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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Santa Fe Public Schools
Case No. C2223-29
February 10, 2023

This Report requires corrective action. See page 9–12.

On December 12, 2022, there was a complaint filed with the New Mexico Public Education Department's (NMPED) Special Education Division (SED) 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. §§ 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 Complainant, Special Education Director, Private School Liaison, and Private School Executive Directors; 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’s policies fail to require comprehensive evaluations and reevaluations of students with disabilities who are parentally placed in private schools located within the educational jurisdiction of the District, in violation of 34 C.F.R. § 300.131 and 6.31.2.11(N)(1)(c) NMAC;
2. Whether the District’s policies fail to require consultation with private school representatives for the provision of special education and related services to students with disabilities who are parentally placed in private schools located within the educational jurisdiction of the District, in violation of 34 C.F.R. § 300.134 and 6.31.2.11(N)(1)(g) NMAC; and
3. Whether the District’s policies fail to require the provision of equitable services to students with disabilities who are parentally placed in private schools located within the educational jurisdiction of the District, in violation of 34 C.F.R. § 300.138 and 6.31.2.11(N)(1)(f) NMAC.

General Findings of Fact

1. The District is home to many private schools within its educational jurisdiction.
2. This means that the District is the “school district of location” where the private schools are situated and it places a legal obligation on the District to consult with the private schools within the District regarding and the forms and provision of equitable services to parentally-placed private school children with disabilities.
3. According to Complainant, the District had historically fulfilled this responsibility by conducting consultation meetings or annual service plan review meetings for each special education student attending private school within the District.
4. Complaint also stated that related services such as occupational therapy, speech therapy, and physical therapy were provided to about a dozen students each year and the expenses associated with those services took up most of the proportionate share of IDEA Part B funds designated for private school students within the District.
5. These practices were altered during the 2022-2023 school year.
6. On October 4, 2022, the District sent a letter to all private schools in the area. The letter stated that the District “will no longer provide reevaluations, audiology evaluations, and ancillary services to students who are not currently enrolled in [the District].”
7. Furthermore, the letter declared that the District would only provide consultations, reevaluations, and related services to students within the attendance zone and enrolled with the District.
8. Some private schools responded with concerns about the policy changes reflected in the letter.
9. The District issued a second letter on November 22, 2022.
10. This follow-up letter clarified that the policy changes were designed to discontinue a prior practice of evaluating parentally-placed private school children with disabilities every year.
11. The letter further explained how the District’s Private School Liaison would continue consultation meetings and annual service plan review meetings but that any additional services would have to be determined on a case-by-case basis.
12. Interviews with private school directors and staff show that the District’s shift in policy resulted in a suspension of related services, delays in performing initial evaluation or reevaluations, and inconsistent scheduling of consultation and service plan review meetings.
13. Multiple private school representatives highlighted the fact that they had students needing related services and the District was not providing them.

14. The District's Special Education Director said the rationale for modifying their policies towards private schools was to discourage the practice of private schools using annual evaluations as a means of progress monitoring their students.
15. While the Director confirmed that evaluations were being performed for parentally-placed private school children with disabilities, he also acknowledged that there is a 7–8 month delay in completing such assessments.
16. When asked about the District's requirement that a private school student also be a resident of the District, the Special Education Director stated that they were under the impression that a private school student had to reside within the District to be eligible for a District-conducted evaluation.
17. Audiology evaluations are still administered by the District but the Special Education Director made clear that there had to be a reasonable basis for suspecting a student had auditory processing issues before proceeding with that specific type of evaluation.
18. The Special Education Director asserted that the District lacks sufficient staff to provide occupational therapy, speech therapy, and physical therapy services to parentally-placed private school children with disabilities. As a result, no related services have been provided in a private school setting during the 2022-2023 school year.
19. The Director said that the proportionate share of IDEA Part B funds available to serve parentally placed private school children with disabilities was insufficient to provide direct services to students in private school.
20. Nevertheless, Director did describe how they communicate directly with private school administrators and that the District will provide equipment or materials to support private school students in need of assistive technology.
21. The District's Private School Liaison provides the bulk of services to parentally-placed private school children with disabilities. Sixty percent of the Liaison's time is dedicated to consultation and training with private schools.
22. An annual consultation meeting between the Liaison, private school, and parents of the student is held for each parentally-placed private school child with a disability.
23. The Liaison also provides the following services: (a) staff training; (b) parent training; (c) classroom observations and interviews with teachers to assist them in identifying children suspected of having a disability; (d) referrals to District diagnosticians to evaluate private school students who are suspected of having a disability; (e) review of evaluation reports with private school and parents; (f) and drafting of service plans with private school officials and parents.
24. Once an evaluation is completed, Liaison sets up a consultation meeting with the private school and parents to determine eligibility for special education. If student is deemed eligible, then Liaison will develop a service plan with all parties.

25. Liaison is also a BCBA and they develop service plans that incorporate accommodations and modifications that contain strategies for addressing the behavioral needs of a specific student.
26. The District produced meeting logs showing that 31 consultation meetings took place during the 2022-2023 school for purposes of determining special education eligibility and developing or revising service plans. Private school representatives were present at these meetings and signed their names in the meeting logs.
27. Aside from one consultation meeting taking place in September, the vast majority of the consultation meetings took place on or after October 4, 2022 (the date in which the District issued its first letter regarding the scope of child find activities and equitable services).

Discussion and Conclusions of Law

Issue No. 1

Whether the District's policies fail to require comprehensive evaluations and reevaluations of students with disabilities who are parentally placed in private schools located within the educational jurisdiction of the District, in violation of 34 C.F.R. § 300.131 and 6.31.2.11(N)(1)(c) NMAC.

Every local educational agency is required to locate, identify, and evaluate children with disabilities enrolled by their parents in private schools located in the school district served by the LEA. 34 C.F.R. § 300.131(a). This child find process is intended to ensure that parentally-placed private school students can equitably participate in special education services. *M.B., et al., Plaintiffs, v. Chester County Intermediate Unit, Defendant*, No. CV 19-2622-KSM, 2022 WL 541779, at *11 (E.D. Pa. Feb. 22, 2022). The LEA where the private school is located, not the LEA where the child resides, is responsible for conducting child find including initial evaluations and reevaluations. 71 Fed. Reg. 46592 (2006); *see also*, Office of Special Education Programs, QUESTIONS AND ANSWERS SERVING CHILDREN WITH DISABILITIES PLACED BY THEIR PARENTS IN PRIVATE SCHOOLS, A-9 (February 2022).

The District's policies unlawfully place a residency requirement on conducting evaluations for parentally-placed private school children with disabilities. The Special Education Director acknowledged during their investigation interview that the District believed a private school student had to reside in the District to get an evaluation conducted by District staff. This position is in complete contravention of the implementing regulations of IDEA which squarely place child find and evaluation responsibilities for parentally-placed private school children with disabilities

on the school district where the private school is located. The District also points to the elimination of annual reevaluations of private school students as the reason for implementing the change in evaluation policy for private school students. Yet the prerequisite that a student verify their in-District residence goes well beyond the scope of reigning in excessive evaluations and instead carries the risk of categorically denying nonresident private school students from equitable participation in special education services. For these reasons, the District's current policy of limiting evaluations to in-district student residents is a failure to require initial evaluations and reevaluations for parentally-placed private school students with disabilities.

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

Issue No. 2

Whether the District's policies fail to require consultation with private school representatives for the provision of special education and related services to students with disabilities who are parentally placed in private schools located within the educational jurisdiction of the District, in violation of 34 C.F.R. § 300.134 and 6.31.2.11(N)(1)(g) NMAC.

LEAs must consult with representatives of the private school and the students' parents at the point when a plan for special education and related services is being developed for the student. 34 C.F.R. § 300.134. Consultation must cover several areas. For example, the consultation process will discuss child find considerations including how the child with a disability will equitably participate in an LEA's services and how parents, teachers, and private school administrators will be informed of the process. 34 C.F.R. § 300.134(a). The LEA has to address how the proportionate share of IDEA Part B funds to serve parentally-placed private school children with disabilities was calculated. 34 C.F.R. § 300.134(b). Consultation carries with it an obligation on the LEA to explain how the process itself will take place and operate throughout the school year. 34 C.F.R. § 300.134(c). This process also includes a service delivery discussion about the types of services, how services will be apportioned, and how these decisions will be made. 34 C.F.R. § 300.134(d). Finally, if an LEA disagrees with the views of private school representatives regarding service delivery, then an LEA must provide a written explanation of the final determination regarding services. 34 C.F.R. § 300.134(e).

The evidence in this case supports a finding that the District did not consult with private schools before discontinuing evaluations, reevaluations, and direct services for private school students residing out-of-district. The consultation records do not show that the District extended any opportunity to the private schools within the District to express their views about the need for evaluative and therapeutic services among private school children with disabilities. Instead, the District made a final decision about child find and equitable services by issuing letters in October

and November 2022 that effectively restricted access to either type of service. The lack of collaboration between the District and the private schools before engaging in such broad policy changes constitutes a failure to comply with the consultation process.

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

Issue No. 3.

Whether the District's policies fail to require the provision of equitable services to students with disabilities who are parentally placed in private schools located within the educational jurisdiction of the District, in violation of 34 C.F.R. § 300.138 and 6.31.2.11(N)(1)(f) NMAC.

Equitable services are the special education and related services that LEAs are required to offer and provide to parentally-placed private school children with disabilities. 34 C.F.R. § 300.138(b)(1). However, a parentally-placed private school child with a disability has no individual right to receive some or all of the special education and related services that they would receive if enrolled in public school. 34 C.F.R. § 300.137(a). IDEA does not require an LEA to spend their proportionate share solely on direct services to students and may opt for indirect services instead. 34 C.F.R. § 300.134(d)(1); *see also* Office of Special Education Programs, QUESTIONS AND ANSWERS SERVING CHILDREN WITH DISABILITIES PLACED BY THEIR PARENTS IN PRIVATE SCHOOLS, D-6 (February 2022).

Here, the District shifted the use of their proportionate share funds from related services to indirect types of services. This was a determination due to the local circumstances of the District (staffing shortage of related services providers) and the funds available to expend on private school students (prior expenditures on related services for a minimal number of private school students took up most of the proportionate share). The District now provides equitable services in the form of staff/parent training and behavior consulting as well as the provision of material and equipment to support private school students displaying a need for assistive technology.

However, this shift in policy was impermissible because the District did not consult private school representatives and parents before reaching the determination to entirely roll back related services in favor of indirect services. This is a violation of 34 C.F.R. § 300.134(d)(1) because timely and meaningful consultation must be carried out with all parties before the District makes a final decision about the type of equitable services to be provided. By unilaterally determining how to spend its proportionate share, the District committed an IDEA procedural violation in its provision of equitable services for the 2022-2023 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. § 300.131 and 6.31.2.11(N)(1)(c)	The District failed to require comprehensive evaluations and reevaluations of students with disabilities who are parentally placed in private schools located within the educational jurisdiction of the District.
34 C.F.R. §§ 300.134, 300.138 and 6.31.2.11(N)(1)(f) & (g) NMAC	The District failed to use the consultation process before shifting its use of proportionate share funds to fund indirect equitable services.

Required Actions and Deadlines

By February 17, 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 September 1, 2023, and reported to the SED no later than September 15, 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 SED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	February 17, 2023	Written Assurance Letter/Email	February 17, 2023
2.	The District Special Education Director, and the private school liaison shall meet with the SED Education Administrator assigned to the District and the 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.	February 27, 2023	Notes from meeting prepared by District	March 6, 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>
3.	<p>The District will revise Board Policy 405 to codify its legal responsibility to locate, identify, and evaluate <u><i>all</i></u> children with disabilities who are enrolled by their parents in private schools located within the District. The policy must further require that the District consult with private school representatives and parents of parentally-placed private school children with disabilities before making final decisions as to how the proportionate share of IDEA Part B funds are used for direct or indirect equitable services.</p> <p>The revised policy is subject to PED approval prior to its submission to the Board of Education for ratification.</p>	<p>March 31, 2023</p> <p>March 10, 2023</p>	<p>Copy of revised Board-approved policy 405 for</p> <p>Copy of revised Board Policy 405</p>	<p>April 7, 2023</p> <p>March 10, 2023</p>
4.	<p>Following Board approval of the revised policy, the District will issue a letter to all private schools located within the District summarizing the changes in Board Policy 405.</p>	<p>April 14, 2023</p>	<p>Copy of Letter to private schools</p>	<p>April 21, 2023</p>
5.	<p>The District shall consult with representatives of each private school in their educational jurisdiction to ascertain whether there are any non-resident private school students in need of evaluation, reevaluation, or equitable services.</p>	<p>May 24, 2023</p>	<p>Written affirmations signed by private school representatives attesting to their participation in the consultation.</p> <p>Copies of evaluation referrals and updated service plans</p>	<p>May 24, 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>
6.	<p>The District shall contact each private school located in the District and convene consultation meetings with representatives of the private school and representatives of parents of parentally-placed private school children with disabilities to discuss the following:</p> <ul style="list-style-type: none"> • The child find process and how parentally-placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process; • The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated; • How the consultation process among representatives of the District, the private schools, and the parents of parentally-placed private school children will take place, including how the process will operate throughout the school year to ensure that parentally-placed private school children with disabilities 	September 1, 2023	<p>Written affirmations signed by private school representatives attesting to their participation in the consultation.</p> <p>Copies of detailed notes from the meeting summarizing the discussion amongst the parties.</p>	September 15, 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>identified through the child find process can meaningfully participate in special education and related services;</p> <ul style="list-style-type: none"> • How, where, and by whom special education and related services will be provided, including a discussion of types of services, including direct services and alternate service-delivery mechanisms, as well as how the services will be apportioned if funds are insufficient to serve all children; and how and when decisions regarding services will be made; and • How, if District representatives disagree with the views of the private school officials on the provision of services or the types of services provided directly or through a contract, the District will provide to the private school officials a written explanation of the reasons why the District chose not to adopt the recommendations of the private school officials. 			

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/ Michael Gadomski

Michael W. Gadomski, 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