

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 23.24.34  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** April 19, 2024  
**Date of Report:** REDACTED

### Introduction

On April 19, 2024, the Nebraska Department of Education (Department) received a written request for a special education Complaint investigation from the Complainants (Complainants) of a Student (Student) residing in the District. During the Complaint period, the Student was a senior in high school who qualified for special education services under the category of Other Health Impairment (OHI) due to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and Speech-Language Impairment. The Complainants requested that the Department conduct a special education investigation under 92 NAC § 51-009.11C3. The Department confirmed receipt of this Complaint and forwarded the request to the District. Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the Complaint. This timeline may be extended if the Complainants and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the Complaint.

On April 29, 2024, the Department sent a Request for Response to the District identifying the allegations in the Complaint to be investigated on behalf of the Student. It established a Response due date of May 13, 2024. The District submitted a Response on May 7, 2024, which disputed the allegations, explained, and submitted documents supporting the District's position. The information included in this report that is outside the Complaint period is provided for context only.

### Issues Investigated

1. Did the District provide the Complainants with an opportunity to participate in meetings regarding the provision of a Free Appropriate Public Education (FAPE) to the Student? [92 NAC 51-009.01A]
2. Did the District provide the Student with a FAPE when declining to offer transition services after the Student's senior year in high school? [92 NAC 51-004.01, 92 NAC 51-004.03, 92 NAC 51-007.02A, 92 NAC 51-007.07A9]

## **Information Reviewed by Investigator**

### *From the Parent*

- Letter of Complaint dated April 5, 2024; received by [the Nebraska Department of Education] (NDE) April 19, 2024
- Neuropsychological Evaluation dated December 22, 2022
- Gene testing for [the Student] dated September 29, 2023
- Nebraska Department of Education Complaint Form dated April 5, 2024
- Understanding Chromosome and Gene Disorders brochure undated
- Parent interview conducted with interpretation on May 20, 2024

### *From the District*

- Letter of Response dated April 23, 2024; received by NDE April 23, 2024
- Individualized Education Program (IEP) dated May 15, 2023
- Neuropsychological Evaluation dated December 22, 2022
- Progress Report dated March 15, 2024
- Work-Based Learning Summary Letter for [the Student] dated January through April 2024
- Student Attendance Summary 2023-24 undated
- Student Transcript dated May 3, 2024
- Email Exchange between Special Education Director and VR Specialist dated October 30, 2023, through November 14, 2023
- Email from Special Education Director to District employees dated November 16, 2023
- Email from the Special Education Director to the VR Service Specialist and the Special Education Teacher dated November 20, 2023
- Email from Special Education Director to DD Service Coordinator Supervisor dated January 25, 2024
- Email from DD Services to Student's Team dated February 6, 2024
- Email Exchange between the Special Education Director and the Professional Partner from Behavior Health Services dated March 4, 2024
- Email from Behavioral Health Service to the Student's Team dated March 5, 2024
- Email Exchange from DD Service Coordinator to Student Team dated March 20, 2024
- Email from Special Education Director to Probation Officer dated April 3, 2024
- Email from Attorney to Investigator dated May 20, 2024
- District interviews conducted May 21, 2024

## Background Information

1. The December 22, 2022, Neuropsychological Evaluation from the Medical Center indicated the Student was 16 years old and was referred to the Medical Center to “establish current levels of cognitive functioning.” The Evaluation indicated:
  - a. “Concerns reported are primarily related to [the Student’s] behaviors and with cognitive delay. [The Student] is described by [the Complainants] as having always been hyperactive, noncompliant, and disrespectful towards others. There is concern regarding [the Student’s] understanding of [their] choices and decisions. [The Student] often lies, has used [their] caregivers’ credit cards without permission, and accesses inappropriate content online. [The Student] currently is not allowed any access to electronic devices, but [the Student] will reportedly go above and beyond to obtain them (e.g., has picked the locks with knives and screwdrivers to try and unlock things [the Student] is not supposed to). [The Complainant] described that [the Student] is very delayed cognitively and behaves like a young child even though [the Student] is almost 17.”
  - b. The Student had a history of physical aggression, including incidents at home and school. The Student had been physically aggressive toward the Complainant and is facing legal action for making “terroristic threats.” Despite having a safety plan in place, receiving counseling and medication, and identifying anger triggers, the Student’s anger was not managed. It was noted that the Student sometimes refuses to take their medication.
  - c. The Evaluation described that the Student lost their job due to their inability to meet work demands and “According to information in [the Student’s] IEP, the company chose to let [the Student] go since [the Student] was not completing work while there.” The Student had been referred to vocational rehab services.
  - d. “Based on data obtained from this evaluation and from a review of records, [the Student] meets [the] criteria for an intellectual disability. [The Student’s] overall IQ score on more than one measure of intellectual ability is well below average (WISC-V FSIQ=60; WNV FSIQ=70), and [the Student] exhibits substantial deficits in adaptive functioning.”
  - e. “[The Student] will likely continue to do well with basic concepts but will struggle with application, generalization, and reasoning. [The Student] does have intact verbal learning and memory, which has

likely helped [the Student] be successful in memorizing simple, rote knowledge/facts. Educational planning may need to focus more on adaptive skills development, social skills development, and transitional planning. Behaviorally, having an intellectual disability can account for [the Student's] poor decision-making, difficulties with learning, and behavior problems."

- f. "The cause of [the Student's] intellectual disability is unknown. No information is known regarding prenatal health/status, which plays a role in appropriate fetus brain development. Similarly, no information is known regarding [the Student's] first several years of development, which is a crucial period for infant/toddler brain development. [The Student] was previously referred for genetic testing."
- g. The following relevant recommendations were listed:
  - i. "High degree of support and supervision."
  - ii. "Safety plan in place at home and school."
  - iii. "The Student has an upcoming court date. ... Given [the Student's] intellectual disability [the Student] will be prone to repeat/new offenses." Court-mandated community service or group therapy was recommended. Probation was deemed likely ineffective.
  - iv. "Given [the Student's] aggressive behaviors and very low IQ, [the Student's] family and medical/psychiatric team are encouraged to consider options for out[-]of[-]home placement if [the Student's] behaviors become unmanageable."
  - v. "Follow-up with genetic testing as discussed. Educational planning may need to have increased emphasis on adaptive skills development, social skills development, and transition planning. A copy of this report should be shared with [the Student's] special education team so that a new verification under Intellectual Disability can be considered."  
(Neuropsychological Evaluation dated December 22, 2022.)
  - vi. The Student's genetic testing was not provided to the District until the Complaint was filed. (Special Education Director Interview held May 21, 2024.)

### **Findings of Fact**

1. The Student was 18 years old, in 12<sup>th</sup> grade, and was attending a public High School when this Complaint was filed. (IEP dated May 15, 2023.)

2. The Student was eligible for special education services as a child with an Other Health Impairment and a Speech-Language Impairment. (IEP dated May 15, 2023.)
3. On May 15, 2023, the Complainant and Student signed the MDT indicating their agreement with the MDT decision. (MDT Report dated May 15, 2023.)
4. The IEP dated May 15, 2023, included the following:
  - a. Sixteen people attended the IEP including the Complainant, the Student, a Service Agency Representative, and the Vocational Rehabilitation (VR) Service Specialist.
  - b. The Parent Signature section indicated that "the document was signed by [the Complainant] on May 15, 2023" and that "Yes" was selected for all of the following items:
    - i. "The school district has taken the necessary action to ensure that I understand the proceedings of this IEP conference (including arrangement for an interpreter, if appropriate)."
    - ii. "I have received a copy of the IEP at no cost."
    - iii. "I have been offered a copy of my parental rights at no cost."
    - iv. "Parent Signature."
  - c. For Student strengths, the Student was described as happy and social. The Student participated in extra-curricular activities. The Student showed growth in language and reading skills and enjoyed hands-on activities and drawing.
  - d. In "Concerns of the Parent", the Complainant shared that "[the Student] is very aggressive at home and [they] will often hit something, push or shove someone, etc. [The Complainant] mentioned that [the Student] does not volunteer to help at home with chores. [The Student] is under the impression that if [the Student] becomes aggressive towards anyone the cops will be called on [the Student], as stated by [the Complainant]. [The Student] often will lie and is persistent in gaining access to locked-up materials in the home such as electronics. [The Student] will use a threatening posture towards family members and they try to ignore this but can't always because [the Student] becomes aggressive (hitting, kicking, pushing, etc.) so quickly it is hard to predict what will happen next. Teachers mentioned that appropriate social skills, such as peer relationships, saying appropriate things, and talking to girls are concerning. Another concern is lying. [The Student] is having a hard time turning

assignments in on time, staying focused, and accepting help when teachers try to assist [them] with tasks. When [the Student] does complete an assignment, [the Student] tends to rush through problems, answering incorrectly. [The Student] continues to need to work on basic math problems, language and comprehension, and reading comprehension. [The Student] has got aggressive with teacher(s) before when they redirect [the Student]. [The Student] will often state "You don't want to know what happens when I become angry" and will clutch [their] fist and glare. [The Student] has been refusing to work in classes and is very lethargic, and tired throughout the day. Another concern discussed was [the Student] having seizures. [The Student] has not had any seizures this year, [the Student] stated the last one [they] had had was in March of 2022. Lastly, [the Student's] organization with [their] school work was a concern.

- e. For the Present Levels of Academic Achievement and Functional Performance, the Multidisciplinary Team (MDT) date was listed as May 15, 2023, and indicated that "[The Student's] IEP team determined that additional information was needed to make appropriate and supportive programmatic decisions. The Team collected additional information in the areas of adaptive ability and cognitive ability. An MDT was held on 5/15/23 to review the results of this evaluation."
  - i. Cognitive Assessment data from the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV) indicated that the Student's Full Scale IQ (70), Verbal Comprehension (70), Working Memory (71), and Processing Speed (74) were deemed "Well Below Average." The Student's Perceptual Reasoning (81) was deemed "Below Average."
  - ii. Data from the Vineland Adaptive Behavior Scales, Third Edition (VABS-3) indicated that the Complainant, a General Education Teacher, and the Special Education Teacher scored the Student as "Low" or "Moderately Low" in all categories. Specifically, the teachers reported the Student's expressive language to be in the "Low" range. All parties reported the Student's writing skills, overall socialization skills, interpersonal relationship skills, play and leisure skills, overall daily living skills, and personal skills to be in the "Low" range.
- f. In the "if behavior impedes learning" section of the IEP, the IEP Team indicated that they "would like to see [the Student] be more

respectful to peers and teachers, stay on task, and complete [their] work as assigned." The teacher will complete a quarterly behavior chart to track the Student's behaviors.

- g. In the "Consideration of the Child's Communication Needs" section of the IEP, it was noted that the Student experiences difficulty with receptive and expressive language skills that negatively impact their academic performance. "These areas are addressed through IEP goals and accommodations."
- h. In the "Assistive Technology" section of the IEP, it was noted that the Student has access to a calculator.
- i. The Present Level of Academic and Functional Performance section indicated that the Student was making academic progress through the 11<sup>th</sup>-grade curriculum in science, social studies, math, language arts, and electives with modifications and accommodations. "Resource assistance is available in [their] classes" and without that and accommodations, the Student's "performance in the general education curriculum would be hindered." It was noted that "[The Student] has difficulty in the following areas; reading, math, written expression, receptive and expressive language which affects [the Student's] performance in general education. Because academics are difficult for [the Student], [the Student] is taking Foundations English and Foundations Math in the Special Education room." It was noted that the Student was successful "when teachers clarify/repeat directions; emphasize key information; provide written directions/lists, and check for understanding frequently." The Student struggled with grammar and writing and experienced success when these skills are scaffolded or presented with "graphic organizers; an adult or capable peer to brainstorm ideas with; and cues to read written work aloud to check for errors."
- j. The Team indicated the Student needed to work on respect, attitude, and staying on task. The School and the Complainant agreed that the Student's computer must stay at School, the Student will ride the bus home even if there is an evening activity, and the Student may "participate in one activity during the school year."
- k. The Team indicated that the Student was able to participate in extracurriculars "with the need for special education and related services and supplementary aids and services." The Student "will need the use of a support plan for behaviors."

- l. The Student's Postsecondary Transition Plan included the Student completing college and career worksheets. The Student updated their "Student Structured Interview Assessment" on September 21, 2022. The Student indicated that they enjoyed art and hands-on activities, would like to live with friends, in Las Vegas, and wanted to pursue a career as an actor/WWE wrestler.
- m. The following Transition Assessments were listed for the Student:
  - i. Student Structured Interview, September, 21, 2022, Grade 11;
  - ii. Survival Checklist, August 18, 2021, Grade 10;
  - iii. O'Net Interest Profiler/Job comparison, April 20, 2021, Grade 9;
  - iv. Parent Survey, February 7, 2022, Grade 10;
    1. The survey indicated that the Student's family felt that "[The Student] will begin competitive employment working full or part-time. They also feel [the Student] will live in their home or the home of a relative after [the Student] graduates high school. They are unsure if [the Student] will obtain a driver's license. They are unsure if [the Student] should be [their] own legal guardian when [the Student] turns 19. They are concerned for [the Student's] future. They feel [the Student] will need assistance managing [their] adult living needs such as budgeting, shopping, cooking, etc. They feel [the Student] continues to need the following instruction:
      - a. [S]hopping for clothes, food, etc.;
      - b. [B]udgeting and managing money;
      - c. [O]btaining a driver's license;
      - d. [U]tilizing community resources;
      - e. [M]aintaining a personal schedule."
  - v. College Planning Worksheet, September 21, 2022, Grade 11;
    1. The Student indicated they wanted to attend the University of Nevada.
      - a. The Student will need to take the ACT/SAT and plans to do so in April of their junior year of high school.
      - b. The Student plans to apply to colleges when they are a senior in high school.
  - vi. Career Comparison Worksheet, September 21, 2022, Grade 11;



1. The Student indicated they wanted to be an actor or wrestler.
- n. The Student's Postsecondary Goal for Education/Training was to move to Las Vegas and to attend the University of Nebraska at Kearney [sic]. This goal was revised or refined by the IEP Team.
  - o. The Student's post-secondary goal for Employment was to become an actor or wrestler. This goal was reviewed by the IEP Team and was unchanged.
  - p. The Student's Additional post-secondary goal for Independent Living was to live with a friend in Las Vegas. This goal was reviewed by the IEP Team and was unchanged.
  - q. The following Transition Services were listed:
    - i. Transition Service 1: Practice doing laundry. This goal was associated with Independent Living. The School was responsible for this goal being completed by February 7, 2023.
    - ii. Transition Service 2: Creating a resume. This goal was associated with Education/Training and Employment. The School was responsible for this goal being completed by February 7, 2023.
  - r. Interagency Linkages and Responsibilities: The Student was referred to VR in 10<sup>th</sup> grade.
  - s. The following Courses of Study were reasonably calculated to "facilitate the movement from school postsecondary activities and achieve postsecondary goals:
    - i. "9th grade: Foundations [English Language Arts] ELA, Foundations Math (Consumer Math), Physical Science, World Cultures, Study Hall, Health/Foundations, Informational Technology, Band, Strength & Conditioning";
    - ii. "10th grade: Foundations ELA, Foundations Math (Geometry), Intro to Agriculture, World History(1)/Word Processing (1), Choir, Foods, Band, Study Hall";
    - iii. "Potential 11th grade: American History, Animal Science, Band, Concert Choir, Foundations ELA, Foundations Math, Visual Design"; and
    - iv. "Potential 12th grade: Foundations ELA; Consumer Math; Government (1); Job Site (2 class period); Study Hall; Band; Criminal Justice."
    - v. "[The Student's] science classes will be replaced with agriculture classes in order for [the Student] to receive science credits necessary to graduate."

- t. The following course of study will help the Student meet their postsecondary goals:
  - i. "[The Student] is a junior at [High School]. [The Student] is currently enrolled in the following courses; American History, Animal Science, Band, Concert Choir, Foundations ELA, Foundations Math, and Visual Design. At this time, [the Student] is earning credits that put [them] on track to graduate with [their] peers in May of 2024. Due to [the Student's] expressed interests in the field of acting and wrestling, [the Student] will be enrolled in several acting classes."
- u. "[The Student] is projected to graduate with [their] class in May 2024 upon completion of [the Student's] previously outlined course of study."
- v. The Measurable Annual Goal for Math was, "In 36 instructional weeks, [the Student] will increase [their] functional living skills by performing the following objectives with 85% accuracy."
  - i. "When given a budget, [the Student] will be able to complete the budget simulation with 85% accuracy."
  - ii. "When given a start and end time, [the Student] will find the elapsed time to the nearest quarter hour. (Baseline: 73%)"
  - iii. "When given a money amount, [the Student] will be able to count the appropriate amount using mixed dollars and coins."
- w. The Measurable Annual Goal for Reading Comprehension was, "In 36 instructional weeks, given instruction on comprehension strategies (e.g. paraphrasing, requesting repetition/clarification, note taking)[,] [the Student] will read and understand various literacy types (e.g., stories, chapter books, grade-level texts) with at least 80% accuracy as measured by observation in class discussions, answering questions regarding text, and written response to the text. Baseline: 68%"
- x. The Measurable Annual Goal for Behavior was, "In 36 instructional weeks, [the Student] will display productive school behavior on a weekly basis with 90% of scores marked as completely successful as measured by teacher observation and a behavior chart in four consecutive weeks. Productive school behavior will be measured by the following:"

- i. "[The Student] respects the learning environment of the other students in the room ([the Student] will not distract others from learning)";
  - ii. "[The Student] demonstrates respectful behavior towards staff and students";
  - iii. "[The Student] remains on-task during class time and completes [their] work as assigned."
- y. The following services were listed:
  - i. Special Education Service:
    - 1. Special Instruction (Resource) from May 16, 2023, through May 13, 2024, at the School for 90 minutes per day, five days per week.
  - ii. Additional Special Education Services:
    - 1. Speech-language therapy from May 16, 2023, through May 13, 2024, at the School for 20 minutes per day, four days per month.
    - 2. Nursing services from May 16, 2023, through May 13, 2024, at the School for five minutes per day, six days per year.
    - 3. The following Program Modifications and Accommodations were required "to advance toward attaining annual goals and progress in the general curriculum, participating in the extracurricular and other non-academic activities:"
      - a. "Give verbal and written directions";
      - b. "Check for understanding";
      - c. "Shorten and simplify directions so [the Student] understands";
      - d. "Testing in a quiet, separate location";
      - e. "Use of a behavior chart when appropriate";
      - f. "Use of graphic organizers";
      - g. "Highlighting important information when appropriate";
      - h. "Reduce multiple choice answers down to 2 or 3";
      - i. "Preferential seating (near the teacher)";
      - j. "Extended time" from May 16, 2023, through May 13, 2024 at the School;
      - k. "Tests and assignments can be read aloud to [the Student]";

- l. "Calculator";
  - m. "Option to retake tests and assignments";
  - n. "Use visuals";
  - o. "Break down steps";
  - p. "Hard copy of notes";
  - q. "Modified Assignments and Tests";
  - r. "Shortened Assignments and Tests";
  - s. "Staff will utilize clarifying questions when [the Student] appears to be being dishonest or unclear";
  - t. "[The Student] will leave [their] computer at school. If [the Student] has homework, paper copies will be sent home"; and
  - u. "Utilize simple, concrete rules and instructions."
- iii. The duration and location of services were not listed for all but one of the accommodations and modifications. The frequency was not listed for any of the accommodations and modifications.
- z. The Student was scheduled to participate in District and State assessments with accommodations.
  - aa. Extended School Year (ESY) Services were considered and determined unnecessary. The Student did not show regression and did not qualify for ESY.
  - bb. The Complainant and Student signed the IEP on May 15, 2023. (IEP dated May 15, 2023.)
5. The Clinical Indication from September 29, 2023, Genetic Testing Laboratory Report described the Student as an individual with an "intellectual disability, attention deficit hyperactivity disorder, and brachycephaly." The Report indicated that the Student experienced a "2q37.3 Deletion." The interpretation of the Lab results indicated, "This 2q37.3 multi-gene copy number variant may be related to reported clinical features. Clinical findings also should be considered in the diagnosis of this individual." The Report indicated that the Student's genetic material partially overlapped with the region associated with 2q37.3 microdeletion syndrome. However, the Student's deletion was smaller than those typically seen in individuals with the same microdeletion syndrome. The Report suggested that the Student may not experience all of the symptoms of the syndrome. The Student's deletion did not include the HDAC4 gene, which is believed to be responsible for many of the symptoms associated with the 2q37.3 microdeletion

syndrome. The absence of this deletion suggested a milder presentation or different clinical features for the Student. The Report indicated that the Lab interpreted this "as a Pathogenic Variant." (Genetic Lab Report dated September 29, 2023.) The Student's genetic testing was not provided to the District until the Complaint was filed. (Special Education Director Interview held May 21, 2024.)

6. In an email exchange between the Special Education Director and the VR Service Specialist from October 30, 2023, through November 14, 2023, the following information was discussed.
  - a. The Special Education Director shared:
    - i. Concerns about the Student's ability to hold a job;
    - ii. Concerns about the Student's behaviors; and
    - iii. Wonderings about how VR and other services could work together to help the Student transition from "School VR" to "adult VR" services.
  - b. The VR Specialist indicated that they were taking adult applications at the end of the school year and that the Student would need a job goal in place. The VR Specialist was concerned about the student holding a job and wondered about work experience through the School. The VR Specialist indicated they had reviewed the Student's records and asked if the Student would be eligible for the School's 18+ program for independent living skills and work experiences.
  - c. The Special Education Director indicated that "[The Student] will have met all the requirements for graduation in May. We are planning on [the Student] doing a second-semester community-based instruction (job with school staff coaching) during 2<sup>nd</sup> semester. Our plan is to look to get something in place that would have staff supervising and providing job coaching since we know that [the Student] has had historical issues. As far as [the Student's] independent living activities, [the Student] does not have independent living skills that are impeding [their] ability to access [their] education, [the Student] manages [their] schedule with many mainstream classes and is successful with minimal behavior support." The Special Education Director mentioned that the Student's wraparound meeting was scheduled for the following day and wondered if the VR Service Specialist could join the meeting "to help with the transition from school[-] based support to adult support." (Email Exchange between Special Education Director and VR Specialist dated October 30, 2023, through November 14, 2023.)

7. On November 16, 2023, the Special Education Director emailed an update to District employees regarding the Student's court information and wraparound notes. The wraparound notes indicated:
  - a. The "School updated the team about the possibility of job coaching through the school during 2<sup>nd</sup> semester";
  - b. The Student expressed an interest in construction "but I informed [the Student] that we were not looking at that as a potential job placement at this time"; and
  - c. "Told the team that the school was prioritizing job placements that minimized potential issues for [the Student]." (Email from Special Education Director to District employees dated November 16, 2023.)
8. On November 20, 2023, the Special Education Director emailed the VR Service Specialist and the Special Education Teacher indicating that the School was working on a job placement that would begin the second semester. (Email from the Special Education Director to VR Service Specialist and the Special Education Teacher dated November 20, 2023.)
9. On January 25, 2024, the Special Education Director emailed the Developmental Disabilities (DD) Service Coordinator Supervisor to establish communication between DD and the School to "ensure the best transition of our common student." (Email from Special Education Director to DD Service Coordinator Supervisor dated January 25, 2024.)
10. A "wraparound" meeting was held on February 5, 2024, confirmed by an email the following day from the DD Service Coordinator Supervisor. (Email from DD Services to Student's Team dated February 6, 2024.)
11. In an email exchange on March 4, 2024, between the Special Education Director and the Professional Partner from Behavior Health Services, the following information was shared by the Special Education Director:
  - a. The DD Supervisor reported that the Student may not qualify for "any services until 21 unless [the Student] is enrolled in the 18-21 program at [the High School]."
  - b. "I explained that [the Student] does not meet any of the criteria for the 18-21 program at [the High School]."
  - c. The Special Education Director "explained that [the Student's] behaviors are not significant enough to impede [the Student's] ability to access [their] education and there is not an adverse effect on [the Student's] learning because of [the Student's] behaviors."
  - d. The email indicated that the [Complainants] moved out of the country and the Student is not able to live with them.

The Professional Partner from Behavior Health Services responded that they explained to [the Complainant] that if there was an accurate report

of the “happenings in the home” regarding physical aggression or safety risks, that information could be used to help the Student get into a group home. The email indicated that [the Complainants] “have stated they did not want [the Student] to suffer... They both have stated they cannot continue to be able to care for [the Student].” (Email Exchange between the Special Education Director and the Professional Partner from Behavior Health Services dated March 4, 2024.)

12. A March 5, 2024 email from a Professional Partner of Behavioral Health Services to the Student's Team indicated that they would be scheduling a “wraparound” meeting, that [the Complainants'] work schedules needed to be accommodated, and that the Student had a new Probation Officer. (Email from Behavioral Health Service to the Student's Team dated March 5, 2024.)

13. The March 15, 2024, Progress Report indicated the following:

a. For the math goal:

- i. The evaluation procedures listed included teacher observation, written performance, oral performance; and
- ii. The progress measurement indicated that progress was made, the goal had not yet been met, and the progress was sufficient to meet the goal by the end of the year.

b. For the reading comprehension goal:

- i. The evaluation procedures listed included written and oral performance.
- ii. The progress measurement indicated that progress was made, the goal had not yet been met, and the progress was sufficient to meet the goal by the end of the year.

c. For the behavior goal:

- i. The evaluation procedures listed included teacher observation and oral performance.
- ii. The progress measurement indicated that the Student met the goal and made progress sufficient to meet the goal at the end of the year. (Progress Report dated March 15, 2024.)

14. The Student's Work-Based Learning Summary from January 2024, through April 2024, specified that the Student began work-based learning at the [Outside Agency] on January 23, 2024, attending two-hour sessions on Tuesdays and Thursdays with a job coach. [The Student] successfully performed various cleaning tasks, occasionally needing redirection. This experience has allowed [the Student] to fulfill [the Student's] volunteer and job shadow hours required for graduation, as agreed upon in the January 2024 Wraparound meeting. [The Student] enjoyed laundry and

- expressed interest in pursuing a similar job in the future. (Work-Based Learning Summary dated January 2024 through April 2024.)
15. A Report Card for the 2023-2024 school year described the Student's attendance for three quarters:
- a. Quarter 1
    - i. Absent: 0.57;
    - ii. Tardy: 1.
  - b. Quarter 2
    - i. Absent: 2.41;
    - ii. Tardy: 2.
  - c. Quarter 3
    - i. Absent: 0.34;
    - ii. Tardy: 7.
  - d. Totals
    - i. Absent: 3.32;
    - ii. Tardy: 10. (Report Card dated 2023-2024.)
16. On March 20, 2024, the DD Service Coordinator indicated in an email to the Student's Team that the Student's guardians were "interested in [the Student] attending an 18-21 transitional program." The Special Education Director responded and wrote, "[The Student] has met all requirements for graduation through [the High School]. We cannot deny [the Student's] diploma in May since [the Student] has met all graduation requirements, which are the same as all of [their] cohort. [The Student] did not have modified programming and was able to be successful within the traditional programming and meet the traditional requirements. Upon graduation, [the Student] will not be eligible for 18-21 programming either here or at another school district." (Email Exchange from DD Service Coordinator to Student Team dated March 20, 2024.)
17. An April 3, 2024 email from the Special Education Director to the Student's Probation Officer indicated that the Student was "doing fairly well and passing [their] classes" and that "[the Student] did go to [their] job site yesterday and had a better day completing [their] work tasks." (Email from Special Education Director to Probation Officer dated April 3, 2024.)
18. According to the Student's transcript, generated on May 3, 2024, during the 2023-2024 school year, the Student was absent for 11.73 days and tardy for 12 periods. In the first term, the Student earned 2 A's, 1 B, 3 C's, 1 D, and a Pass. (Student Transcript dated May 3, 2024.)
19. On May 20, 2024, the Investigator requested additional materials from the District. In an email response, the attorney indicated the following:



- a. “[The Student’s] IEP never included a behavior support plan, as [the Student’s] behavior at school did not impede [their] learning or that of others.”
  - b. “... the data examined by the IEP team did not indicate that a BIP was required to support [the Student] in accessing FAPE. [The Student’s] IEP team did articulate its belief that [Student] would benefit from a debrief with [the Student] about [their] compliance with school rules and expectations. [The Student’s] case manager did this monthly with [the Student] instead of waiting for a full quarter to pass before providing this support. The case manager color-coded the chart that [they] used to debrief with [the Student] to assist the family in understanding how the Student was doing at school. [The Case Manager] then would send the chart with [the Student] to take home to the family. [The Case Manager] did not maintain a copy of those charts in [Student’s] file once [the Case Manager] had sent them home with [Student].” (Email from Attorney to Investigator dated May 20, 2024.)
    - i. An October 2023, calendar was provided as a sample of the chart the attorney referenced. This chart/calendar revealed 21 days; 18 days were colored in green; and 3 days were colored in yellow.
      1. The yellow days included a note:
        - a. October 1, 2023 (with an arrow to October 2)
          - i. “Calling a teacher an inappropriate name.”
        - b. October 6, 2023
          - i. “Tried to call other grandma to come pick up. Was using another classmates [sic] phone.”
        - c. October 9, 2023
          - i. “Took Chromebook home.”
- (Chart/Calendar, October 2023.)
20. During interviews with the Investigator, the Parent reported that the Student graduated with a “diploma that they give to all the graduates.” The Parent shared that they had attended “lots of meetings,” and interpreters were present at the meetings. The Parent reported that written information was not always provided to them in their native language. The Parent believed the Student did not receive the “special classes” agreed to during the meetings. (Parent Interview held May 20, 2024.)

21. During interviews with the Investigator, the Special Education Director described meetings with the Parent, "Well, we would meet annually for [the Student's] IEP. So, at [the Student's] IEP meeting, it was discussed that [they] would graduate with [their] cohort, which was this May [2024]. Um, but then also, during wraparound meetings, which we had monthly, um, those discussions continued ... ." The Special Education Director reported that all the meetings were interpreted for the Parent, and there were back-and-forth discussions between the Parent and staff. The Special Education Director described the concerns the Parent expressed at a meeting about "holding and maintaining a job. ... we provided a work-based learning experience with a job coach through the school for the second semester ... ."

Transition services prior to the job placement included coursework such as consumer math, resume writing, nutrition, and health. Updates on the Student's progress at the job site were provided at the monthly wraparound meetings, which the Parent attended. At the April 2024 wraparound meeting, options for vocational rehabilitation and developmental disabilities services were discussed with the Parent. The Student's genetic testing was not provided to the District until the Complaint was filed. After interviews, the Special Education Director confirmed that the May 2024 IEP was translated and provided to the Parents in their native language. (Special Education Director Interview held May 21, 2024; Email from Special Education Director to Investigator dated June 4, 2024.)

## **Issue # 1**

Did the District provide the Complainants with an opportunity to participate in meetings regarding the provision of a FAPE to the Student?

92 NAC 51-009.01A states:

### *009.01 Parent Participation in Meetings*

009.01A     *The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.*

### *Allegations/Complainant Position*

The Complainant alleged "[the District] has violated [the IDEA by denying] a Free and [A]ppropriate Public Education (FAPE). [The Student] and [their]

guardians have been denied their right to a transitional 18-21 program, or any additional options, starting the fall of 2024 after [the Student's] senior year in high school. This decision was not made by or agreed upon by [the Student's] IEP Team. [The Student] has outstanding needs in the areas of employment, educations [sic], and independent living." (Letter of Complaint dated April 5, 2024; received by NDE April 19, 2024.)

#### *District Response*

In the District's Response, the District indicated that "the Complainants were provided with an opportunity to participate in every single IEP and MDT meeting and were given 'an opportunity to participate in meetings with respect to . . . the provision of FAPE to the child.'" Further, the Complainant provided input to the IEP Team that resulted in life skills transition services being added to the IEP, and the Complaint provided the IEP input through the completion of rating scales. "At no point during the IEP team meetings did the Complainants articulate disagreement with the services in the IEP or with the projected graduation of [the] Student at the end of the 23-24 school year. ... Even though [the Complainants] may feel more could be accomplished with 18-21 services, that does not mean they were denied meaningful parental participation in the IEP meeting creating [Student's] IEP." (District Response dated and received May 7, 2024.)

#### *Investigative Findings*

On May 15, 2023, the Parent signed the Student's IEP and indicated that they understood the proceedings, an interpreter had been provided and they had received a copy of the IEP and their parental rights, free of charge. The IEP dated May 15, 2023, included the Parent's concerns for enhancing the Student's education. (IEP dated May 15, 2023.) The Parent attended the monthly wraparound meetings in which the District had a representative attend to provide updates on the Student's performance and progress at school and with the transition services. (Parent Interview held May 20, 2024; Special Education Teacher Interview held May 21, 2024.) Emails and the Special Education Director's report during interviews with the Investigator indicated that the Parent did provide input, and the District responded. The Parent and the District confirmed during interviews that an interpreter was provided at each meeting. (Email from DD Services to Student's Team dated February 6, 2024; Email Exchange from DD Service Coordinator to Student Team dated March 20, 2024.)

#### *Summary and Conclusions*

The Parent participated in the development of the Student's IEP and was provided with multiple opportunities to discuss and provide input about the

student's needs and transition services. Based on written documentation, the District's reporting, and the Parent's written signature that they attended meetings that provided information in their native language, the District implemented the requirements of 92 NAC 51-009.01A, and no corrective action is required.

## **Issue # 2**

Did the District provide the Student with a FAPE when declining to offer transition services after the Student's senior year in high school? [92 NAC 51-004.01, 92 NAC 51-004.03, 92 NAC 51-007.02A, 92 NAC 51-007.07A9]

92 NAC 51-004.01 states:

004.01      *All providers of special education services shall be under the general supervision of the Nebraska Department of Education for the purpose of meeting the standards of this Chapter. School districts and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which the child reaches age twenty-one, 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. School districts and approved cooperatives responsibility to ensure the availability of FAPE includes ensuring the availability of FAPE for resident children in detention facilities, correctional facilities, jails, and prisons.*

92 NAC 51-004.03 states:

004.03      Exceptions to the Requirement to Provide a Free Appropriate Public Education

004.03A      *Children with disabilities who have graduated from high school with a regular high school diploma are not eligible to receive a FAPE.*

004.03A1      *The exception in 92 NAC 51-004.03A does not apply to children who have graduated but have not been awarded a regular high school diploma.*

- 004.03A2 *Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with 92 NAC 51-009.05.*
- 004.03A3 *As used in this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the state's academic standards such as a certificate or a general educational developmental credential (GED).*

92 NAC 51-007.02A states:

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

92 NAC 51-007.07A9 states:

- 007.07A9 *Beginning not later than the first IEP to be in effect when the child turns 16, or younger if deemed appropriate by the IEP team, and updated annually thereafter:*
- 007.07A9a *Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and*
- 007.07A9b *The transition services (including courses of study) needed to assist the child in reaching those goals; and*
- 007.07A9c *If a participating agency, other than the school district or approved cooperative fails to provide the transition services described in the IEP, the school district or approved*

*cooperative shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.*

007.07A9c(i) *Nothing in this Chapter relieves any participating agency, including the State Division of Vocational Rehabilitation, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility of that agency.*

#### *Allegations/Complainant Position*

The Complainant alleged "[the District] has violated [the IDEA by denying] a Free and [A]ppropriate Public Education (FAPE). [The Student] and [their] guardians have been denied their right to a transitional 18-21 program, or any additional options, starting the fall of 2024 after [the Student's] senior year in high school. This decision was not made by or agreed upon by [the Student's] IEP Team. [The Student] has outstanding needs in the areas of employment, educations [sic], and independent living." (Letter of Complaint dated April 5, 2024; received by NDE April 19, 2024.)

#### *District Response*

The District's Response to this allegation included, "[T]he [Student's] IEP has elicited substantial input from [Student] and [the Complainants], and through that feedback, it was determined that [Student] wanted to pursue a college education, living on [their] own, and has career aspirations in acting/WWE. The District provided [Student] with extensive transition services: training in laundry, budgeting, personal finance, creating a resume, and a job site placement as part of [the Student's] academic coursework. [The Student's] transition plan provided the necessary focus on [their] unique interests while providing an opportunity to develop life skills. These skills would assist [Student] with [their] desire to pursue college and a career while living on [their] own." (District Response dated and received May 7, 2024.)

### *Investigative Findings*

The Student was eligible for special education services as a child with an Other Health Impairment and a Speech-Language Impairment. The IEP dated May 15, 2023, included the Student's Postsecondary Transition Plan that described the Student's interests, preferences, and goals after graduation. The results of transition assessments were described and postsecondary goals for education, training, employment, and independent living were included. Transition services were described and it was documented that the Student was referred to vocational rehabilitation. A course of study for the Student to meet their postsecondary goals was provided and the IEP projected that the Student would graduate with their class in May 2024. The IEP goals were aligned with the Student's transition needs in budgeting, time, money, reading comprehension, and behavior skills. (IEP dated May 15, 2023.)

Prior to the Student graduating from high school, the District provided the Student with a semester of community-based instruction through job placement and coaching. The District was in communication with adult agencies to support the Student's post-secondary transition after graduating from K-12 public school to adult support. These discussions included whether the Student would qualify for adult services if the Student was not in a school-age program for youth ages 18-21. The District informed the agencies the Student would meet all the requirements for graduation and did "not meet any of the criteria for the 18-21 program." (Email Exchange between Special Education Director and VR Specialist dated October 30, 2023, through November 14, 2023; Email from Special Education Director to DD Service Coordinator Supervisor dated January 25, 2024; Email Exchange between the Special Education Director and the Professional Partner from Behavior Health Services dated March 4, 2024.) IEP progress reports dated March 15, 2024, indicated the Student was making progress to meet their goals. (Progress Report dated March 15, 2024.) The Student's Worked-Based Learning Summary concluded that the Student had successfully met the requirements of the job placement that had been agreed to in a January 2024 wraparound meeting. (Work-Based Learning Summary dated January 2024 through April 2024.)

In March 2024, the Parent requested that the Student attend an 18-21 transitional program. The District responded that the Student had met all of the graduation requirements without the need for modifications and would not qualify for this type of program after graduating. (Email Exchange from DD Service Coordinator to Student Team dated March 20, 2024.) The Student received all passing grades for the second semester of the 2023-24 school year. (Student Transcript dated May 3, 2024.) The Parent and the District agree that

the Student graduated with a regular diploma in May 2024 after the Complaint was filed. (Parent Interview held May 20, 2024; Special Education Teacher Interview held May 21, 2024.)

#### *Summary and Conclusions*

The Student's IEP included a legally compliant postsecondary transition plan. The District provided the Student with transition services during the Complaint period and before the Student graduated with a regular diploma. Children with disabilities who have graduated from high school with a regular diploma are not eligible to receive a FAPE, and the District implemented the requirements of 92 NAC 51-004.01, 92 NAC 51-004.03, 92 NAC 51-007.02A, 92 NAC 51-007.07A9 and no corrective action is required.

#### **Additional Issue**

Through the course of the investigation, an additional issue was added. The issue is as follows:

Did the District include the frequency, location, and duration of the supplementary aids and services as required by 923 NAC 51-007.07A8?

92 NAC 51 007.07A8 states:

007.07A8	<i>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.</i>
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#### *Investigatory Findings*

Upon review of the IEP dated May 15, 2023, it was found it did not include the frequency, location, or duration by which all of the accommodations and modifications were to be provided to the Student. (IEP dated May 15, 2023.)

#### *Summary and Conclusions*

Although the Student's IEP was missing the required elements, they were still able to successfully graduate from high school with a regular diploma. As a result, the procedural error did not result in a substantive issue. Based on the investigative record, the District failed to fully implement the requirements of 92 NAC 51-007.07A8, and **corrective action** is required.

#### **Corrective Action**

1. The School District must develop and provide training in IEP development, specifically including the frequency, location, and duration of implementation to all District staff and administrators who develop IEPs.



2. The NDE Office of Special Education must approve the training and trainer(s) two calendar weeks before the training begins.
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. On or before January 15, 2025, NDE will request a copy of IEPs for three high school students to verify each student's supplementary aids and services containing frequency, location, and duration to verify correction of noncompliance.

**Notice to District**

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

Christopher Chambers, Complaint Specialist  
Tara Korshoj, Complaint Specialist  
NDE Office of Special Education  
[nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov)