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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Rio Rancho Public Schools
Case No. C2324-19
December 1, 2023

This Report requires corrective action. See pages 46-47.

On October 2, 2023, a complaint was filed with the New Mexico Public Education Department's (NMPED) Office of Special Education (OSE) under the federal Individuals with Disabilities Education Act (IDEA) and the implementing Federal Regulations and State Rules governing publicly funded special education programs for children with disabilities in New Mexico.¹ The SED has investigated the complaint and issues this report pursuant to 34 C.F.R. § 300.152 (a)(5) and 6.31.2.13(H)(5)(b) NMAC.

Conduct of the Complaint Investigation

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

- review of the complaint and supporting documentation from complainant;
- review of the District's responses to the allegations, together with documentation submitted by the District at the request of the PED's independent complaint investigator;

¹ The state-level complaint procedures are set forth in the federal regulations at 34 C.F.R. §§ 300.151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

- review of the District’s compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Complainant, Student, Ombudsman, Director of Student Services and Special Education Director; 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. This complaint investigation resolves all of the issues raised by the Complainant.

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 the Student’s October 3, 2022, Individualized Education Plan (IEP) to meet the Student’s unique needs resulting from the Student’s disabilities to enable the Student to be involved in and make progress in the general education curriculum, as required by 34 C.F.R. §§ 300.320-300.324 and 6.31.2.11(B) NMAC, specifically by:
 - a. failing to conduct a reevaluation of the Student prior to developing the October 3, 2022, IEP, as required by 34 C.F.R. § 300.303; and 6.31.2.10(D)(2) NMAC;
 - b. failing to consider the results of the most recent recreational therapy evaluation in determining the nonacademic needs of the Student, as required by 34 C.F.R. §§ 300.107(b) and 300.324(a)(1)(iii); and 6.31.2.11(B)(1) NMAC;
 - c. failing to provide the Student with appropriate social work services, as required by 34 C.F.R. § 300.107(b); and 6.31.2.11(B)(1) NMAC; and
 - d. determining that the Student did not have behavior that impedes the Student’s learning or that of others, and thereby failing to consider the use of positive behavior interventions and supports, and other strategies (e.g., conduct a functional behavior assessment, develop a behavior intervention plan), to address behavior that impedes Student’s learning or that of others, as required by 34 C.F.R. § 300.324(a)(2)(i); and 6.31.2.11(F)(1) NMAC.

2. Whether the District failed to implement the Student's October 3, 2022, IEP to enable Student to be involved in and make progress in the general education curriculum, by failing to implement the Student's special education Math services as set forth in the Student's IEP during the 2022-2023 school year, as required by 34 C.F.R. § 300.323(c)(2); and 6.31.2.11(B)(1) NMAC.
3. Whether the District failed to appropriately conduct the April 3, 2023, Manifestation Determination Review (MDR) by failing to determine if the Student's conduct in question had a direct and substantial relationship to the Student's disability, as required by 34 C.F.R. § 300.530(e)(1)(i); and 6.31.2.11(F)(2) NMAC.
4. Whether the District failed to implement the Student's April 13, 2023, IEP at the beginning of the 2023-2024 school year to enable Student to be involved in and make progress in the general education curriculum, by failing to provide Student with special education and related services prior to August 22, 2023, in accordance with the Student's IEP, as required by 34 C.F.R. § 300.323(c)(2) and 6.31.2.11(B)(1) NMAC.
5. Whether the District developed the August 31, 2023, IEP for Student that was reasonably calculated to allow Student to make progress appropriate in light of Student's individual circumstances, including:
 - a. Whether the District considered the use of positive behavior interventions and supports, and other strategies (e.g., conduct a functional behavior assessment, develop a behavior intervention plan), to address behavior that impedes the Student's learning or that of others as required by 34 C.F.R. § 300.324(a)(2)(i) and 6.31.2.11(F)(1) NMAC;
 - b. Whether the District determined an appropriate placement for Student that considered any potential harmful effect on the student or on the quality of services that Student needs as required by 34 C.F.R. § 300.116; and
6. 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

1. The student who is the subject of this complaint investigation is 17 years old and will turn 18 years old prior to the completion of this investigation (the Student).
2. The District is a Local Educational Agency (LEA) under State law (the District) and, as such, is responsible for implementing the IEPs of special education students enrolled in the District.
3. In April 2012, the Student received an initial evaluation in Kindergarten for special education services and was found eligible under the category of developmental delay. In

February 2014, when the Student was eight years old in 2nd grade, the Student received a comprehensive psychoeducational evaluation due to his age and “behavioral concerns, including noncompliance, elopement, and disrespect towards peers and authority figures.” The Student’s cognitive and academic scores were in the average range except in the area of mathematics. The Speech/Language screening results indicated adequate pragmatic language and receptive and expressive language skills. The socioemotional behavior rating scales indicated high levels of maladjustment reported by the parents and teachers and indicated a high probability of ADHD. The evaluation considered eligibilities of Other Health Impairment (OHI), Emotional Disturbance (ED) and Autism, and recommended Other Health Impairment as the Student’s eligibility. The Student’s Multidisciplinary Evaluation Team (MET) determined that the Student was eligible for special education and related services under the disability classification of Other Health Impairment and an IEP was developed for the Student.

4. In February 2017, a reevaluation was conducted to determine if the Student continued to be eligible for special education services and regarding whether student qualified as Gifted. The Student received a psychoeducational assessment and an Educational Evaluation of Learning and Achievement. The Student’s MET determined that the Student continued to exhibit the disability of OHI and qualified for special education services. An IEP was developed for the Student.
5. During the 2020-2021 school year the Student attended an independent Charter School in New Mexico located outside the jurisdictional boundaries of the District (the Charter School).
6. In March 2021, the Charter School conducted “an initial Recreation Therapy Evaluation.” The March 4, 2021, Recreation Therapy Evaluation Report states that the Student was referred for this evaluation due to “growing concerns with Social Emotional and interpersonal relationship skills. [The Student] has a medical diagnosis of post-traumatic stress disorder (PTSD) due to emotional/psychological trauma.” The Report further states that the Student was in a treatment center following the death of Student’s mother. The areas of concern for the Student identified in the Report are anxiety, distractions, decision-making, staying focused on task, conflict management, self-esteem, consequential thinking and cause & effect. The evaluation administered was the School Social Behavior Scales-2 (SSBS-2). The Certified Therapeutic Recreational Therapist’s (CTRS) summary qualified the Student for Recreation Therapy Services to work on “age-appropriate group social skills, experiential learning, consequential thinking, cause & effect, impulse control, anxiety/stress and the ability to accept feedback from peers.” It was recommended that the Student receive Recreation Therapy once a week in a small group setting provided by a CTRS.

7. On February 11, 2022, the Charter School developed an IEP for the Student which provides, in relevant part, as follows:
 - a. Behavioral goals and strategies were included in the IEP, but the Student did not have a Behavior Intervention Plan (BIP). The Student's Present Levels of Functional Performance indicate that the Student needed to work on "self-regulation skills...age-appropriate group social skills, experiential learning, consequential thinking, cause & effect, impulse control, anxiety/stress management and the ability to accept feedback from peers and/or staff."
 - b. It was noted that the graduation option for the Student was the Standard Option, but the Student was not on target with graduation requirements.
 - c. The Student was provided with a number of accommodations including "opportunities for movement."
 - d. The Student received seven hours per week of special education and related services in the special education setting, including 60 minutes of Social Work services and 60 minutes of Recreational Therapy.
8. In the Spring of 2022, the Student's father placed him in a Job Core program and the Student did not earn any high school credits for that semester. Later that Spring the Student was taken into the custody of the New Mexico Children Youth and Families Department (CYFD) and was placed in foster care.
9. In early August of 2022, the Student was placed in the home of the Complainant, a foster parent who was also appointed by the court as the Student's Educational Decision Maker (EDM). The Complainant and Student lived within the jurisdictional boundaries of the District.
10. On August 29, 2022, which was after the school year began, the Student transferred from the Charter School to the District and was enrolled in, and began attending, a high school in the District (RRHS). The Student transferred to the District with the February 11, 2022, IEP developed by the Charter School.
11. District records include a document entitled "Student Transfers From Within A State" regarding the Student's transfer to the District, dated August 29, 2022. This document states that the District "consulted with the parent(s) regarding the services to be provided to the student (which are comparable to those in the student's previously held IEP and constitutes a free appropriate public education) as follows:" Special Education support in General Education for ELA, math, history; Social Work services for 60 minutes per week; and preferential seating, clearly defined expectations, modified homework and assignments. The transfer document further states that the "comparable services will be provided to the student until RRPS holds an IEP Team Meeting within a reasonable period of time and either adopts the IEP from the previous school district or develops a new IEP."

12. On August 29, 2022, the District provided Prior Written Notice to the Complainant regarding the Student's transfer which provides, in relevant part, as follows: "Student is on an IEP from within the state. RRPS will provide the comparable services listed within this document. An IEP will be scheduled within 30 school days to determine services at RRHS."
13. The District's Special Education Director reports that after transferring to the District, the Student received special education and related services comparable to those provided in the February 11, 2022, IEP.
14. On October 3, 2022, the District conducted a Review of Existing Evaluation Data (REED) as part of a reevaluation for the Student which provides, in relevant part, as follows:
 - a. Review of Existing Evaluation Data:
 - i. Information provided by the Parent: "[The Student] is doing well at home, he's responding to redirection well. He loves to cook and bake. There is a lower need for redirection than in the past. He's getting along well with others in the home. There has (sic) not been any arguments with peers who are all older than him. He is reported to be mildly pushy when being assertive with his wants at home."
 - ii. Summary of outside evaluations:
 1. 2017 Evaluation for Giftedness:
 - a. WISC-V: Verbal Comprehension SS 113; Processing Speed SS 80; Full Scale IQ SS 85.
 - b. The Student did not qualify as a student with Giftedness.
 2. 2014 reevaluation:
 - a. WPPSI-III: Nonverbal Intelligence and Processing Speed – low average.
 - b. WJ-III: Word Recognition and Reading Comprehension were average. Letter Writing and Math Reasoning were low average. Language functions appeared intact.
 - c. VMI: low average.
 - d. RIAS: Verbal Intelligence Index SS 104; Nonverbal Intelligence Index SS 99; Composite Memory Index SS 95; and Composite Intelligence SS 102.
 - e. KTEA-2: Reading Composite SS 106; Decoding Composite SS 112; Reading Fluency Composite SS 105; Written Language Composite SS 91; and Math Composite SS 82.
 - f. ABAS-2:

- Student] is struggling with severe asthma for which he receives ongoing care.” No additional data needed regarding primary language: English.
- ii. Cognitive Abilities: “[The Student] has had 2 cognitive evaluations which have yielded average abilities. There is no need to reassess this area as it has been established [the Student] has an average IQ.” No additional data needed.
 - iii. Academic Achievement: “[The Student’s] last academic evaluation indicated he had average academic skills. After reviewing his IEP from [the Charter School], there are Present levels of varying degree, which points back to [the Student’s] difficulty with attention and behavior.”
 - iv. Functional Performance/Adaptive Behavior: no additional data needed.
 - v. Speech and Language: no additional data needed.
 - vi. Social/Emotional/Behavioral: “[The Student] is a student with a diagnosis of OHI. His most recent battery of psychological testing on file is 2014, is acknowledged as somewhat dated. However, his functional performance presence (sic) levels on his most recent IEP and teacher/parent input as part of this REED meeting demonstrate continued need and presentations aligned with an OHI eligibility. No additional testing is requested at this time.”
 - vii. Physical: no additional data needed.
 - viii. Assistive Technology: no additional data needed.
- c. Summary of need for additional data: there is not a need for additional data. “An Eligibility Determination Team meeting will convene to determine initial eligibility or continued eligibility for special education and related services. The date of the EDT decision becomes the new evaluation date.”
 - d. The REED provides written notice to the Parent of the District’s decision at no additional data is needed and that Parent has the right to request an evaluation of the District.
 - e. The parties who participated in the October 3, 2022, REED were the Student, the Parent, Evaluation representative (individual who can interpret the instructional implications of evaluation results), District Representative, Educational Diagnostician, General Education Teacher, Special Education Teacher, CYFD, Adaptive PE, and Caseworker.
15. On October 3, 2022, the Student’s EDT met to determine the Student’s eligibility for special education and related services. The EDT determined that Student was eligible to receive special education and related services under the disability classification of OHI. The EDT consisted of the following participants: the Student, the Parent, Special Education Teacher, General Education Teacher, District Representative, Evaluation

Representative, Educational Diagnostician, Speech Language Pathologist, School Psychologist, Social Worker, Caseworker, Adaptive PE, and School Nurse.

16. On October 3, 2022, the Student's IEP team met to develop an IEP for the Student. The Student's October 3, 2022, IEP provides, in relevant part, as follows:

- a. The Student's primary eligibility is OHI.
- b. A Student Profile section includes transition planning statements regarding Employment, Post-Secondary Training & Learning, Community Participation, Recreation & Leisure, and Independent Living.
- c. The box marked "No" was checked in response to the question whether the Student exhibits behaviors that impede his learning or that of others. It was indicated that the Student will follow the school-wide discipline plan.
- d. Present Levels of Academic Achievement:
 - i. Reading and Written Language: the Student is doing fairly well but his attendance is a bit of a worry. He gets along well with his peers and teachers and is completing class and home work. He is a good writer and seems to be understanding the work. Gets frequent check ins and he can redo any assignment or test if needed. He is very articulate and a pleasure to have in class. Currently has a B.
 - ii. Social Studies: Student does a very good job at advocating for himself in class. He comes to class ready to work and learn. Turns and assignments and communicates well. He is just missing one assignment and can make that up. The Student receives his accommodations. Student is very kind and respectful, strong-willed and very bright and outgoing.
 - iii. Math: the Student is able to complete one step problems after given an example but struggles with basic foundational skills of math. He is below average in all areas of Algebra 2 so far. The Student has remained in math modeling even though he was transferred into small group math. The Student is very kind and personable. He is open and honest about how he is feeling and is helpful around the classroom. He gets along well with his peers and is very friendly.
 - iv. Science: Student is very knowledgeable and eager to learn new material. He needs to stay focused and work on Science during Science class. The Student will listen when given direction and not distract students but needs to work on not getting off topic.
 - v. Advisory/Edgenuity: the Student's current grade for Advisory is 70%. He can turn in late/missing work by the end of each quarter for full credit. The Student started Edgenuity for Conceptual Chemistry late but his completion rate is on pace at 10.9%.

- vi. Sociology: current grade is 77%. The student self-advocates and asks questions for clarification but he needs to speak up during class discussions. The Student has a great attitude and behavior.
 - vii. Social/Emotional: the Student is a bright young man and has strong self-advocacy skills. He struggles with relating to peers and forming peer relationships and often gravitates to adults for social interaction. We can become preoccupied with past experiences that trigger strong emotions making it difficult to remain focused on academic tasks.
- e. Annual Goals:
- i. Reading/Written Language
 - ii. Math: “For success in secondary, post-secondary, and workplace settings, within one school year, in a variety of settings, [the Student] will choose and produce an equivalent form of an expression to reveal and explain properties of the quantity represented by the expression with 80% accuracy as measured by teacher observations, student work and classroom assessments.”
 - iii. Career Readiness
 - iv. Social/Emotional: “For success in secondary, post-secondary and beyond, across all educational settings during this IEP year the Student will be able to regulate their thoughts and feelings in a manner that allows them to remain academically engaged, they will use coping skills to remain task focused, and complete assignments. They will build self-confidence that supports relationship building with peers and staff. Success will be determined by school staff with support of social worker as needed.”
- f. The IEP includes a section of Post-Secondary Goals. The Student’s goal is to enroll in a post-secondary school to obtain training in the field of Law Enforcement or in the Mental Health field.
- g. A section regarding Transition Services/Interagency Linkages is included for the Student’s 11th and 12th grade years, including courses of study.
- h. The Student’s graduation option is the Standard Option, but it is noted that the Student is not on target with graduation requirements.
- i. The following Instructional Accommodations are included in the IEP for ELA, Math, Social Studies, Science and Electives as follows:
- i. Preferential seating near the teacher and also by socially appropriate peers;
 - ii. Use of manipulatives and visual aids;
 - iii. Modified assignments and homework at 70%, and extra time if need;
 - iv. Small group setting;

- v. Clearly defined limits;
 - vi. Provide opportunities for movement;
 - vii. Model lessons and specific examples and demonstrations;
 - viii. Check for understanding;
 - ix. Gain the Student's attention before speaking; and
 - x. Allow for extra time.
- j. Accommodations are allowed in District-wide and Mandated State assessments.
 - k. The Student is taking medications for ADHD and Asthma and requires an Individualized Health Plan which is attached to the IEP.
 - l. Transportation is not provided as a related service.
 - m. The IEP Team determined that ESY services are not necessary.
 - n. Special Education and Related Services:
 - i. ELA inclusion for 225 minutes per week in the general education setting;
 - ii. Math Small Group services for 235 minutes per week in the special education setting;
 - iii. Social Studies inclusion for 235 minutes per week in the general education setting;
 - iv. Social Work individual services for 30 minutes per week in the special education setting.
 - v. The total number of special education and related services hours equals 12.08 hours per week.
 - o. Least Restrictive Environment (LRE): The Student's teacher feels that placement in the small group classroom for Math instruction is necessary to enhance the Student's academic growth more effectively than an inclusion setting.
 - p. The following individuals attended and participated in the development of the IEP: the Student, the Parent, District Representative, Special Education Provider, General Education Teacher, Evaluation Representative, Social Worker, Special Education Teacher, CYFD caseworker, Adaptive PE, and School Nurse.
17. A Prior Written Notice of Proposed Actions is attached to the October 3, 2022, IEP and provides, in relevant part, as follows:
- a. The Student is behind in credits and must retake the following courses: Geometry A/B, Global Issues, World History A/B, English 10 B, and Chemistry A/B.
 - b. The Parent agreed to waive the prior notice requirement so the changes in the IEP can begin immediately on October 3, 2022. "District will implement the IEP on October 3, 2022 at Parent request."
18. The October 3, 2022, REED and IEP for the Student were conducted within 30 school days of the Student's transfer to the District.

19. The District Educational Diagnostician who contributed to the REED and the development of the Student's October 3, 2022, IEP, reports that she "reviewed the evaluations listed in the REED and did not have any need for further evaluations to determine [the Student's] eligibility. Since he had previously been evaluated more than once for processing deficits and did not have any, I was not concerned about the existence a (sic) specific learning disability; nor were there any concerns about another disability . . . The Team also agreed that we had adequate information to determine [the Student's] educational needs . . . We considered input from [the Student] and his CYFD Guardian and [EDM] and based on that information, felt we had sufficient information about [the Student's] academic needs as well, including his needs for math instruction."
20. The District's Evaluation Representative who participated in the REED and the development of the Student's October 3, 2022 IEP, reports that the team "reviewed the 2/24/14 Multi-disciplinary Team Evaluation completed by Albuquerque Public Schools. Based on that evaluation and discussion with the Student and Educational Decision Maker, we agreed that no additional evaluations were needed to continue [the Student's] eligibility as Other Health Impaired (OHI) for Attention Deficit Hyperactivity Disorder (ADHD). We also agreed that no additional evaluations were needed to determined (sic) his educational and related service needs . . . The team discussed [the Student's] needs as a team . . . The team reached consensus on all issues."
21. The Student's Social Worker who participated in the October 3, 2022, REED and IEP for the Student reports that she met with the Student for 270 minutes in September 2022, and she "believed it was in his best interest to reduce his total time for social work services because he didn't need 120 minutes per week of counseling, and I thought that much pull-out would hinder his academic progress greatly. He would miss three classes per week if he received 120 minutes per week of social work services, and I did not think that he needed that. He did need to be in class so that he could pass classes and earn credits toward graduation. I recommended a reduction in social work counseling sessions to 30 minutes per week based on my assessment of [the Student's] needs, including social/emotional and academic . . . RR PS does not use recreational therapy to address social/emotional behavioral needs. We use social work counseling services, which can target the goals that [the Student] had in his prior IEP for recreational therapy. While working with [the Student] during the 2022/23 school year, I felt his services were sufficient to meet his needs."
22. The District's Executive Director of Special Services also reports that "Recreational therapy is a methodology used to increase social, emotional, and basic physical skills. For [the Student], recreational therapy goals addressed his social/emotional needs with a goal for personal responsibility and social decision-making. RRPS addresses the same needs through social work counseling services. [The Student] also had a goal for behavior,

which addressed self-regulation skills and appropriate social interactions.” It was also reported that the Social Worker’s recommendation to reduce Social Work minutes to 30 minutes per week was agreed to by the Student and EDM.

23. The Special Education Instructional Leader (SEIL) at RRHS reported that after considering the Student’s social/emotional and behavior goals, the number of credits the Student needs to recover, and the Student’s LRE, the SEIL was concerned about removing the Student from classes for two hours per week for social work services, which would equal three missed class periods per week, because he would miss too much material and would have a difficult time making up for the missed classes.
24. The email correspondence provided in the District’s documentation does indicate that following the development of the October 3, 2022, IEP the Student did continue to advocate for himself and was receiving the accommodations set forth in the IEP.
25. A review of the Student’s Social Worker’s School Based Service Capture logs shows that during the 2022 2023 school year the Student received 30 minutes or more per week of Social Work services, as set forth in the Student’s IEP.
26. District records and the Parent’s Complaint provide that on October 20, 2022, the Student had a conflict with the Small Group Special Education Math teacher. On October 21, 2022, the Student, CYFD guardian and the EDM met with an Assistant Principal and a transition specialist at RRHS to discuss the situation. The District reports that all parties agreed to change the Student back to the general education inclusion Math class. The Social Worker’s log notes indicate that the Student did not express an objection to the change in the Student’s Math class.
27. The documentation does not include a written document to amend or modify the Student’s October 3, 2022, IEP to change the Student’s Math class from the Small Group Special Education class to the General Education inclusion class.
28. On February 2, 2023, the District and the Parent/EDM agreed to amend the Student’s IEP to add an accommodation to allow the Student “to listen to music with headphones to help him focus during non-instructional, independent times. Must be at an appropriate volume as to not distract those around him.” The Student’s IEP was amended to include this additional accommodation. However, the Student’s February 2, 2023, amended IEP still provides that the Student would receive his special education Math services in the Small Group Special Education Setting.
29. The Parent reports that on February 16, 2023, the Student’s Math teacher asked the Student to go to the office due to the Student causing a disruption in the classroom. The Student went to the office. The District reports that the Student was agitated and initially wanted to return to Math class to “air his grievances.” After speaking with the Assistant Principal and his CYFD guardian, the Student agreed to go to his next class. The District

did not make a disciplinary referral against the Student or impose any out-of-school suspension (OSS) or in-school suspension (ISS) as a result of this incident.

30. On March 28, 2023, the Student was involved in an incident during an after-school club meeting which resulted in a disciplinary referral and report by school staff. The RRHS Student Discipline Referral Form dated March 29, 2023, provides, in relevant part, as follows:
 - a. The Staff Member reported that “the Student made a series of direct verbal threats about an RRHS staff member. [The Student’s] comments, which were overheard by several students and the teacher, made several references to killing a RRHS staff member, further stating that it wasn’t a ‘threat’ but a ‘promise’. [The Student] was directed by the staff member to leave immediately which he did.”
 - b. The Administrator’s notes state that the Student “was brought to the security office at the beginning of the day on March 29. [The Student] verbally admitted to making veiled references regarding the threatening comments. Additionally, [the Student] became upset during the questioning and aggressively knocked over several objects in the security office and was required to be de-escalated by security staff. When [the Student] was informed of his suspension, he left campus without permission, with security & SROs following him.”
 - c. The Student’s conduct was indicated to be a Level III Behavior Violation for Assault of, and Threats made regarding, an RRHS Assistant Principal. The Student was given a 10 day out-of-school suspension beginning on March 29 through April 12, 2023, and a long-term suspension was recommended.
31. In an email to the Parent on March 29, 2023, the RRHS Assistant Principal provided a copy of the report and indicated that school would be “reaching out to you soon regarding a manifestation determination hearing for [the Student], and to discuss next steps in this process.”
32. On April 3, 2023, the Student’s IEP team met and conducted a manifestation determination review, which was five school days after the Student was suspended pending a disciplinary hearing. A Manifestation Determination Review Form was completed by the Student’s IEP team and provides, in relevant part, as follows:
 - a. A description of the behavior subject to disciplinary action was included, as set forth in paragraph 29 above.
 - b. Information Considered in Review:
 - i. Current evaluation date and findings:
 1. The Student’s current evaluation is a REED dated October 3, 2022. The Student has an existing eligibility of OHI: ADHD. No additional data was requested at the time of his current REED.

2. On March 4, 2021, the Student's previous Charter School conducted a recreational therapy evaluation which found that he met criteria for services in this area. This evaluation indicates that the Student has a medical diagnosis of PTSD. "Areas of concern include anxiety, inattention, distractibility, and difficulty with decision-making and conflict management." On the SSBS-2 it was found that the Student is rated to have similar levels of social adjustment and social behavior problems compared to same age peers. The Student's score on the CERT-Psych/R assessment tool fell in the "problematic area" which indicates that he has difficulty with decision-making, judgment ability, leadership ability, and style of group interactions in individual and group activities and settings.
 3. On November 20, 2020, a REED was conducted and no additional data was requested. The Student continued to be eligible as a student with OHI: ADHD.
 4. On February 8, 2017, a comprehensive re-evaluation by an Educational Diagnostician was conducted for gifted which produced a Full Scale IQ of 85. The Student did not meet the criteria for giftedness.
 5. On February 24, 2014, a Multidisciplinary Evaluation was conducted including social/emotional, speech/language and occupational therapy. The Student was being reassessed because the team had concerns regarding behavior, noncompliance, elopement and disrespect toward authority. The evaluation indicates that the Student did not meet the criteria and speech/language or occupational therapy.
 6. On April 25, 2012, the Student was first evaluated and determined to meet the criteria as a student with a Developmental Delay.
- ii. Current IEP:
1. "[The Student's] current IEP date is 10/3/2022. He is receiving special education services as a student with OHI: ADHD. He receives a moderate level of services including inclusion in ELA, math, and social studies. He also receives social work for 30 minutes weekly. [The Student] does not have a Functional Behavioral Assessment (FBA)/Behavioral Intervention Plan (BIP). He has a current Health Plan dated 10/3/2022 for Asthma. It is important to note that [the Student] has a history of receiving residential treatment in two different facilities in Utah."

- iii. Prior discipline referrals and out of school suspension days:
 - 1. “[The Student] has had one discipline referral, the current referral, this school year. He has a total of 10 days of out of school suspension.”
- iv. Teacher and other staff observations:
 - 1. The Student currently has a total of 9 credits and a total of 18 absences year to date.
 - 2. Reading: the Student is an avid reader and understands and comprehends grade level material and he is articulate in his oral reading skills. He generally has a B in class at all times. The Student can sometimes get off task but is redirected easily.
 - 3. Writing: “[The Student’s] writing skills are emerging into a decent writer . . . On his essays.” The Student can use textual evidence and can write a clear thesis statement. Concerns are with grammatical errors and proofreading.
 - 4. Math: “[The Student] is kind to both teachers in the class. The Student chooses not to do any work or notetaking in class. Student has made it clear that he will not participate in the class. He needs to improve his effort and attitude toward learning the material. “Concerned about his willingness to stay in school long-term.”
 - 5. Science: “[The Student] can bring interesting topics up, when he is here. [The Student] will come into the start of class, say hi or have a short conversation with [the teacher] and then leave. [The Student] has made it clear that he does not feel he needs to do work. [The Student] has made it clear that he is done with school and class. He is overall very respectful and polite, but has no drive to continue his education . . .”
 - 6. Social Studies: “Student overall did very well in Q3 and he did very well on his Q3 project, and common assessment. [The Student] is very kind and respectful. He has great manners and is very mature.” The Student can better his study habits in order to score high consistently on common assessments.
 - 7. Advisory: “No problems with attitude or behavior. Gets along with teacher and peers.” The Student’s grade for Q3 is 0% and his current completion percentage is 24.2%. The Student has not done any work for Q2 and Q3. The Student has not asked the teacher to check quizzes and tests until he has a passing score.

8. Social Worker: “Extremely creative, outgoing, he is able to communicate and advocate for himself very well. He sees a grandiose sense of justice, not always flexible.”
- v. Any additional relevant information from the parent:
 1. “[The Student] reported that he agrees about his strengths. He does not feel like his accommodations are being met. In his IEP, he reported that he can take walks. His math teacher is allowing him to benefit from his accommodations. In his treatment he was not able to focus on his academics. He does not feel like he’s in the appropriate classes.”
 2. “The CYFD guardian reported that he has a recent evaluation conducted by Dr. Alexander that indicated he has a significant impairment in math.”
 3. One of his teachers and the ombudsman reported that they observed maturity in the Student. “They reported that he is impulsive and anything will come out of his mouth even if may be threatening. He will think about it and will apologize. The CYFD guardian said he was sorry and he felt his needs weren’t being accommodated. He advocate strongly for himself.”
 4. “Administration did not see remorse. [The Assistant Principal] reported that he still observed belief (sic) in that he felt negatively toward the target ([the Assistant Principal]) of his threat.”
 5. “[The Student] reported that he has a habit of forming first impressions due to his time in foster care and treatment centers. He stated that he does not have any homicidal ideations toward [the Assistant Principal]. He said he does not like this administrator but noted that she is doing something right because she’s been in education for many years. He apologized to security, [Assistant Principal], and [Assistant Principal] for causing distress on campus. He reported that he has a habit of not being heard based on his experiences.”
- c. Manifestation Determination:
 - i. It was stated that the conduct in question was not caused by the student’s disability and did not have a direct and substantial relationship to the student’s disability.
 - ii. It was stated that the conduct in question was not a direct result of the district’s failure to implement the IEP.

- d. The parties who attended and participated at the MDR were the Student, Parent/EDM, CYFD Guardian, School Psychologist, SEIL, General Education Teacher, Special Education Teacher, Social Worker, Assistant Principal, Vice Principal, Security Officer, Transition Specialist, and State Ombudsman.
33. The District provided Prior Written Notice of Proposed Actions to the Parent, dated April 3, 2023. The April 3, 2023 PWN provides, in relevant part, as follows:
- a. The IEP team agreed that the conduct in question is not caused by the student's disability and did not have a direct and substantial relationship to the student's disability.
 - b. The IEP team agreed that the conduct in question was not the direct result of the district's failure to implement the IEP.
 - c. The CYFD guardian and the Parent indicated that there is a history of emotional disturbance and recent evaluation for specific learning disability. However, no documentation has been provided to the school to support this.
 - d. The School Psychologist presented the Manifestation Determination Review Form information to the IEP team. Changes to the document were made due to the Parent's input. The IEP team agreed to the information given.
 - e. A proposal was made to waive the disciplinary hearing and accept a recommendation for 45-day placement on an off campus special education setting. This proposal was rejected. The Guardian and ombudsman indicated they would like to proceed with the proposed hearing.
34. On April 11, 2023, a due process hearing was held before a Hearing Officer. The Decision of Hearing Officer dated April 11, 2023, provides, in relevant part, as follows:
- a. The RRHS Administration staff presented evidence on behalf of the District. The two Ombudsman, CYFD guardian and the Parent/EDM presented evidence on behalf of the Student. The issue before the Hearing Officer was whether the Student violated Criminal or delinquent acts, Board Policy 1008 B.1.a, and the RRHS Student Management Handbook rules pertaining to Criminal or delinquent acts.
 - b. After the evidence was presented by RRHS Administration, and questions by the Ombudsman were answered, the Student was given an opportunity to speak. The Student "expressed the belief that schools were not providing students with adequate services required to be successful."
 - c. The Hearing Officer stated that the District produced substantial evidence that the Student was in violation of Board Policy 1008 B.1.a, Criminal or delinquent acts and the RRHS Student Management Handbook. "This conduct warrants a long-term suspension because of violations of Board Policy 1008 B.1.a, Criminal or delinquent acts.

- d. The Hearing Officer recommended the imposition of the penalty of long-term suspension be effective through May 26, 2023. It was the responsibility of the Guardian to make sure the Student was enrolled in a public school or other alternative setting during the period of suspension.
 - e. The Hearing Officer ordered the IEP team to reconvene immediately to determine the Student's educational placement and the interventions necessary to assist the Student in improving his behavior and educational success. The Guardian and Student were required to participate in this process.
 - f. "[The Student] may return to Rio Rancho High School in August 2023 and shall report to the Principal's office accompanied by his guardian/caseworker if the IEP Committee determines that this is the student's least restrictive environment."
 - g. "[The Student] is not allowed on any Rio Rancho Public School grounds during the period of suspension except to attend the least restrictive educational placement decided by the IEP team."
35. On April 13, 2023, the Student's IEP team met to review and revise the Student's October 3, 2022, IEP pursuant to the order of the Hearing Officer. The April 13, 2023, IEP provides, in relevant part, as follows:
- a. The Student's Primary Eligibility is OHI: ADHD.
 - b. Student Profile unchanged.
 - c. The box marked "No" was checked in response to the question whether the Student exhibits behaviors that impede his learning or that of others. It was indicated that the Student will follow the school-wide discipline plan.
 - d. Present Levels of Academic Achievement remain unchanged.
 - e. Annual Goals remain unchanged.
 - f. Post-Secondary Goals remain unchanged.
 - g. Transition Services/Interagency Linkages remain unchanged.
 - h. The Student's graduation option is the Standard Option, but it is noted that the Student is not on target with graduation requirements.
 - i. Instructional and testing Accommodations remain unchanged.
 - j. Individualized Health Plan remains unchanged.
 - k. Transportation is not provided as a related service.
 - l. The IEP Team determined that ESY services are not necessary.
 - m. Special Education and Related Services remain unchanged.
 - n. The following individuals attended and participated in the review of the IEP: the Student, the Parent/EDM, CYFD legal guardian, State Ombudsman, District Representative, Social Worker, Special Education Teacher, Transition Specialist, and SEIL.

36. A Prior Written Notice of Proposed Actions is attached to the April 13, 2023, IEP and provides, in relevant part, as follows:
- a. The District proposed a placement for the Student at Desert Pathways (DP) which was accepted by the IEP team. “The team agrees that this setting will provide the necessary supports for [the Student], including special education teachers and access to a social worker.”
 - b. The District proposed to provide modified transportation for this placement which was accepted by the IEP team. “Guardian may not be able to provide transportation to the site so [the Student] may not be able to attend until transportation is provided by the District.”
 - c. The District proposed that the Student return to RRHS campus for the 2023-2024 school year, which was accepted by the IEP team. “The team agrees that this is appropriate for [the Student] to return upon the completion of his long-term suspension.”
 - d. The Parent/Guardian proposed to increase social work hours to two hours per week based on prior IEP information, which was rejected by the IEP team. The District requested the evaluations “referenced by the Student and Guardian be provided in order to better inform the services provided by the school.”
 - e. The Parent/Guardian proposed an FBA/BIP for Student which was accepted by the IEP team. “To better understand the behaviors demonstrated by the student, and (sic) FBA and possible BIP will be conducted.”
 - f. The IEP team proposed a tentative date to reconvene to review the FBA/BIP on May 11, 2023.
37. The Student began attending DP several days after the IEP team meeting due to scheduling issues by the District.
38. In April 2023, the District received a report of a community-based evaluation of the Student obtained by CYFD dated November 2, 2022. On April 17, 2023, the District agreed to conduct a REED to review the evaluation as part of a reevaluation of the Student.
39. The District’s documentation indicates that on April 23, 2023, the Student was observed standing on the sidewalk outside of the entrance/exit to the RRHS staff parking lot looking into the parking lot. When confronted by school security officers, the Student stated that he knew he was permitted to be at that specific spot because it was not on school property. The District reports that his actions were interpreted by the victim and security officers as Student having an intent to intimidate the victim.
40. On April 25, 2023, the victim obtained a Temporary Restraining Order (TRO) against the Student in response to this additional alleged threat, requiring the Student to stay at least 100 feet away from her. (On September 15, 2023, a permanent injunction was issued by the court against the Student.)

41. In late April and early May, 2023, the Student was involved in three minor behavior incidents at DP involving disruptive behavior and elopement from class. The Student received two days of OSS and one unexcused absence regarding these incidents.
42. On May 15, 2023, the District did convene a meeting of the Student's IEP team to conduct a REED. The May 15, 2023, REED and attached PWN provide that after reviewing previous evaluation data and the recently obtained Community Based Evaluation report, additional data was needed for Academic Achievement in the area of math. The Parent/EDM requested a formal assessment in math. In addition, it was determined that additional data was needed in the area of Social/Emotional/Behavioral. The School Psychologist recommended a BASC since one has not been completed in the past year, and the team agreed with the recommendation.
43. Beginning on May 15, 2023, the date of the REED, the District requested consent for a reevaluation of the Student from the Parent/EDM on three occasions, and consent was provided by the Parent/EDM on July 31, 2023.
44. The District did not conduct an FBA prior to the end of the 2022-2023 school year.
45. Following the 2022-2023 school year, the Student transferred to a transitional living environment located within the jurisdictional boundaries of the District. At the end of the Summer, 2023, the Student was transferred out of the transitional living environment into a new foster home located within the boundaries of RRPS, but not within the attendance boundaries of RRHS. The District reports that it was not made aware of the Student's transfer to this new foster home. The Student's new foster home was located within the attendance boundaries of Cleveland High School (CHS).
46. The Complainant continued to be EDM for the Student even though the Student did not continue to reside with the EDM.
47. The Parent reports that on July 26, 2023 a best interest determination (BID) was made by CYFD to move the Student from RRHS to CHS. This BID was emailed to the District and the Executive Director of Student Services replied to the email and agreed with the move to CHS.
48. School began at RRHS for the 2023-2024 school year on August 3, 2023.
49. Prior to the beginning of the school year, the State Office of the Special Education Ombud, CYFD and the District's Executive Director of Student Services began an email chain discussion regarding the Student's need for transportation in order to return to attending RRHS after his long-term suspension. The Ombud indicated that the Student was residing in the boundaries of CHS and needed transportation in order to begin attending RRHS because it was his "school of origin." There was some confusion as to the previously conducted BID that the Student should attend CHS. The District did not allow the Student to register at RRHS but directed him to register at CHS.

50. On August 9, 2023, the District and CYFD agreed that a BID meeting needed to be held involving both RRHS and CHS to determine where the Student should attend school.
51. At this point in time the District's Educational Diagnostician was also attempting to begin the evaluation of the Student but was not able to contact him because he was not in school.
52. On August 9, 2023, the advocates for the Student contacted the SEIL and requested "an emergency IEP for [the Student]" to arrange transportation for the Student to RRHS. The District scheduled an IEP team meeting for the Student on August 31, 2023.
53. On August 17, 2023, a BID meeting was held with the Student's advocates and District representatives including staff from the high schools. The result of this meeting was a decision that it was in the Student's best interest to attend Independence High School (IHS) (an alternative high school within the District) because the Student needed to recover high school credits and students who attend IHS can graduate with fewer credits than students who attend RRHS or CHS. There were also concerns that if the student attended RRHS the Student would engage in behaviors that could result in another long-term suspension.
54. On August 18, 2023, the District informed IHS staff that the Student would be attending IHS.
55. Following the August 17, 2023, BID meeting, the advocates for the Student continued to request that he be provided special transportation. The EDM and Ombud stated that the Student's current IEP provided special transportation. The Assistant Principal at IHS responded that the Student received special transportation to DP only because it was a disciplinary placement located outside of the attendance zone where he was then living. The Parent/EDM was encouraged to provide the Student's address so that normal bus transportation to IHS could be scheduled and the Student could be informed where the bus pickup would be. The Parent provided the address for the Student.
56. The District reports that on August 22, 2023, the first day that the Student attended IHS, the Student disclosed to his school social worker "a list of incidents of serious harm to self and others that [the Student] displayed in the past as well as current dangerous statements by [the Student] that he may himself hurt a student or make a weapon with the intent of harming others."
57. The District originally scheduled an EDT/IEP team meeting for the Student on August 28, 2023. However, due to scheduling conflicts the meeting took place on August 31, 2023.
58. On August 29, 2023, the Parent/EDM sent an email to District staff with several requests for the upcoming IEP team meeting. These requests were included in the IEP team meeting agenda prepared by the District.

59. Upon arriving at school on the morning of August 31, 2023, the Student's backpack was searched by District Security. District Security found pepper spray in the Student's backpack and confiscated it.
60. On August 31, 2023, the Student's IEP team met to review and revise the Student's IEP and determine the appropriate placement for the Student. The Student's August 31, 2023, IEP provides, in relevant part, as follows:
- a. The Student's Primary Eligibility remains as OHI: ADHD.
 - b. The Student Profile section was updated and includes transition planning statements regarding Employment, Post-Secondary Training & Learning, Community Participation, Recreation & Leisure, and Independent Living. It was noted that the Student was removed from a foster home last school year due to threats made to others in the home.
 - c. No Special Factors exist.
 - d. The box marked "Yes" was checked in response to the question whether the Student exhibits behaviors that impede his learning or that of others. It was noted that an FBA was conducted on August 23, 2023, and that a new FBA will be conducted. It was indicated that the Student will follow the school-wide discipline plan and that the Student requires a BIP.
 - e. Present Levels of Academic Achievement:
 - i. The Student was taking the following classes with the noted grades: Algebra 2B 50%, English 10B 65%, Weight Training 97%, Biology 70% and Government 68%.
 - ii. Math: the Student has turned in one out of five assignments. He communicates well and enjoys talking to other students. Concerns are a lack of work production, some excessive cursing, and Student needs constant redirection to stay on task. On August 31, 2023, Student refused to give up his phone and refused to attempt any work.
 - iii. English: Student has completed two out of four assignments. The Student enjoys reading and writing. Student does not engage in instructional expectations. He is also easily distracted and needs multiple redirections.
 - iv. Weight Training: Student currently has a 97% and has completed all five assignments. The Student can be disruptive at times and likes to control the class conversations.
 - v. Government: the Student has a 68% and has completed one out of two assignments. The Student enjoys the class conversations and demonstrates strength in his verbal skills. Student is easily distracted and has uttered aloud inappropriate comments. The Student's behavior across

the week while at IHS has declined. The open setting at IHS does not appear to be conducive to the Student's learning style.

- vi. Biology: Student has completed three of four assignments and currently has a 70%. Student has done well with assignments and demonstrates strength in the content area. The Student likes to shock the class with inappropriate comments and there has been some cursing including the "n" word.
- f. Present Levels of Functional Performance:
 - i. DP: The Student attended DP for approximately four weeks at the end of last school year as a disciplinary placement. The Student refused to work, used profanity towards staff and used his cell phone to record staff while reciting his rights. The Student walked off campus four times during the first two weeks of attending DP. "The Student has a penchant for portraying himself as someone he is not, such as reporting to staff that he previously worked as head of security at a local hospital."
 - ii. IHS: the Student is bright, articulate and enjoys talking to and engaging with adults. On August 22, 2023, the Student's first day at IHS, the School Social Worker met with the Student. The Student described many difficult life events the Student had experienced. The Student reported prior attempts and thoughts of self-harm. The Student referenced four separate incidents of violent behavior in which he had participated. The Student indicated it was possible for him to order arsenic and other lethal chemicals online. He also stated he could build a weapon with a 9 V battery, a wire, and a can of pepper spray. The Student made threats of harm statements towards a student who sat next to him on the bus that morning. When asked why the Student was using a clear plastic bag for his books he stated he had a backpack at home but didn't want to bring it because he might fill it with rocks and use it as a weapon. The Social Worker asked the Student if he could make a commitment to stop making statements of harm to others while in school and he stated that he could not commit to that. After reviewing the above events, the District determined the Student should not bring a backpack to school. Prior to notifying the Student of this decision, the Student arrived at IHS on August 31, 2023 with the backpack. The backpack was searched and pepper spray was found.
 - iii. Social Worker recommends continued social work services to develop social/emotional regulations and increasing service time from 30 minutes to 60 minutes per week.

- g. Annual Goals:
 - i. Math: “[The Student] will understand algebraic concepts and applications by demonstrating the ability to solve applications involving systems of two equations in two variables, simple equations, and word problems with 75% proficiency.”
 - ii. Social/Emotional: “Within the IEP year, [the Student] will continue to develop and utilize self-regulation skills including the ability to understand and manage his reactions and responses to feelings and things happening around him. Success towards this goal will be measured by the student completing academic courses, having no disciplinary referrals, and increasing proficiency and communication with staff and peers.”
- h. The IEP includes a section of Post-Secondary Goals. The Student’s goal is to obtain training and qualifications in the field of Law Enforcement, Mental Health, or as a CDL driver (bus driver).
- i. A section regarding Transition Services/Interagency Linkages is included for the Student’s 12th grade years, including courses of study at DP. It is noted that the Student is currently not on track to graduate and may need to return as a fifth-year senior as he is approximately 11.5 credits behind and will need 15 credits without a waiver to graduate the class of 2025 at IHS. You will need 16.5 credits to graduate with the Comprehensive High School class of 2025.
- j. The Student’s graduation option is the Standard Option, but it is noted that the Student is not on target with graduation requirements.
- k. The following Instructional Accommodations are included in the IEP for all core subject areas as follows:
 - i. Preferential seating near the teacher and also by socially appropriate peers;
 - ii. Access to differentiated materials.
 - iii. Allow student to resubmit assignments if below a 60%.
 - iv. Extended time of 1 day if communicated by student to teacher;
 - v. Student may retake or correct tests if below 60% with extra time if needed;
 - vi. Clearly defined limits;
 - vii. Provide opportunities for movement with the limits;
 - viii. Clearly defined expectations with teaching, monitoring, & praise/reward for compliance;
 - ix. Use short instructions and visual aids;
 - x. Check for understanding
 - xi. Gain the Student’s attention before speaking;
 - xii. Repeat, clarify and/or simplify directions;

- xiii. High ratio of positive reinforcement;
 - xiv. Allow student time to process requests; Allow for movement breaks if deemed appropriate by staff (in an area designated by staff);
 - xv. Limit communications with student during times of aggravation/escalation;
 - xvi. Designate safe place on campus for Evan to go when he requests;
 - xvii. The Student we use a verbal cue to let teachers know when he needs time and space. Verbal cue will be "I need a minute.";
 - xviii. Allow the Student to listen to music with personal MP3 with headphones during non-instructional, independent work times AFTER instruction is given and with staff permission. Must be an appropriate volume so as not to distract those around him.
- l. Accommodations are allowed in District-wide and Mandated State assessments.
 - m. The Student is taking medications for ADHD and Asthma and requires an Individualized Health Plan which is attached to the IEP.
 - n. Transportation is provided as a related service. "The IEP Team determined that [the Student] does require special transportation as a related service due to Safety Concerns."
 - o. The IEP Team determined that ESY services are not necessary.
 - p. Special Education and Related Services:
 - i. ELA Small Group services for 255 minutes per week in the Special Education setting;
 - ii. Math Small Group services for 255 minutes per week in the Special Education setting;
 - iii. Science Small Group services for 255 minutes per week in the Special Education setting;
 - iv. Social Studies Small Group services for 255 minutes per week in the Special Education setting;
 - v. Social Work Small Group Individual and/or Group Setting (only for Related Services) for 60 minutes per week in the Special Education setting;
 - vi. School Transportation in the Special Education setting;
 - vii. The total number of special education and related services hours equals 30 hours per week; and
 - viii. The Student requires Special Transportation home to school and school to home daily.
 - q. Least Restrictive Environment (LRE): "The Student can only be served in an off-campus special education setting with special education and related services. [The Student] needs an educational environment that provides intensive behavioral

supports and the highly structured environment to learn, both academically as well as functionally in order to appropriately behave (refrain from threatening harm to others, learn coping techniques and incorporate these skills into his daily routine) in an off-campus special education setting 100% of the school day.”

- r. Location of Services: “The student has had two BIDs . . . both in August 2023. In the first BID, it was determined that the student would enroll at Cleveland High School. The student, CYFD EDM . . . disagreed with that determination and continually attempted to enroll at RRHS before finally seeking a subsequent 2nd BID. The second BID determined that given that [the Student] was a Senior with only nine credits it was in his best interest to enroll at Independence High School where he could make up credits at an accelerated rate (this option is not available at the comprehensive High School Campus). [The Student] and CYFD EDM advocated for [the Student] to return to RRHS (the school he attended during the 22-23 SY until he made a threat to the RRHS Asst. Principal and received a disciplinary consequence and was enrolled at Desert Pathways as a disciplinary removal for the remainder of the 22-23 SY). It was determined at the 2nd BID Meeting that [the Student’s] school of origin is Desert Pathways as that was the last school he was enrolled in. The BID supported [the Student] enrolling at Independence High School, however, given the grave concerns as reported in the Present Levels of Functional Performance of this IEP, the IEP Team has determined that the student will enroll and attend Desert Pathways.”
- s. There were 21 individuals who attended and participated in the IEP team meeting as follows: the Student, the Parent/EDM, CYFD the legal guardian, District Representative, Special Education teacher, General Education Teacher, Evaluation Representative, IHS School Social Worker, DP School Social Worker, IHS Transition Specialist, DP Transition Specialist, IHS Director of Special Services, District Executive Director of Special Services, State Ombudsman, State Ombudsman, IHS Assistant Principal, District diagnostician, District diagnostician, Principle of DP, SEIL of DP, and School Nurse.

61. A Prior Written Notice of Proposed Actions is attached to the August 31, 2023, IEP and provides, in relevant part, as follows:

- a. The IEP team discussed status of the pending reevaluation of the Student. There was an error in the Consent signed by the EDM on July 31, 2023, where Reading was checked rather than Math. The EDM will sign Consent for Re-evaluation for the Student on August 31, 2023.
- b. The District agreed that the District is beholden to the signed Consent date of July 31, 2023, and will look to expedite the reevaluation and reconvene an EDT/IEP meeting as soon as that information is available.

- c. The team discussed the need to conduct a new FBA as the Student demonstrated further dangerous behavior while at school that day (elopement from class and the school building into the parking lot and brought pepper spray in his backpack).
 - d. The team agreed to increase social work minutes from 30 to 60 minutes per week.
 - e. The Parent/EDM proposed that the Student receive Special Transportation to/from school. The Student did not want Special Transportation, but the team agreed to provide it with a goal to transition back to regular transportation when the Student is ready. The Student became very upset regarding the IEP team's decision and took a break in the hall.
 - f. The District proposed that the Student's placement be changed to an off-campus special education setting with special education and related services under the umbrella of IHS so that the student will only need to earn 24.5 credits for graduation but will attend his educational placement at DP and receive all courses and instruction at DP, not IHS. The District stated that Edgenuity instruction at DP is supplemented with hands-on special education teacher instruction and access to textbooks. The Student repeated many times that he did not want, and would not go, to DP. The District made the determination to change the Student's placement to DP. Once the determination was made, the Student became extremely upset. The RRPS staff exited the room to give Student time and space to de-escalate and RRPS Security entered the room to ensure everyone was safe.
 - g. The District advised the Student's advocates that the Student had received a three day OSS for bringing pepper spray to school in his backpack.
 - h. The District also agreed to provide prior notice of, and not implement, the change of placement for the Student until September 11, 2023.
 - i. The District emailed the Modified Transportation Plan to the Parent/EDM and requested that she sign and return it immediately so transportation could begin the process of routing the Student's Special Transportation.
62. On September 1, 2023, the District emailed to the EDM and the legal guardian a copy of the IEP, Health Maintenance Plan, current FBA and BIP and the PWN dated August 31, 2023.
63. On September 1, 2023, the Parent/EDM sent an email to the District's Director of Secondary Special Services requesting that several changes be made to the August 31, 2023, PWN. One of the requested changes was that she did not agree with the District's proposal to change the Student's placement to DP. On September 12, 2023, the Director responded and indicated she did not receive the Parent's email until September 11, 2023. The Director responded that the August 31, 2023, PWN "we provided meets the requirements of Section 303.421 [of the IDEA]." No changes were made by the District to the August 31, 2023, PWN.

64. District records indicate that on September 22, 2023, the Student received a 1 day OSS for inappropriate use of his cell phone in class and his refusal to turn in the phone.
65. On September 29, 2023, the District's point of contact for CYFD emailed the Parent/EDM and the CYFD legal guardian stating that she was informed that the Student was exited from the group home and placed with a foster family in a different district. She indicated that DP was "still trying to navigate school work using our edge annuity program; however, this may prove to be difficult. Will you be requesting a new BID?" The CYFD legal guardian responded that she would be working on a BID between RRPS and the Student's previous Charter School that he attended before RRPS.
66. The Student's grades for the 2022-2023 school year (11th grade) and the first Quarter of the 2023-2024 school year (12th grade) are as follows:

STUDENT'S GRADES

Year/Qtr/Sem	Sociology	English11A	US History A	Math Modeling Algebra II A	Advisory 11 A	Algebra 2A	Biology	World History A
2022/2023 Q1	B	C+	A-	C	B-	C+	F	D
Q2	F	D	F	F	F	F	F	F
S1	F	C-	D	F	F	D-	F	F

Year/Qtr/Sem	Drama	English 11B	US History B	Intro to Photogr. Arts	Advisory 11 B	Algebra 2B	Biology	World History A
2022/2023 Q3	D	B	B-	F	F	F	F	F
Q4	F	C-	F	F	F	F	F	F
S2	F	C+	F	F	F	F	F	F

Year/Qtr/Sem	Algebra 2B	English 10B	Weight Training	Biology A	Government			
2023/2024 Q1	F	D+	A	F	D+			
Q2	F	D+	A	F	D+			
S1								

67. Student's progress reports for 11th grade are as follows:

STUDENT'S PROGRESS REPORTS

Year/Qtr/Sem	Reading/Written Language	Math	Career Readiness	Social/Emotional
2022/2023 Q1	Making progress	Making progress	Making progress	New Goal
Q2	Making progress	Minimal Progress	Making Progress	Making Progress
Q3	Making progress	Minimal Progress	Making Progress	Minimal Progress
Q4	Minimal progress	Minimal progress	Minimal Progress	

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to develop the Student's October 3, 2022, Individualized Education Plan (IEP) to meet the Student's unique needs resulting from the Student's disabilities to enable the Student to be involved in and make progress in the general education curriculum, as required by 34 C.F.R. §§ 300.320-300.324 and 6.31.2.11(B) NMAC, specifically by:

- a. failing to conduct a reevaluation of the Student prior to developing the October 3, 2022, IEP, as required by 34 C.F.R. § 300.303; and 6.31.2.10(D)(2) NMAC;**
- b. failing to consider the results of the most recent recreational therapy evaluation in determining the nonacademic needs of the Student, as required by 34 C.F.R. §§ 300.107(b) and 300.324(a)(1)(iii); and 6.31.2.11(B)(1) NMAC;**
- c. failing to provide the Student with appropriate social work services, as required by 34 C.F.R. § 300.107(b); and 6.31.2.11(B)(1) NMAC; and**
- d. determining that the Student did not have behavior that impedes the Student's learning or that of others, and thereby failing to consider the use of positive behavior interventions and supports, and other strategies (e.g., conduct a functional behavior assessment, develop a behavior intervention plan), to address behavior that impedes Student's learning or that of others, as required by 34 C.F.R. § 300.324(a)(2)(i); and 6.31.2.11(F)(1) NMAC.**

The IDEA provides that any party may present a complaint with respect to any matter relating to the identification, evaluation, educational placement, or provision of FAPE to a disabled student. 20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.153(a).

Students with disabilities who are eligible under the IDEA are entitled to be appropriately identified, evaluated, placed, and have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. §1400(d); 34 C.F.R. § 300.1(a); 6.31.2.6 NMAC.

Under the IDEA, eligible students with disabilities are entitled to receive a FAPE provided in conformity with an IEP developed consistent with IDEA's procedural requirements and State Rules. 34 C.F.R. § 300.17; 6.31.2.8.A NMAC. "Central to IDEA is the requirement that local school districts develop, implement, and annually revise an individualized education program (IEP) calculated to meet the eligible student's specific educational needs. 20 U.S.C. § 1414(d)." *Thompson R2-J School Dist. v. Luke*, 540 F.3d 1143, 1144 (10th Cir. 2008). The "IEP is a written statement that sets forth the child's present performance level, goals and objectives, specific services that will enable the child to meet those goals, and evaluation criteria and procedures to

determine whether the child has met the goals.” *Ass’n for Cmty. Living in Colo. v. Romer*, 992 F.2d 1040, 1043 (10th Cir. 1993).

The IDEA provides that when developing an IEP, the IEP team must consider the strengths of the child; the concerns of the parents for enhancing their child’s education; information about the child provided by or to the parents; the results of the most recent assessments; the academic, developmental, and functional needs of the child; and any lack of expected progress toward the annual goals. 20 U.S.C. § 1414(d)(3)(A), (d)(4)(A); 34 C.F.R. § 300.324(a), (b); 6.31.2.11.B(1) NMAC. In conducting a meeting to develop, review and, if appropriate, revise a student’s IEP, the IEP Team must consider whether the student’s behavior is a special factor that is impeding the student’s education or that of others. 34 C.F.R. § 300.324(a)(2)(i); and 6.31.2.11(F)(1) NMAC. The goals must enable the child to be involved in and make progress in the general academic educational curriculum and meet each of the child’s other educational needs that result from the child’s disability. 34 C.F.R. § 300.320(a)(2)(ii); 6.31.2.11.B(1) NMAC.

The IEP must include program modifications or supports for school personnel to enable a student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children. 20 USC § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(4); 6.31.2.11.B(1) NMAC. The IDEA federal regulations and State Rules require the LEA to ensure that a student’s IEP is implemented by each general education teacher, special education teacher, the related services provider, and any other service provider responsible for its implementation. 34 C.F.R. § 300.323(d); 6.31.2.11.B(1) NMAC.

The courts have consistently held that IEPs are not evaluated retrospectively. “We do not judge an [IEP] in hindsight; rather, we look to the [IEP’s] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer [Student] with a meaningful benefit.” *J.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 439 (9th Cir. 2010). Whether an IEP is appropriate is determined by the facts and circumstances known to the IEP team at the time it was developed. While it is possible that some time following the development of the IEP different or additional goals, services, or accommodations may appear to be needed for a student. However, unless the need was known or apparent at the time the IEP was developed, the IEP cannot be concluded to have been inappropriate when developed. In hindsight, it is always possible to conclude that the IEP Team could have written better goals or identified additional accommodations for the student. However, the standard for determining if a student has received FAPE is whether the IEP was reasonably calculated to provide educational benefit to the student. *Board of Educ. Of Hendrick Hudson Central Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). Whether an IEP is reasonably calculated to provide educational benefit is determined prospectively. *Fuhrmann v. East Hanover*

Bd. of Educ., 19 IDELR 1065 (3d Cir. 1993), petition for reh'g denied, 110 LRP 65930 (3d Cir. 06/08/93); and *Adams v. State of Oregon*, 31 IDELR 130 (9th Cir. 1999). It should be noted that an IEP team may meet and revise an IEP at any time to include new goals and benchmarks, related services, and/or accommodations, if appropriate for the student.

As set forth in 34 C.F.R. § 300.320; and 6.31.2.11.B(1) NMAC, an appropriate IEP in the state of New Mexico must include:

1. A statement of the student's PLAAFP, including how the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same grade-level curriculum as for non-disabled students);
2. A statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum, and meet each of the student's other educational needs that result from the student's disability, and for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
3. A description of how the student's progress toward meeting the annual IEP goals will be measured, and when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
4. A statement of the special education and related services and supplementary aids and services (including assistive technology), based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities;
5. An explanation of the extent, if any, to which the student will not participate with similar-aged non-disabled students in the regular education environment and in the activities described in this section;
6. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on all grade-level State and districtwide assessments, and if the IEP Team determines that the student must take an alternate assessment instead of a particular regular State districtwide assessment of student achievement, a statement of why the student cannot

participate in the regular assessment and why the particular alternate assessment selected is appropriate for the student;

7. The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications;
8. A statement of school to post-school transition services for a student with a disability, ages 14 and older, or younger if determined appropriate by the IEP Team, and updated annually thereafter, and shall include appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
9. The transition services (including courses of study) needed to assist the child in reaching those goals, and a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority.

If a child with a disability (who had an IEP that was in effect in a previous public agency in New Mexico) transfers to a new public agency in New Mexico and enrolls in a new school within the same school year the new public agency shall provide FAPE to the child. The IEP shall include services comparable to those described in the child's IEP from the previous public agency, until the new public agency either adopts and implements the child's IEP from the previous public agency or develops and implements a new IEP that meets the applicable requirements in 34 C.F.R. Secs. 300.320 through 300.324. 6.31.2.11(H)(1) NMAC.

The IDEA and State Rules provide that the parents of a student with a disability are participants along with school personnel in developing, reviewing, and revising the IEP for their student. 34 C.F.R. § 300.322, and 6.31.2.11.B(1) NMAC. The Rules also provide that each LEA must ensure that the IEP team reviews a student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved and revises the IEP to address any lack of expected progress toward the annual goals, the results of any reevaluation, information about the student provided to, or by, the parents, and the student's anticipated needs. 34 C.F.R. § 300.324(b)(1), and 6.31.2.11.B(1) NMAC.

The Student transferred to the District in August 2022, with an IEP that was developed by the Charter School February 2022. The District chose to provide the Student with special education and related services that were comparable to those described in the transferred IEP until the District could conduct an evaluation and develop a new IEP for the Student. On October 3, 2022, the District conducted a REED, and it was determined by the team, including the Complainant, that no additional evaluations were needed to determine eligibility and develop an IEP for the Student. The Student's IEP team reviewed all of the evaluations provided by the Charter School

and the Complainant, including the most recent comprehensive psychoeducational re-evaluation of the Student conducted by a previous school district in 2014.

The 2014 Evaluation Report's Summary states that "Socioemotional behavior rating scales indicate high levels of maladjustment reported by his mother and teachers. Significant elevations were indicated in the areas of Externalizing Behaviors and the Behavior Symptom Index." These results "indicated a High Probability of ADHD." The Eligibility Statement provides that the eligibilities considered for the Student were OHI, Emotional Disturbance and Autism. The Report further provides as follows:

Emotional Disturbance-the eligibility of Emotional Disturbance was considered due to behavioral concerns and the previous evaluation that had suggested that an Emotional Disturbance eligibility may be appropriate. Though significant behavioral concerns were revealed during the evaluation, the types of behavior shown by [the Student] were behaviors common to students with ADHD. Classroom observations also suggested that [the Student's] behaviors were driven in large part by the attention brought to him by peers. No emotional concerns (depression, anxiety, etc.) were indicated. [The Student] does meet a criteria on included in Emotional Disturbance ("Strange behavior or feelings under normal circumstances"). However, it is the opinion of the examiner that these behaviors are caused by [the Student's] ADHD rather than a true behavioral disorder. Additionally, [the Student's] psychiatrist indicated that a diagnosis of Mood Disorder no longer appears to be appropriate and that ADHD appears to be the cause of [the Student's] behavioral difficulties . . . At this time, it appears that the eligibility of Other Health Impairment based on [the Student's] documented ADHD best meets his needs.

The facts also indicate that the REED team reviewed and considered the 2014 IEP, the Recreational Evaluation and the 2017 Gifted Evaluation as well as past and current educational and behavior data on the Student and determined that no additional data was needed. At the time of the October 3, 2022, IEP the documentation does not contain any significant incidents of behavior by, or behavioral referrals for, the Student. It is concluded that the District's REED and the determination that no additional evaluations were needed prior to developing the October 3, 2022, IEP were reasonable and appropriate at the time. Therefore, the District did not fail to conduct a reevaluation of the Student prior to developing the October 3, 2022, IEP.

As to Issue No. 1(a), the District is not cited.

The Complainant alleges that the October 3, 2022, IEP is not appropriate for the Student because it eliminated the 60 minutes per week of recreational therapy and reduced the amount of social work services from 60 minutes per week to 30 minutes per week. The Complainant argues that

the Student needed the level of social/emotional supports provided in the previous IEP due to his demonstrated difficulty with behavior and self-regulation. The District argues that deference should be given to the expertise and exercise of judgment by the school authorities after the Parent has fully aired her opinions and objections. The standard is whether the IEP is reasonable, and not whether it is ideal. The District explains that the Student transferred to the District for 11th grade with only 9.5 credits when he should have had approximately 13 credits. At the time the Student transferred to the District, the District made the decision to implement the Student's social/emotional/behavioral goals in one hour per week of social work services pending an IEP team meeting. This would provide social work services but would also allow more class time for credit recovery. At the October 3, 2022, IEP the School Social Worker reported that after reviewing her counseling sessions with the Student, she recommended reducing the social work minutes to 30 minutes per week based on her assessment of the Student's social/emotional and academic needs. The IEP team, including the Student and Parent/EDM, agreed with this proposal. The Social Work therapy logs provided by the District show that the District did provide the social work minutes provided for in the Student's IEP. Therefore, it is concluded that the District did not fail to consider the results of the most recent recreational therapy evaluation in determining the nonacademic needs of the Student and did not fail to provide the Student with appropriate social work services.

As to Issues Nos. 1(b) and 1(c), the District is not cited.

The Complainant correctly points out that the October 3, 2022, IEP does not specifically indicate that the Student has behavior that impedes the Student's learning or that of others. However, as noted above, the District argues that the Student did not demonstrate any significant negative behaviors or have any behavior referrals at RRHS prior to October 3, 2023. The PLAAFP in the October 3, 2022, IEP describes the student as pleasant, helpful, articulate, polite and a joy to have in class, but does also indicate some work refusal and minor classroom disturbances associated with his ADHD. The October 3, 2022, IEP does include a social/emotional/behavioral goal and social work services to work on these issues. The IEP also includes a list of 10 classroom accommodations for the Student. It should be further noted that the IDEA and State Rules only require the district to conduct an FBA and develop a BIP when a disciplinary removal due to a violation of a code of student conduct is determined to be a manifestation of the student's disability. It is concluded that the Student's behavior prior to the development of the October 3, 2023, IEP, did not reasonably warrant conducting an FBI or developing a BIP. It is further concluded that at the time of the development of the October 3, 2022, IEP, the District did not fail to consider the use of positive behavior interventions and supports, and other strategies to address behavior that impedes the Student's learning or that of others.

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

The Student's October 3, 2022, IEP provides for the Student to receive small group math instruction in a special education class. The PWN indicates that the team believed the Student would receive more intensive math supports in the small group special education class rather than in a general education inclusion math class.

Issue No. 2

Whether the District failed to implement the Student's October 3, 2022, IEP to enable Student to be involved in and make progress in the general education curriculum, by failing to implement the Student's special education Math services as set forth in the Student's IEP during the 2022-2023 school year, as required by 34 C.F.R. § 300.323(c)(2); and 6.31.2.11(B)(1) NMAC.

In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent and the public agency can agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. If the parent and the public agency agree to modify the IEP without a meeting, the public agency must ensure that the IEP team is informed of the changes. 34 C.F.R. § 300.324(a)(4); 6.31.2.11.B(4) NMAC. Each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. 34 C.F.R. §§ 300.327, and 300.501(c).

On October 20, 2022, the Student had a conflict with his Math teacher and the following day the Student, CYFD guardian and the Parent/EDM met with an RRHS staff to discuss the situation. All of the parties including the Student, CYFD guardian and the Parent/EDM agreed to change the Student back to the general education inclusion Math class. The Student did not object to the change in the Student's Math class. As set forth above, the Federal regulations and State rules allow the parties to agree not to convene an IEP team meeting for the purposes of making the change, and instead may develop a written document to amend or modify the Student's current IEP. The parties appropriately met and agreed to change the Student's IEP. However, the District did not develop a written document to amend or modify the Student's October 3, 2022, IEP to change the Student's Math class from the Small Group Special Education class to the General Education inclusion class. The failure to develop the written amendment is clearly a procedural violation of the IDEA. However, the documentation indicates that the Student continued to receive his special education math services in the General Education Inclusion Math class.

Therefore, it is concluded that the District did not fail to implement the Student's October 3, 2022, IEP by failing to implement the Student's special education Math services, but the District did fail to develop a written document to amend the Student's IEP during the 2022-2023 school year, which is a procedural violation.

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

Issue No. 3

Whether the District failed to appropriately conduct the April 3, 2023, Manifestation Determination Review (MDR) by failing to determine if the Student's conduct in question had a direct and substantial relationship to the Student's disability, as required by 34 C.F.R. § 300.530(e)(1)(i); and 6.31.2.11(F)(2) NMAC.

School personnel may remove a student with a disability who violates a code of student conduct from the student's current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension, for not more than 10 consecutive school days (to the same extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, (as long as those removals do not constitute a change of placement because of disciplinary removal as set forth in 34 C.F.R. § 300.536). 34 C.F.R. § 300.530(b)(1); and 6.31.2.11(F)(2) NMAC. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, or if the conduct in question was the direct result of the LEA's failure to implement the IEP. 34 C.F.R. § 300.530(e)(1); and 6.31.2.11(F)(2) NMAC. Parents do have the right to invite additional participants to the MDR, but they do not have the right to veto a district's choice of team members or the MDR team's determination that the child's misconduct is unrelated to his disability. *Fitzgerald v. Fairfax County Sch. Bd.*, 556 F.Supp.2d 543 (E.D. Va. 2008).

The factual findings above describe the Student's behavioral incident at an afterschool club on March 28, 2023, when the Student made verbal threats to kill an Assistant Principal at RRHS. The facts related to the incident have all been admitted to by the parties. The District scheduled and held an MDR meeting with the Student's IEP team, including the Student, the Parent/EDM, CYFD legal guardian and State Ombudsman and nine District staff members, on April 3, 2023, six days

after the incident. The Complainant argues that there was “no review or discussion of the October 3, 2022, IEP, previous incidents, or services.” However, a very detailed Manifestation Determination Review Form was prepared by the District, which clearly contains all of the elements required to be reviewed and discussed under the regulations and rules. The Complainant admits that the District School Psychologist read the Form to the team and led a discussion about whether Student’s behavior was caused by his disability. The Form was amended at the meeting with input from the Student’s advocates. The PWN provided to the Complainant states that the IEP team agreed that the conduct in question was not caused by the Student’s disability and did not have a direct and substantial relationship to the Student’s disability, and also agreed that the conduct in question was not the direct result of the District’s failure to implement the IEP. The Student’s behavior was determined not to be a manifestation of his disability.

It should be noted that there is no question that the Student has experienced a number of very difficult life experiences including abuse, loss of his mother, foster care, and the many transitions caused by foster care. The Complainant argues that District staff did not understand the impact of both ADHD and PTSD on the Student and his behavior and ability to self-regulate. The CYFD guardian stated to the team that the Student has a history of an emotional disturbance and a specific learning disability (SLD). However, at the time of the MDR there was no documentation of either disability, and the 2014 evaluation specifically found no evidence of emotional disturbance. The District argues that the threat of harm made by the Student regarding an Assistant Principal at RRHS was not an impulsive act or made under stress or feeling threatened. The Student was not being threatened at the time and the threat was repeated and embellished by stating it was not a “threat but a promise.” Moreover, the Student showed no immediate remorse for those threats. The District argues that the Student’s behavior was calculated and deliberate and is actually indicative of social maladjustment rather than an emotional disturbance. As support for this argument the District cites the case of *J.M. v. Weakly County Bd. of Edu.*, WL 1179615 (W.D. Tenn., E. Division 2015) (continued misbehavior outside acceptable norms, manipulative, and a violation of societal norms is representative of social maladjustment).

Following the District’s MDR determination, the Parent/EDM filed an appeal and a hearing officer was appointed and conducted a due process hearing on April 11, 2023. The Decision of the Hearing Officer dated April 11, 2023, states that “the District produced substantial evidence that the Student was in violation of Board Policy 1008 B.1.a, Criminal or delinquent acts and the RRHS Student Management Handbook. This conduct warrants a long-term suspension because of violations of Board Policy 1008 B.1.a, Criminal or delinquent acts.”

Therefore, based upon the facts and law stated above, it is concluded that the District did not fail to appropriately conduct the April 3, 2023, Manifestation Determination Review (MDR) by failing to determine if the Student's conduct in question had a direct and substantial relationship to the Student's disability.

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

Issue No. 4

Whether the District failed to implement the Student's April 13, 2023, IEP at the beginning of the 2023-2024 school year to enable Student to be involved in and make progress in the general education curriculum, by failing to provide Student with special education and related services prior to August 22, 2023, in accordance with the Student's IEP, as required by 34 C.F.R. § 300.323(c)(2) and 6.31.2.11(B)(1) NMAC.

As noted above, LEAs are required to have an IEP in place for each eligible student with a disability at the beginning of the school year. Each LEA must ensure that special education and related services are made available to the student in accordance with the student's IEP. Each LEA must ensure that the student's IEP is accessible to each regular education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation, and each teacher and provider is informed of the teacher's specific responsibilities related to implementing the student's IEP, and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP. 34 C.F.R. § 300.323; 6.31.2.11(B)(1) NMAC.

The Federal regulations define "Transportation" to include travel to and from school and between schools, travel in and around school buildings, and specialized equipment (such as special or adapted buses, this, and ramps), if required to provide special transportation for a child with a disability. 34 C.F.R. § 300.34(16). Each public agency must ensure that unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. 34 C.F.R. §300.116(c).

The facts set forth above provide that at the end of the 2022-2023 school year the Student was living in the attendance zone for RRHS. At the end of the Summer of 2023, Student was moved by CYFD to a new foster home located within the attendance zone of CHS. On July 26, 2023, a best interest determination (BID) pursuant to 6.41.4.8(E) NMAC was made by CYFD to move the Student from RRHS to CHS. This BID was emailed to the District and the District agreed with the Student's move to CHS. School began at RRHS for the 2023-2024 school year on August 3, 2023.

At the beginning of the school year there was some confusion between the parties as to the BID previously conducted by CYFD that the Student should attend CHS. In accordance with the BID, the District did not allow the Student to register at RRHS but directed him to register at CHS. However, the Student continued to attempt to register at RRHS. The District argues that CHS could have implemented the Student's IEP on the first day of school if the Student had registered and attended CHS.

On August 9, 2023, the District and CYFD agreed that a BID meeting needed to be held involving both RRHS and CHS, and the meeting was held on August 17, 2023, with the Student's advocates and District representatives including staff from the high schools. The second BID determined that the Student would attend IHS because students who attend IHS can graduate with fewer credits than students who attend RRHS or CHS. There were also concerns that the Student would engage in behaviors at RRHS that could result in another long-term suspension. On August 18, 2023, the District informed IHS staff that the Student would be attending IHS. The Parent/EDM was encouraged to provide the Student's address so that normal bus transportation to IHS could be scheduled and the Student could be informed where the bus pickup would be. The Parent provided the address for the Student. The Student began attending IHS on August 22, 2023.

The Parent/EDM argues that the District failed to have a new IEP in place at the beginning of the 2023-2024 school year, and failed to implement the Student's April 13, 2023, IEP until August 22, 2023. The Parent/EDM also argues that the Student should have been allowed to attend RRHS because it was his "school of origin," and because the April 11, 2023, decision by the Hearing Officer regarding the disciplinary hearing stated that the Student could return to RRHS after his disciplinary placement at DP. The District points to several important facts which are contrary to the Parent's arguments. First, the Student did have a current IEP which could have been implemented at CHS. Second, the Student's actual school of origin at the beginning of the 2023-2024 school year was DP, not RRHS. Third, the Student no longer lived in the attendance zone for RRHS, because he had recently been moved into a foster home in the attendance zone for CHS. Fourth, the April 11, 2023, decision by the Hearing Officer stated that "[the Student] may return to Rio Rancho High School in August 2023 and shall report to the Principal's office accompanied by his guardian/caseworker if the IEP Committee determines that this is the student's least restrictive environment . . . [The Student] is not allowed on any Rio Rancho Public School grounds during the period of suspension except to attend the least restrictive educational placement decided by the IEP team." Finally, a TRO was entered against the Student by the Court after the Student showed up on the sidewalk just outside of the entrance/exit to the RRHS staff parking lot, because it was determined by the court that he was stalking or trying to intimidate the RRHS Assistant Principal he had threatened to kill the previous school year. The Student was not allowed within 100 feet of the Assistant Principal. The TRO eventually became a permanent

injunction against the Student. The District argues these facts mitigate against the Parent/EDM's argument that the Student should have been allowed to attend RRHS and have his IEP services implemented there. While there are many mitigating factors on both sides of this issue, it is concluded that the District's arguments are more persuasive than the Complainant's arguments.

Therefore, it is concluded under the facts and law set forth above that the District did not fail to implement the Student's April 13, 2023, IEP at the beginning of the 2023-2024 school year to enable Student to be involved in and make progress in the general education curriculum, by failing to provide Student with special education and related services prior to August 22, 2023, in accordance with the Student's IEP.

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

Issue No. 5

Whether the District developed the August 31, 2023, IEP for Student that was reasonably calculated to allow Student to make progress appropriate in light of Student's individual circumstances, including:

- a. Whether the District considered the use of positive behavior interventions and supports, and other strategies (e.g., conduct a functional behavior assessment, develop a behavior intervention plan), to address behavior that impedes the Student's learning or that of others as required by 34 C.F.R. § 300.324(a)(2)(i) and 6.31.2.11(F)(1) NMAC;**
- b. Whether the District determined an appropriate placement for Student that considered any potential harmful effect on the student or on the quality of services that Student needs as required by 34 C.F.R. § 300.116.**

The Federal regulations and State Rules provide that "the IEP team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies, and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal rules." 34 C.F.R. Sec. 324(a)(2)(i), and 6.31.2.11(F)(1) NMAC.

The Federal regulations and State Rules provide that in determining the educational placement of a student with a disability, each LEA must ensure that the placement decision is made by a

group of persons, including the parent(s) and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options, and is made in conformity with the LRE provisions in the State Rules. A student's placement must be determined at least annually and is based on the student's IEP. In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that the student needs, and a student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. 34 C.F.R. § 300.116.

The facts state that at the April 13, 2023, IEP team meeting for the Student, the IEP team agreed to conduct an FBA to address the Student's work refusal. The IEP team initially discussed meeting in the middle of May 2023, discussed the FBA, but that did not occur.

The facts provide that on August 22, 2023, the day that the Student began attending IHS, the Student had an initial meeting with his Social Worker. The Student made some very disturbing statements including regarding harm to himself and others and his ability to make a weapon out of pepper spray. The District scheduled an IEP team meeting for the Student on August 31, 2023. Upon arriving at school on the morning of August 31, 2023, the Student's backpack was searched by District Security and Pepper Spray was found and confiscated. The IEP that was developed for the Student on August 31, 2023, includes a Social/Emotional Annual Goal, 18 classroom accommodations, and 30 hours of Special Education Services, including special transportation to and from school. The FBA that was agreed to at the end of the previous school year was completed and reviewed at the IEP team meeting on August 31, 2023, and a BIP was also adopted at the meeting. In view of the team's concern with the Student's recent behavioral incidents, the IEP team agreed to conduct a new FBA and BIP to address the Student's increasingly concerning behaviors. Therefore, it is concluded that the District developed the August 31, 2023, IEP for Student that was reasonably calculated to allow Student to make progress appropriate in light of Student's individual circumstances, including that the District did consider the use of positive behavior interventions and supports, and other strategies (e.g., conduct a functional behavior assessment, develop a behavior intervention plan), to address behavior that impedes the Student's learning or that of others.

As to Issue No. 5(a), the District is not cited.

At the August 31, 2023, IEP team meeting a new placement was proposed by the District and discussed and determined by the team. This placement was through IHS with the Student to attend the DP campus through Edgenuity, the online learning platform. District staff explained that this placement was designed to assist the Student academically with the opportunity for faster credit recovery (because he only needed to obtain 24.5 credits at IHS instead of 26 credits

at RRHS or CHS and he could work at a faster pace), and that DP would address the Student's dangerous and criminal behavior which disrupted his learning and the learning of other students. The Student, the Parent/EDM and the Student's other advocates disagreed with the placement at DP. The Student explained that he did not like Edgenuity because the online learning format was not his preferred learning format. The Student stated that he learned better with an in-person hands-on format. The Student emphatically stated that he would not go to DP. The District acknowledged that the Student did not like the online learning format and did not attend to it very well. This was balanced against the need for credit recovery and a safer environment for the Student, staff and peers. It was noted by the District that the Student's conduct the previous year regarding a staff member had resulted in a TRO and a permanent injunction against him with the potential for criminal charges. The Student's behavior at the beginning of the current school year regarding his comments to the IHS social worker and bringing Pepper Spray to school were also very concerning to the District. The District also explained that instruction at DP could be provided through Edgenuity with direct special education instruction, hands-on projects and traditional textbooks. When the District eventually stated that the Student's placement was being changed to DP, the Student reacted in an extremely negative manner in the meeting room which required a lengthy break for him to calm down.

It is concluded that based upon the facts and law set forth above, the District developed the August 31, 2023, IEP for Student that was reasonably calculated to allow Student to make progress appropriate in light of Student's individual circumstances, including that the District determined an appropriate placement for Student that considered any potential harmful effect on the student or on the quality of services that Student needs.

As to Issue No. 5(b), the District is not cited.

Issue No. 6

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.

An allegation of a denial of FAPE to a disabled student can be based on either substantive grounds or procedural violations of the IDEA. 20 U.S.C. § 1415(f)(3)(E). *Hendrick Hudson Central School Dist v. Rowley*, 458 US 176; 102 S Ct 3034; 73 L Ed 2d 690 (1982); *Sytsema v. Academy School District No. 20*, 538 F.3d 1306 (10th Cir. 2008). "The IDEA also sought to maximize parental involvement in educational decisions affecting their disabled child by granting parents a number of procedural rights. For example, parents are entitled to: (1) examine all records relating to their child, 20 U.S.C. § 1415(b)(1); (2) participate in the IEP preparation process, *Id.*; (3) obtain an

independent evaluation of their child, *Id.*; (4) receive notice before an amendment to an IEP is either proposed or refused, § 1415(b)(3); (5) take membership in any group that makes decisions about the educational placement of their child, §1414(f); and (6) receive formal notice of their rights under the IDEA, § 1415(d)(1).” *Ellenberg ex rel. S.E. v. New Mexico Military Institute*, 478 F.3d 1262 (10th Cir. 2007). The IDEA’s “procedural guarantees are not mere procedural hoops through which Congress wanted state and local educational agencies to jump. Rather, the formality of the Act’s procedures is itself a safeguard against arbitrary or erroneous decision making.” *Daniel R.R. v. State Bd. Of Edc.*, 874 F.2d 1036, 1041 (5th Cir. 1989) (internal quotation marks omitted).

However, proving a procedural violation is only a first step to obtaining relief. In *Sytsema*, the court held that an “IEP’s failure to clear all of the Act’s procedural hurdles does not necessarily entitle a student to relief for past failures by the school district.” *Sytsema*, 50 IDELR at 216; quoting *Garcia v. Bd. Of Educ. Of Albuquerque Pub. Schs.*, 520 F.3d 1116, 1125-26 & n.4 (10th Cir. 2008) (“[O]ur precedent hold[s] that procedural failures under IDEA amount to substantive failures only where the procedural inadequacy results in an effective denial of a FAPE.”); quoting *Urban ex rel. Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 726 (10th Cir. 1996) (holding that a procedural failure did not entitle a student to relief because that deficiency did not result in the denial of a FAPE). Congress provided in the 2004 amendments to the IDEA that to find a denial of FAPE based on a procedural violation, the procedural violation must have: (1) impeded the student’s right to a FAPE, (2) significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE to the student, or (3) caused a deprivation of educational benefits. 34 C.F.R. § 300.513(a)(2).

The IEP process provides that the parents and school personnel are partners in decision-making; the IEP team must consider the parents’ concerns and information they provide regarding their child. 64 Fed. Reg. 12473 (Mar. 12, 1999). The IDEA’s requirement that parents participate in the IEP process ensures that the best interests of the child will be protected and acknowledges that parents have a unique perspective on their child’s needs, since they generally observe their child in a variety of situations. *Amanda J. ex rel. Annette J. v. Clark County School Dist.*, 267 F.3d 877, 891. A parent who has had an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. *Fuhrmann v. East Hanover Board of Education*, 993 F. 2d 1031,1036 (3rd Cir. 1993). Stated another way, a parent has meaningfully participated in the development of an IEP when he/she is informed of his/her child’s problems, attends the IEP meeting, expresses his/her disagreement regarding the IEP team’s conclusions, and requests revisions in the IEP. *N.L. v. Knox County Schools*, 315 F.3d 688, 693 (6th Cir. 2003); *Fuhrmann*, supra, 993 F.2d at 1036.

It has been concluded above that the District failed to develop a written amendment to the Student's October 3, 2022, IEP regarding the agreed-upon change to the Student's math class. This constitutes a procedural violation of the IDEA. However, in order to rise to the level of a substantive violation it must be determined whether the District's procedural violation impeded the Student's right to a FAPE, significantly impeded the Parents' opportunity to participate in the IEP process or caused a deprivation of educational benefit to the Student. It is concluded that the Parent/EDM was invited to, and participated in, all of the meetings scheduled by the District to identify, evaluate, determine eligibility for, and develop IEPs for, the Student. It is also concluded that the Student was not deprived of any educational benefit due to the School's failure to document the agreed-upon amendment. Finally, it is concluded that the District's failure to develop a written amendment to the Student's IEP did not impede the Student's right to a FAPE. Therefore, it is concluded that the District's actions and/or omissions towards the Student did not result in a denial of a FAPE to the Student.

As to Issue No. 6, the District is not cited for a substantive violation. However, the procedural violation noted above will require corrective action.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.324(a)(4); 6.31.2.11.B(4) NMAC	The District failed to develop a written record to amend or modify the Student's IEP.

Required Actions and Deadlines

By December 8, 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
Office of Special Education
New Mexico Public Education Department
300 Don Gaspar Avenue

Santa Fe, NM 87501
 Telephone: (505) 490-3918
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 March 8, 2024 and reported to the SED no later than March 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

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
1.	As described above, the District will submit a written assurance to the PED SED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	December 8, 2023	Written Assurance letter/email	December 8, 2023

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
2.	<p>The District shall arrange to provide training to District High School special education staff (including special education teachers, special education administrators, and related service personnel), on the following special education topics:</p> <ul style="list-style-type: none"> A. Meaningful inclusion of a parent or adult student in the IEP development process; B. Requirement to develop a written document/agreement regarding any amendment to a student's IEP made outside of an IEP team meeting with the consent of the parent or adult student. <p>The training may be provided by an employee of the District with expertise in special education who is approved by NMPED.</p>	March 8, 2024	<p>Submission of proposed trainer and trainer's resume and proposed presentation for NMPED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.</p>	<p>January 12, 2024</p> <p>February 9, 2024</p> <p>March 15, 2024</p>

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/ Wallace Calder

Wallace J. Calder, Esq.

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:

DocuSigned by:

Margaret Cage

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Margaret Cage, Ed.D.

Director, Special Education Division