

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Case No. C2122-07
January 18, 2022

This report requires corrective action. See pages 12-16.

This complaint was filed with the Special Education Division (SED) of the New Mexico Public Education Department (PED) on November 19, 2021, 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.¹

Scope of Review and Authority

The PED SED administers the Federal Regulations and State Rules governing special education programming requirements for children with disabilities. The implementing regulations to the IDEA and the corresponding State rules require investigations into complaints regarding violations of these provisions. 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.

Conduct of the Complaint Investigation

The PED's independent complaint investigator's investigation process in this matter involved the following:

- review of the complaint and supporting documentation from complainant;
- review of the District's responses to the allegations, together with documentation submitted by the District at the request of the PED's independent complaint investigator;
- review of the District's compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Parent, Advocate, Special Education Director and two Occupational Therapists; and
- research of applicable legal authority.

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.

Limits to the Investigation

Federal regulations and state rules limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint is received. 34 C.F.R. §300.153(c); 6.31.2.13(H)(2)(d) NMAC. Any educator ethics issues, or any alleged ADA or Section 504 disability discrimination issues, are not within the jurisdiction of this complaint investigation and, as a result, were not investigated.

Issue for Investigation

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

1. Whether the District developed and implemented an IEP that provided Student a FAPE when they denied direct occupational therapy (OT) services and discontinued OT services without an appropriate assessment of present levels of functional performance in violation of 6.31.2.11(B) and 6.31.2.11 (F)(1)(a) NMAC and 34 C.F.R. §§ 300.320-300.323;
2. Whether the District failed to obtain consent for an OT evaluation before determining that Student no longer needed direct OT services in violation of 6.31.2.13(F)(1) NMAC and 34 C.F.R. § 300.300 (c);
3. Whether the District provided the agreed to compensatory OT services in violation of 6.31.2.8(A) NMAC and 34 C.F.R. § 300.17; and
4. Whether the District's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE) to the Student in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

1. Student suffered from a rare disorder that resulted in significant medical issues including congestive heart failure, seizures, a D-net tumor in the brain, pulmonary hypertension, and kidney condition.
2. Student was medically fragile and had constant nursing care because of health needs.

3. Student received all special education and related services in person through homebound services.
4. Pursuant to the October 15, 2020 IEP, Student had been receiving 5 hours of special education and related services weekly: 60 minutes each of occupational therapy (OT), physical therapy (PT) and speech language therapy (SL) and 120 minutes of academic special education services.
5. Student had been receiving OT and SL services for years and it was noted on the IEP that Student exhibited regression in all areas warranting extended school year (ESY) services.
6. As early as 2018, the District had failed to provide the SL and OT services that Student was to receive as outlined on the IEPs.
7. At the start of the 21-22 school year as noted on the October 15, 2020 IEP, Student was owed 46 hours of compensatory OT services and 63 hours of compensatory SL services
8. There has been no plan in place for how those compensatory services would be provided to Student.
9. During Student's last three-year reevaluation in 2019, Student was not formally assessed for OT needs.
10. During the 2021-2022 school year, Student was in the twelfth grade and was eligible for special education and related services under the category of multiple disabilities.
11. This school year, Student has been primarily bedridden, but has been able to participate in special education and related services.
12. When Student was unable to participate in special education or related services because of health, fatigue or other reasons, the providers, in consultation with the onsite nurse, the District would determine whether to end the session early. Student was usually able to complete services.
13. If Student was having a bad day, the family would notify the providers before they arrived that Student was having a bad day and cancel services. This happened rarely.
14. When the family cancelled services or Student's services were ended early because of Student's needs, the District and family agreed that there was no obligation to make up the services.
15. Student's annual IEP was due on October 15, 2021.
16. Two IEP meetings were held on October 12, 2021 and October 22, 2021 to develop Student's annual IEP. Both meetings were tabled before the annual IEP was finalized.
17. As noted in the present levels of performance section on the October 12, 2021 IEP, "On October 8, 2021, the Occupational Therapist conducted a home visit to meet [Student] and caregiver to build rapport and informally assess current functional participation and the need for goal reassessment in preparation of this IEP."

18. In that section, the OT outlined the abilities and skills of Student on various tasks and discussed information obtained from the caregiver about Student's performance on fine motor and daily living tasks.
19. The Occupational Therapist opined about Student's needs by stating, "In review of historical IEP data, observation, and communication with one of Student's caregivers, [Student] appears to be performing functional tasks at baseline and has plateaued in the performance of fine motor tasks necessary to assess the curriculum. In light of this, the continuation of regular occupational therapy services is unlikely to benefit [Student's] ability to reach IEP goals."
20. The Occupational Therapist's recommendation on the IEP was, "At this time Occupational Therapist recommends a consultation model of service to caregivers and educational staff to assist in the facilitation of IEP goals."
21. At the October 22, 2021 IEP meeting, one of the proposals considered was the Occupational Therapist's recommendation that OT services would switch from one hour of direct OT services to a consultation model of OT services.
22. Parent objected to this recommendation, in part, because this was based on only one hour of observation by an Occupational Therapist that Student had not met before. The Therapist did not seek information from parents or other therapists that had worked with Student before making recommendations and did not seek consent to complete a thorough evaluation of Student's OT skills.
23. The District also proposed co-therapy for SL and OT services. The PWN stated that the "IEP team agrees that cotreating for therapy sessions is an option and can be tried should that be determined to be appropriate. Cotreating will be monitored by parent and service providers to see how [Student] responds and adjustments made to treatment plan as necessary."
24. Parent did not agree because Parent believed Student worked best 1-1 with only one provider at a time. Parent did not believe District considered Student's best interests, but recommended cotreating for the convenience of the District.
25. Parent also was concerned because Student needed individual services, but also the Student was owed compensatory services of at least 46 hours of OT and 63 hours of SL prior to that IEP meeting.
26. This topic was to be discussed at the upcoming IEP meeting.
27. Student has not been assessed to determine if the District's failure to provide the required OT and SL services had a negative impact on Student requiring more OT and SL services.
28. The October 22, 2021 meeting was tabled to allow the District to collect more data before any decision was made on the provision of OT services. At the end of that IEP meeting, there were at least three proposals that had not been resolved.

29. A new Occupational Therapist was assigned to work with Student and has gone into the home weekly to work with Student and collect data on Student's skills.
30. Since the annual IEP had not yet been completed, the October 15, 2020 IEP was still in effect and Student received 60 minutes per week of OT services.
31. The District has not developed or implemented a plan for provision of compensatory OT and SL services; that is a topic for the next IEP meeting.
32. The District has tried to resolve the issue with Parent and an IEP meeting is scheduled for January 20, 2022.

Discussion and Conclusions of Law

Issue No. 1

Whether the District developed and implemented an IEP that provided Student a FAPE when they denied direct occupational therapy (OT) services and discontinued OT services without an appropriate assessment of present levels of functional performance in violation of 6.31.2.11(B) and 6.31.2.11 (F)(1)(a) NMAC and 34 C.F.R. §§ 300.320-300.323.

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." *Endrew F. V. Douglas County School District RE-1*, 137 S. Ct. 988 (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. *Endrew F. v. Douglas County School District. RE-1*, 137 S. Ct 989, 69 IDELR 171 (2017). 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*, 24 IDELR 756, 24 LRP 3746, 93 F. 3d 1458 (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. *Endrew F. V. Douglas County School District RE-1*, 137 S. Ct. 988 (2017). 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). Failure to implement material parts of the IEP may be considered a denial of FAPE. See *Sumter County School District 17 v. Heffernan*, 642 F. 3d 478, 56 IDELR 86, 111 LRP 30393 (4th Cir. 2011); *Van Duyn v. Baker School District 5J*, 502 F. 3d 811 (9th Cir. 2007); *Houston Independent School District. v. Bobby R.*, 200 F. 3d 341 (5th Cir. 2000), cert. denied, 531 U.S. 817 (2000); *Neosho R-V School District v. Clark*, 315 F.3d

1022 (8th Cir. 2003). Failing to provide needed supports and services can be a denial of FAPE. Dear Colleague Letter, 68 IDELR 76 (OSERS/OSEP 2016).

Student's IEP was due on October 15, 2021. An IEP meeting was held on October 12, 2021, but the IEP was not finalized, and another IEP meeting was held on October 22, 2021. At that meeting, the issue of OT consultation services was discussed and objected to by the Parent. The meeting was tabled to allow another Occupational Therapist to work with Student and collect additional data. It is January, 2022 and the annual IEP is still not finalized. Since the last IEP meeting, Student has been receiving one hour of OT as the District has been implementing the October 15, 2020 IEP. The District is out of compliance for not developing the annual IEP in a timely manner. The District met before the due date, but the meeting was tabled twice because the IEP team needed additional data to develop appropriate goals for Student.

The District's proposal to change OT services from direct services to a consultation model was an appropriate discussion for the IEP team, but what was not considered by the IEP team during that discussion was that the District owed Student at least 56 hours of compensatory OT services and the IEP indicates that Student experienced regression in all service areas over breaks. The OT's opinion that Student has plateaued and no longer need direct services may be accurate, but the team agreed that could not be determined without additional information and the meeting was tabled to collect that information.

There may be many reasons for the OT's opinion that Student has plateaued. One reason may be because of the District's failure to provide the needed OT services. That is, the Student needed additional direct OT services, not less, because of District's failure to provide needed OT services. That and other possible factors that may impact on Student's services have not been considered by the IEP team. Student has not been formally assessed in OT skills since before that last reevaluation in 2019. Furthermore, the compensatory services have been owed since 2018, but the District has not yet developed a plan to provide the OT or SL services.

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

Issue No. 2

Whether the District failed to obtain consent for an OT evaluation before determining that Student no longer needed direct OT services in violation of 6.31.2.13(F)(1) NMAC and 34 C.F.R. § 300.300 (c).

Evaluations or reevaluations under the IDEA are conducted to determine if a student has a disability requiring specialized instruction because of that disability and the special education and related services that student needs. 6.31.2.13(F)(1) NMAC; 34 C.F.R. § 300.300 (c)(1). See also 34 C.F.R. §§ 300.304 through 34 C.F.R. § 300.315 and 71 Fed Reg 46,548 (2006). One of the purposes of a reevaluation is to determine if the child continues to need special education and related services. 34 C.F.R. § 300.305 (a)(2) (ii)(B). An evaluation may be lacking if it does not provide the needed information to determine goals and develop appropriate supports and services a student may need. *A.W. v. Middleton Area School District*, 65 IDELR 16 (M.D. PA 2015). Failing to conduct a thorough evaluation and relying on existing data may be a denial of FAPE if the IEP team has insufficient information to determine student's needs and services. *New Mexico Public Education Department*, 115 LRP 12278 (SEA NM 2015).

Reevaluations are warranted when the IEP team must consider if additions or modifications to the student's IEP are needed to enable the child to meet goals and participate in the general education curriculum. 34 C.F.R. § 300.305 (a)(2)(iii)(iv). A reevaluation is also warranted before it is determined that a child no longer requires special education or related services. 34 C.F.R. § 300.305(e). After the completion of a comprehensive evaluation in all areas of suspected disability, the student may be dismissed from services if the results of the evaluation as reviewed by the IEP team determines that the student does not need the special education or related services to obtain educational benefit. *South Pasadena Unified School District*, 58 IDELR 120 (SEA CA 2011); *Connecticut Technical High School System*, 112 LRP 49055 (SEA CT 2012) and *Victor Elementary School District*, 50 IDELR 204 (SEA CA 2008). Parental consent must be obtained before a reevaluation can be completed. 34 C.F.R. § 300.300 (c)(1).

On October 8, 2021, the Occupational Therapist met with Student for the first time for approximately one hour. The purpose of that meeting was not to provide OT services to Student, but to observe Student to determine the goals and services for the IEP. Because the observation was to determine, in part, whether Student continued to need OT services and the type of services needed for FAPE, this was an evaluation requiring consent. Although the Occupational Therapist contacted Parent to outline what she would be doing during the home visit, the Occupational Therapist did not seek or obtain consent for completion of that observation.

In addition, reevaluations with the required consent are warranted when additions or modifications are made to the Student's IEP. Changing services from direct services to a consultation model would be a modification to Student's IEP. A reevaluation, with the required consent, should have been conducted. After approximately one hour of observing Student and discussing Student with Caregiver, the Occupational Therapist opined that Student had

plateaued; direct OT services were no longer warranted to allow Student to access the general education curriculum and recommended that consultation services should be provided. This was noted in the October 12, 2021 IEP where the Occupational Therapist also noted that the recommendations were based on a review of previous IEP history in addition to the one-hour observation and consultation with Caregiver. While the review of Student's records would not require consent, the observation of Student and consultation with caregiver for purposes of determined needs and services would require consent.

Furthermore, the IEP meeting was tabled twice because there was insufficient data to determine Student's OT needs. Student had not had an evaluation in fine motor since before the last three-year reevaluation in 2019. The District was aware that for several years Student had not received the OT services outlined in the IEP which should have triggered the need for an OT evaluation to determine if there were additional needs because of the District's failure to provide those needed OT services. For the above reasons, the District should have completed a reevaluation and obtained the required consent.

As to Issue No. 2, the District is cited. Corrective Action is required.

Issue No. 3.

Whether the District provided the agreed to compensatory OT services in violation of 6.31.2.8(A) NMAC and 34 C.F.R. § 300.17.

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). Failure to implement material parts of the IEP may be considered a denial of FAPE. See *Sumter County School District 17 v. Heffernan*, 642 F. 3d 478, 56 IDELR 86, 111 LRP 30393 (4th Cir. 2011); *Van Duyn v. Baker School District 5J*, 502 F. 3d 811 (9th Cir. 2007); *Houston Independent School District. v. Bobby R.*, 200 F. 3d 341 (5th Cir. 2000), cert. denied, 531 U.S. 817 (2000); *Neosho R-V School District v. Clark*, 315 F. 3d 1022 (8th Cir. 2003). Failing to provide needed supports and services can be a denial of FAPE. Dear Colleague Letter, 68 IDELR 76 (OSERS/OSEP 2016).

The District agreed that Student was owed compensatory OT and SL services. The agreed number of hours of owed compensatory services was noted on the October 12, 2021 prior written notice (PWN). Prior to October 8, 2021, Student had not yet received any OT services for the 21-22 school year because of scheduling conflicts. The first home visit by the Occupational Therapist was not for provision of OT services but was an observation for purposes of determining needs and developing IEP goals. The IEP team agreed at the October

12, 2021 IEP meeting that Student was entitled to compensatory services of 56 hours of OT and 76 hours of SL. Prior to this school year, Student was owed 46 hours of OT and 63 hours of SL services since 2018. Although the District has agreed for at least the last two years that Student was owed the compensatory services, the District had not developed a plan for provision of those compensatory services. That is on the agenda for the next IEP meeting, but the District has no explanation for the delay in provision of those services.

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

Issue No. 4.

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

Students who are eligible for special education and related services are entitled to a FAPE. 6.31.2.8 NMAC; 34 C.F.R. § 300.101. 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 type of services to be provided are determined by the IEP team. 34 C.F.R. § 300.320. The educational program for a student must be one that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District. RE-I*, 69 IDELR 174, 117 LRP 9767, 137 S. Ct. 988 (U.S. 2017). The services outlined on the IEP are determined by the IEP team as necessary to allow that student to make progress in the general education curriculum. See 34 C.F.R. § 300.320. Procedural violations can also rise to the level of a denial of FAPE. The court in *J.L. v. Mercer Island School District*, 55 IDELR 164, 110 LRP 60810, 592 F. 3d 938, 951 (9th 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. *Id.* at 953.

On this record, there was a substantive denial of FAPE because of the continued failure of the District to provide the needed services outlined in Student's IEPs. At the time of the October 12, 2021 IEP, Student was owed 56 hours of OT and 76 hours of SL services. The IEP must be developed to allow the Student to make progress. It must be assumed that the services outlined in the IEP were needed for Student to receive a FAPE. The IEP and other documents noted that Student has significant regression in all areas when on breaks and Student had been entitled to ESY services because of that regression. However, no OT services were provided to Student during the 21-22 school year until after October 12, 2021. Prior to the start of the 21-

22 school year, Student was owed 46 hours of OT services and 64 hours of SL services. Just this year alone, Student had been denied 10 hours of needed OT services and 12 hours of SL services. Failure to provide those needed services was a substantive denial of FAPE.

There were also procedural violations. Student's annual IEP has still not been completed even though it was due on October 15, 2021. The District proposed modifying OT services to a consultation model but did not conduct an evaluation or seek consent to observe Student for purposes of determining needs and goals prior to the development of the IEP. Two IEP meetings were tabled to allow for collection of more data about Student's OT needs. Although Student has been receiving services set out on the October 15, 2020 IEP, the 2021 IEP has not yet been finalized. A third IEP meeting is scheduled for January 20, 2022. These procedural errors denied Student an educational benefit and deprived Student of an educational opportunity. This was a denial of FAPE.

As to Issue No. 4, the District is cited. Corrective Action is required.

Summary of Citations

Statutory and Regulatory Provisions	Citation
6.31.2.11(B) and 6.31.2.11 (F)(1)(a) NMAC	The District failed to develop and implement an IEP that provided Student a FAPE when they denied direct occupational therapy (OT) services and discontinued OT services without an appropriate assessment of present levels of functional performance.
6.31.2.13(F)(1) NMAC	The District failed to obtain consent for an OT evaluation before determining that Student no longer needed direct OT services.
6.31.2.8(A) NMAC	The District failed to provide the agreed to compensatory OT and SL services.
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) to the Student.

Required Actions and Deadlines

By January 25, 2022, 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
300 Don Gaspar Ave.
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 January 18, 2023 and reported to the PED SED no later than January 31, 2023. All documentation submitted to the SED to demonstrate compliance with the CAP must be clearly labeled to indicate the complaint number, **C2122-07**.

Corrective Action Plan

<u>Step No.</u>	<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.	Within two weeks from the issuance of this Complaint Resolution Report, the District Director of Exceptional Student Services shall meet with SED 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 Director has the discretion to include other SFPS administrators or personnel in this meeting. The District Director shall be responsible for setting up this meeting with SED.	February 1, 2022	None	N/A
2.	The District Director of Exceptional Student Services (or designee approved by PED) will meet with the student's special education administrator, special education teacher, and related service personnel to review the Complaint Resolution Report to ensure that those persons understand the complaint, the violations that were found, and the corrective actions that will be taken to address the violations.	February 15, 2022	Documents reflecting scheduling of meeting, attendance at meeting, and agenda for meeting	February 22, 2022
3.	The District will conduct a comprehensive occupational therapy evaluation of Student within 30 days from the date of the issuance of this Complaint	February 15, 2022	The occupational therapy evaluation	February 22, 2022

<u>Step No.</u>	<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>Resolution Report. The District shall use the current occupational therapist serving Student for the evaluation if possible. One factor that must be considered as part of this evaluation is whether the failure of the District to provide Student's needed OT and SL services warrants additional services or supports. The evaluator shall ensure that as part of the evaluation, information from Student's private occupational therapist be considered.</p> <p>The District must promptly seek parental consent for this evaluation. The parent is free to refuse consent to this evaluation. The parent retains the right to request an Independent Occupational Evaluation after the completion of the District's evaluation.</p>	February 1, 2022	Request for parental consent for OT evaluation/consent provided or written statement signed by parent refusing to consent	February 15, 2022
4.	<p>The District shall provide compensatory education services to Student consisting of 56 hours of occupational therapy services and 76 hours of speech and language therapy services.</p> <p>The District shall develop the plan for compensatory education services at the Facilitated IEP meeting referenced below in Step 5. The plan for compensatory services</p>	<p>January 17, 2023</p> <p>February 28, 2022 development of plan at FIEP meeting</p>	<p>Monthly log documenting delivery of compensatory education services, and communications with parent about services.</p> <p>Documentation of plan, including PWN</p>	<p>Log and communication each month</p> <p>March 7, 2022</p>

<u>Step No.</u>	<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>shall be documented in the PWN for the Facilitated IEP meeting.</p> <p>These compensatory services are above and beyond the services required by Student's IEP. The schedule for compensatory services should be developed in collaboration with the parent and can include the summer months. If a change is needed to the plan based on Student's condition</p> <p>Due to Student's fragile medical needs and the extensive number of compensatory services required, the plan for provision of compensatory services may exceed the one-year timeline with the approval of the parent and PED.</p> <p>If the District, due to staffing or other limitations, is unable to provide the needed IEP and compensatory services as outlined in Student's IEP and the compensatory services plan, the District, with Parents' approval, will be required to contract with a private provider to ensure those and other needed services are provided.</p>	When determination of extra time to complete delivery of services is made	Documentation of need for additional time, parent agreement with need for additional time, and request to PED for additional time	December 17, 2022

<u>Step No.</u>	<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>
5.	<p>On or before February 28, 2022, the District shall conduct a Facilitated IEP for student to review the occupational therapy evaluation and develop an annual IEP for Student. The new OT evaluation shall be reviewed and the plan for compensatory services shall be developed at the FIEP meeting.</p> <p>The Facilitator shall be independent of the District and shall be selected from the PED list of approved facilitators.</p> <p>The IEP meeting shall be held on a date and time that is convenient for the parent. The parent will be provided with a copy of the IEP and PWN at the conclusion of the FIEP meeting.</p> <p>The District shall ensure that the related service providers (PT, OT, SLP, AT, etc.) attend the Facilitated IEP meeting.</p>	February 28, 2022	Documentation of selection/retention of Facilitator, Invitation to FIEP, Agenda for FIEP, IEP and PWN	March 7, 2022
6.	The District will provide training to all District special education supervisors, coordinators, teachers, and related service personnel that are responsible for the development and implementation of IEPs, including the provision of related services. This training will	March 1, 2022	The agenda and training materials including outlines, power points and other materials to be submitted to NMPED for approval.	February 1, 2022

<u>Step No.</u>	<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>focus on evaluations and required consent, development and implementation of IEPs, the subject matter of this Complaint Resolution Report, and obligations of District in implementing IEPs. The District shall make this training available to all related service personnel who are working under contract and who are not employees.</p> <p>This training shall be developed and provided by an independent person(s) with expertise who has not been involved in responding to this Complaint and who is approved by the NMPED</p> <p>Attendance will be taken and provided to NMPED within two weeks of the completion of the training.</p>		<p>The resume or CV of the person(s) proposed to provide the training and a draft of the proposed training to be submitted to NMPED for approval.</p> <p>Attendance list for all those who attended the training.</p>	February 1, 2022 March 15, 2022

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

Investigated by:

/s/ Michele K. Bennett
Michele K. Bennett
Independent Complaint Investigator

Reviewed by:

/s/ Debra Poulin

Debra Poulin, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:

Timothy Crum 1/18/2022

Deborah Dominguez-Clark←for

Director, Special Education Division