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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Albuquerque Public Schools
Case No. C2425-54
June 20, 2025**

This Report requires corrective action. See pages 21-23.

On April 22, 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 Charter School and LEA's compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Parent and LEA's 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 develop and 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 determine and implement a placement for the Student in an age-appropriate grade-level classroom, as required by 34 C.F.R. § 300.116; and 6.31.2.11(C) NMAC; and
 - b. failing to afford the Parents an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the Student, and the provision of FAPE to the Student, as required by 34 C.F.R. § 300.501; and 6.31.2.11(B) 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. The Student's Charter School is a public middle school (grades 6-8) of the LEA, and is therefore under the direction and supervision of the LEA.
2. Under the Federal regulations and State Rules, the Charter School, and ultimately, the LEA are responsible for developing and implementing the IEPs of students enrolled in the Charter

School who require special education and related services. Therefore, subsequent references are, where appropriate, made to the LEA who is the ultimate responsible entity.

3. The Student is currently 14 years of age and resides with the Parent.
4. The Student was first determined eligible by the LEA to receive special education and related services in May 2015, when the Student was six years old. The Student first qualified for services under the disability classification of Developmental Delay (DD).
5. Since the Student's initial eligibility determination, the Student has had an extensive evaluation history with both Parent-obtained and school-based evaluations.
6. LEA records indicate that from the time the Student was in pre-school until the present, the Student has changed schools 12 times, including a homebound placement.
7. LEA records state that during the 2022-2023 school year the Student attended three different Middle Schools in the LEA in the 6th grade.
8. An IEP was developed by the LEA for the Student at a previous middle school dated February 16, 2023. This IEP states that the Student is in the 6th grade.
9. Charter School records state that the Student was enrolled in the Charter School on August 11, 2023, at the beginning of the 2023-2024 school year, when the Student was 12 years of age.
10. Charter School records include a "2023-2024 Registration Form" for the Student that was filled out by the Parent. The form includes a New Student Registration Checklist that states the "Grade in 2023-2024: 8th." However, there is a strike-out in the space before where it states "8th" that appears to be a "7." There is no indication on the form as to who changed the Form. However, the penmanship appears different from the Parent's, and the number "8" is not written the same as in other parts of the registration form. The Parent reports that he did fill out the form and he identified the Student's grade as "7th."
11. Charter School records show that the Student began the 2023-2024 school year in the 8th grade. The Charter School and LEA report that this was a "mistake" by the Charter School.
12. There is no record that the Student was enrolled in the 7th grade in any school in the LEA or in any other school.
13. An IEP team meeting to review the Student's IEP was held at the Charter School on November 3, 2023, and a PWN of the same date was provided to the Parent. The November 3, 2023, PWN provides, in relevant part, as follows:
 - a. The grade level noted for the Student is: "08."
 - b. The Charter School proposed accepting the Student's IEP from the previous Middle School, which was accepted by the IEP team. The previous 6th grade IEP goals and accommodations were accepted and service times for related services and supports were adjusted.
 - c. There is no indication that school staff or the Parent discussed the issue of the Student's records showing he was enrolled in the 8th grade.

- d. The IEP team accepted the Student's abbreviated schedule from his previous IEP, at Parent's request, starting the Student's school day at 10:30 a.m.
14. On February 12, 2024, the IEP team conducted the annual review of the Student's IEP. The February 12, 2024, IEP provides, in relevant part, as follows:
- a. The Student was determined eligible under the disability classification of Specific Learning Disability (SLD), Other Health Impairment (OHI), and Speech Language Impairment (SLI), with the Primary Cause Code as Dyslexia.
 - b. The Student's Present Levels of Academic Achievement and Functional Performance (PLAAFP), including transition planning, include the following:
 - i. The Projected Courses of Study for the 2023-2024 school year list the Student's courses as: Computer Science, Language Arts 7, Math 7, Media/Visual Arts, PE, Science 7, and Social Studies Coordinated Activities.
 - ii. The graduation date for the Student is identified as June 16, 2029.
 - iii. January 2024 NWEA MAP testing:
 1. "[The Student's] Math scores were 168 RIT, 1st percentile and EM135Q-EM35Q (roughly kindergarten grade level equivalency)."
 2. The Student's ELA scores were 181 RIT, 1st percentile and 225L-375L (roughly 1st grade level equivalency).
 - iv. At the Parent's request, a psychological evaluation had previously been conducted. The Referral Information from the Parent states that the Student "is a 7th grade student at the Charter School."
 - v. General Education: Special Education staff report that "although [the Student] has cognitive deficits, his behavior is exemplary. He is at the beginning steps in all educational aspects, but he is working hard to improve."
 - c. Annual Goals and Progress:
 - i. Language Arts:
 1. Reading: "Grade 07, Reading." "Due to an abbreviated schedule and frequent absences in the fall semester, [the Student] was not given adequate opportunities to make progress towards this goal."
 2. Writing: "Grade 07, Writing." "Due to an abbreviated schedule and frequent absences in the fall semester, [the Student] was not given adequate opportunities to make progress towards this goal." OT reports that the Student has not yet met this goal in his occupational therapy.
 3. Speaking and Listening: "Grade 07." The GE teacher reports that the Student has made progress and the Special Education teacher reports that the goal is partially met.

4. Communication: "Grade 07." The SLP reports that the goal is not yet met. Student is at Beginning Steps. The Special Education teacher reports that the goal is partially met due to an abbreviated schedule and frequent absences.
- ii. Career Readiness:
 1. OT: "Grade 07." The OT reports insufficient progress on this goal.
 2. Functional: "Grade 07." "Health Content Standard 7." "Due to an abbreviated schedule and frequent absences in the fall semester, [the Student] was not given adequate opportunities to make progress towards this goal." The GE teacher reports that the Student has not yet met this goal. OT reports that the goal is not yet met.
 3. Social/Emotional: GE teacher reports that "[the Student] has made progress, but has yet to meet this goal." The Special Education teacher reports that the goal is met.
- iii. Math: "Grade 08." "Due to an abbreviated schedule and frequent absences in the fall semester, [the Student] is not given adequate opportunities to make progress towards this goal." The GE teacher reports that the Student has made progress towards this goal, but has not mastered it yet.
- d. The Schedule of Services in the Student's IEP provides the following:
 - i. Special Education and Related Services:
 1. Special Education English Language Arts – 275 minutes per week in the Special Ed setting;
 2. Special Education Math – 275 minutes per week in the Special Ed setting;
 3. OT – 30 minutes per month in the Special Ed setting;
 4. SLP – 60 minutes per week in the Special Ed setting;
 5. Social Work – 30 minutes per month in the Special Ed setting.
 - e. Accommodations: an extensive list of accommodations were provided.
 - f. It was noted that the Student did not meet eligibility for the alternate assessment.
 - g. The Student's mother attended the meeting and the Student was consulted.
15. On May 30, 2024, the IEP team conducted a review of the Student's IEP. The May 30, 2024, IEP provides, in relevant part, as follows:
 - a. the IEP indicates that the Student was in the 8th grade.
 - b. The Student continued to be eligible under the disability classifications of SLD, OHI, and SLI, with the Primary Cause Code as Dyslexia.
 - c. The Student's PLAAFP, including transition planning, include the following:

- i. The Projected Courses of Study for the 2024-2025 school year list the Student's courses as: "Computer Science, English Language Arts 8, Math 8, PE, Science, Social Studies, Visual/Media Arts Coordinated Activities."
 - ii. The date of completion for the Student's studies is identified as June 16, 2029.
 - iii. May 2024 NWEA MAP testing:
 - 1. Math: "169 RIT, 1st percentile and EM115Q-EM15Q (kindergarten GE)."
 - 2. ELA: "171 RIT, 1st percentile, 30L-180L (1st grade GE)."
 - iv. General Education: the Student continues to have good behavior and is working hard to improve. His low attendance is a significant concern.
- d. Annual Goals and Progress:
 - i. Language Arts:
 - 1. Reading: "Grade 07, Reading." "In the special education small group setting, [the Student] volunteers to read aloud. Although he needs help decoding some multisyllabic words, he has improved his recognition of sight words."
 - 2. Writing: "Grade 07, Writing." "[The Student] has found continued success copying down sentences, in addition to writing his own original sentences. He continues to need support when revising his work, but his line placement, margins and letter formations are steadily improving."
 - 3. Speaking and Listening (fluency): "Grade 07." "[The Student] continues to require consistent cues to implement fluency-enhancing techniques including easy onsets and light articulatory contact. This affects his ability to communicate effectively, especially in longer utterances and in multi-syllable words."
 - 4. Communication: "Grade 07." "[The Student] responds to comprehension questions and makes appropriate inferences related to a story or passage read aloud to him with 80% accuracy given moderate verbal and visual cues to identify relevant evidence."
 - ii. Career Readiness:
 - 1. OT: "Grade 07." "[The Student] has some work left to do in this area."
 - 2. Functional: "Grade 07." "Health Content Standard 7." "[The Student] is able to effectively communicate his needs and self-advocate throughout the school day." The Student is making progress on this goal.
 - 3. Social/Emotional: the Social Worker reports that the Student "is making progress towards meeting this goal. He demonstrates an

increase with identifying his thoughts/feelings and stressors with the use of more descriptors.”

- iii. Math: “Grade 08.” “In the special education, small group setting, with the use of a calculator and multiplication/division tables, [the Student] is able to solve math problems using the 4 classical operations with greater than 80% accuracy. He continues to need help when identifying which operation is needed for word problems, but he is receptive to feedback and demonstrates resilience until he has accurately solved the problem.”
- e. The Schedule of Services in the Student’s IEP provides the following:
 - i. Special Education and Related Services:
 - 1. SE Adapted PE – 45 minutes per week in the Special Ed setting;
 - 2. SE English Language Arts – 275 minutes per week in the Special Ed setting;
 - 3. SE Math – 275 minutes per week in the Special Ed setting;
 - 4. OT – 30 minutes per week in the Special Ed setting;
 - 5. SLP – 90 minutes per week in the Special Ed setting;
 - 6. Social Work – 30 minutes per month in the Special Ed setting.
 - f. Accommodations: an extensive list of accommodations were provided.
 - g. The Student qualified for Extended School Year (ESY) services.
 - h. It was noted that the Student did not meet eligibility for the alternate assessment.
 - i. The Student’s father and the Student attended the meeting.
- 16. The LEA provided PWN to the Parent regarding the IEP team meeting held on May 30, 2024. The PWN provides, in relevant part, as follows
 - a. Parent expressed concerns that the Student will be unable to pass the graduation assessment and would like to change the pathway to modified. “Based off of multiple cognitive assessments, parent is concerned with the standard graduation assessment because the student is still operating on the kindergarten grade level.” School staff explained that the pathway was appropriate but will be reconsidered at each IEP and can be changed anytime up to the 20th day of the Student’s senior year.
 - b. The Parent made many proposals for additions or changes to the Student’s IEP, most of which were accepted by the IEP team.
 - c. The PWN does not indicate any discussion or disagreement by the Parent regarding the Student’s IEP indicating the Student was in the 8th grade, or the Student attending his classes in the Special and General Education classrooms.
 - d. The IEP team agreed to continue a modified schedule for the Student beginning at 10:00 a.m.
- 17. The Parent withdrew the Student from the Charter School on May 30, 2024, and enrolled him in the Student’s home school so he could attend ESY during the summer.

18. On June 26, 2024, the Student received an Auditory Processing Re-Evaluation, which concluded that the Student showed significant signs of an Auditory Processing Disorder.
19. LEA email records include an email dated July 19, 2024, from the LEA's Exceptional Student Specialist for High Schools to the Parent which provides as follows: "Thank you for taking my call today. Please email me the name of the school your son will be attending so I can schedule training for the staff on how to use your son's assistive technology." The email included links for the Parent to register the Student.
20. The Student was enrolled by the Parent in the 9th grade at a High School in the LEA (the High School) for the 2024-2025 school year.
21. On August 15, 2024, the Student's Special Education Teacher sent an email to the LEA's Special Education Head Teacher stating that school staff "believe [the Student] should be in 8th grade this year. When he was at [a former middle school] year 2022 he was in the 6th grade. [The Charter School] year 2023 – they put him in the 8th grade instead of 7th grade. Remember I told you he had 7th grade goals. . ."
22. On August 16, 2024, the LEA's Assistive Technology Specialist sent an email to the Exceptional Student Specialist regarding the Student which provides, in part, as follows: "Why is he enrolled at [the High School] when age wise and yearly [LEA] documentation make him actually an 8th grader. I assessed [the Student] May 2022. He was finishing his 5th grade year and he was homebound. . . . Year 2024-2025 would make him an 8th grader. . . .This is concerning."
23. On August 16, 2024, the Exceptional Student District Specialist for High School sent an email to the Special Education staff and the High School Principal stating that "if he was placed in the 8th grade last year and completed the year, then we will continue with him being in the 9th grade."
24. At the beginning of the 2024-2025 school year, the Student's IEP team met in a series of three meetings to review and amend the Student's IEP. The documentation indicates that the team, including the Parent, met on August 27, 2024. LEA staff and the Parent both report that the issue of the Student not attending 7th grade was discussed at this meeting. The LEA reports that the Parent "was adamant that the Student should stay at the High School."
25. The final of the three IEP team meeting was held on September 19, 2024. The Student's September 13, 2024, IEP provides, in relevant part, as follows:
 - a. The IEP indicates that the Student is in the 9th grade for the 2024-2025 school year.
 - b. The graduation option for the Student is now the Modified Option.
 - c. The projected graduation/exit date was identified as June 22, 2028.
 - d. The Student's Projected Courses of Study include English Language Arts 8 and Math 8.
 - e. The Student's Annual Goals are all linked to "Grade 09" standards. However, all of the Student's Annual Goals are clearly not based on 9th grade curriculum.

- f. The Student's progress reports indicate that in August 2024, the Student was making progress and most of the Student's goals were partially met.
 - g. Additional special education services were added for Science, School Health, and Rehab Counseling.
- 26. The LEA provided PWN to the Parent dated September 13, 2024. This PWN provides, in relevant part, as follows:
 - a. The IEP team agreed to create an Evacuation Plan for the Student.
 - b. The IEP team agreed that a Functional Behavior Assessment be conducted because the Student experiences PTSD and Adjusted Mood Disorder with Emotional Outbursts.
 - c. The IEP team meeting reconvened on August 29, 2024.
 - d. The IEP team agreed for the Student to have 1:1 support for the entire school day.
 - e. The IEP team agreed to change the Student's graduation option to the Modified Option.
 - f. The Parent stated that the Student has "chronic absenteeism . . ." resulting from "medically diagnosed insomnia."
 - g. The Parent disagreed with the LEA's psychological evaluation of the Student because the evaluation did not take into account PTSD and other medical diagnoses of the Student. The LEA responded that a previous mediation agreement between the parties states that the Parent was responsible for arranging the full comprehensive assessment and making Student available for the evaluation, which was at the LEA's expense.
 - h. The IEP team agreed to reconvene the IEP team meeting on September 13, 2024.
 - i. The Parent stated that the LEA was given one chance to evaluate the Student and the Parent is under no obligation to give the LEA another chance to evaluate. The LEA did not take into consideration that the Student experiences PTSD and Adjusted Mood Disorder with emotional outbursts.
- 27. On October 3, 2024, the Parent requested an IEP team meeting to discuss Parent concerns.
- 28. In October 2024, an evaluation was conducted by the school PT, which indicated that the Student has functional range of motion, strength and balance needed for physical access of the school environment.
- 29. On November 20, 2024, the Student's IEP team met to discuss the PT evaluation and Parent Concerns. The PWN provided to the Parent dated November 20, 2024, provides, in relevant part, as follows:
 - a. The Parent proposed that the LEA bring an Autism Team out to the school to support the Student in the school setting. The LEA rejected this proposal and stated that the LEA will request a resource support to provide teachers with strategies on the Student's needs.

- b. The Parent proposed an IEE for PT because the Parent disagreed with the LEA's previous PT evaluation. The LEA rejected the parent's proposal because "Independent Evaluations are based on identification and eligibility not for related services." The Parent stated he would "submit evidence of the Student's balance problems . . . that demonstrate a presence of disability." The Parent further stated that the LEA "is not accurately depicting the student's deficits."
 - c. The LEA proposed that the LEA review an outside psychological evaluation provided by the Parent and for the IEP team to meet to review the Report.
- 30. On November 21, 2024, two LEA Diagnosticians reviewed an independent Neuropsychological evaluation that was completed on September 25, 2024, due to Parent's concerns regarding a possible diagnosis of an Autism Spectrum Disorder. A Multidisciplinary Evaluation Team (MET) Report was provided on December 10, 2024. The MET Report provides, in relevant part, as follows:
 - a. Summary of Findings from IEE:
 - i. "Cognitive testing revealed mild to severe impairments across multiple domains, including language skills, visual-spatial skills, learning and memory, attention/executive functioning, and fine motor coordination."
 - ii. "Academic achievement was severely impaired in reading, writing, and math."
 - iii. Behavioral assessment indicated clinically significant concerns regarding inattention, hyperactivity/impulsivity, oppositionality, anxiety, and social skills deficits."
 - iv. "Adaptive behavior skills were rated as severely impaired."
 - b. Conclusion from IEE: "[The Student] presents with significant weaknesses in social interaction and communication, as well as restricted/repetitive behaviors and sensory differences, consistent with a diagnosis of Autism Spectrum Disorder. His cognitive, academic, and adaptive functioning are also significantly impaired."
 - c. Recommendations from MET:
 - i. "[The] IEE did not include all of the highly recommended components required by the NMTEAM (2017). Therefore an additional evaluation assessment needs to be completed at this time."
 - ii. "At this time [the Parent] has not provided the LEA with consent to conduct formal evaluation necessary to consider additional eligibilities/areas of need based on TEAM (2017)."
 - iii. "The current MET considered eligibility based on existing data and determine that [the Student] continues to meet the criteria for Specific Learning Disability, Other Health Impairment, and Speech or Language Impairment."
 - d. Cultural Factors were assessed based on data provided by the Student's father. The Student is a multicultural young man. It was noted that in 2017 "work was done with

[the Student] to address an adjustment disorder and other personal and family stressors.” The Student moved residences 10 times by the time he was six and a half years old.

- e. Linguistic Factors were considered including the Student’s first language and exposure to a second language, dominant language, language spoken in the home, and languages of instruction. The Student reportedly speaks English only with peers and adults at school. 100% of the Student’s instruction has been in English. Previous LEA and outside evaluations do not identify the Student’s proficiency with English language as a primary concern. “Therefore, his continued limited English proficiency and any below average diagnostic assessment results appear to be due to something other than learning English as a second language or becoming bilingual.”
 - f. Summary: the evaluator stated that “there do not appear to be cultural, linguistic, environmental, or socioeconomic factors that would interfere with planning, conduct, and interpretation of this evaluation or that would adversely affect eligibility or placement decisions. These factors can therefore be ruled out as PRIMARY FACTORS impacting [the Student’s] academic progress.”
 - g. Eligibility: “[The Student’s] assessment and evaluation data indicate that [the Student] meets disability eligibility criteria, based on NM TEAM, in the following categories: Specific Learning Disability, Other Health Impairment, Speech or Language Impairment.”
31. On December 16, 2024, the Student’s IEP team met to discuss the December 10, 2024, MET Report, and review and revise the Student’s IEP. The PWN from this IEP team meeting which was provided to the Parent on December 16, 2024, provides, in relevant part, as follows:
- a. The LEA stated that the September 2024 IEE does indicate the need to consider new or additional data and potential eligibilities, but the IEE did not include all of the highly recommended components required by the NMTEAM (2017). “Therefore, an additional evaluation assessment needs to be considered at this time.”
 - b. The Parent did provide consent at the meeting for an additional evaluation but stated he “has concerns that the new evaluation will conflict with the IEE.”
32. Beginning in December 2024, the LEA’s Diagnosticians conducted a very comprehensive review of existing data, including the September 2024 IEE, and also conducted additional evaluation assessments. The additional evaluation assessments included a Speech/Language Evaluation, Observation of Learning Environment, Fine Motor Assessment, Social/Emotional Assessment, Gross Motor Assessment, Adaptive Behavior Assessment, and a School Psychological Evaluation. The evaluation results were compiled and discussed in a MET Report dated April 7, 2025.
33. In late February or early March 2025, the LEA began efforts to schedule a MET meeting and an IEP team meeting. During mid-March, the Parent emailed the LEA many times and

expressed his concerns and objections to various issues. The parties were eventually able to agree to meet on April 7, 2025.

34. The April 7, 2025, MET Report concludes as follows: “Based on a review of historical and current information and data, the evaluation team has multiple data points, including standardized assessments, observational information, and other evidence, that confirm the presentation of autism based on NMTEAM eligibility criteria.” The evaluator concluded that the Student’s “assessment and evaluation data indicate that the [the Student] meets disability eligibility criteria, based on NMTEAM, in the following categories: Autism and Other Health Impairment.” The evaluator further concluded that the Student does not meet disability eligibility criteria, based on NMTEAM, for Emotional Disturbance, Speech or Language Impairment, and Specific Learning Disability.”
35. The April 7, 2025, MET Report includes a statement from the Parent as follows: “I disagree with the eligibility of Autism based on [the Student’s] Navajo culture. There is no way to tell what is cultural and what is autism. Some autism traits also co-exist with the Navajo culture. For example, a part of autism requires a lack of eye contact. In part of Navajo culture, the child is not supposed to make eye contact. As far as speech, the child’s receptive language is hindered by Navajo culture. Navajos are not supposed to ask questions. The district does not have enough data to overcome the cultural barrier. The child was diagnosed through UNMCDD. [The Student] has been diagnosed with a cultural barrier to education and a language barrier with cultural differences.”
36. The MET Report provides the following statement: “The district offered an Independent Educational Evaluation (IEE) on 4/7/2025 following the completion of the MET meeting. [The Special Education Director] emailed [the Parent] the necessary IEE documents required to request an IEE at public expense.”
37. On April 7, 2025, the Student’s IEP team met to develop an IEP for the Student based on the student’s new eligibility classifications of Autism and OHI. The LEA provided PWN from this IEP team meeting to the Parent dated April 7, 2025, which provides, in relevant part, as follows:
 - a. The Student’s Annual Goals and services were reviewed and revised.
 - b. The Parent proposed that the Student not have an escort to and during lunch, which the team agreed to.
 - c. The Parent raised a concern that the LEA “possibly denied the child FAPE due to not completing the 8th grade for a full 180 school days. The student was skipped from the 7th grade, mid-year, to the 8th grade.” The LEA did not acknowledge a denial of FAPE.
 - d. “Parent proposed that [the Student] does not qualify for the eligibility of Autism, based on IDEA. The district’s evaluation, documented February 24, 2024 stated that the child was diagnosed with a Traumatic Brain Injury. The district cannot deny its own diagnosis.” The LEA responded that the LEA “has not considered Traumatic Brain

Injury nor does it have any medical records or parent reported injuries to support the consideration of the eligibility of Traumatic Brain Injury (TBI). A Psychological Evaluation documented February 11, 2024, referenced a brain injury being a potential rationale that is why a child could demonstrate inattention difficulties. However, [the Student] does not meet criteria as a student with a TBI.”

- e. The LEA proposed that Autism be considered as the primary eligibility. “The team agrees that Autism is primary and Other Health Impairment as secondary eligibility.”

38. The LEA staff report that after the April 7, 2025, IEP team meeting ended, LEA staff had a discussion with the Parent. The High School Principal asked the Parent whether he wanted the Student to graduate in four years with his entry cohort or to graduate in five years with his age cohort. The Parent replied that High School is four years. The Principal reminded the Parent that the Student is on an abbreviated schedule and could need additional time to acquire the necessary credits to graduate. The Principal further stated that additional time would allow the school to focus on work readiness and independent living skills. The Principal reports that this is where the discussion ended.

39. The LEA staff report that the Student “adjusted well to high school. He participated in assemblies, interacted with peers, and developed positive relationships with staff and students.”

40. The Semester 1 Progress Reports for the 2024-2025 school year and the Student’s grade reports for 2023-2024 and 2024-2025 provide, in relevant part, as follows:

STUDENT’S PROGRESS REPORTS

Year/Quarter	Reading	Writing	Career Readiness	Math	PE	Health Ed.
2024/2025 Q1	Mastery Level 1	Mastery Level 1	Progress not stated	Mastery Level 1		Mastery Level 1
Description	An IEP meeting was just held; therefore, data has not been collected on this goal at this time. Previous Goal Partially met.	An IEP meeting was just held; therefore, data has not been collected on this goal at this time. Speaking and listening goals are the same. Previous Goal Partially met.	Recent IEP. OT will update goals at the next progress cycle. This applies to the other sub-goals. Previous Goal Partially met.	An IEP meeting was just held; therefore, data has not been collected on this goal at this time. Previous Goal Partially met.		An IEP meeting was just held; therefore, data has not been collected on this goal at this time
Q2	Mastery Level 3	Mastery Level 3	Mastery Level 3	Mastery Level 3	Mastery Level 4	Mastery Level 3
Description	The Student can independently read eight out of 10 words with 70% accuracy..	The Student can copy down a paragraph from teacher provided notes/exemplar	The Student is able to identify coins 3/4 times and able to identify the coin	The Student can independently solve problems involving the	Currently the Student is showing his ability to throw/role	The Student uses social work sessions well toward self-expression

		and write 3-5 sentences independently with 60% accuracy. Speaking and listening goals are the same.	amounts 3/4 times. When instructed by an authority figure, the Student completes assignment without negative comments with 70% accuracy.	addition, subtraction, multiplication, and division of whole numbers between zero and 100 with 65% accuracy.	with opposition and accuracy on 7 out of 10 opportunities given from 10-15 feet. He is able to complete 1 mile on the track/treadmill within one class period.	about issues that get can affect or distress him. He continues to work on problem-solving scenarios.
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STUDENT'S GRADE REPORTS

Year/Qtr/ Sem								
2024/2025	Applied Life Skills	Esports	Functional Academics/ Reading	English 9	Adaptive PE	Navajo I	Prostart I	Biology I
Q1	B	B	C	B	A	B	B	F
Q2	C	B	B	B	A	A	B	P
S1	C	B		B	A	A	B	P
Q3	B	B		C	A	B	A	D
2023/2024	Badge Work/SE	Math8 /7	Social Studies 8/7	English 8/7	Study Skills	Info Tech	Art	Science 8/7
Q1	P	P		P	P	P	P	P
Q2	P		P	P	P	P		
S1	P		P	P	P	P	-	
Q3	P	C	F	D	P	C	B	C
Q4	P	C	C	D+	P	F	A+	B-
S2	P	C	D	D+	P	D	A-	B-

41. A review of the Student's progress reports for the 2024-2025 school year indicates that the Student generally was making progress on his IEP Annual Goals.
42. The Student's grade reports for the previous two school years show that the Student received all passing grades. The Student's grades for the 2024-2025 school year are mostly A's and B's with one C and one D. The 9th grade marks appear to be much

improved over the previous school year, during which the Student was double promoted from 6th grade to 8th grade. The Student then began the 2024-2025 school year in the 9th grade in High School, which was a year earlier than his same age peers.

Discussion and Conclusions of Law

Issue No. 1

Whether the LEA failed to develop and 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 determine and implement a placement for the Student in an age-appropriate grade-level classroom, as required by 34 C.F.R. § 300.116; and 6.31.2.11(C) NMAC; and**
- b. failing to afford the Parents an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the Student, and the provision of FAPE to the Student, as required by 34 C.F.R. § 300.501; and 6.31.2.11(B) NMAC.**

The IDEA Federal regulations provide that each public agency must ensure that a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. 34 C.F.R. § 300.116(e). This provision is specifically included in the State Rules. 6.31.2.11(C)(d) NMAC. The New Mexico Statutes provide that at the end of grades one through seven, if a student is academically proficient the student shall enter the next higher grade. NM Stat §22-2C-6(F)(1) (2024). The Statute further provides that “[p]romotion and retention decisions affecting a student enrolled in special education shall be made in accordance with the provisions of the individual educational plan established for that student.” NM Stat §22-2C-6(I) (2024). With respect to the “double promotion” of a student, which means the student is promoted one grade higher than normal, the LEA’s Policies and Procedures PI12 require that a detailed process be followed by school personnel and parents. This process involves preparing a written rationale for considering double promotion, all available alternatives at the school be considered prior to double promotion, and a case conference involving the parents and school personnel must be held.

The first issue in this complaint investigation involves the development and implementation of the Student’s IEP, specifically with respect to implementing the Student’s placement in an age-appropriate grade-level classroom. The Parent alleges in his Complaint that the Student “has been placed from the sixth grade to the eighth grade. The facts show that the Student completed his 6th grade year (2022-2023) at a previous middle school in the LEA. In August 2023, the Parent

filled out a registration form to enroll the student in the Charter School for the 2023-2024 school year. The Student should have been enrolled in the 7th grade at the Charter School. The Parent reports, and the documentation shows, that the Parent correctly identified the Student as entering the 7th grade on the form. However, at some point thereafter the “7th” written on the form by the Parent was lined through and replaced with “8th.” The Student was enrolled in the 8th grade at the Charter School. The documentation and reports of the Parent and school staff do not include any indication that the process for double promoting the Student was undertaken by the Charter School prior to promoting the Student from the 6th grade to the 8th grade. This inappropriate double promotion of the Student by the Charter School was either an egregious mistake or an intentional action. The Complaint Investigator has not undertaken to determine whether the action was a mistake or intentional due to the fact that the double promotion of the Student took place outside of the jurisdictional one-year period of this complaint investigation. Moreover, the Student’s IEP team at the Charter School, including the Parent, held IEP team meetings in November 2023, and February 2024. The IEP’s developed at these meetings both identify the Student as being in the 8th grade. Once again, these actions are all outside of the jurisdictional period of this complaint investigation.

The actions of the Charter School and LEA that are within the jurisdictional period of this investigation begin with the implementation of the Student’s IEP after April 22, 2024, and the IEP developed for the Student by the Charter School IEP team on May 30, 2024. The May 30, 2024, IEP identifies the Student as being in the 8th grade. This IEP and the associated PWN, do not identify any discussion by the IEP team regarding the Student being in the 8th grade. Obviously, by the time the May 30, 2024, IEP was written the Student had successfully completed the 8th grade at the CharterSchool.

In July 2024, the Parent was contacted by LEA High School administration requesting that the Parent register the Student and identify the school the Student would attend so that special education staff working with the Student could be trained on the Student’s assistive technology. The documentation shows that the Parent registered the Student in the 9th grade at the High School. On August 16, 2024, the special education staff involved in the AT training became aware that the Student was in a grade level above his age level. The Student’s Special Education Teacher informed LEA administration regarding the Student’s grade-level discrepancy. The reports of the Parent and LEA staff indicate that the first time the grade-level discrepancy was discussed was at the August 27, 2024, meeting of the Student’s High School IEP team. However, the Student’s IEP, that was completed on September 13, 2024, and the corresponding PWN, do not include any proposals to deal with that issue. LEA staff report that since the Student had successfully completed 8th grade and was making progress on his IEP Annual Goals, LEA staff did not believe it was in the best interests of the Student to retain the Student in the 8th grade. The Parent also

stated that he did not want the Student retained. LEA records indicate that due to the Student's current abbreviated class schedule and being on the Modified Pathway, the Student will not earn enough credits to graduate from High School in four years, which would necessitate a fifth-year to graduate. It should be noted that under the IDEA and State rules, the Student is entitled to a FAPE through age 21. 6.31.2.11(G)(6) NMAC.

Therefore, it is concluded that during the jurisdictional period of this complaint investigation, the Charter School was, or should have been, aware of the inappropriate double promotion of the Student by the . It is concluded that the Charter School should have taken action at that time to discuss the Student's placement with the Parent and determine whether it was appropriate to retain the Student in the 8th grade, as required by New Mexico Statutes. It is further concluded that at the May 30, 2024, IEP team meeting the Charter School should have discussed the issue of the Student's placement and provided PWN to the Parent regarding the Student's placement in a class grade that was not the age-appropriate grade for the Student. Therefore, it is concluded that the Charter School failed to implement a placement for the Student in an age-appropriate grade-level classroom.

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

Under the facts and circumstances, it is concluded that the LEA's decision to allow the Parent to enroll the Student in the 9th grade at the High School was not a failure to determine an appropriate placement or implement the Student's IEP, or a violation of LRE. The Student had already successfully completed the 8th grade, and retaining him in the 8th grade for an additional year would not have benefited the Student at that point. Moreover, the facts clearly show that the Student received good grades in 9th grade and made progress on his Annual Goals. LEA staff also report that the Student socializes appropriately with other students in, and has adapted well to, the High School environment. At this point in time, it appears that assisting the Student to continue moving forward successfully on the educational track he is on is the Student's best option. This will certainly require the Student's IEP team to develop appropriate Transition and Annual Goals and closely monitor the Student's progress and make adjustments where necessary. It should also be noted that continuing the Student's current abbreviated schedule should be a regular topic of discussion and agreement by the Student's IEP team because of its negative effect on the Student's graduation path.

A careful review was undertaken of all of the Student's records requested from the LEA, specifically including the Student's enrollment records, current and previous IEPs and PWNs, evaluations, and email. The facts set forth above clearly show that during the jurisdictional period of this complaint investigation the Charter School and the LEA engaged in at least six IEP team

meetings, two MET meetings and a large number of telephone conversations and email exchanges regarding the Student. The documentation shows that at all of the IEP team meetings the Parent made proposals and objected to proposals, and that the Charter School and the LEA accepted and implemented many of the Parent's proposals. The LEA also conducted several comprehensive evaluations of the Student and provided IEEs that were requested by the Parent. These evaluations and their recommendations were appropriately considered by the Student's IEP team with respect to the Student's eligibility and services. The documentation also shows that the Parent participated in the August 27, 2024, IEP team meeting where the issue of the Student's placement in 9th grade was discussed, and that the Parent did not object to the Student's promotion to the 9th grade. It is concluded that during the jurisdictional period of this complaint investigation the Parent participated in all of the meetings conducted by the Charter School and the LEA regarding the identification, evaluation, and educational placement of the which in effect is a change of placement School and the LEA did not fail to afford the Parents an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the Student, and the provision of FAPE to the Student.

As to Issue No. 1(b), the LEA 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. The Charter School's decision to double promote the Student to 8th grade, without the involvement of, and agreement by, the Student's Parent and IEP team, is a clear violation of the IDEA and state rules, but is outside of the jurisdictional period of this complaint investigation. However, as concluded above, the Charter School's continued inappropriate placement decision in the Student's May 30, 2024, IEP is a violation for which the LEA has been cited and for which corrective action is required. It is concluded that the violation does not warrant an award of compensatory education because the Student successfully completed the 8th and 9th grades and make progress on his Annual Goals. Compensatory education would not put the Student in the position he would have occupied but for the violation. Since the Student is on the Modified pathway to graduation and is on an abbreviated school schedule, if he does not graduate with his current class the IDEA provides that the Student is entitled to continue his education and transition services at the High School for up to five additional years.

Therefore, 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 LEA is cited, and Corrective Action is required.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.116; and 6.31.2.11(C) NMAC	The LEA failed to determine and implement a placement for the Student in an age-appropriate grade-level classroom.
34 C.F.R. § 300.101; and 6.31.2.8 NMAC.	The LEA'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 June 27, 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. Elizabeth Cassel
Interim Corrective Action Plan Monitor
Office of Special Education
New Mexico Public Education Department
300 Don Gaspar Avenue
Santa Fe, NM 87501
Telephone: (505) 490-3918
Elizabeth.Cassel@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 June 20, 2026, and reported to the OSE no later than June 27, 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 the Charter School and/or 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 SED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	06/27/2025	Written Assurance Letter/Email.	06/27/2025
2.	The LEA Special Education Director and the Charter School Principal shall meet with the PED SED CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the Charter School and LEA plan to take to ensure that the violation is corrected and does not recur. The LEA Special Education Director shall be responsible for arranging this meeting with SED.	07/07/2025	Notes from the meeting.	07/12/2025
3.	The LEA District Special Education Director will meet with all staff to review the Complaint Resolution Report to ensure that those persons understand the complaint, the	Within first week of 2025-2026 school year	Notes from meeting	Within 7 school days of the meeting

Step No.	<u>Actions Required by the Charter School and/or LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	violations that were found, and the corrective actions that will be taken to address the violations.			
4.	<p>The LEA shall ensure Charter School schedules and conducts an FIEP to discuss the Student's special and regular education and transition services, and abbreviated school day, and make any necessary changes to the Student's IEP to implement an appropriate High School graduation plan for the Student. The IEP team shall specifically discuss whether any services are needed by the Student due to the inappropriate double promotion of the Student.</p> <p>The facilitator shall be independent of the LEA and shall be selected from the PED list of approved facilitators. The Facilitator shall be paid for by the LEA.</p> <p>The LEA shall ensure a meeting notice is provided in advance of the meeting, pursuant to 34 C.F.R. § 300.322. Note: If mutually agreeable to Parent and required staff, the meeting may be rescheduled within 10 school days of the proposed date.</p> <p>The LEA shall ensure that a copy of the IEP is provided to Parent at the end of the meeting and that all related notices are in Parent's native language.</p> <p>The LEA will also ensure that Parent's preferred mode (hard copy and/or electronic) of communication is</p>	08/15/2025	<ol style="list-style-type: none"> 1. Invitation to FIEP meeting 2. Agenda for FIEP meeting 3. IEP 4. Prior Written Notice(s) 5. Documentation of finalized communication plan distributed to all of Student's teachers and service providers within 5 school days of the meeting with confirmation of receipt logged. 	7 school days after FIEP

Step No.	<u>Actions Required by the Charter School and/or LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	established, including language, and a plan put in place to both follow Parent's preferences and that plan communicated out to all teachers and service providers of Student.			
4.	<p>The LEA is required to provide training to Charter School administrative, regular and special education staff (including special education teachers, special education administrators, and related service personnel) to be provided by a person independent of the District with expertise in special education who was not involved in responding to this complaint and is approved by the PED.</p> <p>The training will include the promotion and retention policies set forth in State statutes and special education rules, and in LEA policies and procedures and will include at a minimum:</p> <p>(1) Promotion and retention policies of the State and LEA regarding special education students in public schools;</p> <p>(2) Enrollment procedures for special education students into the Charter School to make sure that students are appropriately enrolled and promoted, including accurate review of student files, accurate documentation, and participation of and notification to Parents;</p>	Training itself to occur within the first week of the 2025-2026 school year	<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 Charter School attendees at the training and plan for addressing the provision of training for those staff not in attendance.</p>	<p>07/20/2025</p> <p>07/27/2025</p> <p>09/15/2025</p>

Step No.	<u>Actions Required by the Charter School and/or LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	(3) The involvement and agreement of a special education student's IEP team in any proposal to double promote the student.			

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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 Amanda DeBell

Deputy Cabinet Secretary