IN THE DISTRICT COURT
OF LANCASTER COUNTY, NEBRASKA

ANGELA BESSEY as Guardian and Next Friend and on Behalf of NICHOLAS BESSEY, an Incapacitated Person, ***Petitioner*,** **v.** **STEVE CORSI, Chief Executive Officer of the Nebraska Department of Health and Human Services, TONY GREEN, Director of the Division of Developmental Disabilities of the Nebraska Department of Health and Human Services, AND THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES,** ***Respondents.***	**CASE NO. CI 26-441** **BRIEF IN SUPPORT OF MOTION FOR PARTIAL DISMISSAL**

The Respondents, Steve Corsi, Tony Green, in their official capacities only, and the Nebraska Department of Health and Human Services ("DHHS"), hereby submit this brief in support of their Motion for Partial Dismissal.

Introduction and Background

Nicholas Bessey is a developmentally disabled individual who receives services pursuant Nebraska's Developmental Disability Services Act. Pet. at 2, ¶ 5. This case primarily concerns the manner in which DHHS determined his level of funding for disability and waiver services. Last September, after going through an annual Objective Assessment Process used to evaluate the support needs of those receiving developmental disability services, Bessey's funding level was lowered to an "intermediate" level. *Id*. at 3, ¶ 9. This resulted in a reduction in his annual Individual Budget Amount ("IBA") from $194,279.86 to $126,437.19. *Id*. at 4, ¶ 15. Bessey appealed this determination and, following an administrative "Fair Hearing" on the matter, the Director of the Division of Developmental Disabilities affirmed the "intermediate" level determination. *Id*. at 4, ¶ 16.

The Petitioner, Angela Bessey, as guardian and next friend of Nicholas Bessey, appealed that decision to this Court pursuant to Neb. Rev. Stat. § 84-917 of Nebraska's Administrative Procedures Act ("APA"). In addition to her APA appeal, she levied additional claims under 42 U.S.C. § 1983, Neb. Rev. Stat. § 84-911 of the APA, and Neb. Rev. Stat. § 25-21,149 to 25-21,164 of Nebraska's Uniform Declaratory Judgments Act ("UDJA"). Spanning across ten claims, Petitioner takes issue with, among other things, the alleged lack of criteria and standards during the Objective Assessment Process, DHHS's alleged failure to promulgate certain rules and regulations about criteria and standards for needs determinations, that current rules and regulations are unconstitutionally vague, and general dissatisfaction with the Objective Assessment Tool that DHHS is using in its redetermination process.

Of Petitioner's ten claims, six fail to state a claim upon which relief can be granted, and dismissal of those claims is warranted. Additionally, all claims that do not seek prospective declaratory or injunctive relief, other than Petitioner's APA appeal under Neb. Rev. Stat. § 84-917, are likewise barred by sovereign immunity.

Consequently, Respondents ask that the Court to dismiss Bessey's *First*, *Third*, *Fourth*, *Fifth*, *Sixth*, and *Seventh* claims against them.

Standard of Review

To prevail against a motion to dismiss for failure to state a claim, "a plaintiff must allege sufficient facts to state a claim of relief that is plausible on its face." *Schaeffer v. Frakes*, 306 Neb. 904, 909, 947 N.W.2d 714, 720 (2020); *Davis v. State*, 297 Neb. 955, 902 N.W.2d 165 (2017). The Court must "accept[] all the allegations in the complaint as true and draw[] all reasonable inferences in favor of the nonmoving party." *Ramaekers v. Creighton Univ.*, 320 Neb. 478, 484, 28 N.W.3d 57, 64 (2025) (citing *Lopez v. Catholic Charities*, 315 Neb. 617, 998 N.W.2d 31 (2023)). For purposes of a motion to dismiss, "a court is not obliged to accept as true a legal conclusion couched as a factual allegation, and threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Chaney v. Evnen*, 307 Neb. 512, 520 (2020) (citing *Holloway v. State*, 293 Neb. 12, 26, 875 N.W.2d 435, 447 (2016)). In Nebraska, it is well-settled law that sovereign immunity deprives a court of subject matter-jurisdiction. *Zawaideh v. Neb. Dep't. of Health & Hum. Servs.*, 285 Neb. 48, 54, 825 N.W. 2d 204, 211 (2013).

Argument

I. All claims seeking retrospective relief are barred by sovereign immunity.

This case must be approached from two separate tracks. The nature of Petitioner's Neb. Rev. Stat. § 84-917 APA appeal is past-looking and based on a closed record that the Court reviews, de novo. In contrast, Petitioner's ten additional claims must be viewed as forward-looking, only. As will be discussed, Respondents are entitled to sovereign immunity for any alleged past violations of Petitioner's rights. This means Petitioner can only maintain claims seeking prospective relief. But it is somewhat unclear whether that is all Petitioner seeks. See Pet. at 9 (asking the Court to that declare Respondents "*violated* and continue to violate Petitioner's rights . . . .")

(emphasis added). Accordingly, to the extent any of Petitioner's ten claims do not seek prospective relief, they must be dismissed for lack of subject-matter jurisdiction.

Excluding her APA appeal, Petitioner purports to ground the majority of her claims in 42 U.S.C. 1983 and Nebraska's UDJA. To the extent Petitioner seeks declaratory or other retrospective relief concerning past conduct, Respondents are entitled to sovereign immunity. "Section 1983 provides a civil remedy for deprivations of federally protected rights, statutory or constitutional, caused by persons acting under color of state law." *Cappel v. State Dep't of Nat. Res.*, 298 Neb. 445, 451, 905 N.W.2d 38, 45 (2017). But Nebraska has not waived its sovereign immunity with regard to § 1983 suits brought against it. *Id*. Similarly, "A suit against a state official in his or her official capacity is not a suit against the official, but, rather, a suit against the official's office." *Id*., 298 Neb. at 452, 905 N.W.2d at 46. That said, "the State's sovereign immunity 'does not bar a claim against state officers which seeks only prospective declaratory or injunctive relief for ongoing violations of federal law.'" *Anthony K. v. Nebraska Dep't of Health & Hum. Servs.,* 289 Neb. 540, 547, 855 N.W.2d 788, 795 (2014) (quoting *Doe v. Board of Regents*, 280 Neb. 492, 510, 788 N.W.2d 264, 281 (2010)). While Petitioner's prospective relief for alleged ongoing violations may proceed, a declaration of a past violation of federal law is barred by sovereign immunity. *See Filyaw v. Corsi*, 150 F.4th 936, 946 (8th Cir. 2025); *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc*., 506 U.S. 139, 146, 113 S. Ct. 684, 688 (1993) (sovereign immunity "does not permit judgments against state officers declaring that they violated federal law in the past[.]").

Similarly, any declaration under the UDJA of an alleged past violation of Nebraska law is likewise barred. "Nebraska's [UDJA] does not waive the State of Nebraska's sovereign immunity." *Concerned Citizens of Kimball Cnty., Inc. v. Dep't of Env't Control of State*, 244 Neb. 152, 157, 505 N.W.2d 654, 659 (1993). However, "a declaratory or other equitable action against a state officer or agent to obtain relief from an invalid act or from an abuse of authority by the officer or agent

is not a suit against the state and is not prohibited by the general principles governing the immunity of the state from suit." *Id*., 244 Neb. at 156, 505 N.W.2d at 658. But such an action cannot be retrospective in nature or be used to declare that past conduct violated an individual's rights. Indeed, the UDJA "is applicable when a present actual controversy exists and all interested persons are parties to the proceedings, and then only when a justiciable issue exists for resolution." *Mullendore v. Nuernberger*, 230 Neb. 921, 926, 434 N.W.2d 511, 515 (1989) (citing Graham v. Beauchamp, 154 Neb. 889, 50 N.W.2d 104 (1951). Accordingly, any claim seeking relief based on prior conduct is barred by sovereign immunity.

II. First Cause of Action: § 1983 claim for failure to provide adequate notice of reduction in funding.

Petitioner claims DHHS failed to provide adequate notice of the reduction in funding; however, the notice of redetermination sent by DHHS and the right to appeal the determination satisfied due process, and Petitioner's § 1983 claim therefore fails to state a claim for relief. Her § 1983 claim is also barred by sovereign immunity.

On or about September 26, 2025, DHHS sent Bessey a "Notice of Redetermination" based on information from the most recent Objective Assessment Process. Pet. at 3, ¶ 9. While a copy of the notice was not attached to the Petition, it may still be considered by this Court for purposes of Respondents' motion for partial dismissal. Because the Notice of Redetermination is not only referenced in the Petition, but also at the center of Petitioner's first claim, it is necessarily embraced by the pleadings. *See DMK Biodiesel, LLC v. McCoy*, 285 Neb. 974, 980, 830 N.W.2d 490, 496 (2013) ("[T]he court generally must ignore materials outside the pleadings, but it may consider some materials that are part of the public record or do not contradict the complaint, as well as materials that are *necessarily embraced by the pleadings*. Documents embraced by the pleadings are materials alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading.") (internal quotations and

citations omitted) (emphasis added)). Accordingly, it may be considered by the Court in determination of this matter.

A. The Notice of Redetermination and right to appeal satisfied due process.

Petitioner claims the Redetermination Notice deprived Bessey of due process in violation of the Fourteenth Amendment to the U.S. Constitution and Art. I, § 21 of the Nebraska Constitution. Specifically, she states the notice failed to 1) provide a citation to any statute or regulation applicable to the redetermination decision; 2) provide further information on the Individual Budge Amount ("IBA"), or how it was calculated; 3) incorrectly stated that Bessey's IBA level had not changed; and 4) failed to provide Bessey with adequate notice explaining the basis for the reduction in funding level. Pet. at 16, ¶¶ 76-79. Despite these alleged deficiencies, however, Bessey's right to due process was not violated.

When a party appears in an adjudication hearing before an administrative agency, "the requirements of due process are satisfied if a person has reasonable notice and an opportunity to be heard appropriate to the nature of the proceeding and the character of the rights which might be affected by it." *Cain v. Custer Cnty. Bd. of Equalization*, 298 Neb. 834, 841, 906 N.W.2d 285, 292 (2018). The September 26, 2025 Notice of Redetermination informed Bessey that, based on the required documentation DHHS received and the information from the Objective Assessment Process, his new annual IBA would be at the "intermediate" level effective November 1, 2025. Ex. 1 at 1. It also informed him that a DHHS staff member would contact him by phone to discuss the use of funding to purchase developmental disability services. *Id*. And although the notice contained an incorrect notation that Bessey's IBA level had not changed, the notice explicitly said that if he had questions regarding the notice, to please contact DHHS by phone or email. *Id*. But most importantly, the Notice of Redetermination included a notification of his right to appeal. *See id*. at 2.

The notification of rights informed Bessey of his right to appeal if his services were reduced or if he felt that action taken was erroneous. It explained that Bessey had 90 days to appeal and ask for a "Fair Hearing." It also told him that if he appealed within ten days, the adverse action—or reduction in benefits—would not occur until a fair hearing decision is rendered. Finally, it explained in detail not only how to file an appeal, but also that arrangements would be made for a hearing where he may represent himself or be represented by another person.

Although the Notice of Redetermination did not include all the information Petitioner may have necessarily preferred, it did not violate due process. "Procedural due process generally requires that notice be given of such a nature as to reasonably convey the required information." *In re A.A.*, 307 Neb. 817, 850, 951 N.W.2d 144, 170 (2020), *supplemented*, 308 Neb. 749, 957 N.W.2d 138 (2021). Here, the Redetermination Notice informed Bessey that his IBA would be at the intermediate level, the date in which that would go into effect, that DHHS staff would be directly calling him with more information to discuss services, an opportunity to contact staff with questions by both phone and email, and detailed notice about his right to appeal that decision. Indeed, Bessey exercised that right to appeal which resulted in a Fair Hearing where he was represented by counsel. That process also provided the opportunity to participate in discovery, call and subpoena witnesses, offer evidence, and present argument. *See* Title 404 Neb. Admin. Code. Ch. 3, § 004 (rules and regulations on hearings for issues related to developmental disabilities services). And, as evidenced by his appeal and participation in the Fair Hearing, he was given the opportunity to contest DHHS's redetermination.

When a party appears in an adjudication hearing before an administrative agency, "the requirements of due process are satisfied if a person has reasonable notice and an opportunity to be heard appropriate to the nature of the proceeding and the character of the rights which might be affected by it." *Cain v. Custer Cnty. Bd. of Equalization*, 298 Neb. 834, 841, 906 N.W.2d 285, 292 (2018). And

here, there is no allegation that Bessey was denied a fair hearing for lack of notice. Accordingly, Bessey's due process rights were not violated and Petitioner has failed to state a claim.

B. Petitioner's claim is barred by sovereign immunity.

Petitioner brings a 42 U.S.C. § 1983 claim alleging that the Redetermination Notice deprived Bessey of liberty and property without due process of law. However, the retrospective nature of this claim makes it barred by sovereign immunity.

Here, Petitioner does not allege that Bessey is in danger of receiving another Redetermination Notice with any alleged deficiencies. Nor has Petitioner asked for any prospective injunctive relief concerning any future Redetermination Notice. *See* Pet. at 27-29. Additionally, the legislative landscape controlling the administration of developmental disability services has changed since this suit was filed. On April 16, 2026, Neb. L.B. 958, 109th Leg (Neb. 2026) ("L.B. 958") went into effect. This law addressed, among other things, what information is required to be included in notices of eligibility determinations and service tier assignments. *See* L.B. 958, § 2(3). Specifically, L.B. 958 now requires notices to include 1) a complete explanation of the assigned service tier and eligibility determination, 2) a clear and precise explanation of the assessment tool results, and 3) information regarding the right to appeal the determination. L.B. 958, § 2(3).

Petitioner makes no allegation of an ongoing violation of Bessey's rights, nor an allegation that the new requirements of LB 958 pose a danger of a due process violation. Because Petitioner's § 1983 claim is only for an alleged past violation, sovereign immunity bars her claim. Accordingly, this court lacks subject-matter jurisdiction and Petitioner's First Cause of Action must be dismissed.

III. Third Cause of Action: § 1983 claim for failure to follow required rulemaking procedures.

Petitioner alleges DHHS has failed to promulgate rules and

regulations specifying certain criteria, standards, and methodology for funding determinations. Despite this claim, however, no such rule or regulation is required to be promulgated. Neb. Rev. Stat. § 83-1216(1) provides:

> [DHHS] shall administer the medicaid home and community-based services waivers upon application approval by the federal Centers for Medicare and Medicaid Services. The amount of funding for any person receiving services shall be determined using an objective assessment process developed by the department and approved by the federal Centers for Medicare and Medicaid Services.

Neb. Rev. Stat. § 83-1226 further requires DHHS to "adopt and promulgate rules and regulations to carry out the Developmental Disabilities Services Act." DHHS has met this obligation via promulgated rules and regulations found at Titles 403 and 404 of Nebraska's Administrative Code. In addition to establishing the framework and outlining eligibility criteria for developmental disabilities services, the rules and regulations provide that "[t]he amount of funding for any person receiving services is determined using an objective assessment process (OAP)." 404 Neb. Admin. Code. ch. 3, 001.06(A). It goes on to define the OAP as, "The process used by the Department to determine the amount of funding for any participant receiving services, which includes the Inventory for Client and Agency Planning (ICAP) and other assessments." 404 Neb. Admin. Code. ch. 2, § 001.13.

Petitioner, however, takes issue with these rules and regulations and asserts that "Respondents failed to hold a public hearing on the adoption and promulgation of the standards used in the Objective Assessment Process as required by the Nebraska [APA,]" and that "the criteria governing the determination of funding levels for Petitioner are not publicly promulgated." *Id.* at ¶¶ 102-103. Stated another way, Petitioner claims DHHS did not promulgate detailed

enough rules and regulations regarding the Objective Assessment Process and, accordingly, argues that "[t]he absence of publicly promulgated standards governing the determination of funding levels deprives the Petitioner of adequate notice and meaningful procedural protections including a meaningful opportunity to contest the decision affecting the Petitioner's services." *Id.* at ¶ 104. This, she contends, is a violation of due process.

As an initial matter, there is no federal right to have the criteria and methodology of an assessment tool adopted and promulgated in administrative code. "Section 1983 provides a civil remedy for deprivations of federally protected rights, statutory or constitutional, caused by persons acting under color of state law." *Cappel v. State Dep't of Nat. Res.*, 298 Neb. 445, 451, 905 N.W.2d 38, 45 (2017). But without a federal right implicated, Petitioner's claim is not subject to a 42 U.S.C. § 1983 action.

Petitioner is essentially claiming that DHHS—in promulgating rules and regulations—was not specific and detailed enough in its rulemaking. But even if that could be construed as a violation of the general mandate of Neb. Rev. Stat. § 83-1226 to, "adopt and promulgate rules and regulations to carry out the Developmental Disabilities Services Act[,]" "[s]ection 1983 does not provide a remedy for the violation of state law." *Melanie M. v. Winterer*, 290 Neb. 764, 774, 862 N.W.2d 76, 85 (2015). The alleged failure to promulgate specific enough standards fails to state a violation of a federal right. Accordingly, Petitioner fails to state a claim upon which relief can be granted.

IV. Fourth Cause of Action: Unconstitutionally Vague Regulations.

Petitioner brings a 42 U.S.C. § 1983 claim arguing that Title 404 of Nebraska's Administrative Code, as it relates to the Objective Assessment Process, is unconstitutionally vague in violation of the Due Process Clause of the U.S. Constitution and Art. I, § 21 of the

Nebraska Constitution. But void-for-vagueness challenges do not generally apply to entitlements. Accordingly, she fails to state a claim.

Petitioner takes issue with the alleged lack of detailed criteria, standards, and methodologies used to determine funding tiers in Title 404 Neb. Admin. Code. ch. 3, §§ 001.06(A)-(B). Pet. at 20, ¶ 109-110. She claims, "Regulations that fail to provide ascertainable standards governing agency decision-making are unconstitutionally vague." *Id*. at ¶ 112. However, "[T]he void for vagueness doctrine was held [by the Supreme Court] to relate to prohibitions, not to entitlements. . . . Consistent with that approach, the Court has steadfastly applied the void for vagueness doctrine only to statutes or regulations that purport to define the lawfulness of conduct or speech." *Nyeholt v. Sec'y Of Veterans Affs.*, 298 F.3d 1350, 1357 (Fed. Cir. 2002). Here, there is no regulation at issue concerning the lawfulness of activity or speech. Instead, the regulations at issue relate only to entitlement to funding levels for disability benefits. Petitioner takes issue with the level of detail that Title 404 provides when describing how funding levels are determined. It provides:

> 001.06 Funding for developmental disabilities services with State General Funds other than service coordination is authorized for eligible individuals contingent upon legislative appropriations and availability of funds.
>
> > 001.06(A) The amount of funding for any person receiving services is determined using an objective assessment process (OAP).
> >
> > 001.06(B) Specialized services for an individual is authorized according to the individual's objective assessment.
> >
> > 001.06(C) The Department will authorize funding for services only when services and supports are not being provided through other available sources.

Title 404 Neb. Admin. Code. ch. 3, § 001.06. Although this section does

not get into the granular detail of the Objective Assessment Process, there is no requirement for it to do so.

Title 404 provides the framework for administering the Developmental Disabilities Services Act. It includes, among other things, provisions outlining eligibility, annual eligibility review, and the appellate process and rights. But nothing in the Act requires these regulations to provide the scoring criteria, methodologies, and details governing the Objective Assessment Process. Those details are developed and implemented at the administrative level through guidance documents and assessment tool manuals. Contrary to Petitioner's assertion, there is simply no federal or state right to have that information promulgated in administrative code. And because Title 404 does not purport to prohibit speech or conduct, it cannot be subject to a void-for-vagueness challenge. Accordingly, Petitioner has failed to state a claim upon which relief can be granted.

V. Fifth Cause of Action: Violation of the Nebraska APA.

Petitioner's fifth cause of action is similar to her third in that she alleges DHHS failed to promulgate specific rules and regulations outlining the criteria, standards, and methodology used to determine the amount of funding authorized for individuals receiving developmental disability services. *See* Pet. at 20-22, ¶¶ 115-125. This time, however, she claims that this violates the APA because DHHS failed to adopt and promulgate the standards used in the Objective Assessment Process "as required by the Nebraska Administrative Procedure Act." *Id*. at 21, ¶ 122. But contrary to this assertion, the APA requires no such thing.

Citing to Neb. Rev. Stat. § 84-901(2), Petitioner states that the APA "requires agencies to adopt and promulgate rules when establishing standards of general application affecting private rights or private interests." *Id*. at ¶ 118. Petitioner, however, misapprehends what the APA requires when it comes to rulemaking. Neb. Rev. Stat. 84-901(2) provides, in part:

(2) Rule or regulation shall mean any standard of general

> application adopted by an agency in accordance with the authority conferred by statute and includes . . . Rule or regulation shall not include (a) internal procedural documents which provide guidance to staff on agency organization and operations, lacking the force of law, and not relied upon to bind the public, (b) guidance documents as issued by an agency in accordance with section 84-901.03, and (c) forms and instructions developed by an agency. For purposes of the act, every standard which prescribes a penalty shall be presumed to have general applicability and any standard affecting private rights, private interests, or procedures available to the public is presumed to be relied upon to bind the public. Nothing in this section shall be interpreted to require an agency to adopt and promulgate rules and regulations when statute authorizes but does not require it[.]

This provision defines what a rule or regulation is—it does not independently require the promulgation of any specific rule. In fact, the provision explicitly states, "Nothing in this section shall be interpreted to require an agency to adopt and promulgate rules and regulations when statute authorizes but does not require it[.]" Neb. Rev. Stat. § 84-901(2).

Here, there is no statute that requires DHHS to promulgate rules or regulations that establishes "criteria, standards and methodology used to determine the amount of funding authorized for individuals receiving DD Services[.]" Pet. at 21, ¶ 121. As it relates to rulemaking, the only direction the Developmental Disabilities Services Act provides is, "The department shall adopt and promulgate rules and regulations to carry out the [Act]." But nothing in the Act requires DHHS to promulgate the rules and regulations with explicit "criteria, standards, and methodology" of the Objective Assessment Process. The Act provides, "The amount of funding for any person receiving services shall be determined using an objective assessment process developed by the department and approved by the federal Centers for Medicare

and Medicaid." Neb. Rev. Stat. 83-1216. This, however, does not create a requirement for DHHS to promulgate rules with the specificity Petitioner seeks. Accordingly, she has failed to state a claim upon which relief can be granted.

VI. Sixth and Seventh Cause of Action: Violation of the Developmental Disabilities Services Act.

In her Sixth and Seventh Causes of Action, Petitioner claims Respondents have violated the Developmental Disabilities Services Act, itself. Despite this claim, however, Respondents have carried out all that is required by the Act.

Citing to Neb. Rev. Stat. § 83-1209, Petitioner states, "The Developmental Disabilities Services Act requires that funding for specialized services be determined through an objective assessment process." Pet. at 22-23, ¶¶ 127, 133. Indeed, Neb. Rev. Stat. § 83-1209 provides, in part, "[T]he director shall (1) Ensure effective management by . . . having the amount of funding for specialized services determined by an objective assessment process." But Petitioner complains that "[i]nformation has not been provided by Respondents regarding the objectivity, accuracy, testing, or other critical information necessary to assess or provide comment on whether the Objective Assessment Process is objective or otherwise meets criteria." *Id*. at ¶ 128. And "[w]ithout defined criteria or standards governing funding determinations, the process cannot be evaluated as an objective assessment process." *Id*. at ¶ 130. This, she concludes, means that "the process used by Respondent's [sic] to determine funding levels fails to comply with the requirements of the Developmental Disabilities Services Act." *Id*. at ¶ 131.

As an initial matter, Title 403 of Nebraska's Administrative Code states what is evaluated in the Objective Assessment Process. Specifically, it provides:

> 008.01 OBJECTIVE ASSESSMENT PROCESS (OAP). The funding for a participant is determined using the Objective Assessment Process (OAP) involving

> information from an assessment of the participant's physical, cognitive, and emotional functioning.
>
> 008.01(A) OBJECTIVE ASSESSMENT. The assessment must include a comprehensive assessment of the participant's:
>
> (i) Activities of daily living (ADL);
> (ii) Problematic Behaviors;
> (iii) Community Living; and
> (iv) Behavioral and health factors.
>
> 008.01(B) DATA. Scoring data from the assessment are entered into a formula to determine the funding amount for day services or residential services.
>
> 008.01(C) BUDGET. An individual budget amount is assigned for each participant based on each participant's assessed needs. Assessments are completed to determine individual budget amounts for participants.

Title 403 Neb. Admin. Code. ch. 2, § 008. In other words, funding levels are determined by looking to an individual's physical, cognitive, and emotional functioning and how that affects their activities of daily living, problematic behaviors, community living, and behavioral and health factors. that It is unclear what more Petitioner believes the Developmental Disabilities Services Act requires. But, as previously discussed, there is no requirement that DHHS promulgate rules or regulations that specifically outline the criteria and standards used to determine funding at the level of detail Petitioner seeks. Broad generalizations that Respondents have failed to comply with the Act by not including all the information Petitioner would prefer does not state a claim upon which relief can be granted. *See Chaney v. Evnen*, 307 Neb. 512, 520 (2020) ("threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.").

In her Seventh Cause of Action, Petitioner also claims that the "process used by Respondents to determine funding levels cannot

meaningfully be evaluated as an objective process when the criteria, methodologies, and standards governing the process are undisclosed or unknown to the individuals whose funding levels are determined through that process." *Id.* at 23, ¶ 134. But again, nothing in the Developmental Disabilities Services Act requires this type of information to be promulgated in a rule or regulation. Petitioner's claim that "the process used by the Respondent's [sic] to determine funding levels fails to comply with the requirements of the Developmental Disabilities Services Act[]" Pet. at 23, ¶ 135, is simply a "legal conclusion couched as a factual allegation . . . [which] do[es] not suffice." *Chaney v. Evnen*, 307 Neb. at 520. Accordingly, Petitioner has failed to state a claim upon which relief can be granted.

Conclusion

For the above-stated reasons, Respondents ask that the Court dismiss Petitioner's *First*, *Third*, *Fourth*, *Fifth*, *Sixth*, and *Seventh* claims against them. Additionally, to the extent any claim seeks retrospective declaratory relief, Respondents are entitled to sovereign immunity.

Respectfully submitted June 8, 2026.

STEVE CORSI, TONY GREEN, and THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES, Respondents.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the required typeface and formatting rules set forth in Neb. Ct. R. Pldg. § 6-1505 and Neb. Ct. R. App. P. § 2-103 and contains 4,853 words and was prepared using the Microsoft Word program from Microsoft Office 365.

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