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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Alamogordo Public Schools ISD  
Case No. C-2425-71  
July 29, 2025**

**This Report requires corrective action. See pages 18-22.**

On May 30, 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> OSE has investigated the complaint and issues this report for the individual student referenced in Complaint, pursuant to 34 C.F.R. § 300.152(a)(5) and 6.31.2.13(H)(5)(b) NMAC.

**Conduct of the Complaint Investigation**

The PED's complaint investigator's investigation process in this matter involved the following:

- review of the complaint and supporting documentation from complainant;
- review of the LEA's responses to the allegations, together with documentation submitted by the Local Education Agency at the request of the PED's independent complaint investigator;

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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 LEA's compliance with federal IDEA regulations and state NMAC rules;
- interviews with Parents and LEA personnel;
- and research of applicable legal authority.

### **Limits to the Investigation**

Federal regulations and state rules limit investigation of state complaints to violations that occurred not more than one year prior to the date 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 an 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 jurisdiction of this complaint investigation and, as a result, were not investigated. For these reasons, the Complaint Investigator did not investigate complaints regarding licensure and professional conduct of school personnel except for complaints about the alleged failure of LEA employee to be qualified and appropriately certified as required by the IDEA. Systemic issues raised in the complaint will be addressed in a separate report.

### **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 met its regulatory obligations to identify, evaluate, and determine if Student had a disability in violation of 34 C.F.R. § 300.111 and 6.31.2.10 NMAC.
2. Whether the District failed to conduct special education evaluations of Student within the required timeframes and other evaluation requirements pursuant to 34 CFR § 300.301-311 and 6.31.2.10 NMAC.
3. Whether the District failed to develop, implement, and review 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, 6.31.2.10, 6.31.2.11 NMAC.
4. Whether the District failed to properly place Student through a continuum of placement analysis as required by 34 C.F.R. § 300.115 and 6.32.2.11(C) NMAC.
5. 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 an elementary student who qualifies for special education services under the Individuals with Disabilities Education Act (IDEA).
2. Complainant is a former employee of LEA.
3. Parents signed a consent for initial evaluation on March 28, 2023, when Student was in first grade.
4. An evaluation was conducted on April 3, 2023.
5. Student was found to be eligible for special education services.
6. The April 11, 2023, Eligibility Determination indicated student was eligible under a primary disability of Speech or Language Impairment.
7. The May 1, 2023, Individualized Education Plan (IEP) indicated a medical diagnosis of Attention Deficit Hyperactive Disorder (ADHD).
8. Student began to receive special education services as a student with Speech and Language Impairment and was placed in a general education classroom with pull-out services for speech therapy.
9. The Schedule of Services in the May 1, 2023, IEP included 30 minutes per week for speech therapy services in a special education setting.
10. Student's Level of Service in the May 1, 2023, IEP was set at Level 1 (minimum) with a or Least Restrict Environment (LRE) or Setting 1 (in regular classroom 80% of the school day, or more).
11. The LEA obtained a second evaluation consent on November 6, 2023.
12. That evaluation was conducted on November 28, 2023, and the date of the report with findings is December 11, 2023.
13. In addition, the November 28, 2023, evaluation also indicated Student had additional eligibilities under the category of Special Learning Disability.
14. Student was found to have additional need for special education services in the areas of written expression, oral expression, listening comprehension.
15. Student's IEP Team developed an IEP Amendment on January 8, 2024, based on the additional evaluation data identified in the December 11, 2023, report.
16. The IEP's Schedule of Services for the January 8, 2024, IEP Amendment included 30 minutes per week for speech services in a special education setting.
17. Student's Level of Service remained at Level 1 (minimum) with a Setting 1 (80% or more of the day in regular classroom).
18. The January 8, 2024, IEP Amendment also discussed Student's ADHD medication and the fact that the medication did not appear to improve Student's behavior.

19. Further, the January 8, 2024, IEP Amendment indicated that Student did not qualify for academic support, but that there were concerns connected with Student's iStation, MobyMax, and grades indicating slower than expected progress.
20. Student's annual IEP meeting was held on April 22, 2024.
21. Goals in the areas of Reading (45 minutes weekly) and Math (30 minutes weekly) were established in the Schedule of Services in the April 22, 2024, IEP. These services were provided in a special education setting.
22. The April 22, 2024, IEP also included Accommodations and Modifications with over 10 specific items, including environment, instructional material, assignments/homework, testing, behavior supports, etc.
23. The April 22, 2024, IEP Team also determined Student was eligible for Extended School Year (ESY) during Summer 2024 based on Student's regression in these three areas.
24. During the school's Open House in August 2024, Parents met with Classroom Teacher. During that conversation, Parents advised Classroom Teacher that they were privately seeking an autism evaluation of Student.
25. According to Classroom Teacher, this information was not communicated to any other LEA personnel.
26. From August 2024 to October 2024, Special Education Teacher 1 provided special education instructional services and served as Student's case manager. Service logs detail services provided and were consistent with the Student's April 22, 2024, IEP.
27. From October 2024 to Mid-December 2025, Special Education Teacher 2 provided special education instructional services and served as Student's case manager. Service logs detail services provided and were consistent with the Student's April 22, 2024, IEP.
28. From mid-December 2024 to the end of the school year in May 2025, Special Education Teacher 3 provided Student special education instructional services. Several months of service logs provided detail services to Student and were consistent with the Student's April 22, 2024, IEP.
29. During the Spring 2025 school term, Special Education Teacher 3 often provided special education instructional services in excess of the weekly minutes.
30. According to Classroom Teacher, Special Education Teacher 3 also came into the regular classroom to work with Student and other students.
31. On February 27, 2025, an IEP team meeting was held to amend the April 22, 2024, Annual IEP.
32. Student's primary eligibility was modified to Specific Learning Disability: Dyslexia with the following identified areas of need: "SLD, written expression, oral expression, and listening comprehension." The secondary disability was listed as speech or language impairment with an identified area of need in Articulation.



33. According to LEA, Dyslexia is screened in 1<sup>st</sup> grade. Therefore, screening was conducted during Student's 1<sup>st</sup> grade school year, and the evaluation results were added to the February 27, 2025, IEP Amendment.
34. The February 27, 2025, IEP Amendment noted some gains in iStation scores for reading and math.
35. The February 27, 2025, IEP Team expressed the following concern: "[Student's] scores are not consistently increasing but he is making progress. However, results still shows (sic) that [Student] needs support in most areas for reading and math."
36. During the February 27, 2025, IEP team meeting, Classroom Teacher also noted that Student "needs a lot of support in all areas of ELA."
37. However, the February 27, 2025, IEP Amendment Level of Service and Setting remained the same as the April 22, 2024, IEP.
38. Accommodations and Modifications also remained the same as the April 22, 2024, IEP.
39. The February 27, 2025, IEP Amendment and associated Prior Written Notice (PWN) do not reflect any discussion concerning additional testing and/or evaluations for Student.
40. Sometime after the beginning of the Spring 2025 school term, it was observed that Special Education Teacher 3 was struggling with completing IEPs for assigned students, including completing sections addressing Present Levels and Annual Measurable Goals in identified areas of need.
41. In March 2025, Special Education Teacher 1 was asked to assume responsibilities for drafting IEPs for Special Education Teacher 3, including Student's IEP. Special Education Teacher 1 agreed to assume those responsibilities.
42. Special Education Teacher 3 continued to provide special instructional services throughout the Spring 2025 term.
43. As previously noted, Special Education Teacher 3's service logs confirm continuation of Student's special education instruction services during this period.
44. Special Education Teacher 1 prepared the draft IEP for the April 15, 2025, Annual IEP.
45. In preparing the draft IEP, Special Education Teacher 1 reviewed current data and visited with all service providers regarding Student's progress.
46. After learning Student's current progress, Special Education Teacher 1 was concerned Student did not have enough minutes associated with special education pull-out services.
47. Special Education Teacher 1 determined that additional special education instructional time should be increased for Fall 2026 and included additional minutes in the April 15, 2025, IEP draft for consideration and approval by the IEP Team.
48. On April 15, 2025, an IEP Annual meeting was held.
49. Student's primary and secondary eligibilities remained the same as the February 27, 2025, IEP Amendment.

50. With respect to academic/learning skills, the April 15, 2025, IEP noted that “Student is significantly below grade level in reading and math.” Student was further noted to be at iStation Level 1 in all areas of reading, and Student is “still working on letter knowledge, phonetic awareness, and alphabetic decoding.”
51. The April 15, 2025, IEP further expressed concern that Student was struggling in all areas of math, particularly when adding and subtracting double digits.
52. The April 15, 2025, IEP also indicated that Student “finds difficulty working on reading or math without the teacher paying close attention to him.”
53. The April 15, 2025, IEP stated that Student was not eligible for ESY as there was no indication of regression in academics.
54. Student’s accommodations and modifications remained the same as the April 24, 2024, IEP.
55. Student’s Schedule of Services were set as follows: Speech, 30 minutes/weekly; Reading, 60 minutes/weekly; and Math, 60 minutes/weekly.
56. Level of Service (Level 1) and Setting (Setting 1) for the period April 15, 2025, to May 23, 2025, remained the same. The April 15, 2025, PWN documents the IEP Team’s analysis in these two areas.
57. For the period August 7, 2025, to April 14, 2026, the reading schedule of service was increased from 60 minutes/weekly to 90 minutes/weekly.
58. The April 15, 2025, PWN reports the IEP’s analysis of Student’s placement, which provided for “regular education classroom with Special Education services specified as: (instructional setting 1: 80% or more of the day in regular classroom).”
59. The April 15, 2025, Annual IEP and associated PWN do not reflect any discussion concerning additional testing and/or evaluations for Student, including Autism.
60. The April 15, 2025, PWN indicates that “Parent participated by Google Meets and agreed with the IEP team’s recommendations.”
61. Further, the April 15, 2025, PWN indicates that Parent “agrees with the implementation of the IEP on (April 15, 2023).”
62. According to LEA Special Education Director, Special Education Teachers 1 and 3 were essentially co-case managers for Student from April 2025 to the end of the school year.
63. After the April 15, 2025, Annual IEP team meeting, Parents contacted LEA Special Education Director to express several concerns, including Parents’ desire for a grade retention and Student’s progress towards IEP goals.
64. LEA Special Education Director discussed the Student’s educational history with Principal and also reviewed Student’s special education file.
65. LEA Special Education Director was concerned that under the circumstances, Student may need additional weekly minutes for pull-out special education instructional services, as well as special education instructional services provided in the regular classroom.

66. Thereafter, LEA Special Education Director recommended an IEP team meeting be scheduled to review the Student's IEP and further discuss Student's lack of academic progress.
67. An IEP team meeting was scheduled for May 20, 2025. The meeting was facilitated by an in-LEA facilitator.
68. During the meeting, Parents shared that Student had been "off [Student's] prescribed medication [for ADHD] for approximately four weeks."
69. Classroom Teacher replied that during this time, Student had increased difficulty with attention to task, following directions, and completing work.
70. The May 20, 2025, IEP Team discussed Student's needs associated with the ADHD diagnosis and confirmed Student's needs were addressed in Student's IEP through classroom accommodations and modifications.
71. ADHD has not been identified as an eligibility in the IEPs (May 2023, April 2024, and April 2025) but has been addressed in each IEP through identification of the diagnosis in the Current Medical Condition and through Accommodations and Modifications sections.
72. The May 20, 2025, IEP Team also discussed including ADHD as an Other Health Impairment (OHI) eligibility for ADHD.
73. Parents also requested Student undergo an Autism evaluation.
74. The IEP Team accepted Parents' proposal for the Autism evaluation and further recommended "a comprehensive re-evaluation, including assessments in the areas of cognitive functioning, academic achievement, and occupational therapy (with a focus on sensory needs). Based on the results of these evaluations, the diagnostic team may consider additional areas of assessment as appropriate. A district diagnostician will develop and provide an Assessment Plan outlining the proposed evaluations."
75. Parents provided a signed consent on May 22, 2025, for a full evaluation that included an Autism evaluation.
76. Parent 1 indicated during an interview with investigator that Parents had been seeking an autism evaluation privately. These efforts were in process for approximately 16 months due to a backlog with availability of medical providers in Albuquerque.
77. Parent 1 also indicated during the interview that results from that evaluation indicated student did not have Autism.
78. The IEP Team also reviewed Student's Level of Service (Level 1) and Least Restrictive Environment (LRE) or Setting (Setting 1).
79. The IEP Team determined that Level of Service (Level 1) and LRE (Setting 1) no longer provided Student with the supports required based on Student's present levels.
80. Therefore, Student's Second-Year Schedule of Services (to begin at the start of the 2025-2026 school year) was updated to align with Student's current academic needs as reflected in present levels of performance.

81. This revised Second-Year Schedule of Services included: Speech-Language Therapy, 30 minutes/weekly; Reading, 90 minutes/weekly in special education setting and 60 minutes/weekly in general education setting; Math, 60 minutes/weekly in special education setting and 60 minutes/weekly in general education setting.
82. The updates to the Second-Year Schedule of Services resulted in an increased Level of Services (Level 2 – moderate) and LRE or Setting (Setting 2 – moderate).
83. The May 20, 2025, PWN specifically documents that Parents agreed to the implementation of the May 20, 2025, IEP Amendment.

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

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

**Whether the District met its regulatory obligations to identify, evaluate, and determine if Student had a disability in violation of 34 C.F.R. § 300.111 and 6.31.2.10 NMAC.**

“Child find” is the affirmative, ongoing obligation of states and local districts to identify, locate, and evaluate all children with disabilities residing within the jurisdiction who are in need of special education and related services. See, 34 CFR 300.111(a)(1)(i); 6.31.2.10 NMAC. Under Child Find, a district’s responsibility requires it to “adopt and implement policies and procedures to ensure that all children with disabilities . . . who are advancing from grade to grade, regardless of the severity of their disability and who are in need of special education and related services, are located, evaluated, and identified in compliance with all applicable requirements of 34 CFR Secs. 300.111, 300.131, 300.301 through 300.306, and all these or other [New Mexico Public Education Department] rules and standards.” 6.31.2.10(A) NMAC.

Further, either a parent of a child or a public agency may initiate a request for a full and individual evaluation to determine if the child is a child with a disability or may request a reevaluation to determine if the child’s educational needs have changed. 6.31.2.10(D)(1) NMAC. There is no particular method in which a parent may make such a request. 6.31.2.10(D)(2) NMAC.

In this matter, Student had previously undergone multiple evaluations and was receiving special education under an IEP. Therefore, the LEA was on notice of Student’s special education services under the multi-layered system of supports. 6.31.2.10(B) NMAC. During an open house held at the beginning of the 2024-2025 school year, Parents indicated to Classroom Teacher that they were privately seeking an evaluation of Autism for Student. Classroom Teacher did not communicate this information to any other LEA personnel nor did Classroom Teacher take any other action related to Parents’ communication.

There is no notation of any parental request for an Autism evaluation in the four IEP team meetings held between April 22, 2024, and April 15, 2025. Parents did make a request for an Autism evaluation during a May 20, 2025, IEP team meeting.

During an interview in interview with Parent 1, Parent 1 confirmed Parents sought a private Autism evaluation. That process took approximately 16 months. Parent 1 also indicated during the interview that results of the Autism evaluation indicated Student did not have Autism. As of the date of the interview, Parents had not shared the results of the Autism evaluation with LEA.

When Parents communicated with Classroom Teacher, a licensed professional in the school where Student attended, the LEA was on notice that Student may have an additional disability. As stated in LEA's Child Find policies, LEA "permits referrals from any source that suspects a child may be eligible for special education and related services."

The LEA failed in its obligation to pursue an evaluation to determine if Student was in need of additional special education and related services, are located, evaluated, and identified in compliance with all applicable requirements of 34 CFR Secs. 300.111, 300.131, 300.301 through 300.306, and these or other department rules and standards. 6.31.2.10(A) NMAC.

**As to Issue No. 1, LEA is cited, and Corrective Action is required.**

### **Issue No. 2**

**Whether the District failed to conduct special education evaluations of Student within the required timeframes and other evaluation requirements pursuant to 34 CFR § 300.301-311 and 6.31.2.10 NMAC.**

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 CFR 300.304 through 34 CFR 300.311; 6.31.2.10 NMAC.

An evaluation under the IDEA serves two purposes: 1) identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and 2) helping IEP teams identify the special education and related services the student requires. 71 Fed. Reg. 46,548 (2006). *See, e.g., A.W. v. Middletown Area Sch. Dist.*, 65 IDELR 16 (M.D. Pa. 2015) (holding that a student's evaluation was inappropriate because it lacked information from which the district

could develop a positive behavior plan, craft IEP goals, or rule out a specific learning disability); *E.H. v. McKnight*, 81 IDELR 227 (D. Md. 2022) (acknowledging that evaluator recommendations are tied to a student's programming needs); and *Cumberland Valley Sch. Dist.*, 124 LRP 1165 (SEA PA 11/17/23) (The ultimate function of evaluations and reevaluations is to determine whether the student has a disability and to assist in determining the content of the student's IEP.).

The IDEA distinguishes between initial (or preplacement) evaluations (34 CFR 300.301) and reevaluations of students who already are receiving special education and related services under the IDEA (34 CFR 300.303). The former refers to the first evaluation, while the latter refers to the follow-up or repeat evaluations that occur throughout the course of the student's educational career.

After obtaining a parent's consent to evaluate, the initial evaluation "must be conducted within 60 days of receiving parental consent for the evaluation; or If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe." 34 C.F.R. § 300.301(c)(1). In this matter, Student's initial evaluation was conducted in April 3, 2023, within 60 days of the initial evaluation consent dated March 28, 2023. The initial evaluation is outside the statutory period of the complaint.

Additional evaluations were conducted on December 11, 2023, after parental consent was signed on November 6, 2023. These evaluations were not subject to the 60-day evaluation requirement for initial evaluations but were conducted within 60 days. 34 C.F.R. 304-305; 6.31.2.10(C) NMAC. In addition, these evaluations were outside the statutory period of the complaint.

During the May 20, 2025, IEP team meeting, the IEP Team determined a comprehensive re-evaluation, including assessments in the areas of cognitive functioning, academic achievement, and occupational therapy (with a focus on sensory needs) would be conducted.

**The District did not fail to conduct special education evaluations of Student within the required timeframes and other evaluation requirements pursuant to 34 CFR § 300.301-311 and 6.31.2.10 NMAC.**

**As to Issue No. 2, LEA is not cited.**

### **Issue No. 3**

**Whether the District failed to develop, implement, and review 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, 6.31.2.10, 6.31.2.11 NMAC.**

Reviewing and revising a student's IEP is a critical step in the IEP process, because the needs of a student with a disability often change throughout the course of the student's educational career. The IEP must be responsive to those changes to ensure FAPE is provided. IEP teams must meet at least once a year to formulate a new program, even in circumstances where it is clear that all of the services provided to the student will remain the same.

At each annual review meeting, the IEP team needs to consider if the IEP still reflects the individual needs of the student. To answer that question, the IEP team reviews the extent to which the student has accomplished her annual goals. Based on the student's level of success, the IEP team members can then decide which adjustments, if any, are necessary. It also may decide or consider:

- Any lack of progress toward the student's annual goals, if appropriate.
- The results of any reevaluation conducted.
- Information about the child provided to or by the parents.
- The child's anticipated needs.
- Any other IEP-related matters.

34 CFR 300.324 (b)(1)(ii); 6.31.2.11(B) NMAC.

In *Questions and Answers on Endrew F. v. Douglas County School District RE-1*, 71 IDELR 68 (EDU 2017), the U.S. Department of Education (USDOE) reinforced the Supreme Court's decision in *Endrew F. v. Douglas County School District RE-1*, No. 15-827 (2017), and clarified that if it turns out a child is not making progress at the level the IEP team expected, USDOE stated, the team must revisit the IEP with the *Endrew F.* standard in mind and revise it as necessary to ensure the student is receiving appropriate special education and related services and that the goals are individualized and ambitious. The Court emphasized that an IEP should be designed to allow a student to make meaningful progress, not just minimal or trivial gains.

In this matter, the LEA was aware that while Student was making some progress but concerns remained among the IEP Team that Student's progress was not at the progress levels expected. There is ample evidence of Student's lack of progress:

- The April 22, 2024, IEP added a primary eligibility of Specific Learning Disability (SLD)-Dyslexia based on the 1<sup>st</sup> grade screening.
- The April 22, 2024, IEP expressed the concern that “results shows that [Student] had made progress in both areas. [Student] scores are not consistently increasing but he is making progress. However, results still shows that [Student] needs support in most areas for reading and math. It is recommended that [Student] will work on reading and math goals to help [Student] fill in the gaps of skills that [Student] needs to master.”
- The April 22, 2024, IEP added pull-out minutes for reading (60 minutes/weekly) and math (60 minutes/weekly) for the period August 9, 2024, to April 21, 2025.
- The February 27, 2025, PWN based on an IEP team meeting indicated that iStation scores showed some progress.
- The February 27, 2025, IEP Amendment indicated that, according to the Classroom Teacher, Student needs support in completing his work and must be constantly reminded “to focus and listen.”
- The February 27, 2025, IEP, according to the Classroom Teacher, indicated that Student needed “a lot of support in all areas of ELA.”
- The April 15, 2025, IEP indicated that “[Student] is significantly below grade level in reading and math. [Student’s] Istation level 1, beginning steps in all areas of reading and is still working on letter knowledge, phonemic awareness, and alphabetic decoding. [Student] is also struggling in all areas of math, particularly when adding and subtracting double digits. [Student] needs a lot of individualized attention when he is working on assignments. He finds difficulty working on reading or math without the teacher paying close attention to him.”
- Accommodations and modifications remained the same from the April 2024 IEP to the May 2025 IEP.
- The IEP Team did not document discussions of effectiveness of accommodations and modifications identified in the IEPs nor strategies to try additional accommodations and/or modifications.

Despite the lack of any indicia of satisfactory progress toward goals, pull-out services were not increased appreciably in an attempt to aid Student. Parents contacted LEA Special Education Director in late April 2025 to express concerns. LEA Special Education Director felt the special education instructional service hours should be increased. A May 20, 2025, IEP Team was convened and, as determined by the IEP Team, special education instructional services were increased to 5 hours/week, including services provided in a special education environment and regular classroom for the period of August 7, 2025, to April 14, 2026.



The LEA did not meet its duty to ensure Student's IEP be designed to allow Student to make meaningful progress, not just minimal or trivial gains.

**As to Issue No. 3, LEA is cited, and Corrective Action is required.**

**Issue No. 4**

**Whether the District failed to properly place Student through a continuum of placement analysis as required by 34 C.F.R. § 300.115 and 6.32.2.11(C) NMAC.**

The LRE mandate demands that students be educated in regular classroom settings to the maximum extent appropriate. 34 C.F.R. 300.114 (a); *OSEP Memorandum 95-9*, 21 IDELR 1152 (OSEP 1994); 6.31.2.11(C) NMAC.

To that end, the IDEA requires that each public agency must ensure:

- To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- Special classes, separate schooling, or other removals of children with disabilities from the regular educational environment occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 C.F.R. 300.114(a); 6.31.2.11(C)(1) NMAC.

If a child's placement does not confer a "meaningful benefit" to the student and a more restrictive program is likely to provide such benefit, the child is entitled to be placed in that more restrictive program. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008); *Hartmann v. Loudoun County Bd. of Educ.*, 26 IDELR 167 (4th Cir. 1997), *cert. denied*, 111 LRP 18076, 522 U.S. 1046 (1998); and *D.W. v. Milwaukee Pub. Schs.*, 61 IDELR 32 (7th Cir. 2013, unpublished).

Further, the IDEA requires that a district develop a "continuum of alternative placements," which is the range of potential placements in which a district can implement a student's IEP. The continuum begins with the regular classroom and continues to get more restrictive at each placement on the continuum. 34 C.F.R. 300.115(a); 6.31.2.11(C)(2) NMAC.

The IDEA requires that the continuum:

- Include the alternative placements listed in the definition of special education under [34 C.F.R. 300.39] (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
- Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

*Id.*

In making a placement determination, priority must be given to placement in the regular classroom with any necessary supplemental aids and services to make that placement successful. Only after that placement is considered should districts move to more restrictive placement options. However, a child with a disability need not fail in the regular education environment before a local educational agency can consider or implement a placement in a more restrictive setting. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996); and *OSEP Memorandum 95-9*, 21 IDELR 1152 (OSEP 1994).

During the April 22, 2024, Annual IEP Team Meeting, the IEP Team determined Student’s schedule of services would include special education instructional “pull-out” services would be appropriate related to speech, reading, and math. These services would take place in a special education environment for a total of 2.5 hours/week from August 9, 2024, to May 21, 2025. Student’s primary location for educational services would remain in the regular classroom. The April 22, 2024, PWN detailed the IEP Team’s analysis of Student’s least restrictive environment. Student’s Level of Services was set at Level 1 (minimum), including 2.5 hours/week provided in a special educational environment. Student’s remaining school day would be in the regular classroom. Given these services, Student’s educational Setting would be Level 1 (minimum) or more than 80% in the regular classroom.

Likewise, during the April 15, 2025, Annual IEP Team Meeting it was also determined special education instructional “pull-out” services would be appropriate related to speech, reading, and math. These services would take place in a special education environment for a total of 2.5 hours/week from April 15, 2025, to May 23, 2025. Again, Student’s primary location for educational services would remain in the regular classroom. Second-year services in the special education services indicate an increase to 3.0 hours/week (with additional minutes each week in reading). The April 15, 2025, PWN detailed Student’s least restrictive environment. A continuum of placements were reviewed—from essentially full-time in a special education environment to essentially full-time in the regular classroom.

The May 20, 2025, IEP team meeting resulted in an increase of special education services provided in a special education environment, as well as special education services provided in

the regular classroom. This change was prompted by the IEP Team's concerns related to Student's progress in meeting IEP goals. The IEP Team's changes in levels of service resulted in a change in the Level of Service (from Level 1-minimum to Level 2-moderate) and educational setting (Setting 1-minimum to Setting 2-moderate).

In arriving at these IEP changes to Student's level of services and related educational settings, the IEP Team engaged in analyses of the required continuum of placements as it considered Student's needs. **The District did not fail to properly place Student through a continuum of placement analysis as required by 34 C.F.R. § 300.115 and 6.32.2.11(C) NMAC.**

**As to Issue No. 4, LEA is not cited.**

**Issue No. 5**

**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. *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.

"To meet a substantive obligation for FAPE, a district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstance." *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 999 (2017). The IEP must be "appropriately ambitious in light of [the child's] circumstances." *Id.* at 1000. While the IEP is not required to be ideal, the IEP must be reasonable. *Id.* at 999.

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).

While Student made some progress toward meeting his IEP goals, which are appropriate to Student's circumstance, Student did not progress as the IEP Team anticipated. While LEA ensured Student is provided with identified accommodations, it did not engage in review and analysis regarding the effectiveness of those accommodations and modifications.

Special education instructional activities and related services were not crafted to provide for student progression toward academic goals. The failure to review and modify Student's IEP rises to the level of a violation of the substantive obligations for FAPE.

**As to Issue No. 5, LEA is cited, and Corrective Action is required.**

**Summary of Citations**

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.111 and 6.31.2.10 NMAC	The LEA failed to meet its regulatory obligations to identify, evaluate, and determine if Student had a disability.
34 C.F.R. §§ 300.156, 300.320-300.328 and 6.31.2.9, 6.31.2.10, 6.31.2.11 NMAC	The LEA failed to develop, implement, and review an Individualized Education Plan (IEP) that allowed Student to make progress toward identified goals
34 C.F.R. § 300.101 and 6.31.2.8 NMAC	The LEA's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE) to the Student.

**Required Actions and Deadlines**

**By August 8, 2025**, LEA's Special Education Director must assure the OSE in writing that LEA will implement the provisions of this Corrective Action Plan (CAP). OSE requests LEA submit all documentation of the completed corrective actions to the individual below, who is assigned to

monitor LEA's progress with 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 PED's satisfaction that required elements of this Corrective Action Plan are accomplished within deadlines stated. LEA is advised that 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 OSE.

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

**Please carefully read 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 One year from issuance and reported to OSE no later than Two Weeks from Final Deadline.**

All documentation submitted to OSE to demonstrate compliance with the CAP must be clearly labeled to indicate state complaint case number and step number.

**Corrective Action Plan**

<b>Step No.</b>	<b><u>Actions Required by LEA</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, LEA 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>August 8, 2025</b>	Written Assurance/Letter/Email	<b>August 8, 2025</b>
<b>2.</b>	LEA Special Education Director and School Principal shall meet virtually with OSE CAP Monitor to review Complaint Resolution Report, Corrective Action Plan, and any other measures that LEA plans to take to ensure that violations are corrected and do not recur. LEA Director has discretion to include other LEA or school administrators or personnel in this meeting. LEA Director shall be responsible for arranging this virtual meeting with OSE CAP Monitor.	<b>August 12, 2025</b>	Notes from meeting prepared by LEA	<b>Within 7 working days of the meeting.</b>
<b>3.</b>	LEA Special Education Director will meet with relevant case manager, implementation specialist, and others with special education roles and responsibilities to review Complaint Resolution Report and to ensure that those persons understand this report, violations that were found, and corrective action that will be taken to address violations.	<b>August 18, 2025</b>	Notes from meeting prepared by LEA, including list of attendees, summary of key points, and specific responsibilities assigned to each participant for ensuring compliance.	<b>Within 5 days of meeting</b>

<b>Step No.</b>	<b><u>Actions Required by LEA</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>LEA shall develop a written plan for the school to address lack of appropriate progress monitoring and reporting of student's progress on goals; such will be presented to PED for approval. After approval, plan will be provided to School Principal for dissemination to appropriate staff.</p> <p>LEA shall provide quarterly progress reports for Student for the remainder of the school year.</p>	<b>August 17, 2025</b>	<p>Written plan to be approved by PED</p> <p>Quarterly written progress reports</p>	<b>To begin on August 18, 2025, and continue through 1 year CAP time period.</b>
<b>5.</b>	LEA shall conduct intermittent auditing of Student's school team progress monitoring and reporting throughout the 2025-26 school year.	<b>Within 14 days of the end of each grading period</b>	Documentation of audit results/ recommendations	<b>No later than 21 days after the end of the grading period</b>
<b>6.</b>	<p>LEA shall convene a facilitated IEP meeting for Student. The facilitated IEP meeting shall address, at minimum:</p> <ol style="list-style-type: none"> <li>1. Develop IEP with identified goals based on all data available to LEA;</li> <li>2. Compensatory education schedule, can occur after school, on weekends and during summer months</li> </ol> <p>Facilitator shall be independent of LEA and shall be selected from PED list of approved facilitators. Facilitator shall be paid for by LEA.</p> <p>LEA shall ensure a meeting notice is provided in advance of meeting,</p>	<b>August 25, 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)</li> <li>5. Documentation of finalized communication plan distributed to all of Student's teachers and service providers within 5 school days of meeting with confirmation of parent's receipt logged.</li> </ol>	<b>7 days after the FIEP meeting is held</b>

<b>Step No.</b>	<b><u>Actions Required by LEA</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>pursuant to 34 C.F.R. § 300.322.  <i>Note:</i> If mutually agreeable to Parent and required staff, meeting may be rescheduled within 10 school days of proposed date.</p> <p>LEA shall ensure that a copy of IEP is provided to Parent at end of meeting.</p> <p>LEA will also ensure that Parent's preferred mode (hard copy and/or electronic) of 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.</p>			
<b>7.</b>	<p>LEA shall provide the following compensatory education:</p> <ol style="list-style-type: none"> <li>1. Reading, 51 hours</li> <li>2. Math, 34 hours</li> </ol> <p>The plan for compensatory services shall be documented in a PWN for the facilitated IEP meeting.</p> <p>LEA shall maintain a PED-approved tracker that includes total compensatory hours owed and provided to Student based on missed services as well as Student need.</p> <p>If a parent declines compensatory education, LEA shall get</p>	<b>September 2, 2025 to begin services</b>	<p>Monthly documentation of delivery/provision of compensatory education services, including logs of services recorded in the PED-approved Excel spreadsheet log and a summary progress report submitted each quarter provided by the OSE CAP monitor.</p> <p>Prior Written Notice containing plan for compensatory services.</p>	<p><b>Monthly from date of compensatory services plan until the compensatory education hours are completed</b></p> <p><b>7 days after the FEIP meeting is held</b></p>



<b>Step No.</b>	<b><u>Actions Required by LEA</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>confirmation in writing and provide such to PED.</p> <p>These compensatory services are above and beyond regular services required by Student's IEP.</p> <p>Scheduling compensatory services shall be determined in collaboration with Parent and documented in writing in a Prior Written Notice. Scheduling can include provisions of services in summer months.</p> <p>Services shall be provided in person unless otherwise agreed upon in writing by Parent.</p> <p>If LEA, due to staffing or other limitations, is unable to provide required IEP and compensatory services as outlined Student's IEP and compensatory services plan, LEA is required to contract with private provider to ensure those services are provided.</p> <p>Partial fulfillment of any service hours shall be documented monthly using the PED-approved log, with a summary progress report submitted each quarter.</p>			
<b>8.</b>	LEA shall arrange training for school staff (including special education teachers, special education administrators, and related service personnel) to be provided by a person with	<b>August 29, 2025</b>	Submission of proposed trainer and trainer's resume and proposed presentation for NMPED approval.	<b>August 8, 2025</b>

<b>Step No.</b>	<b><u>Actions Required by LEA</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>expertise in special education who was not involved in responding to this complaint and who is approved by PED.</p> <p>Training materials/presentation will be provided to CAP Monitor for approval before use.</p> <p>Training shall address the following special education topics:</p> <ol style="list-style-type: none"> <li>1. Child Find responsibilities</li> <li>2. Monitoring and Reporting student progress</li> <li>3. Designing IEPs to allow students to make meaningful progress</li> </ol> <p>LEA shall also submit a plan for ensuring ongoing training of new hires or staff unable to attend the training.</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><i>August 8, 2025</i></b></p> <p><b><i>September 9, 2025</i></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 Kerr/

Samuel D. Kerr

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