

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.19
Complaint Investigator: REDACTED
Date Complaint Filed: December 7, 2023
Date of Report: REDACTED

Introduction

On December 7, 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 second 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. However, the Department only designated four of the five allegations in the Complaint for investigation; the Department previously investigated the fifth allegation as part of Complaint #23.24.19. 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 [92 NAC § 51-009.11C4]. This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the Complaint [92 NAC § 51-009.11C5].

On December 16, 2023, the Department requested that the District respond to the allegations in the Complaint by January 4, 2024. The District submitted a response on January 2, 2024, 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.

During the previous investigation, it was discovered that the district was keeping IEPs for the student in "draft" status as a result of meetings taking multiple days. The district was issued corrective action regarding when IEPs must be finalized and the process for making amendments to an existing IEP. Although the Office of Special Education does not typically review draft IEPs, as a result of the district currently undergoing corrective action for not finalizing an IEP at the conclusion of the IEP team meeting, the current investigation did review draft IEPs.

Issues Investigated

1. Did the District review and revise, as appropriate, the IEP to meet the Student's increased behavior needs? [92 NAC 51-007.07B1-B3]
2. Did the District implement accommodations as described in the Student's IEP? [92 NAC 51-007.02; 92 NAC 51-007.07A5; 92 NAC 51-007.07A8]
3. Did the District implement the least restrictive environment requirements when denying the Parent's request for a change of placement? [92 NAC 51-008.01]
4. Did the District meet the requirements for providing the Parent with Prior Written Notice when the District proposed to initiate the completion of assessments or refused to initiate the completion of the assessments requested by the Parent? [92 NAC 51-009.05]

Information Reviewed by Investigator

From the Parent

1. Letter of Complaint received by NDE [December 7, 2023]
2. RE: [Student], Letter of Assessment Consent for [Student], November 20, 2023
3. RE: [Student]. Letter of Assessment Consent for [Student], expanded, no date.
4. Unsigned Parent Guardian Consent for Individual Evaluation dated November 27, 2023
5. [Student] Goal checklists dated October 25 through November 27, 2023
6. RE: [Student], Consent for Autism Assessment, November 20, 2023
7. RE: [Student], Consent for Autism Assessment, expanded, no date
8. School Day Incident Report dated October 31, 2023
9. Behavior Notes, no date
10. [Student] Emergency Exclusion, September 13, 2023
11. [Students 1,2,3] Cafeteria Incident, September 12, 2023
12. [Outside Agency Autism Evaluation], [Student], December 19, 2023
13. Photo, cut up assignment, November 27, 2023
14. Photos, re: homework sent home on [S]eptember 7, January 15, 2024
15. Video Meeting Footage, September through December 2023
16. Emails from August 29, 2023–January 15, 2024
17. Parent interview

From the School District

1. Letter of Response dated January 2, 2024; received by NDE January 2, 2024
2. Parent Guardian Consent for Individual Evaluation: re [Student], November 27, 2023

3. Preference Assessment, [Student], November 27, 2023
4. Prior Written Notices
 - a. Dated September 18, 2023, for an IEP Team meeting scheduled September 20, 2023
 - b. Dated September 20, 2023, for an IEP Team meeting scheduled September 25, 2023
 - c. Dated October 25, 2023, for an IEP Team meeting scheduled November 1, 2023
 - d. Dated October 27, 2023, for an IEP Team meeting scheduled November 29, 2023
 - e. Dated November 2, 2023, for an IEP Team meeting scheduled November 7, 2023
 - f. Dated November 14, 2023, for an IEP Team meeting scheduled November 14, 2023
 - g. Dated November 17, 2023, for an IEP Team meeting scheduled November 20, 2023
 - h. Dated December 5, 2023, as a response to an email on November 27, 2023
 - i. Dated December 22, 2023, as a response to an assessment location request
5. Period Attendance Totals dated August 2023 through January 2024
6. Documentation about the Student dated November 7 through December 19, 2023
7. Behavior Intervention Plan dated:
 - a. November 21, 2023
 - b. January 27, 2023
8. IEP Meeting Notes dated November 1 through November 20, 2023
9. District Response to Complaint dated January 2, 2024
10. Student's Second Grade Learning Report for the 2023-24 School Year
11. Multidisciplinary Team Report dated January 24, 2023
12. Draft Individualized Education Program, [Student], September 20, 2023
13. Individualized Education Program, January 26, 2023
14. Proposed IEP Team Meeting Agenda, [Student], September 20, 2023
15. Procedural Safeguards Notice, no date
16. Period Student Attendance Profile, 2022-23
17. Period Student Attendance Profile, 2023-24
18. Emails from September 18, 2023-January 2, 2024
19. District staff interviews

Findings of Fact #1

1. From December 8, 2022, through the end of the 2022–23 school year, the Student was absent for six days and tardy on six occasions. (Period Student Attendance Profile, 2022–23.)
2. The Student's 2023–24 attendance from the beginning of the school year through the date the Parent filed the complaint:
 - a. August 16–September 12, 2023: Student present for 19 out of 19 school days (100%) with no tardies.
 - b. September 13–21, 2023: District emergency excluded the Student.
 - c. September 25–October 4, 2023: Student present for 6.5 out of 8 school days (81%) and tardy three times.
 - d. October 5–November 1, 2023: Student present for 12.5 out of 18 school days (70%) and tardy three times.
 - e. November 2–27, 2023: Student present for 10 out of 14 school days (71%) and tardy once.
 - f. November 28, 2023: District emergency excluded the Student.
 - g. November 29–December 7, 2023: Student present for one out of seven school days (14%). (Period Student Attendance Profile, 2023–24.)
3. The January 24, 2023, Multidisciplinary Team Report:
 - a. Provided the reason for referral as the Student's speech-language impairment;
 - b. Indicated the Student was diagnosed with attention deficit hyperactivity disorder;
 - c. Stated the Student will receive resource support in reading, math, and behavior, as well as speech-language pathology;
 - d. Indicated Student's behaviors had improved since the beginning of the year, and the Student could focus more during class;
 - e. Parent concerns were documented and stated "*Student's behaviors may not be accurately described as the behavior questionnaires were completed after the Student began taking medication*";
 - f. Described task avoidance behaviors, functions of behavior, and reactions;
 - g. Concluded the Student did not fall into the spectrum range for autism; and
 - h. Included observation notes that the Student was at task 78% of the time while their peers were at task 91% of the time. (Multidisciplinary Team Report, January 24, 2023.)

4. The January 26, 2023, Individualized Education Program (IEP) described the following:
- a. The Student was eligible for special education in the areas of other health impairment as the primary verification, and speech-language impairment as the secondary verification.
 - b. The reevaluation date would be January 23, 2026.
 - c. The Parental Rights/Procedural Safeguards page included all affirmatives to the statements but was not signed by the Parent.
 - d. Details Special Considerations around the primary and secondary verifications of disability of other health impairment and speech-language impairment.
 - e. It was determined that *"If behavior impedes learning,"* positive behavior interventions should be considered and the IEP Team deemed this necessary: *"Positive behavior supports include the use of developmentally appropriate social materials and instruction, adult verbal and visual prompts for the use of appropriate behavioral skills, ongoing consultation with resource staff, building staff, on-going consultation with [the] school psychologist and/or counselor, and daily communication with parents. Direct social skills instruction is provided through scheduled and spontaneous interactions. [The] School Counselor will also provide social skills instruction. Modeling, role-playing activities, and planned generalization of social skills will be included. Incentives for appropriate behavior within the classroom include the increase of desirable rewards for the use of positive behaviors. These rewards may be candy, stickers, games, marker stamps, etc. Specific target skills identified from the IEP goals are monitored at regular intervals throughout the day based on [Student's] schedule and then recorded on [their] data card. [Student] will check in with resource staff each morning and discuss goals for the day."*

"At the end of the day, [Student] will check out with resource staff to go over [their] chart. Based on [their] point card, if [Student] has 90% in each target goal area [Student] will receive a point to shade in on a behavior chart. After 10 points, [Student] gets to receive a reward. Effort points are also available throughout [their] day to receive, and those mean that [Student] is able to receive extra points on the behavior chart. Ex. If [Student] has two goals on [their] point card and each total 90% or better [Student] gets two points. If

[Student] receives 3 effort points then [Student] is able to have 5 points total for that day."

"[Student] will also have clearly communicated consequences for inappropriate behavior. Consequences for inappropriate behavior include frequent social reinforcement for the use of appropriate behaviors. Opportunities for behavioral contracts are provided using a menu of reinforcements developed with the student's interests in mind and effort points are given to earn rewards...Progress monitoring is completed through data card recording of the use of target skills. Daily progress is communicated to parents, as are the specific target skills and consequences via the daily point card sent via email. Consequences for inappropriate behavior include":

- i. "adult redirection immediately after inappropriate behaviors, prompts for inappropriate behavior, provision of choices and developmentally appropriate wait time";*
 - ii. "use of options for cool down when inappropriate behavior continues";*
 - iii. "use of chill zone with open, closed, or secured door dependent on behavior";*
 - iv. "opportunities for adult-directed problem solving regarding the inappropriate behavior";*
 - v. "opportunities to complete work missed during the misbehavior at school or home."*
- f. The IEP Team considered the Student's communication needs and determined that "[Student] needs support in the area of expressive language. Services will be provided in individual, small, and large group settings."
- g. The Student had a goal in reading and the IEP described the Student's reading strengths and needs. The start date was January 25, 2023, and the end date was January 23, 2024.
- h. The Student had a goal in math and the IEP described the Student's strengths and needs. The start date was January 27, 2023, and the end date was January 25, 2024.
- i. The Student had three goals for behavior and the IEP described the Student's difficulty with behavior as, *"impacts [their] ability to progress in the general education curriculum without accommodations."*

- i. The IEP described the Student's strengths: "[Student] is redirectable and wants to please adults. [Student] has an average of 84% for the school year of following directions. [Student] also has a current average of 93% for the school year of staying in [their] own space and an average of 92% with asking for permission. Since the beginning of January, [Student] has had an average of 98% for following directions, 99% for I can stay in my own space, and 100% for asking for permission. Since the beginning of January, [Student] has been asking how [Student] is doing throughout the day and [is] so proud of [them]self for doing well."
- ii. The IEP described the Student's needs: "Before Christmas break, [Student] struggled with following directions, asking for permission, and staying in [their] own space. [Student] also has struggled with taking things that did not belong to [Student]. This school year, [Student] has taken other's property a total of 5 times. [Student] also struggled with staying with the group or class with transitioning. After Christmas break [Student] has not shown these same struggles. To maintain [their] current success, [Student] needs":
 1. "Checking in with teacher/resource teacher";
 2. "Check in each morning in the resource room/Check out at the end of the day with resource teacher";
 3. "Movement breaks";
 4. "Check for understanding of directions";
 5. "Always go with a peer when transitioning."
- iii. The annual goal for behavior in self-management: "Given social skills instruction, [Student] will maintain [their] space and ask for permission to look or touch others belongings with a 98% or better percentage daily on [their] point card by daily point card by January 25, 2024." This goal's start date was January 24, 2023, and the end date was January 23, 2024.
- iv. The annual goal for behavior in timely complying with adult directions without prompts: "Given social skills instruction, [Student] will follow adult directions within 30 seconds of the direction given without prompts with 98% or better percentage daily on [their] point card as measured by daily point card by January 25, 2024". The start date was January 25, 2023, and the end date was January 23, 2024.

- v. The third annual goal for behavior was around the Student transitioning with their class or group: *“Given social skills instruction, [Student] will transition with [their] class or group without a reminder with a 98% or better percentage daily on [their] point card as measured by daily point card by January 25, 2024.”* The start date was January 27, 2023, and the end date was January 25, 2024.
- j. Expressive speech and language were listed as an area of need, and the IEP described speech-language strengths and needs. The IEP listed a language goal with a start date of January 25, 2023, and an end date of January 23, 2024.
- k. The Service Summary described the specially designed instruction (SDI) the Student needed and how and where that instruction would be delivered. The Student would participate in extracurricular activities and physical education with [their] peers.
 - i. SDI was to occur in the special education classroom five times per week for 30 minutes in an individual and group setting with a January 27, 2023, start date and a January 24, 2024, end date.
 - ii. SDI was to occur in the general education classroom five times per week for 15 minutes in an individual and group setting with a January 27, 2023, start date and a January 25, 2024, end date.
- l. Speech-language pathology-related services were to occur in the special education classroom 14 times per semester for 40 minutes, beginning on January 26, 2023, and ending on January 24, 2024.
- m. For Supplementary Aids and Services/Accommodations, the IEP listed the following:
 - i. “Breaks and opportunities for movement” in the general education classroom, “As Needed” to begin on January 27, 2023, and end on January 26, 2024.
 - ii. “Math supports-manipulatives, 100’s chart, etc.” in the general education classroom, “As Needed” to begin on January 27, 2023, and end on January 26, 2024.
 - iii. “Modified/reduced Assignments, in the general education classroom, “As Needed” to begin on January 27, 2023, and end on January 26, 2024.
 - iv. “Prompting before transitions and changes of activity” in the general education classroom, “Daily,” to begin on January 27, 2023, and end on January 26, 2024.

- v. "Break down assignments into smaller chunks" in the general education classroom, "As Needed," to begin on January 27, 2023, and end on January 26, 2024.
 - vi. "Text-to-Speech" in the general education classroom, "As Needed," to begin on January 27, 2023, and end on January 26, 2024.
 - vii. "Flexible seating" in the general education classroom, "300 minutes daily" to begin on January 27, 2023, and end on January 26, 2024.
 - viii. "Take tests and assessments in a smaller group with less distractions," in the general education classroom, "As Needed" to begin on January 27, 2023, and end on January 26, 2024.
 - ix. "Behavior Chart," in the general education classroom, "300 minutes daily" to begin on January 27, 2023, and end on January 26, 2024.
 - x. "Extended time on tests" in the general education classroom, "As Needed," to begin on January 27, 2023, and end on January 26, 2024.
 - xi. "Preferential seating (near the teacher, away from distractions), in the general education classroom, "Daily" to begin on January 27, 2023, and end on January 26, 2024.
- n. Supports for School Personnel were listed as quarterly support, for 20 minutes, to the classroom teacher for speech-language strategies to begin on January 25, 2023, and end on January 23, 2024. (IEP dated January 26, 2023.)
5. The behavior intervention plan listed a start date as January 27, 2023, and an end date as January 26, 2024. The plan described the Student's primary challenges of self-management, following directions, and transitioning. The plan described the hypotheses of the functional behavior, prevention strategies, replacement strategies, steps for replacement behavior, data collection, and how the plan would be monitored. (Behavior Intervention Plan dated January 27, 2023.)
6. The Special Education Teacher described that the Student was in regular education during the 2022–23 school year and did not exhibit the behaviors she saw during the 2023–24 school year. During the 2022–23 school year, the Special Education Teacher described the Student's improved focus and reading scores and recalled that the Parent indicated that the Student was taking medication. (Special Education Teacher Interview)

7. When the Student began the 2023–24 school year, the Special Education Teacher noted that “Student was completely different.” The Student eloped, refused, and called staff members names: “[Student] was always a happy [child] before this school year.” (Special Education Teacher Interview)
8. On August 29, 2023, the Parent emailed: “I would like to request [an] IEP meeting for [Student] as soon as possible.” The Special Education Teacher responded the following day regarding finding a date and time that would work for all parties. (Email from Parent dated August 29, 2023.)
9. When the Parent requested an IEP Team meeting in August, they noticed on the behavior charts that the Student’s behaviors were increasing. The Student was leaving the classroom and was “doing something different.” (Parent Interview)
10. On September 13, 2023, the Superintendent described the Student’s involvement in the cafeteria incident and the need for emergency exclusion. An official letter described the need for the emergency exclusion “because the student’s conduct presents a clear threat to the physical safety of [themselves] or others and is so extremely disruptive as to make temporary removal necessary to preserve the rights of other students to pursue an education.” (Email from Superintendent dated September 13, 2023; Emergency Exclusion Letter dated September 15, 2023.)
11. The Parent indicated that the Student’s behaviors “began increasing when [their siblings] weren’t attending during the suspension period... [Student] kept asking why [Student] has to go to school and they don’t.” The Parent shared that “when [Student’s] [siblings] began a different school, [Student] accelerated in behaviors.” (Parent Interview)
12. On September 18, 2023, the District generated a Notice of Meeting for a September 20, 2023, IEP Team meeting. (Notice of Meeting dated September 18, 2023.)
13. The district created a proposed IEP Team meeting agenda for the IEP Team meeting on September 20, 2023. (Proposed IEP Team Meeting Agenda dated September 20, 2023.)
14. An Annual IEP was drafted on September 20, 2023, and included the following adjustments:
 - a. It was determined that behavior impeded learning and “Based on [Student’s] point card, if [Student] has 90% in each target goal area [Student] will receive a 2 (sic) fuzz balls to fill up a jar. When the jar is full [Student] able (sic) to pick from the prize box. If [Student] is at 100% in a target goal area [Student] receives 5 fuzz balls to put into

[their] jar. Effort points are also available throughout [their] day to receive and those mean that [Student] is able to receive extra fuzz balls to go into [their] jar. The purpose of the effort points are (sic) to keep [Student] motivated throughout the day when or if [Student] receives a slash for one of [their] goals. The effort points can be limitless as well. [Student] will also have clearly communicated consequences for inappropriate behavior."

- b. The Student had not shown growth in reading, and the reading goal was changed. The annual goal's start date was September 21, 2023, and the end date was September 19, 2024.
- c. The Student had not shown growth in math.
- d. The Self-management goal was "Given social skills instruction, [Student] will ask for permission to look or touch others (sic) belongings from a baseline of 87% to 98% as measured by daily point card by September 2024." The start date was September 20, 2023, and the end date was September 19, 2024.
- e. In the area of compliance, the goal was: "Given social skills instruction, [Student] will follow adult directions within 30 seconds of the direction given without prompts from a baseline of 81% to 98% as measured by daily point card by September 2024." The start date was September 20, 2023, and the end date was September 19, 2024.
- f. The transition goal was "Given social skills instruction, [Student] will transition with [their] class or group without a reminder from a baseline of 89% to 98% or better percentage daily on [their] point card as measured by daily point card by September 2024." The start date was September 20, 2023, and the end date was September 19, 2024.
- g. A new goal was drafted for language; start and end dates were included.
- h. The start date for specially designed instruction was September 20, 2023, and the end date was September 19, 2024; information about the location, setting, cycle, and minutes was not listed.
- i. The following accommodations were noted:
 - i. Test read aloud, in the general and special education classrooms, for the length of the assessment, "in all classes, can be read aloud as a whole group, small group, or individual" to begin on September 21, 2023, and end on September 19, 2024.

- ii. Check-in/check-out, in the general and special education classrooms, “complete the last 5 minutes at the end of each class, in all classes,” to begin on September 21, 2023, and end on September 19, 2024.
 - iii. Shorten and adapted assignments and assessments, in the general and special education classroom, “for the duration of the assignment and assessment, in all classes” to begin on September 21, 2023, and end on September 19, 2024.
 - iv. Rocking chair, in the general and special education classrooms, “for the duration of class, in all classes” to begin on September 21, 2023, and end on September 19, 2024.
 - v. Cool down before processing, in the general and special education classrooms, “until emotionally regulated, when escalated or a problem arises” to begin on September 21, 2023, and end on September 19, 2024.
 - vi. Location, duration, and frequency were listed for other accommodations not specifically related to behavior.
- j. The IEP was unsigned. (Draft IEP dated September 20, 2023.)
15. On September 20, 2023, the District generated a Notice of Meeting for a September 25, 2023, IEP Team meeting. (Notice of Meeting dated September 20, 2023.)
16. In an interview, the Parent described the reasons for not completing the Student’s IEP sooner: “All I kept hearing from [the Superintendent] was that we’re focused on the [Siblings] and then we’ll get to [Student]. Well, in the present situation, I feel if they would’ve helped me with [Student] in a positive manner, we wouldn’t have been this severe. But nobody wanted to help me with that. We wanted to ignore what was happening in the moment and just focus on completing each kid’s IEP... [the Siblings’] to get them back in school. And then, in the meantime, [Student] just went down.” (Parent Interview)
17. The Parent described scheduling challenges for themselves and the District when it came to completing [Student’s] IEP in December 2023 after four meetings had taken place. (Parent Interview)
18. The Director of Special Education described that the team prioritized the completion of Student A and Student C’s IEPs because they were not in school: “[Student] was still going to school at least... [Parent’s] biggest concern was just getting the kids back in school, which was obviously our concern as well.” The Director described feeling like the team was being proactive since the IEP was not scheduled for an annual review until January. District staff hoped to begin reviewing the Student’s IEP in

September, but did not anticipate the time it would take to complete the process. The Director shared that a manifestation determination interrupted the process and that “every time we were meeting, it was kind of a prioritization of...what we needed to do next.” Scheduling was complicated with all the team members. (Director of Special Education Interview)

19. The Principal indicated that September 20, 2023, was the date for all three IEPs (Student A, Student B, and Student C) to be scheduled. It took the team “18 hours just to get through the first IEP. And then we got through the second IEP...and three meeting dates. And then we started on [Student’s] on November 1st, and we met four different times for a total of about nine hours on [Student]...” A lot of the IEP team is similar because they were all in one building...the same people would be involved in most of the meetings.” The Principal continued to describe the contentious nature of the meetings and that a facilitator was required. The Principal shared: “...that level of complexity would totally preclude us from being able to have all three of those IEP meetings simultaneously.” (Principal Interview)
20. When asked if the Parent agreed to delay the Student’s IEP, the Principal responded: “We scheduled those meetings with the Parent...the Parent was a party to scheduling all of those meetings...our attorney was involved, Parent’s attorney was involved...everybody had a part to play in scheduling those meetings.” (Principal Interview)
21. When asked if the Parent protested about wanting to have Student’s IEP done sooner regardless of what was happening with the two siblings, the Principal replied: “Not to my knowledge.” (Principal Interview)
22. On September 28, 2023, the Director of Special Education informed the Parent of the Student’s struggles following directions. Choices were given; motivating breaks were given when the Student worked on academic areas. (Email from Director of Special Education dated September 28, 2023.)
23. In an interview, the Parent indicated that Student A began attending a new school on October 16, 2023, and Student C began attending a new school on October 25, 2023. (Parent Interview)
24. On October 25, 2023, the District generated a Notice of Meeting for a November 1, 2023, IEP Team meeting. (Notice of Meeting dated October 25, 2023.)
25. The Parent indicated in an interview that Student C’s IEP was not completed until October: “And then they began [Student’s] right after that.” (Parent Interview)

26. On October 27, 2023, the District generated a Notice of Meeting for a November 29, 2023, IEP Team meeting. (Notice of Meeting dated October 27, 2023.)
27. In a video of the November 1, 2023, IEP Team meeting, the Parent said: [Student] did have a medication increase before school began, and they have stopped [their] meds because they felt that that was contributing to behaviors ...that we haven't quite seen on the aggressive side...[Student] is currently in medication withdrawal." (Transcript of IEP Team meeting dated November 1, 2023)
28. Notes from the November 1, 2023, IEP Team meeting indicated that the requested FBA was removed from concerns and that "[Parent] shared that they are going to re-assessed (sic) [Student] for Autism. As [of] right now [Student] only has the medical diagnosis of ADHD (sic) - Combined. [Parent] will update the school with the results." Notes from this meeting indicated that the following topics were discussed:
- a. A behavior plan with check-ins, rewards, and daily goals;
 - b. Student's resistance to the reward system;
 - c. Changes in the Student's medication;
 - d. Academic challenges;
 - e. The Student's verbal aggression and inappropriate language;
 - f. A self-advocacy goal;
 - g. Concerns about transitions;
 - h. Functions of the Student's behavior;
 - i. Updating behavior goals;
 - j. Processing time;
 - k. Additional prevention strategies. (IEP Meeting Notes dated November 1, 2023.)
29. On November 1, 2023, the Parent emailed the Principal regarding the Student's behavior chart: "I would like to know what the district is doing to help [Student]? While it seems the district is reporting [Student's] responses there is no information being provided as to what is creating [Student's] responses or triggering them, what interventions are being used or positive reinforcers that work for [Student], what is being done to help [Student] gain success? Can you please tell me why 3 adults are needing to work with [Student] at one time? [Student] has continued to struggle, and it appears behaviors are increasing since [their siblings] have began (sic) attending a different school." (Email from Parent, November 1, 2023.)
30. On November 2, 2023, the District generated a Notice of Meeting for a November 7, 2023, IEP Team meeting. (Notice of Meeting dated November 2, 2023.)

31. Between November 11, 2023, and December 8, 2023, the Student's behavior at school exhibited patterns of refusal to participate, aggression, and a strong desire to go home. From November 11, 2023, through November 15, 2023, the Student resisted entering the school building. The Student commented negatively about the staff and wanted to go home. The Student exhibited disruptive behavior, such as throwing playdough and expressing hatred towards staff." From November 16, 2023, through November 21, 2023, the Student refused to enter the building and expressed negative feelings towards staff. The Parent was involved in attempts to help the student transition into the school.

On some days, the Student engaged in limited activities and left early. On November 27, 2023, the Student exhibited anger, refused to work, and threw items in the classroom. Collaborative efforts to engage the Student were made to involve the Student in learning activities. On November 29, 2023, and November 30, 2023, the Parent was present but did not actively encourage the Student to attend school. The Student continued to refuse to attend. On December 1, 2023, the Parent remained unresponsive to attempts to involve the Parent in the Student's school routine. The Student refused to come to school. From December 4, 2023, through December 7, 2023, the Student's arrival and departure times varied, and the Parent's involvement remained inconsistent.

The Student showed interest in activities on some days but also displayed frustration and resistance. The Student's interactions with staff included negative comments, expressions of hatred, and resistance to participating in school activities. The Parent's role varied with instances of active participation and others where they seemed disengaged or uncooperative. These incidents indicated ongoing challenges in the Student's attendance and behaviors. Documentation continues through December 19, 2023, for days after the Complaint was filed.

(Documentation dated November 7 through December 19, 2023.)

32. Video footage of the November 7, 2023, IEP Team meeting revealed a scheduling discussion with the IEP Team in which both the Parent and their attorney and the District and their attorney agreed to a date and time for the next meeting. (Video from Parent dated November 7, 2023.)

33. On November 14, 2023, the District generated a Notice of Meeting for a November 14, 2023, IEP Team meeting. (Notice of Meeting dated November 14, 2023.)

34. On November 14, 2023, the Parent emailed the District asking about a plan for the Student while the IEP was being completed. The

Superintendent responded: "We will continue to work with [Student], give [them] multiple choices, offer incentives, and give [them] safe places to be until [Student] is ready to learn. I am sorry that [Student] is having the struggles that [Student] is having and that you are having to struggle with [Student] to get [Student] to school. But getting [Student] to school and then letting us work with [Student] is the plan, just as it has been for the last couple of months. As was mentioned in the meeting, we are willing to explore other incentives as well."

"Other than having a safe place for students to be and working with families on incentives, we don't have a plan in place for families who have students who do not want to attend school as we typically focus on how to work with students once they get to school." The Parent responded: "[Student] voices [Student] wants to be with [Student's] siblings at their (sic) school. [Student's siblings] going to a different school was offered by the district as a way for them to start fresh and myself, but the district will not allow [Student] the same curtosey (sic) offered to the [siblings]...I fully believe if my [Student] went to the school [their siblings] are in the general education classroom we would not see the issues [Student] is displaying now. But I function under least restrictive with support while I feel the district functions under restrictive first even after they have already employed such methods and it increased behaviors. However, I understand that is not an option for [Student]." (Email Exchange dated November 14 - 16, 2023.)

35. At the November 14, 2023, IEP Team meeting, the District and its attorney and the Parent and their attorney decided to hold the next IEP Team meeting date for the Student on November 20, 2023. (Video from Parent dated November 14, 2023.)
36. On November 17, 2023, the District generated a Notice of Meeting for a November 17, 2023, IEP Team meeting. (Notice of Meeting dated November 17, 2023.)
37. At the end of the November 20, 2023, IEP Team meeting, the Parent and their attorney and the District and its attorney agreed to meet to continue to work on the IEP on December 1, 2023. (Video from Parent dated November 20, 2023.)
38. On November 27, 2023, the School Psychologist conducted a Preference Assessment to create a plan to motivate the [Student]. The Student showed a preference for consumable and independent rewards. (Preference Assessment dated November 27, 2023.)
39. On November 27, 2023, the Parent requested that an "FBA be completed for [Student] and give (sic) permission for it to be conducted at the

school. I then would like to request a BIP more appropriately be developed from the information. (Email from Parent dated November 27, 2023.)

40. The Parent acknowledged that the previous IEP and behavior plan was in place because the IEP had not been completed. (Parent Interview)
41. On November 27, 2023, the Parent initiated an email alerting the School that they could not attend the Student's December 1, 2023, IEP Team. School personnel responded with dates they were available and not available. (Email exchange from November 27, 2023–December 7, 2023.)
42. In an interview, the Parent shared that the Student was not in school much in November and December 2023 and had not received educational materials or the services on their IEP. (Parent Interview)
43. The Principal indicated in an interview that “we are still working on the IEP. We’ve not been able to finalize that.” The Principal indicated that the Parent’s work was sometimes the reason given for not being able to meet to complete the IEP or that the Parent did not provide a reason. (Principal Interview)
44. The Student’s Learning Report indicated 9.5 days of absence in the first quarter and 23.5 days of absence in the second quarter. Marks for each quarter were described as follows:
 - a. Reading: quarter one, beginning; quarter two, beginning;
 - b. Math: quarter one, advanced; quarter two, beginning;
 - c. Art: quarter one, proficient; quarter two, beginning;
 - d. Music: quarter one, proficient; quarter two, beginning;
 - e. Physical education: quarter one, proficient; quarter two, beginning;
 - f. Social skills: quarter one, averaged as inconsistent; quarter two, averaged between minimal and inconsistent; and
 - g. Work/study skills: quarter one, averaged inconsistent; quarter two, averaged minimal. (Student’s Second Grade Learning Report for the 2023-24 School Year)
45. On September 7, 2023, the Principal described the Student’s disruptive behavior in music class and at recess. (Email from Principal dated September 7, 2023.)
46. On September 15, 2023, a Doctor’s letter noted that Student has a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and can experience behavior challenges. The letter recommended several responses to escalated behaviors. (Letter from Doctor dated September 15, 2023.)
47. A transcript of the November 1, 2023, IEP Team meeting indicated that the Special Education Teacher used visuals to accommodate the Student,

and the General Education Teacher used them in their classroom. (Transcript of November 1, 2023, IEP Team meeting, P15, 40:53) The Special Education Teacher described how the Student selected their rewards: “[Student] picks out those rewards right away in the morning and then [Student] lines them up on...which one [Student’s] working for. And then [Student] gets that right away. So it’s not at the end of the day.” (Transcript of IEP Team meeting dated November 1, 2023)

48. The Special Education Teacher described providing prompts and reminders to the student when a transition is pending, “Remember you check in with me, and you get your prize. And so that seems to help...I’ve been prompting [Student] throughout the day when it’s been areas that [Student] struggles with.” (Transcript of IEP Team meeting dated November 1, 2023) The General Education Teacher described providing prompts to the whole class and if they noticed that Student was struggling, “I’ll go over and...prompt [Student] individually.” (Transcript of IEP Team meeting dated November 1, 2023)
49. November 7, 2023, IEP meeting notes indicated that the team discussed various aspects of the Student’s behavior, focusing on [their] ability to follow directions and the observed verbal aggression, possibly influenced by medication adjustments. The team considered the function of [Student’s] behaviors. Replacement behaviors were explored, emphasizing the importance of teaching appropriate communication. The team discussed the effectiveness of the current reinforcement system, including effort points and rewards. The team suggested implementing a visual chart and discussed motivational, transition, and calming strategies. (IEP Meeting Notes dated November 7, 2023.)
50. At the end of the November 1, 2023, IEP Team meeting, the IEP Facilitator elicited feedback from the team to schedule the next meeting. Both attorneys, the Superintendent, and the IEP Facilitator weighed in, but the Parent did not. The next meeting was scheduled for November 7, 2023. (Transcript of IEP Team meeting dated November 1, 2023)
51. Meeting Notes from an IEP Team meeting on November 14, 2023, indicated concerns about the Student’s reluctance to come to school, prompting a discussion on implementing a soft landing at the beginning of the day. The team considered alternatives to the current check-in and check-out process. The possibility that [Student’s] desire to stay home was linked to wanting to be with their siblings was explored, as were alternative rewards for certain goals. Concerns about the effectiveness of rewards were raised, and there was a conversation about the potential need for a behavior program placement. The team considered various

options and discussed the capacity of the building (too many students for the number of staff available within the building) and the relationship between the family and the school, as well as the viability of delivering the specially designed instruction in the general education classroom. (IEP Meeting Notes dated November 14, 2023.)

52. On November 16, 2023, the Special Education Teacher described, with a photograph and words, options for the Student: "The top 3 pictures are where [Student] can choose to go. The 8 pictures on the left will be [Student's] tasks to complete. The 8 pictures on the right are [Student's] rewards. When [Student] walks in, [Student] will have 3 places to choose to go to for [their] [soft] start. [Student] will choose a reward before [Student] walks into the building to receive after [Student] walks into the building. If [Student] walks in the building, [Student] will get a reward. [Student] will choose another reward to receive. When [Student] gets to the place of [Student's] choosing, [Student] can pick another reward. When [Student] completes a task, [Student] can earn another reward. We will continue the process. [Student] will always pick what [Student] is working for and then pick which task [Student] is working on. This will all be put on a first/then chart." (Email from Special Education Teacher dated November 16, 2023.)
53. On November 21, 2023, a Behavior Intervention Plan was created. The plan described the primary problems of following directions, transitioning, verbal aggression, and inappropriate language use. The hypotheses for the behavior's function included avoiding tasks involving non-preferred directions or activities, attention-seeking behavior, and the desire to be with the Student's brothers. Prevention strategies included teacher proximity, checking in, behavior cards, accompaniment during transitions, choices, priming, breaking down assignments, breaks, and varied activities. Replacement behaviors, staff response, instruction to teach, and steps to follow when replacement behavior occurs were included in the plan. An alternate discipline plan, data collection, and plan monitoring were described. (Behavior Intervention Plan dated November 21, 2023.)
54. On November 28, 2023, the Superintendent emailed the Parent a plan for the Student while they were awaiting a date to complete the IEP Team meeting process. The plan indicated the following:
- a. The Parent should drop off and pick up the Student only to avoid a trespass citation.
 - b. The Student may attend breakfast at a specified time.
 - c. The Student will begin the day with a check-in, will be given choices, and may need a time-out if there are compliance issues.

- d. The School recommended a shortened day but acknowledged that this is the Parent's choice.
 - e. Two Staff members may be assigned to the Student at different times.
 - f. Frustration was acknowledged, and it was suggested that the Student's current placement may not meet the Student's needed level of support. (Email from Superintendent dated November 28, 2023.)
55. On November 29, 2023, the Parent responded to the Superintendent's plan for the Student: "I do not agree to a shortened day for [Student] or the behavior room... for [Student] at this time." (Email from Parent dated November 29, 2023.)
56. In a video clip from November 29, 2023, the Parent said to the Student: "You can go in if you would like," and "Do you want to go in the school?" The Student appeared to be looking out the window to the school entrance. The Parent reminded the student they could not walk the Student into the school; the Student said something about their brothers and added: "I'm not going in there." After waiting for approximately six minutes in the vehicle, The Director of Special Education exited the school with items in their hand. They said to the Student who rolled down their window upon seeing the Director: "I've so many things. I went shopping." The Student responded: "Come here!" The Director said: "Come in, and I will tell you the whole plan." The Student iterated that they wanted their Parent to come in; the Director said, "Not today." (Video from Parent dated November 29, 2023.)
57. On December 7, 2023, the Superintendent summarized the scheduling challenges and noted that the Student's attendance at school was infrequent. The Superintendent shared the following: they have asked the Parent to refrain from attending class with the Student, offered incentives for the Student upon arrival to School, and stood ready to serve the Student when the Student attended. (Email from Superintendent dated December 7, 2023.)
58. Behavior Data was collected on the Student for 15 days:
- a. October 25, 2023, 8:00–2:30: 12/12 following directions, 12/12 transitioning, 12/12 asking permission;
 - b. October 30, 2023, 8:00–2:30: 5/12 following directions, 5/12 transitioning, 7/12 asking permission; notes described time in room 307;

- c. October 31, 2023, 8:00–2:30: 2/5 following directions, 2/5 transitioning, 4/5 asking permission; additional documentation regarding behaviors and adult interactions in room 307;
 - d. November 2, 2023, 8:00–11:10: 6/7 following directions, 7/7 transitioning, 7/7 asking permission;
 - e. November 6, 2023, 8:00–3:20: 9/16 following directions, 12/16 transitioning, 14/16 asking permission;
 - f. November 7, 2023, 8:15–2:30: 10/14 following directions, 11/14 transitioning; 14/14 asking permission;
 - g. November 8, 2023, 8:00–2:30: 10/13 following directions, 10/13 transitioning, 11/13 asking permission;
 - h. November 9, 2023, 11:10–3:20: 3/10 following directions, 3/10 transitioning, 9/10 asking permission;
 - i. November 10, 2023, 11:10–2:00: 3/5 following directions, 3/5 transitioning, 5/5 asking permission;
 - j. November 15, 2023, 8:00–9:20: 0/3 following directions, 0/3 transitioning, 3/3 asking permission; left early;
 - k. November 16, 2023, 8:00–10:30: 0/6 following directions, 0/6 transitioning, 0/6 asking permission; left early;
 - l. November 17, 2023, 8:00–3:20: (not in class), 0/16 following directions, 0/16 transitioning, 16/16 asking permission;
 - m. November 20, 2023, 8:00–9:50: (not in class), 0/4 following directions, 0/4 transitioning, 4/4 asking permission; left early;
 - n. November 21, 2023, 8:00–1:00: (entryway, office, lunchroom), 4/10 following directions, 4/10 transitioning, 10/10 asking permission; left early; and
 - o. November 27, 2023, 8:00–3:20: (not in class), 0/16 following directions, 0/16 transitioning, 0/16 asking permission. (Behavior Tracker, October 25, 2023–November 27, 2023.)
59. On November 27, 2023, the Parent emailed a detailed description of their observations and interactions with their child and staff at the School. “Throughout the day, [Student] experienced difficulties at school, marked by changes in assigned staff and routines. [Student] exhibited resistance and emotional outbursts, expressing dissatisfaction with the sudden alterations. The day involved various attempts to engage [Student] in academic tasks, with mixed success. The challenges included transitions between staff members, changes in the learning environment, and [Student’s] reactions to specific individuals. Despite some positive moments, the overall experience highlighted the need for consistent

- communication and preparation for [Student] to manage routine changes effectively.” (Email from Parent dated November 27, 2023.)
60. The Parent described, in an interview, that on November 27, 2023, the Student was given simple worksheets to do, but that the Student was struggling with the number of problems and the instructions. The Parent also indicated that teachers did not “prep [Student] for the new people coming around.” (Parent Interview)
61. The Director of Special Education indicated that they were trying to get the student to return to the building, and they offered the Student non-academic work to “try to get [Student] back in that routine of coming to school. The Director indicated there was a writing prompt but the Student “wasn’t willing to just write all the sentences [by themselves]” (Director of Special Education Interview)
62. An undated document described the choices given to the Student and the responses from the Student. (Document, no date.)
63. In an October 13, 2023, video of a conversation between the Parent and the Superintendent, the Superintendent described that the placement for the Student would depend on the IEP Team’s decision. They also stated: “Let’s get [Student A] off to a good start. Let’s get [Student C] back in school. At least [Student A’s] in school.” (Video from Parent dated October 13, 2023.)
64. On October 15, 2023, the Parent emailed the District regarding a possible transfer to a different school for their children. The Parent stated that the transfer “should apply for all 3 of my children” and that they were not comfortable with the move if it was only for one of the children: “Before I make a decision with [Student C] I want to know if my other children [Student], and [Student B] will be allowed to attend the new school with [Student C]?” The Parent stated: “A fresh start for all 3 seems more appropriate...”. (Email from Parent dated October 15, 2023.)
65. The Principal indicated in an interview that the IEP Team determined that a placement change was necessary for Student A and Student C. They indicated that “for a variety of reasons,” including the gender of the teacher, capacity for rooms, and increased support, and because their IEPs could not “be implemented in a regular education classroom.” When the Student’s behaviors indicated a need for a greater level of support than could be afforded in the general education setting, “it became clear that [Desired School] did not have the capacity to take another student at this point.” There was a program and teacher available at the Current School. (Principal Interview)

66. November 20, 2023, IEP meeting notes indicated that the meeting revolved around the challenge of getting the Student to attend school, with the Parent's attorney proposing to reschedule the meeting for new ideas. The team discussed the Student's lack of motivation and considered that the Student may be seeking to spend more time with the Parent. Emphasis was placed on the need for a plan for the Student's success. The Parent's attorney expressed concern about forcing the Student into a behavior program. The discussion reached a standstill; two ideas were proposed: more support or placing the Student at another school. (IEP Meeting Notes dated November 20, 2023.)
67. In an interview, the Parent shared: "I don't feel that [Student] needs a behavior program." The Parent reiterated that the siblings were offered a fresh start at a different school, "but they won't afford that same thing to [Student]." The Parent asserted that the student would need one-on-one support "with the behaviors and get back into these routines of (sic) if [Student] is in school." (Parent Interview)
68. The Parent indicated they were told that there was no room in the behavior program in the school that the Student's siblings attended. (Parent Interview)
69. The final point in the Superintendent's December 7, 2023, email summarized the scheduling challenges, attendance, incentives to attend, and standing ready to serve noted: "[Parent] sent an email today (Dec 7th) requesting a change of placement to (New School). [Superintendent] explained that this needed to be discussed in an IEP meeting." (Email from Superintendent dated December 7, 2023.)
70. On November 14, 2023, the Director of Special Education attached the consent forms and the procedural safeguards in an email to the Parent. (Email from Director of Special Education dated November 14, 2023.)
71. In an email to the District on November 15, 2023, the Special Education Teacher described the Student's behaviors that day which included a reluctance to enter the building, verbal expressions of their dislike of staff, and the desire to go home. The Teacher suggested that the Parent leave. The Student walked away from the building and yelled at staff, and resistance continued. The Parent decided to take the Student home until a plan was developed. (Email from Teacher dated November 15, 2023.)
72. On November 20, 2023, the Parent emailed the district requesting assessments for [Parent's] children: "I Parent, mother of [Student] 2nd grade student at [School] and [Student B] kindergarten student at [New School], give permission for the school district to complete an Autism and OT (occupational therapy) assessment in the school for [Student] and

[Student B].” The Director of Special Education responded: “I’m not comfortable with this. I was hoping to get a request that mentions [Student] and the preference assessment. I feel this email could be taken in several different ways and is not clear.” The Parent responded: “I sent both a permission for the motivation assessment on its own and this one for the Autism and OT. It is my understanding these both are sufficient legally.” The Parent reiterated their consent, specifying the Student, the motivation assessment, and referencing the November 20, 2023, IEP Team Meeting. The Director of Special Education followed up with: “For the other assessments requested in the previous email. You will need to sign the forms I sent you previously.” (Email Exchange dated November 20, 2023.)

73. In an interview, the Director of Special Education acknowledged that after attorneys became involved, the District accepted the email consent for the preference assessment. Eventually, on December 21, outside of the complaint window, the District accepted the Parent’s emailed consent for the other assessments. The Director did not recall if the Nebraska Department of Education supported electric communication instead of signed written consent during the pandemic. The Attorney for the District described Rule 51 and that it “requires that the parents have specific information about what consents are actually taking place...Parent would never answer our questions directly.” (Director of Special Education Interview; Attorney for the District Interview)
74. On November 20, 2023, the Parent wrote a letter granting consent to the District to complete several assessments: “I [Parent] mother of [Student] a 2nd grade student at [School], give consent for the school district to conduct an Autism assessment at the school for [Student]. I give consent for the school district to conduct an Occupational Therapy assessment at the school for [Student]. Furthermore, I give consent for the school district to conduct a Motivational (Preference) assessment for [Student] at the school to help in understanding reinforcing motivators for [Student].” (Consent Letter dated November 20, 2023.)
75. When asked in an interview about not signing the consent to evaluate, the Parent described they felt that the PWN wording was sometimes not reflective of what was agreed upon or was missing details. The Parent “felt it was easier for me to put it in writing because then it depicted what I understood was happening and how it would work.” (Parent Interview)
76. In an undated letter to the School, the Parent stated: “I give my informed consent for the school district to conduct an Occupational Therapy Assessment at the school for [Student]. I am informed and knowledgeable

of the process in which the school district completes a[n] Occupational Assessment due to having 3 children in the district having had this conducted previously. I give my informed consent for the school district to conduct an FBA (Functional Behavior Assessment) at the school for [Student]. I am informed and knowledgeable of the process in completing an FBA due to having them conducted on 2 other children within the district. Furthermore, I give my informed consent for the school district to complete the CELF-5 (Clinical Evaluation of Language [F]undamentals) pragmatics profile and to complete an assessment of cognitive skills based on academic testing, to help determine ability and to help determine [Student's] current level of academic performance and the school for [Student]. I am informed and knowledgeable of the process in which the school district completes the CELF-5, gathers information to assess cognitive skills...I would like the information obtained from the Autism assessment, Occupational therapy assessment, FBA, CELF-5, and the assessment of cognitive skills based on academic testing, be used to help in developing an appropriate IEP and BIP for [Student] and to help in determining [Student's] needs from an educational standpoint with consideration to [Student's] medical needs." (Letter from Parent, no date.)

77. On November 21, 2023, the Director of Special Education emailed the consent forms for the Parent to sign for Student B. They inquired as to whether the Parent was requesting an Autism and OT assessment for [Student]. The Parent responded: "...I dropped written signed consents off at the schools both [School] and [New School] for each child, those consents...you have outlined and are requesting permission for. I am giving consent and it appears it must not be being accepted. They were both very clear." The Director of Special Education responded: "The issue I see is that requesting an autism evaluation is vague and doesn't list the specific assessment areas that are specifically stated on the consent form." (Email Exchange dated November 21, 2023.)
78. On November 27, 2023, the Director of Special Education responded to the Parent: "[District] is willing to accept your written request for the FBA. We will need you to sign the attached permission to evaluate if you want the other assessments to be completed." (Email from Director of Special Education)
79. On November 27, 2023, a Parent Guardian Consent for Individual Evaluation was created and listed the District's rationale for evaluation: "... [Parent], requested an evaluation for Autism, occupational therapy, and a functional behavior assessment for... [Student]. District proposed for

[Parent to sign the Parent Guardian Consent for Individual Evaluation for ... [Student]. [Parent] would like [District] to accept [Parent's] written request from [Parent] for [Student] in the form of a letter [Parent] wrote." The options the district considered were listed: "[District] refuses to to (sic) accept the written request provided by [Parent] for the Autism and occupational therapy assessments. [District] proposes that [Parent] sign the Parent Guardian Consent for Individual Evaluation. [District] is willing to accept the written request from [Parent] for the functional behavior assessment." Not assessing the Student was not considered, and the proposal was based on the Parent's request. The other factors were listed: "[District] has been given legal guidance that the written request provided by [Parent] is not legally adequate and does not provide informed consent as required by Rule 51. The consent form provides additional information regarding resources and provides details to support that the parent has been fully informed of all information relevant to the activity for which consent is sought and that the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; includes a description of the proposed activity; and an acknowledgment that the consent is voluntary and may be revoked at any time." The document indicated that the estimated time it would take to evaluate was not to exceed 60 days from the date the School received the signed consent. The document lists the types of assessments that may be given." (Parent Guardian Consent for Individual Evaluation dated November 27, 2023.)

80. On November 30, 2023, the Parent "requested a few assessments be completed by the district this may be important for the district to complete first prior to our next meeting as I believe the information could be useful in helping develop or BIP and IEP needs" (sic). (Email from Parent dated November 30, 2023.)
81. On December 1, 2023, the Director of Special Education indicated that the Parent had requested an FBA and other assessments and that they could not complete the FBA because the Student was not attending regularly. The Director of Special Education noted that the Parent has not signed the appropriate assessment paperwork and PWNs have been sent. The Director indicated they would accept the email consent for the FBA. (Email from the Director of Special Education dated December 1, 2023.)
82. On December 5, 2023, a Prior Written Notice was generated to describe the actions proposed or refused by the District: "The IEP team has met on November 1, 7, 14, 20, and 22. [Student's] IEP is not yet finished. The following proposals and refusals have taken place so far":

- a. "District proposed to place [Student] in the Individual Skills Development Program (IDSP) at [School]";
- b. "[District] refused placement to [Student] at another [School] within [District]";
- c. "On November 20, 2023, [Parent] sent a signed letter..." that described their consent for an autism and occupational therapy assessment. The District responded that a specific consent form needed to be signed.
- d. The District described their rationale:
 - i. "[District] proposed to place [Student] in the ISDP Skills 1 Program at [School] based on [their] current ability to access appropriate replacement behaviors and the BIP developed so far by the IEP team. [Student's] current ability to access appropriate replacement behaviors drives [District's] proposal to place [Student] outside of the general education classroom. When [Student] perceives an activity as difficult or if [Student] is frustrated with staff, [Student] uses verbal aggression, inappropriate language, and elopes. This behavior causes a distinct disruption to the general education setting. [Student] needs time to learn appropriate replacement behaviors and language prior to reentering the general education classroom."
 - ii. "Further, the BIP developed so far in the IEP cannot be implemented with fidelity in the general education classroom. Placement in the general education classroom would require modifications to [Student's] BIP, which would not allow [Student] to receive a FAPE. [Student's] BIP calls for a soft landing at the beginning of the day, frequent and innovative choices, and variation of activities whenever [Student] perceives an activity to be difficult. The general education setting has a specific curriculum and grade-level expectations that must be taught in a structured routine. [Student's] BIP cannot be implemented in this setting."
- e. "However, in the ISDP Skills 1 program, there is a smaller [student-to-staff] ratio. The smaller class size allows for fewer distractions for students and increased opportunities for one-on-one help along with intensive work on the academic, social, and behavioral skills each individual student is missing...." "[The teacher] is specially trained to provide the level of intervention required in [Student's] BIP...The benefits [Student] would receive in the ISDP 1 program far

outweigh the marginal benefit [Student] would receive in the general education environment.”

- f. “[District] refused placement of [Student] at another Elementary School within [District] based on the special education resources and special education caseload at each building.”
- g. “[District] proposes to wait to conduct the Autism and occupational therapy assessments requested by the parent until the parent signs the “Parent Guardian Consent for Individual Evaluation” sent on November 27, 2023, because the consent form meets the legal requirements for informed consent and informs the parent of each assessment. [District] proposes to perform to complete a[n] “Autism Assessment” and “Occupational Therapy Assessment...While the parent’s signed letter says that [Parent] consents to an “Autism Assessment” and an “Occupational Therapy Assessment,” the parent’s letter does not allow for [District] to explain to the parent all information relevant to the assessments, and it does not demonstrate that the parent knows that [their] consent is voluntary and can be revoked at any time. The assessments sought by the parent contain numerous subparts and the parent must be informed and consent to those subparts in order for the district to proceed with conducting the assessment. As soon as the parent signs the form provided by the district, [District] will begin the assessments described in the notice for consent. If [Student] is refusing to attend school after the signature is obtained, the assessments (Autism and occupational therapy evaluations) could be completed at the Public Library or another agreed-upon location. The functional behavior assessment would be completed once [Student] regularly attends school. [District] already performed the preference assessment on November 27, 2023.”
- h. The action was based on the following: “IEP team meetings (IEP still in draft), BIP (BIP still in draft), existing IEP, existing MDT, Discipline Incidents, Emergency Exclusion letter, Behavior Data Cards, and Letter from [Doctor] dated September 15, 2023.”
- i. Other relevant factors included: “All options discussed are still subject to further review and discussion by the IEP team.” It was noted that “[District] has been ready, willing, and able to conduct a functional behavior assessment for [Student], however, [Student] has only attended school for one day since the consent was sent to the parent.” (Prior Written Notice dated December 5, 2023.)

83. The Director of Special Education described that the Parent's "specificity in the BIP" was gonna make it difficult to have that done in general ed." The Parent did not understand the difference between placement and location." (Director of Special Education Interview)
84. In an interview, the Director of Special Education stated that the behavior program at the Parent's desired school was at capacity: "That program was full, to be honest, without the [siblings] in there. The Director also noted that with the addition of siblings, the teacher has become overwhelmed." The Director indicated that the exact program was available at the Student's current school. (Director of Special Education)
85. After the Complaint was filed, between December 18, 2023, and December 22, 2023, the Parent and District exchanged emails regarding consent for specific testing, the proposed location for the testing, and the PWN. (Email Exchange, December 18–December 22, 2023.)

Issue # 1

Did the District review and revise, as appropriate, the IEP to meet the Student's increased behavior needs? [92 NAC 51-007.07B1-B3]

92 NAC 51-007.07B states:

- | | |
|----------|---|
| 007.07B1 | <i>The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.</i> |
| 007.07B2 | <i>The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child and the academic, developmental and functional needs of the child.</i> |
| 007.07B3 | <i>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, supports and other strategies to address that behavior.</i> |

Allegations/Parent Position

The Parent alleges that the School failed to draft and implement an appropriate IEP when the student experienced challenging behaviors. The Parent requested

an IEP Team meeting in August and a meeting was not held until November. (Parent Complaint, Received by NDE December 7, 2023.)

District Response

The District asserted they have worked to review and revise the Student's IEP to address the Student's increased behavior needs. Delays in completing the IEP were related to the extended time needed to complete the IEPs of the Student's siblings and scheduling challenges. (District Response, Received by NDE January 2, 2024.)

Investigative Findings

The IEP Team described the Student's strengths in the IEP dated and again in the draft IEP dated September 20, 2023. (IEP dated January 26, 2023; Draft IEP dated September 20, 2023.)

The IEP Team considered the information from the Parent, teachers, and district personnel regarding the Student's academic, social, and behavioral progress to draft adjustments to the IEP. (Draft IEP dated September 20, 2023; Behavior Intervention Plan dated January 27, 2023; IEP Meeting Notes dated November 1, 2023.)

The Student's behavior impeded their learning or the learning of others, and the IEP Team considered positive interventions, reinforcers, supports, and strategies to mitigate those behaviors. (IEP Meeting Notes dated November 1, 2023; Draft IEP dated September 20, 2023; Behavior Intervention Plan dated January 27, 2023.)

The Parent requested an IEP Team meeting on August 29, 2023, and the District scheduled an IEP Team meeting for September 20, 2023. The September 20, 2023, IEP Team meeting was rescheduled, and the first of four IEP Team meetings occurred on November 1, 2023, and the IEP was not completed by the time this complaint was filed in early December. (Email from Parent dated August 29, 2023; Notice of Meeting dated September 18, 2023; Notice of Meeting dated October 25, 2023; Principal Interview.)

Summary and Conclusions

During the first half of the 2023–24 school year, the Student faced attendance, behavioral, academic, and social-emotional challenges. The attendance records revealed the Student's inconsistent attendance, and interviews with both the District and the Parent emphasized the notable changes in the Student's behavior compared to the previous school year. On August 29, 2023, the Parent requested an IEP Team meeting to review and revise the IEP given these concerns, and the District scheduled an IEP Team meeting to be held on

September 20, 2023. Due to the amount of time being spent on IEP Team meetings for the Student's siblings on this date, the Student's IEP Team meeting needed to be rescheduled. Due to the schedules of District staff, the Parent, and the district and parent attorneys, the first of four IEP Team meetings took place on November 1, 2023. At this meeting, the IEP Team drafted new goals and accommodations based on the Student's needs, and the IEP Team was still convening IEP Team meetings at the time the Parent filed the Complaint.

The District implemented the requirements of 92 NAC 51-007.07B1-B3 and **corrective action is not required.**

Issue # 2

Did the District implement accommodations as described in the Student's IEP? [92 NAC 51-007.02; 92 NAC 51-007.07A5; 92 NAC 51-007.07A8]

92 NAC 51-007.02 states:

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.*

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

007.02A1 *From the end of the school year in which a child reaches age 3, until the child's sixth birthday, the IEP team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in 92 NAC 52 (including an educational component that promotes school readiness and incorporates preliteracy, language and numeracy skills for children with an IFSP) in accordance with the IEP procedures. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is agreed to by the school district or approved cooperative and the child's parents.*

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

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.*

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.*

Allegations/Parent Position

The Parent alleged that the Student did not receive IEP accommodations for breaking assignments down into smaller chunks nor prompts for transitions or changes to the Student's routine. (Parent Complaint, Received by NDE December 7, 2023.)

District Response

The District asserted they had implemented the accommodations described in the Student's IEP while the Student was in their placement and actively working towards their goals or tasks. The District contended that the specific incident mentioned in the Complaint involved a situation where accommodations were not applicable; the focus at that time was helping the student calm themselves so that they could enter and begin instruction. (District Response, Received by NDE January 2, 2024.)

Investigative Findings

The District began the 2023-24 school year with an IEP for the Student that was created in January of 2023. The IEP delineated goals in several areas and described related services, accommodations, modifications, and supports for school personnel. The Special Education Teacher and the General Education Teacher discussed accommodations used in the classroom to describe how District staff implemented the January 2023 IEP. (IEP dated January 26, 2023; IEP Team Meeting Transcript dated November 1, 2023)

The IEP dated January 2023 IEP described the Student's speech-language pathology related services, and the supplementary aids and services needed (IEP dated January 26, 2023). The IEP dated January 2023 listed the dates the services were scheduled to begin and end. The IEP goals and related services listed the frequency, location, and duration of services, as did the Service Summary. (IEP dated January 26, 2023.)

Summary and Conclusions

The District implemented a point card system which included setting goals and earning rewards to manage the Student's behavior. These point cards identified target skills, consequences, and progress on the Student's behavior. Positive behavior interventions were employed, including the use of adult prompting and ongoing consultation with District staff. The Parent described one occasion in which the materials provided for the Student were not shortened or broken down; the District maintained that on that specific day, the assignment was used to help the Student re-establish a school-going routine. While a new IEP was being drafted, the District implemented the accommodations and modifications described in the January 2023 IEP. While there was one time when a task was not shortened, that did not rise to the level of a violation.

Based on the provision of the accommodations and modifications in the January IEP, the District implemented the requirements of 92 NAC 51-007.02; 92 NAC 51-007.07A5; 92 NAC 51-007.07A8 and **no corrective action** is required.

Issue # 3

Did the District implement the least restrictive environment requirements when denying the Parent's request for a change of placement? [92 NAC 51-008.01]

92 NAC 51-008.01 states:

008.01 *Least Restrictive Environment (LRE) Requirements*

008.01A *The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved service agencies, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*

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

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

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

008.01C2 *The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-*

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

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

008.01D1 *The continuum must:*

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

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

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

008.01E1 *Is determined at least annually;*

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

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

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

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

- 008.01H *In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.*
- 008.01I *A child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.*

Allegations/Parent Position

The Parent alleges they requested a change in placement to the school [Parent's] other children were offered due to a fractured relationship between the Parent and the School. (Parent Complaint, Received by NDE December 7, 2023.)

District Response

The District contended that the least restrictive environment required to meet the Student's unique needs is in the ISDP Skills 1 Program. (District Response, Received by NDE January 2, 2024.)

Investigative Findings

According to the January 2023 IEP, the Student's primary placement was in the general education classroom. The Service Summary indicated that specially designed instruction (SDI) for the Student occurred in both the special education setting and the general education setting, related services of speech-language pathology occurred in the special education classroom, and the modifications and accommodations occurred in the general education classroom. The IEP Team began meeting in November of 2023, to review the Student's unique needs as they had shifted from the previous school year. The IEP Team had not yet made a final placement decision. (IEP dated January 26, 2023.)

Summary and Conclusions

The January 2023, IEP indicated the Student's primary placement was in the general education classroom, with some SDI occurring in both the special education and general education classrooms. Modifications and accommodations were provided in the general education classroom. The IEP Team began reviewing the Student's behaviors and concerns in November of 2023, but the IEP Team did not finalize the IEP or adjust the Student's placement.

A change of placement involves moving from one educational setting to another that is considered more restrictive or different in terms of services,

duration, or intensity. Moving from one building to another does not constitute a change of placement. The Parent incorrectly equated a “Special Education Change of Placement” with the process of transferring to a different school location. The Student’s educational placement remained within the least restrictive environment of the general education classroom while the IEP Team carefully reconsidered the Student’s unique needs. Aligned with the January 2023 IEP and guided by IDEA’s definition of “Least Restrictive Environment,” emphasizing the importance of maintaining an inclusive setting for students with disabilities, the IEP reflected that the general education classroom provided the least restrictive environment for the student’s continued education.

Based on the January 2023, IEP and the IDEA definition of “Least Restrictive Environment,” the District implemented the requirements of 92 NAC 51-008.01, and **no corrective action** is required.

Issue #4

Did the District meet the requirements for providing the Parent with Prior Written Notice when the District proposed to initiate the completion of assessments or refused to initiate the completion of assessments requested by the Parent? [92 NAC 51-009.05]

92 NAC 51-009.05 states:

009.05 *Prior Written Notice*

009.05A *Prior written notice shall be given to the parents of a 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; or*

009.05A2 *Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.*

009.05B *Such prior written notice shall include:*

- 009.05B1 *A description of the action proposed or refused by the school district or approved cooperative;*
- 009.05B2 *An explanation of why the school district or approved cooperative proposes or refuses to take the action;*
- 009.05B3 *A description of other options the IEP team considered and the reasons why those options were rejected;*
- 009.05B4 *A description of each evaluation procedure, assessment, record, or report the school district or approved cooperative uses as a basis for the proposal or refusal;*
- 009.05B5 *A description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;*
- 009.05B6 *A statement that the parents of a child with a disability have protection under the procedural safeguards of this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained; and*
- 009.05B7 *Sources for parents to contact to obtain assistance in understanding the provisions of this Chapter.*
- 009.05C *The notice must be written in language understandable to the general public, and provided in the native language of the parents or other mode of communication used by the parents unless it is clearly not feasible to do so.*
- 009.05D *If the native language or other mode of communication of the parents is not a written*

language, the school district or approved cooperative shall take steps to ensure:

009.05D1 *That the notice is translated orally or by other means to the parents in his or her native language or other mode of communication;*

009.05D2 *That the parents understand the content of the notice; and*

009.05D3 *That there is written evidence that the requirements of this section have been met.*

Allegations/Parent Position

The Parent alleges the District conducted a motivation assessment without the required written permission from the Parent. The District also refused to conduct occupational therapy and autism assessments when requested by the Parent. (Parent Complaint, Received by NDE December 7, 2023.)

District Response

The District asserted that the Parent Guardian Consent for Individual Evaluation met PWN requirements, informing the Parent that the District would conduct a functional behavior and preference assessment based on the Parent's written letter but specifying that the District needed additional informed consent for the autism and occupational therapy evaluations. (District Response, Received by NDE January 2, 2024.)

Investigative Findings

A PWN from December 5, 2023, described the actions proposed or refused by the District regarding the preference assessment, the FBA, and the Autism and occupational therapy assessments. The PWN included proposed actions, refused actions, District rationale, information utilized to make the decision, and other relevant factors. Certain assessments, like preference assessments, do not require expressed consent because it is not used for eligibility purposes. (Parent Guardian Consent for Individual Evaluation, unsigned, November 27, 2023.)

Summary and Conclusions

On November 20, 2023, the Parent emailed a request for the District to conduct a preference assessment for the Student. The assessment was completed on November 27, 2023. The administration of this assessment did not require a Consent to Evaluate or signed written permission as the nature of the assessment was for program planning purposes and was not evaluative.

The Parent also requested that the District conduct autism and occupational therapy assessments. The autism and occupational therapy assessments are evaluative, and both the District and IDEA require an official, signed Consent to Evaluate form that includes specific components, including the purpose of the evaluation and the types of assessments that will be conducted. The Parent refused, despite the District's multiple requests via email and during IEP Team meetings, to sign the official Consent to Evaluate form allowing the District to administer these particular assessments. The emails the Parent provided "consenting" to the autism and occupational therapy assessments did not include the components required under the IDEA. The Parent's emails did not include the requirements that would have constituted informed consent. The District's refusal to conduct the assessments without the specified consent form was documented in the December 5, 2023, PWN.

Based on the December 5, 2023, PWN, the District implemented the requirements of 92 NAC 51-009.05, and **no corrective action** is required.

Notice to District

Having found that the district is implementing the requirements of 92 NAC 51 in the areas raised in the Complaint, the Complaint is closed as of the date of this letter.