

COMPLAINT INVESTIGATION REPORT

Complaint Number: 23.24.40
Complaint Investigator: REDACTED
Date Complaint Filed: June 10, 2024
Date of Report: REDACTED

Introduction

The child is four years old and has medical diagnoses of Eosinophilic duodenitis, eosinophilic colitis, eosinophilic esophagitis, and Chronic intestinal Pseudo Obstruction. The student began receiving infant toddler services due to other health impairments and was recently reevaluated for special education and related services. The multidisciplinary team report (MDT) dated May 8, 2024, found that the student has a disability, but special education and related services are not necessary at this point. The IEP team further recommended that a 504 plan be developed for the student's health and medical needs, and the Individualized Health Plan (IHP) be reviewed and updated as needed. The parents disagreed with the decision stating that the student's disabilities necessitated special education and related services.

Issues Investigated

1. Did the district meet timelines for completing the Student's special education evaluation? [92 NAC 51-006.05B2].
2. Did the district complete a comprehensive special education evaluation by including outside medical professionals' input? [92 NAC 51-006.06; 006.02C11; 92 NAC 51-006.04D; 92 NAC 51-006.04I; 92 NAC 51-006.04J]
3. Did the district follow appropriate procedures to identify a child with a disability but not in need of special education services? [92 NAC 51-003.08; 92 NAC 51-006.02C14; 92 NAC 51-006.03E2a; 92 NAC 51-006.04A; 92 NAC 006.03G]
4. Did the district follow IDEA in regard to school policies for student-specific health procedures? [92 NAC 51-007.07C4a]

Information Reviewed by Investigator

From the Complainant

Additional documentation older than twelve months was provided. This documentation was reviewed for historical context and timelines but is not listed, nor considered for the investigation.

- Letter of Complaint dated June 10, 2024, received by NDE June 10, 2024
- Multidisciplinary Evaluation Team MDT Draft Report dated May 8, 2024
- Multidisciplinary Evaluation Team MDT Final Report dated May 8, 2024

- Notice and Consent for Revaluation dated February 13, 2024
- Notice of Meeting dated April 9, 2024
- Prior Written Notice dated May 24, 2024
- Individualized Education Program dated July 17, 2024
- Physical Therapy Progress Note provided by private physical therapy office dated March 27, 2024
- Initial Occupational Therapy evaluation provided by private occupational therapy office dated March 29, 2024
- Telephone encounter between the school nurse and the student's physician dated February 29, 2024, between 11:31 and 11:44 a.m.
- Telephone encounter between the student's nurse at the physician's office and district dated between March 4, 2024, at 9:21 a.m. and March 26, 2024, at 10:53 a.m.
- MDT draft report dated April 9, 2024
- MDT final report dated May 8, 2024
- Student Progress Report dated October 19, 2023, December 20, 2023, March 14, 2024, May 24, 2024
- Prior Written Notice dated May 23, 2024
- Phone interview with parents on July 16, 2024
- Phone interview with student's private physical therapist on July 22, 2024
- Email from the parent to investigator dated July 23, 2024, at 7:40 p.m.

From the School District

- Letter of Response dated July 10, 2024, received by NDE July 10, 2024
- Pediatric Physical Therapy Records dated between October 22, 2022, and August 30, 2023, in response to the district's February 27, 2024, request for records
- Ostomy Medical Management Plan dated June 13, 2023
- Plan of Action if G-button becomes displaced or dislodged completely dated June 13, 2023
- IEP dated July 17, 2023.
- Visiting Nurse Association School Health Program for Gastrostomy (G-tube) feeding dated July 17, 2023
- Doctor's order dated July 17, 2023, for fluids
- GJ Tube Feeding Log dated between July 17, 2023, and July 27, 2023
- Email from birth to 3 transition school nurse to school nurse dated July 20, 2023, at 4:32 p.m.
- Email from school nurse to mother dated August 4, 2023, at 10:33 a.m.
- An email exchange between the school nurse and mother dated August 7, 2023, between 11:09 a.m. and 12:00 p.m.

- An email exchange between the mother and school nurse dated August 14, 2023, between 11:51 a.m. and 5:31 p.m.
- Sign in sheet titled, Visiting Nurse Association School Health Program Training Documentation for Osto-Ez-Vent-release gas buildup; Pause & Resume fluids through GJ tube" dated August 14, 2023
- Student Safe Food List, undated
- District Health Meeting minutes from August 14 and August 15, 2023, signed by speech-language pathologist
- Letter from mother to school nurse, principal, and teacher dated October 23, 2023
- Email from mother to school nurse dated between October 23, 2023, at 2:58 p.m. and October 25, 2023, at 9:37 a.m.
- Email between school nurse and mother dated between November 16, 2023, at 12:52 p.m. and November 26, 2023, at 7:58 p.m.
- Email from school nurse to school psychologist dated November 28, 2023, at 11:12 a.m.
- Email from school nurse to parent dated November 28, 2023, at 11:12 a.m.
- Email exchange among mother, early child coordinator, and services coordinator dated January 4, 2024, between 2:14 p.m. and 2:46 p.m.
- Email exchange between mother and teacher dated January 15, 2024, at 7:39 p.m. and January 17, 2024, at 8:23 a.m.
- Email from mother to teacher dated January 24, 2024, at 7:07 a.m.
- Email among mother, teacher, and school nurse dated between January 31, 2024, at 8:22 a.m. and February 4, 2024, at 3:44 p.m.
- Email between mother and teacher dated between February 5, 2024, at 7:37 a.m. and February 9, 2024, at 5:13 p.m.
- Notice and Consent for Reevaluation dated February 13, 2024, Parent signed consent February 14, 2024
- Authorization for Release/Exchange of Information for hospital, speech, and Physical Therapy, dated February 12, 2024
- Email exchange among parent, substitute school psychologist, and speech-language pathologist dated between February 12, 2024, at 10:46 a.m. and February 13, 2024, at 6:09 p.m.
- G-Tube Feeding Log dated between August 15, 2023, and February 14, 2024
- Email from substitute school psychologist and parent dated February 14, 2024, at 10:18 a.m.
- An email exchange between parent and teacher dated February 26, 2024, between 7:35 a.m. and 8:29 a.m.

- Email from substitute school psychologist to teacher dated February 27, 2024, at 2:45 p.m.
- Email from substitute school psychologist to parent dated February 27, 2024, at 3:42 p.m.
- Email between parent and teacher dated between February 28, 2024, at 10:25 p.m. and February 29, 2024, at 7:52 p.m.
- Letter from student's physician dated February 29, 2024
- Email exchange among parent, teacher, and school nurse dated between April 1 at 5:51 p.m. and April 3, 2024, at 8:28 a.m.
- An email exchange between parent and teacher dated between April 3, 2024, at 5:36 p.m. and April 8, 2024, at 2:39 p.m.
- Email 1 from speech-language pathologist to parent dated April 8, 2024, at 1:41 p.m.
- Email 2 from speech-language pathologist to parent dated April 8, 2024, at 1:41 p.m.
- An email exchange between the parent and substitute school psychologist dated between April 8, 2024, at 7:33 a.m. and April 9, 2024, at 11:01 a.m.
- Email from substitute school psychologist to Parent dated April 9, 2024, at 5:24 p.m.
- Notice of Meeting dated April 9, 2024.
- Draft Multidisciplinary Team (MDT) report dated April 9, 2024.
- Email from school psychologist to mother and principal dated May 3, 2024, at 10:03 a.m.
- Email from Parent to school nurse dated May 6, 2024, at 9:32 a.m.
- Email from school psychologist to parent dated May 6, 2024, at 3:38 p.m.
- An email exchange between school psychologist and parent dated between May 13, 2024, at 8:20 a.m. and May 16, 2024, at 2:05 p.m.
- Hospital records dated between January 9, 2024, and May 7, 2024
- Final MDT report dated May 8, 2024
- Email exchange among parent, teacher, school nurse, and school psychologist dated between May 19, 2024, at 9:43 p.m. and May 20, 2024, at 7:21 a.m.
- Prior Written Notice, dated May 23, 2024
- An email exchange between parent and school psychologist dated between May 23, 2024, at 11:09 a.m. and May 24, 2024, at 8:03 a.m.
- Prior Written Notice, dated May 24, 2024
- Email between parent and principal dated May 24, 2024, between 6:50 a.m. and 8:06 a.m.

- Student Progress Report dated October 19, 2023, December 20, 2023, March 14, 2024, May 24, 2024
- An email exchange between parent and school psychologist dated between May 24, 2024, at 2:51 p.m. and May 31, 2024, at 11:44 a.m.
- Letter dated July 9, 2024, from school psychologist.
- Phone Interview with the executive director of student services and school psychologist on July 17, 2024
- Email exchange among investigator, school psychologist, and district attorney dated between July 26, 2024, at 8:07 a.m. and July 31, 2024, at 2:19 p.m.

Findings of Fact

1. The Multidisciplinary Evaluation Team (MDT) Report dated May 20, 2021 states, "This is an initial Special Education verification according to 92 NAC 51 (Rule 51) and 92 NAC 52 (Rule 52)" and "After reviewing all evaluation information it is the conclusion of the [district] Early Childhood Birth to Three Multi-disciplinary Team that [student] currently meets the Nebraska Department of Education (NDE) Rule 52 verification criteria as a child with a primary verification of Other Health Impairment (OHI) due to [student] medical diagnosis of eosinophilic duodenitis and eosinophilic colitis. The child meets OHI verification criteria due to the fact that [student] diagnoses affect [student] nutrition intake which may negatively affect [student] overall development."
2. The IEP dated July 17, 2023, documents that in the section titled, *Parental information, including Concerns for Enhancing their Child's Education* it is written that the parent is concerned about their child's health. The child catches sicknesses easily and results in lengthy hospital stays which could interfere with the mother's desire to see the student continue to grow and develop in preschool.
3. The school nurse emailed the parent on August 7, 2023, at 12:00 p.m. stating, "I am the nurse at [school]. I was reaching out to discuss [student's] health needs. I would like to get a parent meeting and training set up. We have time set aside for Friday, August 11th. Please let me know if this works for you. For this meeting, I will need doctor's orders and medical plans for the upcoming year. Please let me know if you have any questions."
4. A letter dated October 23, 2023, from the parent to the school nurse, teacher, and principal and the email exchange between the mother and school nurse dated October 25, 2023, at 8:42 a.m. records the following: "Below were what [student's doctor] specifically suggested as [physician] has been through IHP meetings at [district] for [physician's] children. For illness prevention: 1. Handwashing for all students upon each entry into the classroom (first thing in the morning, before and after snack/lunch) 2.

Clean all shared surfaces before the start of the school day and before each use by [Student] (desk, chair, computer keyboards, electronics, scissors, paintbrushes, etc)."

5. The draft Individualized Health Plan proposed for the 2023-2024 school year includes the following in the *Illness Prevention* section, 1) access to hand sanitizer throughout the school day; 2) staff asks and allows students to wash hands upon entering the classroom and before meal times; 3) access to own school materials (pencils, markers, crayons, markers, math manipulatives, etc.); 4) teacher or other adult in the classroom will wipe down Chromebook or iPad before student use.
6. The email exchange between the school nurse and mother dated October 24, 2024, between 1:30 p.m. and 1:52 p.m. documents that the IHP planning meeting was scheduled for October 27, 2024, at 8:30 a.m.
7. An email from the school nurse to the parent on November 20, 2023, at 12:54 p.m. documents, "Made changes to IHP. Does the handwashing aspect sound okay or do we need to re-visit?" to which the parent replied, "Sorry for my delay in response, I was discussing the handwashing aspect with [student] different providers trying to decide what was best for [student]."
8. An email from the school nurse to the school psychologist and teacher of November 28, 2023, at 11:12 a.m. documents, "This is the final draft for [student's] IHP. Mom is still on the fence about washing the hands and surfaces but is okay with it for now. [Student] has an appt coming up with [student's] doctor and [mother] is going to have the doctor review the accommodations."
9. An email from the school nurse to the parent dated November 28, 2023, at 11:12 a.m. documents that the student has an IHP in place.
10. The Notice and Consent for Reevaluation dated February 13, 2024, documents that the district proposed to conduct a special education reevaluation for the student to determine strengths, and needs, and determine continued eligibility for special education services. The district proposed evaluation in the following areas: 1) *Social Emotional* including social, behavioral, and/or adaptive development as it pertains to the educational environment. 2) *Speech and Language* including articulation, receptive and/or expressive language, fluency, voice, pragmatics, and hearing screening. 3) *Observation* to determine the student's present functioning in the learning environment. 4) *Medical* to determine appropriate educational interventions or verification.
11. Consent was signed by the parent on February 15, 2024, for the Notice and Consent for Reevaluation dated February 13, 2024. The parents noted consent with proposed changes marked on the request. The proposed changes included: evaluation in the areas of *academics* and *intellectual*.

12. An email from the mother to the school psychologist on February 15, 2024, verified the family's request for evaluation in academics and intellectual ability, "I would like [student] evaluated in [student] ability level and how [student] is doing right now. I realize ability level can be tricky to capture at a young age, but it is my understanding, that there are ways to evaluate to see how [student] is performing in skill areas related to school and what [student] knows compared to same-age peers. I have concerns in those areas. I've checked those areas and signed the document."
13. The student's physician stated in a letter dated February 29, 2024, that the student "has a medical condition that significantly impacts vitality and alertness. It will impact participation in learning and focus. Secondary to the GI condition the student has limited strength. The student has a GI-related chronic health condition."
14. Email exchanges between the parent and substitute school psychologist between February 27 and April 9, 2024, document the parent asking for an update on the completion of the special education reevaluation and district providers sending home evaluation documents for the family to complete.
15. The Notice of Meeting dated April 9, 2024, documents that the district proposed a meeting to "To review the Multidisciplinary Team (MDT) Report, and determine your child's eligibility for special education and related services. We must meet with you to review these results for your child to determine, with your input, whether your child meets the criteria to qualify for special education services. "
16. The school psychologist reported during the July 17, 2024, interview with the investigator that while writing the MDT and reporting the findings from outside agencies follow-up calls were made to the hospital settings to ensure the most current information was received. The school psychologist reported that a more current occupational therapy evaluation was received and included in the MDT.
17. The school psychologist and parent exchanged emails between May 3, 2024, at 10:03 a.m. and May 6, 2024, at 3:38 p.m., documenting that the executive director of student services was added as an attendee, parental rights were provided, and a draft copy of the MDT report was provided.
18. The MDT dated May 8, 2024, shows that evaluation was conducted for all areas proposed in the reevaluation consent and included the parent's additions for intellectual and academic performance.
19. The MDT dated May 8, 2024, documented the purpose of the evaluation was, "...to determine [if student] continued eligibility for special education or a 504 Accommodation Plan. [Student] is currently eligible under the category of Other Health Impairment (OHI)." The MDT included findings regarding the student's medical information, physical therapy information,

previous evaluation results (DAYC-2, Peabody Developmental Motor Scales 2, and observation data), parental input, teacher input, educational information, progress reports, psychoeducational evaluations (review of records, parent input, teacher input, observations, classroom data, Teaching Strategies Gold, Reynolds Intellectual Assessment Scales, Kaufman Test of Educational Achievement, Social Responsiveness Scale-2, and Adaptive Behavior Assessment System), and a Speech-Language Evaluation (review of records, teacher input, parent input, Goldman-Fristoe Test of Articulation-3, Clinical Evaluation of Language Fundamentals-Preschool-3, Descriptive Pragmatics Profile Checklist, classroom observation). The decision reached by the MDT team was that no disability was verified. "The educational needs identified included: [Student] needs general education accommodations and/or modifications as a child with a disability through Section 504 within [Student's] educational environment in order to access [Student's] education. These accommodations and/or modifications may change based on [Student's] fluctuating health status. [Student] also needs an Individual Health Plan (IHP) in order to ensure that [Student's] health needs are met within the educational setting."

20. The draft and final MDT dated May 8, 2024, reflected the following outside medical information in the report:

- a. GJ tube removal medical in January 2024;
- b. A letter from the student's physician regarding the student's serious health status;
- c. Changes in hydration needs at school;
- d. Results of a private physical therapy evaluation from December 2023;
- e. Private physical therapist reports of skill development and observed difficulties with balance in the clinic appear closely tied to overall health issues;
- f. The mother reported an occupational therapist evaluation in March 2024 with student skills on the 'bubble' of average to below average;
- g. April medical visit to look at dilated aorta in student's heart; and
- h. Genetic testing.

21. It was reported in the May 8, 2024, MDT that the student had 28 absences due to illness or hospitalizations during the 2023-2024 school year. The section for *Parent Input* reports the student can be hesitant when adjusting to new people, places, or routines, especially given medical experiences. As well, the mother reported concerns about how the student's education will be impacted by health and susceptibility to illness.

22. The school psychologist stated during the July 17, 2024, interview with the investigator that, at the conclusion of the May 8, 2024, MDT team meeting, the mother signed that she attended the meeting, but did not agree. The school psychologist further stated that the mother wanted to take the MDT findings to other people for review and later submitted a dissenting opinion to the MDT findings writing that she wanted additional evaluation and clarifications. The school psychologist stated the district offered to conduct an additional evaluation for gross and fine motor performance, but the parents declined and asked for the MDT to be finalized. The school psychologist stated that at that point a PWN was then provided to the parents.
23. The email from the school psychologist to the mother dated May 23, 2024, at 9:21 acknowledged the parent's concerns by writing, "I have attached the Prior Written Notice which includes your concerns and questions that you provided in the letter and the district's response to your concerns. Please review the PWN and see the attached consent for further evaluation in the area of Motor Skills. Once you return the form indicating your agreement or disagreement for consent for further evaluation, we will reach out to coordinate the next steps over the summer."
24. The May 23, 2024, Prior Written Notice recorded eight decisions from the May 8, 2024, MDT meeting.
- The mother stated that the MDT did not address whether the student is performing age-appropriate gross motor skills.
 - The mother reported concern about the student's age as documented in the evaluation report and whether the results of the psychoeducational evaluation were scored at the proper age.
 - The mother requested more specific examples of pre-academic skills that the student is displaying in the classroom and during direct testing.
 - The mother indicated concern for the student's absences due to the health condition this school year and stated that it is important that the student's progress in the classroom curriculum be monitored.
 - The mother stated that the student cannot be served in a general education preschool setting without special education services due to a need to use an ileostomy bag and a fluctuating need to use tube feedings for hydration. The mother further reported that they have been called twice to manage the student's ileostomy needs at school when there was an issue despite the IHP stating that staff should be trained.
 - The parents reported that due to both parents having to work during preschool hours, the student will not be able to get to

and from preschool if the student is no longer eligible for special education transportation.

- g. The mother recommended goals that she believes would be appropriate for special education services in preschool to include:
 - i. if the student missed more than two days in one pre-K school week, direct instruction from staff would be provided until the student can demonstrate mastery of at least 80% of the major concepts presented in the curriculum that are missed.
 - ii. the student will initiate using the bathroom and complete all of the toileting tasks independently during preschool class time with no more than one urine accident per quarter.
 - iii. student will independently seek help from a staff member if the student notices needs related to the ileostomy bag before it becomes a crisis.
 - iv. The student will learn to ask an adult prior to consuming foods due to food allergies.
 - h. The multidisciplinary team proposed to reconvene once the additional perceptual and motor assessments are completed to review the results, existing evaluation data, and examples added to the report at the parent's request to make an eligibility determination for special education. The district will reach out to the parent to schedule the MDT meeting prior to the start of the 24-25 school year.
25. An email exchange between May 23, 2024, at 11:09 a.m. and May 24, 2024, at 8:03 documents an exchange between the mother and school psychologist to discuss the timelines if the parents consented to additional evaluation in the areas of physical and occupational therapy.
26. The May 24, 2024, Prior Written Notice documents three actions by the IEP team:
- a. [District] sent consent for re-evaluation per the parent's request for more information in the area of Perceptual and Motor in order to obtain more information on [student's] current gross and fine motor skills, as well as to review and consider any additional medical input and reconvene once the additional perceptual and motor assessments were completed to review the results, existing evaluation data, and examples added to the MDT report at the parent's request to make an eligibility determination for special education. [Parent] declined consent for further re-evaluation on 5/24/2024 and requested that the MDT report be finalized and sent."

- b. "The MDT determined that [student] has a disability caused by [student's] medical condition, but that [student] no longer requires specially designed instruction. The MDT proposed to dismiss [student] from special education services. The district proposes a guaranteed placement for [student] as an At-Risk student for the 24/25 school year at [school]; and
 - c. "Develop a Section 504 Accommodation Plan and update [student's] Individual Health Plan (IHP) prior to the start of the 2024-2025 school year. The district will reach out to the parents to schedule this meeting prior to the start of the 24-25 school year."
27. The PWN dated May 24, 2024, recorded how the eligibility determination was made "To verify as a child with an Other Health Impairment, the child must exhibit limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems that adversely affect the child's educational performance and requires specially designed instruction. [Student] is a child with a medical diagnosis of Eosinophilic duodenitis, eosinophilic colitis, eosinophilic esophagitis, and Chronic intestinal Pseudo Obstruction. Evaluation information does not demonstrate an adverse impact on [student] educational performance requiring specially designed instruction. To qualify as a student with a Developmental Delay (DD), the child shall have a significant delay as measured by appropriate diagnostic instruments and procedures in one or more of the following areas and, by reason thereof needs special education and related services: cognitive development, physical development, communication development, social or emotional development, adaptive behavior or skills development, a diagnosed physical or mental condition that has a high probability of resulting in a substantial delay in function in one or much of such areas. [Student] has a diagnosed medical condition of Eosinophilic duodenitis, eosinophilic colitis, eosinophilic esophagitis, and Chronic intestinal Pseudo Obstruction. However, the MDT evaluation did not reveal adverse effects on educational performance or the need for specially designed instruction. Finally, the team agreed that while [student] does not require specially designed instruction at this time, [student] is still a child with a disability due to [student] medical diagnoses of Eosinophilic duodenitis, eosinophilic colitis, eosinophilic esophagitis, and Chronic intestinal Pseudo obstruction. The team agreed that [student] is eligible as a child with a disability under Section 504 and is in need of accommodations in order to access [student] educational environment."
28. The July 9, 2024, letter from the district's school psychologist stated, "MDT included previous medical information provided to establish that [student] is a child with a disability. During the MDT meeting, the parent did not offer

additional medical documentation for the team to consider. When asked if there was additional information she wanted to provide, [mother] reported that [student] was accepted into the Complex Care Clinic through [hospital] in April that [student] was undergoing genetic testing, and that [student] was being further evaluated for a heart issue. She also stated that [student] had undergone an OT evaluation in March and that [student] skills were "on the bubble." The school psychologist reported this additional information provided by the parent was included in the evaluation report before it was finalized. After reviewing parent concerns, the parent was asked if the information provided in the report summarized her concerns and the parent stated "Yes." Any additional information that the parent believed may have needed to be included in the evaluation report was open to be discussed when the multidisciplinary team offered consent for re-evaluation and to reconvene the MDT."

29. The parents expressed concern during the July 16, 2024, interview with the investigator that the student exited special education services due to the rapid onset of illness at this pivotal time of the student's development resulting in lengthy absences. They additionally expressed frustration that they had knowledge that other schools in the district were able to institute classroom-wide handwashing procedures and this school was not.
30. The private physical therapist stated during the July 22, 2024, interview with the investigator that the district may not realize how sick this child is, stating that the PT keeps track of missed appointments due to insurance. It was stated that not only is the child very susceptible to illnesses such as strep throat, rhinovirus, rotavirus, and giardia, but that then those impact gut health adding to the length and seriousness of the illness. The PT expressed concern about the district relying on home-based services if the student has lengthy illnesses since the student is often isolated.
31. During the July 17, 2024, interview between the executive director of student services and the investigator, the district procedures for a parent requesting a health practice were described. They started with the parent making the request to the school nurse. The nurse may then follow up with conversations with the physician to evaluate if the request can be accommodated and written into the student's health plan. The executive director of student services stated that in this case the school psychologist was also involved since there was a need to coordinate what needed to be in a health plan, IEP, and/or 504 plan. The district reported that their decision took into consideration what the doctor recommended and what other schools in the district were doing similar to the request. At the conclusion, the district talked about the findings with the mother. The district reported they were under the impression that the family agreed with the procedures in the IHP.

32. An email from the district on July 31, 2024, at 2:19 p.m. verifies that the district did not consider Orthopedic Impairment (OI) as an eligibility category during the May 8th meeting with an explanation,

NDE Rule 51 states that to qualify for services in the category of orthopedic impairment, the child must have a severe orthopedic impairment that adversely affects a child's educational, or in the case of a child below age five, a child's developmental performance caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). The NDE Eligibility Guidelines provide further information on the category of OI and states that in order to qualify under this category, the evaluation should include documentation of: 1. a signed, written report from a physician which describes the severity of the motor impairment and any medical implications; i.e., stamina, pain level, fatigue, etc. 2. The child's level of development or educational performance that is adversely affected; and; 3. A muscular or neuromotor impairment, or skeletal deformity that limits the ability to: - Move about,- Maintain postures, - Manipulate materials required for learning, or; - Perform activities of daily living. There was a lack of documentation received through the evaluation that indicates that [student] has a primary motor impairment. Documentation from [private physical therapist] indicated muscle weakness (generalized) as a diagnosis. However, this diagnosis is not reflected in other medical records obtained from [physicians]. Other evaluation information collected, including input from parents and the classroom teacher did not indicate concern for [student's] motor functioning. Furthermore, observations and rating scales did not indicate delays in the area of motor functioning that impacted [student's] ability to access [student's] environment. Additionally, the medical input form signed and obtained from [student's physician] indicates that [student] has a medical condition that significantly impacts [student] vitality and alertness due to a GI-related chronic condition. The input form states that secondary to [student's] GI condition, [student] demonstrates limited strength. Other Health Impairment (OHI) encompasses [student's] disability due to [student] health needs, including any secondary muscle weakness and overall weakness that may occur from [student's] need for additional fluids and extended hospital stays related to [student's] chronic condition.

Issue # 1

Did the district meet timelines for completing the student's special education evaluation? [92 NAC 51-006.05B2]

92 NAC 51-006.005B2 states:

006.05 *Reevaluations*

006.05B *A reevaluation conducted under subsection 006.05 of this Chapter.*

006.05B2 *Must occur at least once every three years, unless the parent and the school district or approved cooperative agree that a reevaluation is unnecessary.*

Allegations/Parent Position

The parents alleged in their complaint dated June 10, 2024, and during the interview on July 16, 2024, that they were first contacted in February about the need to conduct a special education reevaluation and they signed consent on February 15, 2024, but the meeting to discuss the findings did not occur until May 2024. They stated that they were not updated about why the timeline was so long and by the time they received the evaluation results the school year was over. Due to the long timeline, all school staff were going on summer break and would not be available to discuss the next steps. They stated that if they did not agree to the MDT report their child's needed services would be further delayed.

District Response

The district responded in their July 10, 2024, letter of response that they met timelines for completing the Student's evaluation per Rule 51. The evaluation timeline detailed by the parents in the complaint (starting with a medical release form submitted to the school on February 9, 2024) was for the student's reevaluation and not for an initial evaluation. According to Rule 51, "a reevaluation . . . may occur not more than once a year, unless the parent and the school district or approved cooperative agree otherwise; and must occur at least once every three years, unless the parent and the school district or approved cooperative agree that a reevaluation is unnecessary." 92 NAC 51-006.05B. Prior to the MDT at issue in this complaint, The student's last MDT was on May 20, 2021. The MDT at issue in this complaint took place on May 8, 2024. The district took steps, including seeking consent for reevaluation and collecting consent for medical information, to ensure that the student's reevaluation occurred at least once every three years. The district believes that the parents

are confused and are referring to Rule 51's timelines for an initial evaluation, as opposed to the timelines for reevaluation.

Investigative Findings

In this case, according to Finding of Fact 1 the student's initial special evaluation occurred on May 20, 2021. According to the Finding of Fact 10, the district sent a Notice and Consent for Reevaluation to the parents on February 13, 2024, to conduct a special education evaluation and the parent signed consent on February 15, 2024. Findings of Fact 10, 11, 12, and 18 showed that the district initially proposed evaluation in four areas and the parent requested evaluation in academic and intellectual as well and the district agreed. The finding of fact 14 shows that the parent asked for an update for completing the reevaluation. The Notice of Meeting dated April 9, 2024, proposed an MDT meeting on May 8, 2024 (Finding of Fact 15). The finding of Fact 17 shows the draft MDT was sent to the parents. The PWN dated May 23, 2024, documents that the IEP team met on May 8, 2024, to discuss the MDT findings and recorded discussions and decisions (Finding of Fact 24). Findings of Fact 22, 23, and 25 document additional ongoing discussions about the May 8, 2024, MDT report and May 23, 2024, PWN. The Prior Written Notice dated May 24, 2024, recorded that the District proposed to conduct additional evaluation, but the parents declined and considered additional outside medical input in response to the parents' feedback and the decision to dismiss the student from special education services after consideration of eligibility categories. (Findings of Fact 26 and 27).

Summary and Conclusions

According to 51-006.05B2 reevaluation for a student must occur every three years, unless the parent and the school district or approved cooperative agree that a reevaluation is unnecessary. The previous special education for the student occurred on May 20, 2021, and the current special education reevaluation was discussed on May 8, 2024. Although additional discussions occurred, and additional evaluation was offered after May 20, 2021, the district met its obligation to reevaluate a student every three years.

Based on the review of the evaluation procedures and timelines, the district implemented the requirements of 92 NAC 51-006.05B2, and **no corrective action** is required.

Issue # 2

Did the district complete a comprehensive special education evaluation by including outside medical professionals' input? [92 NAC 51-006-06; 92 NAC 51-006.02C11; 92 NAC 51-006.04D; 92 NAC 51-006.04I; 92 NAC 51-006.04J]

92 NAC 51-006.06 states:

006.06 *Review of Existing Evaluation Data*

006.06A *As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP team and other qualified professionals as appropriate, shall:*

006.06A1 *Review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based local or State assessments and classroom-based observations, and observations by teachers and related services providers; and*

006.06A2 *On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:*

006.06A2a *Whether the child is a child with a disability, as described in 92 NAC 51-003.08, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;*

006.06A2b *The present levels of academic achievement and related developmental needs of the child;*

006.06A2c *Whether the child needs special education and related services, or in the case of a reevaluation of a child,*

- whether the child continues to need special education and related services; and
- 006.06A2d Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.
- 006.06B The school district or approved cooperative shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP team under 92 NAC 51-006.06A2.
- 006.06C The IEP team and other qualified professionals may conduct its review without a meeting.
- 006.06D If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs the school district or approved cooperative:
- 006.06D1 Shall notify the child's parents of:
- 006.06D1a That determination and the reasons for the determination; and
- 006.06D1b The right of the parents to request an assessment to determine whether the child

continues to be a child with a disability and to determine the child's educational needs.

006.06D2 *The school district or approved cooperative shall not be required to conduct such an assessment unless requested by the child's parents.*

006.06E *A school district or approved cooperative shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.*

006.06E2 *The school district or approved cooperative shall not be required to conduct such an assessment unless requested by the child's parents.*

92 NAC 51-006.02C11 states:

006.02 *General Evaluation Requirements*

006.02C *Verification criteria and procedures:*

006.02C11 *School districts and approved cooperatives must ensure in evaluating each child with a disability under Section 006, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.*

92 NAC 51-006.04 states:

006.04 *Eligibility for Special Education*

006.04D *Developmental Delay*

006.04D1 *To qualify for special education services in the category of developmental delay, the child shall have a significant*

delay as measured by appropriate diagnostic instruments and procedures in one or more of the following areas and, by reason thereof needs special education and related services:

- 006.04D1a *Cognitive development,*
- 006.04D1b *Physical development,*
- 006.04D1c *Communication development,*
- 006.04D1d *Social or emotional development,*
- 006.04D1e *Adaptive behavior or skills development, or*
- 006.04D1f *A diagnosed physical or mental condition that has a high probability of resulting in a substantial delay in function in one or more of such areas.*

006.04D2 *Developmental delay may be considered as one possible eligibility category for children age three through the school year in which the child reaches age eight.*

006.04I Orthopedic Impairment

006.04I1 *To qualify for services in the category of Orthopedic Impairment, the child must have a severe orthopedic impairment that adversely affects the child's educational performance.*

006.04I2 *The category includes children with impairments caused by:*

- 006.412a *Congenital anomaly,*

	006.412b	<i>Impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and</i>
	006.412c	<i>Impairments from other causes (e.g., cerebral palsy, amputations and fractures or burns that cause contractures).</i>
006.04J	<i>Other Health Impairment</i>	
	006.04J1	<i>To qualify for special education services in the category of Other Health Impairment, the child must have:</i>
	006.04J1a	<i>Limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems which adversely affects the child's educational performance such as:</i>
	006.04J1a(1)	<i>Asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition,</i>

hemophilia,
lead
poisoning,
leukemia,
nephritis,
rheumatic
fever, sickle
cell
anemia,
and
Tourette
syndrome.

Allegations/Parent Position

The parents alleged in their June 10, 2024, complaint and during their July 16, 2024, interview with the investigator that the student has a number of medical diagnoses that affect the student's vitality, health, and school attendance adversely impact the student's development and participation in school activities. They state that the district did not consider the outside medical professionals' input when they conducted the student's reevaluation.

District Response

The district's July 10, 2024, response stated that the MDT team reviewed each of the medical records obtained in response to a request for medical records. They state that they obtained records from the student's physician, private physical therapist, and occupational therapist which are recorded in the May 8, 2024, MDT. The school psychologist reports that an additional call was made to the outside medical providers as the MDT was being drafted to ensure the most current findings were included in the MDT report for consideration on May 8, 2024. The district states that the MDT team considered the medical note from the student's physician indicating that the student's health condition impacts vitality and alertness and could impact learning and focus despite the physician indicating that the student's medical diagnoses "could" impact learning and focus, the rest of the data reviewed by the team indicated that while the student may require some accommodations in the classroom, the student no longer requires specialized instruction. The student's medical history also indicates that the student received physical therapy for a few years and considered the outside physical therapist's opinion from March 2024 that the student would benefit from physical therapy services due to safety concerns with the ileostomy bag. While the outside physical therapist described that the student may need assistance related to medical conditions, that alone does not

trigger the need for special education services. Nevertheless, the district recognized that the parent had significant concerns surrounding the student's gross motor function based on the opinion of the outside physical therapist. That is why, on May 23, 2024, PWN, the district proposed to conduct additional formal evaluation related to the student's muscle strength, perceptual development, fine motor skills, motor development levels, balance and coordination, posture, and gait. The district proposed to conduct these evaluations prior to "finalizing" the student's MDT. While the district already believes that its evaluation was comprehensive and appropriately considered outside medical opinions, these additional evaluations would have given the district an even fuller picture of the student's physical abilities as they relate to school functions. When the parents declined this offer, they asked that the MDT be finalized to which the district responded with a May 24, 2024, PWN.

Investigative Findings

The findings of Issue One are incorporated herein by reference. Findings of Fact 2, 19, and 21 show that the parent input was collected, observation, and present levels of academic and related development were reported in the May 8, 2023, MDT. The finding of Fact 10 documents that one area proposed by the district for the reevaluation was medical information to determine appropriate educational interventions or verification to which the parents signed consent. Findings of Fact 14 and 16 document that the district requested consent to collect medical information from the student's outside medical professionals. The finding of Fact 13 shows the district received a letter from the student's medical doctor which was reported in the May 8, 2024, MDT. Findings of Fact 20 and 21 show that the draft and final MDT dated May 8, 2024, included information obtained from outside medical reports about the GJ tube, hydration, absences, genetic testing, and heart. The finding of Fact 28 further reports gathering outside medical information and the range of findings. Findings of Fact 29 and 30 describe that the student's rapid onset of illness can impact the student's attendance and student attendance is written into the MDT. Findings of Fact 23 and 24 document the parent's concerns with the reporting of medical and other information contained in the May 8, 2024, MDT. The findings of Fact 25 and 26 records that the district and parents discussed conducting additional evaluation as a means to address parental concerns with gross and fine motor skills and the parent ultimately declined.

Summary and Conclusions

It was found that the district stated it would collect medical input to determine appropriate educational interventions or verifications as part of the reevaluation. Documentation showed that the school psychologist obtained

consent and outside medical records and evaluations that are reflected in the MDT. Based on the final MDT dated May 8, 2024, the District implemented the requirements of 92 NAC 51-006-06; 92 NAC 51-006.02C11; 92 NAC 51-006.04D; 92 NAC 51-006.04I; 92 NAC 51-006.04J and **no corrective action** is required.

Issue # 3

Did the District follow appropriate procedures to identify a child with a disability but not in need of special education services? [92 NAC 51-003.08; 92 NAC 51-006.02C14; 92 NAC 51-006.03E2a; 92 NAC 51-006.04A; 92 NAC 006.03G]

92 NAC 51-003.08 states:

003.08 *Child with a disability means a child who has been verified pursuant to Section 006 as a child with autism, a behavior disorder (herein referred to as emotional disturbance), deaf-blindness, a developmental delay, a hearing impairment including deafness, an intellectual disability, multiple impairment, an orthopedic impairment, another health impairment, a specific learning disability, a speech-language impairment, a traumatic brain injury or a visual impairment including blindness, who because of this impairment needs special education and related services. If, under 92 NAC 51-003.56, it is determined, through an appropriate evaluation under Section 006, that a child has one of the disabilities identified above, but only needs a related service and not special education, the child is not a child with a disability under this Chapter. If the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability.*

92 NAC 51-006.02C14 states:

006.02 *General Evaluation Requirements*

006.02C *Verification criteria and procedures:*

006.02C14 *In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each school district or approved cooperative shall:*

006.02C14a *Draw upon information from a variety of*

sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

006.02C14b *Ensure that information obtained from all of these sources is documented and carefully considered.*

92 NAC 51-006.03E2a states:

006.03 *Multidisciplinary Evaluation Team (MDT) Requirements*

006.03E *Multidisciplinary Evaluation Team Written Report (for all suspected disabilities except specific learning disabilities)*

006.03E2 *The report shall include a statement of:*

006.03E2a *Whether the child qualifies as a child with a disability based on the criteria and definition contained in 92 NAC 51-006.04;*

006.03G *For a school-age child who after initial MDT evaluation does not qualify for special education services or for a child with a verified disability who upon reevaluation no longer qualifies for special education services, a problem-solving team shall document a plan to assist the teacher(s) in the provision of regular education.*

92 NAC 51-006.04 states:

006.04 *Eligibility for Special Education*

006.04A *School districts or approved cooperatives shall provide special education services only to children with verified disabilities.*

Allegations/Parent Position

The parents alleged in their June 10, 2024, complaint and during their July 16, 2024, interview with the investigator that the district did not reach the correct decision child's reevaluation and the resulting decisions were not correct because the child has a disability and has medical needs that need to be addressed by special education and related services.

District Response

The district stated in their July 10, 2024, written response and during their July 17, 2024, interview that the MDT team closely considered the three prongs of eligibility in making the decision that while the student was a child with a disability, the student was not in need of special education or related services. They considered both Other Health Impaired and Developmental Delays as eligibility categories for the student. They determined that by reviewing and discussing the MDT findings the student needs general education accommodations and/or modifications as a child with a disability through Section 504 within the educational environment in order to access education. These accommodations and/or modifications may change based on the student's fluctuating health status. The student also needs an IHP to ensure that health needs are met within the educational setting. They state that their offer of additional gross and fine motor testing following the May 8, 2024, MDT meeting was to provide the parents additional assurances of the student's performance. The final MDT report and the two PWNs given to the parent demonstrate the MDT team's careful review of all of this data. The district stated in a July 31, 2024 email with the investigator that they did not consider Orthopedic Impairment since the student's medical diagnoses, physician notes, and evaluation findings did not support this eligibility category.

Investigative Findings

The findings of Issues One and Two are incorporated herein by reference. The finding of Fact 19 shows that the reevaluation was conducted in accordance with Rules 51 and 52. May 24, 2024, PWN records the teams' consideration of the three prongs of the eligibility criteria in making a determination of special education eligibility under the categories of Other Health Impairment and Developmental Delay (Findings of Fact 26 and 27) and found that while the student has a disability the student did not need special education services. Finding of Fact 32 reports that the team did not discuss, nor consider Orthopedic Impairment as an eligibility category for the student. The finding of Fact 26

recorded that the team determined that the student does need to have a 504 plan to address the medical needs and continue the Individualized Health Plan.

Summary and Conclusions

The May 8, 2024, MDT acknowledged that the student has multiple medical diagnoses and continues to be closely monitored by health and medical professionals. It also reports that at the time of the reevaluation, the student was evaluated based upon the plan agreed to by the district and parent. It was found that the MDT team considered Developmental Disability and Other Health Impaired as eligibility categories. The team did not consider Orthopedic Impairment and the evaluation findings and district's explanation support that decision.

Based on the findings of Issues One and Two and the description of the eligibility discussion and determination, the District implemented the requirements of 92 NAC 51-003.08; 92 NAC 51-006.02C14; 92 NAC 51-006.03E2a; 92 NAC 51-006.04A; 92 NAC 006.03G and **no corrective action** is required.

Issue #4

Did the district follow IDEA in regard to school policies for student-specific health procedures? [92 NAC 51-007.07C4a]

92 NAC 51-007.07C4a states:

007.07	<i>IEP Development</i>	
	007.07C	<i>Services</i>
		007.07C4
		<i>The school district or approved cooperative shall take steps including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford each school age child with a verified disability an equal opportunity for participation in those services and activities.</i>
		007.07C4a
		<i>Nonacademic and extra-curricular services and activities may include counseling</i>

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

In the June 10, 2024 complaint, the parents alleged that their request for specific handwashing guidelines recommended by the child's physician was rejected by the district with the explanation that all children in the student's class cannot be expected to follow the guidelines for just one student. Instead, they were told that they would offer hand sanitizer to the child and keep the child's materials separated and sanitized. The parents stated that given the child's susceptibility to illness leading to long-term absences physician recommendation should have been more carefully considered and not dismissed so quickly.

District Response

The district responded during the July 17, 2024, interview and July 10, 2024, written response that there was correspondence between the parents and school nurse regarding the handwashing issue. Initially, on October 25, 2023, the mother sent an email to the school nurse stating that the student's physician requested handwashing for all students upon entry into the classroom to which the district responded that it could not guarantee that every child will always wash his or her hands. However, to accommodate the student's need, the student's Individualized Health Plan was written to state: "[Student] will have access to hand sanitizer throughout [student's] school day. [Student] will be asked and allowed to wash hands upon entering the classroom and before

meal times. [Student] will have access to their own school materials (pencils, markers, crayons, math manipulatives, etc.). Classroom teacher or other adult in the classroom will wipe down Chromebook or iPad before [student's] use." The district stated they received an email from the parent on November 26, 2024, that caused them to believe that the parents agreed with IHP procedures.

Investigative Findings

The findings of Issues One through Three are incorporated herein by reference. The finding of Fact 3 shows that the school nurse sent an email to the parent to discuss medical classroom training and procedures for the student prior to the start of the school year. The finding of Fact 4 shows that the parent requested handwashing practices for all students in the student's class based on the student's physician's recommendation on October 23, 2023. The finding of Fact 31 shows that the district researched this request by reviewing the medical input, reaching out to the physician's office, and district procedures, and talking with other personnel in the district prior to deciding. Findings of Fact 5, 6, 7, 8, and 9 show that the district and parent communicated to agree on handwashing practices in the IHP. The finding of Fact 2 shows that handwashing procedures were not included in the IEP.

Summary and Conclusions

It was found that the handwriting practices were written into the Student's IHP and were not a part of the Student's IEP. It was found that the district followed its procedures when a parent requested a health practice.

Based on the review of the documentation provided by the district and, an interview with the principal and parent, the district implemented the requirements of 92 NAC 51-007.07C4a, and **no corrective action** is required.

Notice to District

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