



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us

ARSENIO ROMERO, PH.D.
SECRETARY OF EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Corrected Complaint Resolution Report
Santa Fe Public Schools
Case No. C2223-51
September 14, 2023**

This Report requires corrective action. See pages 8–9.

On June 30, 2023, 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 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 Complainant, Special Education Director, and Private School Liaison; 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. Additionally, the Complaint Investigator did not investigate the following issues raised by the Complainant:

1. Any issues that were investigated as part of the state complaint case C2223-29, including the propriety of the District’s provision of indirect services to parentally placed private students; and
2. Any potential non-compliance that has already been addressed as part of the corrective action resulting from state complaint case C2223-29.

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 appropriately allocate or expend a proportionate share of its IDEA Part B Grant funds on 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. § 300.133 and 6.31.2.11(N)(1)(e) NMAC.

General Findings of Fact

1. The Complainant filed this complaint raising issues with the District's decisions regarding the provision of equitable services to parentally-placed private school children with disabilities attending private schools within the District.
2. The complaint alleges that the District has inappropriately spent a part of their IDEA Part B proportionate share funds (slated for parentally placed private school students with disabilities) on administrative expenses and meeting their child find legal obligations.
3. The response from the District shows that 86.5% of the expenditures from the proportionate share were on funding the Private School Liaison ("Liaison") salary (approximately \$86,000.00 according to an email from the Special Education Director dated August 29, 2023).
4. The total amount for the proportionate share during the 2022-2023 school year was \$93,078.92.
5. The Liaison serves as the conduit between the District and the private schools located within the geographical boundaries of the District for purposes of providing equitable services to parentally-placed private school children with disabilities.
6. Two days a week, the Liaison works directly with private schools to carry out consultation meetings and talk with private school staff about accommodations, modifications, and behavioral strategies for students with disabilities attending private schools. Additionally, the Liaison works on drafting service plans for students with disabilities following their consultation meetings at the private schools.
7. The Special Education Director stated that the Liaison's drafting of the service plans was not an administrative function but rather part of the provision of equitable services to private school students with disabilities. The Director further explained that the service plans are focused on providing private school students with disabilities with accommodations and modifications in the classroom setting, especially for those students with behavioral needs.
8. Another two days a week, the Liaison handles child find activities for the private school students suspected of having disabilities. This includes processing requests to conduct initial evaluations of students attending private schools.
9. The other remaining day of the week, the Liaison attends in-District meetings and provides support to District schools and charter schools.
10. The Complainant raised concerns about whether proportionate share funding is limited to the Liaison's provision of equitable services and that any other additional work responsibilities of the Liaison should be supported through separate education funds. Otherwise, a potential overlap between the Liaison's private and non-private school

educational services risks expending proportionate share funds that do not go towards benefiting private school students with disabilities.

11. According to both the Director and the Liaison, the Liaison is now required for the 2023-2024 school year to distinguish between their time spent providing consultations or services to the private school students with disabilities versus their time spent conducting child find activities. The Liaison reported that the tracking of their time is meant to align the payment of their salary between the proportionate share for private school activities and the use of general IDEA Part B funds (or other general funds) for in-District special education services.
12. The District's other expenditures from the proportionate share during the 2022-2023 school year included expenditures for conducting evaluations of students with disabilities attending private schools. The amount of the proportionate share expended on evaluations constituted 9% of the total proportionate share allocation.
13. The Director described how the part of expenses from the proportionate share associated with evaluations was in response to parents of private school students with disabilities requesting annual reevaluations or seeking to formally gauge a student's progress since returning from remote instruction.
14. The remaining 3.3% of expenditures was spent on the salary of the preceding Liaison.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to appropriately allocate or expend a proportionate share of its IDEA Part B Grant funds on 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. § 300.133 and 6.31.2.11(N)(1)(e) NMAC.

The Individuals with Disabilities Education Act ("IDEA") requires public agencies to serve children with disabilities placed by their parents in private schools. 20 U.S.C. § 1412(a)(10)(A). The responsibilities of the public agency include: (1) child find and individual evaluations; (2) consultations with private school representatives and parents; (3) provision of equitable services; and (4) drafting of service plans. Child find and evaluations are the activities to actively identify children with disabilities attending private schools. 34 C.F.R. § 300.131. Consultation is a timely and meaningful discussion among the public agency, private school representatives, and parents of the parentally-placed private school children with disabilities to determine the special education and related services for the children within the private schools. 34 C.F.R. § 300.134. Equitable services consist of special education programming, related services, and indirect services which are provided to parentally-placed private school children with disabilities based

on their service plans. 34 C.F.R. § 300.132; 34 C.F.R. § 300.138(b). The funding to provide equitable services comes from a public agency's "proportionate share" of their IDEA subgrant. 34 C.F.R. § 300.133. However, the proportionate share funding cannot be used to conduct child find and individual evaluations because the child find legal obligation exists separately from the responsibility to expend a proportionate amount on parentally-placed private school children with disabilities. U.S. Dep't of Education, QUESTIONS AND ANSWERS ON SERVING CHILDREN WITH DISABILITIES PLACED BY THEIR PARENTS IN PRIVATE SCHOOLS, Question A-11 (February 2022).

Here, the District spent a small fraction (9% or \$8,377.10) of their 2022-2023 proportionate share on reevaluating parentally-placed private school students with disabilities. It was improper to deduct the cost of carrying out these evaluations from the proportionate share. The reason is because the evaluations are part of the District's separate legal obligation to conduct child find, including individual evaluations, and the proportionate share must be strictly expended on the provision of equitable services. Therefore, the District did not spend an appropriate amount on providing special education and related services to parentally-placed private school children with disabilities during the 2022-2023 school year because a part of the proportionate share funding was used on child find activities.

A separate issue is the expenditure of the proportionate share on the District Liaison's salary. According to the District, \$86,000.00 of the Liaison's salary was financed through the 2022-2023 proportionate share. However, based on assertions made by the District, only forty percent of the Liaison's time was spent conducting consultations, trainings, observations, and drafting of service plans for parentally placed private school students with disabilities. The other sixty percent of Liaison's time was spent conducting child find activities and District-related work which are both impermissible expenses from the proportionate share. Accordingly, sixty percent of the Liaison's salary funded by the 2022-2023 proportionate share (\$51,600.00) was not an allowable or allocable expense under IDEA's proportionate share and equitable services provisions.

Taken together with the improper expenses associated with child find and evaluations, the total amount that was improperly spent is \$59,977.10.

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

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.133 and 6.31.2.11(N)(1)(e) NMAC.	The District failed to appropriately allocate or expend a proportionate share of its IDEA Part B Grant funds on students with disabilities who are parentally placed in private schools located within the educational jurisdiction of the District.

Required Actions and Deadlines

By September 21, 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 June 30, 2024 and reported to the SED no later than July 12, 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).	September 21, 2023	Written Assurance Letter/Email	September 21, 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.	September 28, 2023	Notes from meeting prepared by District	October 5, 2023
3.	The District will develop a written plan to track the Liaison’s time spent between providing in-district special education services and the provision of equitable services to parentally placed private students. The plan must also address how the District will ensure that expenses from the general IDEA Part B subgrant or the proportionate share for private schools accurately reflect the work performed by the Liaison across public and private school settings.	October 5, 2023	Copy of written plan	October 5, 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>
4.	<p>The District will make a Budget Adjustment Request to transfer \$59,977.10 to their 24115 IDEA Private School Share account from their current 24106 account.</p> <p>The District will expend the transferred funds during the 2023-2024 school year on providing equitable services to parentally placed private school students with disabilities.</p> <p>If the District is unable to spend the total amount in its 24115 account by the end of the 2023-2024 school year, it must provide documentation of its reasonable attempts to serve parentally placed private school students throughout the year.</p>	<p>October 12, 2023</p> <p>June 30, 2024</p>	<p>Copy of record documenting the transfer of funds.</p> <p>An accounting of proportionate share expenditures on equitable services for parentally placed private school students with disabilities during the 2023-2024 school year.</p> <p>If necessary, documentation of the District reasonable attempts to serve parentally placed private school students within the District.</p>	<p>October 12, 2023</p> <p>July 12, 2024</p> <p>July 12, 2024</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/ Michael W. Gadomski
Michael W. Gadomski, Esq.
Complaint Investigator

Reviewed and approved by:

/s/Miguel Lozano
Miguel Lozano, Esq.
Interim Director, Special Education Division