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NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
SPECIAL EDUCATION DIVISION  
Complaint Resolution Report  
Case No. C2223-01  
September 2, 2022

This Report requires corrective action. See pages 39-47.

This complaint was filed with the Special Education Division (SED) of the New Mexico Public Education Department (PED) on July 7, 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.<sup>1</sup> 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 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;
- review of the District's compliance with federal IDEA regulations and state NMAC rules;

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<sup>1</sup> 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.

- interviews with the Parent and the Parent Advocate on August 18, 2022;
- interviews with the District’s special education director, deputy superintendent of teaching & learning, and two of the District’s special education teachers on August 24, 2022; 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); 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 issues regarding alleged violations of the IDEA, its implementing regulations and State rules, are addressed in this report:

1. Whether the District failed to comprehensively evaluate the named students in all areas of suspected disability by failing to timely conduct triennial evaluations and upon Parent’s request for same, in violation of 34 C.F.R. § 300.303 and 6.31.2.10(D)(2) NMAC.
2. Whether the named students’ IEPs were tailored to their unique needs and were reasonably calculated to enable the students to make progress appropriate in light of their circumstances pursuant to 34 C.F.R. § 300.320, 34 C.F.R. § 300.324, and 6.31.2.11(B) NMAC.
3. Whether the District considered the strategies described in 6.31.2.11(B)(5)(d) NMAC when developing the students’ IEPs.
4. Whether the District should have conducted manifestation determination reviews when the named students were subjected to a series of removals that constituted a pattern in violation of 34 C.F.R. § 300.530(e); 6.11.2.11(B)(1) NMAC.
5. Whether the District should have conducted functional behavior assessments (FBA) and/or develop behavior intervention plans (BIP) once the named students’ behaviors

started to impede their learning pursuant to 34 C.F.R. § 300.324(a)(2)(i) and 6.31.2.11(F) NMAC.

6. Whether the District denied Parent's meaningful participation in the modification of the named students' IEPs in violation of 34 C.F.R. § 300.324(a)(1)(ii); 6.31.2.11(B)(2) NMAC.
7. Whether the District monitored the named students' progress and provided reports of the same in accordance with students' IEPs pursuant to 34 C.F.R. § 300.320.
8. Whether the District's actions and/or omissions towards the named students resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

### **General Findings of Fact**

#### **Student D.D.**

1. Student D.D. is 14 years old and entered into the eighth grade at the beginning of the 2022-23 school year.
2. In January 2014, when Student was five years old, Student was evaluated by the District and found to be eligible for special education and related services. Student moved away from the District in late 2014.
3. While located in a different state, Student was evaluated in December 2016 and March 2018 and found eligible for special education and related services by Student's then-resident state. A report of the findings from the Student's evaluation was completed on March 19, 2018. The evaluation report stated, in part:
  - a. The Student is nine years old and in the third grade.
  - b. The Student is eligible for special education services under the eligibility category of autism.
4. Student returned to the District in late 2018 when Student was in the fourth grade.
5. On January 25, 2019, the District completed a Review of Existing Evaluation Data (REED). The District stated the REED document could not be located as a result of a change to the student information system being used. The District asserts that no additional testing was completed as a result of the REED.
6. A new annual IEP was implemented on November 19, 2020. The IEP included, in part:
  - a. The Student's primary disability is autism;
  - b. Identified areas of need are math, reading, and written language;
  - c. Consideration of Special Factors:

- i. The Student does not exhibit behaviors that impede their learning or that of others;
- d. Extended School Year (ESY) is not necessary;
- e. Present Levels and Annual Measurable Goals in Reading:
  - i. Present Levels:
    - 1. [Student] currently is performing below grade level. [Student] is able to do all of the reading/literature and reading/information text standards when the text is read to [them]. [Student] has worked with assistance on grade-level skills like identifying a theme, the parts of a plot, and characterization. [Student] needs to continue to develop [their] reading proficiency and comprehension.
  - ii. Annual Goal: By one year's time, [Student] will successfully demonstrate the following skills in reading:
    - 1. Objective 1: [Student will] know and apply phonics and word analysis skills in decoding words.
      - a. Criteria for Mastery: 3 out of 5 trials with 75% accuracy;
      - b. Methods of Measurement: Student samples/teacher observations;
    - 2. Objective 2: [Student will] determine one to two main ideas of a text and explain how they are supported by key details summarize the text;
      - a. Criteria for Mastery: 3 out of 5 trials with 75% accuracy
      - b. Methods of Measurement: Student samples/teacher observations;
- f. Present Levels and Annual Measurable Goals in Written Language:
  - i. Present Levels: [Student] severely struggles with written language. [They are] performing far below grade level. [Student] will need to work on basic writing for sentence structure and the conventions of writing;
  - ii. Annual Goal: By one year's time, [Student] will successfully demonstrate the following skills in written language;
    - 1. Objective 1: [Student will] produce complete sentences when appropriate to task and situation in order to provide requested detail or clarification:
      - a. Criteria for Mastery: 3 out of 5 trials with 75% accuracy;
      - b. Methods of Measurement: Student samples/teacher observations
    - 2. Objective 2: [Student will] demonstrate conventions of standard English capitalization, punctuation, and spelling when writing:
      - a. Criteria for Mastery: 3 out of 5 trials with 75% accuracy;
      - b. Methods of Measurement: Student samples/teacher observations
- g. Present Levels and Annual Measurable Goals in Math:
  - i. Present Levels: [Student] is working below grade level in math. [Student] is working on addition and subtraction. [Student] is working on proficiency of 3<sup>rd</sup>-

- grade math standards. [Student's] shyness makes [them] quiet in class. [Student] attends google meets and listens to discussions.
- ii. Annual Goal: By one year's time, [Student] will successfully demonstrate the following skills in math.
    1. Objective 1: By November 2022, [Student will] represent and solve problems involving multiplication and division:
      - a. Criteria for Mastery: 3 out of 5 trials with 75% accuracy;
      - b. Methods of Measurement: Student samples/teacher observations
  - h. Present Levels and Annual Measurable Goals in Sustained Attention:
    - i. Present Levels: [Student] struggles with sustained attention. [Student] can begin on task but if things don't move rapidly or there is a delay and [they] get off track [they] shut down. [Student] needs continued support and encouragement to redirect to desired activity.
    - ii. Annual Goal: In one year's time, [Student] will improve [their] sustained attention by participating in class discussions, activities, or assignments for at least 15 minutes with 2 redirects back to task:
      1. Criteria for Mastery: 75% accuracy;
      2. Methods of Measurement: Student samples/teacher observations
  - i. Schedule of Services:
    - i. Dates: 11/19/20 to 5/21/21;
      1. Special Education and Related Services;
        - a. Language Arts – 250 minutes/week in special education setting;
        - b. Math – 250 minutes/week in special education setting;
        - c. Reading Support in Science Class – 100 minutes/week in regular classroom;
        - d. Reading Support in Social Studies Class – 100 minutes/week in regular classroom
      2. Setting: In regular classroom 40-79% of the day
      3. Least Restrictive Environment (LRE): Statements were included regarding student's LRE.
    - ii. The special education and related services, setting, and LRE statements were the same for the 8/16/21 to 11/18/21 time period.
  - j. Progress Documentation:
    - i. Progress will be reported to parents quarterly.
7. In September 2021, the District stated that it was informed by its IEP specialist that all services minutes needed to be updated for special education students. It is unclear why the service minutes needed to be updated. As a result of this directive, on September 20, 2021, the special education teacher and the Parent had a phone call regarding changes to the service

minutes in Student's IEP. Pursuant to the call, Student's IEP was amended. The modifications to Student's educational plan included the following:

- a. Student's special education services increased in each language arts and math from 250 minutes/week to 275 minutes a week.
  - b. Student's special education services for reading support in social studies class decreased from 100 minutes/week to 50 minutes/week.
  - c. Student was to receive special education services in the area of "social skills" for 275 minutes/week in the special education room.
8. Attached to the September 20, 2021 IEP was a prior written notice ("PWN"). The PWN indicated, in part:
- a. Student input, parent input, teacher input, classroom performance, and school records were reviewed and discussed.
  - b. Change of placement/modification included:
    - i. The increase in the Student's language arts and math special education services.
    - ii. The addition of special education services in the area of "social skills."
    - iii. History support in reading and writing for 50 minutes/week in the general education setting
    - iv. Science support in reading and writing for 100 minutes/week in the general education setting
  - c. Parent agrees to the implementation of the IEP on September 20, 2021.
9. On September 23, 2021 a meeting invitation was created regarding a meeting scheduled for September 27, 2021. The purpose of the meeting was "Amendment Parent Request." The invitation indicates that the Parent confirmed the meeting date/time on September 23, 2021 via phone.
10. On September 24, 2021 a meeting invitation was created regarding a meeting scheduled for November 8, 2021. The purpose of the meeting was "TriAR." The District states "TriAR" stands for triannual review. The invitation indicates that the Parent confirmed the meeting date/time on September 23, 2021 via phone. On September 28, 2021, the IEP facilitator requested to reschedule the meeting. It is unclear if the date and/or time was rescheduled. However, whatever date/time was selected, it was confirmed via phone the same day.
11. A meeting was held on September 27, 2021. No amendments or modifications were made to the Student's IEP. The District provided a PWN following the meeting. The PWN indicated, in part:
- a. Student input, parent input, teacher input, classroom performance, and school records were reviewed and discussed.
  - b. The Parent requested an emergency IEP meeting due to behavioral concerns, as the Parent was called to the school on numerous occasions to help with the Student.

The Parent requested a behavior intervention plan (BIP) and extra support for the Student.

- c. In response to the Parent's request, the IEP team proposed:
  - i. A functional behavioral assessment ("FBA");
  - ii. Once an FBA was conducted, another IEP meeting would be scheduled and a BIP will be put in place;
  - iii. The Student will participate in social skills class in a special education setting for 275 minutes/week; and
  - iv. Behavior techniques and strategies were suggested and accepted. Specifically, staff would (1) utilize a calm soothing voice when interacting with the Student; (2) allow cool down space for the Student; (3) use and encourage cooperative listening, divert the emotion, and allow the Student to complete a task they are interested in before attempting a difficult task; (4) use positive reinforcement and motivators; (5) provide choices; and (6) keep tone neutral.
- d. The IEP team recommended a staff meeting take place so that all educators were informed of what strategies to utilize to support the Student.

12. On October 7, 2021, an Assessment Plan for Special Education Eligibility and Services form ("Assessment Plan") was completed. The Assessment Plan indicated that there was a parent request for an FBA. The Parent signed the Assessment Plan on October 8, 2021.

13. On October 28, 2021 an FBA was completed. The FBA determined, in part:

- a. Identified problem behaviors:
  - i. The Parent reports that the Student has difficulty in time management, waiting, and transitions between activities. The Student will lose interest in an activity quickly and will often resort to solitary claim.
  - ii. School staff reports that the Student has been observed walking/running around the classroom, will yell and blurt out, and will hit the wall or slam the computer shut on a daily basis when presented with academic work.
  - iii. School staff report that, at times, the Student becomes quiet and refuses to work or will lay on the floor in class when presented with academic work.
- b. Analysis and recommendations:
  - i. The presumed function or explanation of the behaviors is to get preferred tasks/activities or attention.
  - ii. The Student's behavior patterns *may* require instructional modifications or accommodations only.

14. On November 8, 2021 a REED was completed. The REED determined, in part:

- a. The following may be contributing to the Student's educational performance/difficulties:
  - i. The Student's history;

- ii. Social, emotional, and/or behavioral factors; and
    - iii. Academic achievement factors.
  - b. Communication, physical, cognitive, nor functional performance and adaptive behaviors factors were determined to be a contributor to the Student's educational performance/difficulties.
  - c. The IEP team has adequate data related to the Student's history, social/emotional/behavioral factors, and academic achievement factors.
  - d. No additional data are needed to determine eligibility for special education and related services.
  - e. The parent notice section which requires an indication of whether or not the District explained the reasons for its determination that additional data are not needed and that the parent understands the right to request an evaluation was not filled out.
  - f. The Parent was listed as a participant of the REED process.
15. The results of the REED were discussed at the November 8, 2021 IEP meeting and a new annual IEP was developed. The IEP included, in part:
- a. The Student exhibits behaviors that impede their learning or that of others.
    - i. Positive behavioral interventions, strategies and accommodations are included in the IEP;
    - ii. Behaviors goals are included in the IEP;
    - iii. An FBA does not need to be conducted.
  - b. The Student requires modifications described in the IEP under annual goals and/or instructional accommodations.
  - c. Instructional Accommodations and/or Modifications:
    - i. Other:
      - 1. Utilize a calm soothing voice when interacting with [Student]. Allow cool down space for example [the special education classrooms]. Use and encourage cooperative listening, divert the emotion, allow [Student] to complete a task that [they] are interested before [they] attempt a difficult task, use positive reinforcement and motivators, provide choices, keep tone neutral.
      - 2. Avoid mentioning about [their] father.
  - d. Present Levels and Annual Measurable Goals in Reading:
    - i. Present Levels: The PLAAFP contained the same language as the prior IEP with the addition of the following:
      - 1. Student scored in the second percentile rank on the STAR.
      - 2. [Student's] reading skills are comparable to those of a typical second grade student after the ninth month of the school year.



3. [Student] achieved an instructional reading level score of 2.5; [Student] is at least 80% proficient at reading second-grade level materials.
- ii. Annual Goal:
    1. By November 2022, [Student] will know and apply phonics, and word analysis skills in decoding words and read with sufficient accuracy and fluency to support comprehension with 75% accuracy, as evidenced by student work samples and teacher recorded data
    2. By November 2022, [Student] will cite textual evidence to support analysis of what a text says and draw inferences from the particular text, written or verbal, with 75% accuracy, as measured by student work samples and teacher recorded data.
- e. Present Levels and Annual Measurable Goals in Written Language:
    - i. Present Levels: The statement was generally the same, with only minor variations from the previous IEP.
    - ii. Annual Goal: By November 2022, when given a topic, [Student] will produce 2-3 complete sentences applying the basic standards for writing (grammar, capitalization, punctuation) with 75% accuracy as measured by complete writing samples.
  - f. Present Levels and Annual Measurable Goals in Math:
    - i. Present Levels: The statement was generally the same, with only minor variations from the previous IEP.
    - ii. Annual Goal: By November 2022, [Student] will be able to divide multi-digit numbers using the standard algorithm with 75% accuracy, as evidenced by student work samples and teacher recorded data.
  - g. Present Levels and Annual Measurable Goals in Sustained Attention:
    - i. Present Levels: The statement was identical to the statement in the previous IEP.
    - ii. Annual Goal: The goal was the same as the previous IEP.
  - h. Present Levels and Annual Measurable Goals in Social/Emotional:
    - i. Present Levels: [Student] has had various struggles with completing work and overall behavior in the general education classroom.
    - ii. Annual Goal:
      1. [Student] will demonstrate the skills and coping methods taught in the C.A.R.E. elective by having no more than one incidence per week of eloping/leaving in the middle of class unprompted or without permission.
        - a. Criteria for Mastery: No more than one incidence of eloping per month;
        - b. Methods of Measurement: Discussion/observation/spot checks

2. Benchmark 1: When a classroom or education environment, [Student] will comply with requests to either bring an assignment, or get out the materials necessary to complete an assignment when asked. [Student] will be given three opportunities to acknowledge the request and cooperate by no greater than the third request.<sup>2</sup>
    - a. Criteria for Mastery: Cooperation by third request;
    - b. Methods of Measurement: Discussion/Observation
  3. Benchmark 2: If [Student] is somewhere they are not supposed to be, they will cooperate with any responsible adult's request to return to their classroom or the designated area. [Student] will be given three opportunities to acknowledge and cooperate by no greater than the third request.
    - a. Criteria for Mastery: Cooperation by third request;
    - b. Methods of Measurement: Discussion/Observation
  4. Benchmark 3: When frustrated, [Student] will seek a trusted adult, or [the special education teacher], to discuss what is frustrating them, and to be offered solutions, with no more than one incidence per month of [Student] not seeking a trusted adult or [the special education teacher].
    - a. Criteria for Mastery: No more than one incidence not seeking adult;
    - b. Methods of Measurement: Discussion/Observation
- i. Schedule of Services:
    - i. Dates: 11/8/21 to 5/27/22
      1. Special Education and Related Services
        - a. Language Arts services increased by 25 minutes from the prior IEP.
        - b. Math services increased by 25 minutes from the prior IEP.
        - c. The addition of services in the area of Social Skills was added for 275 minutes/week in the special education setting.
        - d. The reading support in science and social studies classes was removed.
      2. Setting: In regular classroom 40-79% of the day
      3. Least Restrictive Environment (LRE): The LRE-related statements were the same as the previous IEP.
    - ii. The special education and related services, setting, and LRE statements were the same for the 8/5/22 to 11/7/22 time period.
  - j. Progress Documentation:
    - i. Progress will be reported to parents quarterly.

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<sup>2</sup> In some instances, the Benchmarks incorrectly referenced Student B.D. not Student D.D.

16. Attached to the November 8, 2021 IEP was a PWN. The PWN indicated, in part:
  - a. Student input, parent input, teacher input, classroom performance, classroom observation, and school records were reviewed and discussed.
  - b. The Parent agrees to the implementation of the IEP.
17. Sometime in April 2022, the Parent sent an email to the District requesting an IEP meeting. The District and Parent were unable to locate and provide this email. However, the PWN dated May 4, 2022 included a summary of the Parent's email. The email from the Parent stated the following, in part:
  - a. Student's behaviors have increased yet no BIP has been implemented.
  - b. The Parent and Student's grandparent continue to receive calls to pick up Student from school or to notify them when there is another eloping incident.
  - c. Safety protocols need to be addressed in the IEP.
  - d. It is not okay to have Student removed from school during testing because of the possibility other students will be disrupted.
  - e. Request for Student to be provided a one-on-one aide to prevent behavior escalation and eloping.
  - f. In the alternative, request for a behavior technician from BCBI to act as the one-on-one aide for Student in all of their classes.
18. On April 21, 2022, a meeting invitation was created regarding a meeting scheduled for May 4, 2022. The purpose of the meeting was "Amendment [of] IEP." The invitation indicates that the Parent confirmed the meeting date/time on April 21, 2022 via phone.
19. On May 4, 2022 another IEP meeting was held to amend the Student's November 8, 2021 IEP, per the Parent's request. There were no modifications made to the Student's IEP document. However, the PWN attached to the IEP was updated. In addition to keeping all the previous PWN language attached to the November 8, 2021 IEP, the following additional provisions were added to the PWN, in part:
  - a. Purpose of the meeting: IEP amendment meeting
  - b. Parent requested an IEP meeting via email to address several concerns. The email from the Parent was detailed in the PWN.
  - c. Response to Parent Concerns:
    - i. In regards to Student staying home during testing, it was a suggestion and apologized for the miscommunication that led the Parent to believe that Student was forced to stay home.
    - ii. The IEP team proposes to conduct a new FBA in order to develop a BIP.
    - iii. The IEP team will meet again to answer the Parent's questions regarding the request for a one-on-one aide or a behavior technician from BCBI.
20. At the IEP meeting, an Assessment Plan was completed. The Assessment Plan "re-evaluation (REED)" box was marked and the assessment requested was an FBA. The Parent did not sign

the Assessment Plan. However, it was indicated that the special education teacher was a witness to the parent agreement for the FBA assessment to be completed.

21. On May 9, 2022, a meeting invitation was created regarding a meeting scheduled for May 23, 2022. The purpose of the meeting was “Amendment [of] IEP.” The invitation indicates that the Parent confirmed the meeting date/time on May 9, 2022 via phone.
22. On May 23, 2022 another IEP meeting was held to amend the Student’s November 8, 2021 IEP, per the Parent’s request. The only modification to Student’s IEP was the addition of ESY services. An ESY Addendum dated May 23, 2022 indicated, in part:
  - a. Documents reviewed: Information in current IEP (Document date: 5/23/22)
  - b. The student requires the following ESY services:
    - i. Instructional
    - ii. Behavioral
  - c. ESY services June 1 – June 22, 2022 by special education staff
23. Attached to the May 24, 2022 IEP was a PWN. The PWN included the contents of the PWN attached to the November 8, 2021 IEP and the contents of the PWN attached to the May 4, 2022 IEP. In addition, the PWN included the following new information, in part:
  - a. Parent request for a one-on-one aide: Rejected
    - i. The school is unable to provide a one-on-one aide for the entire day. An aide or another adult can be provided for most of the core classes but not all of Student’s classes.
  - b. Parent request for a behavioral therapist from BCBI: Rejected
    - i. The school is unable to grant parent request for an ABA therapist due to the fact that a memorandum of understanding needs to be approved by the District and BCBI. For next year, there are behavior interventionists in the District that have been trained in ABA that are available to assist in the classroom if needed.
  - c. ESY eligibility: Accepted
    - i. ESY services are necessary at this time. The IEP team looked at data provided by the District and members of the team and even though there does not appear to be a regression, the IEP team feels that [Student] is not making adequate progress for [their] grade.
  - d. Current Progress in School:
    - i. [Student] was reading at a primary level since the beginning of the year and is still reading at the primary level. There was some discussion about regression due to checkpoint scores indicating higher scores in September and lower scores in November, however it was explained that the checkpoints do not test the same material and test on new standards each time. There are other factors to consider for example lack of attendance. When the material is read to [Student],

[their] comprehension is near 80% so the accommodations of text to speech are very important.

- e. Request for Additional Testing: Accepted
  - i. The IEP team determined that additional testing is needed. The request for testing is in the following categories:
    - 1. Occupational therapy; Physical therapy; Speech or Language; Pragmatics; Adaptive; Cognitive; Achievement and Dyslexia

24. At the IEP meeting, an Assessment Plan was completed. The Assessment Plan indicated that there was a parent request for the following assessments:

- a. Achievement Tests:
  - i. Basic Reading; Fluency; Comprehension; Dyslexia; Written Language; Math Calculation; and Math Problem Solving.
- b. Cognitive Ability/Intelligence Tests (for suspected SLD)
- c. Autism
- d. Speech/Language/Communication (for Pragmatics)

The Parent signed the Assessment Plan on June 22, 2022

25. A progress report was provided to the Investigator that included data for October 2021, January 2022, March 2022, and May 2022 time periods. The report included a progress code of “sufficient” or “insufficient” progress for each of the reading, writing, math, and sustained attention goals. Comments were included for the October 2021 and January 2022 progress codes. However, most comments were not measurable to the goal. No comments were included for the March or May 2022 progress codes, despite many progress codes of “insufficient progress.” No progress was reported for the social/emotion goal.

26. The District stated that there were no disciplinary records for Student D.D.

27. Attendance records were provided to the Investigator that indicated that Student D.D. had been absent for a total of 15.00 days between August 12, 2021 and May 26, 2022. However, the detailed daily records indicated the following, in part:

- a. Unexcused absences: 104 class periods
- b. Unexcused tardies: 22 class periods
- c. 1 day of out-of-school suspension
- d. Excused absences: 60 class periods

Each day consists of six class periods. In total, Student D.D. was absent from 187 class periods; a total of 31.17 days.

28. The District conducted a reevaluation of Student D.D. The evaluation report provided by the Parent is dated August 5, 2022.

**Student B.D.**

29. Student B.D. is 14 years old and entered into the eighth grade at the beginning of the 2022-23 school year.
30. In January 2014, when Student was five years old, Student was evaluated by the District and found to be eligible for special education and related services. Student moved away from the District in late 2014.
31. While located in a different state, Student was evaluated in December 2016 and March 2018. The records of the evaluations were not provided, and, thus, are not discussed further.
32. Student returned to the District in late 2018 when Student was in the 4<sup>th</sup> grade.
33. On January 25, 2019, the District completed a REED. The District stated the REED document could not be located as a result of a change to the student information system being used. The District asserts that no additional testing was completed as a result of the REED.
34. A new annual IEP was implemented on November 19, 2020. The IEP included, in part:
  - a. The Student's primary disability is autism.
  - b. Identified areas of need are math, reading, and written language.
  - c. Consideration of Special Factors:
    - i. The Student does not exhibit behaviors that impede their learning or that of others.
  - d. Extended School Year (ESY) is not necessary.
  - e. Present Levels and Annual Measurable Goals in Reading:
    - i. Present Levels:
      1. [Student] has worked with assistance on grade-level skills like identifying a theme, the parts of a plot, and characterization. [Student] contributes when asked about the text or a story. [Student] needs to continue to develop [their] reading proficiency and comprehension.
    - ii. Annual Goal: By one year's time, [Student] will successfully demonstrate the following skills in reading.
      1. Objective 1: [Student will] ask and answer questions to demonstrate understanding of a text, referring explicitly to the text as the basis for the answers.
        - a. Criteria for Mastery: 3 out of 5 trials with 75% accuracy;
        - b. Methods of Measurement: Student samples/teacher observations
      2. Objective 2: [Student will] demonstrate command of the conventions of standard English grammar and usage when writing or speaking.
        - a. Criteria for Mastery: 3 out of 5 trials with 75% accuracy;
        - b. Methods of Measurement: Student samples/teacher observations
  - f. Present Levels and Annual Measurable Goals in Written Language:

- i. Present Levels: [Student] is participating in class and responds to questions about stories or texts we have read. [Student] continues to need guidance and scaffolding to write responses for prompts. [Student] will need to continue to develop improvements in capitalization, punctuation, and grammar. [Student] needs to continue to develop critical writing skills.
- ii. Annual Goal: By one year's time, [Student] will successfully demonstrate the following skills in written language.
  - 1. Objective 1: [Student will] write routinely over extended time frames using revising skills and shorter time frames for a range of discipline-specific tasks, purposes, and audiences.
    - a. Criteria for Mastery: 3 out of 5 trials with 75% accuracy;
    - b. Methods of Measurement: Student samples/teacher observations
  - 2. Objective 2: [Student will] demonstrate command of the conventions of standard English grammar and usage when writing or speaking.
    - a. Criteria for Mastery: 3 out of 5 trials with 75% accuracy;
    - b. Methods of Measurement: Student samples/teacher observations
- g. Present Levels and Annual Measurable Goals in Math:
  - i. Present Levels: [Student] is currently 60% proficient with 3<sup>rd</sup>-grade math standards. [Student] is willing to ask for directions when [they aren't] sure what to do. [Student] is able to follow one-step directions. [Student] attends google meets and listens to discussions.
  - ii. Annual Goal: By one year's time, [Student] will successfully demonstrate the following skills in written language.
    - 1. Objective 1: [Student will] represent and solve problems involving multiplication and division.
      - a. Criteria for Mastery: 3 out of 5 trials with 75% accuracy;
      - b. Methods of Measurement: Student samples/teacher observations
    - 2. Objective 2: [Student will] develop understanding of fractions as numbers.
      - a. Criteria for Mastery: 3 out of 5 trials with 75% accuracy;
      - b. Methods of Measurement: Student samples/teacher observations
- h. Present Levels and Annual Measurable Goals in Executive Function:
  - i. Present Levels: [Student] is willing to do what is asked of [them] when directed. [Student] needs to continue to grow in independence by developing skills to make sure [they are] completing assignments and tracking when they need to be turned in.
  - ii. Annual Goal: In one year's time, [Student] will be able to keep track of homework and assignment due dates, remember to turn in assignments and homework, remember to bring home (or return) books and materials.

1. Criteria for Mastery: 75% accuracy;
  2. Methods of Measurement: Student samples/teacher observations
- i. Schedule of Services:
    - i. Dates: 11/19/20 to 5/21/21
      1. Special Education and Related Services
        - a. Language Arts – 200 minutes/week in regular classroom
        - b. Math – 200 minutes/week in regular classroom
        - c. Reading Support in Science Class – 100 minutes/week in regular classroom
        - d. Reading Support in Social Studies Class – 100 minutes/week in regular classroom
      2. Setting: In regular classroom 80%+ of the school day
    - ii. The special education and related services and setting were the same for the 8/16/21 to 11/18/21 time period.
  - j. Progress Documentation:
    - i. Progress will be reported to parents quarterly.
35. In September 2021, the District stated that it was informed by its IEP specialist that all services minutes needed to be updated for special education students. It is unclear why the service minutes needed to be updated. As a result of this directive, on September 20, 2021, the special education teacher and the Parent had a phone call regarding changes to the service minutes in Student’s IEP. Pursuant to the call, Student’s IEP was amended. The modifications to Student’s educational plan included the following:
- a. Student’s special education services increased in each language arts and math from 200 minutes/week to 275 minutes/week.
  - b. Student’s “other reading support” in both science and social studies classes decreased from 100 minutes/week to 50 minutes/week.
  - c. Student was to receive special education services in the area of “social skills” for 275 minutes/week in the special education room.
36. Attached to the September 20, 2021 IEP was a PWN. The PWN indicated, in part:
- a. Change of placement/modification included:
    - i. The increase in the Student’s language arts and math special education services.
    - ii. The addition of special education services in the area of “social skills.”
    - iii. History and science support in reading and writing for 50 minutes/week in the general education setting
  - b. Parent agrees to the implementation of the IEP on September 20, 2021.
37. On September 23, 2021 a meeting invitation was created regarding a meeting scheduled for September 27, 2021. The meeting invitation was identical, with the exception of the Student name, to the meeting invitation for Student D.D. (see Student D.D. Findings of Facts #9).



38. On September 24, 2021 a meeting invitation was created regarding a meeting scheduled for November 8, 2021. The purpose of the meeting was "TriAR." The meeting invitation was identical, with the exception of the Student name, to the meeting invitation for Student D.D. (see Student D.D. Findings of Facts #10).
39. A meeting was held on September 27, 2021. No amendments or modifications were made to the Student's IEP. The District provided a PWN following the meeting. The PWN is identical, with the exception of the Student name, to the PWN issued for Student D.D. (see Student D.D. Findings of Facts #11).
40. On October 7, 2021, an Assessment Plan was completed for an FBA. The Assessment Plan is identical, with the exception of the Student name, to the Assessment Plan completed for Student D.D. (see Student D.D. Findings of Facts #12).
41. On October 27, 2021 an FBA was completed. The FBA determined, in part:
- a. Identified problem behaviors:
    - i. The Parent reports that the Student has previously shown some defiance and instance of aggression (yelling, hitting, kicking, throwing objects) at home, especially to brother, when [Student] is escalated. [The Parent] reports that there was a recent medication change and has since not seen as many instances of problem behavior.
    - ii. School staff report that the Student will occasionally get quiet and refuse to work while in class. Teachers report that these instances occur rarely and do not cause a large distraction to the class.
  - b. Analysis and recommendations:
    - i. The presumed function or explanation of the behaviors is to get preferred tasks/activities or attention.
    - ii. The Student's behavior patterns *may* require instructional modifications or accommodations only.
42. On November 8, 2021 a REED was completed. The REED determined, in part:
- a. The following may be contributing to the Student's educational performance/difficulties:
    - i. The Student's history;
    - ii. Social, emotional, and/or behavioral factors; and
    - iii. Academic achievement factors.
  - b. Communication, physical, cognitive, nor functional performance and adaptive behaviors factors were determined to be a contributor to the Student's educational performance/difficulties.
  - c. The IEP team has adequate data related to the Student's history, social/emotional/behavioral factors, and academic achievement factors.

- d. No additional data are needed to determine eligibility for special education and related services.
  - e. The parent notice section which requires an indication of whether or not the District explained the reasons for its determination that additional data are not needed and that the parent understands the right to request an evaluation was not filled out.
  - f. The Parent was listed as a participant of the REED process.
43. The results of the REED were discussed at the November 8, 2021 IEP meeting and a new annual IEP was developed. The IEP included, in part:
- a. The Student exhibits behaviors that impede their learning or that of others.
    - 1. Positive behavioral interventions, strategies and accommodations are included in the IEP;
    - 2. Behavior goals are included in the IEP;
    - 3. An FBA does not need to be conducted.
  - ii. The Student requires modifications described in the IEP under annual goals and/or instructional accommodations.
  - b. Instructional Accommodations and/or Modifications:
    - i. Other:
      - 1. Utilize a calm soothing voice when interacting with [Student]. Allow cool down space, for example [the special education classrooms]. Use and encourage cooperative listening, divert the emotion, allow [Student] to complete a task that [they are] interested before [they] attempt a difficult task, use positive reinforcement and motivators, provide choices, keep tone neutral.
      - 2. Avoid mentioning about [their] father.
  - c. Present Levels and Annual Measurable Goals in Reading:
    - i. Present Levels: The PLAAFP contained the same language as the prior IEP with the addition of the following:
      - 1. ELA Checkpoint #4-Level 1-43% accuracy; [they] scored 9/42;
      - 2. Based on STAR computer-based reading assessment test, [Student] scored in the 2<sup>nd</sup> percentile rank;
      - 3. [Student's] reading skills are comparable to those of a typical 1<sup>st</sup>-grade student after the first month of the school year.
    - ii. Annual Goal:
      - 1. By November 2022, [Student] will cite textual evidence to support analysis of what a text says and draw inferences from the particular text, written or verbally, with 75% accuracy, as measured by student work samples and teacher recorded data.
  - d. Present Levels and Annual Measurable Goals in Written Language:

- i. Present Levels: The statement was identical to the statement in the previous IEP.
  - ii. Annual Goal: By November 2022, when given a topic, [Student] will write short 5 sentence paragraphs using correct grammar, capitalization, punctuation, and spelling with 75% accuracy in 4/5 writing as measured by completed writing samples.
- e. Present Levels and Annual Measurable Goals in Math:
  - i. Present Levels: [Student] is currently earning a 75% in math class.
  - ii. Annual Goal:
    - 1. By November 2022, [Student] will be able to divide multi-digit numbers using the standard algorithm with 75% accuracy, as measured by student work samples.
    - 2. By November 2022, [Student] will be able to compute quotients of fractions and solve word problems involving the division of fractions by fractions with 75% accuracy as measured by student work samples.
- f. Present Levels and Annual Measurable Goals in Executive Function:
  - i. Present Levels: [Student] does [their] work well when closely monitored. [Student] shuts down when frustrated, but [they] do not disrupt the class.
  - ii. Annual Goal: [Student] will attend to task 75% of the time as measured by student work samples.
- g. Present Levels and Annual Measurable Goals in Social/Emotional:
  - i. Present Levels: [Student] has various struggles academically and behaviorally.
  - ii. Annual Goal: The social/emotional goal was identical to the social/emotional goal for Student D.D. (see Student D.D. Findings of Facts #15(h)(ii)).
- h. Schedule of Services:
  - i. Dates: 11/8/21 to 5/27/22
    - 1. Special Education and Related Services
      - a. Language Arts services increased by 75 minutes from the prior IEP.
      - b. Math services increased by 75 minutes from the prior IEP.
      - c. The addition of services in the area of Social Skills was added for 275 minutes/week in the special education setting.
      - d. The reading support in science and social studies classes was removed.
    - 2. Setting: In regular classroom 80%+ of the school day
  - ii. The special education and related services, and setting were the same for the 8/5/22 to 11/7/22 time period.
- i. Progress Documentation:
  - i. Progress will be reported to parents quarterly.

44. Attached to the November 8, 2021 IEP was a PWN. The PWN indicated, in part:
- a. Student input, parent input, teacher input, classroom performance, and classroom observation were reviewed and discussed.
  - b. The Parent agrees to the implementation of the IEP.
45. On February 16, 2022, the Parent sent an email to the District requesting an emergency IEP meeting. The email stated, in part:
- a. The current plan for pull-outs and the option for the special education classroom needs to be revisited;
  - b. Student has had several incidents of eloping and skipping classes; and
  - c. Student has expressed that they would like to be in a smaller class setting for assistance with understanding their work.
46. On February 17, 2022, a meeting invitation was created regarding a meeting scheduled for February 25, 2022. The purpose of the meeting was “Emergency IEP Amendment.” The invitation indicates that the Parent confirmed the meeting date/time on February 16, 2022 via phone.
47. On February 25, 2022 an IEP meeting was held to change and/or modify the educational program for Student. The modifications to Student’s educational plan included the following:
- a. Schedule of Services
    - i. Dates: 2/25/22 to 5/27/22:
      1. Special Education and Related Services
        - a. Student was to receive 175 of their math services in the special education setting and 100 minutes in the general education classroom.
        - b. Student was to receive 175 of their language arts services in the special education setting and 100 minutes in the general education classroom.
      2. LRE: LRE-related statements were added and are identical, with the exception of student name, as Student D.D.’s LRE statements (*see Student D.D. Findings of Facts 15(i)(i)(3)*).
    - ii. Dates: 8/5/22 to 11/7/22:
      1. Special Education and Related Services
        - a. Student was to receive 100 minutes of math services in the special education setting and 175 minutes in the general education classroom.
        - b. Student was to receive 100 minutes of language services in the special education setting and 175 minutes in the general education classroom. (*Note: The District stated this change in services was an error and the services should have remained the same.*)

2. The setting and LRE statements were the same for the 8/5/22 to 11/7/22 time period.
48. Attached to the February 25, 2022 IEP was a PWN. In addition to keeping all the previous PWN language attached to the November 8, 2021 IEP, the following additional provisions were added to the PWN, in part:
- a. Student input, parent input, teacher input, classroom performance, and classroom observation were reviewed and discussed.
  - b. The contents of the Parents email dated February 16, 2022
  - c. Response to Parent Concerns:
    - i. The IEP team proposes to support [Student] in [their] classes to try to get [Student] to stay in [class] and to not leave when [they] get frustrated. [Student] will be in the inclusion math and inclusion language arts classes first to get the instruction and teaching, because the team agrees [Student] is capable and understands how to do the 7<sup>th</sup> grade curriculum. [Student] will then go to resource math and language arts for the remainder of the class time to offer more support and limit frustrations with behavior. IEP team proposed strategies to help [Student] in the classroom to limit frustrations. For example, the use of a sticky note to let the teacher know [Student] is frustrated and needs assistance.
49. Sometime in April 2022, the Parent sent an email to the District requesting an IEP meeting. The Parent detailed the concerns they had for Student, along with Student D.D. (see Student D.D. Findings of Facts #17).
50. On April 21, 2022, a meeting invitation was created regarding a meeting scheduled for May 4, 2022. The meeting invitation was identical, with the exception of the Student name, to the meeting invitation for Student D.D. (see Student D.D. Findings of Facts #18).
51. On May 4, 2022 another IEP meeting was held to amend the Student's February 25, 2022 IEP, per the Parent's request. There were no modifications made to the Student's IEP document. However, the PWN attached to the IEP was updated. In addition to keeping all the previous PWN language attached to the November 8, 2021 IEP and the February 25, 2022 IEP, additional provisions were added to the PWN. The additional provisions are identical to the PWN issued for Student D.D. (see Student D.D. Findings of Facts #19), with the exception of Student B.D.'s then-current grades.
52. At the IEP meeting, an Assessment Plan was completed for an FBA. The Assessment Plan is identical, with the exception of the Student name, to the Assessment Plan completed for Student D.D. (see Student D.D. Findings of Facts #20).
53. On May 9, 2022, a meeting invitation was created regarding a meeting scheduled for May 23, 2022. The meeting invitation was identical, with the exception of the Student name, to the meeting invitation for Student D.D. (see Student D.D. Findings of Facts #21).

54. On May 23, 2022 another IEP meeting was held to amend the Student's IEP, per the Parent's request. The only modification to Student's IEP was the addition of ESY services. An ESY Addendum dated May 23, 2022 indicated, in part:
- a. Documents reviewed: Information in current IEP (Document date: 5/23/22)
  - b. The student requires the following ESY services:
    - i. Instructional
    - ii. Behavioral
  - c. ESY services June 1 – June 22, 2022 by special education staff
55. Attached to the May 24, 2022 IEP was a PWN. In addition to keeping all the previous PWN language attached to the November 8, 2021 IEP, February 25, 2022 IEP, and the May 4, 2022 IEP, additional provisions were added to the PWN. The additional provisions are identical to the PWN issued for Student D.D. (see Student D.D. Findings of Facts #23), with the exception of the following information:
- a. Current Progress in School:
    - i. [Student] was reading at a 2<sup>nd</sup> grade level since the beginning of the year and is still reading at a 2<sup>nd</sup> grade level. There was some discussion about regression due to checkpoint scores indicating higher scores in September and lower scores in November, however it was explained that the checkpoints do not test the same material and test on new standards each time. There are other factors to consider for example lack of attendance. When the material is read to [Student], [their] comprehension is near 80% so the accommodations of text to speech are very important.
56. At the IEP meeting, an Assessment Plan was completed. The Assessment Plan is identical, with the exception of the Student name, to the Assessment Plan completed for Student D.D. (see Student D.D. Findings of Facts #24).
57. A progress report was provided to the Investigator that included data for October 2021, January 2022, March 2022, and May 2022 time periods. The report included a progress code of "sufficient progress" for each of the reading, writing, math, and executive function goals for the four time periods. Comments were included for some of the time periods and goals. However, no comments were included for the math or executive function goals after October 2021. No progress was reported for the social/emotion goal.
58. The District stated that there were no disciplinary records for Student B.D.
59. Attendance records were provided to the Investigator that indicated that Student B.D. had been absent for a total of 11.00 days between August 9, 2021 and May 26, 2022. However, the detailed daily records indicated the following, in part:
- a. Unexcused absences: 91 class periods
  - b. Unexcused tardies: 49 class periods
  - c. Excused absences: 47 class periods

Each day consists of six class periods. In total, Student D.D. was absent from 148 class periods; a total of 24.67 days.

60. The District conducted a reevaluation of Student B.D. The evaluation report provided by the Parent is dated August 9, 2022.

### **District's Failure to Cooperate with Investigation**

At the start of this investigation, the District was asked to provide numerous educational records pertaining to Student D.D. and Student B.D. no later than July 26, 2022. Through its counsel, District provided some, but not all documents requested, on July 26, 2022. District's counsel indicated some records would be provided upon receipt but did not indicate a date (e.g., discipline records). Other records requested were not addressed at all (e.g., attendance records).

Upon inspection of the records the District did provide, it was discovered that documents were missing pages and other requested documentation was not provided at all (e.g., IEPs, REEDs, PWNs, etc.). The Investigator requested that all documentation that was missing or not provided be produced. The District provided a significant amount of additional documentation to the Investigator on August 8, 2022.

Upon inspection of the supplemental disclosure, it was discovered that the District still had failed to provide the discipline and attendance records, along with other documentation requested (e.g., emails). The Investigator followed up with the District and asked for production of the requested documentation by August 11, 2022. Additionally, the Investigator asked a number of clarifying questions that were required to be answered and requested the schedules of District staff to hold an interview.

On August 12, 2022, after inquiring about the missing documents and other requests that District had failed to respond to, the District's counsel provided some additional documentation that they had been in receipt of on August 8, 2022 and failed to address a number of the outstanding requests. On August 15, 2022, the PED had to become involved and inform the District of its duty to cooperate in the investigation. Despite the PED's involvement, the District failed to provide additional documentation, respond to the questions posed by the Investigator, or provide District staff's availability to hold an interview until August 18, 2022 when the attendance records were provided and the District indicated there were no discipline records. Then, on August 19, 2022, the District attempted to contact the Investigator to schedule an interview.

During, the interview with the District, the elopement and behavior issues of both Student D.D. and Student B.D. was discussed. The special education teacher indicated they kept a log regarding the students' elopement from class and/or campus. The original request regarding discipline records required any and all incident or behavior-related reports. The log referenced by the special education teacher should have been provided as it falls under the request. Additionally, Student D.D.'s attendance record indicates they were on out of school suspension on November 12, 2021. Surely, documentation regarding the suspension was kept by the District and it should have been provided to the Investigator.

As the District knows, a final report on a state complaint is required to be issued within 60 days of the date of filing. The District and its counsel made it extremely difficult to abide by the short timeframe.

Pursuant to 34 C.F.R. 300.211, a district must provide the state agency with the information necessary for the state agency to carry out its duties under the IDEA.

As evidenced above, the District and its counsel appeared to be less than willing to provide the requested documentation needed to investigate the allegations made in the complaint. Furthermore, it is concerning that had the Investigator not asked specific questions regarding the possibility of additional documentation, the Investigator would never have been provided with same.

It took repeated requests, asking the "right" questions, and the PED's involvement for the District to disclose required documentation. Even then, the disclosures and necessary communication was over three weeks beyond the District's original deadline and some requested documentation was still never provided. The District and its counsel's non-cooperation and/or less than timely disclosure violates 34 C.F.R. 300.211.

This will serve as the District's notice that if any complaints are filed against the District in the future, and there appears to be an unwillingness to cooperate, the District will be cited and will be required to complete corrective action.



## *Discussion and Conclusions of Law*

### *Issue No. 1*

**Whether the District failed to comprehensively evaluate the named students in all areas of suspected disability by failing to timely conduct triennial evaluations and upon Parent's request for same in violation of 34 C.F.R. § 300.303 and 6.31.2.10(D)(2) NMAC.**

#### *Sub-Issue A: Triennial Reevaluations*

Both Student D.D. and Student B.D. have been found eligible for special education and related services since a young age. Upon their first eligibility determination, Student D.D. and Student B.D. were attending a school within New Mexico. After eligibility was established, in 2014, the students' moved to a different state.

While residing in the different state, the students were evaluated at least two separate times. Each time, the students were found to be eligible for special education and related services. However, their disability category changed pursuant to each reevaluation. Specifically, in January 2014 the students were determined to be eligible under the Developmental Delay category. In December 2016, while in another state, the students were determined to be eligible under the Other Health Impairment and the Specific Learning Disability categories. In March 2018, while in another state, the students were determined to be eligible under the Autism category.

In late 2018, the students returned to the District. The District states that a REED was completed in January 2019 for both students. However, the REED documentation was not provided to the Investigator. The District stated that the documentation was "missing" as a result of a change to the student information system being used. The District was asked whether any additional testing was completed pursuant to the January 2019 REED, the District stated it did not believe so. While the REED documents could not be verified, other documentation provided by the District suggests that a REED was in fact done in January 2019. Thus, Districts assertion that a REED was completed is credible.

In November 2021, a REED was completed for both students. The REED determined additional data, including additional testing, was not necessary as there was adequate data to determine: (1) that the students continued to have a disability; (2) the educational needs of the students; (3) the present levels and related developmental needs of the students; (4) whether the students continue to need special education and related services; and/or (5) whether any additions or modifications to the special education and related services are needed to enable the students to meet the measurable annual goals set out in the IEPs and to participate, as appropriate, in the general education curriculum.

Per 34 C.F.R. § 300.303 and 6.31.2.10(D)(2) NMAC, a district must conduct a reevaluation every three years unless the district and the parent agree that a reevaluation is unnecessary.

Presumably, the District accepted the 2018 evaluation conducted by a different state as the District did not conduct a new evaluation upon the students' reenrollment in the District. See *Letter to Anonymous*, 72 IDELR 222 (OSEP 2018). Thus, based on the evaluation conducted in March 2018, a reevaluation should have occurred no later than March 2021, unless there was an agreement not to reevaluate.

At the time the students were evaluated in March 2018, they were nine years old and had been found eligible under at least four different disability categories. In January 2019, less than a year had passed since the previous evaluation. It may be reasonable that the District and the Parent determined another evaluation was not necessary at that time. However, no documentation was provided to indicate a written agreement was made as to whether the reevaluation was unnecessary. Thus, the reevaluation still should have occurred no later than March 2021.

No reevaluation, or agreement not to reevaluate, was conducted prior to March 2021. Rather, another REED was conducted in November 2021, eight months after the reevaluation deadline. While the REED documentation states the Parent was involved in the REED decision, the Parent has no recollection of the discussions surrounding the REED. Furthermore, there is no written agreement in which the Parent agrees to waive the reevaluation. In fact, the REED document specifically states that the District is to notify the Parent of its determination that additional data is not needed and the Parent's right to request an evaluation. The REED document requires the Parent to indicate whether this information was relayed or not and to include their signature. The corresponding section of the REED is blank.

As there was no agreement between the District and the Parent to not reevaluate either student, the District failed to conduct the required triennial reevaluations of Student D.D. and Student B.D. and is in violation of the IDEA and NMAC.

Since the filing of this complaint, the District has conducted reevaluations for both students. The Parent provided the evaluation reports to the Investigator on August 25, 2022.

While the IEP team is best left to determine whether a reevaluation is needed or if there is adequate data on a student, it raises alarms that the District did not reevaluate Students D.D. and B.D. given their circumstances. Specifically, both of the students appear to have had a significant escalation in behaviors, their behaviors were impeding their learning and it is unclear why, there is information that the students may qualify under an additional disability classification, and there was a change in placement. All of these circumstances warrant a reevaluation. See *West-Linn Wilsonville School District v. Student*, 63 IDELR 251 (D. Ore. 2014);

*District of Columbia Public Schools*, 75 IDELR 176 (SEA 2019); *Board of Educ. of City of White Plains*, 20 IDELR 1475 (SEA NY 1994).

Reevaluations do not just establish eligibility. They also help the IEP team determine the educational needs of the child, including the child's present levels, developmental needs, and special education and related services needs.

Here, the last time the students were evaluated they were nine years old. At the time this complaint was filed, the students were thirteen years old. It is unlikely that the students' educational needs, present levels, developmental needs, and special education and related service needs did not vary during their highly developmental time period that would require a reevaluation so that the IEP team would be equipped with all of the necessary information to provide FAPE. The District is cautioned to be wary of circumstances that may warrant a reevaluation and to be cautious when determining a reevaluation is unnecessary.

#### *Sub-Issue B: Parent Request for Reevaluation*

The Parent asserts in the complaint that they requested a reevaluation on May 23, 2022. The Parent requested an evaluation include testing in occupational therapy, physical therapy, speech/language, achievement (e.g., reading, writing, and math related testing), cognitive ability, and autism. Despite the request, the Parent asserts that the District declined most of the evaluations requested.

However, the PWN dated May 23, 2022 states that the Parent's request for the testing indicated above was approved. The District obtained written parental consent for the testing on June 22, 2022 and testing ensued thereafter.

The Parent provided the evaluation reports to the Investigator on August 25, 2022. For Student D.D., the evaluation report is dated August 5, 2022. For Student B.D., the evaluation report is dated August 9, 2022.

As the District conducted evaluations, upon the Parent's request for same, the Parent's assertion that the District declined their request for a reevaluation, is inaccurate and there is no violation for same.

**As to Issue No. 1, the District is cited, and Corrective Action is required.**

#### *Issue No. 2*

**Whether the named students' IEPs were tailored to their unique needs and were reasonably calculated to enable the students to make progress appropriate in light of their circumstances pursuant to 34 C.F.R. § 300.320, 34 C.F.R. § 300.324, and 6.31.2.11(B) NMAC.**

The IDEA requires that the school offer an IEP reasonably calculated to enable a child to make progress appropriate in light of their circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). In order to analyze the adequacy of an IEP, the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, is considered. 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 206-207. If both prongs are met, the IEP is appropriate. *Id.* at 207.

### Student IEPs

Student D.D. had three different IEPs during the above stated timeframe – November 8, 2021, May 4, 2022, and May 23, 2022. The contents of the November 8, 2021 and May 4, 2022 IEP are identical. The District issued a new IEP with the May 4, 2022 date when it should have only issued a PWN as no changes to Student D.D.'s educational plan actually occurred. The May 23, 2022 only differs from the November 8, 2021 IEP in that Student D.D. was now eligible for ESY services. As that is the only change in Student D.D.'s educational plan, only the November 8, 2021 IEP will be discussed in detail below with the understanding that the other two IEPs result in the same outcome.

Student B.D. had four different IEPs during the above stated timeframe – November 8, 2021, February 25, 2022, May 4, 2022, and May 23, 2022. The contents of the November 8, 2021 and February 25, 2022 IEPs differ only in regards to the services Student B.D. was to receive and their LRE. The contents of the May 4, 2022 IEP are identical to the February 25, 2022. The District issued a new IEP with the May 4, 2022 date when it should have only issued a PWN as no changes to Student B.D.'s educational plan actually occurred. The May 23, 2022 only differs from the February 25, 2022 IEP in that Student B.D. was now eligible for ESY services. As that is the only change in Student B.D.'s educational plan, only the November 8, 2021 IEP and the February 25, 2022 IEPs will be discussed in detail below with the understanding that the other two IEPs result in the same outcome.

### Impact of Failure to Reevaluate Students

The November 8, 2021 IEPs were developed as part of Student D.D. and Student B.D.'s triennial reevaluations. According to the PWNs, the IEP team reviewed student input, parent input, teacher input, classroom performance, classroom observation, and school records data. Moreover, other than the addition of Student D.D.'s performance on the STAR and both students' scores on the district assessments during the fall of 2021, many of the comments in the IEPs

regarding the students' strengths and weaknesses were similar, if not identical, to the November 2020 IEPs.

Student D.D.'s disability category has changed at least four times since eligibility. In Student's March 2018 evaluation report, while finding Student D.D. eligible under the Autism category, it was noted that the team did not feel secure in suggesting that Student D.D. had a learning disability because of their behaviors and frequent moves in their educational career. However, it is clear that since the return to the District in 2018, Student D.D. has exhibited deficits in reading, math, and writing. Despite this, the District did not reevaluate Student D.D. in these areas to either determine (1) whether Student D.D. had a learning disability or (2) to address all of Student D.D.'s disability related needs.

Similar to Student D.D., it is clear that since Student B.D.'s return to the District in 2018, Student B.D. has exhibited deficits in reading, math, and writing. Despite this, the District did not reevaluate Student B.D. in these areas to either determine (1) whether Student B.D. had a learning disability or (2) to address all of Student B.D.'s disability related needs.

A reevaluation would have enabled the District to delve into the root of Student D.D. and Student B.D.'s reading, math, writing, and behavioral deficits, which is crucial to the development of an IEP tailored to the students' individual needs. Pursuant to the findings of Issue No. 1, the District should have completed a reevaluation of Student D.D. and Student B.D. no later than March 2021. As the District failed to do so, the IEP development process did not comply with IDEA's procedures. The District failed to tailor an IEP to Student D.D. and Student B.D.'s individualized needs because it did not sufficiently evaluate students to determine the student's individualized needs.

#### Issues with Present Level and Measurability of Goals within Student D.D. and Student B.D.'s 2021 and 2022 IEPs

Both Student D.D. and Student B.D.'s November 8, 2021 IEPs lack the necessary detail required. Specifically, the present levels are vague, no measurable baselines are noted, and some goals are not objectively measurable.

#### **Present Level Statements**

The statement of Present Levels of Academic Achievement and Functional Performance (PLAAFP) should be updated periodically to ensure that it accurately reflects the student's present levels of performance for the current IEP. *See Bucks County Montessori Charter Sch., 75 IDELR 289 (SEA*

PA 2019). A statement of PLAAFP that is unclear or ambiguous could result in a denial of FAPE. *Clovis Unified School District*, 109 LRP 69459 (SEA CA 10/19/09). A district cannot evaluate a student's progress towards IEP goals without a clear understanding of the student's current strengths and weaknesses. Thus, failure to obtain appropriate baseline data before developing IEP goals may result in a denial of FAPE. *See Methacton Sch. Dist. v. D.W. and R.W.*, 117 LRP 43200 (E.D. Pa. 10/06/17).

Here, in Student D.D.'s and Student B.D.'s IEPs, the PLAAFP statements under the reading and writing goals contain some of the same language as what was included in each students' previous IEPs and are still vague in that no baselines or level of progress from the previous IEP is noted. The PLAAFP statements for the math, sustained attention, and social/emotion sections are similar – all are ambiguous and do not provide a clear picture as to Student D.D. or Student B.D.'s present levels.

### **IEP Goals**

The reading, writing, math, and sustained attention goals are all extremely similar, if not identical, to the goals in Student D.D. and Student B.D.'s previous IEPs. As the goals only varied slightly from the previous IEP goals, it calls into question whether the goals are appropriate for Student D.D. and/or Student B.D. as it appears no progress was made. *See Fairhaven Pub. Schs.*, 75 IDELR 175 (SEA MA 2019) (finding that because the student's IEP goals were "near verbatim continuation of the goals" found in the student's previous IEPs, the IEP was not reasonably calculated to provide the student FAPE).

IEP goals should be objectively measurable. *Bridges v. Spartanburg County Sch. Dist. Two*, 57 IDELR 128 (D.S.C. 2011). A well-written goal should pass the "stranger test" – a person unfamiliar with the IEP can implement the goal, implement the assessment of the student's progress on the goal, and determine whether the student's progress was satisfactory. *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006).

While Student D.D.'s writing and math goals were updated so that each is now objectively measurable, the reading goal is not and does not pass the "stranger test." Similarly, the social/emotional goals in Student D.D. and Student B.D.'s IEPs and the accompanying benchmarks are confusing. When using benchmark goals, each benchmark should be treated as an interim step to reach the overall goal. Here, the benchmarks appear to be separate, unrelated goals. The District had to be asked to clarify how the benchmarks correlate. The District stated that if Student D.D. and Student B.D. are kept busy (Benchmark 1), listens to adult requests to return to class (Benchmark 2), and seeks an adult to help control emotions (Benchmark 3) then the students would be less likely to elope (overall goal). The correlation between the benchmarks

and the overall goal should be clear to the reader so that an explanation is not necessary – again it does not pass the “stranger test.”

Finally, the goals are riddled with errors. The incorrect student’s name is included in Student D.D.’s IEP and the criteria for mastery, method of measurement, and the language contained within the goals do not always match. For example, the social/emotional goal in Student D.D.’s IEP requires that Student D.D. have no more than one incident a week of eloping. However, the criteria for mastery states no more than one incident a month – a very different standard.

Despite the students’ IEP goals remaining mostly unchanged, the District failed to conduct a reevaluation of Student D.D. and Student B.D.’s needs and barely increased the special education services offered to each student from their November 2020 IEPs. Moreover, nothing was put in place to address either student’s increasing absenteeism.

At the conclusion of the 2021-22 school year, Student D.D. was absent for more than 180 class periods and had a significant amount of tardies. Student B.D. was absent for more than 140 class periods and had a significant amount of tardies. Student D.D. and Student B.D.’s absences should have raised alarms for the District and should have subsequently been addressed in the students’ IEPs. *See Huron Sch. Dist., 68 IDELR 178 (SEA SD 2016)* (finding that when a student with a disability has excessive absences, it may need to be addressed as a behavioral need if the absences are impeding the student’s learning. Failure to address excessive absences timely may result in a violation of the IDEA).

#### Other Issues within Student D.D. and Student B.D.’s 2021 and 2022 IEPs

Many of the IEPs for Student D.D. and Student B.D. contain errors. Moreover, many of the PWNs issued contain contents of previously issued PWNs, indicates student input was considered when the student was not in attendance at the meeting, and does not accurately describe the changes made to the education plan including indicating support in reading and writing when no writing support is in the schedule of services. The District is cautioned to produce IEPs free of error and ambiguity and PWNs that are accurate and contain contents only related to the IEP meeting it is giving notice of so that confusion or problems do not arise in the future.

Additionally, the IEPs of the two students are very similar. Keeping in mind the students’ biological circumstances, the students’ individual needs should be considered and their IEPs should reflect same. During the telephonic interview with the District, the District made a point to say that the students should be treated individually and it was concerned they were not based on the similarity of the complaints and the formatting of the acknowledgement letter.

However, it is the District that has developed similar education plans with verbatim language within, documentation that references the wrong student, and has issued identical notices for the two students. Moving forward, the District is cautioned to ensure that it is clear the individualized needs of each student are considered and that any similarities are based on the student's circumstance and not out of ease.

For all of the reasons stated above, neither of the *Rowley* prongs have been met. The District failed to tailor the November 8, 2021 IEP to meet Student D.D.'s individualized needs and the November 8, 2021 and February 25, 2022 IEPs to meet Student B.D.'s individualized needs resulting in a denial of FAPE.

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

**Issue No. 3**

**Whether the District considered the strategies described in 6.31.2.11(B)(5)(d) NMAC when developing the students' IEPs.**

The District stated in its response to the complaint that the IEP team considered the strategies described in 6.31.2.11(B)(5)(d) NMAC but failed to document such with the considerations form. While the District claims the strategies were considered, given the findings under Issue No. 2, there was no further investigation into whether they were actually considered, as claimed. Moreover, the state regulations require that the strategies be considered *and* documented. 6.31.2.11(B)(5)(d) NMAC. As the District failed to document the consideration of the required strategies, the District is in violation of same.

**As to Issue No. 3, the District is cited, and Corrective Action is required.**

**Issue No. 4**

**Whether the District should have conducted manifestation determination reviews when the named students were subjected to a series of removals that constituted a pattern in violation of 34 C.F.R. § 300.530(e); 6.11.2.11(B)(1) NMAC.**

According to Student D.D.'s attendance record, between August 9, 2021 and May 26, 2022, Student D.D. has only been subjected to one documented removal from school. Student D.D. was suspended from school on November 12, 2021. The details regarding the suspension were not made aware to the Investigator.



According to Student B.D.'s attendance record, between August 9, 2021 and May 26, 2022, Student B.D. has not been subjected to any documented removal from school.

A manifestation determination review (MDR) is required when a district proposes disciplinary measures that will result in a change of placement to the child. See 34 C.F.R. § 300.530(e); 6.11.2.11(B)(1) NMAC.

Per 34 C.F.R. § 300.536, a change in placement occurs when:

1. There is a removal for more than 10 consecutive school days; or
2. When a child is subjected to a series of removals that constitute a pattern:
  - a. Because the series of removals totals more than 10 school days in a school year;
  - b. Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - c. Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

As Student D.D. and Student B.D. have not been subjected to a series of removals that resulted in a change of placement, the District was under no obligation to conduct an MDR for either student.

**As to Issue No. 4, the District is not cited.**

#### **Issue No. 5**

**Whether the District should have conducted functional behavior assessments (FBA) and/or develop behavior intervention plans (BIP) once the named students' behaviors started to impede their learning pursuant to 34 C.F.R. § 300.324(a)(2)(i) and 6.31.2.11(F) NMAC.**

It is clear from the record that Student D.D. and Student B.D.'s behaviors impede their learning or the learning of others. Both students refuse to complete work, have difficulty maintaining attention in class, are not well equipped with coping skills, elope from class and/or campus, etc. Both students' IEPs attempt to address the students' behaviors through accommodations/modifications, IEP goals, and special education services. Despite Student D.D.'s and Student B.D.'s behaviors, a BIP was never developed.

In October 2021, the Parent requested an FBA for both students. An FBA was conducted for both students. The FBAs determined that instructional modifications or accommodations may be necessary for Student D.D. and Student B.D. but a BIP was not warranted for either student. Per the FBA recommendations, a BIP was not developed.

Although the IEP team can recommend and create a BIP in the absence of an FBA determination of need, there is only one circumstance in which a BIP is required by the IDEA. If a student is subjected to a disciplinary change in placement and the conduct is found to be a manifestation of their disability, the district must either (1) conduct a FBA and implement a BIP or (2) if a BIP is already developed, review and modify, as necessary. 34 C.F.R. § 300.530(f); 6.11.2.11(D) NMAC.

Pursuant to the discussion under Issue No. 4, neither student was subjected to a disciplinary change in placement, nor did an MDR determine their conduct was a manifestation of their disability. As such, the District was under no obligation to conduct an FBA and/or develop a BIP.

**As to Issue No. 5, the District is not cited.**

### **Issue No. 6**

**Whether the District denied Parent’s meaningful participation in the modification of the named students’ IEPs in violation of 34 C.F.R. § 300.324(a)(1)(ii); 6.31.2.11(B)(2) NMAC.**

The Parent alleges in the complaint that the District has denied the Parent’s meaningful participation by (1) disregarding their requests; (2) predetermination; and (3) failure to provide progress reports. Each allegation is discussed below separately.

#### **Sub-Issue A: Disregarding Parent Input**

The Parent alleges that they have felt disregarded, their requests are ignored or minimally addressed, they are not respected by the District, nor do they feel like an equal participant.

Per 34 C.F.R. § 300.324(a)(1)(ii) and 6.31.2.11(B)(2) NMAC, the IEP team must consider, in part, the concerns of the parent when developing an education plan for a student.

Since September 2021, there have been numerous IEP meetings for both students. Specifically, for Student D.D., there was an IEP meeting on September 27, 2021; November 8, 2021; May 4, 2022; and May 23, 2022. For Student B.D., there was an IEP meeting on September 27, 2021; November 8, 2021; February 25, 2022; May 4, 2022; and May 23, 2022. The Parent participated in each of the meetings for both of the students. In fact, the Parent requested at least three of the meetings – September 27, 2021; February 25, 2022 (only for Student B.D.); and May 4, 2022.

The IEPs that were produced as a result of the meetings included the concerns, requests made by the Parent, and/or input of the Parent. All written documentation regarding the Parent’s requests have been addressed by the District in the PWNs. The Parent may not agree with the decision regarding the requests but there is no IDEA mandate to accede to parent demands. *See Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132 (8th Cir. 1999).

As there is evidence that the District considered the Parents input and requests, the Parent was not denied meaningful participation.

*Sub-Issue B: Predetermination*

A parent must be afforded with the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the child's FAPE. 34 CFR 300.501 (c)(1); 6.31.2.11(B)(2) NMAC. Predetermination occurs when district members of the IEP team unilaterally make decisions regarding the student's identification, evaluation, placement, and/or FAPE.

The Parent alleges that the District engaged in predetermination because the District did not consider the Parent's request for a behavior technician from an outside agency. The Parent further alleges that the District has a policy to unilaterally refuse to consider school-based ABA, even when an educational need is present.

This allegation is unsubstantiated. The PWN issued on May 4, 2022 and May 23, 2022 indicate the District was willing to consider the request. While the Parent's request was denied, that is not an indicator of predetermination. Moreover, no policy was located which stated school-based ABA would not be considered by the District. The District did state in the May 23, 2022 PWN that a memorandum of understanding would have to be in place before an outside agency was permitted to provide services. However, this is not evidence of a policy that unilaterally refuses to consider such requests.

*Sub-Issue C: Progress Reports*

The Parent asserts that they were never provided with progress reports for Student D.D. or Student B.D. Pursuant to the findings under Issue No. 7, the Parent's allegation is substantiated. However, while the Parent was not provided progress reports, the District asserts that it is in constant communication with the Parent regarding Student D.D. and Student B.D. The District's assertion appears to be reasonably credible. Given the frequent contact between the parties, including the frequent holding of IEP meetings, it does not appear that the Parent has been denied the ability to meaningfully participate in regards to Student D.D.'s or Student B.D.'s educational plan based on the District's failure to provide written progress reports.

**As to Issue No. 6, the District is not cited.**

**Issue No. 7**

**Whether the District monitored the named students' progress and provided reports of the same in accordance with students' IEPs pursuant to 34 C.F.R. § 300.320.**

### Sub-Issue A: Providing Progress Reports

The IDEA requires that a student's IEP detail when periodic reports will be *provided* to a parent. 34 C.F.R. § 300.320.

The District provided progress reports to the Investigator for Student D.D. and Student B.D. Each of the progress reports contained progress monitoring data in October 2021, January 2022, March 2022, and May 2022. However, for both Student D.D. and Student B.D., no progress monitoring data was included in the report for each of the students social/emotional-related goal. The District stated there was an internal miscommunication regarding whom would complete the progress report for the social/emotional-related goals. As Student D.D. and Student B.D.'s IEPs require quarterly progress reporting on the social/emotional-related goals, and the District did not do such, the District failed to provide progress reports to the Parent.

Moreover, while the District provided the Investigator with progress reports, the progress reports were never provided to the Parent. The District stated that progress was discussed at parent-teacher conferences. However, when further inquired as to when parent teacher conferences were held to ensure the Parent was provided quarterly progress reports, the District failed to indicate specific dates to confirm conferences occurred in October 2021, January 2022, March 2022, and May 2022. Furthermore, the District stated conferences are held virtually and that a "conversation" was had with the Parent regarding progress. There is no indication the District actually provided a copy of the progress report to the Parent either electronically or a hard copy.

As no progress reports have been provided to the Parent, the District is in violation of same.

### Sub-Issue B: Monitoring Progress

Aside from the fact that the Parent was not provided with Student D.D. nor Student B.D.'s progress reports, the progress reports that were provided to the Investigator are insufficient. See Student D.D. Findings of Facts #25 and Student B.D. Findings of Facts #57.

The information within a progress report should use the same method of measurement set forth in the student's IEP goals. See *Seattle Sch. Dist.*, 113 LRP 19336 (SEA WA 04/03/13).

In this case, most of the reported progress is not measurable to the goals, the progress reported is unsubstantiated as no comments were included, or progress was not reported at all. There are few objective statements that support the District's assertion that Student D.D. or Student B.D. is making sufficient progress.

As the District did not measure progress and/or report on progress adequately, the District failed to fully implement the requirements of 34 C.F.R. § 300.320.

**As to Issue No. 7, the District is cited, and Corrective Action is required.**

**Issue No. 8**

**Whether the District’s actions and/or omissions towards the named students resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.**

For the reasons stated above in the discussion of Issue No. 2, the District failed to tailor the November 8, 2021 IEP to meet Student D.D.’s individualized needs and the November 8, 2021 and February 25, 2022 IEPs to meet Student B.D.’s individualized needs resulting in a denial of FAPE.

**As to Issue No. 8, the District is cited, and Corrective Action is required.**

**Summary of Citations**

<b>IDEA/State Rule Provisions Violated</b>	<b>Description of Violation</b>
34 C.F.R. § 300.303 and 6.31.2.10(D)(2) NMAC	The District failed to conduct a triennial reevaluation for Student D.D. and Student B.D.
34 C.F.R. § 300.320, 34 C.F.R. § 300.324, and 6.31.2.11(B) NMAC	The District failed to tailor Student D.D.’s and Student B.D.’s IEPs to meet each students individualized needs.
6.31.2.11(B)(5)(d) NMAC	The District failed to document the consideration of the required strategies.
34 C.F.R. § 300.320	The District failed to measure progress and/or report on Student D.D.’s and Student B.D.’s progress adequately.
34 C.F.R. § 300.101 and 6.31.2.8 NMAC	The District’s actions and/or omissions towards Student D.D. and Student B.D. resulted in a denial of a free appropriate public education (FAPE) to each student.

### **Required Actions and Deadlines**

**By September 12, 2022**, the District's Special Education Director must assure the SED in writing that the District will implement the provisions of this Corrective Action Plan (CAP). The SED 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](mailto: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 SED 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 SED.

Each step in this Corrective Action Plan is subject to and must be carried out in compliance with the procedural requirements of the IDEA 2004 and the implementing federal regulations and State rules. Each step also must be carried out within the timelines in the Corrective Action Plan. If a brief extension of time for the steps in the Corrective Action Plan is needed, a request in writing should be submitted to the Corrective Action Plan Monitor. The request should include the case number, the date for the proposed extension, and the reason for the needed extension. The SED will notify the parties of any extension granted.

**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 **September 2, 2023** and reported to the SED no later than **September 15, 2023**.** All documentation submitted to the SED to demonstrate compliance with the CAP must be clearly labeled to indicate the state complaint case number and step number.

**Corrective Action Plan**

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
1.	As described above, the District will submit a written assurance to the PED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	<b>September 12, 2022</b>	Written Assurance Letter/Email	<b>September 12, 2022</b>
2.	District shall designate a Corrective Action Plan Monitor (District CAP Monitor) to coordinate all corrective action activity required by the District in all cases in which a CAP is currently active or in cases which the District is currently awaiting a final decision and possible corrective action. The designee shall be someone other than the District Special Education Director.	<b>September 12, 2022</b>	District shall identify the designated CAP Monitor in the initial assurances letter required in Step 1.	<b>September 12, 2022</b>
3.	The District Special Education Director, District CAP Monitor, School Principal, and School Special Education Coordinator/Lead shall meet with the PED SED EA assigned to the District and the PED SED CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the District and School plan to take to ensure that the violations are corrected and do not recur. The District Director has the discretion to include other District and school administrators or personnel in this meeting. The	<b>September 19, 2022</b>	Notes from meeting prepared by District	<b>September 26, 2022</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	District Director shall be responsible for arranging this meeting with PED SED staff members.			
<b>4.</b>	The District Special Education Director and CAP Monitor will meet with the students' special education teachers, general education teachers, any related service personnel, school special education coordinator/lead and school principal to review the Complaint Resolution Report to ensure that those persons understand the complaint, the violations that were found, and the corrective actions that will be taken to address the violations.	<b>September 26, 2022</b>	Notes from meeting prepared by District	<b>October 3, 2022</b>
<b>5.</b>	<p>The District shall participate in an audit of student files conducted by auditors with special education program experience appointed by the PED to determine whether the District:</p> <ul style="list-style-type: none"> <li>(1) Includes required components in its IEPs including but not limited to: <ul style="list-style-type: none"> <li>a. Present Levels of Academic Achievement and Functional Performance with Necessary detail and specificity;</li> <li>b. Challenging and measurable goals;</li> </ul> </li> </ul>	<b>December 30, 2022</b>	Audit Report to be provided by PED appointed auditors	<b>January 30, 2023</b>



<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>(2) Complies with reevaluation requirements including deadlines and parent consent to conduct or waive reevaluations;</p> <p>(3) Sufficiently monitors progress and provides written progress reports with sufficient detail to parents.</p> <p>The appointed auditors will determine the start date and schedule for the audit. District shall provide any support and access to all documentation and information requested by the auditors throughout the course of the audit. Any failure to cooperate with the auditors may result in further corrective action.</p> <p>The District shall create and provide a plan to PED to address all areas for improvement identified in the audit report. The plan shall include deadlines for completion of each planned action addressing areas of improvement. District shall address all areas of improvement by September 2, 2023.</p> <p>This plan may include revision of policies and procedures, supplemental training related to</p>		<p>Written plan addressing all areas of improvement identified in the audit report for PED approval.</p>	<p><b>February 27, 2023</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>areas of improvement, direct coaching of special education personnel and periodic review of IEP and progress monitoring compliance.</p> <p>PED will monitor the implementation of the plan until all areas of improvement have been sufficiently addressed. PED has the discretion to require additional audit reporting, training, and support based on the results of this audit and subsequent improvement plan.</p>		Documentation of implementation of Improvement Plan	Plan shall include deadlines for related document submission
6.	<p>The District shall arrange to provide training to District staff (including special education teachers, special education administrators, and related service personnel), on the following special education topics:</p> <p>(4) Required components of an IEP including:</p> <ul style="list-style-type: none"> <li>a. Necessary detail and specificity of Present Levels of Academic Achievement and Functional Performance</li> <li>b. Challenging and measurable goals</li> </ul> <p>(5) When reevaluations are warranted and what is required to waive a reevaluation;</p>	November 4, 2022	<p>Confirmation of the date of the training</p> <p>Confirmation of attendees at the training and plan for addressing provision of training to those staff not in attendance</p>	<p>October 17, 2022</p> <p>November 11, 2022</p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>(6) Requirement to monitor progress and to provide progress reports to parents;</p> <p>The training 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>		Submission of proposed trainer and trainer’s resume and proposed presentation for NMPED approval.	<b>October 3, 2022</b>
<b>7.</b>	District shall submit the recent evaluation reports completed for Student D.D. and Student B.D. to the SED and ensure the copies of the most up to date and final reports are also provided to the Parent prior to any IEP meeting including the Facilitated IEP meeting ordered in Step 8.	<b>September 16, 2022</b>	Student D.D. and Student B.D. Evaluation Reports	<b>September 16, 2022</b>
<b>8.</b>	<p>The District will convene facilitated IEP meetings for Students D.D. and B.D. The FIEP meetings shall address:</p> <ul style="list-style-type: none"> <li>• Areas of need identified in recent evaluations;</li> <li>• Present Levels of Academic Achievement and Functional Performance including strengths and weaknesses as well as baseline data to create and measure goals;</li> <li>• Measurable goals that are challenging but achievable;</li> </ul>	<b>September 30, 2022</b>	<ol style="list-style-type: none"> <li>1. Invitation to IEP meetings,</li> <li>2. IEPs,</li> <li>3. Prior Written Notices, and</li> <li>4. Agenda for FIEP team meetings</li> </ol>	<b>15 days after the FIEP meetings are held</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<ul style="list-style-type: none"> <li>• 11 considerations for Autism described in 6.31.2.11(B)(5)(d) NMAC. (The District shall complete IEP-Checklist-Consideration document located on the PED website to document the strategies considered);</li> <li>• Plan for the provision of compensatory services required in Steps 9 and 10 respectively;</li> <li>• Provision of Progress reports to Parents.</li> </ul> <p>Although the resulting IEPs may be similar, the IEP teams shall make and document individualized considerations and determinations for each student.</p> <p>The PWNs shall only include details of the FIEP meetings held to develop the new IEP. No other contents of previous IEP meetings shall be included.</p> <p>The Facilitator shall be independent of the District and shall be selected from the PED list of approved facilitators. The Facilitator shall be paid for by the District.</p>		<p>Confirmation of arrangement with Facilitator from PED approved list of Facilitators</p>	<p><b>Within 3 days of making arrangements for facilitator.</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>The FIEP meetings shall be held on a date and time that is convenient for the parent. The parent will be provided with a copy of the IEPs and PWNs at the conclusion of the FIEP meetings.</p> <p>The District shall ensure that the FIEP team includes, but is not limited to, parents, special education teacher, general education teacher, and any related services providers.</p>			
<b>9.</b>	<p>The District shall provide the following compensatory education to Student D.D.:</p> <ul style="list-style-type: none"> <li>a. 70 hours of specialized reading instruction</li> <li>b. 70 hours of specialized writing instruction</li> <li>c. 155 hours of specialized math instruction</li> </ul> <p>The plan for compensatory services shall be documented in the PWN(s) for the Facilitated IEP meeting(s) as well the IEP resulting from Step 8.</p> <p>These compensatory services are above and beyond the regular services required by Student's IEP. The schedule for compensatory services should be developed in collaboration with the parent and</p>	<b>September 2, 2023</b>	<p>Documentation of delivery/provision of compensatory education services, including logs of services and progress reports</p> <p>Prior Written Notice containing plan for compensatory services.</p>	<p><b>Monthly from date of compensatory services plan until the compensatory education hours are completed</b></p> <p><b>15 days after the FIEP meeting is held</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>can include provisions of services in the summer months.</p> <p>If the District, due to staffing or other limitations, is unable to provide the needed IEP and compensatory services as outlined in Student’s IEP and the compensatory services plan, the District is required to contract with a private provider to ensure those services are provided.</p>			
<b>10.</b>	<p>The District shall provide the following compensatory education to Student B.D.:</p> <ul style="list-style-type: none"> <li>d. 70 hours of specialized reading instruction</li> <li>e. 70 hours of specialized writing instruction</li> <li>f. 155 hours of specialized math instruction</li> </ul> <p>The plan for compensatory services shall be documented in the PWN(s) for the Facilitated IEP meeting(s) as well as the IEP resulting from Step 7.</p> <p>These compensatory services are above and beyond the regular services required by Student’s IEP. The schedule for compensatory services should be developed in collaboration with the parent and can include provisions of services in the summer months.</p>	<b>September 2, 2023</b>	<p>Documentation of delivery/provision of compensatory education services, including logs of services and progress reports</p> <p>Prior Written Notice containing plan for compensatory services.</p>	<p><b>Monthly from date of compensatory services plan until the compensatory education hours are completed</b></p> <p><b>15 days after the FIEP meeting is held</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	If the District, due to staffing or other limitations, is unable to provide the needed IEP and compensatory services as outlined in Student's IEP and the compensatory services plan, the District is required to contract with a private provider to ensure those services are provided.			

This report constitutes the New Mexico Public Education Department's final decision regarding this complaint. If you have any questions about this report, please contact the Corrective Action Plan Monitor.

Investigated by:

*/s/ Emily Adams*

Emily Adams

Complaint Investigator

Reviewed by:

*/s/ Miguel Lozano*

Miguel Lozano, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:



Deborah Dominguez-Clark

Director, Special Education Division