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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Case No. 2223-15
November 14, 2022**

This Report requires corrective action. See pages 14-17.

This complaint was filed with the Special Education Division (SED) of the New Mexico Public Education Department (PED) on September 16, 2022 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 The SED 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 District's responses to the allegations, together with documentation submitted by the District at the request of the PED's independent complaint investigator;

¹ 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 the District’s compliance with federal IDEA regulations and state NMAC rules;
- interview with the Parent on October 8, 2022;
- interview with the District’s Assistant Principal and Special Education Teacher on October 20, 2022; and
- research of applicable legal authority.

Limits to the Investigation

Federal regulations and state rules limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint is received. 34 C.F.R. § 300.153(c); 6.31.2.13(H)(2)(d) NMAC. Any 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.

Issues for Investigation

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

1. Whether the District failed to provide advance written notice of an IEP meeting, in violation of 34 C.F.R. § 300.322 and 6.31.2.13(D)(1) NMAC.
2. Whether the District ensured the IEP team included the required members, pursuant to 34 C.F.R. § 300.321 and 6.31.2.7(B)(11) NMAC.
3. Whether the District made decisions about a provision of the Student’s FAPE in advance of an IEP meeting without the participation or input of the Parent, in violation of 34 C.F.R. § 300.327² and 6.31.2.13(C) NMAC.
4. Whether the District properly determined the Student’s placement based on their least restrictive environment, pursuant to 34 C.F.R. § 300.114 and 6.31.2.11(C) NMAC.

² The original citation was 34 C.F.R. § 300.322. After further information was received regarding the allegation, the more appropriate citation is 34 C.F.R. § 300.327. The citation change did not impact the investigation or findings.

5. Whether the District properly implemented the Student's IEP, specifically by providing special education and related services to the Student, pursuant to 34 C.F.R. § 300.323 and 6.31.2.11(B) NMAC.
6. Whether the District's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

1. The Student is currently ten years old and in the fourth grade for the 2022-23 school year.
2. The Student was last evaluated on March 30, 2022. As a result of that evaluation, the Student is identified as a student with a disability under the primary disability classification of Other Health Impairment (OHI) and secondary disability classification of Speech and Language Impairment (SLI).
3. Following the most recent reevaluation, the IEP team convened on April 11, 2022 to conduct an annual review of the Student's IEP. The IEP members included the Parent, an LEA representative, two special education teachers, three regular education teachers, a qualified evaluator of test results, two related services providers, and the school psychologist.
4. Relevant portions of the IEP include:
 - a. The Student requires a lot of one-on-one teacher support in all general education classes. The Student will not work on assignments until a teacher is available to sit with the Student and assist them. If the teacher walks away, the Student often will stop working on the given assignment.
 - b. The IEP contains five measurable annual goals to support math, reading, writing, speech, and task completion.
 - c. Student is to receive the following special education and related services in the special education classroom for the remainder of the 2021-22 school year or through May 27, 2022:
 - i. Math: 375 minutes/week
 - ii. Reading: 300 minutes/week
 - iii. Writing: 300 minutes/week
 - iv. Speech: 60 minutes/week
 - v. Occupational Therapy (OT): 7.50 minutes/week
 - d. The only schedule of service for the 2022-23 school year was located in the "IEP at a Glance" section. The services were to begin on August 1, 2022 through April

11, 2023. The services were identical to the services included under the 2021-22 school year except for the following changes:

- i. Math services were to increase from 375 minutes/week to 525 minutes/week

Despite this inclusion, the District indicates no schedule of service was determined by the IEP Team for the 2022-23 school year and the District was unaware the “IEP at a Glance” section included a schedule of services for the 2022-23 school year.

- e. The Student was to be educated in the general education classroom for less than 40% of the day.
5. Attached to the April 11, 2022 IEP is a Prior Written Notice of Proposed Actions (PWN) dated April 11, 2022. Relevant portions of the PWN include:
 - a. The Student will receive reading, writing, and math services in the special education classroom for the remainder of the 2021-22 school year. Following the completion of an audiologist evaluation, the IEP team will reconvene to review the evaluation results and any progress made while in the special education classroom to determine what the most appropriate setting is for the Student during the 2022-23 school year.
 - b. The IEP Team rejected the proposal that the Student receive services for reading, writing, and math in the general education setting as the Student will benefit from small group support and needs individualized instruction in the special education setting.
 6. A PWN dated April 28, 2022 was provided to the Parent. The PWN indicated the April 11, 2022 IEP was updated to correct the primary disability to OHI and list the secondary disability as SLI.
 7. A PWN dated May 19, 2022 was provided to the Parent. The PWN indicated that a particular statement from the PWN attached to the April 11, 2022 was inadvertently included and was removed. The IEP was amended to remove the statement from the PWN. The Amended IEP is dated May 19, 2022.
 8. The Parent made the Student available to an audiologist in May 2022. The audiologist evaluation was completed on June 9, 2022. The evaluation report indicated there was no evidence of a processing disorder.
 9. Despite the IEP team’s agreement at the April 2022 IEP meeting, the IEP team did not reconvene to determine the Student’s placement prior to the 2022-23 school year. As a result, on August 1, 2022, the Parent emailed the District regarding the Student’s placement for the 2022-23 school year. In response to the Parent’s email, the District Diagnostician reached out to the Parent via phone to schedule an IEP meeting. Over the phone, the Parent agreed to attend an IEP meeting on August 5, 2022. No formal meeting notice was issued prior to the meeting.

10. Between August 1, 2022 and August 5, 2022, the Student was placed in the general education classroom and did not receive any special education or related services except for 30 minutes of speech on August 5, 2022. The District indicated the reason for this was that a schedule of services had not been completed for the 2022-23 school year at the April 2022 IEP meeting so District staff were uncertain about what services the IEP team would decide on. The District also indicated that no students with disabilities are provided with direct services during the first week of school. The purpose of this is to enable the student to get acclimated to their new classroom and teacher and to observe how the student reacts to the new environment. This practice goes directly against the District's policy which states, in part, "[I]t is expected that the district will provide the special education and related services written in the IEP immediately after the IEP is finalized [T]here must be an IEP in effect for [a] child [with a disability] at the beginning of each school year. The failure to do so may constitute a denial of FAPE."
11. On August 5, 2022, the IEP team convened. The Parent was under the impression only the Student's placement would be discussed. However, the District staff indicated an annual review of the IEP would occur. The IEP members included the Parent, an LEA representative, a special education teacher, a regular education teacher, a qualified evaluator of test results, and the Speech Language Pathologist (SLP).
12. Relevant portions of this IEP, including changes from the previous IEP, include:
 - a. The Student transitioned well into the math and ELA resource rooms.
 - b. The IEP contained the same reading, writing, speech, and task completion annual goals as the previous IEP.
 - c. The IEP included a new measurable annual math goal.
 - d. The Student's special education and related services were changed in the following ways:
 - i. Student was to receive 150 minutes/week of inclusion math services in the general education classroom and 150 minutes/week in the special education classroom.
 - ii. Student was to receive 150 minutes/week of inclusion language arts services in the general education classroom and 150 minutes/ week in the special education classroom.
 - iii. There were no changes to the speech or OT services.
 - e. The Student was to be educated in the general education classroom for 40% to 79% of the day.
13. A PWN was attached to the August 5, 2022 IEP. Relevant portions of the PWN include:
 - a. The IEP team consensus was that the Student would benefit from a combination of services in the special education classroom and inclusion support in the general

education classroom. The Parent requested the Student receive all services in the general education setting but that was rejected.

14. At the conclusion of the IEP meeting, the Parent was provided with a notice regarding the August 5, 2022 meeting. The meeting notice was dated August 2, 2022 and indicated the date and time of the August 5, 2022 meeting. The purpose of the meeting was “annual placement.” It is unclear why the District provided a meeting notice after the IEP meeting which it referenced.
15. On September 12, 2022, the Parent informed the District that they were going to file a state complaint. On September 13, 2022, the Parent emailed their state complaint to the District.
16. In response to the Parent’s state complaint, the District proposed to hold an IEP meeting on September 14, 2022. A notice of the IEP meeting was provided to the Parent.
17. An IEP meeting was held on September 14, 2022 and the Student’s IEP was amended. The IEP members included the Parent, an LEA representative, a special education teacher, a regular education teacher, a qualified evaluator of test results, and the SLP. The only amendments to the IEP were changes to the special education and related services. Specifically, the Student’s services changed in the following ways:
 - a. Student was to receive all language arts services in the general education classroom for a total of 210 minutes/week.
 - b. Student was to receive all math services in the special education classroom for a total of 400 minutes/week.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to provide advance written notice of an IEP meeting, in violation of 34 C.F.R. § 300.322 and 6.31.2.13(D)(1) NMAC.

Districts are required to notify the parents of an IEP meeting in writing. 6.31.2.13(D)(1) NMAC. The notice must include the purpose, time, and location of the meeting; who will be in attendance; and specific IDEA provisions. 34 C.F.R. § 300.322(b).

The District admitted through the course of this investigation that written notice of the August 5, 2022 IEP meeting was not provided to the Parent prior to the IEP meeting. As written notice is required, the District is in violation of the same. However, while written notice was not provided, the Parent was provided with a verbal notice of the meeting and participated in the meeting. Thus, the District’s failure to provide written notice is a technical violation that did not amount to a denial of FAPE. *See Carroll County Pub. Sch., 23 IDELR 157 (SEA VA 1995).*

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

Issue No. 2

Whether the District ensured the IEP team included the required members, pursuant to 34 C.F.R. § 300.321 and 6.31.2.7(B)(11) NMAC.

The Parent asserts in the complaint that despite addressing social emotional concerns at the August 2022 IEP meeting, there was no one present at the IEP meeting that had the expertise to address social emotional concerns and/or make recommendations on behalf of the Student.

Pursuant to 34 C.F.R. § 300.321 and 6.31.2.7(B)(11) NMAC, the mandatory members of an IEP team include the child's parent(s), a regular education teacher, a special education teacher, a representative of the public agency, and an individual who can interpret evaluation results. There are also discretionary members that may be included at IEP meetings. Discretionary members include the student and other individuals who have knowledge or special expertise regarding the child. *Id.*

IDEA regulations explicitly identify the mandatory members of the IEP team. The Parents' assertion that someone should have been included that could have addressed social emotional needs does not create additional mandatory members. It is likely that an individual that could have addressed the social emotional needs of the Student would fall under the discretionary "other individuals" catch-all provision. The Parent has the right to invite a person with special expertise or special knowledge regarding the Student at the Parent's discretion. In this instance, the Parent did not do so. Furthermore, there is no indication that the members of the IEP team that did attend the meeting did not have sufficient knowledge and expertise to address Student's social/emotional needs identified by the IEP team. Because the mandatory members were present at each of the IEP meetings, there was no violation.

As to Issue No. 2, the District is not cited.

Issue No. 3

Whether the District made decisions about a provision of the Student's FAPE in advance of an IEP meeting without the participation or input of the Parent, in violation of 34 C.F.R. § 300.327 and 6.31.2.13(C) NMAC.

A parent must be afforded the opportunity to participate in meetings regarding the educational placement of their child. 34 C.F.R. § 300.327 and 6.31.2.13(C) NMAC. Predetermination occurs when district members of the IEP team unilaterally make decisions regarding the student's identification, evaluation, placement, and/or FAPE.

April & August 2022 IEP Meetings

The Parent asserts in the complaint that the District made predetermined placement decisions at the August 2022 IEP meeting. The Parent also asserted during the telephonic interview that the District made predetermined placement decisions at the April 2022 IEP meeting.

The District was asked about the placement decisions at both the April and August 2022 IEP meetings. The District indicated that at both meetings the Parent's voice was heard and there was discussion of multiple placement settings between District staff and the Parent before determining the best placement for the Student. *See e.g., Reed Union School District, 52 IDELR 240 (SEA CA 2009) (IEP teams must discuss the parents' placement objections and consider alternative placements).* The District provided sufficient information regarding the discussions at both the April and August 2022 IEP meetings to substantiate their claim that the District had not predetermined the Student's placement. Furthermore, the District clearly documented the placement considerations in the corresponding PWNs and described the reasons for each decision to either accept or deny a specific placement recommendation of the IEP team. Thus, there is no finding for the same in regard to the April or August 2022 IEP meetings.

August 1, 2022 Change in Placement

At the beginning of the 2022-23 school year, the District made the unilateral decision to place the Student in the general education classroom. The decision was made without consultation with the Parent and outside of an IEP meeting. The District indicated the Student was moved to the general education classroom for the first week of the 2022-23 school year because the IEP Team had not yet determined the appropriate placement for the Student. The District's decision to move the Student to the general education classroom, prior to holding an IEP meeting and without agreement with the Parent, was a violation of the IDEA and NMAC regulations.

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

Issue No. 4

Whether the District properly determined the Student's placement based on their least restrictive environment, pursuant to 34 C.F.R. § 300.114 and 6.31.2.11(C) NMAC.

Children with disabilities must be educated with their nondisabled peers to the maximum extent appropriate. 34 C.F.R. § 300.114(a). Children with disabilities may only be removed from the regular education environment "if the nature or severity of the disability is such that education in [the] regular [classroom] with the use of supplementary aides and services cannot be achieved satisfactorily." *Id* at (ii).

There are several situations in which inclusion in the general education classroom is not required. One situation where inclusion in the general education classroom is not required is when a student is so demanding of a teacher's time and attention that the student substantially interferes with the learning of others in the classroom. *See Greenwood v. Wissahickon School District*, 50 IDELR 280 (E.D. Pa. 2008), *aff'd*, 54 IDELR 113 (3d Cir. 2010, *unpublished*).

Placement is determined by the IEP team, including the parents, and must be individualized and based on the student's IEP. 34 C.F.R. § 300.116.

April 2022 Change in Placement

In April 2022, the Student's placement for the remainder of the 2021-22 school year was changed so that the Student spent the majority of time in the special education setting. The IEP indicates the teacher was constantly helping the Student and that the Student would not work on assignments if the teacher was not sitting beside the Student.

The Parent indicated in the interview that the Student was achieving good grades so there was no need to remove the Student from the general education setting in April 2022. However, a student need not fail in the general education setting before a district considers a change of placement to a more restrictive setting. *See OSEP Memorandum 95-9*, 21 IDELR 1152 (OSEP 1994).

Given the Student's demands for the teacher's time, it was appropriate for the IEP team to change the Student's placement to a more restrictive setting.

August 1, 2022 Change in Placement

At the beginning of the 2022-23 school year, the Student's placement changed to the general education classroom for the entire school day. This decision was made by the District, without consultation with the Parent, outside of the IEP process. The District indicates the Student was placed in the general education classroom because a schedule of service was not developed for the 2022-23 school year. Temporarily tabling the discussion regarding the appropriateness of having an incomplete IEP, the District's unilateral decision to place the Student in the general education setting was in direct violation of the IDEA and NMAC regulations regarding placement decisions and amounts to a procedural violation. *See* 34 C.F.R. § 300.116 and 6.31.2.13(C) NMAC. The change in placement also contradicted the decisions made by the IEP team at the April 2022 meeting (*see* Findings of Facts #4b).

August 5, 2022 Change in Placement

At the August 5, 2022 IEP meeting, the IEP Team reached a consensus that the Student should return to an inclusion model – part of the day would be spent in the general education classroom

and the other part of the day would be spent in the special education setting. This consensus was reached to appease the Parent, as the District indicated the special education setting was working well for the Student but the Parent wanted the Student to return to the general education classroom. Despite the compromise, the Parent did not agree with the placement decision.

Given the Student's success in the special education setting and their continued need for support, the decision to place the Student in both the general education and special education setting on August 5, 2022 was appropriate and the Student's LRE.

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

Issue No. 5

Whether the District properly implemented the Student's IEP, specifically by providing special education and related services to the Student, pursuant to 34 C.F.R. § 300.323 and 6.31.2.11(B) NMAC.

An IEP must include, in part, a statement of the special education and related services that will be provided to the child, including the extent to which the student will be educated with their nondisabled peers. 34 § C.F.R. 300.320(a)(4). The IDEA also requires that a student's IEP be reviewed at least annually, 34 § C.F.R. 300.324(b)(1)(i) and 6.31.2.11(J)(1)(e), and be in effect at the beginning of the school year. 34 § C.F.R. 300.323(a).

A district must implement a student's IEP with all required components. 34 C.F.R. § 300.323(c). The failure to implement an IEP can result in a denial of FAPE. 34 § C.F.R. 300.17. However, an IEP need not be perfectly implemented to provide a student with FAPE. A minor discrepancy does not amount to a denial of FAPE. *See I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs.*, 70 IDELR 86 (8th Cir. 2017).

Failure to Provide Services

The Student was not provided with any special education or related services during the first week of the 2022-23 school year other than 30 minutes of speech, despite the need for same. The Student is identified as a student with a disability in need of special education and related services. The District failed to include a provision of services in the Student's April IEP or prior to the start of the 2022-23 school year. The District's failure to determine those services and provide those services amounts to a denial of FAPE.

Absent the creation of a new IEP for the Student, the District could have at the very least, provided all services provided in the most recent IEP to mitigate some if not all of the potential denial of FAPE. However, through the course of this investigation, it was revealed that the District

does not provide any special education or related services to *any* student identified with a disability during the first week of school. This practice goes directly against IDEA regulations and its continued practice is a violation of the IDEA. *See Letter to Ackerhalt*, 60 IDELR 21 (OSEP 2012) (informing a parent’s attorney that it is not proper for a district to commence services for all its students with disabilities at a specific time after the school year has already begun). Any decision to cease IEP services must be made on an individual basis and never as a blanket policy and should only be made by the IEP team.

As to Issue No. 5, the District is cited, and Corrective Action is required.

Issue No. 6

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

To determine whether FAPE was provided, the United States Supreme Court in the *Rowley* case, established a two-part test:

1. Has the district complied with the procedures set forth in the IDEA?
2. Is the IEP reasonably calculated to enable the child to receive an educational benefit?

If the two-part test is satisfied, FAPE was provided. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. V. Rowley*, 553 IDELR 656 (1982).

A procedural violation results in a denial of FAPE if it: (1) impedes the child’s right to FAPE; (2) significantly impedes the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE; or (3) causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Change in Placement August 1, 2022

First, changing the Student’s placement outside of an IEP meeting significantly impeded the Parent’s opportunity to participate in the decision-making process. *See Dallas Sch. Dist. 2*, 118 LRP 34179 (SEA OR 6/4/18) (finding a denial of FAPE when a district unilaterally restricted a student’s school day outside of the IEP process). Moreover, when a change in placement occurs, the notice requirements are triggered. 34 C.F.R. § 300.503(a) and 6.31.2.11(C)(h) NMAC. The District failed to issue a PWN following their decision to place the Student in the general education classroom during the first week of the 2022-23 school year.

Secondly, the Student was deprived of an educational benefit because (1) the Student’s IEP was not administered in the placement most appropriate for the Student and (2) no special education or related services were provided while the Student was placed in the general education setting.

(Further discussion surrounding the appropriateness of the District failing to provide special education and related services is under Issue 5.)

As the Parent was denied participation in the decision-making process and the Student was deprived of an educational benefit, the Student was denied FAPE.

Adequacy of April 2022 IEP

In April 2022, the IEP team determined that the Student would best be served in the special education setting for the majority of the school day for the remainder of the 2021-22 school year. No decisions were made as to the Student's placement or special education and related service needs for the 2022-23 school year, as noted by the PWN. The District's failure to determine the Student's placement and services for the 2022-23 school year was inappropriate and failed to meet the requirements of the IDEA. *See Reyes v. New York City Dep't of Educ.*, 63 IDELR 244 (2d Cir. 2014) (finding that a district cannot defend the adequacy of an IEP that contemplates the possibility of future amendments).

In *Reyes*, the IEP of the student only included paraprofessional support for a period of three months, with the anticipation that the IEP team would meet again to determine whether or not the student needed ongoing paraprofessional support beyond the three-month time period. The U.S. Court of Appeals of the Second Circuit determined that the adequacy of the IEP could not be based on the possibility of future amendment to the IEP but rather on how the IEP read on its face. The court determined the IEP, as written, was inadequate as there was an apparent need for paraprofessional support beyond the three-month time period. Because the IEP did not include the provision of paraprofessional support after the three-month time period, the student was found to have been denied FAPE. *Id.*

Here, unlike in *Reyes*, there is no question as to whether there was a need for placement or special education and related services, as the Student has been identified as a child with a disability. Thus, at the April 2022 IEP meeting, the IEP Team should have determined what the schedule of services would have been for the 2022-23 school year. Had the IEP Team decided at a later time that the schedule of services for the 2022-23 school year was not appropriate for the Student, the IEP Team could have reconvened and amended the IEP accordingly. 34 § C.F.R. 300.324(a)(4) and (6). As the Student was in need of a placement determination and special education and related services, the District's failure to include a schedule of service for the 2022-23 school year in the IEP constitutes a denial of FAPE.

For the reasons stated above, the District failed to properly determine the Student's placement, develop an adequate IEP for the Student, and implement the Student's IEP properly, including providing special education and related services, resulting in a denial of FAPE.

As to Issue No. 6, the District is cited, and Corrective Action is required.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.322 and 6.31.2.13(D)(1) NMAC	The District failed to provide the Parent with proper written notice in advance of an IEP meeting.
34 C.F.R. § 300.327 and 6.31.2.13(C) NMAC	The District predetermined the Student’s placement when it unilaterally moved the Student to the general education classroom without consultation with the Parent.
34 C.F.R. § 300.116 and 6.31.2.13(C) NMAC	The District improperly determined the Student’s placement by failing to allow the Parent to participate in the decision-making process regarding the Student’s educational placement.
34 C.F.R. § 300.503(a) and 6.31.2.11(C)(2)(h)	The District failed to provide the proper notice before it proposed or refused to change the Student’s educational placement.
34 § C.F.R. 300.320(a)(4); 34 § C.F.R. 300.323(a)	The District failed to develop an adequate IEP for the Student when it did not include an educational placement or a provision of services for the entirety of the IEP term.
34 C.F.R. § 300.101 and 6.31.2.8 NMAC	The District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE) to the Student.

Required Actions and Deadlines

By December 2, 2022, the District’s Special Education Director must assure the SED in writing that the District will implement the provisions of this Corrective Action Plan (CAP). The SED 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 Avenue
 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 SED 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 SED.

Each step in this Corrective Action Plan is subject to and must be carried out in compliance with the procedural requirements of the IDEA 2004 and the implementing federal regulations and State rules. Each step also must be carried out within the timelines in the Corrective Action Plan. If a brief extension of time for the steps in the Corrective Action Plan is needed, a request in writing should be submitted to the Corrective Action Plan Monitor. The request should include the case number, the date for the proposed extension, and the reason for the needed extension. The SED will notify the parties of any extension granted.

Please carefully read the entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes. All corrective action must be completed no later than November 15, 2023 and reported to the SED no later than November 29, 2023. All documentation submitted to the SED to demonstrate compliance with the CAP must be clearly labeled to indicate the state complaint case number and step number.

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.	As described above, the District will submit a written assurance to the PED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	December 2, 2022	Written Assurance Letter/Email	December 2, 2022

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>
2.	The District Special Education Director, and the school principal shall meet with the PED SED Education Administrator assigned to the District and the PED SED CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the District plans to take to ensure that the violations are corrected and do not recur. The District Director has the discretion to include other District or school administrators or personnel in this meeting. The District Director shall be responsible for arranging this meeting with SED.	December 9, 2022	Notes from meeting prepared by District	December 16, 2022
3.	The District shall arrange to provide training to District staff (including special education teachers, special education administrators, and related service personnel) on the following special education topics: <ul style="list-style-type: none"> (1) Notice requirements for an IEP meeting; (2) The requirement to have an IEP in effect at the beginning of the school year with all required components within including: <ul style="list-style-type: none"> a. Special education and related services with the anticipated frequency, location, and duration; b. An explanation regarding the student's participation with 	January 27, 2023	Confirmation of the date of the training. Confirmation of attendees at the training and plan for addressing provision of training to those staff not in attendance.	January 6, 2023 February 3, 2023

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>their nondisabled peers in the regular classroom.</p> <p>(3) The proper procedure for amending a student’s IEP;</p> <p>(4) The required team members who must be included in a student’s placement decision;</p> <p>(5) Notice requirements following a change in placement;</p> <p>(6) Requirements to implement a student’s IEP as written</p> <p>The training shall be provided by a person with expertise in special education who was not involved in responding to this complaint and who is approved by NMPED.</p>		<p>Submission of proposed trainer and trainer’s resume and proposed presentation for NMPED approval.</p>	<p>December 16, 2022</p>
<p>4.</p>	<p>The District shall provide the following compensatory education:</p> <ul style="list-style-type: none"> a. 375 minutes of specialized math instruction; b. 300 minutes of specialized language arts instruction; c. 30 minutes of specialized speech instruction; d. 7.5 minutes of specialized occupational therapy instruction. <p>These compensatory services are above and beyond the regular services required by Student’s IEP. The schedule for compensatory services should be developed in collaboration with the parent and</p>	<p>November 15, 2023</p>	<p>Documentation of delivery/provision of compensatory education services, including logs of services and progress reports.</p> <p>Prior Written Notice containing plan for compensatory services.</p>	<p>Monthly from date of compensatory services plan until the compensatory education hours are completed</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>can include provisions of services in the summer months.</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 is required to contract with a private provider to ensure those services are provided.</p>			

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/ Emily Adams

Emily Adams

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:



Deborah Dominguez-Clark

Director, Special Education Division