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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Las Cruces Public Schools
Case No. C2425-75
August 8, 2025**

This Report requires corrective action. See pages 12-14.

On June 9, 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 Local Education Agency's (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;
- review of District Questionnaire submitted, completed, and returned by LEA on July 1, 2025;
- review of documents and materials submitted by the Parent on July 3, 2025;
- interview with the Parent on July 7, 2025;
- review of District Questionnaire follow-up materials submitted July 18, 2025;
- interview with an LEA Special Education Social Worker, Director of Special Education, Principal, Assistant Principal, and Special Education Teacher of the Student on July 17, 2025;
- interview with the LEA Assistant Superintendent for Special Education, General Education Social Worker, and Classroom Teacher of the Student on July 21, 2025;
- interview with the LEA Special Education Administrator on July 25, 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 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. For these reasons, the Complaint Investigator did not investigate the following issues raised by the complainant: retaliation, harassment, and intimidation.

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 Parent was denied meaningful participation in educational decisions for Student in violation of 34 CFR §300.322 and 300.501 and 6.31.2.13(C) NMAC.
2. Whether the LEA properly implemented the Student's individualized education program(s) (IEP), including but not limited to the Student's behavior intervention plan, pursuant to 34 C.F.R. §300.323 and 300.501 and 6.31.2.11(B) and (F) NMAC.

3. Whether the LEA provided sufficiently detailed prior written notice(s) (PWN), pursuant to 34 C.F.R. § 300.503 and 6.31.2.13(D) NMAC.
4. 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. Student is classified as a student with a disability under the primary classification of developmental delay pursuant to an initial evaluation in May 2023.
2. During the 2023-2024 school year, an annual IEP was developed for the Student for the remainder of the Student's first-grade year and to be in effect during the Student's 2024-2025 (repeat) first-grade year. The IEP in effect at the start of the 2024-2025 school year is dated April 26, 2024. Relevant portions of the IEP include:
 - a. The student needs support to meet her academic goals.
 - b. The Student will require specially designed instruction to be involved and make progress in the general education curriculum due to emotional dysregulation that negatively impacts her ability to access academics.
 - c. The Student exhibits behaviors that impede her learning or that of others.
 - d. The Student will follow the school-wide discipline plan, however, requires a BIP for targeted behaviors.
 - e. Regarding the BIP and/or FBA, the Case Manager will inform administrators and teachers.
 - f. A behavioral goal for the Student that indicates measurement by observation, teacher reports, and data collection.
3. The Student's Behavior Intervention Plan (BIP) was developed during the 2023-2024 school year and was in effect as part of the IEP during the 2024-2025 school year. The BIP in effect at the start of the 2024-2025 school year is dated April 26, 2024. Relevant portions of the BIP include:
 - a. The BIP plan will be assessed for effectiveness through frequent communication with staff and parents.
 - b. Behavior data should be collected for behavior occurrences.
 - c. All teachers will keep documentation of behavioral occurrences and reinforcers and will communicate to the school social worker behavioral incidents.
4. On July 24, 2024, an email thread was created to communicate about Student with Parent and service providers.

5. On August 29, 2024, a behavioral incident occurred where Student was removed from the classroom and banged head against the door.
6. The Special Education Social Worker responded to two Student behavioral incidents in August 2024 and five behavioral incidents in September 2024
7. A meeting was held on September 10, 2024, concerning the implementation of Student's BIP. The meeting included a representative from the Superintendent's Office, a Special Education Administrator, the Principal, the Student's Therapist, and Parent. Relevant outcomes of that meeting include:
 - a. Agreement to revise the BIP to include the addition of a feelings chart and the opportunity for Parent to attend school events.
 - b. Training to staff in support of monitoring time when Student is experiencing a "melt down".
8. A follow-up email was sent by the Special Education Administrator to Parent and other school personnel on September 19, 2024, detailing the next steps from the meeting.
9. The Special Education Social Worker responded to one Student behavioral incident in December 2024 and four behavioral incidents in January 2025.
10. A meeting was held on January 29, 2025, to review and revise the Student's BIP. The changes to the BIP reflected the proposed and agreed-upon additions from the September 10, 2024, meeting.
11. All relevant school staff were provided with a copy of the Student's IEP, including the BIP, on January 29, 2025, with signatures from relevant school staff indicating receipt in early February 2025. There is no documentation that Parent received a copy of the revised BIP at that time.
12. The Special Education Social Worker responded to five Student behavioral incidents in February 2025, three behavioral incidents in March 2025, and three behavioral incidents in April 2025.
13. The Special Education Social Worker met with Student's outside provider on or about February 4, 2025, for coordinated support.
14. The Student's IEP was updated during the annual review on April 22, 2025, and May 3, 2025. Relevant portions of the IEP include:
 - a. The Student is making appropriate progress on IEP goals and will need continued support going into second grade.
 - b. The Student will require specially designed instruction to be involved in and make progress in the general education curriculum due to emotional dysregulation, which negatively impacts her ability to access academics.
 - c. The Student exhibits behaviors that impede her learning or that of others. Positive behavioral interventions, strategies, and accommodations are included

- in the IEP. Annual goals (with short-term objectives or benchmarks), when appropriate, are included in the IEP.
- d. The Student's behaviors do require a behavior intervention plan (BIP).
 - e. The Student's case manager will inform administrators and teachers about Student's BIP.
15. The Student's BIP was updated during the meeting on April 22, 2025, and May 3, 2025. Relevant portions of the BIP include:
- a. The BIP plan will be assessed for effectiveness through frequent communication with staff and parents. Behavior data should be collected for behavior occurrences. The functional behavioral assessment (FBA) team will review and revise the BIP as needed.
 - b. All teachers will keep documentation of behavioral occurrences and reinforcers and will communicate to the school social worker behavioral incidents.
16. On May 20, 2025, Parent sent an email to district and school personnel requesting an IEP meeting to consider changes to the Student's BIP. Follow-up communication from the district indicated receipt of the email.
17. On or about May 28, 2025, Parent was presented with Resolution Options from the LEA that outlined a communication structure for all interactions between Parent and LEA moving forward.
18. The school utilizes the Synergy Student Information System to upload documentation and communicate with parents about student progress in both general education and special education.
19. Parent is an employee of the school district and is familiar with technology, as evidenced by logins to Synergy and regular electronic communications with school and LEA staff.

Discussion and Conclusions of Law

Issue No. 1

Whether Parent was denied meaningful participation in educational decisions for Student in violation of 34 CFR §300.322 and 300.501 and 6.31.2.13(C) NMAC.

Under the Individuals with Disabilities Education Act (IDEA), school districts must ensure that the parents of a child with a disability are members of the IEP Team. 34 C.F.R. § 300.321(a)(1). Parents must also be afforded the opportunity to participate in meetings related to the identification, evaluation, and educational placement of the child, and the provision of FAPE. See 34 C.F.R. § 300.501(b), (c)(1); 6.31.2.13(C) NMAC.

The evidence confirms that Parent attended and participated in IEP meetings, including the annual review meeting held on April 22, 2025, IEP meeting, and contributed input reflected in the IEP documentation. Of note, the parental input sections in the April 26, 2024, and April 22, 2025, IEPs were identical in part, suggesting a lack of individualized documentation.

However, the failure to provide the Parent with a copy of the revised January 29, 2025, BIP constitutes a procedural violation. As a member of the IEP team, the Parent must be afforded timely access to all IEP components, including the BIP. 34 C.F.R. § 300.501(a); 6.31.2.11(B)(4) NMAC.

The communication plan developed by the LEA in May 2025 does not constitute a denial of participation. The communication plan designates one point of contact with direction on the form and type of communication that can be expected by both Parent and the LEA, depending on the underlying topic or concern. Based on the documentation and interviews provided by the LEA and the Parent that indicated a high level of consistent, frequent communication about Student, often concerning Student's behavior and staff response, between and outside of scheduled meetings, the proposal and implementation of a communication plan is reasonable.

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

Issue No. 2

Whether the LEA properly implemented the Student's individualized education program(s) (IEP), including but not limited to the Student's behavior intervention plan, pursuant to 34 C.F.R. §300.323 and 300.501 and 6.31.2.11(B) and (F) NMAC.

The Individuals with Disabilities Education Act (IDEA) ensures that children with disabilities receive a free appropriate public education (FAPE) through the delivery of specially designed instruction and related services outlined in an IEP. See 34 C.F.R. § 300.17. The IEP is "the centerpiece of the statute's education delivery system" for children with disabilities and the primary mechanism through which services are tailored to meet a child's individual needs. *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (citing *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)).

School districts are required to implement the IEP in its entirety. 34 C.F.R. § 300.323(c)(2); 6.31.2.11(B) NMAC. Behavior Intervention Plans (BIP) are explicitly referenced as both a necessary consideration and as an integral part, if appropriate, of a Student's IEP. 6.31.2.11(F) NMAC. When a student's IEP includes a BIP, the BIP must be implemented with fidelity and monitored for effectiveness. 6.31.2.11(F) NMAC. The IEP must also specify how progress

toward annual goals will be measured and when progress reports will be provided to parents. 34 C.F.R. §300.320(a)(3).

While the Student's IEP and BIP specified that data should be collected and progress toward behavioral and academic goals should be measured through teacher reports, observations, and data collection, the investigation revealed a lack of actual documentation reflecting such measurement. No behavioral logs, progress graphs, or formal reporting documentation were provided by the LEA to demonstrate that data were consistently collected or used to inform educational decisions during the 2024-2025 school year. During interviews, the school staff stated that Synergy, the LEA's designated student data management system, was where data was designated to be uploaded, but that it was not used, or used consistently, by school staff to both record and share data internally regarding the Student's IEP goals.

Furthermore, there is no documentation that progress reports were issued to the Parent according to the defined schedule as required by the IEP. It was stated during interviews that progress reports were uploaded into the Synergy for Parent to access but that technical issues often impacted complete information being available in the reports. The LEA was unable to produce progress reports issued during the 2024-2025 school year for any time before May 2025, and Parent confirmed that no progress reports were received. The absence of progress data significantly limits the IEP team's ability to assess the effectiveness of interventions, adjust supports, and meaningfully engage in ongoing educational decisions.

Moreover, the progress report dated May 29, 2025, that was provided as evidence was inadequate. The progress report for each of the Student's goals either (a) did not have any measure of progress, or (b) contained a general narrative description. The progress report lacked any numerical data or percentage-based progress, with information only available for the behavioral goals. The behavioral goals included a score of "3" with one goal supplemented by an observational narrative. The academic goals had no indication of progress reported.

These deficiencies reflect a failure to fully implement the IEP and BIP, in violation of 34 C.F.R. § 300.320(a)(3) and 300.323(c)(2), and 6.31.2.11(F) NMAC.

As to Issue No. 2, LEA is cited, and Corrective Action is required.

Issue No. 3

Whether LEA provided sufficiently detailed prior written notice(s) (PWN), pursuant to 34 C.F.R. § 300.501 and 6.31.2.13(D) NMAC.

Under IDEA, school districts must provide prior written notice (PWN) whenever they propose or refuse to initiate or change the identification, evaluation, educational placement of the child, or the provision of FAPE. 34 C.F.R. § 300.503(a); 6.31.2.13(D) NMAC. The PWN must include: (1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that is relevant to the agency's proposal or refusal. 34 C.F.R. § 300.503(b); 6.31.2.11(D)(2) NMAC.

In its response to the complaint, the District acknowledges that the PWNs provided to Parent are deficient in meeting the requirements of the notice. This was confirmed during the investigation, and a violation is substantiated.

Two additional issues were identified through the course of the investigation related to PWN.

1. Parent's May 20, 2025, written request for an IEP meeting to discuss revisions to the Student's Behavior Intervention Plan (BIP) and educational setting. Even if the LEA determined a meeting was unnecessary at the time, the LEA is required to provide written notice, a PWN, explaining that decision and its rationale. 64 Fed. Reg. 12476 (Mar 12, 1999); Letter to Anonymous, 112 LRP 52263 (OSEP 2012).

2. Revision of the Student's BIP on January 29, 2025. No PWN was issued to the Parent after the revision. The BIP is a component of the IEP and outlines the behavioral supports required for the Student to access FAPE; any substantive change to that plan triggers the PWN requirement. 34 C.F.R. § 300.503(a)(1); Letter to Lieberman, 52 IDELR 18 (OSEP 2008).

The District's failure to issue PWN in both instances constitutes violations of 34 C.F.R. § 300.503 and 6.31.2.13(D) NMAC.

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

Issue No. 4

Whether the District'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.

Under the Individuals with Disabilities Education Act (IDEA), a free, appropriate public education (FAPE) must be made available to all eligible children with disabilities. FAPE includes special education and related services provided at public expense, under public supervision and direction, and in conformity with an individualized education program (IEP). 34 C.F.R. § 300.17; § 300.101. In New Mexico, 6.31.2.8 NMAC incorporates federal FAPE standards and imposes state-level obligations on local education agencies (LEAs) to implement services as outlined in the student's IEP.

To determine whether a student has been denied FAPE, courts and hearing officers examine whether: (a) the IEP was reasonably calculated to enable the student to make progress in light of their circumstances; and (b) any procedural violations of IDEA significantly impeded the parent's opportunity to participate, impeded the child's right to FAPE, or (c) caused a deprivation of educational benefit. See *Endrew F. v. Douglas County Sch. Dist.* RE-1, 580 U.S. 386 (2017); 34 C.F.R. § 300.513(a)(2).

The investigation identified the following procedural and implementation violations:

- Failure to provide Parent with the revised BIP;
- Failure to respond to a written IEP meeting request;
- Inadequate progress monitoring and documentation;
- Failure to provide required PWNs.

Despite these violations, the record shows that the Student made progress on IEP goals, received consistent behavioral intervention responses, and continued to access services. There is no evidence that these violations caused educational regression, denied services, or substantively compromised educational benefit.

The investigation does not support a finding that the Student was denied FAPE. However, the LEA remains responsible for implementing corrective actions to address procedural failures and ensure future compliance.

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

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.501(a) and 6.31.2.11(B)(4) NMAC.	The LEA failed to provide all members of the IEP team with a copy of the revised BIP.
34 C.F.R. § 300.323(c)(2) and 6.31.2.11(B) NMAC	The LEA failed to implement the Student's IEP and BIP in its entirety. Data provided in the progress report did not correspond to the measurements as described in the Student's annual goals.
34 C.F.R. § 300.320(a)(3)(ii)	The LEA failed to include documentation that Parent received the progress reports.
34 C.F.R. § 300.503 and 6.31.2.13(D) NMAC	The LEA failed to meet the content requirements of Prior Written Notice (PWN) and provide PWN on two required occasions.

Required Actions and Deadlines

By August 22, 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 August 8, 2026, and reported to OSE no later than August 15, 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 18, 2025	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 18, 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 22, 2025	Notes from meeting prepared by LEA	August 29, 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 28, 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.	September 2, 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 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 to PED for the remainder of the school year</p>	August 22, 2025	<p>Written plan to be approved by PED</p> <p>Quarterly written progress reports</p>	<p>August 29, 2025</p> <p>To begin on Quarter 1 of the 2025-2026 school year and continue through August 8, 2026.</p>
5.	LEA shall conduct intermittent auditing of Student's school team progress monitoring and reporting throughout the 2024-25 school year.	Within 14 days of the end of each grading period	Documentation of audit results/ recommendations	No later than 21 days after the end of the grading period

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>
6.	<p>LEA shall arrange training for 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. Prior Written Notice 2. Progress Reports 3. Documentation of IEP implementation and required special education actions, including use of information systems (i.e., Synergy) <p>LEA shall also submit a plan for ensuring ongoing training of new hires or staff unable to attend the training.</p>	September 8, 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 18, 2025</p> <p>August 18, 2025</p> <p>September 18, 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/ Jana Rosborough

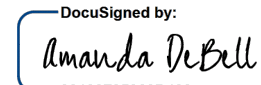
Jana Rosborough
Complaint Investigator

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