

FEB 05 2026

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

NEBRASKA DEPARTMENT
OF EDUCATION



Petitioners,

v.

ELKHORN PUBLIC SCHOOLS
20650 Glenn Street
P O Box 439
Elkhorn, NE 68022,

Respondent.

CASE NO. 25-05 SE

FINAL DECISION AND
ORDER OF HEARING OFFICER

Following the formal hearing conducted on December 11, 2025, and considering the written closing arguments and briefs submitted concurrently by the parties on January 12, 2026, the undersigned hearing officer makes the following findings of fact and conclusions of law in reaching a final decision in this case, as follows:

I. BACKGROUND

Petitioners [REDACTED] filed a Due Process Petition with the Nebraska Department of Education on behalf of their [REDACTED] [REDACTED] on September 22, 2025, against the Respondent Elkhorn Public Schools [EPS] for alleged violations of the Individuals with Disabilities Education Act [IDEA] and Nebraska law found at 92 NAC § 51 ("Rule 51"). A formal hearing was conducted on December 11, 2025 at the Elkhorn Public Schools Teacher Training Conference Center in Elkhorn. Petitioners appeared as self-represented through the parents of [REDACTED] Respondent EPS appeared

through its attorney, Haleigh B. Carlson. The hearing was recorded by Thomas and Thomas Court Reporting. At the conclusion of the hearing the undersigned allowed both parties to submit closing arguments in writing, through formal briefs, concurrently due on January 12, 2026, and allowing optional reply briefs by January 19, 2026. Both parties agreed to these briefing and argument deadlines, and the hearing officer's decision was continued by agreement by the parties, and the hearing officer's acknowledgment as authorized by 92 NAC § 55-006.03.

II. ISSUES PRESENTED

The issues of law and fact presented at the hearing were both substantive and procedural. Based on the allegations in the Petition and the Answer, the Statement of Issues filed by both parties, and the issues discussed at the hearing, I determined that the following primary issues were raised at this hearing:

1. Whether EPS denied [REDACTED] a free and public education [FAPE] by failing to place him in the least restrictive environment based on his individual needs following the September 8, 2025 IEP meeting.
2. Whether EPS complied with its obligations under the IDEA and Rule 51 regarding transportation as a related service and access to school-sponsored extracurricular activities.
3. Whether EPS engaged in predetermination of [REDACTED] educational placement by failing to meaningfully consider his individualized needs and the special factors applicable to students who are deaf or hard of hearing under the IDEA and Rule 51.

4. Whether the prior written notice issued by EPS on September 16, 2025 satisfied the procedural content requirements of the IDEA and Rule 51.

III. WITNESS TESTIMONY

The following witnesses testified at the hearing:

1. Sarah Peterson who was the Nebraska State Coordinator for programs for students who are deaf and hard of hearing and who was employed in this role for the past three years.

2. Kristi Gross who is the Director of Special Education at EPS and has served in that role since 2020.

3. Alison Eblin who was the IEP Coordinator at Iowa School for the Deaf [ISD]. She was responsible for scheduling and coordinating IEP meetings at ISD and completing paperwork related to those meetings.

4. Diane Meyer who is the Coordinator for the Greater Metro Regional Program for Children who are Deaf or Hard of Hearing and who was employed in this role since 2005.

5. Miranda Boice who is the Special Education Coordinator at EPS. She has worked as a school psychologist since 2020.

IV. EXHIBITS

During the hearing, the hearing officer received Exhibits 1 through 23 offered by Petitioners. Petitioner's Exhibits 24, an affidavit of [REDACTED], was not admitted as evidence, but rather as an offer of proof. (366:2-368:24) A description of the exhibits is set out in the Bill of Exceptions, prepared as part of the court reporter's

record. The hearing officer received Exhibits 101 through 152 as offered by Respondent, also identified in the formal record.

V. FINDINGS OF FACT

The hearing officer has determined the the following findings of fact derived from the testimony, exhibits, and records received as evidence in this case, as follows:

1. ██████████ is a student who resides within the boundaries of EPS and who is verified as a student with a disability under the IDEA and Rule 51 as a student who is deaf or hard of hearing. (Exhibit 104; Exhibit 107).

2. ██████ began attending kindergarten at ISD in Fall 2022 at the recommendation of his Individualized Education Program (“IEP”) team at EPS. (Exhibit 4, p. 5). As ██████ home school district, EPS has continued to provide special education services to ██████ throughout ██████ education at ISD. (Exhibit 104; 319:10-15).

3. EPS provided transportation from ██████ home to ISD and back to his home each school day. (Exhibit 107, p. 16; 155:23-25; 156:1-8).

4. During the 2025-2026 school year, ██████ was in the ██████ grade. (Exhibit 107; 235:7).

5. On May 15, 2025, ██████████ sent the following email to ISD:

██████ has been begging to live in the dorms for the past year or so and has grown enough in maturity this year for us to consider it. We are not ready for him to be a full-time residential student but would be open to him starting with one night a week until he’s older.

(Exhibit 117, p. 1)

6. ██████████ also called Miranda Boice and stated that ██████ has expressed high interest in the dorms and that they felt EPS could pay for the program. (331:19-25; 332:1).

7. At the particular time that Petitioners inquired into dormitory services for ██████ at ISD, the Nebraska Department of Education [NDE] would automatically pay for the cost of residential services at ISD for students who lived more than 50 miles from ISD. (80:4-18; Exhibit 148). Even without considering NDE's automatic criteria or its special circumstances criteria, any school district could still determine residential services were necessary for a student to receive FAPE and pay for those services. (95:17-22).

8. Iowa has the same rule for students who attend ISD and reside in Iowa. (Exhibit 146).

9. At the time Petitioners inquired into dormitory services, Petitioners did not live more than 50 miles from ISD. (Exhibit 112, p. 6).

10. When Petitioners requested a residential placement at ISD, staff from ISD and EPS took some time to look into eligibility criteria for the ISD dorms. (Exhibits 117, 118, 119, 120, 121, 122, 123). The general consensus between ISD and EPS was that because ██████ did not live more than 50 miles from ISD, the cost of residential services would fall on EPS as opposed to NDE or ISD. (Exhibit 121, p. 1-2).

11. On June 17, 2025, Boice emailed Mrs. ██████████ and stated:

[W]e would need to meet as an IEP team to determine if this placement for living is needed for a Free Appropriate Public Education (e.g., the needed environment for ██████ services.

(Exhibit 122 p. 1).

12. On July 31, 2025, Boice emailed the ISD school principal, Christopher Fears, stating:

[W]e would need to meet and determine that living in the dorms would be considered *needed* for continued IEP services and [REDACTED] least restrictive environment.

(Exhibit 123, p. 1)

13. Miranda Boice emailed [REDACTED] on August 20, 2025 informing her that Boice told Fears:

[W]e would need to meet and determine that living in the dorms would be considered *needed* for continued IEP services and [REDACTED] least restrictive environment.

(Exhibit 124, p. 1-2).

14. On August 14, 2025, Boice emailed Alison Eblin at ISD and [REDACTED] stating that, “[Mrs. [REDACTED] has requested an IEP meeting to consider the ISD dorms as a residential placement for [REDACTED],” and requested that ISD coordinate a date for an IEP meeting. (Exhibit 124, p. 1).

15. On August 26, 2025, Eblin sent a meeting invitation for [REDACTED] IEP meeting to be held at ISD on September 8, 2025. (Exhibit 126). Included on the invitation as an invitee was Sara Peterson, Bailey Waldo, Christopher Fears, Carly Hiser, Deborah Cates, [REDACTED], Mallory Lawrence, Mandy Boice, and Kevin Boyce. (Exhibit 126). On September 3, 2025, Kristi Gross was also invited to the meeting. (Exhibit 127).

16. After Peterson received the IEP meeting invitation from Eblin, on August 27, 2025 she called Boice to learn more about [REDACTED] (88:13-22).

17. During the August 27, 2025 phone call, Peterson discussed with Boice what his role was in the process. She explained Nebraska services were available to certain families. Peterson discussed with Boice that students who live farther than 50 miles away, the department of education would provide dorm placement for students, but that was not the case with ██████ (89:11-21)

18. During the phone call, Boice and Peterson discussed that some other districts in the metro area had been able to add times to student's IEPs for them to be involved in extracurricular activities.

19. During the phone call, Boice and Peterson also discussed the special circumstances in which NDE would pay for a dorm placement even if the student did not live greater than 50 miles from the placement. (92:1-25; 93:1-20).

20. After the phone call, Peterson sent Boice an email generally advising about special circumstances which apply if a school district doesn't have a particular bus driver to take students to school each day. She concluded that if the school or program they need to attend to receive FAPE benefits is so far away that residential services are needed, that can be provided. However, that circumstance was not the case here. (Exhibit 9, p. 1-2).

21. Peterson and Boice understood that this "write-up" was to help "brainstorm" a full continuum of least restrictive environment options for ██████. (91:19-25). Boice testified that she did not give much thought to this email. (325:10-25).

22. Peterson did not tell Boice that ██████ could not ever attend the dorms at ISD. (95:23-25; 96:1).

23. Peterson did not tell Boice that EPS had to say “no” to Petitioners’ request for residential placement. (96:2-7).

24. Peterson did not “coach” Boice on how to say no to Petitioners’ request for residential placement. (96:8-10).

25. Prior to the September 8, 2025 IEP meeting, Boice emailed her supervisor, Gross, and stated that Petitioners had requested dormitory placement for [REDACTED] and asked if Gross could attend the IEP meeting. (164:25; 165:1-7).

26. Gross responded to Boice’s email, as follows:

[I] stated I could be there. I recommended she reach out to the Metro Regional Program coordinator to get consultation, which is what we typically do just to see if there’s any information that we need to be aware of or anything that would be important for us to know. I spoke to [Boice] briefly afterwards, and she had stated that the meeting was going to be scheduled, and I told her that I would be there and that we would need to determine whether or not [REDACTED] needed it for FAPE.

(165:23-25; 166:1-9).

27. Gross also told Boice that she would review [REDACTED] progress reports. (167:18-23).

28. Gross never told Boice that EPS would deny Petitioners’ request for dormitory services based on distance and mileage. (168:25; 169: 5).

29. Boice did not tell Gross that her plan was to deny Petitioners’ request based on distance. (169:6-11).

30. Prior to the September 8, 2025 IEP meeting, Gross reviewed [REDACTED] current IEP and most recent evaluation. She looked to see when [REDACTED] was due for

reevaluation and then she looked at █████ progress reports from March and June of 2025, █████ MAP scores, and █████ grades from ISD. (167:24-25; 168:1-15). This is documentation that Gross would typically review prior to attending a student's IEP meeting (170:20-25; 171:1-2).

31. Kristi Gross did not have a predetermined plan going into the September 8, 2025 IEP meeting. Rather she testified:

I had reviewed his progress reports, and based on that information, it was difficult for me at that time to see what the need would be for a more restrictive setting, but the intent always was to come and hear what parents' concerns were, hear what that request was, hear the input from the team, and make a decision in that meeting.

(169:22-25; 170:1-7).

32. Miranda Boice did not have a predetermined plan going into the September 8, 2025 IEP meeting. She testified:

I think I reviewed █████ quarterly report data, █████ MAP data, most recent grades, most recent MDT, just so I had all of the most data fresh for decision making for FAE. And so that was my plan, was just to make sure I was up to date on most recent data and to use that data for decision making at the meeting.

(337:22-25; 338:1-13).

33. Gross testified at the September 8, 2025 IEP meeting concerning her recollections. Gross testified that the parties summarized, at one point, that they did not have enough information to state that █████ was required to live in the dormitory for any period of time. █████ current placement had been successful, and there was a question as to what additional data would be needed. She further testified the parties would need to

get more data to move the evaluation way up, and assess all the areas. They would look at communication, look at behavior, look at all of [REDACTED] needs, and then reconvene the IEP team to determine if they had data that suggests changes to the IEP. (171:3-25; 177:1-17).

34. Sarah Peterson testified at the September 8, 2025 meeting that the parties were there to discuss a parent's request for dormitory placement, and then she turned the discussion over to the parents. The parents wished that [REDACTED] could be in the dorm one or two nights a week as trial basis. Eblin asked the Nebraska representatives what was their response. Responses were given by the Nebraska representatives at that time. (96:15-25; 97:1-19).

35. Peterson recalled that at the September 8, 2025 meeting, the data by the IEP team revealed:

That at the last spring IEP that [REDACTED] had had, that they had dismissed speech and language services because his speech and language had been progressing so well, that they had removed [REDACTED] behavior plan that [REDACTED] had in place because the behavior was no longer impeding [REDACTED] education . . . The parents again went back and stated that their educational benefits that they believe [REDACTED] would receive from the dorm placement. ISD staff talked about the routine in the dorm, what happened in the dorm, what kind of skills are developed there. And then discussion went back to right now the data shows what it is, there was discussion about adding after-school programming to [REDACTED] day, there was discussion about what clubs or groups after school [REDACTED] would be interested in attending so that the IEP team could look at adding those to [REDACTED] day. And that discussion kind of got cut off because we had shifted from wanting to talk about dorms to talking about extended day.

(97:20-25; 98:1-3; 99:19-25; 100:1-9).

36. Boice recalled at the September 8, 2025 meeting that the parties spent a lot of time seeking the clarifications on the parental concerns and their requests. She noted that there were not particular goals for ██████ presented at that time, ██████ had at that time of the prior IEP meeting met those goals, so they were no longer part of ██████ IEP. (339:19-25)

37. The September 8, 2025 IEP meeting ended with an agreement to get more data and to revisit the question regarding dormitory services for ██████. (101:8-13; 258:2-5).

38. At the conclusion of the September 8, 2025 IEP meeting, the discussion of whether ██████ qualified for dorm placement was not closed. Rather the team would gather additional data and reconvene to address the question more fully. (101:14-21; 236:1-23).

39. During the IEP meeting, no one from ISD contradicted the conclusion that ██████ was making good progress during the school day at ISD. (205:17-19).

40. On September 16, 2025, EPS sent a prior written notice (“PWN”) to Petitioners summarizing the discussions at the September 8, 2025 IEP meeting. (Exhibit 112; 181:4-25; 182:1-7).

41. The PWN stated:

The district considered the parents’ request for ██████ to be residentially placed at ISD. Parents’ request for residential placement is refused for two reasons. The first of these reasons is the proximity of ██████ home to ISD. ██████ lives approximately 25 miles from ISD. The distance is not prohibitive, thus requiring a residential placement. The second reason the request is refused is that, after a review of ██████ needs, progress, and current performance, ██████ does not require a residential educational

placement in the dormitory at ISD in order to receive a free and appropriate public education. ■■■■ was dismissed from direct speech and language services at the IEP in April 2025 and currently does not require specially designed instruction in social or behavioral areas. ■■■■ most recent progress report data and MAP assessment data indicate ■■■■ is making good progress toward his IEP goals.

(Exhibit 112, p. 6).

42. Transportation was listed as a reason for refusing the residential placement request because:

Our requirement is FAPE, and if the student – we can transport the student to and from school, and transportation isn't necessary in order for the student to receive – or the dormitory isn't necessary in order for the student to receive FAPE.

(183:14-20).

43. ■■■■ dismissal from speech and language services was included as a reason for denying the residential placement because:

[A]s we talked about it in the IEP meeting, when we dismiss a related service for a student we're saying they're performing well enough that they don't require that service. So that would be – that would – that would suggest that a lesser restrictive environment in April was actually determined because within every continuum of LRE, there is a continuum. So being placed in a special school is not the beginning of the end of the LRE in that school. We can continue to add additional services and provide ■■■■ instruction away from other peers even within that setting. What we were discussing in the IEP is at the April IEP meeting, the team determined ■■■■ no longer needed that, so that would – that would suggest ■■■■ was performing well enough that ■■■■ could perform with lesser services, not more.

(184:2-24)

44. The language services from which ██████ was dismissed by his IEP team in April 2025 addressed ██████ receptive and expressive language skills—specifically, ██████ ability to understand instruction and interact with others—and were not related to articulation. (184:1-8).

45. ██████ dismissal from social and behavioral services was included as a reason for denying the residential placement because, as Gross testified:

Parents had discussed that they were concerned about some of the behaviors that they had been seeing at home. They stated – that ██████ was frustrated, that they had some instances where—or at least one instance where ██████ was frustrated with a peer who couldn't understand ██████, and who was, therefore, aggressive with that peer. And one of the reasons they provided for their request for the residential dormitory placement was that it would benefit ██████ behaviorally and socially to be able to have more intersection with other students who sign. So we did have a conversation that, you know, currently in the school environment we are not seeing aggression, we're not seeing those extreme behaviors. And one of the discussions was that we remove the need for ██████ to have a behavior intervention plan in April that suggests ██████ needed less services, not more. We no longer monitor behavior during specially designed instruction and they weren't implementing a positive behavior intervention.

(185:9-25; 186:1-14).

46. ██████ progress monitoring was listed as a reason for denying the residential request because, as Gross testified:

[F]or the overall description of progress on this particular page, in the areas of reading, writing – or reading sight words, writing and then reading comprehension, it is noted that ██████ is above the aim line, and will likely meet ██████ goal by the annual review date . . . Those are ██████ IEP goals, so those are the goals that we would look at progress monitoring data and compare to ██████ goals, and that tells us that ██████ – with the goals that they set in April, that ██████ performing above the

aimline already in that moment. That means that [REDACTED] making very good progress . . . so [REDACTED] was above what they expected [REDACTED] to be by June.

. . .

[REDACTED] sign language skills] didn't support a more restrictive environment was necessary. [REDACTED] was working – which is why we want [REDACTED] at the Iowa School for the Deaf. We want to give [REDACTED] all day to work on those skills, and this does not suggest that [REDACTED] stagnated or regressing. It suggests that [REDACTED] making good progress. So it would be part of the data that wouldn't support a change in [REDACTED] current placement.

(188:1-23; 196:1-18).

47. [REDACTED] MAP scores were listed as a reason to deny the residential request because, as Gross testified:

[T]hat is a lot of growth in a year compared for the fall score, which would tell me that we built a lot of skills between fall and spring in the area of reading according to this particular assessment . . . If a student's IEP is not reasonably calculated to allow them to perform at school, we don't see growth. We see stagnation, we see significant regression, and again, over multiple data points."

(203:14-19; 203:22-25; 204:1-4)

48. The most important reason for denying the residential request was based on [REDACTED] appropriate progress in [REDACTED] current placement. (206:8-14).

49. In the PWN dated September 16, 2025, EPS denied the request for [REDACTED] to stay after school at ISD each day through dinner-time because, as Gross testified:

[W]hen we look at educational services, we look at – first, we're thinking about LRE, we're thinking about those level of placements. Dinnertime, breakfast time, those things fall under custodial care.

Students who don't have to go home to their families or whoever they live with and they eat dinner there. And there isn't instruction being provided during dinner, nor was there instruction described as being provided by the dormitory representative that was there. It is a regular mealtime. Because the student's can't go home – students living in the dorm can't go home. They have to be provided meals. So there isn't an activity that we're denying █████ as █████ right now can be in a lesser restrictive environment, which is eating dinner with █████ family.

(207:21-25; 208:1-20).

50. In the PWN dated September 16, 2025, EPS stated that “Should █████ enroll in a school-sponsored extracurricular activity that is an extension of the school day, transportation as a related service can be provided in order for █████ to participate.” (Exhibit 112, p. 7).

51. The PWN issued by ISD on September 10, 2025 (Exhibit 113) does not reflect the decision of EPS. EPS did not have any input in the content of the PWN issued by ISD. (210:1-9).

52. █████ grade data, at the end of the 2024-2025 school year, demonstrated that █████ was performing well within the classroom with █████ accommodations and that █████ was earning the highest level of grades on the grade scale. (Exhibit 110 p. 2; 187:12-25).

53. █████ June 5, 2025 progress report stated that in relation to █████ reading goal for sight words, “█████ is currently above the aimline and will likely meet █████ goal by the annual review date. █████ has made great progress in reading █████ sight words.” (Exhibit 110, p. 3); *see also* (Exhibit 110 p. 4; 191:18-25; 192:2).

54. ██████████ June 5, 2025 progress report stated that in relation to ██████████ writing goal, “██████████ is currently above the aimline and will likely meet ██████████ goal by the annual review due date.” (Exhibit 110, p. 3); *see also* (Exhibit 110, p. 4; 192:3-25; 193:1-4).

55. ██████████ June 5, 2025 progress report stated that in relation to ██████████ reading comprehension goal, ██████████ is currently above the aimline and will likely meet ██████████ goal by the annual review due date.” (Exhibit 110, p. 3); *see also* (Exhibit 110, p. 5; 193:5-25; 194:1-25; 195:1-20).

56. ██████████ June 5, 2025 progress report showed that ██████████ was making good progress in the number of words ██████████ was able to sign. (Exhibit 110, p. 9; 195:21-25; 196:1-5).

57. ██████████ MAP test scores showed that between the Fall of 2024 assessment and the Spring of 2025 assessment in reading, ██████████ went from the 1st percentile to the 19th percentile. (Exhibit 110, p. 13; 196:19-25; 197:1-25; 198:1-25; 199:1-25; 200:1-25; 201:1-25; 202:1-25; 203:1-25; 204:1-13).

58. Prior to the September 8, 2025 IEP meeting, ██████████ IEP team met for an annual IEP meeting on April 9, 2025. (Exhibit 107; 249:15-18).

59. At the April 9, 2025 IEP meeting, ██████████ IEP team agreed to dismiss ██████████ from ██████████ behavioral goal because ██████████ had been consistently meeting ██████████ goal throughout the year. (Exhibit 107, p. 5; 249:19-23).

60. At the April 9, 2025 IEP meeting, ██████████ IEP team agreed that ██████████ no longer required specialized instruction on speech and language because “██████████ met one of two

objectives and was above the aimline on [REDACTED] prior communication goal and less intensive support is needed.” (Exhibit 107, p. 5; 249:24-25; 250:1-14).

61. At the April 9, 2025 IEP meeting, [REDACTED] IEP team agreed that [REDACTED] did not qualify for Extended School Year Services because the team did not believe that [REDACTED] would regress so significantly over the summer that it would be detrimental to [REDACTED] progress the following school year. (Exhibit 107, p. 5; 250:25; 251:1-10; 361:21-25; 362:1-9).

62. The April 2025 IEP was created with the intention of providing [REDACTED] with a FAPE. (251:20-23).

63. During the April 2025 IEP meeting, no one on the IEP team, including anyone from ISD, recommended residential dorm services as necessary for [REDACTED] to receive a FAPE. (251:24-25; 252:1-7).

64. On September 25, 2025, EPS sent Petitioners a Notice and Consent for Reevaluation that would include, “a comprehensive reevaluation prior to the due date, which will include assessments in the areas of communication, adaptive behavior, academic performance, and social-emotional/behavioral functioning to determine [REDACTED] continued eligibility for special education, [REDACTED] educational strengths, and [REDACTED] needs.” (Exhibit 105, p. 1). Petitioners signed this consent on September 25, 2025. (Exhibit 105, p. 6).

65. On November 20, 2025, a Multidisciplinary Team (“MDT Team”) reviewed the data collected during the reevaluation. (Exhibit 106). A comprehensive report was developed and the team agreed that [REDACTED] continues to require specially designed education. (Exhibit 106).

66. At the conclusion of the MDT meeting, the team agreed to schedule an IEP meeting for December 18, 2025 where the team would discuss whether [REDACTED] requires any new or different goals, specially designed instruction, related services, or a placement to receive a FAPE. (235:25; 236:1-24).

67. [REDACTED] October 30, 2025 progress report states that in relation to [REDACTED] first reading goal, [REDACTED] met [REDACTED] IEP goal. (Exhibit 111, p. 2).

68. [REDACTED] October 30, 2025 progress report states that in relation to [REDACTED] second reading goal that [REDACTED] is currently above the aimline and will likely meet [REDACTED] goal by the annual review due date. [REDACTED] has an IEP soon and will likely raise the reading level on this goal.” (Exhibit 111, p. 2).

69. [REDACTED] October 30, 2025 progress report states that in relation to [REDACTED] writing goal, [REDACTED] is below the aimline and may not meet their goal by the annual review date. (Exhibit 111, p. 2).

70. [REDACTED] first quarter grades show that [REDACTED] continues to receive top marks with two A’s, three A+’s and one B+. (Exhibit 151).

71. According to the ISD Parent-Student Handbook, ISD offers a YMCA and a Boys Club for students within [REDACTED] age range as after-school clubs. All other after-school clubs and activities are geared towards middle school and high school students. (Exhibit 145, p. 40-42).

VI. ANALYSIS AND CONCLUSIONS OF LAW

I have determined the following conclusions of law, and I have resolved mixed questions of fact and law based on the stipulations of the parties made on the record and the evidence presented during the hearing. I begin with my legal analysis.

A. Standard of Law

1. Burden of Proof.

The U.S. Supreme Court has held that the “burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.” *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Therefore, the burden of proof here is placed upon Petitioners.

2. Free Appropriate Public Education Standard [NAPE]

The ultimate issue is whether a FAPE has been provided or made available to ██████. Under the IDEA and Rule 51, public school districts receiving federal funding must provide a FAPE to all children with verified disabilities. 20 U.S.C. § 1412(a)(1); 92 NAC § 55-008.03. Under the definition of FAPE, a school district must provide “special education and related services to a child with a disability in accordance with the child’s IEP.” 92 NAC § 51-007.02; *see also* 20 U.S.C. § 1401(9); 92 NAC § 51-003.24.

“Special education” services are defined as “instruction” that is “specially designed . . . to meet the unique needs of a child with a disability.” 20 U.S.C. § 1401(29); 92 NAC § 51-003.56. “Related services” are defined in relevant part to include “transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services [and] interpreting services. . . as may be

required to assist a child with a disability to benefit from special education.” 20 U.S.C. § 1401(26)(A); 92 NAC § 51-003.49.

The definition of FAPE also requires that the totality of the special education and related services provided must “meet the State’s educational standards,” “approximate the grade levels used in the State’s regular education,” “comport with the child’s IEP,” and be “provided at public expense.” *Adams Cent. Sch. Dist. v. Deist*, 215 Neb. 284, 286, 338 N.W.2d 591, 592 (1983), citing *Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 458 U.S. 176, 203 (1982); see also 20 U.S.C. § 1401(9); 92 NAC § 51-003.24.

However, the requirement that an IEP be “reasonably calculated to enable a child to make progress in light of the child’s circumstances” does not mean that the IDEA requires a school district to “maximize a student's potential or provide the best possible education at public expense.” *Albright v. Mt. Home Sch. Dist.*, 926 F.3d 942 (8th Cir. 2019). Rather, “[t]he provision of a FAPE to a student qualified for special education must be judged by the overall educational benefits received, and not solely by the remediation of the student's disability.” *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390, 391 (5th Cir. 2012).

3. Procedural Violation Standard.

The IDEA has both procedural and substantive components. With regard to alleged procedural violations of the IDEA, a hearing officer may find that a child did not receive a free appropriate public education or early intervention services only if the procedural inadequacies:

(I) impeded the child’s right to a free appropriate public education or early intervention services;

(II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education or early intervention services to the parents’ child; or

(III) caused a deprivation of educational benefits.

20 U.S.C. § 1415(f)(3)(E)(ii); 92 NAC § 55-008.03.

B. Substantive Issues.

1. Petitioners Failed to Prove by a Preponderance of the Evidence that [REDACTED] Required a Residential Placement at ISD to Receive a FAPE.

Petitioners alleged that EPS failed to provide [REDACTED] with a FAPE because it did not place [REDACTED] at the ISD dorms during [REDACTED] September 8, 2025 IEP meeting, which Petitioners contend was [REDACTED] least restrictive environment (“LRE”). This issue turns on whether a residential placement was legally necessary—not merely beneficial—to provide [REDACTED] a FAPE in the least restrictive environment. The IDEA and Rule 51 require school districts to place a child with a disability in the “least restrictive environment” sufficient to “provide [that child] a free appropriate public education according to the unique needs of the child as described in the child’s IEP.” 20 U.S.C. §§ 1413(e)(4)(B); 1412(a)(5); *see also* 92 NAC § 51-008.01.

School districts must ensure that “to the maximum extent appropriate, children with disabilities. . . 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 the severity of the disability is

such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. § 1412(a)(5)(A); 92 NAC § 51-008.01A. Stated differently, removal from typical settings is permitted only to the extent required by the child’s unique needs as reflected in the IEP.

School districts must also ensure that “a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services,” including “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions,” and must “make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.” 34 C.F.R. § 300.115; 92 NAC § 51-008.01D. This “various array of placement options. . . must be available to the extent necessary to implement the individualized education program for each child with a verified disability.” 92 NAC § 51-008.01F. Accordingly, the appropriate analysis does not begin (or end) with a single location; it requires consideration of available settings and services across the continuum.

Finally, school districts also “must ensure” that the child’s educational placement is “as close as possible to the child’s home,” “based on the child’s IEP,” and “determined at least annually.” 34 C.F.R. § 300.116(b); 92 NAC § 51-008.01E. Identification of the “least restrictive environment” in which the child must be placed must be “based on the child’s *unique* needs and *not* on the child’s disability,” 92 NAC § 51-008.01C2 (emphasis added), with “consideration. . . given to any potential harmful effect on the child.” 34 C.F.R.

§ 300.116(d); 92 NAC § 51-008.01H. These requirements underscore that the question is individualized by necessity, not a categorical preference for a more restrictive option.

Regarding residential placement, the Nebraska Supreme Court has clarified that the IDEA “does not authorize residential care merely to enhance *an otherwise sufficient* day program.” *Williams v. Gering Pub. Sch.*, 236 Neb. 722, 735, 463 N.W.2d 799, 808 (1990), *quoting Abrahamson v. Hershman*, 701 F.2d 233, 227 (1st Cir. 1983) (emphasis in original). “A handicapped child who would make educational progress in a day program would not be entitled to placement in a residential school merely because the latter would more nearly enable the child to reach his or her full potential.” *Williams*, 236 Neb. at 735, *quoting Abrahamson*, 701 F.2d at 227. Consequently, Petitioners’ burden is to show that the residential placement was required for educational progress—not that it could improve ██████ experience or accelerate gains.

The Eighth Circuit has stated that the IDEA’s requirement that children be placed “in the least restrictive environment” means that “children should be provided with an education close to their home, and residential placements should be resorted to only if these attempts fail or are **plainly untenable**.” *Evans v. District No. 17*, 841 F.2d 824, 832 (8th Cir. 1988) (emphasis added), *citing Kruelle v. Biggs*, 489 F. Supp. 169, 174 (D. Del. 1980), *aff’d*, 642 F.2d 687 (3rd Cir. 1981) *and Hessler v. State Bd. of Educ.*, 700 F.2d 134, 138 (4th Cir. 1983).

The IDEA does not grant school districts the authority to remove a child from their home and place them in a residential program “**simply to remedy a poor home setting or to make up for some other deficit not covered by the Act**.” *Abrahamson*, 701 F.2d

at 227 (emphasis added). Rather, residential placement is to be reserved only for those rare situations in which residential care itself is “essential” to the child making “**any educational progress at all.**” *Abrahamson*, 701 F.2d at 227 (emphasis in original and added); *see also Williams*, 236 Neb. at 735. Anything short of this standard would violate the IDEA’s requirement that children with disabilities be placed in the least restrictive environment capable of delivering a FAPE to that child. *See* 20 U.S.C. § 1412(a)(5); 92 NAC § 51-008.01; *Evans*, 841 F.2d at 832. Applying these authorities, my focus is whether the evidence establishes that *only* a residential placement could allow ██████ to make appropriate progress.

On the continuum of alternative placements available for students with disabilities, residential placement is the among the most restrictive settings. The testimony consistently and persuasively confirmed this point. Gross testified:

A residential setting is as far away from what we would typically do— what general education environment is as possible. So not are we stating that students can’t be with general education peers, but we are also stating that they have to be remove from their home. They can’t be home with their families in the evening, they can’t sleep in their own bed, they are – they can’t participate in activities with their families in the evening. We are saying their educational needs are so severe that they should have to be removed from their home, and that is just not a decision that any IEP team should take lightly. And it is the most restrictive setting, as far away from what a typical – typically developing peer would experience.

(163:3-19).

Meyer similarly testified:

[Residential placement] is the most restrictive because we're removing them from the home. Residential schools can be used as a day school, such as what [REDACTED] is accessing now. I come during the day and I leave, just like our typically developing peers, come to school, leave and go home. When you remove a student from their family, that is the most restrictive situation that you could have. And while I understand that that might offer opportunities for interactions with other individuals, it also negates the ability for that child to interact with their family.

(270:13-25; 271:1).

Peterson and Boice both affirmed that a residential placement is the most restrictive environment available because it removes students from their families. (79:2-8; 338:20-23). This testimony supports the conclusion that a residential placement requires a strong showing of educational necessity.

Based on these legal standards and my findings of facts, Petitioners failed to prove that [REDACTED] least restrictive environment was a residential placement, even for partial days, at ISD. The preponderance of the evidence showed that [REDACTED] did not require a residential placement to receive a FAPE. Having been apprised of all of [REDACTED] individualized data including [REDACTED] IEP goals, [REDACTED] progress reports, [REDACTED] grades, [REDACTED] MAP scores, and more, all of the expert witnesses at trial testified that [REDACTED] did not require a residential placement in order to receive a FAPE. (104:10-19; 221:3-10; 285:7-18; 299:3-14; 356:18-25; 357:1-6). Rather, [REDACTED] was making appropriate progress within [REDACTED] existing placement at ISD and there remained numerous less restrictive interventions available to address [REDACTED] ongoing needs.

As of the September 8, 2025 IEP meeting, ██████ placement was at ISD with 480 minutes of specialized instruction in reading intervention to address language development through American Sign Language and Academic Readiness skills and with 240 minutes per month of specially designed instruction in writing intervention to address Language Development through American Sign Language and Academic Readiness skills. (Exhibit 107, p. 16). Petitioners argued that even with this placement, ██████ was failing to make appropriate progress on ██████ reading skills and therefore, the only other option was to place ██████ in a residential setting where ██████ would have additional time with peers and adults who utilize American Sign Language. However, this framing is inconsistent with the continuum required by law. The continuum of alternative placements for a student is significant. Peterson testified:

Continuum of placements starts with all children should start in an educational placement that is general education setting all the time. And then if that setting is not providing educational progress, then we look at restricting that setting by providing interventions within general education, more interventions within general education, secluded setting within general education or general classrooms, all the way through the most restrictive continuum of placement with he residential program.

(78:8-20)

As such, placement is not limited to a particular location. It is flexible and includes the wide variety of service configurations. In evaluating LRE, I therefore consider not only the setting but also whether services can be intensified or modified within less restrictive options before resorting to residential placement.

Meyer testified that there were several additional interventions that could be added to █████ IEP prior to considering a residential placement such as adding additional reading goals, adding additional time with a speech-language pathologist; and adding additional language goals.

Peterson, the only other deaf educator who testified at the hearing, stated:

[W]e would look at expanding educational access, we might add an after-school program, we might add some tutoring. We might start by just changing what is in their normal 8 to 4 school day to increase language support services in order to build that language and allow literacy to grow.

(87:7-13).

Boice also testified:

[W]e could have decided to add back goals targeting communication, like communication and behavior or, doing the behavior intervention plan if that was determined as needed for █████ due to behavior concerns. So those are just two least restrictive steps that we would want to take as a team with maybe some additional accommodations or modifications if needed before we would look at removing him from his home setting. That would be very restrictive to do that, and so appropriate next step would be to consider adding those goals onto █████ IEP.

(351:2-20).

Collectively, this testimony is persuasive that residential placement was not essential for █████ to make appropriate progress and that the record supported multiple less restrictive steps that could be implemented and evaluated. *No expert testimony*

supported the proposition that ██████ required a residential placement, even for partial days, at ISD. This absence of supporting evidence weighs heavily against Petitioners' meeting their burden of proof in this case.

Petitioners presented three arguments in response to the expert testimony provided at the hearing. I will address each argument in turn and explain why none establish that a residential placement was required for FAPE. First, Petitioners asserted that a residential placement for ██████ was of the essence and that based on ██████ data and disability, a residential placement is necessary to make up for the serious gap in ██████ abilities, and therefore waiting to try lesser restrictive options would cause further harm. Petitioners specifically pointed to ██████ MAP scores and the assertion that:

The U.S. Department of Education has recognized that many deaf and hard of hearing students, when they lack appropriate language, access and instructions plateau in reading around third grade. That is exactly where ██████ is at right now, but ██████ data shows something worse. ██████ effectively plateaued at about the first-grade level, and despite being at ISD as a day student, ██████ not meaningfully closed the gap.

(31:7-18).

Petitioners' arguments were undermined by the evidence presented at the hearing. The evidence showed that ██████ has been making excellent progress on his IEP goals, that ██████ has been consistently above the aimline for his reading and writing goals, and that ██████ abilities have increased to the point of reducing ██████ educational services. On this record, Petitioners' reliance on select assessment data does not overcome the broader evidence of progress under the IEP. The Petitioners point to ██████ MAP scores and the

evidence showed that █████ made a significant increase in █████ reading MAP scores during the past year from the 1st to the 19th percentile. Even though █████ most recent score placed him in the 19th percentile, that score, standing alone, does not establish that █████ is not making appropriate progress in light of █████ circumstances, particularly given the evidence of growth and IEP progress. Kristi Gross testified:

█████ is in third grade, █████ eight years old and, you know, literacy is a really foundational part of what is provided in all schools. And so the goal for students, particularly students who don't have cognitive impairments, is for us to continue to build those skills and to put supports in place to have that child continue to make progress so we do close the gap between non-disabled peers and the student with a disability. So it doesn't mean █████ always will be [behind]. █████ young, and there's a lot of work that will be done for █████ up until the time █████ graduates from high school. And as long as reading is a need for █████, that will be addressed.

(234:21-25; 235:1-22).

Sarah Peterson testified that it takes time for a student to close the gap:

Closing the gap between ability and grade level] is always the long-term goal, that is not the expectation within a year, but that depends on the student. You know, some students – it depends on how far away they are from the goal at baseline, and then what we expect that student's rate of progress to be, but it is not an expectation that the IEP in one year for most students, if they are already below grade level and skills, would necessarily be at grade level, but that does depend on the student.

(160:24-25; 161:1-12).

Additionally, ██████ progress report following the September 8, 2025 IEP meeting continues to demonstrate that ██████ making appropriate progress. Gross testified:

Currently this document states that in reading ██████ met ██████ goal, both of ██████ reading goals. One of ██████ reading goals ██████ met, and that ██████ above the aimline and will likely meet that goal by the annual review date. And then it does state that ██████ below the aimline and may not meet ██████ goal by the annual review date for writing. And while I don't like to see that, we have – we have a year and some additional data to review, it doesn't mean that ██████ being denied a FAPE. It means that ██████ not making the progress they expected from the goal they wrote in April to October. It doesn't change my opinion that he's receiving a FAPE.

(223 – 224)

Based on the testimony and exhibits presented at the hearing, Petitioners did not present sufficient evidence to prove by a preponderance of the evidence that ██████ progress was so low that it necessitated bypassing the traditional analysis for ██████ least restrictive environment. Residential placements should be considered as a last resort when all other typical interventions are clearly untenable. The evidence presented at the hearing showed that there are numerous less restrictive interventions that are likely to assist ██████ in ██████ reading and writing skills and EPS appropriately determined that those interventions should first be attempted.

Petitioners next referenced the academic benefits that ██████ would receive at the dormitory program. Even accepting that the residential placement could confer additional opportunities, the controlling authorities require necessity for FAPE – not the possibility

of added benefit. Each expert witness testified regarding this sentiment. For example, Gross testified:

[I]t is not a matter of would he benefit. There are numerous ways that students would benefit from a variety of experiences and do. Parents elect to enroll their students in dance classes and club sports, scouts, summer camp. Those are all experiences that undoubtedly students do and can benefit from. While I think it is – ██████ may like to be at the dorms and ████ may certainly achieve some benefit from that, that is different than our standard of saying ████ has to be there. And it really isn't about would ████ benefit. It is stating that unless ████ is removed from ██████ home, ████ cannot receive a FAPE, which is different than whether or not ████ would benefit. We're saying ████ has to be removed from ██████ home, and if ISD were to no longer, you know, be in place, we would have to find another dormitory program for ██████ to live in. And that's just a really serious decision, that's very different than a benefit.

(221:21-25; 222:1-19).

Meyer and Peterson offered supporting testimony in general agreement with Gross' conclusions.

School districts are obligated to provide students with the specialized instruction and services necessary to allow the student to make appropriate progress in light of their unique abilities. Based on the testimony and exhibits presented at the hearing, ██████ is receiving a FAPE from EPS. Petitioners' "benefit" argument does not satisfy the standard for residential placement.

Finally, in response to the expert testimony presented at the hearing, Petitioners argued that due to limitations in their own ability to communicate with ██████ using ASL in the home, ██████ required a residential setting. Petitioners argued that they are unable

to have full communication with [REDACTED] and are struggling to assist [REDACTED] with homework related communication. This argument reframes the residential-placement inquiry around conditions in the home rather than [REDACTED] educational needs within the school setting. However, the IDEA does not reach the inside of a student's home, unless necessary for FAPE. (85:15-25; 86:1-8; 216:18-25; 217:1-3; 359:24-25; 360:1-5). On this record, Petitioners did not establish that limitations in the home environment rendered a residential placement educationally necessary for [REDACTED] to make appropriate progress and receive a FAPE.

In summary, after considering the totality of the evidence and applying the governing legal standards, I find that Petitioners failed to prove by a preponderance of the evidence that [REDACTED] required a residential placement at ISD in order to receive a free appropriate public education. The persuasive and unrebutted expert testimony established that residential placement is the most restrictive setting on the continuum of placements and is reserved for circumstances where residential services are educationally necessary—i.e., without them the child cannot receive FAPE. The evidence instead demonstrated that [REDACTED] was making appropriate progress under [REDACTED] existing day placement and that multiple less restrictive options remained available to address [REDACTED] educational needs. Accordingly, I conclude that EPS did not deny [REDACTED] a FAPE by declining to place [REDACTED] in a residential setting at the September 8, 2025 IEP meeting.

2. Petitioners Failed to Prove by a Preponderance of the Evidence that EPS Failed to Comply with its Obligations Under the IDEA and Rule 51 Regarding Transportation as a Related Service.

At the hearing, Petitioners argued that if ██████ was not residentially placed at ISD, ██████ should still participate in the afternoon and evening activities at ISD through dinnertime as ISD provides “structured after-school routines conducted in ASL, supervised homework and academic support in ██████ language, peer interaction with other deaf children and fluent-signing adults, and daily opportunities to internalize vocabulary, storytelling and conversational ASL well beyond what can occur in a few class periods.” (30:1-8). Petitioners therefore framed the transportation dispute as one involving access to educational or extracurricular programming.

Under the IDEA and Rule 51, school districts have an obligation to provide specially designed instruction and related services necessary to allow a student to receive FAPE. Transportation is a related service. 92 NAC § 51-003.49. There is no dispute that EPS provided transportation to and from school for ██████. The question before me is narrower: whether EPS was obligated to allow ██████ to stay after school at ISD through dinner, and then provide ██████ transportation home. Resolution of that question turns on whether the after-school routines and evening meal constitute part of ██████ educational program or a nonacademic or extracurricular activity within the meaning of the IDEA and Rule 51.

No witnesses or documentary evidence established that the after-school routines or evening meal were considered part of the ISD school day. Rule 51 requires districts to consider the related services that a student needs to participate in extracurricular and nonacademic activities. 92 NAC § 51-007.07A5. Accordingly, EPS’ transportation obligation depended on whether the activities at issue fell within those categories.

The credible evidence presented at the hearing does not support Petitioners' characterization of the evening meal or after-school routines. Documentation directly from ISD further supports this distinction. According to the ISD Parent-Student Handbook, ISD offers a YMCA and a [REDACTED] Club as after-school clubs for students within [REDACTED] age range. All other after-school clubs and activities are geared toward middle school and high school students. (Exhibit 145, pp. 40–42). The handbook does not identify the evening meal or dorm routines as extracurricular or nonacademic school activities. As such, EPS had no obligation to provide [REDACTED] transportation home from dinner at ISD. This conclusion is consistent with the IDEA's framework, which distinguishes between educational services required for FAPE and activities of daily living associated with custodial care.

At the same time, EPS did have an obligation—and affirmatively acknowledged that obligation—to provide transportation home from school-sponsored extracurricular activities. The record reflects that EPS expressly offered to provide transportation for such activities, both during the IEP meeting and in the prior written notice. For example, Gross testified:

My opinion is that we offer to provide transportation home from those activities. That if [REDACTED] would choose to enroll in their extracurricular activities at ISD that's an extension of the school day, we would provide the transportation at no cost for the supplemental service.

(218:13-25)

Gross' testimony draws a clear and legally significant distinction between extracurricular programming and the custodial aspects of residential life. Meyer testified to the same points.

This testimony further supports the conclusion that the evening meal was not an educational or extracurricular component of ██████ program and therefore did not trigger a transportation obligation under Rule 51 or the IDEA.

Based on the testimony and exhibits presented, I find that Petitioners failed to prove by a preponderance of the evidence that EPS violated its obligations regarding transportation as a related service. EPS provided transportation necessary for ██████ to access ██████ educational program and appropriately offered transportation for school-sponsored extracurricular activities. Because the evening meal at ISD was neither part of ██████ educational program nor an extracurricular activity, EPS was not required to provide transportation associated with that meal. Accordingly, EPS complied with its obligations under the IDEA and Rule 51.

C. Procedural Issues.

1. Petitioners Failed to Prove by a Preponderance of the Evidence that EPS Engaged in Predetermination.

The IDEA and Rule 51 require that parents have the opportunity to participate in the educational decision-making for their children. To comply with parental participation requirements, district IEP team members must enter an IEP team meeting with an open mind and must meaningfully consider the parents' input. *See, e.g., R.L. and S.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11th Cir. 2014). Predetermination occurs when

district members of the IEP team unilaterally decide a student's educational placement in advance of an IEP meeting. *See e.g., Deal v. Hamilton County Board of Education*, 42 IDELR 109 (6th Cir. 2004). The IDEA's requirement that parents be allowed to participate in the development of their child's IEP does not mean that district IEP team members cannot prepare for an IEP meeting. The difference between "preparation" and "predetermination" is the district's willingness to listen to the parent's concerns. *See e.g., P.F. and S.F. v. Board of Educ. Of the Bedford Cent. Sch. Dist.*, 67 IDELR 148 (S.D.N.Y. 2016). District staff may meet in advance of an IEP meeting to discuss potential placements for a child. *See, e.g., T.P. v. Mamaroneck Union Free Sch. Dist.*, 51 IDELR 176 (2d Cir. 2009); *Schoenbach v. District of Columbia*, 46 IDELR 67 (D.D.C. 2006). Petitioners claim that EPS engaged in predetermination in three ways. First, it inappropriately relying on NDE's 50-mile radius rule; second, it failed to consider [REDACTED] unique and individualized needs as a student who is deaf and hard of hearing; and third, it failed to appropriately consider a full continuum of alternative placements. I will address each theory below as I conclude that Petitioners did not meet their burden as to any of them.

a. EPS did not rely on NDE's 50-mile radius rule.

The evidence presented at the hearing clearly demonstrated that EPS did not inappropriately rely on NDE's 50-mile radius rule when denying the parents' request for a residential placement at ISD on September 8, 2025. At bottom, Petitioners' "50-mile rule" argument assumes that mileage drove the placement outcome. The record does not support that assumption. The evidence clearly demonstrated that the "50-mile rule" solely

related to whether the State or the school district would be responsible for payment of a residential placement.

The un rebutted evidence at the hearing established that if a student lived more than 50 miles from their educational placement, the State of Nebraska would fund that placement, even if the student did not need a residential placement for FAPE. That is, if the distance of the student's educational placement was so great that the student would not have appropriate transportation, the State would bear the cost of housing the student at their educational placement. This funding framework, standing alone, does not determine whether a residential placement is educationally necessary for FAPE.

Along these lines, the un rebutted evidence and testimony established by a preponderance of the evidence was that EPS neither believed nor acted upon an assumption that the State's offer of payment for students who reside more than 50 miles from their placement was the only factor which should be considered at the IEP meeting. Instead, the persuasive evidence demonstrated that EPS approached the meeting as an individualized placement determination and did not treat mileage as outcome-determinative.

EPS ensured that placement decisions were made by a group of persons, including the parents and others knowledgeable about the child, the meaning of the evaluation data, and placement options, in accordance with 92 NAC § 51-008.01C and 009.02. EPS further ensured that placement decisions conformed to the least restrictive environment requirements along a full continuum of alternative placements as outlined in 92 NAC § 51-008.01 and that they were based on the child's unique needs and not on

the child's disability. This process is inconsistent with any predetermination, which requires a unilateral decision made in advance of the IEP team meeting.

This testimony supported the conclusion that the placement discussion occurred within a robust IEP team process and included the very participants required for meaningful parental participation. Peterson provided this description of the meeting:

They discussed continuing the current placement, they discussed adding after-school programs, they discussed data that would be needed to show that additional time or residential placement would be needed . . . I believe the school district still laid out all opportunities for placement to continue as it was for them to add after-school programming, for the data that would be needed for them to add dorm placement. And all of that would be used to determine the LRE needed by [REDACTED] in order to receive educational gain and progress from [REDACTED] placement.

(102:12-25; 103:1-13).

As established in the findings of facts, on September 8, 2025, the team had a full and complete discussion of [REDACTED] data as well as Petitioners' wishes for a residential placement. That type of full discussion is the opposite of the closed-mind process required to prove predetermination.

Petitioners argued that an email between Peterson and Boice establishes that Peterson coached Boice on how to deny Petitioners' request for a residential placement based solely on mileage. (Exhibit 9). The record does not support that characterization. Peterson and Boice both testified that this email did not establish predetermination. Peterson testified that this email, including the referenced "write-up," was intended to

show how districts could include after-school clubs into a students' IEP and how EPS should consider the full continuum of placements available to ██████ (90:14-25; 91:1-25).

Peterson also testified that the email was intended to show Boice that there are times when NDE will also pay for residential placements under special circumstances. (93:21-25; 94:1-25; 96:1-22). Peterson testified that this email did not state that EPS could not or should not consider whether ██████ needed the residential placement for FAPE. (95:17-22). Boice also testified that she did not give the email much thought. (325:10-25). This testimony, together with the evidence of the September 8, 2025 meeting discussion, supports the conclusion that Exhibit 9 reflects preparation and information-sharing—not a unilateral, pre-meeting decision to deny placement.

The evidence presented at hearing clearly established that neither Gross, Peterson, nor Boice had any understanding—explicit or implicit—that the IEP team would consider any information other than ██████ individualized data to determine whether the residential placement was necessary for ██████ to receive a FAPE. Accordingly, Petitioners failed to prove by a preponderance of the evidence that EPS relied on the “50-mile rule” to predetermine ██████ placement.

b. EPS appropriately considered ██████ unique and individualized needs as a student who is profoundly deaf.

Rule 51 states that in developing, reviewing or revising each child's IEP . . . “The IEP team shall consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, shall consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in

the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication needs." 92 NAC § 51-007.07B6. This provision requires an individualized, communication-focused inquiry that is distinct from – and cannot be replaced by— administrative considerations such as distance or funding.

Petitioners asserted at the hearing that EPS did not make this individualized determination and instead focused only on the distance between ISD and ██████ home. The record does not support Petitioners' framing. Rather, all experts testified that the IEP team, including EPS, considered ██████ communication needs and individualized data when evaluating Petitioners' residential placement request. The consistent theme across the testimony is that the IEP team evaluated ██████ then-current performance and progress, considered the parents' concerns, and determined that additional updated data would best inform whether any changes were necessary.

As discussed in previous sections of this decision, EPS appropriately considered ██████ unique and individualized needs as a student who is profoundly deaf. The evidence at the hearing establishes that EPS addressed the very considerations identified in 92 NAC § 51-007.07B6 by focusing on ██████ communication mode, ██████ access to direct communication with peers and staff, and ██████ academic progress within that setting. The evidence adduced at the hearing demonstrates that EPS had previously placed ██████ at ISD where ██████ spends ██████ entire school day surrounded by students and staff who communicate in ██████ preferred language of ASL. This placement is directly responsive

to ██████ primary communication needs and provides the direct peer and professional communication opportunities contemplated by Rule 51.

The expert witnesses at the hearing explained that, based on ██████ individualized data and progress, ██████ did not require a residential placement, even though ██████ is profoundly deaf, has hearing parents, and does not have full access to a language-rich environment in ██████ home. Critically, the conclusion reached by the IEP team was not that communication needs were ignored, but that ██████ data did not show that removal from the home was necessary for appropriate educational progress at that time. This decision was made by reviewing and considering ██████ individual grades, progress reports, goal progress, services, and statements from ██████ teachers about ██████ individual progress. Accordingly, Petitioners failed to prove that EPS neglected the individualized inquiry required by 92 NAC § 51-007.07B6 or substituted mileage considerations for ██████ unique needs.

c. EPS considered a full continuum of alternative placements during the September 8, 2025 IEP meeting.

As discussed in earlier sections of this decision, the evidence adduced at the hearing demonstrated that Petitioners' request for a residential placement at ISD was considered as a potential placement during the September 8, 2025 IEP meeting. Contrary to Petitioners' assertions, residential placement was neither excluded from consideration nor predetermined to be unavailable. This placement option was also not foreclosed or limited by NDE's 50-mile radius rule. It simply was the case that ██████ data did not support a residential placement as of the September 8, 2025 IEP meeting. The distinction

between “considered and rejected based on data” and “excluded from consideration” is central to the procedural analysis, and the record supports the former.

Petitioners failed to prove by a preponderance of the evidence that EPS committed any procedural errors during the September 8, 2025 IEP meeting. The evidence instead showed that EPS:

- i. Followed procedures under 92 NAC § 51-007.07B;
- ii. Ensured placement decisions for █████ were made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options in accordance with 92 NAC § 51-008.01C and 009.02;
- iii. Ensured that placement decisions were made in conformity with the least restrictive environment requirements along a full continuum of alternative placements as outlined in 92 NAC § 51-008.01 and based on the child’s unique needs and not on the child’s disability;
- iv. Took steps, including the provision of supplementary aids and services determined appropriate and necessary 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 in accordance with 92 NAC § 51-007.07C4;
- v. Sent the parents prior written notices which included all of the required content under 92 NAC § 51-009.05B when it refused to initiate or change

the identification, evaluation, or educational placement of [REDACTED] or the provision of a free appropriate public education for the child;

vi. Ensured that a reevaluation of [REDACTED] was conducted when the school district determined that the educational or related services needs, including improved academic achievement and functional performance, of [REDACTED], warranted a reevaluation or when the parents requested a reevaluation in accordance with 92 NAC § 51-006.05A; and

vii. Appropriately considered whether [REDACTED] required transportation as a related service and then followed the procedures of 92 NAC § 51-014.02.

Taken together, these procedural safeguards demonstrate that EPS engaged in a comprehensive, legally compliant IEP process that considered the full continuum of placements and services required by Rule 51. The evidence does not support Petitioners' contention that EPS narrowed that placement discussion or failed to consider less restrictive and more restrictive options in accordance with law. Additionally, the parties testified that the residential placement will be considered, *again*, after completing [REDACTED] reevaluation at the IEP scheduled for December 18, 2025.

Having found that there were no procedural errors during the September 8, 2025 IEP meeting, it is not necessary for me to consider whether any alleged errors resulted in a denial of FAPE to [REDACTED] under 92 NAC § 55-008.03. Absent a procedural violation, no further analysis of educational harm is required.

2. Petitioners Failed to Prove by a Preponderance of the Evidence That EPS Issued a Procedurally Deficient PWN Following the September 8, 2025 IEP Meeting.

Petitioners argued that the prior written notice issued by EPS “do[es] not meet IDEA’s content requirements and do[es] not transparently explain what was considered and why.” (26:24-25; 27:1-2). Petitioners argue:

[EPS] rel[ies] on vague statements about proximity and adequate progress without trying those statements—without tying those statements to specific data. They do not clearly list the alternative options parents proposed or explained in a child-specific way why they were rejected. [EPS] left us as parents without a clear, lawful explanation of the refusal, and they deprived us of the information we needed to fully and meaningfully participate in [REDACTED] educational plan.

(34:15-25; 35:1-2).

This claim requires me to determine whether the September 16, 2025 PWN satisfied the specific content requirements under federal and state law – not whether Petitioners agreed with EPS’ conclusions or placement decision. The IDEA and Rule 51 require clarity and transparency in PWNs, but they do not require districts to draft PWNs in a manner that persuades the parents or exhaustively catalog every possible interpretation of the data.

Rule 51 states that prior written notices shall include:

- 1) A description of the action proposed or refused by the school district or approved cooperative;
- 2) an explanation of why the school district or approved cooperative proposes or refuses to take the action;
- 3) a description of other options the IEP team considered and the reasons why those options were rejected;

- 4) a description of each evaluation procedure, assessment, record or report the school district or approved cooperative uses as a basis for the proposal or refusal;
- 5) a description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;
- 6) a statement that the parents of a child with a disability have protection under the procedural safeguards of [Rule 51];
- 7) sources for parents to contact to obtain assistance in understanding the provisions of this Chapter.

92 NAC § 51-009.05B. Having reviewed Exhibit 112 as well as the expert testimony regarding the adequacy of the PWN, I find the September 16, 2025 PWN meets all of the procedural requirements under Rule 51 and the IDEA. The PWN identifies the actions proposed and refused, explains the District's reasoning, describes the options considered and rejected, and identifies the data relied upon by the IEP team in making its determination. The PWN discloses each of the considerations made at the IEP meeting and explains EPS' reasoning for either accepting or denying those proposals. (219:24-25; 220:1-9; 298:15-25; 299:1-2).

Although Petitioners emphasize their disagreement with portions of the PWN discussing proximity and progress, the PWN must be read as a whole. Viewed in its entirety, the PWN provided sufficient, child-specific information to allow Petitioners to understand EPS' decision-making and to meaningfully exercise their procedural rights. Additionally, although it was likely very confusing for Petitioners to also receive a PWN from ISD, in this hearing, the only question is whether EPS' PWN was legally sufficient. Because the Respondent's PWN satisfied the procedural requirements of Rule 51, no further analysis of procedural harm is required.

VIII. REMEDIES

Because Petitioners did not prevail on the merits of their claims, no remedial relief is warranted. Even if Petitioners were successful on the merits of this case, which I have determined they were not, the issue of remedies would nonetheless be moot. As Petitioners acknowledged in their opening argument, the primary remedy they sought—a new IEP meeting with full and meaningful consideration of [REDACTED] unique needs—was already scheduled prior to the hearing in this matter on December 18, 2025.

Each of the witnesses acknowledged that, in the period between the September 8, 2025 IEP meeting and the December 18, 2025 IEP meeting, [REDACTED] was undergoing a reevaluation. The purpose of that reevaluation was to obtain updated data to inform the IEP team's consideration of [REDACTED] educational needs. On December 18, 2025, the IEP team was scheduled to reconvene to review [REDACTED] new data and to determine whether [REDACTED] required residential services to receive a FAPE or whether [REDACTED] required any other new or different services at ISD. Accordingly, it would be inappropriate for me to order an IEP meeting that the parties had already agreed to convene and which was already scheduled to occur independent of this proceeding.

Additionally, for the reasons stated above, the remaining remedies requested by Petitioners are denied. Because EPS did not deny [REDACTED] a FAPE and did not commit procedural violations that resulted in a denial of FAPE, there is no legal basis for ordering compensatory relief, corrective action, or staff training. The record shows that EPS conducted an appropriate IEP meeting, and Petitioners did not establish any systemic or procedural deficiencies warranting training or other prospective relief.

IX. CONCLUSION

After careful consideration of the testimony, exhibits, and arguments presented, and for the reasons set forth above, I conclude that Petitioners failed to prove by a preponderance of the evidence that Elkhorn Public Schools denied ██████ a free appropriate public education [FAPE] or violated the procedural requirements of the IDEA or Nebraska Rule 51. The evidence demonstrates that EPS convened and conducted an appropriate IEP meeting on September 8, 2025; meaningfully considered ██████ unique and individualized needs; evaluated placement options along the full continuum of alternative placements; and made placement and service decisions based on ██████ individualized data and progress.

I further find that EPS did not engage in predetermination, did not rely on impermissible factors in making placement decisions, and issued a prior written notice that satisfied the content requirements of Rule 51 and the IDEA. Because EPS provided ██████ with a FAPE and committed no procedural violations that resulted in a denial of FAPE, the relief requested by Petitioners is denied.

Accordingly, the Complaint is dismissed in its entirety.

It is therefore ordered as follows:

1. Petitioners failed to meet their burden of proving Respondent failed to place ████████████████████ in ██████ least restrictive environment and failed to provide a free appropriate public education to ██████ in accordance with federal and state law and applicable regulations.


2. Petitioners failed to meet their burden by proving Respondent committed procedural errors which denied [REDACTED] a free and appropriate public education to [REDACTED] by predetermining its decisions in accordance with federal and state law and applicable regulations.

3. Petitioners' Special Education Petition is dismissed as it relates to Chapter 55 of Title 92 of the Nebraska Administrative Code, the Nebraska Special Education Act, Neb. Rev. Stat. § 79-1110 et. seq., and the Individuals with Disabilities in Education Act, 20 U.S.C. § 1400 et. seq.

4. Each party is responsible for and shall pay their own costs incurred herein.

SO ORDERED.

DATE: February 5, 2026.

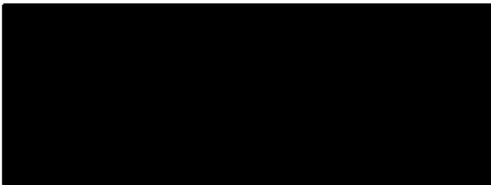
A handwritten signature in black ink, appearing to read "Robert F. Bartle", written over a horizontal line.

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 5th day of February, 2026, addressed as follows:

Ms. Haliagh Carlson
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Lincoln, NE 68508
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Mr. Troy Hawk
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A handwritten signature in cursive script that reads "Robert F. Bartle".

Robert F. Bartle
Hearing Officer