



**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
Complaint Resolution Report
Albuquerque Public Schools
Case No. C2324-04
October 10, 2023**

This Report requires corrective action. See pages 7–8.

This complaint was filed with the Special Education Division (SED) of the New Mexico Public Education Department (PED) on August 11, 2023, 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 independent complaint investigator's investigation process in this matter involved the following:

- review of the complaint and supporting documentation from complainant;

¹ The state-level complaint procedures are set forth in the federal regulations at 34 C.F.R. §§ 151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

- review of the District’s responses to the allegations, together with documentation submitted by the District at the request of the PED's independent complaint investigator;
- review of the District’s compliance with federal IDEA regulations and state NMAC rules;
- interview with the District’s Executive Director for Compliance in the Special Education Department and Parent with educational decision-making rights;
- Electronic correspondence with caseworker at the New Mexico Children, Youth, and Families Department; 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. For this reason, the Complaint Investigator did not investigate the following issues raised by the complainant: Whether the District violated the McKinney-Vento Homeless Assistance Act.

Issue 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 the Student with transportation as a related service, in violation of 34 C.F.R. § 300.34(c)(16) and 6.31.2.7(B)(7) NMAC; and
2. Whether the District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

1. Student is a 6th grade student who is eligible for special education under the classification of Autism and attends middle school within the District.
2. The IEP for Student dated April 17, 2023, lists special transportation as part of Student’s special education programming and related services.

3. The special transportation consists of “curb to curb” transportation to address the student’s safety needs (e.g., limited verbal skills and adult support needed while in school).
4. The District’s 2023-2024 school year started on August 3, 2023.
5. The following day, the Student’s parent (hereinafter referred to as “Complainant”) enrolled the Student with the District.
6. Complainant did not fill out a transportation form until August 7 because Complainant could not initially provide two emergency contacts when they filed the enrollment paperwork.
7. While the District was arranging for bus transportation, the Student was provided temporary transportation to and from school via a local taxi service but did miss half a school day on August 7.
8. On August 10, 2023, a District bus began picking up Student at their place of residence, transporting Student to school and delivering Student back to their home at the end of school.
9. Student rode the bus on August 10, 11, 14, 15, 16, and August 18.
10. Student did not ride the bus on August 17 because they had an appointment.
11. That same day, Complainant sent an email to District Executive Director for Special Education Compliance (“Director”) expressing concerns about Student having bruises on their arms and legs. Director tried calling Complainant twice and sent Complainant a responsive email.
12. On August 19, 2023, Student was removed from Complainant’s custody pending an investigation by the New Mexico Children, Youth, and Families Department (“CYFD”).
13. Complainant sent another email to Director on August 21, 2023 informing the District that Complainant no longer had custody of Student and that CYFD had temporary custody.
14. District bus attempted to pick up Student the week of August 21 through August 25 but Student did not ride bus.
15. CYFD assumed official custody of Student pursuant to a custody order dated August 29, 2023. Student remains in the custody of CYFD at the time of this report.
16. Student was absent from school on August 21, 22, and August 31.
17. A CYFD Investigations Supervisor corresponded that the Student’s current school transportation consists of a family support/service provider transporting Student by car to their middle school within the District. In the afternoon, Student’s other parent (“Parent”) picks Student up from school and the two ride the bus back home.
18. Parent confirmed that he and Student travel home on the local bus system after the school day ends.
19. The Supervisor wrote that their agency had referred Student’s case to the District to resume school transportation but District did not provide a response to the referral.

20. District Director stated CYFD had taken over responsibility for transporting Student while custody proceedings were underway because the Student's school of origin is on the far western side of the District and the student's temporary housing is centrally located within the District.
21. District plans to resume transportation responsibilities once issue of Student's custody is resolved.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to provide the Student with transportation as a related service, in violation of 34 C.F.R. § 300.34(c)(16) and 6.31.2.7(B)(7) NMAC.

Special transportation to and from school constitutes a related service that is part of a child's IEP. 34 C.F.R. 300.34(c)(16)(i). An IEP team will recommend special transportation for a student if that related service is necessary in order for the child to receive a free appropriate public education. 71 Fed. 46576. Curb-to-curb school transportation consists of a child being picked up and dropped off at their home whereas traditional transportation is a student being assigned to a bus route that picks up students along designated stops. Under the Every Student Succeeds Act ("ESSA"), a school district must collaborate with state or local child welfare agencies to maintain a student's transportation to their school of origin after the student has entered the foster care system. 20 U.S.C. § 6312(c)(5)(B).

In this case, the District's IEP team determined that Student needed special transportation in the form of curb-to-curb transit due to Student's disability-related safety needs. When Complainant enrolled Student at the beginning the 2023-2023 school year on August 4, 2023, the District set up and began providing Student curb-to-curb transportation within a week on August 10, 2023. During that interim period, the District used a taxi service to appropriately transport Student with Complainant to school. Both forms of transportation adequately met Student's needs because the transportation was curb-to-curb and ensured that Student could access their educational program.

The District ceased curb-to-curb bus transportation after CYFD took custody of Student on August 29, 2023. The current transportation arrangement put in place by CYFD provides curb-to-curb transportation in the morning by the family services provider. However, the fact that Student takes the bus home with their Parent in the afternoons is not curb-to-curb transportation because the Student must travel with their Parent to a local bus stop and ride the public bus. Therefore, the lack of coordination between the District and CYFD to ensure curb-to-curb

transportation while Student is in foster care constitutes a failure to provide Student with special transportation as a related service.

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

Issue No. 2

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.

A student eligible for special education is entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. School districts are obligated to provide FAPE for each student eligible in their district. 6.31.2.9(A), 6.31.2.11(l)(2) NMAC. If an IDEA procedural violation occurs, that violation will constitute a denial of FAPE only if it: (1) resulted in a substantive harm to the child or their parents; (2) deprived an eligible student of an IEP; or (3) resulted in the loss of an educational opportunity. *Boutelle v. Bd. of Educ. of Las Cruces Pub. Sch.*, No. CV 17-1232 GJF/SMV, 2019 WL 2061086, at *7 (D.N.M. May 9, 2019). The substantive legal standard for determining whether a District has offered a student FAPE is whether an IEP is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017).

Here, a procedural violation occurred in that special transportation, as mandated in Student's IEP, is not currently provided to Student after school lets out. However, the lack of curb-to-curb has not resulted in a substantive harm to Student, deprived Student of an IEP, or resulted in the loss of an educational opportunity. Student regularly attends their school of origin with the transportation arranged by CYFD. Furthermore, Student's safety needs are addressed by Parent voluntarily transporting with Student for transportation back home. For these reasons, the procedural error of not providing special transportation as a related service does not constitute a denial of FAPE because Student still receives an appropriate education with the current transportation arrangements.

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

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.34(c)(16) and 6.31.2.7(B)(7) NMAC	The District failed to provide the Student with curb-to-curb transportation as a related service.

Required Actions and Deadlines

By October 20, 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 November 3, 2023 and reported to the SED no later than November 13, 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 School 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).	October 20, 2023	Written Assurance Letter/Email	October 20, 2023
2.	<p>The District Special Education Director and the school principal shall meet with the PED SED Education Administrator assigned to the District and the PED SED CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the District plans to take to ensure that the violations are corrected and do not recur. The District Director has the discretion to include other District or school administrators or personnel in this meeting. The District Director shall be responsible for arranging this meeting with SED.</p> <p>CYFD staff involved in Student's foster care case (such as Investigation Caseworkers or Permanency Planning Workers)</p>	October 27, 2023	<p>Notes from meeting prepared by the District</p> <p>Documentation of District's invitation to CYFD to attend meeting.</p>	November 3, 2023

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
	must also be invited to this meeting but their attendance is not mandatory.			
3.	The District shall develop a transportation plan, in consultation with CYFD and Parent, to provide Student curb-to-curb transportation for the duration of Student's time in the foster care system. This plan must address how curb-to-curb transportation will be provided, arranged, and funded. Furthermore, the plan must make assurances that Parent will be reimbursed for any previous or future costs associated with transporting Student.	November 3, 2023	Copy of transportation plan and records of any reimbursements to Parent. Written confirmation that the plan has been implemented and that student has begun receiving curb-to-curb transportation services both to and from school.	November 13, 2023 November 13, 2023

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

Chief Counsel, Special Education Division

Reviewed and approved by:

DocuSigned by:

Margaret Cage

1D32A08CC33B4F2...

Dr. Margaret Cage

Director, Special Education Division