



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
Farmington Municipal Schools
Case No. 2324-15
November 14, 2023

This Report requires corrective action. See pages 21-22.

On September 15, 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 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, Director of Exceptional Programs, Assistant Director of Exceptional Programs; 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, issues outside the one year timeline, personnel or operational matters in the school will not be addressed.

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 develop and implement IEPs for students with behavioral needs that allowed students to make educational progress in the general education curriculum in violation of 34 C.F.R. §§ 300.324 and 6.31.2.11(B)(1) NMAC; specifically, whether the District:**
 - a. Failed to provide supports and services provided in the IEPs;**
 - b. Failed to ensure that needed supports were provided to students during Saturday school and/or other disciplinary actions;**
 - c. Failed to consider and address all needs related to the students' disabilities in developing IEPs;**
 - d. Failed to convene timely transition meetings, determine and provide appropriate transition services;**
 - e. Failed to timely complete comprehensive evaluations in all suspected areas of disability;**
 - f. Failed to timely refer students that were suspected of a disability for evaluations and/or services;**
 - g. Ignored parental requests and concerns when developing and implementing IEPs;**
 - h. Failed to consider disciplinary procedures when changing students' placement;**

General Findings of Fact

1. The provision of special education services in the District were tracked using two systems: Brolly for special education teachers and aides while MaxCapture was used for related services as well as nursing, social work and other services.
2. These services were monitored by the administration to ensure that services outlined on the IEPs were implemented with fidelity.
3. Transition services began at age 14 for students and there were two transition specialists to assist IEP teams in determining transition goals and services. Transition needs were reviewed annually or more often as needed. Academic goals often reflected transition plans.
4. The Exceptional Program Office (EPO) was responsible for reviewing evaluator logs and monitoring that evaluations were completed in a timely manner.
5. Saturday School was a program at one high school within the District to allow students with absences to make up absences and complete missing work. Both general and special education teachers were present to assist students during Saturday School. The High School maintained records of attendance at Saturday School and the teachers who assisted.
6. For Child Find, the District had a process for preschool referrals. Once students were in school, the District implemented the Student Assistance Team (SAT) process to refer students that were suspected of needing special education services.
7. The District used multi-level services and supports (MLSS) for students who were struggling either with behavior or academically. Students were referred for special education evaluations when MLSS was not effective or the students were suspected of having a disability and needing specialized instruction.
8. When it was apparent that a student had a disability and needed specialized instruction, the District immediately began the referral process. When parents made a referral, MLSS data or other data was reviewed to determine the need for the referral.
9. In the 2022-2023 school year, 209 students were referred for evaluation, 131 qualified for special education services, 26 students did not qualify. This year, 59 students have been evaluated, 48 students have qualified for special education services.
10. When determining eligibility for students, the District has developed procedures to ensure that all suspected areas of disability were considered. The eligibility determination team (EDT) reviewed evaluation reports, teacher and parent input when it was determined if a particular student had one of the statutory disabilities and needed specially designed instruction.

11. Once eligibility was determined, the IEP team would meet and develop the IEP including accommodations and modifications, goals, services and supports and the other components required in the development of the IEP.
12. Parents were invited to all eligibility and IEP team meetings. The District often had difficulties getting parents to attend IEP meetings, especially at the high school. On the invitation to educational meeting notice, parents were provided with the option of the District holding the meeting without the parents. Parents received draft IEPs prior to the IEP meeting for review and to add parental input.
13. The District's policy when parents did not respond was to try three times within a fifteen-day period to contact the parents by various means to schedule IEP meetings. If parents could not be contacted, the District would hold the meeting without the parents. The IEP team would then reach out after the meeting to share the IEP.
14. In three of the files, parents and/or guardians were not in attendance at one or more of the IEP or addendum meetings. In one file the parent/guardian informed the District that the IEP team could proceed without the parent/guardian's attendance as allowed in the District's meeting notice. In the second file, the District reported the parent/guardian agreed with the final IEP but there was no record of parent/guardian's attendance at the meeting. In the third file, student attended the addendum meeting but parent was not in attendance and it was not clear why parent was not in attendance.
15. Parents were provided the opportunity to participate virtually in eligibility/IEP meetings.
16. Parents' input was included in both the IEP and PWN. In the files reviewed, parents and student's comments were included in the Present Levels of Academic Achievement and Functional Performance (PLAAFP) for each individual goal for each student's IEP.
17. The District had developed a plan when a change of placement was considered for special education students with behavior needs. Prior to the change of placement, behaviors interventions and supports were implemented and monitored with the involvement of parents/guardians. If behaviors did not improve, consent for a social work was sought and the need for a functional behavior assessment (FBA) and BIP. Whenever a more restrictive placement due to behavior was being considered, an Exceptional Programs Office (EPO) facilitator and evaluator would be part of the process to ensure compliance with Part B of IDEA.
18. Any changes to the amount or type of services for a special education student were determined by the IEP team, including the parents. The PLAAFP was updated to demonstrate the need for a change in services.
19. When adding services or decreasing or increasing time, the IEP team met prior to any substantial changes.
20. Minor changes including completion of goal may be made as an addendum through a call with the parents.

21. General education services and supports may be made available to students without an IEP team meeting. Schedules may be changed but the amount and type of services did not change without the IEP team's involvement.
22. According to District records, there were no students in the sample who did not receive services pursuant to their IEPs during the 2022-2023 school year.
23. The District outlined the procedures the District followed when there was a need for compensatory services. Parents/guardians were provided with a letter of compensatory services which outlined the amount of compensatory services. The IEP team would determine the plan for provision of compensatory services.
24. When teachers or service providers were absent, services were made up by the staff member and documented on Brolly or MaxCapture.
25. Parents were provided copies of their procedural safeguards at every annual IEP meeting and that was noted on the PWN. Parents' input was requested multiple times during IEP meetings and at the conclusion of the IEP meetings, parents were asked to complete a parent satisfaction survey. The results from that survey indicated parents felt they had meaningful parental participation.
26. All IEPs were included in the Power School Special Programs (PSSP) and case managers provided guidance and support to regular education teachers to ensure that students received the services and supports outlined in their IEPs. All teachers were required to review and acknowledge the IEP and addendums at the start of the school year, at the annual IEP and when change of services or placement was determined by the IEP team for each student in their class that has an IEP.
27. The District has had staffing issues but when a long-term substitute was in the role of the special education instructor, the school special education specialist would assist and support the substitute along with support from EPO and other administrators. The District reported there were no more than ten long term substitutes in instructional positions within the district. All related service providers were appropriately certified.
28. When students had BIPs, they were implemented and modified by the IEP team as needs changed.
29. When students were not making progress on IEP goals, displaying chronic absenteeism or poor work completion which impacted academic advancement, the IEP team would reconvene to consider other options.
30. When students' disciplinary removals constituted a change in placement triggering the need for a manifestation determination, a manifestation determination was completed with consideration of appropriate factors.
31. Special education students were subject to the same code of conduct as general education students.

Named Students

Student 1

32. Student 1 was a senior, eligible under the category of intellectual disability. Student 1 received services in reading, math, written language, social/emotional, transition and receptive and expressive language.
33. Student 1's long-range plan was to be a salesman in a retail business.
34. Student 1 was doing well in school but had difficulties in the hallways; Student 1 often talked about fighting but there had been no fights at school since last year.
35. Progress reports indicated that Student 1 was making progress on all goals.
36. The graduation plan for Student 1 was the modified option. Student 1 was in modified classes and struggled with understanding and processing information and self-regulation.
37. Student 1 was reading at a second-grade level.
38. Behavior impeded Student 1's learning.
39. Student 1 received 17.87 hours of special education services per week: 45 minutes per week in speech; 475 minutes per week in reading; 238 minutes per week for transition services; 238 minutes per week in math; 120 minutes per month in social work services; 25 minutes per week for supplemental aids and services and 80 minutes per month of behavioral health.
40. There were three incident reports for Student 1 for the 2022-2023 school year. The first incident on February 8, 2023 was insubordination, the second incident on March 7, 2023 did not list the facts and the third incident on May 2, 2023 incident was assault and battery. Student 1 received in-school suspension for the first incident and out of school suspension for the third incident. It was not clear from the records the particulars of the second incident. Student had not had ten days of disciplinary removals at the time of the third incident.
41. Student 1 attended Saturday School on two occasions and had both general and special education teacher available to assist Student 1 in work completion. The accommodations and modifications and other supports that were available to Student 1 were also available during Saturday School.
42. Student 1 graduated last spring under the modified program of study diploma track.

Student 2

43. Student 2 was a senior, eligible under the category of specific learning disability. Student 2's needs were in math reasoning, reading comprehension and transition.
44. Student 2's long-range plan was welding construction or chef or business owner.

45. Student 2's behavior in school did not impede learning.
46. Student 2 was passing English classes but was struggling with reading comprehension; written language content was there but spelling and mechanics were an issue.
47. Student 2's placement was in a regular education classroom and received 6.2 hours per week of support for math reasoning, reading comprehension and transition.
48. Student 2 was on a standard program of study graduation option. Student 2 did not attend the annual IEP meeting.
49. Student 2 did not have any discipline issues during the 2022-2023 school year.
50. Student 2's parent was not in attendance at the January 5, 2023 IEP Addendum Meeting but Student 2 attended.

Remaining Sampled Students

51. The remaining ten students' files that were reviewed were all high school students with disability categories of SLD, ED and OHI. Many of the students struggled with attendance and work completion.
52. The files reviewed were sampled from special education students that had behavior needs. In some cases, the students had behavior intervention plans (BIP) or behavior goals included on the IEPs.
53. In two files, students were placed at a juvenile facility. The IEP teams determined that a BIP was not needed at the facility but would be reconsidered when and if the students returned to school.
54. In some of the files, behavior did not impede the student or others' learning but there may have been behavior issues with attendance or work completion that were addressed through behavior supports.
55. For the two students that were at a juvenile facility, the District modified the IEP to ensure students continued to receive special education services and supports. The placement was not directly related to the behaviors in the school setting but was the result of other actions by students.
56. In a review of the IEPs from all twelve sampled students, timely transition assessments were completed. Academic and transition goals were designed to address students' needs and academic goals often incorporated students' transition interests. Transition specialists were available to assist IEP teams with development of transition services and supports and transition needs were reviewed annually.
57. Only one of the files reviewed was an initial evaluation. In that file, consent was received on February 6, 2023 and the evaluation was completed on April 5, 2023, with the IEP completed on May 11, 2023.

58. In the remaining files, reevaluations were timely completed and in one file, the student was determined no longer eligible for special education services. That student continued to have issues with attendance during the 2023-2024 school year but was passing all classes.
59. Many of the students struggled in academics and had difficulty with self-regulation and appropriate social skills.
60. For some of the students, poor attendance and work completion limited opportunities for earning credit. This was acknowledged on the IEP but it was not clear how the District planned to address these issues with students, especially if students were on a standard graduation track.
61. There were also students that were on a standard graduation track yet their reading and math scores raised issues about successful completion of graduation standards. The IEPs did not always address how the students would master the necessary skills given their abilities.
62. However, in one of the files, student, a senior, was engaged in class, completing work and set to graduate on time.
63. Another student had struggled in the past with behavior and had a BIP. This past year, student, who was at a 2nd grade math level and 3rd grade reading level, was completing work and receiving extensive services, no longer needed BIP because no behavior issues in two years.
64. In another file, an eleventh grader no longer qualified under ED but the PLAAFP noted that student had attendance issues, incomplete work, school was not a priority.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to develop and implement IEPs for students with behavioral needs that allowed students to make educational progress in the general education curriculum in violation of 34 C.F.R. §§ 300.324 and 6.31.2.11(B)(1) NMAC; specifically whether the District:

- a. Failed to provide supports and services provided in the IEPs;
- b. Failed to ensure that needed supports were provided to students during Saturday school and/or other disciplinary actions;
- c. Failed to consider and address all needs related to the students' disabilities in developing IEPs;
- d. Failed to convene timely transition meetings, determine and provide appropriate transition services;

- e. Failed to timely complete comprehensive evaluations in all suspected areas of disability;**
- f. Failed to timely refer students that were suspected of a disability for evaluations and/or services;**
- g. Ignored parental requests and concerns when developing and implementing IEPs;**
- h. Failed to consider disciplinary procedures when changing students' placement;**
- i. Modified services and supports on IEPs without following the required procedures for amending IEPs, and**
- j. Failed to timely provide compensatory services when warranted.**

Special education is “specially designed instruction provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability.” 34 C.F.R. § 300.39(a)(1). This specialized designed instruction is adapting the content, methodology or delivery of instruction to address the unique needs of an individual child. 34 C.F.R. § 300.39(b)(3). These unique needs are more than academic needs but can include social, health and emotional needs. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458 (9th Cir. 1996). Behavioral needs are also part of the IEP process and can be addressed in a behavioral intervention plan (BIP). A BIP is usually a component of the IEP to address behaviors that interfere with the student’s learning and are inconsistent with school expectations. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022).

IEPs are developed during an IEP meeting. The IEP team must consider the student’s strengths, any concerns of the parents, results of evaluations, and academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a)(1). Parents, as required members of the IEP team, must have adequate information to make informed decisions. 34 C.F.R. § 300.321(a)(1). 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 baseline data that reflects all the child’s needs, both academic and nonacademic. This also should 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 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 progress made and the specific skills needed to achieve progress on goals. 64 Fed. Reg. 12, 471 (1999). When a student is not making progress on their goals, the IEP team needs to meet to modify the goals or determine the need for additional supports and services. 34 C.F.R. § 300.324(b)(ii)(A). An IEP must be implemented with all required components. 34 C.F.R. § 300.324(b)(ii)(a). However, only material failures of implementation will result in a denial of FAPE. See *Van Duyn v. Baker School District*, 5J, 502 F.3d 811, 822 (9th Cir. 2007).

a. Failed to provide supports and services provided in the IEPs.

The twelve files reviewed demonstrated that the supports and services required by their IEPs were consistently provided. Documentation through Brolly and MaxCapture indicated that each student received their special education services from a qualified provider. When teachers or service providers were absent, documentation showed that services were made up in a reasonable time. There was no evidence that compensatory services were warranted with these twelve students.

As to Issue No. 1a, the District is not cited.

b. Failed to ensure that needed supports were provided to students during Saturday school and/or disciplinary actions.

Student 1 participated in Saturday School on two occasions. Saturday School was only available at one high school in the District. Special education staff and additional accommodations and modifications were available for students during participation in Saturday School. When students were disciplined under the general education code of conduct, special education services and supports were not provided for the first ten days of discipline. However, when required by Part B of IDEA, manifestation determinations meetings were held and the proper factors were considered. Educational services were provided to students after ten days of disciplinary removals. Two of the students were in a juvenile facility that had its own disciplinary rules. Reports indicated the students were not disciplinary concerns at the juvenile facility.

As to Issue No 1b, the District is not cited.

c. Failed to consider and address all needs related to the students' disabilities in developing IEPs.

For many of the students reviewed, chronic absenteeism and work completion were issues that impacted on their ability to make progress in the general education curriculum. Many of the students struggled in reading, math and written language. Their reading and math levels were 2nd, 3rd or 4th grade levels but it was not clear from the IEPs what the plan was to improve their reading and math abilities, especially if the students were on a standard path for graduation. Although attendance and other factors that might impact on progress were monitored by District personnel including social workers in each building, the IEPs did not always indicate what plan the District was implementing to ensure those students had the necessary skills to make progress or when appropriate, meet the standards for graduation. Absenteeism was a chronic problem for many of these students, but meetings were not always convened to address school attendance through the IEP process.

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

d. Failed to convene timely transition meetings, determine and provide appropriate transition services.

The District began transition services for students starting at 14 years of age. Each of the students' IEPs were reviewed at least annually and included transition plans with assessments, goals and services for students to achieve their future. Many of the academic goals incorporated students' transition interests in the language of the goal. The PWN outlined that students' transition plans were discussed and changes made as needed. Transition specialists were available to assist in IEP development and annual review of transition services.

As to Issue No. 1d, the District is not cited.

e. Failed to timely complete comprehensive evaluations in all suspected areas of disability.

One student's file was an initial evaluation completed during the 2022-2023 school year. The evaluation addressed all suspected areas of disability. Student was determined eligible under the category of ED but was not eligible under SLD. The evaluation indicated areas of concern that were addressed on student's IEP. The remainder of the students had been receiving special education services for some time. Their reevaluations were timely and addressed areas of suspected disability.

As to Issue No. 1e, the District is not cited.

f. Failed to timely refer students that were suspected of a disability for evaluations and/or services.

The District implemented MLSS for students that were struggling academically or with behavior. The District also used the SAT process when there were suspicions that students may need special education services. The District reported that some students did not receive MLSS but were immediately referred for a special education evaluation because it was suspected that student had a disability and needed specialized instruction. For the 2022-2023 school year, 209 students were referred for evaluation, 131 qualified for special education services, 26 students did not qualify. This year, 59 students have been evaluated, 48 students have qualified for special education services.

As to Issue No. 1f, the District is not cited.

g. Ignored parental requests and concerns when developing and implementing IEPs.

On each file reviewed, parents/guardians' input was included on the PLAAFP for each IEP goal. The District reported that parents' input was sought out by the team during development of the IEPs. Draft IEPs were provided to parents before IEP meetings and parental input was requested. After IEPs were completed, parents were asked to complete a satisfaction survey about the IEP process. The results from the survey demonstrated that parents felt that they had meaningful parental participation in the process.

As to Issue No. 1g, the District is not cited.

h. Failed to consider disciplinary procedures when changing students' placement.

Two of the students were placed at a juvenile facility that was unrelated to their disciplinary history at the District. For the remaining students, there was no evidence that placement was related to discipline. Students who had behavior needs and were struggling in their existing placement were not transferred to another placement until additional behavior and other supports were implemented and monitored and the IEP team met to determine whether changing the student's placement was appropriate. If behavioral supports were not effective, consent for a social work evaluation was sought to determine if additional services and supports were needed before a change of placement was made.

As to Issue No. 1h, the District is not cited.

i. Modified services and supports on IEPs without following the required procedures for amending IEPs.

When adding services or decreasing or increasing time, the IEP team met prior to any substantial changes. Minor changes including completion of goal may be made as an addendum through a call with the parents. General education services and supports may be made available to students without an IEP team meeting. Schedules may be changed but the amount and type of services did not change without the IEP team's involvement.

As to Issue No. 1i, the District is not cited.

j. Failed to timely provide compensatory services when warranted.

The records submitted by the District indicate that there was no need for compensatory services during the 2022-2023 school year. When compensatory services were warranted, the District would send out a letter of compensatory services outlining the amount of services owed. The IEP team would develop the plan for providing compensatory services. When teachers and services providers were absent and were unable to deliver services as required by the IEP, those services were made up and documented on Brolly or MaxCapture.

As to Issue No. 1j, the District is not cited.

As to Issue No. 1, the District is cited on Issue No 1c. The District is not cited on Issue No. 1a, 1b, 1d, 1e, 1f, 1g, h,1i and 1j.

Issue No.2.

Whether the District failed to provide Parents procedural safeguards in violation of 34 C.F.R. §§ 300.322 & 300.501(b) and 6.31.2.11(b)(2) & 6.31.2.13(c) NMAC, specifically, whether the District:

- a. Failed to provide parents meaningful parental participation in the IEP process;**
- b. Failed to ensure that staff were aware of the students on IEPs and their prescribed services;**
- c. Failed to complete Child Find obligations;**
- d. Failed to consider parents' concerns in the provision of special education services;**
- e. Failed to consider the individual needs of students when receiving requests for modification of special education services and supports;**
- f. Failed to consider least restrictive environment in determining placement;**

- g. Failed to have appropriately qualified staff to work with students; and**
- h. Disciplining students with disabilities differently than non-disabled peers.**

Parents are mandatory members of the IEP team. 34 C.F.R. § 300.321(a)(1). Districts must provide parents with meaningful parental participation in any decisions involving the identification, evaluation and educational placement of the student and provision of FAPE. 34 C.F.R. § 300.501(b). Districts must make reasonable efforts to have parents participate in IEP meetings. 34 C.F.R. § 300.322(d). IEPs are to be implemented as written. 34 C.F.R. § 300.323(c)(2). When there has been a disciplinary change of placement, then a manifestation determination must be conducted and special education services must be continued. 34 C.F.R. §§ 300.530-300.536.

- a. Failed to provide parents meaningful parental participation in the IEP process.**

In three files, parents/guardians were not in attendance at the IEP or addendum meeting. In one file, the parent/guardian told the District to proceed without their attendance because of difficulty in scheduling the meeting. In another file, the parents/guardians were not present at the meeting but had an opportunity for parental input and received a copy of the IEP and agreed with the provisions therein. In a third instance, the parents were not in attendance. Parental participation is one of the fundamental principles of IDEA and it is imperative that the District make attempts to have the parents participate at times through alternative means. Meaningful parental participation requires more than providing a draft IEP for parental input and allowing parents to opt out of participation in the IEP. When parents cannot be reached, the District can hold a meeting if the District has made reasonable efforts to get parents to attend. The notice of meeting allowed parents to check off that they would not attend but the District could hold the IEP meeting without their attendance. Allowing the parents to opt out of the IEP meeting is not a reasonable effort to satisfy the requirement for meaningful parental participation. The District did not provide meaningful parental participation in the IEP process.

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

- b. Failed to ensure that staff were aware of the students on IEPs and their prescribed services.**

The case managers were responsible for ensuring needed assistance and support for the regular education teachers. Regular education teachers had access through PSSP to special education students' IEPs on their caseload including needed accommodations and/or modifications. Teachers must review and acknowledge special education students' IEPs at the beginning of the

year, the annual IEP, and any addendums or modifications that are made to the IEPs for each of their special education students. There was no evidence that students did not receive prescribed services.

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

c. Failed to complete Child Find obligations.

The District had a robust Child Find plan for preschoolers. The District implemented MLSS services for students struggling in academics or behaviors. They also had a SAT team for those students suspected of having a disability and needing specialized instruction. When students were suspected of having a disability where specialized instruction was needed, students could be referred for an evaluation without MLSS services. In the 2022-2023 school year, 209 students were referred for evaluation, 131 qualified for special education services, 26 students did not qualify. This year, 59 students have been evaluated, 48 students have qualified for special education services. One student in the sample was referred and determined eligible for special education services. The record in this case supports a finding that the District has fulfilled their affirmative obligation to conduct Child Find.

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

d. Failed to consider parents' concerns in the provision of special education services.

Generally, parents were part of the IEP team and input was included in the PLAAFP on the IEP. Parents's concerns were noted on the PWN. After IEPs were completed, a satisfaction survey was completed and parents reported they were provided meaningful parental participation. This body of evidence shows a concerted effort by the District to take into account a parent's point of view during IEP team meetings.

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

e. Failed to consider the individual needs of students when receiving requests for modification of special education services and supports.

When a student needed additional supports, services or an increase or decrease in service times, the District would meet as an IEP team to determine what other services could be provided. Decisions were made by the IEP team with input from teachers and parents. For example, in one file, student was struggling in the general education classes; the IEP team met

reviewed the student's performance and increased service time without changing placement. When students struggled with attendance, the district tracked attendance and social workers contacted students and families to determine reasons for attendance issues. At that point, the IEP team would meet to discuss ways to improve attendance including increasing or changing services and supports.

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

f. Failed to consider least restrictive environment in determining placement.

The IEPs reviewed indicated that the appropriate factors were considered when determining least restrictive environment (LRE). When students were not successful in their placement, the IEP team would meet prior to changing placement to determine if additional supports or services were needed, ensured those services and supports, including behavior supports were implemented and monitored before considering any change of placement. There was no error by the District in settling on the least restrictive environment for students.

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

g. Failed to have appropriately qualified staff to work with students.

This District attempted to hire qualified staff to work with students. All related service providers were appropriately qualified. However, even with robust recruitment procedures, there were times when long-term substitutes were providing special education and other instruction. The long-term substitutes were provided support on site by other special education teachers and providers and through administrative support from EPO. Some of the staff in the District were not appropriately certified in the area they were assigned to teach. The lack of proper certification renders these staff persons as not appropriately qualified.

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

h. Disciplining students with disabilities differently than non-disabled peers.

For the first ten days of disciplinary removal, special education students can be removed from their placement without further action. For those ten days, special education and general education students are treated the same. In the files reviewed, disciplinary procedures under IDEA were followed. In the instances where there was a change of placement triggering a

manifestation determination, the appropriate process was followed. There was no violation of Part B of IDEA.

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

As to Issue No. 2a and g, the District is cited and Corrective Action is required. The District is not cited on Issue No. 2b, 2c, 2d, 2e, 2f and 2h.

Issue No. 3.

Whether the District's actions and/or omissions towards the students 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. A District is 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." *Andrew 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 IEPs reviewed in the twelve files were reasonably calculated to allow the students to make progress in light of the individual child's circumstances. Students' needs changed and the IEP team would meet when needed to address those changes or lack of progress on goals. There was no substantive violation of IDEA on this record. When a student was struggling in the placement, the IEP team met, reviewed student's progress, and added additional service times and supports. Chronic absenteeism has been an ongoing issue with many of the students and the social workers work with students and families to determine reasons for absences. The IEP team meets and discuss options to increase attendance and by extension increase progress. When a student was not making progress on goals, the District would meet as an IEP team to

determine why progress was not being made or what could be changed to demonstrate progress. When a goal was met, the IEP team would meet to acknowledge degree of progress and develop new goals.

There were procedural violations where not all needs were addressed, parents were not in attendance at all IEP and addendum meetings, and nonqualified staff were employed as instructors. The District's procedures to opt out of IEP meeting attendance was a violation, yet the parents had the opportunity to attend and participate in IEP meetings. The parents received draft IEPs before the scheduled IEP meetings and the District was able to incorporate parental input into the IEP. Parents were not denied meaningful parental participation and some parents chose not to avail themselves of the opportunity to participate. The files reviewed demonstrated that students were provided educational opportunities and benefits. Students were making progress on IEP goals but there were concerns that expectations such as graduation or goal development were not always commensurate with students' abilities. The IEPs were silent about the plan of how sufficient progress in academic areas to allow for graduation or meeting transition goals would be achieved given students' abilities. Yet these errors did not rise to the level of a procedural denial of FAPE.

As to Issue No. 3, the District is not cited.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. §§ 300.324 and 6.31.2.11(B)(1) NMAC	The District failed to develop and implement IEPs for students with behavioral needs that allowed students to make educational progress in the general education curriculum when the District failed to consider and address all needs related to the students' disabilities in developing IEPs.
34 C.F.R. §§ 300.322 & 300.501(b) and 6.31.2.11(b)(2) & 6.31.2.13(c) NMAC	The District failed to provide Parents procedural safeguards when the District failed to provide parents meaningful parental participation in the IEP process and failed to have appropriately qualified staff to work with students.

Required Actions and Deadlines

By **November 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 February , 2024 and reported to the SED no later than March 1, 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).	November 21, 2023	Written Assurance Letter/Email	November 21, 2023
2.	The District Special Education Director 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 Special Education Director shall be responsible for arranging this meeting with SED.	December 1, 2023	Notes from meeting prepared by District	December 1, 2023
3.	The District shall review IEPs of all high school special education students at District with goals, services, and supports related to behavior, including chronic absenteeism, and convene IEP team meetings to revise as needed, the IEPs to ensure those students are receiving the appropriate supports and services to make educational progress.	January 31, 2024	Log of Review of IEPs which shall include: 1. Student Identification Number 2. Results of Review a. Whether IEP meeting was requested and the date of the requested b. Whether IEP meeting was held and the date of the meeting	February 9, 2024

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.	The District shall create a plan and steps to help ensure qualified staff are recruited and retained in the District.	December 15, 2023	Written recruitment and retention plan	January 15, 2024
5.	<p>The District shall arrange to provide training to District special education 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"> • Implementation and development of appropriate IEP goals and services for students with behavioral challenges and/or chronic absenteeism; and • Parental participation in IEP process <p>The training may be provided by an employee of the District with expertise in special education who is approved by NMPED.</p>	February 16, 2024	<p>Submission of proposed trainer and trainer’s resume and proposed presentation for NMPED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.</p>	<p>December 15, 2023</p> <p>January 8, 2024</p> <p>March 1, 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/ Michelle Bennett

Michele K. Bennett, Esq.

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:

DocuSigned by:

Margaret Cage

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Margaret Cage, Ed.D.

Director, Special Education Division