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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Explore Academy - Albuquerque
Case No. 2425-40
April 25, 2025**

This Report requires corrective action. See pages 7-8.

On February 25, 2025, 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 LEA'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 LEA's compliance with federal IDEA regulations and state NMAC rules;
- review of LEA questionnaire submitted, completed, and returned on April 11, 2025;
- interview with Parent on April 9, 2025;
- interviews with Head Special Education Teacher and Special Education Case Manager on April 11, 2025;
- interview with LEA Principal on April 14, 2025; 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 any allegations regarding disability discrimination.

In addition, on April 7, 2025, Parents requested that several issues identified in the Acknowledgement Letter be withdrawn. Therefore, Issue No. 1, Issue No. 3, Issue No. 4, and Issue No. 5 that were originally identified were no longer investigated and will not be included in this report.

Issues for Investigation

The following issues regarding alleged violations of the IDEA, its implementing regulations and State rules, are addressed in this report:

2. Whether the Student's IEP team included all required members at the January 2025 IEP meeting, pursuant to 34 C.F.R. § 300.321 and 6.31.2.7(B)(11) NMAC.
6. Whether the LEA's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

1. Student is currently 13 years old and is classified as a student with a disability under the primary classification of Autism.
2. On December 2, 2024, a meeting notice regarding an upcoming meeting was sent. The meeting notice indicated an IEP meeting would be held on January 10, 2025 to discuss a reevaluation, eligibility determination, IEP review, and transition planning. The attendees identified on the notice included a regular education teacher, special education teacher, LEA representative (i.e., Head Special Education Teacher), evaluator, Student, transition agency representative, speech language pathologist, social worker, and occupational therapist (OT). The attendees were identified by name and by position. The Principal was not identified as a person to be in attendance.
3. An IEP meeting was held on January 10, 2025. The first part of the meeting was intended to complete a review of existing evaluation (REED) and determine Student's continued eligibility for special education and related services. In attendance were Parents, Head Special Education Teacher (e.g., LEA representative), Student's Case Manager, a diagnostician, general education teacher, OT, and the social worker. At the meeting, it was determined no additional data was needed to determine Student's continued eligibility and/or needs.
4. The second part of the meeting was intended to develop a new annual IEP for Student. All people who participated in the REED and eligibility determination were still present. The parties gave differing accounts regarding what conversations occurred next. However, the parties agree that at some point Parent requested additional accommodations (e.g., chewing gum and wireless headphones) and a change to Student's least restrictive environment (LRE). At that time, Head Special Education Teacher requested that the Principal join the meeting. Shortly thereafter, Parent requested that the meeting adjourn prior to developing the IEP because the Principal had not been present for the entirety of the meeting and was refusing Parent's requests for additional accommodations and to change Student's LRE. The meeting was adjourned and no IEP was developed on this date.
5. Principal typically is invited and attends IEP meetings for Student. Principal indicated they had another meeting during Student's January 10, 2025 IEP meeting and that is why they were not originally going to be in attendance.
6. Head Special Education Teacher serves as the LEA representative for many IEP meetings and has the authority to commit LEA resources without prior approval. Head Special Education Teacher asserts the Principal was asked to join the meeting for support.
7. A facilitated IEP meeting was held on March 27, 2025. A new annual IEP was developed at the meeting. The Parent's requested accommodations of chewing gum and wireless

headphones are included in the new IEP. In addition, for a trial period, Student's LRE was changed to allow Student to be in the general education environment more.

Discussion and Conclusions of Law

Issue No. 2

Whether the Student's IEP team included all required members at the January 2025 IEP meeting, pursuant to 34 C.F.R. § 300.321 and 6.31.2.7(B)(11) NMAC.

An IEP team must include (1) the parents of the child; (2) one regular education teacher of the child; (3) one special education teacher of the child; (4) a representative of the public agency (e.g., LEA); (5) an individual who can interpret the instructional implications of evaluation results; (6) other individuals who have knowledge or special expertise regarding the child, at the discretion of the parent or public agency; and (7) the child, when appropriate. 34 C.F.R. § 300.321(a) and 6.31.2.7(B)(11) NMAC.

To serve as the LEA representative, the individual must meet the three requirements specified in 34 C.F.R. § 300.321(a)(4). Specifically, the LEA representative must be (1) qualified in the provisions of special education to meet the unique needs of the student, (2) be knowledgeable about the general education curriculum and (3) be knowledgeable about the availability of resources at the school. *Id.*

The LEA representative should have the authority to commit LEA resources. 71 Fed. Reg. 46,670 (2006).

The LEA has a duty to provide the parents of a child with a disability advance written notice of IEP meetings. 6.31.2.13(D)(1) NMAC; see also 34 C.F.R. § 300.322(a)(1). The notice required to be provided to parents must, in part, indicate who will be in attendance at the meeting. *Id.* at 300.322(b)(1)(i).

A LEA violates the notice requirements when individuals whom did not appear on the meeting notice are included in the IEP meeting. *See, e.g., Greeneview Local Schs.*, 117 LRP 18017 (SEA OH 04/18/17) (finding that the district violated the notice requirements when it failed to tell the parent that the superintendent would attend the IEP meeting).

Here, there is no evidence that the IEP team did not consist of the mandatory meeting participants required by 34 C.F.R. § 300.321 and 6.31.2.7(B)(11) NMAC, thus there was not a violation of this legal requirement.

However, without prior notice to Parent, the Principal attended the IEP meeting on January 10, 2025, in violation of the notice requirements of 34 C.F.R. § 300.322 and 6.31.2.13(D)(1) NMAC, resulting in a procedural violation of same. The original acknowledgement letter did not provide notice that 34 C.F.R. § 300.322 and 6.31.2.13(D)(1) NMAC were at issue. However, under NMPED's general supervisory authority, corrective action will be required. 34 C.F.R. § 300.149.

Moving forward, meeting notices must identify all participants whom will be in attendance at the IEP meeting; participants whom were not originally identified on the meeting notices are not permitted to attend without first providing advance notice to parents. 34 C.F.R. § 300.322(b)

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

Issue No. 6

Whether the LEA's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

FAPE must be made available to all children with disabilities. 34 C.F.R. § 300.101; 6.31.2.8 NMAC. School districts must provide FAPE for each student who resides within the school district's educational jurisdiction. 6.31.2.9(A) NMAC. A procedural violation constitutes a denial of FAPE if it: (1) impedes the child's right to FAPE; (2) significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of FAPE; or (3) causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Here, had Principal not been called into the January 10, 2025 meeting, the outcome *may* have been different. Subsequent to the incomplete IEP meeting in January 2025, the accommodations and change of placement Parent requested have been added to Student's IEP and/or implemented.

As stated above, the LEA violated the notice requirements of the IDEA which resulted in a procedural violation. The procedural violation did not rise to the level of a denial of FAPE because Parent was not denied meaningful parent participation, Student's right to FAPE was not impeded nor was Student deprived of educational benefit.

As to Issue No. 6 the LEA is not cited.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.322 6.31.2.13(D)(1) NMAC	LEA failed to provide adequate notice of participants.

Required Actions and Deadlines

By May 9, 2025, the LEA's Special Education Director must assure the OSE in writing that the LEA will implement the provisions of this Corrective Action Plan (CAP). The OSE requests that the LEA submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the LEA'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 LEA 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 April 25, 2026 and reported to the OSE no later than May 25, 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 LEA</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 LEA will submit a written assurance to the PED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	May 9, 2025	Written Assurance Letter/Email	May 9, 2025
2.	The LEA Special Education Director and the school principal shall meet virtually with the OSE Education Administrator assigned to the LEA and the OSE CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the LEA plans to take to ensure that the violation is corrected and does not recur. The LEA Director has the discretion to include other LEA or school administrators or personnel in this meeting. The LEA Director shall be responsible for arranging this virtual meeting with OSE.	May 16, 2025	Notes from meeting prepared by LEA	May 23, 2025
3.	The LEA Special Education Director will meet with the case managers and Student's special education teachers and related service providers at both the middle school and high school to review the Complaint Resolution Report to ensure that those persons understand the complaint, the	May 23, 2025	Notes from meeting prepared by LEA	May 30, 2025

Step No.	<u>Actions Required by LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	violation that was found, and the corrective action that will be taken to address the violations.			
4.	<p>The LEA shall arrange a virtual meeting of 30 minutes to include mandatory attendance of LEA Superintendent, Director of Special Education and Principal and Chief Counsel for Special Education Natalie.Campbell@ped.nm.gov</p> <p>The meeting shall address the following special education topics:</p> <p>1. Meeting notice requirements.</p>	May 23, 2025	<p>Set virtual meeting and send invitations out.</p> <p>Meeting held</p>	<p>May 23, 2025</p> <p>By May 30, 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/ Emily Adams

Emily Adams, Esq.

Complaint Investigator

Reviewed by:

/s/ Natalie Campbell

Natalie Campbell

Chief Counsel, Special Education

Reviewed and approved by:

DocuSigned by:


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Dr. Tyre D. Jenkins

Deputy Director, Office of Special Education

Certificate Of Completion

Envelope Id: 472A1C95-83D1-4C9F-BF47-A670048D1F5A	Status: Completed
Subject: Complete with Docusign: 4.25.25 C2425-40 Complaint Resolution Report Final.pdf	
Source Envelope:	
Document Pages: 9	Signatures: 1
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Miguel Lozano
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	Miguel.Lozano@ped.nm.gov
	IP Address: 10.103.81.73

Record Tracking

Status: Original	Holder: Miguel Lozano	Location: DocuSign
4/24/2025 8:18:50 PM	Miguel.Lozano@ped.nm.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Public Education Department	Location: Docusign

Signer Events

Signature	Timestamp
Tyre Jenkins tyre.jenkins@ped.nm.gov Deputy Director of OSE Security Level: Email, Account Authentication (None)	Sent: 4/24/2025 8:20:21 PM Viewed: 4/25/2025 8:19:14 AM Signed: 4/25/2025 8:19:23 AM
Signature Adoption: Pre-selected Style Using IP Address: 96.77.22.81	

Electronic Record and Signature Disclosure:
Not Offered via Docusign

In Person Signer Events

Signature	Timestamp
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Editor Delivery Events

Status	Timestamp
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Agent Delivery Events

Status	Timestamp
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Intermediary Delivery Events

Status	Timestamp
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Certified Delivery Events

Status	Timestamp
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Carbon Copy Events

Status	Timestamp
Natalie Campbell natalie.campbell@ped.nm.gov Security Level: Email, Account Authentication (None)	Sent: 4/24/2025 8:20:21 PM Viewed: 4/25/2025 8:15:17 AM

Electronic Record and Signature Disclosure:
Accepted: 7/26/2024 8:31:35 AM
ID: 9857fe78-503e-407e-bf57-81479b6657b6

Witness Events

Signature	Timestamp
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Notary Events

Signature	Timestamp
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Envelope Summary Events

Status	Timestamps
Envelope Sent	4/24/2025 8:20:21 PM
Certified Delivered	4/25/2025 8:19:14 AM
Signing Complete	4/25/2025 8:19:23 AM
Completed	4/25/2025 8:19:23 AM

Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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