

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.39
Complaint Investigator: REDACTED
Date Complaint Filed: May 28, 2024
Date of Report: REDACTED

Introduction

During the Complaint period, the Student was a six-year-old Kindergarten student eligible for special education services due to a Developmental Delay.

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 Parent with consent to evaluate and conduct the special education evaluation within the required timelines? [92 NAC 51-009.04A1; 006.01A; and 34 CFR 300.301(c)(1)(i)]
2. Did the District conduct an individualized education program (IEP) for the Student within 30 calendar days of the multidisciplinary team verification decision? [92 NAC 51-009.04A2]
3. Did the District provide the Student with protections for children not yet eligible for special education and related services? [92 NAC 51-016.06]
4. Did the District conduct a Manifestation Determination Review within ten school days of any decision to change the placement of a child with a disability because of violating a code of student conduct? [92 NAC 51-016.02E]
5. Did the District develop, review, or revise the Student's IEP to meet their unique needs? [92 NAC 51-007.01; 007.10; 007.07B3; 007.07A8]
6. Did the District provide special education and related services to the Student in accordance with the Student's IEP? [92 NAC 51-007.02]
7. Did the District provide the Student with 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? [92 NAC 51-007.07C4 and 007.07C4a]
8. Did the District provide the Student with a free appropriate public education? [92 NAC 51-004.01 and 004.02]

From the Parent

- Letter of Complaint dated and received May 28, 2024
- Notice of Meeting dated October 25, 2023
- Functional Behavioral Assessment dated October 25, 2023
- Multidisciplinary Team (MDT) Report dated November 6, 2023
- Manifestation Determination and Review dated November 6, 2023
- Individualized Education Program (IEP) dated November 15, 2023
- Notice and Consent of Initial Placement in Special Education Services, November 15, 2023
- Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP)
 - Dated November 16, 2023
 - February 15, 2024
 - March 18, 2024
 - May 20, 2024
- Email from Parent to the District with District responses dated September 26, 2023, through May 17, 2024
- Texts between Parent and District dated September 27, 2023, through December 7, 2023
- List of days the Student was excluded from school dated August 22, 2023, through May 17, 2024
- Letter to Parent from District regarding Emergency Exclusion
 - August 22, 2023
 - Dated May 15, 2024
- Parent Interview, June 27, 2024

From the School District

- Parent/Guardian Consent for Individual Evaluation dated October 2, 2024; signed by Parent October 2, 2023
- Notice of Meeting dated October 25, 2023
- Functional Behavioral Assessment dated October 25, 2023
- Multidisciplinary Team (MDT) Report dated November 6, 2023
- Manifestation Determination and Review dated November 6, 2023
- Individualized Education Program (IEP) dated November 15, 2023
 - Progress Report dated February 4, 2024
 - Progress Report dated May 7, 2024
- Student Support Team Meeting Notes dated August 29, 2023, through February 2, 2024
- School Period Student Attendance Profile for the 2023-2024 School Year
- School Student Discipline Profile for the 2023-2024 School Year
- Grade KG Report Card for the 2023-2024 School Year

- Service Provider Logs dated November 17, 2023, through May 22, 2024
- Emails from District to Parent dated September 26, 2023, through May 17, 2024
- Emails between District staff and to Remote Psychologist dated October 6, 2023, through February 28, 2024
- District case notes dated June 11, 2024, through June 18, 2024
- Interviews with District Staff dated July 1, 2024, and July 5, 2024

Findings of Fact

1. According to the School Period Student Attendance Profile for the 2023-2024 school year, the daily attendance summary indicated:
 - a. "All Day Reason Code Totals:"
 - i. "ILL (ILLNESS) = 2.00";
 - ii. "MED (Medical) = 14.00";
 - iii. "PR (Parent Request) = 10.93"; and
 - iv. "Daily Reason Code Total = 27.83."
 - b. "Period Reason Code Totals:"
 - i. "AD (Admin Excused) = 20";
 - ii. "EE (Emergency Excused) = 30";
 - iii. "ILL (ILLNESS) = 20";
 - iv. "MED (Medical Docu) = 149";
 - v. "PR (Parent Request) = 109"; and
 - vi. "TU (Tardy Unexcused) = 65." (School Period Student Attendance Profile for the 2023-2024 School Year.)
2. According to the Grade KG Report Card for the 2023-24 school year, the Student's attendance indicated that in Trimester 1, the Student was absent for 3.70 days. For Trimester 2, the Student was absent for 4.40 days; for Trimester 3, the Student was absent for 19.73 days, for a total of 27.83 days. The Student was proficient in:
 - a. In the area of academic performance, the Student demonstrated sufficient understanding of important concepts, ideas, and/or skills;
 - b. In the area of physical education, the Student demonstrated using the skill as expected;
 - c. In the area of music, the Student demonstrated sufficient understanding of important concepts, ideas, and/or skills;
 - d. In the area of English/language arts, Trimester 3, the Student was proficient in:
 - i. "Phonological Awareness";
 - ii. "Word Analysis";
 - iii. "Fluency";
 - iv. "Vocabulary";

- v. "Listening Comprehension: Literary Text";
 - vi. "Listening Comprehension: Informational Text"; and
 - vii. "Grammar."
 - e. "[The Student was] developing proficiency in Writing and Beginning Proficiency in Speaking and Listening."
 - f. In the area of Mathematics, Trimester 3, the Student was proficient in:
 - i. "Counts to 30, Counts to 60, and Counts to 100";
 - ii. "Identifies the numerals 0-10, Identifies numerals 11-20";
 - iii. "Writes Numbers from 1-10, Writes Numbers from 11-20";
 - iv. "Matches numbers to the quantities they represent 0-10, Matches numbers to the quantities they represent 11-20";
 - v. "Solves real-world problems that involve addition and subtraction within 10"; and
 - vi. "Identifies and describes 2D shapes (circle, square, triangle, rectangle, and hexagon)."
 - g. "[The Student was] developing proficiency in decomposing numbers less than or equal to 10 into pairs in more than one way [and] identifies 3D shapes (cubes, cones, spheres, and cylinders)."
 - h. In the area of Work and Social Skills, Trimester 3, the Student was at the Beginning Proficiency Level:
 - i. "Safe";
 - ii. "Responsible"; and
 - iii. "[The Student was] Developing Proficiency in Respectful."
(Grade KG Report Card for the 2023-2024 School Year.)
3. According to a School Student Discipline Profile for the 2023-2024 School Year indicated the following:
- a. On August 22, 2023, the Student received a Major Referral for Disorderly Conduct (Disruptive Behavior). The Student received an Emergency Exclusion for 1.00 days; the disposition date was August 23, 2023, and ended on August 23, 2023.
 - b. On May 15, 2024, the Student received a Major Referral for Disorderly Conduct (Disruptive Behavior). The Student received an Emergency Exclusion for 2.00 days; the disposition date was May 16, 2024, and ended on May 17, 2024.
 - c. According to the Discipline Profile for the 2023-2024 School Year, the Student received detention for 39 school days. The behaviors exhibited that required detention were:
 - i. Disorderly Conduct;
 - ii. Physical Altercation Minor (Pushing, Shoving);

- iii. Physical Attack or Fight Without a Weapon;
 - iv. Failure to Follow Instructions;
 - v. Harassment or Bullying- Other; and
 - vi. Elopement. (School Student Discipline Profile, School Year 2023-2024.)
4. An example of a visual schedule for the morning Kindergarten session indicated the student received 45% for their Morning Goal. (Email from Parent to District dated October 6, 2023)
 5. On August 22, 2023, [Principal] sent an Initial Notice of Emergency Exclusion letter to the Parent, which indicated, "[The Student] refused to go to an alternative location and eloped through the hallways of the school, creating an unsafe situation. Your [S]tudent cannot return to school until we are assured that your [S]tudent does not pose an imminent threat to the health or safety of the school community or will not be so disruptive as to endanger the rights of other students to pursue an education. We will make every attempt to minimize the time your [S]tudent is excluded from school. In the event your [S]tudent is excluded from the school for more than five days, you will have the opportunity to request a hearing to challenge continued exclusion." (Initial Notice of Emergency Exclusion dated August 22, 2023.)
 6. On September 26, 2023, the Parent emailed [Special Education Director], requesting, "I would like to be sent a consent form for a comprehensive special education evaluation. ... I think it would be helpful to look at academics, language, and occupational therapy so that as a team we can make the best decisions for [the Student] as a whole and not just a small version of [them]." (Email from Parent to the Special Education Director dated September 26, 2023.)

The same day, the Special Education Director responded to the Parent, "Thank you. I am in receipt of your request to evaluate. I have added our school psychologist to this email and one of them will be in contact with you to complete the consent to evaluate." (Email from Special Education Director to the Parent dated September 27, 2023.)

7. A Parent/Guardian Consent for Individual Evaluation dated October 2, 2023, indicated the District proposed to evaluate the Student because the Parent requested an evaluation. "The estimated amount of time for completing the multidisciplinary evaluation and making the verification decision is (not to exceed 45 school days): No more than 45 school days." The Parent signed the Consent for Initial Evaluation on October 2, 2023.

(Parent /Guardian Consent for Individual Evaluation dated October 2, 2023.)

8. A Check In/Check Out Form (CICO) dated October 4, 2023, indicated the Student did not meet their goal in the afternoon. The Student "spent the afternoon 1 on 1 with a staff [member]." One thing the Student did really well that day was "completed some of the work [they] missed out of class." (Check In/Check Out Form dated October 4, 2023.)
9. On October 6, 2023, the Parent emailed Child Psychologist, "I understood during our discussion on Monday that if [the Student] can't regulate in two hours, my dad or I will be contacted to sit with [them] and help [them] regulate, and then if [they] still can't regulate then [they] will be sent home. Today, [the Grandparent] was called at 11:41 a.m. and was asked to come and get [the Student]-not to help try to sit with [them], etc. ... Also, did we have an actual FBA in the list of assessments to look at? If not, I believe this needs to be added since [they are] continuously struggling to meet behavioral expectations." (Email from Parent to Child Psychologist dated October 6, 2023.)
10. On October 7, 2023, Teacher 2 emailed [Special Education Director], "I will be doing a fidelity check with CICO this week and next and continue as needed with at least monthly fidelity checks. [Positive Support Coach] and I also have a student support meeting on Tuesday afternoon. I'm glad [the Parent] reached out about the plan as we had not heard anything about [the Student] going home. [District Remote Psychologist], [Positive Support Coach] & I did decide an FBA would be a great addition, too! I'll make sure that gets communicated to [the Parent]." (Email from Teacher 2 to the Parent dated October 7, 2023.)
11. On October 9, 2023, [District Remote Psychologist] emailed Parent, "Good morning, [Parent]! I wanted to share that we are planning to complete an FBA for [the Student]. It will be a joint effort between myself, [Teacher 2], and [Positive Support Coach]. On the consent for testing form, we did indicate that we would be completing classroom observations. If you would like me to more explicitly indicate that we will be completing an FBA, I would be happy to put that on there and have you re-sign. I agree that this is an important part of the evaluation as it will help guide appropriate interventions for [their] needs." (Email from District Remote Psychologist to the Parent dated October 9, 2023.)
12. On October 25, 2023, a meeting invitation was sent to the Multidisciplinary Team (MDT) for [the Student]. (Notice of Meeting dated October 25, 2023.)

13. A Notice of Meeting dated October 25, 2023, indicated the meeting was scheduled for November 15, 2023. The purpose of the meeting was to hold a meeting for:
- b. Individual Education Plan (IEP) Meeting;
 - c. Multidisciplinary Team (MDT) Meeting; and
 - d. Other - FBA, PBSP, and Manifestation Determination. (Notice of Meeting dated October 25, 2023.)
14. A Functional Behavior Assessment dated October 25, 2023, indicated in the area of Behaviors of Concern, the Student exhibited:
- a. "Most likely to occur:"
 - i. "Elopement from work area";
 - ii. "Hit, kick, pinch - Physical Aggression toward peers"; and
 - iii. "Work Refusal."
 - b. "Least likely to occur:"
 - i. "Work completion with little redirection or intervention";
 - ii. "Appropriate attention-seeking strategies (adult and peer)";
 - c. "Precipitating Factors:"
 - i. "Problems with peers";
 - ii. "Antecedents";
 - iii. "Reprimand/correction";
 - iv. "Teacher requests";
 - v. "Unstructured time";
 - vi. "Nonpreferred task or activity"; and
 - vii. "Adult attention restricted/elsewhere." (Functional Behavioral Assessment dated October 25, 2023.)
15. On November 2, 2023, the Parent emailed [Associate Superintendent], "I am curious why I haven't heard back from you. You said, during our phone conversations on October 20th that you would follow up with me next Monday, Oct 23rd and I have yet to hear from you or anyone by phone or email." (Email from Parent to Associate Superintendent dated November 2, 2023.) The Associate Superintendent sent an email response that indicated, "I understand the special Ed [sic] evaluation process is still occurring. I asked [the Principal] to follow up regarding the discussion we had regarding [the] shortened day and to ensure the teacher did complete the OT request. We paused on that conversation with shortened day as we are in the special Ed [sic] evaluation cycle. Could you provide items of additional concern at this time[?] Have they been communicating about any tiered behavior support plan [the Student] is working within? Let me know if you have been communicating with folks

in the building." (Email from Associate Superintendent to the Parent dated November 2, 2023.)

Additionally, the Parent emailed the Associate Superintendent on November 2, 2023, sharing, "The plan isn't ever being followed consistently and contradicts everything I questioned when it was set up to begin with. My main frustration these last couple weeks is that I am getting [the Student's] daily sheets saying [the Student] is meeting most, if not all, of [their] morning, afternoon, and daily goals, yet when we get called to sit with [the Student] in school, we are being notified of a laundry list of behavior complaints that have happened over days that are complete news to us. ... but it seems that there has been no actual support being given to [them] until the Special Ed evaluation cycle is completed. It doesn't take an IEP to give a child wait time, put [them] in the front of the line, have [them] moved to sit away from the projector, etc. Luckily, we do have [the Student's] MDT meeting scheduled for this coming Monday, November 6th, so hopefully we can find a plan that will help support [the Student]." (Email from Parent to the Associate Superintendent dated November 2, 2023.)

16. A Multidisciplinary Team (MDT) Report dated November 6, 2023, indicated the reason for the referral was, "[The Student] was referred for an evaluation at the request of [their] adoptive [Parent]." Regarding Eligibility, Verification Statements, "The Multidisciplinary Team determined that [the Student] meets the qualifying criteria as a student with Developmental Delay according to NDE Rule 51 guidelines." The Parent signed an agreement on the MDT Report. (Multidisciplinary Team (MDT) Report dated November 6, 2023.)
17. A Manifestation Determination and Review dated November 6, 2023, indicated in the area of Special Education Placement(s), the Student was currently in the evaluation process and placed in the general education environment with PBSP support. The date of the current IEP was November 5, 2023. "The total number of suspension days this school year prior to this incident - 13:00. Number of suspension days being considered for this incident of misconduct - 13.00. ... [The Student] has been suspended numerous times over the first semester of Kindergarten resulting in removal from the educational environment. Incidents include physically attacking peers and elopement." (Manifestation Determination and Review dated November 6, 2023.)
18. The Manifestation Determination and Review dated November 6, 2023, indicated the Team member's conclusions were:

- a. "The conduct in question was caused by or had a direct and substantial relationship to the [S]tudent's disability(ies)";
 - b. "It is necessary to review the current behavior plan for this [S]tudent";
 - c. "Student has been suspended more than ten days and a plan is developed to deliver special education services"; and
 - d. "The conduct subject to disciplinary action is a manifestation of the [S]tudent's disability." (Manifestation Determination and Review dated November 6, 2023.)
19. According to an IEP dated November 15, 2023, the Parent attended the meeting. Under Special Considerations - Strengths, "[The Student] is a Kindergartener at [the School]. [The Student] is passionate about bugs, coins, and animals. [The Student] loves to be a sibling and help out with [their] little [sibling]. Math is a strength for [the Student] as [they] love numbers. [Their] language skills are in the average range. [The Student] is an effective communicator. [Their] fine/gross motor skills are in the average range. [The Student] does really well with 1:1 support. [The Student] thrives on praise and reassurance from adults. [The Student] does see outside therapy for OT." (Individualized Education Program dated November 15, 2023.)

Parental information, including concerns for enhancing their child's education, indicated, "[the Parent] is concerned about [the Student's] behavior in the fact that [they are] unable to control [themselves] at school. [The Student] says things that are inappropriate but doesn't realize that it hurts other's feelings. [The Parent] is also aware that [the Student] does not have too many friends." (Individualized Education Program dated November 15, 2023.)

According to the IEP, "If behavior impedes learning, consideration of the use of positive behavioral interventions and strategies ... was considered by the IEP team and was deemed necessary. [The Student] will be monitored through teacher observation and daily data. [The Student] struggles with behavior, self-regulation, following directions, making jokes that offend others, saying things that are inappropriate, [they like] to negotiate to get [their] way, and transitions are difficult for [the Student]." (Individualized Education Program dated November 15, 2023.)

In the area of consideration of the child's communication needs," This was considered by the IEP [T]eam and was deemed necessary. [The Student] exhibits articulation delays that will be addressed in this IEP. Social

communication skills are also addressed." (Individualized Education Program dated November 15, 2023.)

20. According to an IEP dated November 15, 2023, the Summary of Present Levels of Academic Achievement and Functional Performance, an Area of Need was Self-Regulation. The Educational Impact Statement indicated, "[The Student's] difficulty with self-regulation impacts [their] ability to progress in the general education curriculum without accommodations." The annual goal for self-regulation included, "In 36 weeks, [the Student] will increase [their] ability to stay at expectation' by moving from (78%) to (85%) on three consecutive data collection periods." Objective/Benchmarks indicated:
- "Work Completion";
 - "Adhering to Rules/Procedures";
 - "Getting Peer/Teacher Appropriately." (Individualized Education Program dated November 15, 2023.)
21. According to the IEP dated November 15, 2023, an Area of Need was Speech-Language. The annual goal for articulation was, "By the next annual IEP, [the Student] will show improvement with the production of the unvoiced /th/ and final /l/ sounds from a baseline of 60% accuracy in imitation of single words to 90% accuracy in conversation." Objectives/Benchmarks included:
- "Benchmark 1 - [The Student] will produce unvoiced /th/ in all positions of words within phrases with 90% accuracy. Target Date: February 16, 2024";
 - "Benchmark 2 - [The Student] will produce unvoiced /th/ in all positions of words within sentences with 90% accuracy. Target Date: May 22, 2024";
 - "Benchmark 3 - [The Student] will produce final /l/ in words within phrases with 90% accuracy. Target Date: February 16, 2024"; and
 - "Benchmark 4 - [The Student] will produce final /l/ in words within sentences with 90% accuracy. Target Date: May 22, 2024." (Individualized Education Program dated November 15, 2023.)
22. According to an IEP dated November 15, 2023, an Area of Need was Social Skills. The Present Level of Performance Educational Impact Statement indicated, "[The Student's] difficulty with social skills impacts [their] ability to progress in the general education curriculum without accommodations." The Annual Goal stated, "By the next annual IEP [the Student] will show improvement in [their] understanding and utilization of social skills by demonstrating and explaining social skills necessary to build friendships and participate in classroom activities from the current level of

55% to 80% as measured by teacher observation of [the Student] in small group and classroom activities." Objectives/Benchmarks included:

- a. "Objective 1 - [The Student] can explain how [they are] feeling in a particular situation. Target Date: November 14, 2024";
- b. "Objective 2 - [The Student] can explain how [their] actions may have made someone feel. Target Date: November 14, 2024";
- c. "Objective 3 - [The Student] will follow the group plan by staying on task or completing [their] job in the group. Target Date: November 14, 2024";
- d. "Objective 4 - [The Student] will 'think with [their] eyes' by looking at the correct person or the correct material being utilized. Target Date: November 14, 2024";
- e. "Objective 5 - [The Student] is in the right place, doing what [they are] supposed to be doing. Target Date: November 14, 2024";
- f. "Objective 6 - [The Student] uses correct body posture to demonstrate that [they are] listening. Target Date: November 14, 2024." (Individualized Education Program dated November 15, 2023.)

23. According to an IEP dated November 15, 2023, an Area of Need was Reading. The Present Level of Performance Educational Impact Statement was "[The Student's] difficulty with reading impacts [their] ability to progress in the general education curriculum without accommodations." The Annual Goal for Reading stated, "In 36 instructional weeks, [the Student] will be able to go from meeting 0 out of 5 benchmarks to 4 out of 5 benchmarks in 3 out of 4 opportunities."

Objectives/Benchmarks included:

- a. "Letter Names - [The Student] will be able to name 26/26 letters in 3 out of [sic] opportunities. Target Date: November 14, 2024";
- b. "Letter Sounds - [The Student] will be able to sound out 44 sounds in one minute given orally in 3 out 4 [sic] opportunities. Target Date: November 14, 2024";
- c. "Blending - [The Student] will be able to identify, blend, and segment syllable sounds in spoken words (e.g. cupcake, birthday). Target Date: November 14, 2024";
- d. "Listening - [The Student] will be able to listen to the text of increasing length and/or complexity to develop stamina. Target Date: November 14, 2024";
- e. "Writing - [The Student] will be able to write letters correctly on the baseline. Target Date: November 14, 2024." (Individualized Education Program dated November 15, 2023.)

24. According to an IEP dated November 15, 2023, the Service Summary section indicated the Service areas were:

- a. "Specially Designed Instruction, Location/Public School, Setting/Individual, Integrated Status, Special Ed Room, four sessions per week, 15 minutes per session, Start Date – November 15, 2023, End Date - November 14, 2024";
- b. "Specially Designed Instruction, Location/Public School, Setting/Group, Integrated Status, General Education Classroom, four sessions per week, 30 minutes per session, Start Date - November 15, 2023, End Date - November 14, 2024";
- c. "Related Services, Speech/Language Pathology, Location/Public School, Setting/Group, Integrated Status, Special Ed Room, six sessions every month, 25 minutes per session, Start Date - November 15, 2023, End Date - November 14, 2024." (Individualized Education Program dated November 15, 2023.) (

25. According to an IEP dated November 15, 2023, the Supplementary Aids and Services/Accommodations indicated:

- a. "[The Student] would benefit from the use of breaks when needed, Location/General Ed, Duration/[The Student] will be given a five-minute timer to get [themselves] back to regulation, Frequency/when [the Student] is dysregulated for a period of 15 minutes and other interventions have not worked, Start Date - November 15, 2023, End Date - November 14, 2024";
- b. "[The Student] would benefit from the use of visual aids throughout [their] day, Location/General Ed, Duration/The adult who is with [the Student] will show [them] a visual when [they are] struggling, Frequency/when [the Student] is dysregulated for a period of 15 minutes and other interventions have not worked, Start Date - November 15, 2023, End Date - November 14, 2024";
- c. "[The Student] would benefit in taking assessments in a quiet location, Location/Special Ed, Duration/[The Student] would come to a different location to take assessments that is quiet until the assessment is completed, Frequency/Whenever there is an assessment, Start Date - November 15, 2023, End Date - November 14, 2024";
- d. "[The Student] would benefit from having extra time to take assessments, Location/General Ed, Duration/for the duration of the assessment, Frequency/Whenever there is an assessment, Start Date - November 15, 2023, End Date - November 14, 2024";

- e. “[The Student] would benefit by having multistep directions broken down, Location/General [E]d, Duration/until tasks that require this is understood, Frequency/whenever there are multistep directions, Start Date - November 15, 2023, End Date - November 14, 2024.”
(Individualized Education Program dated November 15, 2023.)
- 26. The Parent signed the Student’s IEP dated November 15, 2023.
(Individualized Education Program dated November 15, 2023.)
- 27. A Notice and Consent of Initial Placement in Special Education Services dated November 15, 2023, indicated the Parent gave consent for the special education action in the notice. The Parent(s) signed that the consent they gave was voluntary and could be revoked at any time. The proposed action was taken because “[The Student] is performing below average range in the areas of self-regulation and Speech Language. ... This action was accepted as data shows [the Student] is making sufficient progress with the current level of specialized instruction in the classroom setting.” (Notice and Consent of Initial Placement in Special Education Services dated November 15, 2023.)
- 28. A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP) dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024, indicated the Problem Behaviors for the Student were:
 - a. “Adherence to expectations and procedures”;
 - b. “Completing work”;
 - c. “Responding to adults and peers appropriately”;
 - d. “Elopement [Added May 30, 2024]”;
 - i. “In the classroom”;
 - ii. “[O]ut of the classroom and/or building (currently not needed).” (A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP) dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024.)
- 29. According to the PBSP & PBIP dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024, the “Behavioral Goal indicated: In 36 weeks, [the Student] will increase [their] ability to stay at expectation’ by moving from (78%) to (85%) on three consecutive data collection periods.” (A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP) dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024.)
- 30. According to a Service Log with a date range of November 17, 2023, through May 22, 2024, the Student received services for Reading 60 minutes a day on Monday, Wednesday, and Thursday and 25 minutes a day on Tuesday and Friday. The Student was absent for 22 sessions of

Reading from November 17, 2023, through May 22, 2024. The Student received CKLA (Core Knowledge Language Arts) Support for 20 minutes a day. The Student was absent for 29 sessions, according to the Service Log. The Student received Speech Services on Tuesday and Friday for 35-minute sessions. The Student was absent from Speech Services for six sessions, according to the Service Log. (Service Logs dated November 17, 2023, through May 22, 2024.)

31. On April 24, 2024, the Student had a "53 Majors 4 Minors document in Synergy." On May 20, 2024, the Student had "65 Majors, 4 Minors documented in Synergy: started a new med two weeks ago." (A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP) dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024.)
 32. According to the PBSP & the PBIP, with a beginning date of November 16, 2023, the "Function of Behavior" was to:
 - a. "Obtain/Get Something";
 - b. "Sensory/Stimulation";
 - c. "Social";
 - d. "Adult";
 - e. "Peer(s)";
 - f. "Tangible/Activity";
 - g. "Escape/Avoid Something"; and
 - h. "Tangible/Activity."
- "Proactive Strategies" included:
- a. "Greet [S]tudent upon arrival & re-entry - Upon re-entry to the classroom, it will be a fresh start for [the Student]";
 - b. "Develop &/or strengthen a relationship with the [S]tudent";
 - c. "Positive Praise 4:1";
 - d. "2 X 10 Relationship Builder - all staff members who work with [the Student]";
 - e. "Reduce stimuli and verbal directions";
 - f. "Increase use of visuals";
 - g. "Decrease voice level and tone";
 - h. "Positive physical touch (know your student) ex) High five, hug, elbow bump, etc.";
 - i. "Pre-teach social interactions ex) Recess, Lunch, Specials, Field Trip, etc.";
 - j. "Pre-teach behavioral expectations ex) Assemblies, Substitutes, etc.";

- k. "Model appropriate behavior - what does it look and sound like to ...";
 - l. "Have a model peer to sit with";
 - m. "Use of reinforcement system in the classroom";
 - n. "Active supervision in the classroom - Move, Scan, Interact"; and
 - o. "Pre-Corrects." (A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP) dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024.)
33. According to the PBSP & the PBIP, with a beginning date of November 16, 2023, Skills to Teach included:
- a. "Social Skills Group, Weekly 2 times, [Speech Language Pathologist]";
 - b. "Zones of Regulation, Daily, [Resource Teacher], By April 19, [the Student] will have [their] own Zones of Regulation sheet to score [themselves] on how [they are] feeling; [The Student] will also have space so that adults can give positive feedback to [the Student]";
 - c. "Checking In Checking Out," Daily, [Resource Teacher], At Check-in, [the Student] will leave [their] backpack with [Resource Teacher] will bring it to [the Student] at the end of the day";
 - d. "Taking a break after completing a task when requested, Daily as needed, Weekly as needed, [Teacher 1], [Resource Teacher], [Staff], [School Counselor], [Principal], [Teacher 2] Removed from plan on April 24, 2024, due to success";
 - e. "Transitioning through hallways, buildings, and areas of the school, [r]e-entering the classroom, [u]se of delivery system to move through hallway, daily, [Resource Teacher], removed from plan on April 24, due to success, added back to plan on May 20, 2024, due to increase in elopement";
 - f. "Discrete trial training including responding to visuals and/or verbal redirections, Examples: Stop, wait." (A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP) dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024.)
 - g. "[The Student] will still have [their] scheduled breaks regardless of office referrals or work completion." (A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP) dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024.)

34. According to the PBSP & the PBIP with a beginning date of November 16, 2023, "What accommodations/modifications does this [S]tudent need in order to be successful?":
- a. "Chunking Work";
 - b. "Offer Choice - rule of 3";
 - c. "Transition Warning & Notify of changes in Schedule or Routine";
 - d. "Visual Schedule or Command Cards";
 - e. "Sentence Stems";
 - f. "Prioritize Seating";
 - g. "Offer other modes of Writing - Clipboard with work or blank papers/blue spot"; and
 - h. "Be the 'Teacher' or 'Helper' for a subject area they struggle with." (A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP) dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024.)
35. According to the PBSP & the PBP with a beginning date of November 16, 2023, the "Behavior Targeted for Reduction-Physical & Verbal Aggression":
- a. "Antecedent Procedures";
 - i. "A visual schedule will be utilized during school"; and
 - ii. "[The Student's] physical, emotional, and cognitive needs will be continually monitored and met throughout the day";
 - iii. "[The Student] will receive five positive praises for each correction throughout the day (5:1), e.g., If [the Student] is told 'no,' thereafter, [The Student] will be praised five times for things [they are] doing well, prior to another corrective instruction is given."
 - b. "Staff will pre-teach expectations to all transitions (e.g., 'On our way to Specials, we are going to walk with our hands by our side. We will show the [School] line expectations. I will stop and check to see how our line is doing.')
 - c. "[The Student] will not have access to preferred items when/if exhibiting the physical aggression. Instead, [the Student] will be asked to sit in a specific place in [Teacher 1's] classroom, [Resource Teacher's] room, or in the 'den'."
 - d. "Reactive Procedures";
 - i. "If [the Student] is disrupting the learning environment with physical or verbal aggression";
 - ii. "If [the Student] is able to comply with the request of the first responder, then the 'den' will be utilized for physical or verbal dysregulation, if [the Student] will not leave willingly"; and

- iii. "Adjust task/demand expectations on tasks that are not mastered. Prompt [the Student] to request/take a break following task completion." (A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP) dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024.)
- e. "Adjust task/demand expectations on tasks that are not mastered. Prompt [the Student] to request/take a break following task completion."
- f. "Elopement-Inside of the classroom";
 - i. "Operational Definition: [The Student] will run away from a trusted adult or a safe area, without concern for [their] own safety";
 - ii. "Frequency of Behavior (baseline): Data indicates, [the Student] has shown an increase of eloping within the classroom";
 - iii. "Hypothesized Function: Specifically, [the Student] engages in problematic behavior in order to gain attention, to escape demands, and to access tangibles";
 - iv. "Goal: [The Student] will increase [their] toleration of non-preferred activities, removal of preferred items, waiting, and will accept 'no' without engaging in maladaptive behavior"; and
 - v. "Data Collection Procedure: Indicator on [the Student's] intensity matrix & referral will be added to Synergy when elopement has increased in intensity and duration."
- g. "Procedures being implemented to address specific behavior: Antecedent Procedures":
 - i. "Staff will require [the Student] to walk next to them while inside."
 - ii. "Staff will teach [the Student] safety procedures through discrete trial training including responding to visuals and/or verbal redirections, like 'stop' or 'wait.'"
 - iii. "When seated at a table or carpet, [the Student] will have [their] back to the door. Staff will place themselves between [the Student] and the exit."
 - iv. "All exit doors will remain closed during school."
 - v. "A visual schedule will be utilized during school. A visual timer will be utilized during timed activities."

- vi. "'First/When/Then' visuals and language will be utilized across settings."
 - vii. "Frequent scheduled breaks, including physical exercise, will be utilized."
 - viii. "[The Student] will receive five positive praises for each correction throughout the day."
 - h. "[The Student] will receive increased positive reinforcement during problem times, such as large group.;"
 - i. "Staff will pre-teach expectations prior to all transitions."
 - ii. "Use pre-corrective statements to anticipate the problem before it occurs and give a proactive statement."
 - iii. "Ignore, if possible."
 - iv. "Offer a redirection after break in the classroom or ask [the Student] to deliver a note in the building."
 - v. "Find a time to process privately."
 - vi. "Increase proximity or increase space, know [their] cues and stimuli." (A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP) dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024.)
 - i. "Elopement - Out of the classroom and/or out of the building. (Currently, this is not a behavior that has been seen, but will stay in the PBSP)." This procedure is similar to eloping within the classroom.
 - j. "Frequency of Behavior (baseline): Data indicates [the Student] has shown an increase of eloping in the school setting. Currently, the elopement is within the classroom setting." (A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP) dated November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024.)
36. On February 26, 2024, [Resource Teacher] emailed [Child Psychologist], "I am writing in reference to [the Student]. I am [their] case manager at [the School] and [they are] struggling at school. [Their Parent] had suggested that we contact you in hopes that you have some ideas on how to support. Most of the issues we are having is not following directions, when an adult gives a direction [the Student] will not listen or run away from the staff member. I do realize that is [sic] [the Student] not fond of [their] school. I am hoping that you can give me some strategies that could help support [them] at school." (Email from Resource Teacher to Child Psychologist dated February 26, 2024.)

In an email response dated February 27, 2024, [Child Psychologist] emailed [Resource Teacher], "We are definitely working on following

directions in sessions. [The Student] sometimes takes [their] sweet time to get there! Is [the Student] running from the classroom, or wandering away from adults when given directions? Just so I know for monitoring [their] safety skills (which we are also working on). Are they work-related directions, random day-to-day. Do these directions, or any patterned issue that you know?" (Email from Child Psychologist to Resource Teacher dated February 27, 2024.)

"One possibility is giving [the Student] choices within what we need from [them]. For example, cleaning up in my room. I give [them] a choice of what toys to start with, or ask if [they want] to clean up or put on [their] shoes first. So they are things we need from [the Student], but [the Student] has a bit of a choice to keep [them] engaged. Lots of praise in choosing one and doing it, of course. We also practice giving very direct instructions that are short and sweet. 'Do this, please.' [The Student] still requires several redirections at times and wait time. I think building relationships with staff is another really crucial part! You're right that [the Student] doesn't love school, and we can't fix that overnight. However, [they are] a very social little [Student], and maybe if we can do some more pairing between [the Student] and teachers in a positive way, that could help!" (Email from Child Psychologist to Resource Teacher dated February 27, 2024.)

37. An IEP Progress Report-Annual Goal dated May 7, 2024, indicated in the area of Self-Regulation according to the IEP goal, "In 36 weeks, [the Student] will increase [their] ability to stay "at expectation" by moving from (78%) to (85%) on three consecutive data collection periods." Short-term objectives indicated:

- a. According to the short-term objective, "[The Student] will be able to complete work with preferred/nonpreferred activities in 3 out of 4 opportunities." The Student "is also still working on this skill." The Student scored a mastery level of 3.
- b. According to the short-term objective, "[The Student] will be able to follow rules/procedures in 3 out of 4 opportunities." The Student scored a 3.
- c. According to the short-term objective, "[The Student] will be able to get adult/peer attention appropriately." The Student scored a mastery level of 3. "[The Student] is still working on this skill as it is difficult for [them] to be at expectation."
- d. In the area of Speech-Language, the annual goal stated, "By the next annual IEP, [the Student] will show improvement with the

production of the unvoiced /th/ and final /l/ sounds from a baseline of 60% accuracy in imitation of single words to 90% accuracy in conversation." The short-term objective was, "[The Student] will produce unvoiced /th/ in all positions of words within phrases with 90% accuracy." The Student scored a mastery level of 4.

- e. The short-term objective was, "[The Student] will produce final /l/ in words within sentences with 90% accuracy." The Student scored a mastery level of 4. "[The Student] is making good progress with articulation as well as working in the small group setting. [Their] progress is acceptable and likely to achieve mastery."
 - f. In the area of Social Skills, the annual goal was. "By the next annual IEP, [the Student] will show improvement in [their] understanding and utilization of social skills by demonstrating and explaining social skills necessary to build friendships and participate in classroom activities from the current level of 55% to 80% as measured by teacher observation of [the Student] in small group and classroom activities." The short-term objective was, "[The Student] can explain how [they are] feeling in a particular situation." The Student scored a mastery level of 3. Comments indicated, "[The Student] knows what [they] need to do to be successful in school, however when it comes to implementation that is when it becomes difficult for [the Student] to achieve."
 - g. According to the Progress Report for Reading, the Student received a mastery level of 4. Comments noted were, "[The Student] is doing a nice job of learning [their] letters/sounds. [They are] working on CVC words." (IEP Progress Report-Annual Goal dated May 5, 2024.)
38. On May 15, 2024, the Principal sent an Initial Notice of Emergency Exclusion to the Parent. After swinging a toy at recess endangering others, the letter stated, "[The Student] attempted to evade multiple school staff members by running away multiple times and had to be escorted to a separate room. Despite many interventions, [the Student] lashed out physically and vocally, refusing to cooperate. Due to [their] consistent disruptive behavior, it's deemed unsafe for [them] to participate in less structured activities. Following a recommendation from the [D]istrict's SEL supervisor, [the Student] is to be emergency excluded for the next two days, due to the risk of further disruption and unsafe conduct during unstructured periods." (Email from Principal to the Parent dated May 15, 2024.)
39. On May 15, 2024, the Parent responded to an email from the Principal sharing, "I want to know what happened before the behavior, behavior

details on what [the Student] did, and then the consequence (how adults responded, what did [they] 'get' out of the behavior). I would like to hear how you implemented the behavior plan/strategies to help [the Student] regulate and return to the classroom. ... While I agree that safety at the picnic and field day is likely a concern, [the Student] should not be excluded from school and therefore those events due to [their] disability. This was the main reason we asked for [their] IEP in the first place. In addition, [the Grandparent] and I have offered to help accompany [the Student] if ever needed due to limited staffing, as well. I also have concerns when looking back over [their] behavior plans, IEP, and MDT have very little to no mention of plans for some of what seems to be some of the biggest complaints (such as [their] elopement)." (Email from Parent to the Principal dated May 15, 2024.)

40. On May 17, 2024, [Positive Support Coach] emailed [Principal], "We are going to meet as a team on Monday morning at 7:15 to plan for [the Student's] re-entry from Emergency Exclusion. We will also add steps to take in the case of an elopement since this is a new behavior and of the biggest concern to [the Parent] on how we are responding to it. The building team will be in attendance and anyone else is welcome to join if they would like. As always, once the plan is updated, a copy will be sent home to [the Parent]." (Email from [Positive Support Coach] to the Parent dated May 17, 2024.)
41. During an interview with the Investigator, the Special Education Case Manager described their support of the Student to include the provision of special education services, and they would also act as a "First responder" and provide support to the Student as needed. The Special Education Case Manager also reported that there was never a time when they were aware that the BIP or the IEP was not implemented. (Special Education Case Manager Interview dated July 1, 2024.)
42. During an interview with the Investigator, the Classroom teacher described the support the Student received: "lots of visuals to help scheduling [and] student choice." The Student received daily instruction in the Zones of Regulation and was able to act as a teacher and take questions from peers. The Classroom Teacher reported that the Student received instruction in letter names and sounds, blending, reading text, and writing letters. The Student received scheduled and as-needed breaks. The Student used a timer, visuals, checklists, checkout systems, went to the Resource Room for assessments, and had preferential seating. The Classroom Teacher and the Parent communicated frequently regarding the Student's ability to stay

awake; they were "trying to figure out why certain times of the day were a little trickier ... or harder for [the Student]." (Classroom Teacher Interview dated July 5, 2024.)

43. During an interview with the Investigator, the Principal reported that before the Student became eligible for special education services, the Student performed well academically and was "pretty much on level across the board. ... [The Student's] very smart, especially socially communicatively. Behaviorally, [the Student] was very challenging from the first day." The Principal described the Student's refusal to "follow instructions, classroom disruptions, physical altercations with other students This was a very challenging Kindergarten class as a whole. [The Student] certainly wasn't the only one. But when they come down to the office, and we give them a chance to process, and we have a process sheet where we identify, they self-identify, do they know why they're down there, what they did wrong? We have a discussion."
44. The Principal reported that the School had "a number of interactions with the [P] aren't prior to [October], and [the Parent] had actually asked that [the Student] be evaluated for an IEP. The Principal shared with the Parent, '[I]f there's a parent request, then we automatically treat the student as if they do have the IEP and in accordance with the child find and make sure that our students, anyone who has even been requested for testing, receive the same support as if a student had already been verified, regardless of what comes out from the testing.' According to the Principal, students are observed to have "enough data" and for the Student, "we [hadn't] had this time with the student, that we needed to have enough data to go forward."
45. The Principal reported that the Student was not excluded from the School for more than a total of about four days, "two [full] days in August and two [full] days at the end of the school year," during the 2023-24 school year. Two of these exclusion days were at the time of the reward picnic and field day. The Manifestation Determination Review document was completed incorrectly as the Student was not excluded from the School for 13 school days. The School would contact the Parent or a Relative, "[W]e didn't say that [the Student] couldn't be there. We've had times where [the Student's] behavior was so bad that we had to have the [P]arent come in and we'd ask them to come and sit with [the Student] throughout the day, and they would just take [the Student] home because [the Student] had to sit in the regulation station or wherever." (Principal Interview dated July 1, 2024.)
46. During an interview with the Investigator, the Special Education Director reported, "When the [P] aren't emailed me on September 25th, I

emailed [them] back that same day. And the school psychologist contacted [them] the very next day, and we scheduled a time to meet with [the Parent] on October 2nd to get the ... the consent to evaluate." The Special Education Director also shared, "looking at the positive support plans before the student was eligible and once the [S]tudent was eligible and talking to team members, elopement outside of the classroom or outside the building had not been an ongoing issue. ... It was something that started to occur at the end of the year, the last two weeks of school. ... [The Student] continued to [have] a support plan, [it] continued to be implemented, and I think it actually only happened one time. And so they were actually recomputing and talking about what those next steps would be, just as a team, like, 'Hey, just saw this, what do you think we should do?' So it was pretty informal at that time because it was a new behavior." The Special Education Director recalled that the Team addressed 13 "partial or part days ... [b]ut to err on the side of caution, we're always going to [complete a Manifestation Determination]." (Special Education Director Interview dated July 1, 2024.)

47. During an interview with the Investigator, the Parent reported that the Student had not received special education services prior to entering Kindergarten. The parent reported their concerns about the Student becoming overwhelmed with sensory overload before school started at the Kindergarten roundup. The Parent noted that school started around August 15, 2023, and the Student was excluded from the School the second week. This is when the Principal told the Parent(s) they needed to wait 6-8 weeks before moving to a special education evaluation. The Parent "actually requested the evaluation" on September 26th or 27th and "received the consent right away and returned it back right away." The Parent expressed concern with inconsistent communication about how the Student was performing at school, and when the Student's elopement from assigned areas actually began. The Parent also reported that the Student was having sleep and medical issues in Kindergarten. The Parent believed that the Student did not receive all of their breaks, but the "behavior plan was probably done." (Parent Interview dated June 27, 2024.)

Issue # 1

Did the District provide the parent with consent to evaluate and conduct the special education evaluation within the required timelines? [92 NAC 51-009.04A1; 006.01A; and 34 CFR 300.301(c)(1)(i)]

92 NAC 51- 009.04A1 states:

009.04A1 *Referral, notice to parents (See 92 NAC 51-009.05), and parental consent, shall be completed within a reasonable period of time. The initial multidisciplinary team evaluation shall be completed within 45 school day of receiving parental consent for the evaluation.*

92 NAC 51- 006.01A states:

006.01A *All children with disabilities residing in the state, including children with disabilities who are homeless children or wards of the State and children with disabilities attending nonpublic schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and evaluated and a practical method shall be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.*

34 CFR 300.301(c)(1)(a) states:

300.301 *Initial Evaluations*

(c) *Procedures for initial evaluation. The initial evaluation –*

(1)(i) *Must be conducted within 60 days of receiving parental consent for the evaluation;*

Allegations/Parent Position

"[The Parent] expressed that we should work to get [the Student] tested and provide support in the classroom. [The Principal] told me that [the Student] needed to be in school 6-8 weeks before requesting something like that. On Sept. 26th, I emailed ... [the] Director of Special Education, formally requesting a comprehensive special education evaluation. ... Finally, on Nov. 6th we had [the Student's] MDT meeting where it was determined that yes, [the Student] did qualify for an IEP under a developmental delay." (Letter of Complaint dated May 28, 2024.)

District Response

The District did not provide a narrative response in their materials.

Investigative Findings

The Parent made a request for a special education evaluation on September 26, 2023. The same day, the District responded affirmatively that the District would conduct an evaluation. The Parent provided written consent for the District to conduct a special education evaluation on October 2, 2023. (Email

from Parent, September 26, 2023; Email from [Special Education Director], September 27, 2023; Parent /Guardian Consent for Individual Evaluation dated October 2, 2023.) On October 25, 2023, an MDT meeting was scheduled for the Student to be held on November 15, 2023. (Notice of Meeting dated October 25, 2023.) The District conducted an FBA for the Student on October 25, 2023. (Functional Behavioral Assessment dated October 25, 2023.) On November 6, 2023, the Student was found eligible for special education services due to a Developmental Delay. (Multidisciplinary Team (MDT) Report dated November 6, 2023.)

Summary and Conclusions

The District conducted a special education evaluation and found the Student eligible for special education services in 24 school days. Based on the District completing the special education evaluation within the 45 school-day requirements, the District implemented the requirements of 92 NAC 51-009.04A1; 92 NAC 51-006.01A, and 34 CFR 300.301(c)(1)(i). As a result, **no corrective action** is required.

Issue # 2

Did the District conduct an individualized education program for the Student within 30 calendar days of the multidisciplinary team verification decision? [92 NAC 51-009.04A2]

92 NAC 51-009.04A2 states:

009.04A2 *Upon completion of a multidisciplinary team verification decision, school districts or approved cooperatives shall provide a reasonable notification and conduct an individualized education program conference within 30 calendar days.*

Allegations/Parent Position

"[The Parent] expressed that we should work to get [the Student] tested and provide support in the classroom. [The Principal] told me that [the Student] needed to be in school 6-8 weeks before requesting something like that. On Sept. 26th, I emailed ... [the] Director of Special Education, formally requesting a comprehensive special education evaluation. ... Finally, on Nov. 6th we had [the Student's] MDT meeting where it was determined that yes, [the Student] did qualify for an IEP under a developmental delay." (Letter of Complaint dated May 28, 2024.)

District Response

The District did not provide a narrative response in their materials.

Investigative Findings

The District notified the Parent of the initial IEP meeting on October 25, 2023 (Notice of Meeting dated October 25, 2023). The Student was found eligible for special education services on November 6, 2023. The Parent attended the initial IEP meeting and signed the Consent of Initial Placement in Special Education Services on November 15, 2023. (Individualized Education Program dated November 15, 2023; Notice and Consent of Initial Placement in Special Education Services dated November 15, 2023.)

Summary and Conclusions

The District found the Student eligible for special education services and then developed the IEP for the Student nine days later. Based on the District developing the Student's IEP within the required 30 calendar day requirement, the District implemented the requirements of 92 NAC 51-009.04A2 and **no corrective action** is required.

Issue # 3

Did the District provide the Student with protections for children not yet eligible for special education and related services? [92 NAC 51-016.06]

92 NAC 51-016.06 states:

- 016.06A *A child who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct of the school district or approved cooperative, may assert any of the protections provided for in this Chapter if the school district or approved cooperative had knowledge (as determined in accordance with 92 NAC 51-016.06B) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.*
- 016.06B *A school district or approved cooperative shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:*
- 016.06B1 *The parent of the child has expressed concern in writing to supervisory or administrative personnel of the school district or approved cooperative, or a teacher of the child, that the child is in need of special education and related services;*
- 016.06B2 *The parent of the child requested an evaluation of the child pursuant to 92 NAC 51-006.02B1; or*

- 016.06B3 *The teacher of the child or other personnel of the school district or approved cooperative expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of the school district or approved cooperative or to other supervisory personnel of the school district or approved cooperative.*
- 016.06C *A school district or approved cooperative shall not be deemed to have the knowledge that the child is a child with a disability if:*
- 016.06C1 *The parent of the child has not allowed an evaluation of the child pursuant to 92 NAC 51-006; or*
- 016.06C2 *The parent of the child has refused services under this Chapter; or*
- 016.06C3 *The child has been evaluated pursuant to 92 NAC 51-006 and was determined to not be a child with a disability under this Chapter.*
- 016.06D *Conditions that Apply if No Basis of Knowledge*
- 016.06D1 *If a school district or approved cooperative does not have knowledge that a child is a child with a disability (in accordance with 92 NAC 51-016.06B or 016.06C) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with 92 NAC 51-016.06D2.*
- 016.06D2 *If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 92 NAC 51-016.02, the evaluation shall be conducted in an expedited manner.*
- 016.06D2a *Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.*

016.06D2b *If a child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district or approved cooperative and information provided by the parents, the school district or approved cooperative must provide special education and related services in accordance with this Chapter, including the requirements of 92 NAC 51-016.*

Allegations/Parent Position

"[The Parent] expressed that we should work to get [the Student] tested and provide support in the classroom. [The Principal] told me that [the Student] needed to be in school 6-8 weeks before requesting something like that. On Sept. 26th, I emailed... [the] Director of Special Education, formally requesting a comprehensive special education evaluation. ... Finally, on Nov. 6th we had [the Student's] MDT meeting where it was determined that yes, [the Student] did qualify for an IEP under a developmental delay. We held a manifestation meeting at that same time due to being excluded 13 days from school to that point. It was determined that the suspensions were due to [the Student's] disability and that we were in the process of setting up the IEP. ... [the Student] was excluded fifteen school days this year including both before and after [the] IEP was put in place." (Letter of Complaint dated May 28, 2024.)

District Response

The District did not provide a narrative response in their materials.

Investigative Findings

The Parent reported that the Student did not receive special education services before Kindergarten. The Parent did express concerns about the Student being overwhelmed in Kindergarten before the school year started. The Parent also shared in interviews that the Student has medical and sleep issues while attending Kindergarten. The 2023-24 school year started in mid-August 2023. The Parent reported that they were told by the Principal that a special education evaluation could not happen for 6-8 weeks. (Parent Interview, June 27, 2024.) The Parent requested a special education evaluation on September 26, 2023, and the special education evaluation commenced after the Parent provided written consent on October 2, 2023. (Email from Parent to Special Education Director dated September 26, 2023; Parent/Guardian Consent for Individual

Evaluation dated October 2, 2024.) In October 2023, the Student utilized a CICO card and the School conducted fidelity checks on the system. (Check In/Check Out Form dated October 4, 2023; Email from Teacher 2 dated October 7, 2023.) Also, in October 2023, the School and the Parent were making arrangements for the Student's family to join the Student at school if, after two hours, the Student could not self-regulate. The Parent also requested the completion of an FBA in October 2023, and the District affirmed that an FBA would be completed. (Email from Parent dated October 6, 2023; Email from Parent dated October 9, 2023.)

During interviews, the Principal reported that the Student experienced challenges from the start of the year, and the School had several interactions with the Parent about these concerns before October 2023. Before the special education evaluation commenced, the School supported the student as if they had already been identified, and the team collected information to proceed forward. (Principal Interview dated July 1, 2024.) In November 2023, the Parent communicated with the School Psychologist that they did not believe the Student's plan was being followed consistently. (Email from Parent to School Psychologist dated November 2, 2023.)

Summary and Conclusions

The Student entered Kindergarten with no educational records that indicated a disability. In August 2023, the Parent verbally expressed concern that the Student may experience sensory overload in Kindergarten. When school started in August 2023, the Student had difficulties in school that resulted in detentions and a two-day out-of-school removal by mid-August 2023. The Parent, in writing, requested an evaluation on September 26, 2023, and the evaluation was consented to on October 2, 2023. The investigative record documented that the school supported the student with a CICO system during the evaluation process.

The District became aware that the Student may have a disability on September 26, 2023, when the Parent requested a special education evaluation in writing. When the request was made, the District responded affirmatively and proceeded with a special education evaluation. There is no evidence that the District had knowledge of a suspected disability before September 26, 2023. The District implemented the requirements of 92 NAC 51-016.06, and **no corrective action** is required.

Issue #4

Did the District conduct a Manifestation Determination Review within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct? [92 NAC 51-016.02E]

92 NAC 51-016.02E states:

- 016.02E1 *Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district or approved cooperative, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district or approved cooperative) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:*
- 016.02E1a *If the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or*
- 016.02E1b *If the conduct in question was the direct result of the school district's or approved cooperative's failure to implement the IEP.*
- 016.02E2 *The conduct must be determined to be a manifestation of the child's disability if the school district or approved cooperative, the parent, and relevant members of the child's IEP team determine that a condition in either 92 NAC 51-016.02E1a or 016.02E1b was met.*
- 016.02E3 *If the school district or approved cooperative, the parent, and relevant members of the child's IEP team*

determine the condition described in 92 NAC 51-016.02E1b was met, the school district or approved cooperative must take immediate steps to remedy those deficiencies.

Allegations/Parent Position

"[On] Nov. 6th we had [the Student's] MDT meeting where it was determined that yes, [the Student] did qualify for an IEP under a developmental delay. We held a manifestation meeting at that same time due to being excluded 13 days from school to that point. It was determined that the suspensions were due to [the Student's] disability and that we were in the process of setting up the IEP. ... [[the Student] was excluded fifteen school days this year including both before and after [the] IEP was put in place." (Letter of Complaint dated May 28, 2024.)

District Response

The district did not provide a narrative response in its materials.

Investigative Findings

The Student was excluded from school for one day in August 2023 and two days in May 2024. (Initial Notice of Emergency Exclusion dated August 22, 2023; Email from Principal dated May 15, 2024.) The removals from the School that were coded administrative or emergency exclusions equated to five school days. (School Period Student Attendance Profile, 2023-2024.) The remaining absences were due to parent-requested absences. (Principal Interview dated July 1, 2024.) The Manifestation Determination and Review meeting was held on November 6, 2023. The documentation indicated the Student was suspended for 13 days when the Manifestation Determination and Review meeting was held. The determination was that the conduct subject to disciplinary action was a manifestation of the Student's disability. (Manifestation Determination and Review dated November 6, 2023.)

Summary and Conclusions

The Student was removed from school for six school days due to behavior when the District held a Manifestation Determination and Review meeting on November 6, 2023. However, Nebraska Revised Statute 79-265.01, prohibits pre-kindergarten through second grade students from being suspended. As a result, the Nebraska Department of Education considers the 6 days the student missed as a result of behavior as a change in placement. The Student's Team reviewed relevant information and determined that the removals were due to conduct that was a manifestation of the Student's disability. As a result, the District

implemented the requirements of 92 NAC 51-016.02E, and **no corrective action** is required.

Issue # 5

Did the District develop, review, or revise the Student's IEP to meet their unique needs? [92 NAC 51-007.01; 007.10; 007.07B3; 007.07A8]

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. In order to fulfill the requirements of 92 NAC 51-007.01 for infants and toddlers, school districts or approved cooperatives shall meet the requirements of 92 NAC 52. FAPE is provided to infants and toddlers with a disability in accordance with an IFSP rather than an IEP. The requirements for contents of the IFSP apply rather than the requirements for the contents of an IEP. All other substantive rights and protections established under special education laws apply to infants and toddlers with disabilities receiving FAPE in accordance with an IFSP.*

92 NAC 51-007.10 states:

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

007.10A *Any lack of expected progress toward the annual goals described in 92 NAC 51-007.07 and in the general education curriculum, if appropriate;*

007.10B *The results of any reevaluation conducted under 92 NAC 51-006.05A;*

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

007.10D *The child's anticipated needs; or*

007.10E *Other matters.*

92 NAC 51- 007.07B3 states:

007.07B3 *In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior.*

92 NAC 51-007.07A8 states:

007.07A8 *The projected date for the beginning of the services and modifications described in 92 NAC 51-007.07A5 and the anticipated frequency, location, and duration of those services and modifications;*

Allegations/Parent Position

"[The Parent] expressed that we should work to get [the Student] tested and provide support in the classroom. [The Principal] told me that [the Student] needed to be in school 6-8 weeks before requesting something like that. On Sept. 26th, I emailed ... [the] Director of Special Education, formally requesting a comprehensive special education evaluation. ... Finally, on Nov. 6th we had [the Student's] MDT meeting where it was determined that yes, [the Student] did qualify for an IEP under a developmental delay."

"[The Student's] IEP does not address some of "the biggest complaints, like eloping."

"... it also sounded like staff began to cut back on the things listed in [the] Behavior Plan and IEP prematurely." (Letter of Complaint dated May 28, 2024.)

District Response

The district did not provide a narrative response in its materials.

Investigative Findings

The November 15, 2023, IEP considered the Student's behavior and communication needs. The IEP included goals and services for self-regulation, communication, social skills, and reading. The supplementary aids, services, and accommodations for the Student included breaks, timers, visual aids, taking assessments in a quiet location with extended time, and breaking down multi-step directions. (Individualized Education Program, November 15, 2023.) The Student's behavior support plan was developed on November 16, 2023, and reviewed and revised three times on February 15, 2024, March 18, 2024, and May 20, 2024. The behavior support plan documented the student's needs and included numerous proactive strategies and supports that were increased and adjusted based on the student's performance at the time. (A Positive Behavior Support Plan (PBSP) & Positive Behavioral Intervention Plan (PBIP), November 16, 2023, February 15, 2024, March 18, 2024, and May 20, 2024.) The School staff consulted with outside agencies also working with the Student. (Email from [Resource Teacher] to Child Psychologist dated February 26, 2024; Email from [Child Psychologist] to [Resource Teacher] dated February 27, 2024)

The Special Education Director shared in interviews that the behavior of elopement outside the classroom didn't start until the last two weeks of the 2023-24 school year. This concern was addressed at the May 20, 2024, meeting. (Special Education Director Interview dated July 1, 2024.)

Summary and Conclusions

The Student's IEP addressed the Student's needs for communication, behavior, social skills, and reading. The IEP team developed a behavior support plan that was comprehensive and exceptionally detailed and revised three times to address the Student's changing needs. The IEP team considered the use of positive behavioral interventions, supports, and other strategies to address the Student's behavior. The District implemented the requirements of 92 NAC 51-007.01; 007.10; 007.07B3; 007.07A8 and **no corrective action** is required.

Issue #6

Did the District provide special education and related services to the Student in accordance with the Student's IEP? [92 NAC 51-007.02]

92 NAC 51-007.02 states:

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

Allegations/Parent Position

"... it also sounded like staff began to cut back on the things listed in [the] Behavior Plan and IEP prematurely."

"[The Parent] received a phone call from [the Principal] saying that [the Student] had three major office referrals, so [the Principal] was excluding [the Student] from the Kindergarten picnic on Thursday and Field Day on Friday because [the Principal] did not have two staff members to devote to [the Student] during unstructured periods." (Letter of Complaint dated May 28, 2024.)

District Response

The District did not provide a narrative response in their materials.

Investigative Findings

The District provided evidence that visual supports were being used with the Student. (Visual Schedule, no date.) Service logs dated November 7, 2023, through May 22, 2024, documented that the Student received reading, behavior-social, and speech services. (Service Log dated November 17, 2023 - May 22, 2024.) Interviews with the Classroom Teacher, the Special Education Teacher, and the Case Manager revealed that special education services and the behavior support plan were implemented consistently and as described in the IEP. (Special Education Case Manager Interview dated July 1, 2024; Classroom Teacher Interview dated July 5, 2024.)

Summary and Conclusions

Based on the investigative record, the District implemented the requirements of 92 NAC 51-007.02, and **no corrective action** is required.

Issue #7

Did the District provide the Student with 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? [92 NAC 51-007.07C4 and 007.07C4a]

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.*

92 NAC 51-007.07C4a states:

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 Parent] received a phone call from [the Principal] saying that [the Student] had three major office referrals, so [the Principal] was excluding [the Student] from the Kindergarten picnic on Thursday and Field Day on Friday because [the Principal] did not have two staff members to devote to [the Student] during unstructured periods." (Letter of Complaint dated May 28, 2024.)

District Response

The District did not provide a narrative response in their materials.

Investigative Findings

On May 15, 2024, the Student was excluded from attending school due to the Student's behavior at school. The two-day removal from school coincided with a picnic and field day activities at the School. Due to the exclusions, the Student was not in attendance at the School on these days. (Email from Principal to the Parent dated May 15, 2024; Email from Parent to the Principal dated May 15, 2024.)

Summary and Conclusions

The District had the authority to remove the Student from school for the two days at issue as a disciplinary measure. [92 NAC 51-016.02B] Because the Student was not at School during the extracurricular and nonacademic activities, the District was not required to implement the requirements of 92 NAC 51-007.07C4 and 007.07C4a, and **no corrective action** is required.

Issue #8

Did the District provide the Student with a free appropriate public education?
[92 NAC 51-004.01 and 004.02]

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 51-004.02 states:

004.02 *The school district or approved cooperative shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade.*

004.02A *The determination that a child described in 92 NAC 51-004.02 is eligible under this Chapter must be made on an individual basis by the multidisciplinary evaluation team.*

Allegations/Parent Position

"[The Parent] believe[s] [the District] has violated numerous educational rights of [their] child. These include... FAPE" and the denial of "equal access to [the Student's] education, as well as educational activities and opportunities." (Letter of Complaint dated May 28, 2024.)

District Response

The District did not provide a narrative response in their materials.

Investigative Findings

The Student entered Kindergarten with no educational records that indicated a disability. The School acknowledged that the Student struggled behaviorally at school early on, and the Student received detentions and was suspended from school for one day in August 2023. The District provided some support to the Student through a CICO system. (Issue 3) The Parent requested a special

education evaluation, and the District completed the evaluation and found the Student eligible for special education services within the required 45 school-day timelines. (Issue 1) The District met the requirements for conducting a Manifestation Determination and Review when the Student was removed from school for eight days (including partial removals). (Issue 4) However, Nebraska Revised Statute 79-265.01 prohibits districts from suspending students from prekindergarten through grade 2. As a result, the Student missed 8 days of education including special education and related services required by the IEP. The initial IEP was developed within 30 calendar days, and the Parent provided signed written consent for the District to provide the Student special education services. (Issue 2)

The District developed an IEP considering the Student's behavioral and communication needs. The IEP goals and accommodations were designed to meet the student's unique needs, including a behavior support plan. The Student's discipline record documented 39 in-school detentions due to disorderly conduct, physical alterations, failure to follow directions, harassment/bullying, and elopement for the 2023-24 school year. (School Student Discipline Profile, School Year 2023-2024.) The IEP Team reviewed and revised the Student's IEP three times as the needs of the Student changed. (Issue 5) The IEP progress report dated May 7, 2024, indicated that the Student was progressing toward all their IEP goals. (IEP Progress Report-Annual Goal dated May 5, 2024.) The Student's KG report card indicated the Student was proficient in most areas; they were developing writing, speaking, and listening skills, and work and social skills. (Grade KG Report Card, School Year 2023-2024.) The District implemented the IEP as designed (Issue 6) but was not allowed to remove the Student from school for behavior. (Issue 7)

Summary and Conclusions

Based on the aforementioned, the District did not implement the requirements of 92 NAC 51-004.01 and 004.02 and **corrective action is required**.

Corrective Action

Compensatory Service

1. For the eight days (including the partial day removals) that the Student was removed from the School, the Student's IEP Team shall convene an IEP Team meeting within the first 10 school days of the 2024-25 school year to develop a mutually agreed upon schedule to provide 2 hours of individual specialized education and 6 hours of group specialized education as compensatory service. The 6 hours of compensatory service for type of service was determined by taking the total number of minutes of individual and group specialized instruction the student is required to

receive [(4 individual sessions/week at 15 minutes per session and 4 (total of 60 minutes) group sessions/week at 60 minutes (total of 120 minutes) then the student missed 180 for a week or 45 minutes/day (using a 4 day week)] and multiply the 8 days of the suspension coming to 360 minutes or 6 hours.

2. The IEP team, including the Parent, shall determine the schedule for which compensatory instruction for 6 hours will be provided including the type of instruction (language arts, math, etc). If the District is unable to convince the Parent to attend the IEP Team meeting, the District will document the attempts to contact the Parent as required by 92 NAC 007.06D and hold the meeting without the Parent.
3. The schedule for compensatory services must be provided to NDE within ten calendar days of the IEP Team meeting.
4. Compensatory services shall be completed within 60 school days of the IEP meeting. Student absence or refusal of the Parent to make the child available shall result in a waiver of service scheduled for that day. Staff absences must be rescheduled. Any compensatory services declined or not used within 60 school days of the IEP meeting shall be deemed waived (assuming the District has made a good-faith effort to timely commence and provide all compensatory services).
5. The District must submit service provider logs verifying completion of all compensatory services to NDE by the last business day of each month until the service is complete, and all service has been verified.

Notification to Staff

1. The District must have a policy on file to implement the provision of Nebraska Revised Statute 79-265.01 and submit the policy to NDE for approval by August 12, 2024.
2. The District must provide a written memo to all staff members responsible for issuing disciplinary actions to students by September 4, 2024, to inform them of the ban on suspending students from Pre-kindergarten through grade 2 (including emergency exclusions with exceptions) with the District policy included.
3. The District must provide the written memo to NDE on August 12, 2024, for approval.
4. The District must provide NDE with a list of staff members who received the memo and the manner in which it was sent the same day it was distributed to the staff.

Training

1. By September 26, 2024, the District must develop and provide training to all relevant staff serving the Student, and all District staff authorized to suspend Pre-K-2 grade students from school due to behavior. The training must include intervention options other than removing a student from school. These measures must occur inside the school as an alternative to suspension per State Law.
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 on the business day following the conclusion of the training(s).
4. The District must enter discipline data into the Student Information System and ensure that it is pushing to ADVISER for NDE to verify that no students from pre-kindergarten through grade 2 have been suspended by the following dates:
 - a. October 15, 2024
 - b. December 15, 2024
 - c. March 15, 2025
 - d. May 15, 2025
5. The corrective actions must be completed within [60] calendar days of the receipt of this Investigation Report.

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:

Ginny Howard, Complaint Specialist
Kristine Ray, Complaint Specialist
NDE Office of Special Education
nde.speddr@nebraska.gov