



Dispute  
Resolution

# Special Education Dispute Resolution

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# Agenda

Dispute Resolution Activity 2022-  
2023 School Year

Notable Dispute Resolution Decisions

New Evaluation and Eligibility  
Determination Rules

Online Dispute Resolution System



# Dispute Resolution Update

Due Process Hearing Requests 2022-2023 School Year as of February 9, 2023	
Due Process Hearing Complaints	14
DPH Mediations Held	10
DPH Cases Resolved in Mediation	10
DPH Facilitated IEP Meetings Held	0
DPH Resolved in Facilitated IEP Meetings	0
DPH Resolution Sessions Held	1
DPH Cases resolved in Resolution Sessions	1
Dismissal w/o Hearing or Settlement	0
Hearings Held	0
Pending Cases	4

# Dispute Resolution Update

## State Level Complaints for 2022-2023 School Year as of February 9, 2023

State-Level Complaints	39
SLC Mediations Held	7
SLC Cases Resolved in Mediation	6
SLC Facilitated IEP Meetings Held	7
SLC Resolved through Facilitated IEP Meetings	3
SLC Resolved through other Means	1
Complaints Dismissed, or Declined	8
Investigations Completed	21 (18 with Non-compliance Findings)
Pending Cases	8

# Dispute Resolution Update

## 3<sup>rd</sup> Pty Interventions During 2022-2023 School Year as of February 9, 2023

3 <sup>rd</sup> Party Intervention Requests	8
Mediated Agreements	2
Declined or Withdrawn Before Mediation	1
Pending	2

# Notable Dispute Resolution Decisions 2022-2023

BY MICHAEL W.  
GADOMSKI, ESQ.

ASSISTANT GENERAL  
COUNSEL

## State Complaint Investigation Trends

SED has received and accepted 39 state complaints for the 2022-2023 school year.

The most common issue subject to investigation is IEP development and implementation (28).

Other recurring issues are Child Find, Evaluation, and Eligibility (8).

Parental Participation (5) is another relatively frequent issue as well.

# C2223-01, Alamogordo Public Schools

- ❖ Two complaints involving two brothers attending the same school district.
- ❖ The complaints alleged that the District failed to conduct reevaluations, develop appropriate IEPs, consider autism strategies, conduct MDRs, conduct FBAs/BIPs, denied parents meaningful participation, and monitor students' educational progress.
- ❖ The investigation led to SED citing the District for failure to conduct triennial reevaluations (or obtain agreement from parent to waive the reevaluations), failure to develop IEPs tailored to the students' individual needs, failure to document the consideration of autism strategies, and monitor students' IEP progress.
- ❖ These violations led the investigator to conclude that both students were denied FAPE because the District had failed to develop appropriate IEPs.
- ❖ Corrective Action included an independent audit. The audit was completed and auditors recommended improvements in areas such as IEP drafting (PLAAFP, Goals), conducting REEDs as part of a reevaluation, use of EDT after REED completed, and documenting progress in each IEP goals.
- ❖ The audit report recommended professional development training in writing PLAAFP, drafting IEP goals, carrying out the EDT and REED processes, and progress reporting.



# C2223-07, Organizing Parents Education Network v. New Mexico Public Education Department

- ❖ A parent advocacy organization filed a state complaint against PED alleging that the state agency failed in its general supervisory capacity to ensure that school districts considered the need for recovery services upon returning to in-person learning and instead placed the burden on parents to request these recovery services.
- ❖ An independent complaint investigator was assigned to conduct the investigation. The investigation included responses from school districts.
- ❖ The investigator concluded that PED had properly issued a series of guidance documents which encouraged school districts to review data of individual student progress and determine whether to convene an IEP Team meeting for recommending recovery services. Furthermore, parents were permitted to participate in the IEP team process where any decisions regarding recovery services would be made.
- ❖ No corrective action.

## C2223-08, Belen Consolidated Schools

- ❖ Parent filed state complaint alleging the District did not provide transition planning and failed to implement child's IEP.
- ❖ The investigation found that the District had developed the student's IEP to address their transition service needs.
- ❖ However, the District was cited for not using the IEP process to address student's excessive absenteeism which resulted in a material failure to implement the IEP because Student was rarely in class to receive specialized instruction and vocational therapy.
- ❖ Corrective action included a reevaluation of student, IEP meeting to review reevaluation, training on how to address truancy in an IEP, and meeting with parent and student to develop attendance improvement plan.

## C2223-13, Santa Fe Public Schools

- ❖ Grandparent filed a complaint on behalf of their child alleging that the District failed to timely evaluate student in all areas of suspected disability, develop and implement an IEP, and denied parent participation in the development of the IEP.
- ❖ The investigation found that the District failed to conduct an OT evaluation, dyslexia assessment, and assistive technology evaluation which were requested by the family at the time a reevaluation was due. There were delays in student's receipt of specialized instruction, discrepancies in student's PLAAFP, inconsistent progress monitoring, and lack of qualified staff to implement IEP.
- ❖ Parental participation was adversely impacted by IEP meeting delays and tabled meetings.
- ❖ A substantive FAPE denial resulted from the lack of a comprehensive evaluation and understanding of PLAAFP whereas a procedural FAPE denial (deprivation of an educational opportunity) stemmed from an IEP lapse, refusal to conduct parent-requested evaluations without issuing a PWN, and delays in implementing the IEP due to staffing issues.
- ❖ Corrective Action consisted of an AT and OT evaluation, Home Support Plan (so student can access online study programs), develop plan for compensatory services, FIEP meeting, and staff training.

## C2223-14

- ❖ Former teacher filed a systemic state complaint alleging charter school failed to provide specialized instruction to special education students.
- ❖ Fifteen special education students were selected as a sample to conduct the investigation.
- ❖ The investigation found that most students from the sample received specialized instruction as contained in their IEPs except for a student with an intellectual disability who was alternately assessed. In this student's case, the charter school failed to develop a uniform process for modifying the student's curriculum and instruction which prevented staff from properly implementing the IEP.
- ❖ Additionally, this student was found to have been substantively denied FAPE because the specialized instruction and IEP goals were not reasonably calculated to enable student's educational progress.
- ❖ Corrective Action included reevaluation of student by PED-appointed diagnostician, diagnostician would review evaluations of all other students who are alternately assessed, independent expert to provide on-site training to staff working with alternately assessed students, and IEP meeting with independent expert to review student's reevaluation and revise IEP accordingly.

# C2223-18, Hobbs Municipal Schools

- ❖ Parent filed state complaint alleging the District failed to develop and implement an appropriate IEP and integrate behavioral planning services and supports to address student's behavior needs.
- ❖ The investigation found that the District did not timely conduct additional assessments (to ascertain whether student's needs changed over time) and did not complete performative information to develop goals specific to student's needs. District was found to have properly developed, implemented, and modified a BIP for student.
- ❖ The delay in assessing Student, incomplete PLAAFP, and inappropriate IEP goals resulted in a substantive FAPE denial.
- ❖ Corrective Action included meeting with student to discuss behaviors/absences, 100 hours of compensatory education, FIEP, and staff training on IEP development and timely evaluations.

## C2223-20, Cuba Independent Schools

- ❖ Parent filed state complaint alleging the District failed to meet their child find obligation for student, conduct a timely initial evaluation of student, and issue a PWN following District's refusal to evaluate.
- ❖ The investigation found that the District failed to adhere to their child find policies by not initiating an evaluation after the SAT team referred student and parent provided consent to evaluate. District took 195 days to complete initial evaluation of student after parent had provided consent. No PWN was provided to explain District's intent to evaluate.
- ❖ The series of violations constituted a procedural FAPE denial because Student was unnecessarily deprived access to special education and related services.
- ❖ Corrective action included 21 hours of compensatory services, staff training (child find, PWNs, and evaluation timelines), and inputting prior parent consent as part of 80-day data submission for December 2022.

# C2223-21, NADLC v. Bloomfield School District

- ❖ Nonprofit filed a state complaint alleging the District failed to develop appropriate IEPs for students previously attending an in-district behavior intervention program and parents were denied meaningful participation in redeveloping IEPs once students were placed in classroom settings.
- ❖ The investigation concluded that most students previously in the behavior intervention program had appropriate IEPs developed for them. However, there were three students who did not have properly developed IEPs because they were either denied any form of classroom teacher instruction, their IEP did not address ongoing truancy, or student's IEP and BIP were ineffective at addressing their behavioral needs. These were the same reasons for finding a substantive FAPE denial for the three students.
- ❖ Parents were found to have had an opportunity to meaningfully participate in developing students' IEPs.
- ❖ Corrective Action included staff training (strategies for assisting students with mental health or behavioral needs), evaluate one student, FIEPs for all three students, develop attendance improvement plans for all three students, and 50 hours of compensatory instruction to one student.

# C2223-22, Santa Fe Public Schools

- ❖ Grandparent filed a state complaint alleging grandson and other similarly situated students at a District elementary school were deprived of qualified EAs, special education teachers, and related service providers.
- ❖ The investigation found that the District had a shortage of special education teachers and related service providers at the elementary school resulting in student being denied speech therapy services and receiving specialized instruction at times from a substitute teacher. Turnover in EAs impacted student's ability to access educational curriculum.
- ❖ The service logs for the other students in the sample were difficult to interpret and suggest that students were receiving services from unqualified staff.
- ❖ These deficiencies (including no information in the PLAAFP section of IEPs) resulted in a denial of FAPE because the District could not develop appropriate goals or provide special education and related services via qualified providers.
- ❖ Corrective action included the main student who was the subject of the complaint receiving an autism and auditory processing evaluation as well as compensatory education in the form of 450 minutes of speech therapy and 1000 minutes in reading, math, and functional skills.
- ❖ Additionally, an audit of student files at this school was ordered to determine if special education was generally provided by qualified personnel from October 20, 2021 to December 19, 2022. The District would then have to develop a plan for providing compensatory education to those students identified in the audit who missed special education and related services during that period.
- ❖ District also had to develop a plan for hiring and retaining licensed special education teachers, related service providers, and EAs at this elementary school.



## C2223-25, Animas Public Schools

- ❖ Parent filed state complaint alleging District failed to provide Procedural Safeguards Notice, conduct a comprehensive initial evaluation, perform an IEE at public expense, and develop and implement an IEP for student.
- ❖ The investigation found that the District failed to provide a notice of the parent and child rights procedural safeguards notice after parent requested an initial evaluation. The initial evaluation was not comprehensive because testing was incomplete (no intelligence or academic testing). Parent did not request an IEE because they sought a private autism evaluation before District had completed their evaluation. Ultimately, the District developed an appropriate IEP because all evaluative information was considered, various goals were created, and appropriate services were recommended.
- ❖ District committed a procedural FAPE denial because the lack of comprehensive testing in the initial evaluation provided limited information to develop individualized goals or services and precluded parents from requesting an IEE.
- ❖ Corrective action included a psychoeducational evaluation (with academic and intelligence testing), review updated evaluation, and staff training (PSN, response to parental request to evaluate, evaluating in all areas of suspected disability).



Questions



Dispute  
Resolution

# Online Dispute Resolution System

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## Welcome To New Mexico PED Special Education Dispute Resolution Center

Submit & Track SED Dispute Resolution Cases - Due Process, Expedited Due Process, Mediation, & State Complaint

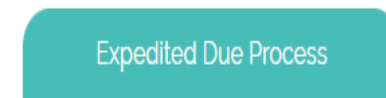
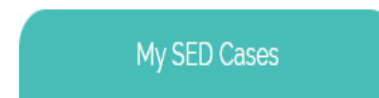
### Submit a New Case

1. Choose a dispute type from the drop-down menu and click the Next button.
2. Fill out the requested information for the form and click the Submit button.
3. You will have the option to upload related documents after submitting the initial form.
4. Click on the "Review Case" to view the case details, or upload files.
5. If you need assistance filing a complaint, please contact the ADR Coordinator at [Dispute.Resolution@state.nm.us](mailto:Dispute.Resolution@state.nm.us).

Options for Dispute Resolution

--None--

Next



### DISPUTE RESOLUTION OVERVIEW/SUMMARY

The child's parent(s) and school personnel work together to make decisions about the student's education, resulting a generally positive working relationship. However,

there are times when the parent(s) and school personnel do not agree

# Home Page

**Details Concerning Complaint:**

\* Complainant, please describe how the school district or charter school has violated a requirement of Part B of the Individuals with Disabilities Education Act and the facts relating to the complaint: (Who? What? Where? Why?) Attach additional pages if needed and any documents that support your position. ⓘ

Does the complaint allege violations of the IDEA Part B that occurred in the last year? ⓘ

--None--

IDEA Part B Violations Dates ⓘ

Describe a proposed resolution of the problem to the extent known: ⓘ

Will the assistance of an interpreter or other accessibility accommodations be needed?

-- none selected --

**Alternative dispute resolution is a voluntary process available to parents at no cost and can often result in more expedient resolution of conflicts. This may proceed concurrently with the Due Process Hearing procedure. Please indicate your interest in the options below:**

- I am interested in a mediation session where the public agency and I agree to meet with an assigned mediator to potentially create a legally binding mediation agreement.
- I am interested in a state-facilitated individual educational plan (IEP) team meeting with an assigned facilitator to attend an IEP team meeting and assist in completing the student's IEP.
- Both

I declare that the foregoing is true and correct to the best of my knowledge after reasonably and diligent inquiry

I affirm that I will forward this request to the School District, Charter School, or other Public Agency. (This form can be printed or saved by clicking the Printview button on your new case after this form is submitted)

\* Signature ⓘ

# State Complaint Form

· Filer Status

--None--

**Student Information:**

If the alleged violation of state or federal special education law is with respect to a specific child, please provide the following information:

\* Student's First Name

\* Student's Last Name

· Student's School District ⓘ

--None--



\* School Student Attends

Student's Date of Birth (Optional)

**Student's Address of Residence (or available contact information for students who are homeless):**

Street

City

State/Province

NM



Zip/Postal Code

Country

US

**Complainant Information:**

\* Complainant First Name

\* Complainant Last Name

**Complainant Address**

Street

City

State/Province

NM



Zip/Postal Code

Country

US

Phone number(s) and Email Address:

Home

Work

Cell

Email

you@example.com

Fax

# State Complaint Form



PED Cases

My SED Cases ▼

Printable View



	PED Case Number ↑	Owner Name	SED Internal Case Num...	PED Case Record Type	SED Received Date	Status	Dispute Resolution Status	Complainant Case
1	<a href="#">00001006</a>	SED Team	CFM17	Due Process	5/2/2022	Open Complaint	Hearing Officer Appointed	▼
2	<a href="#">00001014</a>	SED Team	C2223-TT	State Complaint with Investigation	5/13/2022	Open Complaint	Case Investigator Appointed	▼
3	<a href="#">00001030</a>	SED Team	M2223-TT	Mediation	7/5/2022	Open Complaint	Mediator Assigned	▼
4	<a href="#">00001118</a>	SED Team	T 2223-01	State Complaint with Investigation	11/28/2022	Open Complaint	Case Investigator Appointed	▼

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# Case List



Status	Dispute Resolution Status	PED Case Record Type	Complainant PED Case
Open Complaint	Case Investigator Appointed	State Complaint with Investigation	

▼ PED Case Information

PED Case Owner SED Team
PED Case Number 00001014
SED Internal Case Number ⓘ C2223-TT
SED Received Date ⓘ 5/13/2022
Status Open Complaint
Dispute Resolution Status ⓘ Case Investigator Appointed
CRR Amended Draft Deadline ⓘ
Public Agency 2 ⓘ
Public Agency #2 Attorney ⓘ
Public Agency #3 Attorney ⓘ
Public Agency #2 Rep ⓘ
Public Agency #3 Rep ⓘ

PED Case Origin Email
Priority Medium
Complainant PED Case
Filer Status
PED Case Record Type State Complaint with Investigation

# Case Information



## ✓ SED Student & Parent/Guardian/Surrogate Parent Details

Student

[Student Test](#)

Student's School

Test School

Student's Date Of Birth

12/8/2016

## ✓ SED Complaint Filer Contact Details

Contact Name

[Miguel Lozano](#)

Account Name

[Miguel Lozano](#)

Signature

Miguel Lozano

## ✓ SED Case Associated Parties Details

Public Agency ⓘ

21st Century Public Academy

Public Agency Attorney ⓘ

[Public Agency Attorney](#)

Public Agency #1 Rep ⓘ

Other Representative

Complaint Sent to Public Agency? ⓘ

Yes

Date Complaint Sent to Public Agency ⓘ

12/15/2022

Parent Advocate ⓘ

## ✓ SED State Complaint Information

SED External Partner Assigned ⓘ

[Lisa Arbogast](#)

Acknowledgement Letter Date Sent ⓘ

12/23/2022

Parent, Guardian, or Surrogate Parent

[Miguel Lozano](#)

Interpreter Needed? ⓘ

No

Interpreter Language Needed ⓘ

Contact Email

[bgmike6@aol.com](#)

Contact Phone

Contact Mobile

Parent Attorney

Other Agency ⓘ

Public Agency #1 Rep 2 ⓘ

Other Agency 3

ADR Interest ⓘ

Both

ADR Outcome ⓘ

# Case Information



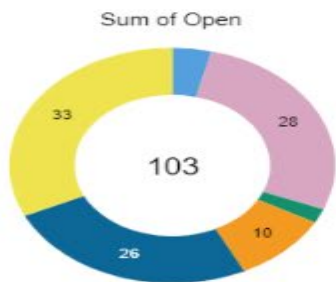
# SED Dispute Resolution Dashboard

Last refreshed 26 days ago. Refresh this dashboard to see the latest data.

As of Jan 10, 2023, 8:03 AM Viewing as Miguel Lozano

Open Refresh

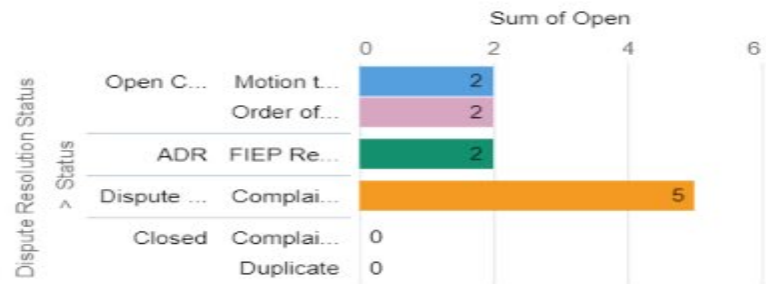
## Open SED Cases by Record Type



PED Case Record Type

[View Report \(Open SED Cases by Record Type\)](#)

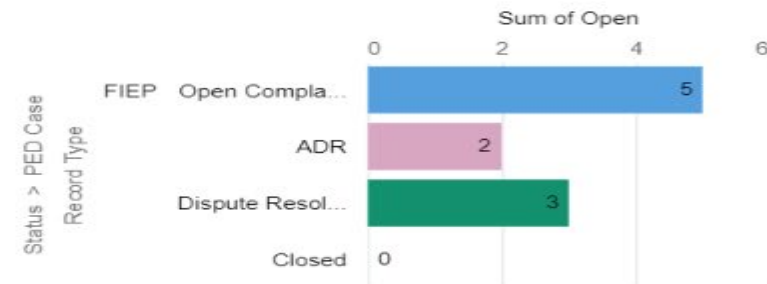
## Due Process Cases with ADR Cases



Dispute Resolution Status

[View Report \(Due Process Cases with ADR Cases\)](#)

## FIEP SED Cases



Status

[View Report \(FIEP SED Cases\)](#)

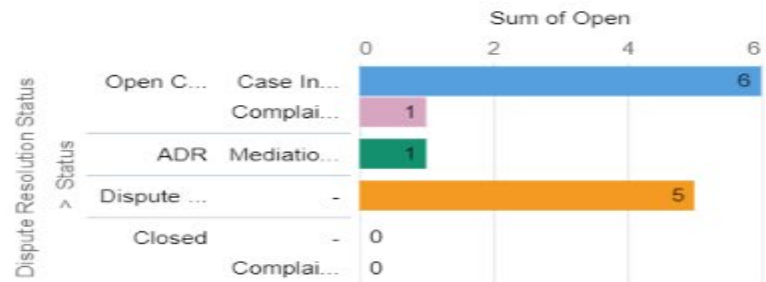
## Closed SED Cases by Record Type



Status

[View Report \(Closed SED Cases by Record Type\)](#)

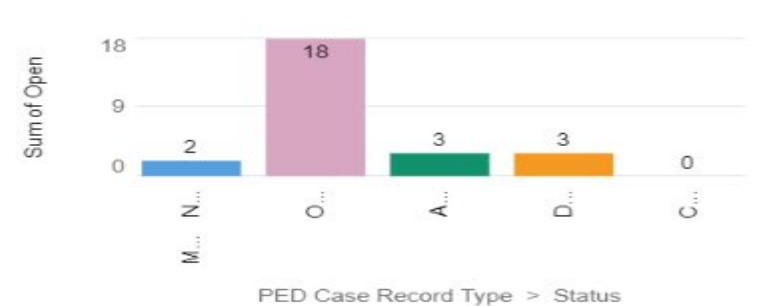
## State Complaint Cases with ADR Cases



Dispute Resolution Status

[View Report \(State Complaint Cases with ADR Cases\)](#)

## Mediation SED Cases



Status

[View Report \(Mediation SED Cases\)](#)

# Internal Data Reporting and Analysis



Questions



Evaluation and  
Eligibility  
Determination  
Rule  
NMAC 6.31.2.10

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# Evaluation and Eligibility Determination Rule

## NMAC 6.31.2.10

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- Special Education Transformation Team Rules Workgroup
  - PED Attorneys
  - Parent Advocate Attorneys
  - School District Attorney
- Additional Experts engaged as needed
- Solicitation of Stakeholder Input Prior to Formal Rulemaking
- Notice of Rulemaking: November 29, 2022
- Written Public Comments: 16
- Rules Hearing: January 3, 2023
- Oral Public Comments: 6
- Final Rule: January 18, 2023
- Effective Date: July 1, 2023



# Summary of Rule Changes:

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Requests for evaluations and evaluations during MLSS Interventions

Requirements after student graduates or exceeds the age of eligibility

Written Informed Consent and Consent Override



# Summary of Rule Changes:

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15 school day deadline  
for response to parental  
request for an  
evaluation

Requirements for  
licensed personnel  
when an oral or written  
request for an  
evaluation is received

15 school day deadline  
for response to referral  
for evaluation

Challenges to LEA  
response or lack of  
response to a request  
to evaluate



# Summary of Rule Changes:

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60 calendar day  
deadline for  
completion of the  
Evaluation Report

Evaluation Report  
provided to parent at  
least 2 calendar days  
prior to the EDT

Explicit requirements  
for Independent  
Educational  
Evaluation requests





# Summary of Rule Changes:

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15 school day deadline  
for Eligibility  
Determination Meeting

Removing the use of  
the Severe Discrepancy  
Model for the  
evaluation of Specific  
Learning Disabilities

Requiring the Dual  
Discrepancy Model to  
identify specific  
learning disabilities for  
students in K-12.



Questions