

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

[REDACTED])	
Father of [REDACTED])	CASE NO. 25-01 SE
[REDACTED])	
[REDACTED])	
)	
Petitioner,)	
)	FINAL ORDER & DECISION
v.)	
)	
MILLARD PUBLIC SCHOOLS)	
5606 South 147 th Street)	
Omaha, NE 68137)	
)	
Respondent.)	

This matter came on for final hearing at 9 a.m. on June 4, 2025, in Omaha, Nebraska before the undersigned hearing officer, Robert F. Bartle. Petitioner [REDACTED] [REDACTED] appeared personally and on behalf of his [REDACTED], and proceeded *pro se*. Millard Public Schools appeared through its attorneys, Duncan A. Young and Jeff C. Miller. The matter was recorded throughout by Thomas & Thomas Court Reporting.

In presenting the Petitioner's case, Exhibits 1 through 17, inclusive, were offered and received. Petitioner [REDACTED] testified on his behalf and on behalf of his [REDACTED]. Petitioner rested. Following that rest, Respondent's Exhibits 30 through 69 were offered and received. The following four witnesses testified on behalf of the Respondent, as follows: Kelli Krause, Wendy Wight, Kaye Schweigert, and Ted Esser. Respondent rested. No further testimony was offered or received by the parties and a post-hearing final argument briefing schedule was established.

Final written arguments and briefs were received from both parties on July 16, 2025, and the matter was deemed fully submitted to the undersigned for decision.

ISSUES PRESENTED

By way of the Petition and Answer filed in this case, the following issues were presented to me for decision:

1. Did Respondent comply with the process and procedural requirements of Title 92, Nebraska Administrative Code, Chapter 51, by way of the IEP team processes and the decision concerning the change of placement of [REDACTED] (hereafter [REDACTED]) from the alternative curriculum program at Beadle Middle School to a Level 3 educational facility at Milestones/Veritas Community Services.

2. Concerning Petitioner's claim of procedural violations, or claim of procedural misconduct, pursuant to Title 92, Nebraska Administrative Code, was there any impediment to [REDACTED] right to a free and appropriate public education, or any significant impediment to the parents' opportunity in the decision-making process regarding the provision of a free and appropriate education for [REDACTED]

3. Did the Respondent school district remediate any lapse in occupational therapy services or speech and language services which may have occurred after [REDACTED] placement at the Milestones/Veritas Community Services which Respondent implemented and provided by way of compensatory services to address and fulfill any missed time for such service, or any other action or decision impacting a free and appropriate public education.

4. Is the placement of ██████ at the Milestones/Veritas Community Services an appropriate program for ██████, as a program designed for students █ years of age and older, despite ██████ reaching only the age of █ at the time of the placement at said school.

From the testimony provided by way of the hearing witnesses and the exhibits received, I find the following facts established from the evidence provided by the parties in this case.

FINDINGS OF FACT

1. ██████ (hereinafter "█████") is an enrolled student with the Millard Public School District and █ current placement is with Milestones/Veritas Community Services. (Ex. 2, Ex. 3)

2. ██████ previous placement was in the Millard Public School District's alternative curriculum program at Beadle Middle School. (Ex. 2)

3. ██████ was first enrolled with the Respondent on or about August 10, 2022, as a █ grade student at Beadle Middle School in the alternative curriculum program after transferring from the Westside School District. (Ex. 3, Ex. 30, Ex. 37)

4. The Respondent implemented ██████ IEP from the Westside School District while informally assessing ██████ educational and behavioral needs and convened his IEP team on September 1, 2022 to implement an IEP for ██████ for the 2022-2023 school year. (Ex. 30, Ex.37)

5. For the start of the 2023-2024 school year ██████ was in the █ grade in the alternative curriculum program at Beadle Middle School. (Ex. 54)

6. ██████ verified disability for special education is ██████. ██████ is essentially dependent on another person at all times and is primarily non-verbal and requires assistance with toileting needs and other activities of daily living. ██████ was able to remove his coat and backpack without assistance, but he required assistance from the Beadle Middle School staff for most all other activities. (Ex. 56; Tr: pg. 114 line 2 through pg. 115 line 22)

7. Beadle Middle School enrolls about one thousand students and employs ninety staff members. It is a large environment with bells used for passing periods, crowd noises and commotion, including students using the hallways between passing periods. (Tr: pg. 126 line 17 through pg. 127 line 3; pg. 157 line 21 through line 24; pg. 237 line 19 through line 25)

8. The classroom for the alternative curriculum program at Beadle Middle School had a teacher, two paraprofessionals, three nurses, and six students including ██████. Three of those students had multiple needs and impairments which were medical in nature. (Tr: pg. 97 line 9 through line 19; Ex. 56)

9. In the alternative curriculum program classroom, ██████ was always placed one-to-one with an adult, and for ninety percent of the time, there were two adults assisting ██████. On occasions, ██████ behavior would require reallocation of program staff from other students to maintain safety. This would impact the instruction for other students at this school. (Ex. 56)

10. ██████ special need behaviors in the alternative curriculum program classroom included such things as climbing on chairs and desks, scratching, hair-pulling, and occasionally hitting staff and other students. There was evidence of ██████ grabbing female staff members in a sexually inappropriate manner, engaging in self-stimulation by grabbing and holding ██████ in the classroom setting, occasionally hitting ██████, putting too much food in ██████ mouth when eating causing ██████ to gag or choke, plopping (sitting) on the floor and reacting to any form of transition or changes in staff or students or external sounds in the environment. (Ex. 56; Tr: pg. 110 line 15 through pg. 111 line 25)

11. On occasion, ██████ could become dysregulated in response to certain events in the Beadle Middle School and alternative curriculum program classroom environments. Triggering events included students being loud or crying, passing period bells, students passing in the hallway, students or staff coming into and going out of the classroom, stopping a favored activity, or when task demands were put on him. (Tr: pg. 97 line 24 through pg. 98 line 9; pg. 100 line 19 through pg. 101 line 5; pg. 103 line 13 through line 17; pg. 111 line 16 through line 19; pg. 121 line 1 through line 7; pg. 157 line 20 through line 24; pg. 237 line 19 through line 25)

12. When ██████ was dysregulated, ██████ could not manage ██████ emotions and behaviors and ██████ would disengage from the educational instruction that was being provided. When these events happened, ██████ was not learning. (Tr: pg. 160 line 8 through line 12; pg. 212 line 12 through line 20; pg. 238 line 1 through line 3; pg. 244 line 7 through line 12; pg. 253 line 13 through line 15; pg. 254 line 9 through line 11)

13. There were multiple instances when ██████ was dysregulated that school administrators and a behavior interventionist were called to the alternative curriculum program classroom to help and provide support. (Tr: pg. 108 line 9 through line 23)

14. The IEP team met in August of 2023 with Petitioner in attendance and participating, to conduct an annual review of ██████ IEP, ████ Positive Behavior intervention Plan (PBIP), and ████ Functional Behavior Assessment (FBA) to better align the plan with the behaviors being demonstrated, and further plan for ██████ ongoing needs. As a result of the review, changes were made to ██████ IEP to increase supervision and support throughout the school day including providing one-to-one support to address ██████ behavioral, sensory, and personal care needs. (Ex. 30, Ex. 46, Ex. 47; Tr: pg. 111 line 16 through pg. 113 line 3)

15. In September of 2023, a progress report based on IEP goals (Ex. 50, Ex. 51) was issued by Respondent and showed a lack of progress on the identified goals and upon the start of ██████ grade there was an increase in concerning behaviors, including physical aggression, inappropriate touching and grabbing of staff, and a significant physical incident involving a teacher that required medical care for the teacher and which resulted in a prolonged absence of the teacher. The report was later updated in November 2023. (Ex. 50, Ex. 51, Ex. 46, Ex. 47)

16. In early October, 2023, there were at least fifteen incidents of aggressive behavior per day by ██████ when ████ had insufficient progress on ████ IEP goals. ████ behavioral issues were hampering ████ ability to receive educational services and the

frequency of various triggers and interruptions increased behavioral issues which further depriving ██████ from receiving educational services and endangered ██████ safety and well-being as well as the safety and well-being of other students and staff in the area. (Tr: pg. 112 line 13 through line 18; pg. 129 line 19 through pg. 130 line 1; Ex. 56) The research-based or evidence-based strategies, which were implemented to keep ██████ regulated so ██████ could learn and grow, were exhausted. (Tr: pg. 129 line 10 through line 18; pg. 167 line 17 through pg. 168 line 5)

17. ██████ lack of progress on IEP goals, personal care needs, distractions and triggers to behavior that existed in the school environment, including increasing physical aggressive behaviors, inappropriate touching and grabbing of staff, and the physical incident involving a teacher that required medical care and a prolonged absence of the teacher, indicated the need for a smaller structured educational setting with a lower student-to-staff ratio and more intensive support. (Tr: pg. 112 line 19 through pg. 113 line 25; pg. 126 line 8 through pg. 127 line 15)

18. In October, 2023, after ongoing communications with ██████ parents regarding ██████ increased physical behavior (Tr: pg. 109 line 23 through pg. 111 line 25; Ex. 60), the case manager and the program facilitator began exploring Level 3 placement options within the Respondent's continuum of services, including Brook Valley, Prime Home DDS, and Milestones/Veritas Community Services. (Tr: pg. 137 line 15 through pg. 140 line 15)

19. At the IEP team meeting on October 20, 2023, with the Petitioner attending and participating via Zoom, the IEP team discussed concerns regarding ██████ current educational placement, lack of progress, and Level 3 placement options. The IEP team determined that the most appropriate and least restrictive placement for ██████ was a Level 3 setting that had a lower student-to-staff ratio and more controlled environment with less distractions and triggers. Petitioner did not object to the decision for a change in placement. (Ex. 40)

20. Petitioner attended and participated in the October 20, 2023 IEP team meeting and subsequently toured two of the three Level 3 placement options identified by the program facilitator. Petitioner personally communicated with the staff of the Level 3 facilities about ██████ transition to the new placement following the October 20, 2023 IEP team meeting and personally selected Veritas for his ██████ placement. ██████ parents, including Petitioner, received a copy of the Prior Written Notice relating to the change of placement on or before November 9, 2023, and the change of placement to Veritas took place on November 13, 2023 with ██████ being personally transported to Veritas by Petitioner. (Ex. 56; Tr: pg. 127 line 16 through pg. 128 line 25; pg. 188 line 4 through pg. 192 line 22)

21. For the 2024-2025 school year, ██████ continued to attend Veritas Community Services as an ██████ grade student. (Ex. 34, Ex. 35, Ex. 36)

22. Beginning with ██████ enrollment in the fall of 2022, the District formed ██████ IEP team which included ██████ parents. That IEP team convened multiple

team meetings to review ■ progress, update ■ goals and determine appropriate support, considered multiple proposals, and determined appropriate support before proposing and making any changes to ■ IEP including the decision on the change of placement. (Ex. 30, Ex. 31, Ex. 37, Ex. 38, Ex.39,Ex.40,Ex.43,Ex.44,Ex.45,Ex.47-51)

23. There was no evidence presented at this hearing that the District or ■ IEP team made any statements to ■ parents with the intent of misleading ■ parents on any matters relating to the IEP team meetings.

24. There appeared to be continuous communication from ■ classroom teacher to update ■ parents on ■ classroom status. (Ex. 56, Tr: 109 line 23 through pg. 111 line 19)

25. The email of October 16, 2023 and the meeting notice of October 19, 2023 provided notice to the parents of ■ relating to the IEP team meeting on October 20, 2023. There is no evidence of any intent to mislead ■ parents relating to that meeting. (Ex.45, Ex. 60)

26. There was no evidence presented to support the allegation that the IEP team had predetermined the change of placement for ■ without ■ parent's participation prior to the IEP team meeting of October 20, 2023. 27. At the October 20, 2023 IEP team meeting, the IEP team, including the Petitioner, reviewed ■ situation, lack of progress toward ■ goals, and the possibility of changing ■ placement to a Level 3 facility. (Ex. 60, Tr: pg. 117 line 15 through pg. 127 line 15)

28. Petitioner was present and participated in the IEP team meeting on October 20, 2023 and he did not express any objection or resist the change of placement for [REDACTED]. (Ex. 56, Tr: pg. 66 line 23 through pg. 67 line 25)

29. The Millard School District and its employees engaged in a variety of strategies based upon research-based and evidence-based practices to address the reasons for [REDACTED] lack of progress on [REDACTED] goals. (Tr: pg. 164 line 5 through pg. 165 line 11; pg. 129 line 10 through pg. 131 line 2)

30. The Millard School District and members of the IEP team collaborated with contracted service agencies under the District's established contracts with licensed Level 3 facilities approved by the NDE and pursuant to Chapter 51-009.0312 and 34 C.F.R. 99.3 I(a)(l)(i)(B). Such communications and disclosure of personally identifiable information and student records was permitted by Chapter 51-009.01.

31. The agencies approved by the Nebraska Department of Education and contracted with the Millard School District for educational services acted as school district officials, maintaining confidentiality and were part of the District's continuum of services. (Ex. 61, Tr: 191 line 1 through 25; pg. 227 line 16 through pg. 228 line 25; pg. 188 line 11 through pg. 191 line 25)

32. [REDACTED] classroom teacher and case manager followed a consistent routine to send all written communications to [REDACTED] parents by putting the written materials in an envelope marked confidential and placed it in the backpack of [REDACTED]. The classroom teacher, Robin McKenzie, did this with the Prior Written Notice for the

October 20, 2023 IEP team meeting on or before November 9, 2023 in advance of the change of placement on November 13, 2023. This method of communication was followed beginning with ██████ enrollment in August of 2022 through November 2023 and provided for the communications to reach ██████ parents. The Prior Written Notice of October 20, 2023 was delivered to the parents of ██████ in the same manner that had been utilized successfully in this case. The Prior Written Notice for the meeting on October 20, 2023 was delivered and received by ██████ parents. (Ex. 56, Tr: pg. 127 line 16 through pg. 128 line 25)

33. The Prior Written Notice given in this case was complete and apparently complied with Chapter 51-009.05. It provided ██████ parents with a description of the actions proposed or refused by the IEP team; an explanation of why the IEP team approved or refused to take proposed action; a description of other options considered by the IEP team and the reasons for the rejection; a description of each evaluation, procedure, assessment, record, and report used as the basis for the proposal or refusal; and a description of any other factor relevant to the IEP team's determination. (Tr: pg. 218 line 4 through line 25)

34. The Millard School District routinely provided Prior Written Notices to ██████ parents after each IEP team meeting in compliance with Chapter 51-009. 0 5. (Ex. 3 7, Ex. 38,Ex.39,Ex.40,Ex. 56)

35. ██████ placement change occurred on November 13, 2023, upon ██████ enrollment in Veritas and ██████ attendance on that date. (Ex. 56; Tr: pg. 263 line 7 through line 17)

36. The evidence established that, at all meetings, the progress, lack of progress, and ██████ situation was discussed by the IEP team and that the teacher shared her assessment of ██████ progress and any other issues brought forward. (Tr: pg. 117 line 21 through pg. 119 line 16; pg. 121 line 7 through pg. 124 line 8)

37. The Level 3 program at Veritas was an appropriate program that was licensed and approved by the NDE for special needs students including ██████. The age of ██████ was not a restriction or a limitation for Veritas recognized by the NDE. (Tr: pg. 239 line 2 through pg. 241 line 7)

38. Veritas is an NDE approved Level 3 facility with facilities and licensed personnel qualified and able to provide the necessary and required services to ██████. (Tr: pg. 188 line 14 through pg. 191 line 7; pg. 223 line 11 through pg. 226 line 10)

39. ██████ has shown progress and levels of achievement toward ██████ goals since ██████ enrollment at Veritas. (Tr: pg. 196 line 2 through pg. 197 line 3)

40. The placement of ██████ at Veritas was for educational purposes, to allow ██████ to progress toward ██████ educational goals because of less environmental interference, less triggers, and to provide more supervision, and was not for disciplinary

reasons. (Tr: pg. 167 line 8 through pg. 168 line 25; pg. 169 line 1 through pg. 170 line 22; pg. 126 line 8 through pg. 127 line 15; pg. 129 line 10 through pg. 131 line 2)

41. The services required by the IEP for ██████ during November 13, 2023 through March 1, 2024 required certain ancillary and related services to be provided to ██████. Some of those services were not provided as required by the IEP, however, a letter dated May 30, 2025 from the Nebraska Department of Education Office of Special Education (Ex. 69) confirms that the Millard School District provided compensatory services and that "the District has corrected the identified non-compliance and is now in compliance with State and Federal regulations." (Tr: pg. 237 line 4 through pg. 238 line 23; Ex. 69)

42. The District has provided all mandated services, specifically occupational therapy and speech and language services from November 13, 2023 through March 1, 2024 as required by the IEP for ██████. (Ex. 69; Tr: pg. 237 line 4 through pg. 238 line 23) 1944. There is no factual dispute that all such compensatory services have been provided as set forth by the IEP team and NDE report. (Tr: pg. 237 line 4 through pg. 238 line 23)

43. The change of placement was not related to disciplinary action and therefore a manifestation determination review was not required. The change of placement was based on the educational needs of ██████. (Tr: pg. 237 line 4 through pg. 238 line 23)

44. The manifestation determination process did not apply in this situation because ██████ had not been suspended for ten consecutive school days or ten school days in the fall of 2023 as a result of violations of the code of student conduct. There were only two disciplinary suspensions for a total of 5.5 days. The manifestation determination process for disciplinary suspensions therefore never came into play and was not undertaken. (Tr: pg. 234 line 18 through pg. 235 line 22; pg. 236 line 14 through pg. 237 line 18)

ANALYSIS OF THE FACTS AND ISSUES OF THE CASE

In his testimony, Petitioner presented nine separate claims, which included six procedural issues relating to the IEP Team meeting of October 20, 2023 (Ex 2), and three tangential claims which related to a belief that there was an improper placement of the child at the Veritas Community Services based upon ██████ age.

The Petitioner's claim that the Respondent failed to convene IEP meeting prior to the placement change from the Beadle Middle alternative program to the Level 3 placement at the Milestones/Veritas Community Services was a subject matter of the Respondent's testimony through the witnesses presented.

██████ was enrolled in the Millard Public Schools District, 2022 as a ██████ grader at Beadle Middle School. Shortly after ██████ enrollment in the district, the district convened the IEP Team to review the IEP sent with ██████ from the Westside Scholl District and began assessed ██████ unique needs. The first IEP Team meeting occurred on September 1, 2022, and resulted in a program established that same date. After the establishment of the September 1, 2022 IEP, the team met again on April 27, 2023, which

resulted in the prior written notice of May 4, 2023 (Ex 38) and again August 24, 2023 (Ex 44) for the annual review of ████████ IEP, and discussion of lack of progress towards █████ educational goals. ████████ parents were in regular contact with the classroom teachers regarding ████████ progress and █████ related behavioral issues. All those IEP meetings involved one or both parents. As a result of the meeting of April 27, 2023, a prior notice was issued relating to the IEP discussion to determine if extended school-year services were need for ████████ as a result of data collected before and after the spring break. Those meetings took place in advance of the October 23, 2023 IEP meeting. As a result of those IEP meetings, there were prior written notices in September 2022, May 2023, September 2023, October 20, 2023, all of which were supported by the testimony of the classroom teacher, Robin McKenzie, and the program facility, Kay Schwiebert, establishing that the Petitioner's claim that the IEP Team failed to conduct meetings to development ████████ IEP before deciding on █████ placement are not supported by the evidence. Rather, the evidence establishes the IEP Team continuously held meetings to review and revise the IEP all before deciding on the change of placement.

Petitioner or his wife attended all IEP meetings and were part of the decisions regarding the September 1, 2022 placement, April 27, 2023, August 24, 2023, and the October 20, 2023 IEP meetings reflected the actions taken by the team.

The Petitioner's next contention was the meeting noticed for October 20, 2023 IEP meeting was deficient and misleading referring to an October 16, 2023 email. The actual meeting notice meets all required information. All the required team members were present for the meeting, including the Petitioner. The meeting notice, when read together

with the content of the email, clearly establishes that Petitioner was aware of the subject to be discussed on October 20, 2023. The meeting notice (Ex 45) provides the requisite information about the purpose of the meeting.

Petitioner's third claim is that the placement change was predetermined without parental input. Petitioner alleges he attended the meeting of October 20, 2023, believing that it was to discuss teacher concerns and not a placement change. The Petitioner offered no evidence to support the allegation other than his personal belief. The witness Kaye Schweigert testified that she opened the meeting, and all IEP meetings, following the same general agenda of first discussing the progress, or lack of progress, of the student and concerns of the staff. The testimony of Schweigert, as well as that of Ted Esser and Wendy Wight, clearly established that if a change of placement to a Level 3 facility is to be discussed it was necessary to ascertain and research the availability of program options, and whether such program options could meet the individual's needs. This research was done and established by way of both testimony and evidence offered.

The testimony of Schweigert established that and the Millard Public School District insured that [REDACTED] parents not only had the opportunity to participate in all placement decisions, as required by law, but that the district made sure that they were actively involved in the placement. After each IEP meeting, [REDACTED] parents were provided with prior written notices (Ex 37 – 40 inclusive) summarizing the discussions and decisions of the IEP team.

Respondent Millard Public School adhered to the least restrictive environment alternative requirements, assuring that [REDACTED] placement aligned with his individual

needs. ■ was originally placed at Beadle Middle School in the ■ grade, alternative curriculum in August 2022. ■ limited progress and behavioral challenges limited the team to explore more structured environments. (Ex 46, Ex 47, Ex 50, Ex 51). Despite allegation to the contrary by the Petitioner, the IEP Teams did not predetermine of change for ■ without parental input.

Petitioner raises as his fourth claim that the district provided unauthorized third-party access to confidential student information. This concern apparently related to evidence that Millard official such as Kaye Schweigert and Wendy Wight collaborated with outside agencies under the district's established contracts with the Nebraska Department of Education. Such contract with department agencies does not require parental consent and does not constitute a disclosure of confidential information. At least apart from entities entitled to receive such information. Testimony established that such collaboration with contract agencies is necessary to determine placement decisions.

Petitioner's next claim was that the district failed to provide written notice before change of placement on November 13, 2023. Testimony of the case manager and classroom teacher did not support, and in fact showed this claim was not factual basis. Testimony from Robin McKenzie, by way of her affidavit (Ex 56), outlines ■ history at Beadle Middle School and generally described ■ special needs and behavior which created safety issues for ■ and others.

Petitioner asserts that ■ was never provided with a copy of prior written dated October 20, 2023, until it was sent to him in April 2024. That issue was presented to the

Nebraska Department of Education for investigation and emailed evidence showed the claim was without factual basis. (Ex 56).

Petitioner's sixth claim challenges the prior written notice of August 24, 2023, regarding placement, and allege that the parents were not aware of the IEP Team concerning placement. The evidence presented clearly shows that the prior written of the October 20, 2023 meeting referenced the August 24, 2023 IEP for the reason that the IEP was existence as a result the annual review on October 20, 2023, approximately two months prior to the August 2023 meeting. The record shows that the August 24, 2023 meeting for the annual review and ██████████ progress was discussed, but there was no discussion of a change of placement in August 2023, as established by the testimony of Kaye Schweigert and the affidavit of Robin McKenzie. The prior written notice concerning the communications and matters discussed on October 20, 2023 was delivered to ██████████ parents on either November 8, 2023 or November 9, 2023. However, there was no testimony to support Petitioner's claim that he was unaware of change of placement until sometime in April 2024 given his involvement in the placement discussions and communication of October and November 2023.

Petitioner alleges in his seventh claim that ██████████ placement was inappropriate because Veritas was designed for students for █ years or older, and ██████████ was only █ at the time of placement. The testimony of Dr. Ted Esser established that such information taken from the website is not credible. Veritas was at the time, and is currently, a Nebraska Department of Education is a Level 3 placement facility. The placement of ██████████ to Veritas was based on various factors, including █ lack of

progress on IEP goals, ■ physical size, ■ personal care needs, ■ increased aggressive behaviors, and ■ inappropriate behavior which could be better addressed at the Veritas facility. The decision was made in partnership with the family and the school district took steps that the Level 3 placement at Veritas was best suited for ■ needs.

The eighth claim of the Petitioner was that Millard Public School District failed to provide IEP services until after ■ change of placement on November 13, 2023, until March 2024. There was no dispute that certain IEP services were not provided immediately after the change of placement. However, there was also evidence that extra services were provided to ■ as compensatory services to make up for and exceed all of the services that were missed. Exhibit 69 shows that the Nebraska Department of Education verified that NDE had determined that the district had corrected and identified noncompliance including the missed services to ■.

Petitioner's ninth claim alleges that that the district fail and to conduct a manifestation determination prior to ■ placement. This determination may be utilized at any time by the team; however, such manifestation determination reviews only are required under Chapter 51 when the student is removed from the school due to a violation of the disciplinary code. That was not the case here. Here the change of placement for was the reason to provide appropriate educational services to ■ as established by the testimony.

The additional testimony given by the four witnesses presented by the Respondent established that the change of placement was for educational purposes. This was

supported by the testimony of Kaye Schweigert, Wendy Wight and Dr. Ted Esser. With respect to the Petitioner's claim that mandated services were not provided at the exact time of transition to Veritas, Dr. Esser testified that as soon as this oversight was discovered after the transfer, the school district reconstituted the services and took steps to remediate the services. There was no dispute that at the time the certain services required under the IEP team that were not being provided. However, the Respondent appeared to act in good faith, in coordination with the Nebraska Department of Education, to correct that as established by Exhibit 69.

In summary, the Respondent's witnesses testified that the change of environment from a busy middle school to a more sedate Level 3 setting was important to provide [REDACTED] appropriate educational services. The testimony also supported the need to keep [REDACTED] in a Level 3 educational setting, at least for the time being, and that any attempt to place [REDACTED] in a high school environment could be extremely detrimental because [REDACTED] may not receive educational services where various triggers could result in his dysregulation.

CONCLUSIONS OF LAW

1. The Petitioner bears the burden of proof to establish there was a violation of educational requirements by the Respondent.
2. Respondent convened an IEP meeting on August 24, 2023, for an annual review [REDACTED] IEP. The Respondent also convened a subsequent IEP on October 20, 2023, to review [REDACTED] IEP progress and behavioral issues in compliance with

requirements of Title 92, Nebraska Administrative Code, Chapter 51 prior to reaching a decision to change the placement for [REDACTED].

3. Respondent provided proper notice to the Petitioner in advance of the August 24, 2023, IEP meeting in compliance with Title 92, Nebraska Administrative Code, Chapter 51-007.06A1.

4. The parental notification for the October 20, 2023, team meeting was not misleading. That notification of the meeting set forth all the information required pursuant to Title 92, Nebraska Administrative Code, Chapter 51-007.06B.

5. The decision for a change in placement for [REDACTED] was made by the IEP team at the IEP team meeting on October 20, 2023. Petitioner attended the IEP team meeting and participated in the decision for a change in placement as required by Title 92, Nebraska Administrative Code, Title 92 Chapter 51-009.01A and 009.01C.

6. [REDACTED] placement in the alternative curriculum program at Beadle Middle School in October 2023 was no longer an appropriate placement because of [REDACTED] lack of progress on [REDACTED] IEP goals, [REDACTED] personal care needs, the distractions and triggers to behavior, [REDACTED] aggressive physical behaviors, [REDACTED] inappropriate touching and grabbing of staff, including a physical incident involving a teacher that required medical care.

7. The change of placement to Milestones/Veritas Community Services was appropriate and served [REDACTED] unique needs and was reasonably calculated to provide [REDACTED] with educational benefits and a free appropriate public education because of the smaller structured educational setting, low teacher-to-student ratio, and more intensive

support at Milestones/Veritas Community Services to address [REDACTED] unique needs and to support [REDACTED] in achieving [REDACTED] IEP goals.

8. Respondent did not violate FERPA and/or Title 92, Nebraska Administrative Code, Chapter 51-009.03Jl by providing personally identifiable information to Milestones/Veritas Community Services or by allowing representatives from Milestones/Veritas Community Services as an approved service provider to observe [REDACTED] in a classroom setting. Such a contracted agency is an extension of the school district for the purpose of providing educational services to students.

9. The Prior Written Notice of the IEP team decision made on October 20, 2023, to change [REDACTED] placement to a Level 3 setting was provided to [REDACTED] parents on or about November 8, 2023 which was a reasonable amount of time in advance of the November 13, 2023 change in placement to Milestones/Veritas Community Services. The direct involvement of the IEP team in the selection of Milestones/Veritas Community Services as the Level 3 provider, in consultation with the Petitioner, establishes knowledge by the Petitioner of the change in placement.

10. The Prior Written Notice dated October 20, 2023 met the requirements of a Prior Written Notice pursuant to Title 92, Nebraska Administrative Code, Chapter 51-009.05.

11. A manifestation determination hearing pursuant to Title 92, Nebraska Administrative Code, Chapter 51-016.02E was not required to be conducted prior to the IEP team's decision to change [REDACTED] placement to a Level 3 setting. The placement

change was not related to discipline but was an educational change in placement and therefore no manifestation determination hearing was required.

12. The procedural violations alleged by Petitioner in his Complaint did not impede ██████ right to a free appropriate public education, or significantly impede his parents' opportunity to participate in the decision-making process, or cause a deprivation of any educational benefits.

13. The Millard School District shared information required by law and ensured all observations and data sharing activities complied with state and federal regulations. (Tr: pg. 227 line 16 through pg. 228 line 25; pg. 188 line 11 through pg. 191 line 25)

14. Respondent failed to provide occupational therapy services and speech/language services following the change of placement to Milestones/Veritas Community Services from November 13, 2023 until March 1, 2024. However, the Respondent provided and ██████ received compensatory services equal to or greater than those services that had been inadvertently withheld.

14. The placement of ██████ at Milestones/Veritas Community Services was appropriate and Milestones/Veritas Community Services is a Level 3 facility that is approved for ██████ by the Nebraska Department of Education.

15. ██████ has received a free appropriate public education from the Millard School District through individualized educational programs which provided special education and related services in the least restrictive environment, and which were specifically designed to meet ██████ unique needs, and which were reasonably

calculated to provide educational benefits from which [REDACTED] can, does, and did receive educational benefits.

DECISION

For the reasons set out in the foregoing findings and conclusions of law, I find that the Petitioner has not proven that Respondent violated any right to a free and public education, and that the Petition in this case should be dismissed. Therefore, I find generally in favor of the Respondent, and dismiss this action accordingly.

SO ORDERED.

DATE: July 30, 2025.



Robert F. Bartle
Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on counsel of record by sending same by electronic mail on this 30th date of July, 2025, addressed as follows:

Mr. Jeff Miller
Mr. Duncan Young
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Ms. Debra Holmes
Nebraska Department of Education
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Robert F. Bartle
Hearing Officer