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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Albuquerque Public Schools  
Case No. C2425-55  
June 20, 2025**

**This Report requires corrective action. See pages 18-20.**

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.<sup>1</sup> 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;

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<sup>1</sup> The state-level complaint procedures are set forth in the federal regulations at 34 C.F.R. §§ 300.151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

- review of the District's compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Complainant and District staff;
- documents submitted by the parties; 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 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 the following issue raised by the complainant: issues related to actions on licensure.

### **Issues for Investigation**

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

1. Whether the District failed to develop and implement an Individualized Education Plan (IEP) that allowed Student to make progress toward identified goals, in violation of 34 C.F.R. §§ 300.156, 300.320-300.328 and 6.31.2.9(B), 6.31.2.10(B), 6.31.2.11(B)(1)-(4) NMAC; specifically, whether the District failed to:
  - a. Provide special education instruction and services through qualified special education personnel;
  - b. Provide instruction associated with IEP goals;
  - c. Collect and provide data in connection with Student's progress toward IEP goals;
  - d. Provide related services for Extended School Year (ESY) identified in the IEP;
  - e. Implement provisions in the IEP related to a Functional Behavioral Analysis (FBA);
  - f. Provide proper notice in connection with a re-evaluation for the Multi-Disciplinary Evaluation Team; and
  - g. Properly review, document, and implement a Student re-evaluation in an IEP team meeting.
2. Whether the District's actions and/or omissions in developing and implementing the IEP 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 20 years old and attends high school within the District on an IEP.
2. Student first attended the high school in Fall 2023 after an intra-district transfer.
3. Upon transfer, Student was placed in a Social Communication Support (SCS3) classroom as part of Student's placement.
4. Student's eligibility for special education services is autism, speech or language impairment.
5. Teacher was serving as Student's Social Communication Support (SCS3) teacher from January 2024 to February 2025.
6. According to the District's web site, social communication support resources are housed within special education.
7. During this period, Teacher held several education-related licenses:
  - a. A NMPED temporary license in Pre-K-12 Administrative issued as a Level Three-B issued for 5 years, effective July 1, 2023–June 30, 2028;
  - b. A NMPED temporary license 6-12 Secondary (general education) as a Level Three-A Instructional Leader issued for 9 years, effective July 1, 2023–June 30, 2032;
  - c. A NMPED Pre-K-12 Special Education alternative license issued for 2 years, effective July 1, 2024–June 30, 2026.
8. For the alternative Pre-K-12 Special Education license, Teacher was required to have a Special Education mentor teacher even with his 6-12 Secondary license.
9. District indicated Teacher's mentor under his alternative special education license was District Math Resource Teacher.
10. According to the Assistant Principal at the high school, with duties including oversight of the special education, Assistant Principal was Teacher's supervisor.
11. Teacher received four sessions of in-person training between February 6 and March 5, 2024, to "quick train" Teacher on the District's Unique Learning curriculum system.
12. However, Teacher did not continue the training, and Teacher's District's access to the Unique Learning system was removed.
13. Teacher re-registered for Unique Learning training on October 24, 2024, under a new access license issued to him. Teacher logged in a total of six times.
14. An IEP meeting was held on February 12, 2024. Parents participated in the IEP meeting.
15. Teacher also participated in the IEP meeting and was listed on the IEP as the "District SCS3" teacher.
16. The February 12, 2024, IEP provided an educational diagnostic evaluation summary that included the following:

Based on a review of all available data, [Student] appears to demonstrate strengths in nonverbal intelligence with overall perceptual reasoning

abilities in the average range. On the other hand, [Student] displays moderate to severe deficits in receptive and expressive language abilities, working memory, auditory processing, and auditory memory. [Student's] basic reading, math, and spelling skills appear to be mildly to moderately impaired. [Student] continues to demonstrate difficulties with social communication and adaptive behavior skills.

17. The February 12, 2024, IEP also established several annual goals, including goals associated with math, writing, reading, and communications.
18. The February 12, 2025, IEP provided for the following special education instruction in the self-contained classroom: SE English Language Arts, 252 minutes/weekly; SE Math, 252 minutes/weekly; SE Life/Work Skills, 504 minutes weekly; SE Social Skills, 252 minute/weekly.
19. Total special education instructional services totaled 21 hours per week.
20. Student did receive some instruction associated with IEP goals in Teacher's class.
21. However, during an interview, Assistant Principal indicated that Teacher did not always provide services in connection with IEP goals.
22. From January 2024 to December 2024, Teacher did not provide sufficient data to support monitoring of Student's IEP goals progress.
23. Teacher's limited input on Student's progress included narrative rather than data-based information.
24. During this period, Parents regularly communicated with District; confirmation of curriculum taught, and data gathered to support academic instruction in Teacher's class, continued during the Spring 2024 and Fall 2024 terms.
25. Parents also pointed out in emails that the Teacher was not trained in the Unique Learning curriculum.
26. For example, on October 9, 2024, Parents, in preparation for a meeting with District, asked for information on curriculum utilization for math and reading. There is no evidence of a response from District.
27. The Assistant Principal acknowledged there were issues related to Teacher's professional development and data collection in a December 20, 2024, email. That email shared the District's commitment to ensuring Teacher would be receiving professional development.
28. While District documents confirm several training sessions for Teacher between August 29, 2024, and December 20, 2024, there was no documentation of training indicating Teacher received training between January 2024 and July 2024 (other than the in-person sessions for training associated with Unique Learning mentioned in No. 12 above).
29. The Assistant Principal thereafter contacted the District special education office and arranged for a special education resource teacher to work with Teacher.



30. District documents confirm Teacher's special education professional development training and mentoring between January 2025 and May 2025.
31. Ultimately, throughout the January 2024 to February 2025 time, data to support monitoring Student's progress in Teacher's classroom was lacking.
32. An IEP meeting was held on May 17, 2024. Parents participated in the meeting.
33. As documented in the May 17, 2024, PWN, the IEP addressed data collection issues, including efforts to update data and to revise the classroom goal data tracking form. Parents were to receive updated data prior to the end of the 2023-2024 school year.
34. While notice of a Multidisciplinary Evaluation Team (MET) meeting (to be held on February 11, 2025), was sent several days prior to the scheduled meeting, no such meeting took place.
35. District confirmed that an Educational Diagnostician had earlier reviewed Student's file and concluded there was insufficient data to conduct the three-year reevaluation.
36. An IEP Amendment Team meeting was held on May 16, 2025. Parents participated in the meeting.
37. The May 16, 2025, PWN confirms there was no MET meeting in February 2025.
38. The May 16, 2025, PWN also confirms there was insufficient supporting data to conduct the reevaluation.
39. District indicated in its complaint response there was a lack of data to discuss at the time the MET was documented on February 11, 2025, and the IEP Team determined data would be collected moving forward to recommend any additional evaluations, support, or services.
40. Rather than an MET meeting being convened on February 12, 2025, a staffing meeting was held on that date.
41. During that meeting with Parents, it was agreed that Student's supports and services outlined in the IEP would continue in an alternate classroom with Teacher 2, a certified special education teacher.
42. On February 23, 2025, Teacher 2 became Student's SCS3 teacher.
43. With respect to ESY related services, the February 12, 2024, Prior Written Notice (PWN) also addressed ESY transportation related services. The PWN indicated at that time that Parents chose to provide transportation.
44. The District did not provide any documentation in its complaint response regarding an agreement between Parents and District for that transportation.
45. Efforts by Parents later in the Spring 2024 term to have District provide transportation services were not successful.
46. Under District protocols, Teacher was responsible for completing the necessary documentation to arrange for District to provide transportation during Summer 2024.

47. When Student transferred to the high school in August 2023, a Functional Behavioral Analysis (FBA) had previously been conducted at the autism center in 2022.
48. A September 22, 2022, BIP was being utilized at time of the transfer. The high school utilized that BIP when Student began attending school.
49. The February 12, 2024, IEP indicated that an FBA did not need to be conducted.
50. The May 17, 2024, IEP Amendment indicated that an FBA needed to be conducted. Further, this Amendment indicated Teacher was responsible for conducting the FBA.
51. However, the May 17, 2024, PWN indicated that a new FBA be initiated in Fall 2024.
52. The May 17, 2024, PWN indicated that the District would continue using the September 22, 2022, BIP during the Summer 2024 to “provide the best support for Student during ESY.” The IEP team acknowledged that the current “BIP may not express the current setting.”
53. After the May 17, 2024, IEP Amendment meeting, Parents provided verbal and written consents for the FBA. The written consent was provided in August 2024.
54. Thereafter, Parents made numerous inquiries regarding the status of the FBA.
55. During this period, Parents also expressed concerns that Teacher was not utilizing the BIP.
56. Teacher forwarded a draft FBA to a District special education resource teacher in January 2025.
57. On January 23, 2025, the District special education resource teacher communicated with other District staff indicating the FBA did not have ABC data and that Teacher needed to complete the ABC data and to gather other documents to revise the FBA.
58. No evidence submitted indicates that an FBA process was completed in Fall 2024 or early 2025.
59. An IEP Team meeting was held on March 31, 2025. Parents participated in the meeting.
60. The March 31, 2025, IEP indicated an FBA had been completed in 2022.
61. The March 31, 2025, PWN indicated that the IEP team “decided not to conduct an FBA at this time.”
62. The March 31, 2025, PWN also indicated that the BIP would be reviewed and updated.
63. The May 16, 2025, PWN provided that the BIP be reviewed, discussed, revised, and accepted within 45 days.

### **Discussion and Conclusions of Law**

#### **Issue No. 1**

**Whether the District failed to develop and implement an Individualized Education Plan (IEP) that allowed Student to make progress toward identified goals, in violation of 34 C.F.R. §§**

**300.156, 300.320-300.328 and 6.31.2.9(B), 6.31.2.10(B), 6.31.2.11(B)(1)-(4) NMAC; specifically, whether the District failed to:**

- a. Provide special education instruction and services through qualified special education personnel;**
- b. Provide instruction associated with IEP goals;**
- c. Collect and provide data in connection with Student's progress toward IEP goals;**
- d. Provide related services for Extended School Year (ESY) identified in the IEP;**
- e. Implement provisions in the IEP related to a Functional Behavioral Analysis (FBA);**
- f. Provide proper notice in connection with a re-evaluation for the Multi-Disciplinary Evaluation Team; and**
- g. Properly review, document, and implement a Student re-evaluation in an IEP team meeting.**

**1.a. Provide special education instruction and services through qualified special education personnel.**

The Every Student Succeeds Act of 2015 (ESSA) eliminated the mandate that every special education teacher of core academic subjects meet the definition of a "highly qualified teacher" as well as the highly qualified teacher mandate of the IDEA. Instead, it requires that all teachers meet state certification requirements. ESSA requires that each LEA shall provide assurances that all teachers and paraprofessionals working in a program supported with funds under the act meet applicable state certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification. 20 USC 6311 (g)(2)(J).

ESSA amended the IDEA provision at 20 USC 1412 (a)(14)(C) governing qualifications of special education teachers. The provision now requires a special education teacher in the state who teaches elementary school, middle school, or secondary school:

- Has either obtained full state certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator) or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher, except with respect to any teacher teaching in a public charter school, who shall meet the requirements set forth in the state's public charter school law;
- Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- Holds at least a bachelor's degree.

34 CFR § 300.156 (c)(1).

Districts must inform parents when their child is receiving specially designed instruction by a staff member who is not licensed in special education. ESSA Section 1112(e)(1)(A). In *A.W. and M.W. v. Loudon County School District*, No. 3:21-cv-57, 81 IDELR 281 (E.D. Tenn. 2022), a Tennessee district violated the IDEA when it failed to inform the mother of a sixth-grader with ADHD and an intellectual disability that her daughter's teacher did not have a provisional endorsement in special education. Holding that the district significantly impeded the parent's participation in the IEP process by failing to disclose the teacher's lack of credentials, the court required the district to train relevant staff on hiring requirements. See also, 34 CFR § 300.156 (c)(2) and 6.31.2.9(B)(9) NMAC.

Teacher was issued a temporary teaching license for 6-12 Secondary (general education) as a Level Three-A Instructional Leader effective July 1, 2023–June 30, 2032. His two-year alternative license in Pre-K-12 in special education was issued on August 1, 2024. Teacher took over as Student's Social Communications Support (SCS3) teacher in January 2024. The District lists the qualifications for an SCS3 teacher in its job description, which provides that the position be filled by a candidate with a New Mexico teaching certificate in the area(s) being taught. From January 2024 to June 2024 Teacher was not qualified under 34 C.F.R. § 300.156, 6.31.2.9(B)(6) NMAC. No evidence was presented to substantiate that Teacher was qualified to serve as Student's SCS3 teacher. Beginning with 2024-2025 school year, Teacher's alternative license in special education allowed him to meet the SCS3 teacher position requirements, subject to being assigned to a teacher sponsor and otherwise meeting the requirements of 6.60.3.9 NMAC.

District's lack of provision of a qualified special education teacher for Student violated IDEA Part B.

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

**1.b. Provide instruction associated with IEP goals.**

The IDEA's implementation mandate does not mean that, to provide FAPE, a district must perfectly implement a student's IEP. The IEP must be implemented as written, including all required components. See 34 C.F.R. § 300.323(c) and 6.31.2.11(B) NMAC. However, a district need not implement a student's IEP perfectly. See *I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs.*, 863 F.3d 966 (8th Cir. 2017). Only a material failure to implement an IEP violates the IDEA. *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2005).

After the IEP is written and an appropriate placement determined, the district must provide the student with the special education and related services listed in the IEP. That includes all

supplementary aids and services and program modifications that the IEP team has identified as necessary for the student. 34 C.F.R. § 300.323 and 6.31.2.11(B) NMAC. The IDEA's implementation mandate does not mean that, to provide FAPE, a district must perfectly implement a student's IEP. According to most courts, a minor discrepancy between the services provided and the services required under the IEP is not enough to amount to a denial of FAPE. See *I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs.*, 863 F.3d 966, 70 IDELR 86 (8th Cir. 2017) (A Minnesota district's occasional failure to provide Braille instructional materials to a ninth-grader with a visual impairment "for all classroom assignments and instruction" as required by his IEP did not result in a denial of FAPE.); and *T.M. v. District of Columbia*, Civil No. 2012-1490, 64 IDELR 197 (D.D.C. 2014) (The "short gaps" in the student's services did not amount to a material failure to provide related services.).

In determining whether an implementation failure was material, courts may consider the duration of the failure. See *Turner v. District of Columbia*, 61 IDELR 126 (D.D.C. 2013) (Reasoning that the District of Columbia's failure to provide specialized instruction to a transfer student with other health impairment between the time that he enrolled and the time that an IEP was developed five months later was significant, the District Court held that it constituted a denial of FAPE.). Further, evidence that a student made isolated progress won't help show that he received FAPE if implementation failures caused him to regress overall. Rather, districts must produce evidence that the student made progress that was meaningful in relation to his potential. See, e.g., *Woods v. Northport Pub. Sch.*, Appeal Nos. 11-1493, 11-1567, 59 IDELR 64 (6th Cir. 2012, unpublished) (Pointing to the student's academic regression, the 6th Circuit affirmed a District Court's decision that the district denied the student FAPE.).

Parents' continuing emails to District requesting documentation to substantiate that Student was receiving curriculum instruction and direct instruction on Student's IEP goals in Teacher's class were either unanswered or inadequate. During an interview with Assistant Principal, District confirmed that Teacher was not always following the goals set forth in the IEP. Further, Teacher's training on the Unique Learning curriculum in use within the District was not completed. This lack of training in that curriculum extended from February 2024 to February 2025. This resulted in a violation of the IDEA Part B.

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

**1.c. Collect and provide data in connection with Student's progress toward IEP goals.**

Each IEP developed for a student with a disability must describe: (1) how the district will measure the student's progress toward her annual goals; and (2) when the district will provide periodic reports on the student's progress toward her annual goals. 34 CFR § 300.320 (a)(3) and

6.31.2.11(B). The IDEA does not require a district to use any particular method to track a student's progress toward his annual IEP goals. Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46,662 (2006). Instead, it leaves that decision up to the IEP team. Curriculum-based measurements are generally used to monitor a student's progress with regard to basic academic skills. *See e.g., Oregon Dep't of Educ.*, 115 LRP 17208 (SEA OR 03/27/15) (The IEP developed for a 13-year-old with a specific learning disability set a goal that the student would read a sixth-grade level text at a rate of 127 correct words per minute with 100 percent accuracy within one year, as measured by a curriculum-based measurement probe.).

A district cannot monitor a student's progress effectively without data. Each district must ensure that the educators responsible for implementing the student's IEP understand the type of data to collect and document that data appropriately. *See, e.g., McKay v. School Bd. of Avoyelles Parish*, 66 IDELR 283 (W.D. La. 2015). The method of measurement identified in the IDEA can provide clues as to the amount of data to collect regarding academic goals. For example, if a student's IEP requires her teachers to monitor her progress toward her writing goal using work samples and a writing skills checklist, teachers would need to use that checklist every time they review a writing assignment. *See, e.g., In re: Student with a Disability*, 120 LRP 22877 (SEA KS 02/13/20) (noting that a student with writing difficulties had an average score of 72.5 percent on the writing skills checklist used to review his assignments).

In this matter, Student's February 12, 2024, IEP set forth measurable goals with respect to Student's progress in academic subjects, including Teacher's teaching responsibilities. Parents' email and other requests for data detailing Student's progress towards IEP goals relative to Teacher's class span over a year. The documents provided are replete with such requests. District acknowledged that a lack of data existed during an interview with District personnel. Further, District was unable to produce records that contain data of measurable goals on Student's progress toward IEP goals. This resulted in a violation of the IDEA Part B.

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

**1.d. Provide related services for Extended School Year (ESY) identified in the IEP.**

The IEP must describe the special education and related services that will be provided so that the child may advance appropriately toward attaining annual goals and, when possible, be involved in and make progress in the general education curriculum. 20 USC 1414 (d)(1)(A)(i)(IV). *See Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 69 IDELR 174 (2017) (An IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.). Related services under the IDEA includes transportation services. 34 C.F.R. § 300.34 and NMAC 6.31.2.9(A) NMAC.

The February 12, 2024, IEP indicated that Student was eligible for EYS services during the Summer 2024. The February 12, 2024, PWN indicated that Parents chose to transport Student. However, Parents later requested District provide ESY transportation. According to District protocol, Teacher was responsible for arranging transportation to support ESY during Summer 2024. Documentation provided reflects that Parents asked on multiple occasions if District transportation arrangements had been made. Ultimately, Parents provided the transportation. This resulted in a procedural violation of the IDEA Part B.

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

**1.e. Implement provisions in the IEP related to a Functional Behavioral Analysis (FBA).**

Under the IDEA, an IEP team must consider special factors. 34 C.F.R. § 300.324(a)(2). Specifically, in the case of a child whose behavior impedes the child's learning or that of others, the IEP must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 C.F.R. § 300.324(a)(2)(i). See also, 6.31.2.11(F)(1) NMAC. The purpose of an FBA is to isolate a target behavior and develop a hypothesis regarding the function of the target behavior. A target behavior is one that interferes with a student's ability to progress in the curriculum and to achieve the student's IEP goals. Once the target behavior is identified and the hypothesis developed, a positive behavior intervention plan can be prepared to address the target behavior with strategies and interventions, if necessary, or the target behavior can be addressed using a more informal approach. *Broward County Sch. Bd.*, 110 LRP 38160 (SEA FL 05/07/10).

The fact that an FBA could maximize a child's educational benefits does not mean that an FBA is required for a student to receive FAPE. *See, e.g., A.C. v. Board of Educ. of the Chappaqua Cent. Sch. Dist.*, 553 F.3d 165, 51 IDELR 147 (2d Cir. 2009) (holding that the failure to perform an FBA did not render the student's IEP inadequate where the New York district demonstrated that the IEP adequately addressed the student's behavior); and *J.C. v. New York City Dep't of Educ.*, Case No. 1:2017cv11579, 67 IDELR 109 (2d Cir. 2016, *unpublished*) (A district's decision to forgo an FBA when the student began to act out at school did not rise to the level of a denial of FAPE because the IEP adequately identified the behavioral impediments and implemented strategies to address the behavior.)

In this matter, District conducted an FBA while Student was attending another District facility. Further, the District had integrated a behavioral intervention plan (BIP) into the Student's IEPs as Student exhibited problem behaviors for which FBAs and BIPs are required under the federal rules and New Mexico rules. The 2022 FBA and BIP were in place a when Student transferred to

high school. The February 12, 2024, IEP indicated that an FBA did not need to be conducted. Therefore, the 2022 FBA and BIP remained in place.

The May 17, 2024, IEP Amendment indicated that an FBA needed to be conducted given the current circumstances related to Student's behaviors. That IEP indicated that Teacher was responsible for conducting the FBA. Parents provided verbal and written consents for the FBA. The written consent was provided in August 2024. Parents made numerous inquiries regarding the status of the FBA. During this time period, Parents also expressed concerns that Teacher was not utilizing the BIP.

Teacher forwarded a draft FBA to a District special education resource teacher in January 2025. On January 23, 2025, the District special education resource teacher communicated with other District staff indicating the FBA did not have ABC data and that Teacher needed to complete the ABC data and to gather other documents to revise the FBA.

The March 31, 2025, IEP indicates that the IEP addressed the FBA. The March 31, 2025, PWN indicates that the IEP Team "decided not to conduct an FBA at this time." The PWN further reflects that the BIP would be revised and updated and that the IEP team would meet in mid-May 2025. An IEP meeting was held on May 16, 2025. The PWN associated with that meeting, indicates that "a plan is required to address target behaviors, property destruction, physical aggression towards others or self – injurious behavior to escape non-preferred events."

There was no evidence presented to indicate Student's educational progress towards education goals set forth in the IEPs was impeded with respect to developing a new FBA. Likewise, there was no evidence to indicate Student's educational benefits were not realized if the BIP was not adhered to completely in Teacher's classroom.

**As to Issue No. 1.e., the District is not cited.**

**1.f. Provide proper notice in connection with a re-evaluation for the Multi-Disciplinary Evaluation Team.**

The IDEA places the responsibility on districts to take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—

- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- (2) Scheduling the meeting at a mutually agreed on time and place.



It was not clear whether an MET meeting took place. The May 16, 2025, PWN documented that no meeting took place: “A meeting was initially convened to discuss a proposed evaluation, and the evaluation document was opened; however, due to insufficient supporting data, it was determined that proceeding was not appropriate. The meeting was instead conducted as a staffing, and the document was formally closed without initiating the evaluation process.”

Because a re-evaluation did not occur, there is no violation attached with lack of notice for such and thus IDEA Part B was not violated as to this sub-section.

**As to Issue No. 1.f., the District is not cited.**

**1.g. Properly review, document, and implement a Student re-evaluation in an IEP team meeting.**

A reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 CFR 300.303 (b) and 6.31.2.10(C)(2)(a). *See e.g., District of Columbia Pub. Schs.*, 121 LRP 15672 (SEA DC 03/27/21) (finding that a district violated the IDEA by failing to comprehensively reevaluate a student with specific learning disability during the six years following the student's initial eligibility evaluation); and *K.K-M. v. New Jersey Dep't of Educ.*, 124 LRP 14958 (D.N.J. 05/07/24) (A district's regular IEP meetings, progress monitoring, and IEP revisions helped show that a four-day delay in conducting triennial reevaluations for two students didn't deny them FAPE.).

Districts must strive to reevaluate students with disabilities in a timely manner to ensure they receive all services and supports necessary for FAPE. Further, some states, including Pennsylvania, have adopted specific time frames for completing reevaluations of students who are already receiving services under the IDEA. *See, e.g., L.E. v. Methacton Sch. Dist.*, 124 LRP 13322 (E.D. Pa. 04/25/24) (A district denied FAPE to a seventh-grader with a hearing impairment by taking 10 months to complete a reevaluation that revealed his need for ADHD-related services.).

Reviewing existing data is part of the reevaluation process and does not occur if the parent and public agency agree that a reevaluation is unnecessary. *Letter to Anonymous*, 48 IDELR 136 (OSEP 2007).

As part of any reevaluation, the IEP team must review existing evaluation data on the child, including:

- Evaluations and information provided by the parents of the child;
- Current classroom-based, local, or state assessments and classroom-based observations; and
- Observations by teachers and related services providers.

34 CFR 300.305 (a)(1).

As noted above, the May 16, 2025, PWN indicated that “due to insufficient supporting data, it was determined that proceeding was not appropriate.” This resulted in a violation of the IDEA Part B.

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

### ***Issue No. 2***

**Whether the District’s actions and/or omissions in developing and implementing the IEP 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 IDEA is meant to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) designed to meet their unique needs. Students who are eligible for special education services are entitled to a FAPE. 34 C.F.R. § 300.101; 6.31.2.8 NMAC. LEAs are obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17. The provision of FAPE is administered through an IEP developed by the IEP team and implemented by the LEA. The IEP must be “reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v Douglas County School Charter RE-1*, 137 S.Ct. 988, 999 (2017). A failure to provide such an IEP is a substantive denial of FAPE. *Id.*

Students with severe cognitive disabilities may require instruction in daily living and self-care rather than general academic classes but they remain eligible for special education services. *Timothy W v. Rochester New Hampshire School District*, 875 F2d 954 (1st Cir. 1989), cert. denied, 493 U.S. 983(1989). An IEP is intended to provide meaningful opportunities for academic and functional advancement and the student to make progress. Every student should have the chance to meet challenging objectives. In order for the student with significant cognitive disabilities to meet challenging objectives, the IEP must include an accurate statement of the [Present Levels of Academic Achievement and Functional Performance] PLAAFP and measurable annual goals based on the information in the PLAAFP obtained through data and evaluations. Questions and answers on *Endrew F v. Douglas County School District*, 137 S.Ct. 988, 999 (2017).

Under certain circumstances, procedural errors can result in a denial of FAPE. The Court in *J.L. v. Mercer Island School District*, 592 F.3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it resulted in the loss of an educational opportunity, infringed on parents' opportunity to participate in the development of the IEP or deprived the student of an educational benefit. All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx. 202 (2d Cir. 2010).

When there is insufficient or inaccurate information in the PLAAFP, the IEP team does not have the necessary information to determine the student's individual needs and therefore, develop appropriate, individualized, measurable goals and determine services necessary for the child to make progress. Without appropriate goals, services and supports, the IEP was not reasonably calculated to allow the student to make progress and was a substantive denial of FAPE.

Insufficient information on the PLAAFP may also be a procedural denial in that the Student lost educational opportunity and educational benefit because the goals and services were not aligned with the Student's needs since the District did not have the needed information to draft appropriate goals and services.

The documents provided indicate there was insufficient data, and the IEP team did not have the necessary information to determine the Student's individual needs and, therefore, develop appropriate, individualized, measurable goals and determine services necessary for Student to make progress. Also, the reevaluation was not conducted within the required time. Without appropriate data and a reevaluation, the IEP was not reasonably calculated to allow the Student to make progress and resulted in a substantive denial of FAPE. Teacher was not qualified as an SCS3 teacher during the Spring 2024 term and Teacher did not document and report data to support Student's progress toward IEP special education goals for a period of two school terms. These actions and lack of action denied Student a FAPE.

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

**Summary of Citations**

<b>IDEA/State Rule Provisions Violated</b>	<b>Description of Violation</b>
34 C.F.R. § 300.156; 6.31.2.9(B) NMAC	The District failed to provide special education instruction and services through qualified special education personnel.
34 C.F.R. § 300.320-300.328; 6.31.2.11 NMAC	The District failed to provide instruction associated with IEP goals.
34 C.F.R. § 300.320-300.328; 6.31.2.11 NMAC	The District failed to collect and provide data in connection with Student's progress toward IEP goals.
34 C.F.R. § 300.320; 6.31.2.10(G)	The District failed to provide related services for Extended School Year (ESY) identified in the IEP.
34 C.F.R. § 300.303, 304; 6.31.2.10 NMAC	The District failed to properly review, document, and implement a Student re-evaluation in an IEP team meeting.

**Required Actions and Deadlines**

**By July 11, 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:

Dr. 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](mailto: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 District is advised that the OSE will retain jurisdiction over the complaint until it is officially closed by this agency and that failure to comply with the plan may result in further consequences from the OSE.

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

**Please carefully read the entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes. All corrective action must be completed no later than June 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**

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
<b>1.</b>	As described above, the District will submit a written assurance to the PED OSE Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	<b>July 11, 2025</b>	Written Assurance Letter/Email	<b>July 11, 2025</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
<b>2.</b>	The District Special Education Director and the school principal shall meet virtually with the OSE CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the District plans to take to ensure that the violations are corrected and do not recur. The District Director has the discretion to include other District or school administrators or personnel in this meeting.	<b>July 18, 2025</b>	Notes from meeting prepared by District	<b>Within 7 working days of the meeting</b>
<b>3.</b>	The District shall review and revise, as appropriate, District procedures: 1) To ensure that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities; 2) To ensure each regular education teacher, special education teacher, related services provider are trained in the special education services to be implemented; 3) To ensure that procedures are in place to monitor instructional activities are appropriately associated with IEP goals, including documentation (through logs,	<b>August 15, 2025</b>	Copy of any District procedure revisions to NMPED for approval prior to District approval; if District decides revisions are not necessary, a copy of current procedures.	<b>August 29, 2025</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
	<p>reports or other means) by every service provider;</p> <p>4) To ensure District's methods of tracking students' progress toward annual IEP goals;</p> <p>5) To ensure processes are in place to document and monitor related services are provided to students as identified in IEPs; and</p> <p>6) To ensure policies and procedures are in place to comply with required re-evaluation processes.</p>			
<b>4.</b>	The District will complete reevaluations in all suspected areas of need, especially academic, functional, social and behavioral needs to determine what additional services and supports are needed for Student to attend school and be successful.	<b>Reevaluation will be completed within 30 days of Student being accessible to District for such to occur</b>	<ol style="list-style-type: none"> <li>1. Notice to Parents of reevaluation</li> <li>2. Request for Parental Consent</li> <li>3. Written consent or declination from Parent</li> <li>4. Reevaluation documents</li> </ol>	<p><b>June 30, 2025</b></p> <p><b>June 30, 2025</b></p> <p><b>Within 3 work days of receipt</b></p> <p><b>Within 10 days of completion of steps of reevaluation</b></p>
<b>5.</b>	<p>The District shall convene a facilitated IEP meeting for Student. The Facilitator shall be independent of the District and shall be selected from the PED list of approved facilitators. The Facilitator shall be paid for by the District.</p> <p>The FIEP meeting shall be held on a date and time that is convenient for the parent. The</p>	<b>October 15, 2025</b>	<ol style="list-style-type: none"> <li>1. Invitation to IEP meeting</li> <li>2. Agenda for IEP meeting</li> <li>3. IEP</li> <li>4. Prior Written Notice(s) – which will include plan for provision of compensatory services</li> <li>5. Documentation of finalized</li> </ol>	<b>7 days after the FIEP meeting is held</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
	<p>parent will be provided with a copy of the IEP and PWN at the conclusion of the FIEP meeting.</p> <p>The District Special Education Director shall participate in the IEP meeting. The District shall also ensure that the IEP team includes but is not limited to, parents, special education teacher, general education teacher, and any related services providers.</p> <p>The District shall ensure that all teachers and service providers working with Student are provided IEP and related documents so that they are aware of their responsibilities in implementing those plans.</p> <p>The facilitated IEP meeting shall address, at minimum:</p> <ul style="list-style-type: none"> <li>• The Student's progress on all IEP goals;</li> <li>• Student present levels of performance regarding all areas of need;</li> <li>• IEP goals;</li> <li>• Schedule of services; and</li> <li>• Plan for compensatory education required by Step 6.</li> </ul>		<p>communication plan distributed to all of Student's teachers and service providers within 5 school days of the meeting with confirmation of receipt logged.</p>	



<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
<b>6.</b>	<p>The School shall provide Student with the following compensatory education:</p> <ul style="list-style-type: none"> <li>• English/Language Arts,</li> <li>• Math,</li> <li>• Life/Work Skills, and</li> <li>• Social Skills.</li> </ul> <p>The compensatory services will Will begin not later than July 8, 2025. Compensatory services will occur over the 2025 summer break for 3 weekdays in a row, and will be provided 3 – 4 hours per day, through July 30, 2025. Summer compensatory services may mirror Student’s ESY services until the FIEP occurs, which may modify such services.</p> <p>Beginning with the 2025-2026 school year, 3 – 4 hours of compensatory services will be provided each Saturday morning during the school year. The details of the 2025-2026 school year Saturday compensatory services provision will be described in the Student’s PWN issues from the FIEP referenced in Step 5 and all decisions will include Parents’ input.</p> <p>Parents may revisit agreed upon compensatory schedule as Student’s threshold limits</p>	<b>Monthly from date of compensatory services plan until the compensatory education hours are completed</b>	Documentation of delivery/provision of compensatory education services, including logs of services recorded in the PED-approved Excel spreadsheet log provided by the OSE CAP monitor	<b>Monthly from date of compensatory services plan until the compensatory education hours are completed.</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
	<p>indicate need for decreasing hours or if Student needs day(s) off.</p> <p>The plan for compensatory education shall be documented through the formal prior written notice that issues from the FIEP in Step 5.</p>			
<b>7.</b>	<p>The District shall arrange to provide training to District staff (including special education teachers, special education administrators, diagnosticians and related service personnel).</p> <p>The training shall be provided by a person with expertise in special education who was not involved in responding to this complaint and who is approved by PED. The training shall be conducted at District's expense. The training shall address the following special education topics:</p> <ol style="list-style-type: none"> <li>1) Documenting and monitoring instructional associated with IEP goals;</li> <li>2) Methods of tracking and monitoring students' progress toward annual IEP goals;</li> <li>3) Documenting and monitoring related services provided to students as identified in IEPs;</li> <li>4) Comply with required re-evaluation processes; and</li> </ol>	<p><b>By the end of the first week of 2025-2026 school year.</b></p>	<p>Submission of proposed trainer and trainer's resume and proposed presentation for PED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.</p>	<p><b>July 29, 2025</b></p> <p><b>August 1, 2025</b></p> <p><b>September 2, 2025</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
	5) Implementing IEPs with fidelity.			

This report constitutes the New Mexico Public Education Department's final decision regarding this complaint. If you have any questions about this report, please contact the Corrective Action Plan Monitor.

Investigated by:

/s/ Samuel D. Kerr

Samuel D. Kerr, Esq.

Complaint Investigator


Reviewed by:

/s/ Natalie Campbell

Natalie Campbell, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:  
  
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Amanda DeBell

Deputy Cabinet Secretary, New Mexico Public Education Department