



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

MARIANA D. PADILLA
SECRETARY DESIGNATE OF PUBLIC EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
South Valley Preparatory Charter School
Case No. 2425-13
December 6, 2024**

This Report does not require corrective action.

On October 15, 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 District's responses to the allegations, together with documentation;
- review of District's compliance with federal IDEA regulations and state NMAC rules;
- interview with Charter School's Head Administrator and one ancillary provider. An interview was requested of the prior Special Education Director, but individual did not respond to request.
- research of applicable legal authority.

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.

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 Charter School, in accordance with the Corrective Action Plan issued in State Complaint Case Number C2324-26 and 34 C.F.R. §§ 300.151(b) and 300.600(e), and 6.31.2.13(H)(5)(c) NMAC, failed to:
 - a. Review delivery of special education and related services of all special education students during the Spring and Fall of 2023 to determine the amount of needed compensatory education resulting from the Charter School's possible failure to provide services during the Spring and Fall semesters of 2023;
 - b. Develop plans for providing compensatory services to the individual students;
 - c. Document plans in a Prior Written Notice ("PWN") for each student and send them to parents;
 - d. Maintain an accurate PED-approved tracker that includes:
 - i. The total compensatory hours owed and provided to each student based on missed services as well as student need,
 - ii. Whether those hours were accepted by the student's parents, and
 - iii. The provision of compensatory education hours provided to each student;
 - e. Obtain a confirmation in writing and provide the written confirmation to PED if a parent declined compensatory education; and
 - f. Contract with a private provider to ensure those services are provided (if needed due to staffing or other limitations).

2. Whether the Charter School failed to provide compensatory services to all special education students who were not provided with such based on the Charter School's

possible failure to provide services during the Spring and Fall semesters of 2023, in accordance with 34 C.F.R. §§ 300.151(b) and 300.600(e) and § 6.31.2.13(H)(5)(c) NMAC.

3. Whether the Charter School failed to follow requirements of NMSA § 22-2C-6 when promoting Student from 7th grade to 9th grade.
4. Whether the Charter School's actions and/or omissions resulted in a denial of a free appropriate public education (FAPE) to student with disabilities, in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

1. Complainant was an employee of District as a business manager.
2. Charter School ("School") was issued a Corrective Action Plan (CAP) in State Complaint Case Number C2324-26. This CAP became effective January 26, 2024, and had action items with deadlines between February 9, 2024, and April 9, 2024.
3. The CAP required multiple actions, but of relevance to this investigation, are action items numbers 4 and 5. Action Item 5 is detailed below in Paragraphs 28-30. Action Item 4 states:

The Charter School:

- shall internally review the delivery of special education and related services of all special education students during the Spring and Fall of 2023 to determine the amount of needed compensatory education resulting from the Charter School's possible failure to provide services during the Spring and Fall semesters of 2023.
- shall develop plans for providing compensatory services to the individual students.
- The plans will be documented in a Prior Written Notice ("PWN") for each student and sent to parents.
- shall maintain a PED-approved tracker that includes the total compensatory hours owed and provided to each student based on missed services as well as student need, whether those hours were accepted by the student's parents, and the provision of compensatory education hours provided to each student.
- if a parent declines compensatory education, the Charter School shall get a confirmation in writing and provide the written confirmation to PED. Charter School shall complete all compensatory education hours by December 2, 2024. 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.

- If the Charter School, due to staffing or other limitations, is unable to provide the compensatory services as required by this CAP, the Charter School is required to contract with a private provider to ensure those services are provided.
4. Compliance with the internal review for action item number 4 required School to review two (2) semesters of special education and related services for all special education students during the Spring and Fall of 2023.
 5. School provided CAP monitor documentation and met with CAP monitor to discuss progress between February and April of 2024. A closing letter sent to School indicated “all findings of non-compliance have been documented and addressed.”
 6. Subsequently, Complainant filed a State complaint alleging that School’s actions and provisions did not effectuate CAP directives. Specifically, Complainant alleges School did not apply CAP directives to all special education students potentially affected by identified violations and, instead, School chose some special education students for application of CAP directives.
 7. To wit, Complainant alleges that School did not review all special education students during the Spring and Fall of 2023, and School, therefore, failed to provide compensatory services to appropriate students. Complainant did not provide documents or facts beyond the allegations provided in the initial complaint. The only substantive offer of evidence from Complainant was an unsigned document attributed to a prior School employee who did not respond to a request for an interview. This document and the employee is discussed in more detail in Paragraphs 19-23.
 8. The number of special education students School listed as being reviewed for delivery of special education and related services as part of its CAP compliance was 47.
 9. Complainant did not provide a different number or documentation indicating that 47 was not the number of special education students during the Spring and Fall of 2023.
 10. The C2324-26 Report, pages 9-10, explicitly stated that
 - determining whether services have been provided will require an in-depth analysis of the hours of services each of the students should have received and how the Charter School is providing special education services. Where the failures are material, determining appropriate compensatory services will likewise require an in-depth analysis of Students’ IEPs and their progress. Both processes will be more complicated due to the lack of service records and the turnover of special education staff. As such, a review to determine each students’ need, if any, for compensatory services is necessary.
 11. It is significant that weakness of school’s records was part of the violation in original C2324-26 Report and CAP, and this investigation does not look to penalize School twice for the same existing weak records. Weak documentation inherently made difficult the task of determining who should receive compensatory services and difficult to calculate

how much compensatory services were due to deserving students for CAP compliance. It is also noted that School had a high turnover of personnel including the position of Head Administrator between the C2324-26 findings and CAP and the deadlines for action within the CAP.

12. School used all resources at its disposal to get a picture of (1) student's service requirements per their IEPs and (2) how much of those services occurred or did not occur. To accomplish this, School was able to articulate with specificity the review of each IEP of the 47 students to objectively identify special education and related services due. School then cross referenced other available records including the admittedly weak service records, school attendance and tardy records, information provided by teachers and ancillary providers who responded to requests for such, and a MaxCapture Report which indicated related services for students. School provided specific names and records indicating discussions with providers about provision of services.
13. School chose five (5) absences or more as an indicator that student may need compensatory services due to accommodations and/or services missed. School took into consideration students' current academic benchmarks as another indicator of need for compensatory services.
14. School provided the names of two other employees/providers that worked on the initial internal review. Investigator interviewed one of these individuals and she provided that her role was provision of compensatory services; she did not work with students prior to the year the CAP was implemented and could not provide personal knowledge of services available at the time, but she did have access to students' IEPs.
15. Investigator could not find records or sources of information that School could have reviewed beyond that were reviewed.
16. School explained that the calculation of compensatory education/services for students who qualified based on initial review was a hybrid approach including quantitative and qualitative factors to include actual accommodation and service hours denoted on each student's IEP, numbers of absences and tardies for each student, notations of services provided or missed in service logs and the MaxCapture Report, consultation with providers, and each student's current academic benchmarks. School conceded that coming up with "numbers" was somewhat arbitrary and that because of this, School overestimated compensatory education and services. School did not receive any feedback from parents that School's recommended time for compensatory services was not enough. Appropriate methods of calculating compensatory education/services is discussed in the Discussion and Conclusions of Law Section below.
17. Fourteen (14) students were concluded to need, and did receive, compensatory education and/or related services.

18. Investigator's review of absences, tardies, service logs, MaxCapture Report, IEPs, and conversations with Head Administrator and an additional service provider does not indicate students in need of compensatory education beyond those fourteen students identified by School.
19. Complainant also provided a typed document with "Submitted by: [J.H.], former Special Education Director." The typed document is not signed nor was contact information for the Special Education Director (SED) provided as part of the State complaint. Relevant to this investigation, SED alleged that Head Administrator said he would create a list of students that "we would offer 'compensatory' hours to" and that he hoped the list would "satisfy PED." The SED quoted Head Administrator in some instances and provides speculation about his intentions without specifics or supporting documentation in other instances.
20. SED was in a supervisory role for special education at School during the time violations occurred and during the time of all CAP compliance deadlines. The statement provides reasons why SED did not take personal action to meet CAP compliance measures but does not provide evidence that Head Administrator and other School employees and ancillary providers failed to complete each action required by the CAP. Relevant statements SED contributes to Head Administrator do not indicate inaction or inappropriate action relative to review for need for compensatory action or calculation of compensatory special education and/or related services. School demonstrated written communication with providers for compensatory services to individual students and provided Excel Spreadsheets denoting dates and times of provision of specific services for each of the fourteen (14) students identified as needing compensatory services. Documentation demonstrated development of plans for providing compensatory services to the individual students.
21. Investigator obtained former SED's contact information and requested an interview to clarify Complainant's allegations. Investigator did not hear back from SED and, thus, no interview occurred.
22. Related to other required actions listed in Action Item Number 4 of the CAP, School:
 - Sent PWNs for fourteen (14) students. For each student, PWN stated proposed amount of compensatory time to be provided and the reasons for need of compensatory services. The PWNs are tailored to individual students;
 - Provided an excel spreadsheet demonstrating dates, type of special education (compensatory service) provided, and amount of time for each compensatory service relative to each identified special education student with all times matching or exceeding that listed on student's PWN; and
 - Provided written documentation that no parent declined compensatory services for identified students.

23. As to a second issue raised, unrelated to Action Item Number 4, Complainant alleges that School inappropriately promoted a special education student from 7th grade to 9th grade; the term used by Complainant is “double passed.” Complainant provided no legal basis that might prohibit Student’s promotion and no information to dispute any facts demonstrated by School as outlined in Paragraphs 24-27 below.
24. School promoted one special education student (“Student”) from 7th grade to 8th grade during the 2023-2024 school year. Student then progressed with passing grades from 8th grade to 9th grade for the 2024-2025 school year.
25. Student’s Mother initiated a request for School to promote Student from 7th grade to 8th grade on February 8, 2024, at Student’s Individualized Education Program (IEP) meeting. Student echoed this request. The basis for the requests were:
 - a. To allow Student to be with same aged/grade peers (Student had been retained in kindergarten during the 2015-2016 school year);
 - b. Nothing in Student’s IEP precluded a promotion; and
 - c. Promotion might help with behavior issues.
26. School has a policy regarding promotion: “Administrators with the assistance of teachers shall determine all grade placements of pupils.” Additionally, School’s Response denotes knowledge of NMSA § 22-2C-6(I) detailing legal requirements for promotion of a student enrolled in special education. Student’s IEP did not specify any alternative promotion standards or requirements which may be based on the student’s progress on IEP goals.
27. School had meetings at multiple levels to address the request for promotion and initiated a trial period of promotion with close monitoring. The February 8, 2024, IEP continued to be implemented in the 8th grade setting. Six days into the trial promotion, Student’s IEP team met to assess and made modifications to Student’s IEP to include extending Student’s class schedule to a full day based on “significant improvements [made] in his behavior toward peers and teachers and in his ability to attend classes consistently, as well as to attempt to complete his assignments in a timely manner.” School continued to monitor Student in this promoted status. Student was successful for the remainder of the third trimester for the 2023-2024 school year with academic progress and reduced behavior incidents, absences and tardies. Parent was kept informed of Student’s progress with PWNs and Progress Reports. Student’s success at the 8th grade level from February through May 2024 earned him the right to graduate 8th grade and move on to 9th grade.
28. A third issue brought up by Complainant, after the State complaint was filed, is an allegation that a necessary attendant of training (as deemed by Complainant) did not attend a CAP required training, Action Item Number 5. Complainant provided a sign in sheet for a single training session and alleged that an interpreter/translator was not in attendance.

29. Action Item Number 5 used language, "...School shall arrange training for school staff (including special education teachers, special education administrators, and related service personnel) The list did not mandate attendance at any training session and, in fact, requested a plan for provision of training to those staff not in attendance.
30. The CAP monitor accepted the plan providing for training of staff who did not attend the first session. Complainant provided no information that demonstrates School failure to the particular terms or required actions of Action Item Number 5.

Discussion and Conclusions of Law

Issue No. 1:

Whether the Charter School, in accordance with the Corrective Action Plan issued in State Complaint Case Number C2324-26 and 34 C.F.R. §§ 300.151(b) and 300.600(e), and 6.31.2.13(H)(5)(c) NMAC, failed to:

- a. **Review the delivery of special education and related services of all special education students during the Spring and Fall of 2023 to determine the amount of needed compensatory education resulting from the Charter School's possible failure to provide services during the Spring and Fall semesters of 2023.**

34 C.F.R. § 300.151(b) provides that State Educational Agencies (in this case, New Mexico Public Education Department, "Department") must provide adopt written procedures for

Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) Appropriate future provision of services for all children with disabilities.

34. C.F.R. § 300.600 requires New Mexico Public Education Department to monitor the remedies as denoted above in §300.151(b). Section 6.31.2.13(H)(5)(c) NMAC allows that:

If the public agency (School) fails or refuses to comply with the applicable law or rules, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be affected by the department by any means authorized by state or federal laws or rules. The department shall retain jurisdiction over the issue of noncompliance with the law or rules and shall retain jurisdiction over the implementation of any corrective action required.

Except for brief mention in relation to the state complaint process (34 C.F.R. § 300.151(b)(1)), *supra*, IDEA regulations do not codify compensatory education, leaving details to case law under the broad remedial authority that the legislation accords explicitly to the courts and implicitly to hearing and review officers. See, e.g., Perry A. Zirkel, *The Remedial Authority of Hearing and Review Officers under the IDEA: The Latest Update*, 37 J. Nat'l Ass'n of Admin. L. Judiciary 505, 507-08 (2018).

Methodology of calculating compensatory hours varies nationally and can include quantitative methods, qualitative methods, or a hybrid of the two. See Perry A. Zirkel, *The Competing Approaches for Calculating Compensatory Education Under the IDEA: The Next Update*, 405 Ed. Law Rep. 621 (2022). An example of quantitative method includes using the duration of denial of FAPE; and example of qualitative method is to apply an individualized fact-specific determination based on the student's specific educational deficits. *Id.* One of the leading cases states the goal of compensatory education, "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA." *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005). Calculation of compensatory services is not, then, necessarily a minute for minute missed, but is calculated with the goal of placing student's in the position they would have occupied but for the violations.

In C2324-26, the department delegated calculation of compensatory services to School. The department monitored School's compliance with the CAP and a closing letter was sent to School indicating "all findings of non-compliance have been documented and addressed."

A second look by a State complaint investigator has occurred in response to this newly filed State complaint.

The Corrective Action Plan issued in State Complaint Case Number C2324-26, Action Item Number 4, required Charter School to, in relevant part: "Internally review the delivery of special education and related services of all special education students during the Spring and Fall of 2023 to determine the amount of needed compensatory education resulting from the Charter School's possible failure to provide services during the Spring and Fall semesters of 2023."

Despite having poor records of service provision to work with (addressed in C2324-26), the new personnel of School used multiple points of information available for each of its 47 students who received special education/related services in the Spring and Fall of 2023. School reviewed 47 IEPs and cross-referenced accommodations and related services and hours to be provided with service logs, attendance and tardy records, memories of educators and ancillary providers, and the MaxCapture Report. Five (5) absences or more was selected as one flag that a student might need compensatory time. School also considered students' academic progress. Head Administrator was able to provide investigator with requested documents relied on and was able

to articulate the process. This is a reasonable review based on all sources and information available to School.

Investigator notes School had a full turnover of personnel and Head Administrator for compliance actions. School had limited records and human resources to gather information about what services were provided to students because of the turnover and because of the poor record keeping of prior personnel and administration. The review was not ideal due to these limitations. The review was reasonable and comprehensive given what was available.

The same inherent lack of resources available to School for compliance in reviewing students' need for compensatory services apply when calculating how much compensatory services were appropriate for identified students. Again, investigator notes calculations were not ideal because resources available were not ideal. That said, School received no complaints from parents based on its calculations. School overestimated service hours because it realized its resources for calculating such were limited. Finally, as stated above, calculation of compensatory service hours is an area wherein experts and courts vary on calculation processes – making it very difficult to second guess the entity that did the primary review. In this case, School's calculations have been reviewed twice – once by the CAP monitor and again by this investigator. Nothing in the primary records reviewed demonstrates that School did not determine the amount of needed compensatory education resulting from the School's possible failure to provide services during the Spring and Fall semesters of 2023.

b. Develop plans for providing compensatory services to the individual students.

The Corrective Action Plan issued in State Complaint Case Number C2324-26, Action Item Number 4, in relevant part: "The Charter School shall develop plans for providing compensatory services to the individual students."

School demonstrated written communication with providers for compensatory services to individual students and provided Excel Spreadsheets denoting dates and times of provision of specific services for each of the fourteen (14) students identified as needing compensatory services. Documentation demonstrated development of plans for providing compensatory services to the individual students.

c. Document the plans in a Prior Written Notice ("PWN") for each student and send them to parents.

The Corrective Action Plan issued in State Complaint Case Number C2324-26, Action Item Number 4, in relevant part: "The plans will be documented in a Prior Written Notice ("PWN") for each student and sent to parents."

School provided fourteen (14) PWNs for the 14 students identified as needing compensatory services and the PWNs documented the plans for provision of the calculated compensatory services.

d. Maintain an accurate PED-approved tracker that includes:

i. The total compensatory hours owed and provided to each student based on missed services as well as student need,

ii. Whether those hours were accepted by the student's parents, and

iii. The provision of compensatory education hours provided to each student;

The Corrective Action Plan issued in State Complaint Case Number C2324-26, Action Item Number 4, in relevant part: "Charter School shall maintain a PED-approved tracker that includes the total compensatory hours owed and provided to each student based on missed services as well as student need, whether those hours were accepted by the student's parents, and the provision of compensatory education hours provided to each student."

School provided an Excel Spreadsheets denoting the total compensatory hours owed and provided to each student based on missed services as well as student need and confirmation that provision of compensatory education hours were provided to each student. School provided separate written confirmation that all hours were accepted by students' parents and this was also corroborated by the ancillary provider who was interviewed.

e. Obtain a confirmation in writing and provide the written confirmation to PED if a parent declined compensatory education; and

The Corrective Action Plan issued in State Complaint Case Number C2324-26, Action Item Number 4, required Charter School to, in relevant part: "If a parent declines compensatory education, the Charter School shall get a confirmation in writing and provide the written confirmation to PED."

School provided separate confirmation that all hours were accepted by students' parents, negating need to provide confirmation of parent declination.

f. Contract with a private provider to ensure those services are provided (if needed due to staffing or other limitations).

The Corrective Action Plan issued in State Complaint Case Number C2324-26, Action Item Number 4, required Charter School to, in relevant part: "If the Charter School, due to staffing or other limitations, is unable to provide the compensatory services as required by this CAP, the Charter School is required to contract with a private provider to ensure those services are provided."

School did not have staffing issues or other limitations necessitating need to contract with private provider.

Beyond Complainant's vague allegations and an unsigned document attributed to the SED who did not respond to investigator for an interview, no evidence contradicting School's information or documents was received by investigator.

As to Issue 1, District is not cited.

Issue No. 2:

Whether the Charter School failed to provide compensatory services to all special education students who were not provided with such based on the Charter School's possible failure to provide services during the Spring and Fall semesters of 2023, in accordance with 34 C.F.R. §§ 300.151(b) and 300.600(e) and § 6.31.2.13(H)(5)(c) NMAC.

The same laws requiring written procedures and monitoring by the department, and the department's written regulations, as detailed above, apply to this issue.

School demonstrated written communication with providers for compensatory services to individual students and provided Excel Spreadsheets denoting dates and times of provision of specific services for each of the fourteen (14) students identified as needing compensatory services. Documentation demonstrated development of plans for providing compensatory services to the individual students.

Investigator notes School had a full turnover of personnel and Head Administrator for compliance actions. School had limited records and human resources to gather information about what services were provided to students because of the turnover and because of the poor record keeping of prior personnel and administration. The review was not ideal because it could not be. The review was reasonable and comprehensive given what was available.

Beyond Complainant's vague allegations and an unsigned document attributed to an individual who did not respond to investigator for an interview, no evidence contradicting School's information and documents was received by investigator.

School provided compensatory services to all special education students who were not provided with such based on the Charter School's possible failure to provide services during the Spring and Fall semesters of 2023.

As to Issue 2, District is not cited.

Issue No. 3:

Whether the Charter School failed to follow requirements of NMSA § 22-2C-6 when promoting Student from 7th grade to 9th grade.

New Mexico law provides that, “promotion and retention decisions affecting a student enrolled in special education shall be made in accordance with the provisions of the individual educational plan established for that student.” § 22-2C-6(l) NMSA. The IDEA requires that the IEP specify any alternative promotion standards or requirements which may be based on the student’s progress on IEP goals. 20 U.S.C. §1414(d)(1)(A), IDEA §614(d)(4). If such is not in the student’s IEP, the school’s standards for promotion apply. *Id.*

Student’s IEP did not specify any alternative promotion standards or requirements which may be based on the student’s progress on IEP goals, and thus, School’s standard policy applied to Student. School’s standard policy is “Administrators with the assistance of teachers shall determine all grade placements of pupils.”

School had meetings at multiple levels to address the request for promotion and initiated a trial period of promotion with close monitoring. The February 8, 2024, IEP continued to be implemented in the 8th grade setting. Six days into the trial promotion, Student’s IEP team met to assess and made modifications to Student’s IEP to include extending Student’s class schedule to a full day based on “significant improvements [made] in his behavior toward peers and teachers and in his ability to attend classes consistently, as well as to attempt to complete his assignments in a timely manner.” School continued to monitor Student in this promoted status. Student was successful for the remainder of the third trimester for the 2023-2024 school year with academic progress and reduced behavior incidents and absences and tardies. Parent was kept informed of Student’s progress with PWNs and Progress Reports. Student’s success at the 8th grade level from February through May 2024 earned him the right to graduate 8th grade and move on to 9th grade. The promotion of Student did not violate federal or state law.

As to Issue 3, District is not cited.

Issue No. 4:

Whether the District’s actions and/or omissions towards 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.

The IDEA is a federal law that makes available a free appropriate public education (FAPE) to eligible children with disabilities. 34 C.F.R. § 300.1.

To determine whether FAPE was provided, the United States Supreme Court in the *Rowley* case, established a two-part test:

1. Has the district complied with the procedures set forth in the IDEA?
2. Is the IEP reasonably calculated to enable the child to receive an educational benefit?

If the two-part test is satisfied, FAPE was provided. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (1982).

A procedural violation results in 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).

As detailed above, no procedural or substantive violations were found based on the instant complaint. School complied with the CAP requirements in C2324-26. Thus, the School complied with the procedures set forth in the IDEA and there was no denial of FAPE.

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

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

Investigated by:
/s/ Natalie Campbell
Natalie Campbell
Complaint Investigator

Reviewed by:
/s/ Miguel Lozano
Miguel Lozano, Esq.
Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:
Margaret Cage
1D32A08CC38B4E2
Margaret Cage, Ed.D.
Deputy Secretary, Office of Special Education