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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
West Las Vegas Public Schools  
Case No. C2425-12  
December 6, 2024**

**This Report requires corrective action. See pages 20-24.**

On October 9, 2024, a complaint was filed with the New Mexico Public Education Department's (PED) Office of Special Education (OSE) under the federal Individuals with Disabilities Education Act (IDEA) and the implementing Federal Regulations and State Rules governing publicly funded special education programs for children with disabilities in New Mexico.<sup>1</sup> The OSE has investigated the complaint and issues this report pursuant to 34 C.F.R. § 300.152(a)(5) and 6.31.2.13(H)(5)(b) NMAC.

**Conduct of the Complaint Investigation**

The PED's complaint investigator's investigation process in this matter involved the following:

- review of the complaint and supporting documentation from complainant;
- review of the District's responses to the allegations, together with documentation submitted by the Local Education Agency at the request of the PED's independent complaint investigator;

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<sup>1</sup> The state-level complaint procedures are set forth in the federal regulations at 34 C.F.R. §§ 300.151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

- review of the District’s compliance with federal IDEA regulations and state NMAC rules;
- interview with Parent on November 14, 2024;
- interview with Parent Advocate on November 19, 2024;
- review of District Questionnaire submitted, completed, and returned by Middle School Case Manager on November 19, 2024;
- review of District Questionnaire submitted, completed, and returned by High School Case Manager on November 19, 2024;
- interview with Middle School Case Manager on November 20, 2024;
- review of District Questionnaire submitted, completed, and returned by High School General Education Teacher on November 22, 2024;
- interview with High School Case Manager on November 22, 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.

#### **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) and/or behavior intervention plan (BIP), pursuant to 34 C.F.R. § 300.323 and 6.31.2.11(B) NMAC.
2. 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.
3. Whether the District ensured the IEP team met annually to review Student’s IEP, pursuant to 34 C.F.R. § 300.324(b) and 6.31.2.11(J)(1)(e) 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 Student's IEP(s) includes the signature of each member of the IEP team and other participants in the IEP meeting, pursuant to 6.31.2.11(B)(3) 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. Student is classified as a student with a disability under the primary classification of Specific Learning Disability, pursuant to a reevaluation that took place in March 2022. At the time of evaluation Student demonstrated a severe discrepancy in the areas of math, reading, and written language.
2. During the 2023-24 school year, an annual IEP was developed for Student at the beginning of Student's eighth grade year. Student was 14 years old at the time of development. The IEP is dated August 30, 2023. Relevant portions of the IEP include:
  - a. Student's behaviors impede their learning or the learning of others. Student requires a behavior intervention plan (BIP).
  - b. Instructional Accommodations and Modifications include, in part:
    - i. "Reading/ELA and Mathematics at [Student's] grade level with differentiated instruction from grade level concepts. Grade level instructional material to be at teachers [sic] discretion and [Student's] interest."
    - ii. When Student blatantly refuses to complete work, Student is to be given one additional day to complete it.
    - iii. If Student refuses to do an assignment, the teacher is to email the parent at the end of class with the assignment and brief descriptor.
    - iv. Student will receive verbal reminders to turn in assignments.
    - v. Longer assignments are to be divided into smaller components for completion.
    - vi. Reduced homework load and/or assignments.
    - vii. Several testing accommodations are included but each is only to be provided at teacher discretion.
  - c. The IEP contains five goals to address academics, career readiness, and behavior. Specifically, in part:
    - i. Reading/Written Language

1. Present levels include test scores during the Student's seventh grade year. In addition, it states Student can independently read at a kindergarten level and is at a foundational phonics level (level 1-3). The goal included is reportedly an advanced phonics level goal (level 10).
  2. Goal: "[Student] will be able to demonstrate [their] comprehension of a passage/text by identifying the central idea and supporting details utilizing context clues and subject academic vocabulary to coherently retain taught concept(s)."
    - a. Objective: [Student] will be able to with adult support demonstrate the command of the of the [sic] conventions of standard English grammar and usage when writing or speaking by writing sentences/paragraphs using the RACE strategy and utilizing academic vocabulary to write in a sequential and informative manner."
    - b. Criteria for mastery: 80% accuracy.
- ii. Math
1. Present levels include test scores during the Student's seventh grade year. In addition, it states Student is able to solve addition, subtraction, multiplication, and one-digit division equations. Student is working on word equations within the four orders of operations.
  2. Goal: "[Student] will utilize place value and regrouping strategies to solve word and numerical math equations involving the four order[s] of operation."
    - a. Criteria for mastery: 85% accuracy.
- iii. Career Readiness
1. Present levels state, in part, Student will compete tasks with assistance, does not complete work assigned, Student does not ask for help, Student is easily distracted, and Student struggles to stay on task.
  2. Goal: "[Student] will turn in assignments by a given due date by asking for assistance from the teacher about confusing or unknown concepts by planning and organizing questions about uncompleted tasks/assignments."
    - a. Criteria for Mastery: 85% accuracy with 4/5 times
- iv. Social/Emotional

1. Present levels indicate Student has made progress towards goals related to decision-making, self-regulation, and academic motivation.
  2. Goal: "When given an opportunity to identify and explore distractions during social work sessions, [Student] will independently recognize distractions, refocus, and utilize learned skills in all academic settings 3/5 opportunities on 3/5 data days."
    - a. Objective: "[Student] will identify and utilize organization styles to decrease forgetfulness or misplacing items on 4/5 times on 4/5 opportunities."
  - v. Behavior
    1. Present levels indicate what the previous behavior-related goal was with no then-current baseline levels.
    2. Goal: "Student will learn to self monitor behaviors and apply learned and new coping skills to [their] everyday school routine to continue maintain [sic] [their] behavior throughout the school year."
      - a. Criteria for mastery: 100% accuracy
  - d. The following special education and related services were to be provided:
    - i. SpEd Academic Support Services in an Inclusion Setting in English/ELA and Math: 500 minutes/week (regular classroom)
    - ii. Advisory SpEd Academic Support: 250 minutes/week (special education setting)
    - iii. Social Work: 30 minutes/week (special education setting)
    - iv. Psychological Services: 15 minutes/week (special education setting)
  - e. Progress was to be reported to Parents on a quarterly basis.
  - f. The IEP at a Glance attached to the IEP includes, in part, the schedule of services for both the 2023-24 school year and from August 23, 2021 through November 2, 2021.
3. A BIP was also developed at the beginning of the 2023-24 school year. The BIP is dated August 30, 2023. Relevant portions of the BIP include:
    - a. The "problem behavior" is disruptive behavior (e.g., non-verbal and verbal noises/gestures, talking, walking around, etc.) during class with the presumed function to avoid academic responsibilities and/or to gain attention from others.
    - b. Prevention strategies include, in part:
      - i. When Student requires redirection, staff should intervene discretely with verbal and nonverbal redirection to not draw attention to Student;

- ii. Teacher is to ignore minor disruptive behaviors and address problem behavior as deemed necessary;
  - iii. Call Parent(s) to help regulate Student.
4. A prior written notice (PWN) dated August 30, 2023 indicates, in part, a transition meeting would be conducted in Spring 2024.
5. A behavior incident occurred on February 29, 2024 in choir class. Specifically, the incident report indicates Student was consistently disruptive in class (e.g., refusing to sing, sang facetiously, talking to peers, had cell phone out, was chewing gum). Teacher redirected Student many times when being disruptive. After Student lied about having chewing gum, the teacher called security to escort Student out of class.
6. On March 19, 2024 while at school, Student sustained a serious leg injury that required surgery. Student was out of school through March 22, 2024.
7. Between March 25, 2024 and April 5, 2024, for every day in which school was in session and Student was present, Student attended a normal schedule.
8. At the request of Parent, an IEP meeting was held on April 5, 2024 to discuss, in part, Student's schedule of services due to Student's injury. At the meeting, the IEP Team agreed to shorten Student's school day due to Student's leg injury that impaired Student's mobility. Specifically, Student was no longer to attend electives (i.e., choir, advisory, physical education, and office aid) that Student was then-presently enrolled in. The IEP was amended to reflect same and is dated April 5, 2024. The amendments noted on the IEP include:
  - a. Instructional Accommodations and Modifications was updated to include math support, as needed, to be provided during lunch by a math teacher.
  - b. Advisory Special Education Academic Support services was removed.
9. The PWN that was sent following the development of the August 30, 2023 IEP was updated to include notice regarding Student's shortened school day and the removal of Advisory special education services.
10. Beginning April 8, 2024, Student began attending a shortened school day. Student was to arrive at school by 10:00 a.m. and was to be dismissed at 3:04 p.m. Student attended "Prep Period," physical science, English, history, and math.
11. Sometime around April 26, 2024, Student obtained a release from Student's doctor stating Student was able to attend a regular school day. For unknown reasons, a meeting was not held prior to the end of the 2023-24 school year. As a result, Student remained on a shortened schedule until the school year concluded on May 22, 2024.
12. At various times during the 2023-24 school year, Student was encouraged by the middle school math teacher to attend the after-school program to get caught up on missing assignments and receive extra help.

13. District provided a document that lists all IEP goals and reports of progress during specific dates during the 2023-24 school year (e.g., October 2023, January 2024, March 2024, and May 2024). There is no proof Parent was provided the progress reports at any time during the 2023-24 school year.
14. In review of the progress report provided to Investigator, the following was noted:
  - a. Throughout each progress period, Student reportedly made “sufficient progress” on the reading-related IEP goal. The comments regarding progress are in no way measurable to the goal. Instead, Student’s then-current grades and a declaration was made that accommodations/modifications were provided to Student.
  - b. Throughout each progress period, Student reportedly made “sufficient progress” on the math-related IEP goal. The comments differ very little from the reading-related progress comments.
  - c. During the first two progress reporting periods, Student made insufficient progress on the career-readiness IEP goal; Student made sufficient progress the latter two reporting periods. Progress comments indicate Student either did not complete many assignments, attempted to complete assignments, or utilized the after-school program to complete assignments.
  - d. The progress comments regarding Student’s social/emotional goal indicate Student made progress.
  - e. The progress comments regarding Student’s behavior-related goal indicate that Student was not willing to come to sessions with the school psychologist for the majority of the school year. As a result, Student made insufficient or no progress on the goal.
15. Neither an IEP meeting or a transition meeting was held prior to the start of the 2024-25 school year. District did not issue a PWN regarding what the duration of Student’s school day would be for the 2024-25 school year.
16. Prior to the start of the 2024-25 school year, Student’s high school case manager received a list of student names for which the case manager was responsible. Student was included on the list.
17. The 2024-25 school year began on August 7, 2024. Student entered the ninth grade and was to attend a regularly scheduled school day. In part, Student was enrolled in an algebra class.
18. The “Instructional Accommodations and/or Modifications” page from the August 30, 2023 IEP and the BIP dated August 30, 2023 was provided to all of Student’s teachers sometime between August 20, 2023 and August 23, 2023. District did not issue a PWN stating it was going to implement the August 30, 2023 IEP without the April 5, 2024 amendments.
19. A meeting notice dated August 22, 2024 invited Parent and others to attend an IEP meeting on September 23, 2024 to develop a new annual IEP.

20. Student was removed from algebra and placed in an integrated math class on or around September 16, 2024.
21. An annual IEP meeting was held on September 23, 2024. It is unclear what discussions were had at the IEP meeting. However, the IEP was unable to be developed. As a result, the IEP Team was to reconvene on October 22, 2024, although no meeting notice was provided.
22. No PWN was issued to Parent following the September 23, 2024 IEP meeting. District continued to implement the August 30, 2023 IEP.
23. District provided a draft IEP and draft PWN to Investigator. Both documents are dated September 23, 2024. The draft IEP is filled out in its entirety, including parent input. Nothing on the document indicates it is a draft. The draft PWN includes “proposed” items including, in part, schedule of services was reviewed, what instructional setting Student will be in, the BIP was reviewed, etc. No proposal is accepted or rejected but a reason/comment for each proposal is included. At the end of the PWN, it states the IEP meeting was tabled and rescheduled for October 22, 2024. Nothing on the PWN indicates it is a draft. Neither document was provided to Parent.
24. Parent filed the state complaint on October 9, 2024. The acknowledgement letter was emailed to the parties the morning of October 16, 2024.
25. On or near October 17, 2024, the October 22, 2024 IEP meeting was cancelled as a result of the state complaint. The parties tell conflicting stories about who cancelled the IEP meeting. District has made no attempt to reconvene the IEP Team since the October 2024 meeting was cancelled nor has PWN been issued regarding the cancellation of the meeting, interim plan, or anything else.
26. No progress report has been generated during the 2024-25 school year. The high school case manager indicated the IEP goals are related to middle school standards, as a result, progress has not been tracked this school year.
27. District emailed a copy of the April 5, 2024 IEP and BIP dated August 30, 2023 to Parent on November 15, 2024. It is unclear what precipitated the correspondence. The April 5, 2024 IEP provided to Parent has a signature page without signatures affixed.
28. As of November 21, 2024, Student has three Fs, one D, and three Cs.



**Discussion and Conclusions of Law**

**Issue No. 1**

***Whether the District properly implemented the Student’s individualized education program(s) (IEP) and/or behavior intervention plan (BIP), 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).

**2023-24 School Year**

Parent indicated only two specific concerns regarding implementation of the IEP/BIP during the 2023-24 school year – the incident in choir and progress reports.

First, the August 30, 2023 BIP requires that the teacher address problem behaviors discreetly and, if disruption persists, Parent is to be called to assist in regulating Student. If that fails, then an administrator is to be involved. During the February 29, 2024 incident, the choir teacher addressed Student’s disruptive behaviors. However, after repeated disruptions, the choir teacher called security to remove Student from class. At no point was Parent called to assist, contrary to what the BIP requires.

Second, the August 30, 2023 IEP requires that Parent be provided progress reports on a quarterly basis. District stated Parent was regularly informed about Student’s progress through biweekly phone calls or text messages. In addition, District asserts Parent was provided progress reports at the school open house in October 2023 and March 2024. Parent vehemently denies receiving progress reports during the 2023-24 school year. Seemingly, Parent was provided regular grade updates but there is no proof that progress reports were provided to Parent at any time during the 2023-24 school year.

### 2024-25 School Year

First and foremost, District has been implementing the wrong IEP. While the April 5, 2024 IEP was no longer appropriate, as Student should not have been on a shortened school day, District did not provide PWN regarding its plan to implement the previous IEP. Therefore, the April 5, 2024 IEP should have continued to be implemented absent an IEP meeting, agreement between the parties regarding what IEP was to be implemented, or a PWN. Nonetheless, District has failed to implement the August 30, 2023 IEP in its entirety.

First, Student's teachers were not provided access to the IEP and BIP for over two weeks after the start of the school year. Without knowing what accommodations and services Student was to receive, teachers could not implement the IEP/BIP.

Secondly, the August 30, 2023 IEP requires Student to receive "advisory" special education services. Student is not enrolled in an advisory class, nor receiving "advisory" services. District indicated Parent requested that Student not be in an advisory class this school year. If that is the case, District should have revised the IEP and issued a PWN regarding the agreement to not enroll Student in advisory and discontinue advisory special education services. Because District did not do so, it is not implementing the August 30, 2023 IEP as written.

In addition, the August 30, 2023 IEP requires Parent to be emailed at the end of the class period if Student refuses to complete an assignment. Student is doing poorly in the majority of classes but Parent alleges no contact is made and District also stated there has been little communication since the filing of the complaint. It is clear, Parent is not being contacted, as they should be. Moreover, most communication, if any, is coming from Parent to Case Manager. District has an obligation to remain in contact with Parent, per the IEP. While Parent may have instant access to grades, the IEP calls for District to contact Parent and District is not doing such.

Finally, District admitted that it is not tracking progress on IEP goals. As a result, a progress report has not been provided to Parent. If the IEP goals are not appropriate at the high school, District has an obligation to revise the IEP. District did not even attempt to schedule a new IEP meeting until the 2024-25 school year had started and then District allowed the October 2024 IEP meeting to be cancelled with no explanation regarding the importance of developing a new IEP sooner rather than later. While parent participation is important, providing FAPE to Student is more important.

In all, District has failed to implement Student's IEP/BIP as written during both the 2023-24 and 2024-25 school years.

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

**Issue No. 2**

***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).

### August 30, 2023 IEP Developed/Implemented During 2023-24 School Year

First, the annual goals in Student's August 30, 2023 IEP are deficient and lack measurability. For example, the reading-related IEP goal indicates Student will demonstrate their comprehension of a passage/text by identifying the central idea and supporting details. The goal fails to specify what grade level text Student will use. Moreover, based on the present levels, it appears the goal is not achievable for Student. Specifically, it states the Student is at a foundational phonics level (level 1-3) and the goal is at an advance phonics level (level 10). For a student who is reportedly reading at a kindergarten level, it is hard to justify such a difficult goal. With regard to the career-readiness goal, the goal states Student will turn in assignments by the given due date by asking for assistance with "85% accuracy with 4/5 times." What does that mean?

Second, none of the goals contain adequate baseline information to allow staff or Parent to determine whether Student is making adequate progress. For example, the math goal indicates Student will solve word and numerical math equations involving the four orders of operations. Even though an accuracy percentage is required to master the goal, there is no baseline percentage regarding Student's then-ability to solve word and numerical equations. Without baseline information, it is impossible to determine whether Student has made progress on the goal.

Third, the majority of the accommodations/modifications do not include the necessary information, nor are many of the accommodations appropriate. An IEP is to include supplementary aids and services (e.g., accommodations) for the student to attain the annual goals, be involved and make progress in the general education curriculum, and participate in nonacademic activities. 34 C.F.R. 300.320(a)(4). Yet, this IEP has many accommodations that are only to be provided *at the teacher's discretion*. For example, "grade level instructional materials" are to be provided at teacher's discretion and Student's interest. Does that mean the teacher can choose whether they provide instructional materials or not? Additionally, testing accommodations are also to be provided, but only at the teacher's discretion. Student is a child with a learning disability. Why is that any given teacher gets to decide what accommodations Student can or cannot use? Student either needs the testing accommodations or does not and the IEP needs to specify those appropriate accommodations.

Fourth, the schedule of services combines English/ELA and math services into one service delivery for 500 minutes/week. Does that mean those 500 minutes are divided in half – 250 minutes of English and 250 minutes of math special education services or something else? English and math are two very different subject matters and it is imperative Student's educators are aware how many minutes of specialized instruction Student needs for both.

Finally, the schedule of services in the IEP at a Glance includes the schedule of services provided to Student during the 2021-22 school year. The inclusion of old services demonstrates the District's carelessness when developing this document.

All in all, the August 30, 2023 IEP is not reasonably calculated to enable Student to receive an educational benefit and violates the IDEA's substantive requirements, resulting in a denial of FAPE.

#### April 5, 2024 IEP Amendment

Regarding the April 2024 Amendment, the same concerns noted above still apply. Of further concern is that District did not review and revise the IEP after Student was medically cleared to attend a full school day. *See* 34 C.F.R. § 300.320(b). District indicated Parent insisted on having an IEP meeting but District did not explain to Parent that the IEP Team could agree to amend the IEP outside of a meeting nor did District make sufficient attempts to get an IEP meeting scheduled. As a result, Student continued on a shortened school day for the last month of school when Student should have been attending school full-time.

#### August 30, 2023 IEP Implemented During 2024-25 School Year

As stated above, the August 30, 2023 IEP was not reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances during the 2023-24 school year. The August 30, 2023 IEP is even less reasonably calculated to enable Student to make progress during Student's ninth grade year because the goals are not appropriate for the high school curriculum, according to the case manager. Moreover, Student has struggled this school year maintaining passing grades. Despite Student's struggles, District has not attempted to revise the IEP to address Student's needs, in violation of 34 C.F.R. § 300.320(b).

Finally, Student was first placed in algebra during the 2024-25 school year. Once it became clear algebra was not the appropriate class for Student, Parent alleges they were told if Student were to receive more support Student would not be able to graduate high school with a regular diploma. District does not recall the conversation. Nonetheless, at this point in time, Student is on a standard diploma track.

When reviewing the respective IEPs developed for Student noted above, it is clear that neither were tailored to Student's unique needs and reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances.

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

**Issue No. 3**

***Whether the District ensured the IEP team met annually to review Student's IEP, pursuant to 34 C.F.R. § 300.324(b) and 6.31.2.11(J)(1)(e) NMAC.***

The IEP team must review a child's IEP annually. 34 C.F.R. § 300.324(b); 6.31.2.11(J)(1)(e) NMAC. An amended IEP does not take the place of the annual IEP. 6.31.2.11(B)(3) NMAC.

Here, Student's last annual IEP was developed on August 30, 2023. Therefore, District was to review the IEP no later than August 30, 2024. There is evidence that District attempted to convene an IEP meeting prior to the expiration of Student's August 30, 2023 IEP. Due to Parent availability, the IEP meeting was held one-month beyond the deadline. With that said, when the IEP Team was unsuccessful in developing a new IEP in September 2024, and the follow-up meeting was cancelled, District did nothing. At the time of this writing, Student's annual IEP is more than three months overdue and counting. District's failure to develop a new annual IEP violates the IDEA and State regulations.

As stated above, it is unclear who cancelled the October 2024 IEP meeting. In the event Parent cancelled the meeting, District should have explained the importance and need to develop a new IEP, but, at the very least, memorialized Parent's request and the District's interim plan in a PWN. In the event District cancelled the meeting, there is no justifiable reason to do so just because a state complaint was filed. Regardless of the involvement of the State, District has a duty to follow federal and state regulations.

**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 initiate or change the identification, evaluation, educational placement, or 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 alleged in the complaint that PWNs do not accurately depict what is discussed. Parent's Advocate explained at past IEP meetings Parent has proposed a number of things to discuss prior to the meeting. At the meeting, Parent's proposals are either not discussed or whatever was rejected is not included in the PWN. Advocate provided an email in which Parent's proposals were attached. The email is from August 2023. As the August 2023 IEP meeting is outside of the scope of this investigation, a finding is not made in regards to same. With that said, District is reminded that all proposals discussed at IEP meetings, whether accepted or rejected, should be included in PWNs going forward.

On another note, there were multiple instances that District was required to issue PWN but it did not. Specifically, District should have issued a PWN (1) prior to the beginning of the 2024-25 school year in regards to the length of Student's school day; (2) prior to implementing the August 30, 2024 IEP even though the IEP had been amended in April 2024; (3) prior to stopping advisory special education services (*see Letter to Lieberman, 52 IDELR 18 (OSEP 2008)*); (4) after the September 23, 2024 IEP meeting in regards to what was discussed at the IEP meeting, if appropriate, when the IEP Team would reconvene, and what IEP was to be implemented in the interim; and (5) following the cancellation of the October 2024 meeting.

Finally, the District should be cautious in drafting completed PWNs prior to IEP meetings as it did with the September 2024 meeting. Depending on the circumstances and the IEP teams actual considerations during the subsequent IEP meeting, the practice may strongly suggest predetermination and could be seen to deny a parents right to meaningfully participate in the IEP meeting.

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

**Issue No. 5**

***Whether Student's IEP(s) includes the signature of each member of the IEP team and other participants in the IEP meeting, pursuant to 6.31.2.11(B)(3) NMAC.***

To document attendance, each IEP must include the signature and position of each member of the IEP team and other participants in the IEP meeting. 6.31.2.11(B)(3) NMAC.

Parent alleged they were not provided a copy of the IEP with the meeting participants signatures attached.

It is unclear which IEP Parent alleges did not include a signature page. However, as recently as November 15, 2024, District emailed Parent a copy of the April 5, 2024 IEP. The copy provided to Parent includes the signature page but participants signatures are not included. Similarly, the April 5, 2024 IEP provided to Investigator does include the signed signature page.

New Mexico Rules require that the IEP include the signatures of each IEP meeting participant. *Id.* The IDEA requires that a copy of the IEP be provided to the parent at no cost. *See* 34 C.F.R. § 300.322(f). Therefore, it is concluded that even though versions of the IEP include the signatures of the meeting participants, the version provided to Parent does not. As a result, District is in violation of 6.31.2.11(B)(3) NMAC.

**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. *Endrew F.*, 137 S. Ct. 988 (2017).

**IEP Implementation**

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.*



A parent's right to participate in the development of their child's educational program requires that they be regularly informed of progress toward IEP goals. *See M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (Ninth Cir. 2017), *cert. denied*, 138 S. Ct. 556 (2017).

During the 2023-24 school year, District's failure to implement the BIP during the incident in choir and provide progress reports to Parent constitutes a procedural violation. However, the implementation failure during the choir incident is not material. Therefore, there was no denial of FAPE. On the other hand, the procedural violation for failure to provide progress reports does amount to a denial of FAPE because it significantly impeded Parent's opportunity to participate in the decision-making process.

During the 2024-25 school year, the failure to implement the IEP/BIP as written amounts to a denial of FAPE. Specifically, Student's teachers were not provided access to the IEP/BIP for over two weeks, progress has not been tracked the entire school year nor has a progress report been provided, accommodations are not being provided/followed with fidelity, etc. All of the deviations from the IEP/BIP are a material deviation from same resulting in a denial of FAPE.

#### Reasonably Calculated IEP

As stated above under Issue No. 2, Student's August 30, 2023 IEP is not reasonably calculated to enable Student to receive an educational benefit, resulting in a denial of FAPE.

Compensatory education is an equitable remedy intended to place a student in the same position had an IDEA violation not occurred. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education awards "must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Phillips v. Dist. of Columbia*, 932 F. Supp. 2d 42 (D.D.C. 2013).

Since the implementation of the inadequate August 30, 2023 IEP, Student has been denied FAPE. However, the compensatory services awarded to Student will be limited to the one-year period prior to receipt of this complaint.

#### Annual Review

District's delay in holding the annual IEP meeting until September 2024 would not have amounted to a procedural violation or denial of FAPE, however, because a new IEP was not developed at the September 2024 IEP meeting and District is implementing an IEP that clearly is not appropriate, District's failure to develop a new IEP within a year of the previous IEP results in a denial of FAPE.

PWN

District’s failure to issue PWN on at least five occasions significantly impeded Parent’s opportunity to participate in the decision-making process regarding the provision of FAPE, resulting in a denial of FAPE.

Signature Page

District’s failure to provide the signatures of each person in attendance at the previous IEP meeting(s) did not impede Student’s right to FAPE; significantly impede Parent’s opportunity to participate in the decision-making process regarding the provision of FAPE; or cause a deprivation of educational benefit. Therefore, the procedural violation does not amount to a denial of FAPE.

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

**Summary of Citations**

<b>IDEA/State Rule Provisions Violated</b>	<b>Description of Violation</b>
34 C.F.R. § 300.323 6.31.2.11(B) NMAC	District failed to implement Student’s IEPs.
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. § 300.324(b) 6.31.2.11(J)(1)(e) NMAC	District failed to develop a new annual IEP for Student.
34 C.F.R. § 300.503 6.31.2.11(B)(3)	District failed to provide PWN. District failed to provide Parent a copy of the IEP with the signatures of each participating team member.
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 December 20, 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](mailto: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 August 29, 2025 and reported to the OSE no later than September 12, 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**

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
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).	<b>December 20, 2024</b>	Written Assurance Letter/Email	<b>December 20, 2024</b>
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.	<b>January 10, 2025</b>	Notes from meeting prepared by District	<b>January 17, 2025</b>
3.	The District Special Education Director will meet with the case managers and Student’s special education teachers and related service providers at both the middle school and high school 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.	<b>January 17, 2025</b>	Notes from meeting prepared by District	<b>January 24, 2025</b>
4.	The District shall convene a facilitated IEP meeting for Student.	<b>January 24, 2025</b>	1. Invitation to IEP meeting;	<b>7 days after the FIEP meeting is held</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
	<p>The facilitated IEP meeting shall address, at minimum:</p> <ul style="list-style-type: none"> <li>• The Student’s present levels of performance regarding all areas of need;</li> <li>• A transition plan;</li> <li>• Accommodations;</li> <li>• New IEP goals;</li> <li>• Schedule of services;</li> <li>• Appropriate Placement;</li> <li>• The Behavior Intervention Plan; and</li> <li>• Plan for compensatory education required by Step 6.</li> </ul> <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>If District prepares a draft IEP, it shall be provided to Parent and Facilitator at least one day prior to the IEP meeting. All discussions and IEP Team considerations shall be documented in a PWN which shall be provided to parent after the FIEP meeting is concluded.</p>		<p>2. Agenda for IEP meeting;                      3. IEP; and                      4. Prior Written Notice(s)</p>	
<b>5.</b>	<p>Due to lack of adequate progress reporting during the 2023-24 school year and lack of progress monitoring during the 2024-25</p>	<b>March 21, 2025</b>	Reevaluation Report	<b>March 31, 2025</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
	<p>school year, District shall conduct a reevaluation before Student’s triennial reevaluation deadline and shall reconvene the IEP team after the reevaluation is completed. A review of existing evaluation data (REED) will not satisfy this requirement.</p>			
<p><b>6.</b></p>	<p>The District shall provide the following compensatory education:</p> <ul style="list-style-type: none"> <li>1) 50 hours in English/ELA</li> <li>2) 30 hours in math</li> </ul> <p>The plan for compensatory services shall be documented in the PWN for the facilitated IEP meeting.</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 District is required to contract with a private provider to ensure those services are provided.</p>	<p><b>August 29, 2025</b></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>Prior Written Notice containing plan for compensatory services</p>	<p><b>Monthly from date of compensatory services plan until the compensatory education hours are completed</b></p> <p><b>7 days after the FEIP meeting is held</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED</u></b> <b><u>OSE</u></b>	<b><u>Document Due Date</u></b>
7.	<p>District shall conduct intermittent auditing of Student’s school team progress measuring, documenting, and reporting throughout the remainder of the 2024-25 school year.</p> <p>The audit shall also consist of a review of progress reporting of at least 10% of students with disabilities within the District and shall include students from elementary, middle and high schools within the District.</p>	<b>Within 14 days of the end of each grading period</b>	Documentation of the audit and report of audit findings including corrective action taken if findings indicate insufficient progress monitoring or reporting.	<b>Within 7 days of each audit</b>
8.	<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 independent of the District with expertise in special education who was not involved in responding to this complaint and is approved by the PED.</p> <p>The training shall address the following special education topics:</p> <ol style="list-style-type: none"> <li>1. IEP development, including               <ol style="list-style-type: none"> <li>(a) supplementary aids and services,</li> <li>(b) accommodations and modifications,</li> <li>(c) present levels,</li> <li>(d) measurable annual goals, and</li> <li>(e) special education and related services</li> </ol> </li> </ol>	<b>February 28, 2025</b>	<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><b>January 10, 2025</b></p> <p><b>January 24, 2025</b></p> <p><b>March 7, 2025</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED</u></b> <b><u>OSE</u></b>	<b><u>Document Due Date</u></b>
	2. Implementing an IEP as written, specifically, the provision of services and accommodations; 3. Progress measuring and reporting; 4. Prior written notice, including when to provide notice and the contents of the notice.			

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*

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Margaret Cage, Ed.D.

Deputy Secretary, Office of Special Education