



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](http://www.ped.state.nm.us)

ARSENIO ROMERO, PH.D.  
SECRETARY OF PUBLIC EDUCATION

MICHELLE LUJAN GRISHAM  
GOVERNOR

NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Los Lunas Schools  
Case No. 2324-57  
June 12, 2024

**This Report does not require corrective action.**

On April 16, 2024, a complaint was filed with the New Mexico Public Education Department's (PED) Office of Special Education (OSE) 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.<sup>1</sup> The OSE 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;

---

<sup>1</sup> 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;
- interview with the Parent on May 29, 2024;
- District Questionnaire completed and returned on May 30, 2024; and
- research of applicable legal authority.

### **Limits to the Investigation**

Federal regulations and state rules limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint is received. 34 C.F.R. § 300.153(c); 6.31.2.13(H)(2)(d) NMAC. Any educator ethics issues, or any alleged ADA or Section 504 disability discrimination issues, are not within the jurisdiction of this complaint investigation and, as a result, were not investigated.

### **Issues for Investigation**

The following issues regarding alleged violations of the IDEA, its implementing regulations and State rules, are addressed in this report:

1. Whether the District failed to respond to a parental request for an initial evaluation of the Student, pursuant to 34 C.F.R. §300.503(a) and 6.31.2.10(D)(3) NMAC.
2. Whether the District failed to implement Child Find policies and procedures for the Student, in violation of 34 C.F.R. §300.111 and 6.31.2.10(A) and (D) NMAC.
3. Whether the District failed to provide prior written notice (PWN) when refusing to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the Student, in violation of 34 C.F.R. §300.503(a)(2).
4. 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. In 2017, the Student was first evaluated for special education services. At that time, the Student was identified as a student with a disability under the primary disability classification of Autism.
2. In November 2021, when the Student was in the second grade, the Student was no longer eligible for special education services pursuant to a reevaluation that found the

Student was not then-currently academically impacted by their autism. Student also requested to be exited from services.

3. Student was not eligible nor did they receive special education and related services for the remainder of the 2021-22 school year or at any time during the 2022-23 school year.
4. The 2023-24 school year began on August 1, 2023 in which the Student started their fourth-grade year.
5. On September 6, 2023, the Parent requested the Student be evaluated due to Student's previous autism diagnosis. On September 8, 2023, the District provided a prior written notice (PWN) proposing to evaluate the Student, per Parent's request. The Parent provided their written consent on September 21, 2023.
6. Concurrently with the evaluation request, the Parent requested a 504 meeting. A 504 meeting was held on November 2, 2023. At that time, it was determined that the Student did not qualify for a 504 because the Student's physical or mental impairment did not substantially limit a major life activity nor did Student need 504 accommodations.
7. The special education evaluation was completed and a report of the findings is dated November 14, 2023. The report indicates the Student did not meet the eligibility requirements of Autism because there was no indication the Student was in need of special education services.
8. The Eligibility Determination Team (EDT), including Parent, met on December 7, 2023 to review the evaluation report and make an eligibility determination. At that time, the EDT determined the presence of autism. However, there was not a determination that the Student was in need of specially designed instruction. For this reason, the Student was not found eligible for special education. A PWN dated December 7, 2023 indicates, because the Student was not eligible for special education, the Student was referred to the Student Assistance Team (SAT).
9. It is unclear how SAT was involved with student following the referral.
10. At the end of the quarter 2, in December 2023, Student met expectations in all areas and was demonstrating grade level standards with limited assistance in academics with the exception of grammar and literature/information text which required more frequent assistance be provided.
11. A meeting was held on January 17, 2024. During the meeting, the Parent expressed a concern about the Student's handwriting and grammar. It was decided the Student's teacher would offer one-on-one instruction focused on handwriting and grammar for 6-8 weeks. Following the additional support, a SAT meeting would be held. The SAT meeting was held on March 27, 2024. Additional interventions were put in place to assist the Student.

12. On April 8, 2024, the Student was observed with their hands over their ears in PE and was asked if they would like to sit in the office for the remaining five minutes of class. The Student indicated they would like to do so and left the gym.
13. On April 11, 2024, the School Guidance Counselor was asked to speak to the Student after they refused to come out of the restroom, after five to ten minutes of being in there. At that time, the Student expressed they were in “agony” because other students were too loud. The Student was allowed to remain in the office with the Counselor until they were ready to return to class. The Counselor checked on the Student later in the day; the Student was seen playing with their peers and laughing.
14. On April 15, 2024, the Parent requested the Student be evaluated again. The Parent shared concerns regarding the Student’s behaviors, attendance, work completion, and overstimulation at school.
15. The state complaint was filed on April 16, 2024.
16. On April 16, 2024 the District provided PWN proposing to evaluate the Student, per Parent’s request.
17. On April 18, 2024, the Student was given a refocus form for using a derogatory term towards another student.
18. The Parent provided their consent for District to conduct an evaluation on April 19, 2024.
19. As of April 2024, Student continued to meet expectations and was demonstrating grade level standards independently or with limited assistance in all academic areas.
20. The most recent special education evaluation was completed and a report of the findings is dated May 15, 2024. The report indicates the Student did not meet the eligibility requirements of Autism because there was no indication the Student was in need of special education services. In addition, the Student did not meet the eligibility requirements of speech or language impairment.

### **Discussion and Conclusions of Law**

#### **Issue No. 1**

#### ***Whether the District failed to respond to a parental request for an initial evaluation of the Student, pursuant to 34 C.F.R. §300.503(a) and 6.31.2.10(D)(3) NMAC.***

A district may initiate a special education evaluation, or a parent may request one. 34 C.F.R. § 300.301(b) and 6.31.2.10(D) NMAC. If a parent requests an evaluation, the district must either (1) agree to evaluate the child and obtain parental consent for the evaluation or (2) deny the request to evaluate and provide the parent with prior written notice explaining its decision. 34 C.F.R. § 300.503(a) and 6.31.2.10(D)(4). State regulations also require that a district provide a

PWN consistent with the requirements of 34 C.F.R. § 300.503 when the district proposes to conduct the requested evaluation. 6.31.2.10(D)(4) NMAC. The district must respond to a parent's request for an initial evaluation within 15 school days from receipt of the request. 6.31.2.10(D)(3) NMAC.

During the 2023-24 school year, Parent first requested a special education evaluation on September 6, 2023. Two days later, on September 8, 2023, District provided a PWN and requested Parent's consent to conduct the evaluation. Following completion of the evaluation, Student was found ineligible for special education services.

Subsequently, Parent requested another special education evaluation on April 15, 2024. District provided PWN and requested Parent's consent to conduct the evaluation on April 16, 2024, one day after the Parent's request for same. Again, Student was found ineligible for special education services.

It is concluded, District responded to Parent's request for an initial evaluation, in conformity with 6.31.2.10(D)(3) and (4) NMAC.

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

**Issue No. 2**

***Whether the District failed to implement Child Find policies and procedures for the Student, in violation of 34 C.F.R. §300.111 and 6.31.2.10(A) and (D) NMAC.***

The IDEA mandates that states develop and implement adequate procedures to identify, locate, and evaluate children with disabilities who may need special education and related services. 34 C.F.R. § 300.111(a) and 6.31.2.10(A) NMAC.

An essential element of child identification is the special education referral, which places upon districts an affirmative obligation to evaluate a child where there is (1) a reason to suspect a qualifying IDEA disability and (2) a need for special education and related services. 34 C.F.R. § 300.111(c). A student suspected of having a disability shall be referred for an evaluation if the student "demonstrates an obvious need for special education." 6.31.2.10(B)(3) NMAC. The threshold for suspecting a disability is relatively low. *Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001). The actions of a district in terms of whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of the information that it knew, or had reason to know, at the relevant time. *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). It should not be based on hindsight. *Id.*

First, District conducted an evaluation two different times during the 2023-24 school year, satisfying its Child Find obligation. Upon reviewing the student file and speaking with Parent, it became clear Parent did not agree with the eligibility determination. The following discussion addresses Parent's concern that Student should have been found eligible for services under the IDEA.

Prior to Parent's first request for evaluation on September 6, 2023, there was no indication Student demonstrated an obvious need for special education and related services. Student was considered a student without a disability that accessed the general education curriculum and environment without any issues. Following Parent's request for evaluation, Student continued to satisfactorily access the general education curriculum and environment, and even more so, when Parent expressed concerns regarding Student's handwriting and grammar interventions were put in place. Student's report card demonstrates the interventions utilized succeeded in aiding Student meet grade-level standards with less assistance than previously required. In addition, there is little evidence that Student's behaviors, including overstimulation, are impacting them to a point that is demonstrative of a need for specially designed instruction. Each of the three incidents that occurred in April were handled quickly and effectively. Thus, the evidence demonstrates that Student is not in need of special education and related services.

Based on the District's action related to Student, there is no indication that District failed to meet its Child Find obligations.

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

**Issue No. 3**

***Whether the District failed to provide prior written notice (PWN) when refusing to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the Student, in violation of 34 C.F.R. §300.503(a)(2).***

District did not refuse to evaluate Student. Therefore, PWN was not required by 34 C.F.R. §300.503(a)(2). A discussion regarding the requirement to provide PWN, pursuant to State rules is included under Issue No. 1.

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

**Issue No. 4**

***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 FAPE. 34 C.F.R. § 300.101; 6.31.2.8 NMAC.

As discussed above, Student has not been determined to be eligible for special education and related services. Therefore, District did not have an obligation to provide FAPE to Student as of the date of this complaint. Thus, District did not deny the Student FAPE.

**As to Issue No. 4, the District is not cited.**

This report constitutes the New Mexico Public Education Department's final decision regarding this complaint.

Investigated by:

*/s/ Emily Adams*  
Emily Adams, Esq.  
Complaint Investigator

Reviewed by:

*/s/ Miguel Lozano*  
Miguel Lozano, Esq.  
Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:  
*Margaret Cage*  
1D32A08CC33B4F2...  
Margaret Cage, Ed.D.  
Director, Office of Special Education