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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Albuquerque Public Schools
Case No. C2324-32
March 11, 2024**

This Report does not require corrective action.

On January 11, 2024, 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 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 NMPED's complaint investigator's investigation process in this matter involved the following:

- review of the complaint and supporting documentation from complainant;

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 responses to the allegations, together with documentation submitted by the District at the request of the PED's independent complaint investigator;
- review of the District’s compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Complainant, Student, District Executive Director for Special Education Compliance, and District School Psychologist; 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 an appropriate IEP for the Student by not considering strategies to address Student behaviors which impeded their learning, in violation of 34 C.F.R. § 300.324 and 6.31.2.11(B) NMAC;
2. Whether the District failed to implement Student’s IEP, in violation of 34 C.F.R. §§ 300.320–300.324 and 6.31.2.11(B) NMAC;
3. Whether the District failed to educate Student in the least restrictive environment, in violation of 34 C.F.R. § 300.114 and 6.31.2.11(C) NMAC; and
4. Whether the District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

1. Student is 18 years old and is eligible for special education under the categories of Autism and Specific Learning Disability (Dyslexia). They are currently in 10th grade.
2. Student has a history of irregular attendance at school.

Fall 2022 Semester

3. During the 2022-2023 school year, Student attended a District high school from August 2022 to February 2023.
4. A Prior Written Notice dated August 9, 2022, shows District staff preparing for Student to start attending school the following day. The notice states that staff are trained on Student's IEP and that Student will have the same 1:1 aide as the prior school year.
5. Part of the transition plan at the start of the school year was to give Student options for attending their 7 school courses.
6. An IEP dated September 9, 2022 shows Student receiving specialized instruction in English Language Arts, Math, Social Studies, and Science. Additional services included social work, speech therapy, and an aide for 260 minutes per week.
7. Another IEP meeting on September 16, 2022 documented that the District's Board Certified Behavior Analyst ("BCBA") recommended a "fidelity checklist" to ensure that behavioral supports were provided to Student by educational assistants.
8. On or about September 29, 2022, Student complained about another student's repetitive vocalizations and physical movements on the bus. Student attended school the next day and then stopped attending school for the remainder of the Fall 2022 semester.
9. An IEP meeting was held October 28, 2022. Parent reported Student was not attending school due to the experience on the bus with the other student. District staff explained that the incident was addressed with the bus driver and seating changes were made the day after the event occurred. In addition to riding the same bus, the District offered to place Student on another bus or reimburse parent for transportation.
10. The IEP Team agreed to have the school psychologist consult with Student to address school avoidance behaviors and identify additional interventions. District staff requested permission from Parent to contact outside mental health provider and Parent requested additional information before agreeing to consent.
11. Student did not return to school following the October 28, 2022 IEP meeting.
12. The District conducted a review of existing data ("REED") on November 6, 2022 and December 8, 2022. This review reaffirmed that Student qualified for special education under the categories of Autism and Specific Learning Disability.
13. The parties met again for an IEP Team meeting on December 9, 2022. The IEP Team agreed to continue implementation of the BIP and assigning a 1:1 aide to student

throughout the entire school day, provide reading specialist services, provide supports from a District BCBA, and ongoing provision of bus services regardless of Student's day-to-day school attendance.

14. Other strategies included exchanging information between District BCBA and private BCBA as well as release of information between IEP Team members and Student's mental health providers. Parent said they would consider those proposals.
15. An additional IEP Team meeting took place on December 14, 2022. The IEP Team recommended supplemental occupational therapy to work on Student's writing needs, having a District employee ride the bus with Student (to facilitate Student having more familiarity and comfortability riding the bus), and conducting a root cause analysis to better understand Student's difficulty with getting on the bus and coming to school. Parent agreed to these recommendations.

Spring 2023 Semester

16. According to the District's Response, a school psychologist, District BCBA and Parent met on January 6, 2023 to conduct a root cause analysis and identify solutions for addressing the school avoidance behaviors of Student.
17. The District claims this meeting was unproductive because Parent was unwilling to discuss the current cause of Student's school avoidance and preferred to focus on past events. When the psychologist discussed the bus incident and proposed several ideas for accommodating Student's transportation needs, Parent was not in favor of the suggestions from the psychologist. Staff inquired about any ideas from Parent and did not receive substantive feedback. At the end of the meeting Parent requested the District create a plan to transition Student back to school.
18. Following this meeting, the District had difficulty creating an effective transition plan for Student to return to school because District staff perceived Parent as not cooperating with their efforts to create the plan.
19. During the month of January 2023 there was a series of emails from the Parent to District staff voicing complaints about how the District claimed to be able to educate Student but did not have a plan to bring him back to school.
20. The parties convened an IEP meeting on February 17, 2023. The District proposed having staff, including a school psychologist, conduct a new FBA to address school aversion behaviors. This proposal included a psychological assessment and having the school psychologist engage directly with Student, Parent, and other school staff to identify the factors which impact school attendance (e.g., psychological services). Pending the outcome of those activities, the District recommended homebound instruction with the ultimate goal of transitioning Student back to their high school.

21. The school psychologist proceeded to interview Student and then attempted to visit Student at home on three separate occasions as part of conducting the FBA and root cause analysis of Student's school avoidance behaviors. Student declined to meet with school psychologist each time they were present in the home.
22. On February 21, 2023, the homebound instructor for Student emailed Parent about starting educational programming beginning the next day. Parent replied the homebound instruction plan was contingent upon Student being willing to go through with these types of educational services and Student had told Parent they did not want to receive in-person homebound instruction.
23. School psychologist emailed Parent on February 23, 2023 emphasizing that Student's openness to engaging with them and the psychological services they were seeking to provide was an "important" factor for getting Student to return to school.
24. Parent replied that Student told Parent they did not want to speak with anyone from APS and Parent expressed concerns that discussing a return to school with Student was damaging their parent-child relationship. Parent reiterated that the plan for homebound instruction was contingent upon Student saying yes.
25. On February 27, 2023, the school psychologist sent another email to Parent suggesting they try other psychological services such as a parent rating scale, student questionnaire, attending an in-school psychological appointment, or provide Student with a brief introductory video recorded by the school psychologist.
26. Parent sent back an email reply the next day that none of the proposed psychological strategies were in the IEP or written down in a plan.
27. The school psychologist clarified in an email on March 2, 2023, that the IEP Team had discussed the type of service (psychological assessment). Psychologist explained that the specific manner or methods of implementing the service were not specifically defined because it would be counterproductive to limit the manner of the service before it was initially implemented.
28. Parent and School Psychologist spoke on the phone a week later. They agreed that Parent would ask Student a series of questions including: (1) willingness to come to psychologist's office once a week; and (2) if not, openness to meeting with psychologist at home.
29. Parent reported back to School Psychologist that Student responded no to both questions. The record shows no further contact between the Parent and School Psychologist after March 27, 2023.
30. On May 10, 2023, a District administrator emailed Parent asking about Student's interest in summer camp or summer employment opportunities. The administrator also asked about whether Student would like to attend a different District high school or a charter school for the 2023-2024 school year.

31. Parent's reply to this email stated that Student refused to go back to any District schools or to a summer camp. Parent requested the District provide them with additional education program options.
32. The 2022-2023 social work service logs recorded Student as being largely absent from these services due to "unspecified psychosocial circumstances."
33. Student's grades for the 2022-2023 school year show they failed Physics, Algebra, Literature, and Functional Reading.
34. No progress was made on IEP goals due to a lack of attendance at school or homebound instruction.

Fall 2023 Semester

35. Parent sent an email on June 23, 2023 suggesting the District contract with a mutually agreed upon BCBA to train school staff to educate Student. Parent also wrote in the email that it was not their "job to develop or implement an [education] plan" for Student.
36. While the District was looking into the BCBA proposal and arranging another IEP meeting, a District instructor contacted Parent on August 1, 2023 in an attempt to schedule temporary homebound instruction for Student. Parent welcomed the opportunity to commence homebound instruction.
37. District Special Education Director also emailed Parent the same day to discuss a potential placement at a private school within the District which focuses on educating students with Autism. Parent responded via email requesting a plan to educate Student. Director replied that the plan being developed was to engage with a familiar BCBA, place Student on the waiting list at the aforementioned private school, provide homebound instruction during the interim, and enroll Student in driving school. However, this plan was conditioned on Parent signing a general release of all claims which Parent took exception to. Director stated that they later brought up the topic of the private school directly with the Student and Student replied that they were not interested in attending the school because did not like being around other students with Autism.
38. A facilitated IEP meeting was held on August 25, 2023. The parties agreed to an outside BCBA conducting an FBA to create a new BIP and plan for transitioning Student back to high school. Additional agreed-to recommendations from the IEP Team included: (1) training for school staff and related service providers to support Student; (2) homebound social work and speech therapy (until transition back to high school); (3) homebound instruction in ELA and Math (75 minutes per week); and (4) prepare class schedule with class descriptions for Student.
39. Another facilitated IEP meeting took place on September 8, 2023. Parent requested other transportation options for Student besides a special education bus and parties agreed

that Student would take a general education bus. The IEP Team also agreed to have staff use strategies (e.g., Universal Protocols) to support Student across all learning environments, update BIP, and a series of in-school special education programming and supports such in the areas of ELA (520 minutes per week), Math (260 minutes per week), Social Studies (260 minutes per week), and Science (260 minutes per week).

40. The Prior Written Notice from this meeting showed that the IEP Team would reconvene another meeting if Student missed 3 consecutive days of school.
41. Student continued on homebound instruction until September 15 and transitioned to the high school on September 18.
42. On September 21, 2023, the outside BCBA reported that Student had attended school 3 of 4 school days thus far that week. This report mentioned an incident in Biology class where Student had witnessed another student (who the Student could not identify because Student did not know the other student's name) allegedly drawing a swastika on their desk and it had made Student feel anxious. The outside BCBA also reported that Student had adjusted well in other classes and that they would work on a formal BIP for consideration by the IEP Team.
43. The next day, Assistant Principal agreed with recommendations from the outside BCBA to provide Student with copy of class notes for the Biology course. The Assistant Principal also noted that they informed the Biology teacher of the alleged swastika incident and teacher was advised to vigilantly monitor any future signs of the alleged misconduct. Student did not attend school that day.
44. On October 15, 2023, the outside BCBA analyzed historical behavior/attendance data and wrote to the IEP Team the following points: (1) Student may benefit from longer duration of homebound instruction; (2) reducing learning endurance obstacles; (3) focus on developing reading and driving skills; and (4) and check in with Student every week during homebound instruction to ascertain whether they would like to return to high school.
45. The next day an IEP Team meeting was held. Parent voiced concerns about a lapse in coordination for transporting Student on the first day they returned to high school in September and that Student had witnessed an anti-Semitic written statement in reference to the alleged swastika incident. District staff responded that the transportation logistics were resolved since the error on the first school day and that Biology Teacher would monitor for any student misconduct related to a student allegedly drawing a swastika into their desk.
46. The IEP recommendations from this meeting included continuing to have Student attend the local District high school, specialized transportation, and greater support from a 1:1 educational assistant (1,950 minutes per week). The District declined to provide Student with a single rider bus (at the suggestion of Parent) but agreed to investigate the

appropriateness of this proposal (which was later determined that no single rider bus or SUV was available at the District to transport Student in this manner).

47. On October 23 and 30, 2023, emails were exchanged between District social worker and Parent about having the social worker meet with Student to provide social work services. In both cases, the Parent reported that Student said “no” to meeting with the social worker.
48. The outside BCBA emailed the District Special Education Director on November 6, 2023. In the email, the outside BCBA mentioned they were meeting with the Student once a week to provide behavioral services. The provider also discussed how they encouraged Parent to seek mental health treatment for Student’s signs of depression but Parent had not responded to these propositions.
49. The following day another email from the outside BCBA to the District Special Education Director stated that Student was continuing to show signs of depression about being asked whether they wanted to start attending school again. The outside BCBA also wrote that they may have an ethical duty to stop working with the Student if they determined that their services were potentially harming Student. The email ended with the outside BCBA voicing their ongoing efforts to work with Parent to get “additional mental health evaluation and support.”
50. On November 8, 2023, Special Education Director provided Parent with information about conducting an independent education evaluation. The next day Parent informed Director about selecting an outside evaluator to conduct a neuropsychological evaluation of Student.
51. In early December, the outside BCBA informed the District via email they did not have enough behavioral data in preparation for an upcoming IEP meeting because Student was neither attending school nor requesting homebound instruction. It was the belief of the outside BCBA that Student’s behavior was communicating that Student did not want to return to school. The outside BCBA advised against using Applied Behavior Analysis (“ABA”) to get Student to return to school due to the negative impact these interventions may have on Student’s mental health. The email concludes that it is outside BCBA’s belief that Student may have their own reasons not to attend school “and these may not be things anyone can change.”
52. An IEP Team meeting was held on December 8, 2023. The District agreed to conduct an independent education evaluation of Student (at District expense) and a “performance-based reevaluation.” Due to the Student’s ongoing school avoidance issues and previous failed measures to address it (provision of District BCBA, outside BCBA, school psychologist, and attempts to consult directly with Student’s mental health providers), the IEP Team recommended homebound instruction for Student.

53. The proposed homebound services included specialized instruction in ELA, Math, Social Studies, and Life Skills (each 75 minutes per week) as well as a reduction in related services (speech therapy and social work) to 200 minutes per semester.
54. During the meeting, the Student expressed their preference to not attend their local District high school in the future which the rest of the IEP Team accepted.
55. Parent voiced several concerns at this IEP meeting. They stated that the District did not properly oversee Student's first day of school at the start of the 2023-2024 school year (District responded that administrator had contacted Parent that first day because Student had not met with adult support at designated location). Parent felt that District had not developed a plan to return Student to school and District staff replied that the Fall 2023 IEP had been implemented and the revised IEP would provide homebound instruction going forward. Another issue raised by Parent was that staff may not have been properly trained to implement IEP and District responded that IEP-mandated trainings were provided to necessary staff. Lastly, Parent requested 6.5 hours of homebound instruction to make up for the perceived denial of FAPE. District said that Student could receive this level of instruction at school.
56. On December 12, 2023, District Special Education Director emailed Parent summarizing prior IEP Team meeting and describing Student's preference as not wanting to return to high school or receive homebound instruction ("He indicated he was done with [District]"). Director requested a meeting with Parent and Student.
57. The parties met on December 19, 2023. At this meeting, Parent raised a concern (for the first time according to the District's response) about Student being asked to read aloud in History class as another basis for why Student was averse to attending school. Director brought up the prospect of attending the private school and Student declined that placement option.
58. As of the date of this report, Student is neither attending high school nor receiving homebound instruction.

Interviews

59. When asked why they were not attending school, Student stated that "it doesn't feel right to be there in my opinion." Student expanded on this position by explaining that District staff and other students were rude and this created a negative learning environment for Student.
60. At times, Student had difficulty articulating why certain incidents (e.g., another student vocalizing on bus or allegedly drawing a swastika and a teacher asking Student to read aloud) led to Student not returning to school for remainder of the 2022-2023 school years.

Student described the cumulative effect of these incidents as creating a disconnect between Student and the District.

61. Student discussed that in order to return to school, they would need better training for staff, a quieter and rules-based classroom environment, and specialized reading instruction to increase Student's reading level. Student mentioned that some District teachers and staff had shown that they cared about Student's learning and tried to help.
62. Parent made it clear that Student was a "rule follower" and Student becomes upset if they see other students not following rules.
63. Parent felt that District was placing responsibility to create Student's education plan on Parent.
64. Parent also submitted a reply to the District's response. The Parent's reply sets forth a series of arguments such as:
 - a. If Student's needs were being met, then he would attend school;
 - b. The three incidents (transportation arrangement confusion, swastika, and reading aloud) were evidence of the District not meeting Student's needs;
 - c. Another incident (when Speech Language Pathologist pointed out to Student that they were not paying attention during virtual lesson) caused Student to stop going to school in October 2023;
 - d. Parent wanted to get Student's consent before Student would meet with school psychologist; and
 - e. The lack of supportive environment at the District is why Student is averse to attending school.
65. Similar to comments from Student, Parent thought that District needed to do a better job of training staff on Student's learning needs so that Student can trust those staff persons.
66. District Special Education Director described how attempts to educate Student have been hampered by a lack of cooperation from Parent.
67. Director said there was a pattern of behavior in which Parent (or Student) refuses District proposals to educate Student and then Parent demands that the District create a plan to bring Student back to school.
68. The Director was insistent that the District exhausted multiple strategies to promote Student's attendance including the use of a school psychologist and an outside BCBA, discussing an out-of-District education program, personally offering to train staff on Student's IEP, proposing 1:1 reading instruction, and setting up a video game break room at the high school.
69. School Psychologist said his efforts to provide psychological services to Student experienced setbacks.
70. The Psychologist would have to negotiate with Parent about the wording to invite Student to his appointments. Then Parent relayed these invitations in a neutral manner which did

not encourage Student to engage with School Psychologist. Finally, School Psychologist felt there was a lack of collaboration from Parent to properly effectuate his service in the family home setting.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to develop an appropriate IEP for the Student by not considering strategies to address Student behaviors which impeded their learning, in violation of 34 C.F.R. § 300.324 and 6.31.2.11(B) NMAC.

When developing an IEP, a school must consider the strengths of the child, the concerns of the parent, the evaluation results of the child, and the needs of the child. 34 C.F.R. § 300.324(a)(1). Other special factors for consideration in the IEP includes the use of behavioral services and supports when a child displays behavior that impedes their learning. 34 C.F.R. § 300.324(a)(2). While the review of an IEP must be at least once a year, it may be necessary to convene additional IEP meetings and revise an IEP if the child's needs warrant it. An IEP may be appropriately developed without conducting a Functional Behavior Assessment ("FBA") if the IEP provides strategies to address a student's behavioral needs. *A.C. ex rel. M.C. v. Bd. of Educ. of The Chappaqua Cent. Sch. Dist.*, 553 F.3d 165, 172–73 (2d Cir. 2009).

Here, the IEPs for Student were developed several times over the course of two school years to address behaviors related to school avoidance. The IEPs created during the 2022-2023 school year offered support from an educational assistant, counseling through a District social worker, speech therapy, and specialized instruction in academic subjects. When Student had concerns about another student's vocalizations on the bus, the District changed the Student's seating arrangement as well as offered to place Student on another bus. As Student continued refusing to attend school after the bus incident, the District added another service in the form of consultation with the school psychologist to address the school aversion behavior. While a BIP was already in place to respond to Student's behaviors, the District revised the IEP again on December 9, 2023, to add a fulltime 1:1 aide throughout the school day, reading specialist services, behavioral services from a District BCBA, and maintaining Student's place on a District bus regardless of attendance status. Additional strategies were introduced at a second IEP meeting that month in which the IEP Team recommended a District employee ride the bus with student (effectively an aide on the bus for Student) and conducting a "root cause" analysis of Student's school avoidance behaviors.

During the Spring 2023 Semester, the District continued to revise the IEP in an ongoing effort to reintegrate Student back into school. The IEP Team introduced a school psychologist to oversee conducting an FBA and compiling a psychological assessment as a means to ascertain the reasons for Student's school avoidance. While those activities were carried out, the District changed Student's placement to homebound instruction to facilitate a continued delivery of educational programming to Student.

The District sustained their efforts in further developing the IEP to meet the Student's needs in the 2023-2024 school year. The IEP was revised during a facilitated IEP Team meeting on August 23, 2023 to add an outside BCBA (who was familiar with Student and vice versa) who would be responsible for completing an FBA and a Behavior Intervention Plan ("BIP"). This meeting also resulted in a series of other added strategies including staff training, homebound social work and speech therapy, and preparations for transition to in-person learning at the high school. Two weeks later another IEP Team meeting resulted in finalizing appropriate school transportation, utilizing Universal Protocols for responding to Student's display of any severe behaviors, updating the BIP, and increasing the amount of specialized instruction for on-site learning at the local high school. The District again met with Parent on October 16, 2023 for an IEP Team meeting to resolve transportation logistics issues and address an alleged student misconduct issue that startled Student. Then the parties met on December 8, 2023 where the District recommended homebound instruction pending an independent education evaluation to better ascertain Student's disability-related learning needs.

Taken together, the District demonstrated a repeated pattern of working with Parent and Student to provide appropriate services and supports both in the high school and home settings. These proffered supports were extensive and included obtaining support from school psychologists, behavior specialists, and outside providers. Even if an updated BIP could not be completed, the District introduced an abundance of behavioral services and strategies in the IEP to meet Student's needs. For these reasons, the District developed appropriate IEPs for Student during the 2022-2023 and 2023-2024 school years.

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

Issue No. 2

Whether the District failed to implement Student's IEP, in violation of 34 C.F.R. §§ 300.320–300.324 and 6.31.2.11(B) NMAC.

Schools must have an IEP in effect at the beginning of the school year for each student with a disability. 34 C.F.R. § 300.323(a). A material failure to implement an IEP occurs when there is more than a minor discrepancy between the services a school provides to a child with a disability and the services required by the IEP. *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d

811, 822 (9th Cir. 2007). A school does not materially fail to implement an IEP if many of the missed IEP services are due to a student's refusal to attend school. *L.J. by N.N.J. v. Sch. Bd. of Broward Cnty.*, 927 F.3d 1203, 1217–18 (11th Cir. 2019).

In this case, the District complied with substantially implementing the Student's IEPs. The District offered a wide scope of individualized services and supports to accommodate Student in the areas of transportation, adult support/supervision, specialized instruction, social work, psychological services, and behavior analysis. This set of services embodies the District's robust efforts to facilitate Student's comfortability in attending school and having his behavioral needs met. These efforts also extended to Parent through participation in the IEP process and working with Parent in the home setting. Nor does Student's school avoidance stem from an IEP implementation failure when Student became averse to school soon after attending at the beginning of the 2022-2023 and 2023-2024 school years (with any service oversights immediately rectified by the District). A finding must be made that Student repeatedly missing instruction and services was the reason for difficulties in implementing the IEP. In addition, it is clear that the District did not ignore Student's school avoidance in its IEP implementation but took numerous steps to assist Student in transitioning back to school after periods of absence or homebound instruction.

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

Issue No. 3

Whether the District failed to educate Student in the least restrictive environment, in violation of 34 C.F.R. § 300.114 and 6.31.2.11(C) NMAC.

The least restrictive environment mandate requires school districts to educate special education students with their non-disabled peers to the maximum extent appropriate. 20 U.S.C. § 1412(a)(5)(A). The two-part *Daniel R.R.* test for determining whether a school district has complied with the LRE requirement is: (1) whether education in a regular education classroom with the use of supplemental aids and services can be satisfactorily achieved; and (2) if placement in a regular education classroom cannot be achieved, whether the school district has mainstreamed the child to the maximum extent appropriate. *T.W. v. Unified Sch. Dist. No. 259, Wichita, Kan.*, 136 F. App'x 122, 127 (10th Cir. 2005); see also *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989). In applying the first prong of this test, courts consider additional non-exhaustive factors including: (1) steps the school district has taken to accommodate the child in the regular classroom, including the consideration of a continuum of placement and support services; (2) comparison of the academic benefits the child will receive in the regular classroom with those she will receive in the special education classroom; (3) the child's overall educational experience in regular education, including non-academic benefits; and (4) the effect on the

regular classroom of the disabled child's presence in that classroom. *G.W. v. Boulder Valley Sch. Dist.*, No. 16-CV-00374-PAB-SKC, 2019 WL 4464130, at *14 (D. Colo. Sept. 18, 2019).

Under the *Daniel R.R.* least restrictive environment test, the District's actions support a finding that the District complied with the LRE requirement in this instance. At all times relevant to this case, the District sought to accommodate Student at the local high school with specialized instruction in academic subjects with access to regular education peers through library, electives, computer lab, lunch, assemblies, and extracurricular activities. When the District recommended homebound instruction, it was a temporary measure to continue Student's education while behavioral supports were delivered and plans for transitioning Student back to high school were made. The placement decisions during the relevant investigation period show a concerted effort by the District to mainstream Student to the greatest extent appropriate.

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

Issue No. 4.

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

A student eligible for special education is entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. School districts are obligated to provide FAPE for each student eligible in their district. 6.31.2.9(A), 6.31.2.11(l)(2) NMAC. If an IDEA procedural violation occurs, that violation will constitute a denial of FAPE only if it: (1) resulted in a substantive harm to the child or their parents; (2) deprived an eligible student of an IEP; or (3) resulted in the loss of an educational opportunity. *Boutelle v. Bd. of Educ. of Las Cruces Pub. Sch.*, No. CV 17-1232 GJF/SMV, 2019 WL 2061086, at *7 (D.N.M. May 9, 2019). The substantive legal standard for determining whether a District has offered a student FAPE is whether an IEP is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017).

This investigation found no procedural IDEA violations. The IEP was substantively adequate to enable the Student's educational progress. The District unrelentingly met with Parent and Student to develop or revise IEPs, introduce novel services and outside supports, and shift Student's educational placement based on the severity of their school avoidance behaviors. The alleged failure of the District to implement an appropriate IEP to provide FAPE to Student was primarily due to the Student's refusal to receive their educational programming and services either in school or at home (an issue that the District also sought to address through many additional supports).

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

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

Investigated by:

/s/ Michael Gadomski

Michael W. Gadomski, Esq.

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:

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Margaret Cage

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Margaret Cage, Ed.D.

Director, Special Education Division