

COMPLAINT INVESTIGATION REPORT

Complaint Number: NDE 23.24.25
Complaint Investigator: REDACTED
Date Complaint Filed: January 22, 2024
Date of Report: REDACTED

Introduction

On January 22, 2024, the Nebraska Department of Education (Department) received a written request for a special education Complaint investigation from the Parents of a Student residing in the District. During the Complaint period, the Student was in the third and fourth grades and attended a public school in the District and a residential treatment facility. The information included in this report that is outside the Complaint period is provided for context only.

Issues Investigated

1. Did the District consider the use of positive behavioral interventions and supports and other strategies to address behavior? [92 NAC 51-007.07B]
2. Did the District develop an IEP (Individualized Education Program) that met the unique and individual needs of the Student? [92 NAC 51-007.07A5 and 007.07A8]
3. Does the District have a continuum of alternative placements available to meet the needs of the Students? [92 NAC 51-008.01D]
4. In developing the Student's IEP, did the IEP team make a placement decision based on the Student's needs and not on the child's disability? [92 NAC 008.01C]
5. Did the District meet the Least Restrictive Environment requirements, and did the District offer a continuum of placement options when making educational placement decisions for the Student? [92 NAC 51-008.01]
6. Was an IEP developed to meet the Student's needs when transitioned to homeschool pursuant to 92 NAC 51-015.03C1a?
7. Did the Student receive a free appropriate public education during the 2022-23 and 2023-24 school years? [92 NAC 51-003.24]

Information Reviewed by Investigator

From the Complainant

- Letter of Complaint dated January 22, 2024; received by NDE January 22, 2024
- Emails between the Parents and the District, dated March 24, 2022, through February 5, 2024
- Interviews with the Parents, February 26, 2024

From the School District

- Letter of Response dated February 12, 2024; received by NDE February 12, 2024
- Multidisciplinary Evaluation Team MDT Report, March 24, 2022
- IEPs
 - Dated March 25, 2022
 - Dated February 23, 2023
 - Dated April 19, 2023
 - IEP Meeting Notes dated April 21, 2023
 - Dated August 10, 2023, with meeting agenda dated August 9, 2023;

- Dated January 26, 2024, with attendance sheet, meeting notes, and meeting agenda
- Notes Page, transition meeting/questions from PWN/email communications dated August 12, 2023
- [Student] Transition Meeting, agenda, and notes dated December 8, 2023
- Progress reports
 - Dated December 20, 2022
 - Dated May 17, 2023
 - From Outside Agency dated March 24, 2022
 - From Outside Agency dated August 10, 2023
- Permission to Invite [Outside Agency] to Attend IEP Meeting dated January 26, 2024
- BIP
 - Dated April 19, 2023
 - Dated August 8, 2023
- Prior Written Notices
 - Dated March 25, 2022
 - Dated February 23, 2023
 - Dated April 19, 2023
 - Dated April 21, 2023
 - Dated August 11, 2023
 - Dated August 23, 2023
 - Dated December 11, 2023
 - Dated January 26, 2024
- Attendance
 - Dates of Attendance for the 2022-2023 School Year and 2023-2024
 - Meeting Attendance List for [Student] dated September 7, 2022, through May 11, 2023
 - Meeting Attendance List for [Student] dated August 22, 2023, through January 31, 2024
 - [Student] Attendance for 2024 dated January 4 through January 25
- Classroom schedule, August 14, 2022, through August 20, 2022
- Daily Schedule/Plan, no date
- Teacher Report for [Students] Receiving Special Education Services Modification/Accommodations Currently Addressed on the IEP
 - Dated March 25, 2022
 - Dated February 23, 2023
 - Dated April 19, 2023
 - Dated August 10, 2023
 - Dated January 26, 2024
- Report Cards
 - Dated May 16, 2023
 - From Outside Agency dated January 8, 2024
- Evidence of Implementation of Behavioral Interventions used during the 22-23; and 23-24 School Years including:
 - Behavior descriptions,
 - Student check-in sheets
 - Behavior descriptions and reward choices
 - Replacement behavior examples
 - Sensory Diet for [Student]

- [Student] Daily Point Cards dated August 11, 2023, through August 23, 2023
- Think Sheet/Discussion debriefing form dated August 16, 2023, through August 23, 2023
- Expectation point value dated August 16, 2023
- Positive reinforcement point cards dated March 13, 2023, through March 29, 2023
- [Student] Rewards Menu
- Seesaw Message History dated August 11, 2022, through April 6, 2023
- [Student's] Work Completion Data dated November 30 through January 21
- Student check-in sheets, completed
- [Student], individual usage bar chart dated April 13
- Ion System Account Book, positive reinforcement data sheet
- Behavior notes/documentation dated March 28, 2022, through May 13, 2022
- [Student] Behaviors, notes/documentation dated March 14 through April 3
- Cliff Notes of Incidents Reported to [Parents] in Email for [Student] dated August 23 through February 10
- Behavior/Threat Assessment Checklist dated March 14, 2023
- Behavior Discipline/Incidents summary dated November 14, 2021, through August 23, 2023
- Reduction of the Following Behaviors, behavior plan
- Notes about [Student] behavior, no date
- Outside Agency Documentation including:
 - ADA/ADM by [Student] dated January 8, 2024
 - Discharge paperwork/safety plan dated April 4, 2023
 - Safety plan dated April 18, 2023
 - Psychoeducational report dated March 24, 2022
 - After Visit Summary dated April 4, 2023, through April 7, 2023
 - Treatment plan dated February 28, 2023
 - Letter of referral to Residential Treatment Center dated April 1, 2023
- Modified School Day, schedule/plan
- Summary of discussion with [Student] dated August 15, 2023
- Handwritten note from Principal regarding Student comment dated August 23, 2023
- CPI Training, list of attendees, September 19, 2023
- [Student] Meeting Agenda and Notes dated August 2, 2023
- Special Education Procedures
- Meeting with [Parents] - [Student] dated April 11, 2023
- Interview with District staff dated February 27, 2024

Findings of Fact

1. The Student is eligible for special education as a student with an Emotional Disturbance. (IEP Progress Report dated August 10, 2023)
2. The Student was ten years old and, in the 3rd, and 4th grades during the Complaint period. (IEP Progress Report dated August 10, 2023)
3. The Student was described as creative, interacts with adults, tells jokes, [is] personable and outgoing, and a good reader. The Student's needs included mental health, emotional well-being, and math. The Student's behaviors were distracting to themselves and others; the Student sought attention by making noises, being disruptive, or being intimidating and unkind. The Student required redirection on average "10 times every 30 minutes." (Special Education Teacher Interview dated February 29, 2024.)

4. The Dates of Attendance report for the Student listed the following absences for 3rd grade:
 - a. There were 20 morning absences from February 27, 2023, through May 12, 2023.
 - i. One absence was coded as "MD" (Medical documentation provided);
 - ii. One absence was coded as "SU" (Suspension, in or out of school);
 - iii. Three absences were coded as "PA" (Parent notified the school of absence); and
 - iv. Fourteen absences were coded as "AD" ("Administrative - school administrative excuses absence – discretionary") when the Student was on a modified schedule.
 - b. There were six afternoon absences from February 20, 2023, through May 9, 2023.
 - i. One absence was coded as "IL" (Parent notified school of illness);
 - ii. One absence was coded as "SU";
 - iii. Three absences were coded as "PA"; and
 - iv. One absence was coded as "AD." (Attendance Report, February 20, 2023, through May 12, 2023.)
5. The Dates of Attendance report for the Student listed the following absences for 4th grade:
 - a. There were nine-morning absences from January 3, 2024, through January 19, 2024.
 - i. Nine absences were coded as "AD."
 - b. There were 11-afternoon absences from August 22, 2023, through January 22, 2024.
 - i. One absence was coded as "PA"; and
 - ii. Ten absences were coded as "AD." (Attendance Report, August 22, 2023, through January 22, 2024.)
6. On January 31, 2023, the Elementary Principal emailed the Parents alerting them that the Student hit another student when lining up for recess (Email from Elementary Principal, January 31, 2023).
7. On February 1, 2023, the 3rd Grade Teacher emailed the Parents about two physical incidents, "I'm sure you are aware of [the Student] hitting a student and then yesterday [the Student] punched another student. [The Student] screamed at my class for reminding [the Student] to put a coat on before going outside." The 3rd Grade Teacher also described a soccer game that the Student broke, which upset the students in the class. (Email from 3rd Grade Teacher, February 1, 2023.)
8. On February 3, 2023, the Behavioral Health Therapist sent an email to the Elementary Principal, which stated, "During [a] session with [the Student] on Tuesday, we discussed [the Student's] recent behaviors with disrespectful talking, hitting another student, and cutting in line. I explored consequences with [the Student], explaining that consequences are simply the result of a choice and that they can be positive or negative." The Student produced the following consequences for negative behaviors:
 - a. "1st offense cutting in line-must move to the back of the line";
 - b. "2nd offense in line-must be last in line for the remainder of the day";
 - c. "Yelling at friends/saying mean things (ex. You're stupid or Shut up)-lose 2.5 minutes of recess";
 - d. "Hitting- write an apology note, verbally apologize"; and
 - e. "Hitting 2nd offense-lose one recess." (Email from Behavioral Health Specialist dated February 3, 2023.)

9. On February 6, 2023, the Parents sent an email to the Elementary Principal which stated, "I've put some thought into "Natural Consequences" (sic) [The 3rd Grade Teacher] had mentioned how [the Student] yelled at [their] class because of [their] coat. That is something we wouldn't even choose to battle ... The natural consequence is [the Student] goes outside and when [the Student] gets cold, [they] would have to ask to go back and get [their] coat on. [The Student] doesn't get in trouble, and [they] will get [their] coat on once [the Student] is cold ... [The Student] is a child that won't be able to have the same consequences as [their] peers. [The Student's] brain doesn't work like that. [The Student] doesn't stop to think about what might happen if [they do] A or B." The Parent also shared concerns about the Student's IEP, "Unfortunately, I don't feel [the Student's] IEP is doing much of anything for [the Student's] behavior. I am currently reviewing it and reaching out to some professional contacts to see how we can better it." (Email from Parent dated February 6, 2023.)
10. On February 7, 2023, the Elementary Principal emailed the Parents, "In regards to the effectiveness of [the Student's] IEP for behavior, we have seen significantly less time out of class this year than in previous years, due to the consistent implementation of [the Student's] behavior plan. Since the start of school [the Student] has spent fewer than 5 times in my office, all of which occurred during the lunch or recess periods and did not impact [the Student's] ability to access instruction within the classroom. Situations involving the safety of other students, such as instances when [the Student] has become physical with them, do fall under our code of conduct and as laid out in [the Student's] behavior plan, will always result in a visit to my office with consequences determined based upon the extent of the offense." (Email from Elementary Principal dated February 7, 2023.)
11. An IEP dated February 23, 2023, and signed by the Parent on the same day, described the following:
 - a. The Student's strengths included math facts, creativity, and participating in class discussions.
 - b. The Parents shared concerns about the Student's aggressive behavior, maturity, and ability to graduate, given some of the Student's challenges.
 - c. The Student's behavior impeded learning, "The Student will have access to a behavior plan and behavior charts that will help facilitate positive behavior skills throughout [their] day. This plan may be altered throughout the year to fit [the Student's] educational needs."
 - d. Communication needs were addressed with goals in this area.
 - e. The Student had access to "text-to-speech, calculator, and computation tools."
 - f. The Student's Present Level of Academic Achievement and Functional Performance was described as follows, "[The Student] will complete the 3rd-grade curriculum in all areas with accommodations and/or modifications available to [them] as needed. [The Student] will receive [their] special education services either in a small group setting outside of the classroom or during inclusion times to address social and classroom needs. Services outside of the classroom will provide individualized instruction, support, and the opportunity to work with less (sic) distractions to target specific skills and strategies."
 - g. Graphs described the Student's pre-IEP behaviors and behaviors during the implementation of the IEP, "Following [the] implementation of [the Student's] IEP and behavior plan [the Student] has had 9 instances of escalated behaviors from April 2022 to February 2023 requiring removal from the classroom indicating

progress toward managing [their] behaviors/emotions and ability to more effectively access the curriculum."

- h. It was noted in the Resource/Speech section of the IEP that "[the Student's] study habits are highly dependent on [the Student's] desire to complete the task. [The Student's] ability ranges from completely independent to fully dependent, due to [their] emotional state. [The Student] has been given education on tools that are available to [them], but [the Student's] willingness to use these tools is inconsistent. When choosing not to use tools available, [the Student] has a difficult time accepting peer and/or adult support to do so." It was described that "The Student does not utilize strategies taught to [them] or known skills to de-escalate [themselves] and appropriately navigate social situations. When [the Student] has been emotionally escalated resulting in unexpected behavior, [their] behavior intervention plan has been utilized in order to help [the Student] effectively return to the classroom. [The Student's] success within the IEP year, is reflective of implementing [the Student's] behavior intervention plan which has allowed [them] to remain in the classroom more independently than during previous years."
- i. In the area of fine motor skills, the Student demonstrated improvement in letter reversals. For 75% of the time, the Student demonstrated appropriate spacing, line placement, and sizing. The Student demonstrated emerging typing skills.
- j. The first Measurable Annual Goal was described as follows, "By February 2024, in a variety of environments, [the Student] will increase [their] social and classroom skills by completing the following benchmarks in 4 out of 5 opportunities."
 - i. The Short-Term Objectives were listed as follows:
 - 1. "[The Student] will initiate non-preferred tasks within 30 seconds of the instruction being given";
 - 2. "[The Student] will decrease attention seeking behaviors within the classroom (i.e., incorrect responses, repetitive questioning, poor work quality)";
 - 3. "[The Student] will demonstrate study skills by utilizing the tools provided to [them] to complete assigned tasks";
 - 4. "[The Student] will recognize a conversational partner's emotional response when using unexpected behaviors during a social interaction and will adjust [their] language or behavior accordingly"; and
 - 5. "[The Student] will utilize [their] strategies within [their] behavior intervention plan to modify [the Student's] behavior when [the Student] is emotionally escalated."
 - ii. Evaluation Procedures/Instruments used to assess progress toward meeting the goal included, "Teacher Observation, Written Performance, Oral Performance, Parent Report, Other Running tx data (*sic*)."
 - iii. "Progress may be reported with progress notes, Parent/Teacher Conferences, annual IEP meetings, daily communication, email, and/or phone calls as necessary."
- k. The second Measurable Annual Goal indicated, "By the next IEP date, given direct instruction and practice, [the Student] will demonstrate age[-] appropriate fine motor skills by meeting the following benchmarks on 90% of opportunities in three consecutive sessions."
 - i. The Short-Term Objectives were listed as follows:

1. "[The Student] will demonstrate age[-]appropriate line placement when writing sentences on the lines with 90% accuracy";
 2. "[The Student] will demonstrate age[-]appropriate sizing when writing [a] sentence on regular notebook paper with 90% accuracy"; and
 3. "[The Student] will demonstrate proper hand/finger placement when typing 80% of attempts."
 - ii. Evaluation Procedures/Instruments used to assess progress toward meeting the goal included, "Teacher Observation, Written Performance, Other: [Occupational Therapist] OT Observation."
 - iii. For this goal, "Progress reports will be sent home quarterly."
- l. Non-Participation Justification: "According to Nebraska Rule 51, [the Student] verifies as a student with Emotional Disturbance. [The Student] will complete the 3rd[-]grade curriculum in all areas. [The Student] will work with the special education teacher for 30 minutes per week, 4 weeks a month, inside and outside of the classroom. [The Student] also verifies as a student who needs Speech-Language Therapy, and Occupational Therapy. [The Student] will receive speech-language therapy outside the regular education classroom for 20 minutes per week, 4 weeks a month. [They] will see the Occupational Therapist 4x/quarter for 20 minutes. This schedule is based on services being provided with [an] allowance for special activities/events not included in a regular school day such as field trips, assemblies, and illnesses. Everett will participate in all specials (PE, music, library, etc.) with [their] class."
- m. Special Education and Related Services included the following:
- i. Special Instruction (Resource)for 30 minutes per week for four weeks per month beginning on February 23, 2023, and ending on February 22, 2024;
- n. Additional Special Education Services included the following:
- i. Speech-language therapy for 20 minutes per week for four weeks per month; and
 - ii. Occupational Therapy Services for 20 minutes per day for four days per quarter.
- o. Program Modifications and Accommodations were described:
- i. "[The Student] may have longer time limits, test read orally/text-to-speech (if not comprehension tests), calculator, computation tools, breaks, quiet setting, small group, and/or one-on-one setting." The frequency of these modifications and accommodations was not listed. (IEP dated February 23, 2023.)
12. A Prior Written Notice (PWN) was hand-delivered on February 23, 2023, and described the actions proposed by the District, "The team is proposing to implement new IEP goals, an updated [Behavior Intervention Plan] BIP, and special education times to correlate with [the Student's] grade Level and [the Student's] educational needs." (PWN dated February 23, 2023.)
13. In a Confidential Teacher Report, teachers were alerted to the modifications and accommodations described on the Student's IEP, "The following is a list of modifications that will benefit this student. The ones that are marked have been specifically recommended for this student at [their] IEP meeting. It is your responsibility to follow the Modifications/Accommodations listed below. Please incorporate these Modifications/Accommodations when planning classroom activities. Other

Modification/Accommodation (sic) can be added as deemed necessary." The specific accommodations and modifications were listed:

- a. "Assignments - Allow student to use resource assistance when necessary";
 - b. "Assignments - Redo for better grade";
 - c. "Environment - Avoid distracting stimuli";
 - d. "Environment - Preferential seating";
 - e. "Environment - Seat near positive role model";
 - f. "Lesson Presentation - Teacher emphasize: - Visual; - Auditory; - Tactil (sic); - Multi-sensory";
 - g. "Materials - Special equipment: - Calculator; - Computer; - Video recorder; - Audio Recorder; - SGD: Speech Generating Device; - Amplification System";
 - h. "Motivation & Reinforcement - Positive reinforcement";
 - i. "Pacing - Allow breaks, vary activity often";
 - j. "Pacing - Extend time requirements";
 - k. "Self Management / Follow-through - Calendar/Assignment Book";
 - l. "Self Management / Follow-through - Use concrete reinforcement";
 - m. "Self Management / Follow-through - Use positive reinforcement";
 - n. "Self Management / Follow-through - Request parent reinforcement";
 - o. "Social Interaction Support - Use multiple/rotating peers";
 - p. "Social Interaction Support - Peer tutoring";
 - q. "Social Interaction Support - Teach friendship: skills/sharing/negotiations";
 - r. "Testing Accommodations - Provide extended time"; and
 - s. "Other -." (Confidential Teacher Report dated February 23, 2023.)
14. On March 14, 2023, [the Licensed Mental Health Professional (LMHP)] conducted a Behavior/Threat Assessment Checklist for the Student. The behavior the Student exhibited was determined "low risk." It was noted that "While [the Student] may know of the whereabouts of guns or other weapons in [their] home, [the Student's] current behavior does not indicate [the Student] has any intention of attempting to access the weapons." (Behavior/Threat Assessment Checklist dated March 14, 2023.)
15. On March 14, 2023, Parent 1 and the 3rd Grade Teacher exchanged emails through the SEESAW application. The 3rd Grade Teacher shared, "[The Student's] behaviors are definitely concerning." The following day, Parent 1 responded, "Between you and me, I have been getting information on residential treatment. I don't know what else we can do for [the Student]. I've tried to avoid that for the last year. There is a wait list so I am filling things out to get [the Student] on there." That same day, the 3rd Grade Teacher responded to the Parent's email and indicated frustration from other parents regarding the Student's behavior, "I think there has been continual frustration throughout the entire year." (SEESAW Message History dated March 14, 2023, through March 15, 2023.)
16. On March 28, 2023, the 3rd Grade Teacher communicated with Parent 1 via the SEESAW application, "Another really tough day. [The Student] was defiant, especially towards me." (SEESAW Message History dated March 28, 2023.)
17. On March 31, 2023, the 3rd Grade Teacher communicated with Parent 1 via the SEESAW application, "I've been giving [the Student] more breaks, more time to cool off, and for the class to settle down as well. But that hasn't seemed to be effective this week." (SEESAW Message History dated March 31, 2023.)
18. The Student's behaviors were tracked each day in the areas of safety, respect, and doing one's best. A menu of rewards was created for the Student.
- a. From March 7, 2023, through March 9, 2023:
 - i. The Student met their daily points goal of at least eight points on 1/3 days.

- b. From March 13, 2023, through March 17, 2023:
 - i. The Student met their daily points goal of at least eight points on 4/5 days.
 - c. From March 21, 2023, through March 24, 2023:
 - i. The Student met their daily points goal of at least 12 points on 2/4 days.
 - d. From March 27, 2023, through March 31, 2023:
 - i. The Student met their daily points goal of at least 12 points on 1/5 days.
 - e. On April 3, 2023, the Student earned 2/16 points and was sent home. (Daily Goal Sheet dated March 13, 2023, through April 3, 2023.)
19. On April 1, 2023, the LMHP wrote a letter to "Who It May Concern" and described their role in the Student's treatment, "Throughout the course of therapeutic treatment, [the Student's] negative behaviors have intensified. Within the last 8 weeks, [the Student] has made numerous negative and hurtful verbal comments toward peers, has pretended to be a school shooter disguised as a janitor, broke out windows in the family's barn, and has physically hurt other students by hitting, pushing, or kicking. [The Student] made a verbal comment to a few peers who refused to play with [the Student] at recess that [the Student] wished they would all commit suicide. [The Student] also admitted to locking the stalls in the restroom and climbing over the top so other students coming in have to climb the stall to unlock the door. [The Student] has recently looked up pornography on a family computer and presents with sexualized (sic) at school. [The Student] has been seen pushing a pencil down [their] throat [and] then coughing it back up. There is ongoing concern from parents regarding [the Student's] behavior at home, as well as concerns for the safety of others at school." The LMHP wrote, "There is ongoing concern for [the Student], [their] family, and [their] peers with [the Student's] behaviors. It is my professional opinion that [the Student] receives a higher level of care in a Residential Treatment Center. I believe [the Student] will benefit from intensive behavioral and psychological interventions." (Letter from LMHP dated April 1, 2023.)
 20. On April 3, 2023, the Elementary Principal sent an email to the Parents which stated, "I had a letter explaining [the Student] was sent home today with a 1 day out of School (sic) suspension letter with [their] homework ... I'm thinking the best next steps is to get a meeting schedule (sic) so we can all talk about what we want for [the Student] and what is best for [the Student]." (Email from the Elementary Principal dated April 3, 2023.)
 21. On April 4, 2023, the 3rd Grade Teacher emailed the Parents to check in with the family. The Parents shared that "The [Treatment Center] inpatient denied [the Student] as [the Student] didn't meet requirements." (Email Exchange dated April 4, 2023.)
 22. On April 4, 2023, the Elementary Principal and Parent 1 exchanged emails. The Elementary Principal recommended that they meet with the Parents before the Student's return to school. Parent 1 confirmed that the Student would be admitted to the hospital and that they would communicate when they had more information. (Email Exchange dated April 4, 2023.)
 23. On April 4, 2023, a Safety Plan was created at a medical facility for the Student. (Safety Plan dated April 4, 2023.)
 24. On April 11, 2023, the District staff met with the Parents to discuss the Student's hospital stay and the hospital's recommendations. Notes from the meeting described that:
 - a. "Parents stated they felt [the Hospital] did nothing for [the Student] in terms of care or treatment."
 - b. "Parents stated [the Hospital] made no recommendations or provided discharge paperwork; told parents to put away knives, weapons, guns, [and] medication."
 - c. "Parents stated [the Hospital] did not do a Psych Eval."

The Team discussed a structured day, the Level 3 school, and a home/school hybrid. The Team discussed the Student's behavior escalation and increased class disruption. "Parents asked about getting [the Student] a Para – what are the qualifications, who decides, how is the need determined ... School staff explained Para's are generally reserved for students who struggle or present difficulties with accessing the curriculum. Parents want to know if increasing the supports or need with the IEP will ensure [the Student] receives the supports and services [the Student] needs. [Parent 2] stated, 'Being non-equipped is not an answer.' Parents want more from the IEP. Parents stated they do not want [the Student] to go to [the Level 3 School] this year due to starting a relationship/connection with others just to have it end in a few weeks." (Meeting Notes dated April 11, 2023.)

25. On April 14, 2023, the School Psychologist emailed District staff with a "tentative plan for [the Student] to get us by until [the Student's] IEP." The following information was included in this "Tentative Behavior and Well [-] Being Plan – Effective until Wednesday, 4/19":
 - a. "Reason: [The Student] was recently admitted and discharged from [the Hospital] for homicidal threats. Behavior at school has escalated, and staff and student safety is a concern."
 - b. The tentative plan detailed the expectations around supervision, sharp objects, classwork locations, and other school-related activities.
 - c. "A formal behavioral and safety plan will be created on 4/19 at [the Student's] IEP." (Email from School Psychologist dated April 14, 2023.)
26. On April 18, 2023, an LMHP created a Safety Plan for the Student. (Safety Plan dated April 18, 2023.)
27. An IEP amendment dated April 19, 2023, and signed by a Parent on the same day, described the following:
 - a. "... parents voiced concerns related to [the Student's] self[-]harm threats and [the Student's] increased comfort with using bad language."
 - b. [The Nebraska Student-Centered Assessment System] NSCAS Growth for Spring 2023 indicated, "The scores listed above reflect the impact of [the Student's] increased behaviors in relation to successfully engaging in learning curriculum presented within the classroom environment."
 - c. The Present Level of Academic Achievement and Functional Performance indicated the following:
 - i. Health & Well-being:
 1. "On 4/3/2023 [the Student] was suspended from school during the morning, due to vulgar language. After being picked up at school, [the Student's] parents later took [the Student] to [the Hospital] for depression, suicidal, and homicidal statements. [The Hospital] discharged [the Student] to the [Special Unit] at [the Medical Center] on 4/4/2023, due to worsening symptoms of anger and threats. [The Student] remained there until 4/7/2023 when [the Student] was discharged home with parent(s). Upon discharge, parents were provided with recommendations for outpatient follow-up and a safety plan."
 - ii. Educational Impact:
 1. The Student demonstrated behaviors that impacted their learning and the learning of others. The Student exhibited increased threatening behaviors and language, "[The Student] demonstrates

increased instances of targeting and repetitively unkind behavior towards certain peers, which resulted in students being removed from [the Student's] classroom in order to protect the other student's well-being." Peers have requested that staff members limit their (the classmates') interactions with the Student. Parents indicated that the Student responds better to adult interactions. The Student demonstrated increased disrespect with staff. It was noted that "***[A] Review of data indicates [the Student] demonstrates the most difficulty with poor behaviors when a decrease in structure occurs.**" For the remainder of the (sic) [the Student's] third[-]grade year, [the Student] will complete [their] academic program with a modified school day. Due to behavioral and mental health needs, the IEP team feels that it would be best to have [the Student] complete [their] general education curriculum with a modified school day. [The Student] will have access to an adult supplementary aide to support [the Student's] behavioral needs which require additional redirection."

- d. The date of the first Measurable Annual Goal was changed to "By April 2024."
 - i. One of the short-term objectives described that "[The Student] will initiate non-preferred tasks within 15 seconds of the instruction being given."
 - e. The Special Education Service and Additional Special Education Services remained the same in frequency and location, with a starting date of April 19, 2023, and an ending date of April 17, 2024.
 - i. The Program Modifications & Accommodations included additional documentation, "Please see attached documents for modifications to [the Student's] school day, which include daily check-ins with ... [an] LMHP and/or school counselor. These check-ins were scheduled to begin on April 19, 2023, and end on April 17, 2024, and would be delivered at the Public School."
 - ii. Supports for School Personnel were added, "Access to [Education Support Unit] ESU2 supports for mental health. Direct education will be given by licensed mental health practitioners and/or counselors to the adult support staff working with [the Student], in order to provide them with the knowledge and skills needed to support [the Student's] behavioral and mental health needs." (Amended IEP dated April 19, 2023.)
28. On April 19, 2023, a BIP was updated to include the following Functional Behavioral Assessment (FBA) Hypothesis Statements:
- a. "The following hypotheses are based on the data collected via observation, review of anecdotal records, and analysis of teacher-collected data. Based on the outcomes surrounding specific behavioral instances the following hypotheses are to be considered":
 - i. "[The Student] engages in disruptive behaviors, such as blurting out and interrupting others in order to obtain teacher and peer attention."
 - ii. "[The Student] engages in work refusal behaviors in order to escape or postpone work and to obtain teacher attention."
 - b. The BIP listed the following prevention strategies:
 - i. "Use of preferential seating, near a peer role model";
 - ii. "Practice skills during neutral times with a variety of people";
 - iii. "Use of very clear black and white language";

- iv. "Backpack checks every day";
 - v. "Is not to be left alone, adult supervision provided for [the Student's] entire day";
 - vi. "Provide private bathroom";
 - vii. "Limit access to sharp objects (e.g., scissors, cutting)"; and
 - viii. "Shortened day, see supplemental modified schedule document."
- c. The teaching strategies included consulting with specialists and seeking out "teachable moments." During "inclusion time," the Resource Teacher "attends math class in the classroom to support [the Student] in developing those academic skills. [The Resource Teacher] also focuses on social skills, peer interactions, conflict resolution, and making good choices during that time." The Speech-Language Pathologist (SLP) "conducts direct instruction of social skills." The Student "attends counseling sessions" with a mental health provider.
- d. The extinction strategies described, "Following misbehavior, adults should limit providing attention to [the Student]. It is appropriate to acknowledge the behavior, remind [them] of the specific skill(s) [the Student] did not use, and inform [them] of the upcoming consequences." The BIP indicated that peers would be taught how to respond to [the Student's] challenging behaviors and would also provide feedback to the Student.
- e. The teacher would provide feedback through "check-in points" during the day for reinforcement strategies.
- f. Consequent strategies included redirections and a specified "cool [-] down" process, which included a verbal "Think Sheet."
- g. The Safety Plan section of the BIP described, "[Crisis Prevention Institute] (CPI) de-escalation will be used. Physical restraints will be used in the event a behavior becomes a danger to [themselves] or others. The present plan consists of constant supervision of [the Student] and represents a comprehensive safety plan to ensure the well-being of [the Student] and fellow students and staff." (Updated BIP dated April 19, 2023.)
29. A document entitled "Sensory Diet" for [the Student] described various tools or activities that could be used with the Student for calming and alerting purposes. The document described when overstimulating activities would be most strategic and described "how" the Student's breaks should look. (Sensory Diet)
30. In a Confidential Teacher Report, teachers were alerted to the modifications and accommodations described on the Student's IEP in effect from April 19, 2023, through April 17, 2024. The list of modifications and accommodations included:
- a. "Assignments - Allow student to use resource assistance when necessary";
 - b. "Assignments - Redo for better grade";
 - c. "Environment - Avoid distracting stimuli";
 - d. "Environment - Preferential seating";
 - e. "Environment - Seat near positive role model";
 - f. "Lesson Presentation - Teacher emphasize: - Visual; - Auditory; - Tactil (sic); - Multi-sensory";
 - g. "Materials - Special equipment: - Calculator; - Computer; - Video recorder; - Audio Recorder; - SGD: Speech Generating Device; - Amplification System";
 - h. "Motivation & Reinforcement - Positive reinforcement";
 - i. "Pacing - Allow breaks, vary activity often";
 - j. "Pacing - Extend time requirements";
 - k. "Self Management / Follow-through - Calendar/Assignment Book";

- l. "Self Management / Follow-through - Use concrete reinforcement";
 - m. "Self Management / Follow-through - Use positive reinforcement";
 - n. "Self Management / Follow-through - Request parent reinforcement";
 - o. "Social Interaction Support - Use multiple/rotating peers";
 - p. "Social Interaction Support - Peer tutoring";
 - q. "Social Interaction Support - Teach friendship: skills/sharing/negotiations";
 - r. "Testing Accommodations - Provide extended time"; and
 - s. "Other -." (Confidential Teacher Report dated April 19, 2023.)
31. On April 21, 2023, a PWN described the following:
- a. The action proposed or refused by the District:
 - i. "The team is proposing alternate placement, modified school day, or return to full school day";
 - ii. "The team proposed a modified behavior intervention plan";
 - iii. "The team proposed the support of an adult supplementary aide";
 - iv. "The team added ESU2 mental health supports"; and
 - v. "The team maintained the goals and service minutes as proposed in the February [2023] IEP as these continue to meet [the Student's] needs, due to [the Student's] shortened schedule."
 - b. An Explanation of the District's proposed action included, "[The Student's] educational needs have changed due to [their] mental and behavioral health which require modifications in schedule and/or location of services to help [the Student] be successful in [the Student's] educational progress."
 - c. A description of other options was "Placement at [the District Level 3 School] was rejected due to parent's preference for [the Student] to remain at [the Elementary School] for the remainder of the 2022-2023 school year. Returning to the educational environment at a full school day was rejected, due to data indicating [the Student] is currently unable to be successful in the educational environment for a full day, due to [the Student's] behavioral and mental health needs."
 - d. The basis for the proposal or refusal included a "Review of safety plans and discharge information from [the Hospital], treating LMHP professional input, and an annual review that entails parent collaboration, classroom teacher input, review of progress on IEP goals and achievement on curriculum[-]based assessments" (PWN dated April 21, 2023.)
32. A Modified School Day plan was created for the Student from April 24, 2023, through May 16, 2023. The Student's school day was scheduled from 12:00 p.m. to 2:40 p.m. The plan included the dates of the field experiences and who would be attending the field experiences as well as the Student's goals and justification for those goals.
- a. The first goal was "[The Student], students, and staff will be safe within the school environment."
 - i. The justification for the goal was "Due to [the Student's] behavioral and mental health history [the Student] has shown [the Student] is unable to stay safe around others."
 - ii. Examples of justification for the goal included:
 - 1. "Hospital stay for homicidal comments with threat to self and others";
 - 2. "Moving a student from [the Student's] classroom due to targeting";
 - 3. "Parents intentional limiting of peer interactions outside of school";

4. "School shooter comments";
 5. "Hypersexualized behaviors";
 6. "Exposing [themselves] to peers";
 7. "History of false accusations of sexual abuse";
 8. "Abuse of animals";
 9. "Chasing older [sibling] with [a] knife";
 10. "Trauma history"; and
 11. "Theft."
- iii. It was documented that "Parents have noted they understand [the Student] will be missing [English Language Arts] ELA instruction with the modified day and have stated agreement with this change. [The] IEP team determined that ELA materials would be created and sent home for [the Student] to complete with parents on an as-needed basis."
- b. The Daily Schedule/Plan indicated that the Student would be dropped off at 12:00 p.m., take their scheduled medications, and "complete [their] mental health check-in." The Student's designated "adult supervision" person was scheduled to retrieve the Student from the office after the check-in.
 - c. The behavioral goal was listed as follows:
 - i. "[The Student] will decrease attention-seeking behaviors within the classroom (i.e., incorrect responses, repetitive questioning, poor work quality)." The following behaviors were listed to reduce:
 1. "Blurting Out";
 2. "Out of Seat";
 3. "Physical Aggression";
 4. "Verbal Aggression";
 5. "Staring"; and
 6. "Refusal to work."
 - d. A redirection/strategies plan was described to include two redirections before removal and a cool-down process.
 - e. Contingencies were described as follows:
 - i. "If [the Student] requires the cool[-]down process three times within a day, parents will be contacted to pick [the Student] up. [The Student] will remain in the cool[-]down room until parents arrive."
 - ii. "Three days sent home within a week for two weeks, results in an IEP team meeting before [the Student] returns." (Modified School Day Plan)
33. A May 16, 2023, Report Card indicated that the Student earned the following marks in 3rd grade:
- a. Four A's;
 - b. One B+, one B, and one B-;
 - c. Five C's and one C-;
 - d. One D+;
 - e. One S+ and two S's (satisfactory); and
 - f. One E (excellent). (Transcript dated May 16, 2023.)
34. A Progress Report, dated May 17, 2023, described the Student's goals and their progress toward meeting those goals:
- a. The first goal was "By April 2024, in a variety of environments, [the Student] will increase [their] social and classroom skills by completing the following benchmarks in 4 out of 5 opportunities."
 - i. The Progress Measurement indicated "Little or no Progress."

- ii. It was noted that the progress was sufficient to meet the goal by the end of the year.
 - iii. Comments included, "Since [the] IEP held [on] 4/19/2023, [the Student] has participated in a modified school day with adult support, secondary to [their] mental health (sic). Throughout this time, direct instruction has been given towards appropriate social skills. [The Student's] abilities within this area continue to be highly dependent on [their] mental health."
 - b. The second goal was, "By the next IEP date, given direct instruction and practice, [the Student] will demonstrate age[-]appropriate fine motor skills by meeting the following benchmarks on 90% of opportunities in three consecutive sessions."
 - i. The Progress Measurement indicated "Little or no Progress."
 - ii. It was noted that the progress was sufficient to meet the goal by the end of the year.
 - iii. Comments included, "Since [the]IEP held [on] 4/19/2023, [the Student's] participation with writing skills varies on the day due to [their] mental health. [The Student] does like working on typing skills and show[s] progress on the speed of typing, however [the Student] prefers to not use proper hand placement when typing." (Progress Report dated May 17, 2023.)
35. On May 16, 2023, [Parent 2] sent an email to the Special Education Information Specialist (School-Age) that stated, "[The Student's] behavior went downhill fast and [the Student] ended up getting suspended for cussing out the secretary because [the Student] got angry ... [The Student] started talking about wanting to jump off our loft and the roof. [The Student] ended up getting admitted to [the Medical Center], which was worthless. Before the [S]chool would allow [the Student] to come back we had to have a meeting with some of [their] iep (sic) team. They told us they wanted [the Student] to go to [the Alternate School] in [Location] which is a Level 3 school. Even for the last 5 weeks of school ... [The Student] got on the [the Residential Treatment Center] waiting list ... I have made my decision [the Student] will not go to [District Level 3 School]." (Email from Parent 2 dated May 16, 2023.)
36. An amended IEP dated August 9, 2023, and signed by a Parent on the same day, described the following:
- a. The Parents were concerned that "[the Student] was not in a least restrictive environment with [the Student's] peers and they asked to have a full day with supports. They were concerned with suspensions for impulsivity."
 - b. The Educational Impact indicated there was a crisis plan in place for the Student. "If [the Student] is unable to follow the crisis plan three times throughout the school year, a meeting will be held for alternative placement. [The Student] will have access to an adult supplementary aide to support [their] behavioral needs which require additional redirection. This will happen with adult check-ins throughout the day." Additionally, "If [the Student] participated in any of the three following behaviors three times in a school year, we will have a meeting to discuss alternate placement due to the safety of [themselves] and peers/adults in the general education setting." The following behaviors were described:
 - i. "Anything sexual";
 - 1. "Comments, gestures, and inappropriate usage of materials";
 - ii. "Verbal aggression";
 - 1. "Vocalizations uttered that may be considered offensive, hostile, threatening, or that otherwise violate general social norms. Can

- include cruising, yelling put-downs, name-calling, wishing others would die/were dead"; and
- iii. "Physical Aggression";
 1. "Any purposeful contact made with another individual with enough force to cause harm (kicking, slapping, punching, head butting, biting, body slam[ming], pushing/shoving, and using any body parts inappropriate[ly])."
 - c. Special Education and Related Services were listed with duration, location, and frequency noted. Program Modifications and Accommodations included:
 - i. "[The Student] has daily check-ins available to [them] through [the Student's] BIP." (Amended IEP dated August 9, 2023.)
37. A PWN dated August 11, 2023, described the action proposed or refused by the District:
- a. "Parents proposed that [the Student] is moved from a modified school day to a full day in the least restrictive environment with supports such as a point card, de[-]escalation trainings for staff that is working with [the Student] and breaks."
 - b. An explanation of the action was described, "The school district approved the plan to move [the Student] back to full days with a crisis plan due to the needs of the child, this includes de[-]escalation training for the staff working with [the Student], a point card is put into place, and breaks are established into [the Student's] day." (PWN dated August 11, 2023.)
38. On August 17, 2023, the Student Services Director sent a sample rewards menu to the Special Education Teacher to consider for the Student. The Student Services Director indicated that the Student should be earning a reward at least once per week and "We want to positively reinforce the good things [the Student] is doing. For the blurting out, [the Student] should not be receiving any points in that period if it is a continued behavior! Unless [the Student] corrects it and it does not happen again for the entire period, then light [them] up with points!!" (Email from Student Services Director dated August 17, 2023.)
39. In a Confidential Teacher Report, teachers were alerted to the modifications and accommodations described on the Student's IEP in effect from August 10, 2023, through August 8, 2024. The list of modifications and accommodations included:
- a. "Assignments - Allow student to use resource assistance when necessary";
 - b. "Assignments - Redo for better grade";
 - c. "Environment - Avoid distracting stimuli";
 - d. "Environment - Preferential seating";
 - e. "Environment - Seat near positive role model";
 - f. "Lesson Presentation - Teacher emphasize: - Visual; - Auditory; - Tactil (sic); - Multi-sensory";
 - g. "Materials - Special equipment: - Calculator; - Computer; - Video recorder; - Audio Recorder; - SGD: Speech Generating Device; - Amplification System";
 - h. "Motivation & Reinforcement - Positive reinforcement";
 - i. "Pacing - Allow breaks, vary activity often";
 - j. "Pacing - Extend time requirements";
 - k. "Self Management / Follow-through - Calendar/Assignment Book";
 - l. "Self Management / Follow-through - Use concrete reinforcement";
 - m. "Self Management / Follow-through - Use positive reinforcement";
 - n. "Self Management / Follow-through - Request parent reinforcement";
 - o. "Social Interaction Support - Use multiple/rotating peers";
 - p. "Social Interaction Support - Peer tutoring";

- q. "Social Interaction Support - Teach friendship: skills/sharing/negotiations";
 - r. "Testing Accommodations - Provide extended time"; and
 - s. "Other -." (Confidential Teacher Report dated August 10, 2023.)
40. An updated BIP dated August 9, 2023, removed [the] "shortened day" language in the "Prevention Strategies" section. Additional information was added to the Safety Plan around "anything sexual" and verbal and physical aggression. (BIP dated August 9, 2023.)
41. The Student's Daily Point Card revealed the following points:
- a. August 14, 2023
 - i. The Student had 14 opportunities to earn points.
 - 1. 8/14 were scored as a two (great);
 - 2. 2/14 were scored as a one (prompt needed); and
 - 3. 3/14 were not scored.
 - b. August 15, 2023
 - i. The Student had 44 opportunities to earn points.
 - 1. 29/44 were scored as a two;
 - 2. 4/44 were scored as a one;
 - 3. 4/44 were scored as a zero;
 - 4. 7/44 were not scored; and
 - 5. There were four bathroom breaks and comments about blurting and chatting.
 - c. August 16, 2023
 - i. The Student had 36 opportunities to earn points.
 - 1. 21/36 were scored as a two;
 - 2. 3/36 were scored as a one;
 - 3. 1/36 was scored as a zero;
 - 4. 5/36 were not scored; and
 - 5. There were five bathroom breaks and comments about blurting.
 - ii. The Think Sheet/Discussion worksheet identified blurting as a problem, and the Student wrote responses to the questions that explored what happened and why it happened.
 - d. August 17, 2023
 - i. The Student had 36 opportunities to earn points.
 - 1. 28/36 were scored as a two;
 - 2. 4/36 were scored as a one;
 - 3. 4/36 were scored as a zero; and
 - 4. There were three bathroom breaks and comments about tapping.
 - ii. The Think Sheet/Discussion worksheet identified loud noises as a problem, and the Student wrote responses to the questions that explored what happened and why it happened.
 - iii. There was another undated Think Sheet/Discussion worksheet that identified fanning as the problem behavior.
 - iv. The Think Sheet/Discussion worksheet identified tapping as the problem behavior.
 - e. August 22, 2023
 - i. The Student had 24 opportunities to earn points.
 - 1. 11/24 were scored as a two;
 - 2. 0/24 were scored as a one;
 - 3. 8/22 were scored as a zero;

4. 5/22 were not scored; and
 5. There were three bathroom breaks.
 - ii. A Think Sheet/Discussion worksheet identified shouting as the problem.
 - iii. A Think Sheet/Discussion worksheet identified tapping and "ignoring redirects" as the problem.
 - iv. A Think Sheet/Discussion worksheet identified music behavior as the problem.
- f. August 23, 2023
 - i. The Student had 40 opportunities to earn points.
 1. 18/40 were scored as a two;
 2. 3/40 were scored as a one;
 3. 17/40 were scored as a zero;
 4. 2/40 were not scored; and
 5. There were four bathroom breaks, and comments described blurting and work refusal.
 - ii. A Think Sheet/Discussion worksheet identified blurting and rude comments as the problem. The Student wrote responses to the questions that explored what happened and why it happened.
 - iii. A Think Sheet/Discussion worksheet identified "causing a scene" as a problem. The Student wrote responses to the questions that explored what happened and why it happened.
 - iv. A Think Sheet/Discussion worksheet identified telling a student they "look like a boy" as the problem. The Student completed and signed the worksheet.
 - v. A Think Sheet/Discussion worksheet identified "continued tapping" as the problem. The Student completed and signed the worksheet. (Daily Point Cards and Think Sheets dated August 14, 2023, through August 23, 2023.)
42. A PWN dated August 23, 2023, indicated the following action approved by the District, "Parents have admitted [the Student] into [the Residential Treatment Center] as of 08/25/2023. This will be a change of placement from [the District] Public Schools to [the Residential Treatment Center] until further notice. [The Student's] IEP and related services will be followed by [the Residential Treatment Center] staff." The rationale provided for this action was that "[the District] approved the change of placement as the parents requested this change of placement. It was not an IEP team decision." (PWN dated August 23, 2023.)
43. The Student attended an Interim Program in fourth grade from August 25, 2023, through December 20, 2023. (Official Report Card dated January 8, 2024.)
44. The IEP Progress Report for the first quarter of the 2023-24 school year described the Student's progress at the Interim Program:
 - a. The Student's first Measurable Annual Goal was, "By April 2024, in a variety of environments, [the Student] will increase [their] social and classroom skills by completing the following benchmarks in 4 out of 5 opportunities."
 - i. The Student's progress toward meeting the annual goal was not indicated.
 - ii. Comments included, "In a highly structured classroom, [the Student] demonstrated a difficult time starting non-preferred tasks and only started them in 1-2 opportunities. [The Student] is in a locked classroom, so [the Student] is unable to leave without an adult. However, [the Student] uses bathroom breaks as a way to avoid [their] work. And when out at the

bathroom will seek negative attention, so [the Student] does not have to return to school. [The Student] also avoids work with attention-seeking behaviors such as responding with curse words or in a loud voice, along with the misuse of tools/aggressive behaviors (throwing items off the desk, pushing chairs over, etc.) to get out of the classroom. [The Student] wasn't able to adjust [their] language or behavior based on the response of others."

- b. The Student's second Measurable Annual Goal was, "By the next IEP date, given direct instruction and practice, [the Student] will demonstrate age-appropriate fine motor skills by meeting the following benchmarks on 90% of opportunities in three consecutive sessions."
 - i. The Student's progress toward meeting the goal was not indicated.
 - ii. Comments were included, "[The Student] demonstrated appropriate line placement and sizing 60% of the time. [The Student] is rushing through much of [their] work, causing a decrease in age-appropriate line placement and sizing." (IEP Progress Report dated August 10, 2023)
45. On September 19, 2023, District staff who worked with the Student attended a CPI training from 8:30 a.m. to 12:00 p.m. (Calendar invite dated September 19, 2023.)
46. On December 1, 2023, the Elementary Principal sent an email to the Parents which stated, "[The Residential Treatment Center] emailed me November 16 in regard to some questions they had and a tentative dismissal date of December 12ish. I responded back to it and got another email today at 3:07 saying an (sic) [the Student] will be leaving soon and [P]arents want [the Student] to return back to [the School]. I told [the Residential Treatment Center] that we want to make a smooth transition and wanted to use their language and behavior rewards/consequences if that was possible. Let me visit with [the School] team on Monday and [the Residential Treatment Center] on Monday and schedule a time we can all sit down and talk about [the Student's] transition plan." (Email from Elementary Principal dated December 1, 2023.)
47. Notes from the December 8, 2023, Transition Meeting held at the Elementary School with the Parents and the District staff indicated that the Residential Treatment Center recommended the following:
 - a. "[The Residential Treatment Center] recommends smaller class size, high tolerances, verbal praise, redirected, practice [the Student's] skills, negatives came from following directions and redirection, two areas of concerns adult relations and classroom behaviors (seeking peer attention), struggling with peer relations on the unit less structure (sic)"; and
 - b. "It is very rare kids leave RTC [Residential Treatment Center] and goes straight to school (sic)."

The District indicated, "We believe [the Student] would not be successful in our school, we believe [the Student] would be successful in a smaller school." Parent 1 indicated a preference for [the Treatment Center] Day School, but the Student was not on the waiting list. It was noted that "Parents are going to look into other options because [Parent 1] said our offering of [a] [Free Appropriate Public Education] FAPE at [the Alternate School] is a 'hard pass.'" (Transition Meeting Notes dated December 8, 2023.)

48. It was noted in a District document from December 8, 2023, that the following considerations for the Least Restrictive Environment (LRE) for the Student were shared with the Parents:

- a. "Whether the presence of this student in a regular education classroom substantially and consistently creates disruption that adversely affects the educational performance of the other students"; and
 - b. "The need for supplementary aids and services that are reasonably calculated to give educational benefit in the regular education environment."
 - c. It was also handwritten that "1:1 is more restrictive." (District Notes dated December 8, 2023.)
49. On December 9, 2023, the Parents sent an email to the Special Education Information Specialist (School-Age) that stated, "[The Student] has currently been in [the Residential Treatment Center] since Aug. [The School] and [the Residential Treatment Center] have been emailing updates back and forth during the process. Yesterday we went to [the Student's] IEP meeting with [the Residential Treatment Center] and [the School], and we were blindsided as [the School] wants [the Student] to go to [the District Level 3 School] out by [Location]. We toured it in April, and I didn't like it. I decided right then and there [the Student] would not attend there ... [The Student] is transitioning out of [the Residential Treatment Center] placement in 10 days and there's no agreed-upon LRE, and no transition plan. What can we do to ensure ... [the Student]:
- a. "Has a placement agreed upon by the team";
 - b. "Have (sic) a transition plan in place to ensure progress is maintained? The [S]chool's only option that they came up with was [the District Level 3 School], knowing that was not an option. Once they heard that [the Student] would do better in a smaller atmosphere, they started pushing [the District Level 3 School]. I asked them what other options they came up with. They hadn't." (Email from Parents dated December 9, 2023.)
50. District documentation from a December 10, 2023, phone call with Parent 1 indicated that the Special Education Teacher "shared with [Parent 1] that the PWN will be sent via email today. It was reiterated that [the Level 3] placement is what is recommended and will be paid for through [the District] (transportation included). If parents choose to send [the Student] to another Level 3 placement, the cost that is incurred will be up to parents." (Notes dated December 10, 2023.)
51. On December 11, 2023, the Special Education Information Specialist (School-Age) sent an email to the Parents that stated, "Placement is something that is determined by the team, including parents. How have those meetings went (sic)? And since [the Student] is on a private/medical placement, how have they provided FAPE during that time? And I would think all would work together to train district staff and have a behavior plan in place that uses what was found appropriate and helpful. Has any of that been discussed? Here is a document on placement." (Email from Special Education Information Specialist (School-Age) dated December 11, 2023.)
52. A PWN dated December 11, 2023, indicated the following actions were proposed or refused by the District, "[The Student's] IEP team met to discuss [the Student's] transition plan from [the Residential Treatment Center]. Dismissal guidelines from [the Residential Treatment Center] indicated that [the Student] would benefit from a smaller class size, additional practice of skills, and a high level of structure. [The Residential Treatment Center] representative indicated that [the Student] continues to struggle with adult relations, peer relations, classroom behaviors (seeking peer reaction), and unstructured situations. Due to this information [the District] proposed placement to a Level 3 school to ensure ongoing success and carryover of skills begun at [the Residential Treatment Center]. Parents proposed a full return to the general education environment following discharge from [the Residential Treatment Center]. Parents rejected [the] proposal for

Level 3 placement stating concerns they had with highway traffic to and from the Level 3 facility, the appearance of the building, and the presence of cool-down rooms to manage behaviors." The District proposed "placement to Level 3 due to dismissal recommendations from [the Residential Treatment Center]. [The District] also considered placement within [the District], however, this option was rejected due to this not meeting [the Student's] behavioral and educational needs at this time." The other options considered were described, "Due to [the Student's] parents rejecting the proposed Level 3 school with which [the District] contracts, [the District] did not reject the parents' request to investigate other options available to [the Student] before making a final decision." The action was based on "data provided by [the Residential Treatment Center] such as teacher/therapists reports, assessments, physicians input, and daily behavioral logs." (PWN dated December 11, 2023.)

53. On December 12, 2023, [Parent 2] sent an email to the Special Education Teacher which stated, "I am looking over the attachment for the prior written notice (*sic*). There are just a few things I wanted to clarify or get clarification on. In the description of [the] action proposed (*sic*). It states that [the Student's] dismissal guidelines from [the Residential Treatment Center] indicate that [the Student] would benefit from smaller class size, [the] additional practice of skills, and a high level of structure. That information has no bearing on [the Student's] successful discharge from [the Residential Treatment Center], they are simply a recommendation that was given the day of ... It also says that the [P]arents proposed a full return to the general education environment following discharge from [the Residential Treatment Center]. That was never stated and we never even got that far in the meeting." (Email from Parent 2 dated December 12, 2023.)
54. On December 18, 2023, [Parent 2] sent an email to the Special Education Teacher and District personnel which stated the family's intent to explore options for the Student. Parent 2 referenced the data from the Residential Treatment Center. Parent 2 indicated, "With the above in mind, we are trying to meet [the Student's] academic goals and avoid as many educational disruptions as possible for [the Student]. I understand that [the School] has said that they cannot meet [the Student's] current educational needs. We would like a detailed plan of reintegration for [the Student] from a more structured educational setting back to [the School] before our IEP meeting. The information we would like to see in the plan are: identified benchmarks, what specific benchmarks will need to be seen before transitioning back to [the School]. Data- What type data (*sic*) will be utilized for each benchmark? Who is collecting it for each benchmark? ... success of each benchmark ... Percentage of time the IEP would like to see the identified benchmarks (*sic*)?" (Email from Parent 2 dated December 18, 2023.)
55. In response to an email sent by [Parent 2] on December 18, 2023, the District responded, "Historically with our [District Level 3 School] students, the type of data that may be collected is typically documentation of observable behaviors, frequency of behaviors, number of redirections needed, and responses to redirections given. Daily/weekly data collection is usually taken through [the Student's] team members of whatever placement you choose. At [the District Level 3 School] specifically, this data translates into Levels which helps determine the student's readiness to begin the transition back to a general education setting. Please note, this is our experience with [the District Level 3 School] and other Level 3 placements may have different methods of communication and data collection." (Email from District dated December 18, 2023.)
56. On December 19, 2023, the Elementary Principal sent an email to the Parents, which stated, "Our goal has always been to help [the Student] find ways to manage [their] behaviors in order to give [the Student] the opportunity to have a successful education.

Our hope is that Level 3 placement can meet [the Student] where [they are] currently performing so [the Student] can return to the generalized setting with a high rate of success ... As stated in our meeting on December 8, 2023, there continue (sic) to be various areas where [the Student] requires a high level of support for success, as indicated by [their] 4:1 classroom ratio. These are the benchmark recommendations that the Level 3 school will take into account when they write [their] IEP. We can't hold an IEP meeting until [the Student's] placement has been decided by you and [Parent 2], since that is where [the Student] will be working on [their] specific IEP goals and benchmarks." (Email from Elementary Principal dated December 9, 2023.)

57. On December 19, 2023, an email was sent from the Special Education Teacher to the Parents, which stated, "Most of the answers to your questions will be dictated by the Level 3 Placement you choose as they will be managing the IEP until [the Student's] return to the generalized setting at [the Elementary School]. Our experience in helping our students become successful in our generalized setting is through [the School's] contracted Level 3 Placement at [the District Level 3 School], therefore, we are basing this information on that relationship/collaboration experience. The benchmarks and specifics of data collection are decided as a team at [the Student's] IEP meeting so these are only draft suggestions until the team meets to write the IEP." (Email from Special Education Teacher dated December 19, 2023.)
58. On January 3, 2024, the Elementary Principal emailed the Parents to inquire about their decision regarding the "transition placement" for the Student. The Elementary Principal alerted the Parents that an IEP meeting would need to be scheduled. (Email from Elementary Principal dated January 3, 2024.)
59. On January 5, 2024, [Parent 1] sent an email to the Elementary Principal which stated, "Unfortunately, due to [the School] public school district (sic) and their refusal of accepting [the Student] back into [the Student's] classroom where [they] would be with [their] peers and have [their] rights to free public education we are now opting out of [the School] District ... I really wish we could have come together like we did before [the Student's] transition to come up with a working plan for [the Student] to transition back to [the School] ... You did not give us the option to have [the Student] part-time in the resource room. But instead have used the excuse of not having enough staff or resources available to meet [the Student's] needs ... Consider [the Student] unenrolled at [the District] Public school (sic)." (Email from Parent 1 dated January 5, 2024.)
60. On January 5, 2024, the Elementary Principal sent an email to the Parents that stated, "Thank you for letting us know your decision related to [the Student's] education. In order to move forward in your wish to unenroll [the Student], we need to put together the proper paperwork. Is it your wish to revoke [the Student's] special education services ... Once I hear back from you I will move forward on our end." (Email from Elementary Principal dated January 5, 2024.)
61. On January 5, 2024, the Parents sent an email to the Elementary Principal which stated, "We will NOT be revoking [the Student's] special education services." (Email from Parents dated January 5, 2024.)
62. The Student's Fourth Grade Report Card at the Residential Treatment Center listed the following grades:
 - a. Six B's and three A's during quarter one and quarter two. (Official Report Card dated January 8, 2024.)
63. On January 11, 2024, the Elementary Principal sent an email to the Parents, which stated, "We understand you want to unenroll [the Student] from [the School]. In order to move forward we need to know if your plan is to homeschool [the Student] or enroll in another

school. We have not received any formal documentation. Please provide these documents, so we can complete the appropriate paperwork." (Email from Elementary Principal dated January 11, 2024.)

64. On January 12, 2024, the Parents alerted the Elementary Principal and other District personnel that "We actually have decided to keep [the Student] enrolled. We will proceed with a dispute resolution." (Email from Parent 1 dated January 12, 2024.)
65. On January 15, 2024, in response to an email sent by [Parent 2] inquiring about special education services and implementation, the Elementary Principal stated, "Yes. [The Residential Treatment Center] did cover [the Student's] special education service minutes while [the Student] was in their care. Specific data or questions based on services at [the Residential Treatment Center] can be answered best by them. In regards to special education services moving forward, we will follow [the Student's] current IEP minutes with Speech, Resource, and OT, so [the SLP, the Special Education Teacher, and the Occupational Therapist] will provide these services to [the Student]. [Occupational Therapy] OT services will be provided every other Thursday. As stated in the IEP, goals addressed will focus on social skills and accepting and initiating non-preferred tasks." (Email from Elementary Principal dated January 15, 2024.)
66. On January 15, 2024, the Elementary Principal sent an email to the Parents which stated, "Until we are able to reach a resolution, we will need to provide [the Student] with [their] special education services. [The Student's] team members are all in the [D]istrict and available to provide these services on Thursdays at 1:00." (Email from Elementary Principal dated January 15, 2024.)
67. On January 17, 2024, [Parent 2] sent an email to the Elementary Principal, which stated, "We are also concerned of sending [the Student] to the [S]chool for 40 minutes while [the Student's] peers are in session. We are concerned it may do more harm than good and get [the Student] thinking that [they] may be able to return to [the School]." (Email from Parent 2 dated January 17, 2024.)
68. On January 17, 2024, the Elementary Principal sent an email to [Parent 2] that stated, "I forgot to include the day in this email, the services will be on Thursdays. Our plan is to have [the Student] meet us at the door and we will provide these services in a location away from [the Student's] peers. Another option would be to provide these services at the [the District] Activity Center if you would prefer that. The first couple [of] Thursdays we will have [the Student] get started on [their] state testing (NSCAS) that is being completed by all students at [the School] during this timeframe. After that, [the Special Education Teacher] and [the SLP] will work on [the Student's] IEP goals. If you are unsure of those goals we can provide you with them again." (Email from Elementary Principal dated January 17, 2024.)
69. On January 18, 2024, an Outside Agency alerted the Elementary Principal with information about an IEP facilitator, mediation, and a possible contract for mediation. The Outside Agency had contacted the family to describe the mediation process. (Email from Outside Agency dated January 18, 2024.)
70. On January 22, 2024, the Elementary Principal sent an email to the Parents which indicated, "Notwithstanding that complaint, we would like to set up an IEP meeting to develop a plan that is reflective of [the Student's] current educational placement. We received confirmation from the state that you have enrolled [the Student] in Homeschool (exemption) status. We also were notified by [the Residential Treatment Center] of an opening in their 4/5 grade day school program." (Email from Elementary Principal dated January 22, 2024.)

71. On January 23, 2024, the Elementary Principal sent an email to the Parents that stated, "I just left a voicemail with [Parent 2] regarding setting up an IEP meeting and wanted to follow up with an email too." (Email from Elementary Principal dated January 23, 2024.)
72. A District document entitled "[the Student] Attendance 2024 (Homeschool) indicated the following:
 - a. On January 4, 2024, the District was notified that homeschool paperwork was completed.
 - b. On January 18, 2024, and January 25, 2023, there was no call, and the Student was a "no show" for "scheduled therapy sessions." (Student Attendance dated January 4, 2024, through January 25, 2024.)
73. On January 26, 2024, an IEP meeting was held that described that the Parents "chose to place [the Student] in Level 3 placement at [Agency] beginning on January 29, 2024. (IEP dated January 26, 2024.)
74. On January 26, 2024, a PWN described the proposed placement and provided an explanation as to why the District approved or refused to take action. The option considered was, "Return to [the Student's] home school district in either a Level 1 (regular/typical educational setting), Level 3 Placement at contracted Level 3 Placement at [Location], homeschool placement, or Level 3 placement outside of [the] home district. The team determined [that] [the Student] needs services that can be provided through placement at a Level 3 program. Parents declined services at District contracted school [Location], so services will be provided outside of the home school district at a Level 3 program at [Out-of-District Location]." (PWN dated January 26, 2024.)
75. On January 29, 2024, the Student started attending the out-of-district location, which was also the Parents' preferred location. The District provided occupational and speech therapy. (Parent Interview dated February 26, 2024.)
76. During interviews with the Complaint Investigator, the Principal reported that at the end of 3rd grade, the Parents did not want the Student to finish the last few weeks of school. The IEP Team instead developed a plan that included a modified school day and adult support while the Student was attending the remaining 3-4 weeks of school. When the Student started 4th grade the following fall, the Student returned to a full school day based on the Student's success over the summer, and the Student would have the same teacher as they did in 2nd grade. (Principal Interview dated February 29, 2024.)
77. During interviews with the Complaint Investigator, the Student's 3rd-grade Teacher reported that the Student's response to the use of the behavior chart was inconsistent, and sometimes, even with redirection, the Student was not successful. The Teacher indicated that the Student's five-day hospitalization was due to things happening at home, and the Student's behavior started to escalate at the School during the second semester. The behavior chart was adjusted several times. The Teacher described the Student's behavior in the classroom as "brought fear into our classroom. ... [the Student] would hurt someone or say something inappropriate to someone ... sit too close to somebody ... stare at them, um, and intimidate them." The Teacher described the Student's academics as average and the Student's behavior impeded their success. During interviews, the Teacher detailed their implementation of the accommodations included in the Student's IEP. (Teacher Interview dated February 29, 2024.)
78. During interviews with the Complaint Investigator, the Special Education Teacher indicated that the behavior charts would "work temporarily when we would try incentives, but then we would have to readjust, depending, because it wasn't working, and so we would go back to the table and maybe have ... we had a lot of different like reward interviews ... 'How would you want to work towards something? Or what would

you wanna work towards?' So we would change it up often because it wouldn't last very long ... the positive behaviors wouldn't last very long." The Student received two sensory breaks per day. The Special Education Teacher reported that the Parent suggested a shortened school day "because there was such a limited amount of time left in school. So [the Student's] modified day consisted of [a] highly structured, uh, setting with an adult to help [the Student], um, be a part of [their] class as much as possible." The Special Education Teacher described a 'Level three placement' as a smaller class size with more behavioral therapists, academic supports, and more individualized instruction. (Special Education Teacher Interview dated February 29, 2024.)

79. The Special Education Teacher indicated that a "generalized setting" was considered at the December 8, 2023, meeting. The Team determined the Student still required a high Level of support, and a Level 3 placement was the most similar to the support being provided at the Residential Treatment Center. (Special Education Teacher Interview dated February 29, 2024.)

80. In an interview with the Complaint Investigator, the Parent reported that "Certain behaviors that were allowed ... that necessarily weren't allowed by other students in the class, or ... Or the school, for that matter. Um, but then after the Christmas break, they became behaviors that the school was not willing to, uh, have in the school setting. ... [the Student's] meds were kind of being adjusted" around this time, also. When the Student returned to the School after the five-day hospitalization, the Parents agreed to the modified schedule as the Student was on a waiting list for a higher level of care, and the Student needed supervision while at school. (Parent Interview dated February 26, 2024.)

Issue # 1

Did the District consider the use of positive behavioral interventions and supports and other strategies to address behavior? [92 NAC 51-007.07B]

92 NAC 51-007.07B states:

- | | |
|----------|---|
| 007.07B | <i>In developing, reviewing or revising each child's IEP:</i> |
| 007.07B1 | <i>The IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child.</i> |
| 007.07B2 | <i>The IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic developmental, and functional needs of the child.</i> |
| 007.07B3 | <i>In the case of a child whose behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, and supports and other strategies to address that behavior.</i> |

Allegations/Parent Position

The Parent alleged that the Student's IEP lacked the necessary resources and staffing for the Student's success in school. (Parent Complaint dated January 22, 2024.)

District Response

"The District not only considered but implemented a wide range of positive behavioral interventions, supports, and other strategies to address [the Student's] behavior as required by 92 NAC 51-007.07B." (District Response dated February 12, 2024.)

Investigative Findings

The Student's IEPs included information about the Student's strengths and needs, evaluation data, and their academic and functional needs. The Student's behaviors were considered as a special factor when developing an IEP for the Student. The February 23, 2023, IEP included access to a behavior plan and charts to facilitate positive behavior skills. When the Student's behavior increased in the spring of 2023, the Student received more breaks and more time to cool off. The Student had access to a sensory diet and sensory breaks, and a rewards menu was created with the Student's input. On April 19, 2023, an FBA and BIP were developed for the Student. The District staff working with the Student described the Student's inconsistent success with the behavior strategies being used and the need for frequent adjustments. (IEP dated February 23, 2023; Daily Goal Sheet dated March 13, 2023, through April 3, 2023; Updated BIP dated April 19, 2023; Email from Student Services Director dated August 17, 2023; PWN dated August 23, 2023; Teacher Interview dated February 29, 2024.)

Summary and Conclusions

The District considered positive behavioral interventions, supports, and other strategies to address the Student's behavior.

Based on the investigative findings, the District implemented the requirements of 92 NAC 51-007.07B, and **no corrective action is required.**

Issue # 2

Did the District develop an IEP that met the unique and individual needs of the Student? [92 NAC 51-007.07A5 and 007.07A8]

92 NAC 51-007.07A5 states:

- 007.07A5 *A statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:*
- 007.07A5a *To advance appropriately toward attaining the annual goals;*
- 007.07A5b *To be involved in and progress in the general education curriculum and to*

participate in extracurricular and other non-academic activities; and

007.07A5c

To be educated and participate with other children with disabilities and nondisabled children in the activities described in 92 NAC 51-007.07A5.

92 NAC 51-007.07A8 states:

007.07A8

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

Allegations/Parent Position

The Parent alleged that the Student's IEP lacked the necessary resources and staffing for the Student's success in school. (Parent Complaint dated January 22, 2024.)

District Response

"The Student's IEP team carefully and thoughtfully developed an IEP that was well supported, and the IEP offered a reasonably calculated approach for the Student to make appropriate progress in light of [the Student's] circumstances. ... The District recognizes that, on their face, the IEP documents developed for the Student may not provide the Level of specificity required by 92 NAC 51-007.07A8 as it has been recently interpreted and enforced by the Department. This is a recent area of focus for improvement and compliance across the state, and the District is working with staff through professional development to improve compliance in this area." (District Response dated February 12, 2024.)

Investigative Findings

On February 6, 2023, the Parents informed the District that they were concerned that the Student's IEP was not addressing the Student's behavioral needs, and the Parents planned to contact other professionals for assistance. The Elementary Principal responded and informed the Parents that the Student's behavior at the School had actually improved. An annual IEP was developed for the Student on February 23, 2023, and the IEP referenced the need to alter the behavior plan throughout the year based on the educational needs of the Student. The Present Level of Academic Achievement and Functional Performance included data that was specific to the Student's academic and behavior needs; the special education and related services, and accommodations included in the IEP were based on the needs of the Student. The February 6, 2023, IEP did not include the frequency for which the modifications and accommodations would be provided.

On April 3, 2023, the Elementary Principal contacted the Parents to inform them that the Student would be suspended from school for one day and requested a meeting with the Parents. On

April 4, 2023, the Student was admitted to the hospital for five days due to the behaviors occurring at home and school. On April 11, 2023, the District and the Parent met to discuss the Student's hospital stay. The Parent reported that the hospital did not provide any recommendations. The District created an interim plan for the Student that included adult supervision until the April 19, 2023, IEP meeting. The April 29, 2023, amendments to the IEP included a safety plan, a modified school day, and the addition of adult supervision.

To prepare for the Student's discharge from the Residential Treatment Center, the Elementary Principal communicated with the Parents that the School wanted a smooth transition and wanted to use the language and behavior rewards and consequences from the treatment center with the Student when they returned to school. The District acknowledged that the 2023 IEPs were non-compliant due to the accommodations not including the frequency, duration, and location of the supplementary aids and services. (District Response dated February 12, 2024; IEP dated April 19, 2023; Email from Parent dated February 6, 2023; IEP dated February 23, 2023; Confidential Teacher Report dated February 23, 2023; Email from the Elementary Principal dated April 3, 2023; Email Exchange dated April 4, 2023; Meeting Notes dated April 11, 2023; Email from School Psychologist dated April 14, 2023; Safety Plan dated April 18, 2023; Email from Elementary Principal dated December 1, 2023.)

Summary and Conclusions

The Student's IEPs included special education and related services designed to meet the unique needs of the Student. The IEP Team amended the Student's IEP as the Student's needs changed and adjusted the support frequently. However, the IEPs were non-compliant due to the omissions of the frequency, duration, and location of the supplementary aids and services.

Based on the investigative findings, the District did not implement the requirements of 92 NAC 51-007.07A5 and 007.07A8, and **corrective action is required** and detailed at the end of this report.

Issue # 3

Does the District have a continuum of alternative placements available to meet the needs of the Student? [92 NAC 51-008.01D]

92 NAC 51-008.01D states:

008.01D *Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.*

008.01D1 *The continuum must:*

008.01D1a *Include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and*

008.01D1b *Make provision for supplementary*

services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.

Allegations/Parent Position

The District placed the Student on a modified school day and only offered a placement option that was not located at the Student's school as a result of the Student's behavior. When the Student returned to the District from an out-of-district placement, a general education option was not considered when making the educational placement decision for the Student. (Parent Complaint dated January 22, 2024.)

District Response

"The District responded to a struggling student in the exact manner that Rule 51 requires; it immediately recognized the Student's struggles, responded by working through a continuum of interventions that kept the student in the general education environment as long as was appropriate, and continued to create and consider data regarding the efficacy of its approach as new and additional data emerged informing the District of the student's needs." (District Response dated February 12, 2024.)

Investigative Findings

When the Student was discharged from the hospital in April of 2023, the Student's IEP Team considered the option of the Student attending the general education classroom, a Level 2 or Level 3 program, or a modified school day. These options were documented in a PWN dated April 21, 2023. When the Student transitioned out of the Residential Treatment Center in December of 2023, the District considered the general education classroom with special education support and Level 2 and Level 3 placements. When the Parents expressed disagreement with the location of the District-offered location, they explored other locations that would provide similar services. The Student was eventually enrolled in a Day School that was similar to the District-offered Level 3 program, and the District agreed to this placement. (PWN dated April 21, 2023; District Notes dated December 8, 2023; Special Education Teacher Interview dated February 29, 2024.)

Summary and Conclusions

The District provided a continuum of placement options that included the general education classroom, special programs and schools, and supplementary aides and services. Based on the investigative findings, the District implemented the requirements of 92 NAC 51-008.01D, and **no corrective action is required.**

Issue # 4

In developing the Student's IEP, did the IEP team make a placement decision based on the Student's needs and not on the child's disability? [92 NAC 008.01C]

92 NAC 008.01C states:

008.01C *In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:*

- 008.01C1 *The placement decision is 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; and*
- 008.01C2 *The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.*

Allegations/Parent Position

The District placed the Student on a modified school day and only offered a placement option that was not located at the Student's school due to the Student's behavior. When the Student returned to the District from an out-of-district placement, a general education option was not considered when making the educational placement decision for the Student. (Parent Complaint dated January 22, 2024.)

District Response

"The data demonstrates that the Student's education and progress were being hindered by [their] behavior and that the District's responsive interventions and strategies in the general education setting were insufficient at that time to meaningfully improve the Student's progress and behavior. The District implemented extensive supports and interventions in the general education setting. However, these were not successful to permit the student to make appropriate progress in light of [the Student's] developing needs." (District Response dated February 12, 2024.)

Investigative Findings

The PWN dated April 21, 2023, indicated that the placement decisions were made based on a review of the Student's safety plan and discharge information from the hospital, data from the Student's behavior at the School, the changes in the Student's mental and behavioral health, professional input from an outside provider, and input from the Parents and teaching staff. On May 16, 2023, the Parents informed the District that the Student was on a waiting list for the Residential Treatment Center, and they did not want the Student to attend the District offered Level 3 placement. On December 8, 2023, the District held a transition meeting with the Parents, the District staff, and staff from the Residential Treatment Center. The staff from the Residential Treatment Center recommended a smaller class size with a high level of support. The District's staff recommended a smaller class environment, and the Parents wanted the Student to attend the treatment center's Day School. (PWN dated April 21, 2023; Email from Parent 2 dated May 16, 2023; Transition Meeting Notes dated December 8, 2023.)

Summary and Conclusions

The placement decisions made for the Student were made by persons, including the Parents, who were knowledgeable about the Student's needs, evaluation data, and were made in conformity with the LRE requirements. Based on the investigative findings, the District implemented the requirements of 92 NAC 008.01C, and **no corrective action is required.**

Issue # 5

Did the District meet the Least Restrictive Environment (LRE) requirements, and did the District offer a continuum of placement options when making educational placement decisions for the Student? [92 NAC 51-008.01]

92 NAC 51-008.01 states:

- 008.01 *Least Restrictive Environment (LRE) Requirements*
 - 008.01A *The school district or approved cooperative shall establish policies and procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or nonpublic schools and approved service agencies, are educated with children who are not disabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular education classes with the use of supplementary aids and services cannot be achieved satisfactorily.*
 - 008.01B *Before any action is taken with respect to the initial placement of a child with disabilities, the school district or approved cooperative shall be responsible for the provision of a comprehensive individual multi-disciplinary evaluation of the child's development and educational needs.*
 - 008.01C *In determining the educational placement of a child with a disability, including a preschool child with a disability, school districts and approved cooperatives must ensure that:*
 - 008.01C1 *The placement decision is 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; and*
 - 008.01C2 *The placement decision is made in conformity with the least restrictive environment requirements in 92 NAC 51-008.01 and based on the child's unique needs and not on the child's disability.*
 - 008.01D *Each school district or approved cooperative must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities or special education and related services.*
 - 008.01D1 *The continuum must:*
 - 008.01D1a *Include instruction in regular classes, special classes, special schools, home*

- instruction and instruction in hospitals and institutions; and*
- 008.01D1b *Make provision for supplementary services (such as resource or itinerant instruction) to be provided in conjunction with regular class placement.*
- 008.01E *The school district or approved cooperative shall ensure that the educational placement of a child with a verified disability:*
- 008.01E1 *Is determined at least annually;*
- 008.01E2 *Is based on his or her individualized education program (IEP); and*
- 008.01E3 *Is as close as possible to the child's home.*
- 008.01F *The various array of placement options included under 92-NAC 51-008.01D must be available to the extent necessary to implement the individualized education program for each child with a verified disability.*
- 008.01G *Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.*
- 008.01H *In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which he or she needs.*
- 008.01I *A child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.*

Allegations/Parent Position

The District placed the Student on a modified school day and only offered a placement option that was not located at the Student's school as a result of the Student's behavior. When the Student returned to the District from an out-of-district placement, a general education option was not considered when making the educational placement decision for the Student. (Parent Complaint dated January 22, 2024.)

District Response

The District developed "a series of IEP and BIP documents for the student that would enable [the Student] to participate in the general education setting with increasingly more restrictive and intensive support. Unfortunately, these attempts were unsuccessful in light of the Student's evolving and increasing level of need. The Student ultimately was unilaterally placed in RTC because of this evolving and increasing Level of need. All data available to the District suggested that even with intensive support in the general education environment, the Student could not make meaningful progress without [the Student's] behaviors significantly interfering with [their] learning or that of [the Student's] peers." (District Response dated February 12, 2024.)

Investigative Findings

At the transition meeting on December 8, 2023, the District discussed considerations for the LRE with the Parents, including the impact of the Student attending their neighborhood school and the Student's behavior on others in the regular education classroom. Whether the supplementary aids and services were reasonably calculated to provide educational benefit was discussed. The District also suggested that providing 1:1 support to the Student may be more restrictive. A PWN dated December 11, 2023, indicated that the Student's IEP Team determined that the most appropriate placement for the Student, after transitioning from the Residential Treatment Center, was a program not located in the District that offered a similar level of structure as the Residential Treatment Center. This decision was based on the Student's performance at the Residential Treatment Center and recommendations from the treatment staff. The Parents refused to have the Student attend the District offered location because of the facility's appearance, location, and the presence of a seclusion room on site. The Parents' disagreement with the location of the special education services was not related to the Student's needs. The IEP Team rejected the general education classroom as the LRE for the Student as this placement option did not meet the Student's behavioral and educational needs at the time. (District Notes dated December 8, 2023; PWN dated December 11, 2023; Email from Elementary Principal dated December 9, 2023.)

Summary and Conclusions

The District met the LRE requirements when making placement decisions for the Student. A continuum of placement options was considered, as was the use of supplementary services. These decisions were made by persons, including the Parents, who were knowledgeable about the Student's needs at the time and based on the Student's IEPs. Based on the investigative findings, the District implemented the requirements of 92 NAC 51-008.01, and **no corrective action** is required.

Issue # 6

Was an IEP developed to meet the Student's needs when the Student transitioned to homeschool pursuant to 92 NAC 51-015.03C1a?

92 NAC 51-015.03C1a states:

- 015.03C1a *Parentally-placed nonpublic school children with disabilities are eligible for the provision of a free appropriate public education from the school district or approved cooperative in which they reside. Services available under such circumstances are referred to as a Free Appropriate Public Education (FAPE).*
- 015.03C1a(1) *An IEP shall be developed and implement-ed in accordance with 92 NAC 51-007 for each resident*

Allegations/Parent Position

The Parent alleged that the Student did not receive a FAPE. The Parent alleged that the Student's IEP lacked the necessary resources and staffing for the Student's success in school. (Parent Complaint dated January 22, 2024.)

District Response

"The District was never provided an opportunity to comply with the provisions of 92 NAC 51-015.03C1a, and the provisions of that section are inapplicable to the Student as [they] never transitioned to a homeschool placement." (District Response dated February 12, 2024.)

Investigative Findings

When the Student transitioned out of the five-day hospital stay, the Parents did not want the Student to return to the School while awaiting placement in a treatment center. The District developed a modified school day plan for the Student that lasted approximately 18 days and continued through the end of the 2023 school year. The plan included the Student having access to field experiences. The materials from the ELA instruction that the Student would miss would be sent home to complete with the Parents on an as-needed basis. The plan also included medication administration at school, a mental health check-in, adult support, and behavior goals. On August 9, 2023, the District amended the Student's IEP. The Student returned to a full school day program due to the Parent's request and their report of the Student's success over the summer.

In January 2024, the Parents elected to withdraw the Student from school. They enrolled the Student with the State as a homeschooler and continued to request special education and related services from the District. The District scheduled these services for remote implementation, and the Student did not attend the scheduled sessions. On January 22, 2024, the Elementary Principal contacted the Parents to request scheduling an IEP meeting to consider a plan for the Student. This communication also informed the Parents that an opening in the Parents' preferred program location was available. (Modified School Day Plan; Amended IEP dated August 9, 2023; PWN dated August 11, 2023; Email from Elementary Principal dated January 22, 2024; Student Attendance dated January 4, 2024, through January 25, 2024; Principal Interview dated February 29, 2024.)

Summary and Conclusions

On two different occasions, the Parents notified the District that the Student would not be attending school. The first time was because the Parents did not want the Student to attend school while awaiting placement in a treatment center. The District developed a plan for the Student to attend school for a partial day. The second time the Parents notified the District that the Student would not be attending school, they also enrolled the Student in homeschooling. When the District was notified of this, the District requested an IEP meeting to consider how special education services could be implemented when the Student was being homeschooled. Based on the investigative findings, the District implemented the requirements of 92 NAC 51-015.03C1a, **and no corrective action** is required.

Issue # 7

Did the Student receive a free appropriate public education during the 2022-23 and 2023-24 school years? [92 NAC 51-003.24]

92 NAC 51-003.24 states:

003.24 *Free appropriate public education or FAPE means special education and related services that are provided at public expense, under public supervision, and direction and without charge; meet the standards of the state, including the requirements of this Chapter; include an appropriate preschool, elementary school, or secondary school education in Nebraska and are provided in conformity with an individualized education program (IEP) that meets the requirements of 92 NAC 51-007.*

Allegations/Parent Position

The Parents alleged that the Student did not receive a FAPE. (Parent Complaint dated January 22, 2024.)

District Response

The District "has consistently provided the student a free appropriate public education as required by 92 NAC 51-003.24. The placement offered by the district provided for special education and related services designed to meet the unique needs of the Student and offered at no cost to the Student. These services were provided in conformity with the standards articulated in Rule 51 and the IDEA pursuant to a lawfully developed IEP that met all requirements of 92 NAC 51-007." (District Response dated February 12, 2024.)

Investigative Findings

The Student's Present Levels of Academic Achievement and Functional Performance documented in the February 23, 2023, IEP indicated that the Student was receiving general education instruction at the third-grade level and did not require special education services in academic areas; the Student's behavior and communication needs were addressed as special factors in the IEP. The two areas of Student need, social/classroom skills, and fine motor skills were addressed with IEP goals that were aligned with the Student's present levels of performance and the goals expected reasonable progress for the Student. The Student received SDI in these goal areas and related services for speech-language and occupational therapy, as well as numerous accommodations and modifications. The IEP referenced the Student's success at staying in the classroom more often due to the implementation of the BIP. The February 23, 2023, IEP, reflected that the Student would receive the SDI in a small group setting outside of the classroom or during inclusion times "to provide individualized instruction, support, and the opportunity to work with less distraction and to target specific skills and strategies." However, the IEP did not include the frequency, duration, and location of the accommodations and modifications and the supplementary aids and services. The non-participation justification statement provided a rationale for the extent of the Student's removal from the general curriculum. In March and April of 2023, communication between the District and the Parents and behavior data collected documented that the Student's behavior at school was escalating. In early April 2023, the Parent(s) admitted the Student to a hospital for a few days due to the concerning behavior at the School and at home. The School met with the Parents on April 11, 2024, to discuss the hospital discharge recommendations and the District discussed offering the Student a structured special education program, not at the Student's neighborhood school. The Parents were not in favor of this idea and wanted the Student to attend the School for the remainder of the school year. An interim safety plan was developed, and the IEP Team met on April 19, 2023, to amend the Student's IEP. The amendments included a modified school day for the Student, providing adult support while the Student was at the School, and training to staff working with the Student. However, there were procedural errors that occurred when the appropriate location, duration,

and frequency of accommodations, modifications, and supplementary aids and services were not documented. The IEP amendments were based on input and information from the Parents, the Student's current functioning and progress, and assessments such as the NSCAS and the updated FBA/BIP. A PWN dated April 21, 2023, documented these changes, and the Student was on a modified school day through the end of the 2022-23 school year.

The Student's May 2023, report card indicated that the Student earned all passing grades except for one D+ grade. IEP Progress Reports dated May 17, 2023, indicated that the Student had made "little to no progress" toward the IEP goals since the recent IEP meeting in April 2023. The student's progress was noted to be on track to meet the IEP goals. It was also noted that the Student's mental health was contributing to the Student's inconsistent performance and progress. The first quarter IEP Progress Reports from the Residential Treatment Center for the 2023-24 school year indicated that the Student was struggling to meet their behavior goals even in a highly structured classroom. The Student passed all academic classes during their stay in the Residential Treatment Center. The District utilized information and preferences from the Parents, data, and recommendations from the residential treatment center, and what the District knew about the Student when developing the Student's IEP and making placement decisions. When the District offered the Level 3 placement, and the Parents refused to have the Student attend this location, the District continued to offer the Student special education and related services and coordinated the timing and location of the services, taking into account the Parents' preferences. The components of the Student's IEP and the special education placements offered were in alignment with the needs of the Student but did not include the frequency, location, and duration of the accommodations, modifications, and supplementary aids and services. The Student's IEP was determined to be what the Student required in light of the Student's unique circumstances. (Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988 (2017).) (IEP dated February 23, 2023; Daily Goal Sheet dated March 13, 2023, through April 3, 2023; SEESAW Message History dated March 14, 2023, through March 15, 2023; PWN dated February 23, 2023; Email from School Psychologist dated April 14, 2023; Safety Plan dated April 18, 2023; Meeting Notes dated April 11, 2023; Updated BIP dated April 19, 2023; PWN dated April 21, 2023; Progress Report dated May 17, 2023; Transcript dated May 16, 2023; IEP Progress Report dated August 10, 2023; Official Report Card dated January 8, 2024; Email from Elementary Principal dated January 15, 2024; Email from Elementary Principal dated January 15, 2024; IEP dated April 19, 2023.)

Summary and Conclusions

When the Student attended the District in 2023, the Student was earning passing grades, and the District was developing, reviewing, and revising the Student's IEP to address the Student's behavior needs and the changes and escalation of the Student's mental health needs. At first glance, the goals in each IEP appeared to have been crafted to meet the Student's present level of performance, but they were remarkably similar considering the increase in the Student's behaviors. While the District increased support, adjusting the goals to more specifically meet the Student's needs should have been considered. Additionally, the frequency, location, and duration of the accommodations, modifications, and supplementary aids and services should be tailored to the Student's needs and documented in the appropriate section of the IEP. When the Student returned to the District in January 2024, the District offered the Student special education and related services and a special education placement that met the Student's needs at the time. The District made adjustments to the special education services provided as the needs of the Student changed and information was provided from outside sources. Based on the lack of documentation regarding the location, frequency, and duration of the Students'

accommodations, modifications, and supplementary aids and services in the Student's IEPs, the District failed to meet the requirements of 92 NAC 51-003.24, and **corrective action** is required.

Corrective Action

Reconvene

1. Within 10 calendar days of the date of this Investigation Report, the District must reconvene the Student's IEP Team and ensure that the frequency, location, and duration of the accommodations, modifications, and supplementary aids and services are documented properly in the Student's IEP.
 - a. The IEP and any associated PWN must be sent to NDE no later than 10 days after the IEP Team meeting.
2. A random sample of 3 student IEPs will be reviewed on or before December 1, 2024, to ensure supplementary aids and services contain frequency, location, and duration.

Training

1. By May 1, 2024, the District must develop and provide training to all relevant staff who serve the Student in the building in which the Student is enrolled regarding the procedure of including the frequency, duration, and location for accommodations, modifications, and supplementary aids and services in all IEP's. This training is intended to prevent the violations found in this investigation from recurring. Staff involved in the training should include any of the groups of staff that may make the same violation(s) as found in the Investigation Report including:
 - General education teachers;
 - Special education teachers;
 - Principals or individuals who may serve as the representative of the school district as described in 92 NAC 51-007.03A4;
 - Related service personnel; and
 - Any other school personnel who are responsible for overseeing special education legal requirements.
2. The training must be approved by the NDE Office of Special Education two calendar weeks prior to the training.
3. Sign-in sheets or other evidence of attendance must be provided to NDE the day following the training.

Notice to District

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

Sharon Heater, Complaint Specialist
Christopher Chambers, Complaint Specialist
NDE Office of Special Education
nde.speddr@nebraska.gov