

## COMPLAINT INVESTIGATION REPORT

**Complaint Number:** 24.25.14  
**Complaint Investigator:** REDACTED  
**Date Complaint Filed:** November 13, 2024  
**Date of Report:** REDACTED

### Introduction

This complaint was filed on behalf of a 7-year-old, who turned 8 just after the date of filing. The Student is currently in first grade, after having repeated kindergarten because the Student's behavior so significantly impacted access to instruction during the first year of kindergarten. The Student was found eligible for special education services as a student with an emotional disturbance at the start of the first year of kindergarten (fall of 2022).

The complaint was filed by the guardian ad litem who represents the Student. The guardian ad litem is involved as the Student has had several out-of-home placements and most recently, was placed in foster care in June of 2024. The Student returned home about the time that this complaint was filed.

The Student was enrolled in the District for both kindergarten years with an IEP and behavior intervention plan that was designed to support classroom behavior. Documents indicate that the Student has a history of disruptive and non-compliant behavior, as well as increasing verbal and physical aggression toward staff and other students, property destruction, and threats to hurt or kill others. In spite of the District's ongoing efforts to meet those needs, the Student's behavior gradually worsened and during the spring of 2024, the Student was receiving 1:1 instruction in the resource classroom with very limited access to peers. During this time, a plan had been designed to return the Student to the less restrictive setting based on behavioral progress, though minimal improvement was observed. In August of 2024 (prior to starting first grade), the IEP team determined that a privately-funded day school environment that specializes in trauma-informed education for children with significant behavioral needs was the most appropriate educational placement to meet the Student's needs.

While in this placement, the Student had two severe behavior incidents that involved punching an adult in the face, sexualized behavior threatening to "hurt" the special education teacher, and "blow up" the school. These behaviors resulted in a change in placement initiated by the IEP team. This change of placement is at the crux of the complaint.

## Issues Investigated

1. Did the School District develop an appropriate IEP that meets the Student's needs including the following:
  - a. Measurable annual goals, including academic and functional goals that meet the child's needs that result from the child's disability, enable the child to make progress in the general education curriculum. [92 NAC 51-007.07A2]
  - b. Special education and related services and supplementary aids and services based on peer-reviewed research and program modifications or supports for school personnel that will enable the child to advance appropriately toward attaining annual goals and progress in the general education curriculum? [92 NAC 51-007.07A5]
  - c. The date for the beginning of the above services and modifications and the anticipated frequency, location, and duration of those services and modifications? [92 NAC 51-007.07A8]
2. Did the District consider the use of positive behavioral interventions and supports and/or other strategies to address challenging behavior? [92 NAC 51-007.07B3]
3. Did the District provide special education and related services to the Student in accordance with the IEP? [92 NAC 51-007.02]
4. Did the District ensure that the Student is being educated in the least restrictive environment? [92 NAC 51-008.01]
5. Did the District follow the required procedures for the change of placement of a student for disciplinary removal? [92 NAC 51-016.01]
6. Did the District ensure that instructional personnel serving the Student hold a valid Nebraska Department of Education certification and endorsement in the assigned area? [92 NAC 51-010.01A]
7. Has the Student been provided a free appropriate public education? [92 NAC 51-004.01]

## Information Reviewed by Investigator

### *From the Complainant*

- Complaint dated November 13, 2024; received by NDE November 15, 2024

### *From the School District*

- Letter of Response dated December 16, 2024; received by NDE December 17, 2024
- Apex Psychological Evaluation dated November 12, 2024
- Munroe-Meyer Psychological Evaluation dated December 2, 2024
- Functional Behavior Assessment dated December 4, 2024

- Behavior Intervention Plans (BIPs) dated November 7, 2023, and January 5, 2024
- Driver's Recounting of October 30 bus incident, dated October 30, 2024
- Daily Notes dated September 13- October 16, some not dated
- Email exchange dated January 6, 2025

*From the School District*

<b>Issue #</b>	<b>Information Requested</b>	<b>Information Received</b>
1, 4, & 6	The Student's most recent MDT	MDT dated September 27, 2022
1, 2, 3, 4, & 6	IEPs developed for the Student during the 2023-24 and 2024-25 school years	IEPs dated: <ul style="list-style-type: none"> <li>• August 7, 2023</li> <li>• November 14, 2023, and</li> <li>• April 11, 2024</li> <li>• August 8, 2024</li> <li>• September 26, 2024</li> <li>• November 7, 2024</li> </ul>
2, 5, & 6	Any discipline and attendance records kept during the 2023-24 and 2024-25 school years	Behavior Logs and video files dated October 30 & November 8, 2024
5	Any documentation of manifestation determinations conducted during the 2023-24 and 2024-25 school years	None
3, 4, 5, & 7	Any Prior Written Notice provided to the parent during the 2023-24 and 2024-25 school years	Prior Written Notices dated: <ul style="list-style-type: none"> <li>• August 7, 2023</li> <li>• November 14, 2023</li> <li>• April 11, 2024</li> <li>• August 8, 2024</li> <li>• September 26, 2024</li> <li>• November 7, 2024</li> </ul>
3 & 6	Service Logs kept for the 2024-25 school year	Daily Journal of Activities for November and December services
6	Evidence of current licensure of the special education provider	Licensure verification for 2 special education teachers and school principal

*Procured by the investigator*

- Student Discipline Act, Neb. Rev. Stat. § 79-254 through 79-296
- School 2024-25 Calendar, found on the District website

## Findings of Fact

1. The Student is verified as a student with an emotional disturbance. (MDT dated September 27, 2022)
2. At the time of the complaint, the Student was considered a state ward in the juvenile court system and the complaint was filed by the Guardian Ad Litem. (Letter of Complaint, dated November 13, 2024)
3. This complaint was received by NDE on November 15, 2024, and therefore, covers the time period from November 16, 2023, through November 15, 2024.

## Issue # 1

Did the District develop an appropriate IEP that meets the Student's needs including the following:

- a. Measurable annual goals, including academic and functional goals that meet the child's needs that result from the child's disability, enable the child to make progress in the general education curriculum.
- b. Special education and related services and supplementary aids and services based on peer-reviewed research and program modifications or supports for school personnel that will enable the child to advance appropriately toward attaining annual goals and progress in the general education curriculum?
- c. The date for the beginning of the above services and modifications and the anticipated frequency, location, and duration of those services and modifications?

92 NAC 51-007.07A states:

007.07A      *The IEP shall include:*

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

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

007.07A2b      *Meet each of the child's other educational*

*needs that result from  
the child's disability*

- 007.07A5      *A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided.*
- 007.07A8      *The projected date for the beginning of the services and modifications described above and the anticipated frequency, location, and duration of those services and modifications*

#### *Allegations*

In the original Complaint, dated November 13, 2024, the Complainant alleges that the Student was only being provided one hour a day of schooling each day, and was not allowing the Student to attend any public setting. This allegation raised the question as to whether the services and placement in the Student's IEP were appropriate.

#### *District Response*

In their Letter of Response, dated December 16th, 2024, the District states, "The District ensured that each IEP in effect during the relevant period included measurable goals designed to meet the Student's needs." The letter goes on to state, "The student's prominent need related to [the Student's] disability is behavioral. Therefore, across all IEPs, there is a focus on addressing behavioral needs through measurable, behavior-based goals. The Student's IEP underwent substantial revision due to the Student's progress and some areas, regression in others, and placement at [day school]. This included input provided by IEP team members, including representatives from [day school]." Finally, the letter states, "The Student IEP provides for several modifications and accommodations to address [the Student] behaviors. Those modifications and accommodations include quiet space, extra time, breaks when needed, specific test areas, positive praise, checks for understanding, behavioral supports, visuals, shortened assignments, and a visual schedule."

The letter goes on to outline that duration, location, and frequency have been well spelled out for the Student's special education services, however, the Student program modifications and accommodations do not include this level of specificity.

#### *Investigative Findings*

- The Student's IEP team convened 4 times in the calendar year covered by this complaint. (IEPs dated April 11, August 8, September 26, and November 7, 2024).
- Each of these IEP meetings resulted in material changes to the Student's IEP based on current data and needs as outlined below:

#### ***IEP dated NOVEMBER 14, 2023***

- This IEP reflected 225 minutes of specialized instruction 4 times each week and 180 minutes once each week in the public school setting, as well as occupational therapy, speech therapy, and mental health counseling services to address the following goals:
  - Behavior Goals targeting safe hands and feet, initiating a break, and using appropriate language, measured using the daily check-in data.
  - Occupational therapy goals address fine motor precision, self-help skills, grip strength, and sensory processing skills with specific benchmarks for each.
  - Reading goal targeting correct letter sounds for both lowercase and capital letters using teacher observation and oral performance as the evaluation instrument.
  - Social goal promoting participation in turn-taking activities in a small group for 20 minutes at a time, as measured by teacher observation.
  - Math goal targeting counting and writing numbers to 100 measured by teacher observation, written and oral performance.
- This IEP also outlines a daily check-in system, which involves the Student's behavior being rated in 30-minute increments. Rating scales focused specifically on target behaviors (Safe hands and feet, access a break or go to calm down space, appropriate language to request help or initiate interactions with others). (IEP dated April 11, 2024)

- With regard to Program Modifications and Accommodations, 10 were listed with no specific information regarding duration, location, or frequency.

***IEP dated APRIL 11, 2024***

- The April 11 IEP meeting was convened because “[The Student's] behaviors have been increasing for some time... the team felt that it was necessary to meet and discuss the LRE for [the Student].” During the meeting “it was determined that a one-on-one classroom would be appropriate for [the Student] for [the Student's] safety and the safety of the adults in the building. A plan was put into place for how [the Student] would reenter the classroom and the order of the classes.” (Prior Written Notice dated April 11, 2024)
- This amended IEP provided 515 minutes each week of specialized instruction in a “separate school” which is how the 1:1 instructional placement was captured. (IEP dated April 11, 2024)
- The goals remained the same as in the previous IEP. (IEP dated April 11, 2024)
- This IEP also outlines a daily check-in system, which involves the Student's behavior being rated in 30-minute increments. Rating scales focused specifically on target behaviors (Safe hands and feet, access a break or go to calm down space, appropriate language to request help or initiate interactions with others). (IEP dated April 11, 2024)
- The behavior plan also included a data-based plan for returning to the less restrictive environment including appropriate behavior for 3 days in a row (1s or 2s on the behavior chart) meant that the Student would earn back 1 class period. “If the Student receives 0s on the behavior chart or shows any extreme behavior, the Student will start over for that class period.” (IEP dated April 11, 2024)
- The same accommodations and modifications were included in the previous IEP.

***IEP dated AUGUST 8, 2024***

- The August 8 IEP meeting resulted in a change of placement to a third-party provider. The Prior Written Notice indicates, “[the Student] will have the opportunity to continue to receive [the Student's] current services while at the day school. A new IEP will be written in cooperation with [third party provider] staff to update goals and service time accordingly when their staff has had the

opportunity to get to know [the Student] and assess [the Student's] current skills." (Prior Written Notice dated August 8, 2024)

- The goals and services remained the same pending revision as described above.

***IEP dated SEPTEMBER 26, 2024***

- The September 26 IEP meeting included the original IEP team from the District, including the Parents, as well as staff from the day school. The team agreed that the most prominent concern at that time was the Student's behavior, and amended the IEP goals and services to address only behavior needs. Additionally, because the Student had met math and reading goals, these goals were removed from the IEP. The resulting IEP includes four behaviorally focused goals, which are described below. (Prior Written Notice and IEP dated September 26, 2024)
- Services from this IEP indicated 1800 minutes each week of specialized instruction in a "separate school" setting. (IEP dated September 26, 2024)
- The goals of this IEP are as follows: (IEP dated September 26, 2024)
  - A social skills goal targeting relationships with adults (following directions, accepting feedback, accepting, "no," appropriate language, gestures, and facial expressions) measured on a daily point card
  - A social skills goal targeting peer relationships (swearing, language, voice, comments, bullying/threatening, arguing, inappropriate gestures or facial expression) measured on a daily point card
  - A goal targeting classroom behaviors (interrupting, having permission, noise/rowdiness, not attending to classwork, homework, carelessness of materials) measured on a daily point card
  - A goal targeting following rules and expectations as measured on a daily point card
- This IEP includes 11 program modifications and accommodations with no specific information regarding duration, location, or frequency.

***IEP dated NOVEMBER 7, 2024***

- Finally, a Prior Written Notice dated November 7 reads, "[the Student] is on an emergency exclusion from [day school] until the



team has the results of [the Student's] psychological evaluation in order to create a plan for how to better serve [the Student's] needs in terms of [sic] behavior and the safety of staff and peers. While excluded from school, [the Student] may receive compensatory services related to the behavior goals of [the] IEP at a neutral location for 1 hour per day, 5 days per week, when school is in session." (Prior Written Notice dated November 7, 2024)

- This IEP reflects 300 minutes per week of specialized instruction in a "separate school" location. (IEP dated November 7, 2024)
- Goals and accommodations/modifications remained the same in this IEP

### *Summary and Conclusions*

There are three parts to this issue, each of which will be addressed individually. First, it is clear that the District made repeated efforts to amend the IEP goals to reflect the Student's most significant needs. The change to the goals that were made in September shifted the focus of specialized instruction to the Student's behavior, which was the primary factor limiting the Student's access both to academic instruction as well as to a less restrictive educational setting. As the needs of the child appeared to change, the District responded by convening the IEP team and changing the IEP goals.

Second, and similar to the above discussion regarding goals, the findings reflect the District's responsiveness to the Student's changing needs related to special education and related services. The Student's services (both time and content) and placement were both changed 4 different times, each time becoming increasingly more restrictive based on the Student's behavior. The IEPs also included a detailed behavior intervention plan and a list of accommodations and modifications.

The third and final part of this issue is whether or not the IEP includes "the anticipated frequency, location, and duration" of the services and modifications listed in the IEP. Each IEP includes detailed information related to special education and related services, though the accommodations and modifications lack specificity in this regard. The IEP does not make clear the circumstances under which the Student would need the modifications listed.

Based on the above, the District implemented the requirements of 92 NAC 51-007.07A2 and 007.07A5 but failed to fully implement the requirements of 92 NAC 51-007.07A8. Thus, the following **corrective action is required**.

### *Corrective Action*

Reconvene the IEP

1. By January 24, 2025, the District must reconvene the Student's IEP Team and consider each individual program accommodation, modification, or supports for school personnel and the specific circumstances under which each may be needed. The IEP should be amended to include the anticipated frequency, location, and duration of each individual accommodation, modification, or support.
  - a. The IEP must be provided to NDE within 2 business days of the meeting to verify correction.
  - b. On or before October 1, 2025, NDE will request copies of 3 students' IEPs to ensure program accommodations, modifications, and/or supports for school personnel including frequency, location, and duration.

#### Training

1. By March 14, 2025, the district must develop and provide training to all staff serving students with disabilities regarding the requirement for frequency, location, and duration specifiers for accommodations, modifications, and/or supports for school personnel within the IEP.
  - a. The training must be approved by the NDE Office of Special Education two calendar weeks prior to the training.
  - b. The school district must provide NDE with copies of the participant sign-in sheets or other evidence of attendance, the business day following the conclusion of training.

#### Issue # 2

Did the District consider the use of positive behavioral interventions and supports and/or other strategies to address challenging behavior?

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.*

#### Allegations

The Letter of Complaint, dated November 13, 2024, does not raise the issue of positive behavior supports, though because the Complainant alleged that the Student had not been allowed to attend school due to behavior, the Investigator believed it warranted to ensure that positive behavior supports were being used to support appropriate behaviors prior to any change of placement.

### *District Response*

In their Letter of Response, the District outlines the functional behavior assessments and behavior intervention plans and supports throughout the last two school years that have been attempted to address the student's behaviors based on each individual setting. Behavior goals have always been included and the impact of the student's behavior is discussed in each IEP within the present levels of academic achievement and functional performance.

### *Investigative Findings*

- There are two behavior intervention plans (BIPs) that were developed during the year that this complaint investigation covers. (BIPs dated November 7, 2023, and January 5, 2024)
- Both BIPs include specific prevention strategies, skills to be taught, response strategies, and behavior goal scaling. The plan also includes specific skills being taught through social skills training. Neither plan includes any specific reinforcement strategies. (BIPs dated November 7, 2023, and January 5, 2024)
- Once the Student was placed at the day school, daily notes were provided that outlined what had gone well and any concerns throughout the day. (Daily Notes dated September 13- October 16, some not dated)
- Notes about the IEP meeting further indicate the use of a tiered daily point system to provide positive reinforcement as a form of behavior support. (Email exchange dated January 6, 2025)

### *Summary and Conclusions*

The Student's behavior has been a primary focus of the IEP throughout the Student's education. The District has repeatedly taken steps to understand and respond to the Student's behavior according to best practices. There is evidence of both antecedent and consequence strategies used for this purpose across settings, and once the student was in the day school placement, there was a clear behavior system linked to incentives to promote positive behavior.

Based on these elements of the student's IEP and behavior plan, the District implemented the requirements of 92 NAC 51- 007.07B3, and **no corrective action** is required.

### **Issue # 3**

Did the District provide special education and related services to the Student in accordance with the IEP?

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.*

### *Allegations*

Like previous issues, while there were no concerns directly alleging that IEP services had not been provided, the fact that the Complaint dated November 13, 2024, raised concern about limited services being provided begged the question as to what the IEP included with regard to services and what had actually been provided.

### *District Response*

In their letter of response, dated December 16, 2024, the District outlines the quick actions taken to ensure that the student continues to receive special education and related services in spite of the day school's decision to exclude. The letter goes on to explain the circumstances around each day of attendance in the time period in question. Details are provided below.

### *Investigative Findings*

- The day school where the student was attending documented a serious behavior incident on October 30, 2024, when the Student twice threatened to “blow up” the school and stated that he would “punch [the] teachers in the [expletive] face.” (Driver’s Recounting of October 30 bus incident, dated October 30, 2024)
- In considering this incident along with a number of other significant (several sexualized) behaviors, the day school elected to exclude the student from their setting pending evaluation and the development of a safety plan. (Letter of Response dated December 16, 2024)
- The Student was excluded from the day school beginning November 1. (Letter of Response dated December 16, 2024, and Independent Evaluator 2 Report, dated December 2, 2024)
- The Student was already scheduled for evaluation through Independent Evaluator 1 in mid-November and Independent Evaluator 2 in early December. (Letter of Response dated December 16, 2024)
- The school was not in session on November 1, 2024. (School 2024-25 Calendar)
- The Parent, Guardian ad litem and some members of the IEP team met on November 4 & 5 to discuss the Student’s return and how best to provide services. (Letter of Response dated December 16, 2024)
- The District held an IEP meeting on November 7, 2024, to discuss services and placement during the period that evaluations were pending. The team questioned whether the Student could tolerate even an hour of

instruction at that point. At this meeting, it was determined that the Student would receive 1 hour each day at a community location (not District property) in an effort to ensure the Student's safety and that of other students and staff. (Letter of Response dated December 16, 2024, and Prior Written Notice dated November 7, 2024)

- The Student resumed services according to the new IEP on November 8, and had another serious incident, including threatening to harm a specific staff member, as well as pushing furniture, throwing objects, and running. Ultimately, law enforcement was called. (Incident Description dated November 8, 2024).
- Following the weekend (November 9 & 10), the guardian ad litem suggested no services be provided until the Student's family support worker could be in attendance. The Student had outside appointments on November 12 & 13 and was unable to attend services with the District. (Letter of Response dated December 16, 2024)
- Services resumed on November 14 and were delivered daily. (Letter of Response dated December 16, 2024)

#### *Summary and Conclusions*

The complaint appears to be focused on the short time between November 1, after the Student was excluded from the private day school placement until November 15, the date that the complaint was filed. When the IEP that had been developed for the day school placement could not be implemented, the District called several meetings in an effort to resolve this issue. After 2 days of smaller meetings, they held an IEP meeting to amend the IEP. The student missed 4 days of school awaiting this meeting. The District was willing and able to provide the agreed-upon services the next day. The District's response was fast, and flexible, and considered the input of all stakeholders in this process.

Based on the District's swift and thorough attempts to amend the Student's IEP, considering the Student's needs and the safety concerns that emerged, and to implement that IEP, the District implemented the requirements of 92 NAC 51-007.02, and **no corrective action** is required.

#### **Issue #4**

Did the District ensure that the Student is being educated in the least restrictive environment?

92 NAC 51-008.01 states:

008.01        *Least Restrictive Environment*

008.01A      *The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or non-public schools and approved service agencies, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education and regular classes with the use of supplementary aids and services cannot be achieved satisfactory.*

#### *Allegations/Parent Position*

In the letter of complaint dated November 13, 2024, the complainant states that the district and day school are, "refusing to allow [the Student] to attend school at either [the District], or [the day school]. This is over the objection of guardian ad litem, dad, and DHHS." The proposed resolution is that the Student be allowed to attend school at the District.

#### *District Response*

The District has kept data across settings indicating that current attendance in a public school setting is not appropriate for the Student or peers. The District alleges that the suggested resolution, "ignores that mainstreaming at this time for the Student cannot be, 'achieved satisfactorily.'"

#### *Investigative Findings*

- As outlined in the findings for Issue #1, from November 14, 2023, through November 7, 2024, the IEP team changed the Student's placement four different times. (see Investigative Findings Issue #1)
- As further described in the findings for Issue #1, each of these changes of placement was the result of severe behavior and/or a lack of progress on IEP goals, suggesting the student needed more intensive services. (see Investigative Findings Issue #1)

#### *Summary and Conclusions*

The findings from Issue #1 outline the District's ongoing attempts to consider the student's least restrictive environment while also considering the educational needs and safety of the student and peers. Their efforts demonstrate a systematic change of placements that thoughtfully moved across a continuum toward the current highly restrictive placement. The District has also

demonstrated its willingness to consider a less restrictive placement as soon as such a change can be implemented successfully.

Based on the above, the District implemented the requirements of 92 NAC 51-008.01, and **no corrective action** is required.

#### **Issue # 5**

Did the District follow the required procedures for the change of placement of a student for disciplinary removal?

92 NAC 51-016.01 states:

016.01      *Change of Placement for Disciplinary Removals*

016.01A      *For the purpose removals of a child with a disability from the child's current educational placement under Section 016, a change of placement occurs if:*

016.01A1      *The removal is for more than 10 consecutive school days; or*

016.01A2      *The child is subjected to a series of removals that constitute a pattern:*

016.01A1a      *Because the series of removals total more than 10 school days in a school year;*

016.01A1b      *Because the child's behavior is substantially similar to the child's behavior in previous incident that resulted in the series of removals; and*

016.01A1c      *Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the*

removals to one another.

#### *Allegations/Parent Position*

The Letter of Complaint dated November 13, 2024, raised concerns about the Student not being provided services due to serious behavior. The Investigator chose to include this issue to ensure that any discipline related to the Student's behavior was subject to the discipline procedures outlined in the IDEA.

#### *District Response*

In their letter of response, dated December 16, 2024, the district posits that, "at no point has the District proposed a disciplinary removal. The **pause on attendance** at [day school] was not a disciplinary removal, nor was it proposed by the District."

#### *Investigative Findings*

- Nebraska's Student Discipline Act states, "Any student may be excluded from school in the following circumstances... if the student conduct presents a clear threat to the physical safety of himself, herself, or others, or is so extremely disruptive as to make temporary removal necessary to preserve the rights of other students to pursue an education." (Student Discipline Act, Neb. Rev. Stat. § 79-254 through 79-296)
- The Student had a significant behavior incident on October 30, 2024. This incident involved a threat to blow up the school as well as to "punch his teachers in the [expletive] face." (Driver's Recounting of October 30 bus incident, dated October 30, 2024)
- The Student was excluded from the day school two days subsequent to this incident. (Letter of Response dated December 16, 2024)
- The District presented a new offer of FAPE in a more restrictive environment on November 7, 2024, after collaborating with the Parent and other stakeholders to consider options. (Letter of Response dated December 16, 2024)
- School was not in session in the District on November 1, 2024. (School 2024-25 Calendar, found on the District website)

#### *Summary and Conclusions*

The District's conclusion that the behavior incident in question did not result in disciplinary action is patently false. It is clear that the behavior incident falls in the category of conduct and discipline. Simply referring to the response as a "pause in attendance" does not change the disciplinary nature of the day school and the District's response. That said, the District took quick action to problem-solve, and the Student ultimately missed four days of school before a



new IEP was developed. The IEP team together determined a change of placement was appropriate during the November 7 meeting. As a result, the disciplinary action does not meet the requirements outlined in this rule of 10 or more consecutive school days or a pattern of exclusion.

Based on the limited amount of school missed, and the District's quick and thorough actions to develop a new IEP, the District implemented the requirements of 92 NAC 51- 51-016.01, and **no corrective action** is required.

#### **Issue # 6**

Did the District ensure that instructional personnel serving the Student hold a valid Nebraska Department of Education certification and endorsement in the assigned area?

92 NAC 51-010.01 states:

- 010.01A *Instructional personnel shall hold valid Nebraska department of education certification, be endorsed in the assigned area. Instructional personnel may serve children with visual impairments and children with hearing impairments in a multi categorical program if the instructional personnel have attended training approved by the department of education or have received consultation from an individual endorse in the area of visual hearing impairments this section does not apply to individuals providing in service.*
- 010.01B *Each person employed as a special education teacher who teaches elementary school, middle school, or secondary school Shelby a teacher meeting IDEA 2004 criteria as defined in 92 NAC 51 –003.62.*

#### *Allegations*

The letter of complaint dated November 15, 2024, alleges that the student had had only one meeting for services and that services were provided by the school principal.

#### *District Response*

Since the student was excluded from the day school, there were three providers who provided services. Most services were provided by the Student's special education teacher, though due to illness, the school principal implemented instruction designed and supervised by the special education teacher for a few days in late November.

### *Investigative Findings*

- During the 2023–24 school year, the Student's special education teacher was endorsed and certified by NDE. A new special education teacher was assigned by the district during the current school year. (Licensure verification for 2 special education teachers)
- The school principal is also appropriately endorsed by NDE (Licensure verification for school principals)
- All specialized instruction delivered in the one-to-one setting during the current school year was designed by the current special education teacher. (Letter of Response dated December 16, 2024)
- Due to the teacher's illness, the school principal met with the student and delivered the services designed by the teacher on November 18, 19th, and 20th, 2024. (Letter of Response dated December 16, 2024)

### *Summary and Conclusions*

The Student services provided between November 8 and December 15 were all designed and delivered or supervised by appropriately trained and endorsed staff. It is also noted that the district made efforts to ensure that services were delivered by adults who know the student and understand the specific behavioral needs involved. The school principal has a long history with both the Student and the family and therefore was a strong alternative when the teacher was out sick.

Based on evidence of licensure and endorsement, the District implemented the requirements of 92 NAC 51-010.01, and **no corrective action** is required.

### **Issue # 7**

Did The District provide the Student with a free appropriate public education?

92 NAC 51-004.01 states:

004.01      *...School district and approved cooperatives shall ensure that all children with verified disabilities, from birth through the school year in which the child reaches age 21, 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 district and approved cooperatives responsibility to ensure the availability of FAPE includes ensuring the availability of FAPE for resident children and detention facilities, correctional facilities, jails, and prisons.*

### *Allegations/Parent Position*

The issue of FAPE was not specifically raised by the Complainant, however considering the allegations in the complaint, the Investigator elected to consider whether or not the allegations may have resulted in a denial of FAPE.

### *District Response*

In their Letter of Response dated December 16, 2024, the District outlines their documentation demonstrating that "the Student requires a limited amount of daily service time to build [Student's] tolerance to instruction and curb maladaptive behaviors. The District has continued to provide the Student with FAPE in light of [the Student's] circumstances. The District has offered instruction to develop positive behavioral skills and continues to provide the Student with access to academic content."

### *Investigative Findings*

See investigative findings from Issues #1 –6.

### *Summary and Conclusions*

This issue provides an opportunity to review the District's actions throughout the last calendar year when considering the needs of the Students and the services provided. While it is clear that the Student has struggled to benefit from education over the course of the year, this has not been a result of the District's failure to design an appropriate IEP and deliver services that were aimed at meeting the Student's needs.

As a result, it is determined that the District implemented the requirements of 92 NAC 51- 004.01, and **no corrective action** is required.

### **Notice to District**

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

Mary Lenser, Complaint Specialist  
Sharon Heater, Complaint Specialist  
NDE Office of Special Education  
[nde.speddr@nebraska.gov](mailto:nde.speddr@nebraska.gov)