

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.22
Complaint Investigators: REDACTED
Date Complaint Filed: January 2, 2024
Date of Report: REDACTED

Introduction

The district and family agreed to engage in mediation of all issues identified, however, the parents did not withdraw any of the issues from the complaint. As a result, all issues were investigated and addressed within this report.

Additionally, documentation that predated the January 2, 2024, complaint was reviewed by the complaint investigators to better understand the context of issues under investigation in regard to the student's September 16, 2022, IEP revisions in response to goals being met and the relationship between district and community afterschool clubs. They were not used to determine findings.

The student addressed by this complaint is an eleventh-grade student attending high school within the district. The student receives 10 minutes of individual special instruction special education service 2 days every month and 10 minutes of individual and group special instruction special education service 6 days every month under the eligibility category of autism. The student has testing and classroom/assignment accommodations, a behavior intervention plan, and a general education safety plan that is listed as an accommodation on the IEP. Pre-teaching expectations, including social norms and problem-solving as needed, were noted in the service summary of the current IEP. The IEP team deemed it was necessary for supplementary aids and services for the student to attend regular education classes and have the opportunity to participate in district-sponsored clubs, activities, field trips, assemblies, etc., and/or athletics. It is documented that the district safety plan will be implemented for district-sponsored clubs, activities, field trips, assemblies, and or activities.

In the student's previous September 17, 2022, IEP the student had a social skills goal that was discontinued during the September 6, 2023, IEP due to achieving the goal. It was practiced during the school day and during after-school and extracurricular activities as part of the transition goal. In this complaint, the student was suspended for four days in November 2023, for disciplinary action. During that suspension, the student was suspended through February 24, 2024, from specific after-school and extracurricular activities including athletics.

Issues Investigated

1. Did the District's suspension of the student from extracurricular activities following a November 17, 2023, disciplinary action constitute a change of placement? [92 NAC 51-016.01A1; 92 NAC 51- 007.07A5b; NAC 51-007.07C4; NAC 51-007C4a]
2. Did the District follow proper procedures for the disciplinary removal of a student who qualifies for special education and related services following the November 15, 2023, incident? [92 NAC 016.02A; 92 NAC 51-016.02B; 92 NAC 51-016.02C; 92 NAC 51-016.02D; 92 NAC 51-016.02E]
3. Did the District change the student's IEP during the September 7, 2023, annual meeting without parent participation? [92 NAC 51-007.01; 92 NAC 51-007.07A2a; 92 NAC 51-007.09F]
4. Did the District develop and revise the student IEP during the 2023- 2024 school year in response to the November 17, 2023, behavior incident to ensure equal access to extracurricular and nonacademic activities? [92 NAC 51- 007.07C4; 92 NAC 51-007.07A5c; 92 NAC 51-007.07A8]
5. Did the District provide special education and related services, accommodations, and supplementary aids/services to the student in accordance with the IEP including access to extracurricular activities following the November 17, 2023, discipline action? [92 NAC 51-007.02; 92 NAC 51-007.07C4a]
6. Did the District provide the parents access to and review all student educational records pursuant to the November 15, 2023, discipline action? [92 NAC 51-009.03A; NAC 51-009.03B]
7. Did the District properly train staff to use the student's safety plan during the 2023-2024 school year? [92 NAC 51-007.02D]

Information Reviewed by Investigator

From the Complainant

- [City] After School Community Programs website accessed by the complaint investigators on January 4, 2024
- District Board Policy 6740, nd
- Individualized Education Program dated September 16, 2022
- Letter from school administrator to parents dated January 24, 2023
- Letter 1 from school administrator to parents dated January 25, 2023
- Letter 2 from school administrator to parents dated January 24, 2023
- Letter from school administrator to parents dated February 1, 2023
- Safety Plan Information dated February 1, 2023, signed by the IEP team on February 1, 2023

- Email from instructional coach to parent dated April 26, 2023, at 12:40 p.m.
- Email between director of strategic initiatives and focus programs and parents dated between April 27, 2023, at 10:15 a.m. and 8:25 p.m.
- Email from parent to instructional coach dated April 27, 2023, at 8:42 p.m.
- Email between director of strategic initiatives and focus programs and parent dated between April 28, 2023, at 11:19 and 11:35 a.m.
- Transcript generated by Otter.ai from parent-recorded minutes of the August 30, 2023, Safety Planning and IEP meeting
- Audio recording of August 30, 2023, Safety Planning and IEP meeting 1:17:20 in length
- Individualized Education Program dated September 7, 2023
- Transcript generated by Otter.ai from parent-recorded minutes of the September 7, 2023, Safety Planning and IEP meeting
- Audio recording of September 7, 2023, Safety Planning and IEP meeting 1:18:25 in length
- Summary of Decisions document from the district dated September 18, 2023, and November 10, 2023
- Email from mother to assistant special education coordinator dated November 16, 2023, at 7:38 a.m.
- Transcript generated by Otter.ai from parent-recorded minutes of the November 16, 2023, School Resource Officer and Principal meeting
- Audio recording of November 16, 2023, School Resource Officer and Principal meeting 25:20 in length
- Letter from the school administrator of the high school to the parents dated November 17, 2023
- Email from assistant special education coordinator to parents and special education teacher dated November 20, 2023, at 7:22 a.m.
- An email exchange between the high school principal and mother dated November 21, 2023, between 2:25 and 3:48 p.m.
- An email exchange from the mother to the high school principal dated November 26, 2023, at 1:26 p.m.
- Transcript generated by Otter.ai from parent recorded minutes of the November 27, 2023, conversation upon returning from suspension
- Audio recording of November 27, 2023, conversation upon returning from suspension 26:43 in length
- Transcript generated by Otter.ai from parent recorded minutes of the November 29, 2023, conversation re emails from Student B
- Audio recording of November 29, 2023, conversation re: emails from Student B 15:56 in length

- An email exchange between the mother and high school principal dated between November 28 and November 30, 2023, between 7:22 a.m. and 2:14 p.m.
- Transcript generated by Otter.ai from parent-recorded minutes of the November 30, 2023, Safety Plan Meeting
- Audio recording of November 30, 2023, Safety Plan Meeting 36:01 in length
- An email exchange between the assistant special education coordinator and mother dated November 30, 2023, between 5:06 p.m. and 9:13 p.m.
- Email exchanges between the assistant special education coordinator and mother dated December 7, 2023, between 9:24 a.m. and 10:11 p.m.
- Email from mother to assistant special education coordinator dated December 8, 2023, at 10:29 a.m.
- Letter of Complaint dated January 2, 2024; received by NDE January 2, 2024
- Email from mother to Assistant Special Education Coordinator and Special Education Teacher dated January 10, 2024, at 7:14 a.m.
- Email between the assistant special education coordinator and parents dated between January 16, 2024, at 9:32 p.m. and January 22, 2024, at 10:22 a.m.
- Summary of Decisions document from the district dated January 16, 2024
- Safety Plan Information, dated January 16, 2024
- Interview between parents and complaint investigators dated February 13, 2024
- A phone call between the mother and complaint investigator dated February 29, 2024

From the School District

- Letter of Response dated February 1, 2024; received by NDE February 1, 2024
- Multidisciplinary Team Report(MDT) dated December 16, 2021
- Safety Plans
 - Dated February 1, 2023
 - Dated April 11, 2023
 - Dated September 6, 2023
 - Dated September 6, 2023, amended November 30, 2023
- Meeting Request
 - Dated February 26, 2023, for the meeting scheduled for March 3, 2023,
 - Dated April 5, 2023, for meeting scheduled April 11, 2023
 - Dated August 19, 2023, for meeting scheduled August 30, 2023

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- Dated August 30, 2023, for meeting scheduled September 7, 2023
- Dated November 27, 2023, for meeting scheduled November 30, 2023
- Functional Behavior Assessment (FBA) dated March 3, 2023
- Individualized Education Program (IEP)s
 - Amendment dated March 3, 2023, amending the September 16, 2022, IEP
 - Dated September 7, 2023, and two signature pages
- Behavior Intervention Plan (BIP) dated August 30, 2023, with IEP signature page dated August 30, 2023
- Prior Written Notice (PWN)
 - Dated March 9, 2023
 - Dated April 11, 2023
 - Dated April 12, 2023
 - Dated August 29, 2023
 - Dated August 30, 2023
 - Dated September 7, 2023
 - Dated September 18, 2023
- Student Class Schedule for the 2023-2024 School Year
- District Board Policy 6740, nd
- District 2023-2024 School Year Calendar
- Student Discipline Profile for August 14, 2023
- Letter from special education teacher to parents dated August 14, 2023
- Emails
 - From special education teacher to homework zone staff dated August 31, 2023, at 3:09 p.m.
 - From Special education teacher to parents dated September 11, 2023, at 3:14 p.m.
 - From special education teacher to afterschool staff dated September 12, 2023
 - Between parents and principal dated between November 16, 2023, at 10:49 p.m. and November 30, 2023, at 2:14 p.m.
 - From administrative assistant to parents dated November 17, 2023, at 2:09 p.m.
 - From assistant special education coordinator to mother, special education teacher/case manager, and principal dated November 20, 2023, at 7:22 a.m.
 - From assistant special education coordinator to parents dated November 28, 2023, at 6:20 p.m.

- From special education teacher to homework zone staff dated November 30, 2023, at 2:28 p.m.
- From mother to assistant special education coordinator dated November 30, 2023, at 5:06 a.m.
- From assistant special education coordinator to district after-school staff, associate principal, counselor, special education teacher/case manager, and six high school teachers dated December 1, 2023, at 3:34 p.m.
- Between mother and assistant special education coordinator dated between December 7 at 9:24 a.m. and December 8, 2023, at 10:29 a.m.
- From special education teacher/case manager to district after-school staff, special education teacher and five high school teachers dated January 25, 2024, at 9:43 p.m.
- IEP Progress Report – Annual Goal dated October 13, 2023
- Student executive functioning goal monitoring was implemented on September 7, 2023, updated on October 13, 2023, and December 22, 2023
- Suspension letter from school administrator to parents dated November 17, 2023
- IEP Progress Report – Annual Goal dated December 22, 2023
- Service minutes, Semester 1 (Fall 2023)
- Telephone interview with the director of special education, assistant special education coordinator, special education teacher/case manager, principal, and special education supervisor facilitated by the district attorney on February 12, 2024

Findings of Fact

1. The Prior Written Notice (PWN) dated August 11, 2022, distinguished that the community after-school programs are not district-sponsored.
2. The IEP dated September 16, 2022, documents an Education/Training goal stating, “[student] will participate in a school activity/club” in the Transition Plan (page 14). Further, it included a social skills goal and was addressed in part during the after-school clubs.
3. The IEP dated September 16, 2022, was revised on March 3, 2023, and September 7, 2023, and stated, “Safety Plan will be provided to [student’s] teachers” in the Supports for School Personnel section of each IEP.
4. The parents (February 13, 2024) and district state (February 12, 2024) during interviews with the complaint investigators that the student

participated in theatre and Homework zone during the 2022-2023 spring semester.

5. The PWN dated August 30, 2023, included the following statement regarding the Education/Training goal in the Transition Plan, "8. Add exploring course options at TCA (The Career Academy) for senior year under Education/Training coordinated activities." The parent signed attendance at this meeting.
6. The PWN dated August 30, 2023, discontinued the social skills goal due to the student meeting the goal but added it as an accommodation to be accessed as the need arises.
7. Emails sent from the student's case manager on August 31, 2023, September 12, 2023, and December 1, 2023, show that the safety plan was provided to the teachers listed on the student's school schedule and district's Homework Zone.
8. The IEP dated September 7, 2023, included the following statement regarding the Education/Training goal in the Transition Plan, "[student] will select high school courses (HS/TCA) when registering for next school year that support [student's] career interest" (page 6) as documented in the August 30, 2023, PWN. The parent(s) signed they agreed to the IEP on September 7, 2023.
9. The IEP dated September 7, 2023, Service Summary (page 13) states, "[Student] has the opportunity to participate in [district] sponsored clubs, activities, field trips, assemblies, etc. and/or athletics." The IEP Team considered the need for supplemental aids and services and it was deemed necessary. The following Supplementary Aids and Services/Accommodations are identified in the September 7, 2023, IEP: 1) testing, a) small group environment, b) opportunities for a single retake within a week of original assessment, c) extended time (1.5x), and d) safety plan implementation. 2) classroom/assignments, a) opportunities to redo assignments, b) extended time for assignments (1.5x), c) proximity seating (when possible sit next to a peer model-upperclassman), d) teacher-initiated check-ins (review assignments, prompts for re-doing assignments) e) break larger assignments into smaller assignments with interim deadlines, f) provide timely feedback on work, g) safety plan implementation, h) social skills support as situation arise.
10. The September 7, 2023, IEP includes the following special education and related services for the student: 1) individual special instruction 2 times/month for 10 minutes in the general education classroom; 2) individual and group special instruction 4 times/month for 10 minutes in the general education classroom; and 3) individual and group special

instruction 2 times/month for 10 minutes in the general education classroom. It is documented in the IEP that the student is not in need of related services.

11. The September 7, 2023, IEP documents that participation in afterschool extracurriculars as an education/training goal in the Transition Plan is deleted on the September 16, 2022, IEP. The district documents in their district response that at the meeting it was discontinued because it had been met so the new transition activity for education/training replaced it.
12. The September 18, 2023, PWN stated that "[District] safety plans are for the school day." The Safety plans dated September 6, 2023, and January 24, 2024, are written to be implemented in the district's Homework Zone after school activity. The district's letter of suspension on November 20, 2023, does not suspend the student from the Homework Zone during the suspension.
13. The PWN dated September 18, 2023, includes a parent request, "We would like to request special education services, including [student's] safety plan which is related to [student's] disabilities, to support [student] participation in the afterschool clubs held at [high school]. Last year our request was denied by the district, and we would like to confirm if that is still the case." with a further clarification, "I am asking about the clubs that meet after school. I understand that [district] did not consider the [community after-school program] clubs school-sponsored activities last year and I want to confirm that is still the case this year. [District] refuses to implement safety plans at [community after-school programs] because they are not [district] sponsored activities. [District] safety plans are for the school day. [District] proposes that a parent can provide the safety plan with the [community after-school program] and ask them to consider following it." The request considered the parent request and rejected it because the [community after-school program] is not an [district]-Sponsored extracurricular activity. Parents may meet with the [community after-school program] staff directly to develop a plan. See previous District Decision from August 11, 2022."
14. The parents reported during the February 13, 2024, interview that the student had been participating in the swim team preconditioning workouts through Power Hour for approximately three weeks prior to the suspension, had purchased the swimsuit and cap, and had been interacting with the swim coach. The student had turned in the sports physical at the beginning of the school year in anticipation of participating in district athletics and had participated in track and field during freshman year.

15. An email from the special education teacher/case manager to the parent on September 11, 2023, documents that the special education teacher/case manager forwarded an email concerning the student's participation in the swim team Power Hour and stated that the safety plan was sent to this and the other after school and extracurricular that the student was participating in.
16. The principal stated that the student's intention to participate in an extracurricular and after-school activity was made clear when the mother emailed the principal requesting an exception for the student to participate in the swim team photos on November 21, 2023, during the suspension.
17. An email from the principal to the parent on November 21, 2023, confirmed that the student's suspension was not from the Dungeons and Dragons club through the community after-school program.
18. An email from the parent to the principal on November 21, 2023, at 3:48 p.m. states, "Would you please send me the second disciplinary form that indicated you were going to bar [student] from the [community after school program] as well as the third version that reverses this decisions? I want to make sure I have copies of all versions of documentation of this event."
19. An email from the parent to the principal on November 26 at 1:26 p.m. states, "Just checking back on the disciplinary forms for [student]. Please send them as soon as possible..."
20. An email on November 28, 2023, at 7:22 a.m. states, "I am growing concerned that it has been over a week since you verbally told me of additional al punishment you are imposing on my student and I have received nothing in writing...You gave a specific date the punishment ends but I do not (sic) recall that detail and the scope of what you told me changed per your email. Plus, I can't imagine any parent accepting a verbal report of a punishment without documentation...Please send me the disciplinary documentation today."
21. The principal responded to the parent on November 28, 2023, in an email at 7:48 a.m. stating, "There is not another 'form'. The documentation that led to this suspension is [student's] discipline referral. [Student's] suspension of extracurricular activities is based on Policy [number] (see the attached portion). [Student] extracurricular activities suspension is through February 24th and includes athletics and other [district] after-school activities like theatre. [Student] is allowed to attend Homework Zone and [student's] Dungeon and Dragons CLC club during this suspension."

22. The after-school community programs website states it “uses neighborhood schools as the central gathering place for students, families, and neighborhoods.”
23. The district board policy describes the district and principal's authority to assign a suspension for extracurricular and after-school activities.
24. The principal outlined the process and district staff involved followed when determining to suspend the student from extracurricular and after-school activities during the February 12, 2023, district interview.
25. The principal stated during the February 12, 2023, interview that “in [student's] case it was [student's] second significant behavior incident” that impacted the safety of other students, and that part of the decision was to look at this incident and also other incidents in which the student had been involved. The principal stated “yes” when asked if it was the history of last year's event and this event as well that led to the suspension through February 24, 2024.
26. The district reported during the interview on February 12, 2024, that they did not consider reconvening the IEP to discuss if supplementary supports or services should be considered for the student to participate in extracurriculars or after-school activities because the student did not have goals for these activities in the current IEP and the student had not been suspended ten days required to consider whether the behavior that led to the suspension was a manifestation of the student's disability.
27. During the interview on February 12, 2024, the special education teacher/case manager stated that the Homework Zone after-school activity was excluded from the suspension because “we wanted [student] to have access to teachers after school and the [community after-school program] club as well. We didn't want to remove [student] from something that would help [student] academically; also, the executive skills goal is related to the work with teachers in the homework zone.”
28. During a follow-up call between the mother and the complaint investigator on February 29, 2024, the mother declined to withdraw the investigation of Issue 6, mediated, and resolved on February 9, 2024, from the child complaint filed with NDE on January 2, 2024.
29. 92 NAC 51-007.07C4 states, that the school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school-age child with a verified disability an equal opportunity for participation in those services and activities.

30. The student had Safety Plans developed and/or amended on February 1, 2023, April 11, 2023, September 6, 2023, and November 30, 2023.
31. 92 NAC 51-003.63 defines transition services as “a coordinated set of *activities* [emphasis added] for a child with a disability that is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation...”
32. 92 NAC 51-007.07A9 states, “Beginning not later than the first IEP to be in effect when the child turns 14 and updated annually thereafter.” Further, 92 NAC 51-007.07A9a and 92 NAC 51-007.07A9b states, “Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and The transition services (including courses of study) needed to assist the child in reaching those goals...”
33. The high school website lists Homework Zone under academics and distinguishes between clubs and community after-school activities.
34. The board policy documents, Grounds for Extracurricular Activity Discipline as “Students who participate in extracurricular activities are expected to demonstrate cooperation, patience, pride, character, self-respect, self-discipline, teamwork, sportsmanship, and respect for authority. The following conduct rules have been determined by the [district] Board of Education to be reasonably necessary to aid students, further school purposes and prevent interference with the educational process. Such conduct constitutes grounds for suspension from participation in extracurricular activities and grounds for other restrictions or disciplinary measures related to extracurricular activity participation. Suspension or removal from activity may be immediate. In addition to serving a suspension as provided in this policy and applicable code of conduct, guidelines, or handbooks (i.e., staff or student handbook or activities/athletics handbooks/guidelines), the District may require completion of restorative practices or programs approved by the Superintendent or his or her designee prior to returning to participation” Twenty-nine statements describe the scope of the grounds for dismissal. No documentation or interview revealed the specific grounds to match the dismissal.

Issue # 1

Did the District's suspension of the student from extracurricular activities following a November 17, 2023, disciplinary action constitute a change of placement? [92 NAC 51-016.01A1; 92 NAC 51- 007.07A5b; NAC 51-007.07C4; NAC 51-007C4a]

92 NAC 51-016.01A1 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*

92 NAC 51-007.07A5b 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:*

007.07A5b *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 51-007.07C4 states:

007.07C4 *The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities.*

007.07C4a *Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.*

Allegations/Parent Position

The parents alleged that while the student was on suspension from November 16, 2023, through November 21, 2023, they were notified by the principal that the student would receive an additional suspension from all district after-school and extracurricular activities including the community after-school clubs through February 24, 2024. As a result of this additional lengthy extracurricular suspension, the parents allege that the student's placement was in effect changed without a manifestation determination. (Letter of Complaint dated January 2, 2024, 2024)

District Response

The District responded that the November 15, 2023, incident resulted in a four-day suspension and that at the time of the complaint, there were only four days of suspension during the 2023-2024 school year so a manifestation determination meeting was not warranted. The district further clarified in their February 1, 2024, response that their additional suspension was only from specific district-sponsored after-school and extracurricular activities through the end of the Winter season (February 24, 2024). Because the student's IEP did not include services or goals for the student to participate in afterschool and extracurricular activities, they would not contribute to suspended days, and therefore the student's days of suspension remain at four days and a manifestation determination is not triggered. They further clarify in their response that this after-school and extracurricular suspension did not include the community after-school clubs because, although they occur on the high school campus, they are not district-sponsored. (Letter of Response dated February 1, 2024)

Investigative Findings

The investigation addressed two separate factors. First, the complaint investigators examined whether the district suspended the student from community after-school clubs operating at the student's high school.

Interviews with the district staff detail that students at the high school have access to district-sponsored clubs that meet during the school day and after school as well as athletics (Interviews with staff dated February 12, 2024). Also, students have access to after-school community programs and clubs that are not district-sponsored but are held at the district schools according to the website for the after-school community programs website. Prior Written Notices from this school year (September 18, 2023, and last school year (August 11, 2022) document that community after-school clubs are not district-sponsored. The email from the principal on November 28, 2023, stated that the suspension of district extracurricular activities through February 24th specifically does not

include the community after-school club, Dungeons and Dragons. The district stated they do not have the authority to suspend the student from the community after school and extracurricular activities during the February 12, 2024. The parents and district agree that the student continued to participate in the community after-school Dungeons and Dragons club according to parent interview on February 13, 2024, and district interview on February 12, 2024.

The second factor investigated was to determine if the student's suspension from district after-school and extracurricular activities through February 24, 2024, constituted a change of placement. Both parents and district agree that the student was suspended for four days for the discipline event on November 15, 2023, according to the District Interview on February 12, 2024, and the Parent Interview on February 13, 2024. The student's previous IEP dated September 16, 2022, included a social skills goal that was practiced during district-sponsored clubs. The parents and district report that the student had taken advantage of extracurricular and after-school events, including athletics in the past. The social skills goal was discontinued at the September 7, 2023, IEP due to meeting criteria. The student's IEP dated September 7, 2023, did not include any service minutes, special education, related services, or supplementary aids or services for the student to participate in afterschool or extracurriculars. Page 13 of the current IEP stated, "[student] has the opportunity to participate in [district] sponsored clubs, activities, field trips, assemblies, etc. and/or athletics." The parents stated during an interview that the student had begun preconditioning for the swim team as well as purchased the swimsuit and cap.

An interview with and documentation from the district show that an after-school and extracurricular suspension was given from November 20, 2023, through February 24, 2024. The suspension was considered once the principal learned of the student's plan to participate on the swim team in an email from the mother on November 18, 2024. According to the principal during the February 12, 2024, interview the suspension was determined by the principal and a district team based on district policy. The student's suspension was conditional to allow for field trips, school assemblies, and the after-school Homework Zone, but specifically suspended the student from after-school nonacademic clubs and athletics. The parents and district both stated during their interviews on February 12, 2024, and February 13, 2024, that they did not meet or consider reconvening the IEP team to discuss if the IEP needed to be reviewed and revised prior to or after determining to suspend the student from after school and extracurricular activities (Source(s)).

Summary and Conclusions

Documentation shows that the district did not overreach its authority to suspend the student from community after-school clubs. It is found that the district acted only to suspend the student from district after-school and extracurricular activities through February 24, 2024. The principal's November 30, 2023, letter to the parent distinguishing between the after-school and extracurricular activities that the student currently participated in (both district and community) may have led the parent to conclude that the principal was making decisions about the student's participation in the community after school clubs.

The district described following their policy consistent with their practices to suspend the student from after-school and extracurricular activities through February 24, 2024 and included special education administration in that decision. As such, the student's removal correctly did not trigger a manifestation determination meeting during the time of removal.

However, the suspension of the student from athletics and after-school clubs and extracurriculars that the student was currently participating in, or had previously participated in during the prior year, effectively denied the student access to participate in district-sponsored clubs, activities, and/or athletics for the duration of the suspension. Rule 51 is clear that students should be *afforded* equal access. Therefore, it is found the student's placement was changed due to the district's unilateral decision to suspend the student from the after-school and extracurriculars without consideration of an IEP meeting to review and consider reinstating services and support for the access which the IEP team had found necessary during the previous IEP.

Based on a review of the IEP, PWNs, Board Policy, audio recordings of meetings, emails, and interviews, the District failed to fully implement the requirements of 92 NAC 51-016.01A1; 92 NAC 51-007.07A5b; NAC 51-007-07C4 and NAC 51-007C4a. Thus, the following **corrective action is required**.

Corrective Action

Reconvene the IEP Team

1. Within 10 calendar days after the date of this Investigation Report, the District must reconvene the Student's IEP Team to determine if special education and related services or supplementary aids and supports are necessary for the student to access district-sponsored after-school and extracurricular events.

2. The IEP and any associated PWN must be sent to NDE no later than 10 days after the IEP Team meeting.

Compensatory Offer

1. The School District must offer to reimburse the parents for the cost of the student's district-approved swimsuit and swim cap purchased for participation on the school's swim team during the 2023-2024 school year. The parents had incurred these costs prior to the district's unilateral suspension of the student's participation in athletics. This sport is not offered following the student's suspension for the 2023-2024 school year. There is no way to provide the student with the missed opportunity, but the family should not have to absorb the cost of school materials that were not able to be used.

Training

1. The School District must develop and provide training to special education case managers, special education coordinators, special education supervisors, district-sponsored after-school and extracurriculars professional staff who would have the responsibility for implementing student IEPs and principals to include the following:
 - a. The content of 92 NAC 51-016.01A1; 92 NAC 51-007.07A5b; NAC 51-007-07C4 and NAC 51-007C4a
 - b. District responsibilities for implementing 92 NAC 51-016.01A1; 92 NAC 51-007.07A5b; NAC 51-007-07C4 and NAC 51-007C4a
 - c. How to determine if students need special education services, related services, and/or supplementary aids and supports during after-school and extracurricular activities.
 - d. Examples of implementing 92 NAC 51-016.01A1; 92 NAC 51-007.07A5b; NAC 51-007-07C4 and NAC 51-007C4a during after-school and extracurricular events.
2. The training and trainers) must be submitted to the NDE Office of Special Education four calendar weeks prior to the training for approval.
3. The school district must provide NDE with copies of the participant sign-in sheets or other evidence of attendance the business day following the conclusion of the training(s).
4. The corrective training activities must be completed by the first day students start back of the 2024-2025 school year. Attendance sheets will be provided to NDE on the business day following the conclusion of the training.

Policy/Procedure Review

1. The district shall review and revise, if necessary, its policies and procedures regarding students with IEPs access to the district after-school and extracurricular events including athletics in conjunction with the district's disciplinary policy for extracurriculars (Board Policy 6740) within 10 calendar days of the date of this Investigation Report.
 - a. The District will provide NDE with notes indicating the results of the review the business day following the conclusion of the Investigation Report.
2. If the District determines revisions to its policies are needed, the District must:
 - a. Provide the revised policies to NDE 45 calendar days after the date of the Investigation Report for review.
 - b. If the District determines it needs to revise board policy to address the violations in the Investigation Report, notify NDE of when the policies will be taken to the local board of education for approval.
 - c. If the District proposes to revise board policies, provide NDE with verification of acceptance of the revised policy by the local board of education within 10 calendar days of the Board Meeting.

Issue # 2

Did the District follow proper procedures for the disciplinary removal of a student who qualifies for special education and related services following the November 15, 2023, incident? [92 NAC 016.02A; 92 NAC 51-016.02B; 92 NAC 51-016.02C; 92 NAC 51-016.02D; 92 NAC 51-016.02E]

92 NAC 51-016.02 states:

016.02 *Authority of School Personnel*

016.02A *School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of subsection 016.02 of this Chapter, is appropriate for a child with a disability who violates a code of student conduct.*

016.02B *School personnel under subsection 016.02 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10*

consecutive school days (to the extent these alternatives are applied to children without disabilities) and for additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 92 NAC 51- 016.01).

016.02C *For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 92 NAC 51-016.02E, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures that would be applied to children without disabilities, except as provided in 92 NAC 51-016.02D.*

016.02D *A child with a disability who is removed from the child's current placement pursuant to 92 NAC 51-016.02C or 016.02G must:*

016.02D1 *Continue to receive educational services, as provided in 92 NAC 51-004.01, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and*

016.02D2 *Receive, as appropriate, a functional behavior assessment, behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.*

016.02D3 *The services described in 92 NAC 51-016.02D1, 016.02D2, 016.02D4, and*

016.02D5 may be provided in an interim alternative educational setting.

016.02D4 *A school district or approved cooperative is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.*

016.02D5 *After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under 92 NAC 51-016.01, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed as provided in 92 NAC 51-004.01, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.*

016.02D6 *If the removal is a change of placement under 92 NAC 51-016.01, the child's IEP team determines appropriate services under 92 NAC 51-016.02D*

016.02E *Manifestation Determination*

Allegations/Parent Position

The parents alleged in their January 2, 2023, complaint that a manifestation determination was not held after the student was removed from district services for more than 10 school days. They contend that the suspension from the after-

school and extracurricular activities from November 22, 2023, through February 24, 2024, counts toward the 10 school days of school removal. (Letter of Complaint dated January 2, 2024)

District Response

The district responded in their February 1, 2024, response that the district followed proper disciplinary procedures for a student with a disability and that they suspended the student from November 16, 2023, through November 21, 2023. They further state that a suspension from after-school extracurricular activity does not trigger rights and obligations under IDEA unless an IEP team determines that access to the activity is required to provide the student with FAPE.

Investigative Findings

The findings of Issue #1 are incorporated herein by reference. Because of the findings in Issue #1, this issue is moot as it was found that the subsequent unilateral suspension through February 24, 2024, from after-school extracurricular activities denied the student access and special education protections were not followed for this suspension.

Summary and Conclusions

Based on the conclusion of Issue 1, the District failed to fully implement the requirements of 92 NAC 016.02A; 92 NAC 51-016.02B; 92 NAC 51-016.02C; 92 NAC 51-016.02D; 92 NAC 51-016.02E. **No additional corrective action** beyond that outlined in Issue 1 is required.

Issue # 3

Did the District change the student's IEP during the September 7, 2023, annual meeting without parent participation? [92 NAC 51-007.01; 92 NAC 51-007.07A2a; 92 NAC 51-007.09F]

92 NAC 51-007.01 states:

007.01 *An IEP shall be developed, reviewed, revised, and implemented for each child who receives special education and related services.*

92 NAC 51-007.07A2a states:

007.07A *The IEP shall include:*

007.07A2 *A statement of measurable annual goals, including academic and functional goals, designed to:*

007.07A2a *Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.*

92 NAC 51-007.09F states:

007.09F *Changes to the IEP may be made either by the entire IEP team at an IEP team meeting or as provided in 92 NAC 51-007.09E of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.*

Allegations/Parent Position

The parents alleged in their child's complaint to NDE on January 2, 2024, that the district inadvertently deleted IEP Goal #4 which states, "participate in a school activity/club" when revising the September 7, 2023, IEP. The parents are requesting it be reinstated since the IEP team did not discuss eliminating this goal during the August 30 or September 7, IEP review, and revision meetings.

District Response

The district stated in their district response dated February 1, 2024, that the parents attended August 30, 2023, and September 7, 2023, IEP review and revision meetings and are incorrect when they allege that they "participate in a school activity or club" was a goal in the previous IEP (dated September 16, 2022). Instead, it was an education/training goal of the Transition Plan. The district stated that the student had completed the transition activity of "participating in a school activity or club" by the time of the August/September IEP planning and therefore it was removed from the IEP.

Investigative Findings

The IEP dated September 16, 2022, shows that "participating in a school activity or club" was listed in the Transition Plan and not as an IEP goal. The IEP dated September 7, 2023, does not include "participate in a school activity or club" as either an IEP goal or in the Transition Plan. 92 NAC 51-003.63 defines transition services as "a coordinated set of *activities* [emphasis added] for a child with a disability that is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a

disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation..."

The district stated in their February 1, 2024, response that at the meetings to review and revise the annual IEP the student had completed the transition activity to participate in a school activity or club and therefore it was removed from the IEP and replaced with a new education/training goal. The district stated that this was discussed with the parents, but the PWN only documents the new education/training goal for the Transition Plan as selecting high school courses that support the career interest.

Summary and Conclusions

Based on a review of the IEPs, PWNs, 92 NAC 51-003.63, and interviews with district staff and parents, the District implemented the requirements of 92 NAC 51-007.01, 92 NAC 51-007-07A2a, and 92 NAC 51-007-09F and **no corrective action** is required.

Issue #4

Did the District develop and revise the student IEP during the 2023- 2024 school year in response to the November 17, 2023, behavior incident to ensure equal access to extracurricular and nonacademic activities? [92 NAC 51-007.07C4; 92 NAC 51-007.07A5c; 92 NAC 51-007.07A8]

92 NAC 51-007.07C4; 92 NAC 51-007.07A5c; 92 NAC 51-007.07A87 state:

- | | |
|----------|---|
| 007.07C4 | <i>The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities</i> |
| 007.07A5 | <i>A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the</i> |

extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

007.07A5c *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

The parents alleged that the district did not convene an IEP meeting after the additional suspension of after-school extracurricular activities that constituted a change of placement due to denying the student equal access to nondisabled peers during those times. (Letter of Complaint dated January 2, 2024)

District Response

The district, in their February 1, 2024, response stated that the behavior that led to the November 16-21 suspension had not previously been identified as a need and therefore was not addressed in the IEP. They further state the IEP team did reconvene after the November 2023 suspension because the student had more tardies to class than normal and the team discussed updates to the safety plan to address the tardies.

Investigative Findings

The findings of Issues #1 through #3 are incorporated herein by reference. Because of the findings in Issue #1, this issue is moot as it was found that the subsequent unilateral suspension through February 24, 2024, from after-school extracurricular activities changed the student's placement by denying the student equal access to nondisabled peers during these times. Due to the

change of access, the district had an obligation to convene the IEP team to discuss changing the IEP in lieu of the behaviors that led to the suspension.

Summary and Conclusions

Based on the conclusion of Issue 1, the District failed to fully implement the requirements of 92 NAC 51- 007.07C4; 92 NAC 51-007.07A5c; 92 NAC 51-007.07A8. **No additional corrective action** beyond that outlined in Issue 1 is required.

Issue # 5

Did the District provide special education and related services, accommodations, and supplementary aids/services to the student in accordance with the IEP including access to extracurricular activities following the November 17, 2023, discipline action? [92 NAC 51-007.02; 92 NAC 51-007.07C4a]

92 NAC 51-007.002 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.*

92 NAC 51-007.07C4a states:

007.07C4 *The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities*

007.07C4a *Nonacademic and extra-curricular services and activities may include counseling services, athletics, transportation, health services, recreational*

activities, special interest groups or clubs sponsored by the school district or approved cooperative, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district or approved cooperative and assistance in making outside employment available.

Allegations/Parent Position

The parents alleged in the January 2, 2023, complaint that the student's IEP was not implemented because the district did not provide the student an opportunity to participate in district-sponsored clubs and athletics described in the September 7, 2023, IEP from November 22, 2023, through February 24, 2024, thereby denying their student access to nondisabled peers.

District Response

The district responded in the February 1, 2024, response that the student received special education and related services and supplementary aids and services as specified in September 7, 2023, IEP before and after the suspension as evidenced by service logs, progress reports, and the fact that the student has not had any further disciplinary actions during the 2023-2024 school year.

Investigative Findings

The findings of Issues #1 through #4 are incorporated herein by reference. Because of the findings in Issue #1, this issue is moot as it was found that the subsequent unilateral suspension through February 24, 2024, from after-school extracurricular activities was a change of placement due to denying the student access.

Summary and Conclusions

Based on the conclusion of Issue 1, the District failed to fully implement the requirements of 92 NAC 51-007.02; 92 NAC 51-007.07C4a. **No additional corrective action** beyond that outlined in Issue 1 is required.

Issue # 6

Did the District provide the parent(s) access to and review all student educational records pursuant to the November 15, 2023 discipline action? [92 NAC 51-009.03A; NAC 51-009.03B]

92 NAC 51-009.03A and 51-009.03 B states:

009.03 *Opportunity to Examine Records*

009.03A *The parents of a child with a disability must be afforded, in accordance with the procedures of 92 NAC 51-009.03, an opportunity to inspect and review all education records with respect to: the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.*

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 alleged that their student's placement was changed as a result of a suspension from extracurricular activities and requested the student's educational records relating to the November 15, 2023, discipline action that led to the suspension and subsequent suspension from extracurriculars. They state in their January 2, 2024, complaint they were denied access to see official documentation of the "extracurricular suspension" beyond a copy of the district board policy indicating the principal's authority to enact an extracurricular activities suspension.

District Response

The district responded in their February 1, 2024, response that the parents were provided access to and review of all student's education records related to the November 15, 2023, discipline action. The parents specifically asked for a document that does not exist. The principal explained that when a student is suspended from school they are also suspended from extracurricular activities pursuant to district board policy.

Investigative Findings

Emails exchanged between the principal and parents between November 28, 2023, and November 30, 2023, showed that the district responded to the parent(s) request for documentation related to the November 15, 2023, school suspension and the parents acknowledged they received it. This same email exchange showed that the parents continued to request specific documents to explain the extracurricular suspension. The principal explained in an email chain between November 28, 2023, and November 30, 2023, that the district did not produce such a document so could not provide it. During the interview on February 12, 2024, the principal explained that district policy does not have a form or document for extracurricular suspension, so the principal spoke on the phone with the mother. The principal stated multiple conversations occurred during the week with the mother regarding the extracurricular suspension and that she asked for a letter to have it in writing.

Summary and Conclusions

Based on the evidence provided, the District fully implemented the requirements of 92 NAC 51-009.03A and 92 NAC 51-009.03B, and **no corrective action** is needed.

Issue # 7

Did the District properly train staff to use the student's safety plan during the 2023-2024 school year? [92 NAC 51-007.02D]

92 NAC 51-007.02D 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.*
- 007.02D *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.*

Allegations/Parent Position

The parents alleged in the January 2, 2023, complaint that the district did not provide the safety plan to all teachers and adequately prepare the teachers to use it during the past 12 months.

District Response

The district responded in the February 1, 2024, response that documentation shows that the student's teachers were regularly made aware of updates to the Complaint #23_24_22

plan and that the plan was successful as evidenced by the fact that the student has not had any issues with the Chromebook this school year and is excelling with goals.

Investigative Findings

Separate interviews with the parents and district show that the student has a safety plan for safe computer use that has been in place throughout the student's high school years. A second safety plan was put in place following a behavior on the school bus in February 2023. This safety plan was phased out at the end of the school year after the school team reviewed it and determined it was no longer necessary.

Safety plans are general education district plans. In this case, the safety plan for technology use was written into the IEP as an accommodation and was to be provided to all of the student's teachers and emails show that it was to be provided to the district-sponsored Homework Zone for implementation as an accommodation as well.

The September 7, 2023, IEP records that the Safety Plan will be provided to the student's teachers. It does not specify training of the Safety Plan and lists the frequency as "as needed." Documentation via emails provided by the district showed that the Safety Plan was distributed at the beginning of the 2023-2024 school year and to the district-sponsored Homework Zone staff on September 12, 2023. Documents provided by the district showed that the Safety Plan was emailed to the student's classroom teachers following the revision on November 30, 2023.

Summary and Conclusions

Based on interviews, review of IEPs, and emails the District implemented the requirements of 92 NAC 51-007.02D, and **no corrective action** is required.

Notice to District

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

Mary Lenser, Complaint Specialist
Marci Haight, Complaint Specialist
NDE Office of Special Education
nde.speddr@nebraska.gov