



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

MARIANA D. PADILLA
SECRETARY DESIGNATE OF PUBLIC EDUCATION

MICHELLE LUAN GRISHAM
GOVERNOR

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Albuquerque Public Schools
Case No. 2425-06
October 4, 2024**

This Report requires corrective action. See pages 24-31.

On August 7, 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.¹ 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 Local Education Agency at the request of the PED's independent complaint investigator;
- review of the District's compliance with federal IDEA regulations and state NMAC rules;

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.

- interview with Parent and Parent Advocate on September 16, 2024;
- review of District Questionnaire submitted, completed, and returned on September 16, 2024;
- interview with Head (Special Education) Teacher on September 20, 2024;
- Interview with Student's General Education Teacher on September 20, 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 allegations related to professional or ethical misconduct by an licensed educator or related service provider, or allegations related to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act are not within the jurisdiction of this complaint investigation and, as a result, were not investigated. For these reasons, the Complaint Investigator did not investigate any events that occurred more than one year prior to the date the complaint was received.

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 properly implemented the Student's individualized education program(s) (IEP), specifically, by providing all special education and related services and providing timely periodic progress reports, pursuant to 34 C.F.R. § 300.323 and 6.31.2.11(B) NMAC.
2. Whether the District should have conducted a reevaluation to determine Student's changing educational needs, pursuant to 34 C.F.R. § 300.303(a)(1) and 6.31.2.10(C)(2) NMAC.
3. Whether the Student's IEP(s) is tailored to their unique needs and reasonably calculated to enable the Student to make progress appropriate in light of their circumstances, pursuant to 34 C.F.R. §§ 300.320 and 300.324; and 6.31.2.11 NMAC.
4. Whether the District provided prior written notice(s) (PWN) that accurately reflect what was discussed and agreed upon at the IEP meeting(s), pursuant to 34 C.F.R. § 300.503.

5. Whether the District ensured the personnel providing special education and/or related services was qualified under the state licensure requirements, pursuant to 34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC.
6. 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. Pursuant to a reevaluation that took place in September 2022, Student was classified as a student with a disability under the primary disability classification of Autism and secondary classification of Other Health Impairment.
2. During the 2022-23 school year, on February 27, 2023, District obtained parental consent for "data collection for possible special education related services." The consent documentation was on a form titled "Consent for Additional Assessment(s)."
3. Following receipt of Parent's consent for "data collection for possible special education services", an IEP meeting was held on March 6, 2023. The prior written notice (PWN), also dated March 6, 2023, indicates District received consent for additional testing. It is unclear why the PWN did not specify that testing was not requested or consented to but rather that data collection was requested and consented to.
4. IEP meetings were held on May 10, 2023 and May 23, 2023. It is unclear if the intent was to develop a new annual IEP or to discuss other concerns. Nonetheless, another IEP meeting was scheduled for August 18, 2023 to develop a new annual IEP. A PWN was not sent following either of the May 10, 2023 or May 23, 2023 IEP meetings.
5. The 2023-24 school year began on August 3, 2023. At the time, Student was in the seventh grade.
6. The third IEP meeting to develop Student's new annual IEP was held on August 18, 2023. The IEP is dated August 18, 2023. Relevant portions of the IEP include:
 - a. Student's behaviors impede their learning or the learning of others. A functional behavior assessment (FBA) is warranted and needs to be conducted.
 - b. The IEP contains five annual goals to address academics, behavior (e.g., health education), and "career readiness."
 - c. The IEP indicates progress reports will be sent home "in accordance with the grading periods." However, the IEP does not include the specific dates, even though there is a section to indicate same.
 - d. The following special education services were to be provided:
 - i. Social Skills: 260 minutes/week (special education setting)

1. These services were to be provided in a Social Communication Support (hereinafter referred to as “SCS”) classroom.
 - ii. English Language Arts: 260 minutes/week (special education setting)
 - iii. Math: 260 minutes/week (special education setting)
 - iv. Social Studies: 260 minutes/week (special education setting)
 - v. Science: 260 minutes/week (special education setting)
 - vi. Electives: 520 minutes/week (regular education setting)
 - vii. Medical/Safety Support in Gen Ed: 520 minutes/week (regular education setting)
 - e. The following related services were to be provided:
 - i. Social Work: 680 minutes/semester (special education setting)
 - ii. School Health: 180 minutes/semester (regular education setting)
 - f. Several accommodations are included. Specifically, in part, “stop/think/breathe,” frequent reminder of rules, re-direction to task, private discussion regarding behavior, etc.
 - g. The IEP indicates services are not provided at Student’s “neighborhood school” because Student attends a SCS classroom that is not offered at Student’s neighborhood school. As a result, Student attends a different middle school.
7. The PWN regarding the August 18, 2023 IEP includes the decisions made at each of the three IEP meetings. Specifically, in part:
 - a. The following proposals were accepted or rejected at the May 10, 2023 meeting:
 - i. Parent’s proposal that Student’s at home applied behavior analysis (ABA) provider be permitted in the academic setting was rejected by District because supports are provided by District’s BCBA provider.
 - ii. On March 6, 2023, District accepted Parent’s proposal to conduct occupational therapy (OT) and speech language assessments. A Review of Existing Evaluation Data (REED) was conducted on May 10, 2023 regarding Parent’s request.
 1. Although not included in the PWN, the REED documentation indicates the team determined OT and speech assessments were needed.
 - b. The following proposals were accepted or rejected at the May 23, 2023 meeting:
 - i. Parent’s request for an FBA was rejected. District would first analyze behavior data to determine if an FBA was needed.
 - ii. Parent’s request for additional support in executive functioning skills was rejected because the social worker is providing support.
 - c. The following proposals were accepted or rejected at the August 18, 2023 meeting:

- i. District proposed to conduct an FBA. Consent for testing was provided orally at the meeting.
 - ii. Parent proposed the classroom teacher and/or social worker be contacted if behavior concerns arose. District accepted the proposal.
 - iii. The IEP team was to reconvene no more than two weeks after the first grading period to discuss Student's progress, goals, accommodations, and services. (Per the school calendar, the first grading period ended on October 6, 2023.)
8. The SCS classroom Student was enrolled in at the beginning of the 2023-24 school year was taught by a special education teacher. Following a request from Parent to change Student's SCS teacher, Student was placed in a SCS classroom taught by a "substitute teacher" (hereinafter referred to as "SCS Teacher"); this change occurred on August 21, 2023.
9. The SCS Teacher has held a Level Three K-12 Educational Assistant License since July 1, 2016. The SCS Teacher does not hold a special education or substitute teacher license. When not acting in the role as a substitute, the SCS Teacher served as an educational assistant (EA), as they had previously done in years past. District asserts the SCS Teacher was activity pursuing a degree in special education, at the time. District further asserts the SCS Teacher received "daily support" from licensed special education teachers and the Social Worker.
10. The first grading period ended on October 6, 2023. A progress report dated October 12, 2023 includes progress on three of Student's five IEP goals.
11. Per the August 18, 2023 PWN, the IEP Team was to reconvene within two weeks of the first grading period (i.e., by October 20, 2023) to discuss Student's progress and amend the IEP, as necessary. However, an IEP was not held. District was unable to explain why an IEP meeting was not scheduled.
12. Between October 4, 2023 and November 8, 2023, three behavior incidents were documented on October 4, 2023; October 26, 2023; and November 8, 2023. In all three incidents, Student reportedly engaged in inappropriate conduct (e.g., made sexual comments, gestures, and jokes, sent inappropriate messages, drew inappropriate images, etc.). As a result of the October 26, 2023 and November 8, 2023 incidents, Student received two days of out-of-school suspension (OSS).
13. On November 13, 2023, Parent requested an "emergency" IEP meeting be held. An IEP meeting was scheduled for, and held on, November 27, 2023. The PWN regarding the IEP meeting is dated November 27, 2023. Relevant portions of the PWN include:
 - a. OT and speech evaluations are pending.
 - b. Parent requested the IEP document the impact of Student's disability on their behavior. District indicated it would be discussed at the next meeting to be held on January 16, 2024.

- c. Parent requested a communication plan. The District proposed the following:
 - i. The Social Worker is to be consulted as soon as possible regarding behavior incidents.
 - ii. If the Social Worker is not available, the Sponsor Teacher or Counselor shall be consulted with.
 - iii. Until the FBA is complete, it is agreed that there should be collaboration between the Social Worker and Administration to determine appropriate consequences considering Student's disability. In-school suspension (ISS) should be considered, temporarily.
 - iv. Parent is to be contacted regarding discipline incidents.
 - d. A copy of the progress report was provided to Parent in person.
 - i. District indicated the October 12, 2023 progress report was provided.
14. The IEP was amended pursuant to the November 27, 2023 IEP meeting. Specifically, the following comments were added to the Present Levels of Academic Achievement and Functional Performance (PLAAFP):
- a. A resource teacher observed Student in the classroom setting on April 27, 2023; May 2, 2023; and May 10, 2023. No behavior concerns were noted. In addition, a resource teacher was at the school several times between August and October 2023. No behavior concerns were noted.
 - b. Data is to be collected in November and December for the FBA. Data will be reviewed at the next meeting on January 16, 2024.
 - c. Student will "earn" their computer back once Student demonstrates correct use of technology.
 - d. The communication plan detailed in the PWN was included.
15. The second grading period ended on December 21, 2023. District failed to produce a progress report.
16. Even though the November 27, 2023 PWN indicated an IEP meeting would be held on January 16, 2024, an IEP meeting was not held. District stated it requested to reschedule the January 16, 2024 meeting "due to the short amount of time for data collection and the number of Student's absences." Parent agreed to reschedule the IEP meeting for February 7, 2024.
- a. Between November 27, 2023 and January 15, 2024, Student was only absent for five days, two of which were excused.
17. District received verbal consent to conduct a speech evaluation on January 23, 2024. District explained that parent consent was not previously requested due to a failure to process and assign an evaluator.

18. The speech assessment was completed on January 25, 2024. The report was provided, via email, to Parent and District staff on February 20, 2024. Relevant portions of the report include:
 - a. Student presents with impaired pragmatic/social communication.
 - b. Student exhibited significant deficits in both verbal and nonverbal social communication skills, including reciprocal communication and nonverbal skills (e.g., eye contact, use of adequate vocal prosody, adequate facial affect, use of gestures).
 - c. Student may benefit from specialized support to develop social communication skills.
19. A meeting was held on Feb 7, 2024. A "Record of Conference" document indicates the following, in part:
 - a. The purpose of the meeting was to review data collected between January 16, 2024 and February 2, 2024. The data showed nine instances in which Student inappropriately used technology.
 - b. District will complete an FBA to determine the function of behavior within three weeks, after which time an IEP meeting will be scheduled to review the FBA.
20. A PWN was not provided following the February 7, 2024 meeting.
21. An IEP meeting was scheduled for February 22, 2024 to discuss the speech evaluation and results of the FBA. The morning of February 22, 2024, District requested to reschedule the meeting in order to collect more data. The meeting was rescheduled for March 21, 2024.
22. During the months of January and February 2024, four behavior incidents were documented on each of January 19, 2024; February 15, 2024; February 20, 2024; and February 29, 2024. In all four incidents, Student reportedly engaged in inappropriate conduct. Student was only required to serve lunch detention for three days as a result of the February 20, 2024 incident. No other disciplinary action was taken.
23. The third grading period ended on March 15, 2024. District failed to produce a progress report.
24. An IEP meeting was held on March 21, 2024. The Head Teacher acted as the District representative. A new annual IEP was developed and the results of the speech evaluation were discussed. Relevant portions of the IEP include:
 - a. The following was noted in the PLAAFP:
 - i. Progress on Student's reading and writing IEP goals was provided. However, the comments were not quantifiable. For example, regarding Student's reading goal, the comment states Student has not shown enough progress.
 - ii. Progress was not included on Student's math, career readiness, or behavior goals.

- iii. Behavior concerns were included regarding inappropriate use of computer, lack of productivity, inappropriate language, and bullying.
 - b. Student's behavior continues to impede learning.
 - c. The IEP does not indicate Student has communication needs.
 - d. The IEP contains seven annual IEP goals to support academics, behavior, "career readiness," and communication. Specifically:
 - i. The math goal remained the same as the August 18, 2023 IEP.
 - ii. The behavior goal remained the same as the August 18, 2023 IEP.
 - iii. A new writing goal was incorporated.
 - iv. The reading goal was changed minimally.
 - v. Two communication goals were added.
 - vi. The career readiness goal remained the same as the August 18, 2023 IEP.
 - e. The following changes were made to the special education services:
 - i. Social skills, language arts, math, social studies, and science services were increased from 260 minutes to 278 minutes a week.
 - ii. Electives and medical/safety support were increased from 520 minutes to 556 minutes.
 - f. Related services were amended to include speech for 120 minutes/month in the special education setting.
 - g. The accommodations remained the same.
- 25. The PWN is dated March 21, 2024. Relevant portions of the PWN include:
 - a. Student is eligible for speech language services.
 - b. The FBA is still in progress. The IEP will be revisited upon completion of the FBA.
- 26. During the month of April 2024, two behavior incidents were documented on each of April 9, 2024 and April 16, 2024. On April 9, 2024, Student hit another student. On April 16, 2024, Student, in part, made inappropriate comments. Student was required to serve lunch detention for three days following each incident.
- 27. A progress report dated May 6, 2024 includes progress on five of Student's seven IEP goals. It is unclear why a progress report was made prior to the end of the fourth grading period on May 31, 2024.
- 28. An IEP meeting was held on May 29, 2024. The Head Teacher acted as the District representative. A new annual IEP was developed. Relevant portions of the IEP include:
 - a. Student's behavior impedes their learning or the learning of other. However, an FBA is not warranted.
 - b. Student has communication needs.
 - c. The IEP contains seven annual IEP goals to support academics, behavior (e.g., health education), "career readiness," and communication. Of note:
 - i. The math goal remained the same from the August 18, 2023 IEP.

- ii. The writing goal remained the same from the March 21, 2024 IEP.
 - iii. The reading goal remained the same from the March 21, 2024 IEP.
 - iv. The two communication goals remained the same from the March 21, 2024 IEP.
 - v. New goals were written regarding career readiness and behavior.
 - d. The IEP indicates progress reports will be sent home “in accordance with the grading periods.” However, the IEP does not include the specific dates, even though there is a section to indicate same.
 - e. The following changes were made to the special education services:
 - i. Social skills, language arts, math, social studies, and science services were decreased from 278 minutes to 276 minutes a week.
 - ii. Student was to attend social studies in the regular education setting during the 2024-25 school year.
 - iii. Electives was decreased from 556 minutes to 552 minutes a week.
 - iv. Medical/safety support was removed.
 - 1. Note: District indicated the removal of same was an error.
 - f. The social work and speech related services remained the same.
 - g. The accommodations remained the same with the exception of the addition of “check-ins, explicit rules and consequences, sharing, known routines, no gossiping, positive praises, academic peer supports, [and] high fives.”
- 29. The PWN is dated May 29, 2024. Relevant portions of the PWN include:
 - a. The behavior data collected between April 25, 2024 and May 10, 2024 indicated only one occurrence of the “targeted behavior.”
 - i. Note: District indicated in its response because there was only one occurrence of concerning behavior in the data reviewed, there was not enough data to write an FBA or develop a BIP.
 - b. Parent requested ABA therapy be provided for Student at school. District rejected Parent’s request because District is able to provide the supports and services needed.
 - c. District indicated on November 30, 2023 the OT evaluator decided there was no need for an OT assessment based on the previous assessment conducted in 2016 and a motor sensory form that was completed on September 7, 2023.
 - d. Parent indicated the SCS classroom is not providing the support Student needs. Thus, Parent requested Student be transferred to a different school with an SCS classroom. District indicated it is not the IEP Team’s decision to transfer Student. If Parent transfers Student, transportation services will not be provided.
 - e. Parent indicated progress reports were not provided. Going forward, progress reports will be emailed to Parent.

30. District asserts a hardcopy of the progress report dated May 6, 2024 was provided to Parent at the May 29, 2024 IEP meeting.
31. The motor sensory form that was, purportedly, completed on September 7, 2023 requires the person completing the form to indicate what concerns/problems the student is having, what strategies apply, and how the student responded to the strategies. The form indicates Student has (1) distractible behaviors/poor attention and (2) problems staying seated, poor body awareness, and is fidgety. Of the prepopulated strategies to use, the comments regarding how Student responded only indicate what accommodations/interventions had been utilized. The comments do not lend any insight into whether the accommodations/interventions are successful or what steps need to be taken.
32. District provided the behavior data it collected throughout the 2023-24 school year. Behavior data was first collected on December 4, 2023 and continued through the beginning of March 2024. During that time, different methods of documentation were used. For example, some behavior “data” consisted of handwritten or typed notes regarding Student’s behaviors that school day; other documentation were completed “ABC” sheets. Some of the documentation is not detailed enough to determine what is being reported on. In addition, there is not documentation for every school day. District asserts there are gaps in documentation because no behavior concerns were observed. Of the documentation provided, there were at least 19 days in which Student engaged in inappropriate behaviors.
33. In addition, District provided data from April 29, 2024 through May 10, 2024. Of that documentation, only one behavior incident was recorded. Prior to the May 29, 2024 IEP meeting, the April 29, 2024 through May 10, 2024 documentation was reviewed by the District BCBA to determine if an FBA was warranted. Based on the documentation, the BCBA concluded an FBA was not necessary.

Discussion and Conclusions of Law

Issue No. 1

Whether the District properly implemented the Student’s individualized education program(s) (IEP), specifically, by providing all special education and related services and providing timely periodic progress reports, pursuant to 34 C.F.R. § 300.323 and 6.31.2.11(B) NMAC.

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the

means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* See also 6.31.2.11(B)(1) NMAC.

An IEP must include a description of when periodic reports on progress will be provided. 34 C.F.R. § 300.320(c)(3)(ii).

Parent alleges Student was not always provided EA support (i.e., “Medical/Safety Support in Gen Ed”), nor was Parent provided periodic progress reports during the 2023-24 school year.

Medical/Safety Support in General Education Classes

First and foremost, Student’s IEP dated August 18, 2023 includes “Medical/Safety Support in Gen Ed” as a special education service. The medical/safety support provided to Student consisted of an EA accompanying Student to their general education classes to support Student’s behaviors (e.g., ensure Student keeps their hands/feet to themselves, maintains appropriate physical boundaries, stays on task, etc.). The IDEA defines “special education” as specially designed instruction that adapts the content, methodology, or delivery of instruction to meet the unique needs of the student with a disability. 34 C.F.R. § 300.39. On the other hand, the IDEA defines “supplementary aids and services” as “aids, services, or other supports that are provided in regular education classes. . . . to enable children with disabilities to be educated with nondisabled children. . . .” 34 C.F.R. § 300.42. Here, the support provided by an EA is not specially designed instruction but rather a supplementary aid and service. District has misclassified medical/safety support in the IEP.

Nonetheless, Student was to have support from an EA during Student’s general education classes, per the August 18, 2023 IEP. District asserts an EA was provided “for the most part,” as an EA was “usually” present. However, according to one of Student’s general education teachers, an EA was not present in Student’s media literacy class for the entire semester. Similarly, when the class changed to video editing in the second semester of the school year, the EA assigned to Student was often absent. During the times of absence, another EA did not accompany Student in class.

It is clear an EA was not present for a significant period of time in at least one of Student’s general education classes during the 2023-24 school year. District’s failure to provide an EA in Student’s general education class(es) results in a procedural violation for failure to implement the IEP. Any substantive harm will be discussed under Issue No. 6.

Progress Reports

The August 18, 2023 IEP states progress reports are to be provided in accordance with grading periods. The IEP does not specify the dates of each grading period. According to the 2023-24 school calendar, the grading periods during the 2023-24 school year ended on October 9, 2023; December 21, 2023; March 15, 2024; and May 31, 2024. Presumably, Parent should have received a progress report shortly after each grading period.

A progress report was only generated in October 2023 and May 2024. However, neither progress report contain progress regarding each of Student's IEP goals, nor is the progress reported measurable to the IEP goals. Furthermore, Parent was not provided the October 6, 2023 progress report until the end of November 2023.

The October 2023 progress report was not provided timely and did not contain progress on all of Student's IEP goals; a progress report was not provided in either December 2023 or March 2024. Additionally, the May 2024 progress report did not contain progress on all of Student's IEP goals. Thus, District failed to implement Student's August 18, 2023 IEP.

The District admitted it failed to provide progress reports, as required by the IEP. District stated, going forward, it will ensure the Student's case manager is reminded of the reporting obligation before Student's first progress report is due.

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

Issue No. 2

Whether the District should have conducted a reevaluation to determine Student's changing educational needs, pursuant to 34 C.F.R. § 300.303(a)(1) and 6.31.2.10(C)(2) NMAC.

A district *must* reevaluate a child with a disability (1) if the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation or (2) the child's parent or teacher requests a reevaluation. 34 C.F.R. § 300.303(a); 6.31.2.10(C)(2)(b) NMAC.

A reevaluation may be warranted in other circumstances. For example, when a child's behavior impedes learning and it is unclear what is causing it. *See e.g., District of Columbia Pub. Schs., 75 IDELR 176 (SEA 2019).*

A district must respond to a parent request for a reevaluation no later than 15 school days from the receipt of the request. 6.31.2.10(D)(3) NMAC. The district shall respond by providing prior written notice consistent with 34 C.F.R. § 300.503. 6.31.2.10(D)(4) NMAC.

When obtaining consent for an evaluation, the district shall obtain *written* informed parental consent. 34 C.F.R. § 300.9; 6.31.2.10(E)(2) NMAC.

Here, several assessments were requested by Parent prior to, and during, the 2023-24 school year. Specifically, Parent requested that a speech evaluation, OT evaluation, and an FBA be conducted. Each evaluation, and request, will be discussed individually below.

Speech Evaluation

Sometime in February 2023, the IEP Team discussed conducting a speech evaluation because Student had previously received speech services and there was no explanation as to why the services stopped. Parent's consent was sought and received on February 27, 2023. However, the consent form does not indicate an assessment was to be conducted, but rather that data would be collected. Despite the vague consent form, all documentation and notices later provided suggest a speech evaluation was to be conducted. Specifically, the May 10, 2023 REED, August 18, 2023 PWN, and November 27, 2023 PWN indicate a speech evaluation was needed and/or pending.

Despite the agreement to conduct a speech evaluation, District did not request or obtain Parent's informed consent for same. In fact, it was not until January 23, 2024 that Parent's consent was requested via a phone call, nearly 11 months after a need was identified. Moreover, District never obtained Parent's informed consent. In order to obtain informed consent, District must have, in part, obtained Parent's agreement and consent in writing which District failed to obtain. See 34 C.F.R. § 300.9

Following receipt of Parent's verbal consent to conduct a speech evaluation, the evaluation was conducted and a report was completed and provided to Parent and other District staff members on February 20, 2024. However, an IEP meeting was not held to discuss the report until March 21, 2024, at no fault of Parent.

District's failure to timely request Parent's consent to conduct a speech evaluation, failure to obtain written consent, and untimeliness in discussing the evaluation report results in a procedural violation of the IDEA. Any substantive violation caused by District's failure to incorporate needed speech services in Student's IEP until March 21, 2024 will be discussed under Issue No. 6.

OT Evaluation

Similar to the speech evaluation, the May 10, 2023 REED, August 18, 2023 PWN and November 27, 2023 PWN indicate an OT evaluation was needed and/or pending. Per the May 29, 2024 PWN, District stated an OT evaluation was no longer needed based on, in part, a motor sensory form that was completed on September 7, 2023. If true, it is unclear why the November 27, 2023 PWN stated an OT evaluation was pending if, through the September 7, 2023 motor sensory form, it

was determined there was not a need for an OT evaluation. Moreover, and of concern, the motor sensory form does not appear to provide complete information to assist in the determination of whether an OT evaluation was needed, yet District relied on the motor sensory form when making its decision whether to evaluate.

In all, it appears District either mishandled or forgot that it agreed to conduct the OT evaluation. District should have requested parental consent to conduct the OT assessment, as early as May 10, 2023 when the team, through the REED process, determined an OT assessment was needed. Alternatively, if the District had not agreed to conduct an OT assessment, the PWNs should have explicitly reflected such.

In its response to the complaint, District agreed to conduct an OT assessment.

FBA

Although conducting an FBA, in some circumstances, may not constitute an evaluation subject to the parental consent and 60-day completion requirements², Parent requested an FBA for Student as early as May 23, 2023. At first, Parent's request was rejected in order to allow District to analyze behavior data. However, the IEP team later determined that an FBA was warranted for Student. On August 18, 2023, District agreed to conduct an FBA and obtained verbal consent for same.

Even though District agreed to conduct an FBA, on November 27, 2023, District stated that data needed to be collected for the FBA -- even though District stated no behavior concerns were noted in April, May, August, or October 2023. District was to collect data in November and December 2023 and review same in January 2024.

In January, District stated it still did not have enough data. Then in February, based solely on the "data" District collected over the previous few weeks, District determined, again, that an FBA was warranted. The FBA was to be completed in three weeks. However, *again*, District pushed back the FBA and IEP meetings to continue to collect data. Finally, on May 29, 2024, District stated the data collected between April 25, 2024 and May 10, 2024 showed only one instance of concerning behaviors. As a result, the District was no longer going to conduct an FBA.

² It is important to note, an FBA may or may not qualify as an evaluation or reevaluation. According to the Office of Special Education Programs (OSEP), if the FBA focuses on the educational and behavioral needs of the student, the FBA does qualify as an evaluation or reevaluation under the IDEA. *Letter to Christiansen*, 48 IDELR 161 (OSEP 2007). However, the Office of Special Education and Rehabilitative Services (OSERS) indicated it is reconsidering its position that an FBA is an evaluation or reevaluation under the IDEA. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022).

First and foremost, District appears to be disingenuous regarding its data collection attempts. The FBA was delayed for upwards of nine months so that District could “collect data.” However, each time the IEP team was to meet to discuss the data collected, District needed more time to collect more data. The instances in which data was discussed, only data that was collected over a few weeks period was considered. It is unclear why all the data District collected was not reviewed and considered by the IEP team.

Moreover, District agreed in August 2023 and in February 2024 that an FBA was warranted. The agreement was not dependent on what the data to be collected showed, yet that is what District later required. District mishandled Parent’s request for an FBA and unnecessarily delayed and then refused to conduct same, at the detriment of Student.

Of importance, the documentation provided by District shows that Student does in fact engage in concerning behavior. Student has been suspended and put on lunch detention for engaging in inappropriate, sexual in nature, conduct; inappropriate use of Student’s computer; and bullying concerns have been expressed numerous times. Yet District said in May 2024 that there were not enough instances to support an FBA. It is a violation of the IDEA for District to fail in offering further testing and/or supports to help Student, particularly when the IEP team determined further testing to be necessary.

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

Issue No. 3

Whether the Student’s IEP(s) is tailored to their unique needs and reasonably calculated to enable the Student to make progress appropriate in light of their circumstances, pursuant to 34 C.F.R. §§ 300.320 and 300.324; and 6.31.2.11 NMAC.

The primary vehicle for providing FAPE is through an appropriately developed IEP that is based on the individual needs of the child. *Dear Colleague Letter*, 115 LRP 53903 (OSERS 2015). The IDEA requires a district offer an IEP reasonably calculated to enable a child to make progress appropriate in light of their circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

In developing an IEP, the IEP team must consider the strengths of the child, the parent’s concerns, evaluation results, and “the academic, developmental, and functional needs of the child.” 34 C.F.R. § 300.324(a)(1). An IEP must include a statement of the child’s present levels of academic achievement and functional performance. *Id.* at 300.320(a)(1)(i). An IEP must also contain measurable annual goals designed to: (1) meet the needs that result from the student’s disability to enable him or her to be involved in and make progress in the general education curriculum, and (2) meet each of the student’s other educational needs that result from his or her disability.

Id. at 300.320(a)(2). Also, an IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. *Id.* at 300.320(a)(4). The IEP must indicate the anticipated frequency, location, and duration of services. *Id.* at 300.320(a)(7). There must be enough specificity about the services and modifications that will be provided “so that the level of the [district]’s commitment of resources will be clear to the parents and other IEP team members.” See 71 Fed. Reg. at 46667. Failing to provide needed supports and services can be a denial of FAPE. *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016).

The IEP must pass the “stranger test,” meaning that the IEP must not be vague and can be understood and implemented by someone unfamiliar with the student. *Mason City Community School District*, 46 IDELR 148 (SEA IA 2006).

“[A] court should determine the appropriateness of an IEP as of the time it was made and should use evidence acquired subsequently to the creation of an IEP only to evaluate the reasonableness of the school district’s decisions at the time that they were made.” *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 564-65 (3d Cir. 2010).

First and foremost, District failed to conduct additional, necessary assessments to determine Student’s needs. Specifically, as early as May 10, 2023, but no later than August 18, 2023, District agreed to conduct speech and OT evaluations yet never requested Parent’s consent to conduct same. Similarly, as early as August 18, 2023, District agreed to conduct an FBA but did nothing to “prepare” for the FBA until December 2023. Once District agreed to conduct the additional assessments, District should have sought Parent’s consent within 15 school days of same. See 6.31.2.10(D)(5) NMAC.

At the latest, District should have requested Parent’s consent by September 11, 2023 (15 school days after the August 18, 2023 IEP meeting) for the speech assessment, OT assessment, and potentially, the FBA. However, District never requested consent for the OT assessment or FBA and only received verbal consent for the speech assessment on January 23, 2024 - 158 calendar days later. At minimum, a speech evaluation could have been conducted and the report discussed and additional special education services incorporated into Student’s IEP by November 25, 2023 (75 days after consent should have been requested). Instead, Student’s communication needs were not identified, nor supports incorporated into the IEP, until March 21, 2024 - 216 days after a need was identified. District’s failure to act, and do so timely, is egregious and resulted in Student being deprived FAPE.

Even if Student did not have additional needs, Student’s August 18, 2023; March 21, 2024; and May 29, 2024 IEPs are not reasonably calculated to meet Student’s unique needs. For example,

the August 18, 2023 includes several accommodations without much detail, if any, regarding the frequency, duration, or location in which the accommodations should be utilized or provided. As stated above, the IEP should pass the “stranger test,” but as written it does not. In addition, despite behavior concerns, some of which are sexual in nature, the August 18, 2023 IEP seemingly includes very few supports to address those behaviors. The behavior-related goal has nothing to do with addressing Student’s inappropriate conduct, nor do the accommodations. Similarly, even though there were many reports of inappropriate behaviors, some of which resulted in suspension or lunch detention, the March 21, 2024 IEP did not include any additional supports to address same; the behavior goal remained the same and the accommodations did not change. It was not until the May 29, 2024 IEP that additional behavior supports were added. However, the additional accommodations are vague and a person unfamiliar would not be able to implement the accommodations without more information.

Problematically, very little progress has been reported since the implementation of the August 18, 2023 IEP rendering it impossible to determine if Student’s IEPs were reasonably calculated.

In all, Student’s August 18, 2023; March 21, 2024, and May 29, 2024 IEPs are not reasonably calculated to meet Student’s unique needs depriving Student of FAPE.

Of note, each of Student’s IEPs includes special education services for “electives.” However, Student is not receiving specialized instruction in their elective classes but rather this designation is intended to show that Student is attending and participating in the general education elective classes. Including Student’s participation in the general education classroom as a special education service, when not receiving specially designed instruction, is an inappropriate way to classify this in the IEP. Only minutes in which Student is to receive special education services should be included with the appropriate title so it is clear what the specially designed instruction should target (e.g., math for 276 minutes/week).

As to Issue No. 3, the District is cited, and Corrective Action is required.

Issue No. 4

Whether the District provided prior written notice(s) (PWN) that accurately reflect what was discussed and agreed upon at the IEP meeting(s), pursuant to 34 C.F.R. § 300.503.

A district must provide prior written notice prior to proposing or refusing to change the provision of FAPE to a child. 34 C.F.R. § 300.503. The content of the notice must include: (1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part

and the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal. *Id.*

Parent alleges that the May 29, 2024 PWN was not an accurate reflection of the agreements made at the May 29, 2024 IEP meeting. Specifically, the PWN indicates District refused Parent's proposal for an outside ABA therapist to collaborate with District staff to develop a comprehensive behavior plan even though it was agreed to at the IEP meeting.

District recalled a discussion that it would obtain a release of information from Parent to "work with" the ABA therapist. However, District stated it does not allow outside agencies to work within school buildings so that would not have been agreed to.

Nonetheless, there is sufficient evidence that there was supposed to be some kind of collaboration with the ABA therapist but the PWN does not reflect same. As the PWN does not accurately reflect the meeting, District is in violation of this section.

Moreover, as noted above, there are several PWNs that suggest a speech evaluation, OT evaluation, and/or FBA were to be conducted and/or in progress, but that was not true. In addition, there were two PWNs that indicated another IEP meeting would be held in the future. District did not hold an IEP meeting, as it indicated it would. Again, District is in violation of 34 C.F.R. § 300.503 in regards to each of the August 18, 2023; November 27, 2023; and March 21, 2024 PWNs.

Finally, many of the PWNs are not written clearly and require the reader to obtain further information that is not articulated within the IEP(s) or PWN(s). For example, the May 29, 2024 IEP indicates the behavior data collected only included one occurrence of the "targeted behavior." Seemingly, District included this in the PWN to support its decision not to conduct an FBA but the PWN does not explicitly say that. The PWN should be clear so that the reader, and, most importantly, the parent, understands what District is proposing or refusing to do.

Of note, District held IEP meetings on May 10, 2023 and May 23, 2023. Even though decisions were made at these meetings, District did not provide a PWN regarding those decisions until after the August 18, 2023 IEP meeting. That is not an appropriate practice. District should provide PWN a reasonable time after each IEP meeting, regardless if the IEP team is scheduled to reconvene or not. Because these meetings are outside of the scope of this investigation, the decision and corrective action is not impacted by District's action.

As to Issue No. 4, the District is cited, and Corrective Action is required.

Issue No. 5

Whether the District ensured the personnel providing special education and/or related services was qualified under the state licensure requirements, pursuant to 34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC.

State educational agencies (SEAs) are required to establish and maintain qualifications of special education teachers. 34 C.F.R. § 300.156.

In New Mexico, each local education agency (LEA) is bound by the rules enumerated at 6.31.2 NMAC. Specifically, 6.31.2.9(B)(9) NMAC requires LEAs to ensure personnel serving children with disabilities be qualified under state licensure requirements.

The state licensure requirements regarding special education teachers can be found at 6.61.6.8 NMAC. The licensure requirements for a special education teacher require that the person seeking licensure (1) hold a bachelor's degree from a regionally accredited college or university; completion of specific credits, courses, and teaching hours; and satisfy the requirements of "a highly qualified beginning pre K-12 special education teacher" or (2) possess a valid certificate for the appropriate grade level and type. See 6.61.6.8 NMAC.

The state licensure requirements regarding substitute teachers can be found at 6.63.10.8 NMAC.

In addition, State regulations allow "paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to children with disabilities under Part B of IDEA." 6.31.2.9(B)(9) NMAC. See also, *Letter to Copenhaver*, 50 IDELR 16 (OSEP 11/07/07).

Here, the SCS classroom that Student transferred to on August 21, 2023 was taught by a "substitute teacher." District admitted the SCS Teacher does not hold a special education license. Of concern, the SCS Teacher only holds an educational assistance license. Despite the SCS Teacher's lack of licensure, District allowed the SCS Teacher to act as a "substitute" in the SCS classroom. It is unclear if the SCS Teacher is eligible for a substitute teacher certification, per 6.63.10.8 NMAC. Nonetheless, there is no indication that the SCS Teacher had the content knowledge and skills to serve children with disabilities.

District claims the SCS Teacher received support from licensed special education teachers throughout the school year. Specifically, in part, the Head Teacher provided support and offered curriculum and resources for the SCS Teacher to utilize. The Head Teacher stated they checked in with the SCS Teacher daily and stayed in the SCS classroom for the duration of the class period several times to make sure the students were getting their services. State regulations state "while

there may be brief periods when EAs are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct supervision of duly licensed staff.” 6.63.9.8 NMAC. Here, the SCS Teacher was not working alongside or under the direct supervision of duly licensed staff nor were they only in control of the SCS classroom for a brief period of time. Therefore, District is in violation of state rules regarding same.

As to Issue No. 5, the District is cited, and Corrective Action is required.

Issue No. 6

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.

FAPE must be made available to all children with disabilities. 34 C.F.R. § 300.101; 6.31.2.8 NMAC. School districts must provide FAPE for each student who resides within the school district’s educational jurisdiction. 6.31.2.9(A) NMAC. Violations of the IDEA may be based on either substantive or procedural violations. A procedural violation constitutes a denial of FAPE if it: (1) impedes the child’s right to FAPE; (2) significantly impedes the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE; or (3) causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2). A substantive legal standard for determining whether a district offered a student FAPE is whether the IEP was reasonably calculated to enable the child to make progress appropriate in light of their circumstances. *Andrew F.*, 137 S. Ct. 988 (2017).

The failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17. However, not every deviation from the IEP results in a denial of FAPE. *See I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs.*, 70 IDELR 86 (8th Cir. 2017). Only material implementation failures qualify as a denial of FAPE. *See e.g., Van Duyn v. Baker Sch. Dist. 5J*, 47 IDELR 182 (9th Cir. 2007), *reprinted as amended*, 107 LRP 51958 , 502 F.3d 811 (9th Cir. 2007). “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP.” *Id.*

IEP Implementation

The August 18, 2023 and March 21, 2024 IEPs were not implemented in regards to the required support from an educational assistant and production of progress reports.

It was concluded that Student went without an EA in one class for several months and there were many times Student did not have the support of an EA in other classes. It is inherently difficult to determine if Student’s behaviors would have impeded learning less had an EA always

been present due, in part, to the lack of progress reports. However, the IEP required an EA assist Student/be present during all general education classes. Because an EA was not present for upwards of five months in one general education class, the failure to provide same was material and results in a denial of FAPE.

Similarly, District failed to provide progress reports to Parent according to the schedule determined by the IEP. In both March 2024 and May 2024, a new IEP was developed. However, without progress reports, the IEP Team, including Parent, did not have adequate information about Student's strengths, weaknesses, and needs. Because Parent did not receive progress data, Parent's ability to participate in the decision-making process regarding the March 2024 and May 2024 IEPs was significantly impeded. Therefore, the failure to provide progress reports to Parent resulted in a denial of FAPE.

Speech Evaluation

At no fault of Parent, Student's speech assessment was delayed for 158 calendar days. Once the assessment was completed, the IEP Team determined Student was in need of speech services and incorporated same into the March 21, 2024 IEP. Had Student been evaluated sooner, Student would have received services sooner. As a result, Student was deprived of educational benefit, resulting in a denial of FAPE. District will be required to provide Student with compensatory education for the time in which Student could have, and should have, been receiving speech services, had District not delayed the evaluation.

Reasonably Calculated IEPs

As stated above under Issue No. 3, Student's IEPs were not reasonably calculated to meet Student's unique needs. Therefore, Student was denied FAPE.

Special Education Teacher

As stated above under Issue No. 5, the SCS classroom was not taught by a licensed special education teacher. This violation results in a substantive violation against the students in the SCS classroom.

In the complaint, Parent requested that Student be transferred to another school with an SCS program and District be responsible for providing transportation because of District's failure to provide FAPE. Parent previously requested same at the May 29, 2024 IEP meeting. The PWN incorrectly states the IEP Team cannot decide whether Student transfers to another school. In fact, the IEP team can decide if Student should receive services at another school, like it did when Student was moved to the school with the SCS program instead of attending Student's neighborhood school. See 34 C.F.R. § 300.116.

The Student’s placement is for the IEP Team to decide, as the PED does not know how Student would be served at another school. *Id.* If the IEP Team decides another placement is appropriate for Student, District should provide transportation, if the placement is not Student’s neighborhood school.

As to Issue No. 6, the District is cited, and Corrective Action is required.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.323 6.31.2.11(B) NMAC	District failed to implement Student’s IEPs.
34 C.F.R. § 300.303(a) 6.31.2.10(C)(2)(b) NMAC	District failed to reevaluate Student.
34 C.F.R. § 300.9 6.31.2.10(E)(2) NMAC	District failed to request and obtain written informed parental consent.
34 C.F.R. §§ 300.320 and 300.324 6.31.2.11 NMAC	District failed to develop IEPs reasonably calculated to meet Student’s unique needs.
34 C.F.R. § 300.503 6.31.2.9(B)(9) NMAC	District failed to provide accurate PWNs.
34 C.F.R. § 300.101 6.31.2.8 NMAC	District failed to ensure personnel serving children with disabilities qualified under state licensure requirements.
34 C.F.R. § 300.101 6.31.2.8 NMAC	District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE) to the Student.

Required Actions and Deadlines

By October 18, 2024, the District's Special Education Director must assure the OSE in writing that the District will implement the provisions of this Corrective Action Plan (CAP). The OSE 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:

Ms. Yaling Hedrick
Corrective Action Plan Monitor
Office of Special Education
New Mexico Public Education Department
300 Don Gaspar Avenue
Santa Fe, NM 87501
Telephone: (505) 795-2571
Yaling.Hedrick@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 OSE 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 OSE.

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 OSE 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 October 1, 2025 and reported to the OSE no later than October 15, 2025. All documentation submitted to the OSE 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 OSE</u>	<u>Document Due Date</u>
1.	As described above, the District will submit a written assurance to the PED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	October 18, 2024	Written Assurance Letter/Email	October 18, 2024
2.	The District Special Education Director and the school principal shall meet virtually with the OSE Education Administrator assigned to the District and the OSE 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 virtual meeting with OSE.	October 25, 2024	Notes from meeting prepared by District	November 1, 2024
3.	The District Special Education Director will meet with the principal, Head Teacher, and Student’s special education teachers and related service providers to review the Complaint Resolution Report to ensure that those persons understand the complaint, the violations that were found, and the corrective action that will be taken to address the violations.	November 1, 2024	Notes from meeting prepared by District	November 8, 2024

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
<p>4.</p>	<p>The District shall conduct the following evaluations:</p> <ol style="list-style-type: none"> 1. assistive technology (AT) 2. occupational therapy (OT) <p>The District shall issue a PWN requesting parental consent to evaluate Student within 21 days of this report.</p> <p>If the parent declines to provide consent to evaluate, then the District shall obtain written documentation of parent’s refusal to consent.</p>	<p>Within 45 days of receipt of parental consent</p> <p>October 25, 2024</p>	<p>AT Evaluation report OT Evaluation report</p> <p>Prior written notice requesting parental consent to evaluate Student</p> <p>Written parental consent, if provided</p> <p>Alternatively, written documentation of parent’s refusal to provide consent to reevaluate.</p>	<p>Within 7 days of completion of the evaluation reports</p> <p>October 28, 2024</p> <p>Within 7 days of receiving parental consent</p> <p>Within 7 days of receiving parent’s refusal to consent to evaluate.</p>
<p>5.</p>	<p>The District shall convene a facilitated IEP meeting for the Student. The facilitated IEP meeting shall address, at minimum:</p> <ul style="list-style-type: none"> • Student’s progress on their previous IEP goals; • Student’s present levels of performance regarding all areas of need; • Whether different IEP goals are needed based on Student’s present levels; • Positive behavioral interventions and supports or other strategies to address Student’s behaviors; • If EA support is needed in general education classes, and, if so, incorporate that 	<p>Within 15 days of completing the evaluations required in Step 4.</p> <p>If consent to evaluate is not provided by parent, the FIEP meeting shall be held no later than November 22,2024</p>	<ol style="list-style-type: none"> 1. Invitation to IEP meeting; 2. Agenda for IEP meeting; 3. IEP; and 4. Prior Written Notice(s) 	<p>15 days after the FIEP meeting is held</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED</u> <u>OSE</u>	<u>Document Due Date</u>
	<p>support within the IEP, in the appropriate section;</p> <ul style="list-style-type: none"> • Compensatory education in math and/or writing proposed by District; • Compensatory Speech Language services required in Step 6. • Compensatory OT services, if appropriate; and • Student’s appropriate placement. <p>The Facilitator shall be independent of the District and shall be selected from the PED list of approved facilitators. The Facilitator shall be paid for by the District.</p> <p>The District shall ensure all mandatory IEP members are present at the facilitated meeting.</p> <p>The FIEP meeting shall be held on a date and time that is convenient for the parent. The parent will be provided with a copy of the IEP and PWN at the conclusion of the FIEP meeting.</p> <p>The District shall also ensure that the IEP team includes, but is not limited to, parents, special education teacher, general education teacher, the BCBA or District Behavior Management Specialist involved in Step 7, and any other related services providers.</p>			

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	<p>District shall ensure the IEP categorizes specialized instruction, supplementary aids and services, and Student’s participation in general education classes appropriately.</p>			
6.	<p>The District shall provide the following compensatory education:</p> <ol style="list-style-type: none"> 1. 480 Minutes of Speech Services 2. Math services (determined by IEP team) 3. Writing services (determined by IEP team) 4. OT services, (if determined to be appropriate during FIEP meeting) <p>The plan for compensatory services shall be documented in the PWN(s) for the facilitated IEP meeting required in Step 5.</p> <p>These compensatory services are above and beyond the regular services required by Student’s IEP. The schedule for compensatory services should be developed in collaboration with the parent and can include provisions of services in the summer months.</p> <p>If the District, due to staffing or other limitations, is unable to provide the needed IEP and compensatory services as outlined in Student’s IEP and the compensatory services plan, the</p>	July 31, 2025	<p>Documentation of delivery/provision of compensatory education services, including logs of services recorded in the PED-approved Excel spreadsheet log provided by the OSE CAP monitor.</p> <p>Prior Written Notice containing plan for compensatory services</p>	<p>Monthly from date of compensatory services plan until the compensatory education hours are completed</p> <p>15 days after the FEIP meeting is held</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	District is required to contract with a private provider to ensure those services are provided.			
7.	<p>District shall assign a District BCBA to develop a data collection plan for Student and train a District Behavior Management Specialist, who is a district employee from outside of the school, to collect data in accordance with that plan.</p> <p>Based on the data collected during the 2024-25 school year and data collected during the 2023-24 school year, the District BCBA will consult with Student’s outside BCBA, to develop recommendations for Student in advance of the FIEP meeting required in Step 5.</p>	<p>November 15, 2024</p> <p>Prior to the IEP meeting required in Step 5</p>	<p>Data collection plan</p> <p>Written recommendations regarding Student behavior interventions</p>	<p>November 22, 2024</p> <p>15 days after the FEIP meeting is held</p>
8.	District shall conduct intermittent auditing of Student’s school team progress monitoring and reporting throughout the 2024-25 school year.	Within 14 days of the end of each grading period	Documentation of audit results/ recommendations	No later than 21 days after the end of the grading period
9.	<p>District will develop and submit a recruitment plan to address the licensed special education teacher vacancy in the SCS class served by the “substitute teacher.”</p> <p>Any action already taken by the District as of the date of this report to fill this vacancy may be included in the District’s Plan.</p> <p>District shall provide evidence of action taken in accordance with the recruitment plan.</p>	November 15, 2024	<p>Recruitment Plan</p> <p>Documentation of Plan Implementation</p>	<p>November 15, 2024</p> <p>December 20, 2024</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED</u> <u>OSE</u>	<u>Document Due Date</u>
	<p>If the District has already filled this vacancy as of the date of this report, documentation of employment of an appropriately licensed special education teacher will be sufficient to satisfy this CAP step.</p>		<p>If applicable, documentation of employment of an appropriately licensed special education teacher serving the SCS class</p>	<p>November 1, 2024</p>
<p>10.</p>	<p>District shall internally review the delivery of special education of all students in the SCS classroom led by the “substitute teacher” during the 2023-24 school year to determine the amount of compensatory education needed for the individual students, if any.</p> <p>The District shall develop plans for providing compensatory services to the individual students. The plans will be documented in a Prior Written Notice for each student and sent to parents of the respective students.</p> <p>District shall maintain a PED-approved tracker that includes the total compensatory hours owed and provided to each student based on missed services as well as student need, whether those hours were accepted by the student’s parents, and the provision of compensatory education hours provided to each student.</p> <p>If a parent declines compensatory education, the District shall get a confirmation in writing and provide the written confirmation to PED.</p>	<p>December 6, 2024</p>	<p>Prior Written Notices containing plans for compensatory services, if any.</p> <p>Compensatory education tracker</p> <p>Written confirmation of parent’s decision to decline compensatory services</p>	<p>December 13, 2024</p> <p>Monthly from date of compensatory services plan until the compensatory education hours are completed</p> <p>Forward when all parents’ decisions have been received</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED</u> <u>OSE</u>	<u>Document Due Date</u>
	<p>District shall complete all compensatory education hours by October 1, 2025. These compensatory services are above and beyond the regular services required by the students' IEPs. The schedule for compensatory services should be developed in collaboration with the parents and can include provisions for services in the summer months.</p> <p>If the District, due to staffing or other limitations, is unable to provide the compensatory services as required by this CAP, the District is required to contract with a private provider to ensure those services are provided.</p>			and documented
11.	<p>The District shall arrange training for school staff (including special education teachers, special education administrators, and related service personnel) to be provided by a person with expertise in special education who is approved by the PED.</p> <p>The training shall address the following special education topics:</p> <ul style="list-style-type: none"> (1) IEP development, including <ul style="list-style-type: none"> (a) adequate descriptions and detail of services and accommodations and (b) what classifies as specialized instruction and a supplementary aid and service; (2) Implementing an IEP as written, specifically, the 	December 6, 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>October 25, 2024</p> <p>November 8, 2024</p> <p>December 13, 2024</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	provision of services and accommodations; (3) Progress monitoring and reporting; (4) Licensure required for staff providing special education and related services; (5) Providing accurate and complete PWNs; (6) Reevaluations, including (a) when a reevaluation is necessary prior to the triennial evaluation (b) obtaining parental consent; and (c) timeline to conduct; (7) Data collection; (8) FBAs; and (9) Supporting students with autism, including the 11 considerations for autism.			

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/ 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.

Deputy Secretary, Office of Special Education