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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report**

Case No. C2425-38

April 14, 2025

This Report requires corrective action. See pages 10-11.

On February 13, 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 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;
- communications with Parent and District Special Education Director;
- 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 a licensed educator or related service provider, or allegations related to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act are not within the jurisdiction of this complaint investigation and, as a result, were not investigated. For these reasons, the Complaint Investigator did not investigate allegations of misconduct by school staff.

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 LEA failed to implement an IEP for the Student that was reasonably calculated to allow Student to make progress appropriate in light of Student's individual circumstances by:
 - a. failing to implement the Student's Safety Plan by failing to provide the Student with appropriate supervision by District staff, as required by 34 C.F.R. § 300.320(a)(4); and 6.31.2.11(B)(1) NMAC; and
 - b. failing to afford the Parents an opportunity to participate in the provision of FAPE to the child by failing to appropriately communicate with the Parent, as required by 34 C.F.R. §§ 300.501(b), and 300.501(c); and 6.31.2.13(C) NMAC.
2. 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. Under the Federal regulations and State Rules, the LEA is responsible for developing and implementing the IEPs of students enrolled in the LEA who require special education and related services.

2. Student is currently 6 years of age and resides with the Parent.
3. At the time of the events in question, and the alleged violations, referenced in the Parent's Complaint, LEA records state that the Student was enrolled in and attending a school in the LEA in pre-kindergarten/kindergarten, which was during the jurisdictional period covered by this complaint investigation.
4. According to LEA records, the Student was referred for a Comprehensive Diagnostic Evaluation in September 2021, to determine his need for early intervention services. The Student was first determined eligible to receive special education and related services in May 2022, when he was 3 years of age, under the disability classification of Autism Spectrum Disorder (ASD).
5. School records include IEP's that were developed for the Student on March 28, 2023, and October 26, 2023, which were outside the jurisdictional period of this complaint investigation. Records also include IEPs for the Student dated January 19, 2024, April 11, 2024, and February 3, 2025, which are within the jurisdictional period of this complaint investigation.
6. The March and October, 2023, IEP's do not state any parent or teacher concerns with the student eloping at school, and do not include goals or services related to elopement. Those IEP's do state with respect to "Mobility" that the Student needs "Adult Supervision at all times" to move in and around the school.
7. The Student's IEPs in January and April, 2024, continued to indicate the Student had mobility needs and required adult supervision at all times to move in and around the school. The Student's IEPs provided OT services to assist with his mobility needs. However, as with previous IEPs, there is no mention of elopement concerns. The Student's IEPs, including the February 3, 2025, IEP do not include a health or safety plan.
8. School records include a text from the Parent to school staff dated July 22, 2024, which was during the Student's 2024 summer program, in which the Parent states that the Student does elope and expressed her concern that the Student "may sneak out with an open door." This appears to be the first documentation of communication between the Parent and school staff regarding the Parent's concern with the Student eloping.
9. In August 2025, the Parent indicated in an email that the Student was doing very well at his morning drop offs and that the transition plan was working "wonderfully."
10. On January 16, 2025, the Parent sent an email to the school Principal stating that the Student had begun to experience difficulties with his morning transition and that she was no longer able to safely walk him to class. The parent requested a brief transition period where she could assist the Student in getting to his classroom with a gradual reduction in her involvement. The Principal agreed to a plan to gradually decrease the Parent's support over the following two weeks "with a goal of February 3rd having him begin walking to

class independently with staff only, no parent in the building.” The Parent agreed with the proposed timeframe for getting the Student back on a good morning routine.

11. At the time of the events in question in this complaint investigation, Student was receiving special education and related services under an IEP developed by the LEA on February 3, 2025. At the time of the development of the February 3, 2025, IEP it is evident that the IEP team was aware of concerns with mobility and elopement by the Student, as indicated by the following:
 - a. Mobility: “[The Student] requires adult supervision at all times when moving around the school campus.”
 - b. Under the Parent’s statement regarding Daily/Independent Living, it states that the Parents “want him to be able to walk on his own without eloping and to keep him safe.”
 - c. In the Present Levels section the Student’s teacher stated that the Student “require staff to hold his hand while outside the classroom or he tends to run away.” The teacher also stated that the Student “is learning to walk next to staff without holding hands,” when he is asked to “walk with me.” The teacher also stated in the Student’s Present Levels that the Student “is learning to remain with the class and sometimes needs to hold hands while we transition to other areas of the school.” There is no mention in the documentation that Student has eloped from the school campus prior to February 11, 2025.
 - d. The Occupational Therapist stated as follows: “Transition to/from the classroom varies from hand-held assistance to falling on the ground, using cues to resume walking, and hand-held assistance.” The OT further stated that the Student “has made gains in regulation and transitions but continues to need support.”
 - e. Annual Goals: the Student’s IEP includes the following annual goals:
 - i. “While [the Student] is transitioning in the school setting (in the building, playground, outside) he will learn to walk side-by-side while walking independently from one setting to another with 100% accuracy.”
 - ii. “By the end of the IEP year, [the Student] will transition in/out of the classroom with minimal cues or less 4 out of 5 opportunities as measured by student performance, related service provider data and educational staff data.”
12. The LEA provided Prior Written Notice (PWN) to the Parents with respect to the February 3, 2025, IEP team meeting. The February 3, 2025, PWN does not mention a concern with the Student eloping, or any strategies to prevent elopement.
13. On February 11, 2025, an incident occurred at school where the Student eloped from the school campus during the lunch recess. The following is a timeline regarding the Student’s

elopement provided by the LEA, which is based on camera footage from cameras located on school grounds and the convenience store:

- a. 11:35 - the Student and his classmates enter the PK playground;
 - b. 11:52 – the 5th grade students start coming out to go to their playground;
 - c. 11:54-54:35 - the Student makes his way towards the door the 5th graders are walking through and the Student walks through the door into the front vestibule area. The Student’s teacher and his Educational Assistants (EAs) did not watch him walk towards the door and did not see him leave the playground;
 - d. 11:55 - the Student walks out the front door, runs into the street, and runs west towards a restaurant;
 - e. 12:01 - the Student’s teacher and EAs round up the students to return to class;
 - f. 12:01:54 - school staff appear to be looking around for a student;
 - g. 12:04:52 - the Student’s teacher tells the security guard she cannot locate the Student;
 - h. 12:05 - the security guard calls for all staff to look for the Student;
 - i. 12:10:15 - the school nurse calls the parent with no answer;
 - j. 12:10:27 - the school nurse makes contact with the Parent to report the elopement by the Student; and
 - k. 12:10-12:14 - police dispatch contacts the school, and school staff arrive at the convenience store to take charge of the Student. Parents arrive shortly thereafter.
14. The LEA’s documentation includes a Police Department Summary report dated February 24, 2025, which provides narrative statements from the two responding police officers which provide, in relevant part, as follows:
- a. Officers M.S. and C.N. responded to a call regarding a young child seen running across a parking lot and into a convenience store. Officer C.N. arrived at the scene at 12:01 p.m. and located the Student in the convenience store across the parking lot from a restaurant. Officer M.S. Arrived at the scene at 12:03 p.m. The Reporting Party (RP) informed the officers that she saw the Student running across the parking lot at the restaurant and she tried making contact with him and to stop him but he continued running across a street, causing traffic to stop. The RP reported that the Student then went into the convenience store, where he was later contacted by the police officers. Officer C.N. was advised by dispatch that the Student was from the School and the officer then contacted the School and was informed that the school principal and security were on their way. When school staff arrived, staff were advised on how the RP came across the Student. The Parent arrived at the scene shortly after school staff and expressed her concern and frustration over the incident.

15. The LEA's documentation states that at the time of the Student's elopement from the PK playground there were three adults (Teacher and 2 EAs) supervising 6 students, including the Student.
16. A review of the documentation does not reveal any additional instances where the Student eloped from the school campus.
17. After this incident, the Parents transferred the Student to a different elementary school in the LEA.

Discussion and Conclusions of Law

Issue No. 1

Whether the LEA failed to implement an IEP for the Student that was reasonably calculated to allow Student to make progress appropriate in light of Student's individual circumstances by:

- a. **failing to implement the Student's Safety Plan by failing to provide the Student with appropriate supervision by LEA staff, as required by 34 C.F.R. § 300.320(a)(4); and 6.31.2.11(B)(1) NMAC; and**
- b. **failing to afford the Parents an opportunity to participate in the provision of FAPE to the child by failing to appropriately communicate with the Parent, as required by 34 C.F.R. §§ 300.501(b), and 300.501(c); and 6.31.2.13(C) NMAC.**

The first issue in this complaint investigation involves the implementation of the Student's IEP, specifically with respect to implementing "the Student's Safety Plan." A careful review of all the Student's records requested from the LEA, specifically including the Student's current and previous IEPs, shows that during the jurisdictional period covered by this complaint investigation the Student did not have a Safety Plan. However, Issue No. 1(a) also involves the question as to whether the LEA failed to provide the Student with appropriate staff supervision. Therefore, whether appropriate staff supervision was provided to the Student, as required by the Student's IEP, is the actual issue being investigated in Issue No. 1(a).

The facts set forth above clearly show that beginning at least as early as July 2024, the LEA was aware of the Parent's concern that the Student would elope if unsupervised. Moreover, the Student's February 3, 2024, IEP indicates the LEA's awareness of this concern because the IEP states that the Student requires adult supervision at all times when moving around the school campus. In the PLAAFP the Student's teacher stated that the Student required staff to "hold his hand while outside the classroom or he tends to run away." Both the Parents and LEA staff stated that the Student needs to learn to walk independently around the school campus without eloping. The Student's IEP team developed two Annual Goals for the Student to work on this

transitioning goal. The Annual Goal agreed to by Parents and school staff regarding the Student's transitions in the building, playground, and outside, stated he "will learn to walk side-by-side while walking independently from one setting to another with 100% accuracy." While the clear expectation was for the Student to learn to walk independently without holding hands while moving around the school campus, there is absolutely no evidence to suggest that 8 days after the goal was developed the Student had mastered it and no longer required adult supervision while outside. School staff should certainly have been working on this goal with the Student, but it is unreasonable that there were three staff present and no one was supervising the Student while outside on the playground at recess.

The facts set forth above show that at 11:35 a.m. on February 11, 2025, the Student entered the PK playground for the lunch recess with his class, his teacher and 2 EAs. Approximately 19 minutes later, at 11:54, the Student began walking towards a door the 5th graders were walking through, and approximately 30 seconds later the Student walked through the door with the 5th grade students. The LEA has admitted that the Student's teacher and his 2 EAs were not watching him and did not see him walk out the door. The Student then walked off the school campus and during the next approximately six minutes he was seen running unsupervised in a restaurant parking lot, crossing a busy street and entering into a convenience store before he was contacted by police officers at 12:01. It was at approximately this moment when school staff could not locate the Student and began searching for him. At 12:05 the teacher reported the elopement to school security and the Principal. At 12:08 the school Principal directed the School Nurse to call the Parents. At approximately 12:10 the school Nurse contacted the Parent by telephone to inform her that the Student had eloped from the school campus. Under the facts set forth above, it is concluded that the LEA was fully aware that the Student required appropriate supervision when he was outside the school building. It is further concluded that the LEA failed to implement the Student's IEP by failing to provide the Student with appropriate supervision during the lunch recess on February 11, 2025.

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

It should be noted that the LEA has stated that it has taken a number of remedial actions to make the playground and other areas used by the Student more secure, such as raising the height of the door latches. While clearly helpful, these actions will not alleviate the need for adult supervision of the Student, especially when outside and on the playground. The events of February 11, 2025, clearly demonstrate Student's need for school staff supervision, even with other remedial actions by the LEA.

The documentation reveals that the LEA and the Parents had a number of IEP team meetings during the year preceding the filing of Parents' Complaint. The Parents were provided notice of these IEP team meetings, attended all of the IEP team meetings, and appear to have fully participated as members of the IEP team. The Parents attended the February 3, 2025, IEP team meeting at which the concern with the Student eloping was identified and discussed by LEA staff and the Parents. The documentation does not reveal any complaints by the Parents regarding a failure of the LEA to communicate with them or allow them to participate in the provision of FAPE to the Student. The email correspondence between the parties at the beginning of the 2024-2025 school year indicates that school staff were appropriately responsive to the requests of the Parent to help facilitate the Student's transitions at school. The Complaint alleges that the LEA failed to immediately contact the Parents regarding the Student's elopement on February 11, 2025. However, the timeline regarding the Student's elopement shows that the Principal directed school staff to contact the Parent within three minutes following her notification of the elopement, and the parent was actually contacted two minutes later. In view of all the emergency actions being undertaken by school staff at that time to locate the Student, contacting the Parents within five minutes of school staff being aware and informed of the elopement does not appear to be unreasonable. Therefore, it is concluded that the LEA did not fail to afford the Parents an opportunity to participate in the provision of FAPE to the child by failing to appropriately communicate with the Parent. Please note that this conclusion regarding the reasonableness of the LEA's actions relates only to communication with the Parent and not with respect to the elopement of the Student.

As to Issue No. 1(b), the District is not cited.

Issue No. 2

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.

The federal regulations and State Rules provide that violations of the IDEA may be based on either substantive or procedural violations. In the present matter, the violation found above is a substantive violation of the IDEA and State Rules. It was clearly provided in the Student's IEP that the Student required adult supervision at all times when moving in and around the school campus. As concluded above, school staff failed to provide the required supervision for enough time to allow the Student to elope from school campus, which the LEA has acknowledged. The Student's safety was clearly at risk during his elopement, even though the Student did not suffer any actual physical harm. It is concluded that the violation did not cause a deprivation of educational benefits to the Student due to the relatively short duration of the elopement and no

material loss of instruction time. Therefore, appropriate corrective action does not require compensatory education for the Student to remedy the violation by the LEA. It is concluded that LEA's actions and/or omissions did result in the denial of FAPE to Student.

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

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.320(a)(4); and 6.31.2.11(B)(1) NMAC;	The District failed to appropriately implement the Student's IEP by failing to provide the Student with appropriate supervision while on the playground.
34 C.F.R. § 300.101; and 6.31.2.8 NMAC.	The District's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE) to the Student.

Required Actions and Deadlines

By April 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
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 April 21, 2026, and reported to the OSE no later than May 5, 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, the District will submit a written assurance to the PED SED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	04/21/2025	Written Assurance Letter/Email.	04/21/2025
2.	The District Special Education Director and the School Principal shall meet with the PED SED Education Administrator assigned to the District and the PED SED CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the District and School plan to take to ensure that the violation is corrected and does not recur. The District Special Education Director shall be	04/28/2025	Notes from the meeting, prepared by District.	05/05/2025

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>
	responsible for arranging this meeting with SED.			
3.	The LEA shall schedule and conduct an IEP meeting to discuss Student's safety needs, and make any necessary changes to the Student's IEP, including potential development of a Safety Plan.	04/28/2025	A copy of the revised/amended IEP and associated PWN, including a copy of a Safety Plan, if developed by the IEP team.	05/12/2025
4.	<p>The District is required to provide training to School administrative and special education staff regarding the implementation of safety protocols to prevent elopement by all similarly situated students, specifically to include at a minimum:</p> <p>(1) Assessing the need for safety protocol assessment for a student with a disability as determined by the student's IEP team and documented in the student's IEP or Safety Plan; and</p> <p>(2) Specific elopement-related safety protocols to be implemented for the Student, including the documentation, and notification to Parents, of the implementation of such protocols in the school environment;</p> <p>The training shall be provided by a person with expertise in special education and who is approved by NMPED. The trainer may be an employee of the District, but not School Personnel.</p>	05/30/2025	<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>05/05/2025</p> <p>05/12/2025</p> <p>06/06/2025</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/ Wallace J. Calder

Wallace J. Calder, Esq.

Complaint Investigator

Reviewed by:

/s/ Natalie Campbell

Natalie Campbell, Esq.

Chief Counsel for Special Education

Office of General Counsel

Reviewed and approved by:

DocuSigned by:


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Dr. Tyre' D. Jenkins

Deputy Director, Office of Special Education