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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Albuquerque Public Schools
Case No. C2425-72
July 25, 2025**

This Report requires corrective action. See pages 8-9.

On May 27, 2025, a complaint was filed with the New Mexico Public Education Department's (PED) Office of Special Education (OSE) under the federal Individuals with Disabilities Education Act (IDEA) and the implementing Federal Regulations and State Rules governing publicly funded special education programs for children with disabilities in New Mexico.¹ OSE has investigated the complaint and issues this report pursuant to 34 C.F.R. § 300.152(a)(5) and 6.31.2.13(H)(5)(b) NMAC.

Conduct of the Complaint Investigation

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

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

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

- review of the LEA's compliance with federal IDEA regulations and state NMAC rules;
- interview with the Parent on July 2, 2025;
- interview with Special Education Teacher on July 14, 2025; 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.

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

General Findings of Fact

1. Previously, Parent filed a state complaint in the spring of 2024. In an attempt to resolve that state complaint, the parties attended mediation. A mediation agreement was reached on June 13, 2024. In part, the parties agreed that the LEA would provide Student "medical safety support through constant adult supervision for the entire school day."
2. Subsequently, an amendment was made to Student's then-current IEP. The amendment is dated August 20, 2024 and includes, in part, special education services described as "SE Medical/Safety Support in Gen Ed" for 1,875 minutes/week. The setting is designated as "regular ed setting." The prior written notice (PWN) indicates due to Student's needs,

maximum adult support “in the school setting” was necessary. The PWN indicates medical/safety support would be provided for 1,750 minutes/week.

3. A new annual IEP was developed and is dated October 16, 2024. The new IEP includes the same medical/safety support as the August 2024 IEP amendment. In addition, the PWN states only 1,750 minutes of medical/safety support would be provided. Other relevant information in the IEP includes:
 - a. Student does not require physical assistance to walk except for outdoors on curbs, on uneven terrain, and/or stairs. Student requires proximity to an adult throughout the day.
 - b. Accommodations include, in part, adult assistance to monitor Student when walking around campus, attending general education electives, eating lunch, and when completing tasks that require fine motor skills.
4. The LEA explained Student was to receive medical/safety support for nearly the entire school day during the 2024-25 school year. The LEA explained medical/safety support was provided by an educational assistant (EA) or the special education teacher. Specifically, the person providing the medical/safety support was to escort Student from place to place, assist Student in getting on and off the bus, in the restroom, and in the classroom. The EA(s) who provided the support was not solely designated to Student but several students. Special Education Teacher further explained that when escorting Student from place to place, staff were to remain close to Student and would hold Student’s hand, when necessary. For example, when outside, going up and down stairs, or in crowded hallways.
5. Throughout the 2024-25 school year, several incidents have been documented in which Student was injured to some degree and/or fell. The specifics of incidents mentioned by Parent are detailed below:
 - a. August 21, 2024: Student ran into a table in the classroom. Student was seen by the nurse after running into the table and again in the afternoon when Student appeared “wobbly.” No visual injuries were observed.
 - b. February 5, 2025: Student fell out of the chair, bumping into another chair. No visual injuries were observed.
 - c. February 7, 2025: Student fell while entering the bus. Two bruises were observed on Student the next day.
 - d. May 22, 2025: Student bit an iPad causing the iPad to crack. The next day, a cut was visible on Student’s tongue.
6. The parties attended a facilitated IEP meeting on July 11, 2025. A new annual IEP dated July 11, 2025 was developed. Relevant portions of the IEP include:
 - a. One IEP goal objective aims to increase Student’s ability to navigate the school campus with verbal and/or physical (e.g., hand holding, touching) support to decrease the number of falls.

- b. Medical/safety support is no longer included as a special education service.
 - c. Supplementary aids and services include EA support for the entirety of the school day.
 - d. Accommodations include, in part, adult assistance while walking around campus, attending electives, eating lunch, and completing tasks that require fine motor skills.
7. The PWN regarding the IEP states Parent shared concerns regarding Student being injured in class from falling out of chairs and other incidents. The IEP team agreed Student should receive “focused adult supervision” throughout the entirety of the school day.

Discussion and Conclusions of Law

Issue No. 1

Whether Student’s IEP is tailored to their unique needs and 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). The United States Supreme Court in *Board of Education v. Rowley*, established a two-prong standard to analyze whether an IEP is adequate. 458 U.S. 176 (1982). The first prong is whether the development of the IEP complies with the IDEA’s procedures and the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Bd. of Ed. v. Rowley*, 458 U.S. at 207.

In the complaint, Parent indicated Student’s behaviors were not properly addressed by the LEA with an FBA, BIP, and/or updated safety plan. Upon investigating the complaint and speaking with Parent, it became clearer that Parent’s concerns were that Student was being “injured” due to a lack of supervision that should have been provided through medical/safety support. Therefore, the findings are in regards to whether the first prong of *Rowley* was met. Specifically, whether the IEP clearly defined what medical/safety support would be provided and whether it was provided.

An IEP must include the anticipated frequency, location, and duration of services and modifications. 34 C.F.R. § 300.320(a)(7).

IEPs must pass the “stranger test.” That is, a person unfamiliar with the student’s IEP would be able to read it, clearly understand it, and implement it. *See e.g., Mason City Community School District*, 46 IDELR 148 (SEA IA 2006).

First and foremost, the August 2024 IEP amendment and October 2024 IEP include “SE Medical/Safety Support in Gen Ed” as a special education service. The medical/safety support provided to Student consisted of an EA maintaining physical proximity to support Student when transitioning and offering assistance in and outside of the classroom. The IDEA defines “special education” as specially designed instruction that adapts the content, methodology, or delivery of instruction to meet the unique needs of the student with a disability. 34 C.F.R. § 300.39. The IDEA defines “supplementary aids and services” as “aids, services, or other supports that are provided in regular education classes . . . to enable children with disabilities to be educated with nondisabled children . . .” 34 C.F.R. § 300.42. Here, the support provided by an EA is not specially designed instruction but rather a supplementary aid and service. Therefore, the LEA misclassified this support in the IEP. The LEA has previously been informed by the OSE that this kind of support is not a special education service. Therefore, corrective action will be required.

Secondly, the description of the support to be provided is misleading. The description and the setting both indicate the support is to be provided in the general education setting, but that is inaccurate. The LEA must ensure IEPs include an accurate depiction of the anticipated frequency, location, and duration of services and supports. *See* 34 C.F.R. § 300.320(a)(7).

Third, the IEPs indicate Student was to receive medical/safety support for 1,875 minutes/week while the PWNs state the support was to be provided for 1,750 minutes. Again, the LEA’s level of commitment is unclear.

On its face, neither the August 2024 IEP amendment nor the October 2024 IEP accurately or clearly describe the “medical/safety” support to be provided. However, there is an understanding amongst the parties that an EA was to escort Student when transitioning and assist Student in the classroom and at lunch. Thus, while the IEP could have been written with more clarity, the IEP did include the support that was needed for Student. With that said, there were four instances during the 2024-25 school year in which Parent questioned whether the required medical/safety support was provided. There is no indication that an EA was not present during any of the four incidents.

In conclusion, the IEPs did not comply with the IDEA’s development procedures, resulting in a procedural violation.

Of note, the parties participated in a facilitated IEP meeting and the IEP team has, as of today’s date, developed an IEP that remedies the deficiencies noted. Therefore, student-level corrective action will not be required.

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

Issue No. 2

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

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).

Even though the IEP did not include sufficient detail to make the LEA's level of commitment clear regarding medical/safety support, there was a general understanding what was to be provided and there is no indication it was not consistently provided; Student was enabled to make progress appropriate in light of circumstances. Therefore, there was no denial of FAPE.

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

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. §§ 300.320 6.31.2.11 NMAC	The LEA failed to develop an IEP specifying the anticipated frequency, location, and duration of services and supports.

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

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 July 25, 2026 and reported to OSE no later than August 8, 2026. 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

Step No.	<u>Actions Required by LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
1.	As described above, 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).	August 4, 2025	Written Assurance/Letter/Email	August 4, 2025
2.	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.	August 8, 2025	Notes from meeting prepared by LEA	August 19, 2025
3.	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.	August 14, 2025	Notes from meeting prepared by LEA, including list of attendees, summary of key points, and specific responsibilities assigned to each participant for ensuring compliance.	August 21, 2025

Step No.	<u>Actions Required by LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
4.	<p>LEA shall arrange training for all middle school staff within the LEA (including special education teachers, special education administrators, and related service personnel) to be provided by a person independent of LEA with 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"> 1. IEP development, including: <ol style="list-style-type: none"> a. What classifies as specialized instruction and a supplementary aid and service; and b. Adequate descriptions and detail of services and accommodations. <p>LEA shall also submit a plan for ensuring ongoing training of new hires or staff unable to attend the training.</p>	August 22, 2025	<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>August 4, 2025</p> <p>August 4, 2025</p> <p>August September 1, 2025</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:

Signed by:

A handwritten signature in black ink that reads "Amanda De Bell". The signature is written in a cursive style with a large, stylized 'A' and 'B'.

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Amanda DeBell

Deputy Cabinet Secretary, New Mexico Public Education Department