



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
West Las Vegas Public Schools
Case No. 2425-28
February 7, 2025

This Report does require corrective action. See pages 19-25.

On December 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.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;
- interviews with Complainant, Principal and Assistant Principal and Special Education Teacher.
- 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.

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 District failed to comprehensively evaluate Student when it knew or should have known Student may have been a student with a disability under 34 C.F.R. §300.8 and in need of special education, in violation of 34 C.F.R. §300.111 and 6.31.2.10 NMAC;
2. Whether District developed and implemented an IEP reasonably calculated to allow Student to make progress and receive a free appropriate public education (FAPE) in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC;
3. Whether Parent was denied meaningful parental participation in decisions involving the education of Student in violation of 34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13 (C) NMAC;
4. Whether District failed to follow the IDEA disciplinary procedures when disciplining Student for violations of District's code of conduct, in violation of 34 C.F.R. § 300.530 and 6.31.2.11(F)(2) NMAC;
5. Whether the District allowed Parent access to educational records of Student, including disciplinary records, in a timely manner in violation of 34 C.F.R. § 300.501(a); 34 C.F.R. § 300.613 and 6.31.2.13 (B) NMAC; and
6. Whether 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.

General Findings of Fact

1. Complainant is Parent of Student.
2. Student is a 12-year-old in 7th grade at District school.
3. Student transferred to District in August 2023, as a 6th grader.
4. Student's transfer paperwork into District evidences:
 - a) Great academic struggles. Student's prior school recommended retention of Student in 5th grade for the school year 2023-2024;
 - b) Medical diagnosis of ADHD, combined type as of May 30, 2023;
 - c) Attention/Focus difficulties such as difficulty getting started on task, difficulty maintaining attention and often distracted;
 - d) Difficulty remembering multi-step verbal direction, difficulty remembering details of what was said or heard, difficulty finding right words to communicate;
 - e) Comprehension issues and per the Student Assistance Team, reading level at the 2nd grade and math level at the 3rd grade (Parent provided that the iReady testing in 2022-2023 school year rated Student at the 1st and 2nd grade levels for reading and math respectively);
 - f) Student had an IEP in place between 2017 and 2020 with eligibility being Speech or Language Impairment (SLP). The previous District had dismissed Student from an Individualized Education Plan (IEP) in April 2020.
5. District's paperwork for the 2023-2024 school year demonstrates that Student's unexcused tardies and unexcused absences increased greatly as the school year progressed, with 5 unexcused tardies between the start of the school year and January 2024, and 55 unexcused tardies from January 1, 2024, to May 2024.
6. In August 2023, Parent provided a neuropsychological evaluation diagnosing Mixed Receptive-Expressive Language Disorder and Specific Learning Disorders (SLDs) in reading (comprehension and fluency) and math (problem-solving). Parent also provided medical diagnosis of ADHD, combined type.
7. Two months passed between (1) Provision of the neuropsychological evaluation diagnosing Mixed Receptive-Expressive Language Disorder and Specific Learning Disorders (SLDs) in reading (comprehension and fluency) and math (problem-solving) and (2) District's partial evaluations and determination of eligibility.
8. On October 10, 2023, District found Student eligible for special education under Other Health Impairment (OHI). District developed an IEP. This IEP did not provide social work services, and the corresponding Prior Written Notice (PWN) stated that District would review evaluation to determine speech therapy eligibility once a Speech Language Pathologist (SLP) was hired. A comprehensive evaluation had not occurred at the time that this IEP was put into place.
9. District did not provide investigator with Student's IEP that was finalized on October 10, 2023. Such was obtained from Parent.

10. The 2023 IEP lists the following accommodations for Student (not an exhaustive list):
 - a) 250 minutes per week Special Education Teacher in regular classroom for “Group Math;”
 - b) 250 minutes per week Special Education Teacher in regular classroom for “Group English;”
 - c) 250 minutes per week Special Education Teacher in special education classroom for “Group Other Advisory;”
 - d) Color coded materials for reading and emphasis; study aids and/or manipulatives; reading material at grade level;
 - e) Short instructions (1 or 2 steps); multimodal and/or multisensory presentation; visual aids; opportunity to have instruction repeated; opportunity to have instructions written;
 - f) Frequent feedback; immediate feedback; positive reinforcement for academic and communication skills; checking for understanding; repeat, clarify and/or simplify directions;
 - g) Minimize auditory distraction; exams of reduced length; extra time for assignments....
11. Student’s 2023 IEP notes that “if the student begins to demonstrate a need in the area of social/emotional development the school[’]s social worker can review the initial Neuropsychologi[c]al Evaluation, dated 8/3/23 to determine if the data supports social work. Between the writing of this statement in Student’s IEP and District conducting a review, Student had twelve (12) write-ups for behaviors that were data supporting need for review, but review did not occur for four (4) months.
12. In February 2024, Student’s IEP team conducted a Review of Existing Evaluation Data (REED) and the team proposed a Functional Behavioral Assessment (FBA) and a social work assessment. An SLP did not review the neuropsychological report.
13. On February 14, 2024, Parent requested an FBA. A partial FBA that only considered discipline was conducted in October 2024, ten (10) months later and after 25 separate District write-ups for Student’s behavior.
14. Further IEP meetings occurred as follows:
 - a) **10/1/2024**: The annual review and Behavioral Intervention Plan (BIP) meeting was postponed due to a missing SLP and the absence of an FBA report;
 - b) **10/7/2024**: A REED meeting was postponed because the SLP was unavailable;
 - c) **10/25/2024**: A REED meeting occurred, during which future evaluations for Occupational Therapy (OT), assistive technology, and an FBA were approved;
 - d) **11/01/2024**: A manifest determination review (MDR) found that behaviors were a manifestation of Student’s disability;
 - e) **11/21/2024**: The annual review and BIP meeting was tabled after three hours of work, with a continuation set for December 5, 2024; and
 - f) **12/5/2024**: The IEP and BIP were finalized, adding virtual speech therapy twice weekly for 30 minutes. At this time, a full FBA had not occurred, and Occupational Therapy Evaluation and Assistive Technology Evaluation had not occurred.

15. District personnel provided information that one reason IEP Team Meetings were tabled was due to nature of interactions with Parent's advocate that disrupted rapport and ability for team members to provide information and discuss. District brought in a facilitator to help with this breakdown of rapport.
16. On December 5, 2024, Student's IEP was finalized with Student eligible for special education with primary disability as Specific Learning Disability (SLD), secondary disability as Speech or Language Impairment (SLI), and tertiary disability as Other Health Impairment (OHI).
17. Student began receiving social work services in November 2024.
18. Student had been suspended for over 10 cumulative days evidencing removal in a pattern that represented a change of placement requiring an MDR as of December 2024. Discipline is outlined below. Behaviors leading to discipline and behaviors observed that did not rise to the level of discipline included:
 - a) Defiance, disrespect, disruptive with recognition that "much of his behavior is related to his diagnosis of ADHD combined type;"
19. Relative to the FBA for Student, and specific to the December 2, 2024, incident, Parent requested and was denied viewing or obtaining copies of District's teacher daily reports and tally sheets (used by District to determine primary behavior [S]tudent is displaying) and teacher observation forms, and video footage of incident leading to further out of school suspension. District personnel stated that "[o]ur district does not provide tally sheets and observation forms to parents nor are they part of the IEP." District's Assistant Principal denied provision of a redacted video, which was used as evidence in determining suspension of Student. District's Assistant Principal stated that she did provide verbal description about content of video to Parent.
20. Parent, in a December 2, 2024, written communication, notified District that Student was over the 10-day cumulative out of school suspension and requested procedural safeguards.
21. District provided Student's IEP that was finalized on December 5, 2024. This IEP still has not evaluated Student for Occupational Therapy (OT) or Assistive Technology (AT). The IEP lists the following accommodations for Student:
 - a) 250 minutes per week Special Education Teacher in regular classroom for "Individual and/or Group Setting Other Math Inclusion for Academic Support;"
 - b) 250 minutes per week Special Education Teacher in regular classroom for "Individual and/or Group Setting Other English/ELA Inclusion for Academics;"
 - c) 250 minutes per week Special Education Teacher in special education classroom for "Individual and/or Group Setting Other Advisory Classroom for Academic and Skills Support;"
 - d) 30 minutes weekly by social worker in special education setting for "Individual and/or Group Setting Social Work Services;"
 - e) 60 minutes weekly by Speech-Language Therapist in special education setting for "Individual and/or Group Setting Speech Services;"

- f) Grades for Student to be determined by General Education Teacher and Special Education Teacher;
 - g) Implement Student’s BIP;
 - h) Testing in classroom – extended time up to 1-day, small group if student is visibly seen as unable to test due to classroom distractions, exams of reduced length with an emphasis on key/major points or mastery content; and
 - i) Reading material at Student’s reading level; academic instructional material at grade level; minimize auditory distraction, preferential seating in front of class.
22. District has not conducted an evaluation for Occupational Therapy (OT) or Assistive Technology. Student’s December 2024 IEP notes that AT is needed and that an assessment will occur.
23. District did not provide Student’s December 2024 FBA documents or notes and did not provide Student’s December 2024 BIP. The 2024 IEP states that behaviors impeded Student’s academic progress and is attached to the IEP, but such was not attached to IEP provided by District.
24. Parent withdrew Student from District on January 6, 2025.

Facts relative to Disciplinary Actions

25. As of November 2024, Student had been suspended for 10 cumulative days that District recognized as a series of removals that constituted a pattern, requiring an MDR, and such was held.
26. The November 1, 2024, MDR found that Student’s behaviors were a manifestation of disability.
27. In December, Student received additional suspension, and District did not conduct a new MDR.
28. Student had multiple incidences of reported negative behaviors that impeded his learning and the learning as others documented by District. These behaviors included disrespectful language to other students and staff and inappropriate actions. In the 2023-2024 and 2024-2025 school years, Student was written up for over 30 such incidents without the IEP Team addressing the need for additional or new supports and services. Student’s IEP Team did hold meetings, but no product (e.g. amended IEP, FBA, BIP) addressing these behaviors was created until December 5, 2024.

2024 Incidents Leading to Out of School Suspensions

Date(s)	Discipline or Intervention Imposed
2.2.2024 sexual harassment against female student	1 day OSS
2.5.2024 body slams another student	2 days OSS
8.22.2024 participating with others in aggressive slap boxing	3 days OSS

9.3/9.4.2024 showing inappropriate videos	3 days OSS
9.17.2024 rude comment about other student with sexual tones	3 days OSS
10.25.2024 Student slap other student at school dance	No discipline due to November 1, 2024 MDR decision.
10.28.2024 Another student alleged that Student broke his glasses	No discipline due to November 1, 2024 MDR decision.
10.29.2024 Student hit another student in the face with clay	No discipline due to November 1, 2024 MDR decision.
12.2.24 punch other student in stomach multiple times, not allow other student to leave	6 days OSS. No MDR held.

29. After the October 2024 incidents listed above, District conducted an MDR, which occurred on November 1, 2024. The team concluded from the MDR that Student’s conduct was caused by, or in direct and substantial relationship to, student’s disability and that conduct was direct result of failure to implement IEP due to postponement of IEP and BIP meetings on multiple dates District’s failure to implement the IEP
30. District gave notice to Parent that IEP team would meet on November 7, 2024 to consider whether FBA was needed and to design a new BIP or to modify the BIP. The IEP team did not meet until November 21, 2024, and the BIP was not modified until 12.5.2024).
31. District provided evidence that Student received partial services as outlined in his 2023 IEP while on out of school suspension in December 2024. Parent stated that services were not provided, but Student online services were made available for 2 of the 3 days. The 2023 IEP was in place at the time of December 2024 suspension (Student suspended beginning December 2, 2024 and new IEP not put into place until December 5, 2024).
32. When the suspension occurred on December 2, 2024, an MDR did not occur.
33. After the incident leading to the December 2024 suspension, Parent requested evidence supporting allegations including the video of incident, teacher daily reports and tally sheets and teacher observation forms. District did not provide a PWN or other written documentation for an MDR, did not provide a PWN for change in placement of Student; did not provide requested evidence and other requested tangibles; and did not hold an MDR relative to the incident leading to suspension. District did inform Parent of contents of video as such related to Student and incident.

District's Failure to Cooperate with Investigation

At the start of this investigation, the District was asked to provide numerous educational records pertaining to Student no later than January 8, 2025. District provided some, but not all documents requested, on July 26, 2022. Other records requested were not addressed at all (e.g., PWNs, 2023 IEP, BIP).

Upon inspection of the records the District did provide, it was discovered that documents were cut-off and unreadable and other requested documentation was not provided at all. The Investigator requested that all documentation that was missing or not provided be produced. District did not make further production.

During, the interview with the District, evaluations, discipline and behavior issues of Student was discussed. District's Assistant Principal was able to provide information about why IEP Team meetings were postponed and tabled that District did not provide in its written response. District's Principal and Assistant Principal were able to articulate misunderstanding about when an MDR was required. Both individuals were cooperative and provided helpful information.

As the District knows, a final report on a state complaint is required to be issued within 60 days of the date of filing. District made it extremely difficult to have necessary documents to conduct investigation. Several necessary documents were received from Parent and not District.

Pursuant to 34 C.F.R. 300.211, a district must provide the state agency with the information necessary for the state agency to carry out its duties under the IDEA.

As evidenced above, District appeared to be less than willing to provide the requested documentation needed to investigate the allegations made in the complaint.

District's non-cooperation and/or less than timely disclosure violates 34 C.F.R. 300.211.

This will serve as District's notice that if any complaints are filed against the District in the future, and there appears to be an unwillingness to cooperate, the District will be cited and will be required to complete corrective action.

Discussion and Conclusions of Law

Issue No. 1: Whether District failed to comprehensively evaluate Student when it knew or should have known Student may have been a student with a disability under 34 C.F.R. §300.8 and in need of special education, in violation of 34 C.F.R. §300.111 and 6.31.2.10 NMAC.

Child find is an affirmative ongoing obligation of a school district to identify, locate and evaluate all children with disabilities that are residents of the district in need of special education and related

services. 34 C.F.R. § 300.111(a)(1)(i). Failure to meet child find obligations, a procedural violation, may be considered a denial of FAPE. *T.B. v. Prince George's County Board of Education*, 897 F3d 566, (4th Cir. 2018), cert. denied, 119 LRP 7071, 139 S.Ct. 1307 (2019).

Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.304 through 300.306, before the initial provision of special education and related services to a child with a disability under this part. 34 C.F.R. § 300.301(a). The initial evaluation must consist of procedures—(i) To determine if the child is a child with a disability under §300.8; and (ii) To determine the educational needs of the child. 34 C.F.R. § 300.301(c)(2). In conducting the evaluation, the public agency must—(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum. 34 C.F.R. § 300.304(1)(ii).

In August 2023, Parent provided a neuropsychological evaluation diagnosing Mixed Receptive-Expressive Language Disorder and Specific Learning Disorders (SLDs) in reading (comprehension and fluency) and math (problem-solving). Parent also provided medical diagnosis of ADHD.

On October 10, 2023, District found Student eligible for special education under Other Health Impairment (OHI). District developed an IEP. This IEP did not provide social work services, and the corresponding Prior Written Notice (PWN) stated that District would review evaluation to determine speech therapy eligibility once a Speech Language Pathologist (SLP) was hired.

In February 2024, Student's IEP team conducted a Review of Existing Evaluation Data (REED) and the team proposed a Functional Behavioral Assessment (FBA) and a social work assessment. An SLP did not review the neuropsychological report.

Further IEP meetings occurred as follows:

10/1/2024: The annual review and Behavioral Intervention Plan (BIP) meeting was postponed due to a missing SLP and the absence of an FBA report;

10/7/2024: A REED meeting was postponed because the SLP was unavailable;

10/25/2024: A REED meeting occurred, during which evaluations for Occupational Therapy (OT), assistive technology, and an FBA were approved;

11/21/2024: The annual review and BIP meeting was tabled after three hours of work, with a continuation set for December 15, 2024; and

12/5/2024: The IEP and BIP were finalized, adding virtual speech therapy twice weekly for 30 minutes.

Thus, sixteen months passed between when Parent provided private neuropsychological evaluation diagnosing Mixed Receptive-Expressive Language Disorder and Specific Learning Disorders (SLDs) in reading (comprehension and fluency) and math (problem-solving) and medical diagnosis of ADHD -- and when District fully evaluated Student with qualified personnel.

Student did not receive a comprehensive evaluation to include SLP review of evaluations (including the private neurological psychology report provided by Parent in August 2023) and District did not conduct a comprehensive FBA for Student, despite significant on-going behavioral problems and stated intent to do so, until December 5, 2024. District failed to develop and implement an IEP reasonably calculated to allow Student to make progress and receive a free appropriate public education (FAPE). This is a substantive violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC.

As to Issue No. 1, the District is cited, corrective action is needed.

Issue No. 2: Whether District developed and implemented an IEP reasonably calculated to allow Student to make progress and receive a free appropriate public education (FAPE) in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) 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.” *Endrew 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)).

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. *Endrew 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.

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. A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

As stated in Issue 1 above, sixteen months passed between when Parent provided private neuropsychological evaluation diagnosing Mixed Receptive-Expressive Language Disorder and Specific Learning Disorders (SLDs) in reading (comprehension and fluency) and math (problem-solving) and medical diagnosis of ADHD -- and when District fully evaluated Student with qualified personnel.

Student did not receive a comprehensive evaluation to include SLP review of evaluations (including the private neurological evaluation provided by Parent in August 2023) and District did not conduct a comprehensive FBA for Student, despite significant on-going behavioral problems, until December 5, 2024. This is a substantive violation of 34 C.F.R. §300.111 and 6.31.2.10 NMAC.

District did not timely consider or conduct needed evaluations, thus the IEP could not have had the necessary information to develop an appropriate IEP for Student. District failed to develop and implement an IEP reasonably calculated to allow Student to make progress and receive a free appropriate public education (FAPE) in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC.

As to Issue No. 2, the District is cited, corrective action is needed.

Issue No. 3: Whether Parent was denied meaningful parental participation in decisions involving the education of Student in violation of 34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13 (C) NMAC.

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

The MDR meeting is conducted by the District and should include the parent and relevant members of the IEP team. 34 C.F.R. § 300.530(E). The MDR meeting must consider all relevant information in the child's file including but not limited to the IEP, any teacher observations and relevant information provided by the parents. *Id.*

Parents have a right to invite additional participants to an MDR. *See* 34 C.F.R. § 300.530(e)(1). When conducting an MDR, the team must review all relevant information in the student's file. 34 C.F.R. § 300.530(e)(1). The list of relevant information that may be reviewed at an MDR is not exhaustive. *71 Fed. Reg. 156, 467190* (August 14, 2006). "All the statute requires is that, before reaching a manifestation determination, the team must review the information pertinent to that decision" *Fitzgerald v. Fairfax Cnty. Sch. Bd.*, 556 F. Supp. 2d 543, 559 (E.D. Va. 2008). Also, there is nothing "in the statute or the regulations . . . that limits a manifestation determination review only to the disability that served as the basis for the eligibility determination." *Letter to Yudien*, 103 LRP 37911 (OSEP August 1, 2023).

Pursuant to the Family Educational Rights and Privacy Act (FERPA) parents of students have a right to all school records of their student. FERPA does not prohibit provision of records that contain information on more than one student, instead it limits information provided only as to the other students. 34 C.F.R. § 99.10 and § 99.12. FERPA provides that when education records contain information on more than one student, the parent may inspect and review or "be informed of" only the specific information about his or her own child. (If an eligible student, he or she may only have access to the information that relate to him or her.) *See* 20 U.S.C. 1232g(a)(l) (A) and 34 CFR § 99.12(a). However, when the information about the other student or students cannot be segregated and redacted without destroying its meaning, than the parent has a right to that information as well. *See Letter to Wachter*, U.S. Department of Education, 2017.

By December 2, 2024, when District sought to impose additional discipline, Student's similar behaviors, proximity of behaviors and resulting discipline was a pattern of removals of more than 10 days making the December discipline a change in Student's placement. This December discipline, then required a PWN. 34 C.F.R. § 300.504. District failed to provide a PWN and failed to conduct an MDR for the December 2024 discipline to Parent (discussed in detail in Issue 3, below).

The inaction of District to provide a PWN as required because of 10 plus days of removal creating a pattern for a change of placement, and failure to hold an MDR with all documents that directly relate to the required MDR denied Parent meaningful parental participation in decisions involving the education of Student in violation of 34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13 (C) NMAC.

As to Issue No. 3, the District is cited, corrective action is needed.

Issue No. 4: Whether District failed to follow the IDEA disciplinary procedures when disciplining Student for violations of District's code of conduct, in violation of 34 C.F.R. § 300.530 and 6.31.2.11(F)(2) NMAC.

Under IDEA, a district may discipline a student for violation of a code of conduct resulting in removal or suspension from the student's educational program for not more than 10 school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (if those removals do not constitute a change of placement under 34 C.F.R. § 300.536). 34 CFR § 300.530(b)(1). 6.31.2.11(F)(2) NMAC.

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

An MDR examines whether a student's conduct was directly and substantially related to the student's disability. 34 C.F.R. § 300.530(e)(1). An MDR must be held within ten school days of "any decision to change the placement of a child with a disability because of a violation of a code of student conduct" *Id.*

If the MDR determines that the conduct was a manifestation of the child's disability, the IEP Team must:

(1) Either— (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except when a special circumstance is found pursuant to subsection g, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

When a student with a disability has been removed from their current placement for more than 10 school days, special education and other services must continue to be provided – thus if a change of placement for more than 10 school days has occurred, but the MDR finds that the underlying behavior(s) were not a manifestation and the student’s placement is changed, student must continue to receive services to the extent required by 34 C.F.R. § 300.530(d). 34 C.F.R § 300.530 (b)(2).

The provision of FAPE remains the focus and continuing obligation during any disciplinary removals, even during a suspension and the District has an obligation to address whether Students need additional or new supports and services to receive FAPE in the least restrictive environment (LRE). *Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education* (OSERS 2016). A disciplinary removal after repeated similar behaviors should trigger the IEP team to meet to consider what other options to address negative behaviors even through monodisciplinary steps. *Id.*

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

By December 2, 2024, when District sought to impose additional discipline, Student’s similar behaviors, proximity of behaviors and resulting discipline was a pattern of removals of more than 10 days making the December discipline a change in Student’s placement. This December discipline, then, required a PWN and an MDR. 34 C.F.R. § 300.504. District had conducted an MDR November 1, 2024, and District’s belief was that another 10 plus days of change in placement needed to occur before another MDR was necessary. This is an incorrect understanding of what IDEA Part B requires. Once the 10 plus day change in placement has occurred, each subsequent potential change in placement requires a new MDR if the analysis concludes that the new potential discipline and underlying behavior meet the definition of a pattern as outlined in 34 C.F.R. §300.536(a)(2).

District failed to provide a PWN and failed to conduct an MDR for the December 2024 discipline to Parent.

District had conducted an MDR for a previous change in placement evidencing knowledge that it had reached the requirement of an MDR. District knew a subsequent removal close in proximity and for similar reasons would trigger the need for another MDR. Parent had given written notice to District that she believed Student needed procedural safeguards in place for this suspension.

District failed to provide Parent with requested documents and tangibles related to what resulted in a change of placement of Student.

District failed to provide a PWN for a required MDR; failed to provide Parent with documents for a required MDR and failed to conduct a required MDR once student had a series of removals constituting a pattern that was a change of placement for more than 10 school days. This represents a failure to follow the IDEA disciplinary procedures when disciplining Student for violations of District's code of conduct, in violation of 34 C.F.R. § 300.530 and 6.31.2.11(F)(2) NMAC.

As to Issue No. 4, the District is cited, corrective action is needed.

Issue No. 5: Whether the District allowed Parent access to educational records of Student, including disciplinary records, in a timely manner in violation of 34 C.F.R. § 300.501(a); 34 C.F.R. § 300.613 and 6.31.2.13 (B) NMAC.

"The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to inspect and review all education records with respect to—
(1) The identification, evaluation, and educational placement of the child; and
(2) The provision of FAPE to the child." 34 C.F.R. § 300.501(a).

"Each public agency shall afford the parents of a child with a disability an opportunity to inspect and review all education records related to the child in compliance with 34 CFR Secs. 300.501(a), 300.613 through 300.620, 34 CFR Part 99, and any other applicable requirements of these or other department rules and standards." 6.31.2.13(B) NMAC.

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

Pursuant to the Family Educational Rights and Privacy Act (FERPA) parents of students have a right to all school records of their student. FERPA does not prohibit provision of records that contain information on more than one student, instead it limits information provided only as to the other students. 34 C.F.R. § 99.10 and § 99.12. FERPA provides that when education records contain information on more than one student, the parent may inspect and review or "be informed of" only the specific information about his or her own child. (If an eligible student, he or she may only have access to the information that relate to him or her.) See 20 U.S.C. 1232g(a)(l) (A) and 34 CFR § 99.12(a). However, when the information about the other student or students cannot be segregated and redacted without destroying its meaning, than

the parent has a right to that information as well. See *Letter to Wachter*, U.S. Department of Education, 2017.

District did inform Parent of the information on video. District failed to provide other requested student records such as drafts of IEP and BIP documents and daily reports and tally sheets created by District about Student.

District did not allow Parent access to requested educational records of Student, including disciplinary records, in a timely manner in violation of 34 C.F.R. § 300.501(a); 34 C.F.R. § 300.613 and 6.31.2.13 (B) NMAC.

As to Issue No. 5, the District is cited, corrective action is needed.

Issue No. 6: Whether 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.

Students who are eligible for special education services are entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. Districts are obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17. The determination of whether there has been a denial of FAPE requires consideration of two components: substantive and procedural. The question in determining the substantive standard is whether the IEP was "reasonably calculated to allow the child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas County School District. RE-1*, 137 S. Ct. 988 (2017).). All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx 202 (2d Cir. 2010). At a minimum, IEPs must be reviewed annually. 34 C.F.R. § 300.324(b).

The initial question that must be addressed to determine whether a substantive denial of FAPE occurred is whether the IEP was reasonably calculated to allow Student to make progress. An analysis of any procedural violations must also be considered and, if such exist, whether such procedural violations rise to the level of a denial of FAPE. The Court in *J.L. v. Mercer Island School District*, 592 F.3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it results in the loss of an educational opportunity, infringes on parents' opportunity to participate in the development of the IEP or deprives the student of an educational benefit.

When a student has behavioral needs, the IEP should consider those needs when developing, reviewing and revising the IEP. Questions and Answers on *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017). Although the IDEA does not mandate a BIP or specific behavioral goals, not considering academic progress and/or behavior supports can support a finding that a FAPE was provided to student. In *Lathrop R-II School District v. Gray*, 611 F.3d 419 (8th Cir. 2010), cert. denied, 131

S. Ct. 1471 (2011). See also, *Neosho R-V School District v. Clark*, 315 F.3d 1022 (8th Cir. 2003) (concluding that a student was denied a FAPE when the school district did not adequately address a student's behaviors).

District failed to address Student’s behaviors as they related to goals and objectives on Student’s IEP for sixteen months – documenting and providing informal discipline and removals between August 2023 and December 2024 but not conducting an FBA and creating a BIP until December 5, 2024.

District failed to conduct necessary MDR for December 2024 out of school suspension; failed to provide Student with special education and related services during the suspension; failed to provide Parent with meaningful participation; failed to provide requested Student records; failed to address documented behaviors of Student that were impeding his and other’s learning for sixteen (16) months; failed to conduct a comprehensive evaluation of Student and failed to develop and implement an IEP allowing Student to make progress and to receive a FAPE. This 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.

As to Issue No. 6, the District is cited, corrective action is needed.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. §300.111(a)(1)(i) and 6.31.2.10(A) and (D);	The District failed to comprehensively evaluate Student;
34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC;	District failed to develop and implement an IEP reasonably calculated to allow Student to make progress and receive a free appropriate public education (FAPE)
34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13 (C) NMAC;	Parent was denied meaningful parental participation in decisions involving the education of Student in violation of 34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13 (C) NMAC;
34 C.F.R. §300.530; 34 C.F.R. 34 § 300.534 and 6.31.2.11(F)(2) NMAC;	District failed to follow the IDEA disciplinary procedures when disciplining students, to include an MDR, LRE, and

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. §300.501(a); 34 C.F.R. § 300.613 and 6.31.2.13(B) NMAC;	evaluation of needs during disciplinary removals/change of placement. District denied Parent access to educational records;
34 C.F.R. §300.101 and 6.31.2.8 NMAC.	District's actions and/or omissions towards the named Students resulted in a denial of a free appropriate public education (FAPE).

Required Actions and Deadlines

By February 21, 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

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. 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 February 7, 2026 and reported to the OSE no later than February 21, 2026. 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, 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).	February 21, 2025	Written Assurance	February 21, 2025
2.	District shall designate a Corrective Action Plan Monitor (District CAP Monitor) to coordinate all corrective action activity required by the District in this case and all cases in which a CAP is currently active. The designee shall be someone other than the District Special Education Director.	February 21, 2025	Written notice with contact information of District CAP Monitor	February 21, 2025
3.	District Special Education Director, District CAP Monitor and School Principal shall meet with the PED OSE Education Administrator assigned to the District and the PED OSE CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that District plans to take to ensure that violations are corrected and do not recur. District	February 28, 2025	Notes from meeting prepared by District	March 7, 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>
	Special Education Director shall be responsible for arranging this meeting with OSE.			
4.	District Special Education Director and District CAP Monitor will meet with Student’s special education teachers, related service providers, principal, and general education teachers to review Complaint Resolution Report to ensure that those persons understand the complaint, violations that were found, and corrective actions that will be taken to address violations	March 7, 2025	Notes from meeting prepared by District	March 14, 2025
5.	<p>District shall provide a prior written notice (PWN) that it proposes to conduct the evaluations of Student identified in Step 6.</p> <p>The District shall request consent to evaluate student at the same time that this PWN is issued to Parent.</p> <p>The District will provide a written record of the decision of Parent to accept or decline to evaluate.</p>	March 7, 2025	<p>Prior Written Notice and request for consent to evaluate.</p> <p>Signed parental consent to evaluate Student or parent’s signed written decision to decline request to evaluate.</p>	<p>March 7, 2025</p> <p>Within 5 days of the written decision to evaluate.</p>
6.	<p>Within 45 days of receiving Parent’s consent, District shall conduct and complete:</p> <ul style="list-style-type: none"> evaluation for occupational therapy; 	Within 45 days of receipt of parental consent	Evaluation Reports	Within 5 days of the completion of the evaluation reports

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>
	<ul style="list-style-type: none"> • evaluation for assistive technology; and • functional behavior assessment <p>Evaluation Reports shall be provided to parent when they are provided to PED.</p>			
7.	<p>If student is evaluated, District will issue a PWN and seek Parental consent to convene a Facilitated IEP meeting.</p>	Within 10 days of the issuance of the evaluation reports	Prior Written Notice	Within 10 days of the issuance of the evaluation reports
8.	<p>District shall convene a Facilitated IEP (FIEP) meeting if the parent agrees to participate. The FIEP meeting shall address, at minimum:</p> <ul style="list-style-type: none"> • appropriate measurable goals, including: <ul style="list-style-type: none"> ○ functional behavioral goals; • necessary revisions to the BIP based on FBA; • Appropriate accommodations; • appropriate supplementary aides and services, program modifications and supports; • special education services and service time based on the goals and needs of Student; • Assistive Technology; 	15 days after obtaining parental consent to participate in FIEP	<ol style="list-style-type: none"> 1. Invitation to FIEP meeting; 2. Agenda for FIEP meeting; 3. FIEP and BIP; and 4. Prior Written Notice(s) 	7 days after the Facilitated IEP 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>
	<ul style="list-style-type: none"> provision of compensatory education services hours required in Step 9. <p>The Facilitator shall be independent of District and shall be selected from the PED list of approved facilitators. The Facilitator shall be paid for by District.</p> <p>The FIEP meeting shall be held on a date and time that is convenient for the parent. The parent will be provided with a copy of the IEP and PWN at the conclusion of the FIEP meeting.</p> <p>District Special Education Director shall participate in the IEP meeting. District shall also ensure that the IEP team includes, but is not limited to, parents, special education teacher, general education teacher, and any related services providers.</p> <p>District shall ensure that all teachers and service providers working with Student are provided IEP and BIP so that they are aware of their responsibilities in implementing those plans.</p>			
9.	District shall provide Student with the following compensatory education:	February 7, 2026	Documentation of delivery/provision of compensatory education services, including logs of	Monthly from date of compensatory services 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>
	<ul style="list-style-type: none"> 1. 450 minutes of Specially designed instruction in math; 2. 450 minutes of Specially designed instruction in English; 3. 36 hours of speech services and 4. 20 hours of social work services <p>The schedule for compensatory services should be developed in collaboration with the parent during the FIEP meeting required in Step 8 and can include provisions for services in the summer months. Compensatory services cannot occur during normal school hours that would interfere with Student’s current classes, including elective classes.</p> <p>The plan for compensatory education shall be documented in Student’s IEP or through a formal prior written notice.</p> <p>If District cannot provide compensatory education through District employed providers, it shall contract with a private provider to deliver these hours of compensatory education.</p>		<p>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>until the compensatory education hours are completed.</p> <p>7 days after the Facilitated IEP meeting is held.</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
10.	District shall provide Parent with all Student School Records as requested in multiple written requests, to include all records created for Student’s FBA such as daily reports and tally sheets for Student.	February 21, 2025	Provide CAP monitor with list of all documents/tangibles and evidence that documents were provided to Parent	February 21, 2025
11.	<p>District shall arrange to provide training to District staff (including special education teachers, special education administrators, diagnosticians and related service personnel). The training shall be provided by a person with expertise in special education who was not involved in responding to this complaint and who is approved by PED. The training shall be conducted at District’s expense. The training shall address the following special education topics:</p> <ul style="list-style-type: none"> • Development of an IEP that provides FAPE especially when behavior impedes learning; • Importance of providing information to parents to ensure meaningful participation; • Reconvening of IEP Meetings when increasing behaviors impede learning or progress; • Disciplinary procedures of IDEA, specifically: 	April 25, 2025	<p>Submission of proposed trainer and trainer’s resume and proposed presentation for PED 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>March 21, 2025</p> <p>March 7, 2025</p> <p>May 2, 2025</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>
	<ul style="list-style-type: none"> ○ When an MDR is required to be conducted; ○ procedures for conducting an MDR, to include provision or viewing of all evidence of underlying incident; ○ relevant information to be considered and appropriate team members; ○ determination of whether conduct was a manifestation of a student’s disability; ○ provision of appropriate services to student when there had been 10 days of disciplinary removal; <p>If these trainings are consistent with trainings required in other pending corrective action plans, trainings offered for those other corrective action plans may satisfy this training requirement so long as the all appropriate individuals attended trainings.</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/ Natalie Campbell

Natalie Campbell

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Deputy General Counsel, Office of General Counsel

Reviewed and approved by:

DocuSigned by:

Margaret Cage

Margaret Cage, Ed.D.

Deputy Secretary, Office of Special Education