

## COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.17  
Complaint Investigator: REDACT  
Date Complaint Filed: November 27, 2023  
Date of Report: REDACT

### Introduction

This investigation is being conducted because the parent believes the district failed to provide the student with a free appropriate public education by changing the student's placement from a full-day schedule in the local public high school to homebound following a hospitalization for mental health issues in September 2023.

Further, the parent reports the district has failed to provide the student with access to the internet and support to participate in the online general education classes with special education support. The parent stated that the student has received only one day of online homebound education during the past three months. The parent believes the requirements for conducting a reevaluation and threat assessment were not followed which has further hindered the provision of appropriate services to the student. The parent indicated that multiple requests for IEP team meetings were made during the first semester of the 2023-24 school year but no IEP team meetings were ever held.

Because of the lack of educational services and the district's failure to respond to parent concerns, the parent was forced to send the student to live with relatives so the student could go to school. The student now resides in Texas with a grandmother and enrolled in the local public high school beginning in January 2024. The parent reported the student is currently being evaluated for special education eligibility and services in that state.

It is noted that the parent filed this complaint on November 27, 2023. The district and parent agreed to mediate the issues on December 22, 2023, but did not extend the timeline to complete the investigation. The district did not provide all requested documentation to complete the investigation to the NDE until January 15, 2024.

### Background

The student is 15-years old and was enrolled in the 10th grade in the district during the first semester of the 2023-24 school year as reported by the parent

and district staff. During the semester break, the student moved to live with a grandmother in Texas and enrolled in that state's local public school district.

Per parent interview, the student was initially evaluated during the third grade while attending Prairie Hills USD #113 in Kansas but was not eligible for services at that time. During the fourth grade, the student was evaluated a second time, found eligible for an Individual Education Program (IEP), and began to receive specialized instruction. The family relocated and the student transferred to Hiawatha Schools USD #415 in Kansas and continued to receive special education services through an IEP for fifth and sixth grades.

According to the Autism Spectrum Evaluation Report dated May 10, 2020, the student was originally diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), Generalized Anxiety Disorder (GAD), and Disruptive Mood Dysregulation Disorder (DMDD). A comprehensive evaluation was conducted and the student also received a diagnosis of Autism Spectrum Disorder, Level 1, and requiring support. The report documents continued eligibility for the diagnoses of ADHD and GAD but removed the DMDD.

The family relocated again at the beginning of the 2020-21 school year and the student was enrolled in the current Nebraska district. During eighth grade, the student attended full days at an alternative school through the Educational Services Unit. In ninth grade, the student transferred to the district's alternative school and the student's IEP was revised for a shortened school day due to attendance issues.

### **Issues Investigated**

1. Did the district follow the appropriate procedures when changing the student's placement to homebound during the 2023-24 school year? [92 NAC 51-007.06A; 92 NAC 51-008.01C; 92 NAC 51-009.02, and 92 NAC 51-009.05]
2. Did the District provide special education and related services to the student in accordance with the IEP for homebound placement during the 2023-24 school year? [92 NAC 51-007.02]
3. Did the district follow the appropriate procedures to conduct a psychoeducational evaluation of the student during the 2023-24 school year? [92 NAC 51-006.05 and 92 NAC 51-009.08]
4. Did the district respond appropriately to the parent's request for an IEP team meeting during the 2023-24 school year? [92 NAC 51-007,10C and 92 NAC 51-007.06]

5. Did the district provide the student with a free appropriate public education during the 2023-24 school year? [92 NAC 51-003.24 and 92 NAC 51-007.07]

### **Information Reviewed by Investigator**

#### *From the Complainant*

- Autism Spectrum Disorder Evaluation dated May 10, 2020
- Letter of Complaint dated November 27, 2023; received by NDE November 27, 2023
- Emails dated December 8, 2023, and January 16, 2024, written by the parent to the investigator
- Interview with the parent on January 15, 2024
- All other documentation provided by the parent was also provided by the district

#### *From the School District*

- Letter of Response dated January 15, 2024; received by NDE January 15, 2024
- Interview with Director of Special Education on January 16, 2024
- Interview with School Psychologist on January 17, 2024
- PWN dated August 4, 2020
- Evaluation Report dated October 20, 2020
- IEP Team Meeting Agenda and Notes dated August 14, 2023, written by the School Psychologist
- IEP dated August 14, 2023
- PWN dated August 15, 2023
- Hospital Discharge Summary dated September 25, 2023
- IEP Team Meeting notes dated September 28, 2023, written by the Special Education Teacher / Case Manager
- IEP dated September 28, 2023
- Determination Notice dated September 28, 2023
- PWN dated September 29, 2023
- Emails between the parent and the district dated October 6 and November 21, 2023
- Draft PWN dated November 8, 2023
- Screenshots of texts between the parent and the Superintendent dated January 10, 2024
- Email dated January 17, 2024, at 8:40 AM written by the Special Education Director to the Investigator
- Email dated January 17, 2024, at 7:39 PM written by the School Psychologist to the Investigator

## Findings of Fact

1. The IEPs dated August 14, 2023, and September 28, 2023, both document that the student was found eligible for special education and related services on August 8, 2020, under the disability categories of Other Health Impaired, Speech/Language Impairment, and Specific Learning Disability in the areas of Written Expression, Math Computation, and Reading Comprehension. The student has received special education services through an IEP since that time.
2. The district provided a Prior Written Notice (PWN) dated August 4, 2020, where the parent granted consent for a reevaluation with additional assessments of the student. This is about the same time as the student was moving from Kansas to Nebraska and the School Psychologist explained this is the district's practice when a student transfers from another state in order to determine eligibility under Nebraska Rule 51 (Interview with School Psychologist on January 17, 2024).
3. The Multidisciplinary Evaluation Team MDT Report dated October 8, 2020, documents that the student was reevaluated and determined eligible under Nebraska eligibility criteria for the disability categories of Other Health Impaired due to medical diagnoses of ADHD and GAD, Speech/Language Impairment, and Specific Learning Disability in the areas of Written Expression, Math Computation, and Reading Comprehension.
4. The Evaluation Report includes a copy of the Autism Spectrum Disorder Evaluation dated May 10, 2020, as well as results from the Gilliam Autism Rating Scale (GARS-3) and Sensory Processing Measure. On the GARS-3, the student was rated as Probable – Level 1 for Autism and requiring minimal support while the Sensory Processing Measure found “some sensory processing difficulties, especially with auditory input”.
5. The School Psychologist explained in an interview that the team must have considered the category of Autism at that time; however, the student did not meet the eligibility criteria for Educational Autism in Nebraska (Interview with School Psychologist dated January 17, 2024).
6. The Special Education Director acknowledged there was no documentation showing the parent was provided with a PWN for initial eligibility in the state of Nebraska because “this was prior to our state's emphasis on the PWN”. (Interview with Director of Special Education dated January 16, 2024)
7. On August 14, 2023, the student was considered for a three-year reevaluation. The parent gave written consent for a reevaluation with additional assessment in the areas of speech/language, social/emotional,

and academics according to the PWN dated that same date. (IEP Team Meeting Agenda and Notes dated August 14, 2023).

8. In addition to proposing a three-year reevaluation of the student on August 14, 2023, the student's IEP was also reviewed and revised prior to the first day of 10<sup>th</sup> grade in the 2023-24 school year with the parent in attendance. The IEP dated August 14, 2023, included four goals addressing language skills, work completion, math skills and attendance. The IEP noted the student's behavior and social emotional needs required behavior support and core instruction in the areas of reading, writing, and math. The IEP did not include a behavior intervention plan. This IEP included special instruction for 120 minutes per day for four days per week and speech/language therapy for 15 minutes per day for one day per month. In addition, social and sensory support were listed as a supplementary aid and service but did not include frequency. All services were to be provided in the public-school setting and for the duration of the school year. The student was enrolled in the following general education classes: Intro to Business; English 10, World History, Algebra 1B; and Woods 1. This IEP noted the student would carry a point sheet to help track goals, have social and sensory support, and use a visual schedule.
9. The district provided the parent with a PWN describing these proposed changes on August 15, 2023. Both parent and district interviews confirmed the parent was in agreement with this change in services and placement.
10. The School Psychologist reported that a general education teacher, the special education teacher, and the parent were provided with rating scales for the Vineland Adaptive Behavior Scales, the Behavior Assessment System for Children, the Autism Spectrum Rating Scales, and the Emotional Disturbance Decision Tree on September 8, 2023, and given a deadline to return these protocols no later than September 18, 2023. (Interview with School Psychologist dated January 17, 2024)
11. Per both parent and district interviews, the student reported thoughts of hurting others / animals to the parent on September 19, 2023. At that time, the parent reached out to the School Psychologist for a referral for mental health services. As a result, the student was hospitalized at the hospital on September 20, 2023, and discharged on September 25, 2023.
12. According to the parent and district, the district contacted the parent on September 25, 2023, to arrange to reconvene the IEP team on September 28, 2023, for the purpose of reviewing the results of the current reevaluation, developing a safety plan, and reviewing/revising the IEP as

needed based on a Risk Assessment that was to be conducted on September 27, 2023.

13. The School Psychologist provided documentation of the recommendations from the National Association of School Psychologists regarding behavioral threat assessment and management. She described practices based on these documents that were put into place in the district beginning during the second semester of the 2022-23 school year for conducting a risk assessment for any student as a result of certain disciplinary issues and for any student due to certain mental health crisis situations. (Email written by School Psychologist, January 17, 2024)
14. Both parent and district staff indicated the Hospital Discharge Summary was provided to the district prior to the risk assessment conducted on September 27, 2023, by the School Psychologist. The Discharge Summary indicated medication for anxiety and intrusive thoughts was added to the existing prescription for medication to control ADHD. The Discharge Summary also included a safety plan for the student to follow if suicidal or out-of-control thoughts were to re-occur.
15. Both the parent and School Psychologist reported the Risk Assessment was begun but not completed on September 27, 2023, because the student was not able to identify a "safe person" in the school to go to if thoughts of hurting self or others were to occur. (Parent interview dated January 15, 2024; Interviews with District staff dated January 16, 2024, and January 17, 2024)
16. The parent reported the student did not trust any school staff at the time because the student believed multiple high school peers had become aware of the hospitalization due to staff discussions at school and exaggerated rumors regarding the cause of the hospitalization were circulating amongst the student's peers. (Parent interview dated January 15, 2024)
17. An IEP team meeting was held on September 28, 2023, to review testing results with the parent in attendance. It was noted that the speech/language testing had been completed prior to the student's hospitalization on September 20, 2023, and results showed average scores as compared to peers in all areas of language. However, none of the academic testing had been completed and neither the teacher nor parent had returned any of the social/emotional behavioral scales by the due date according to the School Psychologist. (IEP Team Meeting notes dated September 28, 2023)
18. At that time, the multidisciplinary team (MDT) did not recommend proceeding to conduct any further assessments in the areas of

academics and social/emotional as previously proposed because of concerns with the impact of the mental health crisis on the validity of testing results. (Determination Notice dated September 28, 2023)

19. Instead, the MDT determined the student continued to be eligible for special education and related services under the disability categories of Other Health Impaired and SLD in written expression, math computation, and reading comprehension based on a review of the current existing data. (Determination Notice dated September 28, 2023)
20. In addition, the MDT recommended dismissal from therapy services based on the current speech/language assessment results. (Determination Notice dated September 28, 2023)
21. On September 29, 2023, the district provided the parent with PWN dated September 28, 2023, proposing these actions and the parent reported she was in agreement with the continued determination of eligibility for special education services and with the student being dismissed from speech/language therapy.
22. In addition to determining continued eligibility, the student's IEP was also reviewed and revised at the September 28, 2023, IEP team meeting with the parent in attendance. Because the Risk Assessment had not been successfully completed and a safety plan developed, the school team members recommended homebound placement until such time a risk assessment could be completed and a safety plan put in place. (IEP Team Meeting notes dated September 28, 2023)
23. The September 28, 2023, IEP continued the math goal but deleted the speech/language goal. Two goals were included for completing daily assignments/activities and participating in the Zoom or recorded instruction on a daily basis in the homebound setting. The student's behavior still interfered with learning but the behavior support and core academic instruction was to be provided in a homebound setting. The IEP still did not include a behavior intervention plan. The IEP services were changed to 30 minutes per week for four weeks per month in the homebound setting beginning October 2, 2023, through September 25, 2024.
24. According to the IEP dated September 28, 2023, the student would receive 30 minutes for four weeks each month of specialized instruction in the homebound setting beginning October 2, 2023. The statement of special education and related services indicates,  
*The student will not re-enter the building at this time due to the extreme concerns with [the student's] mental health needs at this time causing an increased concern*

*in the level of safety of self, staff, and other students. The student will be participating in Home-bound instruction for the following classes: English, Algebra, History, and intro into Business as well as have the opportunity to continue working on [the student's] Courseware for credits to be recovered from the previous school year. Credit Recovery with courseware will be available to work on at home 7:30 -4:30 with [the student's] current login and password. Direct instruction will be provided through live Zoom meetings with teachers and recorded classroom sessions. Direct emails with teaching staff is always an option as well.*

25. A second PWN dated September 28, 2023, related to the change of services and placement was provided to the parent via email on September 29, 2023. The proposed action was described as,

*Due to safety concerns and the level of severity of [student's] mental health needs, the district proposes direct instruction, course work, and resource support be provided in a homebound setting until out of district placement can be secured. [Student's] mother requested that [student] return to the school building and resume the schedule [the student] had prior to this crisis.*

26. This PWN described the reasons for the proposed and refused actions as,

*The School District proposes the action of homebound setting for educational service due to the safety of self and others, and necessary components of a safety plan. [Student] has refused to follow some of the safety plan components as set up in [the student's] discharge papers. The School District rejected [the student's] mother's proposal of returning to the school building and resuming the schedule, due to the level of concerns of [student's] current mental health and unwillingness to participate in the safety plan.*

27. This PWN states that the decision was based on,

*Information gathered through the risk assessment process, record review and at the discretion of the district administration.*

28. The parent interview and records confirmed the parent was provided with a copy of the IDEA Procedural Safeguards at the September 28, 2023, meeting; however, the parent did not recall being told about the due process rights for disagreeing with the district's decision and the "stay put"



provisions when filing for due process. (PWN dated September 29, 2023; Parent interview dated January 15, 2024)

29. According to the IEP Team Meeting notes dated September 28, 2023, written by the Special Education Teacher / Case Manager, PWNs for continued eligibility and change of services and placement would be provided to the parent via email on September 29, 2023, along with the draft IEP with the IEP to be finalized on October 6, 2023. Another IEP meeting was to be scheduled on October 24, 2023, to monitor the student's progress on the revised IEP.
30. The District's Response to the Allegations dated January 15, 2024, indicated that the homebound services were to begin on October 2, 2023. The district reported,

*The district arranged a schedule for the student to participate in direct instruction with Intro to Business, Algebra, and Social Studies. Because the student was familiar with and used Google Classroom and Courseware prior to September 20, 2023, the teachers would continue to use Google Classroom to share assignments and zoom for direct instruction. The student would have access to Courseware to continue credit recovery classes. Teachers began messaging the student on October 3, 2023, via Google Classroom. The student logged into Courseware on October 24, 2023.*

31. The parent was not provided with a draft copy of the IEP and a copy of the PWN until October 6, 2023, at 10:47 AM in an email written by the Special Education Teacher / Case Manager. The email gave the parent until October 10, 2023, at noon to provide any feedback; after that time, the IEP would be finalized and distributed. It is noted that the parent was provided with another copy of the IDEA Procedural Safeguards as an attachment to this email.

32. The parent stated that she continued to be in disagreement with the September 28, 2023, IEP and requested another IEP team meeting on October 13, 2023. The parent sent an email on October 13, 2023, at 4:47 PM to the Special Education Teacher / Case Manager, the Special Education Supervisor, and the Superintendent stating,

*As I have stated prior...there is no one home to help [the student] with any kind of assistance or to make sure that [the student] logs in to any of these classes as directed in an email that was sent to **[the student] only**. I have no clue as to what, when or how [the student] needs to log into. I have scheduled to try and keep [the student] on task even with the distance. I tried to explain that this home bound solution was not going to work, and it has already shown...it*

*is expected of [the student] to do all of this with absolutely no support. Our internet **will not support Zoom**, as I have stated before. I now know that no one is listening to anything I have concerns about. I am officially requesting for another IEP meeting to discuss placement.*

33. Interviews with the parent and district staff found the district responded to this request by confirming the previously scheduled IEP team meeting on October 24, 2023. (Interview with the Parent dated January 15, 2024; Interviews with District staff dated January 16 and 17, 2024)
34. On October 17, 2023, at 12:49 PM the parent sent an email to the Special Education Teacher / Case Manager indicating that she was unable to meet during the school day as proposed due to her work schedule during harvest season and requested an evening meeting.
35. The Special Education Teacher / Case Manager responded in an email dated that same date at 2:48 PM offering to meet at the end of parent-teacher conferences on October 26, 2023, and noting the latest they could meet would be at 6:00 PM.
36. The parent responded in an email on October 23, 2023, at 2:26 PM explaining she could not attend the scheduled meeting and reiterating her request to complete the Risk Assessment process. In the email, the parent stated,

*I am in the understanding that this must take place prior to having an IEP. With that being said, I agree that the IEP will need to be rescheduled until a safety plan can be formulated.*

37. The parent also updated district staff on the status of the homebound instruction in this email explaining that the student had not participated in any of the online classes or completed any assignments to date because of internet/technology issues. The parent stated that the original plan to have the student access the homebound services at a grandmother's home in another city through her internet would not work. While the grandmother was willing to provide supervision, the parent stated that she was,

*Just hesitant on being in the Para capacity with no knowledge or direction being given. And Unfortunately, I am unable to give her any direction in that area, as I haven't been given any clear guidance either.*

38. The parent indicated that an aunt from out-of-state was visiting and had offered to help get the student set up at the grandmother's home, but this was just a temporary situation. In this same email, the parent stated,

I am at a loss as to how to move forward with this. I have expressed my concerns several times, that have gone unanswered. I repeatedly asked for direct assistance as to how to navigate through systems that I am unfamiliar with, with an actual schedule of the classes [the student] is scheduled to take throughout the day, which classes are on Zoom; that our internet doesn't support; on what days and times those Zooms are scheduled. I have combed back through my emails and have found bits and pieces but not the entirety. At this point I am still trying to find common ground in order to help my [student], but I have to be honest, I am finding it very difficult. If we cannot come up with a resolution, or clarification cannot be made with the requests given, then I am wondering if I should seek outside counsel for facilitated IEP or mediation services.

39. The School Psychologist responded to the parent in an email dated October 24, 2023, at 10:20 AM indicating that the latest the IEP team could meet was 6:00 PM and requesting the parent to send other dates and times that would work for her so an IEP team meeting could be scheduled. The School Psychologist stated,

*You have requested to put the IEP team back together, that is the main meeting that is trying to be scheduled at this time. A new safety plan can be developed as part of the IEP meeting, as this takes input from everyone for discussion, assessment, and planning purposes. What I had offered to work with you specifically on was furthering the Risk Assessment process to help guide the safety plan.*

40. In this email, the School Psychologist provided the specific schedule of the days/times each of the online Zoom classes and stated,

*I would like to, again, extend an offer to meet with someone to go over logging in and how to access everything. Built into the plan are opportunities for direct instruction on assignments, that is the purpose and intention of Zoom calls. On this, I know you have responded several times about Zoom not supported by your internet. I want to assure this has not gone unheard: I acknowledged in the email sent last Monday that [the Superintendent] has ordered a hotspot. In the meantime, [the student] has had access to other opportunities for engagement with the course work expectations. We can also set something to help provide direction for [the student's] grandma, if that is helpful. The email and Courseware are both systems [the student] is familiar*

*with, however, and is fully capable of utilizing independently without direct support. I do see now that [the student] has accepted the Google Classroom invitation, which means [the student] has also logged in to the email account. Hopefully we are getting some kinks worked through! There are several pieces of correspondence for [the student] on that thread that [the student] can work through, contact teachers on, as well as his email.*

41. The School Psychologist acknowledged that the only day the student accessed the online homebound instruction during the first semester of the 2023-24 school year was October 24, 2023.
42. The parent responded via email on October 25, 2023, at 12:01 PM to district staff indicating that she was planning to meet with staff at the Parent Training and Information Center in Nebraska (PTI) on October 27, 2023, to discuss her concerns with the IEP and the Risk Assessment and would prefer to meet after that date.
43. On October 31, 2023, at 1:53 PM, the parent emailed district staff indicating that she had been advised by the PTI and the NDE that “*completing the risk assessment would be a good place to start as well as a new IEP.*” She provided three days/times she was available to meet in order to complete the risk assessment and requested that an IEP team meeting be scheduled “*with the assistance of a facilitator with mediation.*”
44. On November 1, 2023, at 3:04 PM, the Special Education Teacher / Case Manager sent an email to the parent and school staff working with the student setting up a weekly email thread to monitor the student’s progress and participation in the online homebound instruction. He reported at that time that the student had accessed the Courseware program on October 24, 2023, and completed 17 assignments. The student earned a 70% on one assignment but failed the other 16 assignments. It was noted that these assignments were completed within minutes of the previous one.
45. The district provided follow-up emails to the parent documenting the student had not completed any assignments or participated in any Zoom meetings on November 9, November 13, November 17, and November 21, 2023.
46. The parent responded to the Special Education Teacher / Case Manager and school staff working with the student via email on November 21, 2023, at 4:23 PM and stated,

*I am fully aware that [the student] has not logged in or attended any Zoom meetings. As I have repeatedly explained and told this*

*entire team . . . our internet does not support Zoom, and at this time we do not have any internet. I was told this was going to be provided by the school and has yet to be fulfilled. This is going on 55 days now. We are unable to go anywhere else that might have an internet source as the "Grandma" option was only a temporary solution as also explained previously. So, again, I will explain to the team, [the student] cannot attend something that he has no access to.*

47. The School Psychologist responded to the October 31, 2023, email from the parent regarding the rescheduling of the risk assessment in an email on November 2, 2023, at 2:37 PM. A date/time was proposed for the School Psychologist, Special Education Director and the High School Principal to complete the risk assessment.

48. The parent responded via email on November 3, 2023, at 9:05 AM accepting the proposed date/time for the risk assessment to be completed. However, the parent expressed confusion over the addition of two district staff in the assessment process and requested that she be involved in any interview being conducted with the student by school staff.

49. On November 6, 2023, at 8:19 AM the School Psychologist responded to the parent via email stating,

*Please understand that the risk assessment prior to the meeting is not an IEP team meeting, and is not open to any additional invitees as you requested. The District assigns its staff and contracted providers to attend an assist with assessments and evaluations at its discretion, and has specifically assigned [the High School Principal] and [Special Education Director] to be available for the scheduled assessment. Their extensive expertise in education and special education generally, coupled with their unique experiences and knowledge of [the student] and the district make them invaluable to the process. In order for that process to provide meaningful data for the team's consideration, it will need to follow the professional best practices that include interview time with the student individually. This is not "questioning" but a part of the appropriate assessment process.*

*While the District is confident that its team of providers (Special Education Director, [High School Principal], and myself) are qualified and well positioned to undertake the assessment in a fair and unbiased manner to provide the team with valuable data and*

information regarding [the student's] present level of need, performance, and tolerance of the educational environment. **However, in consideration of your concerns about the risk assessment process, the District would also be willing to undertake a more formal and comprehensive psychoeducation evaluation to be undertaken by an outside contracted provider.**

*If you would prefer this alternative, please let me know at your earliest convenience and I will identify an available professional and provide you with a formal request for consent to undertake the evaluation. [The student's] IEP team would then meet after it receives the results of that evaluation to consider the resulting information.*

50. The parent responded in an email on the same date at 9:05 AM and stated,

*I would like to take the offer of the outside provider for the Risk Assessment as you have mentioned. I do not believe that [the student] would be provided a non-biased review with staff that was selected.*

51. The district responded to the parent request to complete the district's risk assessment process by proposing to conduct a psychoeducational evaluation of the student in lieu of the risk assessment because "additional information would be beneficial to determining appropriate placement and thus necessary programming." A draft PWN was prepared on November 8, 2023, proposing to conduct a full comprehensive psychoeducational evaluation in place of the originally proposed risk assessment. However, interviews found the district neither provided this PWN to the parent nor obtained written consent for this reevaluation with additional assessment. (Interviews with District staff dated January 16 and 17, 2024)

52. Based on district staff interviews (dated January 16 and 17, 2024) and the written response to the allegations dated January 15, 2024, the district began looking for an outside person or agency to complete the risk assessment / psychoeducational evaluation in November 2023. Once a provider could be procured, the district planned to send the PWN proposing the assessment and obtaining the written parent consent. However, the School Psychologist indicated that to date, no in-person provider was either available or willing to provide the psychoeducational evaluation of the student.

53. Screenshots of texts sent on January 10, 2024, between the Superintendent and the parent show a telehealth provider had been located to conduct the risk assessment; however, because the provider was not licensed to practice in Texas where the student was now residing, another provider with appropriate licensure would need to be found. Contact information for The Resolution Center was also provided to the parent so mediation could be arranged.
54. Also In their response to the allegations on January 15, 2024, the district stated,
- The student is currently residing in Texas and the risk assessment will need to be scheduled with someone licensed in that state. In addition, on January 10, 2024, the district notified the parent that the mediator from The Resolution Center will be in contact with the parent. The district continues to work with the parent in completing the risk assessment and setting up the IEP.*
55. The Special Education Director noted that a records request was being sent by the Texas school district as of January 17, 2024, and that the student's educational records would be provided once it was received. (Interview with the Director of Special Education dated January 16, 2024)

**Issue # 1**

Did the district follow the appropriate procedures when changing the student's placement to homebound during the 2023-24 school year? [92 NAC 51-007.06A; 92 NAC 51-008.01C; 92 NAC 51-009.02, and 92 NAC 51-009.05]

92 NAC 51-007.06 states:

007.06        *Parent Participation*

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.

92 NAC 51-008 states:

008.01        Least Restrictive Environment (LRE) Requirements

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

- 008.01C1 *The placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options and*
- 008.01C2 *The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on child's unique needs and not on the child's disability.*

92 NAC 51-009 states:

009 *Procedural Safeguards*

009.02 *Parent Involvement in Placement Decisions*

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

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

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

009.05A1 *Refuses to initiate or change the identification,*



*evaluation, or educational placement of a child or the provision of a free appropriate public education.*

009.06A

*A copy of the procedural safeguards available to the parents of a child with a disability shall be given by the school district or approved cooperative to the parties at least annually.*

#### *Allegations/Parent Position*

The parent believes the student's placement was changed to homebound services following the hospitalization for a mental health crisis based on an inappropriately administered risk assessment by the School Psychologist. The parent shared she never agreed with the change of services and placement from a full-day schedule with minimal special education support in the public high school to the online homebound setting. The parent indicated in the interview that she was unaware she could disagree with the proposed placement. (Letter of complaint dated November 27, 2023)

#### *District Response*

The district reported that it followed the appropriate procedures in convening the IEP team to determine an appropriate services and placement for the student following the hospitalization and ideation for harming others and pets. Per district practice, a risk assessment was conducted on September 27, 2023, but was not completed because the student refused to fully participate. An IEP team meeting was held on September 28, 2023, with the parent in attendance and all current information was considered. The district provided the parent with PWN for changing the student's services and placement on September 29, 2023, and again on October 6, 2023. The parent was provided with copies of the IDEA Procedural Safeguards which included a description of the dispute resolution options and processes on two separate occasions as documented in emails from the Special Education Teacher / Case Manager on September 29, October 6, and October 10, 2023. The parent was provided with a copy of the draft IEP on October 6, 2023, and given a deadline until October 10, 2023, to formally disagree with the changes. The District's Response to the Allegations and an email written by the Special Education Teacher / Case Manager to the parent dated October 10, 2023, show that the final copy of the IEP was

provided to the parent on October 10, 2023, when no response was received. (Letter of Response dated January 15, 2024)

### *Investigative Findings*

Based on interviews with the parent and district staff as well as documentation provided by both the parent and the district, it appears that the parent was provided with sufficient notice to be able to participate in person in the September 28, 2023, IEP team meeting. IEP Team Meeting Notes and interviews with both the parent and the district staff indicated IEP was reviewed and revised during that IEP team meeting based on the results of the most current reevaluation, the Discharge Summary from Hospital, the risk assessment conducted on September 27, 2023, and input from the parent.

The district provided the parent with PWN proposing to change the student's services and placement and refusing the parents request to continue the services and placement required by the IEP dated August 14, 2023.

Interviews and documentation show the parent was provided with the IDEA Procedural Safeguards at the IEP team meeting on September 28, 2023, and when the draft IEP and PWN was emailed on October 6, 2023. While the district staff may not have fully explained the parent's rights regarding disagreement with a change of services and placement, the parent did exercise her rights to seek assistance from the PTI and NDE at the end of October 2023.

### *Summary and Conclusions*

Nebraska Rule 51 requires districts to provide parents with the opportunity to participate in IEP team meetings and provide input regarding their student's IEP services and placement. The district is also required to provide the parent with PWN when it either proposes or refuses to make changes to the provision of a free appropriate public education (FAPE) to the student. In addition, the district is required to provide the parent with information regarding the IDEA Procedural Safeguards, which includes the dispute resolution process, at least once each school year.

In this case, the parent did participate in the September 28, 2023, IEP team meeting. [Refer to Finding #17]

As a result of that meeting, the district proposed a change of services and placement to online homebound and refused the parent's request to continue with the services and placement required by the IEP dated August 14, 2023. The district provided the parent with a copy of the PWN on September 29, 2023, and again on October 6, 2023, proposing the change of services and placement and refusing the parent request for the student to continue in the current

services and placement. The district provided the parent with a copy of the IDEA Procedural Safeguards on September 28, 2023, and emailed a copy of them along with the PWN. [Refer to Findings #21, 22, 29, and 31]

Based on the foregoing, the District implemented the requirements of 92 NAC 51-007.06A; 92 NAC 51-008.01C; 92 NAC 51-009.02, and 92 NAC 51-009.05 and **no corrective action is required.**

## **Issue # 2**

Did the District provide special education and related services to the student in accordance with the IEP for homebound placement during the 2023-24 school year? [92 NAC 51-007.02]

92 NAC 51-007.02 states:

007 *Individualized Education Program (IEP)*

007.02 *School districts or approved cooperatives must provide special education and related services to a child with a disability in accordance with the child's IEP.*

### *Allegations/Parent Position*

The parent indicated that student failed to receive the services described in the IEP dated September 28, 2023, for homebound instruction to continue to make progress in the current class schedule through Zoom / Google Classroom as well as continue to earn make-up credits towards graduation through Courseware due to the shortened school day during the 9<sup>th</sup> grade. Since September 28, 2023, the student was only logged into Courseware on one date and only passed one assignment out of the 17 attempted and submitted. The parent indicated this was because of internet access and supervision issues. While the school offered to provide a hotspot so the student could access Zoom and the internet, the student had gone eight weeks with no educational services by the end of the first semester. The parent reported in the interview that and multiple emails written to district staff show that she made ongoing attempts to work with the school so the student could receive services. However, the parent finally felt it was necessary to have the student to live with a grandma in Texas so the student would not be denied an education any longer. (Letter of Complaint dated November 27, 2023)

### *District Response*

The district believes it has provided the student with the opportunity to access the instruction required by the IEP dated September 28, 2023; however, the student has chosen to not participate in the services that were offered. The student continued to be enrolled in the English, Algebra, History, and Intro to

business classes and had scheduled access to recorded classroom sessions, Zoom meetings with teachers, and direct email access with all teachers. The student also had the opportunity to continue working on the Courseware program for credits to be recovered from the previous school year. These courses were available via the internet using the student's current login and password.

The district reported the homebound services were to begin on October 2, 2023, and the teachers started reaching out to the student October 3, 2023. The district reported that student was capable of accessing and participating in the online courses independently. The district began monitoring the student's participation in the online education beginning in November 2023 and kept the parent informed that the student was not taking advantage of the scheduled Zoom meetings, Google Classroom, and Courseware opportunities.

According to the District's Response to the Allegations dated January 15, 2024, interviews and emails written by school staff to the parent in October and November, The district reported that the student only participated in the online homebound instruction on October 24, 2023, and only passed one of the 17 assignments that were submitted on that date.

#### *Investigative Findings*

The IEP dated September 28, 2023, requires the student to receive 30 minutes a week for four weeks each month of specialized instruction in the homebound setting beginning October 2, 2023. The statement of special education and related services indicates specifically describes the homebound instruction plan as follows:

*The student will not re-enter the building at this time due to the extreme concerns with [the student's] mental health needs at this time causing an increased concern in the level of safety of self, staff, and other students. The student will be participating in Home-bound instruction for the following classes: English, Algebra, History, and intro into Business as well as have the opportunity to continue working on [the student's] Courseware for credits to be recovered from the previous school year. Credit Recovery with courseware will be available to work on at home 7:30 -4:30 with his current login and password. Direct instruction will be provided through live Zoom meetings with teachers and recorded classroom sessions. Direct emails with teaching staff is always an option as well.*

The school staff indicated their understanding was that the student had internet access in the home but no Zoom access and that a plan for the student to

access Zoom at the grandma's home was agreed to at the September 28, 2023, IEP team meeting according to interviews with district staff, emails, and IEP team meeting notes dated September 28, 2023. The district offered to provide the student with access to the internet via a hot spot provided by the district, which, unfortunately, was delayed due to global supply chain issues according to the School Psychologist. The district acknowledged that the only day the student participated in the online homebound instruction was on October 24, 2023, in the District's Response to the Allegations dated January 15, 2024.

### *Summary and Conclusions*

Rule 51 requires IEPs to be implemented as written. In this case, the district failed to provide the services required in the IEP dated September 28, 2023. Interviews and documentation show the student did not have reliable internet access to participate in the online homebound instruction offered by the district and in fact only participated in the Courseware instruction on one day between October 2, 2023, and the end of the first semester and never participated in a Zoom meeting with a district staff.

Based on the foregoing, the District failed to fully implement the requirements of 92 NAC 51-007.02. Thus, the following **corrective action is required**.

### *Corrective Action*

1. The district is ordered to pay for tutoring (in Texas or Nebraska, if the Student is moved back home) for the student for a minimum of 11 weeks to provide specialized instruction and support for credit recovery through Courseware in order to provide the student with the opportunity to earn all the credits which could have been earned during the first semester of the 2023-24 school year when the district failed to implement the IEP as written.
  - a. The parent must provide the name, address, and cost per hour for the tutoring by February 16, 2024, to the District and to NDE.
  - b. The District must provide billing receipts for tutoring monthly to NDE until all credits missed during the first semester of the 2023-24 school year have been earned, or through the end of August 2024.

### **Issue # 3**

Did the district follow the appropriate procedures to conduct a psychoeducational evaluation of the student during the 2023-24 school year? [92 NAC 51-006.05 and 92 NAC 51-009.08]

92 NAC 51-006.05 states:

006.05      *Reevaluations*

- 006.05A *A school district or approved cooperative shall ensure that a reevaluation of each child with a disability is conducted in accordance with the verification procedures in Section 006 of this Chapter*
- 006.05B *A reevaluation conducted under subsection 006.05 of this Chapter:*
  - 006.5B2 *Must occur at least once every three years, unless the parent and the district or approved cooperative agree that a reevaluation is unnecessary.*

92 NAC 51-009.08C states:

- 009.08C *Consent for Reevaluations*
  - 009.08C1 *Subject to 92 NAC 51-009.08C2, each school district or approved cooperative must obtain informed parental consent, in accordance with 92 NAC 51-009.08A1, prior to conducting any reevaluation of a child with a disability.*

#### *Allegations/Parent Position*

The parent believes that the student was not reevaluated within the required timelines or by following the appropriate procedures. The parent stated the district's risk assessment process following the student's hospitalization for a mental health crisis was inappropriately used to deny the student the opportunity to attend school at the local high school with the support of the IEP dated August 14, 2023. The parent noted that she was in agreement with the district's proposal for an outside psychoeducational evaluation to be conducted as the risk assessment on November 6, 2023. However, the parent interview and emails between the parent and school staff found the district has failed to contract with a provider to conduct this assessment to date. (Letter of Complaint dated November 27, 2023)

#### *District Response*

Per the District's Response to the Allegations dated January 15, 2024, the district believes it has followed the appropriate procedures to conduct the required three-year reevaluation and the psychoeducational evaluation of the student during the 2023-24 school year.

### *Investigative Findings*

In this case, while the IEP dated August 14, 2023, showed the most recent reevaluation of the student was conducted on August 8, 2020, a PWN dated August 4, 2020, documents parental consent to complete a reevaluation of the student and an evaluation report dated October 8, 2020, shows the district did reevaluate the student through additional assessments when transferring from an out-of-state district as required by 92 NAC 51-007.08B. The next triennial reevaluation was therefore due no later than October 8, 2023.

Interviews and documentation found the district conducted a review of existing data meeting on August 14, 2023. Following that review, the district obtained written consent from the parent for a reevaluation with additional assessment on that same date. The district was able to complete the speech/language testing but not the social emotional or academic portions of the testing prior to the student's hospitalization for the mental health crisis on September 20, 2023.

Following discharge from the hospital, the district followed its practice and conducted a risk assessment in order to facilitate the development of a safety plan. This risk assessment was not a reevaluation conducted under the IDEA regulations and Rule 51. However, the information obtained during the risk assessment could certainly be considered as current data during the September 28, 2023, IEP team meeting when reviewing and revising the IEP.

The results of the speech/language testing along with current data including the Discharge Summary from the hospital, the risk assessment, and input from the IEP team members was reviewed at the IEP team meeting held on September 28, 2023. Interviews with the parent and district staff as well as meeting notes indicate the MDT made a decision to not continue with the originally proposed additional assessments due to concerns related to the student's mental health. Instead, a Determination Notice, dated September 28, 2023, reflects that the student continues to be eligible for special education under the disability categories of Other Health Impaired and Specific Learning Disability in the areas of Written Expression, Math Computation, and Reading Comprehension. The district provided the parent with PWN of this decision on September 29, 2023.

On October 31, 2023, the parent requested that the district's risk assessment be completed so that a new IEP team meeting could be held to discuss appropriate services and placement of the student. The district scheduled a date/time to conduct the risk assessment; however, the parent did not agree with the district's choice of staff for conducting the risk assessment.

The district responded by creating a draft PWN dated November 8, 2023, proposing a psychoeducational evaluation of the student be completed in lieu

of the risk assessment because “*additional information would be beneficial to determining appropriate placement and thus necessary programming*”. However, the district never provided the parent with a copy of this PWN and did not obtain consent for an evaluation with additional assessment according to the interview with the School Psychologist and the PWN dated November 8, 2023.

Instead, the district proceeded with attempts to contract with a provider to conduct the psychoeducational evaluation and updated the parent regarding that progress; however, no provider was located between the dates of the parent request for a reevaluation on November 6, 2023, until January 10, 2024, as documented in the text messages between the parent and the Superintendent dated January 10, 2024. At that time, the district was attempting to locate a provider who was licensed in Texas to conduct the psychoeducational evaluation because that was where the student is currently residing.

#### *Summary and Conclusions*

Rule 51 requires that a student be reevaluated at least triennially and that the district obtain written parent consent before conducting a reevaluation with additional assessments. Interviews and documentation support a finding that the district completed the required triennial evaluation within the three-year timeframe on September 28, 2023, and that consent was obtained on August 14, 2023, which is prior to conducting any of the additional assessments.

However, on November 8, 2023, the district responded to the parent request to complete the district’s risk assessment process by proposing to conduct a psychoeducational evaluation of the student in lieu of the risk assessment because “*additional information would be beneficial to determining appropriate placement and thus necessary programming.*” Because the purpose of conducting the risk assessment was now related to developing an appropriate IEP to deliver FAPE to the student, the proposed evaluation does fall under the IDEA regulations and Rule 51. Interviews and documentation found the district has failed to provide the parent with appropriate PWN and to obtain consent for this reevaluation with additional assessment.

Based on the forgoing, the District failed to fully implement the requirements of 92 NAC 51-006.05 and 92 NAC 51-009.08. Thus, the following **corrective action is required**.

#### *Corrective Action*

1. Because the student is currently enrolled in another school district and being evaluated for special education eligibility, the district is ordered to



follow the transfer procedures required in 92 NAC 51-007.08B if the student were to re-enroll in the district at a future date.

- a. On or before, November 1, 2024, the district will contact NDE to provide the following information:
  - i. The date to which the student moved back to Nebraska, if applicable.
  - ii. A copy of the MDT demonstrating adherence to the transfer procedures required by 92 NAC 51-007.08B including the date consent was signed by the parents.
2. By February 9, 2024, the district is ordered to contact the NDE School Safety and Security Office (Jay Martin) and the NeMTSS Regional Support Lead (Heidi Farmer) to request training to all special education staff, including school psychologists, and administrators on the requirements for conducting a special education evaluation to determine the positive behavioral supports and interventions needed by a student versus following district practices for conducting a risk assessment.
  - a. The district will provide the results of that contact no later than February 12, 2024.
  - b. The district will inform the Office of Special Education the date the training is scheduled by March 9, 2024.
  - c. The district must provide to the Office of Special Education the participant sign-in or other evidence of participation within 5 business days of the training.
3. Based on this training, the district will create a procedure for conducting risk assessments and provide copies to all school psychologists, counselors, and administrators in the district.
  - a. Procedures must be provided to the Office of Special Education by August 31, 2024.

#### **Issue #4**

Did the district respond appropriately to the parent's request for an IEP team meeting during the 2023-24 school year? [92 NAC 51-007.10C and 92 NAC 51-007.06]

92 NAC 51-007.10 states:

007.10        *The IEP team shall revise the IEP as appropriate to address:*

007.10C      *The information about the child provided to, or by, the parents, as described in 92 NAC 51-006.06A1.*

92 NAC 51-006.06A1 states:

006.06A1      *Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based local or State assessments and classroom-based observations, and observations by teachers and related services providers.*

92 NAC 007.06C states:

007.06      *Parent Participation*

007.06C      *If neither parent is able to participate in the scheduled meeting, the district or approved cooperative shall use other alternate methods to provide the parent with the opportunity to participate in the meeting.*

*Allegations/Parent Position*

The parent reported requesting to reconvene the student's IEP team on October 13, 2023, because of internet/technology problems which caused the student to miss all IEP services beginning on October 2, 2023. The parent requested a mediator to conduct a facilitated IEP on October 31, 2023. (Letter of Complaint dated November 27, 2023)

The parent indicated the district is continuing to require the student to complete a risk assessment prior to scheduling the IEP team meeting but is not able to complete the risk assessment because the district has been unable to contract with an outside provider to conduct the risk assessment. During the parent interview, she expressed frustration that the student has essentially been denied educational services for most of the first semester of the 2023-24 school year.

*District Response*

The District's Response to the Allegations dated January 15, 2024, indicates the district did respond to the parent's request to reconvene the IEP team on October 13, 2023. The district reported two meetings were scheduled on October 24 and October 26, 2023. but the parent did not attend either IEP team meeting. Then, on October 31, 2023, the parent requested an IEP meeting be scheduled with a mediator so the district again responded to the parents request and attempted to arrange for this to occur. On January 10, 2024, the district informed the parent that The Resolution Center staff would be contacting the parent to arrange the requested mediation and facilitated IEP team meeting.

### *Investigative Findings*

In this case, the parent requested to reconvene the IEP team in an email on October 13, 2023. Interviews and documentation show the district originally scheduled an IEP team meeting on October 24, 2023; however, the parent indicated she would not be able to attend at that time and requested a later meeting time.

The district responded by rescheduling the IEP team meeting for October 26, 2023, at 6:00 PM following the district's parent/teacher conferences. On October 25, 2023, the parent informed the district she would not be attending that meeting because she was seeking guidance from the PTI on October 27, 2023.

On October 31, 2023, the parent emailed the district and indicated the PTI and NDE had advised her that "*completing the risk assessment would be a good place to start as well as a new IEP.*" She provided three days/times she was available to meet in order to complete the risk assessment and requested that an IEP team meeting be scheduled "*with the assistance of a facilitator with mediation.*"

On November 6, 2023, because of parent concerns with impartiality of the risk assessment being conducted by school staff, the district proposed to conduct a psychoeducational evaluation in lieu of the risk assessment and to reconvene the IEP team once the psychoeducational evaluation had been completed. The parent indicated agreement with this proposal on that same date.

It is noted that the decision to conduct a psychoeducational evaluation and the difficulty the district experienced in contracting with a provider coupled with the belief and decision that the IEP team could not meet prior to the completion of this evaluation caused a significant delay in the district's attempts to schedule an IEP team meeting.

Screenshots of text messages between the parent and the Superintendent dated January 10, 2024, show the district had arranged for staff from The Resolution Center to conduct the mediation for the IEP team meeting.

### *Summary and Conclusions*

Rule 51 requires the IEP team to reconvene if the parent requests to share information that will impact the provision of FAPE to the student. The parent made such a request on October 13, 2023, and the district responded by scheduling an IEP team meeting on October 24, 2023. When the parent indicated she needed to reschedule that meeting to a later time, the district scheduled the IEP team meeting for October 26, 2023, at 6:00 PM. On October

25, 2023, the parent indicated she was seeking guidance from the PTI and wanted to wait until after that consultation to reschedule the IEP team meeting.

On October 31, 2023, the parent requested an IEP team meeting be scheduled with the assistance of facilitator with mediation. On January 10, 2024, the district informed the parent that staff from the Resolution Center would be in contact with her to schedule the mediation and IEP meeting as she had requested.

It is noted that the district's incorrect belief and decision that the IEP team could not meet prior to the completion of this evaluation caused a significant delay in the district's attempts to schedule the requested IEP team meeting. However delayed, the district did follow the requirements of 92 NAC 51-007.06 for ensuring the parent had an opportunity to participate in the IEP team meeting as evidence by the steps taken to reschedule the IEP team meetings on multiple occasions in order to provide the parent the opportunity to participate at a mutually agreeable date and time.

Based on the foregoing, the District implemented the requirements of 92 NAC 51-007.10C and 92 NAC 51-007.06 in regards to responding to the parent's requests to reconvene the IEP team meeting during the 2023-24 school year and **no corrective action is required.**

#### **Issue # 5**

Did the district provide the student with a free appropriate public education during the 2023-24 school year? [92 NAC 51-003.24 and 92 NAC 51-007.07]

92 NAC 51-003.24 states:

003.14      *Free appropriate public education or FAPE means special education and related services that are provided at public expense, under public supervision, and direction, and without charge; meet the standards of the state including the requirements of this Chapter; include an appropriate preschool, elementary school, or secondary school education in Nebraska and are provided in conformity with an individualized education program (IEP) that meets the requirements of 92 NAC 51- 007.*

92 NAC 51-007.07 states:

007.07      *Individualized Education Programs Development*

007.07A      *The IEP shall include:*

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:*

007.07A5a      *To advance appropriately toward attaining the annual goals;*

007.07A5b      *To be involved in and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and*

007.07A5c      *To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5;*

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 51-007.10 states:

007. 10      *The IEP team shall revise the child's IEP to address:*

007.10A      *Any lack of progress toward the annual goals described in 92 NAC 51-007.07*

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

*Allegations/Parent Position*

The parent alleges the lack of any educational services beginning on October 2, 2023, through the end of the first semester of the 2023-24 school year constitutes a denial of FAPE to the student (Letter of Complaint dated November 27, 2023). During the parent interview on January 15, 2024, the parent reported that, because of the denial of FAPE, she was forced to send the student to live with a grandmother in Texas so he could once again be given the opportunity to receive FAPE.

*District Response*

The District's Response to the Allegations dated January 15, 2024, indicated the district believed that the student was provided with FAPE during the 2023-24 school year. The district explained,

*The district arranged a schedule for the student to participate in direct instruction with Intro to Business, Algebra, and Social Studies. Because the student was familiar with and used Google Classroom and Courseware prior to September 20, 2023, the teachers would continue to use Google Classroom to share assignments and zoom for direct instruction. The student would have access to Courseware to continue credit recovery classes. Teachers began messaging the student on October 3, 2023, via Google Classroom. The student logged into Courseware on October 24, 2023.*

*Investigative Findings*

The findings of Issue #2 regarding the district's failure to implement the student's IEP as written during the 2023-24 school year are incorporated herein by reference.

The Evaluation Report dated October 8, 2020, identified the student as eligible for special education and related services under the categories of OHI due to

medical diagnoses of ADHD and GAD, Speech/Language Impaired, and Specific Learning Disability in the areas of written expression, math computation, and reading comprehension. Though not eligible under the disability category of Autism, summarized testing noted the student was rated a probable – Level 1 Autism and requiring minimal support and “some sensory processing difficulties, especially with auditory input”.

The August 14, 2023, IEP included four goals addressing language skills, work completion, math skills and attendance. The IEP noted the student’s behavior and social emotional needs required behavior support and core instruction in the areas of reading, writing, and math. The IEP did not include a behavior intervention plan. This IEP included special instruction for 120 minutes per day for four days per week and speech/language therapy for 15 minutes per day for one day per month. In addition, social and sensory support were listed as a supplementary aid and service but did not include frequency. All services were to be provided in the public-school setting and for the duration of the school year.

The September 28, 2023, IEP continued the math goal but deleted the speech/language goal. Two goals were included for completing daily assignments/activities and participating in the Zoom or recorded instruction on a daily basis in the homebound setting. The student’s behavior still interfered with learning, but the behavior support and core academic instruction was to be provided in a homebound setting. The IEP still did not include a behavior intervention plan. The IEP services were changed to 30 minutes per week for four weeks per month in the homebound setting beginning October 2, 2023, through September 25, 2024.

Documentation and the parent interview found that the parent expressed concerns regarding lack of technology to access the online homebound instruction during the September 28, 2023, IEP team meeting. In addition, the parent interview along with multiple emails dated between October 13, 2023, and November 21, 2023, showed the parent attempted to make district staff aware that the online homebound instruction was technologically unfeasible for providing the homebound services. Yet, the district did not respond to these concerns by either arranging for appropriate online access for the student or by considering other delivery models for providing the homebound instruction.

Documentation and district staff interviews found the district was aware that the student was not accessing the online homebound instruction as early as October 13, 2023. In fact, the only date the student accessed the Courseware program was on October 24, 2023, and the student only passed one assignment

of the 17 assignments that were submitted on that date. Emails written by district staff to the parent during the months of October, November, and December document the district was aware that the student had never accessed any of the scheduled Zoom meetings and was not turning in assignments.

However, despite being aware of the student's ongoing lack of participation in the online homebound instruction over the course of 11 weeks of the first semester of the 2023-24 school year, the district did not reconvene the IEP team to discuss the student's lack of participation and progress towards the IEP goals, to be involved in and progress in the general education curriculum, and to develop a plan to provide the student with FAPE.

#### *Summary and Conclusions*

Rule 51 requires districts provide students with FAPE by developing IEPs which are reasonably calculated so the student can advance appropriately toward attaining the annual goals and to be involved in and progress in the general education curriculum. In this case, the IEP dated August 14, 2023, did not include the frequency of the supplementary aids and services behavioral and sensory support that was to be provided to the student.

In addition, both the IEPs dated August 14 and September 28, 2023, documented the student's behavior impacted learning and that support was needed to address behavior and social/emotional needs. However, neither IEP included goals focused on the student's social emotional needs or addressed these concerns through a behavior intervention plan.

Districts are required to reconvene the IEP team to review and revise, as appropriate, the IEP when the student is not making progress towards the IEP goals or for "other matters" in order to provide FAPE to the student.

Interviews and documentation found the district was aware of the concerns with internet access/technology and had even made an effort to obtain a hot spot for the student's home to provide such access. The district was also aware of the student's lack of progress towards his IEP goals based on the fact the student had only attended one day of instruction over the course of the 11 weeks of online homebound instruction required by the September 28, 2023, IEP. In addition, the district was aware that the student had only passed one of 17 submitted assignments, which indicates a failure rate of 94% of the assignments the student even attempted.

Despite being aware of these "other matters" which were impacting the provision of FAPE to the student, the district never reconvened the IEP team to



review and revise the student's IEP, if appropriate. The total lack of educational services provided to the student for 11 weeks during the first semester was a failure to provide this particular student with FAPE.

Based on foregoing, the District failed to fully implement the requirements of 92 NAC 51-003.24 and 92 NAC 51-007.07. Thus, the following **corrective action is required**.

#### *Corrective Action*

1. The district staff, including all school psychologists, special education staff, is ordered to participate in training provided by NDE on the following:
  - a. Requirements for when to reconvene an IEP team;
  - b. Components of a compliant IEP document including, but not limited to, the inclusion of frequency, duration, and location of supplementary aids and services;
  - c. Developing an IEP that is reasonably calculated to provide FAPE to a student.
2. The District must contact NDE no later than February 9, 2024, to determine dates for which the training will be provided.
3. The district will send verification of attendance including the name and role of each individual attending within 2 business days of the training.
4. The district is ordered to complete the corrective action identified in Issue #2 and to award credit for the successful completion of all Courseware classes on the student's transcript. If the student continues to be enrolled in another district, the district shall provide an updated transcript reflecting these credits and contact the school where the student is enrolled so these credits can be transferred and applied to the student's high school transcript in the current district of enrollment for graduation purposes.
  - a. Copies of the updated student's transcripts as well as evidence transcripts were provided to the district the student is enrolled must be provided no later than August 31, 2024.

#### **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:

Christopher Chambers, Complaint Specialist  
Micki Charf, Assistant Director of Special Education  
NDE Office of Special Education

nde.speddr@nebraska.gov