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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report

Case No. 2425-08
October 25, 2024

This Report does require corrective action. See pages 26-34.

On August 28, 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 and answers to a questionnaire 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;
- interviews with the Superintendent, Director of Special Education, the Principal of the Online and AEP Schools, and the Complainant (with attorney present).

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.

- 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 a 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 the following issues raised by the complainant: Issues pertaining to racism, retaliation or disparate treatment.

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 evaluate Students 1 and Student 2 after Parental requests for a comprehensive evaluation and failed to provide Parent with prior written notices (PWN) of District's refusal to evaluate Students in a timely manner in violation of 34 C.F.R. § 300.111(a)(1)(i) and 6.31.2.10(A) and (D);
2. Whether the District failed to follow the IDEA disciplinary procedures when disciplining Students, who had not yet been determined eligible for special education, for violations of the District's code of conduct, in violation of 34 C.F.R. § 300.530; 34 C.F.R. 34 § 300.534 and 6.31.2.11(F)(2) NMAC; specifically, whether the District:
 - a. Failed to consider both Students' needs and eligibility for special education and related services when assigning Student to "jail school" and
 - b. Failed to promptly evaluate and determine Student's needs before imposing long term suspension or expulsion;
3. Whether the District allowed Parent access to educational records of both Students, including disciplinary records, in a timely manner in violation of 34 C.F.R. § 300.501(a); 34 C.F.R. § 300.613 and 6.31.2.13(B) NMAC;
4. Whether the District improperly denied Student 1's and Student 2's enrollment at the neighborhood school within the LEA in violation of 34 C.F.R. § 300.101 and

6.31.2.8(A) NMAC;

5. Whether the District's actions and/or omissions towards the named 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.

General Findings of Fact

Background Information

Students, 1 and 2

1. Complainant is the mother of Students 1 and 2. Both Students have been resident students of the District since Kindergarten.
2. Student 1 has never been evaluated for special education.
3. Student 2 was determined to be eligible for special education and related service on March 5, 2023. The District never developed an IEP for Student 2.
4. Complainant attempted to enroll both Students into District's schools for the 2024-2025 school year. The District refused to enroll both Students, telling Complainant that Student 1 was too old and Student 2 was currently serving a suspension and could not be enrolled. In its Response, District states that Complainant did not attempt to enroll either Student for the 2024-2025 school year. This was contradicted by Complainant and by other information available to the investigator.
5. The District sent a letter to Complainant on August 5, 2024, being the first day of school, stating that due to credits earned by the two Students last year, the District did not believe that it could "offer either of them a successful pathway to a High School diploma" and that the Principal had discussed alternatives with a [REDACTED] Social Worker and the Social Worker would reach out to Complainant.
6. The [REDACTED] Social Worker confirmed that the District did not want the two Students enrolled at the District and offered alternatives such as how a Graduate Equivalency Degree [GED] could be obtained.

Placement at the Online School and Alternative Educational Site [AEP]

7. The District had a Memorandum of Agreement (MOA) between the District and the [REDACTED] Department of Corrections and the [REDACTED] [REDACTED] [REDACTED]. Multiple names were used by the District to describe this program and/or facility. In some District documents, it was called an Alternative Educational Program [AEP] and in other documents it was called the [REDACTED] Correctional Facility or [REDACTED] Department of Corrections. The District stated this was a

program operated by the local Department of Corrections. This facility housed incarcerated adults and adjudicated juvenile delinquents at the same time students were placed there for educational purposes.

8. The MOA itself states the agreement is between the District and the [REDACTED] Department of Corrections; the [REDACTED] is also a signatory.
9. The MOA states that the programs/services at the AEP setting include basic educational services for school aged students who are incarcerated or placed on long term suspension or expulsion by the District, including services for students with disabilities.
10. The District's Response states that students are placed at the AEP as a last resort alternative to total removal from school, as an alternative to long-term suspension or expulsion.
11. In interviews with the Superintendent and the Principal, it was stated that students were not placed there, but that the students' parents chose to have them there instead of serving the long-term suspension or expulsion.
12. Both students spent time at the [REDACTED] Correctional Facility – Student 1 either as a student in the AEP or as an adjudicated juvenile (records to clarify this were not provided) and Student 2 as a student in the AEP. What instruction occurred is unclear based on the information provided by the District.
13. Contrary to the MOA, the District's Response states that the education occurring at the AEP involved an "assistant" without educational certification, who "proctored students' online coursework." This assistant was not a certified District Educational Assistant, but an individual hired by the [REDACTED] [REDACTED]
14. Student 2's placement at AEP was justified by the District as a choice that Student 2's parents made after a hearing. The District's single page discipline document did not identify any discipline imposed by the District. In interviews, the District was unable to state what the exact discipline imposed was and the District failed to follow all notice requirements, hearing memorialization requirements and reporting requirements for either long-term suspension or an expulsion of any New Mexican student.
15. Conversely, Student 2's Principal stated that the result of Student 2's disciplinary hearing was a disenrollment – which is not a form of discipline.
16. The District provided no documentation and conflicting statements about what Student 2's parent was told at the hearing that resulted in parent choosing for Student 2 to attend AEP.
17. The superintendent stated that parents are fully informed about everything involved with an AEP placement and the principal stated that the parent could not have been told about isolating students in cells by non-District employees because the District did not know this would happen and that parent was not informed about the Department of Corrections uniforms Student 2 would have to wear.

18. The District stated that there were zero licensed educators in residence at the AEP during the 2023-2024 and current school year (2024-2025) and that the individual who was present with students at the AEP was a non-district, non-certified educational assistant who was hired and monitored by the [REDACTED] [REDACTED]
19. The District stated that students' teachers would go to the AEP to work with students when they needed academic support. The records for Student 2 show a single visit by a District employee occurred while he was at the AEP.
20. While at the AEP, students' discipline was executed by [REDACTED] Department of Correctional Facility officers with zero oversight by the District. The MOA does not provide that the [REDACTED] Correctional Department employees have any authority over students. The District did not provide a copy of the discipline plan used by AEP staff, if one exists. The discipline plan included in the District's Response document did not address isolating students in cells for any type of behavior.
21. Student 2 was isolated in a cell for the day on five different dates. The cells at the correctional facility were behind locked doors and in a different part of the building. This building housed adult inmates and juvenile delinquents. The Principal of Student 2 had never observed the cell area and could provide no information about the cells or whether students were observed while held in the cells. The Principal stated he was not curious about this practice as his sole responsibility was providing educational materials to the students.
22. The AEP has been referred to as "jail school" by the parent and her attorney because, during school hours at this facility, students had to dress in jumpsuits or color-coded uniforms. District personnel gave conflicting information about whether students wore jumpsuits or pants and tops, but they agreed that students had to change out of their normal clothing and wear clothing provided by the correctional facility. The District is not aware of whether these uniforms are the same or different than what adult inmates and/or juvenile delinquents wear at the correctional facility.
23. The District also has an online school. This online school is voluntary and has an application process. Initially the principal stated students' families filled out an application, and then stated he only had District enrollment forms. Both students attended a District online school at some point which has a physical site and face to face instruction twice weekly.
24. The online school uses Edgenuity, which the District's Director of Special Education stated is good for catching up on credits for students who are self-motivated. Neither Student 1 or Student 2 records indicate they are self-motivated students and were not successful in catching up on credits.

Requests for Student Records and Provision of Same

25. On August 20, 2024, the District provided Complainant attorney links to social services and parole office for records for Student 1.
26. On September 11, 2024, the Native American Disability Law Center ["NADLC"] requested all educational records for Student 1.
27. On May 30, 2024, the Native American Disability Law Center ["NADLC"] requested all educational records for Student 2.
28. On June 3, 2024, the District responded that NADLC's request for records was unduly burdensome and stated they would need time to gather the documents.
29. As of October 25, 2024, the District has not demonstrated compliance with the educational record request for either Student. The records provided by the District to Complainant were incomplete. For example, some documents only had every other page provided, other records were not included. The records provided to the investigator were also incomplete with only every other page provided of some documents. The investigator was provided complete documents and additional documents during the investigation, but Complainant was not provided these updates or additional documents.

STUDENT 1

30. Student 1's date of birth is November 14, 2006.
31. On August 23, 2023, Complainant wrote to the District requesting completion of Student 1's Student Assistant Team (SAT) Meeting. Previously, Complainant, in an October 1, 2020 document, had requested a SAT Meeting and described Student 1's academic difficulties.
32. Student 1 attended the online school. It is unclear from documents and information provided by the District whether Student 1 was placed into the online school or whether it was a voluntary decision made by Student 1's parents. Specific information demonstrating that Student 1's parents made the decision and provided an application for the online school was requested from the District and was not received.
33. The District stated in its response to Complainant that "our main responsibility is to identify those learning disabilities we are equipped to address as an education organization" and "all special accommodations, modifications to curricula.... must, by law, be supported or justified by signed statements from a qualified medical professional. These statements prescribe certain actions the educational institution is prepared to and allowed to take on the student's behalf. Without these statements we can do nothing because we are not medical professionals."

34. On September 19, 2023, Complainant made request for support for Student 1 to the [REDACTED] Child Protection Team ["CPT"].
35. Student 1's attendance was very poor for the 2023-2024 school year. In the 3rd Quarter alone, Student 1 had 25 absences in one class and 24 absences in a second class; her total missed classes for the 3rd Quarter were listed at 116 and five (5) days of out of school suspension. The District did not address Student's chronic absenteeism.
36. On November 28, 2023, a meeting was held to discuss special education services for Student 1. A PWN was provided to Complainant. The PWN states that Complainant wanted a behavior SAT and an FBA/BIP but did not request testing. The District did not propose an evaluation for Student. The District indicated they offered to evaluate Student 1 but Complainant declined and wanted a 504 plan. There was no documentation provided to support District's offer or Complainant's alleged refusal. Complainant stated she was never offered, nor would she refuse, an evaluation.
37. Student 1's psychiatrist provided the District with post-traumatic stress disorder (PTSD) and substance abuse diagnoses and recommended a 504 Plan on December 11, 2023. District did not seek an evaluation or follow through with the 504 plan despite ample evidence that Student 1 was struggling academically and emotionally and had chronic absences.
38. On December 12, 2023, Student 1 received 5 days out of school suspension for possession of one Delta-9-tetrahydrocannabinol [THC] gummy found in a backpack. The conditions for Student 1's return on December 20, 2023, were to complete an intake for a treatment program and complete Vector training. Information regarding Vector training was not provided by the District. Since valid discipline processes for a long-term suspension or expulsion had not occurred, it is unclear what the District could have or would have done had Student 1 not met these conditions.
39. Another District document stated that Student 1 had already enrolled in counseling through a treatment program. The only other 2023 discipline imposed for Student 1 was on April 3, 2023, for using her phone while taking a test on Edgenuity. Before April of 2023, the other disciplinary listings were in 2021 or earlier.
40. On February 7, 2024, the District, with Complainant's participation, created a SAT Intervention Plan for Student 1. The SAT document indicated Student 1 had frequent tardies. The SAT was silent on Student 1's poor/infrequent attendance for the entire year, not just the 3rd quarter. The SAT, which was completed in the first month of the 3rd quarter, noted 20 tardies and 5 absences. An attendance document for Student 1 indicated that there were 25 absences in one class and 24 absences in another class in the 3rd Quarter. The SAT team recommended a 504 Plan and put into place a goal of 5% progress towards 4 online Edgenuity classes.

41. According to District records, a 504 Plan was created on February 6, 2024, but was not finalized or implemented. The disabilities that triggered the need for a 504 plan were the PTSD and substance use disorder(s) diagnoses. Other District documents stated the 504 Plan could not be finished due to Student 1 being placed into treatment.
42. The District stated, but did not provide documentation, that Student 1 was ordered to treatment by the [REDACTED] Court. This treatment occurred in Arizona, outside the District's boundaries.
43. On March 18, 2024, the treatment facility informed District that Student 1 would be in treatment until April 25, 2024 and requested school work for Student 1. The District did not provide school work.
44. Student 1's cumulative GPA was 1.91 as of February 6, 2024.
45. On March 25, 2024, the District sent a letter "To Whom It May Concern" stating because Student 1 was unable to attend classes at the online school, Student 1 was administratively disenrolled. In this letter, the District Principal for Student 1 stated that the disenrollment was necessary because the online school and all other schools in the district are not accredited distance learning schools by the New Mexico Public Education Department and, furthermore, the Public Education Department has directed that all instruction in the State to be done in a "face-to-face classroom environment."
46. Both assertions made in the March 25 letter are false. There is no accreditation for distance learning schools in New Mexico and New Mexico has not issued such a directive for only face-to-face classroom instruction. There are multiple distance learning schools available to New Mexican students.
47. Additionally, the Principal stressed that the online school for the District was a face-to-face environment when discussing a different issue.
48. Based on the contradictory information provided by the District, it is unknown how much time students at the District online school interface with certified teachers.
49. The District stated a second reason for Student 1's disenrollment was that she had 10 consecutive absences and that she was disenrolled pursuant to New Mexico's truancy law.

STUDENT 2

50. Student 2 has a date of birth of February 20, 2010. Prior to the 2023-2024 school year, Student 2 has always attended District schools. As early as 4th grade, Student 2 was struggling with academics and behavior.
51. A Functional Behavior Assessment ["FBA"] was conducted for Student 2 on January 5, 2022. Student 2 was in 6th grade at the District's elementary school. This assessment

noted that Student 2 had difficulty sustaining interest/motivation, showed defiance, and stated, “academic abilities are good” and “does better with small group instruction.” The FBA noted Student 2 spent the majority of 4th grade in in-school suspension [“ISS”] with other times of out-of-school suspensions [OSS]. The 6th grade behaviors noted in the FBA included defiance, disruptive behavior and elopement. Despite this history and lack of improvement in academics or behavior, the District did not refer Student 2 for a comprehensive evaluation to determine eligibility for special education nor did it develop a Behavioral Intervention Plan (BIP). Observations were completed and concerns were noted with no action by the District to address Student 2’s needs.

52. The District did not evaluate Student 2 for special education in 4th grade, in 5th grade, in 6th grade, in 7th grade or in 9th grade (after skipping Student 2 from 7th to 9th grade).
53. Student 2 was advanced from 7th grade to 9th grade after the 2022-2023 school year. The reason provided by the District for skipping Student 2’s 8th grade education was his maturity level, stating that the District believed he would be better served if he was with older students who also had an affinity for drug use and “gang-like” tendencies.
54. During the 2023-2024 school year – the year that the District skipped Student 2 a grade level, Student 2 was reading at the 2nd grade level.
55. Student 2 began the 2023-2024 school year at the online school as a 9th grader. Student’s math scores were significantly delayed, and student failed to complete coursework.
56. On September 8, 2023, Student 2 demonstrated threat of violence with firearm via Instagram and extortion of drinks/snacks and sexual harassment threatening physical harm.
57. On September 25, 2023, Student 2 was placed by the District at the AEP to receive educational services for the remainder of the 2023-2024 school year in lieu of a long-term suspension.
58. On September 28, 2023, Student 2 was found to be under the influence and “spent the day in a cell” at the AEP; on October 4, 2023, Student 2 was confrontational and refused to do schoolwork and “spent the day in a cell” at the AEP.
59. On October 5, 2023, Complainant requested in writing for Student 2 to be evaluated by the District for special education eligibility.
60. The District did not provide the required 15-day response to this formal written request for evaluation.
61. On October 27, 2023, the District invited Complainant to attend a SAT Meeting; Complainant signed this invitation. The October 27, 2023, SAT Intervention Plan did not mention Complainant’s request for a special education evaluation. The SAT Plan noted Student 2’s reading at 2nd grade level. Goals included completion of 75% of assignments, awards for work completion, activities to keep Student 2 busy and engaged, and assignments relevant to Student 2’s interests. Student 2 would remain in the AEP. The

District did not evaluate Student 2 for special education eligibility at this time despite Complainant's written request, pattern of similar behaviors, reading level at 2nd grade, and math skills below grade-level.

62. On November 26, 2023, Student 2 was sent home early from the AEP for being under the influence.
63. On November 26, 2023, an email was sent from the Principal to Complainant about psychological testing of Student 2, requesting Complainant come in and sign consent. This consent was signed on November 28, 2023, by Complainant.
64. On November 27, 2023, a SAT meeting occurred at the online school and a BIP was instituted on November 28, 2023. The comprehensive evaluation was not initiated at this time.
65. An FBA was completed on November 28, 2023.
66. On November 28, 2023, a SAT meeting was held. The resulting initial SAT meeting summary noted that Student 2's reading and math skills were significantly below grade level, school attendance was poor/infrequent, and that attention was poor/indifferent with poor impulse control and distant/reluctant relationship with teacher. Previous interventions were listed as "isolation" for 2 days. No referrals for special education evaluations were proposed and Complainant's written request for evaluation was not mentioned.
67. A PWN issued on November 28, 2023, stated that a meeting was held on November 28, 2023 to discuss special education services for Student 2. The PWN stated that Complainant was not requesting testing at this time; this document provided by the District was not signed by Complainant. The PWN did not mention a special education referral.
68. On December 4, 2023, an educational diagnostic evaluation report was generated for Student 2. The report stated testing occurred on November 8, 2019. Why this was published as a report on December 4, 2023, without additional assessment remains unknown and was not explained by the District.
69. On December 22, 2023, Student 2 was placed in a "holding cell" while waiting for law enforcement to come and do an eye test.
70. A PWN was signed by Complainant on January 18, 2024. This PWN related to a January 12, 2024, meeting to discuss special education services for Student 2. In this PWN, the District accepted Complainant's request to move forward with an initial evaluation to include vision and hearing screening, social/emotional, initial academic testing, occupational therapy, Speech and Language, and autism spectrum disorder evaluations. Complainant signed consent to proceed with all the above by signing this PWN on January 18, 2024.

71. The District's Response stated that Student 2 "was removed from school by the [REDACTED] Court in February 2024...and has not returned." This assertion is contradicted by multiple documents provided by the same District to include the 2023-2024 Student Withdrawal form showing Student 2 transferring from online school on April 9, 2024, and a myriad of evaluation documents from March, 2024 wherein Student 2 was found eligible under IDEA Part B.
72. Complainant provided additional consent for evaluation of Student 2 on January 28, 2024. The testing occurred between January 30, 2024, and March 28, 2024, and was completed by a licensed educational diagnostician. The testing included evaluations for specific learning disability ["SLD"], Autism ["AU"], other health impairment ["OHI"] and emotional disturbance ["ED"].
73. Student 2's eligibility determination for other health impairment ["OHI"] document from the March 5, 2024, evaluation stated repeatedly that Student 2 did not qualify under OHI as OHI requires a diagnosis of ADHD.
74. Student 2 was found eligible for special education and related services on March 5, 2024: "The results of the evaluation indicate that the child does not have other health impairment as defined by IDEA (2004), but the child is eligible for special education and related services under the category of emotional disturbance." This affirmative statement that Student 2 was found eligible for special education and related service is found on 3 separate documents created by the District. The emotional disturbance ("ED") document itself affirms each response that would support eligibility, yet the conclusion on that single document is that Student 2 is not eligible; the document is internally contradictory and contradicts the other 3 evaluation reports – all which state Student 2 is eligible for special education and related service.
75. Additionally, the March 28, 2024, PWN created from the March 28, 2024 Educational Determination Team [EDT] Meeting stated that Student 2 was eligible. After stating that Student 2 does qualify for Emotional Disturbance, the PWN states, "however[,] the team feels as though a 504 would be more beneficial for [Student 2] at this time...."
76. The District did not develop an IEP for Student 2 or a 504 Plan for Student 2.
77. The District provided transfer paperwork for Student 2 to another in-state public middle school. The transfer paperwork noted April 9, 2024, as entry date with exit date noted as May 25, 2024. Personnel from the new middle school requested but did not receive an IEP or 504 plan for Student 2.
78. The District's Response stated that because Student 2 was "removed from [parent's] custody", a 504 Plan could not be crafted. There was no evidence provided by the District that Student 2 was ever removed from Parent's legal custody or that the District's legal obligations to Student 2 ended. Student 2's custody status had no impact on District's state and federal obligations to provide FAPE to Student 2.

Discussion and Conclusions of Law

Issue No. 1:

Whether the District failed to evaluate Students 1 and Student 2 after Parental requests for a comprehensive evaluation and to provide Parent with prior written notices (PWN) of District's refusal to evaluate Students in a timely manner in violation of 34 C.F.R. § 300.111(a)(1)(i) and 6.31.2.10 (A) and (D);

Child find is an affirmative ongoing obligation of a school district to identify, locate and evaluate all children with disabilities that are residents of the district in need of special education and related services. 34 C.F.R. § 300.111(a)(1)(i). Parents do not need to request an evaluation; it is the responsibility of the district to seek out and identify those students who may need special education services. *Robertson County School System v. King*, 24 IDELR 1036 (6th Cir. 1996, unpublished); *Compton Unified School District. v. Addison*, 598 F.3d 1181 (9th Cir. 2010), *cert. denied*, 112 LRP 1321, 132 S. Ct. 996 (2012). Failure to meet child find obligations, a procedural violation, may be considered a denial of FAPE. *T.B. v. Prince George's County Board of Education*, 897 F3d 566, (4th Cir. 2018), *cert. denied*, 119 LRP 7071, 139 S.Ct. 1307 (2019).

Poor attendance, failed classes, disruptive and defiant behavior, are signs that may trigger the need for an evaluation. *T.B. v. Prince George's County Board of Education*, 897 F3d 566; *Independent School District No. 413 Marshall v. H.M.J.*, 123 F Supp 3d 1100, (DC MN 2015); *Fridley Public School District 0014-01*, 119 LRP 41403 (MN 2019); *Department of Education, State of Hawaii v. Cari Rae S.*, 35 IDELR 90 (D. Hawaii 2001). Increases in the frequency and severity of behaviors, especially warranting disciplinary removals, should prompt the need for an evaluation. *Spring Branch Independent School District. v. O.W.*, 961 F.3d 781 (5th Cir. 2020), *cert. denied*, 121 LRP 7003, 141 S. Ct. 1389 (2021). Child find obligations apply even when a student attends an online or virtual school. *Dear Colleague Letter*, 68 IDELR 108 (OSERS/OSEP 2016).

Districts must provide a prior written notice (PWN) any time they propose or refuse to initiate or change the identification, evaluation, educational placement or provision of FAPE. 34 C.F.R. 300.503(a); *see also* 6.31.2.10((D) NMAC (requiring a response within 15 days of a parent request). Verbal notice does not meet the standards of a PWN. *Union School District. v. Smith*, 15 F3d 1519 (9th Cir. 1994), *cert. denied*, 109 LRP 36508, 513 U.S. 965 (1994).

Federal law requires that once a student is found eligible for special education and related services, an IEP must be developed for the student in accordance with 34 C.F.R. §§ 300.320 through 300.324. . 34 C.F.R. § 300.306. Once a student is found eligible for special education and related services, the District must make FAPE available to the student and must obtain

informed consent from the parent of the student before initial provision of same. The District must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student. 34 C.F.R. § 300.300.

Student 1

During the 2023-2024 school year, and also in prior years, the District had knowledge that Student 1 had chronic absenteeism and multiple tardies. By August 23, 2023, Complainant had contacted school requesting a SAT Meeting, outlining Student 1's academic needs. The District did not take any action related to the Complainant's August 23, 2023 request for support for Student 1.

The District's response to Complainant misapplied the District's obligation under IDEA Part B by asserting that a medical professional and not the EDT/IEP team determines eligibility and need for special education services, stating that "our main responsibility is to identify those learning disabilities we are equipped to address as an education organization" and "all special accommodations, modifications to curricula.... must, by law, be supported or justified by signed statements from a qualified medical professional. These statements prescribe certain actions the educational institution is prepared to and allowed to take on the student's behalf. Without these statements we can do nothing because we are not medical professionals." This position is not what is required by the IDEA Part B. The determination of eligibility for special education and related services does not require signed statements from any qualified medical professional (such may be considered by the EDT, or may trigger the District to conduct an educational evaluation). Also, the standard of identifying learning disabilities is not based on whether the District is "equipped to address" any specific disability. The District cannot abdicate its responsibility to evaluate and determine a student's qualification for special education and related services – either to the medical arena or because it is inconvenient and requires the District to expand its capabilities.

Using the District's analysis, parental information was irrelevant; and the District was restricted on what special education services it could provide to Students for specified disabilities and could not necessarily provide the services students needed to access the general curriculum. The District's response implied that the only eligibility category the District was able to identify and service were those students with specific learning disability (SLD) rather than the thirteen special education eligibility categories under state and federal law.

On September 19, 2023, Complainant, receiving no action by the District, then reached out to a [REDACTED] Child Protection Agency seeking assistance for her child; this was communicated to the

District and the District continued to not take action. On November 28, 2023, Complainant and District met to discuss how to assist Student. There was no suggestion of a referral for evaluation for Student. On December 11, 2024, the District was provided with diagnoses of PTSD and substance abuse and a recommendation for a 504 plan. The following day, Student was suspended for five days for possession of drugs, yet the District did not complete the 504 plan nor seek a referral for a comprehensive evaluation. Finally, on February 7, 2024, the SAT process was initiated without consideration of information from the entire 2023-2024 school year. A 504 plan was recommended but not completed. Student 1 had a 1.91 GPA and was failing all classes.

Student attended a treatment program in Arizona, as ordered by the non-educational, non-New Mexico public agency, and the District failed to provide requested educational materials and disenrolled Student. See 6.31.2.11(N)(4) NMAC ([Students] placed in or referred to private schools or facilities by public noneducational agencies other than New Mexico public agencies: A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.)

The disenrollment of the student was premised on false assertions of the District's inability to, or prohibitions against, providing distance learning; and also on a concerning false belief that New Mexico law allows for long-term suspension or expulsion or disenrollment of a student for truancy. The New Mexico Attendance for Success Act explicitly prohibits schools from using discipline or disenrolling any student for truancy. NMSA § 22-12A-6(A)(3)(b).

The District indicated they offered to evaluate Student 1 but Complainant declined and wanted a 504 plan. There was no documentation provided to support District's offer or Complainant's alleged refusal. Complainant stated she was never offered, nor would she refuse, an evaluation. When Student tried to enroll for the 2024-2025 year, the District declined enrollment because Student 1 had aged out, which was inaccurate, rather, Student 1, at 17 years old, was of compulsory school age (Except as otherwise provided, a school-age person shall attend public school, private school, home school or a state institution until the school-age person is at least eighteen years of age unless that person has graduated from high school or received a high school equivalency credential.). NMSA § 22-12-2.

The District invalidly disenrolled Student 1 in the 2023-2024 school year and refused to enroll Student 1 for the 2024-2025 school year. The District failed to provide basic education to Student 1 while she was court ordered to attend treatment. All reasons provided by the District for these actions were legally incorrect.

Child Find is an ongoing obligation of the District. The District had ample evidence and acknowledged that Student 1 may need special education services to receive FAPE. Complainant repeatedly sought assistance for her child from the District and other agencies but the District failed to appropriately address Student 1's potential need for special education and related services. The District failed to meet its Child Find obligations and failed to document their actions or refusals through PWNs. This was a violation of Part B of IDEA for Student 1.

Student 2.

District knew as early as fourth grade that Student 2 was struggling academically and behaviorally. During the 2023-2024 school year, Student was at the online school. Student continued to struggle and, after a legally deficient hearing for discipline, was sent to the AEP. Student read at the second-grade level and math skills were five years delayed; though Student 2 skipped 8th grade without any justification for the promotion. Despite ample evidence prior to the 2023-2024 school year that Student may be eligible for special education services, the District failed to meet its Child Find obligation by not seeking to evaluate Student 2. Student 2 was found eligible for special education and related services on March 5, 2024. Even after the EDT determined eligibility, the District did not develop an IEP, and instead, determined that Student would benefit from a 504 plan rather than an IEP. The inconsistent and inaccurate documentation including the limited PWNs failed to provide Complainant with meaningful parental participation. The delays in the referrals for Student 2 with the ultimate failure of developing and implementing an appropriate IEP for an eligible student was a denial of FAPE and a violation of Part B of IDEA.

As to Issue 1, the District is cited, Corrective Action is required.

Issue No. 2:

Whether the District failed to follow the IDEA disciplinary procedures when disciplining Students, who had not yet been determined eligible for special education, for violations of the District's code of conduct, in violation of 34 C.F.R. § 300.530; 34 C.F.R. 34 § 300.534 and 6.31.2.11(F)(2) NMAC; specifically, whether the District:

- a. Failed to consider both Students' needs and eligibility for special education and related services when assigning Students to "jail school" and**
- b. Failed to promptly evaluate and determine Student's needs before imposing long term suspension or expulsion;**

Under IDEA, a district may discipline a student for violation of a code of conduct resulting in removal or suspension from the student's educational program for not more than 10 school days (to the extent those alternatives are applied to children without disabilities), and for additional

removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 34 C.F.R. § 300.536). 34 CFR § 300.530(b)(1). 6.31.2.11(F)(2) NMAC. The procedural protections afforded under IDEA apply to those students not yet determined eligible if the District is “deemed to have knowledge that a student is a child with a disability. 34 C.F.R. § 300.534(a).” The District is assumed to have knowledge if, before the violation of the code of conduct occurred: 1. The parent expressed in writing to District personnel that the child is in need of special education; 2. The parent requested an evaluation; 3 The student’s teachers or other District personnel, have expressed concerns about behaviors to administration. 34 C.F.R. § 300.534(b). If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under C.F.R. § 300.530, the evaluation must be conducted in an expedited manner. 34 C.F.R. § 300.534(d)(2)(i). Provision of response to intervention services does not waive the obligation of an expedited evaluation. *Letter to Combs*, 52 IDELR 46 (OSEP 2008). Any of the procedural safeguards may be asserted by a Parent when the District is presumed to know the student is a child with a disability. 34 C.F.R. § 300.534(a).

When the placement of a special education student is changed because of a violation of the code of conduct, a manifestation determination review (MDR) meeting must be completed. 34 C.F.R. § 300.530 (E). A change of placement occurs when the removal is more than 10 school days or there is a series of removals that constitute a pattern. 34 C.F.R. § 300.356(a). Removals that constitute a pattern are defined as such: (i) Because the series of removals total more than 10 school days in a school year; (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. 34 C.F.R. § 300.536. Students that have not been determined eligible for special education services, but the District has a reason to suspect are eligible, are entitled to the procedural protections under IDEA. 34 C.F.R. § 300.534(a). A district does not suspect the student is disabled if the district has conducted an evaluation and determined the child was not eligible for services, or if the parent has not allowed an evaluation or has refused services. 34 C.F.R. § 300.534(a).

During the MDR meeting, two questions must be answered to determine if the conduct was a manifestation of the child’s disability. Was the conduct in question caused by or had a direct and substantial relationship to the child’s disability, or was the conduct the district’s failure to implement the IEP? 34 C.F.R. § 300.530 (E)(1). The MDR meeting is conducted by the District and should include the parent and relevant members of the IEP team. 34 C.F.R. § 300.530(E). The MDR meeting must consider all relevant information in the child’s file including but not limited to the IEP, any teacher observations and relevant information provided by the parents. 34 C.F.R.

§ 300.530(E). The MDR team may remove a student with a disability that has violated the district's code of conduct to an Interim Alternative Educational Setting (IAES), another setting, or suspend for not more than ten days provided the same discipline would be made for a child without a disability. 34 C.F.R. § 300.530(b).

A prior written notice (PWN) must be sent before the district proposes or refuses to initiate or change the identification, evaluation, educational placement or the provision of FAPE. 34 C.F.R. § 300.503(a).

After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section, which requires that the student must— “(i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.” 34 CFR § 300.530(d).

Office of Special Education and Rehabilitative Services (OSERS) has opined that the provision of FAPE remains the focus and continuing obligation during any disciplinary removals, even during a suspension and the District has an obligation to address whether Students needs additional or new supports and services to receive FAPE in the least restrictive environment (LRE). A disciplinary removal after repeated similar behaviors should trigger the IEP team to meet to consider what other options to address negative behaviors even through monodisciplinary steps. *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016).

A BIP is not defined within IDEA or the regulations but is often a part of the educational program that addresses behaviors that impact a student's learning. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022). The BIP should include a description of the behaviors that interfere with learning and the positive behavioral supports that reinforce positive behavior and eliminate or reduce the negative behaviors that interfere with learning. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022). The IDEA does require that behavior that impedes learning should be addressed, and the IEP should consider the use of positive behavioral interventions and supports. 34 C.F.R. § 300.324(a)(2)(i).

When a student has behavioral needs, the IEP should consider those needs when developing, reviewing and revising the IEP. *Questions and Answers on Andrew F. v. Douglas County School District RE-1*, 71 IDELR 68 (EDU 2017); and *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016). Although the IDEA does not mandate a BIP or specific behavioral goals, not considering academic progress and/or behavior supports can support a finding that a FAPE was provided to student. In *Lathrop R-II School District v. Gray*, 611 F.3d 419 (8th Cir. 2010), *cert. denied*, 131 S. Ct. 1471 (2011). See also, *Neosho R-V School District v. Clark*, 315 F.3d 1022 (8th Cir. 2003) (concluding that a student was denied a FAPE when the school district did not adequately address a student's behaviors). Districts can impose disciplinary action against a special education eligible student but those disciplinary actions cannot adversely affect goals and objectives on the IEP and must not be discriminatory. *OSEP Memorandum 95-16*, 22 IDELR 531 (OSEP 1995). The procedural protections afforded under IDEA apply to those students not yet determined eligible if the District is "deemed to have knowledge that a student is a child with a disability. 34 C.F.R. § 300.534(a)."

New Mexico law has specific requirements for all students, including students with disabilities that must occur for long-term suspension or expulsion to be valid. See § 6.11.2.12 NMAC (setting out notice requirements, recording or memorializing hearings in writing, and report with summary of evidence supporting discipline decision.)

Student 1

Student 1 attended the online school. The District was unable to demonstrate that Student 1's attendance of the online school was not a placement made by the District. Student 1's frequent absences and poor grades demonstrated that the online program was not appropriate for Student 1. Records did not indicate Student 1 attended the AEP.

Later, Student 1 was placed into treatment by the [REDACTED] Court. Student 1 did not receive educational services at the treatment facility even though they were requested by the treatment facility and District knew or should have known that Student had a disability warranting services. Due to the circumstances of the placement, the District was responsible for Student 1's education while at the treatment center.

Student was suspended for five days during the 2023-2024 school year which did not rise to the level of a change of placement. This year, Student 1 has not attended school because the District will not allow Student 1 to enroll. The District claims it is because Student 1 is too old, but Student 1 is of compulsory school age until November, 2024, and remains eligible for services through

age 22, if found eligible. Based on the totality of information available, Student 1 was denied enrollment because of behaviors, the diagnoses of PTSD and substance abuse.

District failed in its Child Find Obligation to provide FAPE to this Student. The evidence provided demonstrated to the investigator's satisfaction that Student was a child in need of special education services. Student was entitled to the protections of IDEA because the District had reason to suspect Student 1 needed special education services. The failure to evaluate, determine eligibility and provide appropriate services deprived this Student of FAPE. Moreover, the delays and placement at the online school without provision of appropriate services and determining the need for specialized instruction was a denial of Part B of IDEA. Due to District's failure to enroll Student 1 in the current school year, Student 1 has been subjected to an ongoing removal with the District failing to follow the appropriate procedures or providing services after ten days of removal. This was a violation of Part B of IDEA.

Student 2

The District was unable to demonstrate that Student 2's attendance of the online school was not a placement made by the District. The placement of Student 2 at the AEP was based on Student's behaviors and was not a decision based on Student's needs. When the District imposed an undefined long-term suspension or expulsion or disenrollment of Student 2 for 8 months, it: (1) Failed to follow any of the required procedures before imposing the discipline; (2) Failed to inform the parents of what the option of AEP would actually be so that they could make an informed decision; and (3) Failed to follow specific discipline processes for Student 2 as a student with a disability who was already determined to be eligible for special education and related services. Student 2 was not successful at either the online school or the AEP.

While placed at the AEP, Student 2 was placed in a cell on at least 5 different occasions by non-District employees without District oversight. In these instances, seclusion was inappropriately used as a disciplinary intervention and its use constituted change of placement for Student 2. To wit, Student 2 received a change of placement (seclusion) within a change of placement (AEP) – and both placement changes occurred without an IEP developed and without special education services available. The actions of placing Student 2 into a cell violates state law prohibiting the use of seclusion on students as a disciplinary measure on and demonstrates an abdication of supervision of a student by the District.

Student 2 was determined eligible for special education on March 5, 2024, but Student 2 still does not have an IEP and has not received any special education services although the EDT determined Student 2 to be eligible. Student 2 has not received any educational services this

school year even though eligible for special education services. Student 2 was subjected to disciplinary removals and other discipline without consideration of IDEA requirements for discipline including manifestation determination review (MDR), least restrictive environment (LRE) and the need for continued services. Student 2 was never validly suspended or expelled but was denied enrollment this school year. Student 2 has been subjected to long term disciplinary removals without the involvement of the IEP team in determination and providing special education services or determining placement. Placement after disciplinary removals is to be made by the IEP team, which has never met with respect to this Student and has never considered services prior to imposing discipline. This was a violation of Part B of IDEA.

As to Issue 2, the District is cited, Corrective Action is required.

Issue No. 3:

Whether the District allowed Parent access to educational records of both Students, including disciplinary records, in a timely manner in violation of 34 C.F.R. § 300.501(a); 34 C.F.R. § 300.613 and 6.31.2.13(B) NMAC.

The Family Educational Rights and Privacy Act (FERPA) regulates access to educational records maintained by a District. FERPA is specifically referred to in IDEA regulations at 34 C.F.R. § 300.613. Parents have the right to inspect and review education records of their children that are collected, maintained, or used by the District. 34 CFR § 99.3 ; 34 CFR § 99.10(a); and 34 § CFR 300.613(a). An "education record" is a record that is: "1) directly related to a student; and 2) maintained by an education agency or institution or a party acting for the agency or institution." 34 CFR § 99.3. Records are not limited to handwritten documents; they include records prepared in multiple formats. 34 CFR § 99.3. All education records must be provided to Parent within 45 days of the request. 34 C.F.R. § 99.10(b).

Complainant Parent, through her advocate, requested all educational records, including discipline records for both students. Some of the Records provided to the Complainant Parent were later provided to the investigator. The records provided did not include all of the relevant education records, many documents were missing every other page. In addition, documents that met the definition of educational records were not provided to the Complainant Parent but were provided to the investigator.

As to Issue 3, the District is cited, Corrective Action is required.

Issue No. 4:**Whether the District improperly denied Student 1's and Student 2's enrollment at the neighborhood school within the District in violation of 34 C.F.R. § 300.101 and 6.31.2.8(A) NMAC;**

As established in New Mexico law, all school age persons are entitled to a free public school education NM Stat Sec 22-1. Student must attend school between the ages of 5-18. NMSA§ 22-12A-1. Students are residents of the district where they reside. Under NMSA §22-8-2(O), a qualified student is a public school student who: "(1) has not graduated from high school; (2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and (3) in terms of age and other criteria is: (a) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; (b) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department; (c) except as provided in Subparagraph (d) of this paragraph, has not reached the student's twenty-second birthday on the first day of the school year; or (d) has reached the student's twenty-second birthday on the first day of the 2019-2020 school year, is counted in a school district's or charter school's MEM on the third reporting date of the 2018-2019 school year, has been continuously enrolled in the same public school since that reporting date and is still enrolled in that school.

Both Students have been resident students of the District since Kindergarten. Complainant attempted to register both students at the local public high school in the fall of 2024, but both Students were denied enrollment. Complainant reported that Student 1 was denied because of age; Student 2 was denied because Student 2 was expelled or suspended.

Student 1 was of school age, 17 years old, at the time enrollment was denied. Student 1 will be 18 in November 2024 but will not have yet earned a high school diploma and, therefore, is entitled to attend school within the District. Student 2 is of compulsory school age and is entitled to attend District schools unless expelled in a legal manner. The District's Response indicated that Student 2 was assigned to the AEP in lieu of a long-term suspension. The District did not provide any information that the long-term suspension/expulsion process was completed so the District's explanation for not enrolling Student 2 does not apply. Both students have been subjected to ongoing long term disciplinary removals for the 2024-2025 school year without the appropriate procedural safeguards as described above. The District's reasons do not appear to be legally sufficient and both Students were improperly denied enrollment and the provision of FAPE. This was a violation of Part B of IDEA.

As to Issue 4, the District is cited, Corrective Action is required.

Issue No. 5:

Whether the District's actions and/or omissions towards the named 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. Districts are 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 in determining 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 results in the loss of an educational opportunity, infringes on parents' opportunity to participate in the development of the IEP or deprives 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). At a minimum, IEPs must be reviewed annually. 34 C.F.R. § 300.324(b).

For each Student, the initial question that must be addressed to determine whether a substantive denial of FAPE occurred is whether the IEP was reasonably calculated to allow Student to make progress. An analysis of any procedural violations must also be considered for both Students and, if such exist, whether such procedural violations rise to the level of a denial of FAPE.

Student 1

District knew or had reason to suspect Student 1 was a student with a disability. When Complainant provided District with information about Student's diagnosis along with the other information available to District such as absences, failing grades and negative behaviors, the District should have pursued a comprehensive evaluation. The District's Response indicated that the District offered a comprehensive evaluation, but Complainant refused and so the plan was to develop a 504 plan, which was never completed. The District did not provide a PWN or other documentation regarding the proposed evaluation plan and Complainant's purported refusal. This failure to properly evaluate Student and provide needed services was a substantive denial of FAPE. Moreover, there were multiple procedural violations for Student 1 including: failing to provide educational services while in an in-state treatment program, failing to timely or appropriately evaluate Student, and failing to allow Student to enroll in a District school for the

2024-2024 school year. These and other procedural violations resulted in a loss of educational opportunity for Student 1, such being a denial of FAPE.

Student 2

Student 2 was determined eligible for special education on March 5, 2024. An IEP meeting was never convened nor was an IEP developed for this Student. Later, a letter without holding an IEP meeting, was sent to Complainant indicating that Student 2 was not eligible for special education services. The District's records indicate that Student 2 was eligible and entitled to special education services. The IEP was not reasonably calculated to allow Student to make progress because the IEP team never met to develop the IEP. This is a substantive violation of FAPE for Student 2.

There were many procedural violations. In 2023, the evaluation relied on information from the 2019 evaluation that was not completed. The EDT team did not consider the appropriate standards for determining eligibility. After determining Student 2 was eligible, they failed to develop and implement an IEP that would provide FAPE. Student 2, who was determined eligible by the IEP team, was disciplined without a MDR or consideration of LRE or following the disciplinary procedures of IDEA. Student 2 did not receive any special education services from the time that Student 2 was determined eligible. These and other procedural violations denied Complainant meaningful participation and denied Student 2 of educational benefit and opportunity. These procedural violations rise to the level of a violation of FAPE for Student 2.

As to Issue 5, the District is cited, Corrective Action is required.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
<p>34 C.F.R. §300.111(a)(1)(i) and 6.31.2.10(A) and (D);</p>	<p>The District failed to evaluate Student 1 and Student 2 after Parental requests for a comprehensive evaluation; failed to provide Parent with prior written notices (PWN) of District’s refusal to evaluate Students in a timely manner; and failed to implement an IEP once Student 2 was found eligible.</p>
<p>34 C.F.R. §300.530; 34 C.F.R. 34 § 300.534 and 6.31.2.11(F)(2) NMAC;</p>	<p>The District failed to follow the IDEA disciplinary procedures when disciplining students, to include an MDR, LRE, and evaluation of needs during disciplinary removals/change of placement. This occurred for Student 1 who had not yet been determined eligible for special education but whom the District had reason to believe would be eligible and for Student 2 who was found to be eligible.</p>
<p>34 C.F.R. §300.501(a); 34 C.F.R. § 300.613 and 6.31.2.13(B) NMAC;</p>	<p>The District denied Parent access to educational records;</p>
<p>34 C.F.R. §300.101 and 6.31.2.8CPT(A) NMAC;</p>	<p>The District improperly denied both Students’ enrollment at the neighborhood school within the District;</p>
<p>34 C.F.R. §300.101 and 6.31.2.8 NMAC.</p>	<p>The District’s actions and/or omissions towards the named Students resulted in a denial of a free appropriate public education (FAPE).</p>

Required Actions and Deadlines

By November 8, 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

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 25, 2025 and reported to the OSE no later than November 8, 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 OSE Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	November 8, 2024	Written Assurance Letter/Email	November 8, 2024
2.	The District Special Education Director and the school principal shall meet with the PED OSE Education Administrator assigned to the District and the PED 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 meeting with OSE.	November 15, 2024	Notes from meeting prepared by the District	November 22, 2024
3.	District shall enroll Students at District’s in-person High School for in-person instruction. Enrollment at the District’s Online School is not sufficient to meet this requirement. District shall document any and all facilitation of enrollment and	November 1, 2024	Records of Enrollment for Student 1 and 2 Documentation of facilitation of enrollment.	November 6, 2024 November 6, 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>
	communication regarding enrollment of Students at the High School.			
4.	<p>District shall provide a prior written notice that proposes to conduct an initial special education evaluation of Student 1 and seek parental consent for the evaluation.</p> <p>If the Parent declines to consent for the evaluation, then the District will provide a written record of the decision to decline.</p>	November 8, 2024	<p>Prior Written Notice requesting parental consent to evaluate Student 1</p> <p>Signed parental consent to evaluate Student 1 or parent’s signed written decision to decline the request to evaluate</p>	<p>November 8, 2024</p> <p>Within 5 days after receipt of consent or decision to decline</p>
5.	<p>Following receipt of parental consent to conduct an evaluation, District shall conduct a comprehensive initial evaluation of Student 1 and issue an evaluation report.</p> <p>Within 15 school days of completing the evaluation report, District shall hold a meeting with Parent to determine Student’s eligibility for special education and related services.</p> <p>The District shall use a facilitator for the eligibility determination meeting. The Facilitator shall be independent of the District and shall be selected from the PED list of approved facilitators. This may be</p>	<p>Within 45 days of receipt of parental consent</p> <p>Within 15 days of completion of the evaluation report</p>	<p>The completed evaluation report</p> <p>Written Eligibility determination</p>	<p>Within 7 days of completion of the evaluation report</p> <p>Within 7 days after the Eligibility Determination Team 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>
	<p>the same facilitator that is required in Steps 6 and 7. The Facilitator shall be paid for by the District.</p>			
<p>6.</p>	<p>If Student 1 is determined to be eligible for special education and related services, District shall convene a Facilitated IEP (FIEP) meeting.</p> <p>In addition to the minimum required components of the IEP, the IEP team shall consider the following areas of support:</p> <ol style="list-style-type: none"> 1. Interventions for Absenteeism 2. Social Work Services and Supports 3. Positive Behavioral Interventions and Supports 4. Substance Use Interventions 5. Post-Secondary Transition Services and Supports 6. Compensatory Education due to delay in evaluation of Student 1 <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 FIEP meetings shall be held on a date and time that is convenient for</p>	<p>Within 15 days of the Eligibility Determination Team Meeting</p>	<ol style="list-style-type: none"> 1. Invitation to IEP meeting, 2. IEP, 3. Prior Written Notices, and 4. Agenda for IEP team meeting 	<p>Within 7 days after the IEP 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>
	<p>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 Special Education Director shall participate in the IEP meeting. The District shall also ensure that the IEP team includes, but is not limited to, student, parents, special education teacher, general education teacher, and any potential related services providers.</p>			
7.	<p>District shall convene a Facilitated IEP meeting to develop an IEP for Student 2:</p> <p>In addition to the minimum required components of the IEP, the IEP team shall consider the following areas of support:</p> <ol style="list-style-type: none"> 1. Interventions for Absenteeism 2. Appropriate specialized instruction in reading or other reading interventions 3. Small group or 1 on 1 support 4. Post-Secondary Transition Services and Supports 5. Social Work Services and Supports 6. Positive Behavioral Interventions and Supports 7. Substance Use Interventions 	November 22, 2024	<ol style="list-style-type: none"> 1. Invitation to facilitated IEP meeting, 2. IEP, 3. Prior Written Notice, and 4. Agenda for facilitated IEP team meeting 	December 2, 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>8. Compensatory Education due to delay in the development of an IEP for Student 2 required in Step 8</p> <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 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 Special Education Director shall participate in the IEP meeting. The District shall also ensure that the IEP team includes, but is not limited to, parents, special education teacher, general education teacher, and any potential related services providers.</p>			
8.	<p>The District shall develop a plan for providing compensatory services to Student 2 for failure to develop an IEP from March 5, 2024 to the date of the completion of the IEP. The plan will be documented in a Prior Written Notice (“PWN”) and sent to parents. The IEP team shall consider the services provided in Student 1’s</p>	November 22, 2024	<p>Prior Written Notices containing plans for compensatory services.</p>	December 3, 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>IEP to determine appropriate compensatory services and hours.</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>The District shall maintain a PED-approved tracker that includes the total compensatory hours owed and provided to student 1, whether those hours were accepted by parent.</p> <p>District shall complete all compensatory education hours by October 25, 2025. 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 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</p>		<p>Parent’s signed written decision to decline the offered compensatory education (if Parent declines).</p> <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>Forward when parent’s decisions have been received and documented.</p> <p>Monthly from date of compensatory services plan until the compensatory education hours are completed.</p>

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	private provider to ensure those services are provided.			
9.	<p>The District shall maintain a log of all discipline of students with disabilities within the District which constitutes a removal from the students’ placement, including informal removals and removals of less than 10 days.</p> <p>This log shall include:</p> <ol style="list-style-type: none"> 1. Students’ grade 2. Disability category 3. Level of discipline (informal removals, suspension, expulsion or change of placement in lieu of suspension or expulsion) 4. Disciplinary procedural safeguards applied (MDR, disciplinary hearing) 5. New placement, if applicable (includes placement at other District schools or the AEP) <p>The District and PED shall use this log to determine if appropriate procedural safeguards are being implemented. Failure to implement</p>		Monthly discipline log	Provided monthly beginning December 1, 2024 until June 1, 2024.

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	appropriate procedural safeguards may result in the imposition of additional corrective action measures.			
10.	District shall provide parent and parent’s attorney with all requested records of Student 1 and Student 2.	November 15, 2024	Documentary evidence that District has fully and completely responded to records request	November 22, 2024
11.	<p>The District shall arrange to provide training to District staff (including those serving students at AEP, special education teachers, special education administrators, diagnosticians and related service providers). The training shall be provided by persons independent of the District with expertise in special education who were not involved in responding to this complaint and who are approved by NMPED. The training shall cover the following special education and related topics.</p> <ol style="list-style-type: none"> 1. The manner in which District staff become aware, or suspect, that a student is a student with a disability who needs an evaluation; 2. The Federal and state requirements for responding 	January 24, 2025	<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 2, 2024</p> <p>December 16, 2024</p> <p>January 31, 2025</p>

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	<p>to a parental request or school referral for a special education evaluation, including the timing of such response and the documentation required;</p> <p>3. Interventions to address Chronic absenteeism (including requirements of the Attendance for Success Act);</p> <p>4. Appropriate disciplinary procedures for long-term disciplinary actions for all students including students with disabilities eligible for special education;</p> <p>5. Legal restrictions on the use of restraint or seclusion for all students;</p> <p>6. District’s continued obligation to appropriately serve and ensure the safety of students being served at alternative placements</p> <p>7. Appropriate provision of student records to parents upon request.</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/ Michele K. Bennett

Michele K. Bennett

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:

Margaret Cage

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Margaret Cage, Ed.D.

Deputy Secretary, Office of Special Education