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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Public Academy for Performing Arts  
Albuquerque Public Schools  
Case No. C2425-73  
July 29, 2025**

**This Report does not require corrective action.**

On May 30, 2025, 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> 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 LEA and Charter'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 Charter's compliance with federal IDEA regulations and state NMAC rules, and therefore, the LEA's compliance as authorizing body for Charter;
- interviews with the Parent and Advocate;
- Special Services Director and
- research of applicable legal authority.

### **Limits to the Investigation**

Federal regulations and state rules limit investigation of state complaints to violations that occurred not more than one year prior to the date 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 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 Charter/LEA failed to develop and implement an IEP that allowed 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 Charter/LEA;
  - a. Failed to timely complete a comprehensive reevaluation to include music therapy evaluation to determine Student needs to develop an appropriate IEP
  - b. Failed to provide services and supports and accommodations required by IEP;
  - c. Failed to modify Student's assignments to allow Student educational access and to make progress;
  - d. Failed to address school refusal and work avoidance issues and other needs that impacted learning;
  - e. Failed to conduct a Functional Behavior Assessment (FBA) with appropriate data collection and develop a Behavior Intervention Plan (BIP) to address Student's maladaptive behaviors; and
  - f. Failed to consider and provide positive behavior supports and services to assist Student in managing inappropriate behaviors; and

2. Whether the Charter/LEA failed to provide Parent meaningful parental participation, in violation of 34 C.F.R. § 300.300 (b) and 34 6.31.2.11(B)(2) and 6.31.2.13(F) NMAC; specifically, whether the Charter/LEA;
  - a. Failed to timely provide copies of IEP, FBAs and BIPs to Parent;
  - b. Modified provisions of the IEPs or support documents after provisions were agreed upon by the IEP team; and
  - c. Prevented Parent and Advocate from participation in the eligibility determination team (EDT) meeting which delayed development and implementation of the IEP;
3. Whether the Charter/LEA'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. Charter is within the auspices and authority of the LEA.
2. The LEA provided PED with assurances of compliance of IDEA Part B as consideration to receipt of IDEA Part B funds from PED. These assurances apply to LEA's oversight duties for any Charter it authorizes.
3. Student, who was seventeen, was eligible for special education services under the category of emotional disturbance (ED), other health impaired (OHI), and specific learning disability (SLD) (dyslexia). Student exhibited inappropriate social interactions with staff and other students. At times, Student would be physically aggressive or swear at others.
4. During the 2023-2024 school year, Student had a behavior intervention plan (BIP). Many of the recommendations on the BIP were incorporated into the IEP as accommodations. The focus of that BIP was inappropriate social interactions and work completion. Inappropriate interactions have declined but work completion issues remained. When Student was inappropriate and was provided a safe plan to regulate, and then debrief, Student was aware and could describe better choices
5. Previously, Parent had requested an evaluation including music therapy evaluation. Student, when younger, had received music therapy but it was determined Student no longer needed the services. Parent reported that Charter stated it was a performance school so music therapy was incorporated in the program. Nevertheless, the Charter send a consent form to Parent in August including a music therapy assessment but the consent form was not signed and returned to the Charter.
6. During the 2024-2025 school year, a BIP, with the assistance of a board-certified behavior analyst (BCBA) was developed but Parent and Advocate were not in agreement with the BIP; they believed it was too punitive and included the Charter's discipline matrix. The focus of the recent BIP was work completion.
7. Student received a number of accommodations and modifications as outlined on the IEP that include: preferential seating, peer model, allowed movement breaks and leave the classroom when dysregulated, weekly check in for work, modified assignments, extended time.
8. Parent reported that Student was on the honor roll previously and was not struggling to pass all classes, but this past year, Student failed environmental science and was failing other

classes but was able to bring up grades to earn passing grades in those courses before the end of the school year. Staff reported that Student was able to complete work successfully but work initiation and completion were the struggle.

9. Student struggled with completing school work, especially paper-pencil tasks. Often, Student would not complete the work but would report to staff that work was completed but be unable to share completed work with teachers.
10. When Student was assigned a large project, especially in environmental science (such as the Shark project), that took multiple days of work; Student struggled to initiate work. Student was provided time in class with reminders and assistance from the classroom teacher and study skills teacher but Student would not use the resources at school available to Student. Parent reported that Student would spend four hours on the shark project at home and still not be able to finish it.
11. Often, Student would leave the assigned task until the end before it was due so Student had to scramble to finish all the work on time.
12. During the 2024-2025 school year, the staff worked to assist Student and ensure that Student could complete the required work. In most classes, Student was able to turn in completed work well past the deadline. Student could redo work that was not passing but Student would not put forth the effort. If student put effort into an assignment, Student would earn a passing grade.
13. The IEP that was in effect for the 2024-2025 school year was developed on April 27, 2024. In that IEP, Student had goals in reading, math, written language, occupational therapy, and social-emotional-behavior.
14. Student received services in speech (SL), social work (SW) occupational therapy (OT) and study skills class.
15. Student was in general education classes the majority of the day.
16. Parent participated in that IEP by telephone and the IEP and other documents were emailed to Parent.
17. Parent expressed concerns with Student's educational program with multiple staff members throughout the fall semester. Staff continued to encourage Student to complete work and tried various strategies to improve work completion.
18. Student's assignments were modified with a reduced work requirement that still ensured Student mastered skills required for successful completion of the class. All assignments were put on Google Classroom so Student could complete online rather than paper-pencil. At times, some of Student's assignments were paper-pencil which was in compliance with IEP requirements. When assignments were paper-pencil, the Student Services Director would scribe the work for Student if needed. The lengthy assignments were not because the assignment was not modified but because the assignment involved multiple days of work and Student, even with encouragement, failed to initiate or complete the assignment with reminders and the assistance of the teacher and study skills staff and Student Services Director.
19. A facilitated IEP was held on December 9, 2024. Some of the comments noted on the present levels of academic achievement and functional performance (PLAAFP) were similar to the previous year's IEP and included: daily negative interactions with other students, easily

- distracted, off task, poor work completion, struggles with assignments but can complete grade level work when Student wants to, task avoiding behavior.
20. Copies of the IEP and supporting documents were sent to Parent that same day.
  21. Student's first semester grades were: History-D; Geometry-C; Hip Hop-A; Flamenco-A; Guitar-B; English-C; Science-D and Study Skills-C. The teachers reported that the failing grades were because of incomplete homework and tests.
  22. Attendance was an issue during the 2024-2025 school year. In history missed 19 classes; geometry 16 classes; hip hop 16 classes; Flamenco 28 classes; guitar 26 classes, English 20 classes, environmental science 20 classes and study skills 15 classes.
  23. A check in system was set up weekly to verify Student was completing work. Student would meet with the Student Services Director to go over missing assignments and finish incomplete work.
  24. At the facilitated IEP meeting, Parent requested a comprehensive evaluation in all suspected areas including a music therapy evaluation before Student's three-year reevaluation was due. The IEP and a consent for evaluation form were sent by email that day and signed.
  25. A meeting with the BCBA to develop the BIP was scheduled for April 15, 2025. Parent indicated that she would attend. Parent and Advocate participated in the meeting and development of the BIP. A draft of the BIP was sent to Parent on April 22, with the delay because of computer issues. The BIP was to be reviewed at the next IEP meeting scheduled for May 1, 2025.
  26. Following that meeting, Parent informed the Charter that she would not agree to the BIP as it was punitive and included the Charter's discipline matrix. It was not providing positive behavior supports for Student.
  27. The proposed BIP provided reward opportunities for Student including performance opportunities in the community and at school. Student was highly motivated in dance and performance classes.
  28. At the May 1, 2025 IEP meeting, eligibility was to be determined. During this meeting, there was a dispute about whether Student continued to be eligible under the category of ED. Student was eligible under ED on previous IEPs. At that meeting, Student was determined eligible under the categories of OHI and SLD.
  29. Parent and Advocate, who participate virtually, were dropped from the meeting before the meeting ended and were not allowed to rejoin the meeting. When they were dropped, eligibility had been determined but the question about ED eligibility was still undetermined. The plan was to revisit that at the IEP meeting next fall.
  30. The IEP meeting was planned for the start of the school year when the team would also discuss how music therapy would be provided.
  31. The LEA indicated that additional information from the psychologist would be collected in the fall to determine whether Student was eligible under ED. Also, Student was determined eligible for music therapy which would start in the fall, since the school year was almost over.
  32. Copies of the eligibility documents including reports were sent to Parent by email on May 7, 2025. When Parent requested copies of any documents they were promptly provided.
  33. The Charter/LEA proposed that Student take an online class to earn passing credit in environmental science. Parent reported that would not be beneficial for Student. The Charter/LEA said they would revisit that at Student's IEP in the fall.

## **Discussion and Conclusions of Law**

### **Relationship between Charter and LEA and how such relates to findings and responsibilities regarding IDEA Part B violations and corrective actions.**

Charter is a public charter school (Charter) authorized by the LEA. The LEA provided PED with assurances of compliance of IDEA Part B as consideration to receipt of IDEA Part B funds from PED. These assurances apply to LEA's oversight duties for any Charter it authorizes. Thus, non-compliance by an authorized Charter is non-compliance by its authorizing LEA. Below, actions are attributed to the Charter, but corrective action, if any, is cited to the LEA. In some cases, both the Charter and the LEA will need to take corrective action; any corrective action required of Charter is the co-responsibility of Charter and authorizing LEA.

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

**Whether the Charter/LEA failed to develop and implement an IEP that allowed 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 Charter/LEA;**

- a. Failed to timely complete a comprehensive reevaluation to include music therapy evaluation to determine Student needs to develop an appropriate IEP**
- b. Failed to provide services and supports and accommodations required by IEP;**
- c. Failed to modify Student's assignments to allow Student educational access and to make progress;**
- d. Failed to address school refusal and work avoidance issues and other needs that impacted learning;**
- e. Failed to conduct a Functional Behavior Assessment (FBA) with appropriate data collection and develop a Behavior Intervention Plan (BIP) to address Student's maladaptive behaviors; and**
- f. Failed to consider and provide positive behavior supports and services to assist Student in managing inappropriate behaviors**

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. A LEA is 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. Special education is "specially designed instruction provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability." 34 C.F.R. § 300.39(a)(1). This specialized designed instruction is adapting the content, methodology or delivery of instruction to address the unique needs of an individual child. 34 C.F.R. §

300.39(b)(3). These unique needs are more than academic needs and can include social, health and emotional needs. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458 (9<sup>th</sup> Cir. 1996).

IEPs are developed during an IEP meeting. The IEP team must consider the student's strengths, any concerns of the parents, results of evaluations, and academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a)(1). Parents, as required members of the IEP team, must have adequate information to make informed decisions. 34 C.F.R. § 300.321(a)(1). As a Student's needs change, the IEP team should convene and modify the IEP as appropriate to address changing needs. 34 C.F.R. § 300.324. An IEP must be implemented with all required components. 34 C.F.R. § 300.324(b)(ii)(a).

Behaviors that inhibit a child's learning or that of others should be addressed on the IEP or through a BIP developed by the IEP team. While parents/guardians have input in development of the IEP, it is ultimately the responsibility of the IEP team to develop an IEP that provides Student a FAPE. 34 C.F.R. § 300.116.

**a. Failed to timely complete a comprehensive reevaluation to include music therapy evaluation to determine Student needs to develop an appropriate IEP**

Parent at the December 9, 2024 facilitated IEP meeting requested a comprehensive evaluation, to include a music therapy evaluation. Parent reported that she had requested a music therapy evaluation multiple times before this but was continually brushed off by the school because it was a performing arts school and music was incorporated into the curriculum. The Charter refuted Parent's assertions. They reported a consent including music therapy had been provided in August, but Parent never returned the signed consent form. Documents were provided by email, which was how Parent communicated with school. The Charter provided a consent for a comprehensive evaluation including music therapy on December 9, 2024. Student's evaluations were completed and discussed at the May 1, 2025 eligibility meeting. Although there was a four-month lag in completing the evaluations, there is nothing in state or federal law regarding the time frame for completion of reevaluations. At that eligibility meeting, it could not be determined whether Student was eligible under ED so additional assessments could be completed in the fall of the 2025-2026 school year. Student was determined eligible for special education services under OHI and SLD. Student needed music therapy and that would start at the beginning of the next school year when the new IEP was developed, since the 2024-2025 school year was almost at an end.

**As to Issue 1a, the LEA/Charter is not cited, no Corrective Action is required.**

**b. Failed to provide services and supports and accommodations required by IEP;**

Student received a number of accommodations and modifications as required by the IEP. Student and Parent may have misunderstood some of the accommodations that Student received such as grades and paper/pencil assignments. For example, the accommodations indicated that Student would receive a passing grade if put in effort on assignment. Student could redo work or tests for a passing grade. Student preferred to complete work online but paper/pencil tasks were not prohibited. When possible, Student was able to complete work on Google classroom but again the work was not completed in a timely fashion. Student did not turn in work or redo work that was not passing. Student reported that work was completed but unable to provide completed work. Teachers were available to assist Student but Student was often off task or distracted and would avoid work. The Special Services Director would check in weekly with Student about completed assignments and worked one on one with Student to complete work. Parent reported that Student had pages and pages of homework that were not realistic if work was modified for Student. Student could receive assistance during lunch or study skills classes but did not seek out assistance. Student's work was modified but Student would not complete work during class. The new IEP provided one week of extended time for assignments. Student often did not complete work within the extended time. Teachers would allow additional time for work completion up until final grades were due. The BIP, which was incorporated in the IEP, was designed to increase Student's work completion, but that was not successful in all classes. The Charter continued to try other approaches to improve work completion and increase appropriate interactions, and while some progress was noted, Student continued to fail classes.

**As to Issue 1b, the LEA/Charter is not cited, no Corrective Action is required.**

**c. Failed to modify Student's assignments to allow Student educational access and to make progress;**

Student's assignments were modified. The requirements of the assignment were reduced but ensured Student was able to master the required content. Student's assignments were on Google Classroom and Student was able to complete most assignments online. A few assignments required paper-pencil but the Student Services Director would scribe those assignments if Student had difficulty with paper-pencil. The lengthy assignments that Parent was concerned about were not because assignments were not modified but were because Student would not start multi-step or long assignments that were to be completed over multiple days right before they were due which resulted in long assignments. Weekly check ins, reminders and

offers of assistance were provided to keep Student on task, but Student often left things to the last minute.

**As to Issue 1c, the LEA/Charter is not cited, no Corrective action is required.**

**d. Failed to address school refusal and work avoidance issues and other needs that impacted learning;**

The LEA took many steps to address Student's school refusal and work avoidance issues. They had a weekly check in with Student about what assignments were outstanding and were available to assist Student as needed. The BIP and IEP had accommodations and other rewards built into a plan for Student to reinforce work completion but Student indicated work was done but was unable to provide completed work to teachers. Student attended a study skills class that was designed to assist Student with organization and processing as well as work completion. Student was often absent from classes and this impacted on work completion. The LEA involved a BCBA in developing a plan to assist Student with work completion. An evaluation was completed to obtain more up to date information about Student to assist Student. Student was making progress in reading and math but was not making progress on other goals because of work completion. The LEA was continuing to meet and try other approaches to address school refusal and work avoidance issues.

**As to Issue 1d, the LEA/Charter is not cited, no Corrective Action is required.**

**e. Failed to conduct a Functional Behavior Assessment (FBA) with appropriate data collection and develop a Behavior Intervention Plan (BIP) to address Student's maladaptive behaviors;**

A BIP was developed during the 2023-2024 school year to address work completion concerns. A BIP was developed at an April 15, 2025 meeting to address both work completion and social interaction concerns. A BCBA was involved in the development of the BIP and many of the recommendations were included in the BIP and incorporated in the IEP. Parent later objected because the BIP was too punitive. The draft BIP was sent home with plans to review at the May 1, 2025 eligibility meeting. At that meeting, Parent and Advocate expressed concern that the BIP was punitive and Student needed more services, including a tutor or 1-1 assistance. Although the FBA was not revised, the BIP was revised with the assistance of the BCBA. FBAs and BIPs are not required under IDEA except following a MDR when the behavior was a manifestation of the Student's disabilities. That did not apply in this case. The LEA developed a BIP in April, 2025 but did not implement it without the involvement of Parent.

**As to Issue 1e, the LEA/Charter is not cited, no Corrective Action is required.**

**f. Failed to consider and provide positive behavior supports and services to assist Student in managing inappropriate behaviors**

The IEP and BIP included many positive supports for Student when positive behaviors occurred. The LEA also recognized that when Student was inappropriate and was provided a safe plan to regulate, and then debrief, Student was aware and could describe better choices. Under the plans, Student would be able to participate in a number of opportunities in school and the community if negative behaviors decreased. Student was also provided movement and other breaks as needed when dysregulated. The LEAs plan was not punitive but included positive behavior supports and services to assist Student.

**As to Issue 1f, the LEA/Charter is not cited, no Corrective Action is required.**

**Issue No. 2**

**Whether the Charter/LEA failed to provide Parent meaningful parental participation, in violation 34 C.F.R. § 300.300 (b) and 34 6.31.2.11(B)(2) and 6.31.2.13(F) NMAC; specifically, whether the Charter/LEA;**

- a. Failed to timely provide copies of IEP, FBAs and BIPs to Parent;**
- b. Modified provisions of the IEPs or support documents after provisions were agreed upon by the IEP team; and**
- c. Prevented Parent and Advocate from participation in the eligibility determination team (EDT) meeting which delayed development and implementation of the 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(d). If parent cannot attend a meeting, the LEA must use other methods to obtain participation or document attempt. 34 C.F.R. § 300.501 (c). Procedural safeguards must be provided to parents when there has been a referral or request for an evaluation, or parents request their procedural safeguards. 34 C.F.R. § 300.504 (a). Meaningful parental participation in not just attendance but listening to the concerns and not cutting off conversations. The IEP team should consider parent's suggestions and to the extent appropriate, include those suggestions in the IEP. *Deal v. Hamilton County Board of Education*, 392 F3d 840 (6<sup>th</sup> Cir, 2004), cert denied., 546 U.S. 936 (2005). Parents are equal members of the IEP team but do not have veto power in development of the IEP. The goal is a consensus and is not a majority vote. 34 C.F.R. § 300.503 (a). See also *Letter to Richards*, 55 IDELR 107 (OSEP 2010).

**a. Failed to timely provide copies of IEP, FBAs and BIPs to Parent;**

The Charter provided copies of documents including IEPs, FBAs, BIPs, prior written notices (PWN) to Parent by email. The BIP that was developed in on April 15, 2025 was provided by email on April 22, 2025 with an explanation for the delay. Parent stated that the final BIP was not the same as the one discussed at the meeting but there is no evidence of that on this record. All other required documents were provided on the same day (December 9, 2024 IEP) or within a day or two. When Parent requested additional copies of the IEPs or other documents, they were provided promptly. Parent never requested that copies be mailed or provided through some other means.

**As to Issue 2a, the LEA/Charter is not cited, no Corrective Action is required.**

**b. Modified provisions of the IEPs or support documents after provisions were agreed upon by the IEP team;**

There was no evidence on this record that the IEPs and other support documents that were discussed at the meetings were modified in any way after the meeting. Most documents were provided that same day to Parent by email and a PWN was included with IEPs outlining what was discussed and agreed to at the IEP and other meetings.

**As to Issue 2b, the LEA/Charter is not cited, no Corrective Action is required.**

**c. Prevented Parent and Advocate from participation in the eligibility determination team (EDT) meeting which delayed development and implementation of the IEP;**

The EDT meeting was held on May 1, 2025 with Parent and Advocate in attendance. There was a disagreement regarding ED eligibility for Student and no consensus could be reached on that issue. The LEA proposed collecting additional information at the start of the 2025-2026 school year to finalize the determination of ED eligibility. Services from the December 9, 2025 IEP continued and music therapy would be added in the fall. For some unknown reason, Parent and Advocate were dropped from the meeting and not provided an opportunity to rejoin the virtual meeting. The meeting ended with the understanding that Student would receive music therapy and a new IEP would be developed in the fall. Although Parent and Advocate were not in attendance for the entire meeting, they were involved when decisions were made about eligibility under OHI and SLD and part of the discussion regarding ED eligibility. Since the decision about ED was not finalized at that meeting nor was the IEP developed, Parent and Advocate were not denied meaningful parental participation. Because there was insufficient information to make the ED determination, no final decision was made and the IEP would be developed at the start of the 2025-2026 school year.

**As to Issue 2c, the LEA/Charter is not cited, no Corrective Action is required.**

### **Issue No. 3**

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

The 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. Students who are eligible for special education services are entitled to a FAPE. 34 C.F.R. § 300.101; 6.31.2.8 NMAC. LEAs 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 provision of FAPE is administered through an IEP developed by the IEP team and implemented by the LEA. The IEP must be "reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School Charter RE-1*, 137 S.Ct. 988, 999 (2017). Under certain circumstances, procedural errors can result in a denial of FAPE. The Court in *J.L. v. Mercer Island School District*, 592 F.3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it resulted in the loss of an educational opportunity, infringed on parents' opportunity to participate in the development of the IEP or deprived 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).

Although Parent was frustrated with the LEA's educational program for her Student, the IEP was reasonably calculated to make educational progress. Student did fail classes but was making progress in reading, math and written language and was completing some work. Student, with the assistance of staff, pulled up grades in the majority of classes to pass. Student failed environmental science and the Charter/LEA proposed a plan for Student to obtain credit. Parent believed that would not be effective with Student. That was a topic to be discussed at the upcoming IEP meeting in the fall. The LEA/Charter offered supports to Student but Student was not using those supports. The LEA/Charter has an obligation to provide an IEP that would enable the Student to make progress. The IEP did that. There was no evidence that Student could not complete the work or needed 1-1 assistance. The BIP was designed to improve work completion with appropriate rewards. Behaviors were not resulting in school removals that required an MDR. While the IEP may not have been what Parent wanted, it met the requirements of FAPE.

Procedurally, there were no violations that rose to the level of a denial of FAPE. The Parent believed the BIP was too punitive, but she attended the meeting where the BIP was developed and later objected that it was too punitive. Parent was not in attendance for the entire eligibility

meeting but Student was determined eligible while Parent was in attendance and the matter would be revisited at the fall IEP meeting, so there was no denial of meaningful parental participation. Parent was provided copies of the IEPs and other documents via email. When she requested additional copies, they were provided in a timely manner. Parent attended IEP meetings, received required notices and was informed about Student's progress or lack, thereof. Student was not denied educational opportunity or educational benefit. Student's poor work habits were being addressed by the school but Student also had an obligation to participate in the LEA's plan.

**As to Issue 3, the LEA/Charter is not cited, no Corrective Action is required.**

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/ Natalie Campbell

Natalie Campbell, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:



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Amanda DeBell

Deputy Cabinet Secretary, New Mexico Public Education Department