

**SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Case No. C2021-04
December 18, 2020**

**This Report Requires Corrective
Action. See Corrective Action
Plan pages 24-29.**

This complaint was filed with the Special Education Division (SED) of the New Mexico Public Education Department (PED) on September 29, 2020, under the federal Individuals with Disabilities Education Act (IDEA) and the implementing Federal Regulations and State Rules governing publicly funded special education programs for children with disabilities in New Mexico.¹ An extension to the 60-day completion requirement until December 18, 2020 was granted because of the complexity of the issues and other exceptional circumstances.

Scope of Review and Authority

The PED's SED administers the Federal Regulations and State Rules governing special education programming requirements for children with disabilities. The implementing regulations to the IDEA and the corresponding State Rules require investigations into complaints regarding violations of these provisions. The PED has investigated the complaint and issues this report pursuant to 34 C.F.R. § 300.152(a)(5) and 6.31.2.13(H)(5)(b) NMAC.

Conduct of the Complaint Investigation

The PED's independent complaint investigator's investigation process in this matter involved the following:

- review of the complaint and supporting documentation from complainant;
- review of the District's responses to the allegations, together with additional documentation submitted by the District at the request of the PED's independent complaint investigator;
- interviews with parent and District personnel
- interview with attorneys for parent and District;

¹ The federal IDEA regulations are published at Title 34 of the Code of Federal Regulations (C.F.R.), Part 300. The New Mexico Public Education Department's special education rules are published at Title 6, Chapter 31, Part 2 of the New Mexico Administrative Code (6.3 1.2 NMAC). The state-level complaint procedures are in the federal regulations at 34 C.F.R. §§ 151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

- review of the district's compliance with federal IDEA regulations and state NMAC rules; and
- research of applicable legal authority.

Limits to the Investigation

Federal regulations and State Rules limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint is received. 34 C.F.R. § 300.153(c) and 6.31.2.13(H)(2)(d) NMAC.

Issues for Investigation

1. Whether the district failed to properly implement the Individualized Education Program (IEP) by not providing appropriate provision of special education and related services through an online educational program, in violation of 34 C.F.R. §§ 300.320-300.328; 6.31.2.10(D) and 6.31.2.11(B) NMAC:
 - a. By failing to provide specialized instruction in math, reading, life/work skills and social skills;
 - b. By failing to provide related services of speech/language and social work;
 - c. By requiring parents to provide approximately 35 hours per week as learning coaches and not having a special education teacher available to assist students;
 - d. By failing to provide adequate procedural safeguards including a prior written notice (PWN) and allowing meaningful parental participation in the development of students' educational program; and
 - e. By failing to provide appropriate accommodations, and/or supplemental services and supports to allow students to receive educational benefit.
2. Whether the district's actions and/or omissions towards student resulted in a denial of a free appropriate public education (FAPE) to the student in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC?
3. Whether the online program used by district to provide services virtually to students eligible for special education and/or related services deprived those special education students of a free appropriate public education (FAPE) in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC?

Introduction

In this complaint, one student was named and the complaint also alleged similar allegations regarding all students receiving services through an online program. There are 305 special

education students attending the K-8 online school in the District. To address the systemic complaint, a random sample of 20 students, across disability categories, gender and age were reviewed. There were 12 males and 9 females in the sample. There was at least one student from each grade K-8 and the disabilities included multiple disabilities, emotional disturbance, autism, specific learning disability, speech/language, other health impaired, developmental disability and intellectual disability. During the course of the investigation, four of the 20 students sampled have left the online program; three have returned to their neighborhood school and one has moved. Those students' files were reviewed.

Findings of Fact

1. A total of 21 students' files were reviewed. All students attending the online magnet school (the School) used the Edgenuity online curriculum and learning solutions program (Edgenuity).
2. All 21 files reviewed were for students who had attended the School and were special education students with IEPs. There were 309 special education students attending the School at the time the complaint was filed; there were 305 special education students at the time of the filing of this report.
3. The School was part of the District programs and was 100% online with no brick and mortar building. The School was not created as an answer to provide online learning during the COVID-19 pandemic, but had served students before the pandemic and would continue serving students after traditional schools returned to in-person learning.
4. Although the School previously was for high school students in the District, the District had planned to expand the grades to include students in Kindergarten through 8th grade beginning in the Fall of 2020. This was a plan that was independent of the pandemic.
5. One of the requirements for enrollment in the School was that each student needed to have a learning coach available to assist the student during online instruction. The learning coach was a requirement for all students attending the School, not just the special education students.
6. The learning coach was an adult, usually a parent or adult family member who could assist the individual student with online learning. The amount of time required by the learning coach varied depending on the age of the student.
7. Students in K-2nd grade needed a learning coach 5 to 6 hours per day; 3rd-5th grade required 3 to 5 hours per day and 6th-8th grade mandated 2 to 3 hours per day.
8. The learning coach description was provided to all parents in enrollment papers prior to the students' enrollment in the School. The information was also included on the website and

parents had to acknowledge that they have read and reviewed the requirements including that of the learning coach.

9. The learning coach specific task requirements as described in the School's handbook included: "guide the student through the online lessons as needed, discuss the concepts being taught throughout the day, assist with interactive tools and games, oversee assignments, assist with submitting assignments, help facilitate hands-on learning, check for understanding of assignments, set and maintain a daily schedule, keep the student on schedule and pace, ensure all components of the course are being done with fidelity, communicate with the teacher regularly, set daily goals with the student, set up learning space, ensure that assignments, quizzes, and tests are completed by the student without assistance, ensure all materials are prepared and available prior to the lesson, view the learning coach lesson previews prior to the student engaging in the online lesson and student self-selected read aloud daily".
10. The online program offered synchronous learning with a certified teacher and peers through an online format and asynchronous independent learning with the assistance of the learning coach.
11. Special education services were provided through small group meetings with a certified special education teacher.
12. New Mexico schools were closed for in-person learning from March 12, 2020 through the end of the 2019-2020 school year due to the Covid-19 pandemic. In the summer of 2020, the PED issued Reentry Guidance for the upcoming school year and required all districts to submit a reentry plan for review and approval by the PED. Some districts were permitted to begin the school year under hybrid learning model. The ability to operate under a hybrid learning model was dependent upon the infection rates within the county that a district was located. The guidance also permitted all districts to provide in-person services to students with disabilities in small groups of 5 students to 1 teacher.
13. The District did not implement a hybrid learning model but chose to utilize remote learning as its primary method of instruction for the entirety of the fall semester. However, the District did have a limited number of students with disabilities return to limited in-person learning in the allowed 5 to 1 teacher-student ratio.
14. During the summer preceding the opening of the School and prior to the District deciding on August 19, 2020 that all District schools would have a remote program in the Fall, the School received an influx of enrollment requests due in part to the COVID-19 pandemic. The number of students seeking enrollment exceeded the number of students initially planned for at the School. This caused problems with staffing and implementation during the first few weeks of school.

15. Many of the students who had enrolled in the School did so with the understanding that they would return to their neighborhood school when District schools reopened for in-person instruction.
16. Since the District instituted remote learning for all schools in the District in response to the Reentry Guidance, enrollment at the online school has declined. Since the start of the school year, four of the students in the sample have disenrolled from School; one moved out of District, the other three returned to their neighborhood schools.
17. At the start of the 2020-2021 school year, the school was nearly fully staffed but there were changes in staffing and staff assignments through the end of September and maintaining a full staff has been an ongoing concern.
18. Since school resumed this Fall, the District has provided in-person services to a limited number of District student with disabilities, while most students have only been offered remote learning. The District did not provide any opportunities for in-person services to any student at the School.
19. The assistant principal reported that the School planned on having IEP meetings as soon as possible for all special education students that would be attending the school to ensure FAPE was being provided. Excluding the student named in this complaint (Student), of the students for which files were reviewed, IEP meetings have only been convened for those students that were due for an annual IEP meeting.
20. In many of the files reviewed, IEP meetings had not been held to address the enrollment or changes to the IEP with enrollment in an online school and the annual IEP meeting date was still set in the future. No IEPs in the files reviewed were overdue for an annual IEP meeting.
21. The curriculum used at the School was the Edgenuity program, an online curriculum that addressed all of the common core requirements of New Mexico.
22. There have been concerns noted about the effectiveness of the Edgenuity program, especially with special education students. The documents submitted by the District indicated that staff and students believed the Edgenuity program was too demanding and fast paced for many of the students.
23. Staff had made modifications to the course requirements. Staff also reported that there was difficulty modifying Edgenuity course requirements to meet the needs of the special education students.
24. General and special education teachers also shared that they were available if students or parents needed additional assistance with the Edgenuity curriculum.

25. Student is currently in fourth grade. The Student was enrolled in the School on August 3, 2020. Student had always attended District schools.
26. On August 8, 2020, the District sent out a uniform prior written notice (PWN) to all special education students in the District informing parents that special education services may be different during the COVID-19 pandemic. When schools reopened for in-person instruction, IEP teams would review progress and determine if recovery services were required for the failure to provide all special education and related services.
27. The PWN was sent to Student's parents. The PWN incorrectly identified the Student as a "gifted student," when the Student was a student with developmental disability (DD). The only difference in the PWN sent to all parents were the names and disabilities.
28. Prior to Student's enrollment in the School, the Student had been receiving 750 minutes of special education services in a homebound setting. Since an October, 2019 IEP meeting, the Student had been receiving all services in a homebound setting due to behavior issues resulting in frequent seclusion and restraint. The Parents agreed with this change in placement.
29. On August 17, 2020, the School held an IEP team meeting for the Student due to his initial struggles with online learning. At that meeting, parents indicated they wanted Student in an online program with peers.
30. The August 17, 2020 IEP provided that Student was to receive 450 minutes of special education and related services. The services included specialized instruction for 150 minutes per week in math, 150 minutes per week in English Language Arts (ELA) (including reading and writing), and 150 minutes in social skills. This specialized instruction was to address Student's needs in reading writing, math and work skills. Student was also to receive, on a weekly basis, 30 minutes of adaptive physical education, 30 minutes in speech language therapy (SLT), 15 minutes of occupational therapy (OT), and 480 minutes per semester in social work services.
31. The IEP identified a number of accommodations for Student including "clearly defined limits, frequent reminder of rules, ignoring of minor infractions prepare [Student] in advance for schedule changes, private discussion regarding behavior, provide opportunities for movement when needed, provide frequent positive feedback, allow extra time for written response, clear classroom management plan, with expectations and routines, clearly defined, preface direction with cues such as "/Listen"/, have [Student] summarize information/ direction orally, provide extra time for assignment, provide frequent breaks as needed, may need snack breaks, allow for sensory/self-regulation strategies as needed", it was unclear how those accommodations would be or have been provided during online learning. It appeared as though these accommodations would have to be implemented by the learning coach. The IEP did not include any training or support for student regarding how these accommodations could be implemented effectively.

32. The August 17, 2020 IEP included goals in reading, speaking and listening, writing, self-help, math and adaptive physical education. The PWN indicated Student did not need adaptive physical education at this time but there was an adaptive physical education goal on the IEP.
33. The IEP required that special education instruction be provided through special education teacher and that related services would be provided through teletherapy that was scheduled with the provider.
34. Since the beginning of the 2020-2021 school year, Student had difficulties with joining the online synchronous classes and completing and turning in assignments. The parents struggled with the learning coach tasks and getting Student to participate.
35. Student needed to be reevaluated this year because he was aging out of his existing eligibility category of DD. *See* NMAC 6.31.2.7(A)(3). The multi-disciplinary evaluation report noted that Student exhibited a “complex diagnostic profile, with difficulties in self-regulation, adaptation, task demands, inattention and social interactions”.
36. On October 12, 2020, the team met to review the multi-disciplinary evaluation report. The report concluded that Student had receptive and pragmatic communication and significant behavior needs.
37. At an October 14, 2020 IEP meeting, Student’s eligibility was changed from DD to other health impaired (OHI) after reevaluation. The service times remained the same as in the August 17, 2020 IEP. Although a functional behavior assessment (FBA) was recommended in the IEP, there were no behavior goals on the IEP. A PWN was issued to the parents that outlined the plan.
38. The daily schedule for fourth graders like Student began with a 30-minute required morning meeting with the class. This synchronous time was where attendance was taken, announcements were made and the teacher discussed the upcoming Edgenuity lessons and often provided some pointers or guidance about the work. The morning meeting was one of Student’s opportunity to interact with peers.
39. For fourth graders, there was also an optional read aloud for 30 minutes three times a week during the noon hour. Students also received art and music 30 minutes each week. This constituted additional synchronous learning which provided additional opportunity to interact with peers.
40. The remainder of the day was asynchronous learning with the assistance of the learning coach. There were additional opportunities to contact the teacher during office hours or technology support if there were issues with the online programs or curriculum.

41. In the District's initial submission of information, a weekly schedule was provided for Student. Student's special education services were provided in small group intervention with the special education teacher. There was a special education small group for ELA and one for math. These small group interventions were 30 minutes in length. There was no specified time in the schedule to address goals in adaptive physical education or social skills services as required by Student's IEP.
42. The special education teacher reported that her role was to collaborate with the general education teaching and to direct teach ELA and math in small groups, to attend weekly collaboration meetings with the other fourth grade special education teachers, and to attend the morning meeting
43. During the small group intervention, the special education teacher utilized lessons from Edgenuity and taught strategies for the students to access the program or enhance the curriculum to fill in gaps with programs such as Lexia or I-Ready.
44. After an inquiry by the investigator about how Student's special education, related services, accommodations and modifications were being provided, the District provided the investigator with a modified schedule for each of the reviewed students. The newly modified schedule indicated that each of the students were provided the correct number of service minutes. However, the School' special education service logs showed that students were not provided with the amount of services required by their IEPs. Additionally, the new schedule did not contain scheduled related services for each student as those were scheduled by the service provider.
45. The District reported that to address Student's social skills needs, Student's special education teacher also made available an optional small group lunch club for an opportunity to connect with other peers.
46. The District reported that this lunch club was considered part of Student's special education services to address social skills needs. The parent reported that they were not told this was social skills training; they were told it was optional for all students.
47. Student participated in music and art for 30 minutes each week. Weekly, Student was scheduled to receive 15 minutes of OT and 30 minutes of SLT through teletherapy.
48. Although Student's August 17, 2020 IEP included an adapted physical education goal, the PWN stated that Student no longer needed adaptive physical education. However, adaptive physical education was added to the IEP on the October 14, 2020 IEP.
49. An audit prepared by the District in response to this complaint indicates Student had received 100% of the special education and related services required by the IEP, but parents indicated that Student has not participated. There were no adaptive physical education services made available to Student before October 14, 2020.

50. For Student, in addition to the delay in providing adaptive physical education, the District's recent updated audit reported Student was owed 210 minutes of math and 360 minutes of social skills education services for the first 12 weeks of school.
51. The grading scale for elementary students is 1-4 and middle school student receive letter grades. The numbers on the grading scale mean: 1 - Difficulty, 2 - Approaching, 3 - Meets, and 4 - Exceeds
52. Since the start of school this past Fall, progress notes and report cards indicated that Student was not participating at all in math groups; the majority of the first quarter grades were 1 and 2s, with a 3 in literature and grammar. On the progress notes using a four point scale, Student received 4s for the related services goals, but only 1s in in math and ELA in part due to lack of participation.
53. Parents have repeatedly contacted the District about their frustration and Student's ongoing struggles, including Student's refusal to participate, but nothing has been done to remediate their concerns or ensure progress was made.
54. The District, in its response to the complaint stated, "[f]urther, although Complainants were fully aware and had specifically acknowledged their understanding of their responsibility to provide a Learning Coach to support [Student] at [School], the District's investigation has revealed that Complainants have not consistently made [Student] available for FAPE. Thus, it is almost impossible to determine whether some action or inaction by [District] resulted in the denial of FAPE to [Student] because Complainants have not consistently provided a Learning Coach to student."
55. To date, the School has not provided additional support or training for parents to assist them in serving as the learning coach for Student. In the future, the School intends on providing training for learning coaches and a newsletter and other supplemental information. Prior to this complaint, there were limited opportunities for training of learning coaches, including learning coaches of students with disabilities. Teachers were available online if parents needed assistance.
56. The District held IEP meetings on August 17, 2020 before school started and following the multi-disciplinary evaluation on October 14, 2020 to ascertain the reasons why Student was not participating and completing work. The District also held an IEP meeting on November 23, 2020 to discuss other steps to assist Student.
57. An IEP meeting was held on November 23, 2020 to discuss how to support Student and increase participation. The investigator did not receive any documentation from that meeting. Notably, there has not been discussion regarding Student's need for in-person learning. However, it appears that this was a consideration of the school that could have

been discussed as one of the student files that was reviewed indicated that it was recommended that the student return to her neighborhood school for in-person learning.

58. On October 14, 2020, the District made a general offer of compensatory education services in math to Student. These compensatory services consisted of addressing the goals that had not been addressed because of Student's lack of participation. There was no discussion noted on the PWN regarding services of a paraeducator or other supports to assist Student. The District has proposed more training for learning coaches.
59. Parents declined the compensatory services in math at that time because Student already struggled and refused to participate in math and they believed that adding additional math services would only exacerbate Student's difficulties with participating. Parents advised the District that they would consider compensatory services for math at some future date.
60. A review of Student's records indicated that Student was not turning in assignments and did not consistently attend synchronous learning in math.
61. The records submitted indicated that reading, writing, math and social skills special education services were made available based on the Student's schedule even if Student did not consistently attend services. All 4th grade special education students had ELA and Math small groups at a set time. Optional lunch groups were the opportunity to address social skills needs. Parents reported to staff they had difficulties with student participating and completing work.
62. The District was not consistent in verifying why Student did not attend. Student occasionally participated in SLT and OT but was not participating in math small groups. There were inconsistent reports of Student's attendance and participation in special education services. The teachers reported Student was inconsistent in attending and turning in assignments, yet the multi-disciplinary report indicated that Student came to small group consistently and participated.
63. To determine Student's behavior needs during the reevaluation, the School provided behavior checklists to the teachers assigned to Student during the 2019 -2020 school year because Student's teachers for the current school year had limited interaction with Student or information to complete the checklist
64. Although an FBA was recommended last year, the District did not provide a completed FBA to the investigator as requested in the initial request for documents. It is not known whether an FBA was ever conducted. Notably, the October 14, 2020 IEP states that a behavior plan was not necessary for Student.
65. Student's first quarter progress was a 1 on academic goals of math and reading, but it was noted on the report that progress was difficult to assess because Student was not participating in online classes nor completing and turning in work.

66. It was unclear how progress was determined when Student inconsistently participated and failed to turn in work and when teachers had limited interaction with Student.
67. Student was not provided all of the special education, related services, or the accommodations and modifications outlined on the August 17, 2020 or October 14, 2020 IEPs. The District's audits and logs do not correspond to the amount of services provided or how often Student participated. From the related service provider logs, Student actually participated in the occupational therapy for a total of 30 minutes in September and 30 minutes in October. In speech, Student only received 30 minutes in October.
68. The District's audit and updated audit, in contrast, counts indirect services such as IEP meetings, administration and collaboration time and stated that Student had received more related services than required. The original related services audit does not agree with the updated related services audit. There were no service logs for Student's special education services; the audit stated Student was denied 210 minutes in math and 360 minutes in social skills. The audit stated Student had received 30 minutes a week of APE services but Student had not participated yet.
69. After requested by the investigator, the District provided a schedule for each special education student in the group of 21 students sampled. The District also provided an audit of special education services and related services that were provided to students in the sample group.
70. In the audit, the District reported that services were provided if the providers were available at the listed time, even if the student did not log in or participate.
71. It was noted in the District's written responses, that often, students who had a behavior intervention plan (BIP) were not "acting out" during online services so there was no need to implement the BIP.
72. The District did not verify the reasons that students were not online, including whether there were technological issues or other barriers preventing individual students from accessing the services.
73. Technological issues may have been a reason why students were not participating. District was aware of this and in documentation provided it was noted in one file that the parents could not afford to pay their internet bill so the student could not log on. In another file, the internet bandwidth was so slow that participation was limited.
74. In yet another file, a student had not logged on for the entire term nor turned in any assignments with no explanation why the student was not participating or the plan to

address that situation. The student was truant, but it is unclear if the District followed state law regarding attendance.

75. The District reported that staff were reaching out to families to determine the reasons for nonattendance/nonparticipation and if the School could assist. In instances where the nonparticipation/nonattendance continued or impacted students' learning, then IEP meetings would reconvene "to develop a plan to address the same."
76. In the files reviewed where there were multiple instances of nonparticipation or nonattendance, there was nothing in the record to indicate that the IEP team had met to modify the IEP or adjust the delivery of services.
77. In all 21 files reviewed, the majority of students had repeated absences or missing assignments, but there was no documentation of ongoing contact with the family or plans to assist the families.
78. Many of the progress reports in the 21 files reviewed indicated poor progress. The comments in the reports included: progress was difficult to determine due to the online format or students' poor attendance and/or not turning in work which impacted on progress and grades.
79. In another file, student was doing well and reduced to "A level services", but there was no update on the IEP or any addendum about a change to "A level services."
80. In many files, students' report cards for older students primarily had grades of Ds, Fs, and a few Cs. Report cards for younger students primarily had grades of 1s and 2s.
81. The District's audit indicated that for the majority of students, special education and related services were reduced from those outlined on the IEPs. This was true even if the student's schedule was followed exactly as it was in the schedule submitted to the investigator. In some cases, the reduced special education services in the audits were 100 minutes or less and, in some cases, 13,440 minutes (5160 minutes in language arts, 4680 minutes in math, 1800 minutes in social studies and 1800 minutes in science) less.
82. Some students had IEPs that required special education services for social studies or science but the School provided no special education services for those subjects.
83. Although progress reports were provided after the end of the first quarter, it was difficult to ascertain how progress was determined when students were frequently absent or not turning in work and these were the often the only interactions the teacher would have with students in the online school.

Discussion and Conclusions of Law

On March 11, 2020, the Governor of New Mexico declared a public health emergency regarding the COVID-19 pandemic. After declaring the public health emergency, the Governor ordered all public schools to close from March 16, 2020 to April 6, 2020. On March 26, 2020, the Governor ordered all public schools to provide instruction through a remote learning model for the remainder of the 2019-2020 school year because of the increase in COVID-19 cases.

In an effort to assist school districts around the nation appropriately address school closures due to the COVID-19 pandemic, the U.S. Department of Education released several documents, including a document entitled *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* on March 12, 2020, a document entitled *Fact Sheet: Addressing the Risk of COVID-19 Schools While Protecting the Civil Rights of Students*, on March 16, 2020, and a document entitled *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* on March 21, 2020. These documents clarified that all provisions of the IDEA remained in force and further emphasized that when a school district provides educational services to all students, the school district “must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP.” *Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease Outbreak*, 76 IDELR 77 (OSERS 2020).

The PED also released various documents to assist and support school districts and charter schools as they dealt with the mandated school closures. In the *Implementation Guide for Your Continuous Learning Plan* (Guide), special education services were addressed. The Guide provides in part:

- “Special education teachers and related service providers will continue to work on IEP and evaluation paperwork within required timelines.” P. 20.
- “Instructional Education Plans (IEPs) may NOT be universally modified.” P. 4.
- “LEAs must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP.” P. 21.
- “The IEP team will need to discuss and document within the IEP or an addendum the agreed upon alternative plan for providing the requisite special education and related services to those students through Prior Written Notice (PWN).” P. 21.
- “Any decisions regarding special education and related services for an individual child should be made by the child’s IEP Team, and should not be based on diagnoses, eligibility categories, or blanket policies.” (Emphasis original). P. 21.

The PED also released documents specifically related to the provision of special education for students with disabilities during the pandemic. On April 2, 2020, the PED issued *Frequently Asked Questions (FAQ): Providing a Free Appropriate Public Education (FAPE) through a Distance Learning Platform during a Closure to Normal School Operations due to the Coronavirus (COVID-19) Pandemic 2020*, to provide guidance to schools and districts on special education.

In July 2020, the PED issued a *Guidance for Special Education Services Reentry Guidance*, which provided in part:

- As the schools' service delivery models change, the schools must then ensure the student's IEP remains appropriate and can be implemented as written. If the IEP cannot be implemented as written, then the schools will need to convene the IEP team and revise the IEP or amend the IEP without a meeting with permission and input from the parents. This continues the process that the school followed in the initial move from face-to-face instruction to complete virtual and/or distance learning."

Issue No. 1

Whether the district failed to properly implement the Individualized Education Program (IEP) by not providing appropriate provision of special education and related services through an online educational program, in violation of 34 C.F.R. §§ 300.320-300.328; 6.31.2.10(D) and 6.31.2.11(B) NMAC:

- a. By failing to provide specialized instruction in math, reading, life/work skills and social skills;**
- b. By failing to provide related services of speech/language and social work;**
- c. By requiring parents to provide approximately 35 hours per week as learning coaches and not having a special education teacher available to assist students;**
- d. By failing to provide adequate procedural safeguards including a prior written notice (PWN) and allowing meaningful parental participation in the development of students' educational program; and**
- e. By failing to provide appropriate accommodations, and/or supplemental services and supports to allow students to receive educational benefit.**

The IDEA is meant to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) designed to meet their unique needs. *Andrew F. v. Douglas County School District Re-1*, 137 S. Ct. 988, 994 (2017). A FAPE includes special education and related services that are reasonably calculated to enable the child to make progress appropriate in light of the child's circumstance. *Id.* at 999; *see also* 34 C.F.R. §§ 300.320 to 300.324; *Board of Education of Hendrick Hudson Central School District v. Rowley*, 102 S.Ct.

3034, 3050; 458 U.S. 176, 203 (1982). Students with disabilities are students evaluated “as having [specified disabilities] which adversely affects educational performance, and who, because of those disabilities, need special education or special education and related services.” 6.31.2.10(D) and 6.31.2.11(B) NMAC; *see also* 34 C.F.R. § 300.8(a)(1). The IDEA mandates that districts are obligated to provide specially designed instruction, provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability. 34 C.F.R. § 300.39(a)(1). Specially designed instruction is adapting, as needed the content, methodology or delivery of instruction catered to the student’s unique needs to allow that student access to the general curriculum and make progress. 34 C.F.R. § 300.39(b)(3). A student’s unique needs are more than just mastery of academic subjects but may include social, health, emotional, physical, and vocational needs of eligible students. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458, 1468 (9th Cir. 1996). At no cost, requires that all specially designed instruction is provided at public expense without charge to the parent. 34 C.F.R. § 300.39(b)(1).

The IEP must be implemented as written, including all required components. *See* 34 C.F.R. § 300.323(c). Minor variations in the implementation of the IEP does not automatically mean that the child was denied FAPE. *See T.M. v. District of Columbia*, 64 IDELR 197 (D.D.C. 2014). Failure to implement material parts of the IEP, however, may be considered a denial of FAPE. *See Sumter County School District 17 v. Heffernan*, 642 F.3d 478, 484 (4th Cir. 2011); *Van Duyn v. Baker School District 5J*, 502 F.3d 811, 826 (9th Cir. 2007); *Houston Independent School District v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000), cert. denied, 531 U.S. 817 (2000); *Neosho R-V School District v. Clark*, 315 F.3d 1022, 1027 n. 3 (8th Cir. 2003); *Turner v. District of Columbia*, 61 IDELR 126 (D.D.C. 2013). All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx 202 (2d Cir. 2010). A failure to provide behavioral and other supports that does not allow the student to receive educational benefit may be a denial of FAPE. Dear Colleague Letter, 68 IDELR 76 (OSERS/OSEP 2016). A district must meet and revise a student’s IEP, “as appropriate, to address any lack of expected progress.” In *Questions and Answers on Andrew F. v. Douglas County School District Re-1* (USDOE 12/7/17).

The named Student had an IEP developed on August 17, 2020. The named Student’s reevaluation was completed and a new IEP was developed on October 14, 2020. At that time, school had been in session more than one month and the IEP team was aware that Student was not consistently participating or turning in completed assignments. In the August 17 and October 14, 2020 IEPs, Student was to receive 450 minutes per week of special education and related services to address needs in math, reading, writing, adaptive physical education, social skills, speech, occupational therapy and social work services. There were also a number of accommodations and modifications listed for Student. According to the Student’s

schedule originally provided by the District, Student was in two 30-minute small group interventions daily in reading and math that were part of the special education services Student was to receive pursuant to the IEP. This did not account for all of the special education services Student was to receive. When asked, the District stated that the lunch group was to address Student's social skills; however, this information was not what was communicated to parents and was missing from the first schedule that the District provided. All 4th grade special education students were in that same small group, without any consideration of specific need. The special education teacher was not providing individualized specialized instruction to Student. The teacher reported that during the small group intervention, she would utilize lessons from Edgenuity and teach strategies for the students to access the program or enhance the curriculum to fill in gaps with curriculum such as Lexia or I-Ready.

Student's IEP provided Student was to receive specialized instruction for 150 minutes per week in math, 150 minutes per week in ELA (including reading and writing), and 150 minutes in social skills. This specialized instruction was to address Student's needs in reading writing, math and work skills. Student was also to receive, on a weekly basis, 30 minutes of adaptive physical education, 30 minutes in speech language therapy and 15 minutes of occupation therapy in addition to 480 minutes a semester in social work services. The small group session accounted for only 300 minutes of the 450 of special education services provided. It is unclear from the information provided including the progress notes, what goals were worked on during those small group sessions or whether progress was made.

The audit for related services indicated Student did not receive all the related services outlined on the IEP. Adaptive physical education did not begin until October 14, 2020. The FBA has not been completed because of limited contact with student. There were inconsistent reports on the multi-disciplinary evaluation report and progress notes about Student's attendance and participation. The report stated Student was participating and turning in assignments; the progress notes reported Student was not participating or turning in assignments. There was no evidence that the Student's accommodations and modifications were being provided as set out in the IEP or whether additional services may be warranted because of Student's nonparticipation/nonattendance.

Although IEP meetings have been held for this Student since the school year began, Student is still struggling. The District offered compensatory services for math, but as parents reported, additional services were not going to help when Student was not completing the assigned work. Parents have repeatedly contacted the District about their frustration and Student's ongoing struggles, but nothing has been done to remediate their concerns or ensure progress was made.

Although case law does not specify how many minutes of denied special education and related services would constitute a material deviation from that required by the IEP, there was no doubt on this record that the District failed to implement material portions of Student's IEP. That failure resulted in lack of progress as demonstrated by Student's nonattendance, failure to turn in completed work, lack of progress on special education and related service goals and poor grades. The District was aware that Student was struggling with the curriculum at the School. Moreover, the District was aware of Student's previous history in the school environment. Despite this knowledge, the District did not ensure that Student's IEP was fully implemented and did not ensure that it was amended when it was clear that Student was not making progress.

Regarding the specific allegations in the complaint, the District failed to implement the August 17 and October 14, 2020 IEPs because they failed to provide specialized instruction in math, reading, life/work skills and social skills; failed to provide related services of speech/language and social work and adaptive physical education; failed to provide appropriate accommodations, and/or supplemental services and supports to allow students to receive educational benefit. Parents attended and participated in the IEP meetings, but their concerns were not addressed during those meetings. They were provided appropriate procedural safeguards including PWNs when necessary. Although a special education teacher was available to work with Student, those services were not as outlined in the IEP. There was no discussion of any other supports or assistance that could be provided to Student, including whether the Student needed in-person instruction.

Although addressed separately in the complaint, the role of the parents or other adults not employed with the District as learning coaches is not an altogether separate issue as it relates to the denial of FAPE. It is not clear that utilizing a parent or other adult as a learning coach is a per se denial of a free appropriate public education. However, it is clear that the use of Student's parents as learning coaches may have contributed to Student's denial of FAPE identified as part of this investigation. This may also be true for other students attending the online school. Students may not be provided services, accommodations and/or modifications required by their IEPs because their respective learning coaches were unable or unqualified to do so. Furthermore, additional supports and assistance were not built into IEPs because of the reliance on the learning coach, typically a parent, to serve that function. Although the School has expressed its intention to begin offering support, it appears that there was no additional training or support for parents or other adults working with the student's with disabilities to prepare them to take on the role of learning coach of their student. The District should have determined whether the learning coach model was an effective approach for each student with disabilities attending the School. If it is determined that this model was not effective, the District should offered additional supports in the IEP or discussed an entirely different learning

model including in-person learning either at the School or a different school within the District to ensure provision of FAPE.

As to Issue No. 1, the District is cited. Corrective action is required.

Issue No. 2

Whether the district's actions and/or omissions towards student resulted in a denial of a free appropriate public education (FAPE) to the student in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC?

Students who are eligible for special education services are entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. Districts are obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17. The type of services to be provided are determined by the IEP team. 34 C.F.R. § 300.320. Districts have an obligation to provide an educational program for a student that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S.Ct. at 999. Failure to meet the *Endrew F.* standard may result in a substantive denial of FAPE.

Procedural violations may also result in a finding of a denial of FAPE. The court in *J.L. v. Mercer Island School District*, 592 F.3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it results in the loss of an educational opportunity, infringes on parents' opportunity to participate in the development of the IEP or deprives the student of an educational benefit. *Id.* at 953. IDEA regulations provide that "[e]ach State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade." 34 C.F.R. § 300.101(c). IDEA also allows the granting of "appropriate relief" for failing to provide FAPE. 34 C.F.R. § 300.516 (c)(3); *see also Letter to Lipsitt*, (OSEP 2018).

Substantive violations of IDEA may result in a denial of FAPE, including failure to provide special education services as mandated in an IEP. Generally, procedural violations do not rise to the level of denial of FAPE. However, when the procedural violations have 1) impeded the child's right to FAPE, 2) significantly impeded the parents' opportunity to participate in decision making process regarding provision of FAPE or 3) caused a deprivation of educational benefits, these violations may result in denial of FAPE. *K.E. v. District of Columbia*, 19 F.Supp. 3d 140, 143 (D.D.C. 2014); *C.H. v. Cape Henlopen School District*, 606 F.3d 59, 66 (3rd Cir. 2010). The primary function of an IEP is to develop a plan to achieve academic and functional advancement. *Endrew F.*, 137 S.Ct. at 999.

With respect to Student, the District failed to provide Student a FAPE on both substantive and procedural grounds. While the impact of COVID-19 has been especially hard on local school districts, state and federal guidance has been very clear that Districts were not relieved of their FAPE obligation because of the pandemic. Guidance from the United States Department of Education and the PED has advised that when it is impossible to provide special education and related services in the same way due to the pandemic, the IEP team must review the student's progress and determine if recovery services are warranted. *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* on March 12, 2020; *Fact Sheet: Addressing the Risk of COVID-19 Schools While Protecting the Civil Rights of Students*, on March 16, 2020; *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* on March 21, 2020; *Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease Outbreak*, 76 IDELR 77 (OSERS 2020);, the PED issued *Frequently Asked Questions (FAQ): Providing a Free Appropriate Public Education (FAPE) through a Distance Learning Platform during a Closure to Normal School Operations due to the Coronavirus (COVID-19) Pandemic 2020*, NMPED April 2, 2020.

However, the School here has always been intended as a school with all instruction provided online, not as a temporary remote learning alternative due to the pandemic. The online school at issue in this complaint was an approved District program and the plan was to continue as an online school after the other brick-and-mortar schools within the District reopened for in-person instruction. Student was accepted in the School, an IEP meeting was held before school began, and an IEP developed outlining Student's needs and services. Nevertheless, the District failed to provide Student all of the services outlined on the IEP to allow Student to make progress and failed to address the Student's lack of progress.

The District had an obligation to determine and implement the appropriate special education and related services for each special education eligible student. Parental choice of enrollment in the School did not cancel the obligation to provide FAPE to eligible students. Student, in this case, was to receive 450 minutes of special education and related services per week pursuant to the October 14, 2020 IEP. District failed to provide all of those services. Even after parental reports and the frequent IEP meetings, Student may have additional or different needs because of learning provided through an online format. The school had an obligation to ensure that the IEP was properly implemented and the IEP was meeting Student's needs and providing FAPE; if not, then the District had an obligation to reconvene the IEP team to revise the IEP to ensure the provision of FAPE. There were inconsistent reports about Student's attendance and completion of assignments. The multi-disciplinary evaluation report said attendance and participation were not issues, but the progress reports and October 14, 2020 IEP noted that

Student was struggling with attendance and turning in completed assignments. The multi-disciplinary evaluation report noted that Student exhibited a complex diagnostic profile, with difficulties in self-regulation, adaptation, task demands, inattention and social interactions. When Student's performance at School demonstrated those acknowledged difficulties, there should have been follow up with the IEP team. Student's nonparticipation and nonattendance belie any progress noted. At the October 14, 2020 IEP meeting, Student's ongoing difficulties with the online program were discussed but not remedied.

Parents raised concerns about the School's requirement for an adult learning coach because this negated the free requirement of FAPE. The District asserted in response that the parents chose the online school knowing that learning coaches were a required component of enrollment in School. The issue of learning coaches is not an IDEA issue, but was a requirement for the enrollment of all students at the school, regardless of whether they were students with disabilities. The issue that must be addressed was whether Student was denied a FAPE, and the District's failure to address Student's need for additional supports in his IEP in addition to the general requirement for students to have a learning coach. On the evidence provided to the investigator, the District has failed to provide a FAPE for this Student.

As to Issue No. 2, the district is cited. Corrective action is warranted.

Issue No. 3

Whether the online program used by district to provide services virtually to students eligible for special education and/or related services deprived those special education students of a free appropriate public education (FAPE) in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC?

Districts have an obligation to provide an educational program for each student that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.* 137 S.Ct. at 999. IDEA regulations provide that "[E]ach State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade." 34 C.F.R. § 300.101. IDEA also allows the granting of "appropriate relief" for failing to provide FAPE. 34 C.F.R. § 300.516 (c)(3).

Substantive violations of IDEA may result in a denial of FAPE, including failure to provide special education services as mandated in an IEP. Generally, procedural violations do not rise to the level of denial of FAPE. However, when the procedural violations have 1) impeded the child's right to FAPE, 2) significantly impeded the parents' opportunity to participate in decision making process regarding provision of FAPE or 3) caused a deprivation of educational benefits,

these violations may result in denial of FAPE. *K.E. v. District of Columbia*, 19 F.Supp. 3d 140, 143 (D.D.C. 2014); *C.H. v. Cape Henlopen School District*, 606 F.3d 59, 66 (3rd Cir. 2010). The primary function of an IEP is to develop a plan to achieve academic and functional advancement. *Endrew F.*, 137 S.Ct. at 999.

School was designed as an online public school within the District. Operating as an online school did not relieve the District of its obligation to ensure, for all special education students, the requirements of IDEA were followed and students were provided FAPE. The COVID-19 pandemic may have impacted staffing and other issues for the School, but State and Federal mandates have not eliminated any of the obligations under IDEA to ensure FAPE for all special education eligible students. Also, COVID-19 may have increased individual students' needs, but it cannot be used as an excuse or explanation for the failure to provide FAPE to these students.

In almost every instance, the files reviewed during the complaint demonstrated that the District failed to implement the IEPs as written. Moreover, it is still not clear how accommodations and modifications were provided for the students when learning was all done virtually, primarily asynchronously. The response from the special education teacher for Student indicated that her responsibility was primarily collaborative teaching and modifying the Edgenuity curriculum. Research suggests that Edgenuity was not designed to be specialized instruction nor responsive to an individual student's special education needs.

Furthermore, many of the students were not participating or turning in assignments in general education classes, much less participating in their special education or related services. In a majority of the files reviewed, students were either not provided all of the services outlined on their IEPs or the amount or type of services was reduced, to be made up later through compensatory services. It is impossible to determine the exact amount of special education and related services that students were denied because the District did not maintain accurate records of why students were not logging in for services. Depending on the reason for nonparticipation, additional services or supports may have been needed to provide FAPE. For example, it was noted in one file that the parents could not afford to pay their internet bill so the Student could not log on. In another file, the internet bandwidth was so slow that participation was limited.

There may have been other reasons, besides technological, for students' lack of participation, including emotional or other needs which were not considered or addressed by the IEP team. There were also other red flags that the District had not addressed including lack of progress and poor grades. Most students' progress notes indicated a 3 or less which implies limited progress and instructional modifications may be warranted. This identifier does not indicate whether the lack of progress was because the IEP did not address all of the students' needs or

whether the reduction in services, or in some cases, the lack thereof, was the explanation for the lack of progress. In either case, this was a denial of FAPE for these students. While this report can only address the 21 cases reviewed, the results from that review suggested that most of the special education students at this School were denied FAPE, both substantively and procedurally.

The District has acknowledged that not all students received all of the services required in their IEPs. They have proposed a plan to address through compensatory education and recovery services, the missing services for the students reviewed during this investigation. While audits of both special education and related services have been provided for the students reviewed, there are 284 special education students who also may have been denied FAPE. The District has also proposed training for all staff and additional support for learning coaches and special education parents. While these plans are a start, that is not enough to address the widespread denial of FAPE that occurred in the School.

As to Issue No. 3, the District is cited. Corrective action is required.

Summary of Citations

Statutory and Regulatory Provisions	Citation
<p>1. 34 C.F.R.§§ 300.320-300.328; 6.31.2.10(D) and 6.31.2.11(B) NMAC:</p>	<p>The District failed to properly implement the Individualized Education Program (IEP) by not providing appropriate provision of special education and related services through an online educational program:</p> <ul style="list-style-type: none"> a. By failing to provide specialized instruction in math, reading, life/work skills and social skills; b. By failing to provide related services of speech/language and social work; d. By failing to provide appropriate accommodations, and/or

	supplemental services and supports to allow students to receive educational benefit.
34 C.F.R. § 300.101 and 6.31.2.8 NMAC	The District's actions and/or omissions towards student resulted in a denial of a free appropriate public education (FAPE) to the Student.
34 C.F.R. § 300.101 and 6.31.2.8 NMAC	The online program used by District to provide services virtually to students eligible for special education and/or related services deprived those special education students of a free appropriate public education (FAPE).

Required Actions and Deadlines

By January 8, 2020, the District's superintendent and director of special education must assure the PED in writing that the District will abide by the provisions of this Corrective Action Plan (CAP). The PED requests that the District submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the District's progress with the CAP and to be its point of contact about this complaint from here forward:

Dr. Elizabeth Cassel
 Corrective Action Plan Monitor
 Special Education Division
 New Mexico Public Education Department
 120 South Federal Place
 Santa Fe, NM 87501
 Telephone: (505) 490-3918
Elizabeth.Cassel@state.nm.us

The file on this complaint will remain open pending the PED's satisfaction that the required elements of this CAP are accomplished within the deadlines stated. The District is advised that

the PED will retain jurisdiction over the complaint until it is officially closed by this agency and that failure to comply with the plan may result in further consequences from the PED.

Each step in this CAP is subject to, and must be carried out in compliance with, the detailed procedural requirements of the IDEA 2004 and the implementing Federal Regulations and State Rules. If the District needs brief extensions for the steps in the CAP, contact Deborah Dominguez-Clark, Director of the Special Education Division.

Please carefully read the entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes. All corrective action must be completed no later than December 18, 2021, and reported to the PED SED no later than December 31, 2021. All documentation submitted to the SED to demonstrate compliance with the CAP must be clearly labeled to indicate the complaint number, CRR 2021-04.

Corrective Action Plan

Step No.	<u>Actions Required by District</u>	<u>Completion of Actions by District</u>	<u>Documents Required to be submitted to PED</u>	<u>Document Due to PED by</u>
1.	<p>The District is required to conduct an audit and prepare a report showing all special education instruction and related services that students with disabilities enrolled in the Online School have received since September 8, 2020 to the present and the special education and related services that students should have received under the IEPs in place during this same time period.</p> <ul style="list-style-type: none"> • The audit provided to PED shall indicate when a student did not attend available 	<p>Audit must be completed by February 15, 2021.</p>	<p>Audit Report</p>	<p>February 28, 2021</p>

	services and the reason for not attending, if known.			
2.	The District will provide, in writing, a description of the type and amount of all IEP missed services to each parent whose child did not receive services and a description of the requirements of this Corrective Action Plan.	Written information provided to parents by February 28, 2021.	Sample copy of written communication to be provided to parents for PED approval Log documenting sending and receipt of written information provided to parents, including method and time of delivery	March 15, 2021 March 30, 2021
3.	The District must develop a plan for providing students with disabilities with compensatory education services for all IEP services not provided or made available for the period of August 2020 through February 15, 2021 (date of required audit completion). The plan may be developed either at an IEP meeting or, if the parent agrees, in an IEP addendum without a meeting. <ul style="list-style-type: none"> The services must be made up if the reasons for not attending is 	IEP meeting or, if parent agrees, addendum without a meeting, with a documented plan for compensatory services to be completed by May 1, 2021.	Copies of the IEP, PWN , the recovery plans, and documentation of provision of Procedural Safeguards Notice to parents	May 15, 2021

	<p>potentially special education related including but not limited to technological, social/emotional or additional needs.</p> <ul style="list-style-type: none"> • Parents shall be provided a copy of Procedural Safeguards Notice as part of this process. • The plan for compensatory services shall be developed in collaboration with the students' parents, with parents having input into the arrangements for provision of the services and with consideration being given to student's ability to benefit from the services. • The plan for compensatory services shall include in-person services if needed to address the student's needs. Any in-person services must comply with public health directives 			
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	<p>and PED Reentry Guidance.</p> <ul style="list-style-type: none"> • If transportation is required as part of the services, the District shall provide transportation for the student or provide a per diem reimbursement for mileage for transportation if necessary and the parent is able to transport the student. 			
4.	The District shall provide all compensatory services required by the plans referenced above.	Compensatory services provided by December 18, 2021	Documentation of provision of compensatory services (<u>i.e.</u> , service logs of services provided)	December 31, 2021
5.	The District shall meet with the SED Division Director and her staff to discuss the special education services and resources available to the online School to discuss online curriculum, adequate staffing resources and plans required to ensure the provision of FAPE to the students with disabilities attending the online school. This meeting shall include a District representative(s) with authority to address	Meeting to be on January 29, 2021 at 10:00 a.m. via zoom at: https://zoom.us/j/92347249942?pwd=UmRoOVEraEZaZEphMkhUTW5rR2F4dz09	Meeting agenda/notes/plan	March 1, 2021

	<p>and commit the District to any changes needed, the District Special Education Director, the lead administrators at the School, and the special education coordinator at the School. This meeting will result in a written plan for ensuring the School has the resources and plans in place to adequately address the needs of students with disabilities, including training for the School's staff.</p> <ul style="list-style-type: none"> • Training for the School's staff shall be provided by an independent trainer approved by PED 			
6.	<p>The District will follow through with the Plan developed at the meeting with the SED, including the plan for training and other components in their plan.</p>	<p>Deadlines to be determined in plan</p>	<p>Documentation of staffing at school, documentation of completion of other plan requirements, training documentation (attendance sheets, outlines of materials presented and documents provided.</p>	<p>Deadlines to be determined in plan</p>


7.	The District will participate in monthly meetings with SED to review status of CAP items.	To be determined at initial meeting with SED.	Completion of CAP	December 31, 2021
8.	The District will provide its policies and procedures for the School to PED for review, including but not limited to special education policies and procedures, and make revisions as requested by the PED.	January 15, 2021	Policies and procedures	January 15, 2021

This report and corrective action plan constitutes the New Mexico Public Education Department's final decision regarding this complaint.

Investigated by:

/s/ Michele K. Bennett
Michele K. Bennett
Independent Complaint Investigator

Reviewed and Approved by:



Deborah Dominguez-Clark
Director, Special Education Division

/s/ Debra Poulin
Debra Poulin
Chief Counsel, Special Education Division