NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION

PROCEEDINGS BEFORE THE IMPARTIAL DUE PROCESS HEARING OFFICER

Case Number: NMPED DPH 0910-36

FINAL DECISION

Statement of Proceedings

Father filed a Due Process Hearing Notice ("Request") with the New Mexico Public Education Department ("NMPED") on May 14, 2010, alleging that District denied his daughter a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") 20 U.S.C. §§ 1400 et seq. (which took effect July 1, 2005) and implementing state rules (6.31.2 et seq. NMAC, effective June 29, 2007, and amended through December 31, 2009) and federal regulations (34 C.F.R. Part 300, effective August 14, 2006, and amended through December 1, 2008).

The Request also asserted claims arising under Section 504 of the Rehabilitation Act, 29 U.S.C. §705, and the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq. These claims were dismissed for want of jurisdiction by Order entered August 25, 2010. The Request asserts claims that predate the two-year timeline and alleges actions on the part of the District that would trigger one of the exceptions thereto. The Request having stated a claim upon which relief could be granted, the District's motion to dismiss some of the time-barred claims was denied in the Order of August 25, 2010. The District sought to join NMPED which joinder was denied by Order entered July 12, 2010. Parent sought to disqualify District's attorneys from representing the District which disqualification was denied by Order entered September 22, 2010. District did not challenge the sufficiency of the Request. The procedural history of this Request is otherwise not remarkable or substantive and need not be related further.

At the joint request of the parties the suspension of the due process timeline was extended to August 23, 2010, to allow resolution of the prehearing motions identified above and pursuit of mediation which efforts failed. Parent requested, without objection from the District, one or more extensions of the

45-day due process timeline and this decision would have been timely filed if delivered to NMPED and the parties no later than December 21, 2010. One of the extension requests was made solely to accommodate conflicts encountered by the DPHO.

The due process hearing was held October 20 and October 25-29, 2010. Parent was present throughout and represented by counsel. The District's Assistant Director of Special Education Anna Vargas-Gutierrez was present on behalf of the District and the District was represented by counsel. All procedural safeguards were observed. The parties timely submitted a Statement of Stipulated Facts as required by 6.31.2.13(I)(14) NMAC. Exhibits offered by Parent were identified by numbers. District exhibits were identified by double letters. Joint exhibits were identified by single letters. Page numbers on all exhibits refer to the pagination in the lower right-hand corner.

The DPHO, having heard the oral testimony of all witnesses, having reviewed the exhibits admitted as evidence, having considered all argument and citations of authority submitted and the parties' requested findings of fact and conclusions of law and being otherwise advised in the premises, makes the following findings of fact, conclusions of law and orders.

Statement of Issues

After extended discussion at the prehearing conference of the parties' claims and defenses, the DPHO identified the following specific issues to be determined at the due process hearing in the Prehearing Conference Summary of record at October 5, 2010, and modified of record on October 14, 2010.

1. Whether one of the exceptions to the two year timeline for requesting a hearing applies to allow Parent to extend the timeline to include claims arising in January 2008 and thereafter.

2. Whether District was obligated to conduct an evaluation of Student at any point relevant to these proceedings prior to the fall of 2009, the time frame in which Student's initial evaluation was conducted.

3. Whether Student was entitled to and, if so, whether she was accorded IDEA protections in the administration of discipline during the 2008-2009 school year.

4. Whether the evaluation done of Student in the fall of 2009 was timely conducted.

5. Whether the evaluation done of Student in the fall of 2009 was sufficiently comprehensive to address all of Student's alleged areas of disability and need.

6. Whether Student is currently eligible for special education or was so eligible at any time relevant to these proceedings.

7. Whether the November 17, 2009, determination that Student was eligible to receive special education and related services as Other Health Impaired ("OHI") was appropriate.

8. Whether District's determination that Student was not eligible for special education and resulting decision to exit Student from special education in January 2010 were appropriate.

9. Whether District is or was obligated to develop and implement an IEP for Student at any time relevant to these proceedings.

10. Whether District significantly impeded Parent's opportunity to participate in the educational decisions made for his daughter by committing alleged procedural violations, specifically:

    a. If an exception to the two year timeline allows consideration of claims arising in January 2008, whether District failed to provide notice of procedural safeguards upon its alleged refusal of a January 2008 request for evaluation;

    b. Whether District failed to obtain informed consent to evaluate, misled Parent as to type and purpose of evaluations and altered the consent form after Parent's signing;

    c. Whether District failed to provide Parent with copies of evaluation reports prior to multiple meetings;

    d. Whether District was obligated to and, if so, whether it did provide written notice of its intent to exit Student from special education;

    e. Whether District made adequate efforts, including the provision of adequate notice, to include Parent at the January 15, 2010, IEP meeting.

Summary of Essential Evidence

The testimony of 21 witnesses was received and 64 exhibits were admitted into evidence during five and a half days of hearing. The witnesses heard were Student; Parent; Student's advocate from Disability Rights of New Mexico ("DRNM"); two of Student's teachers; the District's Superintendent and Assistant Director of Special Education; Dr. John Lang, Student's treating psychologist who was received as an expert in clinical psychology; Dr. Lloyd Vigil, District's school psychologist, received as an expert in school psychology; Dr. Rose Chiviotti-Cavalcante and Lisa Chacon-Kedge, two of District's educational diagnosticians each received as an expert in educational diagnostics; one of District's occupational therapists, three of its counselors, including Middle School Counselor, and two of its social

workers; a complaint investigator from NMPED; Dr. Edward Siegel, a psychologist retained by the District to evaluate Student and received as an expert in psychology; Julianne Glinski, an educational diagnostician retained by the Parent to evaluate Student and received as an expert in educational diagnostics; and Dr. Diane Thompson, received as an expert in clinical psychology who did not evaluate Student. References throughout this decision to exhibits admitted into evidence at the hearing are indicated by "Ex. ___," references to pages in the transcript of the hearing by "Tr. ____" and references to the Statement of Stipulated Facts by "SSF No. ____."

Student was 15 years old at the time of the hearing (SSF No. 1) and enrolled as a sophomore at the District's high school, however, she has earned only one half credit of the eight credits she should have earned during her freshman year. Tr. 1014 and 941. She has been attending District schools since she transferred into the District in January 2008 (SSF No. 2), at two different middle schools for the seventh and eighth grades, respectively, and the District's only high school for ninth and tenth grades. This due process review is confined to the two year period prior to the date receipt of Parent's Request: May 14, 2008, which is the very end of seventh grade to May 14, 2010, the end of ninth grade.[1]

Student has intermittently been under the care of psychologist Dr. John Lang since at least July 2006, at which time Parent requested a psychological evaluation of Student because Student was having problems with authority and following rules. Parent was concerned that Student, who had just completed fifth grade at that time, was not getting better grades at school. Parent gave a history of several significant traumas, including the murder of a close relative and other family deaths and illnesses, and stresses in the family setting that Parent thought had impacted Student's emotional development. Ex. 11; Lang's testimony generally at Tr. 836-938

In his report of July 31, 2006, Lang found that Student's cognitive function was within normal limits based on his administration of the Wide Range Achievement Test and her academic functioning was at grade level. Lang had Parent complete a behavior rating scale and conducted other psychological

[1] See Discussion section on Issues 1 and 10(a) for a summary of the evidence related to Parent's claim to exceed the two-year statute of limitations.

testing and concluded that Student had a mild case of Attention Deficit Hyperactivity Disorder ("ADHD"). His conclusions emphasized Student's awareness of and sensitivity to the family tragedies. He recommended several sessions of individual psychotherapy with intermittent family sessions to help Student process the tragic events. Ex. 11. He did not recommend medication. Notably, given his experience in school psychology, he did not recommend any adjustments in the school setting and did not mention evaluation for special education eligibility or accessing services typically provided by a school system of any kind.

Student earned failing grades in second semester 2008 (Ex. P) and was slated to be retained in seventh grade. On May 30, 2008, Parent signed a Waiver indicating that he refused to have Student retained. Ex. R, p. 2. The waiver promised Student an academic improvement plan to be developed by a Student Assistant Team ("SAT"). Although an undated Student Individual Academic/Growth Plan for eighth grade is of record at Exhibit 14, it is undisputed that no SAT was convened for this Student before May 2009. Tr. 702-703; 760-761. The administration and provision of SAT does not fall under the auspices of special education and is not subject to review in IDEA due process proceedings.

Upon being promoted to eighth grade, it is undisputed that Student demonstrated problematic behaviors that escalated during the 2008-2009 school year. Ex. N; testimony of Middle School Counselor generally at Tr. 754-787. The principal infractions were truancy (where she was usually on campus but not in class (Tr. 769)), insubordination (refusing to obey teachers, insolence), disrupting class and refusing or failing to do classroom work. On two occasions, when Student acted in concert with other classmates, her behavior was more serious, specifically, composing a salacious drawing characterized as sexual harassment in August 2008 (Ex. N, pp. 11-13) and setting fire to an unused locker during the summer of 2009. Tr. 711-713; 1022-1023.

Discipline, including numerous in school and out of school suspensions of varying durations, was imposed during eighth grade. The exact number of days of suspension was not extrapolated from the records but there is no dispute that it easily and significantly exceeded ten for the year. There is also no

dispute that a Manifestation Determination Review ("MDR") was never convened for Student during the period under review in these proceedings. Tr. 765-766.

A SAT was convened on May 1, 2009, chaired by Middle School Counselor. Ex. 5. The May SAT meeting summary is the first school record to make mention of ADHD which one of Student's teachers observed to be "evident." Ex. 5, p. 2. It is also the first District record to document the existence of the 2006 Lang report. The SAT meeting summary catalogues problem behaviors (easily distracted, walks out of class, not producing in class and poor impulse control) and lists current interventions but does not appear to make any recommendations for addressing Student's behaviors and does not refer Student for evaluation of special education eligibility.

Student achieved two C's, three D's and two F's in first semester but failed all her classes in second semester of eighth grade. Ex. P. Middle School Counselor sent Parent notification of Student's failing grades in March 2009 and advised him that the District was recommending summer school and possible retention. Ex. R, p. 1. No waiver of retention for eighth grade was offered in evidence and considerable confusion about whether Student should register at the high school or middle school the following fall 2009 was reported. Exs. 14 and 28; Tr. 24; 718-719, 721-722.

It was during this 2009 summer school session that Student engaged in the arson mentioned earlier. Student was arrested, spent three days in juvenile detention and was placed on probation. Although the summer school principal threatened expulsion, no record of disciplinary action by the District arising out of this incident was offered in evidence. Tr. 711- 713. The Juvenile Probation Office ("JPO") referred the family to DRNM where Parent enlisted the assistance of an advocate. Tr. 713.

Also on a referral from the JPO, Lang conducted a reevaluation as reported on June 29, 2009. Ex. 10. Relying on his clinical interviews of Student and Parent, a "Mental Status Exam," his own observations of Student's behavior, review of her chart and unidentified "Behavior Rating Scales," Lang found that Student's condition had deteriorated in the face of regular psychological therapy with him; that Student was out of control and did not appear to have the ability to regulate herself. Ex. 10, p. 2. Lang

opined that Student's reading and "academic functioning" had also deteriorated, however, he did not identify the administration of any cognitive tests to support such a finding. The ADHD was no longer described as mild and he also diagnosed Oppositional Defiance Disorder ("ODD"). Lang recommended intensive long term residential treatment, which was not done. Ex. 10, pp. 3-4; Tr. 818.

Apparently unaware of the May 1, 2009, SAT meeting (Tr. 791-792), a different District counselor convened another initial SAT meeting on July 29, 2009. ADHD was again noted but there was no mention of Lang or either of his reports. The behaviors described by this SAT were over-active, incomplete assignments, not following directions, easily distracted, fidgety and not following rules. Again, there was no referral for special education evaluation or program recommendations. Ex. 4.

The DRNM advocate began working on Student's behalf in early August 2009. She was finally able to make contact with the then Director of Special Education Patricia Martinez-Lopez ("Lopez") in early September, who at that time refused to accept the findings of Lang's June 2009 reevaluation. The advocate confirmed this conversation by letter dated September 10, 2009, wherein she suggested the District conduct its own evaluation and demanded the District develop a behavior plan to address Student's needs. Ex. 28. The Assistant Superintendent responded to this demand by letter dated September 18, 2009, stating that the District would conduct a comprehensive SAT at the high school and it would be that team's responsibility to develop a behavior plan for Student. She also promised that a "504" would be scheduled for Student. There was no mention of an evaluation of any kind. Ex. 26. In the meantime, DRNM filed a complaint ("State Complaint") with NMPED contending District had failed Student in its child find obligations. Ex. 27.

The State Complaint spawned a flurry of activity from the District. The Section 504 Conference Committee ("504 Meeting") was convened September 29, 2009. Lang, who was asked to attend this meeting, prepared a letter dated September 28, 2009, to be delivered to the Committee in lieu of attending. Ex. 9. Therein, Lang does not reference his earlier recommendation for long term residential treatment but instead outlines his belief that Student is eligible for special education as emotionally

disturbed or Emotional Disturbance ("ED") and recommends a full-time educational assistant. It is not clear from the sparse documents related to the 504 Meeting admitted in evidence whether the Committee actually received or reviewed this letter from Lang. The only reference is under the Summary of Relevant Evaluation/Assessment Data where there is a comment: "Medical Information – Student has ADHD" and identifies Lang under source. Ex. 3, p. 3. There is no reference to ED at all.

The 504 Meeting recommended Student be placed in general education with Section 504 services. Ex. 3, p. 2. Parent executed a Notice and Consent for Evaluation under Section 504 (Ex. 3, p. 1) and, among other recommendations, the Committee referred Student for expedited "special education testing." Ex. 3, p. 4.

Upon receipt of the 504 Meeting referral, Lopez arranged an evaluation by psychologist Dr. Ned Siegel (Ex. 40) which was conducted in on November 5, 2009. Tr. 131 & 199-200. No written informed consent was obtained for this evaluation but Parent delivered Student to Siegel's office out of town and on short notice. Tr. 728-731.

A report was not issued until December 2, 2009. Siegel disagreed with Lang's diagnoses of ADHD and ODD but, using outdated cognitive testing tools, concluded that Student had a specific learning disability ("SLD") and exhibited poor processing speed. He suggested that her oppositional behavior is a reaction to being confused due to this learning disability. Siegel recommended special education to include highly structured, slower paced classes. Ex. 7.

A series of Multidisciplinary Team ("MDT") meetings on November 12, 16 and 17, 2009, were convened by the District after a site visit from the NMPED complaint investigator. Exs. G, H and I. The NMPED complaint investigator was allowed to participate by telephone in the latter two meetings as an observer. The Prior Written Notices ("PWN") from those meetings suggest that the NMPED complaint investigator went beyond mere observation and suggested options to the MDT, at least one of which was rejected. Ex. I, p. 4. Ultimately, the MDT rejected Siegel's finding of a SLD (Ex. I, pp. 1-2) but found Student eligible as OHI based on Lang's diagnosis of ADHD. Ex. I, p. 2.

The November 17 MDT accepted a proposal to postpone developing an individual educational program ("IEP") until further data could be compiled and specified additional diagnostic testing for IQ, achievement and processing. Ex. I, p. 3. Apparently some attempt was made at developing an interim IEP as also proposed by the MDT (Ex. I, p. 4) but the only document of record is boldly labeled DRAFT and, with the exception of a list of supposed Instructional Accommodations or Modifications at page 10, is essentially blank. Ex. 14. There was no evidence that an IEP, interim or otherwise, was implemented on Student's behalf.

The first accepted proposal on the November 17 PWN indicates that Parent will withdraw the State Complaint if eligibility is determined. Ex. I, p. 1. Parent signed a form withdrawal on that date. Ex. 19.

On December 1, 2009, the District requested Parent's consent to additional testing. The only subject for evaluation listed when Parent signed the form was "Collect data for BIP and FBA." Ex. V, p. 2. After Parent signed and was given a copy of the Consent, the remainder of the form was filled in and seven other subjects were checked. Lopez then ordered a series of three evaluations (Multidisciplinary Evaluation by Dr. Rose Chiovitti-Cavalcante, psychological evaluation by Dr. Lloyd Vigil, Occupational Therapy Evaluation) be conducted within the space of less than two weeks and in spite of the presence of a failed vision exam. Ex. 38, p. 2.

Parent thought he would be attending an IEP team meeting at which a program would be developed for Student on December 15, 2009. Instead, he was provided with copies of the new evaluations. Then one evaluator after another reported that Student did not qualify for special education or the related psychological and occupational therapy services evaluated and the team proposed to end her eligibility. Parent asked that the meeting be tabled so that he could consult his advocate who was not present at the meeting. The team adjourned after proposing and accepting that a social work assessment be done and work on the development of a functional behavior assessment ("FBA") and behavior intervention plan ("BIP") continue. Ex. K.

The team reconvened on January 15, 2010, without Parent in attendance. According to the PWN of that date, the meeting had been rescheduled twice to accommodate Parent and Parent's attendance had been confirmed by telephone on January 5. Ex. F, p. 3; Tr. 259-262. There was no evidence that Parent refused or could not be convinced to attend. Parent recalled the meeting being rescheduled only once because he could not attend. He did not recall receiving any notice, written or otherwise, that a meeting would be held on January 15 and denied that anyone called to confirm his attendance. Tr. 749-751.

The January 2010 IEP team/MDT accepted (Ex. F, p. 4) the results of the psychologist's evaluation summarized by, Vigil, the District's school psychologist, concluding that Student did not qualify for psychological services. Ex. F, p. 2. The team also accepted the results of the Social Work Assessment (Exs. BB and KK) conducted by one of the District's social workers finding that Student does not qualify for social work services, stating, "Team agrees however, that [Student] needs behavioral support." The team then exited Student from special education services finding that she was "no longer" eligible but referring her back to the Section 504 Committee for needed "monitoring and supervision." Ex. F, p. 4.

Although exited from special education, the District continued the development of a FBA for Student, a service not typically, if ever, provided to regular education students. The Assistant Director of Special Education and Vigil, whose responsibilities were confined to special education students with the exception of managing crisis intervention (Tr. 379, 434-435), retained responsibility for compiling the data (Ex. B) and, along with a special education teacher and other District staff, conducted the FBA. Ex. E, p. 3; Exs. 33 and 34; Testimony of Vigil (Vol. 3) and Vargas-Gutierrez (Vol. 2), generally. The Assistant Director, in fact, prepared the draft of the FBA. Ex. 34. A BIP was never developed. Tr. 210.

Parent seeks immediate identification of Student as eligible for special education and related services as OHI and ED; an order requiring the District to retain the services of an independent expert to conduct an FBA, assist the IEP team in the development of a BIP and monitor the implementation of the BIP for one year; an order requiring the District to retain the services of an independent facilitator to

facilitate all IEP team meetings for Student for a period of one year; compensatory education to assist Student in credit recovery and remediation of her academic skills; and reimbursement for all costs associated with Ms Glinski's evaluation (Ex. 42). Parent's request for attorney fees is outside the purview of due process proceedings.

Findings of Fact

The Parent submitted requested findings of fact and conclusions of law before the hearing and supplemented those requests after the hearing. The District submitted requested findings and conclusions only after the hearing, contravening the DPHO's directions as to timing and page configuration. To the extent that such requested findings are inconsistent with or contradict the findings and conclusions below, they are denied. If requested findings and conclusions are not addressed in the findings and conclusions that follow, they were found to be not necessary or applicable to the issues determined in these proceedings or contradicted or not supported by the evidence presented at the hearing. All conclusions of law implicit in the following findings of fact are to be considered the conclusions of law of this DPHO.

1. Student resides with her Parent within District's jurisdictional boundaries and has attended District schools at all times relevant to this Request. There is no dispute that District is Student's local educational agency ("LEA").
2. It is more likely than not that no event occurred in January 2008, or throughout spring 2008, to trigger an obligation upon the District to provide Parent with notice of IDEA procedural safeguards.
3. While it is likely that Parent had several conversations with school personnel about Student's behaviors during 2008-2009, the content of those conversations is in dispute and it is more likely that Parent did not make a discernable request that Student be evaluated for special education eligibility.

4. Even if the District had received Lang's report of July 2006 prior to the SAT meeting in May 2009, which was not proved by a preponderance of the evidence, the report does not establish the presence of a disabling condition. Tr. 603.

5. It was not unreasonable for District staff to believe that Student's behaviors in eighth grade were related to the very difficult home life and tragic family losses described by Parent and not suspect that they reflected a disability.

6. District was informed early in eighth grade that Student was undergoing counseling in the form of individual psychological therapy to address her family situation and behavior. Ex. N, p. 11; Tr. 705-706. It was reasonable for District staff to conclude that Student's behaviors were secondary to the tragic events at home and being addressed by psychological therapy with Lang.

7. Student's failing grades, particularly in light of her poor attendance during 2008-2009 and family situation, were not sufficient to require District personnel to suspect that Student was child with a disability in need of special education.

8. Both Student's behavior and her grades appeared to be improving through the middle of the year in eighth grade. Exs. N and P.

9. District's efforts to manage Student's behaviors during eighth grade through the regular education disciplinary process were not unreasonable.

10. Convening a SAT a month before the end of Student's eighth grade to review the situation was not an unreasonable response by the District to address the apparent failure of private counseling and regular education interventions and discipline to modify Student's behaviors.

11. Lang's report of June 2009 was sufficient to raise a reasonable suspicion that Student might be a child with a disability in need of special education.

12. Convening a Section 504 Committee meeting in early ninth grade was not an unreasonable response to the diagnoses and recommendations related in Lang's June 2009 reevaluation.

13. Prior to Parent's letter of September 21, 2009, there was no basis of knowledge that required District to accord Student special education protections in the administration of discipline and there was no change of placement after that date in evidence.

14. Attendance records reflect only three days of suspension from the start of ninth grade through February 1, 2010. Ex. O, pp. 5-6. No attendance records for the remainder of the period under review in these due process proceedings could be found in evidence.

15. District's obligation to conduct an evaluation for special education eligibility was established by a preponderance of the evidence upon the Section 504 Committee's referral for "fast track" special education testing on September 29, 2009.

16. There is no dispute that all the evaluations conducted by District were completed either within 60 days of the Section 504 Committee referral on September 29, 2009, or within 60 days of Parent's initial consent on December 1, 2009.

17. With the exception of the Occupational Therapist's assessment, the District has failed to conduct a comprehensive, appropriate evaluation of Student to assess all areas of suspected disability and that conforms with federal and state standards to the date of this hearing. The challenged evaluations that were performed by or at the direction of the District and found to be inappropriate were: Siegel (Ex. 7), Vigil (Ex. D), Cavalcante (Ex. C) and the Social Work Assessment (Exs. BB and KK).

18. Parent disagreed with the evaluations conducted by District's in-house evaluators. Ex. F, pp. 2-3.

19. It is undisputed that Siegel's evaluation utilized outdated testing materials and was inadequate to support his finding of eligibility as SLD, the only basis for eligibility he recommended. Ex. 7.

20. Vigil's evaluation and conclusion that Student is not eligible for special education as ED and did not qualify for psychological services is unreliable and not credible or persuasive for the following reasons, among others:

    a. He has no personal knowledge of and has had no personal contact with Student.

b. He did not observe Student in any setting prior to making his report. Tr. 386.

c. He has not reviewed the behavior checklists prepared by Students teachers. Tr. 387.

d. He has not reviewed Student's disciplinary records. Tr. 387-388.

e. He merely scored and interpreted two self-report instruments administered to Student by Cavalcante, one assessing anxiety and the other depression. Ex. D.

f. Although Siegel's evaluation was rendered unreliable by the use of outdated testing materials, Vigil relied on one scale, the Freedom of Distractibility Index, derived from the outdated testing by Siegel to conclude that Student is not ADHD. That scale was specifically omitted from the current testing materials as not valid or reliable. Tr. 576-579.

g. His conclusion that eligibility as ED was not met did not address the criteria for ED at all and cited only that the testing he scored was not clinically significant for anxiety or depression and his erroneously based opinion that there is no ADHD. Ex. D, p. 9.

21. Cavalcante's Eligibility Statement regarding SLD is not at issue and its validity will not be reviewed. Her Eligibility Statement regarding ADHD is unreliable and not credible or persuasive for the following reasons, among others:

a. She did not review any of Student's disciplinary records and had woefully inadequate information regarding Student's classroom behaviors. Tr. 477-479

b. She did not observe Student in any setting other than the one-on-one testing sessions with her in a small, well lighted, quiet room with no distractions. Tr. 485-486.

c. She did not administer any behavior rating scales to Student, her parent(s) or her teachers (Ex. C; Tr. 396-397) even though it is recommended in the New Mexico Technical Evaluation and Assessment Manual ("TEAM Manual") (Tr. 485) and it is usually a component of her evaluations (Tr. 514-515).

d. It is presumed that she reviewed no teacher observations for her evaluation, other than the brief list of behaviors found in the SAT summary in Exhibit 4, since no such records were produced by the District for inspection and copying other than those contained in Exhibits B and N and she denied having reviewed the contents of those exhibits. Tr. 477.

e. The background information is replete with facts that are inconsistent with the evidence of record, such as: The implementation of a behavior management plan by the Section 504 Committee (Ex. C, p. 2) when it is undisputed that none exists; that one of Student's strengths is math (Ex. C, p. 3) which is internally contradicted by the recitation that Student *received* 504 services in math[2] (Ex. C, p. 2, but see Ex. 14); she summarizes that Student demonstrates higher achievement in some of her classes (Ex. C, p. 14) but Student is failing across the board (Ex. LL).

f. She "ruled out" Lang's diagnosis of ADHD *solely* on the basis that there was "No apparent presence of ADHD within test setting" (Ex. C, p. 18). She spent no more than three hours with Student in the test setting described above in Subparagraph b. Tr. 545.

22. The Social Work Assessment is unreliable and not credible or persuasive for the following reasons, among others:

a. The District's social worker was not trained and had little experience in administering the instrument relied upon in her report. Exs. BB and KK; Tr. 977-979.

b. She spent no more than 30 minutes with Student and had no personal knowledge of Student outside this assessment. Tr. 985.

c. She relied heavily on teacher reports assessing Student's motivation rather than more appropriate, reliable objective behavior observations. Tr. 632-633. This also disregards Lang's finding that Student was out of control and unable to regulate her behavior. Ex. 10. (See also similar teacher report of lack of control at Tr. 226.)

23. The November 17 MDT correctly found Student eligible for special education and related services on the basis of OHI.

24. The District has not developed an IEP that complies with federal regulations for Student to the date of the hearing and Student has received no special education or related services.

25. Parent did not refuse to attend the January 15, 2010, meeting and District offered no evidence that they could not convince him to attend.

[2] This is also not accurate in that Student was offered Section 504 tutoring in Math and English (Ex. 3, p. 4) but Student did not attend. Tr. 725-726.

26. The Exit MDTs conducted in December 2009 and January 2010 failed to consider the available classroom data that confirmed the inattentive and off-task behaviors and relied on hastily compiled in-house evaluations that did not meet the standard of the TEAM Manual or applicable regulations and speciously ruled out Student's ADHD diagnosis. Ex. M.

27. The evaluation conducted by Ms. Glinski was comprehensive, reliable, credible and persuasive for the following reasons, among others:

    a. She has extensive experience and credentials in the field of educational diagnostics and is a highly trained and knowledgeable educational diagnostician. She is also trained, nationally certified and state licensed as a school psychologist. Tr. 553-560.

    b. She reviewed and relied on all of the disciplinary records in evidence found at Exhibit N. Ex. 6, p. 4; Tr. 649.

    c. She reviewed and relied on all the behavioral checklists, in particular the timed behavior logs, prepared by Student's teachers for the FBA of record at Exhibit B as a source of multiple classroom behavior observations. Ex. 6, p. 4; Tr. 592-593, 649.

    d. She utilized an appropriate rating scale to measure ADHD characteristics in children of Student's age that was completed by Parent. Ex. 6, pp. 8-9.

    e. She utilized an appropriate rating scale to identify behavior problems which exceed the norm of any student in the school or home environment. The home version was completed by Parent. Ex. 6, p. 9.

    f. She provided sound, credible and persuasive support for her conclusions. Ex. 6; Glinski testimony, generally, at Tr. 553-653.

28. Glinski's evaluation and testimony credibly and persuasively confirmed Lang's diagnosis of ADHD and its impact on Student's ability to access the curriculum. Ex. 6, p. 10; Tr. 637-639.

29. Student is in need of specialized instruction and related services. Tr. 610.

30. Student needs compensatory education to remediate her attention deficits and classroom behavior management.

31. Glinski's evaluation met state and federal criteria and, in fact, Kedge had recommended Glinski to Lopez for the District's own evaluation of Student in the fall of 2009. Tr. 1108.

32. Parent incurred $1, 279.50 in costs to secure the independent evaluation by Glinski. Ex. 42.

33. District committed procedural violations in acquiring informed parental consent and conducting the January 15 meeting without Parent in attendance.

Discussion

General

States and local school districts receiving federal funds for education must provide all disabled children ages 3 to 21 residing within their boundaries with FAPE. 20 U.S.C. §§ 1412(a)(1)(A). FAPE is defined in 20 U.S.C. §1401(9) to mean special education and related services that are provided at no charge and in conformity with an IEP.

The Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982) 1982.SCT.42760 VersusLaw.com, set out the seminal case defining compliance with the IDEA saying, "We therefore conclude that the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Id*. at ¶55. A child has received FAPE if the school district complied with procedural requirements and the IEP was reasonably calculated to enable the child with disabilities to receive educational benefits. *Id.* at ¶65. See also *Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008) 2008.C10.0001086 VersusLaw.com.

The vehicle for provision of FAPE is the IEP, the package of special educational and related services designed to meet the unique needs of the child with disabilities. 20 U.S.C. §1414(d) The IEP is developed by a team typically composed of the student's parents and educational professionals (20 U.S.C. §1414(d)(1)(B)) who must consider the strengths of the child; the concerns of the parents; the results of the child's evaluation; and the academic, developmental and functional needs of the child. 20 U.S.C. §1414(d)(3)(a). The IDEA requires that the IEP specify the supports that will be provided for the child "to be involved in and make progress in the general education curriculum . . ." 20 U.S.C. §1414(d)(1)(A)(IV)(bb).

States must also establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a FAPE. The procedures mandated include written prior notice to the parents whenever the LEA proposes to initiate or change; or refuses to initiate or change, the identification, evaluation or educational placement of the child, or the provision of a FAPE to the child. 20 U.S.C. §1415(b)(3). Procedures must also afford an opportunity to parties to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE. 20 U.S.C. §1415(b)(6).

Statute of Limitations – Issues 1 and 10(a)

Any party requesting an impartial due process hearing must make the request within two years of the date the party knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. §1415(f)(3)(C) Parent's Request was received by the NMPED on May 14, 2010, and only claims arising after May 14, 2008, are automatically allowed under the timeline. Parent acknowledges the timeline and this predicate date but asserts that his claims arising in January 2008 and thereafter are excepted from the timeline.

Exceptions are found in 20 U.S.C. §1415(f)(3)(D) which circumvent application of the timeline for a parent who was prevented from requesting the hearing under specific circumstances. The exception asserted here is found at 20 U.S.C. §1415(f)(3)(D)(ii) which applies if the school district withheld information from a parent that was required to be provided to a parent. Specifically, Parent contends that District was required to provide him with notice of rights and procedural safeguards pursuant to 20 USC §1415(d)(1)(A)(i) upon its denial of Parent's alleged request for evaluation in January 2008 and on at least one other unspecified occasion during that spring semester 2008. Accordingly, its alleged failure to do so exempts Parent from application of the timeline. The evidence of record, as summarized below, was insufficient to support this claim and it is therefore denied.

Parent could not give a name of the person he spoke with when he registered Student with the District but believed it was a counselor and, other than his memory, he made no record of this event. Tr.

691-692. He claims he provided this counselor with a copy of Lang's 2006 report and requested that the District evaluate Student. Middle School Counselor, the only counselor for the middle school, independently recalled Student's transfer into the District midyear. Tr. 756. She explained that her secretary was the school's registrar and the counselor's role was to review the documents compiled by the registrar and develop the new child's schedule. She would not typically meet with the transferring parents and did not recall meeting Parent at that time. Tr. 784-785.

Parent claims he gave the District a second copy of the 2006 Lang report along with another request for testing during spring semester 2008. He cannot recall when this happened and, again, cannot recall with whom he spoke and ultimately confessed that he could not say definitively whether he spoke with Middle School Counselor in seventh grade at all. Tr. 700, 796-797. There is nothing in Student's school records to reflect that District received a copy of Lang's 2006 report or a request for evaluation during initial registration or at any time during spring 2008. Middle School Counselor, who served as counselor at both middle schools, adamantly and credibly denies that Parent ever asked for a special education evaluation in middle school. Tr. 767 and 769. (See also the Discussion regarding Issues 2 and 3.) This evidence fails to meet Parent's burden of proof on this Issue. There being no exception to the timeline, only claims arising after May 14, 2008, were considered herein.

The Child Find Obligation – Issue 2

The IDEA is a funding statute. 20 U.S.C. §1411. In order to receive federal funds under this Act, States must meet certain eligibility criteria. 20 U.S.C. §1412. One of these conditions is that the State has in effect policies and procedures which ensure that all children with disabilities residing in the State are identified, located and evaluated. 20 U.S.C. §1412(a)(3). This is known as the child find obligation implied in Issue 2. The regulations broaden this responsibility to include identification of children who are suspected of being a child with a disability even though they are advancing from grade to grade. 34 C.F.R. §300.111(c)(1); *Compton Unified School Dist. v. Addison*, 598 F.3d 1181, 54 IDELR 71 (9th Cir. 2010). This inquiry is intensely fact driven. *Richard S. v. Wissahickon School Dist*., 52 IDELR 245 (3rd

Cir. 2009); *Anello v. Indian River School Dist*., 53 IDELR 253 (3rd Cir. 2009); *D. K. v. Abington School Dist*., 54 IDELR 119 (E.D. Pa. 2010). The evidence adduced in these proceedings, taken as a whole, was insufficient to ascribe a reason to suspect Student was a child with a disability.

Parent's claim that Student should have been identified upon his alleged request for evaluation in seventh and eighth grades has been rejected. (See Discussion of Issues 1 and 3.) Parent also claims that District should have suspected that Student was a child with a disability throughout the period under review. He points to Student's failing grades and behavior/discipline problems which are factors courts have considered in addressing this question. The results vary from case to case depending on the totality of each child's situation. The following are among the factors derived from the evidence summarized above at pages 4-6 and Findings of Fact 3-15 that challenge Parent's claim and militate this Issue in favor of the District.

Parent's oft repeated claim that the District was in possession of the 2006 Lang report will be addressed first. All the experts agreed that ADHD is not per se a disabling condition. There must also be an impact on the child's ability to acquire educational benefit. Lang's 2006 evaluation diagnosed no more than mild ADHD and suggested Student's behavioral problems were situational and secondary to family circumstances and losses. Ex. 11. Lang confirmed that suggestion explicitly in his letter of September 28, 2009. Ex. 9, p. 1. Assuming the 2006 report was delivered to the District prior to May 1, 2009, as claimed, which was not proven by the evidence of record, it would not be sufficient to trigger child find obligations. See also Summary of Essential Evidence at pp. 4-5.

District was informed by Parent very early in eighth grade that Student had experienced significant losses and stresses in her family and that she was undergoing counseling to process her feelings about these events. Consequently, District could reasonably expect Student to act out until the private therapy made progress. Accordingly, there were several disciplinary reports for the fall of 2008. Notably, however, no disciplinary reports were in evidence for the period from December 11, 2008, to

March 2, 2009.[3] Thereafter, the number and severity of reports increased. Ex. N. While her fall semester 2008 grades leave much to be desired, they were an improvement over the grades achieved in spring 2008. Ex. P. All in all, Parent failed to meet his burden on this question.

Discipline – Issue 3

Issue 3 raises a similar question regarding the procedural obligations imposed on the school district when administering discipline to the disabled child. 20 U.S.C. §1415(k). These procedural protections may also be required for Student, as a child not yet eligible for special education, if District must be deemed to have knowledge that she was a child with a disability before the behavior that precipitated the disciplinary action occurred. 20 U.S.C. §1415(k)(5)(A); 34 C.F.R. §300.534; *Jackson v. Northwest Local Sch. Dist.*, 55 IDELR 71 (S.D. Ohio 2010). District shall be deemed to have knowledge only if one or more of the following occurred:

> (i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
>
> (ii) the parent of the child has requested an evaluation of the child pursuant to §1414(a)(1)(B); or
>
> (iii) the teacher of the child, or other personnel of the LEA, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.
>
> 20 U.S.C. §1415(k)(5)(B).

If the District is deemed to have knowledge of Student's alleged disability, it must conduct a MDR whenever it seeks to change Student's placement for disciplinary reasons. 20 U.S.C. §1415(k)(1)(E). If basis of knowledge is not attributed to District, Student may be subject to disciplinary measures applied to children without disabilities who engage in comparable behaviors. 20 U.S.C. §1415(k)(5)(D). Parent contends Student was entitled to this protection and that the multiple suspensions

[3] Student was either suspended or on Winter Break for the remainder of December 2008 and returned to school on January 5, 2009. Ex. N, p. 21.

imposed during eighth grade constituted a change in placement. 34 C.F.R. §300.536. Having failed to convene a MDR at any time in eighth grade, Parent argues that Student was deprived of FAPE.

Subparagraph (i) is not applicable to this inquiry because it is undisputed that Parent did not submit anything in writing concerning Student until September 21, 2009, during Student's freshman year in high school. Ex. 24; Tr. 723. Subparagraph (iii) is of no relevance because there was no evidence offered of record suggesting that a teacher or other District personnel expressed the concerns specified in that Subparagraph prior to the Section 504 recommendation of September 29, 2009. That leaves only Subparagraph (ii) as a possible basis of knowledge to evaluate. Again, taking the evidence of record on the whole, it is insufficient to establish a basis of knowledge.

Parent's testimony regarding these events generally is less than persuasive. Unless there was a corresponding exhibit, Parent consistently could not recall when or with whom he spoke on these multiple occasions when he supposedly asked for testing during eighth grade. Tr. 691, 700, 706 and 796. Parent did nothing to document these alleged requests, even when he reports that the District was losing Student's records and he had no confidence in their handling of his requests. Tr. 696, 721-722 and 796. When initially asked the open-ended question about what he told the District, he responded that he told them about the problems Student was having and asked what the process was to try to get her services. He did not independently mention asking for testing or evaluation until the leading question was posed. Tr. 691-692.

As noted above, Middle School Counselor credibly denied that Parent asked for an evaluation during Student's attendance at middle school. Rather than the constant requests for testing that Parent claims, the evidence more believably suggests that Parent conveyed the history of the significant family tragedies to Middle School Counselor and other District staff (Tr. 699-700) on the occasions when he was called to deal with Student's infractions in an effort to explain Student's behaviors and perhaps as a plea for leniency.

The discipline report of August 22, 2009, at Exhibit N, page 11, is a case in point. This is one of the exhibits that gave Parent a point of reference. It addressed the incident where Student, along with three or four other girls, drew an obscene picture and slid it under a classroom door. In testimony, Parent professed on this occasion he not only asked for testing but related his claimed history of asking for testing. Tr. 705-706. As Parent was rambling through this oft repeated testimony, he recalled that the administrator suggested Student needed counseling and said, "That's when I again pointed out that she was in counseling regularly with Dr. John Lang." Tr. 706, ls.7-10. There is a notation on page 11 of Exhibit N that reads, "John Lang – Counselor" and underneath that, "2-3 weeks." Nothing about Parent's alleged request for testing is recorded in the Exhibit. DPHO finds that the exhibit is the more credible record of the conversation that likely occurred on August 22, 2009, and it reflected only the question of counseling.

The next point of reference is found in Exhibit 5 which records the May 1, 2009, SAT meeting. In relating his recall of this meeting and answering the question of how the District responded to his alleged request for testing on this occasion, Parent said, "They had actually agreed that there needed to be some testing, because again I referred to Lang's report. And based on the amount of times she had been suspended and my many requests to have her tested previously." Tr. 709, ls. 18-22.

As noted in the Summary of Essential Evidence, Exhibit 5 is the first District record to document the existence of Lang's 2006 evaluation. In response to a line entry entitled "(Questions, New Information, Concerns)" Middle School Counselor, the SAT chairperson, wrote "Initial Report July 31, 2006 – will be updated/ADHD." Ex. 5, p. 3. Later, on the same page, in response to the line entry entitled "PART 3. Summary of Screening and Recent Test Results," Middle School Counselor wrote "Eval (7-31-06) – will be updated real soon." The only testing mentioned in the Exhibit is the updating of Lang's now quite dated 2006 evaluation. There is no record of a parental request that District conduct testing or notation of any prior requests by Parent for testing. Again, Exhibit 5 is accepted as the more reliable evidence of the conversation that took place. Further, it is more probable than not that this

Exhibit reflects the first time Parent presented the 2006 Lang report to anyone at the District. The SAT members agreed that the Lang evaluation needed to be updated but there is no evidence to support Parent's claim that the SAT members agreed the District would or needed to conduct testing.

It is more likely that Parent has never asked the District for testing because the evidence, taken as a whole, suggests Parent believed he had already had Student evaluated and reevaluated by Lang and he did not appreciate a need for further testing by the District. Later, when Parent became aware that special education might be indicated, he clearly assumed the Lang evaluations were sufficient to require the provision of special education. Tr. 14. It is notable that Parent's first and only written expression concerning Student in the September 21, 2009, letter asks to have Student "protected under special education" but makes no mention of Lang's evaluation(s) and does not request testing or evaluation of any kind. Ex. 24.[4] Even Parent's advocate took this approach. The advocate's letter of September 10, 2009, demanded specific services but did not ask for testing of any kind. She merely suggested that District conduct its own evaluation if it did not agree with Lang's. Ex. 28.

This evidence is simply not sufficient to meet Parent's burden of proving that District had a basis of knowledge that Student was a child with a disability in eighth grade. Hence, District did not deprive Student of FAPE when she was subjected to the same disciplinary measures applied to children without disabilities who engage in comparable behaviors.

Evaluation – Issues 4 and 5

District is required to conduct a full and individual initial evaluation in accordance with applicable federal and state regulations before the initial provision of special education and related services. 34 C.F.R. §300.301(a). The evaluation must be completed within 60 days of receiving parental consent for the evaluation. 34 C.F.R. §300.301(c). No time limit can be found in the statute or the regulations for the time that may elapse between the referral for evaluation and the acquisition of parental

[4] Again, the Exhibit discredits Parent's testimony. When asked to identify Exhibit 24, he states, "This is when I wrote this letter requesting additional testing. This time I put it in writing so I could make sure it was documented."

consent but it is presumed that the purposes of the IDEA would be frustrated if consent is not sought within a reasonable time.

Parent argued that District was obligated to evaluate Student in January 2008 and thereafter. This claim has been decided against Parent and the Section 504 Committee's referral for fast track evaluation issued on September 29, 2009, is identified as the event that impelled District's obligation to evaluate. The initial evaluation by Siegel was conducted before parental consent was sought. (See also Discussion of Issue 10(b).) Parent signed a consent form on December 1, 2009, and a series of evaluations were conducted well within 60 days of that date. Hence, Parent has failed to prove that District's evaluation was not timely.

Parent did prove that the District's evaluations did not comply with the procedures and requirements found in 34 C.F.R. §§300.301 through 300.306 or state standards as reflected in the TEAM Manual and consequently, were not reliable, credible or persuasive, with the exception of the Occupational Therapy assessment.[5] An example of a provision that was not met is found at 34 C.F.R. §300.304(b)(2) prohibiting the District from using a single measure as the sole criterion. Cavalcante's only basis for ruling out the presence of ADHD was her observation of Student for three hours in the quiet test setting. Ex. C, p. 18; Tr. 485-486, 545. Another example is 34 C.F.R. §300.304(c)(1)(iv) requiring that the evaluation materials are administered by trained and knowledgeable personnel. The District's social worker utilized the Piers Harris Children's Self-Concept Scale (Ex. KK) and admitted that she had never received any training in its administration or interpretation and had used the scale on only six occasions. Tr. 977-979. See also Findings of Fact Nos. 17 to 21.

It must be noted that the evaluators involved were under a great deal of pressure to get these evaluations done within an unrealistic amount of time. The situation surrounding the evaluation and eligibility determinations of Student was variously described as hectic, urgent and chaotic. Tr. 1062-1063, 1110. Cavalcante understood she was conducting an emergency evaluation and she had to get it

[5] Parent does not challenge the Occupational Therapy evaluation and made no claim for the related service of Occupational Therapy.

done fast. Ex. C, p. 19; Tr. 466-467. The resulting evaluations were hastily done and failed to conform to the federal regulations and the TEAM Manual which all the experts who testified agreed is the standard. The reliance upon these evaluations to "exit" Student from special education deprived Student of FAPE.

Eligibility for Special Education and Related Services – Issues 6, 7, 8 and 9

Determination of eligibility is governed by 20 U.S.C. §1414(b)(4) and 34 C.F.R. §300.306 which require the District to convene a group of qualified professionals and Parent to review the evaluations and documentation compiled and determine eligibility under 34 C.F.R. §300.8. The MDT that met on November 17, 2009, concluded that Student qualified for special education and related services as OHI, which is defined at 34 C.F.R. §300(c)(9) to mean "having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment." The District then attempted to reverse that determination during the MDT meetings conducted on December 15, 2009, and January 15, 2010 ("Exit MDTs"), characterizing the action as "exiting" Student from special education and finding her "no longer" eligible. Ex. F, p. 4; *Cf.* Tr. 610-611. During due process proceedings, District asserted three theories for its contention that Student is not eligible:

1. Student is not ADHD;
2. The determinant factor is a lack of appropriate instruction;
3. Student has a conduct disorder which is not eligible under any category;
4. NMPED coerced the November 17 MDT eligibility determination.

Number 1: Exhibit J amply documents the November 17 MDT rationale for identifying Student as OHI. Lang's two reports and his letter and the middle school teachers concerns related to inattentiveness, social/emotional issues reflected in the SAT documentation were cited in support of the MDT's determination. It is acknowledged that the information available to the MDT on November 17 was sparse. But the determination of OHI on the basis of ADHD and its impact on Student's ability to obtain educational benefit was corroborated by the data collected through the winter and early spring for

the FBA. In further confirmation, the Glinski evaluation persuasively confirmed Lang's diagnosis of ADHD and credibly documented and explained its impact on Student's ability to learn. Ex. 6; Tr. 587-589, 639.

On the other hand, the Exit MDTs ignored the previously cited SAT documentation from middle school. The Exit MDTs should also have had available to them the FBA data compiled in early December 2009 reflected in pages 1-9 of Exhibit B in which all of Student's current classroom teachers who completed the Sparks Target Behavior Checklist identified behaviors of inattention. The Exit MDTs make no mention of this classroom data and rely solely on District's "school-based evaluators." As noted above, reliance on the Siegel, Vigil, Cavalcante and social worker assessments to "exit" Student on December 15 and January 15 was misplaced. These evaluations claim to rule out the diagnoses of ADHD without appropriate foundation and cannot be relied upon. The testimony offered by District from Kedge, an expert in educational diagnostics, and Thompson, an expert in clinical psychology, does not change that conclusion. Neither of these witnesses evaluated Student, rather they reviewed and evaluated the evaluations.

Kedge challenged the Glinski evaluation and contended it supported the "exit" determination because Student did not exhibit ADHD symptoms and turned in an average performance on the cognitive test for working memory in Glinski's one-on-one test setting. Tr. 1085-1088. To reach this conclusion, Kedge also had to ignore all the observational data gathered by the teachers for the FBA checklists, including at least two classroom-based timed samples and the behavior rating scale administered to Parent. She remarkably criticized Glinski for administering only the home version of the behavioral scale and not administering it to District staff as well. However, she had to readily concede that Cavalcante did not administer any behavior rating scale to anyone and did not observe Student outside the test setting and, finally, did not even review the observational data available in the teacher checklists. Kedge acknowledged that obtaining behavior rating scales or checklists and classroom-based time sampled

observation were standard to identify OHI by the TEAM Manual. Tr. 1096 and 1118. Kedge's opinions are unreliable and unpersuasive for the same reasons as plague the evaluation she endorsed.

Thompson challenged the Lang evaluations primarily for their failure to conform to either her individual evaluation practices or those she claimed are typical of educational diagnosticians and/or school psychologists. Tr. 1130-1134. This testimony was not particularly helpful since Lang conducted the evaluations as Student's treating psychologist and used the evaluations to direct his treatment recommendations. Exs. 10 and 11; Lang testimony generally at Tr. 836-938. There was no evidence that Lang intended his evaluations to support school based decisions.[6] Thompson's testimony regarding the 2006 Lang report is irrelevant because the DPHO has concluded that this report was not sufficient to trigger IDEA protections prior to the summer of 2009 and its support for the November 17 MDT determination has been confirmed as noted above. Thompson's criticism of Lang's 2009 reevaluation focuses on discrediting it and Glinski's findings that Student qualified as ED which will be discussed under Number 3 below.

Number 2: In these due process proceedings, District has relied on the special rule for eligibility determination found in 20 U.S.C. §1414(b)(5) and 34 C.F.R. §300.306(b) which holds that Student must not be determined to be a child with a disability if the determinant factor for that determination is a lack of appropriate instruction in math or reading. The proffered theory was that lack of appropriate instruction is the determinant factor herein by virtue of Student's poor attendance due to truancy and out of school suspensions and cited *Garcia v. Board of Education of Albuquerque Public Schools*, 520 F.3d 1116, 49 IDELR 241 (10th Cir. 2008) 2008.C10.0000359 VersusLaw.com, in support of this proposition. However, this approach was specifically avoided by the Tenth Circuit in the *Garcia* case.

Before examining the theory raised in the due process proceedings, it should be noted that the November MDT was able to eliminate lack of appropriate instruction as a determinant factor and

[6] His letter to the Section 504 Committee, of record at Exhibit 9, in contrast, was directed to school personnel and contained a review of the criteria for ED. Thompson did not consider this document because it was not an evaluation. Tr. 1182.

specifically found "that attendance does not currently seem to be a concern." That MDT also noted that SAT documentation from the middle school staff suggested that Student's attendance was affected by her emotional state. Ex. J, p. 1.

The Exit MDTs, on the other hand, could not eliminate lack of appropriate instruction as a determinant factor. They noted "lost instructional time due to frequent absences dating back to school year (06-07, 6th grade)." Ex. M, p. 1. But they agreed that their response to this question would be based "upon educational experience and recent outcomes at [high school] only." *Id.*. As noted above, the District had already agreed that attendance was not a concern at the high school. Instead, the Exit MDTs identified the Tier II interventions (recommended by the Section 504 Committee on September 29, 2009) of tutoring in Math and English that were not delivered to Student due to her above noted failure to attend as the lack of appropriate instruction. *Id.*

Hence, the District did not assert this "lack of appropriate instruction due to truancy" theory until these due process proceedings. Turning to the *Garcia* case, the Tenth Circuit therein affirmed a district court's discretion in denying the equitable relief of compensatory education with one of the reasons cited in support being the evidence that the student therein had not regularly attended school in years and that she and her mother refused to cooperate with the development of an educational program. *Id*. at ¶¶71-72. The Court expressed some reluctance at entering this ruling stating

> Because the result of and reasons supporting the district court's decision accord with the relevant purposes of IDEA and are supported by the undisputed facts in the record, we cannot say that the court abused its discretion. Of course, this is not to say that, were we making a decision in the first instance, we would necessarily choose the same path the district court took here; neither do we necessarily believe that the district court's path was the only one available to effect the statutory purposes of IDEA. Rather, we simply hold that the district court's decision fell well within the broad parameters of the discretion Congress chose to invest in it. *Id*. at ¶73

The Tenth Circuit was not similarly inclined to affirm the district court's decision on liability on the same basis. It is true that both the hearing officer and the district court held that, in light of Student's truancy and behavioral problems, the school district's failure to conduct an IEP was immaterial. The administrative appeal officer disagreed. The Tenth Circuit noted at *Id*. ¶53, "As the disunity of these

opinions indicate, the answer to the liability question in this case is not altogether free from doubt." The Court elaborated further:

> Second, the Garcias argue that Myisha's behavior cannot be used to defeat the school district's liability under IDEA. And this, too, presents us with a thorny and uncertain path. On the one hand, we acknowledge potential pitfalls in deeming harmless procedural violations of IDEA for students who fail to exhibit enthusiasm for school. After all, a student's lack of enthusiasm, at least in some cases, may be related to his or her disability. Such students are perhaps most in need of vigilant attention from their schools, and there is at least the possibility that, had the school district reassessed Myisha's needs and implemented a new IEP at the start of the Fall 2003 semester, the school might have been successful in helping Myisha to overcome her behavioral tendencies and to increase her commitment to school – a possibility not entirely out of the question on this record in light of the potential Myisha demonstrated in 2004-2005, the very next school year. *Id*. at ¶57.

In the end, the Tenth Circuit decided to assume, without deciding, the school district's liability stating:

> Having acknowledged that the Garcias' appeal on liability poses novel questions of law, we ultimately think the wisest course is to decline to answer them definitively in this case. We do so because there appears to us a narrower ground for decision, one based on the district court's alternative remedial holding, and one more clearly dictated by our precedent. Accordingly, we leave for another day the questions of liability posed here. *Id*. at ¶59.

Not only is the liability question posed by District to be left for another forum but factually the *Garcia* case is distinguishable. Student herein does not have nearly as severe an attendance or behavior record as the student in *Garcia*. As noted, Student's absenteeism apparently was not a concern in the fall semester of 2009 (Ex. O, p. 5; Ex. J, p. 1) yet Student still earned failing grades. Ex. LL; Tr. 588-589. District offered evidence of one math quiz at Exhibit EE on which Student earned an 85. Her teacher was not specific about any strategy or technique Parent might have used but he explained that he had given Parent advance notice on the content of the quiz and Student apparently studied. Tr. 344-345. Perhaps this is an example of the potential Student can accomplish if she receives the help she needs to overcome her attention deficits and behavioral anomalies. District's "novel" lack of appropriate instruction defense is rejected.

Number 3: This defense derives from the tortured definition of the IDEA-recognized disability of ED. The definition has remained unchanged in the regulations since 1977 despite complaints regarding the confusion and inequities in its application. Fed. Reg. 71:156 at pp. 46549-46550. Found at 34 C.F.R. §300.8(c)(4) it reads in its entirety:

> (i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
> (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
> (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
> (C) Inappropriate types of behavior or feelings under normal circumstances.
> (D) A general pervasive mood of unhappiness or depression.
> (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
> (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

Parent seeks an order requiring the District to immediately identify Student as eligible for special education and related services as ED in addition to OHI. Tr. 1195. This issue will not be reached because Parent has not first requested an IEP for his child on this basis. *Ellenberg v. NMMI*, 478 F.3d 1262 (10th Cir. 2007). The evidence establishes that Parent and his advocate sought an IEP from District on the basis of OHI and possibly SLD but not ED. Exs. F at p. 4; G at pp. 1-2; H at p. 3; I at p. 2. And the District has not accepted or rejected eligibility on the basis of ED. Exs. J and M. This Final Decision finds Student was identified as eligible based on OHI as of November 17, 2009, and the attempt to reverse that decision at the Exit MDTs was invalid and of no effect. If Parent wishes to pursue Student's eligibility as ED, he must first request an IEP for Student on that basis and he is free to do so. A few comments follow for the parties' consideration in the event ED is submitted for determination.

District correctly quotes the Tenth Circuit, "That a child is socially maladjusted is not by itself conclusive evidence that he or she is seriously emotionally disturbed." *A.E. v. Independent Sch. Dist. No. 25*, 936 F.2d 472 (10th Cir. 1991) 1991.C10.41338 VersusLaw.com at ¶27. It is also true that conduct disorders such as ODD are similarly addressed. *Springer v. Fairfax Co. Sch. Bd.*, 134 F.3rd 659, 27

IDELR 367 (4th Cir. 1998). Just as clearly, however, the inquiry does not end there as was suggested by at least one of District's witnesses.[7] A child with a conduct disorder is entitled to FAPE if he or she also has an ED. 34 C.F.R. §300.8(c)(4)(ii). While the Court in *Fairfax* noted that none of the experts, not even the parent's own expert, was of the opinion that the student therein had an ED, in the case at bar, two of the experts concluded that Student qualified as ED. Exs. 6 and 9. Hence, if asked to consider eligibility as ED, District should be cautious not to heed advice from its own personnel that it end its inquiry merely because there is a diagnosis of ODD.

Number 4: Finally, District maintains that the reason the November MDT determined Student to be eligible was due to coercion imposed by the presence of the NMPED complaint investigator. The theory goes that the NMPED complaint investigator pressured the District to grant Student eligibility so Parent would withdraw his State Complaint and she would be relieved of the deadline to issue her report. See District's First Amended Motion to Join the NMPED as a Necessary, Indispensable Party of record June 7, 2010, at p. 3. Having recognized its error, District argues that it should be commended for having the courage to correct this mistake when it would be easier to just give Student unneeded services. Tr. 1197 and 1200.

There is no question that the pending State Complaint had an impact on the MDT proceedings of November 17, 2009. Great emphasis was made of the limited data available but the team went ahead with a determination with the explicit condition that the Parent would withdraw the complaint if Student was found to be eligible.[8] Ex. I, p. 1. District would have the DPHO believe that its personnel were intimidated by the participation of the NMPED complaint investigator and they determined eligibility when they each believed Student was not eligible. An at least equally if not more plausible interpretation is that District rushed and manipulated the MDT process to make an eligibility determination without

[7] When asked what action she would take if she received a report that a child was ODD, Thompson stated, "What I would say is this child has an [ODD] and, therefore, no further evaluation would be necessary as far as special education requirements." Tr. 1145, ls. 6-9.

[8] See also Parent's recall that he felt very pressured into signing the withdrawal and that it was a big distraction that overshadowed the whole meeting. Tr. 738-739.

adequate data for the specific purpose of brokering a withdrawal of the State Complaint pending against it. This is particularly suggested by the almost immediate withdrawal of eligibility based on the District's hasty and inadequate evaluations by District staff. This theory of defense is also rejected.

Having found Student eligible for services, District was obligated to develop an IEP consistent with 34 C.F.R. §300.320 through §300.324. The District having failed to do so has deprived Student of FAPE since the date of determination on November 17, 2009.

Procedural Violations – Issue 10(b)-(e)

Parent has asserted several procedural violations enumerated in Issue 10, Subparagraphs (a) through (e). Subparagraph (a) was addressed under the Discussion section above for the Statute of Limitations. The DPHO may find that a child was denied FAPE "only if the procedural inadequacies—

(I) impeded the child's right to a FAPE;
(II) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the parents' child; or
(III) caused a deprivation of educational benefits.

20 U.S.C. §1415(f)(3)(E)(ii).

A long line of precedent in the Tenth Circuit provides that technical deviations from the procedural requirements will not support a holding of IDEA liability. Rather, the "court must determine whether the procedural error resulted in 'substantive harm to the child or his parents'; 'deprive[d] an eligible student of an individualized education program'; or 'result[ed] in the loss of [an] educational opportunity.'" (citations omitted) *Sytsema, supra* at ¶33.

Subparagraph (b) addresses the procedural deviations related to parental consent for testing. Parent did prove that the Siegel evaluation was performed without the Parent's informed written consent. However, consent could be inferred from Parent's cooperation in getting Student to the evaluation. Certainly no substantive harm was reflected in these facts.

Parent also proved that the written consent he did execute on December 1, 2009, was altered after he signed it. Again, no substantive harm will be found because the resulting evaluations have been

declared inappropriate and inadequate by this Decision, making the irregularities in acquiring Parent's consent immaterial.

Subparagraph (c) protests the failure to provide Parent with copies of the evaluation reports prior to the November 17 and December 15, 2009, MDT meetings. The evidence was undisputed that the reports in question were simply not available prior to the meetings.[9] District is required to provide a copy of the evaluation report at no cost to the Parent but no authority was found requiring that the report be furnished to the parent prior to the IEP or MDT meeting. 34 C.F.R. §300.306. Parent failed to prove that this conduct amounts to a procedural violation.

Subparagraph (d) contends District was obligated to but did not notify Parent of its intent to exit Student at the December 15 meeting. Ex. U. District is required to notify Parent of the purpose of the meeting. 34 C.F.R. §300.322(a)(2)(b). The District's intent to exit Student at the January 15, 2010, was clear in the evidence (Exs. K and 36), but it was not similarly clear for the December 15, 2009, meeting. Given the very tight time constraints, it is quite possible the evaluations were not finalized sufficiently for the District to form that intent before sending out the invitation. There is no question that Parent was blind sided by the December 15 meeting and his ability to participate was severely impaired by the circumstances. Again, however, the fact that this meeting has been invalidated and held to be of no procedural effect on Student's eligibility, the procedural error, if any, is immaterial.

Subparagraph (e) cites District for conducting the January 15, 2010, meeting without Parent in attendance. The IDEA requires the District to use other methods to ensure parent participation when a parent cannot attend. The District is allowed to conduct an IEP meeting without a parent in attendance only if the District is unable to convince the parent to attend. And then the District must make a detailed record of all its efforts to contact and persuade the parent to attend. 34 C.F.R. §300.322(c) and (d). The evidence was sufficient to conclude that District did not comply with this regulation; however, again the

[9] Frankly, the District's mad rush to get both of these meetings held without affording adequate time to the evaluators to do the work properly and report on it is of more concern to the DPHO and certainly forms some, if not all, of the bases for invalidating both the in-house evaluations and the Exit MDTs.

procedural violation is rendered immaterial by this Decision's holding that the January 15 meeting was invalid and of no procedural effect on Student's eligibility.

Remedy

Courts and, correspondingly, due process hearing officers are empowered to "grant such relief as [it] determines is appropriate." 20 U.S.C. §1415(i)(2)(C)(iii). "Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (citations omitted) *Erickson v. Albuquerque Public Schools*, 199 F.3d 1116 (10th Cir. 1999) 199.C10.0043586 VersusLaw.com at ¶32. Appropriate relief includes the award of compensatory education when necessary to secure the student's right to FAPE. *Id.*

Although Student was deemed ineligible, District's special education administrative staff continued with the development of a FBA for Student which was completed in late March 2010 and can be found at Exhibit E. The FBA concludes that Student's behavior patterns warrant the development of a BIP but that was not done, according to the undisputed evidence. Apparently disregarding the social work assessment described above, the Assistant Director of Special Education in February 2010 contacted one of the District's social workers to arrange services for Student as a regular education student. Ex. 33. There was no evidence of record as to whether such services were ever delivered to Student.

District special education staff clearly acknowledged that Student was in need of assistance and made these meager efforts to get something done on her behalf. However, just as clearly District has deprived Student of the FAPE to which she has been entitled since November 17, 2009, to the date of this Decision, a period of approximately 43 regular year school weeks. Compensatory education is needed to secure Student's right to the FAPE she has been denied.

The District must immediately convene an IEP meeting to develop an appropriate educational program for Student with the assistance of an IEP facilitator. Parent must agree to the facilitator chosen for this purpose. The facilitator so chosen must be retained to facilitate all IEP meetings conducted for Student for a period of one year from the date of Student's initial facilitated IEP. District shall respond

promptly to convene an IEP at the request of any IEP team member, including Parent, to review, correct or change the provisions of the IEP. All costs of the facilitator shall be borne by the District.

Student's need for a BIP is undisputed. District shall immediately retain the services of an appropriate outside expert to review the work already done on the development of an FBA, to collect more data if deemed necessary, to assist the IEP team in the development of a BIP, to assist the District in implementing the BIP in staff briefings or training and to monitor implementation of the BIP for a period of one year from the date the BIP is initially adopted by the IEP team. This expert must be invited to all of Student's IEP meetings convened during development of the BIP and the year of monitoring and all costs shall be borne by the District. The Parent must agree to the expert selected for this purpose.

If the parties cannot agree to the selection of the above facilitator and appropriate expert, they shall immediately submit the dispute to NMPED for resolution by mediation or, in the alternative, the parties may submit the dispute to binding arbitration at the District's expense.

Unless the Parent consents to any specific alternatives proposed by the IEP team, the educational program developed for Student shall, at a minimum contain the following special instruction and related services. To the extent any of these services exceed what Student's IEP team deems to be an appropriate educational program for Student, they are to be considered compensatory education to which Student is entitled under this Decision.

1. One-on-one instruction with a certified special education teacher ("SE Teacher") to provide Student with specially designed instruction to overcome her attention deficits and redirect her behaviors to meet her educational needs for a minimum of one hour per week. The academic areas upon which the SE Teacher will focus will be determined by the SE Teacher upon consultation with Student's general education teachers, Student, Parent and Student's IEP team. If Student elects to or is required to attend summer school in order to meet credit requirements, this specialized instruction is to be delivered to Student in the summer school setting as well.
2. Direct, individual psychological services providing Student a minimum of one hour per month, in one or more sessions, of individual psychological therapy/counseling and an

additional one hour per month of indirect services to assist Student's teachers to interact with her effectively.

3. Direct, individual social work services providing Student a minimum of thirty (30) minutes per week of individual social work counseling to assist Student to control her behaviors and remain attentive and on task in class and develop appropriate social skills. This service can include monitoring Student in the classroom setting to help develop social work strategies but such monitoring cannot displace more than thirty (30) minutes of individual counseling per month. An additional one hour per month of indirect social work services shall be provided to assist Student's teachers to manage Student's behaviors in the classroom which can also include classroom monitoring.

4. District personnel who evaluated Student and dismissed her ADHD behaviors as volitional cannot be used to provide the services identified in paragraphs 1, 2 and 3 without the written consent of the Parent. If consent is given, Parent has the right to withdraw that consent at any time he believes it is in the best interest of Student to do so.

5. The personnel selected to provide these mandated services will coordinate their services between each other by conferring at least once a month to be sure their services are complementary. They must also coordinate their respective services with the development of the BIP and the expert retained for that purpose.

The parties will not be ordered to have Student repeat the tenth grade but consideration of this option is strongly suggested. There was ample evidence that Student should be able to access the general curriculum if she is given the assistance and support she needs to manage her behaviors and remediate her attention deficits. However, there is no evidence that it would be in Student's best interest to allow her to fall impossibly behind in the acquisition of credits necessary to graduate.

The District is required to provide Student with compensatory education. In addition to any "excess" services identified above District must provide Student with thirty (30) hours per year of individual one-on-one tutoring by a certified special education teacher to provide Student with specially designed instruction to overcome her attention deficits and redirect her behaviors to meet her educational needs. Parent must agree to the person selected to provide these services and if agreed SE Teacher cam be so employed. When and where these services are delivered is left to the discretion of Parent in

cooperation with the person providing the services. These services can be coordinated with the IEP services mandated above but cannot displace them. Student is entitled to fifteen (15) hours for the remainder of the 2010-2011 school year and thirty (30) hours each for the 2011-2012 and 2012-2013 school years. If the parties elect to retain Student in tenth grade next year Student may receive thirty (30) hours in 2013-2014 as well. Student must attend District schools to receive the compensatory education which will be revoked if Student withdraws from enrollment or moves out of District. Any hours that have not been used through no fault of the District's during the period specified will expire without further compensation to Student. So that District can budget this expense, no more than thirty (30) hours of compensatory services may used per calendar academic year and corresponding summer and no more than fifteen (15) hours for the remainder of this year beginning immediately and any hours not used in a given year expire unused and cannot be carried over to exceed the thirty (30) hour limit on the following year.

Conclusions of Law

1. The DPHO has jurisdiction of the parties and subject matter herein. 20 U.S.C. § 1415(f)(1)(A).
2. The burden of proof, by a preponderance of the evidence, rests with Parent. *Schaffer v. Weast*, 126 S.Ct. 528 (2005) 2005.SCT.0000166 VersusLaw.com.
3. This proceeding has complied with all procedural safeguards required by IDEA, its implementing regulations, and the New Mexico Special Education Rules.
4. This decision is timely if delivered to NMPED and the parties on December 21, 2010.
5. Parent failed to prove by a preponderance of the evidence that District withheld information from Parent that was required to be provided to Parent at anytime prior to May 14, 2008.
6. Parent failed to prove by a preponderance of the evidence that an exception to the statutory timeline existed and Parent was required to request a due process hearing within two years of the date Parent knew or should have known about the alleged action that forms the basis of his complaint. 20 U.S.C. §1415(f)(3)(C) and (D)

7. Parent failed to prove by a preponderance of the evidence that he requested an evaluation for special education eligibility at any time during the period under review.

8. Parent failed to prove by a preponderance of the evidence that District had a basis of knowledge that Student was a child with a disability entitling her to special education protections in the administration of discipline during seventh and eighth grades.

9. The fact that no MDR was convened for any of the discipline that was administered in response to Student's behaviors during the period under review did not deprive Student of FAPE.

10. Parent failed to prove by a preponderance of the evidence that District should have suspected that Student might be a child with a disability in need of special education prior to the fall of 2009.

11. The absence of a comprehensive evaluation for special education eligibility prior to the referral by Student's Section 504 Committee on September 29, 2009, did not deprive Student of FAPE.

12. District did not violate its child find obligations with respect to Student.

13. Parent failed to prove by a preponderance of the evidence that District's evaluation was not timely conducted.

14. Parent proved by a preponderance of the evidence that the District failed to ensure that its evaluations were adequately comprehensive to assess Student in all areas of suspected disability or done according to applicable federal and state standards.

15. Student is qualified and eligible for special education and related services as OHI and has been so eligible since November 17, 2009. 34 C.F.R. §300.8(a) and (c)(9).

16. District's attempt to reverse its eligibility decision during the Exit MDTs is immaterial, invalid and of no procedural effect on Student's eligibility.

17. District's failure to develop and implement an IEP for Student has deprived her of FAPE since November 17, 2009. 34 C.F.R. §300.320 thru §300.324.

18. Student is entitled to compensatory education to replace the special education and related services District failed to provide.

19. District's procedural violations related to acquiring Parent's informed consent to evaluate were rendered immaterial upon the finding that the evaluations in question were inadequate and unreliable.

20. District's procedural violation in conducting the January 15, 2009, IEP/MDT meeting without Parent in attendance was rendered immaterial upon the finding that the meeting was invalid and of no procedural effect.

21. District failed to prove by a preponderance of the evidence that its evaluations were appropriate or that the Glinski evaluation did not meet agency criteria. 34 C.F.R. §300.502(b)(2).

22. Parent has a right to an independent educational evaluation at public expense and the District is obligated to reimburse Parent in full for the expenses incurred in obtaining the Glinski evaluation. 34 C.F.R. §300.502.

ORDER

IT IS HEREBY ORDERED as follows:

1. District will immediately convene a facilitated IEP consistent with the provisions of this Decision.
2. District will immediately retain the services of an appropriate expert to assist in the development and implementation of a BIP for Student consistent with the provisions of this Decision.
3. District will ensure that Student's IEP includes specialized instruction and related services consistent with the provisions of this Decision.
4. District will provide Student with compensatory services consistent with the provisions of this Decision.
5. District will immediately reimburse Parent in the amount of $1,279.50 for the costs incurred to obtain the Glinski evaluation.

Any party aggrieved by this Decision has the right to bring a civil action in a state or federal district court pursuant to 20 U.S.C. §1415(i) and 34 C.F.R. §300.516. Any civil action must be filed within 30 days of the receipt of the hearing officer's decision by the appealing party. 6.31.2.13.I(25) NMAC.

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Barbara Albin
Impartial Due Process Hearing Officer

CERTIFICATION

I, Barbara Albin, certify that a copy of the foregoing decision was transmitted via electronic mail and facsimile to the following persons this 5th day of January, 2011:

Debra D. Poulin, Esq., 440 Cerrillos Road, Suite 4, Santa Fe, NM 87501.

Jacquelyn Archuleta-Staehlin, Esq. of Cuddy, Kennedy, Albetta, Ives & Archuleta-Staehlin, LLP, P. O. Box 4160, Santa Fe, NM 87502-4160.

I, Barbara Albin, certify that a copy of the foregoing decision was transmitted via facsimile to the following person this 5th day of January 2011:

Hanna Skandera, Secretary of Education, New Mexico Public Education Department, 300 Don Gaspar, Santa Fe, NM 87501-2786.

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Barbara Albin