

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Case No. C2021-06
February 1, 2020**

This report requires corrective action. See Page 17-23

Scope of Review and Authority

This complaint was filed with the Special Education Division (SED) of the New Mexico Public Education Department (PED) 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 Mexico¹. The PED 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.

The complaint was filed on behalf of both the individual and the class of potential students with disabilities in the district. During the course of the investigation, the case involving the Student was taken to mediation and a mediated agreement was developed. As a result, only the systemic portion of the case was ultimately investigated and is covered in this report.

The complaint was filed on October 6, 2020. The initial decision deadline was December 18, 2020, which was extended to in two separate orders to February 1, 2021 due to exceptional circumstances acknowledged by PED.

Conduct of the Complaint Investigation

The investigation in this matter included the following:

- Review of the complaint and supporting documentation from complainant;
- Review of the District's responses to the allegations, together with documentation submitted by the District at the request of the complaint investigator;
- Telephonic interview with the complainant;

¹ The federal IDEA regulations are published at Title 34 of the Code of Federal Regulations (C.F.R.), Part 300. The New Mexico Public Education Department's special education rules are published at Title 6, Chapter 31, Part 2 of the New Mexico Administrative Code (6.31.2 NMAC). The state-level complaint procedures are set forth in the federal regulations at 34 C.F.R. §§ 151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

- Review of evaluation data from a random sample of current special education students and English Language Learners as well as review of all evaluation timelines for evaluations completed during the 2019-20 school year at the Student’s school;
- Subsequent review of a random sample of students from 4 additional elementary schools and 2 middle schools within the District including student assistance team documentation, special education evaluation documentation, discipline data, and student performance data;
- Review of the district’s/school’s compliance with federal IDEA regulations and state NMAC rules; and
- Research of applicable legal authority.

Limits to the Investigation

Any facts that occurred prior to October 6, 2019 are for background information only. Federal regulations and state rules limit the investigation of state complaints to violations of IDEA Part B 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.

Issue for Investigation

1. Whether the district has in effect and implements policies and procedures to ensure that all children with disabilities who may be in need of special education and related services are located, evaluated, and identified as required by 34 C.F.R. §§300.111 and 300.301-306.

Findings of Fact

1. The portion of the complaint involving the named student was resolved during the course of this investigation. As a result, the remainder of the investigation and this decision addresses the systemic child find issue only.
2. In order to thoroughly investigate the child find issue across the District, the investigation reviewed 1,471 student records across seven schools in various grades.
3. New Mexico requires that each public agency, including the District, adopt and implement policies and procedures to ensure that all children with disabilities who reside within the public agency’s educational jurisdiction are located, evaluated, and identified in compliance with IDEA. 6.31.2.10 NMAC.
4. The District adopted a Special Instructional Programs policy requiring that procedures be developed to mandate that all children with disabilities aged birth (0) through twenty-one (21) years within the District's jurisdiction are to be identified, located, and evaluated,

including children attending religious or private schools who are in need of special education and related services. *Policy I-2350 IHB, Special Instructional Programs.*

5. The District has also adopted and published on its website the Special Education Procedures Handbook (SEPH) that describes all procedures as a supplement to the PED requirements and policies. Relevant to this investigation, the SEPH outlines processes for Student Assistance Teams, special education referrals, initial evaluations, and reevaluations.
6. The District is comprised of 16 elementary schools, 3 middle schools, 2 traditional high schools, and 2 additional non-traditional schools.
7. According to the New Mexico Public Education Department (PED) Vistas accountability data for 2019 (which replaced the School District Report Card system), 13,359 students are enrolled in 23 schools within the District. Of this total number of enrolled students, 14% of students are identified as Students with Disabilities (SWD).
8. During this complaint investigation, a sample of student data was requested from five elementary schools, two middle schools, and one nontraditional high school. The high school did not provide any data. The sampled schools that responded are listed in alphabetical order by an assigned number in order to protect student confidentiality.

SCHOOL	TOTAL POPULATION	GRADES SAMPLED	SAMPLE SIZE
1	371 (Pre-K to Grade 6)	All	371
2	528 (Pre-K to Grade 6)	4 th and 6 th	127
3	668 (Grades 7 & 8)	8 th	300
4	488 (Pre-K to Grade 6)	3 rd and 5 th	124
5	806 (Grades 7 & 8)	7 th	382
6	274 (Pre-K to Grade 6)	4 th and 6 th	62
7	409 (Pre-K to Grade 6)	3 rd and 5 th	105

9. Responding schools in the sample submitted requested 2019-2020 data regarding students with disabilities already identified, students considered by the Student Assistance Team (SAT) for possible interventions and/or assessments, and discipline data. The review included proficiency rates in reading and math at the school level. Relevant data from each school is summarized below:

SCHOOL #1					
STUDENTS EVALUATED (NO SAT RECORDS)	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	TOTAL DAYS FROM CONCERNS NOTED TO IEP
	154	0	231	6	391
	No Data	No Data	70	No Data	Unknown
SAT STUDENTS	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	RETENTION Y or N
	No Dates	No Data	No Data	No Data	Unknown
	No Dates	No Data	No Data	No Data	Unknown
	No Dates	No Data	No Data	No Data	Unknown
	No Dates	No Data	No Data	No Data	Unknown
	No Dates	No Data	No Data	No Data	Unknown
	No Dates	No Data	No Data	No Data	Unknown
	No Dates	No Data	No Data	No Data	Unknown
STUDENTS DISCIPLINED	TOTAL DAYS REMOVED (ISS or OSS)	REFERRAL TO SPECIAL EDUCATION Y OR N	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP
	4	N	N/A	N/A	N/A
	3	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	2	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	1	No Data	No Data	No Data	No Data

SCHOOL #2					
STUDENTS EVALUATED (NO SAT RECORDS)	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	TOTAL DAYS FROM CONCERNS NOTED TO IEP
	42	251	139	DNQ	DNQ
	894	204	260	0	1358
	29	45	41	0	115
	19	223	84	10	336
	109	216	78	0	403

SAT STUDENTS	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	RETENTION Y or N
	980	No consent	N/A	N/A	Y
	210	No consent	N/A	N/A	Y
	944	No consent	N/A	N/A	Y
	1262	No consent	N/A	N/A	Y
STUDENTS DISCIPLINED	TOTAL DAYS REMOVED (ISS or OSS)	REFERRAL TO SPECIAL EDUCATION Y OR N	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP
	1	Y	204	260	0
	6	Y	No consent	N/A	N/A

SCHOOL #3					
STUDENTS EVALUATED (NO SAT RECORDS)	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	TOTAL DAYS FROM CONCERNS NOTED TO IEP
	N/A	N/A	N/A	N/A	N/A
SAT STUDENTS	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	RETENTION
	N/A	N/A	N/A	N/A	N/A
STUDENTS DISCIPLINED	TOTAL DAYS REMOVED (ISS or OSS)	REFERRAL TO SPECIAL EDUCATION Y OR N	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP
	1	N	N/A	N/A	N/A
	3	N	N/A	N/A	N/A
	9	N	N/A	N/A	N/A
	19	N	N/A	N/A	N/A
	7	N	N/A	N/A	N/A
	3	N	N/A	N/A	N/A
	3	N	N/A	N/A	N/A
	4	N	N/A	N/A	N/A
	7	Eligible	Precedes complaint investigation		
	7	N	N/A	N/A	N/A
	7	N	N/A	N/A	N/A
	18	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	3	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A

9	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
2	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
2	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
6	N	N/A	N/A	N/A
8	N	N/A	N/A	N/A
23	N	N/A	N/A	N/A
3	Eligible	Precedes complaint investigation		
3	N	N/A	N/A	N/A
16	N	N/A	N/A	N/A
2	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A
16	N	N/A	N/A	N/A
1	Eligible	Precedes complaint investigation		
3	N	N/A	N/A	N/A
7	N	N/A	N/A	N/A
3	Eligible	Precedes complaint investigation		
4	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A
2	N	N/A	N/A	N/A
11	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
2	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A
10	N	N/A	N/A	N/A
9	N	N/A	N/A	N/A
9	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
12	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A
9	N	N/A	N/A	N/A
19	N	N/A	N/A	N/A
7	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A

SCHOOL #4					
STUDENTS EVALUATED (NO SAT RECORDS)	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	TOTAL DAYS FROM CONCERNS NOTED TO IEP
	10	61	57	0	128
SAT STUDENTS	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	RETENTION
	952	54	103	0	N
	569	No consent	N/A	N/A	Unknown
	764	124	294	0	N
STUDENTS DISCIPLINED	TOTAL DAYS REMOVED	REFERRAL TO SPECIAL EDUCATION Y OR N	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP
	N/A	N/A	N/A	N/A	N/A

SCHOOL #5					
STUDENTS EVALUATED (NO SAT RECORDS)	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	TOTAL DAYS FROM CONCERNS NOTED TO IEP
	No Data	Unknown	112	0	Unknown
SAT STUDENTS	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	RETENTION Y or N
	291	No Data	No Data	No Data	Unknown
STUDENTS DISCIPLINED	TOTAL DAYS REMOVED (ISS or OSS)	REFERRAL TO SPECIAL EDUCATION Y OR N	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP
	3	N	N/A	N/A	N/A
	2	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	23	Eligible	Precedes complaint investigation		
	3	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	3	N	N/A	N/A	N/A
	2	N	N/A	N/A	N/A
	2	N	N/A	N/A	N/A
	4	N	N/A	N/A	N/A
	1	N	N/A	N/A	N/A
	7	N	N/A	N/A	N/A

4	N	N/A	N/A	N/A
6	N	N/A	N/A	N/A
2	N	N/A	N/A	N/A
5	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A
6	N	N/A	N/A	N/A
9	Eligible	Precedes complaint investigation		
3	Eligible	Precedes complaint investigation		
3	Eligible	Precedes complaint investigation		
2	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A
5	N	N/A	N/A	N/A
7	N	N/A	N/A	N/A
2	N	N/A	N/A	N/A
3	N	N/A	N/A	N/A
2	Eligible	Precedes complaint investigation		
3	N	N/A	N/A	N/A
3	Eligible	Precedes complaint investigation		
2	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
17.5	Eligible	Precedes complaint investigation		
1	N	N/A	N/A	N/A
6	N	N/A	N/A	N/A
10	Eligible	Precedes complaint investigation		
1	Eligible	Precedes complaint investigation		
3	N	N/A	N/A	N/A
2	N	N/A	N/A	N/A
2	N	N/A	N/A	N/A
18	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
4	Eligible	Precedes complaint investigation		
19	N	N/A	N/A	N/A
5	N	N/A	N/A	N/A
4	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
5	N	N/A	N/A	N/A
8	Eligible	Precedes complaint investigation		
3	Eligible	Precedes complaint investigation		
4	N	N/A	N/A	N/A
1	N	N/A	N/A	N/A
3	Eligible	Precedes complaint investigation		
2	N	N/A	N/A	N/A
3	Eligible	Precedes complaint investigation		
2	N	N/A	N/A	N/A
2	N	N/A	N/A	N/A
8	Eligible	Precedes complaint investigation		

	11	Eligible	Precedes complaint investigation		
	3	N	N/A	N/A	N/A
	5	N	N/A	N/A	N/A
	21	N	N/A	N/A	N/A
	16	N	N/A	N/A	N/A

SCHOOL #6					
STUDENTS EVALUATED (NO SAT RECORDS)	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	TOTAL DAYS FROM CONCERNS NOTED TO IEP
	No Data	42	92	DNQ	N/A
	No Data	43	83	0	Unknown
	No Data	5	98	DNQ	N/A
SAT STUDENTS	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	RETENTION Y or N
	2012	No Consent	N/A	N/A	Y
	1200	No Data	No Data	DNQ	N
	489	No Data	No Data	DNQ	N
STUDENTS DISCIPLINED	TOTAL DAYS REMOVED	REFERRAL TO SPECIAL EDUCATION Y OR N	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP
	8	Y	43	92	DNQ
	3	N	N/A	N/A	N/A

SCHOOL #7					
STUDENTS EVALUATED (NO SAT RECORDS)	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	TOTAL DAYS FROM CONCERNS NOTED TO IEP
	No Data	0	87	DNQ	Unknown
	No Data	0	509	0	Unknown
SAT STUDENTS	TIME FROM CONCERNS NOTED TO REFERRAL	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP	RETENTION
	0	No Consent	N/A	N/A	Unknown
	86	0	87	DNQ	Unknown

STUDENTS DISCIPLINED	TOTAL DAYS REMOVED	REFERRAL TO SPECIAL EDUCATION Y OR N	TIME FROM REFERRAL TO CONSENT	TIME FROM CONSENT TO ELIGIBILITY	TIME FROM ELIGIBILITY TO IEP
	1	Eligible	Precedes complaint investigation		
	8	Eligible	Precedes complaint investigation		
	3	N	N/A	N/A	N/A

Discussion and Conclusions of Law

Issue 1: Whether the district has in effect and implements policies and procedures to ensure that all children with disabilities who may be in need of special education and related services are located, evaluated, and identified as required by 34 C.F.R. §§300.111 and 300.301-306.

1. The overarching purpose of the IDEA is to ensure that students with a disability have available to them a Free Appropriate Public Education (FAPE), including special education and related services that meet the unique needs of individual students and prepare them for further education, employment and independent living. 34 C.F.R. §300.1; *see also* NMAC 6.31.2.6.
2. In order to meet the obligation to make FAPE available to eligible students, states and school districts have an affirmative duty to identify, locate, and evaluate children with disabilities who are in need of special education. 34 C.F.R. §300.111; *see also* NMAC 6.31.2.10(A).
3. Because child find is an affirmative obligation, the school district has an independent obligation to seek out IDEA eligible students. *See Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, 1184 (9th Cir. 2010), *cert denied*.
4. The affirmative child find obligation must include students who are suspected being a child with an IDEA disability and in need of special education, even if the student is advancing from grade to grade. 34 C.F.R. §300.111(c).
5. Academic concerns are not the only child find trigger. *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1083 (8th Cir. 2020). Students engaging in behavior resulting in school removals may also be a child find trigger. *See D.C. v. Pittsburgh Pub. Schs.*, 415 F.Supp.3d 636 (W.D. Pa. 2020). Additionally, ineffective use of interventions and lack of a positive response to interventions may also trigger the child find obligation. *Spring Branch Indep. Sch. Dist. v. O.W.*, 961 F.2d 781, 793-94 (5th Cir. 2020).
6. In order to fulfill its obligation to have a child find system that complies with the federal requirements, New Mexico requires that each public agency, including the District, adopt and implement policies and procedures to ensure that all children with disabilities who reside within the public agency’s educational jurisdiction are located, evaluated, and identified in compliance with IDEA. NMAC 6.31.2.10.

7. The District adopted a policy that satisfies both the federal and state requirements. The policy states, in salient part:

All children with disabilities aged birth (0) through twenty-one (21) years within the District's jurisdiction are to be identified, located, and evaluated including children attending religious or private schools who are in need of special education and related services.
8. Further, the District has adopted procedures to facilitate compliance with its child find policy, the state's child find requirements and the federal mandates. Implementation of child find practices consistent with these procedures would result in a robust system to locate, evaluate, and identify children who have the right to receive FAPE.
9. Once the District has reason to suspect that a child is a learner with an IDEA disability and may need special education, it must take steps to ensure that the child receives a full and individual evaluation. 34 C.F.R. §300.301(a); NMAC 6.31.2.10(D). It is critical that students with a disability and in need of special education are identified in a timely manner and that no procedures or practices result in delaying or denying this identification. *Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 2011).
10. In most cases, it would be inappropriate to wait months after concerns are noted to propose an evaluation. *See Spring Branch*, 961 F.2d 781; *D.C. v. Klein Indep. Sch. Dist.*, 711 F.Supp.2d 739 (S.D. Tex. 2020); *J.N. v. Jefferson County Bd. of Educ.*, 421 F.Supp.3d 1288 (N.D. Ala. 2019); *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673 (5th Cir. 2018).
11. Information from the District's Special Education Procedures Handbook supports the need for a "timely and expeditious" referral process. *Chapter 2.2, SAT/RtI Process and Referrals for Special Education Evaluation*, p. 2.
12. Once it is determined that a special education evaluation is warranted, the District must conduct the initial evaluation within 60 days of receiving parental consent. 34 C.F.R. §300.301(c); NMAC 6.31.2.10(D)(1)(d); *Chapter 2.2, SAT/RtI Process and Referrals for Special Education Evaluation*, p. 2.
13. An evaluation under the IDEA serves two purposes: identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and helping IEP teams identify the special education and related services the student requires. 71 Federal Register 46,548 (2006).
14. The data collected and analyzed during this complaint investigation indicates that although the District has adopted compliant child find policy and procedures, the District failed to implement practices consistent with those policy and procedures. The following data summarizes the basis for this conclusion:
 - A. SAT Documentation:

- i. School #1 – No SAT data was maintained or provided for the purpose of this investigation.
- ii. School #2 – The SAT considered four (4) students during the 2019-2020 school year. The amount of time that transpired between concerns noted and referral to special education was excessive for all students, ranging from 210 days to 1,262 days for the school to refer a student for special education evaluation. It is significant to note that no consent to conduct a special education evaluation was obtained for any of the four students. Yet, all four students were retained in the same grade due to lack of progress. In the aggregate, this pattern represents a failure to implement a child find system consistent with state or federal requirements.
- iii. School #3 – No SAT data was maintained or provided for the purpose of this investigation.
- iv. School #4 – The SAT considered three (3) students during the 2019-2020 school year. The length of time from when concerns were first noted until referral for special education ranged from 569 days to 952 days. In each case, this represents a period of time equating to multiple school years. Additionally, for student # [REDACTED], the time from referral to parental consent for evaluation was an additional 54 days, and the time to complete the evaluation was an additional 103 days, more than double the amount of time permitted by federal or state law. Regarding student # [REDACTED], 124 days transpired between the referral for special education and obtaining parental consent. The evaluation took an additional 294 days to complete, nearly 5 times the amount of time permitted by federal or state law. The remaining student was referred for special education, but never evaluated to determine eligibility for services.
- v. School #5 – The SAT considered one student during the 2019-2020 school year. After 291 days in the SAT process, the student was referred for special education evaluation. No further data was available regarding the status of this student.
- vi. School #6 – The SAT considered three students during the 2019-2020 school year. The amount of time from when concerns were first noted to referral for special education service ranged from 489 days to 2,012 days. Student # [REDACTED] remained in interventions for 2,012 days, but parental consent for special education evaluation was not obtained. The student was retained in the same grade due to lack of progress. No other data was available regarding the other two students in the SAT process.

- vii. School #7 – The SAT considered two students during the 2019-2020 school year. No data was available for student # [REDACTED]. Regarding student # [REDACTED], the time from when concerns were first noted to referral was 86 days. Parental consent was promptly obtained for a special education evaluation. The evaluation process was completed in 87 days, exceeding the federal and state requirement by 27 days.
- B. Students evaluated with no SAT records:
- i. School #1 – Two students were evaluated for special education eligibility separate from the SAT process. Student # [REDACTED] was referred for special education 154 days after concerns were first noted. Parental consent was promptly obtained. However, the evaluation was not completed for 231 additional days, far exceeding the amount of time permissible under federal or state law. For the other student evaluated during the timeframe relevant to this complaint, the evaluation was completed in 70 days. No other documentation was available regarding this student.
 - ii. School #2 – Five students were evaluated for special education eligibility separate from the SAT process. The amount of time from when concerns were first noted to referral for special education ranged from 19 days to 894 days. The amount of time from referral to obtaining parental consent ranged from 45 days to 251 days. The amount of time to complete the evaluations ranged from 41 days to 260 days. Of the five students, only one received a special education evaluation within the required time limits.
 - iii. School #3 – No students were evaluated for special education eligibility.
 - iv. School #4 – One student was evaluated for special education eligibility separate from the SAT process. The amount of time from when concerns were first noted to referral for special education was 10 days. Parental consent to conduct the evaluation was obtained in additional 61 days. The District completed the evaluation in 57 days.
 - v. School #5 – One student was evaluated for special education eligibility separate from the SAT process. The limited data available regarding this student documents that the time from obtaining parental consent to completing the evaluation was 112 days, more than twice the permissible length of time pursuant to federal or state laws.
 - vi. School #6 – Three students were evaluated for eligibility separate from the SAT process. No data was available to determine the length of time from when concerns were first noted to referral. The amount of time that transpired from the referral for special education to obtaining parental consent to conduct the evaluation ranged from 5 days to 43 days. The

amount of time to conduct the evaluation after obtaining consent ranged from 83 days to 98 days, all exceeding the federal and state time requirements.

- vii. School #7 – Two students were evaluated for eligibility separate from the SAT process. The only data available confirmed that the time from obtaining parental consent to completion of the evaluation was 87 days for one student, and 509 days for the other student.
- C. Students removed from school for disciplinary infractions:
- i. School #1 – 12 students were removed from the learning environment, either through in school or out of school suspensions. The number of days per student ranged from one day of removal to four days of removal. No students were referred for special education as a result of these removals.
 - ii. School #2 – Two students were removed from the learning environment through in school or out of school suspensions. The total days of removal ranged from one to six days. Both students were referred for special education. For student # [REDACTED], the amount of time from referral to obtaining parental consent was 204 days, and the evaluation took an additional 260 days to complete. For student # [REDACTED] who was removed for six days, the evaluation was not completed.
 - iii. School #3 – 59 students were removed from the learning environment through in school or out of school suspensions. The length of the removals ranged from one day to 23 days. Of the 59 students, five had previously been determined eligible for special education. None of the remaining students were referred for special education as a result of these removals.
 - iv. School #4 – No students were removed from school for disciplinary infractions.
 - v. School #5 – 63 students were removed from the learning environment through in school or out of school suspensions. Of the 63 students, 16 had previously been determined eligible for special education. None of the remaining students were referred for special education as a result of these removals.
 - vi. School #6 – Two students were removed from the learning environment through in school or out of school suspensions. The length of the removals ranged from three days to eight days. Student # [REDACTED] was referred for special education after eight days of removal. The District completed the evaluation in 92 days after obtaining parental consent to evaluate.
 - vii. School #7 – Three students were removed from the learning environment through in school or out of school suspension. The length of the removals

ranged from one day to eight days. Two of the three had previously been identified as eligible for special education. The remaining student had been removed for 3 days, which did not result in a referral for special education.

15. Although the IDEA and New Mexico law do not specify a certain number of removals or days that would trigger a referral to special education, the discipline system must be viewed within the structure of the District's overarching child find obligation. Suspensions of 10 school days or more constitute deprivation of property and liberty interests sufficient to trigger the protections of due process. *See Honig v. Doe*, 484 U.S. 305 (1988). The IDEA considers removals of less than 10 school days to be short term. 34 C.F.R. §§300.530 and 300.536. Removals exceeding 10 school days create a greater deprivation of educational benefit and entitle a student to greater protections under IDEA. Therefore, it is reasonable to apply a 10-day standard for determining when disciplinary removals warrant closer scrutiny from a child find perspective.
16. Based on the totality of the data reviewed across seven schools and 1,471 student records, a pattern emerges pointing to a clear violation of the District's child find obligation. This conclusion is supported by the following:
 - A. SAT records were inconsistent, but the records reviewed in the investigation support a conclusion that the District failed to follow its own SAT procedures, failed to obtain parental consent, and failed to conduct timely special education evaluations within 60 days of obtaining parental consent. This violation was noted throughout the sample of student records reviewed. In some instances, the evaluation exceeded the amount of time permitted by federal and state law by hundreds of days. It is reasonable to conclude that the District has not met its child find obligation through the SAT process or with special education evaluations conducted outside of the SAT process.
 - B. Discipline data demonstrates a troubling pattern of removals from school for disciplinary infractions. Many students were removed for more than 10 days in a school year, and cumulative length of removals for some students exceeded 20 days within a school year. Engaging in behavior that warrants repeated removal from school interferes with student learning. If a student engages in behavior that interferes with learning over a period of time, the District must determine whether it has reasons to suspect an IDEA disability and the need for special education in order to fulfill its affirmative child find obligation. In this case, the District failed to fulfill that affirmative duty.

As to Issue No. 1, the District is cited. Corrective Action is required.

Summary of Citations

Statutory and Regulatory Provisions	Citation
NMAC 6.31.2.10(A).	District has failed to implement a program to locate, evaluate, and identify all students with disabilities in need of special education or related services within their educational jurisdiction.
NMAC 6.31.2.10(D)	District has failed to seek parent consent for evaluation of students suspected of having a disabilities within a reasonable time. District also has failed to evaluate students within 60 days of receiving parental consent to evaluate.

Required Actions and Deadlines

By February 10, 2021, the District's Special Education Director must assure the PED in writing that the District will abide by the provisions of this Corrective Action Plan (CAP). The PED requests that the District submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the District's progress with the Corrective Action Plan and to be its point of contact about this complaint from here forward:

Dr. Elizabeth Cassel
Corrective Action Plan Monitor
Special Education Division
New Mexico Public Education Department
120 South Federal Place
Santa Fe, NM 87501
Telephone: (505) 490-3918
Elizabeth.Cassel@state.nm.us

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 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.

Each step in this Corrective Action Plan is subject to, and must be carried out in compliance with, the detailed procedural requirements of the IDEA 2004 and the implementing federal regulations

and State rules. If the District needs brief extensions for the steps in the Corrective Action Plan, contact Deborah Dominguez-Clark, Director of the Special Education Bureau.

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 February 1, 2022, and reported to the PED SED no later than February 15, 2022. All documentation submitted to the SED to demonstrate compliance with the CAP must be clearly labeled to indicate the complaint number, **C2021-06**.

Corrective Action Plan

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
1.	District shall designate a Corrective Action Plan Monitor (District CAP Monitor) to coordinate all corrective action activity within the District. The designee shall be someone other than the District Special Education Director.	February 8, 2021	District shall identify the designated CAP Monitor in the initial assurances letter required above.	February 10, 2021
2.	District shall submit a letter to SED for approval notifying all parents that the District is currently operating under corrective action plan due to PED complaint investigation findings that the District is not currently in compliance with IDEA provisions related to identification and evaluation of students with disabilities. The letter shall include contact information for the District CAP Monitor in the event that a parent has questions or concerns about the corrective action or suspects that their child may have a disability and may be	February 16, 2021	District shall submit letter for approval by SED. SED shall review for approval and advise District of approval	February 16, 2021 February 19, 2021

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
	<p>eligible for special education or related services.</p> <p>After receiving SED approval, District shall mail the letter to all parents of students enrolled in the District. The letter shall also be posted on the District’s main website. Letter shall be sent to parents within two weeks of final notification of approval by SED.</p>	<p>February 24, 2021</p>	<p>Written assurance signed by the District Superintendent that letter was sent to all parents of students enrolled in the District.</p>	<p>February 26, 2021</p>
<p>3.</p>	<p>An audit of student files shall be conducted by auditors with special education program experience appointed by the PED to:</p> <ul style="list-style-type: none"> • ensure that the child-find obligations are met within the District; • ensure that all student evaluation obligations are met within the District; • provide recommendations to improve the identification and evaluation procedures and implementation within the District. <p>District shall provide any support and access to all documentation and information requested by the auditors throughout the</p>	<p>July 1, 2021</p>	<p>Audit Report to be provided by PED appointed auditors</p>	<p>July 23, 2021</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
	course of the audit. Any failure to cooperate with the auditors may result if further corrective action.			
4.	District shall seek to obtain parental consent to evaluate any student identified by the auditors or through the PED investigation as a potential student with a disability. Any student for which parent consent to evaluate is obtained shall be evaluated within 60 days of consent. Evaluations are required to address any and all suspected disability.	<p>Prior Written Notice and Request for Parental Consent should be Issued within 10 days of referral by the auditors.</p> <p>Evaluations should be conducted within 60 days of receiving parental consent</p>	Log of all evaluation referrals, requests for parental consent, Prior Written Notices and parent responses.	August 6, 2021
5.	<p>For each student determined to be an IDEA eligible student whose evaluation occurred more than 60 days after receiving parental consent to evaluate, the District shall provide compensatory education for special education and related services missed during the period between the 60 day evaluation deadline and the eligibility determination.</p> <p>The proposed provision of compensatory education shall</p>	<p>For students identified through PED's investigation, IEP meetings and compensatory services must be discussed or addressed by April 1, 2021</p>	<p>Log of all students' compensatory education plans created due to delay in evaluation.</p> <p>Prior Written Notices regarding</p>	<p>February 1, 2022</p> <p>Provided to SED on a monthly</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
	<p>be discussed with the parents and documented in a Prior Written Notice.</p> <p>The District shall maintain a log all compensatory education that will be provided to individual students pursuant to this provision and whether the parents accepted to offer of compensatory education.</p>	<p>For other students identified by the auditors, compensatory services must be discussed or addressed by August 30, 2021.</p>	<p>compensatory education.</p> <p>Log of compensatory education offered and provided including the date of service, amount of time, and services provided for each student.</p>	<p>basis beginning March 1, 2021</p> <p>Provided to SED on a monthly basis beginning April 1, 2021</p>
6.	<p>District shall maintain a district-wide master record documenting all requests for evaluation, referrals for evaluation, and the processing and disposition of those requests or referrals. The master record shall include school and grade level information for the purposes of identifying persisting issues related to identification and evaluation at the school level.</p>	<p>Ongoing</p>	<p>Master Record</p>	<p>Current Record should be provided to SED on a monthly basis beginning March 1, 2021</p>
7.	<p>The District shall meet with the SED Division Director and her staff to discuss the identification and evaluation of all students within the District, adequate staffing resources and plans required to ensure all identification and evaluation obligations are met by the District. This meeting shall include the Superintendent, the District</p>	<p>Meeting to be held on or before February 19, 2021</p>	<p>Resulting Plan to be submitted to SED for approval.</p>	<p>March 1, 2021</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
	<p>Special Education Director, the District CAP Monitor, and the Director of the SAT/MLSS programs within the District. This meeting will result in a written plan for ensuring the District has the resources and plans in place to adequately identify and evaluate all potential students with disabilities within the District and may include additional training for District and School level personnel.</p>			
8.	<p>The District will follow through with the Plan developed at the meeting with the SED, including the plan for any additional training and other components outlined in the plan.</p>	Ongoing	<p>Additional required documentation may be included in plan</p>	
9.	<p>The District shall provide training to all district and school level general education and special education personnel including: school and district administrators, teachers, staff, and special education and related services providers regarding:</p> <ol style="list-style-type: none"> 1) obligations to identify all students with disabilities within the jurisdiction of the District; 2) methods of identifying all students with disabilities including identification based 	April 30, 2021	<p>Trainers' credentials and prepared training materials shall be provided to SED for approval for each training session.</p> <p>Training attendance logs.</p>	<p>March 31, 2021</p> <p>May 7, 2021</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
	<p>on frequent disciplinary removals;</p> <p>3) methods of identifying English Language Learners with disabilities;</p> <p>4) obligation to evaluate all students suspected of having a disability;</p> <p>5) procedures and methods for evaluation of all students suspected of having a disability;</p> <p>6) procedures and methods for evaluating English Language Learners suspected of having a disability.</p> <p>Any and all trainings described above or ordered in the abovementioned plan shall be provided by an independent trainer selected by the District and approved by PED.</p>			
10.	<p>The District will participate in weekly meetings with SED to review status of CAP completion and plan implementation. The frequency of these meetings may be adjusted based on compliance and progress related to each CAP provision. These meetings should be attended by, at a minimum, the District’s Special</p>	<p>First meeting to occur one week after initial meeting with SED Director</p>		<p>Weekly Basis</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
	Education Director as well as the District CAP Monitor.			

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

Investigated by:



 Nicole Stewart, Ph.D.
 Complaint Investigator, TAESE

Reviewed by:

/s/ Debra Poulin

Debra Poulin
 Chief Counsel, Special Education Division

Reviewed and approved by:



 Deborah Dominguez-Clark
 Director, Special Education Division