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NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Mora Independent School District  
Case No. 2425-10  
November 5, 2024

**This Report requires corrective action. See pages 24-30.**

On September 6, 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 Parent;
- review of the 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;
- review of the District's compliance with federal IDEA regulations and state NMAC rules;

<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.

- interviews with the Parent, Advocate, Principal, Special Education Director, Special Education Teacher/Case Manager; 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 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. Denied Student access to co-curricular or extracurricular activities because of behaviors that were related to Student's disability without providing additional supports and/or services to allow Student to participate with peers;
  - b. Suspended or removed Student from the educational program for behaviors that were a manifestation of Student's disability;
  - c. Failed to timely complete an updated functional behavior assessment (FBA) and behavior intervention plan (BIP) after determining that behaviors were a manifestation of Student's disability; and
  - d. Failed to collect sufficient data from qualified personnel to determine whether to revise FBA and BIP;
2. Whether the District failed to develop and implement an IEP to allow Student to make educational progress in the general education curriculum, in violation of 34 C.F.R. §§ 300.321, 300.324; 300.501(b)(c)(1) and 6.31.2.11(B)(1) and 6.31.2.13(c) NMAC; specifically, whether the District,
  - a. Had a complete IEP, including a BIP, in place and ready to implement at the start of the school year;

- b. Failed to provide all accommodations and modifications listed in IEP, including grade modifications;
  - c. Developed an IEP that allowed Student to make progress on goals;
  - d. Promptly convened an IEP team meeting when Student's disciplinary removals, including suspensions, indicated that Student's IEP was not meeting Student's needs;
  - e. Shared information about disciplinary removals with Parent and allowed Parental participation in decisions to address Student's behavior;
  - f. Considered the need for additional services and/or supports to address Student's behaviors and lack of progress; and
  - g. Failed to provide prior written notices (PWN) and other IEP documents to parents to allow meaningful parental participation.
3. Whether the District's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

**General Findings of Fact**

1. Student, an eighth grader, was eligible for special education services under the category of autism and other health impaired (OHI) because of attention deficit hyperactivity disorder (ADHD) and executive functioning diagnoses.
2. Student's needs as listed on the August 11, 2023 IEP, were adaptive behavior, social/emotional, and pragmatic language.
3. The August 11, 2023 IEP was the IEP in effect at the time of the filing of the complaint.
4. The August 11, 2023 IEP was not completed that day. Additional meetings were held on September 21, 2023 and September 28, 2023. There was some dispute about when the 2023 IEP was finalized but the team met again regarding Student's programming November 10, 2023 and March 7, 2024.
5. A manifestation determination review meeting was held during the 2022-2023 school year on March 15, 2023. The team met again to discuss the FBA and BIP but agreed to table the meeting until April to collect data. The behavior intervention plan (BIP) was finalized in September, 2023 during the development of the August 11, 2023 IEP after multiple meetings with the involvement of Parent and Advocate.
6. Multiple meetings were required when developing plans for this Student including meetings regarding the IEP, FBA or BIP.
7. The District and the Parent disagreed about the reasons for the delays in finalizing IEPs and other documents. The reported reasons for the delays in completing the IEPs, FBAs

- and BIPS were scheduling conflicts, lack of needed data, team members with other commitments and difficulty with consensus in completing required IEP components.
8. Although IEP meetings were scheduled for 90 minutes, the District and Parent agreed meetings often lasted 3 hours and items were discussed but not finalized before team members had to leave for other commitments.
  9. Parent's main concern was that District staff left before finalizing anything and the District was always requesting additional time for collecting data or researching options. The Parent also noted that the District never came to the table with options.
  10. The District's main concern was trying to find an agreeable time for a meeting and Parent was not amenable to any of District's proposals but proposed no alternatives, so nothing was resolved.
  11. Based on the present levels of academic achievement and functional performance (PLAAFP) from the August 11, 2023 IEP, Student had the ability to complete class work with minimal assistance but would not complete the work and would have a behavioral outburst when asked to do a non-preferred task.
  12. Student struggled with attendance, arrived to class late, was unprepared, and left the classroom to go to the nurse, office or bathroom. This occurred especially when Student and Teacher did not get along. These frequent absences from the classroom prevented work completion.
  13. Parent reported that Student struggled with changes in schedules or routines.
  14. The District reported that changes in schedule did not trigger behaviors, but placing expectations on Student, or saying no to Student, would trigger behaviors.
  15. In most classes Student rarely engaged in class activities and would not complete work. However, in other classes, such as Spanish where the teacher used various strategies including counting for redirection; student was 150-170% better as documented on the 2023 PLAAFP. In English, Student participated 60-70% of the time; however, Student did not complete written work in English. Student had 100% compliance in physical education.
  16. The science and English teachers were no longer at the middle school and so were not involved with Student.
  17. Student had developed a good rapport with the physical education teacher. Student likes sports and would follow direction from the teacher and rarely exhibited behavior incidents.
  18. In other classes, Student exhibited daily behavior issues at school. These incidents included profanity, inappropriate language, class disruption, defiance and school refusal. During the 2022-2023 school year, Student received in school suspensions (ISS) and out of school suspensions (OSS) often. By March 15, 2023, Student had been subjected to 10 days of disciplinary removal requiring a manifestation determination review.

19. At the MDR, it was determined that the behaviors were manifestations of Student's disability. Student was returned to the placement but the BIP was not developed until the IEP meetings in September of 2023.
20. The only goals on the August 11, 2023 IEP were behavior and speech goals. Previously, in addition to behavior and speech services, Student had received social work services (SW), occupational therapy (OT), physical therapy (PT) and 250 minutes per week of special education services in the resource room.
21. Since Student refused to leave the classroom for services and would not participate in inclusion services, all special education and related services were modified, eliminated or became consultative. PT services were to be revisited in January, 2024 but the records do not indicate that this happened. Speech services were reduced from 60 minutes per month to 30 minutes a month, and if Student would not participate then speech would be consultative. There was no documentation that Student did not need the services from the 2022 IEP, rather his refusal to participate was the reason for the change in services.
22. The total amount of special education and related services under August 11, 2023 IEP was 0.13 hours per week to work on speech and behavior. Student's services were 30 minutes per month for speech-language therapy, 15 minutes per month PT consultation, 15 minutes per month case management and 30 minutes per month SW consultation. It was unclear how the behavior goal was addressed since Student no longer participated in social work or resource room services. The District did not provide progress notes for the IEP goals but it appeared that Student was not making progress since Student was not receiving or participating in special education or related services.
23. Although Student struggled in math, there were no math goals or other academic goals listed.
24. Student often refused to leave the classroom for special education and related services and eventually most services were discontinued and became consultation in the August 11, 2023 IEP because of Student's refusal to attend the services.
25. Student still would occasionally attend speech services and a goal was listed on the IEP.
26. Student rarely completed or initiated work. This had been an ongoing problem that did not just begin in the 2023-2024 school year. To encourage completion of work, a grading rubric was implemented. Student would be graded on any work completed at the end of the class period. If Student completed half the assignment Student could earn an A. Grades would be based on the amount of work completed not the quality of the work. Since quality of work was not reviewed, it was difficult to determine if Student was learning or mastering new skills.
27. Student's work load was reduced. Student received extended time and was allowed to redo work that was below 75%. Student rarely redid work below 75%.

28. Using the grading rubric, Student still was not earning passing grades in all classes which prevented Student's participation in sports, including cross country this school year.
29. Student had additional behavior supports such as breaks or excusal from the classroom as needed. Student was allowed a support person. Student would leave to calm down or use a support person but this exacerbated the incomplete work because Student was then not engaged in learning or completing work. When Student had an outburst, Student was to be allowed to calm down without intervention to prevent further outbursts.
30. Records indicate that in previous years, Student would use the support person but the staff members Student had established rapport with were no longer in the District or worked at the middle school.
31. The District reported that it was difficult to find a positive reinforcement for Student. The only reinforcers they found effective were participation in sports and socializing with friends. The last FBA noted that Student responded well to positive reinforcement from teacher or person in authority but that was not noted in the BIP.
32. The reinforcement plan for Student was when Student completed a required task, Student could sit with a peer to complete other work. This reinforcement was rarely used because of Student's disruptions or poor task completion.
33. Staff believed Student did not see the need for schoolwork so it was difficult to get Student to complete any work.
34. Participation in sports was not an effective reinforcer because Student's behaviors and poor grades denied Student the opportunity for participation. When Student could not participate in a sport, Student quit trying because Student could not participate.
35. Student had multiple out of school suspensions (OSS) and failing grades. Student would often miss athletic events because of suspension and failing grades.
36. District staff believed Student came to school for social activities and sports, not academics, and that this behavior was reinforced at home.
37. Student participated in the field trip last year and has participated in extra-curricular and co-curricular activities except when under suspension.
38. Student's behavior goal was to demonstrate the ability to stay on task, complete work, self-manage behaviors and ask for assistance at a rate of 85%. The IEP did not list Student's present levels on those skills.
39. Student was not successful on that goal because District reported daily behavior disruptions and poor work completion.
40. A consultant with the regional educational cooperative had come to the school to observe Student and make proposals for how to address Student's behaviors, including assisting with the completion of FBA and BIP. The consultant returned this semester to

observe Student and make recommendations. The recommendations were to be discussed at the next IEP meeting.

41. The District has not had a board-certified behavior analyst (BCBA) in to assist with Student even after frequent requests for those services from Parent.
42. Student's communication goal was to improve pragmatic communication skills with additional short-term objectives listed. Student rarely participated in speech therapy.
43. Parent reported Student was teased or bullied when Student left classroom for special education services.
44. Neither Student nor Parent reported specific examples of teasing that could be investigated and addressed by the administration.
45. The District reported multiple attempts to assist Student but Student's refusal to work 1-1 with staff or unwillingness to leave the classroom for services did contribute to Student's lack of success.
46. Multiple attempts were made by District to turn things around besides participation in tasks with peers or sports including positive reminders, this or that choices, preferred task after completion of nonpreferred tasks
47. When Student worked alone or with the assistance of a teacher outside of the classroom, the work was completed successfully. The District had proposed 1-1 time with the special education teacher. The Parent objected stating that was not successful before and that Student reported the 1-1 did not occur and Student sat in the room without assistance.
48. When Student was asked to leave the classroom to talk to the principal or other staff, Student wanted to know why and refused to leave the classroom without the information. This made it difficult to address issues with Student without involving the entire class.
49. District staff tried to emphasize to Student why completion of work was important but Student was more focused on socialization with peers. Student was more successful with male teachers and in structured settings.
50. The prior written notice (PWN) from the August 11, 2023 IEP indicated that Student was in the general education classroom for most of the day. Student refused to attend physical therapy. Accommodations and modifications were adjusted because Student was having difficulties in class and not turning in work. Student would not participate in occupational therapy services and was exited from services. A grading rubric for all classes was to be developed. The IEP meeting was tabled and the annual IEP date would be August 19, 2024.
51. The team agreed to collect data on Student's behaviors to update the FBA and BIP.
52. Another meeting was held on September 21, 2023. The PWN from that meeting, which was a continuation of the original PWN accepted the need for an FBA as well as an

assistive technology assessment. The IEP was tabled again and reconvened on September 28, 2023. The grading rubric would be developed by Parent and Advocate. Another IEP meeting was held on March 7, 2024, along with a meeting to address the FBA and BIP. Accommodations and modifications on the IEP were updated. The meeting was again tabled until the first two weeks of April to determine if new accommodations and modifications were effective and how much work Student was completing in Math, ELA and History.

53. Parent requested and it was agreed that teachers would be trained in Executive Functioning and ADHD. The District did not provide evidence that the training was completed.
54. A functional behavior assessment (FBA) was completed on February 21, 2024. This was not the first FBA completed for Student. An FBA was completed September 21, 2023 and December 11, 2023. The main area of concern identified on the FBA was work avoidance, especially non-preferred tasks. Student did not do well in unstructured settings such as substitutes and was easily distracted by peers.
55. As noted on the FBA, Student received in school suspension (ISS) or out of school suspension (OSS) as a response to behaviors. Student was removed from the classroom, often going to the office. Negative behaviors were reinforced by peers within the classroom. Student tried to fit in with peers. Student's behaviors were both skill and performance deficits. A behavior intervention plan (BIP) was recommended.
56. A BIP was revised on May 21, 2024.
57. The BIP indicated it was based on an FBA completed on April 30, 2024. This FBA was not included in the information provided to the investigator, a February 21, 2024, FBA was provided.
58. The focus of the BIP was to increase Student's time on task, arrive at class on time, increase the amount of completed and turned in work and decrease the amount of time spent outside the classroom.
59. The reinforcers on the BIP for Student were sports and preferred seating. When Student received ISS or OSS or failed classes, Student was not allowed to participate in sports or have preferred seating. The BIP was to be reviewed September 11, 2024, and Parent requested staff training in autism and ADHD. The BIP has not been reviewed nor has training been provided.
60. Prior to the development of the BIP and since its implementation, Student has continued to receive ISS and OSS for misbehaviors. Student did receive disciplinary removals warranting a MDR during the 2023-2024 school year.
61. Student was subjected to disciplinary removals during the 2023-2024 school year beginning with a 2 days suspension on September 13, 2023.



62. Disciplinary removals for the 2023-2024 school year included: September 13, 2023, 2 days OSS; October 23, 2023, 2 days OSS; November 2, 2023, 1 day ISS and 1 day community service; November 7, 2023 1 day OSS for tardies-three strikes; November 8, 2023, 5 days community service; December 11, 2023 3 days OSS; January 30, 2024, 3 days ISS. This was a total of 17 days of disciplinary actions.
63. When excluding the community service days, Student had been subjected to disciplinary removals of more than ten days by January 30, 2024. Student's behaviors were of a similar pattern but no MDR was held during the 2023-2024 school year.
64. Consent for an assistive technology (AT) assessment was signed April 30, 2024, but that has not been completed.
65. An IEP meeting was scheduled for August 19, 2024; the IEP was not completed at that meeting. Another IEP meeting was scheduled for October 10, 2024, but later postponed until November.
66. Parent reported that Student was looking forward to being on the cross-country team but because of a failing math grade last semester, Student could not participate. Parent stated the District would not work with Student to help get Student's grades up so Student could be on the team.
67. District reported that the failing grade was first mentioned after Student was denied participation in cross country and it was too late to change Student's grade.
68. Parent reported the District has changed the requirement for participation in basketball which Student was looking forward to but with the new demands, Student would be unable to meet the standards and would not make the team.
69. There was a lack of complete information provided by the District regarding disciplinary removals and Student's progress or lack thereof.

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

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

**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. **Denied Student access to co-curricular or extracurricular activities because of behaviors that were related to Student's disability without providing additional supports and/or services to allow Student to participate with peers;**
- b. **Suspended or removed Students from the educational program for behaviors that were a manifestation of Student's disability;**

- c. Failed to timely complete an updated functional behavior assessment (FBA) and behavior intervention plan (BIP) after determining that behaviors were a manifestation of Student's disability; and**
- d. Failed to collect sufficient data from qualified personnel to determine to revise FBA and BIP.**

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. Students with disabilities may be denied access to extracurriculars or cocurricular activities if nondisabled students would be denied access. Denial access to extracurricular activities may count toward the ten school days if the denial was a disciplinary removal. 34 C.F.R. § 300.107 and 34 C.F.R. § 300.117

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 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). Removals that constitute a pattern are defined as such: (i) Because the series of removals total more than 10 school days in a school year; (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. 34 C.F.R. § 300.536. If the behavior is a manifestation of the student's disability then the student must be returned to the previous placement and an FBA and BIP must be developed or revised. 34 C.F.R. § 300.536.

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).

The Office of Special Education and Rehabilitative Services (OSERS) has opined that the provision of FAPE is the focus during any disciplinary removals, even during a suspension and the District has an obligation n 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 non-disciplinary steps. *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016).

A BIP is not defined within IDEA or the regulations except following a MDR, 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 Andrew F. v. Douglas County School District RE-1*, 71 IDELR 68 (EDU 2017); and *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016). 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. Denied Student access to co-curricular or extracurricular activities because of behaviors that were related to Student's disability without providing additional supports and/or services to allow Student to participate with peers.**

Student was not completing school work and was disruptive in the classroom. Student was subjected to discipline because of the disruptive behaviors and was failing classes because Student did not complete or turn in work. School and state policy prohibit participation in sports when students are failing classes. When Student was disruptive, Student did not receive a passing grade and could not have preferential seating with peers. Since Student was not provided what was rewarding, Student acted out more which increased the likelihood of more discipline and less of the rewards for completing work and appropriate behavior. Student was not allowed to participate in sports because of Student's actions which resulted in discipline and poor grades. When Student completed the work, Student would be able to participate in sports. There was no evidence that Student was not able to participate in field trips, assemblies or school dances, unless the event occurred when Student was suspended from school. The discipline applied to Student was applied equally to non-disabled students. Student's lack of participation in extracurricular or cocurricular activities was not a disciplinary removal but was the result of

District policies concerning failing grades that prevent participation in sports and students cannot attend school activities when under suspension.

The difficulty here is that the IEP team did not meet timely to determine if there were additional supports and/or services that could be implemented that would allow Student to participate in sports or be with peers and improve task completion and minimize disruptions. Although the District reported that they had tried numerous strategies to address Student's behaviors, the methods were not helpful and Student's refusal to leave the classroom for additional help seriously limited the options available. The consultant recently completed multiple observations and proposed recommendations to improve Student's work completion and reduce classroom disruption. These recommendations are to be discussed at the next IEP meeting which has been postponed until November when the annual IEP should have been completed by August 11, 2024.

The IEP from last year is still in effect even though the IEP team was aware that IEP was not meeting Student's needs. While the District has made attempts to address Student's negative behaviors, there was still unreasonable delays in the development of the IEP, delayed completion of the FBA and development of the BIP. Even this year, the IEP that was scheduled for October 10, 2024, has been rescheduled, yet again. The ultimate responsibility for development of the IEP lies with is the District. If consensus cannot be reached and decisions made, then it is the obligation of the District to propose an IEP for implementation. This Student continues to have daily incidents and multiple suspensions with limited improvement. The District provided documentation that the Parent was not cooperative in scheduling meetings and would cancel meetings once scheduled. The Parent reported that when meetings were scheduled, staff members would leave before the IEP or other documents were completed so meetings were tabled and rescheduled. Parent works full time and has difficulties attending multiple meetings. The average IEP meeting was three hours in length without the completion of the IEP. The District failed this Student in not providing needed services and supports for this Student to receive FAPE.

When an IEP is not effective and Student is not making progress, then the IEP team needs to reconvene to determine what additional services can be provided to ensure Student receives a FAPE. That was not done here. The IEP team met multiple times to finish the annual IEP. The delays in completing the annual IEP did not allow Student to receive FAPE. The District failed to timely complete and implement the BIP. Student may be exhibiting challenging behaviors that are difficult to manage but the District cannot sit back and say there is nothing else the team can do.

The IEP team developed and implemented an FBA and BIP in May of 2024. The hope was that the new BIP would remediate Student's behaviors so Student would not be subjected to disciplinary removals such as suspensions. Student continues to exhibit the inappropriate behaviors; the IEP team has not yet finalized the annual IEP. The team must meet promptly to

consider and revise services or implement new services to address Student's negative behaviors. Particularly with challenging behaviors, it is not a situation of one and done for the IEP team. The IEP team continues to be responsible for providing FAPE and may need to meet more than once beyond the annual IEP meeting to ensure the District is addressing Student's needs to allow Student to make progress.

District did provide access to co-curricular and extra-curricular activities but failed to meet to determine if additional services and supports were needed to allow participation in sports. This was a violation of Part B of IDEA.

**As to Issue 1a, the District is cited, Corrective Action is required.**

**b. Suspended or removed Student from the educational program for behaviors that were a manifestation of Student's disability.**

Students with disabilities may be subjected to the same discipline as non-disabled students. When there has been a change of placement, then a MDR must happen. Under District policy, Student was suspended for behaviors that violated the District's code of conduct. The same consequences imposed on Student would apply to non-disabled students that violated the code of conduct. At the MDR during the 2022-2023 school year, the team determined that the behaviors were a manifestation of Student's disability. The Student was returned to the same placement and a FBA was to be completed or revised and a BIP developed to provide services and supports to prevent further behaviors by Student. Although an FBA and BIP were developed, it took months before the BIP was finally implemented during the development of the August 11, 2023 IEP. This delay was problematic but not a violation of IDEA because it occurred more than 1 year prior to the filing of this complaint and therefore is outside the scope of this complaint investigation. The behaviors that Student was suspended for during the 2023-2024 school year were violations of the District's code of conduct and Student received the same discipline as non-disabled peers. During the 2023-2024 school year, Student was subjected to more than ten days of disciplinary removal that constituted a pattern. This change of placement by January 30, 2024 required a MDR and possible revision of the FBA and BIP depending on the results of the MDR. This did not happen. It is unclear from the records provided whether Student continued to experience disciplinary removals for the 2023-2024 school year or whether Student's behaviors were a manifestation of his disability requiring review and revision of the FBA and BIP. The District erred when it failed to hold an MDR after January 30, 2024. This is a violation of Part B of IDEA.

**As to Issue 1b, the District is cited and Corrective Action is required.**

**c. Failed to timely complete an updated functional behavior assessment (FBA) and behavior intervention plan (BIP) after determining that behaviors were a manifestation of Student's disability.**

There were disciplinary removals during the 2023-2024 school year that resulted in a change of placement requiring a MDR, which was not completed. Since the pattern of Student's behaviors during the 2022-2023 school year appear similar to the behaviors during the 2023-2024 school year, it is likely that Student's behaviors were a manifestation of his disability as was determined during the 2022-2023 MDR. Although failure to conduct an MDR is a violation, as noted above, without complete documentation, it is impossible to determine whether this was a manifestation of Student's disability requiring an updated BIP and FBA.

**As to Issue 1c, the District is not cited.**

**d. Failed to collect sufficient data from qualified personnel to determine to revise FBA and BIP.**

Accurate and sufficient data is needed to develop an FBA and BIP. The District had information about the types and frequency of Student's negative behaviors. A consultant was brought in to complete observations and make recommendations for addressing Student's behaviors. This consultant is continuing to work with the District to strategize how best to address Student's behaviors so Student makes progress. The District did not have complete information about what was reinforcing for Student. The known reinforcers could not be used because of Student's continued negative behaviors. There were also concerns about what behavior should be addressed first in the BIP. It was noted that behaviors were both skills and performance deficits but it is not clear how these skills were being taught and practiced, especially when Student refused most special education services. These issues were to be addressed by the IEP team as it worked through the FBA and BIP. This has not yet happened. The delays in the FBA and BIP were not because of lack of information about Student's behaviors but rather how best to address those behaviors. There was no violation of Part B of IDEA.

**As to Issue 1d, the District is not cited.**

**As to Issue 1a and 1b , the District is cited, Corrective Action is required.**

**As to Issue 1c and 1d, the District is not cited.**

**Issue No. 2**

**Whether the District failed to develop and implement an IEP to allow Student to make educational progress in the general education curriculum, in violation of 34 C.F.R. §§ 300.321, 300.324; 300.501(b)(c)(1) and 6.31.2.11(B)(1) and 6.31.2.13(c) NMAC; specifically, whether the District,**

- a. Had a complete IEP, including a BIP, in place and ready to implement at the start of the school year;**
- b. Failed to provide all accommodations and modifications listed in IEP, including grade modifications;**
- c. Developed an IEP that allowed Student to make progress on goals;**
- d. Promptly convened an IEP team meeting when Student’s disciplinary removals, including suspensions, indicated that Student’s IEP was not meeting Student’s needs;**
- e. Shared information about disciplinary removals with Parent and allowed Parental participation in decisions to address Student’s behavior;**
- f. Considered the need for additional services and/or supports to address Student’s behaviors and lack of progress; and**
- g. Failed to provide prior written notices (PWN) and other IEP documents to parents to allow meaningful parental participation.**

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).

Child find is an affirmative ongoing obligation. 34 C.F.R. § 300.111(a)(1)(i). 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.

**a. Had a complete IEP, including a BIP, in place and ready to implement at the start of the school year.**

Student's 2023 IEP dated August 11, 2023 was not finalized and implemented until October or November 2023. That IEP is still in effect this year because although an IEP meeting was held on August 19, 2024, the IEP was not finalized and the next scheduled meeting to complete the IEP on October 10, 2024 has been postponed. The FBA was completed on February 21, 2024 indicating a BIP was needed. The BIP was not finalized until May 21, 2024. Although the District



had the August 11, 2023 IEP in place on the first day of the 2023-2024 school year, the District knew the IEP was not effective since Student had not made progress on goals and was not receiving services in all areas of need. The August 11, 2023 IEP was not effective during the 2023-2024 school year and one has not been developed and implemented for the 2024-2025 school year. The District violated the requirements of Part B of IDEA.

**As to Issue 2a, the District is cited, Corrective Action is required.**

**b. Failed to provide all accommodations and modifications listed in IEP, including grade modifications.**

A grading rubric was established for Student which allowed for an A if Student completed  $\frac{1}{2}$  of the work assigned and was not disruptive during class time. If Student completed  $\frac{1}{4}$  of the assigned work, Student would earn a B. The quality of the work was not at issue, the quantity of work was the concern since Student was rarely completing work. During the 2023-2024 school year, Student was graded using the grading rubric. Student failed math and that grade lowered Student's GPA to be ineligible for cross country in the fall during the 2024-2025 school year. Although there was a claim that the math teacher, who is no longer with the District, told Parent that if he had known 1 point difference made Student ineligible, the teacher would have provided extended school year services to allow Student to improve the math grade. The math teacher's proposal was made outside of the time frame for improving grades and after report cards were issued. Parent raised the issue of changing Student's grade this fall after Student was determined ineligible for participation in cross country. There was no evidence that Student's grading rubric was not properly applied in all classes. Student failed to complete sufficient work to earn the grades needed to participate in sports. Student's actions or inactions resulted in poor grades not the failure of the District to implement the grading rubric. There was no evidence provided by Parent as to what other accommodations and modifications Student did not receive. The District reported that all accommodations and modifications were implemented with Student although Student often did not take advantage of those services.

**As to Issue 2b, the District is not cited.**

**c. Developed an IEP that allowed Student to make progress on goals.**

Other than speech goals, the only goals on Student's IEP were behavior goals. Student had accommodations and modifications including a grading rubric that focused on the completion of work not the quality of the work completed. In earlier IEPs, Student had PT, OT, speech and SW services as well as pull out special education services in the resource room. Student still needed those services but because Student refused to leave the classroom for any special education or related services and no longer wanted special education services in the classroom, it is unclear

how Student was making progress on goals or needs were being met. Parent has been involved in development of the IEP and supported her Student's request to not be pulled out of the classroom or singled out in any way. The related service providers were consulting with District staff because Student refused services but Student still needs those services. The District did not provide information that Student no longer needed those services, but that they were removed because of Student's refusal. The Special Education Teacher has not been providing any services because Student refuses to participate. It is unclear what specialized instruction Student was receiving when the providers were only consulting and not providing any direct instruction. The BIP has some objectives Student was to work on but without instruction to teach the skills or allow practice to address a performance deficit, it is unlikely that Student's behavior will change. While Student is high functioning, the grading rubric and lack of work completion demonstrate that Student was not learning and Student's GPA this fall was below a 2.1, the GPA needed to participate in sports. The District had proposed a number of options to address Student's needs to make progress but the delays in finalizing the IEP and Student's refusal to participate in services limited Student's progress. Last year's IEP was not appropriate and the District will not have a final IEP until three months after the new IEP should have been developed and implemented. The District erred in developing an IEP that would allow Student to make progress. This was a violation of Part B of IDEA.

**As to Issue 2c, the District is cited, Corrective Action is required.**

- d. Promptly convened an IEP team meeting when Student's disciplinary removals, including suspensions, indicated that Student's IEP was not meeting Student's needs.**

Special education students can be disciplined, including suspensions. However, the District continues to have an obligation to monitor special education students to ensure that the IEP provides FAPE and to meet promptly to consider other options if Student was not making progress. After there was a change of placement because of the disciplinary removals in 2023, the District convened an MDR. It was determined that Student's behaviors were a manifestation and the FBA and BIP must be reviewed and revised to address the behaviors that were resulting in suspension. Clearly, at the time of the MDR, it was apparent that the IEP was not working, and the IEP team should have met to consider other options for services. The August 11, 2023 IEP is still in place even though Student has not been making progress on goals. The BIP was finally implemented May 21, 2024, but this year Student is still not engaged in school or completing work. The lack of services on the August 11, 2023 IEP and the lack of instruction on the BIP raises questions about the effectiveness of the District's educational plan for Student. The District's claim that Parent was unable or unwilling to meet or agree to the District's proposals does not relieve the District of the obligation to have an IEP that provides FAPE. They should have finalized

an appropriate and effective IEP before the start of school. The District delayed too long in meeting to revise the IEP and BIP when Student was not making progress. This delay was a violation of Part B of IDEA.

**As to Issue 2d, the District is cited, Corrective Action is required.**

**e. Shared information about disciplinary removals with Parent and allowed Parental participation in decisions to address Student's behavior.**

The evidence provided indicated that Parent was informed when disciplinary removals occurred. Parent was involved in the development of IEPs, FBAs and BIPs. Since multiple meetings were required before the IEP, FBA and BIP were completed, PWNs and copies of the documents were not provided until the documents were finalized. There may be months before the team reconvened to finalize the documents. This does not mean that Parent was not involved in the discussion and development of the IEP, FBA and BIP. District procedures have now changed. At the end of each meeting, a PWN will be provided documenting that the process is not finalized but including what was discussed and decided at the meeting. Copies of the draft documents (IEP, FBA or BIP) will be provided if Parent requests. It could not be determined if that was the previous practice. Parent had access to the IEP and other documents. There was no violation of Part B of IDEA.

**As to Issue 2e, the District is not cited.**

**f. Considered the need for additional services and/or supports to address Student's behaviors and lack of progress.**

The District proposed multiple options to address Student's behaviors and lack of progress. Recently, the District recommended additional small group services in the resource room but neither Parent nor Student wanted Student to be pulled from the classroom nor singled out if services in an inclusion setting were provided. Student needed related services but Student refused to participate in those services. Even if the principal came to discuss something with Student, Student would refuse to leave the classroom unless Student knew the reason for the request. The District implemented the grading rubric and has reached out to a consultant to assist with the recommendations to have Student complete work and behave. Those recommendations will be discussed at the next IEP meeting, when the meeting is scheduled. The delays in scheduling meetings and completing IEPs negatively impacted on the ability to develop and implement an effective IEP. Both the Parent and the District's scheduling limitations prevent the team from fully addressing Student's needs. It is apparent that the existing IEP and BIP are not working but the District has been trying alternatives within the parameters set by Student

but the District's delays and inaction deprived Student of needed services and/or supports. This was a violation of Part B of IDEA.

**As to Issue 2f, the District is cited, Corrective Action is required.**

**g. Failed to provide prior written notices (PWN) and other IEP documents to parents to allow meaningful parental participation.**

Previously, the District's procedures were to provide PWN and other documents including IEPs, FBAs and BIPs when the documents were finalized. With this Student, multiple lengthy meetings would occur before documents were completed. Often, there would be months between the initial meeting and the final document. This is currently occurring with respect to the 2024-2025 IEP. The initial IEP meeting was held on August 19, 2024. The earliest another meeting could be scheduled was October 10, 2024. That meeting was rescheduled and it is unclear how soon that meeting will happen and whether the IEP will be finalized then. The Parent received copies of the final documents and PWNs. Any error by the District will be remedied by the District's new policy to provide the PWN and draft documents, if not finalized, to the Parent before the meeting concludes and have them sign the documents. This will happen after every IEP meeting. Parent attended all meetings and received copies of the IEP and supporting documents when the documents were completed

**As to Issue 2g, the District is not cited.**

**As to Issue 2a, 2c, 2d, and 2f, the District is cited, Corrective Action is required.**

**As to Issue 2b and 2g, the District is not cited.**

### **Issue No. 3**

**Whether the District's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (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 in determining 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-I*, 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 first question to answer is whether the IEP was reasonably calculated to allow Student to make educational progress. Looking at the IEP, Student receives minimal services and most of the services are of a consultive nature. There was no documentation that Student no longer needs the services provided in previous IEPs. Student has accommodations and modifications that have been implemented but Student is still not completing work and failing classes, there is not a final IEP and Student is often disruptive in the classroom which results in disciplinary removals. The District has failed to provide progress notes to Parent but the information provided suggested minimal, if any progress on IEP goals. The District reported they have attempted multiple strategies to assist Student but the IEP does not document the options the District has proposed other than Student refuses services. The District has proposed pull out services with the special education teacher to work on classwork. The District reported Student does well and is not distracted when working 1-1 or small groups. Parent is opposed to that option. Student refused to participate in any of the related services needed. The District was left with minimal service options to address Student's needs. The consultant has recommendations that will be considered at the next IEP meeting whenever that is held. Failing to timely hold IEP meetings and complete the IEP has also had an impact on FAPE. It is the District's ultimate responsibility to develop and implement an IEP that provides FAPE. The District failed to do so. The August 11, 2023 IEP was not reasonably calculated to allow Student to receive FAPE. Since this year's IEP is still not complete, that IEP is not reasonably calculated to provide FAPE. This is a substantive denial of FAPE.

With respect to procedural violations, the District took too long to complete IEPs. The meetings were lengthy, nonproductive and were often months apart. Part of the delays were the result of actions by both the Parent and District. Clearly, the IEP was not effective but part of that was Student's refusal to participate. Student was not allowed to participate in sports but that was not because of Student's disability, instead it was for not maintaining grades or receiving suspensions. The suspensions during the 2022-2023 school year were determined to be a manifestation of Student's disability. Disciplinary removals during the 2023-2024 school year were for violations of District's code of conduct. A required MDR was not completed. Any changes the District tried to implement were limited because of Student's refusal to participate in any pull-out services. Development of an IEP that provides FAPE is the responsibility of the District. The delays in development and implementation of the 2024 IEP and BIP deprived Student of educational benefit. This was a denial of FAPE.

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

**Summary of Citations**

<b>IDEA/State Rule Provisions Violated</b>	<b>Description of Violation</b>
<p>34 C.F.R. § 300.530 and 6.31.2.11(F)(2) NMAC</p>	<p>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, by</p> <p>Denying Student access to co-curricular or extracurricular activities because of behaviors that were related to Student’s disability without providing additional supports and/or services to allow Student to participate with peers;</p> <p>Suspending or removing Student from the educational program for behaviors that were a manifestation of Student’s disability.</p>
<p>34 C.F.R. §§ 300.321, 300.324; 300.501(b)(c)(1) and 6.31.2.11(B)(1) and 6.31.2.13(c) NMAC</p>	<p>The District failed to develop and implement an IEP to allow Student to make educational progress in the general education curriculum, by</p> <p>Failing to have a complete IEP, including a BIP, in place and ready to implement at the start of the school year;</p> <p>Failing to develop an IEP that allowed Student to make progress on goals;</p> <p>Failing to promptly convene an IEP team meeting when Student’s disciplinary removals, including suspensions, indicated that Student’s IEP was not meeting Student’s needs;</p> <p>Failing to consider the need for additional services and/or supports to address Student’s behaviors and lack of progress; and</p>

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R § 300.101 and 6.31.2.8 NMAC.	The District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE).

**Required Actions and Deadlines**

**By November 15, 2024**, the District’s Special Education Director must assure the PED OSE in writing that the District will implement the provisions of this Corrective Action Plan (CAP). The PED 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 PED 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 PED 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 PED 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 July 31, 2025 and reported to the PED OSE no later than August 7, 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>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>November 15, 2024</b>	Written Assurance Letter/Email	<b>November 15, 2024</b>
<b>2.</b>	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>November 22, 2024</b>	Notes from meeting prepared by District	<b>November 27, 2024</b>
<b>3.</b>	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	<b>November 29, 2024</b>	Notes from meeting prepared by District	<b>December 6, 2024</b>



	corrective actions that will be taken to address the violations.			
<b>4.</b>	<p>District shall complete an evaluation to determine student’s need for assistive technology.</p> <p>Any assistive technology evaluation conducted during the 2024-2025 school year will satisfy this requirement.</p>	<b>December 1, 2024</b>	AT Evaluation Report	<b>December 13, 2024</b>
<b>5.</b>	<p>District shall convene a Facilitated IEP (FIEP) meeting to complete Student’s annual IEP. In addition to the minimum required components of the IEP, the IEP team shall explicitly consider the following areas of support:</p> <ul style="list-style-type: none"> <li>• Special Education and Appropriate Related Services;</li> <li>• Appropriate goals in all areas of need;</li> <li>• Positive Behavioral Interventions and Supports including consultation with a BCBA to support behavior interventions;</li> <li>• Accommodations and modifications needed to address Student’s avoidance of special education of services and supports;</li> <li>• Compensatory Education due to delay in development and implementation of IEP;</li> <li>• Need for Assistive Technology (AT) services</li> </ul>	<b>December 6, 2024</b>	<ol style="list-style-type: none"> <li>1. Invitation to facilitated IEP meeting,</li> <li>2. IEP and BIP</li> <li>3. Prior Written Notice, and</li> <li>4. Agenda for facilitated IEP team meeting</li> </ol>	<b>15 days after the Facilitated IEP meeting is held.</b>

	<p>after receipt of AT evaluation report.</p> <p>Except as described above, the IEP team shall consider the direct provision of services prior to consultive services to address Student’s needs.</p> <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 District will ensure that team members have sufficient time set aside to complete IEP including the items described above.</p> <p>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, but is not limited to, student, parents, special education teacher, general education teacher, and any potential related services provider.</p>			
<p><b>6.</b></p>	<p>The District shall develop a plan for providing compensatory services to Student for failure to review and revise Student’s IEP at the start of the 2024-2025 school year until the date of the completion of the 2024-2025 IEP. The plan will be</p>	<p><b>December 6, 2024</b></p>	<p>Prior Written Notices containing plans for compensatory services</p>	<p><b>15 days after the Facilitated IEP meeting is held.</b></p>

<p>documented in a Prior Written Notice (“PWN”) and sent to parents. The IEP team shall consider the needs and services provided in Student’s IEP to determine appropriate compensatory services and hours.</p> <p>If a parent declines compensatory education, the District shall get a confirmation in writing and provide the written confirmation to PED.</p> <p>The District shall maintain a PED-approved tracker that includes the total compensatory hours owed and provided to student, whether those hours were accepted by parent.</p> <p>District shall complete all compensatory education hours by July 31, 2025. These compensatory services are above and beyond the regular services required by Student’s IEP.</p> <p>The schedule for compensatory services should be developed in collaboration with the parents and can include provisions for services in the summer months.</p> <p>If the District, due to staffing or other limitations, is unable to provide the compensatory services</p>	<p><b>July 31, 2024</b></p>	<p>If applicable, written decision to decline compensatory education.</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><b>Forward when parent’s decision to decline services has been received.</b></p> <p><b>Monthly from date of compensatory services plan until the compensatory education hours are completed.</b></p>
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	as required by this CAP, the District is required to contract with a private provider to ensure those services are provided.			
7.	<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 action based on Student’s persistent removal from school.</p>	<p><b>Monthly beginning December 2, 2024</b></p>	<p>Discipline Log</p>	<p><b>Provided monthly beginning December 2, 2024 until May 30, 2025.</b></p>
8.	<p>The District shall arrange to provide training to District staff (including special education teachers, special education administrators,</p>	<p><b>February 3, 2025</b></p>	<p>Submission of proposed trainer and trainer’s resume and proposed</p>	<p><b>December 9, 2024</b></p>

	<p>diagnosticians and related service providers). The training shall be provided by persons independent of the District with expertise in special education who were not involved in responding to this complaint and who are approved by NMPED.</p> <p>The training shall cover the following special education and related topics.</p> <ul style="list-style-type: none"> <li>• Appropriate goals that measures student’s progress in all areas of need;</li> <li>• Development of an IEP that provides FAPE especially when behavior impedes learning, including avoidance of school or specific activities;</li> <li>• Reconvening of IEP Meetings when increasing behaviors impede learning or progress;</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> </ul> </li> </ul>		<p>presentation for NMPED 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>December 23, 2024</b></p> <p><b>February 10, 2025</b></p>
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	<ul style="list-style-type: none"><li>• provision of appropriate services to student when there had been 10 days of disciplinary removal;</li><li>• appropriate record keeping regarding disciplinary actions.</li></ul>			
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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*

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