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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Rio Rancho Public Schools
Case No. C2425-74
August 15, 2025

This Report requires corrective action. See pages 19-25.

On June 2, 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. An extension was granted through August 15, 2025, because one of the witnesses was unavailable within the 60-day timeframe.

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 LEA 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, and therefore, the LEA's compliance as authorizing body for Charter;
- interviews with the Complainant; Special Education Instructional Leader; Assistant Principal Social Services, Social Communication Program; Director of Special Services; Middle School Special Education Teacher, CBI Program; Principal; 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 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 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 District failed to develop and implement an IEP that allowed Student to make progress and receive a free appropriate public education (FAPE), in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC; specifically, whether the District;
 - a. Failed to implement the services and supports and other requirements of the IEP with fidelity;
 - b. Failed to provide all accommodations and other supports and services;
 - c. Failed to adapt and modify assignments and instructional materials to allow Student access and instruction;
 - d. Failed to take steps necessary to address Student's behaviors and dysregulation that impacted learning;
 - e. Changed placement without proper consideration of Student's least restrictive environment (LRE) and needs;
 - f. Failed to consider and provide other supports and services to allow Student to continue in placement or successfully attend school for a full school day; and
 - g. Failed to timely meet and address Student's changing needs when progress was not being met;

2. Whether the District's actions and/or omissions towards the named Students 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

Introduction

Multiple requests were made for data or other documentation used for the development of the FBA, BIP and placement decisions. The response was that they were included on the IEP but no discrete data was provided. The IEPs noted that data was reviewed but no further information was noted on the IEPs. Limited ABC data was provided, but it was reported that data on all of Student's behaviors were collected. Such data was not provided to the investigator. There was no documentation provided regarding the effectiveness of the BIP. The LEA reported a decrease in removal of colostomy bag and other negative behaviors in March of 2025, but no discrete data of the decrease was provided. In addition, progress notes were requested but the information provided did not substantiate Student's present levels, or progress. The LEA acknowledged there were neither written records of Student's present levels at the end of the school year nor data on whether Student had mastered any goals during the 2024-2025 school year. Documentation of modifications and accommodations provided to Student were not available and Student's community-based instruction (CBI) Teacher indicated that she did not maintain records for Student after Student was transferred to the social communication classroom.

Based on the totality of the investigation, the investigator concludes that LEA provided all data that existed. The requisite data was not maintained by the LEA.

Background Information and special education services

1. Student was a seventh grader at LEA, eligible for special education services because of multiple disabilities including intellectual disability, hearing impairment, speech and language, and autism.
2. Parents have been in agreement with all plans of the LEA and were not interviewed as part of this complaint.
3. Complainant was a deaf and hard of hearing teacher ("DHHT") that worked with Student. She reported a specialty in working with autistic deaf children.
4. Previously, Student had attended the New Mexico School for the Deaf (NMSD).

5. Student has attended the LEA since transferring from the NMSD. Student's placement during the 2023-2024 and the majority of the 2024-2025 school year was a self-contained CBI classroom.
6. Student also has many health issues including a colostomy bag, feeding tube and nystagmus.
7. Student has hearing aids and cochlear implant because of profound hearing loss and auditory neuropathy in the left ear but does not use aids because of sensory issues.
8. American sign language (ASL) is Student's primary language.
9. Student did not have significant behaviors and was successful in core subjects and did well in electives that were modified during the 2023-2024 school year.

Special education services and supports

10. An IEP, amended April 3, 2024, provided Student the following special education and related services:
 - 30 minutes per week for audiology,
 - 300 minutes per week each for science, math, social studies and English-Language arts in the CBI room.
 - 60 minutes of speech (SL), 30 minutes of social work (SW),
 - 30 minutes of adaptive physical education (PE),
 - 30 minutes of occupational therapy (OT),
 - 30 minutes of physical therapy (PT),
 - 30 minutes of consultation with Deaf and Hard of Hearing Teacher (DHHT),
 - 119 minutes of direct DHHT services,
 - 364 hours of 1-1 aide, and
 - a full-time interpreter.
11. Student was at the prekindergarten level of cognitive functioning. With 1-1 assistance, Student was able to participate with peers in lunch and two electives at the start of the 2024-2025 school year.
12. The present levels of academic achievement and functional performance (PLAAFP) on September 9, 2024 IEP, indicated the following skills:
 - In reading, Student was able to sign all 26 letters and words that start with that letter with 100% accuracy and read multiple CVC words at 80%.
 - Student could write simple three-word sentences with correct punctuation.
 - In math, Student could identify 1-31 numbers on calendar, could add and subtract with calculator and could identify coins but not value.

13. Student's CBI classroom had 7-8 other students, an interpreter, teacher and three aides that worked with all students in the classroom. Student had a 1-1 aide at all times.
14. Student received fifty (50) distinct accommodations, all of which are not listed in this document, but which were reviewed by investigator.
15. The LEA did not have records relative to when and how accommodations were provided.
16. The CBI Teacher reported that the DHHT added accommodations to the IEP without the IEP team's involvement, and she did the best she could to implement all accommodations.
17. Student received the following accommodations as reported by staff: 1-1 aide, interpreters; reading and matching words to pictures; use of visuals for text; videos with ASL that corresponded to lessons; ASL alphabet posted; interpreters signed specific words to Student; if no visual, draw picture on dry erase board; boom cards; iPad; alternative lessons if not interested in planned lesson, household chores; modified recipes for cooking; funny money for reinforcement. These do not represent the fifty accommodations in Student's IEP.
18. Modified assignments that were reported by staff but were not available for review included boom cards; visuals; shortened assignments; Student controlled work and breaks; videos with ASL; 1-1 aide; simplified instructions; extra time; simplified questions; multiple choice options; math manipulatives; worksheets aligned with IEP goals; teacher created visuals that corresponded to SPIRE curriculum since Student started attending LEA school.
19. The DHHT reported that she provided modified instructional materials, flashcards, visual calendar and other tools and instructional materials to assist Student. Only some of the modified instructional materials were implemented with Student.
20. Student had a detailed visual calendar that Student would check off when a class or task was completed.
21. The LEA used the SPIRE and Unique Learning System (ULS) curriculums in the CBI classroom. SPIRE is a program designed for dyslexia but the CBI Teacher modified the program by using pictures for the words in a sentence. The ULS curriculum for social studies and science used reading. The CBI Teacher reported that Student was in the lowest level of ULS and she added visuals to the reading passages for Student. Student also had the reading passages translated into ASL by the interpreter. Student's strength area was math and Student used manipulatives and a calculator for solving problems.
22. The DHHT reported that the curriculum was not appropriate for a deaf student without extensive modification because it was based on sounds and was not modified to meet Student's needs. The DHHT reported that she modified the curriculum for use with Student, but the modifications were not consistently implemented.

23. The CBI Teacher acknowledged that she had never worked with a deaf student before. The CBI Teacher reported that not all materials provided by the DHHT were used because there were too many and some were inappropriate.
24. The CBI Teacher reported that Student was using SPIRE 1 for reading; Student was in a reading group with 2 other students that were at Student's reading level. The group was learning letters and words that started with a specific letter. The CBI Teacher reported Student knew 10 CVC words.
25. When Student did not want to work in reading, Student was allowed to use iPad for games related to English-language arts.
26. In math, Student's strength, Student was also in a group with 2-3 other students. Student was working on number recognition and counting to 50. Student was able to use a calculator to add and subtract one-digit numbers, use a dry erase board to solve problems and used real and play money in the classroom's reward system.
27. Student had a timer that notified Student after work time and when Student earned a break. Student asked for and often received extended breaks. Student would make requests that were honored, if possible. The CBI Teacher stated that allowing Student to choose what Student wanted was the plan recommended by the Board-Certified Behavior Analyst (BCBA) that worked with Student for an hour every few weeks.
28. The CBI Teacher reported that she used techniques with Student that she used with other autistic students including first, then chart, changing visual calendar and informing Student prior to schedule changes.
29. The CBI Teacher reported that Student would only work for ten minutes on a task and then would need a five-minute break. Often Student would request toys or other items or longer breaks and they would be granted on demand.
30. Documentation from the DHHT's and interpreter's interactions with Student demonstrated longer periods work time. The DHHT believed this increased time of engagement and learning was observed when materials were accessible and at Student's learning level on instruction.
31. Student was earning A grades in all classes but there was no information provided about progress on goals.

Increase in Behaviors and Placement Decisions

32. Almost immediately at the start of the 2024-2025 school year, Student started exhibiting behaviors. The behaviors quickly escalated in both frequency and severity. The behaviors included meltdowns, dysregulation, physical aggression towards others, self-injurious behaviors, disrobing and removing colostomy bag.

33. During the 2024-2025 school year, seven IEP meetings were convened on September 19, 2024, December 17, 2024, January 22, 2025, February 11, 2025, March 12, 2025, April 14, 2025 and May 6, 2025. In addition, there were regular staffings concerning this Student.
34. By the second week of school, Student had removed colostomy bag multiple times in one week and was resistant to having a new one, often taking one hour for replacement. The risk of infection increased the longer Student was without the colostomy bag.
35. When Student removed the colostomy bag, often multiple times per day, it was often difficult to deescalate Student to allow replacement of the colostomy bag. Sometimes, Student removed the bag multiple times until there were no bags left and Student would need to leave school. The CBI Teacher believed Student knew that if they ran out of replacement colostomy bags, Student could go home.
36. There were concerns for Student's and others safety when the colostomy bag was removed and not immediately replaced. There was a doctor's note in Student's file that stated Student's ostomy should not be exposed to air for longer than five minutes in between changes/cares.
37. A functional behavior assessment (FBA) was completed on September 10, 2024. The purpose of Student's behaviors was determined to be escaping or avoiding non-preferred activities. A behavior intervention plan (BIP) was developed at a September 19, 2024 IEP meeting. The BCBA reviewed the BIP plan, but it was developed by school staff with the assistance of the CBI teacher. There was no noted improvement after the implementation of the BIP.
38. The LEA contracted with a board-certified behavior analyst (BCBA) to complete observations and make recommendations for Student's behaviors. After multiple observations over the first semester, the BCBA gave recommendations for replacement behaviors including log behaviors, a visual schedule and visual contingency map with a visual cue for Student when misbehaviors occurred.
39. The BCBA's recommendations did not include recommendations regarding accessible instructional materials, that was the role of the DHHT.
40. The CBI Teacher reported that the use of contingency maps showed a decrease in some behaviors such as physical aggression but the CBI Teacher did not have data to document the amount of decrease in negative behaviors.
41. Staff reported that behavior logs were collected from September 20, 2024 through April 1, 2025. The CBI Teacher reported all behaviors were logged but the records provided did not include all school days and some logs had multiple incidents in one day. Student was frequently absent.
42. Through the fall semester, Student's negative behaviors continued and new behaviors appeared including aggression, eloping and spreading feces around room.

43. The DHHT was not at all IEP meetings even though she worked weekly with Student. The DHHT was not informed of all IEP meetings or staffings and she reported that often, when she was notified, she could not attend because of short notice and/or other commitments.
44. No IEP meetings were held between September 19, 2024 and December 17, 2024, even though Student was exhibiting significant behaviors.
45. Throughout the fall semester, the LEA was completing a reevaluation of Student which was reviewed at the January 22, 2025 IEP meeting. Student was assessed for autism eligibility. The PLAAFP was not updated. The NMSD evaluations were reviewed. At that meeting, it was determined that Student was autistic but the eligibility category remained multiple disabilities.
46. At the December 17, 2024 IEP meeting, it was determined by the IEP team that Student was more successful in the morning. Student was able to complete more work, and there were less issues with removal of colostomy bags and other inappropriate behaviors. The teacher noted that Student was fatigued by lunchtime. No data supporting those conclusions was provided to the Investigator. At that meeting, transfer to the social communication classroom was proposed because of Student's continuing behaviors. Parents objected to that placement change.
47. The Social worker in the PLAAFP from the December, 2024 IEP noted that Student could work with minimal assistance when regulated but when dysregulated it took extensive time to deescalate.
48. At that IEP meeting, the IEP team determined that Student would attend school half days and special education services and supports would be reduced by half. This was based on data logs and BCBA consultation reports that were not provided. The shortened day would be reviewed in one month. The IEP did not include a plan for increasing Student's at school time, what services and supports had been provided prior to the reduction in Student's day or justification for the shortened day.
49. Staff interviewed indicated that Student's frequent removal of the colostomy bag and delays in replacing the bag were safety and health issues for Student and others and those behaviors plus physical aggression were the reasons for the shortened day.
50. Although staff reported that least restrictive environment (LRE) was reviewed, there was limited information provided regarding Student's LRE with the change of placement. The language used on the IEP was not specific to Student and Student's needs for a half day schedule, Student missed lunch and one elective. Student was in physical education with peers. Previously, Student had been successful in robotics and art.
51. The assessments completed and the IEP, PWN, and other documentation did not indicate the reason for the drastic change in Student's behavior since the start of the 2024-2025 school year.

52. Interviews with staff provided various explanations for the behavior changes including inappropriate placement in CBI classroom, puberty, school refusal, and that materials and curriculum were inaccessible for a Deaf student. There was no follow up by LEA to these possible 2024-2025 school personnel explanations.
53. During the December 17, 2024, IEP meeting and subsequent meetings in January, February and March 2025, the IEP team discussed continuation of the shortened day. Homebound services were considered and rejected. The half day schedule was continued with the plan to increase time at school as negative behaviors decreased. At the March 12, 2025, IEP meeting, the team noted that Student's tolerance for school was improving with some decrease in negative behaviors, but Student's time in school was not increased. The LEA did not provide explanation for why Student's school day was not increased.
54. The shortened day continued from December, 2024, until the end of the school year.
55. Staff reported that inappropriate behaviors continued but the BIP was not revised until April 4, 2025, and no other strategies were attempted to address Student's behaviors. The only plan was to continue with the shortened day.
56. At the May 2025 IEP meeting, Student was placed in the social communication classroom at Parents' request because of concerns that occurred outside of school. There was no documentation or data why this placement change was needed. The LEA reported the decision to change Student's placement to the social communication classroom placement was made by the IEP team. This placement had been the LEA's proposal in December 2024, but a shortened day was the placement decision.
57. On the May, 2025 PLAAFP, Student had regressed and could only identify letters and words that start with that letter with 80% accuracy. There were no comments about the regression in the IEP.
58. It was decided at the May 2025 PLAAFP meeting that Student's time at school would increase one hour starting in the fall of 2025. The plan was to return to school full time when Student was ready. It was not clear how LEA would be determined that Student was ready. That plan was not clearly defined on any of the IEPs, addendums or PWNs.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to develop and implement an IEP that allowed Student to make progress and receive a free appropriate public education (FAPE), in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC; specifically, whether the District:

- a. Failed to implement the services and supports and other requirements of the IEP with fidelity;**
- b. Failed to provide all accommodations and other supports and services;**

- c. Failed to adapt and modify assignments and instructional materials to allow Student access and instruction;**
- d. Failed to take steps necessary to address Student's behaviors and dysregulation that impacted learning;**
- e. Changed placement without proper consideration of Student's least restrictive environment (LRE) and needs;**
- f. Failed to consider and provide other supports and services to allow Student to continue in placement or successfully attend school for a full school day; and**
- g. Failed to timely meet and address Student's changing needs when progress was not being met;**

Students who are eligible for special education services are entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. A LEA is obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17. Special education is "specially designed instruction provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability." 34 C.F.R. § 300.39(a)(1). This specialized designed instruction is adapting the content, methodology or delivery of instruction to address the unique needs of an individual child. 34 C.F.R. § 300.39(b)(3). These unique needs are more than academic needs and can include social, health and emotional needs. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458 (9th Cir. 1996).

IEPs are developed during an IEP meeting. The IEP team must consider the student's strengths, any concerns of the parents, results of evaluations, and academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a)(1). Parents, as required members of the IEP team, must have adequate information to make informed decisions. 34 C.F.R. § 300.321(a)(1). As a Student's needs change, the IEP team should convene and modify the IEP as appropriate to address changing needs and if progress is not being made 34 C.F.R. § 300.324. An IEP must be implemented with all required components. 34 C.F.R. § 300.324(b)(ii)(a).

Behaviors that inhibit a child's learning or that of others should be addressed on the IEP or through a BIP developed by the IEP team. Negative behaviors are not a justification for shortening a school day. *Alleghany County (NC) Schools*, 69 IDELR 193 (OCR 2016). The IEP team must determine the need for interventions, supports and strategies. 71 Fed. Reg. 46, 683 (2006). Excessive absences should be addressed as behavior issues or through a BIP. *Huron School District*, 68 IDELR 178 (SEA SD, 2016); *District of Columbia Public Schools*, 120 LRP 179 (SEA DC, 2019).

Shortening a student's school day should be a rare occurrence and for a limited period. *In re: Student with a Disability*, 121 LRP 1039 (SEA WI 2021). The IEP team must determine that the shortened school day is necessary for student to receive FAPE. *Christopher M. v. Corpus Christi Independent School District*, 933 F2d 990, 17 IDELR 990 (5th Cir. 1991). Convenience is not sufficient to shorten a school day. *Osseo Area School Independent School District No. 279 v. AJT*, 81 IDELR 256 (MI 2000). The IEP team must document on the IEP, the services and supports needed to justify the shortened day. Aggression, lack of academic stamina and resistance to non-preferred tasks are insufficient reasons to shorten a student's school day. *In re: Student with a Disability*, 82 IDELR 44 (SEA WI 2022). The IEP documentation must include all steps and placement options that the District considered and/or implemented before shortening the school day. The IEP must also include a plan for returning the student to a full school day of attendance. 34 C.F.R. § 300.116. While parents/guardians have input in development of the IEP, it is ultimately the responsibility of the LEA to develop an IEP that provides Student a FAPE. 34 C.F.R. § 300.116.

a. Failed to implement the services and supports and other requirements of the IEP with fidelity;

The Complainant, who worked directly with Student and consulted with staff on how best to work with Student, filed the complaint alleging that the IEP was not being implemented with fidelity for this Student.

While the LEA established that some of the accommodations and modifications required by the IEP were provided to this Student. There was a significant lack of documentation regarding data records for behaviors, effectiveness of the BIP, progress on IEP goals, and accessibility of materials.

Student's behaviors, especially the frequent removal of the colostomy bag and time required for Student to deescalate to replace the colostomy bag impacted Student's instruction.

Teacher acknowledged that she had never worked with a deaf student before, but consultation with a DHHT in addition to direct services were part of the IEP. Consultation services were available but were not always used. The DHHT provided examples of accessible materials she prepared and documentation of how Student was engaged and learning when she and interpreters were working with Student. Unfortunately, the CBI Teacher was unable to provide similar information and could not demonstrate that Student was making progress.

The September 9, 2024, PLAAFP indicated that Student could identify letters and words with 100% accuracy and could read CVC words and write a three-word sentence with correct punctuation. The PLAAFP in the May 2025 IEP indicated that Student had regressed in identifying words and letters to 80%.

The lack of accurate and complete documentation, increase in negative behaviors, and data of regression, all evidence a failure to implement Student's IEP.

As to Issue 1a, the LEA is cited, Corrective Action is required.

b. Failed to provide all accommodations and other supports and services;

The Student had fifty (50) accommodations listed on the IEP plus modified instructional materials and tools recommended by the DHHT. The LEA was unable to provide examples of modifications and accommodations that the CBI Teacher implemented with Student. The CBI Teacher provided the investigator with a list of the accommodations and modifications that were provided to Student, but they do not correspond to the ones required by the IEP. The CBI Teacher stated that she did not implement some of the DHHT provided materials because there were too many and found some to be inappropriate. No data of how or when accommodations or modifications were provided to Student was made available to investigator.

The LEA failed to provide all accommodations and other supports and services.

As to Issue 1b, the LEA is cited, Corrective Action is required.

c. Failed to adapt and modify assignments and instructional materials to allow Student access and instruction;

Student's IEP provided for a DHHT for consultation and direct services. The DHHT would modify instructional materials, provide strategies and tools to assist Student and ensure access to instruction. The classroom teacher used SPIRE and ULS curriculum with Student. According to the DHHT, who is trained to work with deaf and hard of hearing students, especially autistic deaf students, the two curriculums must be modified significantly to be accessible to profoundly deaf students.

The DHHT modified materials and provided those materials to the CBI Teacher, but those modifications were not consistently implemented with Student. The CBI Teacher acknowledged that she had never worked with a deaf student before; she modified the curriculum by including pictures that corresponded to the text in both SPIRE and ULS. Student is profoundly deaf with limited reading and cannot rely on text heavy materials for instruction. The CBI Teacher acknowledged that consultation with the DHHT was available, but she asserted there was too much material provided by DHHT to use with Student.

In addition to different school personnel creating and using different modified materials without working in concert or based on data, there was no documented progress. Additionally, no examples of modified materials were provided.

Based on the foregoing, it cannot be concluded that Student received materials that were accessible and at Student's instructional level. The LEA failed to adapt and modify assignments and instructional materials to allow Student access and instruction.

As to Issue 1c, the LEA is cited, Corrective Action is required.

d. Failed to take steps necessary to address Student's behaviors and dysregulation that impacted learning;

The IEP team met seven times regarding this Student and held additional staffings. A BCBA was hired, recommendations for teaching replacement behaviors were proposed and a new BIP was developed in April 2025. Student was determined eligible under the category of autism in January, 2025. No information was provided to the Investigator about the effectiveness of the original BIP or the new BIP from April, 2025. There was some reduction in removal of the colostomy bag as reported at the March, 2025 IEP, but since Student's placement remained a shortened day, it would appear that Student's behaviors were not being addressed to allow for full time attendance.

Between September, when the first BIP was implemented and the IEP meeting in December when the shortened day was implemented, the IEP team did not meet to determine why Student was continuing to exhibit the behaviors.

It was noted in interviews and the LEA's responses that Student's time on task was decreasing as the year progressed, but the IEP team did not reconvene to discuss other options, request additional evaluations or information, or consider what other factors may be impacting this Student. Student's behaviors were concerning but the IEP team did not analyze potential reasons for the change from the previous school year. The IEP team failed to consider whether the materials provided for Student were inaccessible to Student which resulted in frustration and dysregulation. Explanations should have been explored since the LEA's plan was not effective and the only option provided was a shortened day.

At multiple IEP meetings after Student's day was shortened, no changes were made to the BIP nor other strategies discussed or implemented (except homebound services) until the April 14, 2025, IEP meeting when the BIP was revised. When Student's behavior showed improvement as noted at the March 12, 2025 IEP meeting, Student's day was not increased. Instead, Student's placement was changed to a social learning classroom at the May 6, 2025 IEP meeting at the

request of Parent. Although the IEP team met seven times during the 2024-2025 school year, they failed to address Student's behaviors effectively to allow Student to attend school full time.

As to Issue 1d, the LEA is cited, Corrective Action is required.

e. Changed placement without proper consideration of Student's least restrictive environment (LRE) and needs;

Student's placement at the start of the 2024-2025 school year was a self-contained CBI classroom. Student had access to peers during lunch and two electives. During the December 17, 2024 IEP meeting, Student's placement was changed to a shortened day because of Student's behaviors including aggression and removal of colostomy bag. After the shortened day was implemented, Student was not at lunch and participated only in physical education with peers. Student had a BIP that was not effective in controlling behaviors. The IEP team did not revise the IEP until April 4, 2025, even though the negative behaviors were continuing. The shortened day continued through the end of the school year.

Although the LEA proposed a social communication classroom in December, it was rejected by the parents for a shortened day and continued placement in CBI classroom. There was no data provided about Student's placement being changed in May to the social communication classroom, except Parents expressed concerns about behaviors that occurred outside of the school. There was limited discussion of LRE on the IEP or how change of placements, (shortened day or social learning classroom) may have met Student's LRE. At the May 6, 2025 IEP, the PWN mentioned that Parents wanted Student placed in social communication classroom because of issues outside of school. The IEP was silent about the need for the change. The behavioral issues were not described nor was there any data, justification or LRE analysis included on the IEP or supporting documents of why this placement was appropriate.

The LRE analysis on the IEPs was similar on all IEPs, not individualized to Student. It is the responsibility of the IEP team to make placement decisions for a Student based on their particular needs. Those decisions need to be documented on the IEP and they were not. The LEA changed placement without proper consideration of Student's least restrictive environment (LRE) and needs.

As to Issue 1e, the LEA is cited, Corrective Action is required.

f. Failed to consider and provide other supports and services to allow Student to continue in placement or successfully attend school for a full school day;

Student had significant needs. Last year when Student attended LEA, she was in the CBI classroom and making progress on goals. At the start of the 2024-2025 school year, Student began to exhibit

behaviors including removing colostomy bag and disrobing. Parents also reported concerns about self-regulation. There were also instances of physical aggression and self-injurious behavior. When Student removed the colostomy bag, it could take an hour to get another put on. Staff reported they believed Student removed multiple bags per day so Student could go home when there were no more available colostomy bags. A doctor opined that more than 5 minutes without a colostomy bag could increase risks of infection.

An FBA was completed in September 2024, and a BIP developed within ten days by the classroom teacher and SW. The purpose of Student's behavior was to avoid or escape non-preferred tasks. Rewards and replacement behaviors were included in the BIP. The classroom had funny money that could be earned as part of a token economy. Student did not understand the value of money according to the PLAAFP.

The LEA reported that the BIP was implemented but negative behaviors continued. A BCBA was brought in and another BIP was developed in April, 2025 with suggestions for teaching replacement behaviors. A BCBA observed Student during the fall semester and developed a new BIP with recommendations including a contingency map for teaching replacement behaviors. There was some reported improvement with the contingency map but it was not clear what strategies from the BCBA were implemented since data on the effectiveness of the BIP was not provided.

The classroom teacher reported that Student was dysregulated and could not work for more than 10 minutes without a break. The DHHT teacher and others that worked with Student reported Student was engaged and learning. The DHHT teacher provided strategies, tools, instructional materials that would assist Student in learning and to help with regulation. Only some of these strategies were implemented in the classroom. Staff stated, without supporting data provided, that Student was more on task and regulated in the morning, thus the reason for the half day school for Student starting in December. This plan was to be reviewed in one month but at the time of the next IEP, the behaviors were still occurring and more data was needed. Student was determined eligible under the category of autism but the IEP and BIP were not modified to address that new information. During the March IEP meeting, some improvement was noted but there was no increase in school time or explanation for why time was not increased.

Finally, at the May 6, 2025, IEP meeting, Student's placement was changed to a social communication classroom as noted on the PWN, not the IEP. There was no justification or explanation on the IEP or PWN about why the change was made but LEA reported that it was Parents' request and the placement had been proposed in December but was rejected. At the

May 6, 2025 IEP meeting, it was recommended that Student would increase time at school by one hour a day in the fall with an IEP to be held mid-September.

The IEP did not include the supports and services the LEA provided before changing the placements in December or May. The justification for the shortened day was that removal of the colostomy bag was unhealthy and Student showed physical aggression. There was no mention of the recommendations from the DHHT or their implementation. LEA contracted with a BCBA, but they did not revise the BIP until April 2025. No plan was provided for when or how Student might return to school full time. All this information must be included in the IEP and supporting documents, it was not.

The LEA failed to consider and provide other supports and services to allow Student to continue in placement or successfully attend school for a full school day.

As to Issue 1f, the LEA is cited, Corrective Action is required.

g. Failed to timely meet and address Student's changing needs when progress was not being met.

The IEP team met seven times starting in September, 2024, with the last meeting in May, 2025. Although a BIP was implemented in September, no additional IEP meetings were held until the December meeting when Student's school day was shortened. A BCBA was hired in the fall but the BIP was not revised until April even though Student's behaviors impacted Student's learning and resulted in the shortened day. At the December 17, 2024, IEP meeting, the IEP team discussed a shortened day, the BIP, updated goals and homebound services but there was no discussion of what other services or supports Student might need based on a significant change in Student's behaviors. The DHHT had provided recommendations, but they were not consistently implemented. It is not clear whether Student was making progress on goals since progress notes provided did not give Student's present levels or any progress observed. Student was earning A grades. The LEA failed to timely address Student's changing needs.

The LEA failed to timely meet and address Student's changing needs when progress was not being met.

As to Issue 1g, the LEA is cited, Corrective Action is required.

Issue 2.

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

The IDEA is meant to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) designed to meet their unique needs. Students who are eligible for special education services are entitled to a FAPE. 34 C.F.R. § 300.101; 6.31.2.8 NMAC. LEAs are obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17.

The provision of FAPE is administered through an IEP developed by the IEP team and implemented by the LEA. The IEP must be "reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School Charter RE-1*, 137 S.Ct. 988, 999 (2017). Under certain circumstances, procedural errors can result in a denial of FAPE. The Court in *J.L. v. Mercer Island School District*, 592 F.3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it resulted in the loss of an educational opportunity, infringed on parents' opportunity to participate in the development of the IEP or deprived the student of an educational benefit. All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx. 202 (2d Cir. 2010). In determining if an IEP provides FAPE, the 5th Circuit recently held that the court looks whether the IEP is "individualized, administered in the least restrictive environment and implemented in a coordinated, collaborative manner." The IEP must also produce progress for the Student. *Boone v. Rankin County Public School District*, 125 LRP 18544 (5th Cir. 2025).

The foregoing facts and analysis are incorporated into this subsection. Additionally, in the most recent IEP, Student has regressed in reading skills.

These LEA's failures resulted in a loss of educational opportunity and deprived Student of educational benefit which resulted in a denial of FAPE.

As to Issue 2, the LEA is cited, Corrective Action is required.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC	<p>The LEA failed to develop and implement an IEP that allowed Student to make progress and receive a free appropriate public education (FAPE), by</p> <ul style="list-style-type: none"> a. Failing to implement the services and supports and other requirements of the IEP with fidelity; b. Failing to provide all accommodations and other supports and services; c. Failing to adapt and modify assignments and instructional materials to allow Student access and instruction; d. Failing to take steps necessary to address Student's behaviors and dysregulation that impacted learning; e. Changing placement without proper consideration of Student's least restrictive environment (LRE) and needs; f. Failing to consider and provide other supports and services to allow Student to continue in placement or successfully attend school for a full school day; and g. Failing to timely meet and address Student's changing needs when progress was not being met;
34 C.F.R. § 300.101 and 6.31.2.8 NMAC.	The LEA's actions and/or omissions towards Student resulted in a denial of a free appropriate public education (FAPE).

Required Actions and Deadlines

By August 25, 2025, the LEA's Special Education Director must assure the OSE in writing that both entities will implement the provisions of this Corrective Action Plan (CAP). OSE requests LEA coordinate submission of all documentation of the completed corrective actions to the individual below, who is assigned to monitor 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 August 18, 2026 and reported to OSE no later than September 6, 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 Charter/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 25, 2025	Written Assurance/Letter/Email	August 25, 2025

Step No.	<u>Actions Required by Charter/LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
2.	LEA Special Education Director/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.	<i>August 29, 2025</i>	Notes from meeting prepared by LEA	September 9, 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.	<i>September 12, 2025</i>	Notes from meeting prepared by LEA, including list of attendees, summary of key points, and specific responsibilities assigned to each participant for ensuring compliance.	September 26 2025
4.	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	September 15, 2025	Written plan to be approved by PED	September 15, 2025

Step No.	<u>Actions Required by Charter/LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
5.	LEA will provide quarterly progress reports for Student to PED for the remainder of the school year.	Through the end of 2025-2026 school year	Quarterly written progress reports	To begin on last day of first quarter and continue through last quarter of 2025-2026 school year
6.	LEA shall conduct intermittent auditing of Student's school team progress monitoring and reporting throughout the 2025-2026 school year.	Within 14 days of the end of the grading period	Documentation of audit results/recommendation	No later than 21 days after the end of the grading period
7.	<p>LEA shall convene two IEP meetings for Student as follows:</p> <ol style="list-style-type: none"> 1. Plan for returning Student to school full time as soon as possible with needed services and supports. If a shortened day is determined to be supported by data; such will be detailed and analyzed; and 2. Post-training and after a new DHHT individual is hired/retained, an IEP Team meeting to discuss cohesive team strategies for implementation of IEP with fidelity and to discuss and decide compensatory service provision per CAP # 8. <p>LEA shall ensure a meeting notice is provided in advance of meeting, pursuant to 34 C.F.R. § 300.322.</p>	<p>By September 5, 2025</p> <p>By September 30, 2025</p>	<ol style="list-style-type: none"> 1. Invitation to IEP meeting 2. Agenda for IEP meeting 3. IEP 4. Prior Written Notice(s) 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. 	7 days after each IEP meeting

Step No.	<u>Actions Required by Charter/LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	<p><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 and that all related notices are in Parent's native language.</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>			
8.	<p>If Parent consents, LEA shall provide the following compensatory education during the summer of 2026:</p> <ol style="list-style-type: none"> 1. Special education services in reading, math, social studies and science 2700 minutes 2. Speech 540 minutes 3. Adaptive PE 270 minutes 4. Social work 270 minutes 5. Physical Therapy 270 minutes 6. Direct deaf and hard of hearing services 1062 minutes <p>Plan for compensatory services shall be documented in a PWN for the 2nd IEP meeting described in CAP #7 IEP meeting.</p>	<p>Date Comp services begin will be determined at IEP and will occur per IEP PWN until completed.</p>	<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>Monthly from date of compensatory services plan until the compensatory education hours are completed</p> <p>7 days after the IEP meeting is held</p>

Step No.	<u>Actions Required by Charter/LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	<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 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</p>			

Step No.	<u>Actions Required by Charter/LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	summary progress report submitted each quarter.			
9.	<p>LEA shall arrange training for LEA school staff (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. Processes for determining appropriateness of shortened days and steps required before implementation; 	September 15, 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 30, 2025</p> <p>August 30, 2025</p> <p>Within 10 days of training.</p>

Step No.	<u>Actions Required by Charter/LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	<p>2. Collaborative goal writing to include applying such for instant Student;</p> <p>3. Collection and review of data on student progress towards goals and use as tool for creating appropriate goals;</p> <p>4. Reporting progress on goals to parents.</p> <p>LEA shall also submit a plan for ensuring ongoing training of new hires or staff unable to attend the training.</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/ Michele K. Bennett, Esq.

Michele K. Bennett, Esq.

Complaint Investigator

Reviewed by:

/s/ Natalie Campbell

Natalie Campbell, Esq.

Supervising Attorney, Office of Special Education

Reviewed and approved by:

Signed by:



Jill Vice

Deputy Secretary, Office of Special Education