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NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Alamogordo Public Schools  
Case No. 2425-61  
July 3, 2025

**This Report requires corrective action. See pages 9-10.**

On May 5, 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 (LEA) 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;
- interview with the Parent on June 11, 2025;
- review of LEA questionnaire submitted, completed, and returned on June 13, 2025;
- interview with Special Education Teacher on June 16, 2025; and
- research of applicable legal authority.

### **Limits to the Investigation**

Federal regulations and state rules limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint is received. 34 C.F.R. § 300.153(c); 6.31.2.13(H)(2)(d) NMAC. Any allegations related to professional or ethical misconduct by 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.

### **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 addressed allegations of bullying towards Student which may have denied Student educational benefit, pursuant to 34 C.F.R. §§ 300.101; 300.201; and 300.324(b); and 6.31.2.8(A); 6.31.2.11(B)(1); and 6.31.2.13(A) NMAC;
2. Whether Student's IEP is tailored to their unique needs and is reasonably calculated to enable the Student to make progress appropriate in light of their circumstances, pursuant to 34 C.F.R. §§ 300.320 and 300.324; and 6.31.2.11 NMAC; and
3. 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. During the 2024-25 school year, Student was in the eighth grade and identified as a student with a disability under the primary classification of Specific Learning Disability and secondary classification of Speech or Language Impairment.

2. The 2024-25 school year began on August 8, 2024. The IEP dated April 12, 2024 was implemented. The IEP makes no mention of behavior or peer relationship-related concerns.
3. Between August 8, 2024 and December 2, 2024, Student was absent for over 20 school days.
4. On December 4, 2024, Student was involved in a physical altercation at an after-school sporting event. Student was taken to the local emergency department by Parent. The emergency department note indicates Student may return to school on December 6, 2024.
5. Following the December 4, 2024, incident, Student did not return to school for the remainder of the 2024 calendar year; missing an additional 13 school days. A note from Student's primary physician indicated Student was recovering from a concussion and neck strain as a result of the physical altercation and recommended remote learning for the remainder of the school year.
6. School resumed after winter break on January 7, 2025. Student was in attendance.
7. By January 17, 2025, Student had missed a substantial amount of school (more than 34 full school days) requiring District to hold a meeting to discuss methods to prevent future absences and to identify interventions that would assist Student to continue to receive an appropriate public education. A meeting was held with administration on January 27, 2025, to discuss Student's absences. An Attendance for Success Student Action Plan was developed at the meeting. However, no identified interventions were included in the plan.
8. On the morning of February 11, 2025, an annual IEP meeting was held. At the meeting, Student's special education eligibility was discussed through the REED (review of existing evaluation) process. The eligibility determination team (EDT) determined that no additional data was needed to determine Student's special education eligibility, special education services, or present levels. A new annual IEP was developed following the EDT determination. The IEP makes no mention of attendance, behavior, or bullying concerns. Special Education Teacher indicated they do not recall having any discussions regarding Student's attendance or bullying concerns.
9. The prior written notice (PWN) regarding the February 11, 2025, meeting indicates Parent was not in attendance but gave District permission to proceed with the IEP meeting. Parent asserted they attended the meeting. District was asked to provide the signed attendance sheet and did not do so. Special Education Teacher's meeting notes indicate Parent was in fact in attendance at the meeting. It is unclear why the PWN indicates Parent was not in attendance.
10. In the afternoon of February 11, 2025, Student was involved in a physical altercation during class. The peer involved in the altercation was not the same peer involved in the

December 4, 2024, altercation. Student received out-of-school suspension for the remainder of the day on February 11, 2025, and all-day February 12, 2025, and February 13, 2025. In addition, Student received in-school suspension on February 14, 2025.

11. On April 7, 2025, Parent provided District a note from Student's physician indicating Student had a complicated school year due to "numerous episodes of bullying." As a result, the physician indicated Student should finish the school year with remote learning. District staff spoke with Parent regarding the note and an IEP meeting was scheduled for April 22, 2025.
12. Between January 17, 2025, and March 18, 2025, Student had missed another eleven school days. As a result, another attendance meeting was required to be held with administration. The meeting was held on April 11, 2025. A new Attendance for Success Student Action Plan was developed. However, similar to the previous action plan, no identified interventions were included. Rather, the plan indicated interventions would be discussed at an upcoming IEP meeting.
13. On April 22, 2025, an IEP meeting was held. Special Education Teacher recalls talking about Parent's concerns regarding Student being "bullied" but does not recall talking about Student's excessive absences. Student's February 11, 2025, IEP was amended to include an accommodation that Student was to be permitted to go to the special education classroom to calm down or deescalate when Student felt unsafe or upset. If Student was not able to return to class after 10 minutes, Student was to speak with a counselor. In addition, at the meeting, District requested parental consent to conduct a reevaluation. The reevaluation was to consist of testing regarding student achievement, cognition, and autism.
14. The PWN regarding the April 22, 2025, meeting indicates Student would not be permitted to attend online school as District did not offer online schooling.
15. Between March 19, 2025, and April 23, 2025, Student had missed another nine school days, requiring a third attendance meeting. The meeting was held on April 30, 2025. The notes from the meeting indicate Student was to connect with the high school counselor and would work on assignments during the summer. No interventions were identified on the action plan.
16. Between April 24, 2025, and the last day of school on May 23, 2025, Student was absent for seven full school days and three partial school days.
17. During the 2024-25 school year, Student was absent for a total of 61 full school days and at least nine partial school days. This marks a significant increase compared to the 2023-24 school year, when Student missed 25 full school days and ten partial school days.
18. Full IEP progress reports were only generated in March and May 2025. Both progress reports indicate Student made sufficient progress.

19. The reevaluation has not yet been conducted. District asserts testing will take place in July 2025.

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

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

***Whether the LEA addressed allegations of bullying towards Student which may have denied Student educational benefit, pursuant to 34 C.F.R. §§ 300.101; 300.201; and 300.324(b); and 6.31.2.8(A); 6.31.2.11(B)(1); and 6.31.2.13(A) NMAC.***

School districts must ensure that a student with a disability who is the target of bullying continues to receive FAPE. 34 C.F.R. §300.101 and 300.201. “The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit.” *Dear Colleague Letter* (OSERS/OSEP 2013). See also 34 C.F.R. § 300.324(b)(ii)(C)-(E) and 6.31.2.11(B)(1) NMAC.

The IDEA requires the IEP team to review and revise a student’s IEP to address, in part, the student’s anticipated needs or “other matters.” 34 C.F.R. § 300.324(b)(ii).

There is no evidence to suggest that Student was subjected to bullying. Aside from two physical altercations involving different peers, there were no reported or observed conflicts between Student and their classmates. When only considering District’s obligation to review and revise Student’s IEP to address bullying, there is no violation of 34 C.F.R. § 300.324(b)(ii). However, it is concerning that Student missed a substantial amount of school during the 2024-25 school year. Although Student had a notable number of absences during the 2023-24 school year, there has been a significant increase in absences. Student’s excessive absences triggered District’s duty to review and revise Student’s IEP to address same, see Issue No. 2 below.

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

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

***Whether Student’s IEP is tailored to their unique needs and is reasonably calculated to enable the Student to make progress appropriate in light of their circumstances, pursuant to 34 C.F.R. §§ 300.320 and 300.324; and 6.31.2.11 NMAC.***

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F. ex rel. Joseph F. v. Douglas*

*Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). The IEP is the means by which special education and related services are “tailored to the unique needs” of the student. *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176 (1982).

In the case of a student whose behavior impedes their learning or the learning of others, the IEP team 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). Truancy is a behavior that impedes a student’s learning.

Parent requested that Student be permitted to attend online schooling due to Student’s avoidance of school, which was reportedly caused by bullying. Removing Student from their current placement is a drastic measure and shall only occur if the use of supplementary aids and services in the general education environment are unsuccessful. *See* 34 C.F.R. § 300.114(a)(2). Instead, the District should have considered implementing positive behavioral interventions and supports and other strategies to address Student’s absenteeism.

As previously noted, District had an obligation to review and revise Student’s IEP to address absenteeism. Although attendance meetings were held with administration, no IEP interventions were implemented to support Student’s attendance during the 2024-25 school year. Crucially, during the February 2025 IEP meeting—when a new annual IEP was developed—District failed to address Student’s absenteeism. Furthermore, despite the attendance meeting requirement for the IEP team to discuss appropriate supports or strategies at the April 22, 2025 IEP meeting, this issue was not raised. This omission resulted in an IEP that was neither tailored to the Student’s unique needs, nor reasonably calculated to enable progress appropriate to Student’s circumstances. Consequently, District violated IDEA’s substantive requirements under 34 C.F.R. § 300.324(a)(2)(i) and 34 C.F.R. § 300.324(b)(ii), resulting in a denial of FAPE.

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

### **Issue No. 3**

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

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

calculated to enable the child to make progress appropriate in light of their circumstances. Endrew F., 137 S. Ct. 988 (2017).

Procedurally, District failed to review and revise Student's IEP to address chronic absenteeism. The absence of progress reports prior to March 2025, a violation of 34 C.F.R. § 300.320(a)(3),<sup>2</sup> further obscures the full impact of this failure regarding Student. District's failure to develop an IEP reasonably calculated to enable educational progress is a substantive violation that independently establishes a denial of FAPE.

**As to Issue No. 3, 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. § 300.324(b) and 6.31.2.11(B)(1) NMAC	District failed to review and revise Student's IEP to address Student's anticipated needs or other matters.
34 C.F.R. §§ 300.320 and 300.324 6.31.2.11 NMAC	District failed to develop an IEP reasonably calculated to meet Student's unique needs.
34 C.F.R. § 300.320(a)(3)	District failed to monitor and report on Student's progress.
34 C.F.R. § 300.101 6.31.2.8 NMAC	District's actions and/or omissions towards the Student resulted in a denial of FAPE to the Student.

### **Required Actions and Deadlines**

**By July 17, 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

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<sup>2</sup> Per 34 C.F.R. § 300.149, under NMPED's general supervisory authority, corrective action will be required for District's failure to monitor progress and report on same.

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[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 27, 2026 and reported to the OSE no later than July 11, 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 Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	<b>July 17, 2025</b>	Written Assurance Letter/Email	<b>July 17, 2025</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. The District Director shall be responsible for arranging this virtual meeting with OSE.	<b>July 25, 2025</b>	Notes from meeting prepared by District	<b>August 1, 2025</b>
<b>3.</b>	The District Special Education Director will meet with the case managers and Student's special education teachers and related service providers at both the middle school and high school to review the Complaint Resolution Report to ensure that those persons understand the complaint, the violations that were found, and the corrective action that will be taken to address the violations.	<b>August 8, 2025</b>	Notes from meeting prepared by District	<b>August 15, 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>4.</b>	<p>The District shall convene an IEP meeting for Student. The IEP meeting shall address, at minimum:</p> <ul style="list-style-type: none"> <li>• The Student's absenteeism; and</li> <li>• Positive behavior interventions and support and other strategies</li> </ul>	<b>August 22, 2025</b>	<p>1. Invitation to IEP meeting;</p> <p>2. Agenda for IEP meeting;</p> <p>3. IEP; and</p> <p>4. Prior Written Notice(s)</p>	<b>7 days after the IEP meeting is held</b>
<b>5.</b>	<p>The District and/or School shall review and revise, where necessary, its special education policies and procedures regarding how absenteeism will be addressed for students eligible for special education.</p> <p>If District believes no revisions are necessary, current policy will be provided.</p>	<b>August 1, 2025</b>	<p>Current policy District believes does not need to be revised relative to absenteeism and students eligible for special education</p> <p>Draft of Proposed Policy Revisions for PED Approval</p> <p>Copy of revised Council-approved policy</p>	<b>August 1, 2025</b>
<b>6.</b>	<p>The District shall arrange training for middle school staff (including special education teachers and special education administrators).</p> <p>The training shall address the following special education topics:</p> <ol style="list-style-type: none"> <li>1. IEP review and revision requirements;</li> <li>2. IEP development, including positive behavior; interventions and supports and other strategies; and</li> <li>3. Progress monitoring and reporting</li> </ol>	<b>September 17, 2025</b>	<p>Submission of proposed trainer and trainer's resume and proposed presentation for NMPED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.</p>	<p><b>August 15, 2025</b></p> <p><b>August 29, 2025</b></p> <p><b>September 24, 2025</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/ Emily Adams

Emily Adams, Esq.

Complaint Investigator

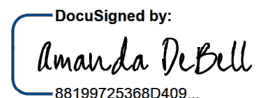
Reviewed by:

/s/ Natalie Campbell

Natalie Campbell, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:  
Amanda DeBell  
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Ms. Amanda DeBell

Deputy Cabinet Secretary, New Mexico Public Education Department