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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Case No. C2122-20
May 20, 2022

This report does require corrective action. See pages 15-18.

This complaint was filed with the Special Education Division (SED) of the New Mexico Public Education Department (PED) on March 21, 2022, 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 The SED 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 documentation submitted by the District at the request of the PED's independent complaint investigator;

¹ The state-level complaint procedures are set forth 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;
- interviews with District Special Education Director, Principal, Assistant Principal, Site Specialist, Behavior Interventionist, School Psychologists, Parent and Advocate;
- 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); 6.31.2.13(H)(2)(d) NMAC. Any educator ethics issues, or any alleged ADA or Section 504 disability discrimination issues, are not within the jurisdiction of this complaint investigation and, as a result, were not investigated.

Issue for Investigation

The following issue regarding alleged violations of the IDEA, its implementing regulations and State rules, are addressed in this report:

1. Whether the District failed to complete the required procedures for discipline of Student including predetermination and consideration of necessary information during the manifestation determination when it determined Student’s actions were not a manifestation of Student’s disability and referred Student to a hearing for further proceedings in violation of 6.31.2.11 (F)(2) and (3) NMAC; 6.11.2.10(I) NMAC; 6.11.2.11 (A) and (C) NMAC and 34 C.F.R. § § 300.530-300.536; and
2. Whether the District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 6.31.2.8 NMAC and 34 C.F.R. § 300.101.

General Findings of Fact

1. At the beginning of the 2021-2022 school year, Student was 13 years old and in seventh-grade at a middle school within District. The eligibility category for Student was other health impairment. Student’s annual IEP was developed on November 11, 2021 and finalized on December 15, 2021.
2. Student had been previously diagnosed with attention deficit hyperactivity disorder (ADHD).

3. Student started the 21-22 school year primarily in inclusion without many supports; services were received in a small group setting.
4. Student had poor grades, often did not complete work and struggled in reading.
5. Student had received speech services since preschool.

Behaviors

6. Behavioral incident reports for Student since 2013 indicated that Student has had lengthy history of maladaptive behavior including fighting, refusal to complete work, and defiance.
7. The frequency of maladaptive behavior has increased every year; inappropriate touching was not observed prior to this school year.
8. Student's first behavior incident during the 2021-2022 school year occurred on August 27, 2021, when multiple students reported that Student hit, kicked, was physical with students, and touched students in private areas. Student pushed another student into a corner of the brick wall causing injury to the other student's shoulder. Student received three days of out of school suspension (OSS).
9. Parent was informed of all behavior incidents.
10. The list of incidents for the 2021-2022 school year included:
 - a. September 2, 2021—Student brought vape pen to school.
 - b. September 9, 2021—Student was involved in shoving match that turned into wrestling match after dodgeball game. Other students were involved. Student received 3 days of in school suspension (ISS).
 - c. September 15, 2021—During a game of tag, Student squeezed female student's breast. Administration stated that it was difficult to determine if this misconduct was an intentional act but it did constitute the third report of inappropriate contact.
 - d. September 17, 2021—Female student reported Student was touching her inappropriately, hugging her and putting arm across chest. Student reported that Student touched her butt 4-5 times as Student walked by her. This was the second report that week.
 - e. October 19, 2021—Female student reported that Student slapped her on butt and touched "her boob". This was the Fourth report of inappropriate touching. Student was suspended pending a manifestation determination review (MDR) meeting.
 - f. January 13, 2022—Student was found to be fighting at lunch (a continuation of the issue four days earlier). Student received five days OSS. An MDR was scheduled for January 21, 2022.

- g. February 25, 2022—Student threw a softball at staff member’s face. When told to stop and warned, Student threw the softball at staff member’s chest. Social worker recommended no discipline be imposed but incident was documented.
- h. March 1, 2022—After lunch while in the classroom, Student hit another student with hand and several times with ball. Staff stopped the incident and separated the students. Victim later complained of headaches/blurry vision, taken to doctor and diagnosed with minor concussion and whiplash. Student received 2 days OSS, a police report was filed, MDR scheduled for March 4, 2022 with a possible hearing to determine next steps.

Manifestation Determination Review Meetings

- 11. Four MDR meetings have been held during the 2021-2022 school year. Student has missed 13.5 school days this school year as a result of disciplinary action.
- 12. Throughout the 21-22 school year, the District tried different strategies to address Student’s behaviors with little success.

September 27, 2021 MDR

- 13. The first MDR, scheduled on September 27, 2021, concerned an incident of inappropriate touching. The team determined this was a manifestation of Student’s disability because of impulsivity associated with ADHD. Based on this determination, Student was returned to the previous placement and the functional behavior assessment (FBA) and behavior intervention plan (BIP) were reviewed and revised. Social work services were increased as well as increased small group resources.
- 14. The incident involved the Student touching another student during gym class when students were playing a game of tag and Student touched the other student’s breast. The other student was wearing a loose sweatshirt at the time of the incident.
- 15. Due to the circumstances and clothing the other student was wearing, the team felt this act may have been unintentional and a manifestation of Student’s disability.

October 26, 2021 MDR

- 16. Another MDR meeting was held on October 26, 2021. The incident also involved inappropriate touching. This time it was determined that Student’s behavior was not a manifestation of Student’s disability because the inappropriate touching was intentional and not the result of Student’s impulsivity.
- 17. This incident involved Student touching another student’s breast and patting her on the butt multiple times.

18. On November 1, 2021, a behavior contract was signed to address Student's repeated physical behaviors. Parents participated and concurred with the behavior agreement. This behavior contract did not eliminate Student's negative behaviors.
19. The District implemented intentional social skill training to teach Student alternatives to negative behaviors.

January 26, 2022 MDR

20. On January 26, 2022, another MDR was held after a fight during lunch. Student hit another student; Student was suspended because of that incident. At that meeting, it was determined that Student's behavior was not a manifestation of the disability but the team reviewed and updated the FBA and BIP for Student and added increased supports.
21. Student was placed in an all-day behavior program with a smaller teacher-student ratio where Behavior Interventionists would assist Student in managing behaviors. The other students in the behavior program would work on focusing and learning appropriate management skills and then return to general education classes with an aide and additional supports. When Student struggled, Student would return to the behavior program with the intention of resetting his behavior.
22. As Student learned to self-regulate, Student would graduate from the behavior program back into general education.
23. Student received extensive support in all content areas and attended specials with an aide.
24. When Student was placed in the behavior program, the Parent and Advocate reported they were told Student would receive additional behavior supports and services within the original placement. They also reported that Student was not receiving instruction in appropriate behaviors.

March 4, 2022 MDR and follow up MDR on March 9, 2022

25. As of March 4, 2022, Student had 12 absences and had received ISS or OSS for 13.5 days.
26. The District agreed that Student was entitled to 288 minutes of compensatory education services because Student had missed days to suspension without receipt of special education services.
27. An MDR meeting was held on March 4, 2022 due to an incident in which Student hit a classmate with his hand and a ball. It was again determined that Student's behavior was not a result of Student's disability and that the District had implemented the IEP for Student.

28. Parent objected to the MDR and requested another MDR because she had inadequate notice of the meeting, and that there was additional information and diagnoses that should have been considered in the MDR.
29. A new MDR was scheduled for March 9, 2022. Parent was notified and participated along with an Advocate. A psychological therapy progress note from December 15, 2022 was provided for the team's review. Student also participated in the two-hour MDR meeting without incident. Parent and Student signed off on the MDR determination.
30. All incident reports, progress notes, and Student's entire special education file were reviewed by the team during the MDR.
31. Parent attended all IEP and MDR meetings but did not believe that she was an equal participant in the decisions nor was she informed about the District's plans for educating Student.
32. In the psychological progress report provided by Parent to the MDR, autism spectrum disorder (ASD) was first mentioned as a diagnosis along with hyperactive, impulsive, or disruptive behavior and was diagnosed with ADHD, Global Developmental Delay and other unspecified neurodevelopmental disorder.
33. A specific learning disability (SLD) in reading and borderline intellectual functioning were also listed but noted that the diagnoses were preliminary.
34. One of the School Psychologists reviewed the report and explained to the team about impulsivity with respect to ADHD diagnosis.
35. The District did not have sufficient information to consider whether ASD or another diagnosis might explain Student's behaviors. The Psychologist that reviewed the report had some concerns about validity of the outside assessments such as the BASC.
36. It was also noted in that report that "Student continued to make poor social decisions without regard to how behavior impacts others."
37. At the end of the March 9, 2022 MDR, it was again determined that Student's behavior was not the result of Student's disability and that Student's IEP was properly implemented.

Psychological Progress Report

38. Parent provide District with a psychological progress report dated December 15, 2021 from Student's private therapist on the date of the March 9, 2022 MDR. The report indicated Student often exhibited hyperactive, impulsive, or disruptive behavior and was diagnosed with ADHD, Global Developmental Delay and other unspecified neurodevelopmental disorder.

39. A specific learning disability (SLD) in reading and borderline intellectual functioning were both to be ruled out.
40. This report indicated based on the Emotional Destructive Qualification Scales (EDQ) that Student was at risk for unsatisfactory interpersonal relationships, inappropriate behavior/feelings, and schizophrenia and related disorders of thought.
41. Unhappiness or depression were clinically significant for Student. This report also indicated the diagnostic impressions were preliminary implying that further assessments were warranted.
42. The report opined that Student was not socially maladjusted at this time.
43. In class, Student would often shout out answers, was unable to stay in seat, walked about the classroom, preferred to sit apart from others, spoke out, argued and exhibited a defiant attitude with teachers.

Evaluation

44. A review of existing evaluation data (REED) was completed in early February 2022. There were no other medical concerns besides ADHD. Therefore, eligibility of OHI was continued. No additional behavior assessments or additional evaluations were needed.
45. On February 25, 2022, Parent requested and provided consent for a comprehensive evaluation. A mental health evaluation was not completed as part of that evaluation. The evaluation was to include a specific learning disability (SLD) assessment.
46. When the Evaluator attempted to evaluate Student on March 3-4, 2022, Student was uncooperative and test results were unreliable. The SLD assessments were not completed and no plan was developed about next steps. The District did not believe Student has a SLD because Student can complete appropriate work when Student chooses, but often claims the work is too difficult and will not complete it.
47. According to the Evaluator, Student did not exhibit evidence of autism during the comprehensive evaluation observation.
48. An assessment of Student's pragmatic language skills was also completed.
49. The District described Student as an onion with many layers and they are continuing to peel back the layers to understand how to best meet Student's needs. The School Psychologist has started to evaluate Student and stated it can be difficult to determine if Student's behavior was manipulative or emotional disturbance.

Disciplinary Hearing

50. A hearing was held on March 10, 2022. The decision from the hearing was issued on March 22, 2022. Student was subject to a long-term suspension for the remainder of the 2021-2022 school year and would be on probation for the 2022-2023 school year.
51. From the last OSS on March 4, 2022 until Student was placed at an Interim Alternative Educational Setting (IAES) on March 24, 2022, Student was offered Zoom online educational services. Student rarely participated in those educational service opportunities.
52. Parent was not notified of the hearing in writing because the family had moved and the District did not have the new address but was informed of the hearing by Student.
53. Parent attended the hearing. At the conclusion she requested a copy of the records and appealed the decision. The Appeal was denied and Parent has not received the records from the hearing.
54. During the interview with Parent, she reported that she had not yet received any of the hearing records.

IEP Meetings

55. The IEP team met on March 24, 2022 to determine Student's change of placement and the options considered were an IAES within the District, virtual services or some combination thereof.
56. Student received 10.5 hours of special education and related services with goals in reading, math, social/emotional and transition goals. The team reviewed the FBA and BIP which had been modified on January 26, 2022.
57. Student was placed at an IAES that was partially in-person and partially virtual.
58. Student was making progress in the IAES.
59. Once the family moved, they no longer were residents of the District, but Student would remain in the IAES until the end of the school year.
60. The evaluation consented to on February 25, 2022 was completed and an eligibility meeting was held on April 14, 2022.
61. It was determined that Student continued to be eligible under OHI; autism was ruled out and emotional disturbance (ED) was not considered.
62. At the April 14, 2022 IEP meeting, the team determined that an autism evaluation was not needed. Pragmatic language services were warranted and recommended a speech evaluation. The District requested all records from the private provider.
63. The Special Education Director and other Administrative Staff acknowledged that they did not have a complete and thorough understanding of this Student or needs.
64. At the time of the report, the District was in the process of completing additional evaluations to consider mental health and other needs.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to complete the required procedures for discipline of Student including predetermination and consideration of necessary information during the manifestation determination when it determined Student's actions were not a manifestation of Student's disability and referred Student to a hearing for further proceedings in violation of 6.31.2.11 (F)(2) and (3) NMAC; 6.11.2.10(I) NMAC; 6.11.2.11 (A) and (C) NMAC and 34 C.F.R. §§ 300.530-300.536?

Local educational agencies (LEA) or school districts have the authority to suspend a student with a disability subject to certain procedural requirements. 34 C.F.R. § 300.530; 6.11.2.11 NMAC. One such requirement is if a child's disciplinary removals constitute a "change in placement," then the LEA must convene a Manifestation Determination Review meeting to assess whether the child's behavior is related to their disability. 34 C.F.R. § 300.530(e); 6.11.2.11(B) NMAC.

A disciplinary change in placement occurs when a child is removed from school for more than 10 consecutive school days OR the child is subject to a series of removals that constitute a pattern of: (1) more than 10 school days of removal; (2) the child's behavior is similar to previous incidents resulting in removal; and (3) additional factors such as the length, time, and proximity of the removals. 34 C.F.R. § 300.536; 6.11.2.11(G) NMAC.

It is the responsibility of the LEA to determine whether a change of placement has occurred on a case-by-case basis. *Id.* Whether an in-school suspension should be counted as part of the days towards a change in placement depends on the unique circumstances of each case as well as continuation of the student's participation in the general curriculum, receipt of IEP services, and participation with nondisabled peers. 71 Fed. Reg. 46715; *Dear Colleague Letter* 68 IDELR 76 (OSERS/OSEP 2016), footnote 29.

Within 10 school days of any decision to change the placement of a special education student, the LEA must convene a MDR meeting. 34 C.F.R. § 300.530(e)(1); 6.11.2.11(B)(2) NMAC. The MDR team must review all relevant information about the student and decide whether: (1) the student's conduct in question was caused by or had a direct and substantial relationship to the student's disability; or (2) the conduct in question was a direct result of the administrative authority's failure to implement the IEP. 34 C.F.R. § 300.530(e)(1); 6.11.2.11(B)(2) NMAC. If the MDR team determines that the student's behaviors were a manifestation of their disability, then an IEP team meeting must be convened to either conduct a functional behavior assessment or modify an existing behavior intervention plan. 34 C.F.R. 300.530(f); 6.11.2.11(C) NMAC.

Student has had a history of negative behaviors since 2013. Prior to the incident on March 4, 2022, that resulted in a long-term suspension and placement in an IAES, there were nine incidents of negative behavior this school year resulting in ISS or OSS. Student was suspended for 13.5 days from the start of the school. The type and frequency of behaviors also changed during the 2021-2022 school year. The incidents involving inappropriate touching were a change from previous behaviors of fighting, defiance and refusal to complete work. A comprehensive evaluation was requested and consent was received on February 25, 2022. Although Student was not always cooperative with the evaluation, it was ultimately completed and Student continued to be eligible under OHI. ED was not considered by the eligibility team, nor was SLD ruled out.

Student was involved in four MDR meetings this year because of maladaptive behaviors. At three of the meetings, Student's actions were not found to be a manifestation of Student's disability. The first MDR, which involved inappropriate touching, was considered a manifestation of the disability because of the impulsivity of the act. Student was returned to placement due to this finding. The next MDR involved inappropriate touching but was not considered a manifestation because the behavior was intentional and not impulsive. The remaining two MDRs involved fighting.

The last incident was March 1, 2021 when another student suffered a mild concussion and whiplash as a result of Student's actions. An MDR was held on March 4 2021 regarding this incident, but Parent objected due to lack of notice and requested another MDR. The final MDR was convened on March 9, 2022 and Parent and advocate attended and provided psychological progress reports. The MDR team reviewed those reports and Student's records and again determined that the behavior was not a manifestation of Student's disability, the IEP was properly implemented and Student was referred for a disciplinary hearing. The hearing was held on March 10, 2022 and Student was suspended and placed at an IAES on March 24, 2022. While Student was suspended, pending the results of the hearing and change of placement, online Zoom services were offered to Student. Student inconsistently participated in those educational opportunities.

The District acknowledged that they did not have a thorough understanding of Student or Student's needs. Although Student did suffer from ADHD and was qualified under the OHI category, the District failed to consider other needs or disabilities such as ED as potential explanations for Student's behavior. There were multiple red flags that should have triggered additional assessments in all areas of suspected disability or investigation into the reasons behind Student's increasingly negative behaviors. The District failed to determine whether there were mental health needs or other reasons for Student's negative behaviors. Even with all the

adjustments to Student's educational program, Student was still struggling and missing school because of these behaviors.

District has an obligation to consider whether Student's needs or factors had changed or that Student had additional needs besides impulsivity which impacted on Student's performance and progress. Student may have had more than one disability that impacted learning and resulted in the negative behaviors. Without a thorough understanding of Student and his disability related needs, it was not possible to determine if Student's negative behaviors were related to or a result of the disability. The IEP team failed to consider all of Student's needs and provide appropriate services and supports. A more complete consideration of Student's individual needs may have explained Student's behaviors, and with appropriate services and supports, Student's negative behaviors may have been diminished which would have allowed Student to continue in school. Because the MDR team failed to consider all potential disabilities, it could not appropriately address whether Student's behaviors were a manifestation of those disabilities. This was a violation of the required disciplinary procedures.

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 the Student resulted in a denial of a free appropriate public education (FAPE) to the Student in violation of 6.31.2.8 NMAC and 34 C.F.R. § 300.101?

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 determination of whether there has been a denial of FAPE requires consideration of two components: substantive and procedural. The question one must answer to determine the substantive standard is whether the IEP was "reasonably calculated to allow the child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas County School District. RE-I*, 137 S. Ct. 988 (2017). The Court in *J.L. v. Mercer Island School District*, 592 F3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it resulted in the loss of an educational opportunity, infringed on parents' opportunity to participate in the development of the IEP or deprived the student of an educational benefit. 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).

Although Student's maladaptive behaviors resulted in frequent suspensions preventing Student from accessing educational services, the District continued to hold IEP meetings and completed an updated comprehensive evaluation to determine if Student had additional needs or what other supports or services could the District provide to meet Student's needs. However, the District did not evaluate Student in all suspected areas of disability. As noted by the District Staff, Student was an onion and they were in the process of peeling back layers, but there were still layers that had not been discovered. While Student was not exhibiting educational progress or behavioral improvement with the IEP and BIP, the District continued to amend the IEP and BIP to meet Student's needs. The District was updating evaluations on Student, but failed to consider all possible areas of suspected disability to determine if Student had other needs. The District did not have a thorough understanding of Student or needs and they failed to consider or evaluate Student in other areas of suspected disabilities such as a mental health disorder. When it was determined that Student was not making progress, the District continued to try and amend the plan for Student to allow Student to make educational progress. However, those changes were not adequately informed by potentially necessary evaluations and subsequent identification of needs. The IEP that was in place was not reasonably calculated to allow Student to make progress because the District did not sufficiently understand Student's needs. Therefore, the District substantively denied the Student FAPE.

The incomplete understanding of Student and Student's needs resulted in the MDR team failing to consider all possible disabilities in the analysis. Therefore, if the appropriate factors had been considered during the MDR meetings, it may have been determined that the behavior was a manifestation of Student's disability and modifications could have been made to the IEP which could have resulted in success for Student in the school setting instead of placement at IAES. The failure to complete necessary assessments to have a thorough understanding of Student and needs deprived Student of an educational opportunity and was a procedural denial of FAPE.

Although Parent alleged that she was not allowed meaningful parental participation, the parent attended and participated in all meetings. The documents that Parent submitted were considered by the IEP team. Parent was not promptly notified about the March 10, 2022 hearing because the District did not have accurate contact information after the family moved. However, the parent ultimately attended the meeting despite the lack of formal notice. The Parent had requested but not received documents from the disciplinary hearing for Student; she did appeal the results of that hearing. Although she is entitled to copies of those educational records for

this Student, this was not a denial of meaningful parental participation because Parent attended and participated in the hearing along with Student.

As to Issue No. 2, the District is cited. Corrective Action is required.

Summary of Citations

Statutory and Regulatory Provisions	Citation
6.31.2.11 (F)(2) and (3) NMAC; 6.11.2.10(I) NMAC; 6.11.2.11 (A) and (C) NMAC and 34 C.F.R. §§ 300.530- 300.536	The District failed to adequately complete the required procedures for discipline of Student including the lack of consideration of necessary information during the manifestation determination review.
6.31.2.8 NMAC and 34 C.F.R. § 300.101	The District's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE) to the Student.

Required Actions and Deadlines

By May 27, 2022, the District's Special Education Director 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 Corrective Action Plan 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
300 Don Gaspar Avenue
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 Corrective Action Plan 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 Corrective Action Plan 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 Corrective Action Plan, 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 February 25, 2023 and reported to the PED SED no later than March 10, 2023. All documentation submitted to the SED to demonstrate compliance with the CAP must be clearly labeled to indicate the complaint number, **C2122-20**.

Corrective Action Plan

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
1.	As described above, the District will submit a written assurance to the Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	May 27, 2022	Written Assurance Letter/Email	May 27, 2022
2.	The District Special Education Director shall meet with SED EA assigned to the District and the CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the District plans to	June 6, 2022	Notes from meeting prepared by District	June 10, 2022

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
	take to ensure that the violations are corrected and do not recur. The District Director has the discretion to include other District administrators or personnel in this meeting. The District Director shall be responsible for setting up this meeting with SED.			
3.	<p>The District shall conduct a comprehensive evaluation of the Student that includes a psychological evaluation. The District will promptly request consent for those evaluations, and, if consent is given, conduct those evaluations and provide evaluation reports to Parent within 30 days of completion.</p> <p>If a psychological evaluation is conducted, the District shall request that it include an analysis of the functional impact that the resulting diagnosis has on Student’s learning.</p>	August 1, 2022	Request for Consent to Evaluate, Written Parental consent or refusal to consent, Evaluation reports.	July 15, 2022
4.	<p>The District will convene a facilitated IEP (FIEP) meeting for Student within 15 days of the completion of the evaluations described above. The FIEP meeting shall address:</p> <ul style="list-style-type: none"> • all of student’s identified needs including communication, behavioral, academic, and functional; 	15 days after the completion of the required evaluations	Invitation to IEP meeting, attendance sheet, IEP, Prior Written Notice,	15 days after the FIEP meeting is held.

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED</u> <u>SED</u>	<u>Document Due Date</u>
	<ul style="list-style-type: none"> • additional supports and services needed for student; • a plan for reintegrating Student into school full time in person learning in the Fall; • updated FBA and BIP to address Student’s behavioral needs to allow Student to successfully attend school in person full time; • an effective communication system between District, Student and Parent including a point of contact for Parent communication regarding Student. <p>The Facilitator shall be independent of the District and shall be selected from the PED list of approved facilitators.</p> <p>The FIEP meeting shall be held on a date and time that is convenient for the parent. The parent will be provided with a copy of the IEP and PWN within 3 days of the FIEP meeting.</p>		Confirmation of arrangement with Facilitator from PED approved list of Facilitators	Within 3 days of making arrangements for facilitator.
5.	The District shall arrange to provide training to District staff (including special education teachers, special education administrators, related	September 1, 2022	Confirmation of the date(s) of the training	August 15, 2022

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
	<p>service personnel, educational diagnosticians and evaluators) regarding: (1) identifying and evaluating all areas of suspected disabilities and (2) behavior interventions including Positive Behavior Intervention and Supports,</p> <p>The training District shall be provided by a person with expertise in special education who was not involved in responding to this complaint and who is approved by NMPED.</p>		<p>Confirmation of attendees at the training and plan for addressing provision of training to those staff not in attendance.</p> <p>Submission of proposed trainer and trainer's resume and proposed presentation for NMPED approval.</p>	<p>September 15, 2022</p> <p>July 15, 2022</p>

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

Investigated by:

Shelly Bennett

Michele K. Bennett

Complaint Investigator

Reviewed by:

Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:



Deborah Dominguez-Clark

Director, Special Education Division