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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Albuquerque Public Schools
Case No. 2324-30
March 8, 2024

This Report does not require corrective action.

On January 8, 2024, there was a complaint 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 OSE 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 parents, two teachers from the autism program, educational aide, math teacher and three special education teachers 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.

Issues for Investigation

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

1. Whether the District failed to develop and implement an IEP and BIP that allowed Student to make educational progress in violation of 34 C.F.R. §§ 300.320-200.328 and 6.31.2.11(B)(1) NMAC; specifically, whether the District:
 - a. Held timely IEP meetings to address Student’s needs and least restrictive environment (LRE) when determining placement and/or changing needs of Student;
 - b. Involved Parents in IEP team decisions regarding the educational services, placement and educational programming for Student that would provide a free appropriate public education (FAPE) to Student;
 - c. Completed appropriate assessments and accurate data collection to determine Student’s needs and whether progress was being made on all goals;
 - d. Failed to provide complete, accurate progress reports on all goals in a timely manner;
 - e. Failed to provide special education and related services as required by the IEP including social work and occupational therapy services;
 - f. Failed to provide communication device as required by the IEP and ensure appropriate training to Student and staff responsible for implementation of the communication device with Student;
 - g. Failed to develop and/or implement communication, behavior and self-regulation goals;

- h. Failed to implement behavior intervention plan (BIP) and provide training to replace inappropriate behaviors;
 - i. Failed to have qualified staff with training in autism specific strategies and autism considerations;
 - j. Failed to provide access to general education curriculum, as appropriate, and to provide access and training to tools needed to access general education or special education curriculum such as a Chromebook and assistive technology, and; and
 - k. Failed to allow Student access to general education peers as appropriate to work on communication and self-regulation goals.
2. Whether the District's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

Background Information

1. Student was a 19-year-old 12th grader who transferred to a high school within the District.
2. Student was eligible for special education services under the category of autism and speech-language impairment.
3. Previously, Student attended a program for students with autism that included fifteen students.
4. In the fall of 2022, the IEP team decided that Student would transition to a high school with 2,500 students.
5. Parents were involved in the development of a multi-month transition plan.
6. During the transition period, Student attended the autism program part time and attended the high school part time.
7. Under this transition plan, Student began going to the neighboring high school to walk the track, walk the halls and eventually sit in a classroom for a few minutes.
8. Prior to Student's transition to another high school, Student would Google chat with students in the social communication skill services (SCSS3) classroom at the high school. When Student came to the high school, Student knew the other students in the social communication SCSS3 class.
9. In January 2023, Student attended the high school one hour a week with placement in a SCSS3 classroom.
10. Student travelled to the high school, with at least one but often three staff members from the autism program, who provided support for Student and staff and training to the staff at the high school.

11. The time at the high school gradually increased to two hours a week by the end of the 2022-2023 school year.
12. Student would attend high school full time at the start of the 2023-2024 school year.
13. All teachers and EAs who worked with Student at the high school were specifically trained by the autism program and/or had extensive experience working with students with autism.
14. The teachers, educational aides (EA) and other staff who worked with Student in the school received approximately 20 hours of training on how best to work with Student. They also received copies of the data collection, behavior charts and other information the autism program had used with Student.
15. Student's behavior plan included a green, yellow, and red zone when Student had difficulties with self-regulation. Student's BIP outlined how to recognize what zone Student was in and how to assist Student in de-escalation.
16. Training for the high school staff also included the tools and materials needed for success and role-playing opportunities to practice de-escalation techniques when Student was moving toward the red zone.
17. This zone system was continued at the high school.
18. During the spring semester of the 2022-2023 school year, Student's time at the high school increased to two hours per week. Student was being successful and the autism program staff were involved in training and guidance to ensure Student's success.
19. Student's new teacher and EAs in the fall of 2023 were trained by the staff from the autism program.
20. Student demonstrated success at the high school and the support from the autism program was discontinued but they were available for assistance, as needed. Consultation with the District resources team was available, as needed.

Placement and Services at High School

21. On the January 31, 2023 IEP it was noted that Student's perceptual reasoning skills were in the average range with moderate to severe receptive and expressive language skills.
22. Student's basic reading, math and spelling skills were mild to moderately impaired. Student's major difficulties were in social communication and adaptive behavior skills.
23. Student had a communication device (speech generating device) that would go with Student during related services and other classes.
24. Student did not have the communication device during transition and training the first two weeks of school during the fall semester 2023.
25. Parents were aware that Student did not have access to the communication device at that time.

26. Student always had access to a low-tech communication assistance (white board with choices) that Student would use when the communication device was not available.
27. Student had a communication dictionary. Student received other accommodations such as audio books, digital books and specialized software.
28. Physical aggression, self-injurious behavior or damage to property including the communication device happened when Student became frustrated.
29. Student broke two communication devices at the high school which were replaced as soon as possible. Student used the low-tech communication system while they were replaced.
30. The communication device, when working, was used in speech therapy.
31. The IEP team agreed to discontinue use of the communication device in the classroom because of safety (two broken communication devices) and Student's adjustment to new teacher and classroom. Per this agreement, Student did not have access to the communication device from October 20, 2023 until the end of the fall semester.
32. The communication device was used again in speech therapy beginning in mid-November. All teachers and EAs who worked with Student were provided multiple trainings on the effective use of the communication device.
33. Student had goals in reading, math, writing, communication, health education and transition. Student also receive occupational therapy and social work services. Student's goals incorporated self-regulation skills.
34. Student demonstrated progress on all goals.
35. Student had a BIP to address aggressive behaviors. Since attending high school, there had been a decrease in physical aggression. Student had one documented crisis behavior incident, which was also a decrease. Student was sleeping less during the school day.
36. Frequent staff turnover of both teachers and EAs made implementation of the IEP and BIP a challenge, but staff were implementing the BIP using many of the tools and techniques that were effective at Student's previous placement. Staff who worked with Student were trained by the autism program staff.
37. Staff who worked with Student were trained in Non-Violent Crisis Intervention (NCVI) and autism strategies.
38. Student received indirect social work support services for 240 minutes per semester.
39. Student had a full time 1-1 EA while at school.
40. Student was at the maximum level for special education services including English language arts 252 minutes per week, math 252 minutes per week, life/work skills 504 minutes per week, social skills, 252 minutes per week and 1764 minutes per week for support in general education. Student also received 504 minutes per semester of occupational therapy and 1350 minutes per semester in speech language services and 504 minutes per week for general education electives.

41. Service logs demonstrated that Student received the special education and related services listed on the IEP. Some of the services were provided through consultation, whereas others such as OT and Speech were provided directly and indirectly. In some areas, service logs indicated that Student received more services than required by IEP
42. Progress reports indicated Student has made progress both academically and socially since transitioning to the high school.
43. Student's communication skills have improved. The teacher reported Student's favorite time of the day was when Student was in speech using the communication device and socialization time when Student and peers answered questions on a variety of topics. Student has increased verbal responses to three words.
44. During IEP meetings, the team addressed autism considerations with respect to Student's needs.
45. Student's placement at the high school was a self-contained classroom with opportunities to participate in inclusion classes with general education peers. The location of Student's placement was a SCSS3 classroom.
46. The District had an intensive Global Support Services classroom (IGS2) and a Social Communication Skills Services (SCSS3) classroom.
47. The High School Intensive Global Support Service (IGS2) program was designed for high school students that need intensive support. The goals of that program were to provide emphasis in basic conceptual skills and functional academics, acquiring basic communication, self-help/self-care, social/emotional skills, therapeutic responses and transition.
48. The High School Social Communication Skills Services (SCSS3) program was designed for high school students that have deficits in social communication skills. The goals of the program are select and engage in indoor and outdoor leisure activities. Appropriate near peers, return greetings, sit appropriately in groups, have preferred activities, develop strategies for self-regulation, follow basic age-appropriate social rules.
49. Both IGS2 and SCSS3 classrooms would be self-contained classrooms on the placement continuum.
50. The high school used a block schedule. Student would participate every other day in an urban sports and art class with general education peers. Student also attended a special education math class.
51. Urban sports, which was the first class of the day was a large class, with over 100 students in a gymnasium. Student often became agitated in this class which impacted on Student's ability to participate in the other inclusion classes.
52. Student with the EA would walk the halls or the track until class was over so Student continued to get exercise.
53. Student was not always able to complete inclusion classes because of agitation or dysregulation.

54. Student attended for a few minutes but rarely for the entire period. One of the goals of attendance was learning to identify potential dysregulation and request a break.
55. When Student requested a break, Student and the EA left the classroom, sometimes returning later in the period, and sometimes returning to the special education classroom.
56. When Student needed the Chromebook, one was available to Student. Access to technology could be a trigger for Student so access was limited if not required for a specific task.

Changes in Staff

57. Within one month of the start of the 2023-2024 school year, the special education teacher in the SCSS3 classroom resigned, effective immediately. All the students in that classroom had to be transferred to another classroom until a new teacher could be hired.
58. The intent was to return Student to the SCSS3 classroom when a teacher was hired. Until that happened, Student was assigned to an IGS2 classroom with an experienced teacher (Teacher 2).
59. Parents were informed immediately by email about the resignation and Student's transfer.
60. The District immediately started the process to hire a new SCSS3 teacher but was unable to find one until January 2024.
61. The transfer to the IGS2 classroom was based on the needs of the Student and the needs of the other students in the SCSS3 and IGS2 classrooms.
62. Student continued to receive all the special education services and supports that were on the IEP.
63. The IGS2 classroom adjoined the other SCSS3 classroom; the two teachers often co-taught and shared materials.
64. At the time of Student's assignment to the IGS2 classroom, Teacher 2 in the IGS2 classroom had already resigned and taken a new position in another building but was Student's teacher for approximately three weeks.
65. On October 10, 2023, Teacher 2 and other staff met with Parents, outlined Student's progress, and discussed services and supports.
66. Teacher 2 left October 12, 2023 and on October 18, 2023, another experienced teacher (Teacher 3) took over the IGS2 classroom. Two days later, a two- and one-half-hour parent-teacher conference was held. Various topics were discussed at that conference.
67. Teacher 3 received training from the autism program staff on October 26, 2023 including training on Student's BIP, communication dictionary and data collection. That same day progress notes were sent home.
68. Every day, Staff would communicate with Parents about how Student's day went when Student was picked up from school.

69. Progress notes were provided to Parents based on the information available to Teacher 3. Unfortunately, the data collected from the first quarter was not available after Teacher 1 resigned. Teacher 2 worked with Student approximately three weeks before the new teacher arrived.
70. Teacher 2 met and shared progress with Parents before he left and the Teacher 3 shared the data and progress information she had available shortly after her arrival. Parents also heard daily about Student's day when they picked up Student.
71. Appropriate assessments and data were collected. There was no indication that Parents requested additional assessments that were not completed.
72. Teacher 3 collected behavior and other data regarding Student and compiled data from previous teachers and shared that with Parents.
73. Parents expressed concern that Student's BIP was not being properly implemented; Teacher 3 reached out to administration for support.
74. Documentation provided by Teacher 3 to Parents indicated that Student's physical aggression and self-injurious behaviors were decreasing. Student was also making progress academically, socially and behaviorally.
75. Student's primary EA had worked with Student since started at the high school and was trained by the autism program staff. Previously, the EA worked on a limited basis with Student, but by October 18, 2023, the EA was with Student all day.
76. The EA eventually became the SCSS3 teacher and Student's new teacher (Teacher 4) in January, 2024.
77. Parents were informed about all program changes for Student since starting at high school. IEP meetings were not held before Student was transferred to another classroom but Parents were timely informed of the changes.

Progress since January, 2024

78. Since Teacher 4's assignment, Student's communication and academic skills in reading and math skills have increased. Negative behaviors have decreased as well.
79. Student's social skills have improved so that Student can navigate the school, eat lunch without agitation, participate more in the classroom without naps and remain in general education classes for longer times, and in some instances, for the entire period.
80. When Student was agitated and there was concern of physical aggression or self-injurious behaviors, Student would be removed from the situation and would often then return to the SCSS3 class.
81. Student did not eat lunch in the cafeteria after an incident in October. Student has returned to the cafeteria, was able to select the meal, pay for it, find a table, and clean the area after eating.

82. Student was able to walk the halls with other students without concerns about inappropriate behaviors. Student has an EA present if Student becomes agitated and can assist in leaving the situation. Student had demonstrated growth in communication and self-regulation skills which has allowed Student to increase participation with general education peers in a safe, successful manner.
83. Recently, Student has demonstrated the ability to verbalize needs. Student was able to tell another student who wanted to sit at the table that Student needed space.
84. Student always has access to the communication device.
85. Two facilitated IEP meetings were held on January 31, 2023 and February 12, 2023. At those meetings, data demonstrated Student's progress socially, academically and behaviorally. The IEP team agreed to use the behavior tracking form developed at the previous school to keep Parents informed about Student's behaviors. There was also discussion about supporting the use of the communication device in the classroom.
86. As noted by Parents in the January 31, 2024 IEP, "[Student] needs to practice navigating crowds, saying "no" to things [Student] doesn't like, understanding when [Student] doesn't have a choice and things may not go as planned. [Student] needs practice in using [their] communication device and voice to let people know what [Student] wants, doesn't like, is upset and needs to go away from? And [Student] needs to do this with a variety of communication partners."
87. "[Student] continues to requires specialized instruction with a lower staff to student ratio with an emphasis on intensive expressive language, receptive language and pragmatic language supports....[Student] requires strategies to support self-regulation and behavior and communication that impact [Student's] learning."
88. The plan was for Student to continue to attend the school to focus on transition skills through the 2024-2025 school year when Student aged out of special education eligibility.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to develop and implement an IEP and BIP that allowed Student to make educational progress in violation of 34 C.F.R. §§ 300.320-200.328 and 6.31.2.11(B)(1) NMAC; specifically, whether the District;

- a. **Held timely IEP meetings to address Student’s needs and least restrictive environment (LRE) when determining placement and/or changing needs of Student;**
- b. **Involved Parents in IEP team decisions regarding the educational services, placement and educational programming for Student that would provide a free appropriate public education (FAPE) to Student;**
- c. **Completed appropriate assessments and accurate data collection to determine Student’s needs and whether progress was being made on all goals;**
- d. **Failed to provide complete, accurate progress reports on all goals in a timely manner;**
- e. **Failed to provide special education and related services as required by the IEP including social work and occupational therapy services;**
- f. **Failed to provide communication device as required by the IEP and ensure appropriate training to Student and staff responsible for implementation of the communication device with Student;**
- g. **Failed to develop and/or implement communication, behavior and self-regulation goals;**
- h. **Failed to implement behavior intervention plan (BIP) and provide training to replace inappropriate behaviors;**
- i. **Failed to have qualified staff with training in autism specific strategies and autism considerations;**
- j. **Failed to provide access to general education curriculum, as appropriate, and to provide access and training to tools needed to access general education or special education curriculum such as a Chromebook and assistive technology; and**
- k. **Failed to allow Student access to general education peers as appropriate to work on communication and self-regulation goals.**

Special education is “specially designed instruction provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability.” 34 C.F.R. § 300.39(a)(1). This specialized designed instruction is adapting the content, methodology or delivery of instruction to address the unique needs of an individual child. 34 C.F.R. § 300.39(b)(3). These unique needs are more than academic needs but can include social, health and emotional needs. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458 (9th Cir. 1996). Behavioral needs are also part of the IEP process and can be addressed in a behavioral intervention plan (BIP). A BIP is usually a component of the IEP to address behaviors that interfere with the student’s learning and are inconsistent with school expectations. *Questions and Answers:*

Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, 81 IDELR 138 (OSERS 2022).

IEPs are developed during an IEP meeting. An IEP meeting must be held annually but districts are encouraged to consolidate IEP team meetings. 34 C.F.R. § 300.324 (a)(5). The IEP team must consider the student's strengths, any concerns of the parents, results of evaluations, and academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a)(1). Parents, as required members of the IEP team, must have adequate information to make informed decisions. 34 C.F.R. § 300.321(a)(1). Every IEP for a student must contain "[a] statement of the child's present levels of academic achievement and functional performance (PLAAFP), including --How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children)." 34 C.F.R. § 300.320(a)(1). This statement of PLAAFP assists in determining the needs of an individual student to develop annual goals to allow the student to receive FAPE and make progress in the general education curriculum. *Bakersfield City School District*, 51 IDELR 142 (SEA CA 2008). The PLAAFP must be comprehensive and provide baseline data that reflects all the child's needs, both academic and nonacademic. This also should include relevant background information about needs, strengths, interests and learning styles. 34 C.F.R. § 300.324(a). The PLAAFP must be individualized to reflect the unique needs and abilities of a particular student. *Letter to New*, 211 IDELR 464 (OSEP 1987).

A child's annual IEP must include measurable annual goals, both academic and functional, that meet the child's needs that result from the child's disability and allow the child to participate in and make progress in the general education curriculum. As part of the program development process, the IEP team must "consider whether the child needs AT devices and services." 34 CFR 300.324 (a)(2)(v). The IEP goals must address all the child's needs that result from the child's disability. 34 C.F.R. § 300.320(a)(2). Annual goals should reflect what is reasonably expected to be accomplished during the annual IEP period. *Letter to Butler*, 213 IDELR 118 (OSERS 1988). The annual goals should be specific to be able to determine progress made and the specific skills needed to achieve progress on goals. 64 Fed. Reg. 12, 471 (1999). Each IEP developed for a student with a disability must describe: How the district will measure the student's progress toward annual goals and when progress reports will be provided. 34 C.F.R. § 300.320 (a)(3). An IEP must be implemented with all required components. 34 C.F.R. § 300.324(b)(ii)(a). However, only material failures of implementation will result in a denial of FAPE. See *Van Duyn v. Baker School District*. 5J, 502 F.3d 811, 822 (9th Cir. 2007).

A determination of a student's least restrictive environment (LRE) is one of the substantive and procedural requirements in the development of the IEP. 34 C.F.R. § 300.320 (a); The section of the IEP that discussed participation in general education and activities specifically refers to the

explanation of the extent, if any, to which the child will not participate with nondisabled peers, the student's LRE. 34 C.F.R. § 300.320 (a). IDEA mandates that students are to be educated to the maximum extent appropriate with their peers. 34 C.F.R. § 300.114 (a). IDEA provides for a continuum of placements to ensure that students are educated in their LRE. 34 C.F.R. § 300.115. LRE decisions are focused on the individual needs of the child. 34 C.F.R. § 300.116. Placement decisions must be considered on an individual basis considering the unique needs and tailored to reasonably promote child's educational success. 34 C.F.R. §§ 300.114 through 34 C.F.R. 118. A change in location of services does not always mean there has been a change in placement. A placement is a point along the LRE continuum of placement options, while a location is the physical location where the child receives related services, such as a classroom. However, a change in location may give rise to a change in placement if the change in location substantially alters the student's educational program. 71 Fed. Reg. 46,588 (2006). *Letter to Tymeson*, 81 IDELR 23 (OSEP 2022). The following factors are determinative in analyzing whether a change of placement has occurred: whether the educational program set out in the child's IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP 1994).

a. Held timely IEP meetings to address Student's needs and least restrictive environment (LRE) when determining placement and/or changing needs of Student;

The District held annual IEP meetings that often involved multiple meetings to finalize the IEP. In addition, there were multiple conferences with staff and Parents to discuss issues regarding Student's educational program. The most recent IEP was initiated at a facilitated IEP meeting on January 31, 2024 and continued February 12, 2024. Parent-teacher conferences lasted multiple hours and Parent would often request IEP meetings shortly before school was out or when there were no issues that warranted an IEP meeting. Whenever Parents expressed concerns, the staff at the autism program and high school attempted to resolve the issues but not always through an IEP meeting. The changes in classroom assignment and teachers were not a change of placement but were required because of staff resignations. Student's needs and the needs of the other students was considered when determining Student's class assignment. Although an IEP meeting could have been convened prior to the new class assignment, it was not required under IDEA because there was not an actual change of placement and Parents were informed of the change. The evidence reviewed demonstrated Parents were involved in the decisions about their Student's education and annual IEP meetings were timely convened.

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

- b. Involved Parents in IEP team decisions regarding the educational services, placement and educational programming for Student that would provide a free appropriate public education (FAPE) to Student;**

Previously, Student attended a special autism program and beginning in 2022-2023 school year, a plan was developed to transition Student to a District high school. The Parents were involved in the development of the multi-month transition plan. Student was gradually transitioned to full time placement in the high school. Part of the plan was Student would be in a self-contained classroom with opportunities for Student to participate with general education peers at lunch, in the halls and selected classes. This happened. During the process of transition, Student's teacher in the SCSS3 classroom resigned and although the District made efforts to replace him, a replacement was not hired until January, 2024. During the interim, Student was placed in an IGS2 classroom with experienced, trained teachers and EAs. The change in location considered Student's needs and the needs of classmates. This was not a change of placement but a change of location of services; Student continued to receive all services and supports outlined in the IEP. Parent actively participated in all IEP meetings and other conferences regarding Student's educational programming.

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

- c. Completed appropriate assessments and accurate data collection to determine Student's needs and whether progress was being made on all goals;**

Teachers and related services providers are required to collect data to determine needs and progress to complete the present levels of academic achievement and functional performance (PLAAFP) on the IEP. The first teacher who worked with Student during the 2023-2024 school year resigned after one month. Some of the data collected by him was not available to subsequent teachers. Since Student first attended high school, Student has had five special education teachers and numerous EAs. Each teacher collected data about Student's progress and completed appropriate assessments to determine Student's needs, progress and shared that information with Parents. All reports indicated that Student was achieving success at the high school. Negative behaviors were decreasing and Student was making progress academically and socially, including with social communication.

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

- d. Failed to provide complete, accurate progress reports on all goals in a timely manner;**

Student's IEP required quarterly progress notes on all goals. Student's first teacher left after one month and progress data was not readily available. Teacher 2 worked with Student only a few weeks but met with Parents about Student's progress two days before he transferred to another position. Teacher 3 had a 2 ½ hour parent-teacher conference with Parents about Student including discussing plans and Student's progress two days after her assignment to Student's class. This teacher also sent a copy of the progress notes for Student that were incomplete but based on the information that she knew. She had worked with Student a short time and Parents had met with the previous teacher and discussed progress. She compiled behavior data that she collected and previous behavior data and shared that with Parents. Since the second quarter, progress notes on all goals have been provided to Parents. Every day, information about Student's day was shared with Parents when Student was picked up after school. Although complete progress notes were not provided as specified in the IEP, Parents were kept informed about Student's progress. IDEA does not require a specific type of data collection. The autism program used one type of data collection that was used to some extent by the high school. The teachers kept sufficient data to track Student's progress and shared that information with Parents in a timely manner.

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

e. Failed to provide special education and related services as required by the IEP including social work and occupational therapy services;

Service logs indicate that Student received all the special education and related services outlined on the IEP and in some instance received more than required. Some of the services were indirect services such as social work and others were a combination of direct and indirect services such as speech services.

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

f. Failed to provide communication device as required by the IEP and ensure appropriate training to Student and staff responsible for implementation of the communication device with Student;

Student's IEP provided for a communication device that was to be used throughout the school day. For the first two weeks of the 2023-2024 school year, Student did not use the communication device but always had access to a low-tech communication system. After the first two weeks, Student had access to the communication system except when Student broke it and there was a lag while it was being replaced. When Teacher 3 was assigned to Student's classroom, in a meeting with Parents shortly after her arrival, there was a discussion and agreement that Student would not have the communication device in the classroom because of safety concerns and Student's adjustment to the new teacher and classroom and then it would

be reintegrated later. The communication device was used in speech starting in mid-November and was used full time in the classroom starting in January, 2024.

Training on the communication device was provided to teachers and EAs multiple times during the 2023-2024 school year. Teacher 4 had been previously trained in use of the communication device and Student has access to the communication device throughout the school day. Student always had access to some form of communication device while at school.

As to issue No. 1f, the District is not cited.

g. Failed to develop and/or implement communication, behavior and self-regulation goals;

Student had goals in reading, math, writing, communication, health education and transition. These goals incorporated self-regulation, behavior and communication goals. Student received speech, OT and social work services that also addressed needs in the areas of communication, behavior and self-regulation. Student had demonstrated progress in communication, behavior and self-regulation as well as the other goals on the IEP.

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

h. Failed to implement behavior intervention plan (BIP) and provide training to replace inappropriate behaviors;

Staff who worked with Student were trained on the BIP by staff from the autism program. They were provided with the tools needed to implement the BIP and during training, participated in role playing where they were provided guidance on implementation of the BIP. At the high school, staff implemented the BIP. Student's physical aggression and self-injurious behaviors have decreased since Student transferred to the high school. The inappropriate behaviors have continued to decrease. This semester, Student has had less physical aggression, was able to participate longer in inclusion classes and SCSS3 classroom with less negative behaviors. Student has been able to verbalize needs rather than become agitated and lash out at other students or staff.

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

i. Failed to have qualified staff with training in autism specific strategies and autism considerations;

All the staff who worked directly with Student either had extensive experience in working with autistic students or were trained by staff from the autism program. This included teachers, EAs, and related services personnel. During IEP meetings, the team discussed the autism

considerations and developed specific strategies that worked with Student. These strategies were implemented with Student with success.

As to Issue No 1i. the District is not cited.

- j. Failed to provide access to general education curriculum, as appropriate, and to provide access and training to tools needed to access general education or special education curriculum such as a Chromebook and assistive technology; and**

Student received specially designed instruction in reading and math as outlined in the IEP goals. Student also attended urban sports and art classes and attended a special education math class. The District operated under block scheduling so those classes were every other day. Student, with one or more EAs, would attend the inclusion classes when Student's mood or temperament would allow. Urban sports was a large class with over 100 students and Student often become agitated requiring Student to leave the classroom before the end of the period. When Student left the class, Student, with the EA, would walk the halls or the track until class was over so Student continued to get exercise. Depending on Student's level of agitation, Student may be able to attend all or part of the other classes. Student was always able to participate in those classes but because of Student's agitation and temperament, full attendance was not always possible. Student had the communication device in the backpack throughout the day. Student did not always use the communication device but had it available. When Student needed the Chromebook, one was available to Student. Access to technology could be a trigger for Student so access was limited if not required for a specific task.

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

- k. Failed to allow Student access to general education peers as appropriate to work on communication and self-regulation goals.**

Student attended lunch, walked the halls or the track and participated, as Student was able, in inclusion classes. When Student was agitated and there was concern of physical aggression or self-injurious behaviors, Student would be removed from the situation and would often then return to the SCSS3 class. Student did not eat lunch in the cafeteria after an incident in October. Later, Student returned to the cafeteria, was able to select the meal, pay for it, find a table, and clean the area after eating. Recently, Student has been able to tell another student who wanted to sit at the table that Student needed space. Student was able to walk the halls with other students without concerns about inappropriate behaviors. Student has an EA present if Student becomes agitated and can assist in leaving the situation. Student had demonstrated growth in communication and self-regulation skills which has allowed Student to increase participation with general education peers in a safe, successful manner.

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

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

Issue No. 2

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

Students who are eligible for special education services are entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. A District is obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17. The determination of whether there has been a denial of FAPE requires consideration of two components: substantive and procedural. The question one must answer to determine the substantive standard is whether the IEP was "reasonably calculated to allow the child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas County School District. RE-I*, 137 S. Ct. 988 (2017). The Court in *J.L. v. Mercer Island School District*, 592 F.3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it resulted in the loss of an educational opportunity, infringed on parents' opportunity to participate in the development of the IEP or deprived the student of an educational benefit. All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx. 202 (2d Cir. 2010).

There was a procedural violation on Issue 1f. However, it is not clear if the team determined that Student should not have access to the communication device for the first two weeks at the high school. Since there was no documentation of that, the District was out of compliance. This, however, was not a denial of FAPE substantively or procedurally. Student has made progress on all goals and the transition was a success story for this Student. While it may have been helpful, for the team to convene an IEP meeting when the first teacher resigned and Student was reassigned, the Parents were always kept informed of the staffing changes. Losing staff is out of a District's control but the District worked to ensure that Student continued to receive services, albeit in a new classroom with new teachers. Despite all the changes, Student had made progress academically, socially, behaviorally and in communication. There was no denial of FAPE.

As to Issue No. 2, the District is not cited.

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

Investigated by:

/s/ Michele Bennett

Michele K. Bennett, Esq.

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:

Margaret Cage

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Margaret Cage, Ed.D.

Director, Office of Special Education