

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION BUREAU
PROCEEDINGS BEFORE THE DUE PROCESS HEARING OFFICER**

Case Number: NMPED DPH 1415-05

ABSTRACT

Parent challenged the services delivered to her 17 year old son during the two years of high school attendance prior to September 25, 2014. Eligible for services as Emotional Disturbance and Specific Learning Disabled, during the bulk of this period, Student was enrolled in the District's highly specialized, structured and comprehensive program for students requiring intense behavioral and emotional support known by the acronym PACES. Parent failed to prove that this placement did not serve to educate Student with nondisabled peers to the maximum extent appropriate. She also failed to prove that Student was not afforded an equal opportunity to participate in extracurricular activities or that District staff actively encouraged either Student or Parent to revoke Student's special education rights.

However, the claims made regarding the alleged failure to provide specialized instruction and/or related and transition services appropriate to Student's needs could not be resolved due to the conflicting evidence regarding Student's skills and abilities and the lack of timely diagnostic evaluative information. This was due to District's failure to timely and appropriately reevaluate Student on the third anniversary following his last round of evaluations. The District elected instead to confine Student's triennial reevaluation when due to a review of existing evaluation data and declined to conduct any additional assessment. This decision was made in spite of Parent's request that the testing be done and the rejection of the existing evaluations results and recommendations by the Assistant Principal in charge of Student's program and most of the staff responsible for delivering his services. Further, the District failed to record any prior written notice of this decision and failed to advise Parent of her right to challenge that decision.

The situation created by the District's decision to refuse testing impaired Parent's ability to participate in the process of Student's educational planning and more likely than not deprived Student of educational benefit. Accordingly, District's failure to timely and appropriately reevaluate Student was found to have deprived the Student of a FAPE. The District was ordered to conduct three separate evaluations to assess Student's current functioning and skills: a psychological evaluation of social, emotional and behavioral functioning; an independent neuropsychological evaluation to comprehensively assess cognitive and academic functioning; and an independent assessment of Student reading skills. Parent's request that the Hearing Officer retain jurisdiction to assess the need for compensatory education upon completion of the evaluations was declined.