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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Roswell Independent Schools  
Case No. 2425-58  
June 27, 2025**

**This Report requires corrective action. See pages 9-13.**

On April 29, 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; and
- interviews and/or questionnaires with the complainant and District; 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, issues raised in the complaint related to Section 504 will not be investigated.

### **Issues for Investigation**

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

1. Whether the District failed to properly conduct special education evaluations pursuant to 34 CFR § 300.301 and 6.31.2.10 NMAC, including:
  - a. Failing to properly respond to evaluation requests and referrals;
  - b. Failing to obtain consent to evaluations; and
  - c. Failing to comply with timelines for evaluations.
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 6 years old and attends elementary school in District.
2. Student currently is subject to a 504 Plan.
3. On February 20, 2025, Parent submitted a request to District for a full diagnostic evaluation, including a social work evaluation.

4. Parent sought the evaluation due, in part, to Student's anxiety and associated panic attacks during which Student misses instructional time in the classroom.
5. On March 4, 2025, District mailed Parent a Prior Written Notice (PWN) acknowledging receipt of Parent's request for an initial evaluation.
6. The March 4, 2025, PWN acknowledged Parent's request and further indicated that upon receipt of Student's educational records, District would obtain Parent's consent to evaluate.
7. Upon receipt of Parent's consent, the March 4, 2025, PWN indicated the diagnostician would begin and complete the evaluation within 60 days.
8. Thereafter, a meeting would be held with Parent to review the evaluation report. If Student qualified for services, an Eligibility Determination Team (EDT) meeting would be held and an Individualized Education Plan (IEP) would be developed.
9. Parent's advocate sent a follow-up email to District personnel on March 14, 2025, reiterating Parent's request for an evaluation, as well as the consent for that evaluation.
10. District's response indicates Parent's consent was obtained on March 29, 2025.
11. According to the District's consent form, the District obtained Parent's written consent on April 29, 2025.
12. Assessments for cognitive, achievement, and functional behavior assessment (FBA) were completed between May 2, 2025, and May 20, 2025. A psychological evaluation report is expected to be completed August 1, 2025.
13. A meeting has not been scheduled with Parent to review the District's evaluation report.
14. Throughout this period:
  - a. Student continued to receive counseling to address his anxiety in the school setting;
  - b. Student's teachers also allowed Student extra time to take a break or time to calm himself; and
  - c. Student received As in his core courses during the 2024-2025 school year.

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

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

Whether the District failed to properly conduct special education evaluations pursuant to 34 CFR § 300.301 and 6.31.2.10 NMAC, including:

- a. Failing to properly respond to evaluation requests and referrals;
- b. Failing to obtain consent to evaluations; and

c. Failing to comply with timelines for evaluations.

**a. Failing to properly respond to evaluation requests and referrals.**

The IDEA defines "evaluation" to mean the procedures used to determine whether a child has a disability and the nature and extent of the child's need for special education and related services. Those procedures must comport with the requirements set forth at 34 C.F.R. 300.304 through 34 C.F.R. 300.311 and 6.31.2.10(C)(1) NMAC.

Under the provisions of 6.31.2.10(D)(1), the request for an initial evaluation by a parent may be made in writing or orally to any licensed personnel of the school in which the student attends. The district shall respond to a parental request for initial evaluation no later than 15 school days from the receipt of the request. 6.31.2.10(D)(3) NMAC. The district response to a parental request for initial evaluation is accomplished by:

(a) providing prior written notice consistent with 34 CFR Sec. 300.503 that proposes to conduct the requested evaluation or reevaluation, providing a copy of the procedural safeguards notice to parents required by 34 CFR Sec. 300.504, and seeking parental consent for the evaluation; or

(b) providing prior written notice consistent with 34 CFR Sec. 300.503 of the public agency's refusal to conduct the evaluation or reevaluation and a copy of the procedural safeguards notice required by 34 CFR Sec. 300.504.

6.31.2.10(D)(4) NMAC.

In this matter, Parent requested an initial evaluation on February 20, 2025. District responded to the request by sending Parent a PWN on March 4, 2025. Parent received the PWN on March 6, 2025. The District complied with the provisions of 6.31.2.10(D)(3) and (4) NMAC in connection with the request for an initial evaluation.

**As to Issue 1.a., the District is not cited.**

**b. Failing to obtain consent to evaluations.**

Pursuant to 6.31.2.10(E)(2) NMAC, a district must obtain written informed parental consent for the initial evaluation or reevaluation in accordance with the requirements of 34 C.F.R. Sec.

300.300 and 6.31.2.13(F) NMAC prior to conducting any evaluation(s). Under 34 C.F.R. Sec. 300.300(a)(1)(i), a district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability. See also, 6.31.2.13(F)(1) NMAC.

Here, District did not obtain Parent's written consent until April 29, 2025. Parent and Parent's advocate made inquiries as to the status of the consent for evaluation. During a 504 meeting in April 2025, Parent was told to "keep on" the District's special education department regarding the consent for evaluation.

The District did not make reasonable efforts to obtain Parent's written consent for the initial evaluation.

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

**c. Failing to comply with timelines for evaluations.**

A district must conduct a full and individual initial evaluation, at no cost to the parent, and in compliance with requirements of 34 C.F.R. Secs. §§ 300.305 and 300.306 and other department rules and standards before the initial provision of special education and related services to a child with a disability. 6.31.2.10(C)(1)(a) NMAC. The initial evaluation must be conducted within 60 calendar days of receiving parental consent for evaluation. 6.31.2.10(F)(2) NMAC.

Here, District obtained Parent's written consent on April 29, 2025. District does not anticipate completing the evaluation process until approximately August 1, 2025. Only then will the District be able to convene a meeting with Parent to review the District's evaluation report. According to the District's May 4, 2025, PWN, if Student is determined to be qualified for services, an Eligibility Determination Team (EDT) meeting would be held and an Individualized Education Plan (IEP) would be developed.

District did not satisfy the requirements of 6.31.2.10(F)(2) NMAC with respect to completing Student's initial evaluation within the required timeframe.

**As to Issue No. 1.c., 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.**

A twofold inquiry is used to determine if a child has been provided with a free appropriate public education (FAPE). *Bd. of Educ. of Hendrick Hudson Hendrick Sch. Dist. v. Rowley*, 458 U.S. 176, 207 (1982). The initial inquiry is whether the State has complied with the procedures set forth in the IDEA. The second inquiry is whether the individualized educational program developed through the procedures of the IDEA is reasonably calculated to enable the child to receive educational benefits. *Id.* at 207.

Further, if a procedural violation does occur, it results in a denial of FAPE only if the procedural issues: (1) impeded a child's right to a free appropriate public education, (2) significantly impeded the parent's opportunity to participate in the decision-making process for a provision of a free appropriate public education; or (3) caused deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Procedural defects are insufficient to set aside an IEP unless a rational basis exists to believe the procedural errors seriously hampered the parents' opportunity to participate in the decision process, comprised the student's right to an appropriate education, or caused a deprivation of educational benefits. *O'Toole v. Olathe Dist. Sch. Unified Sch. Dist. No. 233*, 144 F.3d 692, 707 (10th Cir. 1998). In other words, technical deviations alone are insufficient to establish a denial of FAPE. *Urban v. Jefferson Cnty. Sch. Dist. R-1*, 89 F.3d 720 (10th Cir. 1996).

The District's procedural violation did not deny Student a FAPE. A FAPE consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit the child to benefit from that instruction. Here, despite the District's failure to obtain Parent's consent to evaluate after her first request, Student continued to receive counseling to address his anxiety in the school setting. Student's teachers also allowed Student extra time to take a break or time to calm himself. Having an opportunity to take breaks, along with continued counseling, has ensured that Student has received an educational benefit within the least restrictive environment. Student received As in his core courses during the 2024-2025 school year, demonstrating that Student did not suffer any substantive educational harm or opportunity as a result of the District's procedural oversight.

As a result, Student was not denied a FAPE. *See William V. v. Copperas Cove Indep. Sch. Dist.*, 77 IDELR 92 (5th Cir. 2020, unpublished), cert. denied, 121 LRP 33988 (2021)(Where student with dyslexia made progress in the general education curriculum despite a Texas district's failure to find him eligible for IDEA services as a student with a specific learning disability, his parents could not show that the district denied him FAPE); *I.Z.M. v. Rosemount- Apple Valley-Eagan Pub. Schs.*, 863 F.3d 966 (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.); *T.M. v. District of Columbia*, 64 IDELR 197, 114 LRP 51573 (D.D.C. 2014) (The "short gaps" in the student's services did not amount to a material failure to provide related services.); *K.K-M. v. New Jersey Dep't of Educ.*, 124 LRP 14958 (D.N.J. 05/07/24) (Although a district violated IDEA procedures by completing assessments four days beyond the deadline for a triennial evaluation, the error did not amount to a denial of FAPE where the district regularly addressed the student's changing needs and provided an appropriate IEPs for three years).

**As to Issue No. 2, the District/School/Public Agency is not cited.**

#### **Summary of Citations**

<b>IDEA/State Rule Provisions Violated</b>	<b>Description of Violation</b>
34 C.F.R. Sec. 300.300(a)(1)(i); 6.31.2.10(E)(2) NMAC	The District failed to make reasonable efforts to obtain the informed consent from the parent for an initial evaluation.
34 C.F.R. Secs. 300.305 and 300.306; 6.31.2.10(C)(1)(a) NMAC	The District failed to complete the initial evaluation within the required timeframe.

#### **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  
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 26, 2026, and reported to the OSE no later than July 31, 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>Actions Required by District</b>	<b>Complete Actions By</b>	<b>Documents Required to be Submitted to PED OSE</b>	<b>Document Due Date</b>
1.	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 3, 2025</b>	Written Assurance Letter/Email	<b>July 3, 2025</b>
2.	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. The District Director shall be responsible for arranging this virtual meeting with OSE.	<b>July 10, 2025</b>	Notes from meeting prepared by District	<b>July 10, 2025</b>
3.	District shall complete outstanding evaluation of Student within 14 days of Parent making student available.	<b>Within 14 days of Student availability</b>	Written confirmation that comprehensive evaluation of student has been completed to include psychological evaluation.	<b>Within 20 days of Student availability</b>
4.	Within 15 school days of completing the evaluation report, District shall hold a meeting with Parent to determine Student's eligibility for special education and related services.	<b>Within 15 days of completion of the evaluation report</b>	Written Eligibility determination	<b>Within 7 days after the Eligibility Determination Team Meeting is held.</b>

<p>5.</p>	<p>If Student is found eligible for special education, the District shall convene a facilitated IEP meeting for Student. The facilitated IEP meeting shall address, at minimum:</p> <ul style="list-style-type: none"> <li>• Student present levels of performance regarding all areas of need;</li> <li>• IEP goals;</li> <li>• Schedule of services;</li> <li>• Evaluation by psychologist; and</li> <li>• Plan for compensatory education required by Step 6.</li> </ul> <p>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 District 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 District 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 District will also ensure that Parent's preferred mode (hard copy and/or electronic) of</p>	<p><b>Within 10 days of completion of Step 3.</b></p>	<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)</li> <li>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.</li> </ol>	<p><b>7 days after the FIEP meeting is held</b></p>
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Step No.	Actions Required by District	Complete Actions By	Documents Required to be Submitted to PED OSE	Document Due Date
	communication is 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.			
6.	If the Student is eligible for special education, the District shall provide the following compensatory education: As determined by FIEP Team based on eligibility and determination of needed special education and related services, such will provide minute to minute lost services for two months of time -- e.g., if FIEP Team determines that Student needs 30 minutes per month of social work services, Student will receive 60 minutes compensatory social work services.	<b>Begin once PWN from FIEP in step 5 issues.</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.  Prior Written Notice containing plan for compensatory services.	<b>Monthly from date of compensatory services plan until the compensatory education hours are completed</b>  <b>7 days after the FEIP meeting is held</b>

Step No.	Actions Required by District	Complete Actions By	Documents Required to be Submitted to PED OSE	Document Due Date
7.	<p>The District shall review and revise, where necessary, its special education policies regarding notification of IEP meetings.</p> <p>If District believes no revisions are necessary, current policy specific to bulleted issues below will be provided.</p> <p>Revisions shall address:</p> <ol style="list-style-type: none"> <li>1. To ensure policies and procedures are in place regarding District efforts are reasonable pursuant to federal regulations; and</li> <li>2. To ensure initial evaluations are conducted with the required timelines pursuant to federal and states regulations and rules.</li> </ol>	July 17, 2025	<p>Current policy District believes does not need to be revised</p> <p>Draft of Proposed Policy Revisions for PED Approval</p> <p>Copy of revised Council-approved policy</p>	July 31, 2025

Step No.	Actions Required by District	Complete Actions By	Documents Required to be Submitted to PED OSE	Document Due Date
8.	<p>The District shall arrange to provide training to District staff (including special education special education administrators, diagnosticians and related service personnel). The trainer may be internal to District. The training shall address the following special education topics:</p> <ol style="list-style-type: none"> <li>1. Making reasonable efforts to obtain written Parental consent to conduct initial evaluation as communicated to Parents through PWNs in response to Parental requests from initial evaluations; and</li> <li>2. District procedures and timelines in conducting initial evaluations.</li> </ol>	<b>Within the first week of 2025-2026 school year</b>	<p>Submission of proposed presentation for NMPED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees (sign in sheets) at the training and plan for addressing the provision of training to those staff not in attendance.</p>	<p><b>July 15, 2025</b></p> <p><b>July 28, 2025</b></p> <p><b>Within one week following the training.</b></p>

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

Investigated by:

/s/ 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:

*Amanda DeBell*

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Amanda DeBell

Deputy Cabinet Secretary, New Mexico Public Education Department