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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Socorro Consolidated Schools  
Case No. 2425-03  
September 20, 2023**

**This Report requires corrective action.  
See pages 27 through 33.**

On July 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 Socorro's District's responses to the allegations, together with documentation submitted by the Local Education Agency 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 Complainant, Advocate, Middle School Principal, Principal and School Psychologist;
- questionnaires were completed by Counselor and general education Teacher; 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 allegations related to professional or ethical misconduct by a licensed educator or related service provider, or allegations related to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act are not within the jurisdiction of this complaint investigation and, as a result, were not investigated.

### **Issues for Investigation**

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

1. Whether the Parents were denied meaningful parental participation in decisions involving the education of Student in violation of 34 C.F.R. § 300.321(a)(1); 34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13 (C) NMAC, specifically, whether the District:
  - a. Failed to consider Parent’s concerns in the decisions involving eligibility, discipline and placement;
  - b. Made decisions and drafted documents such as a prior written notice and eligibility determinations prior to holding the IEP meeting; and
  - c. Failed to collect or provide Parents with data for the development of the FBA, BIP and IEP.
  
2. Whether the District developed and implemented an IEP reasonably calculated to allow Student to make progress and receive a free appropriate public education (FAPE) in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC, specifically whether the District:
  - a. Completed a comprehensive evaluation in all suspected areas of disability to ensure that needed information was available to determine eligibility and services and supports;
  - b. Considered information from a variety of sources to determine eligibility and need for services and supports;
  - c. Considered relevant information and made the appropriate decision regarding Student’s eligibility and need for specialized instruction;

- d. Focused on the socially maladaptive label in determining eligibility without considering evaluation data and reports from previous school and outside agencies;
- e. Completed the appropriate procedures when Student transferred into the District from another in state district;
- f. Provided appropriate supports and services and goals to allow Student to make progress;
- g. Determined Student's needs and developed an IEP that addressed those needs;
- h. Completed an appropriate functional behavior assessment (FBA) and behavior intervention plan (BIP) designed to address Student's behaviors that interfered with Student's learning and that of others;
- i. Properly determined Student's eligibility and academic, social-emotional and behavioral needs before development of the IEP;
- j. Failed to consider or address Student's behavioral and social-emotional needs through additional supports and/or services prior to a change of placement;

3. Whether the District failed to follow the IDEA disciplinary procedures when disciplining Student for violations of the District's code of conduct, in violation of 34 C.F.R. § 300.530 and 6.31.2.11(F)(2) NMAC; specifically, whether the District:

- a. Failed to document the first manifestation determination review hearing and failed to provide a prior written notice;
- b. Failed to consider relevant information regarding Student in determining whether the behavior was a manifestation of student's disability;
- c. Failed to consider outside evaluations in determining whether behaviors were a manifestation of Student's disability;
- d. Suspended Student without providing needed services and supports to address behaviors that were impacted Student's learning and that of others; and
- e. Changed Student's placement following a disciplinary hearing without the involvement of the IEP team.

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**

#### **Background information**

1. Student, who was 12 years old and in seventh grade during the 2023-2024 school year, was enrolled in District Middle School on November 14, 2023.
2. Student resided with Complainants, who were authorized to act as parents for purposes of IDEA. Initially, Complainants had a positive communication and working relationship with District. This relationship changed as Student's disruptive behaviors continued, resulting in frequent suspensions.

3. Student had previously been identified in January, 2023 as a child in need of special education services at another school district in the state. The identified eligibility category was emotional disturbance (ED). Student had diagnoses of Oppositional Defiant Disorder (ODD) and Attention Deficit Hyperactivity Disorder (ADHD). Another previous evaluation indicated that Student had a conduct disorder, specifically Disruptive Mood Dysregulation Disorder (DMDD).
4. When Student registered at the school, Student's IEP and other records were not provided to the District. District requested the IEP and other documents from the sending school. Limited records were provided to District despite repeated requests.
5. The District, in a document outlining special education services in the District, accepted the IEP from the sending school and stated that they would provide services while collecting data on Student, and stated that they would review new data and other available information within 30 days.
6. On the previous IEP, Student received writing services and social instruction skills. The January 2024 IEP dropped academic services stating that "the team determined that at this time, academic services are not needed for [Student]. Guardian [Complainant] agrees with this decision and so all academic services have been removed." The January 2024 IEP provided "weekly consultation with the social worker and on-going support in the classroom...measurement of progress will be done through consultation, observations and documentation of services." There was no evidence obtained during the investigation showing that these services were provided.
7. Student had multiple behavior incidents at District. The first incident occurred on November 30, 2023 and the last incident before the long-term suspension occurred on February 27, 2024. When considering the days of suspension, the Student was in school for a total of 34 days.

#### IEPs and BIPs.

8. The District developed an IEP on January 22, 2024 that continued the eligibility of ED and added OHI. Student had multiple accommodations and modifications and was to receive 120 minutes of psychological services per month as well as 30 minutes of social work services (SW) per week. There were no behavior goals but the team planned on developing or revising the behavior intervention plan (BIP).
9. At the time of the development of the District IEP, there were concerns about the limited information from the sending district and permission for additional evaluations were discussed but no consent was received.
10. Although it was reported by the sending District that Student had a BIP, the BIP was not provided to the District. In January, 2024, the District Social Worker completed a functional

behavior assessment (FBA) and developed a BIP. This BIP had “Problem Behavior and Target Goal” listed as “task refusal.”

11. On February 14, 2024, an Advocate became involved and worked with the team to revise the BIP to address the problem behavior, refusal to complete tasks or requests.
12. The following day, Student was evaluated by an outside psychiatrist that diagnosed Student as having DMDD and ADHD. There were no other diagnoses included in the report.
13. From the time of enrollment, Student continued to receive disciplinary removals for negative behaviors which impacted on the District’s ability to collect data or determine Student’s needs and services. The District did not collect data or work to determine Student’s needs, or provide services listed on his IEP during the disciplinary removals.

#### Behaviors and disciplinary removals

14. There were 24 behavior incidents during the 23-24 school year.
15. The incidents included: classroom disruption/defiance, physical confrontation, elopement, inappropriate use of electronic devices, disorderly conduct, aggressive behavior, threats to teachers and students, verbal confrontations, verbal intimidation, inappropriate language and swearing, horseplay, bullying and cyber threats.
16. Student’s behaviors rarely involved physical aggression but the students and staff were concerned for their safety.
17. Two manifestation determination review (MDR) meetings were held during the 2023-2024 school year.
18. Complainant participated in both MDR meetings but did not receive copies of the MDR documents or prior written notice (PWN) from the first MDR meeting.
19. The Student, because of suspensions, missed 20 of the 40 days in the 3<sup>rd</sup> quarter and the entire fourth quarter of school.
20. The last incident, when Student received a long term suspension on March 4, 2024, involved threats against other students. At a hearing on March 11, 2024, Student was suspended for the remainder of the 2023-2024 school year. Student remained at home and received educational services through packets. Special education services were often refused by Student.
21. After the long-term suspension, Complainant provided consent for additional evaluations to be completed by the School Psychologist.
22. Student failed all classes during the 2023-2024 school year because work was not completed. There was no progress on special education goals for the school year.

#### Evaluation and revised IEPs

23. The Student began at the District in November 2023 and the District created a “Proposed Interim Special Education Placement” This interim placement rejected the transfer IEP’s 120 minutes a week of social skills with a social worker without reason provided and stated that “[t]he team will gather more data for how [Student] is doing in school at this point, and we will return in about 30 days to go over updated data.” The interim placement substituted having the “school counselor check in with [Student] weekly to see how he’s doing and to monitor in [sic] we need to help.” The investigation did not receive evidence that this counselor check-in occurred and did not find evidence of a 30 day review of updated data.
24. The District formally modified Student’s IEP on January 22, 2024. The most recent evaluation date was January 19, 2023. The District did not have the data from the previous district school and did not evaluate the Student before creating this IEP. On this IEP, multiple teachers stated that his abilities were not known because not enough work was completed. ED was listed as the primary disability. Modifications listed on IEP included: (1) repeating directions as needed; check-in with student for feelings, understanding at least one time per class; use of visual demonstrations and modeling; repeat, clarify and/or simplify directions as needed; and (2) behavioral interventions as listed on the BIP, including: providing Student with non-verbal cue to tell teachers that he needs a break and being able to take it; use of post it notes to tell teachers that Student needs a break; when confrontation is “necessary”, it should be done with a trusted adult with guardian on phone or present (if available). The BIP stated that Student is very capable of doing academic activities although the IEP stated his abilities were unknown and the BIP framed his behavior as choices although he was eligible via ED which is not a conduct disorder.
25. The investigation did not receive evidence that teachers or staff did the following accommodations and/or modifications: repeating directions as needed; check-in with student for feelings, understanding at least one time per class; use of visual demonstrations and modeling; repeating, clarifying and/or simplifying directions as needed; nor did the investigation receive evidence of implementation of the behavioral interventions listed above.
26. Between the January 2024 IEP development and the new modifications to the BIP in April of 2024, the Student continued to exhibit undesirable behaviors, be suspended from school, and missed more days than he attended.
27. After consent for evaluation was signed by Complainant on April 2, 2024, the School Psychologist began testing Student. There were concerns that the academic testing was not accurate since Student was not completing work and only attended 34 days the entire year. Observations were part of the evaluation and they were completed at home since Student had been suspended for the remainder of the school year on March 11, 2024. Complainant was with Student in the home and there were no concerns noted with behavior or work completion on the observations.

28. The Student was tested on April 17, 2024, May 1, 2024 and May 9, 2024. The school psychologist completed the report on May 24, 2024.
29. In that report, she summarized the BASC forms that were completed by classroom teachers and Complainant. The classroom teachers had minimal contact with Student but the results from teachers and Complainant indicated the following: easily distracted, unable to complete work, irritability, negativity, pessimistic, easily upset, overreaction to requests, low frustration tolerance, difficulties with self-regulation, limited self-control and rapid changes in behavior and mood, and behaviors easily escalating to verbal aggression and threats of physical violence towards teachers and peers. It was also reported that Student had an excessively high activity level, spoke out of turn, had difficulty remaining seated, disrupted classmates, had poor self-control, sought attention and acted out of control. Attention and concentration were elevated areas of concern. Student was easily distracted, missed deadlines, had trouble concentrating, a short attention span and struggled to remain organized, had poor executive functioning skills, with elevated scores on aggression and rule breaking behavior.
30. The report also noted that Student could not control anger when confronted, had heightened levels of depression (even though this was not reported by Student). The Student was always irritable in the classroom, and was negative, easily upset, and had a hard time self-regulating. Although Student has friends, he also does not get along with most/many peers, and was suspicious of others and unaware of others. Student struggled to adapt to changes and calming down when angry.
31. The behaviors reported were consistent with a DMDD diagnosis.
32. The report and summary that accompanied the report opined that Student was not eligible under ED because Student had been diagnosed with ODD and ADHD and that Student behaviors were due to conduct disorder as opposed to mood disorder. Citing to the New Mexico TEAM Manual, the School Psychologist incorrectly asserted that a child identified as socially maladjusted “must meet all of the eligibility criteria for ED as defined in IDEA (2004).” The Psychologist, based on this incorrect reading of the manual and the law, opined that Student could not be eligible under ED if Student exhibited conduct disorder (ODD or SMD). The School Psychologist’s report also incorrectly asserted that DMDD is a “conduct disorder.” Notably, the Diagnostic and Statistical Manual of Mental Disorders [“DSM-5”] defines DMDD as a Depressive Disorder whereas Conduct Disorders are in a different chapter and are defined as a different category in the manual.
33. She noted during interviews that the eligibility decision was a team decision.
34. The School Psychologist opined that Student was also not eligible under OHI for the ADHD diagnosis because the ADHD did not have a significant impact on learning and could best be addressed through a 504 plan.



35. The School Psychologist acknowledged that Student needed supports and services but it would be better to address those needs through a 504 plan.
36. The team was looking at multiple eligibility categories including ED, OHI, specific learning disability and autism.
37. At an IEP meeting on May 29, 2024, the IEP team, based on the School Psychologist's report, was pursuing removal from special education eligibility for Student and towards providing services through a 504 plan. Advocate and Complainant opposed these proposed changes and eligibility was not finalized at that meeting. The January IEP remained in effect.
38. Multiple attempts were made to set another meeting. Finally, a four-hour facilitated IEP meeting was held in July with an evaluation date of July 26, 2024. The IEP was still not finalized and the team met again at the start of the 2024-2025 school year to determine a plan for Student. A finalized IEP was written for the Student on July 26, 2024. The District has hired a BCBA to assist with developing a plan for Student and the Student remains eligible for an IEP with the eligibility criteria being emotional disturbance.
39. From January through May, 2024, the IEP team did not reconvene to address Student's escalating behaviors or the disciplinary removals that resulted in a long-term suspension for the remainder of the school year. During that time, the school staff met every 4-6 weeks to strategize how to assist Student, but there was no meeting with the entire IEP team to consider options to assist Student.
40. Student had two MDR meetings during the 2023-2024 school year. The first MDR meeting occurred in February after Student had been subject to 13 disciplinary removals. An MDR meeting did not timely occur as required by law. The Student's disciplinary removals should have triggered an MDR meeting by January 11, 2024. The Student received the following relevant discipline:
  - a. 2 days in school suspension on December 4, 2023 for major classroom disruption;
  - b. 3 days out of school suspension on December 5, 2023 for disruptive and defiant behavior;
  - c. 2 days in school suspension on December 7, 2023 for disruption and defiance;
  - d. 3 days out of school suspension for aggression, threat and elopement on January 10, 2024.

A timely MDR meeting did not happen after this 10-day pattern of removals which constituted a change in placement for the Student.

41. The Student continued to have disciplinary removals with change in his placement on the following dates: January 23, 2024, February 5, 2024, February 6, 2024, February 8, 2024, February 15, 2024, February 22, 2024, February 27, 2024, with the long-term out of school suspension occurring after a hearing held on March 11, 2024. Because a change in placement had occurred as of January 10, 2024, each of the disciplinary removals after January 10, 2024 should have triggered the need for an MDR given the likely existence of a continued pattern.



42. The District was unable to provide any information about this first MDR meeting except the sign in sheet. Complainant was not provided with notes from the meeting or a PWN about the MDR. The lack of information would indicate that the appropriate procedures were not followed resulting in a procedural denial. It was determined that the behavior was not a manifestation of Student's disability.
43. The second MDR meeting was after Student was suspended for making threats towards other Students. This MDR meeting was held on March 5, 2024. Again, there was limited information provided about what was considered at that meeting. It was reported that the Superintendent, who attended the meeting, started the meeting by stating that the threats were not a manifestation of Student's disability. When asked by team members what information was considered at the MDR meeting, it was learned that the IEP, diagnoses and behavior patterns were not considered in the MDR determinations.
44. The team did not consider additional services and/or supports or alternative placements prior to suspending Students because of threats. Least restrictive environment was not addressed for this Student. The IEP team did not determine placement but that decision was made by the hearing officer at a March 11, 2024 hearing.
45. Since the start of the 2024-2025 school year, Student had been suspended for eight days and has been sent home for 2 partial days due to behaviors ranging from refusal to follow directives, inappropriate comments, threatening comments and physical contact with others.

### **Discussion and Conclusions of Law**

#### **Issue No. 1**

1. **Whether the Parents were denied meaningful parental participation in decisions involving the education of Student in violation of 34 C.F.R. § 300.321 (a)(1); 34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13(C) NMAC, specifically, whether the District,**
  - a. **Failed to consider Parent's concerns in the decisions involving eligibility, discipline and placement;**
  - b. **Made decisions and drafted documents such as a prior written notice and eligibility determinations prior to holding the IEP meeting; and**
  - c. **Failed to collect or provide Parents with data for the development of the FBA, BIP and IEP;**

Parents are mandatory members of the IEP team. 34 C.F.R. § 300.321(a)(1). Districts must provide parents with meaningful parental participation in any decisions involving the identification, evaluation and educational placement of the student and provision of FAPE. 34 C.F.R. § 300.501(b). Districts must make reasonable efforts to have parents participate in IEP meetings. 34 C.F.R. § 300.322(a and c). IEP team decisions are to be obtained by consensus, if

possible, but at a minimum, parents' concerns are to be considered and addressed if provided. § 6.31.2.10(G)(3)(a) NMAC.

Decisions about identification, eligibility and special education services are to be determined by the IEP team during an IEP meeting that must occur at least annually. IEP decisions, including those that concern eligibility and services must be made by the IEP team, not predetermined before the IEP team has a chance to meet and review all relevant information. Predetermination occurs when, prior to an IEP meeting, district members of the IEP team unilaterally make decisions regarding the student's identification, evaluation, placement, and/or FAPE. To avoid a finding of predetermination, a District must enter an IEP team meeting with an open mind and must meaningfully consider the parent's input. *H.B. v. Las Virgenes Unified Sch. Dist.*, 52 IDELR 163 (C.D. Cal. 2008), aff'd, 54 IDELR 73 (9th Cir. 2010, unpublished) (holding that the superintendent's announcement at the start of an IEP meeting that the team would discuss the student's transition to public school showed that the district predetermined the student's placement). See Also *Deal v. Hamilton County Bd. of Edu.*, 392 F.3d 840 (6th Cir. 2004), (holding that predetermination can deny the child a free appropriate public education (FAPE)).

**a. Failed to consider Parent's concerns in the decisions involving eligibility, discipline and placement;**

Initially, Complainant and the District had a positive relationship. The District kept Complainant informed of incidents to assist Student. As the year progressed, the relationship deteriorated and Complainant sought the support of an Advocate. Complainant, acting as the IDEA parent, objected to the eligibility determinations, special education services and disciplinary decisions made by the District concerning Student. There have been multiple IEP meetings to determine whether Student was eligible for special education, and there have been multiple meetings to develop the BIP, complete the MDR, and finalize a facilitated IEP. The Complainant and Advocate may not have agreed with the other members of the IEP team regarding those decisions, but their concerns were heard with respect to eligibility. Student remains on an IEP under the category of ED. Complainant and Advocate were involved in the development and revisions of the BIPs and IEPs. The BIP incorporated many of the Advocate's suggestions.

The lack of documentation regarding the MDRs, especially the failure to provide documents including a PWN from the first MDR, denied Complainant's opportunity to participate in decisions regarding Student and educational placement. This procedural error denied Complainant meaningful parental participation.

**b. Made decisions and drafted documents such as a prior written notice and eligibility determinations prior to holding the IEP meeting;**

Prior to the eligibility meeting in May, 2024, the School Psychologist opined that Student was no longer eligible for special education services but could receive services under a 504 plan. Although she acknowledged that she was only a member of the IEP team that made the decision, her report and summary predetermined that Student was no longer eligible for special education services but could receive 504 services. It was reported that she prepared a 504 plan before the IEP meeting where eligibility was to be determined. This was more than preparation for the meeting and amounted to a predetermination of eligibility and services. Also, it was reported that the Superintendent opined that Student's behaviors were not a manifestation of Student's disability at the start of the 2<sup>nd</sup> MDR meeting before anyone had a chance to discuss or review relevant information. Without documentation, it cannot be ascertained what happened at either MDR meeting. Also, following the BIP meeting on February 14, 2024 and before Student received the long-term suspension, District staff met and strategized how to assist Student. They did not, however, convene an IEP meeting to involve Complainant to participate.

There was predetermination which denied Complainant meaningful parental participation and was a denial of Part B of IDEA.

**c. Failed to collect or provide Parents with data for the development of the FBA, BIP and IEP;**

There was limited data collected because the District did not receive all information from the sending district despite repeated requests. Also, Student only attended 34 days for the entire 2023-2024 school year with over 24 behavior incidents. While the District should have moved to evaluate Student before moving forward with its own IEP for student, it was difficult to collect data when Student was not present or not interacting with peers and staff, including during periods of suspension, since that was where most negative behaviors occurred. There was no denial of Part B of IDEA for lack of data.

**As to Issue 1a and 1b, the District is cited, Corrective Action is required. As to issue 1c, the District is not cited.**

**Issue No. 2**

**2. Whether the District developed and implemented an IEP reasonably calculated to allow Student to make progress and receive a free appropriate public education (FAPE) in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC, specifically whether the District:**

- a. Completed a comprehensive evaluation in all suspected areas of disability to ensure that needed information was available to determine eligibility and services and supports;**
- b. Considered information from a variety of sources to determine eligibility and need for services and supports;**
- c. Considered relevant information and made the appropriate decision regarding Student's eligibility and need for specialized instruction;**
- d. Focused on the socially maladaptive label in determining eligibility without considering evaluation data and reports from previous school and outside agencies;**
- e. Completed the appropriate procedures when Student transferred into the District from another in state district;**
- f. Provided appropriate supports and services and goals to allow Student to make progress;**
- g. Determined Student's needs and developed an IEP that addressed those needs;**
- h. Completed an appropriate functional behavior assessment (FBA) and behavior intervention plan (BIP) designed to address Student's behaviors that interfered with Student's learning and that of others;**
- i. Properly determined Student's eligibility and academic, social-emotional and behavioral needs before development of the IEP;**
- j. Failed to consider or address Student's behavioral and social-emotional needs through additional supports and/or services prior to a change of placement;**

The IDEA is meant to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) designed to meet their unique needs. FAPE is administered through an IEP developed by the IEP team and implemented by the district. The IEP must be "reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances." *Andrew F. V. Douglas County School District RE-1*, 137 S.Ct. 988, 999 (2017); see also 34 C.F.R. §§ 300.320 to 300.324. The primary function of an IEP is to develop a plan to achieve academic and functional advancement. *Andrew F.*, 137 S.Ct. at 999. A student's unique needs are more than just mastery of academic subjects, but may include social, health, emotional, physical, and vocational needs of eligible students. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458, 1467 (9th Cir. 1996). It is the responsibility of the IEP team to determine the special education and related services that a student needs to receive FAPE. *Andrew F.*, 137 S.Ct. at 1001.

The IEP must be implemented as written, including all required components. See 6.31.2.11(B) and 6.31.2.11 (F)(1)(a) NMAC and 34 C.F.R. § 300.323(c). An IEP must include:

1. A statement of the child's present levels of academic achievement.
2. A statement of measurable annual goals, including academic and functional goals.
3. A description of how the child's progress toward meeting the annual goals will be measured.
4. A statement of the special education and related services and supplementary aids and services to be provided to the child.
5. An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in the extracurricular or other nonacademic activities.
6. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on statewide and districtwide assessments.
7. The projected date for the beginning of the services and modifications along with the anticipated frequency, location, and duration of those services and modifications.
8. Appropriate, measurable postsecondary goals and the services needed to reach those goals.
9. Not later than one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights under the IDEA with regard to the rights of the child in reaching the age of majority. 34 C.F.R. § 300.320.

Districts must ensure that disabled students are with non-disabled peers at meals, recess and other nonacademic and extracurricular activities to the maximum extent appropriate. 34 C.F.R. § 300.114 (a).

Public agencies or school districts are responsible to seek out and evaluate students that are suspected of having a disability and in need of special education services. 34 C.F.R. § 300.111(a)(1)(i). They cannot rely on referrals from parents but must seek out those students. *Robertson County School System v. King*, 24 IDELR 1036 (6th Cir. 1996, unpublished). Child find is an affirmative ongoing obligation. *Id.* As such, the District must continue to monitor Student to determine if Student has additional or changing needs. See 6.31.2.11(G)(1) NMAC.

Eligibility decisions are made by the IEP team after review of information from a variety of sources. See 6.31.2.11(G)(1) NMAC. New Mexico defines eligibility criteria for a child with a disability and for various eligibility categories including ED and OHI. New Mexico rules provide that emotional disturbance is one of the eligibility categories for special education services. 6.31.2.7(b)(2) NMAC; See also, The NM Team Manual, defining Emotional Disturbance as a condition exhibiting **one or more of the following characteristics** over a long period of time and to a marked degree that adversely affects a child's educational performance:

- An inability to learn which cannot be explained by intellectual, sensory, or other health factors.
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- Inappropriate types of behavior or feelings under normal circumstances.
- A general pervasive mood of unhappiness or depression.
- A tendency to develop physical symptoms or fears associated with personal or school problems. Emotional disturbance includes schizophrenia. **The term does not apply to children who are socially maladjusted unless it is determined that they (also) have an emotional disturbance under paragraph 34 CFR Sec. 300.8(c)(4)(i).**

- a. **Completed a comprehensive evaluation in all suspected areas of disability to ensure that needed information was available to determine eligibility and services and supports;**

Consent for a comprehensive evaluation was signed by Complainant on April 2, 2024 to be completed by the School Psychologist. The Psychologist did a review of the previous IEP, outside evaluations and interviews with teachers and Complainant. She also had the teachers and Complainant complete the BASC. Student was evaluated at home while on a long-term suspension, with no peers or staff present. Most of Student's behaviors occurred in school with peers and teachers. Teachers that completed the BASC had at most 34 days of experience with Student during the 2023-2024 school year. The remainder of the time Student was out on a disciplinary removal. The BIP was not completed until February 14, 2024, and Student received a long-term suspension on March 4, 2024, so there was limited data from the implementation of the BIP. The academic testing was incomplete because Student would not participate or there were limited grades or work completed. Student did not pass any classes during the 2023-2024 school year. Without that information, it was impossible to determine if Student continued to be eligible or no longer needed special education services. In the meetings that have occurred since May, an eligibility determination or IEP were not completed. The January 2024 IEP was still in effect. A new IEP was eventually completed in July through a facilitated IEP meeting. As part of the implementation of this IEP, a BCBA was engaged to support the team with a plan to positively engage Student's behaviors.

There was insufficient information available to determine Student's eligibility and needs to develop and implement the initial and subsequent IEPs for Student. There was a violation of Part B of IDEA.

**b. Considered information from a variety of sources to determine eligibility and need for services and supports;**

Information from a variety of sources was considered but the information was incomplete or inaccurate in making determination of eligibility and needs. The February 15, 2024 psychiatrist's report with the DMDD diagnosis was not considered correctly in the School Psychologist's report. This evaluation was completed by a qualified provider and should have been considered, especially as it supported the data the District had available. The Student had a previous diagnosis of DMDD and this was reaffirmed in the 2024 report but the School Psychologist disregarded that report and incorrectly concluded Student's behavior as being a conduct disorder. The School Psychiatrist mis-quoted and mis-applied New Mexico law and the New Mexico Team Manual by asserting to the IEP team: (1) that DMDD was a conduct disorder as opposed to a mood disorder; (2) that if a student is "socially maladjusted", that student cannot be defined as emotionally disturbed; and (3) that to be emotionally disturbed, a student must meet all of the listed characteristics. The DSM-5 is clear that emotional disturbance is in a different category than conduct disorders and New Mexico law is clear that a student who is socially maladjusted can be defined as emotionally disturbed if he/she exhibits **one or more of the listed characteristics** over a long period of time and to a marked degree that adversely affects a child's educational performance. The substantive error in this review for eligibility was a violation of Part B of IDEA.

**c. Considered relevant information and made the appropriate decision regarding Student's eligibility and need for specialized instruction;**

The report from the School Psychologist included information from previous evaluations, the BASC and other relevant information. However, the School Psychologist predetermined eligibility and submitted a summary of her findings to the IEP team based on an inaccurate analysis of both New Mexico law and policy and IDEA. This analysis led the team to consider a 504 plan instead of determining that Student was eligible for special education. A careful review of her report, using the appropriate analysis would indicate that Student was a child with a disability under both the category of ED and OHI and needed specialized instruction. This was a violation of Part B of IDEA.



**d. Focused on the socially maladaptive label in determining eligibility without considering evaluation data and reports from previous school and outside agencies;**

Because of an earlier diagnosis of ODD and ADHD, the school psychologist focused on the social maladaptive label and minimized the other more recent evaluations and information from the teachers and Complainant on the BASC. A review of that information would indicate that Student met the criteria of eligibility under OHI and ED and needed more than the supports provided under a 504 plan; the Student needed specialized instruction through an IEP. This was a violation of Part B of IDEA.

**e. Completed the appropriate procedures when Student transferred into the District from another in-state district;**

Student was enrolled on November 14, 2023. At the time of enrollment, the District had no records from the previous school. Despite repeated requests, the District received limited information from the sending school. The District rejected the Student's IEP from the previous school and moved forward with the development of a new IEP. The District planned to collect data to evaluate whether additional services were needed or additional evaluations were required. There was a report that the enrollment was delayed for Student but there was no evidence of that on this record. The District's decision to develop and implement a new IEP for Student rather than accept and implement the previous school's IEP was not a violation of Part B of IDEA.

**f. Provided appropriate supports and services and goals to allow Student to make progress;**

Under the IEP developed in January, 2024, Student was to receive 120 minutes of psychological services a month and 30 minutes of SW per week. There were numerous accommodations and modifications on the IEP that were not consistently implemented. Previously, Student had a written language goal and social interaction skills that were removed from the IEP without academic data or new evaluation; they were removed the same month the Student began attending the District school with a note that data would be updated within 30 days and this did not occur. Student did not pass any classes, and while on suspension, inconsistently participated in special education services and demonstrated no progress on goals. The lack of progress on goals indicates that appropriate services had not been provided. Shortly after Student was enrolled in the District, Student was suspended. This pattern of suspensions continued throughout the school year, ultimately Student received a long-term suspension until the end of the school year. The IEP team was aware of Student's behavior struggles and the school staff met to strategize what else could be provided. However, the IEP team did not reconvene to determine what other supports and services were possible considering Student was not making

progress with the existing IEP. The District's failure to convene timely IEP meetings to address Student's challenging behaviors resulting in repeated discipline was a violation of Part B of IDEA.

**g. Determined Student's needs and developed an IEP that addressed those needs;**

A new IEP was not revised until the IEP/EDT meeting during the Summer of 2024. Student, who was special education eligible the entire time Student was enrolled at District, continued to be suspended throughout the final quarter of the school year. The IEP team did not meet between February 14, 2024 and May, 2024 even though Student's behaviors were increasing in number and escalating in type, and the services provided were not working. This was a violation of Part B of IDEA.

**h. Completed an appropriate functional behavior assessment (FBA) and behavior intervention plan (BIP) designed to address Student's behaviors that interfered with Student's learning and that of others;**

Due in part to Student's disciplinary removals, data collection to develop an FBA and BIP was impacted and limited the development and implementation of an appropriate BIP. Even after the BIP was finalized, it only addressed the behavior of refusal despite many other behaviors occurring. The Student continued to exhibit negative behaviors that ultimately resulted in a long-term suspension. The BIP was in effect for two weeks, too soon to see if it was effective, but clearly, the previous FBA and BIP did not address Student's behaviors. This was a violation of Part B of IDEA.

**i. Properly determined Student's eligibility and academic, social-emotional and behavioral needs before development of the IEP;**

This has been partially addressed in the previous sub issues of Issue 2, above. Additionally, the School Psychologist acknowledged that the District had limited information on Student's academic needs, if any. It is also significant that the IEP team did not reconvene after January even though Student continued to exhibit negative behaviors and failed to complete work. This was a violation of Part B of IDEA.

**j. Failed to consider or address Student's behavioral and social-emotional needs through additional supports and/or services prior to a change of placement;**

There was no consideration of needs for additional supports or services prior to the long-term suspension or after the first MDR. While the MDR determined that the behaviors were not a manifestation of Student's disability, the IEP team still had an obligation to meet and determine if there were additional factors that were impacting on Student relative to other needs or

services. They failed to meet after the January 2024 IEP except to develop and revise the BIP. This was a denial of Part B of IDEA.

**As to Issue 2a-2j, with the exception of 2e, the District is cited, Corrective Action is required. As to Issue 2e, the District is not cited.**

**Issue No. 3**

**3. Whether the District failed to follow the IDEA disciplinary procedures when disciplining Student for violations of the District's code of conduct, in violation of 34 C.F.R. § 300.530 and 6.31.2.11(F)(2) NMAC; specifically, whether the District,**

- a. Failed to document the first manifestation determination review hearing and failed to provide a prior written notice;**
- b. Failed to consider relevant information regarding Student in determining whether the behavior was a manifestation of student's disability;**
- c. Failed to consider outside evaluations in determining whether behaviors were a manifestation of Student's disability;**
- d. Suspended Student without providing needed services and supports to address behaviors that were impacted Student's learning and that of others; and**
- e. Changed Student's placement following a disciplinary hearing without the involvement of the IEP team.**

Under IDEA, a district may discipline a student for violation of a code of conduct resulting in removal or suspension from the student's educational program for not more than 10 school days, provided that all students, including non-disabled students, would be subject to the same discipline. 34 C.F.R. § 300.530(b); 6.31.2.11(F)(2) NMAC. When the placement of a special education student is changed because of a violation of the code of conduct, a manifestation determination must be completed. 34 C.F.R. 300.530 (E). A change of placement occurs when the removal is more than 10 school days or there is a series of removals that constitute a pattern. 34 C.F.R. § 300.356 (a). Students that have not been determined eligible for special education services, but the District has a reason to suspect are eligible, are entitled to the procedural protections under IDEA. 34 C.F.R. § 300.534( a). A district does not suspect the student is disabled if the district has conducted an evaluation and determined the child was not eligible for services. 34 C.F.R. § 300.534(a).

During the MDR meeting, two questions must be answered to determine if the conduct was a manifestation of the child's disability. Was the conduct in question caused by or had a direct and substantial relationship to the child's disability, or was the conduct the district's failure to implement the IEP? 34 C.F.R. 300.530 (E)(1). The MDR meeting is conducted by the District and should include the parent and relevant members of the IEP team. 34 C.F.R. § 300.530 (E). The MDR meeting must consider all relevant information in the child's file including but not limited

to the IEP, any teacher observations and relevant information provided by the parents. 34 C.F.R. § 300.530 (E). The MDR team may remove a student with a disability that has violated the district's code of conduct to an Interim Alternative Educational Setting (IAES), another setting, or suspend for not more than ten days provided the same discipline would be made for a child without a disability. 34 C.F.R. § 300.530(b).

A prior written notice (PWN) must be sent before the district proposes or refuses to initiate or change the identification, evaluation, educational placement or the provision of FAPE. 34 C.F.R. § 300.503(a).

When a student with a disability is removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to allow the Student to make educational progress. 34 C.F.R. § 300.530(d) and 34 C.F.R. § 300.530(b)(2).

OSERS has opined that disciplinary removals, even during a suspension, do not relieve the District of its obligation to address whether Students needs additional or new supports and services to receive FAPE in the least restrictive environment (LRE). A disciplinary removal after repeated similar behaviors should trigger the IEP team to meet to consider what other options to address negative behaviors even through nondisciplinary steps. *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016).

A BIP is not defined within IDEA or the regulations but is often a part of the educational program that addresses behaviors that impact a student's learning. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022). The BIP should include a description of the behaviors that interfere with learning and the positive behavioral supports that reinforce positive behavior and eliminate or reduce the negative behaviors that interfere with learning. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022). The IDEA does require that behavior that impedes learning should be addressed and the IEP should consider the use of positive behavioral interventions and supports. 34 C.F.R. § 300.324(a)(2)(i). When a student has behavioral needs, the IEP should consider those needs when developing, reviewing and revising the IEP. *Questions and Answers on Endrew F. v. Douglas County School District RE-1*, 71 IDELR 68 (EDU 2017); and *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016). Although the IDEA does not mandate a BIP or specific behavioral goals, not considering academic progress and/or behavior supports can support a finding that a FAPE was provided to student. In *Lathrop R-II School District v. Gray*, 611 F.3d 419 (8th Cir. 2010), *cert. denied*, 131 S. Ct. 1471 (2011). See also, *Neosho R-V School District v. Clark*, 315 F.3d 1022 (8th Cir. 2003) (concluding that a student was denied a FAPE when the school district did not adequately address

a student's behaviors). Districts can impose disciplinary action against a special education eligible student but those disciplinary actions cannot adversely affect goals and objectives on the IEP and must not be discriminatory. *OSEP Memorandum 95-16, 22 IDELR 531 (OSEP 1995)*.

**a. Failed to document the first manifestation determination review hearing and failed to provide a prior written notice;**

Complainant reported that she never received any documentation including a PWN from the first MDR meeting held for Student in February 2024. Although requested, the investigator only received a sign in sheet for the attendees but nothing else from the first MDR meeting. The failure to appropriately record the MDR meeting and provide required PWNs related to that meeting was a violation of Part B of IDEA.

**b. Failed to consider relevant information regarding Student in determining whether the behavior was a manifestation of student's disability;**

The District failed to hold a timely MDR meeting pursuant to 34 C.F.R. § 300.530(E) and § 6.11.2.11(B) after the Student's 10th disciplinary removal on January 10, 2024. The in-school suspensions on December 4 and 7, 2023 count as disciplinary removals because the Student was not: (1) afforded the opportunity to continue to appropriately participate in the general curriculum; (2) allowed to continue to receive the services specified on the Student's IEP; and (3) was not allowed to continue to participate with nondisabled children to the extent they would have in the student's current placement. *See Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions (OSEP, 2022)*.

These disciplinary removals between December 4, 2023 and January 10, 2024 established a change of placement for the Student because the Student was subjected to a series of removals that constituted a pattern, as the series of removals: (1) Totaled more than 10 school days in the 2023-2024 school year; (2) The Student's behavior was substantially similar to the behavior in previous incidents that resulted in removals, and (3) The total amount of removal time and the proximity of removals was significant and close in proximity. 34 C.F.R. § 300.536. After the pattern of disciplinary removals occurred on January 10, 2024, the multiple disciplinary removals that occurred after January 10, 2024 should have each triggered an MDR given the likelihood of a continued pattern of behavior. However, the District did not hold timely MDRs for these removals. This was a violation of Part B of IDEA.

Relative to the MDRs that were held for the Student, the District failed to follow mandated procedural requirements. For the first MDR, held in February, the District provided no information beyond the sign in sheet. For the second MDR, held in March, the District did not

provide documentation about what information was considered when determining whether a pattern of behaviors were a manifestation of Student’s behaviors. When asked during interviews what information was considered, neither a comprehensive set of Student’s behaviors, nor the IEP were mentioned. In addition, it was reported that the Superintendent started the second MDR with a pronouncement that the threats were not a manifestation of Student’s disability (predetermination). The length of the MDR was brief, so without sufficient documentation, one must assume that the appropriate analysis of relevant information was not considered in the MDR analysis. This was a violation of Part B of IDEA.

**c. Failed to consider outside evaluations in determining whether behaviors were a manifestation of Student’s disability;**

See above. In addition, Student had a recent diagnosis of DMDD and ADHD. Since there was insufficient documentation provided from each of the MDR meetings, it cannot be determined whether the outside evaluations were considered in determining whether behavior was a manifestation. That is not to say that the threats were a manifestation of Student’s disability, rather, the District failed to document that it made the appropriate determination considering all relevant information in completing the MDR. This was a violation of Part B of IDEA.

**d. Suspended Student without providing needed services and supports to address behaviors that impacted Student’s learning and that of others;**

Student was suspended multiple times before the long-term suspension on March 4, 2024. After ten days, special education students that are subject to disciplinary removals must continue to receive services that allow them to make progress on goals. The record here indicates that Student was at home and services were provided through packets and some virtual or 1-1 services. Student, at times would refuse services, but there was no evidence that the IEP team met to discuss additional services and supports that would allow Student to make progress, albeit in a different setting. There was no evidence that Student made progress during the 2023-2024 school year. This was a violation of Part B of IDEA.

**e. Changed Student’s placement following a disciplinary hearing without the involvement of the IEP team.**

Placement is a decision for the IEP team. After Student received a long-term suspension, Student’s placement was at home without access to peers. The IEP team did not meet following the MDR meeting or MDR hearing. The LRE for this Student was not considered when making the home placement following the suspension. The IEP team should have completed an LRE analysis and determined Student’s placement following the decision to impose a long-term



suspension. The special circumstances did not apply in this case. This was a violation of Part B of IDEA.

**As to Issue 3, the District is cited, Corrective Action is required.**

**Issue No. 4**

**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.**

Students who are eligible for special education services are entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. Districts are obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17. The determination of whether there has been a denial of FAPE requires consideration of two components: substantive and procedural. The question one must answer to determine the substantive standard is whether the IEP was "reasonably calculated to allow the child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District. RE-1*, 137 S. Ct. 988 (2017). The Court in *J.L. v. Mercer Island School District*, 592 F3d 938, 951 (9<sup>th</sup> Cir. 2010), held that a procedural violation may be a denial of FAPE when it results in the loss of an educational opportunity, infringes on parents' opportunity to participate in the development of the IEP or deprives the student of an educational benefit. All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx 202 (2d Cir. 2010). At a minimum, IEPs must be reviewed annually. 34 C.F.R. § 300.324(b).

The question that must be addressed to determine whether a substantive denial of FAPE occurred is whether the IEP was reasonably calculated to allow Student to make progress. This Student's behaviors were a challenge and Student received multiple suspensions, including a long-term suspension as a result of those behaviors. The Student demonstrated no progress on IEP goals, and did not pass any classes during the 2023-2024 school year. After repeated suspensions with Student attending only 34 days of school during the last school year, the IEP team failed to reconvene to consider other options that could address Student's behaviors and allow progress.

There have been multiple meetings about Student's eligibility, but during the 2023-2024 school year, Student was a student with a disability and entitled to an IEP that provided FAPE. Student's IEP did not do so. There were multiple examples when the IEP team should have met and considered other services and supports for the Student. With the repeated suspensions, it was evident that the IEP in place was not working. The District attempted a BIP and initiated an



evaluation, but Student continued with the negative behaviors and continued to be suspended. Once the Student received the long-term suspension, the District did not reconvene the IEP team to consider what else could be done to assist this Student, instead they met as a staff and waited for the evaluation results, while Student continued at home without appropriate services or supports and no access to peers. The IEP that remains in place was not reasonably calculated to allow progress, there was a substantive denial of FAPE.

Moreover, there were multiple procedural violations on this record. The District did not timely reconvene IEP meetings to address Student’s lack of progress; they failed to consider Student’s LRE when suspending Student; the IEP team did not consider Student’s placement; they could not demonstrate that proper procedures were followed when disciplining Student and completing the MDRs; they misapplied eligibility rules when determining Student’s eligibility for special education services; and failed to provide Complainant access to all information needed to have meaningful parental participation. All these procedural violations demonstrated that Student was denied educational benefit for the majority of the 2023-2024 school year. Student has been enrolled in District schools since mid-November but had not been receiving the services and supports that would allow for educational benefit. That is a procedural violation that rises to a denial of FAPE.

**As to issue No. 4, the District is cited and Corrective Action is required.**

**Summary of Citations**

<b>IDEA/State Rule Provisions Violated</b>	<b>Description of Violation</b>
<p>34 C.F.R. § 300.321(a)(1); 34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13(C) NMAC</p>	<p>The District failed to consider Parent’s concerns in the decisions involving eligibility, discipline and Placement;</p> <p>The District Made decisions and drafted documents such as a prior written notice and eligibility determinations prior to holding the IEP meeting;</p>
<p>34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC</p>	<p>The District failed to complete a comprehensive evaluation in all suspected areas of disability to ensure that needed information was available to determine eligibility and services and supports;</p>

IDEA/State Rule Provisions Violated	Description of Violation
	<p>The District failed to consider information from a variety of sources to determine eligibility and need for services and supports;</p> <p>The District failed to consider relevant information and made the appropriate decision regarding Student’s eligibility and need for specialized instruction;</p> <p>The District failed to correctly apply federal and state law regarding emotional disturbance;</p> <p>The District failed to use the appropriate standards in determining eligibility without considering evaluation data and reports from previous school and outside agencies;</p> <p>The District failed to provide appropriate supports and services and goals to allow Student to make progress;</p> <p>The District failed to determine Student’s needs and developed an IEP that addressed those needs;</p> <p>The District failed to complete an appropriate functional behavior assessment (FBA) and behavior intervention plan (BIP) designed to address Student’s behaviors that interfered with Student’s learning and that of others;</p> <p>The District failed to properly determine Student’s eligibility and academic, social-emotional and behavioral needs before development of the IEP; and</p> <p>The District failed to consider or address Student’s behavioral and social-emotional needs through additional supports and/or services prior to a change of placement.</p>



**Required Actions and Deadlines**

**By October 4, 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:

Ms. Yaling Hedrick  
Corrective Action Plan Monitor  
Office of Special Education  
New Mexico Public Education Department  
300 Don Gaspar Avenue  
Santa Fe, NM 87501  
Telephone: (505) 795-2571  
[Yaling.Hedrick@ped.nm.gov](mailto:Yaling.Hedrick@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 September 20, 2025 and reported to the OSE no later than October 4, 2025.** 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>
1.	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>October 4, 2024</b>	Written Assurance	<b>October 4, 2024</b>
2.	The District Special Education Director and the school principal shall meet with the PED OSE Education Administrator assigned to the District and the PED OSE CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the District plans to take to ensure that the violations are corrected and do not recur. The District Special Education Director shall be responsible for arranging this meeting with OSE.	<b>October 11, 2024</b>	Notes	<b>October 18, 2024</b>
3.	The District Special Education Director will meet with Student’s special education teachers, related service providers, principal, and general education teachers to review the Complaint Resolution Report to ensure that those persons understand the complaint, the violations that were found, and the corrective actions that will be taken to address the violations.	<b>October 18, 2024</b>	Notes from meeting prepared by District	<b>October 25, 2024</b>

<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>
4.	<p>The District shall complete a functional behavior assessment (FBA) of student. This FBA shall be completed by a BCBA.</p> <p>If an FBA was started prior to the release of this report, but not before the start of the 2024-2025 school year, the resulting report from that FBA will be satisfy this requirement.</p>	<b>November 1, 2024</b>	FBA Report	<b>November 8, 2024</b>
5	<p>The District shall have an independent school psychologist conduct a review existing evaluation data (REED) and provide written input as to the students current identified categories of disability and potential behavioral and other needs of the Student. If available, the independent school psychologist should be included in the facilitated IEP required in Step 6.</p>	<b>November 1, 2024</b>	Report from Independent School Psychologist	<b>November 8, 2024</b>
6.	<p>The District shall convene a Facilitated IEP (FIEP) meeting. The FIEP meeting shall address:</p> <ul style="list-style-type: none"> <li>• appropriate measurable goals, including functional behavioral goals;</li> <li>• appropriate positive behavioral interventions and supports including revision of Student’s BIP;</li> <li>• appropriate accommodations;</li> </ul>	<b>15 Days after the FBA and Independent School Psychologist report is completed.</b>	<ol style="list-style-type: none"> <li>1. Invitation to facilitated IEP meetings,</li> <li>2. IEP and BIP</li> <li>3. Prior Written Notices, and</li> <li>4. Agenda for facilitated IEP team meetings</li> </ol>	<b>15 days after the Facilitated IEP meeting is held.</b>

<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>
	<ul style="list-style-type: none"> <li>• appropriate supplementary aides and services, program modifications and supports;</li> <li>• special education services and service time based on the goals and needs of Student;</li> <li>• Student Placement in the least restrictive environment including considerations of behaviors or other areas of concern that are impeding Student’s access to the general education setting;</li> <li>• Provision of compensatory education services hours required in Step 7.</li> </ul> <p>The Facilitator shall be independent of the District and shall be selected from the PED list of approved facilitators. The Facilitator shall be paid for by the District.</p> <p>The FIEP meeting shall be held on a date and time that is convenient for the parent. The parent will be provided with a copy of the IEP and PWN at the conclusion of the FIEP meeting.</p> <p>The District Special Education Director shall participate in the IEP meeting. The District shall also ensure that the IEP team includes,</p>			



<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>
	<p>but is not limited to, parents, special education teacher, general education teacher, BCBA and any related services providers.</p> <p>The District shall ensure that all teachers and service providers working with Student are provided IEP and BIP so that they are aware of their responsibilities in implementing those plans.</p>			
<p><b>7.</b></p>	<p>The School shall provide Student with the following compensatory education:</p> <ul style="list-style-type: none"> <li>a. 10 hours of psychological services or appropriate therapy or counseling</li> <li>b. 9 hours of social work services.</li> </ul> <p>The schedule for compensatory services should be developed in collaboration with the parent during the FIEP meeting required in Step 6 and can include provisions for services in the summer months.</p> <p>The plan for compensatory education shall be documented in Student’s IEP or through a formal prior written notice.</p>	<p><b>July 31, 2025</b></p>	<p>Documentation of delivery/provision of compensatory education services, including logs of services recorded in the PED-approved Excel spreadsheet log provided by the OSE CAP monitor.</p> <p>Prior Written Notice containing plan for compensatory services.</p>	<p><b>Monthly from date of compensatory services plan until the compensatory education hours are completed.</b></p>

<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>
	<p>If the District cannot provide compensatory education through District employed providers, it shall contract with a private provider to deliver these hours of compensatory education.</p>			
<p><b>8.</b></p>	<p>In order to ensure that the District is providing required disciplinary procedural safeguards, the District shall maintain a discipline log for Student which includes information regarding all formal and informal disciplinary action taken and the implementation of required procedural safeguards. The information provided in the log should include, at a minimum, dates of formal or informal removals, the code of conduct violation, length of removal, whether an MDR was conducted, the outcome of the MDR, Student’s IAES, if applicable.</p> <p>The District shall include all disciplinary action that has occurred during the 2024-2025 school year, including discipline that occurred prior to issuance of this report.</p> <p>The District shall utilize this log to determine if possible revisions to Student’s IEP and/or BIP are necessary. PED, in its review of these logs, may require additional</p>		<p>Discipline Log</p>	<p><b>Provided monthly beginning October 18, 2024 until May 30, 2025.</b></p>

<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>
	action based on Student’s persistent removal from school.			
<b>9.</b>	<p>The District shall arrange to provide training to District staff (including special education teachers, special education administrators, diagnosticians and related service personnel). The training shall be provided by a person with expertise in special education who was not involved in responding to this complaint and who is approved by PED. The training shall be conducted at District’s expense. The training shall address the following special education topics:</p> <ul style="list-style-type: none"> <li>• Development of an IEP that provides FAPE especially when behavior impedes learning;</li> <li>• Importance of providing information to parents to ensure meaningful participation;</li> <li>• Requirements for dismissal or removal of services from the IEP including determining needs and special supports and services for students;</li> <li>• Reconvening of IEP Meetings when increasing behaviors impede learning or progress;</li> </ul>	<b>December 21, 2024</b>	<p>Submission of proposed trainer and trainer’s resume and proposed presentation for PED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.</p>	<p><b>November 15, 2024</b></p> <p><b>November 22, 2024</b></p> <p><b>January 12, 2025</b></p>

<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>
	<ul style="list-style-type: none"> <li>• State and federal requirements for determining eligibility;</li> <li>• Disciplinary procedures of IDEA, specifically:                             <ul style="list-style-type: none"> <li>○ When an MDR is required to be conducted;</li> <li>○ procedures for conducting an MDR;</li> <li>○ relevant information to be considered and appropriate team members;</li> <li>○ determination of whether conduct was a manifestation of a student’s disability;</li> <li>○ provision of appropriate services to student when there had been 10 days of disciplinary removal;</li> </ul> </li> <li>• Required Procedures for disciplinary hearings including appropriate documentation and the role of the IEP team in determining placement.</li> </ul>			

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/ Michele K. Bennett, Esq.*

Michele K. Bennett, Esq.

Complaint Investigator

Reviewed by:

*/s/ Miguel Lozano*

Miguel Lozano, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:

*Margaret Cage*

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Margaret Cage, Ed.D.

Deputy Secretary, Office of Special Education