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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
SPECIAL EDUCATION DIVISION  
Complaint Resolution Report**

**Case No. C2324-01  
September 22, 2023**

**This Report requires corrective action. See pages 21-24.**

On July 24, 2023, there was a complaint filed with the New Mexico Public Education Department's (NMPED) Special Education Division (SED) 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 the 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. §§ 300.151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

- interviews with the parents, advocate, assistant principal, general education classroom teacher, board certified behavior analyst and special services coordinator; 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. Allegations pertaining to racism and school safety are not violations of Part B of IDEA, and, therefore, the Complaint Investigator did not investigate those issues.

### **Issues 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 develop and implement an IEP that allowed Student to make educational progress, in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC; specifically, whether the District:
  - a. Addressed both academic and functional needs when developing and implementing the IEP;
  - b. Developed and modified as needed, a behavioral intervention plan (BIP) designed to allow Student to make educational progress and be with peers;
  - c. Addressed the least restrictive environment (LRE) in determining placement and services;
  - d. Provided documentation of progress on all goals, and
  - e. Considered Parents' concerns about mental health needs with respect to LRE, development, modification of the BIP, and educational methodology.
2. Whether the District failed to follow the appropriate disciplinary requirements of when Student was disciplined and/or suspended in violation of 34 C.F.R. § 300.503(a); 34 C.F.R. § 300.534 and 6.31.2.11(F)(2) NMAC;
3. Whether the District failed to provide Parents with their procedural safeguards in violation of 34 C.F.R. § 300.322; 34 C.F.R. § 300.501(b) and 6.31.2.11(b)(2) and 6.31.2.13(c) NMAC, specifically whether the District,
  - a. Provided Parents with written notice of Student's progress on IEP goals;
  - b. Considered Parents' concerns regarding methodology and programming for Student;
  - c. Provided appropriately qualified staff to work with Student.

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

### **General Findings of Fact**

#### **Background Information**

1. Student was in the third grade during the 2022-2023 school year. Student was eligible for special education services under the category of other health impairment (OHI). Student had been diagnosed with attention deficit hyperactivity disorder (ADHD), anxiety and intermittent explosive disorder (IED). Student also recently received an autism diagnosis.
2. Student was initially evaluated in 2021, was determined eligible, and received special education services from the District until February 2023, when Student transferred to a private school.
3. Student has a history of behavioral issues including throwing objects, threatening peers with objects, flipping chairs, eloping from class and building, threatening to run into the street, causing staff to fall and hurt themselves when pursuing Student, breaking objects, hitting and kicking staff, whipping stuff with power cords, throwing furniture, verbally threatening peers, lunging at staff and self-injurious behaviors.
4. When Student was acting inappropriately, Student would be temporarily removed to the special education room until Student had 80% positive behaviors for two consecutive days.
5. The District hired a board-certified behavior analyst (BCBA) who had previously worked with Student as a private provider.
6. Student received the support of a registered behavior technician (RBT) for six hours a day.
7. Student had a behavior intervention plan (BIP) and a safety plan.
8. During the spring of the 2021-2022 school year, Student's negative behaviors decreased. There was discussion about fading the supports and eliminating the BCBA because of Student's progress. However, the decision was made to continue with services until the start of the 2022-2023 school year to see how Student would do in the fall. There were still concerns about work completion.
9. All staff that worked with Student had appropriate credentials as determined by NMPED.

#### **April 8, 2022 IEP Meeting**

10. At the time of the annual IEP meeting on April 8, 2022, it was noted that Student had made significant progress in managing their behaviors. Student was able to successfully participate in special classes, recess and lunch with additional adult support. Student was making academic progress and would ask for breaks when needed and could be redirected. Student was demonstrating progress in self-regulation.
11. There were three goals on the April 8, 2022, IEP: Goal 1 was an occupational therapy (OT) goal to address fine motor/sensory-motor deficits; Goal 2 was a behavior goal to address on task behavior and decrease need for breaks; and Goal 3 was a personal-social goal to improve self-regulation and interpersonal communication.

12. There were no academic concerns or goals listed on the IEP. Student was able to complete academic work; it was noted that behaviors impeded Student's ability to complete academic work.
13. Math was a strength for Student, whereas written expression, especially handwriting, was a challenge for Student and was an area worked on in OT.
14. Student received 32 hours of special education services per week with the assistance of a full time 1-1 educational aide and registered behavior therapist (RBT) that went with Student throughout the day. Most of the day, Student was in the general education classroom, was only pulled out of class for occupational therapy, resource room and social behavioral services.
15. According to the April 8, 2022, IEP, Student was in the general education classroom all day and was pulled out one hour of resource, 32 hours a week for a 1-1 aide, 1 hour a week of social behavior support and 45 minutes for occupational therapy services.

### **Behavioral Incidents**

16. Within two to three days of school at the beginning of the 2022-2023 school year, Student's behaviors escalated. There were multiple incidents of physical aggression and elopement during the first few weeks of school. The special services administrator was called daily about what could be done with Student.
17. Student was removed to the special education room for most of the day when behavior escalated. The records indicate frequent removals to the special education classroom because of behavior, but not all removals were listed in District records prior to an IEP meeting held on September 19, 2022.
18. Incidents involving elopement or physical aggression occurred on August 16, 17, 18(2), 24, and 25, 2022. Additional incidents involving these behaviors occurred on September 12, 13, 14, 23 and 27, 2022 and October 4 and 25, 2022. During some of these incidents, Student needed to be restrained or secluded, and Parents were called.
19. As the year progressed, Student was removed from the classroom either to the OT room or special education room for a significant portion of the day. When Student was out of the classroom, academics may not be completed.
20. Although the maladaptive behaviors had returned and were occurring almost daily, the District did not convene an IEP meeting prior to September 19, 2022 to discuss how to address the behaviors.
21. A BIP dated April 8, 2022 provided reinforcers and breaks for good behavior. Student could also be removed to the resource room by staff to the resource room to complete work.
22. When Student escalated, there was concern for staff and other students' safety and the classroom or area was evacuated. There were concerns noted about the impact of Student's behavior on other students' learning.
23. Student was suspended during the month of September on September 12, 13 and 14-20, 2022 for a total of seven school days. Student also went home early on August 18 and 25, 2022 because of escalated behavior.
24. On one occasion, Student opened a classroom window, climbed out and eloped from the school building shortly before school was dismissed. Student would not return to the

building and the school resource officer (SRO) had to assist Parent to get Student into car to go home.

25. On another occasion, Student was hitting, kicking, throwing chairs and balls at staff and could not be returned to the special education classroom for more than 60 minutes.
26. Another incident was when Student was working with the Board-Certified Behavior Analyst (BCBA) in a hallway; other students walked by and without warning, the Student attacked the BCBA and knocked her to the floor.
27. In the fall of 2022, the District noted a pattern of dangerous elopement and physical aggression. Family was primarily concerned with keeping Student safe.
28. The District noted that Student's behavior was so severe that it interfered significantly with Student's ability to participate in general education and make progress. Student's behavior was a significant disruption to other students.
29. At an IEP meeting on September 19, 2022, the IEP team agreed to prioritize social-emotional needs to increase participation in general education by the end of the year.
30. After that incident, the BCBA recommended a new model to address Student's behaviors. She did not believe extinguishing negative behaviors was working and proposed the Enhanced Choice Model (ECM).
31. Parents were informed that this new ECM would take significant time before it was effective, but Parents agreed to its implementation.
32. Parents expressed concerns about the model, including why would an eight-year-old choose to do schoolwork if they could have fun in the special education room.
33. In implementing the ECM, Student would not be restrained in any way, but staff would keep Student in line of sight. Student would make choices from three options: practice completing schoolwork, hangout in the special education classroom or leave and go home. As Student progressed with ECM, alternatives were taught, including persistence when Student was frustrated. The previous plan was not working because Student's escalation could not be "turned off," and it was dangerous to Student, staff and other students.
34. Student's behavior was tracked all day over video and was analyzed and shared with Parents. The tracking was done, in part, to determine if there were warning signs for when Student would escalate, and then teaching could be used to prevent escalation.
35. Parents expressed concern that Student's anxiety was increasing because of being constantly watched. The video monitoring was moved to another location in the room not in the direct view of Student, but the monitoring continued.
36. Parents continued to express concerns that the constant monitoring was making Student anxious and may be part of the reason for the escalating behaviors.
37. The District continued to track Student's behaviors until Student transferred out of the school.
38. The September 19, 2022 IEP meeting was the first time the IEP team changed Student's placement from full time in the general education classroom even though Student had not been full time in the general education classroom since shortly after the start of school because of maladaptive behaviors.
39. At the September 19, 2022 IEP addendum meeting, the plan was to remove Student from the school and change services to the administrative building, where Student would attend

- half-days for a short time to break the cycle of negative behaviors. Student would be able to log into the third-grade classroom for learning opportunities.
40. The District considered that this change of placement was not a disciplinary change but was a way to keep Student safe and remove triggering behaviors.
  41. The plan was limited to ten days, Student would be gradually reintegrated back to school after Student demonstrated success in the alternative location. The plan was to reconvene on October 13, 2022 to review progress.
  42. Student started at the alternative site on September 21, 2022. A safety plan was developed where Student would go home after two requests. Student would not be disciplined after that date, but the BIP, which incorporated the ECM model, would be implemented. Student was at this placement for five days.
  43. The first two days at the alternative location were successful. On September 23 and 27, 2022, Student's behaviors were extremely dangerous.
  44. There were always two adults present with Student in the alternative placement at the administrative building.
  45. On September 27, 2022, the RBT and 1-1 educational aide were in the room with Student. Student left the room and began to hit the glass panels with his head. The two adults tried to stop Student. The Special Services Administrator was also present and Parent was outside of the building in the parking lot.
  46. The report from the Special Services Administrator was that she attempted to find the Parent to assist in deescalating Student. Parent entered the building. Student reentered the classroom and began throwing chairs. With four adults present, Student ran to the window, climbed up, opened two locks, slid the window open, kicked out the screen and climbed out the window. The adults did not intervene, but the two staff that worked with Student went outside to restrain Student and get Student back in the building but were unsuccessful. The Special Services Administrator called 911 because the street near the building was a highway with heavy traffic and she was concerned for Student's safety. Police came and Student deescalated and went home with Parent.
  47. District policy did not allow for restraint of Students except in emergencies, but staff could use physical guidance to control or move students. Physical guidance was no longer effective with Student.

### **IEP and MDR meetings**

48. A total of six IEP meetings were held between September 19, 2022 and February 24, 2023 when Student transferred to another school by Parents.
49. Student returned to school on October 1, 2022 and tried to elope on October 4, 2022.
50. On October 3, 2022, a manifestation determination (MDR) meeting was held, and it was determined that Student's behaviors were a manifestation of Student's disability. The District reported the FBA and BIP were reviewed, and the ECM was part of the BIP and was modified as needed. However, the October 3, 2022 BIP and Safety plan were the same plans developed on April 8, 2022. There was nothing in the plan to indicate the use of the ECM to modify Student's maladaptive behaviors.

51. The plan developed at the October 3, 2022 MD meeting was to return Student to school and continue implementing ECM. Student would increase time in the general education classroom as negative behaviors decreased over two school days. On the first two days back at school, Student was in school in the special education room from 9:00 AM to 11:30 AM.
52. The prior written notice from that meeting indicated that restraint and seclusion would not be used and the safety plan outlined how staff were to protect themselves and steps to follow if Student escalated.
53. Another IEP meeting was held on October 14, 2022 with the District proposing that Student's school day be increased gradually and a slow reintegration to academics would be added after five days of success. Student would start with a choice of lunch with peers and then library and physical education would be added the following week if Student continued to be successful.
54. Parents were concerned about the plan and how their Student would remain safe if Student was not escorted to the special education room. They were also concerned that Student was not doing any schoolwork but was spending the day playing Legos or some other fun activity and not learning.
55. Another behavioral incident occurred on October 25, 2022. Student became agitated, eloped, and had physical aggression toward staff and property. Student finally deescalated and was escorted to car by father and three police officers.
56. After October 25, 2022, there were no more reports of elopement or physical aggression by Student.
57. Student would still exhibit anxiety and pre-escalation activities, which was noted at IEP meetings. Parents again expressed concern about in-school tracking of Student made Student anxious. No additional supports were added. There were minor changes made to the ECM choices, but the District continued to implement that plan and Student increased participation in the general education classroom.
58. On November 7, 2022, a combined eligibility and IEP meeting was held. Parents wanted Student to be transported to a safe room when Student acted out. District disagreed because this was not part of the ECM. Parents were frustrated with the slow progress to implement academics and integrate Student back into the general education classroom.
59. At another IEP meeting on January 10, 2023, the BCBA reported that Parents were pleased with Student's progress and optimistic about the outcome. The BCBA reported that dangerous behaviors had not occurred in a long time, and when Student went to the general education classroom with a comfort item, Student was successful and able to stay longer.
60. Parents wanted Student returned to classroom and fade out supports and monitor impact. They were concerned about lack of academic instruction for Student.
61. The consistent response from the BCBA and the District, was that Student's behavior was improving and not to change existing behavioral strategies too soon. Student needed to continue with ECM.
62. There was a discussion about the frequent staff changes and Student's attachment to certain staff members. Parents were concerned there was no consistent point person for Student which increased anxiety; Student got along well with the RBT.

63. The plan using the principles of ECM was to provide enrichments to Student in the separate special education classroom and transition to academics over time. The plan also emphasized that staff would keep an eye on student but protect themselves. Staff would not chase or attempt to confine Student and would contact administration rather than Parents if Student exhibited maladaptive behavior that could not be controlled.
64. Parents did not agree with the plan and wanted Student back at school, with locked doors and windows to keep Student safe. They wanted to work on academics so Student did not fall farther behind.
65. At the time Student transferred to another school, Student chose to be in the general education classroom for academics approximately ten hours per week. Student had been successful with lunch, recess and specials with peers; that time was not included in the ten hours in the general education classroom.
66. It was unclear what criteria was used to determine that ECM was no longer needed and when Student would be in the general education classroom fulltime.
67. The classroom teacher reported that she provided curriculum and materials to the special education aide weekly but Student completed less than 50% of the assigned work.
68. While Student was in the special education classroom, Student was working on project-based learning which could include Legos or computer work or video learning but not completion of the classwork the other third grade students were expected to complete.
69. When Student was in the general education classroom, Student was able to complete the work and sometimes chose to not come in to for math lessons but would come to the classroom to complete the math assignment with assistance as needed.
70. Student would frequently choose to go to the general education classroom for math and sometimes ELA, but rarely for science or social studies. Student was able to read classroom materials independently and they were nearing targets on standardized testing completed in January.
71. Parents, teacher, BCBA and other staff involved with Student met every two weeks to discuss Student's behavior, incidents and progress. These problem-solving meetings would also discuss how to prevent future incidents of inappropriate behavior. Parents also received daily reports about breaks and behaviors.
72. There was disagreement about whether Parents received written progress notes on Student's IEP goals. District stated that progress reports were provided and Parents received information about Student's progress at biweekly and IEP meetings.
73. Parents attended and participated in all meetings concerning their Student but did not believe their concerns were addressed.
74. The District continued to follow ECM even if that meant Student did not choose academics.
75. Parents were informed daily about Student's behaviors but were not always aware of academic progress or provided examples of work product.
76. District opined that supports would be faded at the time of the annual IEP; there was no annual IEP meeting because Student transferred to a private school before the annual IEP meeting could be held.

## **Discussion and Conclusions of Law**

### **Issue No. 1**

**Whether the District failed to develop and implement an IEP that allowed Student to make educational progress, in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC; specifically, whether the District:**

- a. Addressed both academic and functional needs when developing and implementing the IEP;**
- b. Developed and modified as needed, a behavioral intervention plan (BIP) designed to allow Student to make educational progress and be with peers;**
- c. Addressed the least restrictive environment (LRE) in determining placement and services;**
- d. Provided documentation of progress on all goals, and**
- e. Considered Parents' concerns about mental health needs with respect to LRE, development, modification of the BIP, and educational methodology.**

Special education is “specially designed instruction provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability.” 34 C.F.R. § 300.39(a)(1). This specialized designed instruction is adapting the content, methodology or delivery of instruction to address the unique needs of an individual child. 34 C.F.R. § 300.39(b)(3). These unique needs are more than academic needs but can include social, health and emotional needs. *County of San Diego v. California Special Education Hearing Office*, 95 F3d 1458 (9<sup>th</sup> Cir. 1996). Behavioral needs are also part of the IEP process and can be addressed in a behavioral intervention plan (BIP). A BIP is usually a component of the IEP to address behaviors that interfere with the student’s learning and are inconsistent with school expectations. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022).

IEPs are to be developed during an IEP meeting. The IEP team must consider the student’s strengths, any concerns of the parents, results of evaluations, and academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a)(1). Parents as required members of the IEP team must have adequate information to make informed decisions. 34 C.F.R. § 300.321(a)(1). Every IEP for a student must contain “[a] statement of the child's present levels of academic achievement and functional performance, including --How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children).” 34 C.F.R. § 300.320(a)(1). This statement of PLAAFP assists in determining the needs of an individual student to develop annual goals to allow the student to receive FAPE and make progress in the general education curriculum. *Bakersfield City School District*, 51 IDELR 142 (SEA CA 2008). The PLAAFP must be comprehensive and provide baseline data that reflects all the child’s needs, both academic and nonacademic. This also should include relevant background information about needs, strengths, interests and learning styles. 34 C.F.R. §

300.324 (a). The PLAAFP must be individualized to reflect the unique needs and abilities of a particular student. *Letter to New*, 211 IDELR 464 (OSEP 1987).

A child's annual IEP must include measurable annual goals, both academic and functional, that meet the child's needs that result from the child's disability and allow the child to participate in and make progress in the general education curriculum. 34 C.F.R. § 300.324. The IEP goals must address all the child's needs that result from the child's disability. 34 C.F.R. § 300.320 (a)(2). Annual goals should reflect what is reasonably expected to be accomplished during the annual IEP period. *Letter to Butler*, 213 IDELR 118 (OSERS 1988). The annual goals should be specific to be able to determine progress made and the specific skills needed to achieve progress on the goals. 64 Fed. Reg. 12, 471 (1999). When a student is not making progress on their goals, the IEP team needs to meet to modify the goals or determine the need for additional supports and services. 34 C.F.R. § 300.324 (b)(ii)(A). An IEP must be implemented with all the required components. 34 C.F.R. § 300.324 (b)(ii)(a). However, only material failures of implementation will result in a denial of FAPE. See *Van Duyn v. Baker School District*. 5J, 481 F3d 770 (9th Cir. 2007).

Least restrictive environment (LRE) is an important consideration for the IEP team. LRE requires that students be educated in regular classroom settings to the maximum extent appropriate. 34 C.F.R. § 300.114 (a). OSEP memorandum 95-9, 21 IDELR 1152 (OSEP 1994). LRE decisions must be made on an individual basis based on the student's needs. *Letter to VanWart*, 20 IDELR 1217 (OSEP 1993). This analysis must consider a student's access to peers.

**a. Addressed both academic and functional needs when developing and implementing the IEP.**

Student had significant maladaptive behaviors that impeded Student's and others' learning. In the April 8, 2022 IEP, meeting, the IEP team noted that Student had made progress on managing their behaviors and considered fading the adult support. The IEP team determined that all supports would remain in place until the following school year to see how Student did with a new teacher and class. After two to three days in the fall of the 2022-2023 school year, Student's behavioral stability deteriorated. Student was eloping from the classroom and physically aggressive towards staff. The District was concerned that until Student's maladaptive behaviors could be managed, Student could not focus on academics.

ECM was proposed and implemented. Under this model, Student was not coerced or forced to make a particular choice but could choose from three options: practice completing schoolwork, hangout in the special education classroom or leave and go home. Over time, Student would make the choice to return to the general education classroom and complete academics; there was no requirement for Student to make that choice.

Parents expressed concerns about the model, including why an eight-year-old would choose to do schoolwork if they could have fun in the resource room. There were six IEP meetings during the 2022-2023 school year, and at every meeting, Parents expressed concern that Student was not in the general education classroom, not completing third grade schoolwork and was falling

farther behind in academic skills. The District continued to reiterate that ECM was working. On September 21, 2022, Student, because of behaviors, was temporarily transferred to the administration building to receive educational services. Although this was supposed to only last ten days, after five days, Student returned to the school and the special education classroom where Student often completed project-based learning rather than the third-grade curriculum. The classroom teacher provided the curriculum and materials to the staff that worked with Student, but less than 50% of the materials provided were completed by Student. As of October 25, 2022, there were no more reported incidents of elopement or physical aggression by Student. Student still was anxious and exhibited pre-escalation behaviors but ECM was still followed and as of the time of Student's transfer to another school, Student was only in the general education classroom ten hours per week.

Students with behavioral issues that impede learning are challenging for a District. It is important to keep the Student, staff and other students safe while ensuring Student receives an education. The District noted that Student's behaviors had a significant impact on Student's learning but also disrupted the learning of other students. There were multiple incidents at the start of the 2022-2023 school year requiring Student to be removed to the special education classroom, but no IEP meeting was held until September 19, 2022 when the plan was to remove Student to an alternative placement at the administration building for ten days. When Student returned to the school on October 1, 2022, Student was still exhibiting maladaptive behavior like eloping on October 4, 2022. By October 25, 2022 Student was not exhibiting elopement or physical aggression; yet Student was only in the general education classroom less than ten hours per week and not completing most of the third-grade work as peers were doing. Student was exhibiting anxiety and some pre-escalation behaviors, but other than continuing with ECM, Student was not in the classroom or attempting grade level work that Student could complete.

Although the District opined that supports would be faded at the time of the annual IEP, there was no annual IEP meeting because Student transferred to a private school before the annual IEP meeting. IEPs must address all the Student's needs, including academic and functional needs. IEP teams can determine a student's behaviors are so severe and prevent academic progress to necessitate that services primarily focus on managing behaviors. However, the rationale for prioritizing behavioral management must be short-term in nature so that academics could be reintegrated into the student's program. In this case, Student for over six months was allowed to make choices that did not include academic work completed by peers or time with peers. Not surprisingly, Student chose to remain in the special education classroom working on projects rather than complete classwork. Rather than implement other strategies and supports to address anxiety and pre-escalation behaviors to allow Student to return to classroom full-time to complete third grade work, the District continued with ECM after October 25, 2022 when there were no further instances of elopement or physical aggression. The District did not address academic and functional needs in the IEP.

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

**b. Developed and modified as needed, a behavioral intervention plan (BIP) designed to allow Student to make educational progress and be with peers.**

See analysis in 1a. In addition, the District noted that ECM was part of Student's BIP. The April 8, 2022 BIP was virtually identical to the October 3, 2022 BIP. The PWN from that meeting indicated that seclusion and restraint would not be used and the safety plan outlined how staff were to protect themselves while monitoring Student and the steps to be followed if Student escalated. There was no mention in the BIP that the ECM model was being used with Student. The goals of ECM were to increase Student's time in the general education classroom and complete more work and Student would learn how to take breaks and deescalate. The hope was there would be fewer instances of elopement and physical aggression and Student would be reintegrated into the classroom. This model, however, failed to outline how to measure Student's behavioral progress towards achieving the objective of Student returning to a regular education classroom with peers and completing grade level academic work. As noted in 1a above, Student was not exhibiting elopement or physical aggression after October 25, 2022 but Student remained in the special education classroom more than half the school day and completed less than 50% of the required third grade work. In the special education classroom, Student was completing project-based learning but that was not the same requirements of Student's peers when all IEP team members reported Student could successfully complete third grade work. The results on the standardized testing in January indicated that Student was nearing targets, but it is impossible to determine how the lack of third grade instruction in the classroom would have impacted performance on standardized testing. Student's behaviors had improved significantly by October 25, 2022, but the BIP was not modified nor were additional positive supports or services considered to allow Student to make academic progress and be with peers.

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

**c. Addressed the least restrictive environment (LRE) in determining placement and services.**

IDEA requires that Students are to be educated with peers as much as possible. The IEP team met to determine placement for Student on April 8, 2022 and at six meetings during the 2022-2023 school year. The placement according to the April 8, 2022 IEP was the general education classroom. Shortly after the start of the 2022-2023 school year, Student's behaviors escalated requiring frequent removal to the special education classroom. However, the IEP team did not meet to discuss this change of placement and if additional services or supports were needed or how this impacted on Student's LRE rights. It was not until September 19, 2022 when the IEP team agreed to half day temporary placement at the administration building even though Student had not been in the general education placement full time throughout the fall of the 2022-2023 school year. After Student continued to exhibit maladaptive behaviors throughout the Fall, resulting in injuries to property and staff, the IEP team decided to temporarily place Student in a room at the administration building so Student would have an opportunity to reset and be successful in a quiet environment without the triggers in the school. This placement was much more restrictive than full time placement in the special education classroom. There was no

evidence that the District considered or investigated other less restrictive alternatives even on a short-term basis. In the placement at the administration building, Student had no access to peers and while the plan was to transition Student back to the school as behaviors improved, this still did not provide access to peers and violated Student's LRE rights.

After Student returned to the school on October 1, 2022, a full-time placement in the special education classroom was made because of Student's maladaptive behaviors. The plan was to reintegrate Student back into the general education classroom with peers as Student's negative behaviors decreased. The failure to consider other less restrictive alternatives or the impact of LRE during frequent removals to the special education room, even on a short-term basis, and not ensuring access to peers was a violation of the principles of LRE.

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

**d. Provided documentation of progress on all goals.**

The April 8, 2022 IEP was the IEP in effect for the 2022-2023 school year. Although there were at least six IEP addendum meetings during the school year, the goals remained the same. There were three goals on the April 8, 2022 IEP; Goal 1 was an occupational therapy (OT) goal to address fine motor/sensory-motor deficits; Goal 2 was a behavior goal to address on task behavior and decrease need for breaks; Goal 3 was a personal-social to improve self-regulation and interpersonal communication. There were no academic goals on the IEP. ECM was implemented and there was a BIP and safety plan, re however, the goals on the IEP were not academic in nature. Although it is disputed whether Parents were provided with written progress reports on Student's IEP goals, the Parents were informed of Student's progress or lack thereof on all IEP goals. Progress was discussed at all six IEP meetings and there were biweekly meetings with the BCBA, classroom teacher and others that worked with Student discussing Student's progress and how to prevent future incidents. Data was collected constantly and shared with Parents at biweekly and IEP meetings.

**As to Issue No.1d, the District is not cited.**

**e. Considered Parents' concerns about mental health needs with respect to LRE, development, modification of the BIP, and educational methodology.**

The IEP team had extensive discussions about Student, diagnoses and behaviors and how that impacted Student's learning. Parents disagreed with the alternative placement at the administration building, the implementation of ECM and lack of academic progress and limited time in the third-grade classroom. IEP team decisions are made by a consensus of all team members, which includes the parents. There is no requirement for unanimous decisions and when there is no consensus, it is the obligation of the District to propose an IEP that will provide FAPE. Parents' concerns are to be considered and included, when possible, in the development of the IEP. Parents attended all IEP and problem-solving meetings and were actively involved in their Student's education. There was no evidence on this record that Parents' concerns were not

considered and addressed by the IEP team. Some of Parents' requests such as restraining Student were not allowed under District policy. The constant tracking of Student was needed to determine effectiveness of ECM and Student's progress. When Parents expressed concern, the District moved the recorder away from Student.

**As to Issue No. 1e, the District is not cited.**

**As to Issue No. 1a, 1b, and 1c, District is cited. As to Issue No. 1d and 1e, the District is not cited.**

**Issue No. 2.**

**Whether the District failed to follow the appropriate disciplinary requirements of when Student was disciplined and/or suspended in violation of 34 C.F.R. § 300.503(a); 34 C.F.R. § 300.534 and 6.31.2.11(F)(2) NMAC.**

Under IDEA, a district may discipline a student for violation of a code of conduct resulting in removal or suspension from the student's educational program for not more than 10 school days, provided that all students, including non-disabled students, would be subject to the same discipline. 34 C.F.R. § 300.530(b); 6.31.2.11(F)(2) NMAC. When the placement of a special education student is changed because of a violation of the code of conduct, a manifestation determination must be completed. 34 C.F.R. § 300.530 (e). A change of placement occurs when the removal is more than 10 school days or there is a series of removals that constitute a pattern. 34 C.F.R. § 300.356(a).

The ten school days used in the change of placement calculation can include exclusions outside of discipline but are the result of a student's behavior. "The calculation of the 10 school days of suspension addressed in 34 C.F.R. § 300.530 could include exclusions that take place outside of IDEA's discipline provisions which occur because of a child's behavior. Actions that result in denials of access to, and significant changes in, a child's educational program could all be considered as part of the 10 days of suspension and also could constitute an improper change in placement." "These types of actions are generally considered disciplinary removals unless all three of the following factors are met: (1) the child is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the child continues to receive the services specified on the child's IEP; and (3) the child continues to participate with nondisabled children to the extent they would have in their current placement." *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 122 LRP 24161 (OSEP 2022).

Student's placement was full time in the general education classroom during the start of the 2022-2023 school year which was the placement in the April 8, 2022 IEP. Almost as soon as the 2022-2023 school year began, Student's behaviors escalated almost daily and Student was removed to the special education classroom when Student's behaviors escalated. Student was suspended for seven days. Student was suspended during the month of September on September

12, 13 and 14-20, 2022. Student also left school early on two additional days because of behavior. It was not clear whether the two shortened days were at the request of the District or Parents' choice. Student's removal from the general education placement by staff to the special education classroom because of Student's behavior was also a removal. Although Student continued to receive special education and related services, Student was not with peers and completed less than fifty percent of the work Student's third grade peers were completing. Therefore, removal to the special education classroom when Student escalated was a disciplinary removal. It is unclear from this record how many times other than those listed that Student was removed to the special education classroom because of behavior. The District could have held an IEP meeting to discuss a change of placement but no meeting was held until September 19, 2023.

Given the removals that are in the District's records, it was clear that, at a minimum, an IEP meeting to change placement or services was required and a manifestation determination meeting because all Student's removals were related to behaviors should have been held sooner than wait until October 3, 2022. The records indicate Student was removed from the general education classroom to the special education classroom frequently which would indicate a change of placement had occurred before the IEP team meeting was held on September 19, 2022. The Special Education Director reported that she was called daily to determine what to do with Student. On September 21, 2022, following an IEP meeting on September 19, 2022, Student was placed at the administration building to receive educational services on a temporary basis, up to ten days. Although the District asserted this placement was not disciplinary and allowed Student a reset in a quiet environment, it was directly related to Student's maladaptive behavior. While there, Student eloped by unlocking, opening and climbing out a window that was near a major highway. The IEP team can meet and determine a change of placement for a limited time to allow for a reset because of Student's behavior. The problem here is that the Student's placement was general education, yet Student was regularly removed to the special education classroom and then the IEP team convened and determined a reset was appropriate when the IEP team had failed to meet in August and September to modify the IEP because a general education placement was no longer appropriate. Then, the IEP team met September 19, 2022 and chose a more restrictive placement when Student's placement had changed at the start of the 2022-2023 school year.

Student remained in the temporary placement for five days and then was returned to the special education classroom at the school for half days on October 1. Placement at the alternative placement would count at part of the ten days. Therefore, while Student was at the alternative placement for the five days, Student had exceeded the ten days of removal due to behavior and a manifestation determination should have been completed. All of Student's behaviors were a similar pattern of elopement or physical aggression including the elopement at the alternative placement. A manifestation determination (MD) should have been completed before October 3, 2022. A MD meeting was held on October 3, 2022. At that meeting, it was determined that Student's behaviors were a manifestation of Student's disability. At that point, the Student should have been returned to the original placement and the FBA and BIP should have been reviewed and modified to ensure that services were provided to prevent continued negative behaviors. The District asserted that the FBA and BIP were reviewed and the ECM was part of

the BIP. The October 3, 2022 BIP did not include the ECM but addressed reinforcers, breaks and removal to the special education classroom. The safety plan also did not mention ECM but described the plan if Student escalated. The IEP team agreed to continue with ECM and the plan was Student would increase time in the general education classroom and completion of grade level work as negative behavior was decreased. Since the MD team determined that Student's behaviors were a result of Student's disabilities, it is not clear what modifications were made to the BIP and FBA to ensure that behaviors that resulted in disciplinary action were not repeated.

District asserted that the alternative placement was not a disciplinary placement and was made by the IEP team to assist Student in being successful and making educational progress. The alternative placement, however, was based on Student's increasing negative behaviors. The District's assertion that this placement was to allow Student a reset is disingenuous. Although that may have been one of the reasons for the placement, Student was removed from the building because of the increase in elopement and physical aggression with injuries to staff and property. The behaviors that resulted in suspension and shortened days for Student were like the behaviors that resulted in the alternative placement for Student. The alternative placement was a change in placement requiring a manifestation determination (MD) meeting before October 3, 2022. The MD meeting was held October 3, 2022, after Student eloped from the alternative placement. Moreover, IDEA requires a review of the FBA and BIP and modifications, as needed when the behaviors resulting in removals were a manifestation of the Student's disability. Since that was not in dispute here, the IEP team should have modified the BIP, which could include the ECM, to address Student's behaviors and prevent future removals.

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

**Issue No. 3.**

**Whether the District failed to provide Parents with their procedural safeguards in violation of 34 C.F.R. § 300.322; 34 C.F.R. § 300.501(b) and 6.31.2.11(b)(2) and 6.31.2.13(c) NMAC, specifically whether the District,**

- a. Provided Parents with written notice of Student's progress on IEP goals;**
- b. Considered Parents' concerns regarding methodology and programming for Student;**
- c. Provided appropriately qualified staff to work with Student.**

Parents are mandatory members of the IEP team. 34 C.F.R. § 300.321 (a)(1). Districts must provide parents with meaningful parental participation in any decisions involving the identification, evaluation and educational placement of the student and provision of FAPE. 34 C.F.R. § 300.501 (b). The district must send the parents periodic reports of the student's progress toward his IEP goals following the schedule set forth in the student's IEP. 34 C.F.R. § 300.320(a)(3)(ii). Meaningful parental participation includes consideration of parent's concerns and, if appropriate, incorporating those concerns in documents. *Deal v. Hamilton County Board of Education*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004), cert denied, 546 U.S. 936 (2005), on remand (E.D. TN

2006), *aff'd* 49 IDELR 123 (6<sup>th</sup> Cir 2008). The 11<sup>th</sup> Circuit Court of Appeals in *R.L v. Miami-Dade County School Board* held that parental participation required the District to come to meetings with an open mind and be receptive and responsive to parent's concerns. *R.L. v. Miami-Dade County School Board*, 63 IDELR 182 (11<sup>th</sup> Cir. 2014). Although parents are equal members of the IEP team, decisions are not made by voting but by consensus. 34 C.F.R. § 300.503 (a). When consensus cannot be obtained, the district must provide the Parents with a prior written notice (PWN) outlining proposals and refusals. *Letter to Richards*, 55 IDELR 107 (OSEP 2010). Staff that work with students must have the necessary skills and knowledge and appropriate certification. 20 U.S.C. 6611 (c)(4)(B)(i).

**a. Provided Parents with written notice of Student's progress on IEP goals.**

There was some dispute on this record whether Parents received written progress notes on Student's IEP goals. Student's IEP goals from the April 8, 2022 IEP. There were three goals on the April 8, 2022 IEP; Goal 1 was an occupational therapy (OT) goal to address fine motor/sensory-motor deficits; Goal 2 was a behavior goal to address on task behavior and decrease need for breaks; Goal 3 was a personal-social to improve self-regulation and interpersonal communication. There were no academic goals on the IEP. See Issue 1d. The District provided Parents with daily written reports, collected data and biweekly meetings where Student's progress was discussed. There was no evidence on this record that Parents were not provided written notice of Student's progress.

**As to Issue No. 3a, the District is not cited.**

**b. Considered Parents' concerns regarding methodology and programming for Student.**

See the analysis in 1e above. Parents disagreed with the continued implementation of ECM, alternative placement and lack of grade level instruction in the classroom on a repeated basis at multiple IEP meetings. At IEP team meetings, which Parents attended, there was repeated discussions about these and other issues. The IEP team could not reach consensus on those issues and when consensus could not be reached, the District sought to propose an appropriate IEP even over the objections of Parents. Parents can then assert their rights under the procedural safeguards of IDEA, which is what happened here. There was no evidence on this record that Parents' concerns were not considered and addressed, as appropriate.

**As to Issue No. 3c, the District is not cited.**

**c. Provided appropriately qualified staff to work with Student.**

Student had a general education classroom teacher, a BCBA, RBT, a 1-1 educational assistant, social worker and occupational therapist that worked with Student. Over the course of the 2022-2023 school year, Student had different educational assistants and teachers that worked with Student, including substitute teachers. The credentials provided by the District demonstrated

that the staff that worked with Student were certified by the State of New Mexico and had the appropriate credentials.

**As to Issue No. 3c, the District is not cited**

**As to Issue No 3a, 3b and 3c, the District is not cited.**

**Issue No. 4.**

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

Students who are eligible for special education services are entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. A District is obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17. The determination of whether there has been a denial of FAPE requires consideration of two components: substantive and procedural. The question one must answer to determine the substantive standard is whether the IEP was “reasonably calculated to allow the child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County School District. RE-1*, 137 S. Ct. 988 (2017). The Court in *J.L. v. Mercer Island School District*, 592 F3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it resulted in the loss of an educational opportunity, infringed on parents' opportunity to participate in the development of the IEP or deprived the student of an educational benefit. All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx. 202 (2d Cir. 2010).

There were procedural violations on this record including the disciplinary process followed with this Student. The procedural violations did not meet the criteria that would justify a denial of FAPE. For a procedural violation to rise to the level of a denial of FAPE, one of the three factors must be satisfied. Here, Student had educational opportunities with peers when Student chose to go to the classroom; Parents were not restricted in opportunities to participate in the development of the IEP; and Student received some a, albeit limited, educational benefit while in the special education room. Therefore, there was no procedural denial of FAPE.

There were also substantive violations on this record which resulted in a denial of FAPE. Student had significant behavior problems that warranted a more restrictive learning environment and a focus on managing behaviors. However, when those behaviors are managed, it is imperative that the IEP team address academic, functional and other needs of the special education student. Parents continually raised concerns about placement in the special education classroom, the alternative placement that was implemented and lack of academic instruction for this Student. While the restrictive placement may have been justified during August, September and October, after October 25, 2022, Student was no longer exhibiting those severe maladaptive behaviors.

Multiple IEP meetings were held but the IEP was not changed to address Student’s continued placement in the special education classroom without grade level academic instruction. While Student may not have succeeded if returned to the classroom fulltime in October, the District’s delays in modifying the IEP to allow Student the opportunity to be with peers and complete third grade classwork was a denial of FAPE.

**As to Issue No. 4, the District is cited. Corrective action is required.**

**Summary of Citations**

<b>IDEA/State Rule Provisions Violated</b>	<b>Description of Violation</b>
34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC.	<p>The District failed to address both academic and functional needs when developing and implementing the IEP;</p> <p>The District failed to develop and modify, as needed, a behavioral intervention plan (BIP) designed to allow Student to make educational progress and be with peers; and</p> <p>The District failed to address the least restrictive environment (LRE) in determining placement and services.</p>
34 C.F.R. § 300.503(a); 34 C.F.R. § 300.534 and 6.31.2.11(F)(2) NMAC.	The District failed to follow the appropriate disciplinary requirements of when Student was disciplined and/or suspended.
34 C.F.R. § 300.101 and 6.31.2.8 NMAC.	The District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE) to the Student.

**Required Actions and Deadlines**

**By September 29, 2023**, 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@ped.nm.gov](mailto:Elizabeth.Cassel@ped.nm.gov)

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 January 1, 2024 and reported to the SED no later than January 15, 2024.** 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 SED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	<b>September 29, 2023</b>	Written Assurance Letter/Email	<b>September 29, 2023</b>
2.	The District Special Education Director and the school principal shall meet with the PED SED Education Administrator 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 plans to take to ensure that the violations are corrected and do not recur. The District Special Education Director shall be responsible for arranging this virtual meeting with SED.	<b>October 6, 2023</b>	Notes from meeting prepared by District	<b>October 13, 2023</b>
3.	The District Special Education Director will meet with Student's special education and general education teachers 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>October 13, 2023</b>	Notes from meeting prepared by District	<b>October 20, 2023</b>
4.	The District shall conduct a comprehensive reevaluation of Student. The reevaluation shall include, but is not limited to, the following testing: <ul style="list-style-type: none"> <li>• Intelligence testing;</li> <li>• Adaptive behavior testing;</li> </ul>	<b>Within 30 days of receiving parental consent.</b>	Signed parental consent form  Evaluation report	<b>Within 15 days of receiving signed consent.</b>  <b>Within 15 days of completing reevaluation report.</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>• Academic skills testing; and</li> <li>• Executive functioning skills testing.</li> </ul> <p>Conducting the evaluation is subject to the provision of parental consent. If the parent declines to provide consent to evaluate, then the District shall obtain written documentation of parent’s refusal to consent.</p>		Alternatively, written documentation of parent’s refusal to provide consent to reevaluate.	<b>Within 15 days of receiving parent’s refusal to consent to evaluate.</b>
<b>5.</b>	<p>Following the completion of the reevaluation, the District shall convene a Facilitated IEP meeting. The meeting shall address:</p> <ul style="list-style-type: none"> <li>• The results of the reevaluation and corresponding revisions to the IEP;</li> <li>• Whether compensatory services are warranted given the District’s denial of FAPE;</li> <li>• Determination and documentation of the BIP and appropriate measurable goals for each all areas of need where special education and related services are provided;</li> <li>• Periodic, complete written progress reporting to ensure effectiveness of IEP and next steps, if progress is not observed; and</li> </ul>	<b>Within 15 days of completing the reevaluation.</b>	<ol style="list-style-type: none"> <li>1. Invitation to facilitated IEP meetings,</li> <li>2. IEPs,</li> <li>3. Prior Written Notices, and</li> <li>4. Agenda for facilitated IEP team meetings</li> </ol>	<b>Within two weeks of the FIEP meeting</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>Regular contact between school and family to promptly address any changes in behavior or other needs of Student and develop a plan to ensure that FAPE is provided.</li> </ul> <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>The FIEP meeting shall be held on a date and time that is convenient for the parent. The parent will be provided with a copy of the IEP and PWN at the conclusion of the FIEP meeting.</p> <p>The District shall also ensure that the IEP team includes, but is not limited to, parents, special education teacher, general education teacher, and any related services providers.</p>			
<b>6.</b>	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:	<b>December 22, 2023</b>	Submission of proposed trainer and trainer’s resume and proposed presentation for NMPED approval.  Confirmation of the date of the training.	<b>October 13, 2023</b>  <b>October 20, 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>
	<ul style="list-style-type: none"> <li>• The roles and responsibility of the IEP team in development and implementation of the IEP, including students who are exhibiting behaviors that impact on learning for themselves and others.</li> <li>• The need to promptly update and modify the IEP and BIP when Student’s needs have changed or the plan is not effective</li> <li>• Developing and implementing an appropriate IEP that includes providing services and supports for all areas of eligibility;</li> </ul> <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>		Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.	<b>December 22, 2023</b>

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/ Michele K. Bennett*  
Michele K. Bennett  
Complaint Investigator

Reviewed and Approved by:

*/s/ Miguel Lozano*

Miguel Lozano, Esq.

Interim Director, Special Education Division