



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us

ARSENIO ROMERO, PHD
SECRETARY OF PUBLIC EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Rio Rancho Public Schools
Case No. C2324-35
March 29, 2024

This Report does not require corrective action.

On January 30, 2024, a complaint was filed with the New Mexico Public Education Department's (PED) 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 District Staff: Director of Special Services, Special Education Instructional Leader (SEIL), GE Science teacher, GE American History teacher, current SE ELA teacher and Case Manager, previous SE ELA teacher and Case Manager, SE Math teacher, and offered Parent an opportunity for an interview; 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. The Complaint Investigator did investigate 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 an IEP for the Student that was reasonably calculated to allow Student to make progress in the general education curriculum appropriate in light of Student’s individual circumstances by:
 - a. failing to timely conduct a comprehensive re-evaluation of the Student, as required by 34 C.F.R. § 300.303; and 6.31.2.10(C)(2)(a) NMAC; and
 - b. failing to consider the concerns of the Parent for enhancing the education of the Student, as required by 34 C.F.R. § 300.324(a)(1)(ii); and 6.31.2.11(B)(1) NMAC.
2. Whether the District failed to implement the Student’s accommodations as set forth in the Student’s IEP, as required by 34 C.F.R. § 300.320(a)(4); and 6.31.2.11(B)(1) NMAC.
3. 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 is 14 years of age and resides with the Parent within the jurisdictional boundaries of the District. The Student is currently in the 8th grade and attends a Middle School in the District (the School).
2. When the Student was in 5th grade during the 2020-2021 school year, she attended an Elementary School in the District. In December 2020, the District conducted an initial special education evaluation of the Student to determine whether the Student was eligible to receive special education and related services.
3. The Initial Psycho-Educational Evaluation conducted by the District, with a report date of December 18, 2020, provides, in relevant part, as follows:
 - a. Cognitive Assessment: Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V). The Student’s Full Scale IQ was 80, in the Low Average range.
 - b. Academic Achievement Assessments:
 - i. Test of Word Reading Efficiency – Second Edition (TOWRE – 2), contain scores ranging from Average to Very Poor.
 - ii. Woodcock-Johnson – IV (WJ – IV):
 1. Reading: scores across all reading subtests were in the Poor to Low Average ranges;
 2. Math: Math Problem Solving composite was in the Below Average range, and Math Calculation was ranked below the 1st percentile.
 3. Written Language: the composite score is in the Below Average range.
 - c. The Report’s Summary states that the Student meets the New Mexico TEAM eligibility criteria for a specific learning disability in the areas of Basic Reading, Reading Fluency, Math Problem Solving, and Math Calculation, and meets the NM TEAM dyslexia eligibility criteria.
4. Following the Student’s December 2020, initial evaluation, the District’s Eligibility Determination Team (EDT) met to review the initial evaluation. The EDT determined that the Student was not eligible under the category of Speech or Language Impairment, but the Student was determined eligible under the category of Specific Learning Disability (SLD) and was also determined to have the characteristics of dyslexia.
5. On February 12, 2021, the Student’s IEP team met and developed an IEP for the Student. The Student’s February 12, 2021, IEP provides, in relevant part, as follows:
 - a. The Student’s primary eligibility was identified as SLD: Dyslexia, in the areas of Basic Reading, Reading Fluency, Math Problem Solving and Math Calculation.
 - b. Annual Goals in the areas of: Communication Skills, Reading, Written Language, and Math.

- c. Instructional Accommodations in the areas of (1) Environment; (2) Instructional Material; (3) Assignment/Homework; (4) Testing; (in classroom); (5) Instructional Presentation Mode; (6) Instructional Strategies; and (7) Student Response Mode.
- d. District-Wide Assessments: special education allowable accommodations were provided as follows:
 - i. NWEA – Math: read aloud directions, test items, stimulus responses;
 - ii. EOC/Final – Science: PED approved accommodations not otherwise listed Read Aloud;
 - iii. EOC/Final – Social Studies: PED approved accommodations not otherwise listed Read Aloud;
 - iv. EOC/Final – Related Arts/Electives: PED approved accommodations not otherwise listed Read Aloud.
- e. Mandated State Assessments: accommodated administration – allowable accommodations:
 - i. NMASR [New Mexico Assessment of Science Readiness]; Grades 5,8 and 11: allow accessibility mode testing;
 - ii. NM-MSSA [New Mexico Measure of Student Success and Achievement; Grades 3-8 – Math: Basic calculator/scientific calculator [non-calculator unit], and text-to-speech [English or Spanish].
- f. Schedule of Services
 - i. General Education Services: accommodations needed in Math, ELA, Science, Social Studies, and Related Arts.
 - ii. Special Education & Related Services (February through July):
 - 1. Speech-Language (SL), Individual and/or Group Setting, 45 min/week in the SE Setting;
 - 2. Special Education Services (SE) – ELA, 240 min/week in the SE Setting; and
 - 3. Special Education Services (SE) – Math, 120 min/week in the SE Setting.
 - iii. Special Education & Related Services (August through February 11, 2022):
 - 1. Special Education Services (SE) – ELA, 240 min/week in the SE Setting; and
 - 2. Special Education Services (SE) – Math, 240 min/week in the SE Setting.
 - 3. Special Education Services (SE) – Science, 240 min/week in the GE Setting.
 - 4. Special Education Services (SE) – Social Studies, 240 min/week in the GE Setting.

5. Speech-Language (SL), Individual and/or Group Setting, 45 min/week in the SE Setting;
 - g. Prior Written Notice was provided to the Parent.
6. The Student transferred to a different school district within the State for her 7th grade year.
7. On September 1, 2022, the Student's IEP team at this other district met and developed a new IEP for the Student. The Student's September 1, 2022, IEP provides, in relevant part, as follows:
 - a. The Student's primary eligibility was identified as SLD: Dyslexia. It was noted that the Student struggles with Writing, grade level Math, and Reading
 - b. Annual Goals: goals were developed for the Student in the areas of: Communication Skills, Reading, Written Language, and Math.
 - c. Instructional Accommodations: a significant number of accommodations were provided for the Student in the areas of:
 - i. Environment;
 - ii. Instructional Material;
 - iii. Assignment/Homework;
 - iv. Testing: (in classroom);
 - v. Instructional Presentation Mode;
 - vi. Instructional Strategies; and
 - vii. Student Response Mode.
 - d. District-Wide Assessments: special education allowable accommodations were provided as follows:
 - i. NWEA – Math: read aloud directions, test items, stimulus responses;
 - ii. EOC/Final – Science: PED approved accommodations not otherwise listed Read Aloud;
 - iii. EOC/Final – Social Studies: PED approved accommodations not otherwise listed Read Aloud;
 - iv. EOC/Final – Related Arts/Electives: PED approved accommodations not otherwise listed Read Aloud.
 - e. Mandated State Assessments: accommodated administration – allowable accommodations:
 - i. NMASR [New Mexico Assessment of Science Readiness]; Grades 5,8 and 11: allow accessibility mode testing;
 - ii. NM-MSSA [New Mexico Measure of Student Success and Achievement; Grades 3-8 – Math: Basic calculator/scientific calculator [non-calculator unit], and text-to-speech [English or Spanish].
 - f. Schedule of Services

- i. General Education Services: accommodations needed in Math, ELA, Science, Social Studies, and Related Arts.
 - ii. Special Education & Related Services (February through July):
 1. Speech-Language (SL), Individual and/or Group Setting (only for Related Services), for 45 minutes per week in the Special Education Setting;
 2. Special Education Services (SE) – ELA, for 240 minutes per week in the Special Education Setting; and
 3. Special Education Services (SE) – Math, for 120 minutes per week in the Special Education Setting.
 - iii. Special Education & Related Services (August through February 11, 2022):
 1. Special Education Services (SE) – ELA, for 240 minutes per week in the Special Education Setting; and
 2. Special Education Services (SE) – Math, for 240 minutes per week in the Special Education Setting.
 3. Special Education Services (SE) – Science, for 240 minutes per week in the General Education Setting.
 4. Special Education Services (SE) – Social Studies, for 240 minutes per week in the General Education Setting.
 5. Speech-Language (SL), Individual and/or Group Setting (only for Related Service and s), for 45 minutes per week in the Special Education Setting;
- g. The Meeting Participants were: Parent, District Representative, Special Education Teacher, Gen. Education Teacher, Evaluation Representative, SL Provider and the SEIL.
- h. Prior Written Notice was provided to the Parent.
8. The Student transferred to the District prior to the beginning of the 2023-2024 school year, which started on August 3, 2023. The District received a copy of the Student's September 1, 2022, IEP from the previous district on July 20, 2023.
9. District records include a document entitled "Student Transfers From Within A State" dated August 10, 2023. This document provides, in relevant part, as follows:
 - a. The District received a copy of the Student's September 1, 2022, IEP from the previous school district.
 - b. When the Student enrolled in the District the Student was not in the process of being reevaluated. The original 3-year Reevaluation due date was December 17, 2023.
 - c. The District consulted with the Parent regarding comparable services to be provided to the Student as follows:

- i. ELA – Reading/Writing for 200 minutes per day, and Math for 200 minutes per day.
 - ii. Related Services: None.
 - iii. Accommodations and Modifications:
 1. Auditory books when available with ad-ions/apps;
 2. Use of a calculator/times table;
 3. Hard copy of notes/cloze notes;
 4. Chromebook/Computers with speech to text and text to speech;
 5. Opportunity to have repeated instructions;
 6. Repeat, clarify and/or simplify directions;
 7. Checking frequently for understanding;
 8. Resubmit poorly done assignments for a higher grade with clear deadlines;
 9. Extra time for written response;
 10. Opportunity for flexibility in types of product outcomes;
 11. Test in small group; Test in another room and open notes option;
 12. Extended time for exams;
 13. Read Aloud; and
 14. Resubmit poorly done assessments for a higher grade with clear deadlines.
 - d. The Parent was provided with a copy of the form and a PWN.
10. The District provided PWN to the Parent regarding the Student’s IEP and transfer to the District dated August 10, 2023, which provides, in relevant part, as follows:
 - a. The District reviewed the prior district’s IEP for the Student and “accepted and developed a school schedule to adhere to the requirements of the developed plan for the Student’s educational needs.”
 - b. “[The Student’s] academic schedule and placement at [the District] are based on the prior district’s IEP schedule of services to support [the Student’s] educational needs.”
 - c. The District based the Student’s service time on the prior district’s IEP.
 - d. “A transfer IEP will be held within 30 academic calendar days of [the Student’s] transfer date to [the District].”
11. On August 11, 2023, the Parent first contacted the District regarding her concerns that the Student’s teachers were not providing the Student’s accommodations. The Parent also indicated that the Student had personally informed each of her teachers that she had an active IEP with accommodations. School records indicate that the SEIL forwarded the Parent’s email to the Student’s SE teachers and EA’s and requested that these educators ensure that the GE teachers were providing the Student’s accommodations.

12. On August 15, the Parent emailed the Student's Media-Lit teacher and expressed her fears that the teachers at the School would not accommodate the Student's needs. The Parent was concerned about the Student being able to resubmit a project which the Student had completed but had been damaged by a sibling. The teacher responded the same day in an email and stated that he had previously spoken to the Student regarding her accommodations and that she was receiving them. The Teacher stated that the Student was allowed to resubmit the project.
13. On August 25, 2023, the Student's IEP team at the School met and developed a new IEP for the Student. The Student's August 25, 2023, IEP provides, in relevant part, as follows:
- a. The Student's primary eligibility was identified as SLD: Dyslexia. Identified areas of need were Basic Reading, Reading Fluency, Math Problem Solving, Math Calculation.
 - b. Student Profile: State and District-wide assessments indicate weaknesses in Math and Reading. Then-current grades in English, American History, and Weight Lifting were all A's, and a B in Media Lit. It was noted that the Student had needs in the flow of her writing thought process as well as correct basic grammar and punctuation. The Student's post-secondary employment goal is to be a famous UFC fighter. The Student is a year-round athlete and participates in softball and wrestling.
 - c. Annual Goals: goals were developed for the Student in the areas of:
 - i. Reading and Written Language;
 - ii. Math; and
 - iii. Problem Solving.
 - d. Instructional Accommodations: a significant number of accommodations were provided for the Student, as follows:
 - i. Environment:
 1. N/A;
 - ii. Instructional Material:
 1. Use of a calculator/times table;
 2. Copy of notes/cloze notes;
 3. Speech-to-text and text-to-speech.
 - iii. Assignment/Homework:
 1. Resubmit poorly done assignments for a higher grade with clear deadlines (on teacher discretion);
 2. Removal of repetitive and redundant assignments;
 3. Reduction of assignments and homework by 25% or [the Student] will complete $\frac{3}{4}$ required assignments at the teacher's discretion;

4. Provide [the Student] opportunities to verbally explain mastery of a concept or idea when appropriate.
- iv. Testing: (in classroom):
 1. Extended time for exams up to 50%;
 2. Text to speech for assessments that are not assessing comprehension;
 3. Resubmit poorly done assessments for a higher grade with clear deadlines and teacher discretion; and
 4. Use of calculator/timetables chart.
- v. Positive Behavioral Intervention and Supports:
 1. Positive reinforcement and high ratio of + to - interactions.
- vi. Instructional Presentation Mode:
 1. Opportunity to have repeated instructions; and
 2. Repeat, clarify and/or simplify directions.
- vii. Instructional Strategies:
 1. Checking frequently for understanding;
 2. Repeat, clarify and/or simplify directions; and
 3. Guided notes or copy of teacher's notes.
- viii. Student Response Mode:
 1. Extra time for written response; and
 2. Opportunity for flexibility in types of product outcomes.
- e. District-Wide Assessments: special education allowable accommodations were provided as follows:
 - i. NWEA – Math: read aloud directions, test items, math only;
 - ii. EOC/Final – Science: PED approved accommodations not otherwise listed Text to Speech;
 - iii. EOC/Final – Social Studies: PED approved accommodations not otherwise listed Text to Speech;
 - iv. EOC/Final – Related Arts/Electives: PED approved accommodations not otherwise listed Text to Speech; and
 - v. EOC/Final – Math: PED Approved Accommodation Not Otherwise Listed Text to Speech.
- f. Mandated State Assessments: accommodated administration – allowable accommodations:
 - i. NMASR [New Mexico Assessment of Science Readiness]; Grades 5, 8 and 11 - Science;

- ii. NM-MSSA [New Mexico Measure of Student Success and Achievement; Grades 3-8 – Math: Basic Calculator/Scientific Calculator [non-calculator unit], and Text-to-Speech [English or Spanish].
- g. Schedule of Services:
 - i. General Education Services: accommodations needed in Math, ELA, Science, Social Studies, and Electives.
 - ii. Special Education & Related Services:
 - 1. Special Education Services (SE) – ELA, for 255 minutes per week in the Special Education Setting;
 - 2. Special Education Services (SE) – Math, for 255 minutes per week in the Special Education Setting;
 - 3. Special Education Services (SE) – Science, for 180 minutes per week in the General Education Setting; and
 - 4. Special Education Services (SE) – Social Studies, for 180 minutes per week in the General Education Setting.
- h. Least Restrictive Environment: it was determined that the Student needed a combination of general education and special education settings with special education and related services and academic support in a small group setting to access and progress within the general education curriculum.
- i. The Meeting Participants were: Parent, Student, District Representative, Special Education Teacher, General Education Teacher, Evaluation Representative, Teacher observation.
- j. Prior Written Notice was provided to the Parent which provides, in relevant part, as follows:
 - i. The IEP team reviewed and approved the Student’s present levels of academic achievement and functional performance (PLAAFP).
 - ii. The IEP team reviewed and approved the Annual Goals proposed by the District. “For the upcoming IEP year, [the Student] will focus on reading comprehension, and operational math, as well as completion [sic] and organizing her work.”
 - iii. The IEP team developed Instructional Accommodations for the Student which were approved by the IEP team.
 - iv. The IEP team reviewed and approved accommodations for State and District mandated assessments. “[The Student] requires accommodations in order to demonstrate knowledge on district and state-mandated testing. [The Student] has accommodations for: NWEA (Math) and EOC/Final (math), NM-MSSA Text to Speech, Basic Calculator/Scientific Calculator (non-calculator unit).”

- v. The IEP team reviewed and accepted the Schedule of Services without “any questions or concerns at this time.”
 - vi. The Parent waived the five-day waiting period; thus, the District began implementing the IEP on 8/25/23.
 - k. Attached to the IEP was a “GE TEACHER ACCOMMODATIONS/MODIFICATIONS NOTICE.” The Notice indicated that a copy of the accommodations/modifications from the IEP dated 8/25/2023 was attached to the Notice. However, there was a copy of the Special Education & Related Services schedule attached to the Notice, but there was not a copy of the Accommodations/Modifications attached.
14. On August 30, 2023, the Parent sent an email to the SEIL stating that the Student was not provided her accommodations in History and Science. Specifically, the Parent stated that in History the Student was not given extra time on a quiz, was not allowed to retake the quiz for a better grade without having to do an extra assignment first, or had the test read aloud to her, and was not provided with teacher’s notes. In Science, the Student complained she was not allowed to retest for a higher score and had no text-to-speech.
15. On September 12, 2023, at the direction of the SEIL, the Parent directly emailed the History teacher regarding the Student’s testing accommodations in his class not being provided to the Student on a recent assessment. Specifically, the Parent stated that the Student was not given extra time for the test, was not given text to speech or pulled from the classroom and had the questions read to her, and was not given the opportunity to re-submit the assessment for a better grade. School records indicate that the SEIL spoke with the History teacher and had a telephone conversation with the Parent to discuss testing accommodations that were provided in History.
16. The Testing accommodations set forth in the Student’s August 25, 2023, IEP provide for “extended time for exams up to 50%,” “text to speech for assessments that are not assessing comprehension,” and “resubmit poorly done assessments for a higher grade with clear deadlines and teacher discretion.”
17. With respect to testing accommodations in History, the teacher reports as follows:
- a. “Students are given the entire class period to complete assessments and if additional time is needed students may complete the assessment [at] lunch or the next class period.”
 - b. “During testing an educational assistant will take students to a smaller testing environment and read the test to students. During midterms and finals text to speech is enabled and headphones are provided.”
 - c. “Test corrections/retake available week after assessment. Students must complete a review to demonstrate they are engaging with the material and ask for a lunch pass.

18. On October 31, 2023, the SEIL provided notice to the Parent of an EDT/IEP team meeting scheduled for November 14, 2023.
19. On November 3, 2023, (Friday) the Parent sent an email to the Student's SE Math Teacher expressing concerns about the Student not receiving the support she needs and asking for "more details as to how her Accommodations are being met in your class..." The Parent followed up with the SE teacher with an email the following Monday morning, which was quickly responded to with a telephone call from the SE teacher which the Parent missed. The Parent later requested an email response from the SE teacher.
20. On November 6, 2023, the SE Math teacher sent an email to the Parent responding to the Parent's previous email. The teacher stated that she had spoken with the Student the previous week regarding things the Student could improve on, such as managing her time better by minimizing talking and socializing to improve her productivity and have less homework. The teacher stated that the Student was not taking advantage of "lunch support" offered by the teacher every day for questions, finishing in-class work, and resubmitting assignments and assessments. With respect to specific classroom accommodations, the teacher stated that the Student has access to a calculator, access to formula sheets, notes on Google Classroom, and teacher notes. The teacher accepts late work the week after it is due but generally not after 2 weeks. The teacher stated she walks the room regularly to provide feedback but the Student rarely asks clarifying questions or requests to explain her understanding verbally. The Student "continues to have extended time and text-to-speech/speech-to-text for all assignments." Finally, the Teacher suggested that the Student could benefit from attending math tutoring sessions held 2 days/week after school, and also asked whether the Parent would like to be on her weekly email reminder about quizzes and practice work that is due. The Parent did not respond to the SE Math teacher's email.
21. On November 14, 2023, District staff and the Parent met to conduct, and document, a Review of Existing Evaluation Data (REED) and develop an Evaluation Plan as part of the Student's 3-year reevaluation. The November 14, 2023, REED provides, in relevant part, as follows:
 - a. The participants in the REED were the Parent, Evaluation Representative, District Representative, GE Teacher, and SE Teacher.
 - b. The purpose of the REED was to determine if additional data are needed to determine continued eligibility for, or to assist in understanding educational needs of, the Student.
 - c. The team reviewed the Student's December 18, 2020, Initial Psychoeducational Evaluation and subsequent determination of eligibility.

- d. The Student's current academic performance was reviewed including grades, classroom-based assessments, current state/district group achievement assessments, and teacher observations.
 - e. Determination of need for additional data:
 - i. There were no identified factors related to the Student's home life that affect her curriculum access and educational performance.
 - ii. On October 1, 2023, the District's Diagnostician reviewed the Student's prior cognitive evaluation data and stated that "new assessment data is not required in order for her to continue meeting eligibility criterion under her current category (SLD). . . . This Evaluator is not requesting additional assessment data in this area at this time unless the educational team is suggesting a change in eligibility category or exit of services."
 - iii. On October 1, 2023, the District's Diagnostician reviewed the Student's prior academic skills assessments and current academic achievement described in the PLAAFP of her current IEP. The Diagnostician stated that "this evaluator is not requesting additional assessment data in this area at this time unless the educational team is suggesting exit of services."
 - iv. The District's Diagnostician stated that functional performance/adaptive behavior has historically not been an area of concern for the Student.
 - v. The District's Diagnostician stated that a new assessment of the Student's Speech/Language skills was not required.
 - vi. The District's Diagnostician stated that Social/Emotional/Behavioral has not historically been an area of concern for the Student.
 - vii. The District's Diagnostician stated that the Student has a Health Management Plan for her severe allergy to bees/wasps.
 - viii. The District's Diagnostician stated that the Student "has access to technology that can assist in reading and writing that all students in the District have as part of their educational material.
 - f. The REED team determined that there was not a need for additional data.
 - g. The Student's most recent evaluation date was updated to November 14, 2023.
22. On November 14, 2023, following the REED, the District's EDT met to determine whether the Student continues to be eligible to receive special education and related services. The EDT determined that the Student continues to be eligible under the eligibility category of specific learning disability and that the Student also demonstrates the characteristics of dyslexia.
23. On November 14, 2023, the Student's IEP team met to review the Student's IEP and prepare an addendum to the Student's August 25, 2023, IEP regarding the Student's reevaluation. The PWN provided to the Parent by the District dated November 14, 2023,

regarding the REED, EDT meeting, and IEP team meeting provides, in relevant part, as follows:

- a. The REED was documented and the recommendation that no new evaluation data was needed was accepted by the IEP team, including the Parent.
 - b. The EDT's review of the Student's reevaluation was documented and the EDT's current determination of eligibility for the Student under the category of Specific Learning Disability was accepted by the IEP team.
 - c. The Student's IEP was amended to update the new evaluation date of November 14, 2023, on the demographics page.
24. On November 27, 2023, the Parent sent an email to the SEILs requesting a meeting with the SE Math and Media Lit teachers to "come up with a solution for the obvious difficulties [the Student] feels she is having in both classes." The Parent also wanted to discuss visual learning and the reduction of work in both classes. The District scheduled a meeting for December 8, which the parent canceled on the morning of December 8 due to "some health issues." In a second email the Parent indicated that the Student wanted to voice her concerns regarding her workload and that she feels overwhelmed and "can't keep up with all of it."
25. The parties agreed to meet on December 15, 2023. In response to a meeting reminder on December 14, the Parent sent an email indicating she had forgotten about the meeting and had a doctor's appointment the following morning, but would be available any morning the following week. The SEIL replied that the school staffs' schedules were full the next week and proposed meeting on January 9 or 11. The Parent indicated she would try to move her doctor's appointment so they could meet on the 15th. The Parent sent an email late in the afternoon that she was able to move her appointment but the SEIL saw the email too late to arrange the meeting. The SEIL suggested meeting the following Monday or Tuesday (December 18 or 19) with the SEILs and any available teachers, or after the Winter break.
26. On December 21, 2023, in the afternoon, the Parent sent an email to the SEILs indicating she was out of state dealing with an emergency situation but stated she was concerned about the Student's final examinations (Semester 1 Final Exams). The Parent asked whether the Student could come to school the following day and make corrections for higher grades in Science, Math, History and English, which all had failing grades. The Parent stated that "obviously she needs more help, more time and probably more accommodations to be successful." The Parent also indicated she wanted to discuss re-assessing the Student and stated that "newer assessments are needed to better accommodate [the Student]." The Parent stated her belief that the Student has "only had her initial assessments done when she was in the 3rd grade, 5 years ago. After school, the SEIL replied to the Parent's email and stated that "once the finals are complete, there is

no way to access or retract the assessment, so there isn't a way to make corrections to the finals. The finals are secure tests mandated by PED, which the student completes and sees only once." The Parent responded that the Student's classroom accommodations allow her to re-submit and also have more time to complete tests and that there "is not any specific wording to separate a final from an exam or assessments." The Parent stated the Student would not make the honor roll, which was very important to her.

27. On December 22, 2023, the Parent filed a "District Level-Parent Contact Form" with the District. The Parent stated her concerns that the Student's IEP accommodations were not being provided by the School, as follows: "removal of repetitive and redundant assignments, providing extra time (up to 50%) during exams if not able to finish in regular time provided, resubmit poorly done assignments for higher grade with clear deadlines from teachers, opportunity to verbally explain mastery of concepts or ideas when appropriate." This parent complaint was forwarded to the School Principal who reports that he called the parent, who did not respond, and he left a detailed phone message about "testing protocols and guidelines that are mandated and governed by the state." On January 9, 2024, the District's Director of Special Services followed up with the principal who indicated that he had still not received a return phone call or email from the Parent.
28. On January 11, 2024, the Parent sent a lengthy and detailed email to the Principal in response to his voicemail. The Parent again expressed her concerns that the Student's "accommodations weren't utilized during the actual testing times." The Parent also complained about the lack of response to her concerns from the two SEILs and teachers at the School.
29. On January 25, 2024, the Parent's educational advocate sent an email to the School Principal requesting a follow-up on the Parent's request for an IEP team meeting. The Principal responded and apologized for the delay in his response to the Parent due to having just returned to work following the passing of his father on January 10.
30. On January 30, 2024, the Parent's educational advocate sent an additional email to School staff requesting a meeting to be held prior to February 9. It was further stated that the Parent "disagrees with the outcome of the REED dated 11/14/2023," and further stated that the Parent "was not provided with a Prior Written Notice to document her disagreement. We are concerned that no new assessments were conducted and data from years-old testing was reviewed. We are formally requesting an Independent Educational Evaluation for the [Student] in the areas of ability and achievement and expressive, receptive, and pragmatic language."
31. The Parent filed the Complaint against the District on January 30, 2024.
32. On February 5, 2024, the Student's IEP team, including both Parents, the Student and their educational advocate, met to discuss the Parent's request for an Independent

Educational Evaluation (IEE) for the Student. The PWN from the meeting dated February 5, 2024, states that the Student's IEP team, including the Parent, accepted the District's previous reevaluation of the Student on November 14, 2023, but the Parent disagrees with that evaluation and requests an IEE. The IEP team accepted the proposal for a comprehensive psychoeducational evaluation of the Student and provided the Parents with a list of qualified examiners who meet the District's criteria to conduct the IEE.

33. The District reports that the IEE was scheduled to be conducted in two parts, with the SLP evaluation scheduled on March 19, 2024, and the psychoeducational evaluation scheduled by the Parent with the outside evaluator for May 7, 2024.
34. The Student's Science teacher provided a signed statement regarding the manner in which he implemented the Student's accommodations in his classroom which provides, in relevant part, as follows: "[The Student] has extended time to submit all assignments. She is able to turn in her assignments all quarter long, however I do urge her to turn them in sooner than later so other work does not pileup. My classroom is open every day during lunch and she has been welcome to come in every day to work on assignments or get tutored, should she want or feel the need. She has not come to my room during lunch, unless she is asked, which is usually to retake a test. In the beginning of the year she was more proactive about asking for help but as the year has progressed she has been less and less assertive. . . Again, my classroom is open every day for lunch and she has always had the ability to come in to work on assignments or retake assessments. She has utilized this accommodation, but not enough to truly help her on a consistent basis. When she has an assessment and does not score a minimum of 70%, I require her to retake her assessments, because I want to see her understand and be successful."
35. The Student's SE ELA teacher through November 13, 2024, provided a lengthy written statement regarding her implementation of the Student's accommodations in her classroom. This statement provides, in relevant part, as follows: The Student had access to "digital assessment reviews, master list of writing tutorials, digital copies of text annotations, writing examples, and formats." [The Student] was also given a folder to keep hard copies of these documents as well as vocabulary. The Student had access to text-to-speech and speech to text through the Read & Write approved extension, Google Classroom and the District-wide HMH Secondary ELA Curriculum. The Student "had always been allowed opportunities to make corrections for any assignments or assessments when she scores below 60%. . . She had the opportunity to request lunch passes for help or support, as I recall [the Student] never requested a pass nor needed one. . . Small group students got extended time automatically if they struggled or [they] needed extra time for completion. When given writing prompts students received multiple days as well as chunk pieces over multiple days to complete the writing task. . . [The Student] was allowed opportunities to correct and make up any

assignments/assessments when she scored below 60% as the entire small group class had that accommodation.”

36. The Student’s SE ELA teacher after November 13, 2023, also provided a very lengthy written statement regarding her implementation of the Student’s accommodations in her classroom. The statement provides, in relevant part, as follows: Copies of notes/cloze notes were “posted via 2nd period Google Classroom. . .” Which “included digital copies of unit vocabulary including part of speech and definitions in addition to digital assessment reviews, master list of writing tutorials, poetry notes, digital copies of text annotations, writing formulas and examples as well as digital versions of the text.” On November 26, 2023, the teacher posted a Read & Write tutorial on the Google Classroom, and on November 27, 2023, the teacher “taught an explicit lesson on Read & Write including how to use all of the features and how it can support them individually as a student.” The Student was in attendance and involved in the Read & Write lesson and tutorial. “[The Student] consistently denied and refused the use of the Read & Write application offered to her as well as the assistance offered. . . [The Student] has always been allowed opportunities to correct and make up any assignments/assessments when she scores below 60% as the entire small group class has that accommodation. . . I offered lunch passes daily prior to the [23/24] Winter Break. [The Student] has never requested a lunch pass for support of any kind. . . Most ELA assessments are writing prompts in which students receive multiple days, usually double that of the GE class because assessments/assignments in the small group are broken down step-by-step and scaffolded to meet the needs of all students present. [The Student] has never requested extra time beyond this or demonstrated such a need to date. . . In the small group setting, if students are not completing state/district standardized testing, students are directed and encouraged to use Read & Write to have instructions, questions and answer choices read [aloud] to them. Classroom assessments are always designed and given digitally for this accommodation. . . “[The Student] has always been allowed opportunities to correct and make up any assignments/assessments when she scores below 60% as the entire small group class has that accommodation. The majority of retakes and corrections are done as a class with teacher support automatically providing students with 2 attempts. [The Student] has never requested a lunch pass for support of any kind.”
37. One of the SEILs who works with the Student has reported “a common criticism” that “when [the Student] is reminded of the accommodations that she does have, she often declines to use them.”
38. The Semester 1 Progress Reports for the 2023-2024 school year and the Student’s grade reports for 2021/2022 and 2023/2024 provide, in relevant part, as follows:

STUDENT’S PROGRESS REPORTS

Year/Semester	Reading/Written Language	Math	Problem Solving
2023/2024 Q1	Progress not stated	Sufficient Progress	Progress not stated
Description	It was noted that this goal was written when the student was in 7 th grade and has no relevance for the Student as an 8 th grader and needs to be updated. Grade: B	Student is able to solve word problems with 70% accuracy with maximum support. Grade: B+	
Q2	Progress not stated	Sufficient Progress	Progress not stated
Description	Grade: C+ NWEA ELA Scores: Fall 2023:196 – 10 th percentile Winter 2024:201 – 13 th percentile 5 points, or 3%, growth in one semester.	With fading support Student can solve word problems with 75% accuracy in 3 out of 5 times. Student needs to work on submitting assignments with extended time while meeting clear deadlines. Grade: C	

STUDENT’S GRADE REPORTS

Year/Q/Sem/Ex	American History	ELA	Math	Science	PE/Weight Lifting	Media Lit	Reading Inter A/B
2021/2022 S1	B	B-	B	B-	A+	-	A-
Ex1	B+	F	D+	D	A+	-	
S2	A-	B-	B+	C+	A+	-	A
Ex2	C-	C	F	D	A+	-	
2022/2023	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2023/2024 Q1	B	B	B+	A+	A+	B+	-
Q2	B	C+	C	C	A+	B-	-
S1	B-	C+	C+	B-	A+	B	-
Ex1	F	D	F	F	C-	A	-

39. The documentation indicates that the Student is a very accomplished student-athlete who plays sports year-round. District standards indicate that in order to participate in school sports a student must have a 2.0 GPA. School staff report that the Student currently has a 2.8 GPA.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to develop an IEP for the Student that was reasonably calculated to allow Student to make progress in the general education curriculum appropriate in light of Student’s individual circumstances by:

- a. failing to timely conduct a comprehensive re-evaluation of the Student, as required by 34 C.F.R. § 300.303; and 6.31.2.10(C)(2)(a) NMAC; and**
- b. failing to consider the concerns of the Parent for enhancing the education of the Student, as required by 34 C.F.R. § 300.324(a)(1)(ii); and 6.31.2.11(B)(1) NMAC.**

In 1982, the U.S. Supreme Court held that “the Individuals with Disabilities Education Act establishes a substantive right to a ‘free appropriate public education’ for certain children with disabilities. *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176 (1982); see also *Endrew F. v. Douglas County Sch. Dist.*, 580 U.S. 386 (2017), 69 IDELR

174, 177 (2017). 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. 34 C.F.R. § 300.1(a); 6.31.2.7(B)(20) NMAC.

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. 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). 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.

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.

Under the IDEA and State rules a public agency is required to conduct a reevaluation of a student at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303; and 6.31.2.10(C)(2)(a) NMAC. Reevaluations may not occur more than once a year unless the parent and public agency agree otherwise. 6.31.2.10(C)(2)(c) NMAC. Each public agency shall follow evaluation procedures in compliance with applicable requirements of 34 C.F.R. §§ 300.304 and 300.305 and other State rules. 6.31.2.10(C)(2)(d) NMAC. A reevaluation must begin with a review, by a group that includes the parents, the other members of a child's IEP team and other qualified professionals, as appropriate, of existing information including evaluations and information provided by the parents, current classroom-based, local, or State assessments, and classroom-based observations, and observations by teachers and related services providers. 34 C.F.R. § 300.305(a)(1); and 6.31.2.10(G)(2) NMAC. This review is generally referred to as a REED. On the basis of the review, and input from the parents, the IEP team must identify what additional data, if any, are needed to determine (1) whether the child continues to have a disability and the educational needs of the child; (2) the present levels of academic achievement and related developmental needs of the child; (3) whether the child continues to need special education and related services; and (4) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. 34 C.F.R. § 300.305(a)(2); and 6.31.2.10(G)(2)

NMAC. The District and the parents may agree, based on the REED, that no additional data are needed to determine a student's continued eligibility for special education and related services and the individual needs of the student. 34 C.F.R. § 300.305(a)(2); and 6.31.2.10(G)(2) NMAC.

The Student transferred to the District in August 2023, with an IEP that was developed by the previous school district in September 2022. Upon review, 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 developed a new IEP for the Student. On August 25, 2023, the Student's IEP team met and developed an IEP for the Student, which the Parent agreed could be immediately implemented.

The Student's August 25, 2023, IEP identifies the Student's three-year reevaluation due date as December 18, 2023. On November 14, 2023, the District conducted a REED and the team reviewed the Student's previous educational data and evaluations, including the most recent comprehensive Initial Psychoeducational Evaluation of the Student conducted by the District in December 2020. It was determined by the REED team, including the Parent, that no additional evaluations or data were needed to determine the eligibility and educational needs of the Student. The November 14, 2023, REED and PWN state that the Parent agreed that no additional data was needed. The November 14, 2023, EDT Report determined that the Student continued to be eligible to receive special education and related services and the Student's IEP team thereafter met and determined the educational needs of the Student. The Student's new reevaluation date was noted in the IEP as November 14, 2023.

The Complaint alleges that the Student's previous evaluation was conducted by the District five years ago when the Student was in 3rd grade. However, the facts show that the Student's initial psychoeducational evaluation was completed by the District on December 18, 2020, when the Student was in 5th grade. The District conducted the Student's current reevaluation on November 14, 2023, which was prior to the due date of December 18, 2023. The REED team reviewed and considered the 2022 IEP, the 2020 initial comprehensive Psychoeducational Evaluation as well as past and current educational data on the Student. At the time of the November 14, 2023, REED, the documentation indicates that the Student was doing well in her classes and had no grade lower than a B. The documentation does not contain any past or current reports of negative behavior incidents by the Student. At the time of the REED, there were no reports or documentation of a significant change in the Student's disability, or of additional disabilities. The Parent had previously registered several complaints with the District, but they were related to the implementation of the Student's accommodations by several teachers and not the appropriateness of the accommodations or the IEP. Therefore, it is concluded that the District's REED and the determination that no additional data or evaluations were needed prior

to developing the November 14, 2023, IEP were reasonable and appropriate at the time. It is further concluded that the District did not fail to timely conduct a comprehensive reevaluation of the Student.

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

The Federal regulations and State rules provide that the IEP of an eligible student shall be developed at a properly convened IEP meeting at which the parent has been afforded the opportunity to participate as a member of the IEP team. 34 C.F.R. §300.322(a); 6.31.2.11(B)(2) NMAC. In developing the child's IEP, the IEP team must consider the concerns of the parents for enhancing the education of their child. 34 C.F.R. §300.324(a)(1)(ii); 6.31.2.11(B)(1) NMAC. It should be noted that the term "consider" does not mean "acquiesce." The IDEA does not require districts "simply to accede to parents' demands without considering any suitable alternatives." *Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132 (8th Cir. 1999), *rehearing denied*, 110 LRP 65933, No. 99-1163 (8th Cir. 01/25/00).

The IEP Team meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child. The IEP team should work towards a general agreement, but the district is ultimately responsible for ensuring the IEP includes the services that the child needs in order to receive a FAPE and to make sure that eligibility determinations are appropriately conducted. "The core of the statute, however, is the cooperative process that it establishes between parents and schools. School districts have a 'natural advantage' in information and expertise, but Congress addressed this when it obliged schools to safeguard the procedural rights of parents and to share information with them." *Schaffer v. Weast*, 126 S. Ct. 528, 536 (2005). Although parents are "equal" participants in the IEP process, they do not have veto power over the IEP. *Garden Grove Unified Sch. Dist.*, 115 LRP 20924 (SEA CA 05/05/15). Also, there is not a "majority vote" rule for making decisions in IEP team meetings. According to the ED, if the team cannot reach consensus, the public agency must provide the parents with PWN of the agency's proposals or refusals, or both, regarding the child's educational program. 34 CFR §300.503(a); *Letter to Richards*, 55 IDELR 107 (OSEP 2010) and *Letter to Lieberman*, 56 IDELR 141 (OSEP 2008); and *Buser v. Corpus Christi Indep. Sch. Dist.*, 20 IDELR 981 (S.D. Tex. 1994), *aff'd*, 22 IDELR 626 (5th Cir. 1995).

The Parent argues in her Complaint that the District failed to appropriately consider and respond to the concerns raised by the Parent. The Parent argues that her concerns have been ignored or only briefly responded to. The documentation includes copies of the August 25, 2023, and November 14, 2023, IEPs with their attached PWNs. The PWNs clearly indicate that the Parent was invited to and attended and participated as a member of each IEP team that developed the Student's previous and current IEPs. It is also clear that the Parent was a member of the

November 14, 2023, REED and EDT teams which discussed and determined the eligibility of the Student to receive special education and related services. The PWNs also indicate that the Parent voiced her concerns at the IEP team meetings and made many proposals to the IEP team that were accepted in whole or in part. It does not appear that the IEP team failed to discuss any concerns raised by the Parent at any of the IEP team meetings. The documentation from the Parent and the District also includes many emails that were exchanged between the Parent and District staff. These emails clearly document the Parent's concerns about the implementation of the Student's accommodations. As set forth above, the email responses from District staff do not appear to ignore the Parent's concerns and, in many instances, are lengthy and detailed. For example, in response to the Parent's request to the SE Math teacher for examples of how the Student's accommodations were implemented in her classroom, the SE Math teacher provided a lengthy and detailed description of her implementation of the accommodations.

Therefore, with respect to the documentation and the facts set forth above, it is concluded that the District did not fail to consider the concerns of the Parent for enhancing the education of the Student.

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

Issue No. 2

Whether the District failed to implement the Student's accommodations as set forth in the Student's IEP, as required by 34 C.F.R. § 300.320(a)(4); and 6.31.2.11(B)(1) NMAC.

Public agencies are required to have an IEP in place for each eligible student with a disability at the beginning of each school year. 34 C.F.R. § 300.323(a). Public agencies must ensure that special education and related services are made available to the student in accordance with the student's IEP. Each public agency 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(d); 6.31.2.11(B)(1) NMAC. Although school districts should strive to follow IEP's as closely as possible, the IDEA does not require perfect adherence to a child's IEP. Minor discrepancies between the services provided and the services called for by the IDEA do not give rise to an IDEA violation. *Van Dun ex. rel. Van Dun v. Baker Sch. Dist. 5J*, 502 F. 3d 811, 821 (9th Cir. 2007).

One of the Parent's consistent arguments in her Complaint is that the Student's teachers failed to consistently implement the Student's classroom accommodations as set forth in the Student's IEP. Most of the Parent's complaints regarding implementation appear to center on the SE Math,

SE ELA, Science and American History classes. The documentation clearly shows that the SEILs did inform the Student's teachers that the Student had an IEP and provided the specific accommodations set forth in the IEP. The Student's teachers all report that they were aware of the Student's accommodations. Most of the Parent's complaints involve the Student's accommodations for classroom testing, assignments, text-to-speech and speech-to-text, and the District-level final examinations for the first Semester. Specifically, the Parent claimed that the Student was often not allowed to re-test for a higher grade, she was not given extra time to complete assessments, she was not provided with speech-to-text and text-to-speech, she was not allowed to re-do assignments for a higher grade, her assignments were not reduced by 25%, and she was not allowed extra time to complete the assignments. The Parent also argues that the Student was not given extra time to complete, and was not allowed to retake, her end of semester final examinations.

The documentation includes a large amount of email correspondence between the Parent and District staff regarding the Student's accommodations. As set forth in the facts above, the teachers did respond to the Parent that the Student was receiving her accommodations. Several of the facts set forth above regarding the Student's accommodation are important to note again. First, resubmitting poorly done assessments for a higher grade was with "clear deadlines and teacher discretion." The teachers report that the Student had the entire class period to complete assessments and additional time was specifically offered to complete assessments the following day or with a lunch pass, which the Student rarely took advantage of. Second, all of the teachers stated that the text-to-speech and speech-to-text program used by the School called Read & Write was embedded in the School's Chromebook applications as well as the classroom assessments, and was available to the Student at all times. The teachers all report that the Student consistently refused to use the Read & Write application. Third, resubmitting poorly done assignments and the reduction of assignments by 25% were at the "teacher's discretion." The teachers report that the Student was allowed to re-do assignments, she had at least one week to turn in late assignments and that the Student's assignments were reduced by at least 25%. There was one instance noted by the Parent when the Student was required by a teacher to complete an extra vocabulary assignment in order to be able to retake an assessment for a higher grade. However, the teacher informed the Parent that the extra assignment was to make sure the Student was better prepared for the test. In view of the discretion given to the teacher with respect to re-taking assessments, this does not appear to be a failure to provide the accommodation to the Student. Fourth, the Student's IEP specifically includes a separate section regarding the accommodations allowed for District-Wide Assessments, and the only accommodation allowed for the Student was Text to Speech. There were no accommodations provided for extra time or re-taking the final examinations. The District argues that the end of semester final examinations are electronically administered District-Wide Assessments from the PED and are not timed, but once closed by the student cannot be reopened or retaken. The

Student's in-classroom accommodations for testing would not, therefore, apply to the District-Wide Assessments.

As proof of her allegations that the Student was not receiving her accommodations, the Parent points to the Student's grades going down and that she failed her final examinations in her core academic classes. However, a review of the Student's grades set forth above indicates that the Student's current grades do not appear to be appreciably different from the grades she earned when she last attended a District school during the 2021/2022 school year. Moreover, the Student's lowest first Semester final grade is a C+, and the Student has a 2.8 GPA. It is certainly understandable that the Parent and the Student are concerned that the Student did not make the Honor Role for the first Semester. Moreover, the complaint investigator notes that no conclusion is being made that the District's implementation of the Student's classroom accommodations was perfect and could not be improved upon. However, it is concluded that there does not appear to be any consistent or persistent substantial failures by the District to implement the Student's accommodations. Therefore, it is concluded that the District did not fail to implement the Student's accommodations as set forth in the Student's IEP.

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

Issue No. 3

Whether the District's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education.

In 2017, the Court in *Andrew F.* described what a FAPE requires, and the IEP process to provide a FAPE to an eligible student, as follows:

A FAPE, as the Act defines it, includes both "special education" and "related services." § 1401(9). "Special education" is "specially designed instruction ... to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child ... to benefit from" that instruction. 20 U.S.C. §§ 1401(26), (29). A State covered by the IDEA must provide a disabled child with such special education and related services "in conformity with the [child's] individualized education program," or IEP. 20 U.S.C. § 1401(9)(D).

Andrew F., 69 IDELR, at 177.

The Findings of Fact and Conclusions of Law set forth above do not establish any procedural or substantive violations of the IDEA or State rules by the District with respect to the issues being investigated. Therefore, it is concluded that the District's actions and/or omissions towards the Student did not result in a denial of a FAPE.

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

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

Investigated by:

/s/ Wallace J. Calder

Wallace J. Calder, Esq.

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:
Candice Castillo

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Candice Castillo, Ed.D.

Deputy Secretary for Identity, Equity, and Transformation

On behalf of:

Margaret Cage, Ed.D.

Director, Office of Special Education