

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.21
Complaint Investigator: REDACTED
Date Complaint Filed: December 29, 2023
Date of Report: REDACTED

Introduction

The Student on whose behalf this complaint was filed is a 10-year-old attending fifth grade at one of the District's elementary schools. The Student has been eligible as a student with a specific learning disability and a speech-language impairment since November 2020. According to both the Parent and the District, prior to this school year, the Student has not had any significant behavior infractions or disciplinary concerns, and as of the filing of this complaint, the Student has no history of physical aggression in the school setting. During the fall of 2023, the Student had repeated minor behavior problems that were leading to exclusion from class and special education services. An incident occurred on November 29, 2023, that resulted in the District enforcing its Emergency Exclusion policy and requiring a threat assessment before the Student would be permitted to return to school. The Parents did not consent to a threat assessment, and the emergency exclusion was extended. The Parents filed this complaint to address their concern that their child's educational needs were not being met.

Issues Investigated

1. Did the District include in the IEP a statement of the supplementary aids and services and program modifications or supports for school personnel and the anticipated frequency, location, and duration of those services and modifications? [92 NAC 51-007.07A5; 007.07A8]
2. Did the District revise the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum? [92 NAC 51- 007.10A; 51-007.10D]
3. Did the District consider the use of positive behavioral interventions and supports and other strategies to address the Student's behavior? [92 NAC 51-007.07B3]
4. Did the District employ policies and procedures to assure that the Student was educated with children who are not disabled and that special classes, separate schooling, or other removal of the Student from the regular educational environment occurred 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? [92 NAC 51- 008.01A]

5. Did the District follow the procedures required for disciplinary removal of children with disabilities outlined in 92 NAC 51- 016.01 and 016.02E and F?
6. Did the District comply with requests to inspect and review educational records without unnecessary delay and before any meeting regarding an IEP? [92 NAC 009.03B]
7. Did the District deny the Student a Free Appropriate Public Education (FAPE)? [92 NAC 51- 004.01]

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated December 22, 2023; received by NDE December 29, 2023
- Phone call with the Parent on January 16, 2024
- Email correspondence with the Parent January 30, 2024

From the School District

- Letter of Response dated January 17, 2024; received by NDE January 17, 2024
- Policy 6301- Students with Disabilities who Qualify for Special Education
- The Student's attendance records for the 2022-23 and 2023-24 school years
- Special Education service logs dated August 10- November 29, 2023
- Individualized Education Plans dated November 29, 2022, and October 27, 2023
- IEP Meeting Agenda dated October 4, 2023
- IEP Addendum dated October 4, 2023, provided to the Parents on October 9, 2023
- Multi-Disciplinary Team Report dated October 27, 2023
- Minor Change to IEP Notice and IEP addendum, dated October 9, 2023
- Manifestation Determination and meeting notes dated December 14, 2023
- IEP Addendum dated December 14, 2023
- Behavior Detail Record for the 2023-24 school year
- Incentives and Rewards Presented
- List of Positive Interventions
- Email and phone communication between the Parent and the District dated November 29, 2023- January 8, 2024
- Zoom Documentation dated December 18 & 19, 2023 and January 4 & 11, 2024
- Email correspondence between the Investigator and the District dated January 24, 2024, and received by the Investigator on January 29, 2024; additional email correspondence dated February 1, 5, and 8, 2024

Issue # 1

Did the District include in the IEP a statement of the supplementary aids and services and program modifications or supports for school personnel and the

anticipated frequency, location, and duration of those services and modifications?
[92 NAC 51-007.07A5; 007.07A8]

92 NAC 51-007.07 states:

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 to*

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;*

Allegations/Parent Position

Generally, the Parents became concerned as the Student's behavior escalated in the fall of 2023 that the IEP was not being appropriately implemented. According to the Complaint, the Parents were informed that the Student was being kept in from recess as a form of punishment for the Student's failure to complete in-class assignments. This raised concern that the IEP was either inadequate to meet the Student's needs, or not being implemented properly. The Parent requested a meeting and found that the special education provider was "unable to articulate how she was following [the Student's] plan beyond stating that she sits next to [the Student] at times to allow [the Student] to ask questions. (Letter of complaint dated December 22, 2023)

District Response

While the District believes that the program modifications and accommodations listed are consistent with the Student's needs, they acknowledge that the appropriate details for frequency and duration are not included. The District had planned to implement training on this issue prior to the beginning of the next school year, though they will now advance that training. (Letter of Response dated January 17, 2024)

Findings of Fact

- The November 29, 2022, IEP includes the following under Program Modifications & Accommodations:
 - Extended time; flexible schedule, read non-reading assessment material to student; dictate responses on non-writing assessments; manipulatives, alternate location for assessments, directions and items read aloud, answer questions orally, word bank, no point deductions due to articulation errors; graphic organizer; word processing and word prediction software.
 - The projected date for the beginning of these services is listed as November 29, 2022, and the location as "Public School."
 - There is no frequency or duration listed for any of these modifications or accommodations.
- The October 27, 2023, IEP includes the following under Program Modifications & Accommodations:
 - Extended time; flexible schedule; read non-reading assessments material to student; dictate responses on non-writing assessments; manipulatives, alternate location for assessments, directions and items read aloud, answer questions orally, word bank, no point deductions due to articulation errors; graphic organizer; sentence frames; adult re-reads his writing aloud; checks for understanding; rephrase questions; frequent, positive reinforcement; word processing and word prediction software.

- The projected date for the beginning of these services is listed as October 30, 2023, and the location as "Public School."
- There is no frequency or duration listed for any of these modifications or accommodations.

Investigative Findings

The District acknowledges that the IEP lacks the required detail when it comes to the implementation of specific accommodations and program modifications. In this Student's case, more detail about the implementation of positive behavior supports would have provided more specificity to what the team agreed that the Student actually needed.

Summary and Conclusions

Based on the above findings, the District failed to fully implement the requirements of 92 NAC 51- 007.07A8. Thus, **corrective action is required** and is outlined at the conclusion of this report.

Issue # 2

Did the District revise the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum? [92 NAC 51- 007.10A; 51-007.10D]

92 NAC 51-007.10 states:

- 007.10 *The IEP team shall revise the IEP as appropriate to address:*
 - 007.10A *Any lack of expected progress toward the annual goals described in 92 NAC 51 007.07 and in the general education curriculum, if appropriate*
 - 007.10D *The child's anticipated needs*

Allegations/Parent Position

In their letter of complaint, interview, and email correspondence, the Parents describe that they learned in the Manifestation Determination Review on December 14, 2023, that the Student had missed a number of his special education groups due to refusal to participate throughout the fall. Additionally, the Student's repeated exclusion for behavioral infractions seemed punitive and was preventing the Student from accessing the services outlined in the IEP. (Letter of Complaint dated December 22, 2023)

District Response

The District thoroughly reviewed the Student's needs as part of the multidisciplinary team process. An MDT was conducted on October 27, 2023. Prior to this, the Student had been exhibiting some minor behaviors and the IEP team convened on

October 4 to include a reward-based behavioral tool and other Tier I interventions.
c

Findings of Fact

- From September 25 through November 28, the Student missed 280 minutes of service time outlined on his IEP due to his refusal to come to the group. (Special Education service logs dated August 10- November 29, 2023)
- An additional 80 minutes are documented wherein the Student attended the group but refused to participate. (Special Education service logs dated August 10- November 29, 2023)
- On October 4, 2023, the IEP team convened to “discuss [the Student’s] parent-teacher conference and review [the Student’s] IEP with the whole team present.” Meeting notes reflect the discussion of “Frequent positive reinforcement- punch card” in the Classroom Accommodations/Modifications section. (IEP Meeting Agenda dated October 4, 2023)
- An IEP addendum was provided to the Parents on October 9, 2023, outlining a few academic accommodations as well as “the addition of an accommodation of a punch card for the purpose of frequent, positive reinforcement to increase [the Student’s] motivation for work completion.” (IEP Addendum dated October 4, 2023, provided to the Parents October 9, 2023)
- The District was clear that the punch card system used is a Tier I intervention used with many students (both general education and special education and no formal data is collected on its use or effectiveness for individual students. (Letter of Response dated January 17, 2024)
- When asked to provide data on the use of the punch card system, the District indicated that the Student “cashed in 8-9 cards” and that “each card had 10 punches.” (Email correspondence between the Investigator and the District dated January 24, 2024, and received by the Investigator January 29, 2024)
- Consent for evaluation was collected at the October 4, 2023, meeting. (Meeting Agenda dated October 4, 2024)
- The Student’s most recent MDT, dated October 27, 2023, includes the following data:
 - Behavior Assessment Scale for Children: Elevations for conduct problems, depression, withdrawal, and pervasive adaptive functioning concerns
 - Conner’s 4: Elevations for defiance and aggression, and peer relations.
 - Autism Spectrum Rating Scale: Social problems

- Classroom Observations: Of three observations conducted, the Student's on-task rate as compared to peers was (Student/Peers): 70%/70%, 10%/80%, and 0%/93.3%.
- The Student was found eligible as a Student with a Specific Learning Disability and a Speech-Language Impairment.
- The October 27, 2023, IEP reads, "If behavior impedes learning, consideration of the use of positive behavioral interventions and strategies: This was considered by the IEP team but was deemed unnecessary at the time." (IEP dated October 27, 2023)
- The IEP includes goals to address speech intelligibility, writing skills, and reading skills. (IEP dated October 27, 2023)
- The October 27, 2023, IEP also included "frequent, positive reinforcement" as an accommodation. (IEP dated October 27, 2023)

Investigative Findings

From the start of the 2023-24 school year, there is evidence that the Student's behavior was impacting access to both general and special education. This increase in behavior suggested that the Student's needs may be changing. The District then conducted a triennial evaluation and, formal evaluation data confirms clear evidence of broad social-emotional problems. In spite of consistent evidence that these issues were impacting the Student's education, the District did not amend the IEP in any meaningful way. Instead, the Student's behaviors were addressed using Tier I strategies (interventions used with all students). Further, the accommodation added to the IEP is vague at best and does not delineate any description of how the accommodation is actually implemented (including frequency, location, and duration, as addressed above). The District continued to conceptualize these as "minor" behaviors in need of only Tier I support, even though they were resulting in repeated loss of special education.

Summary and Conclusions

Based on their failure to adequately and comprehensively assess, intervene, and review the Student's escalating behaviors and social-emotional needs through the IEP process, and make appropriate changes to the IEP, the District failed to fully implement the requirements of 92 NAC 51-007.10. Thus, **corrective action is required** and is outlined at the conclusion of this report.

Issue # 3

Did the District consider the use of positive behavioral interventions and supports and other strategies to address the Student's behavior? [92 NAC 51-007.07B3]

92 NAC 51-007.07 states:

007.07A *The IEP shall include:*

007.07B3

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

Allegations/Parent Position

According to their letter of complaint, the Parents believed that the school failed to provide the Student with the special education services needed to be successful within the classroom. (Letter of Complaint dated December 22, 2023)

District Response

Because the Student had only experienced one major behavioral event early in the school year, and otherwise the behavior concerns were "minor," the team decided to continue with Tier I interventions instead of including behavior interventions as part of the new IEP. (Letter of Response dated January 17, 2024)

Findings of Fact

- The District staff began using a punch card system with the Student on September 28, 2023. This is identified as a Tier I intervention to assist in attempting and completing work and following school expectations. (Email correspondence between the Investigator and the District dated January 24, 2024, and received by the Investigator on January 29, 2024)
- On October 9, 2023, the District communicated in writing their request to make minor changes to the Student's IEP, including the addition of a "punch card for the purpose of frequent, positive reinforcement to increase [the Student's] motivation for work completion. (Minor Change to IEP Notice and IEP addendum, dated October 9, 2023)
- In their Letter of Response, the District noted, "As the IEP indicates, the team considered adding positive behavioral interventions and strategies. However, based on the data and input from the IEP team members, the IEP team determined it was unnecessary."
- The October 27, 2023, IEP includes the following under Program Modifications & Accommodations: frequent, positive reinforcement.

Investigative Findings

Consistent with the findings of Issue #2, the District did not adequately acknowledge the growing behavior challenges and the way that those behaviors were impacting the Student's access to both general and special education. The IEP clearly states that behavior interventions were "considered but deemed unnecessary."

Summary and Conclusions

As a result of their failure to consider the child's behavior needs as part of the IEP process, the District failed to fully implement the requirements of 92 NAC 51- 007.07. Thus, **corrective action is required** and is outlined at the conclusion of this report.

Issue #4

Did the District employ policies and procedures to assure that the Student was educated with children who are not disabled and that special classes, separate schooling, or other removal of the Student from the regular educational environment occurred 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? [92 NAC 51- 008.01A]

92 NAC 51-008.01 states:

008.01A *The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved services 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.*

Allegations/Parent Position

The Student was repeatedly denied recess during the first semester of the school year to address incomplete classwork. In addition, the Student was placed in "storage rooms" as a form of punishment for challenging behavior. (Letter of Complaint dated December 22, 2023)

District Response

The District denies ever having used storage rooms to contain the Student and further, in email correspondence, describes how the allegation that the Student repeatedly missed recess is also false. (Letter of Response dated January 17, 2024, and email correspondence between the Investigator and the District February 5, 2024)

Findings of Fact

- The District's Policy 6301 reads, "[The District] will adhere to all laws and state regulations governing Special Education under the conditions and

circumstances specified in the [District] Implementing Procedures. (Policy 6301- Students with Disabilities who Qualify for Special Education)

- The Implementing Procedures listed above simply restate rule 92 NAC 51 by stating “[The District] 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.” (Policy 6301- Students with Disabilities who Qualify for Special Education)
- The District does not have any more specific procedures outlined in a Special Education Handbook or elsewhere for making determinations about the least restrictive environment. (Email correspondence between the Investigator and the District on February 8, 2024)
- According to both IEPs, the Student's placement prior to the emergency exclusion was in general education with some pull-out special education services. (IEPs dated November 29, 2022, and October 27, 2023)
- The District has a safe room that is 12.4 x 12.4 near the front of the school building. This space is used for one-on-one work with students and, when necessary, as a de-escalation space. (Email correspondence between the Investigator and the District on January 30, 2024)
- The Student used the safe room on two occasions, November 16, and November 20, 2023. The first incident, the Safe Room was used after the Student demonstrated unsafe behavior by throwing materials and threatening property destruction. In the second incident, the Student was already working with a special education teacher in 1:1 instruction in the Safe Room after indicating that as the Student's preference. Neither of these incidents constituted seclusion as the Student was accompanied by the adults and was never closed in the room. (Email correspondence between the Investigator and the District on January 30, 2024)
- On August 31, 2023, the Student was assigned a math quiz and refused to complete it with or without help in the classroom. The Student was kept in from afternoon recess to complete the quiz, which the Student continued to refuse to complete. (Email correspondence between the Investigator and the District on February 5, 2024)
- There was one other occasion in the early days of the school year when the Student was kept in from recess due to incomplete classwork. (Email correspondence between the Investigator and the District on February 5, 2024)

- On September 6, 2023, in a meeting, the Complainant requested that instead of missing recess, missing work should be completed during intervention time or at home. The Student did not miss recess again except during In-School Suspensions. (Email correspondence between the Investigator and the District on February 5, 2024)

Investigative Findings

There are two separate issues raised above. First, whether or not the District has in place actual policies and procedures that provide decision rules for making placement decisions in accordance with the least restrictive environment requirements, and second, whether such requirements were violated in the case of this particular student. While the District has posted on its website its acknowledgment of the least restrictive environment requirements under 92 NAC 51-008, there is no evidence of actual procedures used within the District to determine when supplementary aids and services are no longer adequate to maintain placement with the regular classroom and when a change of placement may need to be considered. Even without such documentation, the Parent's concern about whether occasional removal of recess to complete academic activities does not rise to the level of a violation of the least restrictive environment.

Summary and Conclusions

Based on the absence of any specific procedures regarding placement decisions in special education with respect to the least restrictive environment, the District failed to implement the requirements of 92 NAC 51- 008.01A and thus, **corrective action is required** and will be detailed at the conclusion of this report.

Issue # 5

Did the District follow the procedures required for disciplinary removal of children with disabilities outlined in 92 NAC 51- 016.01 and 016.02E and F?

92 NAC 51-016.01 states:

- 016.01 *Change of placement for disciplinary removals*
 - 016.01A *For the purpose of removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:*
 - 016.01A1 *The removal is for more than 10 consecutive school days; or*
 - 016.01A2 *The child is subjected to a series of removals that constitute a pattern:*
 - 016.01A2a *Because the series of removals total more than*

10 school days in a school year;

016.01A2c Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

92 NAC 51-016.02 states:

016.02E1 Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative, the parents, and the relevant members of the child's IEP team (as determined by the parent and the school district or approved cooperative) shall review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine:

016.02E1a If the conduct in question was caused by or had a direct and substantial relationship to the child's disability; or

016.02E1b If the conduct in question was the direct result of the school district's or approved cooperative's failure to implement the IEP.

Allegations/Parent Position

Following an incident that occurred in the classroom on November 29, 2023, the Student was excluded from school and was not allowed to return until the Parents agreed to a threat assessment. During this time, the District provided minimal services, and only after the Parents requested them. (Letter of Complaint dated December 22, 2023)

District Response

The District employed the emergency exclusion provision which states, “any student may be excluded from school... [when the] student’s conduct presents a clear threat to the physical safety of himself, herself, or others.” Neb. Rev. Stat. 79-264(1). Because this provision was used, the District did not remove the Student from his educational placement on a disciplinary basis, so the requirements of 92 NAC 51-016.01 are inapplicable. (Letter of Response dated January 17, 2024)

Findings of Fact

- On November 9, 2023, the Student received an in-school suspension for disrespectful speech toward a staff member. That suspension occurred on November 10, 2023. (District Response dated January 17, 2024)
- On November 13, 2023, the Student was assigned two days of in-school suspension for use of profanity, knocking over furniture, and throwing food and learning materials. The Student was picked up by the Parent and served two days of in-school suspension on November 16 & 17. (District Response dated January 17, 2024)
- On November 16, while serving an in-school suspension, the Student threw materials and refused to clean them up. The Student also threatened to damage equipment. After being moved to the “Safe Room,” the Student was assigned out-of-school suspension for the remainder of that day (November 16) and the full day on November 17, and a full day of in-school suspension on November 20.
- An additional incident occurred on November 20th involving noncompliance. The Student was moved to the “Safe Room.” (District Response dated January 17, 2024)
- On November 29, 2023, the incident that prompted this complaint occurred. According to the District investigation, the Student “almost certainly made a verbal threat of some sort of gun violence,” though details differ based on the individual student interviewed. In any case, there is evidence that the Student told peers that the Student “had a plan” and made a hand gesture with a gun. The Student confirmed having made such comments and gestures when questioned and added that the Student had “a fake gun” in the Student’s backpack. The Student’s backpack was searched and no weapons or facsimile of a weapon were found. (Email correspondence

between the Investigator and the District dated January 24, 2024, and received by the Investigator on January 29, 2024).

- The Student was excluded from school under the emergency exclusion policy and did not return to school until Monday, January 29. (District Response dated January 17, 2024, and phone call with the Parent January 16, 2024)
- On December 5, 2024, the District reached out to the Parent and requested that the Parent consent to a Risk Assessment, conducted by local law enforcement and/or the District's school psychologist. (Letter of Response dated January 17, 2024)
- The Parent refused consent, not wanting the Student evaluated without the Parents present. (Email correspondence between the District and the Parent dated December 6 & 8, 2023)
- The District held a Manifestation Determination on December 14, 2024, (11 full school days after the incident) and determined that the behavior in question was not a manifestation of the Student's disability. Further, documentation notes that the conduct in question was not a direct result of the District's failure to implement the Student's IEP. (Manifestation Determination Review, December 14, 2023)
- The Parent brought an advocate to the meeting. The Parent indicated that several concerns were raised, including the fact that there were no behavioral goals included in the IEP. The concerns were not addressed and the Parent expressed their disagreement that the school was meeting the Student's special education needs. (Email correspondence with the Parent dated January 30, 2024)
- At the Manifestation Determination Review, the Parents were provided an IEP addendum reviewing the proposed changes to the Student's IEP when [the Student] returns to school:
 - Service Minutes: Increasing service minutes from 120 minutes/week to 200 minutes/week
 - FBA/BIP: Gaining consent for a Functional Behavior Assessment and completing a Behavior Intervention Plan.
 - Behavior Support: The team discussed adding behavior coaching support to help the IEP team implement a behavior plan.
- The addendum also stated that during the time [the Student] is not in school, [the Student] will receive the following service:
 - Resource: 30 minutes of direct resource services provided via Zoom twice per week, 30 minutes of consultative support 1x per week
 - Speech: 15 minutes of direct speech-language services provided via Zoom twice per week.
- The District conducted meetings with the Student via Zoom on December 18, 19, January 4, and 11, each for 60 minutes. (Zoom Documentation dated December 18 & 19, 2023, and January 4 & 11, 2024)

- According to the Parent, the District did not provide a device for the Student to access these meetings, so the Student had to access them on an iPhone. Additionally, no textbooks or materials were provided until requested by the Parent in mid-January. (Email correspondence with the Parent dated January 30, 2024)

Investigative Findings

First and foremost, the District's conclusion that any part of the IDEA is "inapplicable" to an eligible student with a disability is expressly false. District discipline policy and special education regulations are not mutually exclusive, instead, both apply to an identified student with a disability. For this reason, the regulations are applicable and the District is in violation of this rule.

First, the Student had been excluded from the educational placement outlined in the IEP for 15 full days on the date of the Manifestation Determination Review, and 11 full days since the incident in question. This violates the Manifestation Determination requirement. More problematic, however, is that the District's actions formally constitute a change of educational placement because of their pattern of disciplinary removal. This change of placement did not comply with the requirements of 92 NAC 51-008.01, which requires that placement decisions be 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 that such a placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51- 008.01.

Finally, the Student was entitled to special education services, provided by the District beginning on December 8, 2023. The Student did not receive these services until December 18, and what was provided was difficult for the family to access as the District did not provide the needed materials for effective instruction.

Summary and Conclusions

Based on their disregard for the disciplinary requirements for students with disabilities, the District failed to fully implement the requirements of 92 NAC 51-016.01. Thus, the following **corrective action is required** and is outlined at the conclusion of this report.

Issue # 6

Did the District comply with requests to inspect and review educational records without unnecessary delay and before any meeting regarding an IEP? [92 NAC 009.03B]

92 NAC 51-009.03 states:

009.03B *Each participating agency shall permit parents to inspect and review any education records relating to their*

children which are collected, maintained, or used by the participating agency. The participating agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program or hearing pursuant to 92 NAC 55 or resolution session and in no case more than 45 days after the request has been made.

Allegations/Parent Position

The Parents report in their complaint that they made requests on December 5, 14, and 20 for copies of the Student's special education minutes served and any intervention data. The District did not provide these documents for nearly a month. (Letter of Complaint dated December 22, 2023, and Letter of Response dated January 17, 2024)

District Response

The Parents left a voicemail on December 4 requesting documentation about the Student's behaviors and the discipline record. These documents were provided on December 20, 2023. On this day, the Parents were provided with attendance data, report cards, behavior detail reports, counseling detail reports, health logs, and student assessment recap through the different years the Student was enrolled at the District. The special education services logs were provided the next day, December 21, 2023. (Letter of Response dated January 17, 2024)

Findings of Fact

According to the Email and phone communication between the Parent and the District dated November 29, 2023- January 8, 2024:

- On December 4, 2023, the Parent left a voicemail that stated, "We are requesting any documentation concerning [the Student's] behaviors or discipline record be provided to us so that we can look at it and review it and that would include, for example, any calls, emails, or notes that were formally documented in the district data system. We would also like a copy of the record of [the Student's] minutes received related to [the Student's] IEP."
- On December 5, in a phone call between the Parent and the District, the Parent again requested a "copy of records related to [the Student]" as documented in phone call notes.
- On December 11, in an email requesting a phone call, the District acknowledged a "records request."
- The District convened a Manifestation Determination Review on December 14, 2023. (Manifestation Determination and meeting notes dated December 14, 2023)
- On December 20, 2023, an email was sent from the District to the Parent including some of the records that had been requested. The Parent replied

to this email stating, "I do not see the records for [the Student's] special education minutes. Kindly send them as that is our primary concern."

- The District responded to this request stating, "IEP minutes served are not maintained separately as a student record... did you discuss this request with the team at [the Student's] recent IEP meeting on December 14?"
- The Parent responded on December 20 with, "My husband and I have made the request for special education minutes documentation multiple times at this point. Is there a reason why they have not been provided in a transparent and timely manner? During the meeting on December 14, 2023, [special education teacher] shared that [the Student] had not been attending groups, yet this was the absolute first time this was communicated to us... we are requesting all minutes served and the intervention records."
- On December 21, 2023, the documentation was provided to the Parent by the District in an email.

Investigative Findings

The Parent(s) request for records was specifically for the purposes of better understanding the situation and circumstances that led up to the Student's exclusion from school. Because the records were not provided in advance of the Manifestation Determination Review, the Parents were unprepared to participate effectively in the IEP review that is a part of this process. For this reason, these records should have been provided *before any meeting regarding an individualized education program* as outlined above.

Summary and Conclusions

Based on their failure to provide records that had been requested before the Manifestation Determination review, the District failed to fully implement the requirements of 92 NAC 51- 009.03. Thus, **corrective action is required** and is outlined at the conclusion of this report.

Issue # 7

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

92 NAC 51-004.01 states:

004.01 *School districts and approved cooperatives shall ensure that all children with verified disabilities, [sic] including children who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE) which includes special education and related services to meet their unique needs.*

Allegations/Parent Position

As outlined by the complaint and clarified in an interview, the Parent believes that the Student's needs have not been adequately addressed before or since the

severe behavior incident on November 29, 2023. The District had not clearly communicated the level of the Student's disengagement prior to the incident and did not provide any type of education to the Student once the emergency exclusion was employed until the Parent requested tutoring. Further, when the District did provide services, these services were virtual, through Zoom and the District did not provide a device or any materials. As a result, the instruction required a parent to sit with the Student and was limited in its effectiveness. (Letter of Complaint dated December 22, 2023, and phone call with the Parent on January 16, 2024)

District Response

The District believes that it has not committed any procedural or substantive violations related to the education of the Student, and even if errors or omissions occurred, such errors or omissions did not result in the denial of FAPE and are procedural in nature only. (Letter of Response dated January 17, 2024)

Findings of Fact

- As outlined in Issue #5, the District failed to comply with the discipline requirements outlined in 92 NAC 51-016 in the following ways:
 - The Student was excluded from school for disciplinary infractions for a total of 15 days before the team convened to conduct a Manifestation Determination Review. (Letter of Response dated January 17, 2024)
 - When the team did convene, the Parent's concerns regarding the IEP not meeting the Student's needs were not addressed as part of the Manifestation Determination Review, and any behavioral supports to be included were recommended only once the Student returned to school. (Email correspondence with the Parent January 30, 2024, and Letter of Response dated January 17, 2024)
- The District also failed to comply with the change of placement requirements outlined in 92 NAC 51-008-01 in the following ways:
 - The placement decision was not made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the other placement options; (92 NAC 51-008.01C1) (Based on the District exclusion of the Student for more than 10 days for disciplinary purposes outlined in the Letter of Complaint received by NDE on December 29, 2023, and the District Response dated January 17, 2024)
- The District failed to convene and amend the IEP to address the lack of progress the Student was making both before and after the incident in the following ways:
 - In the face of evidence that behavior concerns were escalating and were preventing the Student from adequately accessing both special

education services and general education, the IEP continues to state that behavioral concerns are not a relevant part of the Student's IEP. (current IEP dated October 27, 2023)

- Further, in their Letter of Response, the District stated, "Because of the emergency exclusion that happened at the end of November, the IEP team could not reconvene to discuss how to address the new data related to refusal behaviors." (Letter of Response dated January 17, 2024)
- The District failed to provide meaningful and effective special education services during the Student's disciplinary removal, which totaled 30 school days in the following ways:
 - The District did not provide the Student with a device to access Zoom meetings or with the materials (including textbooks) that the Student needed. (Interview with the Parent on January 16, 2024)
 - Data demonstrate that the Student was not participating adequately in in-person instruction with the use of Tier I behavioral supports, so the provision of virtual instruction with no additional supports did not constitute effective academic instruction. (Special Education service logs dated August 10- November 29, 2023)

Investigative Findings

The pattern of failures outlined above demonstrates a pattern of failures on the part of the District which led to repeated loss of special education and related services both in school and after the Student was excluded from school. As a result, these failures constitute a denial of FAPE.

Summary and Conclusions

Based on the pattern of failures on the part of the District, the District failed to fully implement the requirements of 92 NAC 51-004.01. Thus, the following **corrective action is required**.

Corrective Action

Convene the IEP Team

1. Within 10 calendar days of the date of this investigation report, the District shall convene the IEP team and complete the following:
 - a. Review the current data and determine if any additional evaluation data are needed to fully understand the Student's current needs. If so, obtain Consent for Evaluation and conduct appropriate evaluations.
 - b. Review the current IEP and ensure that goals, services, and/or modifications/accommodations are appropriate to address the Student's current behavioral needs. The accommodations/modifications must include frequency, duration, and location as specified by 92 NAC 51- 007.07A5.

2. The IEP and associated PWN must be sent to NDE no later than 2 business days after the IEP meeting.
3. A random sample of 3 student IEPs will be reviewed on or before October 15, 2024, to ensure systemic correction has been made.

Compensatory Services

4. For the period of December 8, 2023 (the 11th day of exclusion)- January 29, 2024 (when the Student returned to school): The Student's IEP Team shall convene an IEP team meeting by February 26, 2024, to develop a mutually agreed upon schedule to provide the Student with 8 hours of compensatory education to address IEP goals (120 minutes for 4 weeks of exclusion).
 - a. The IEP team, including the Parent, shall determine the schedule for which the 8 hours of compensatory services will be provided.
 - b. The schedule for compensatory services must be provided to NDE within 2 business days of the IEP Team meeting.
 - c. The 8 hours of compensatory services must be completed by May 15, 2024. Student absence or refusal of the parent to make the child available shall result in a waiver of services scheduled for that day. Staff absences must be rescheduled. Any compensatory services declined or not used by April 30, 2024, shall be waived (assuming the District has made a good faith effort to timely commence and provide all compensatory services).
 - d. The District must submit service provider logs verifying the completion of all compensatory services to NDE by the last business day of each month until the service is complete, and all services as been verified.

Policies and Procedures

5. The District shall develop formal written procedures for administrators to use with special education students any time emergency exclusion is considered to ensure that the requirements of 92 NAC 51- 016.01 & 016.02 E & F are satisfied. (Issue #5)
 - a. Provide the procedures to NDE 60 calendar days after the date of the Investigation Report for review.

Training

6. The District shall conduct training for all certified staff as well as all administration covering the following topics:
 - a. How supplementary aids and services, accommodations, and curriculum modifications are to be appropriately documented in the IEP according to 92 NAC 51-007.07, and the purpose of such documentation. (Issue #1)
 - b. How and when the IEP team should review and revise the IEP based on a student's lack of progress (including declining participation in either

general or special education) according to 92 NAC 51- 007.10A; 51-007.10D. (Issue #2)

- c. The use of positive behavioral supports and intervention, and how these should be evaluated for effectiveness and documented in the IEP. The training should include the purpose of functional behavior assessment and behavior intervention planning and how to effectively use these tools to satisfy 92 NAC 51- 007.07B3 & 007.10. (Issue #3)
 - d. The right of parents to inspect records in a timely manner, and in advance of any IEP review according to 92 NAC 51-009.03. (Issue #4)
 - e. Disciplinary removal of students with verified disabilities and how the District can employ disciplinary policy while satisfying the requirements of 92 NAC 51- 016.01 & 016.02E & F. (Issue #5)
 - f. Specific training on the procedures developed for administrators to use with special education students in the case of emergency exclusion. (Issue #5)
7. Materials used for the training outlined above shall be shared with NDE two weeks prior to the training and approved by NDE prior to implementation.
 8. The training shall occur no later than May 1, 2024.
 9. Sign-in sheets or other verification of attendance should be provided to NDE confirming the participation of all required staff within 2 business days of the completion of the training.

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:

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