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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Pojoaque Valley School District
Case No. 2223-26
January 20, 2023

This Report requires corrective action. See pages 14-19.

On November 14, 2022, a 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 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 the 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. §§ 300.151 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;
- interviews with the Grandparent, Parent, and Student Services Director; 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 before 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 comparable services to a special education eligible transfer Student and delayed the implementation of the IEP from another state school or the development and implementation of a new IEP in violation of 34 C.F.R. § 300.323 (f) and 6.31.2.13(h)(1) NMAC;
2. Whether the District failed to develop and implement an IEP that met all of Student’s educational needs that resulted from Student’s disabilities and allowed Student to make educational progress in violation 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC; and;
3. Whether the District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC?

General Findings of Fact

Background Information

1. At the time the complaint was filed, Student was nine years old and in the fourth grade. In previous IEPs, Student had been determined eligible under both autism and emotional disturbance. The recent IEP listed autism and other health impairment (OHI) as the eligibility categories.
2. Previously, Student had behavioral incidents, including stabbing classmates with pencils, and hitting teachers and other staff.
3. As a result of the physical aggression and other behaviors, such as property destruction, it was determined that a resource room placement was no longer safe for Student or other students and staff.
4. The IEP team determined that a self-contained classroom with a full-time one-to-one aide and a teacher would be the appropriate placement for Student.
5. Student started in the self-contained classroom on December 19, 2019.
6. Student's disciplinary records indicate only two incidents during the 2022-2023 school year. The first incident was on September 6, 2022 which involved eloping, abusive language, and gestures.
7. On October 7, 2022, Student attended a field trip to a local bowling alley. While there, Student attacked the teacher, causing physical injury.
8. Prior to that, the last disciplinary incident involving Student was on November 8, 2021, when Student hit a teacher and had to be removed to the Principal's office for three hours before Student could return to the classroom.
9. Although it was not noted on the disciplinary records, Student would frequently, often daily, act out and want to call Parent or Grandparent and would request to go home.
10. After the incident at the bowling alley, and in part because of Student's increasing physical aggression toward staff, students, and others, Student was hospitalized.
11. During the hospitalization, Student received improper medication, which caused significant side effects. Student was transferred to another hospital where medication was changed and Grandparent and Parent report that Student's negative behaviors have diminished.
12. After Student was released from the hospital, Parent contacted the District and shared that Parent would be transferring to another District in the State. Student was disenrolled by the District on October 12, 2022 because of the transfer.
13. Parent reported that Student attended the new school for one week to one and one-half weeks before returning to the area.
14. The District had no information from the receiving school about a records request nor information provided about Student's enrollment in the new district.

15. Upon Parent's return to the area, Parent brought Student to the school on October 31, 2022 to return to school in District.
16. When Parent came to the school to reenroll Student, there was a discussion with the Principal about services for Student. This was not an IEP team meeting with the entire IEP team in attendance but was to develop a plan to educate Student.
17. The Principal indicated the District did not have a 1-1 aide to work with Student and would need time to hire one. In addition, when Student returned to the school, Student would remain in the self-contained classroom and would start half-days until Student and staff were acclimated. The Principal stated that Student could not return to school until an aide was hired.
18. The plan was Student would remain at home and that educational packets would be sent home for Student to work on with Parent's assistance.
19. After a 1-1 aide was hired, Student would start back to school for half a school day and then transition to a full day at thirty-minute increments when Student became acclimated to the placement and with the consent of Parent, Principal, and Teacher.
20. Although Parent agreed that Student could not return to school without a 1-1 aide available to work with Student, she did not believe she had any choice in Student's educational plan.
21. This plan was implemented from October 31 through November 16, 2022 when Student returned to school for a half-day with the 1-1 aide and Parent present the entire time.
22. On November 17, 2022, Student came to school but was unable to remain at school for more than one hour. During that hour at school, Student completed work with the Special Services Director and Library Assistant.
23. Student was transported home by the Special Services Director and the next steps were discussed with Parent.
24. On November 17, 2022 Student's IEP, which was due on September 23, 2022, was finalized.
25. There was no prior notice of the IEP meeting, an IEP meeting was convened because Parent was in the building and they needed to complete the IEP.
26. District's records indicated that Parent agreed to waive notice of the IEP meeting. Parent disputed that statement.
27. At the time of the November 17, 2022 IEP, Parent had full custody of Student but lived with Grandparents.
28. Previously, Grandparents had temporary guardianship of Student for educational purposes for approximately one year.
29. Often Grandparent attended IEP meetings for Student, but since there was no notice of the meeting provided prior to the meeting on November 17, 2022, Grandparent was not in attendance.

30. During the IEP meeting, Student who was present, had a meltdown, was crying, and did not want Parent to attend the IEP meeting. Eventually, someone came to assist with Student, and the IEP meeting proceeded and an IEP was developed.
31. Parent requested an opportunity to review the IEP before agreeing to the IEP, which was signed on November 20, 2022.
32. On November 18, 2022, Student returned to school with Parent who stayed with Student for the morning.
33. School was on Thanksgiving break between November 21-25, 2022.
34. On November 28, 2022, Grandparent brought Student to school but after multiple attempts was unable to keep Student at school.
35. On November 29, 2022, Student remained at school for half the day and worked with the library assistant.
36. The following day Student came to school for the entire morning and worked with the assistant principal.
37. Student did not attend on December 3, 2022 and was out sick through December 5, 2022.
38. Pursuant to the November 17, 2022 IEP, Student was to attend school all day beginning December 12, 2022.
39. There have been increasing issues with getting Student to come to school, leave the home, get on the bus, or enter the school upon arrival.
40. Student has had chronic issues with school refusal and avoidance. Once Student arrived in the building, Student was able to successfully complete grade level work.
41. However, Student would often not get on the bus or when driven to school, would not leave the car or enter the building. On multiple occasions, Student behaved aggressively and required restraint when dropped off at the school by Parent and Grandparents.
42. Grandparent has reported that recently, Student confronted Grandparent with a knife when Student was reprimanded and told Parent would be called. Grandparent was concerned for her safety.
43. Since school resumed after the holiday break on January 11, 2023, Student arrived and had a good day on the first day. Student was not at school on January 12, 2023 but when Student arrived at school on January 13, 2023, Student needed to be restrained four times including getting Student out of the car and into the school.

Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP)

44. An FBA and BIP were initially completed on January 15, 2020. In the BIP, three main areas of concerning behaviors were listed: including property destruction, physical aggression, and verbal outbursts.

45. The IEP team noted on both the FBA and BIP that there had been substantial changes in family dynamics which may have impacted on Student's increase in negative behaviors.
46. Shortly before the FBA and BIP were completed, Student had been transferred to a self-contained classroom with a 1-1 full time aide.
47. The BIP and FBA also noted that Student's negative behaviors decreased after the change in placement.
48. It had been observed that Student exhibited precursor behaviors before escalation into physical aggression or property destruction. When these precursor behaviors were noted, Student would be redirected which was sometimes successful. Student's negative behaviors would start as avoidance behaviors and transition to attention seeking behavior.
49. The negative behaviors did not occur during recess, lunch, or transitions but only in the classroom.
50. The BIP outlined many positive strategies to assist Student including a visual schedule, first/then statements, offering choices, visual cues and prompts, priming of behavioral expectations, visual times, and transitional warnings.
51. The goal of the BIP was to teach Student how to deal with emotions and develop appropriate coping skills.
52. Verbal and tangible reinforcement was included in the BIP. Parent participated in the development of the FBA and BIP.
53. At the November 17, 2022 IEP meeting, District agreed to update the FBA and BIP by December 12, 2022, but until then, the January 15, 2020 BIP would be implemented.
54. To date, the FBA and BIP have not been updated.

Development and Implementation of IEP

55. Student's IEP was due on September 23, 2022, but was not completed until November 17, 2022 and signed on November 20, 2022.
56. The explanation for the delay was the lack of a special education teacher to complete the IEP. There was no explanation why a meeting was not scheduled when Student reenrolled or no notice was sent for the November 17, 2022 IEP meeting.
57. Student's three-year re-evaluation was due next school year on September 12, 2023. The last psychological evaluation was completed in 2019. There were questions about Student's eligibility because Student had been previously diagnosed with autism, bipolar, and attention deficit hyperactivity disorder (ADHD).
58. A review of existing evaluation data (REED) was completed as noted on the Prior Written Notice (PWN). Psychological, cognitive, functional performance, adaptive and occupational therapy assessments were recommended.

59. On the Present Levels of Academic and Functional Performance (PLAAFP) of the IEP, it was noted that there were no current academic levels because Student had not been in school since early October.
60. There were no academic levels listed prior to Student's disenrollment this year or last school year.
61. The IEP noted that Student had not been in a separate setting long enough before Student transferred out of District to know if a self-contained classroom was an appropriate placement for Student.
62. Student was in a self-contained classroom last year.
63. On Student's last psychological evaluation in 2019, Student scored average ability on the Wechsler Intelligence Scale for Children (WISC) except in listening comprehension and oral expression.
64. It was reported that Student was capable of completing grade level work.
65. Parent had an outside evaluation completed in 2020. In that evaluation, Student had been diagnosed with bipolar disorder and ADHD.
66. Student's medications have changed and Parent and Grandparent both reported that negative behaviors had diminished.
67. The November 17, 2022 IEP noted the need for a BIP and no extended school year services (ESY).
68. Student needed a full time 1-1 aide, placement in a self-contained classroom with the goal of transitioning Student to a resource room then the classroom.
69. Student was to receive 29.81 hours of special education services per week; 60 minutes of social work services per week, 30 minutes per week for case management, and 1698.7 minutes per week of life skills.
70. There was only one goal listed on Student's IEP. This was a social emotional goal to work on "I feel and I need" statements to understand feelings and learn appropriate coping skills.
71. Student received transportation as a related service.
72. The PWN noted that Student had multiple uncontrollable outbursts in the resource room. At that time, the IEP team agreed that a resource room placement was inappropriate.
73. When Student reenrolled in District on October 31, 2022, Parent agreed that home services were appropriate until a 1-1 aide was hired to work with Student. District agreed to track services and provide compensatory services when Student returned to school full time.
74. It was also agreed to on the PWN that Student would not be sent home for behavioral reasons and the use of restraint was a last resort.

Facilitated IEP and Subsequent Events

75. A facilitated IEP meeting was held on December 9, 2022. At that meeting, the IEP team agreed to have an outside evaluator conduct a comprehensive evaluation of Student to determine areas of need, eligibility, and how to address behavior and school avoidance and refusal.
76. In addition, an updated FBA and BIP were to be completed by outside providers to assist the District in developing an appropriate IEP.
77. Parent has provided consent for these assessments.
78. When Student has attended school, Student has been successful in completing work with minimal negative behaviors but often Student will not come to school or resists getting out of the car and will ask to call home and want to leave before the end of the day.
79. During Christmas break, the District proposed practicing getting on the bus, riding to school, and entering the building. This was tried one day without success and Parent refused to try it another day.
80. The District proposed in-home applied behavior analysis (ABA) services assist Student and work toward returning to school. Parent declined those services.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to provide comparable services to a special education eligible transfer Student and delayed the implementation of the IEP from another state school or the development and implementation of a new IEP in violation of 34 C.F.R. § 300.323 (f) and 6.31.2.13(h)(1) NMAC?

When a Student transfers in from another District within the State, the District must provide comparable services until a new IEP is developed and implemented. 34 C.F.R. § 300.323 (f) and 6.31.2.13(h)(1) NMAC.

Student disenrolled on October 12, 2022 and reenrolled in District on October 31, 2022. The receiving district did not request records from District nor was there any evidence that Student's IEP was amended or implemented by the receiving school. When Student reenrolled on October 31, 2022, the District and Parent discussed Student's placement and agreed that Student would remain at home receiving educational packets until a 1-1 aide was hired to work with Student. This continued until November 16, 2022, when Student returned to school half-days in the District.

However, it is also important to note that Student's annual IEP was due in September 2022 but was not completed until November 17, 2022. Since Student's IEP has lapsed, an IEP meeting should have been scheduled when Parent reenrolled Student on October 31, 2022. The IEP meeting that was finally held on November 17, 2022 was not properly noticed. Moreover, the school was not providing the services outlined in Student's previous IEP until an IEP meeting could be scheduled. Student was receiving homebound services with educational packets, and when Student returned to school on November 16, 2022, services were only for half-day. Student's IEP was not properly implemented, and the completion of the IEP on November 17, 2022 was an unreasonable and unjustified delay in the development and implementation of Student's annual IEP.

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

Issue No. 2.

Whether the District failed to develop and implement an IEP that met all of Student's educational needs that resulted from Student's disabilities and allowed Student to make educational progress in violation 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC?

A child's annual IEP must include measurable annual goals, both academic and functional, that meet the child's needs that result from the child's disability and allow the child to participate in and make progress in the general education curriculum. The IEP goals must address all of the child's needs that result from the child's disability. 34 C.F.R. § 300.320 (a)(2). IEPs must be revised annually. The IEP must include special education, related services, and supplementary aids and services to be provided to the Student. All of these required services are provided to enable the child:

1. to advance appropriately toward attaining the annual goals;
2. to be involved in and make progress in the general education curriculum in accordance with this section and to participate in extracurricular and other nonacademic activities; and
3. to be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

34 C.F.R. § 300.320 (a)(4). The IEP must be implemented with all required components as soon as possible. 34 C.F.R. § 300.323 (c). The IEP must be in effect at the beginning of the year. 34 C.F.R. § 300.323 (a). Reevaluations are to occur every three years or as needed to determine whether the child continues to be a child in need of special education and whether there are any new or modified needs that can be met through special education and related services to allow

the student to meet measurable annual goals and participate in the general education curriculum. 34 C.F.R. § 300.304.

Every IEP for a student must contain "[a] statement of the child's present levels of academic achievement and functional performance, including --How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children)" 34 C.F.R. § 300.320 (a)(1). This statement of PLAAFP assists in determining the needs of an individual student to develop annual goals to allow the student to receive FAPE and make progress in the general education curriculum. *Bakersfield City School District*, 51 IDELR 142 (SEA CA 2008). The PLAAFP must be comprehensive and provide a baseline that reflects all of the child's needs, both academic and nonacademic. This should also include relevant background information about needs, strengths, interests, and learning styles. 34 C.F.R. § 300.324 (a). The PLAAFP must be individualized to reflect the unique needs and abilities of a particular student. *Letter to New*, 211 IDELR 464 (OSEP 1987).

A child's annual IEP must include measurable annual goals, both academic and functional, that meet the child's needs that result from the child's disability and allow the child to participate in and make progress in the general education curriculum. The IEP goals must address all of the child's needs that result from the child's disability. 34 C.F.R. § 300.320 (a)(2). Annual goals should reflect what is reasonably expected to be accomplished during the annual IEP period. *Letter to Butler*, 213 IDELR 118 (OSERS 1988). The annual goals should be specific to be able to determine the progress made and the specific skills needed to achieve progress on the goals. 64 Fed. Reg. 12, 471 (1999). When Student is not making progress on their goals, the IEP team needs to meet to modify the goals or determine the need for additional support and services. 34 C.F.R. § 300.324 (b)(ii)(A).

In this case, the District did not have sufficient information to develop and implement an appropriate IEP for this Student. The last psychological evaluation was completed in 2019. Student had been hospitalized and had new diagnoses and new medication changes since that evaluation. Student had been removed from the resource room to a self-contained classroom with minimal access to peers and a 1-1 aide since last school year, but no additional assessments were requested. Although Parent had provided reports from Student's hospitalizations and diagnoses, an IEP meeting was not scheduled to review that information or determine if any changes were needed to the IEP. Moreover, although Parent consented to the plan when Student was reenrolled on October 31, 2022, Parent believed Student could not come to school until a 1-1 aide was hired for Student, so Student only received educational packets until the return on November 16, 2022 for half-days.

Student's IEP had lapsed because there was no special education teacher to prepare the IEP. The IEP meeting that was finally held on November 17, 2022 was without proper notice. The IEP did not contain all the needed information to develop goals and determine services for Student. For example, the PLAAFP did not have any academic scores because Student had not been in school since early October. Prior to Student's disenrollment, Student had been in the self-contained classroom with a 1-1 aide since the previous year, and Student was able to complete grade level work, yet the District could not outline Student's present levels. Upon Student's return to school after reenrollment, Student's day was shortened because of previous behaviors but they were not noted on the District's disciplinary records nor were assessments completed to determine the cause of the behaviors. The BIP developed in January 2020 had not been revised nor was data provided about its effectiveness. One must assume the BIP was not effective since Student was only attending half days and still having significant behaviors requiring Student to leave early or call Parent or Grandparent.

District had many options to address Student's behaviors including reconvening the IEP team, when BIP was not working and following Student's significant behavior incident on October 7, 2022. The District could have sought consent for updated assessments, timely completed the annual IEP, met as an IEP team when Student reenrolled to develop a plan for Student's return, revised the FBA and BIP, and reconvened the IEP team to amend the IEP. Instead, the District, without the involvement of the IEP team, would not allow Student to return to school until a 1-1 aide was hired, and during the interim, Student received educational packets to work on at home. When Student returned to school, Student only attended half-days, if Student attended at all. Recently, the District was attempting to evaluate Student to determine how to best meet Student's needs. However, this does not remediate the errors in educational programming for Student in the last year. The November 17, 2022 IEP did not provide FAPE or allow Student to make educational progress.

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

Issue No. 3

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

Students who are eligible for special education services are entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. Districts are obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17. The determination of whether there has been a denial of FAPE requires consideration of two components: substantive and procedural. The question one must

answer to determine the substantive standard is whether the IEP was “reasonably calculated to allow the child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County School District. RE-I*, 137 S. Ct. 988 (2017). The Court in *J.L. v. Mercer Island School District*, 592 F3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it resulted in the loss of an educational opportunity, infringed on parents' opportunity to participate in the development of the IEP or deprived the student of an educational benefit. All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx. 202 (2d Cir. 2010).

The District did not timely develop and implement an IEP that provided Student a FAPE. Student’s annual IEP had lapsed and a new IEP was written without proper notice. The Principal determined, without input from the IEP team, that Student should receive services at home until a 1-1 aide was hired. While there may be circumstances where a shortened day is needed or a self-contained classroom is warranted, those situations should be considered with caution by the IEP team and when a less restrictive environment is not appropriate.

Moreover, the District did not have up to date information about Student’s needs and without that information, the IEP team could not develop an IEP that was reasonably calculated to allow Student to make progress. There was a substantive denial of FAPE.

Furthermore, there were procedural violations on this record. The IEP did not have goals to address all of Student’s needs nor was there documentation about what Student was working on in the self-contained classroom for half a day. There were no present academic levels nor indication that the BIP was effective. If the BIP was clearly not effective, an IEP team meeting should have been reconvened to modify the IEP and BIP. Although Parent consented to the plan upon Student’s return, she reported that she did not believe she had a choice. There was an inadequate notice for the November 17, 2022 IEP meeting completed almost two months after the annual IEP was due because there was no special education teacher. All of these errors by the District resulted in a loss of educational opportunity, deprived Student of educational benefit, and denied Parent the opportunity to meaningfully participate in the IEP development.

It should be noted that the District has attempted, since the Complaint was filed, to address many of the concerns raised by the Complainants. They are in the process of conducting outside evaluations to determine Student’s present levels and needs. They have been trying various steps to get Student into school to receive educational programming. These attempts are a good first step, but they do not excuse the mistakes made during this and last school year.

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

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.323 (f) and 6.31.2.13(h)(1) NMAC.	The District failed to provide comparable services to a special education eligible transfer Student and delayed the implementation of the IEP from another state school or the development and implementation of a new IEP.
34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC.	The District failed to develop and implement an IEP that met all of Student’s educational needs that resulted from Student’s disabilities and allowed Student to make educational progress.
34 C.F.R. § 300.101 and 6.31.2.8 NMAC.	The District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE).

Required Actions and Deadlines

By February 3, 2023, 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@ped.nm.gov

The file on this complaint will remain open pending the PED’s satisfaction that the required elements of this Corrective Action Plan are accomplished within the deadlines stated. The District is advised that the 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 January 20, 2024 and reported to the SED no later than February 2, 2024. 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 SED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	February 3, 2023	Written Assurance Letter/Email	February 3, 2023
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	February 10, 2023	Notes from meeting prepared by District	February 17, 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>
	administrators or personnel in this meeting. The District Director shall be responsible for arranging this meeting with SED.			
3.	The District Special Education Director will meet with Student’s special education teachers, principal, and general education teachers to review the Complaint Resolution Report to ensure that those persons understand the complaint, the violations that were found, and the corrective actions that will be taken to address the violations.	February 17, 2023	Notes from meeting prepared by District	February 24, 2023
4.	<p>The District shall complete the previously planned comprehensive evaluation, which shall include an evaluation to a determination of PLAAFP as well as a psychological evaluation.</p> <p>Any evaluations or portions of an evaluation that have been conducted after January 1, 2022 may be included in the fulfillment of this evaluation requirement.</p>	March 10, 2023	Completed evaluation reports.	Within 15 days of completing evaluation report.
5.	The District shall complete the previously planned comprehensive Functional Behavior Assessment and revise Student’s current Behavior Intervention Plan based on the information obtained in the evaluation required in Step 4 and the FBA. The revisions to the BIP can	March 10, 2023	<p>Functional Behavior Assessment Report</p> <p>Behavior Intervention Plan</p>	<p>Within 15 days of completing FBA.</p> <p>15 days after the IEP meeting is held</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>
	take place in conjunction with the IEP team meeting required in Step 8.			
6.	<p>After the completion of the evaluations for Student, the District shall convene an IEP meeting as soon as possible. The IEP meeting shall address:</p> <ul style="list-style-type: none"> • Determination of Student’s Least restrictive environment (LRE); • Integration of Student back into full-day, in-person instruction in Student’s LRE; • Determination and documentation of the PLAAFP and appropriate measurable goals for each area of need where special education and related services are provided. • Additional needs identified through the comprehensive evaluation and update FBA; • Revision of Student’s BIP; • Periodic progress reporting plan to ensure the effectiveness of IEP and BIP and the next steps, if progress is not observed; and • Maintenance of service logs to document the provision of services, progress made, and provider. 	March 24, 2023	<ol style="list-style-type: none"> 1. Invitation to IEP meetings, 2. IEPs, 3. Prior Written Notices, and 4. Agenda for IEP team meetings 	15 days after the IEP meeting is held

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>The IEP meetings shall be held on a date and time that is convenient for the parent. The parent will be provided with a copy of the IEPs and PWNs at the conclusion of the FIEP meetings.</p> <p>The District Special Education Director shall participate in the IEP meeting. The District shall also ensure that the IEP team includes, but is not limited to, parents, special education teacher, general education teacher, and any related services providers.</p>			
7.	<p>In order to ensure that the District is monitoring the integration of Student back into full-time, in-person instruction, the District shall maintain a daily attendance log for Student which includes dates of attendance, excused and unexcused absences, dates of refusal to attend, any informal removals from school (both voluntary or involuntary), any formal discipline including in-school and out-of-school suspensions, or expulsion.</p> <p>The daily log shall also provide descriptions of the reasons for any informal or formal removal of Student from school.</p> <p>The District shall utilize this log to determine progress toward integration and shall seek possible revisions to Student’s IEP and/or BIP</p>		Monthly Daily Attendance Logs	Provided monthly beginning March 1, 2023 until December 31, 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>if Student’s regular attendance does not improve or diminishes. PED, in its review of these daily attendance logs, may require additional action based on Student’s diminished attendance or persistent removal from school.</p> <p>If Student maintains regular attendance for an extended period as determined by PED, the District may request that this requirement be terminated or modified prior to December 31, 2023.</p>			
8.	<p>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:</p> <ul style="list-style-type: none"> • Completing timely assessments in all suspected areas of need and ensuring needed data is available to the IEP team in the development of the IEP; • IEP meeting notice requirements; • Developing and implementing an appropriate IEP that includes providing services and supports for all areas of eligibility; 	March 31, 2023	<p>Confirmation of the date of the training</p> <p>Confirmation of attendees at the training and plan for addressing provision of training to those staff not in attendance</p>	<p>March 3, 2023</p> <p>April 7, 2023</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>
	<ul style="list-style-type: none"> • Providing present levels of academic achievement and functional performance, and the effects that the child’s disability has on the child’s ability to access the general education curriculum; • Developing appropriate individualized measurable goals that address a student’s individual needs in all areas of disability; • Implementation of FBAs and development of BIPs and; • Revision of FBAs and BIPs based on progress and/or changed behaviors. <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>January 16, 2023</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/ Michele Bennett

Michele K. Bennett, Esq.
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