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NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report

Case No. C2324-52

May 21, 2024

This Report requires corrective action. See page 40.

On March 22, 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.<sup>1</sup> 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;

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

- review of the District’s compliance with federal IDEA regulations and state NMAC rules;
- interviews with the adult Student and the Parent; 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 not investigate any alleged systemic issues set forth in the Parents’ Complaint.

### **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 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 include an appropriate statement of the Student’s Present Levels of Academic Achievement and Functional Performance, including how the Student’s disability affects the Student’s involvement and progress in the general education curriculum, as required by 34 C.F.R. § 300.320(a)(1); and 6.31.2.11(B)(1) NMAC;
  - b. failing to include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, as required by 34 C.F.R. § 300.320(b)(1); 6.31.2.11(G)(3) NMAC;
  - c. failing to include the transition services (including courses of study) needed to assist the child in reaching the Student’s postsecondary goals, as required by 34 C.F.R. § 300.320(b)(2); 6.31.2.11(G)(3)(b) NMAC;
  - d. failing to appropriately consider the communication needs of the Student, as required by 34 CFR §300.324(a)(2)(iv); 6.31.2.11(B)(1) NMAC; and
  - e. 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 failed to provide to the Parent or the adult Student periodic reports on the progress the Student is making toward meeting the annual goals, as required by

34 C.F.R. § 300.320(a)(3); 6.31.2.11(B)(1) NMAC.

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. The Student in this matter turned 18 years of age on March 1, 2024. The Student resides with the Parent within the jurisdictional boundaries of the District. The Student is currently in the 12th grade and attends a High School in the District (the School).
2. The Student reached the age of majority (18) prior to the filing of this Complaint by the Parent. Parent documentation includes a general New Mexico Statutory Power of Attorney signed by the Student and notarized on March 20, 2024, which includes the following hand-written language: "I grant [the Parent] the authority to act on my behalf in matters of Education and School, including IEP Administration and complaints." The Complaint Investigator has not received a written or oral withdrawal of the above Power of Attorney, nor has the Complaint Investigator received any communication from the Student instructing the Complaint Investigator to terminate this investigation.
3. The Student has attended the School for all of the Student's High School years, including the Student's current 12th grade year.
4. The documentation indicates that the Student was first referred for a special education evaluation in the Fall 2014, and was determined eligible to receive special education services during the 2014-2015 school year.
5. District records provide that the Student's most recent 3-year reevaluation was conducted in November, 2021.
6. On September 1, 2022 and October 14, 2022, the Student's IEP team met and developed an IEP for the Student. The IEP dated October 14, 2022, provides, in relevant part, as follows:
  - a. The IEP identifies the following four eligible disabilities for the Student: Autism, Emotional Disturbance (ED), Other Health Impairment (OHI) and Gifted.
  - b. The Student was on the Standard graduation program of study and was on target for graduation on May 24, 2024.
  - c. Age Appropriate Transition-Based Assessments:
    - i. Post-Secondary Goals:
      1. Employment: The Student will be competitively employed in the Graphic Design field as a Video Game Designer and/or Graphic Designer.
        - a. Transition Assessments used to identify goal:



7. Functional Vocational Evaluation: Take online interest inventories.
- iv. Transition Planning/Interagency Linkage:
  1. Senior Year: meet with DVR for job support services.
  2. Senior Year: meet with Central New Mexico (CNM) Accessibility Services or the University of New Mexico (UNM) Accessibility Resource Center (ARC) for post-secretary educational support.
- d. Present Levels of Academic Achievement and Functional Performance (PLAAFP) as of September 2022:
  - i. English 11:
    1. Strengths: The Student's attendance was consistent, work was being completed daily, his work was above average, and he was engaging positively with staff. Grade was an A.
    2. Weaknesses: "There is very little peer interaction due to small class size and attendance issues by other students." The Student needed to develop more confidence in his abilities to interact more frequently with his peers.
  - ii. US History/Geography:
    1. Strengths: "[The Student] is a very bright young man with a large vocabulary and background knowledge, and is animated about his interests." The Student had an 85% in US History. The Student participates in scenarios where there is a clearly defined right and wrong.
    2. Weaknesses: The Student needs to use his strengths to meet academic goals. The Student is academically capable of the class content but shuts down on individual assignments.
  - iii. Physics:
    1. Strengths: The Student was doing very well in the class with an A. The Student shows empathy for other students.
    2. Weaknesses: The Student needed to ask for help or time extension on assignments if needed.
  - iv. Communication Skills:
    1. Strengths: "[The Student] has a lot to offer, it is wonderful when he contributes to class discussions and activities. I really enjoy hearing what he has to say when he participates."
    2. Weaknesses: "[The Student's] attendance has been good, but his class participation has not been consistent. Sometimes he's quite engaged, but at other times he puts his head down on the desk and won't participate. [The Student] has not completed any of the

assignments for this class and currently has an F. However, we had a quiz earlier this week and he did very well, so it seems he's absorbing the information. I'd love it if we could find a way for him to stay engaged in what we're doing and if he would participate with more of the activities. I understand giving speeches is difficult for him, but I wish we could hear more from him because I think he has an interesting point of view and a lot to contribute to our class."

v. Intro to Robotics:

1. Strengths: "[The Student] is excellent at spatial recognition and mechanical drawings. He works well with others and is highly motivated and attentive. [The Student's] behavior in the class is excellent! He is willing participant in class and likes to volunteer."
2. Weaknesses: "Would like to see if the Student could take on the responsibility of a leader for his project work group."

vi. Financial Literacy:

1. Strengths: "[The Student] is great in class and seems comfortable responding to questions and interacting with others. He participates, asks questions, and works with his table group. He is a very curious guy and this helps a lot when learning mathematics."
2. Weaknesses: [The Student] is "struggling to turn in all his assignments. He currently has a 66% and is allowed to turn in anything he has missed up until this point."

vii. Art II:

1. Strengths: "[The Student] is positive, thoughtful, wants to share his ideas, and willing to come back and try something again in a new way if he is frustrated with a particular assignment. He is very positive about wanting to grow his art skills and be more focused on his artwork. He has had a few moments in which he gets frustrated, but his EA and myself typically make a plan that would still execute the concept of the assignment, but in a way that [the Student] understands more. . . [The Student] currently has a 79 C+ in Art 2. He is missing two assignments, both of which we have plans for him completing. His attendance is perfect and he participates in class very well by answering questions, engaging with teachers, as well as other students when he feels it appropriate."
2. Weaknesses: "We are working on our two-way communication skills so that I can better understand his needs when he is

frustrated and I would like him to continue to, when he is feeling up to it, express what he is feeling in regards to an assignment that has shut him down so we can reassess together.”

- viii. Occupational Therapy: “[The Student] has a great sense of humor and is passionate about topics he enjoys such as robot battles and chemistry.”
- e. Advanced Education Services Present Levels of Performance:
  - i. Specific Academic Ability Qualified in Reading: “[Woodcock Johnson III] – 125 – Superior Range; Word Identification – 132 – Very Superior Range.”
  - ii. Specific Academic Ability Qualified in Math: “Math: WJ-III tests of achievement, 99<sup>th</sup> percentile, very superior range, meets gifted criteria.”
  - iii. Intellect/Aptitude Qualified by IQ: “[Wechsler Intelligence Scale for Children-IV] Very Superior range (2014).”
- f. Special Considerations: none were noted.
- g. Annual Goals:
  - i. Language Arts: Grade 11, Reading: Informational Text
  - ii. Language Arts: Grade 11, Writing:
  - iii. Health Education
  - iv. Mathematics: Grade 11, The Real Number System
- h. Statement of Special Education and Related Services:
  - i. SE English Language Arts for 257 minutes/week in the Special Ed Setting;
  - ii. SE Math for 257 minutes/week in the Regular Ed Setting;
  - iii. GE Science for 257 minutes/week in the Regular Ed Setting;
  - iv. SE Social Studies for 257 minutes/week in the Special Ed Setting;
  - v. GE Electives for 771 minutes/week in the Regular Ed Setting;
  - vi. Related Service Social Work for 540 minutes/semester in the Special Ed Setting;
  - vii. SE Medical/Safety Support for 771 minutes/week in the Regular Ed Setting; and
  - viii. Rehab Counseling for 150 minutes/year in the Special Ed Setting.
- i. Supplementary Aids and Services:
  - i. Consult with Autism Resource Team, as needed;
  - ii. 1:1 Adult Assistant, daily: all day continuing from middle school; and
  - iii. OT Consult Basis, 30 minutes/month.
- j. Accommodations:
  - i. “Parent and Support teacher will be communicated with when an assignment or class grade drops below 70% or is missing and/or student is struggling. Support Teacher will communicate with [the Student] weekly to ensure that he is staying caught up and what challenges [the Student] may be facing;

- ii. Support teacher will meet with [the Student's] teachers/staff to ensure that they understand the accommodations and verify they are being implemented;
- iii. Enriched Assignments when student loses interest or is not engaged with topics/materials being presented;
- iv. Benchmark deadlines for larger assignments (Broken down into sections and dates.); and
- v. Provide opportunities for movement throughout the day.
- vi. Behavior Management Accommodations:
  - 1. All staff be aware of [the Student's] energy and anxiety levels, (Ex. Head down, agitation, loud reactions/talking, non-responsive, out of seat/tucked in a corner or quite (sic) place in the room ask if everything is okay, if no response give [the Student] space.);
  - 2. Provide reminders of strategies available to [the Student] as needed;
  - 3. Ignoring of minor infractions;
  - 4. Provide visual supports to allow student to easily reference self-regulation strategies; (List)
  - 5. Prepare student in advance for schedule changes;
  - 6. Prepare [the Student] for Assemblies/Pep Rallies and give the option to attend, if not allow [the Student] to go (sic) alternative setting. If [the Student] attends assembly/pep rally, seating that gives [the Student] access to leave discretely; and
  - 7. EA guidelines as described per document created by IEP Team (Date: 09/30/2022).
- vii. Environmental Accommodations:
  - 1. Minimize visual /auditory distractions during task completion;
  - 2. Allow to go to alternative location, during class, when necessary, upon student or EA request or teacher observation of need; and
  - 3. Have a quite (sic) space available for [the Student] for breaks (Under table, corner of classroom, hallway).
- viii. Instructional Accommodations:
  - 1. Use visual aids (pictures, transparencies, charts, maps);
  - 2. Allow extra time for written response;
  - 3. Chunking work either through use of sticky notes, folded paper, Check for understanding of task completion procedures;
  - 4. Provide checklist or rubric with written steps for task initiation/completion;
  - 5. With broad topics or open-ended questions, provide more specific choices;
  - 6. Provide model / specific examples / demonstrations, highlight or underline important information or directions;



7. Alternative assignments when needed and upon student request, allow for flexible product outcomes;
  8. [The Student] is able to use screen shot to access classroom notes; and
  9. [The Student] will be able to take breaks during class with the classroom teacher.
- ix. Accommodations for Materials:
    1. Integration of high interest materials into academic instruction.
  - x. Accommodations for Assignments:
    1. Provide extra time for written assignments, Allow for the use of assistive technology to produce written assignments, allow for dictation for responses over one paragraph in length, allow choice or output method for written assignments (e.g. use of co:Writer or WordQ, oral responses or dictation), reduce task demands for written assignments (e.g., one paragraph instead of two), establish alternative assessments for measuring speaking and listening skills with consideration of how Autism affects these skills;
    2. Reduced homework without impact to grade. Opportunity to demonstrate mastery of concepts through reduced work or alternative output; and
    3. Break down and restate the directions into 1-2 steps, check for understanding and review and repeat as necessary for all classes.
  - xi. [The Student] will be given the opportunity to self-regulate outside of the classroom, without impact on [the Student's] grade for that classroom.
  - xii. Opportunity to take tests with a SE teacher.
  - xiii. Occupational Therapy services will be provided as a supplemental service for 120 minutes a year to help support his sensory processing skills for attention and focus in his classes.
- k. Testing Accommodations:
    - i. The test administrator redirects the Student's attention to the test without coaching or assisting the Student in any way. Breaks as needed.
    - ii. Small Group Setting.
    - iii. Use of calculator on non-calculator portion of the exam.
    - iv. Extended time 100%.
7. The documentation includes a very detailed two-page document prepared by the Parent dated October 14, 2022, regarding the responsibilities, role and duties of the EA assigned to the Student. This document was discussed at the October 14, 2022, IEP team meeting and accepted by the IEP team. The District did provide a copy of this document to the assigned EAs, which was affirmed by the EAs in their written statements.
  8. The District's documentation includes a very detailed signed statement from the Student's Transition Specialist/Rehab Counselor for the 2022-2023 school year. This statement tracks and supports the transition information in the October 12, 2022, IEP.

The statement further describes the Transition Assessments administered to the Student and the bases for using the various assessments. The Statement provides that during the 2022-2023 school year, the Transition Specialist “worked with [the Student] on completing Transition Assessments, IEP Transition Plan, Transition Planning, Coordinated Activities, Resume Building, Self-Advocacy Skills, Job Coaching and scheduling and facilitating DVR referral, application and intake meetings.

9. The documentation provides that the Student received the following, among other, transition assessments and activities by District staff during the 2022-2023 school year:
  - a. Vocational Assessment: Career Pathway Interest Inventory based on the Holland Codes of Occupational Themes;
  - b. Structured Interview with Transition Specialist;
  - c. AIR Self-Determination Scale;
  - d. Resume Development with Rehabilitation Counselor;
  - e. Student took SAT exam and scored 1290;
  - f. Completed DVR Referral paperwork and dropped off referral to DVR;
  - g. Job Coaching at DECA Snack Bar;
  - h. Facilitated DVR Intake Meeting; and
  - i. Referral to Special Services offices for possible academic support and/or accommodations at CNM, UNM and NMSU, ENMU, and ENMUR.
10. Prior to, and at the beginning of, the 2023-2024 school year, the Parent exchanged many emails with District staff who work with the Student expressing concerns regarding the Student’s transition goals and services, implementation of accommodations, and the Student’s EA, and requesting many changes to the Student’s IEP. District staff generally quickly responded to each of the Parent’s concerns and questions and provided updates and answers.
11. On October 12, 2023 and October 23, 2023, the Student’s IEP team met and developed an IEP for the Student. The IEP dated October 23, 2023, provides, in relevant part, as follows:
  - a. The IEP identifies the following four eligible disabilities for the Student: Autism, Emotional Disturbance (ED), Other Health Impairment (OHI) and Gifted.
  - b. The Student is on the Standard graduation program of study and is on target for graduation on May 24, 2024.
  - c. Age Appropriate Transition-Based Assessments:
    - i. Post-Secondary Goals:
      1. Employment: The Student will be competitively employed in the Art, Culinary or Literature field as an Artist, Chef or Writer (Goal updated 10-10-2023).”
        - a. Transition Assessments used to identify goal:



- b. The Student returned Best Buddies Form to participate in PRET class to assist with employment skills on 10/11/2023.
- c. Worked with student on resume format (9/19/2023).
- d. Met with Student, DVR and Transition Specialist to complete PRET's forms (8/6/2023).
- e. Complete FAFSA and research scholarship opportunities.
- f. Attempted to give Student DVR paperwork but he declined stating he would lose it so sent home with brother.
- g. Spoke with DECA teacher about the Student working the snack bar senior year to continue job skills (8/10/2023).
- h. Completed Career Interest Inventory (ONet) and Structured Interview (8/15/2023).
- i. The Student will meet with college and career counselor to identify a post-secondary program that aligns with the Student's interests and apply for it. Student will meet with College and Career counselor at a minimum of once/month.
- j. Met with College and Career counselor on 8/18/2023.
- k. Worked with the Student to update resume to include his academic awards (4/6/2023).
- l. Referral to DVR for post-secondary education and/or employment supports (address included) (4/13/2023).
- m. Meet with community support liaison/rehab counselor to find and apply for job that interests the Student Senior Year.
- n. Set up job with DECA snack bar for Student to gain job skills. Coordinated with DVR for on the job training 8/17/2023.
- o. Participating in PRET Services in order to assist with College and Career Readiness and Employability skills and advocacy for academic success (starts 10/24/23) (5/22/2023).
- p. Will meet with community support liaison/rehab counselor to improve Student's job interview skills to start in October.
- q. Referral to special services office to register for academic support/accommodations in post-secondary setting: CNM, UNM, NMSU, ENMU, and ENMUR.
- r. Coordinate with Study skills teacher for the Student to come into her class for PRET Classes (8/11/2023).
- s. Rehab Counselor job coached at snack bar after the Student reported frustration with job. Spoke with Supervisor who gave him strategies on 3/30/2023.
- t. Emailed information about Online Signatures for DVR Documentation. Printed documents and sent home.
- u. Complete Structured Interview to review postsecondary goals and updated Transition Plan (10/11/2023).

- v. Re-address job skills. Occupational Life Skills class was recommended and Student/parent agreed to the class. Career Readiness goal for job skills will be addressed.
2. Instruction:
    - a. Completed Career Interest Inventory (RIASEC), AIR Self-Determination Scale and Structured Interview.
    - b. Met with Head Teacher and ACE Teacher about stipend for the Student's Library Internship, 9/20/2023.
    - c. Demonstrate employability/soft skills by continuing to use Student Vue to self-monitor grades and assignment completion and meet with support teacher as necessary. Continued self-advocacy skills, especially related to asking for assistance.
    - d. Met with the Student, Mother, Head Teacher, and Rehab Counselor to discuss class schedule and add classes. Offered Occupational Life & Academic Career Experience to address work skills. The Student declined classes. Added Culinary Arts at student request (8/11/2023).
    - e. Take SAT for College and career (4/12/2023).
    - f. Will learn budgeting, money management, investing skills, and an initial budget in Financial Lit class.
  3. Community Experiences: Continue participating in D&D club and MTG club. Attend College and Career Fair (Senior Year).
  4. Postschool Adult Living: Continue to explore transportation options.
  5. Independent/Daily Living Skills: Assisted the Student in speaking with the Driver's Ed teacher and discussed schedule for next semester (10/10/2023).
  6. Daily Living Skills: Open a bank account, manage money.
  7. Functional Vocational Evaluation: Take online interest inventories.
- d. NSTTAC Indicator 13 Checklist Form A: all of the "Yes" boxes were checked.
  - e. Present Levels of Academic Achievement and Functional Performance (PLAAFP) as of October 2023, in relevant part:
    - i. English 12:
      1. Strengths: "[The Student] has an A in English 12 and completed all assignments.
      2. Weaknesses: Needs to use cell phone less during class and needs to be a self-starter.
    - ii. Economics:
      1. Strengths: "[The Student] has a grade of B. His attendance is very good and is on track with edge annuity progress. [The Student]

gives solid effort every class period to complete the assignments on his computer.”

2. Weaknesses: None noted.

iii. Study Skills:

1. Strengths: “[The Student] has an A for Study Skills.”

2. Weaknesses: The Student has difficulty transitioning back after he has traveled or been out.

iv. Culinary Arts:

1. Weaknesses: “Current grade is a 50%. [The Student] has 11 missing assignments and scored a 60% on our latest assessment.”

f. Advanced Education Services Present Levels of Performance: Not changed from previous IEP.

g. Annual Goals:

i. Language Arts:

1. Goal: “In order to support [the Student’s] Postsecondary goal of becoming competitively employed in the Art, Culinary or Literature field as an Artist, Chef or Writer, he will be able to answer comprehension questions about text by citing textual evidence, using the supports of marking the text, with at least 70% accuracy, as measured by a teacher given assessment.”

2. Goal: “In order to support [the Student’s] Post Secondary goal of becoming competitively employed in the Art, Culinary or Literature field as an Artist, Chef or Writer, he will work to develop the topic with well-chosen, relevant, and sufficient facts, extended definitions, concrete details, quotations, or other information and examples appropriate to the audience’s knowledge of the topic with 70% accuracy, as evidenced by oral or written assessment, academic performance, and teacher’s log.”

ii. Health Education: “[The Student] will demonstrate the ability to use interpersonal communication skills to enhance health in order to support his post-secondary goal of being competitively employed in the Art, Culinary or Literature field as an Artist, Chef for Writer. Within a year and across school settings [the Student] will identify and practice ways of expressing his needs, wants, and feelings in his management of difficult situations during each of his monthly encounters with school social worker as assessed by self-report, staff reports, and social work observations.”

iii. Career Readiness: Grade 12, Identifying training, education and certification requirements for one’s occupational choice:

1. Goal: "In order to support [the Student's] Postsecondary goal of becoming competitively employed in the Art, Culinary or Literature field as an Artist, Chef or Writer, [the Student] will be able to independently locate potential jobs through at least three different sources. Example, sites, USA Jobs, Workforce Solution, newspaper. This will be measured by student's trials and demonstrated to Occupational Life Skills teacher."
  2. Goal: "In order to support [the Student's] Postsecondary goal of becoming competitively employed in the Art, Culinary for Literature field as an Artist, Chef or Writer, [the Student] able (sic) to complete an on-line and/or paper application that he is qualified for as measured by completed application. This will be measured by student's trials and demonstrated to Occupational life skills teacher."
- iv. "Progress reports on goals will be sent home in accordance with the grading periods."
- h. Statement of Special Education and Related Services:
- i. SE Study Skills for 270 minutes/week in the Special Ed Setting;
  - ii. SE Life/Work Skills for 270 minutes/week in the Special Ed Setting;
  - iii. SE English Language Arts for 270 minutes/week in the Special Ed Setting;
  - iv. SE Science for 270 minutes/week in the Regular Ed Setting;
  - v. SE Social Studies for 405 minutes/week in the Special Ed Setting;
  - vi. GE Electives for 270 minutes/week in the Regular Ed Setting;
  - vii. Related Service Social Work for 540 minutes/semester in the Special Ed Setting;
  - viii. SE Medical/Safety Support for 270 minutes/week in the Regular Ed Setting;
  - ix. Rehab Counseling for 60 minutes/year in the Special Ed Setting.
- i. Supplementary Aids and Services:
- i. Consult with Autism Resource Team, as needed;
  - ii. 1:1 Adult Assistant, daily: all day continuing from middle school;
  - iii. OT Consult Basis, 30 minutes/month.
- j. Accommodations:
- i. "Parent and Support teacher will be communicated with when an assignment or class grade drops below 70% or is missing and/or student is struggling. Support Teacher will communicate with [the Student] weekly to ensure that he is staying caught up and what challenges [the Student] may be facing;



- ii. Support teacher will meet with [the Student's] teachers/staff to ensure that they understand the accommodations and verify they are being implemented;
- iii. Enriched/alternative Assignments when student loses interest or is not engaged with topics/materials being presented to create a sense of ownership for [the Student]. Have a conversation with him;
- iv. Benchmark deadlines for larger assignments (Broken down into sections and dates.);
- v. Provide opportunities for movement throughout the day;
- vi. Behavior Management Accommodations:
  - 1. All staff be aware of [the Student's] energy and anxiety levels, (Ex. Head down, agitation, loud reactions/talking, non-responsive, out of seat/tucked in a corner or quite (sic) place in the room ask if everything is okay, if no response give [the Student] space.);
  - 2. Provide reminders of strategies available to [the Student] as needed;
  - 3. Ignoring of minor infractions;
  - 4. Provide visual supports to allow student to easily reference self-regulation strategies. (List)
  - 5. Prepare student in advance for schedule changes;
  - 6. Prepare [the Student] for Assemblies/Pep Rallies and give the option to attend, if not allow [the Student] to go (sic) alternative setting. If [the Student] attends assembly/pep rally, seating that gives [the Student] access to leave discretely;
  - 7. EA guidelines as described per document created by IEP Team (Date: 09/30/2022);
- vii. Environmental Accommodations:
  - 1. Minimize visual /auditory distractions during task completion;
  - 2. Allow to go to alternative location, during class, when necessary, upon student or EA request or teacher observation of need;
  - 3. Have a quite (sic) space available for [the Student] for breaks (Under table, corner of classroom, hallway);
- viii. Instructional Accommodations:
  - 1. Use visual aids (pictures, transparencies, charts, maps);
  - 2. Allow extra time for written response;
  - 3. Chunking work either through use of sticky notes, folded paper, Check for understanding of task completion procedures;
  - 4. Provide checklist or rubric with written steps for task initiation/completion;
  - 5. With broad topics or open-ended questions, provide more specific choices;
  - 6. Provide model / specific examples / demonstrations, highlight or underline important information or directions;



7. Alternative assignments when needed and upon student request;
  8. [The Student] is able to use screen shot to access classroom notes;
  9. [The Student] will be able to take breaks during class with the classroom teacher;
- ix. Accommodations for Materials:
1. Integration of high interest materials into academic instruction;
- x. Accommodations for Assignments:
1. Provide extra time for written assignments, Allow for the use of assistive technology to produce written assignments, allow for dictation for responses over one paragraph in length, allow choice or output method for written assignments (e.g. use of co:Writer or WordQ, oral responses or dictation), reduce task demands for written assignments (e.g., one paragraph instead of two), establish alternative assessments for measuring speaking and listening skills with consideration of how Autism affects these skills.
  2. Reduced homework without impact to grade. Opportunity to demonstrate mastery of concepts through reduced work or alternative output;
  3. Break down and restate the directions into 1-2 steps, check for understanding and review and repeat as necessary for all classes;
- xi. [The Student] will be given the opportunity to self-regulate outside of the classroom, without impact on [the Student's] grade for that classroom;
- xii. Opportunity to take tests with a SE teacher;
- xiii. Occupational Therapy services will be provided as a supplemental service for 120 minutes a year to help support his sensory processing skills for attention and focus in his classes.
- k. Testing Accommodations:
- i. The test administrator redirects the Student's attention to the test without coaching or assisting the Student in any way. Breaks as needed.
  - ii. Small Group Setting.
  - iii. Use of calculator on non-calculator portion of the exam.
  - iv. Extended time 100%.
- l. Rationale for LRE selection: How does the disability impact progress in the general education curriculum (for school-age students)?
- i. "[The Student]'s eligibility of autism impacts [the Student]'s academic and social success throughout all settings. [The Student] is easily distracted and has impulsive behavior and difficulties with transitions. [The Student] exhibits anxiety and difficulty building and maintaining relationships. This impacts academic task completion and social/emotional behavior in all school settings. In addition, [the Student] is a student with exceptional gifted cognitive ability which requires both enrichment and direct instruction in areas of strength. In order to provide appropriate educational services, the IEP team determined that he needs to remain in

- a school setting that provides enrichment opportunities as well as gifted mathematics and additional service in order for him to meet his social and academic goals within the general education setting.”
- ii. Are services to be provided at the neighborhood school? “Yes. Math is a gifted area for [the Student] and he benefits from academic acceleration as well as enrichment in this subject. [The Student] needs special education support and related services in order to support him in the general education environment due to social/emotional concerns, self-regulation skills, organizational and work completion concerns. [The Student] will receive services through the Social Emotional Support Level 1 class at [the School].”
  - m. The parties who attended the October 12, 2023 and October 23, 2023, IEP team meetings are as follows: Parent, Student, Cross Category Special Education Teacher, Principal/Designee, Assistant Principal, Regular Education Teacher, Rehab Counselor, Social Worker, DVR Specialist, College and Career Counselor, ESDS, Special Education Ombud.
  - n. Prior Written Notice dated October 12, 2023, was provided to the Parents and provides, in relevant part, as follows:
    - i. Rehabilitation Counseling was accepted in order for the High School Transition Specialist to support student by providing vocational counseling in the areas of post-secondary employment and post-secondary educational training.
    - ii. The IEP team agreed to review transition goals monthly.
    - iii. The District’s proposal that an amendment be held in December to update the readiness goals was accepted by the team with an expected completion date of December 22, 2023.
    - iv. The District’s proposal for 1:1 adult support was accepted by the team for the Student’s safety.
12. The District’s documentation includes very detailed signed statements from the Student’s Transition Specialists for the 2023-2024 school year. The Student’s Transition Specialist/Rehab Counselor from the previous year was being reassigned and the new Transition Specialist took over after the beginning of the 2023-2024 school year. Both statements track and support the transition provisions in the October 23, 2023, IEP. The statements further describe the Transition Assessments administered to the Student and the bases for using the various assessments. The Statements provide that during the 2023-2024 school year, the previous Transition Specialist “continued to provide Transition Services in the form of: administering Transition Assessments, providing Job Interviewing skills, including Mock Interviews, and working to ensure [the Student’s] transition needs were being met.” The current Transition Specialist/Rehab Counselor reports that she “set up job skills training through [the School] Snack Bar. . . Set up Pre-Employment Transition Services, On the Job Trainings, and community Support Liaison Services.” The current Specialist further reports that an Employment Planning Meeting

was held in February and the Community Support Liaison (CSL) met with the Student for job skills, job development and to assist in choosing a job coach through DVR. The CSL assisted with job searching and filling out applications, shared information with [the Student] about Job Fairs, and supported in completion of the profile and application for internships with Bernalillo County that can lead to full-time employment. Mock Interviews were also set up and conducted with the Student three times during October 2023.

13. The documentation provides that the Student received the following, among other, transition assessments and activities by District staff during the 2023-2024 school year:
  - a. ONet Interest Profiler;
  - b. Structured Interview with Transition Specialist;
  - c. Met with Student, DVR Counselor, both transition Specialists, to set up On the Job Training in the DECA Snack Bar and Pre-Employment Transition Services;
  - d. Met with Student to show the Student how to submit his timesheet;
  - e. Mock Interview;
  - f. Met with Head Teacher and ACE Teacher about the Student's Library Internship; and
  - g. Resume Development with Rehabilitation Counselor.
14. On December 8, 2023, the District scheduled a "Progress Towards Goals Meeting" for January 11, 2024. On the day of the meeting the Parent requested that several parties from the Student's outside therapy provider attend the meeting.
15. On January 11, 2024, the Student's IEP team met to discuss the Student's progress, and amended the Student's October 23, 2023, IEP as follows:
  - a. The first Career Readiness Goal was amended to indicate that the goal would be measured "by student's trials and demonstrated to IEP team member."
  - b. The second Career Readiness Goal was amended to state that the Student "will be able to create a document that serves as a reference guide to applying for jobs. This will be measured by student's completion."
  - c. A new third Career Readiness Goal was added as follows: "In order to support [the Student's] Postsecondary goal of becoming competitively employed in the Art, Culinary or Literature field as an Artist, Chef or Writer, [the Student] will be able to appropriately contact and follow-up with employers 3 or more times within the application process. This will be measured by student's trials and demonstrated to IEP team member."
  - d. The Career Readiness Goals were to be completed by February 16, 2024.
16. The District provided PWN to the Parent dated January 11, 2024, regarding the amendment to the Student's October 23, 2023, IEP. The PWN also provides that the

Student is scheduled to graduate in May 2024, and the team agreed to meet monthly to “ensure progress is being made towards post secondary goals.”

17. On January 16, 2024, the Parent sent an email to the School Principal summarizing her “proposals for [the Student’s] IEP going forward.” The Parent requested an IEP team meeting to amend the Student’s IEP. The Parent proposed bringing in a BCBA from the Student’s outside provider to “come into the classroom to observe and then recommend evidence-based approaches to establish goals and measures to fade EA support and help [the Student] learn self-advocacy.”
18. On January 23, 2024, the District informed the Parent that the Student’s Special Education Teacher was being assigned as the Student’s new Case Manager.
19. On January 24, 2024, the Student’s Case Manager sent an email to the Parent as a check-in on the Student’s progress. It was noted that the Student was doing well overall in ELA and New Mexico History, and she was using 35 minutes each period to work towards the Student’s new career goals. The teacher further noted she created a tracking sheet to track progress that the Student would fill out each week.
20. On January 26, 2024, the Student’s Case Manager left a note for the Parent that after the Case Manager had provided support and options to the Student on a missing assignment he refused to complete the work and the Student’s lack of participation was affecting his grade. The Parent responded and asked what needs of the Student the Case Manager identified and how she determined them and what supports or interventions she offered to address those needs.
21. On January 29, 2024, the Student’s Case Manager emailed a very detailed response to the Parent. The Case Manager informed the Parent that the Student’s grade dropped below the 70% threshold. With respect to what accommodations are being made she stated that “as a certified special education teacher, I focus primarily on SEL (social emotional learning) in our SES 1 program here at [the School], which results in more focus on regulating emotions, making positive choices, learning how to be independent and utilizing coping skills when necessary. This is to help our students be successful in the general education setting in hopes that we can reduce their time spent in more restricted environments (LRE).” The Case manager provided a lengthy list of classroom assignment and instructional accommodations she provided to the Student. The Case Manager then stated that these accommodations “are not only best practice in any SP Education classroom but teaching in general.”
22. The Parent responded and asked what specific accommodations were offered to the Student, and since he wasn’t writing what the plan moving forward was. The Case Manager responded as follows: “I offered him to write or type, I offered him to verbally respond, I offered him a break, I offered him to work with a peer. I asked him the questions using multiple rephrasing instructions. I sat with him and went over the answers

together so that he knew what the expectation for the assignment looked like as well. I asked multiple times how I can help him or what we needed to do to get the work completed. I gave him space when he shut down and continued to monitor when he was ready to work. . . As far as moving forward, I unfortunately cannot force [the Student] to do work, my hope is he will see that there are options and he can choose an option for completing work to be successful. Until then my grading structure will remain the same. When he completes the work he will be given a grade. . .”

23. On January 30, 2024, the Student’s IEP team met to review the Student’s progress on his post-secondary goals and discuss the Parent’s proposals. The District provided PWN to the Parent dated January 30, 2024, which provides, in relevant part, as follows:
  - a. The IEP team rejected the Parent’s proposal for an outside BCBA, but agreed to have a District BCBA conduct an assessment of needs and the plan for EA support and fading of this support.
  - b. The team agreed the support teacher or administration would provide weekly check ins regarding IEP accommodations and monitor weekly progress to be reported to the Parent.
  - c. The team agreed that all staff that works with student should review the EA plan provided by the Parent and follow the expectations.
24. On January 31, 2024, the Case Manager sent a check-in email to the Parent regarding the Student shutting down in class and stating that she offered the Student to go for a walk, to stand at the standing desk, water and snacks, time and space, and reinforced the idea for the Student to advocate for his needs before he just fell asleep. The Parent responded that the School “should have a plan developed and EAs should have direction and guidance on their roles” as outlined in the EA document the Parent had provided to the District. The Case Manager responded that she had reviewed the document multiple times “and in terms of what is outlined for the EA’s or myself to help with would be to ‘make a simple suggestion’ asking for a ‘different topic’ or ‘more time’.” She stated that she had implemented all of the strategies, but in attempting to mitigate any shutdown” I do not feel as though I should push when I can clearly see that [the Student] is not able to work or produce for that day.”
25. In a follow-up email the Parent explained that her frustration and high level of involvement “has history going way back to elementary school,” when the District transferred the Student back to his home school “with basically no social comms program, and being autistic, they lack the social skills to easily build new relationships. And the school was very clumsy in how they handled the EAs and they made the situation worse.” The Case Manager expressed her understanding of the Parent’s frustration and that she needed to continue to advocate for her children, but asked “for understanding from a large group of people who are trying to support. As well as meet the requests and needs

that are being brought up.” The Case Manager also informed the Parent that the District’s BCBA would conduct observations of the Student on February 2, 2024.

26. On February 2, 2024, the Parent sent an email to the Case Manager stating that the Student informed her that he had a shut down in ELA the previous day regarding a book the class was reading that he objected to. The Parent stated that the Student has eligibility for Emotional Disturbance and that “the school is required to provide appropriate materials and support that does not endanger his emotional state.” The Case Manager responded that the previous day the class was working on an identity poem that the Student struggled with and he did have a shut down. She stated that the poem was not related to the book that the class was reading that day (not the previous day) that the Student seemed to enjoy the same as the other students. The Case Manager had already changed the Student’s assignment from the previous day to a different one that the Student had completed. The Case Manager again provided a list of the accommodations she provided to the Student (and all students) in her class to “offer a positive and inclusive environment.” She ended with the following statement: “I do not think there are any other ways I can convey/communicate the accommodations and teaching practices that I do day in and day out. In addition I am also utilizing 30 minutes of every 5th period which is NM History for [the Student] to work specifically on the career readiness goals. I am doing everything I can to support your son in accordance with their IEP.”
27. On February 13, 2024, the Parent communicated with the Case Manager that the Student was feeling overwhelmed with the amount of work and the project being assigned in Physics. The Parent agreed that the EA could be used to explain the steps involved in the project and to assist the student with completing it.
28. On February 14, 2024, the District’s BCBA met with the Parent to talk about supports needed for the Student.
29. On February 16, 2024, the Parent sent an email to the district expressing her extreme frustration that the Student was not allowed to leave Physics class early for the bus to avoid the crowds of students leaving classrooms. The Parent stated that the Student “is in danger when they are forced to be in environments that cause dysregulation.” The Parent stated that the Student asked the Physics teacher and was told by the teacher that “it’s not in your IEP.” The Parent also stated that the Case Manager responded the same way when the Student asked her to help with the situation. The Parent informed the District that she “instructed [the Student] to ignore the instructions of the teachers and do what they need to do to protect their emotional safety.”
30. On February 22, 2024, an Employment Plan Meeting was held and covered topics such as Students preferred working conditions, likes/dislikes, Student’s strengths, skills and special needs, a review of potential employers and plans for next steps.



31. On February 23, 2024, the Student's IEP team met to review the Student's progress and amended the Student's October 23, 2023, IEP as follows:
- a. Three new Career Readiness Goals were added as follows:
    - i. "In order to support [the Student's] Postsecondary goal of becoming competitively employed in the Art, Culinary or Literature field as an Artist, Chef or Writer, Within 6 weeks, in order to support [the Student's] job search for full-time employment, with support from staff [the Student] will create 5-8 informational interview questions for three jobs chosen by [the Student], this will be measured by teacher record book and conferencing."
    - ii. In order to support [the Student's] Postsecondary goal of becoming competitively employed in the Art, Culinary or Literature field as an Artist, Chef or Writer, within six weeks with the support of staff [the Student] will practice their informational interview questions with case manager, teacher of choice or administrator to prepare them for job search. This will be measured by teacher record book and conferencing."
    - iii. In order to support [the Student's] Postsecondary goal of becoming competitively employed in the Art, Culinary or Literature field as an Artist, Chef or Writer, within six weeks with the support of staff/transition Specialist [the Student] will create a list of 5 questions to ask job coaches through the DVR support to find an appropriate match. This will be measured by teacher record book and conferencing"
  - b. The Career Readiness Goals were to be completed by April 10, 2024.
  - c. The team accepted the District's proposal to add two new accommodations for the Student as follows:
    - i. "[The Student] will have the option to leave class 3 minutes early to help with stress associated with passing periods."
    - ii. "[The Student] will have the option in any large crowds (excessive stimulus or overwhelming) or traumatic situation to have the option to remove themselves from the environment and find a safe space to stay this will be advocated by [the Student] themselves. [The Student] will also be given any notes from meetings or pertinent school information that would be missed."
32. The District provided PWN to the Parent dated February 23, 2024, which provides, in relevant part, as follows:
- a. the IEP team agreed to have a District BCBA conduct an assessment of needs and the plan for EA support and fading of this support.

- b. The team agreed the support teacher or administration would provide weekly check ins regarding IEP accommodations and monitor weekly progress to be reported to the parent.
  - c. The team agreed that all staff that works with student should review the EA plan and follow the expectations.
  - d. The team agreed with the Parent's proposals to meet again to update goals to support the Student's transition from high school to post-secondary
33. The documentation includes many additional emails between the Parent and District staff prior to the filing of the Parent's Complaint regarding Parent concerns and Student's progress toward meeting his goals.
34. The Student's IEP team met on April 11, 2024, to review the Student's progress towards meeting the Career Readiness and Social Work goals and objectives. It was reported that the Student met all three of his Career Readiness goals prior to the April 11, 2024 IEP team meeting.
35. The Student was assigned two different EAs during the 2023-2024 school year. Both of these EAs provided a signed written statement regarding their interactions with the Student. The first assigned EA (August – January) provides in her written statement, in relevant part, as follows:
- a. When she started as the Student's EA, the Student's support teacher met with her to review the Student's IEP and accommodations and help her understand her role in supporting the Student. She was provided with a document that described the role of the Student's EA;
  - b. She tried to assist the Student only as needed and encouraged him to do things for himself. During class she would sit back and observe unless the Student needed redirection and her "gentle reminders" to stay focused or ask for a break were very effective;
  - c. She reminded the Student to express his needs and request help from teachers and she would speak with the teacher directly about choosing a different subject or giving the Student more time to complete an assignment;
  - d. If the student disengaged and would not respond to offers for help or breaks she would give the Student space but keep eyes on him and check in after about 20 minutes;
  - e. The Student's teachers "really seem to understand [the Student's] accommodations. Teachers were good about working breaks into the class, offering [the Student] more time to complete assignments and modifying assignments when [the Student] was not interested in the subject;"
  - f. She would regularly check in with the Student's support teacher about how the Student was doing;





and observations of the Student. All of these teachers and providers reported that they were aware of, and had received a copy of, the Student’s IEP accommodations. The teachers and providers stated that they provided these accommodations to the Student. These staff indicated that they based their present level statements on personal interactions with and observations of the Student, class work, assignments and projects, grades and the Student’s personal habits and interests. The teachers and providers generally also indicated that they were aware of the need to fade the Student’s EA support in order to assist the student with self-advocacy and becoming more independent and they supported this goal. The teachers and providers generally also spoke very highly of the Student’s personality and that the student was very bright and performed very well when he was motivated.

38. The Student’s grade reports and Progress Reports for the 2022-2023 and 2023-2024 school years (up to March 8, 2024) provide, in relevant part, as follows:

STUDENT’S GRADE REPORTS

Year/Q/Sem/Ex								
2022/2023	S1	C-	A-	A	C+	C	D	C+
	Ex1	A	A	B	D	A	B	A
		Study Skills 3						
	S2	C	B	A-	B-	C+	F	D-
	Ex2	A	B	B	D	A	F	A
2023/2024								-
	S1	B	A	B-	A+	D+	C+	-
	Ex1	A	A	A	A	B	B	-
	S2	-	-	-	-	-	-	-
	Ex2	-	-	-	-	-	-	-

STUDENT’S PROGRESS REPORTS

Year/Semester	Language Arts-Reading	Language Arts-Writing	Health Education	Math	Career Readiness	
2022/2023	Q3	4-Good Progress Made	4-Good Progress Made	3-Progress Made	3-Progress Made	N/A
	Description	-	-	Student is able to identify emotions nine out of 12 times but continues to struggle to express feelings and apply a coping mechanism.	-	-
	Q4	3-Progress Made	3-Progress Made	3-Progress Made	3-Progress Made	N/A
	Description	-	-	Student is more readily able to identify emotions.	-	-
2023/2024	Q1	Goal Changed	Goal Changed	3-Progress Made	Not Continued	N/A
	Description	-	-	Student does not identify coping skills. Student has been in negative space 4 times in 8 weeks lasting over 20 minutes.	-	-
	Q2	3-Progress Made	3-Progress Made	3-Progress Made	Not Continued	3/5

Description	-	-	Student will express needs and wants when in a positive space. Has been in negative space 1 time in 8 weeks.	-	Student only able to apply on one job site. Completed goal to complete job applications (12).
Q3	3-Progress Made	3-Progress Made	3-Progress Made	Not Continued	3/3/3/5/1/4
Description	Student is able to cite evidence from text to support answer with 70% accuracy but still requires adult support.	Student is able to create a well-thought-out written response with 60% accuracy but requires adult support with sentence starters, graphic organizers, starting a response and thinking of ideas for writing.	Increased frequency of expressing feelings and describe the feeling in two out of three instances. Been in a negative space 5 times over 20 minutes since January.	-	At 75%. Student has list of jobsites and reviewed them on six occasions in class but prefers to search on individual sites. Student does have job tracking document and has updated this 3/12 opportunities. He has followed up with one employer. He has completed task of creating five questions to ask three employers. Has completed interview questions but not practiced yet. Has completed the list of five questions to ask a job coach.

39. The documentation indicates that the Student has an IQ in the Superior range and has a good academic record. At the beginning of the 2022-2023 school year the Student’s GPA was 3.285. At the beginning of Semester 2 of the 2022-2023 school year the Student’s GPA had declined to 2.428, and at the end of Semester 2 Student’s GPA was 2.142. As of the end of Semester 1 of the 2023-2024 school year the Student’s GPA has increased to 2.833. The Student’s grades for Semester 2 have not been completed or reported.

**Discussion and Conclusions of Law**

**Issue No. 1**

**Whether the District failed to develop an appropriate 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 include an appropriate statement of the Student’s Present Levels of Academic Achievement and Functional Performance, including how the Student’s disability affects the Student’s involvement and progress in the general education curriculum, as required by 34 C.F.R. § 300.320(a)(1); and 6.31.2.11(B)(1) NMAC;
- b. failing to include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, as required by 34 C.F.R. § 300.320(b)(1); 6.31.2.11(G)(3) NMAC.
- c. failing to include the transition services (including courses of study) needed to assist the child in reaching the Student’s postsecondary goals, as required by 34 C.F.R. § 300.320(b)(2); 6.31.2.11(G)(3)(b) NMAC;
- d. failing to appropriately consider the communication needs of the Student, as required by 34 CFR §300.324(a)(2)(iv); 6.31.2.11(B)(1) NMAC; and

**e. 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.**

**a. failing to include an appropriate statement of the Student's Present Levels of Academic Achievement and Functional Performance, including how the Student's disability affects the Student's involvement and progress in the general education curriculum, as required by 34 C.F.R. § 300.320(a)(1); and 6.31.2.11(B)(1) NMAC;**

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 CFR §300.1(a). "Central to IDEA is the requirement that local school districts develop, implement, and annually revise an individualized education program (IEP) calculated to meet the eligible student's specific educational needs. 20 U.S.C. § 1414(d)." *Thompson R2-J School Dist. v. Luke.*, 540 F.3d 1143, 1144 (10th Cir. 2008).

The IDEA Federal regulations and State Rules require that the IEP of a child with a disability must include a statement of the child's present levels of academic achievement and functional performance (PLAAFP), including how the child's disability affects the child's involvement and progress in the general education curriculum. 34 C.F.R. § 300.320(a)(1); and 6.31.2.11(B)(1) NMAC. To meet IDEA obligations, a district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017). The statement of the child's PLAAFP in the IEP describes the disabilities and behaviors that interfere with the child's education so that everyone working with the child knows the level at which the child is functioning. The written levels help the IEP team develop a document that will provide the child with an appropriate education. The statement of present levels essentially creates a baseline for designing educational programming and measuring future progress. *Red Clay Consol. Sch. Dist. v. T.S. and R.S.*, 59 IDELR 287 (D. Del. 2012). The statement of PLAAFP should be individualized and reflect the student's unique needs. *See Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982); and *Andrew F., Id.* If the statement of PLAAFP does not consider the unique needs of the child, establish a baseline for establishing goals and monitoring progress, or allow informed parental participation in the IEP process, then the IEP may be found to deny FAPE. *Beer v. USD 512 Shawnee Mission*, 82 IDELR 223 (D. Kan. 2023)

The IEP should express the PLAAFP in specific, objectively measurable terms. While the use of test scores is not always appropriate, test scores accompanied by some individual analysis is common. *See O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233*, 28 IDELR 177 (10th Cir. 1998); and *Chase v. Mesa County Valley Sch. Dist. No. 51*, 53 IDELR 72 (D. Colo. 2009). If test

scores are used, they should be self-explanatory or include an explanation. The district should update the statement of PLAAFP in the IEP at least annually to ensure it accurately reflects the student's present levels of performance for the current IEP. The failure to update the statement of PLAAFP may deny the parent an opportunity to participate in the IEP process and could deny the student a FAPE.

The Parent argues in her Complaint that the Student's IEP does not contain an appropriate PLAAFP for career and college transition. The Parent argues that the assessments of ability provided by the District are subjective, rather than objective and do not properly identify the Student's abilities. However, the facts set forth above do not support the Parents allegation. The Student's IEP has an updated PLAAFP that contains very detailed descriptions of the Student's current assessments and grades, general education input and observations by the Student's teachers and related service providers, and Advanced Education Services PLAAFP. The District points to the following present levels shared by the Student's Social Worker as an example of an objective assessment of the Student's abilities:

Adrian is reserved and perceptive, with a playful character. He struggles at times to express his feelings which can lead to emotional withdrawal in some academic settings. Adrian does not identify coping skills that he applies when he becomes overwhelmed or distressed. Thus far, he has gotten into a negative space four times in the first 8 weeks of school. Each of those instances lasted over 20 minutes. He did report to his EA the cause of those in at least three of the instances.

It is concluded that the PLAAFP in the Student's IEP does include updated, appropriate, and objective statements of the Student's academic achievement and functional performance, including how the Student's disability affects the Student's involvement in and progress in the general education curriculum. It is further concluded that the statement of PLAAFP does appear to consider the Student's unique needs and establish a baseline for developing goals and monitoring progress. Therefore, it is concluded that the District did not fail to include an appropriate statement of the Student's Present Levels of Academic Achievement and Functional Performance, including how the Student's disability affects the Student's involvement and progress in the general education curriculum.

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

**b. failing to include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, as required by 34 C.F.R. § 300.320(b)(1); 6.31.2.11(G)(3) NMAC.**

The IDEA regulations and State Rules contain almost identical provisions related to developing post-secondary goals and transition services in the IEPs of students with disabilities. The State Rule regarding Transition Services is set forth below:

(3) State rules require the development of measurable post-school goals beginning not later than the first IEP to be in effect when the child turns 14, or younger, if determined appropriate by the IEP team, and updated annually thereafter. Pursuant to 34 CFR Sec. 300.320(b), the IEP shall include:

(a) appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;

(b) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(c) a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority.

(4) Measurable post school goals refer to goals the child seeks to achieve after high school graduation. The goals shall be measurable while the child is still in high school. In addition, the nature of these goals will be different depending on the needs, abilities, and wishes of each individual child.

6.31.2.11(G)(3) NMAC. As noted above, post-secondary goals related to independent living skills are not mandatory in an IEP, but must be developed "where appropriate." The language in the above-cited rule makes it clear that a district must conduct age-appropriate assessments related to training, education and employment for eligible students, because post-secondary goals must be developed in each of these areas. Assessment(s) must be first conducted and post-secondary goals must thereafter be developed. As described in *Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 09/01/11), "[t]he requirements for postsecondary IEP goals apply, whether or not the student's skill levels related to training, education, and employment are age appropriate. In all cases, the IEP Team must develop the specific postsecondary goals for the student, in light of the unique needs of the student as determined by age-appropriate transition assessments of the student's skills in these areas." Measurable goals allow for a determination of when a goal has been met and identify the data/evidence that will be relied upon. See *NMPED, Writing SMART Goals*.

The Parent alleges in her Complaint that the Student's IEP does not have measurable goals for

career transition, but only include a list of assessments of career interests and a general goal of the Student becoming employed. As the facts above show, the District's Transition Specialists did conduct age-appropriate assessments and structured interviews related to training, education and employment prior to developing the October 14, 2022, and October 23, 2023 IEPs. Two Career Readiness goals were initially developed in these areas based on the Student's strengths, preferences and the interests expressed by the Student. On January 11, 2024, the two Career Readiness goals were amended and a third goal was added. On February 23, 2024, the IEP team added three new Career Readiness goals related to job searching, creating interview questions and job coaching with DVR. These goals were to be completed by April 10, 2024. The documentation indicates that goals were completed by the Student on or prior to April 10, 2024. It is concluded that the Career Readiness goals in the Student's IEP are measurable post school goals because they identify specific career -related actions to be completed by a specific date and identifies the School staff member responsible for measuring the progress. Therefore, it is concluded that the District did not fail to include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills.

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

**c. failing to include the transition services (including courses of study) needed to assist the child in reaching the Student's postsecondary goals, as required by 34 C.F.R. § 300.320(b)(2); 6.31.2.11(G)(3)(b)**

Pursuant to 34 C.F.R. § 300.320(b), an IEP shall include the transition services (including courses of study) needed to assist the child in reaching the child's post-secondary goals. 6.31.2.11(G)(3)(b) NMAC. "Transition Services are a coordinated set of activities for a child with a disability that emphasizes special education and related services designed to meet unique needs and prepare them for future education, employment, and independent living. . . Transition services are designed to be within a results oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. . . Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests and includes: instruction, related services, community experiences, the development of employment and other post-school adult living objectives; and when appropriate, acquisition of daily living skills and the provision of a functional vocational evaluation. . . Transition services for children with disabilities may be considered special education, if provided as individually designed instruction, aligned with the state standards with



benchmarks, or related services, if required to assist a child with a disability to benefit from special education as provided in 34 CFR Sec. 300.43.” 6.31.2.11(G)(2) NMAC.

The Student’s October 23, 2023, IEP and amendments, contain a lengthy list of at least 33 coordinated activities for the Student developed by the Student’s IEP team. These include: instruction, employment, community experiences, post-school adult living; acquisition of daily living skills and a functional vocational evaluation. In addition to these activities, the Transition Specialists also worked with the Student to provide the following services: simulated interviews, meeting with DVR Counselor, On the Job Training in the DECA Snack Bar, submitting timesheets, mock Interviews, setting up the Student’s Library Internship, Resume Development, and filling out job applications. The District further points out that the courses of study for Student during Student’s 11th grade year, which were: Art II, Financial Lit, English 11, Physics, Robotics, US History, Communication Skills; and the courses of study for the Student’s 12th grade year, which were: Culinary Art I, Academic Career Exp-Library, Financial Literacy, Econ/Govt., Study Skills, and Physics I, meet the unique needs of Student and have prepared the Student for future education, employment, independent living. In view of the Student’s stated intention to take time off after high school to work before going to college, the Transition Services identified above appear to be not only extensive but appropriate for the Student’s goals. Therefore, it is concluded that the District did not fail to include the transition services (including courses of study) needed to assist the child in reaching the Student’s postsecondary goals.

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

**d. failing to appropriately consider the communication needs of the Student, as required by 34 CFR §300.324(a)(2)(iv); 6.31.2.11(B)(1) NMAC; and**

The IDEA requires school districts to consider the communication needs of the child. 34 C.F.R. § 300.324(a)(2)(iv). The Student’s IEP clearly indicates that the Student struggles in social situations and with self-advocacy. The Student’s IEP team developed an annual Health Goal for the Student, which is essentially a communication goal. This goal is designed to help the Student “identify and practice ways of expressing his needs, wants, and feelings in his management of difficult situations during each of his monthly encounters with school social worker as assessed by self-report, staff reports, and social work observations.” The IEP also indicates that the team reviewed the Autism indicators checklist which considers the communication needs of the Student. The IEP team also assigned a 1:1 EA to the Student to help the student with, among other things, communication and self-advocacy. While the Student continues to struggle in this area, the Social Worker and the Student’s EAs report that the Student is making progress on this goal. The Student’s third-quarter Progress Report indicates that the Student is making progress on this



goal. Therefore, it is concluded that the District did not fail to appropriately consider the communication needs of the Student.

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

**e. 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.**

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 October 14, 2022, and

October 23, 2023, IEPs, as well as the January 11, January 30, February 23, and April 11 IEP amendments, all 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. 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. 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(e), 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). The Tenth Circuit Court follows other Circuit courts such as the Fifth Circuit, with respect to the standard used to determine whether an implementation failure by a school district amounts to a denial of FAPE. In *Houston Indep. Sch. Dist. V. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000), the Court held that "a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP."

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. The documentation includes a large amount of email correspondence between the Parent and District staff regarding the Student's accommodations. The most often noted complaints by the Parent regarding implementation relate to the Student's 1:1 EA, and a general complaint that a poor grade received by the Student was due to a failure to implement his classroom accommodations. The Parent also took issue with a refusal by the Physics teacher and Case Manager to allow the Student to leave Physics class early to avoid a crowded hallway during a passing period, because such an accommodation is not in the Student's IEP. The Parent also frequently stated to District staff that the Student's teachers and his EA were not aware of his accommodations and did not implement them.

The documentation clearly shows that the Student's Case Managers did inform the Student's teachers that the Student had an IEP and provided each teacher with the specific accommodations set forth in the IEP, including the responsibilities of the EA. The Student's case managers, teachers, related service providers and EAs all report that they were aware of the Student's IEP and accommodations and they implemented the Student's accommodations. In response to the Parent's many complaints about the Student not receiving his accommodations, District staff generally provided the Parent with detailed and specific explanations of the implementation of the Student's accommodations, scheduled meetings to discuss proposed changes to the IEP, or took reasonable steps to comply with the requests of the Parent. For example, the Student's IEP team met on at least five occasions to discuss and amend the Student's IEP beginning on October 12, 2023. In almost every IEP team meeting the team discussed the role of the EA and the need to fade EA support and encourage more self-advocacy. Also, School staff recognized that in several classes the Student received poor grades for classwork and homework yet scored very high on final exams, so the staff arranged to allow the Student to have a final examination grade count as his grade for the Physics I class. In the situation where the Student asked several times to leave the 6th period Physics class early because the Student wanted to avoid the crowds in the hallways during a passing period, the teacher reports that he refused the request because the accommodation was not in the Student's IEP and 7th period was a free period so the Student did not need to arrive at a specified time. The Parent strongly objected to this action. In response, the Student's IEP team met and agreed to an accommodation to allow the Student to "leave class three minutes early to help with stress associated with passing periods."

As additional proof of the Parent's allegations that the Student was not receiving his accommodations, the Parent points to the Student receiving D and F grades in the past year. However, a review of the Student's grades set forth above indicates that the Student's current grades have actually gone up. Over the last two completed semesters the Student has earned

one F and two D's and the majority of the rest of his grades are As and Bs. The Student's lowest Semester 1 grade is a D+, and the Student's GPA went up to 2.833. It is certainly understandable that the Parent and the Student are concerned that the Student received a failing grade and several low passing grades over the past year. However, while passing grades and grade advancement does not automatically suffice as proof of a FAPE, it is nonetheless the case that said progress weighs in that direction. *Zachary J. V. Colonial School District*, 124 LRP 3915 (3d Cir. 2024).

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 where failures did exist, the District generally acted in a prompt manner to discuss and resolve any perceived or actual lack of implementation. 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. It is further concluded that the District substantially implemented the very large number of accommodations set forth in the Student's IEP. 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 failed to provide to the Parent or the adult Student periodic reports on the progress the Student is making toward meeting the annual goals, as required by 34 C.F.R. § 300.320(a)(3); 6.31.2.11(B)(1) NMAC.**

The IDEA Federal regulations and State Rules require that each IEP developed for a student with a disability describes how the district will measure the student's progress toward meeting the annual goals and when the District will provide periodic reports on the student's progress toward meeting the annual goals. 34 C.F.R. § 300.320(a)(3). The IDEA and State Rules do not specifically describe any particular method to monitor and track a student's progress, which leaves that decision up to the IEP team. Typically, some form of data collection is used such as curriculum-based assessments, work samples, and observations, all of which should be documented. Districts are required to monitor and provide timely periodic reports to parents regarding the progress the student with a disability makes toward meeting the annual goals described in the IEP. 34 C.F.R. § 300.320(a)(3)(ii). Once again, there is no required form or format, but the IEP must describe the method and timing of these progress reports. 34 C.F.R. § 300.320(a)(3). Similarly, the IDEA and State Rules do not mandate a particular method for delivering the progress reports to parents. The U.S. Department of Education believes the specific times that progress reports are provided to parents and the specific manner and format of those reports is best left to state and local officials to determine. 71 Fed. Reg. 46,664 (2006). Delivery

of progress reports to parents can take the form of U.S. mail, Email, hand delivery, verbal delivery and/or a parent portal on the District's website.

The Student's October 12, 2022, and October 23, 2023, IEP's provide that "progress reports on goals will be sent home in accordance with the grading periods." In her Complaint, the Parent reports that the March 8, 2024, Progress Towards Goals was the first progress report that she received during the 2023-2024 school year. The District admits to this allegation by the Parent and the documentation also supports the Parent's allegation. Therefore, it is concluded that the District failed to timely provide Progress Reports to the Parent for the first two quarters of the 2023-2024 school year as required by the Student's IEP.

**As to Issue No. 3, the District is cited, and Corrective Action is required.**

**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.**

The Federal regulations and State rules provide that violations of the IDEA may be based on either substantive or procedural violations. As noted above, the District has been cited for a procedural violation of the IDEA as to Issues No. 3. However, proving a procedural violation is only a first step to obtaining relief. In *Garcia v. Bd. of Educ. of Albuquerque Pub. Schs.*, 520 F.3d 1116, 1125-26 & n.4 (10th Cir. 2008), the court held that "procedural failures under IDEA amount to substantive failures only where the procedural inadequacy results in an effective denial of a FAPE."; quoting *Urban ex rel. Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 726 (10th Cir. 1996). Congress provided in the 2004 amendments to the IDEA that to find a denial of FAPE based on a procedural violation, the procedural violation must have: (1) impeded the student's right to a FAPE, (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (3) caused a deprivation of educational benefits. 34 C.F.R. §300.513(a)(2).

A failure to timely comply with this progress reporting requirement is a procedural violation, which may or may not deny FAPE. See, e.g., *Baltimore County Pub. Schs.*, 79 IDELR 180 (SEA MD 2021) (A Maryland district's failure to issue one quarterly progress report concerning a teenager with autism was an isolated incident that didn't result in substantive harm, given that the teen made appropriate progress, the state ED concluded.). See, also, *City of Chicago Sch. Dist. 299*, 112 LRP 11001 (SEA IL 02/24/12) (Because the parents communicated with school staff on a regular basis and were well aware of the child's progress, the district's failure to provide all required progress reports did not amount to a denial of FAPE or an exclusion from the decision-making process.). Moreover, the Student's IEP team met on at least four occasions during the

first two quarters of the 2023-2024 school year to review the Student's progress. The Parent and School staff also communicated on a regular basis through email regarding the Student's progress.

It is concluded that the Student's progress reports, report cards, District assessments and observations show that the student generally made progress on the Student's Annual and Transition goals during the period in question in this complaint investigation. When a student with a disability is participating in the general curriculum, good report card grades suggest that the student has made progress and such progress, in turn, strongly suggests that the student received FAPE. *See Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982). *See also Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017) (holding that an IEP typically should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade"). However, while good grades can be evidence of compliance with the IDEA's FAPE mandate, they do not end an inquiry into whether a district provided FAPE. The IDEA expressly cautions that: "Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade." 34 C.F.R. § 300.101 (c)(1).

In the present matter, the complaint investigator has carefully weighed all of the evidence regarding Student's progress in the general education curriculum and Student's progress on his academic, functional and transitional goals, against the District's procedural violation regarding a failure to provide two progress reports. After review, it is concluded that the District's procedural violation does not rise to the level of a substantive violation of the IDEA. Therefore, it is concluded that the District's actions and/or omissions towards the Student did not result in a denial of FAPE.

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

**Summary of Citations**

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.320(a)(3); 6.31.2.11(B)(1) NMAC.	The District failed to provide to the Parent or the adult Student periodic reports on the progress the Student is making toward meeting the annual goals.



**Required Actions and Deadlines**

**By May 31, 2024**, the District's Special Education Director must assure the OSE in writing that the District will implement the provisions of this Corrective Action Plan (CAP). The OSE requests that the District submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the District's progress with the Corrective Action Plan and to be its point of contact about this complaint from here forward:

Dr. Elizabeth Cassel  
Corrective Action Plan Monitor  
Office of Special Education  
New Mexico Public Education Department  
300 Don Gaspar Avenue  
Santa Fe, NM 87501  
Telephone: (505) 490-3918  
[Elizabeth.Cassel@ped.nm.gov](mailto:Elizabeth.Cassel@ped.nm.gov)

The file on this complaint will remain open pending the PED's satisfaction that the required elements of this Corrective Action Plan are accomplished within the deadlines stated. The District is advised that the OSE will retain jurisdiction over the complaint until it is officially closed by this agency and that failure to comply with the plan may result in further consequences from the OSE.

Each step in this Corrective Action Plan is subject to and must be carried out in compliance with the procedural requirements of the IDEA 2004 and the implementing federal regulations and State rules. Each step also must be carried out within the timelines in the Corrective Action Plan. If a brief extension of time for the steps in the Corrective Action Plan is needed, a request in writing should be submitted to the Corrective Action Plan Monitor. The request should include the case number, the date for the proposed extension, and the reason for the needed extension. The OSE will notify the parties of any extension granted.

**Please carefully read the entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes. All corrective action must be completed no later than August 16, 2024, and reported to the OSE no later than August 23, 2024.** All documentation submitted to the OSE to demonstrate compliance with the CAP must be clearly labeled to indicate the state complaint case number and step number.

**Corrective Action Plan**

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
<b>1.</b>	As described above, the District will submit a written assurance to the PED OSE Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	<b>May 31, 2024</b>	Written Assurance Letter/Email.	<b>May 31, 2024</b>
<b>2.</b>	The District shall arrange to provide training to School special education staff (including special education teachers, special education administrators, and related service personnel) which shall be provided by a person with expertise in special education who is approved by NMPED. This trainer may be an employee of the District. The training shall cover the following special education topics: <ul style="list-style-type: none"> <li>• when and how to prepare periodic progress reports on a student's progress toward meeting annual goals.</li> <li>• The proper method to deliver progress reports to parents.</li> </ul>	<b>August 16, 2024</b>	Submission of proposed trainer and trainer's resume and proposed presentation for NMPED approval.  Confirmation of the date(s) of the training.  Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.	<b>July 15, 2024</b>  <b>July 22, 2024</b>  <b>August 23, 2024</b>



This report constitutes the New Mexico Public Education Department's final decision regarding this complaint. If you have any questions about this report, please contact the Corrective Action Plan Monitor.

Investigated by:

*/s/ 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:  
*Margaret Cage*

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Margaret Cage, Ed.D.

Director, Office of Special Education