



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

MARIANA D. PADILLA
SECRETARY DESIGNATE OF PUBLIC EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Roswell Independent Schools
Case No. 2425-16
December 31, 2024**

This Report requires corrective action. See pages 9-13.

On October 18, 2024, a complaint was filed with the New Mexico Public Education Department's (PED) Office of Special Education (OSE) under the federal Individuals with Disabilities Education Act (IDEA) and the implementing Federal Regulations and State Rules governing publicly funded special education programs for children with disabilities in New Mexico.¹ The OSE has investigated the complaint and issues this report pursuant to 34 C.F.R. § 300.152(a)(5) and 6.31.2.13(H)(5)(b) NMAC.

Conduct of the Complaint Investigation

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

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

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.

- review of the District’s compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Complainant and School Officials; and
- research of applicable legal authority.

Limits to the Investigation

Federal regulations and state rules limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint is received. 34 C.F.R. § 300.153(c); 6.31.2.13(H)(2)(d) NMAC. Any allegations related to professional or ethical misconduct by an licensed educator or related service provider, or allegations related to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act are not within the jurisdiction of this complaint investigation and, as a result, were not investigated. For these reasons, the Complaint Investigator did not investigate matters asserted in the Complaint related to Section 504 or actions or inactions of any licensed educator(s) or related service provider(s).

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 comply with Child Find requirements pursuant to 34 CFR § 330.111 and 6.31.2.10 NMAC, including:
 - a. Whether the District failed to conduct evaluation(s) pursuant to 34 CFR § 300.111 and 6.31.2.10 NMAC; and
 - b. Whether the Parent was denied parental participation when the District failed to respond to Parent’s request for an IEP under the IDEA in violation of 34 C.F.R. § 300.111, 34 CFR § 330.321, 6.31.2.10(D) NMAC, and 6.31.2.13(C) NMAC.
2. Whether the District’s actions and/or omissions 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 16 years old.
2. Student entered the District as a high school student on August 24, 2023.
3. Student was enrolled at the high school during the 2023-2024 school year. He also was enrolled for a portion of the fall semester during the 2024-2025 school year.

4. Student was served under a Section 504 Plan as a result of an eligibility determination dated February 7, 2024.
5. Student was on homebound during his enrollment for the Fall Semester 2024.
6. On April 19, 2024, Parent contacted the District's special education office by email and requested a special education evaluation of Student.
7. On May 3, 2024, the District mailed a Prior Written Notice (PWN) to parent. Parent provided a copy of the PWN in her response to a request for documents during an interview as part of this investigation.
8. The District also acknowledged Parent's request for an evaluation in a telephone conference with Parent on May 7, 2024.
9. The PWN contained three proposed items.
10. The first item in the PWN acknowledged receipt of Parent's request to have Student evaluated.
11. The second item in the PWN indicated that when Student's educational records were received, an educational diagnostician would contact Parent to review the evaluation process and to have Parent sign a consent permitting the evaluation.
12. The third item in the PWN indicated that upon written consent from the Parent, the educational diagnostician would complete the "specified evaluation" within 60 days of parental consent.
13. The third item in the PWN further indicated that once "evaluations were completed, a meeting would be held at a mutually agreeable time in order to review the evaluation report, and if Student qualified for services, conduct an Eligibility Determination Meeting (EDT) and Individualized Education Plan (IEP)."
14. Between the date of the Parent's written request for an evaluation on April 19, 2024, and Parent's withdrawal of Student from school on October 8, 2024, District did not seek to obtain a consent for evaluation from Parent.
15. Per the PWN, a District psychologist completed a full review of the Student's file and medical records on July 29, 2024.
16. Student and medical records included in the District's review included references indicating that Student may have Autism.
17. A record submitted by Parent included a District medical reference form, dated April 13, 2024, submitted by one of Student's healthcare providers recommending testing for Autistic Spectrum Disorder.
18. District's responsive documents included a Childhood Autism Rating, dated April 18, 2024, in response to documents requested as part of this investigation.
19. The Childhood Autism Rating Scale indicated a Severity Group of Mild-to-Moderate Symptoms of Autism Spectrum Disorder.

20. District was unable to confirm when such medical records were received. The Director of Special Services believed the records may have been provided to the 504 Team at some point.
21. By email dated October 8, 2024, Parent withdrew Student from school on October 8, 2024.
22. Student currently attends a program at Eastern New Mexico University-Roswell.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to comply with Child Find requirements pursuant to 34 CFR § 300.111 and 6.31.2.10 NMAC, including:

- a. Whether the District failed to conduct evaluation(s) pursuant to 34 CFR § 300.111 and 6.31.2.10 NMAC; and
- b. Whether the Parent was denied parental participation when the District failed to respond to Parent's request for an IEP under the IDEA in violation of 34 C.F.R. § 300.111, 34 CFR § 330.321, 6.31.2.10(D) NMAC, and 6.31.2.13(C) NMAC.

a. Whether the District failed to conduct evaluation(s) pursuant to 34 CFR § 300.111 and 6.31.2.10 NMAC.

Students with disabilities who are eligible under the IDEA are entitled to be appropriately identified, evaluated, placed, and have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. § 300.1(a).

The IDEA and its implementing regulations and state rules use the term "Child Find" to describe the affirmative and continuing obligation of school districts to identify, locate, and evaluate all children with disabilities residing within the district's jurisdictional boundaries who are in need of special education and related services. 34 C.F.R. § 300.111; 6.31.2.10(A) NMAC. The requirements of Child Find apply to, among others, students who are suspected of being students with a disability and who are in need of special education and related services, even though they are advancing from grade to grade. 34 C.F.R. §§ 300.101(a), 300.111(c)(1); 6.31.2.10(A) NMAC.

Section (a) of 34 C.F.R. § 300.111 specifically provides as follows:

- (1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

6.31.2.10(A) NMAC likewise provides that children “are located, evaluated, and identified in compliance with all applicable requirements of 34 C.F.R. §§ 300.111, 300.131, 300.301 through 300.306, and these or other department rules and standards.”

Prior to evaluating a child who has been referred for evaluation, districts must obtain informed parental consent before conducting an initial evaluation of a student with a disability. 34 C.F.R. § 300.9; 34 C.F.R. § 300.300(a)(1)(i) and 6.31.2.13(F)(1)(a) NMAC. The IDEA doesn't specify a timeframe in which to obtain parental consent for an initial evaluation. *See, e.g., In re: Student with a Disability*, 124 LRP 9974 (SEA MT 01/29/24) (finding that a district violated the IDEA by failing to obtain parental consent for an initial evaluation in the days before the student transferred to a new district.). Districts must make an effort to obtain parental consent for an initial evaluation as soon as reasonably possible. *See, e.g., Arapahoe County Sch. Dist. 6*, 121 LRP 13659 (SEA CO 03/03/21) (The Colorado Department of Education found that a district's 45-day delay to obtain parental consent for an initial evaluation of a child with a specific learning disability violated the IDEA.). However, New Mexico rules require a public agency to respond to a parental request for initial evaluation or reevaluation to the public agency no later than 15 school days from the receipt of the request. 6.31.2.10(d)(3) NMAC. In addition, 6.32.2.10(D)(4) NMAC provides as follows:

The public agency shall respond to a parental request for initial evaluation or reevaluation by:

(a) providing prior written notice consistent with 34 CFR Sec. 300.503 that proposes to conduct the requested evaluation or reevaluation, providing a copy of the procedural safeguards notice to parents required by 34 CFR Sec. 300.504, and seeking parental consent for the evaluation; or

(b) providing prior written notice consistent with 34 CFR Sec. 300.503 of the public agency's refusal to conduct the evaluation or reevaluation and a copy of the procedural safeguards notice required by 34 CFR Sec. 300.504.

In this matter, the District sent a PWN to Parent on May 3, 2024, which acknowledged Parent's request for an evaluation and indicated that student and medical records would be reviewed. The PWN further indicated that an evaluation would be conducted after consent was provided by the Parent.

A records review was completed; however, the District did not obtain consent to evaluate from the Parent in violation of 6.31.210(D)(4)(a) NMAC. At the time District sent the PWN to Parent, District was required to obtain Parent's consent for the evaluation as referenced in the PWN. Id. Moreover, District never sought to obtain Parent's consent from the date of the PWN, April 19, 2024, to the Parent's email withdrawing Student on October 8, 2024. District's failure to do so was a violation of 6.31.210(D)(4)(a) NMAC. (In the alternative, assuming District refused to conduct the requested evaluation, District was required to provide a PWN indicating that denial under the provisions of 6.31.2.10(D)(1)(b). No such notice was ever provided).

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

b. Whether the Parent was denied parental participation when the District failed to respond to Parent's request for an IEP under the IDEA in violation of 34 C.F.R. § 300.111, 34 CFR § 330.321, 6.31.2.10(D) NMAC, and 6.31.2.13(C) NMAC.

"Each public agency shall afford the parents of a child with a disability and, as appropriate, the child, an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement or the provision of FAPE to the child, in compliance with 34 CFR §§ 300.322, 300.501(b), 300.501(c), and any other applicable requirements of these or other department rules and standards." 6.31.2.13(C) NMAC. In other words, districts must ensure that they provide notice to parents early enough to ensure that they have an opportunity to attend the meeting and that districts notify them of the purpose, time, location, and other meeting attendees. And, further, to allow participation during meetings.

As previously noted, District acknowledged Parent's written request for an initial evaluation. The District's response was within the required timeframe under 34 C.F.R. 300.300.1 and 6.31.2.10(D)(3) NMAC. However, the District's response did not comply with the substantive provisions of 6.31.2.10 NMAC. District did not attempt to obtain consent from Parent with 15 days or, alternatively, provide prior written notice consistent with 34 CFR Sec. 300.503 of the District's refusal to conduct the evaluation or reevaluation. 6.31.2.10(D)(4) NMAC.

Because District did not obtain the required consent to conduct the initial evaluation or provide a prior written notice of the District's refusal to conduct the evaluation, the District denied Parent's participation in the process of seeking an evaluation and meeting(s) scheduled to review the results of any evaluation. Further, if Student was determined to be eligible for services under the IDEA, the District denied Parent participation in meetings to discuss the development, monitoring, and modifications related to an Individual Education Plan (IEP).

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

Issue No. 2

Whether the District's actions and/or omissions 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. A District is 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; 6.29.1.7 NMAC. The determination of whether there has been a denial of FAPE requires consideration of two components: substantive and procedural. Examples of procedural violations include failing to meet timelines for notice, evaluations, or referrals; failing to address a student's needs; failing to implement a student's IEP; failing to provide proper notice; failing to provide parents a meaningful opportunity to participate in the IEP process; and, generally, any failure to provide procedural safeguards.

In this matter, while there has not been a determination whether Student was eligible for services under the IDEA, the District should have sought to obtain the consent to evaluate Student at the time the PWN was sent to Parent. 6.31.2.10(D)(4)(a) NMAC. The failure to obtain Parent's consent is compounded by medical records and District records produced during the investigation concerning the possibility that Student may have Autism, including a District referral from a medical provider requesting testing for Autistic Spectrum Disorder (dated April 13, 2024) and a Childhood Autism Rating Scale (dated April 18, 2024). The District's recordkeeping system did not provide any indication when those records were received.

The District denied FAPE with respect to District's failure to seek consent to evaluate (or District's refusal to evaluate), as well as District's denial of Parent's participation, all in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC. If Student is ultimately determined to be eligible for special education and related services, the period of the delay to evaluate would constitute the period of a denial of FAPE (defined in the corrective action plan below).

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

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 CFR §§ 300.111, 300.301, 6.31.2.13 NMAC, and 6.31.2.10 NMAC	The District failed to obtain consent in order to conduct an initial evaluation.
34 C.F.R. § 300.111, 34 CFR § 330.321, 6.31.2.10(D) NMAC, and 6.31.2.13(C) NMAC	District denied Parent participation by failing to sufficiently respond to Parent’s request.
34 C.F.R. § 300.101 and 6.31.2.8 NMAC	The District’s actions and/or omissions in developing and implementing the IEP resulted in a denial of a free appropriate public education (FAPE).

Required Actions and Deadlines

By January 10, 2025, the District’s Special Education Director must assure the OSE in writing that the District will implement the provisions of this Corrective Action Plan (CAP). The OSE requests that the District submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the District’s progress with the Corrective Action Plan and to be its point of contact about this complaint from here forward:

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

The file on this complaint will remain open pending the PED’s satisfaction that the required elements of this Corrective Action Plan are accomplished within the deadlines stated. The District is advised that the OSE will retain jurisdiction over the complaint until it is officially closed by this agency and that failure to comply with the plan may result in further consequences from the OSE.

Each step in this Corrective Action Plan is subject to and must be carried out in compliance with the procedural requirements of the IDEA 2004 and the implementing federal regulations and State rules. Each step also must be carried out within the timelines in the Corrective Action Plan. If a brief extension of time for the steps in the Corrective Action Plan is needed, a request in writing should be submitted to the Corrective Action Plan Monitor. The request should include the case number, the date for the proposed extension, and the reason for the needed extension. The OSE will notify the parties of any extension granted.

Please carefully read the entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes. All corrective action must be completed no later than June 30, 2025, and reported to the OSE no later than July 14, 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).	January 10, 2025	Written Assurance Letter/Email	January 10, 2025
2.	District shall provide a prior written notice (PWN) that it proposes to conduct a comprehensive special education evaluation of Student in all suspected areas of disability in order to identify potential disabilities and needs of Student. The District shall request consent to evaluate student at the same time that this PWN is issued to Parent.	January 24, 2025	Prior Written Notice and request for consent to evaluate.	January 24, 2025

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>
	The District will provide a written record of the decision of Parent to accept or decline to evaluate.		Signed by parental consent to evaluate Student or parent’s signed written decision to decline request to evaluate.	Within 5 days of the written decision to evaluate.
3.	If the District is in receipt of parental consent to evaluate student, District shall conduct a comprehensive evaluation of Student and issue an evaluation report.	Within 45 days of receipt of parental consent.	Evaluation report.	Within 5 days of the evaluation report.
4.	If Student is evaluated in accordance with the above provisions, District shall hold a meeting with Parent to determine Student’s eligibility for special education and related services. This meeting may be held immediately before the scheduled IEP meeting required below. This meeting may be facilitated by the facilitator retained for the facilitated IEP meeting required below.	Within 10 days of completion of the evaluation report	Written Eligibility determination	Within 5 days after the Eligibility Determination Team Meeting is held
5.	If Student is determined to be eligible for special education and related services, District shall convene a Facilitated IEP (FIEP) meeting. The Facilitator shall be independent of the District and shall be selected from the PED list of approved	Within 10 days after the eligibility determination meeting	1. Invitation to FIEP meeting, 2. IEP, 3. Prior Written Notices, and 4. Agenda for FIEP team meeting	Within 7 days after the FIEP meeting is held.

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>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 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 FIEP meeting. The District shall also ensure that the IEP team includes, but is not limited to parent, parent advocate, special education teacher, general education teacher, and any potential related services providers.</p>			
6.	<p>The District shall develop a plan for providing compensatory services to Student based on the IEP team’s determination of the amount of services to be provided to Student during the FIEP meeting. The plan will be documented in a Prior Written Notice (“PWN”) and sent to parents.</p> <p>Given the regulatory timeframes commencing with District’s requirement to respond to Parent’s request for evaluation and, ultimately, to the meeting for IEP development and implementation, the period of denial of FAPE would extend from August 22, 2024, to</p>	June 30, 2025	PWN Completed during FIEP Meeting	Within 7 days after the FIEP meeting is held.

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>October 8, 2024. The FIEP team shall consider this period when determining need for compensatory education.</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, whether those hours were accepted by parent.</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 parents and can include provisions for services in the summer months.</p> <p>If the District, due to staffing or other limitations, is unable to provide the compensatory services as required by this CAP, the District is required to contract with a private provider to ensure those services are provided.</p>		<p>If applicable, written decision to decline compensatory education.</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 decision has been received and documented</p> <p>Monthly from date of compensatory services plan until the compensatory education hours are completed.</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>
7.	The District shall review and revise, as appropriate, District procedures regarding the process of obtaining consent for initial evaluations in a reasonable time frame consistent with applicable federal regulations and state administrative code(s).	April 30, 2025	<p>copy of any proposed revisions to NMPED for approval prior to submission to District Board of Education.</p> <p>Evidence of adoption of policy changes by District Board of Education</p>	May 30, 2025.
8.	<p>The District shall arrange to provide training to School staff (including special education teachers, school administrators and related service providers). The training may 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 topics:</p> <ol style="list-style-type: none"> 1. Child Find obligations; 2. Parental request for evaluations including requirements for responding to request through PWN; 3. Seeking request for parental consent to evaluate; and 4. Timeline for completion of evaluation and evaluation report; eligibility determination; and initial IEP team meeting. 	March 14, 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>January 31, 2025</p> <p>February 21, 2025</p> <p>March 21, 2025</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/ Samuel Kerr

Samuel D. Kerr, J.D., Ed.D.

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