happy to do that." (Email from Parent, November 5, 2023.)
50. On November 5, 2023, the Parent emailed the Superintendent and submitted a formal complaint. In reference to the events that "led up to the poor behavior response that [Student] demonstrated last Thursday, November 3, 2023, during 2nd period. The Parent mentioned: "Unfortunately, due to poor fidelity with [Student's] IEP, a behavior plan was not set in motion, as the teacher ignored [Student] attempting to use [their] coping strategies as well as the comments coming from other peers in the classroom." The Parent said: "due to [Student's] IEP not being implemented with fidelity and a steadfast behavior/safety plan in place, these comments have had a negative effect that has led to emotional outbursts and stress as well as physical frustration (to [themselves]) causing fear in others observing, as well as in-school suspension and now out-of-school suspension." (Email from Parent, November 5, 2023.)
51. On November 5, 2023, a Prior Written Notice indicated a description of the action proposed/ requested by the Parent and refused by the District as follows:
- a. "Instead of a meeting for the PWN, we feel that a new IEP meeting is needed with input and support from [Student's] new case manager... [Their] grades/academic performance and behavior concerns seem to be appropriate areas for goals to be added;

- b. We would like to request a Functional Behavior Assessment to support a behavior plan and/or goals due to [their] behaviors having an educational impact...;
 - c. We would like a copy of all notes/documents on [Student];
 - d. I have created this Google Doc for all courses. We would like to know how, with fidelity, the 14 accommodations/modifications listed in [their] IEP have been put into place for all classes;
 - e. The School District proposes/refuses this action for the following reasons:
 - i. The [S]chool [D]istrict proposed to reconvene as an IEP team in a new IEP meeting;
 - ii. The [S]chool [D]istrict has completed the Functional Behavior Assessment;
 - iii. The [S]chool [D]istrict strictly proposes a new behavior plan based on the Functional Behavior Assessment;
 - iv. The [S]chool [D]istrict has gathered all notes/documentation on [Student] and will provide the family with the documentation requested and
 - v. The new IEP will look at the accommodation/modifications [Student] will need to make school accessible during the new IEP meeting. Those accommodations/modifications will be listed in the IEP." (Prior Written Notice, November 5, 2023.)
52. On November 6, 2023, the Special Education Director emailed the Parent to touch base regarding homework, which stated, "[Student] has so many past due assignments that I told [them] our goal was for [them] to do one past due each night at home and one current assignment at home. We will also be working on assignments during 9th period. (In last week's assignment tracker, I referenced that under the comments section. We talked that having a goal to complete each day/night so things didn't seem so overwhelming when [Student] gets behind." (Email From Special Education Director, November 6, 2023.)
53. On November 6, 2023, the Parent filed a formal Complaint with the Nebraska Department of Education regarding Student. The Complaint alleged that the "IEP is not being implemented with fidelity," ...the "Modifications and Accommodations listed on Student's IEP are not being implemented across all classes," and that they have requested a Functional Behavior Assessment and academic goals. (Parent Complaint, November 6, 2023.)
54. On November 16, 2023, an annual IEP meeting was held with the Parent attending. The IEP stated the following:

- a. "Student Strengths: [Student] is a 9th-grade student...has a very big heart and always wants others to feel accepted and enjoys building relationships. [Student] enjoys coaching others and helping younger students. [Student] works hard when [they have] a preferred task/activity and enjoys a challenge in those preferred areas;
- b. [Parent] has shared that the Student struggles with regulating [their] emotions and appropriately responding to feelings of frustration and reasoning. [Student] can become easily overwhelmed by auditory stimuli and works well in a very quiet environment. [Student] has recently become aware of [their] inability to regulate [their] emotions and understands that [they have] a mood disorder and is taking medication to help [them] regulate [their] emotions. [Student] is working with an outside therapist to assist in learning appropriate coping skills and how to handle everyday stressors. [Student] has come up with a nonverbal code system with [their] outside therapist to help with check-ins... Per the email, the following are concerns that Parents shared;
 - i. Huge amount of late work;
 - ii. Inefficient strategies for work completion;
 - iii. Lack of consideration or understanding of [Student's] medical/mental health condition; and
 - iv. Lack of accommodation understanding with all teachers or need for greater transparency, clear guide in IEP.
- c. Adverse effects: [Student's] [ADHD] and poor executive functioning skills significantly and consistently impact [Student's] progress both academically and emotionally. [Student's] issues of issues of inattention, inability to focus, and impulsivity have consistently impacted [their] learning based upon assessment and teacher data. [Student] has difficulty keeping materials organized, completing and turning in assignments according to timelines, and adjusting to changes in routine that impact [their] behavior patterns;
- d. NSCAS State Assessment 2022-2023: Winter ELA RIT Score 210 (26th percentile) Math RIT Score-212 (44th percentile) Spring- ELA RIT Score-208 (20th percentile);
- e. Current Grades: English 8-72%, American History 75%, Advanced Pre-Algebra 8 68%, Earth Science-67%, Relationships-48%, and Extended Math-84%;

- f. If Behavior Impedes Learning: [Student's] behavior impedes [Student's] learning. A Functional Behavior Assessment (FBA) has been completed by the [District]. A draft of a behavioral intervention plan has been completed. In lieu of conducting a full IEP team meeting on the behavior plan, minor changes to the behavior plan can be made with mutual consent of school personnel and [P]arents. Functional Behavior Assessment and BIP are attached to this document;
- g. Verification Statement: [Student] is able to attend [their] regular education classes with resource support. [Student] has made progress in the area of reading comprehension...by answering questions related to the reading with at least 80% accuracy as measured by grade-level or resource staff 3 out[sic] 5 times observed scoring the following: 80%, 96%, 82%, 73%, 53% across multiple curriculum areas. [Student] is having a difficult time completing work on time. [Student] does not like to work on homework independently or outside of school. [Student] does not have a study hall to complete work outside of class. [Student] benefits from creating a to-do list and checking off [their] work as [they go]. [Student] continues to spend a long periods [sic] of time in this [sic] restroom during instruction and has a difficult time completing work because [they have] missed the majority of instruction time. [Their] classroom teachers have shared that [Student] often becomes distracted during independent work time but has made improvements;
- h. Measurable Annual Goal 1: By the end of the school, [Student] will demonstrate increased ability to use self-regulation strategies (deep breathing, doodling, short walk breaks, etc.) to manage [their] emotions and decrease [their] perceived stress during academic or social tasks with no more than 1 reminder from the teacher per class, per week;
- i. Statement of Progress: Progress will be reported through progress notes, recap messages, assignment tracker, and/or additional parental contacts, including phone calls, visits, or e-mails at least at the end of each academic quarter;
- j. Measurable Annual Goal 2: By the end of the IEP period, when [Student] is given focus homework assignments to complete at home, Student will complete assignments by the due date 3 out [sic] 5 times with 78% accuracy. Current baseline is 0 completed assignment [sic] out of 5;

- k. Statement of Progress: Progress will be reported through progress notes, recap messages, assignment tracker, and/or additional parental contacts, including phone calls or e-mails, at least at the end of each academic quarter;
 - l. The Program Modifications and Accommodations had a duration range of November 16, 2023, through November 15, 2024, and did not include a frequency in the frequency column:
 - i. Extended time for projects. Assistance to break the project into chunks to complete by specific extended due dates;
 - ii. Shortened assignments (when appropriate. Must meet standards);
 - iii. Timeline/chunking of assignments for long-term assignments;
 - iv. Daily assignment tracker (planner/calendar);
 - v. Alternate distraction-free work environment to be utilized during independent work time as needed;
 - vi. Guided notes with fill-in-the-blank format or notes provided;
 - vii. Access to audio option;
 - viii. Correct/redo assignments for partial credit to track understanding of state standards;
 - ix. Built-in a break in schedule to use for self-regulation-use of non-verbals to take a time-limited break-5 minutes; see BIP plan for further explanation;
 - x. Use of scribe or verbally recorded assignments;
 - xi. Extended time for tests (verbally recorded, scribe, etc.) and
 - xii. Not asked to read aloud during instructional time, [they] can volunteer to read." (IEP, November 16, 2023.)
55. When interviewed in the Family and Consumer Science classroom, the Teacher indicated that assignments were accepted late with no point deductions as an accommodation, and most assignments were read aloud. (Family and Consumer Science Teacher Interview, December 14, 2023.) The Student was not given any long-term assignments in the Family and Consumer Science class as well as essay assignments. (Family and Consumer Science Teacher Interview, December 14, 2023.) The Daily Tracker was used in the Family and Consumer Science class, and the Teacher worked with the Special Education staff regarding assignments for continuity. (Family and Consumer Science Teacher Interview, December 14, 2023) The Student was allowed to utilize an alternate distraction-free work environment when the Teacher witnessed the Student getting agitated as well as being able to use guided notes in the

classroom. (Family and Consumer Science Teacher Interview, December 14, 2023.)

56. When interviewed the 7th & 8th Grade Health and Physical Education Teacher shared that the Student's behavior was "pretty good" and that the Student was passing their class. (7th & 8th Grade Health and Physical Education Teacher Interview, December 14, 2023.) An accommodation used in the Physical Education class was that the Student was able to be removed from the classroom to an alternate location for testing with the special education staff. (7th & 8th Grade Health and Physical Education Teacher Interview, December 14, 2023.) According to the 7th & 8th Grade Health and Physical Education Teacher, the Student was allowed extended time to complete health tests, and the Student did not need to take any built-in breaks for dysregulation. (7th & 8th Grade Health and Physical Education Teacher Interview, December 14, 2023.)
57. When interviewed, the School Psychologist indicated that they attended two to three meetings/staffings for the Student. The Parent requested the first meeting to talk about an independent psycho-educational evaluation that was given to the Student, and the team decided to use the independent evaluation for the Student's three-year evaluation. (School Psychologist Interview, December 14, 2023.) The School Psychologist stated that the Student's behaviors were escalating in the school setting, and it was reported to the School Psychologist that the; "parents were not interested in having any kind of behavior plan at school." (School Psychologist Interview, December 14, 2023.) When asked in the first meeting if a Functional Behavior Assessment was needed, the School Psychologist stated; I believe I might have been the one to say...certainly we could look at conducting a functional behavior assessment and incorporating some kind of plan. I don't recall ...a formal sign-off." (School Psychologist Interview, December 14, 2023.) The School Psychologist shared that they did participate in the development of a Functional Behavior Assessment and went on to state, "we never did obtain a formal consent to conduct the Functional Behavior Assessment." (School Psychologist Interview, December 14, 2023.)
58. When interviewed, the Freshman Geography Teacher indicated the Student was given extended time in the geography class during the day to complete work. (Freshman Geography Teacher Interview, December 14, 2023.) The Freshman Geography Teacher went on to state that shortened writing assignments were an accommodation in the classroom. (Freshman Geography Teacher Interview, December 14, 2023.) The Daily Assignment Tracker was implemented in the geography class, and the

Freshman Geography Teacher shared that they worked closely with the Special Education Staff regarding assignments in the Daily Assignment Tracker. (Freshman Geography Teacher Interview, December 14, 2023.) The Freshman Geography Teacher shared that the Student was allowed to utilize an alternate distraction-free work environment to complete work during independent work time, and the Student was also able to take a break when needed. (Freshman Geography Teacher Interview, December 14, 2023.) Guided notes were available for the Student according to the Freshman Geography Teacher. (Freshman Geography Teacher Interview, December 14, 2023.)

59. When interviewed, the English Teacher indicated extended time for projects, as well as chunking of assignments, were accommodations used in English class. (English Teacher Interview, December 14, 2023.) The English Teacher shared that shortened assignments to 75% of the assignment length was also an accommodation available for the Student. (English Teacher Interview, December 14, 2023.) Regarding a Daily Assignment Tracker, the English Teacher shared that they communicated daily with the Case Manager regarding daily assignments. (English Teacher Interview, December 14, 2023.) Another accommodation available to the Student in English class was the option of utilizing an alternate distraction-free work environment as well as using Guided Notes for assignments. (English Teacher Interview, December 14, 2023.)
60. When interviewed, the Special Education Teacher shared that the Student was a frequent restroom visitor and stated, “[Student] would spend anywhere from five to 45 minutes in the restroom at a time...the concern was missing class.” The Special Education Teacher also reported that the Student had a built-in break for dysregulation during 6th period. (Special Education Teacher Interview, December 14, 2023.) The Special Education Teacher shared that the Parents emailed wanting new goals on the Student’s IEP, with the Parent’s main concern being work completion. (Special Education Teacher Interview, December 14, 2023.)

When following the Concussion Protocol, the Special Education Teacher shared that the Student fatigued easily when writing with paper/pencil, so the Student was allowed to voice record and was frustrated with limited access to screens, so the Special Education Teacher called the Parent to ask about the Student accessing their phone in which the Parents said to follow the Concussion Protocol. (Special Education Teacher Interview, December 14, 2023.) The Special Education Teacher stated that the Special Education Teacher was not part of the actual Functional Behavior

Assessment; only sent a reminder home to fill out the paperwork. (Special Education Teacher Interview, December 14, 2023.)

When asked when the Parent asked for a Functional Behavior Assessment to be completed, had one already been completed, the Special Education Teacher said not that they were aware of. (Special Education Teacher Interview, December 14, 2023.) According to the Special Education Teacher, the accommodations used in the special education classroom were; "Extended time for projects...frequent check-ins during [Student's] study hall time...verbal reminders per [P]arent request." (Special Education Teacher Interview, December 14, 2023.) The Special Education Teacher shared that guided notes to fill in the blanks was an accommodation used as well as audio options for reading assignments more than ten pages, breaks during independent work time, correct-redo assignments for partial credit, and shortened or alternate daily assignments. (Special Education Teacher Interview, December 14, 2023.)

61. When interviewed, the Business Teacher shared accommodations used in Business class were extended time for projects, one to two days depending on the length of the assignment; instead of the Tracker, the Business Teacher uses Google Classroom and an alternate distraction-free work environment. (Business Teacher Interview, December 14, 2023.) The Business Teacher shared the accommodation of guided notes, and the Student used them mostly for vocabulary. The Student did not have access to audio for reading assignments because most of the reading is one page. The Student also had access to breaks during independent work time. (Business Teacher Interview, December 14, 2023.) The Business Teacher stated that the Student accommodation of correct/redos assignments for partial credit was utilized but shortened assignments were never used by the Student. The Student also was allowed extended time for tests. (Business Teacher Interview, December 14, 2023.)
62. When interviewed, the Science Teacher expressed the Student had extended time for both projects and tests. The Science Teacher stated that they emailed the Parents several times to communicate about due dates. (Science Teacher Interview, December 14, 2023.) The Science Teacher expressed that a Daily Assignment Tracker was implemented in the Science class by the Student. The Student was also allowed to utilize an alternate distraction-free work environment which was the Case Manager's classroom. Also, the Student had the option to take a break during independent work time. (Science Teacher Interview, December 14, 2023.) Shortened or alternate daily assignments and extended time for

- tests verbally answered or scribed were other implemented accommodations. (Science Teacher Interview, December 14, 2023.)
63. The Algebra Teacher shared during an interview that the accommodation of shortened writing assignments on tests is not lengthy but is an explanation of one sentence. The Algebra Teacher stated that they don't have long-term assignments in math, just daily assignments, and the Student uses the Daily Homework Tracker. (Algebra Teacher Interview, December 14, 2023.) An alternate distraction-free environment was an accommodation the Student used in the resource room. The accommodation of limiting assignments with a copy-paste format and using a study guide was utilized by the Student along with guided notes. (Algebra Teacher Interview, December 14, 2023.) The student utilizes a break during independent work times. The Student also operates the accommodation of correct/redo assignments for partial credit in the Algebra class along with shortened assignments. (Algebra Teacher Interview, December 14, 2023.)
64. During interviews, the Spanish Teacher stated the Student had extended time for assignments. The Spanish Teacher reminded the Student orally when projects were due. The Spanish Teacher shared that a Daily Assignment Tracker was used daily like a trivia question and that the Student utilized an alternative distraction-free work environment during independent work time. (Spanish Teacher Interview, December 14, 2023.) Students are expected to take notes in the Spanish Teacher's class by copying them from the board. Guided notes in a fill-in-the-blank format are not used in the classroom. The Spanish Teacher indicated the Student is allowed to take breaks during independent work time. The Spanish Teacher also allows the Student to correct or redo assignments for partial credit to track understanding of state standards. (Spanish Teacher Interview, December 14, 2023.) The Spanish Teacher indicated the Student did not use a scribe in their classroom as an accommodation. The Spanish Teacher also stated that the Student was barely passing Spanish class. The Student had extended time for tests. (Spanish Teacher Interview, December 14, 2023.)
65. When interviewed, the Case Manager shared that the Student was given extended time when the Case Manager took over. The Case Manager stated that Parents were given daily recaps of what was assigned to the Student. The Case Manager stated that the Student was given verbal tests with verbal responses. (Case Manager Interview, December 14, 2023.) The Case Manager shared that the Student does the Daily Assignment Tracker, and the alternate distraction-free work environment was

implemented in the Case Manager's classroom. The Case Manager stated they did not have any assignments that dealt with a copy/paste format. (Case Manager Interview, December 14, 2023.)

Guided notes were used for Geography, Family, and Consumer Science classes. Access to audio options for reading assignments was not needed at the time in the Case Manager's classroom, but the use of a break during independent work time was implemented. (Case Manager Interview, December 14, 2023.) The Case Manager shared that correct / re-do assignments for partial credit to track understanding of state standards and shortened or alternate daily assignments were implemented in the Case Manager's classroom. The use of a scribe was also implemented daily, and extended time for tests was implemented in the Case Manager's classroom. (Case Manager Interview, December 14, 2023.)

When interviewed, the Special Education Director shared that the reason for the five-day absent letters was the District policy school protocol in which they have five, eight, and then 20-day absence letters to communicate with Parents. (Special Education Director Interview, December 14, 2023.) The Special Education Director stated that they had attended many meetings for the Student, and the Parent's concerns were work completion and some Student behaviors with the Student not wanting to be at school and exhibiting avoidance behaviors. (Special Education Director Interview, December 14, 2023.) The Special Education Director stated the Parents didn't seem concerned at the beginning of the school year but were feeling, in October 2023, that they were having some communication breakdowns. (Special Education Director Interview, December 14, 2023.) The Special Education Director stated, "we would think we have...some new strategies or some new ideas of some way we can try and help and support [Student]...not hear anything...then all of a sudden, um, we would hear from [Parent] that things were not good." (Special Education Director Interview, December 14, 2023.) The Special Education Director shared that the tracker was the Case Manager and part of the IEP goal was for the Student to become independent by trying to teach the Student to use the tracker.

The Special Education Director did not know why the Parent was confused about what the different teachers were doing and that they use Schoology where Student assignments are. The Special Education Director shared that one teacher does use Google Classroom, and maybe that is where the confusion for the Parent existed. (Special Education Director Interview, December 14, 2023.) The Special Education Director indicated

the School Psychologist took more time to complete the Functional Behavior Assessment (FBA) because they were not very confident and that the Parents wanted to hold off on the FBA to let the Student adjust to the school setting but that the Special Education Director did not know exactly when the FBA was formally requested. (Special Education Director Interview, December 14, 2023.) The Special Education Director stated that Consent to Evaluate for an FBA would need to be given first. (Special Education Director Interview, December 14, 2023.)

66. When interviewed, the Parent shared about a suspension on November 2 regarding negative student comments directed at the Student in which the Student stated, "Are you just gonna let them talk to me like this?" and proceeded to leave the room yelling and swearing in the hallway of the school, being suspended for one day. (Parent Interview, December 13, 2023.) The Parent shared that the accommodations/special supports were not being implemented on November 2 and stated that the Parent sent an email on October 30 that things were not happening consistently for the Student. The Parent said; "We had talked about having an [FBA] completed at a meeting in September. And as far as I knew, nothing had happened with that." The Parent shared that an outside behavior plan was shared with the Special Education Teacher but was never implemented. (Parent Interview, December 13, 2023.) The Parent stated that there were three IEP meetings that the Parent had attended regarding accommodations, utilizing the Success Tracker, and the Student quit avoiding class sessions. (Parent Interview, December 13, 2023.)

The Parent shared that the fourteen accommodations listed on the IEP, extended time for projects, and breaking projects into chunks were "kind of hit or miss." Regarding shortened assignments to 75%, the Parent shared; "none of the teachers really knew what that meant." (Parent Interview, December 13, 2023.) For timeline, chunking of assignments for long-term assignments, the Parent shared, "they were probably maybe extended, but it was never clear than on what the actual due date was for [Student]." An alternative distraction-free work environment to be utilized during independent work time as needed accommodation was implemented as needed, as well as limiting assignments with a copy-paste format such as study guides or copying sentences. Guided notes with a fill-in-the-blank format were also used according to the Parent. (Parent Interview, December 13, 2023.)

The Parent shared that the accommodation of access to audio for reading assignments for more than ten pages was utilized in English class.

Use of a break during independent work times didn't take place consistently, according to the Parent. The Parent believed the accommodation of correct redo assignments for partial credit to track understanding of state standards. The Teachers did shorten or alternate daily assignments in math but not in geography. (Parent Interview, December 13, 2023.) The Parent shared that a built-in break-in schedule to use for self-regulation, and the use of nonverbals to take a time-limited break, five minutes as needed was used but not known with all the teachers. The Parent shared that the Student's medication caused the Student to spend more time in the bathroom on occasion. The last accommodation was extended time for tests verbally answered/scribed; the Parents shared they did not know if that was consistently used. (Parent Interview, December 13, 2023.)

When asked what parts of the behavior plan they believed were not implemented, the Parent responded, "They didn't even have a behavior plan...in place...I guess now, it was in September that they wrote it. Um, we were not aware of a behavior plan at that time." (Parent Interview, December 13, 2023.) When asked what academic needs the Parent believed were not being met that would have required IEP goals to be written, the Parent responded, "homework completion...and actually being in the classroom um, you know, wanting getting [sic] [Student] in [their] seat." (Parent Interview, December 13, 2023.)

Issue # 1

Did the District implement the Students' IEPs as designed? [92 NAC 51-007.02A, 92 NAC 51-007.07A8, 92 NAC 51-007.07B3]

92 NAC 51-007.02A 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.*

92 NAC 51-007.07A8 states:

007.07A8 *The projected date for the beginning of the services and modifications described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications.*

92 NAC 51-007.07B3 states:

007.07B3 In the case of a child whose behavior impedes 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

The Parent alleged that the Individualized Education Program for the Student was not implemented as written. (Parent Complaint to NDE dated November 6, 2023.)

District Response

The District developed and implemented an IEP that met the unique needs of [Student]. Throughout the timeframe of the Complaint, [Student] has had multiple IEPs. (District Response, December 1, 2023.)

Investigative Findings

The District held IEP meetings on April 27, 2022, April 24, 2023, and May 24, 2023, with all the legally required components and participants including the Parent. At the IEP meeting on May 24, 2023, a new goal regarding a Planner Tracker and a behavioral goal was added to the IEP. The most recent IEP included 14 accommodations that the classroom teachers implemented during instruction, based on the needs of the Student during the course and the type of assignment.

During interviews, the Parent stated that the teachers implemented many of the accommodations on the current IEP's held during the Complaint date range. On May 19, 2023, the Parent requested an IEP meeting be held because the Parent did not feel the current plan was sufficient. The District did hold an IEP meeting and updated the IEP. The IEPs implemented within the Complaint range did not include the frequency for all of the accommodations included in the IEP.

Summary and Conclusions

The District provided the Student with the accommodations as described in the Student's IEP. The District implemented the requirements of 92 NAC 51-007.02A and 92 NAC 51-007.07B3. The District did not implement the requirements of 92 NAC 51-007.07A8 and **corrective action** is required.

Corrective Action

1. Within 10 calendar days of the date of this Investigation Report, the District must reconvene the Student's IEP Team and ensure the Student's IEP

includes the frequency for which all of the accommodations will be provided.

- a. The IEP and any associated PWN must be sent to NDE no later than 10 days after the IEP Team meeting.
2. The District must develop and provide training to all special education staff and related service personnel regarding the inclusion of frequency for which all accommodations for students will be provided.
 - a. The training must be approved by NDE two calendar weeks prior to the training.
 - b. 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.
 - c. The training must be completed within 60 calendar days of the receipt of this Investigation Report.
 - d. A random sample of 3 student IEPs will be reviewed on or before August 1, 2023, to ensure frequency is included for accommodations for students.

Issue # 2

Did the District develop an IEP that met the unique needs of the Student? [92 NAC 51-007.07A1; 007.07A2; and 007.07A5]

92 NAC 51-007.07A states:

007.07 *The IEP shall include:*

007.07A1 *A statement of the child's present levels of academic achievement and functional performance, including:*

007.07A1a *How the child's disability affects the child's involvement in and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children).*

92 NAC 51-007.07A2 states:

007.07A2 *A statement of measurable annual goals, including academic and functional goals.*

92 NAC 51-007.07A5 states:

007.07A5 *A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child.*

Allegations/Parent Position

The Parent alleged that a functional behavior assessment and a behavior intervention/safety plan had not been completed. They also noted that the Student required academic IEP goals. (Parent Complaint to NDE dated November 6, 2023.)

District Response

The District developed and implemented an IEP that met the unique needs of [Student]. Throughout the timeframe of the Complaint, [Student] has had multiple IEPs. (District Response, December 1, 2023.)

Investigative Findings

On September 20, 2023, the District team conducted an FBA and developed a BIP that supported behaviors that impacted academic performance. Preventative and intervention strategies were listed. Skill deficits including written expression, emotional regulation, and the Student's medical diagnosis were considered. The Special Education Director stated during an interview that a Consent to Evaluate needed to be given to the Parent first before the Functional Behavior Assessment was completed. The Permission to Evaluate was not completed or sent to the Parent.

The Parent stated during interviews they did not think an FBA or a BIP had been completed. On October 3, 2023, the Parent emailed the Case Manager wanting to gain a better understanding of how the school was implementing the IEP and the behavior plans for the Student. The investigative record includes email communications between the School and the Parent about a behavior plan being developed. During an interview, the Parent stated that they felt the BIP was not being implemented regarding a November 2, 2023, suspension of the Student for verbal outbursts and running out of the classroom because of verbal remarks made to the Student by their peers. During interviews, District staff were able to describe supports that were provided to the Student that were in alignment with the Student's IEP and BIP including a designated time for

a regulation break, and the teachers prompted the Student to take breaks when dysregulated.

Summary and Conclusions

The District conducted an FBA and implemented a BIP for the Student. The District implemented the requirements of 92 NAC 51-007.07A, 92 NAC 51-007.07A2, 92 NAC 51-007.07A5, and **no corrective action** is required.

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:

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