

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
SPECIAL EDUCATION DIVISION  
Complaint Resolution Report  
Case No. C2021-11-Sys  
August 11, 2021**

**This report requires corrective action. See Page 23.**

This complaint was filed with the Special Education Division (SED) of the New Mexico Public Education Department (PED) on January 19, 2021, under the federal Individuals with Disabilities Education Act (IDEA) and the implementing Federal Regulations and State Rules governing publicly funded special education programs for children with disabilities in New Mexico.<sup>1</sup>

**Scope of Review and Authority**

The PED SED administers the Federal Regulations and State Rules governing special education programming requirements for children with disabilities. The implementing regulations to the IDEA and the corresponding State rules require investigations into complaints regarding violations of these provisions. The PED has investigated the systemic issues in the complaint and issues this report pursuant to 34 CFR §300.152 (a)(5) and 6.31.2.13(H)(5)(b) NMAC.

**Conduct of the Complaint Investigation**

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

- review of the complaint and supporting documentation from complainant;
- review of the District's responses to the allegations, together with documentation submitted by the District at the request of the PED's complaint investigator;
- review of documentation and data submitted by the District at the request of the PED's complaint investigator;
- review of student files on-site at the District;
- review of PED data regarding numbers of students with disabilities in District;
- review of the District's compliance with federal IDEA regulations and state NMAC rules;
- review of responses to questionnaires received from District diagnosticians;
- telephonic interviews with Parent and District's Special Education Director; and
- research of applicable legal authority.

The Complaint in this matter alleges violations of the IDEA against the District with respect to the individual student named in the Complaint, as well as systemic violations of the IDEA against the District. The Complaint Resolution Report in this matter was originally due on or before March 20, 2021. The complaint investigator initially determined to investigate and resolve both the

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<sup>1</sup>The federal IDEA regulations are published at Title 34 of the Code of Federal Regulations (C.F.R.), Part 300. The New Mexico Public Education Department's special education rules are published at Title 6, Chapter 31, Part 2 of the New Mexico Administrative Code (6.31.2 NMAC). The state-level complaint procedures are set forth in the federal regulations at 34 C.F.R. §§ 151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

individual and systemic issues in a single report. However, as the investigation progressed, it became obvious that complications related to the District's inability to produce data needed for the systemic investigation impacted the ability to complete the systemic investigation and would delay the resolution of the issues related solely to the Student. As a result, the SED bifurcated the investigation and planned to produce a report regarding the individual student first and to later produce a second report regarding the systemic allegations in the Complaint.

SED granted an extension of the complaint investigation report for the allegations regarding the individual student issues. A Complaint Resolution Report for the individual student was completed and issued on April 16, 2021.

The deadline for completion of the Complaint Resolution Report regarding the systemic issues was extended on several occasion at the request of the complaint investigator. These requests were based on the scope of the investigation which included thousands of students and the difficulty in obtaining requested information from the District. The District has no uniform system in place to track requests for evaluation, the Student Assistance Team (SAT) process, or child find. The District's Special Education Director has informed the complaint investigator that the District does not maintain a central database of special education files or SAT files and that the information requested had to be obtained from the individual files maintained at the schools attended by the relevant students. Due to the manner in which the records were kept, or the inability of District staff to find documentation responsive to the information requested at the individual schools, the District was unable to provide, either in a timely manner or at all, some of the information requested for this investigation. As a result of the difficulties obtaining information from the District, as well as the time to review the information obtained, the SED granted four extensions of time, specifically to April 16, 2021, May 31, 2021, July 30, 2021 and August 11, 2021. The following report resolves the systemic allegations in the complaint.

### **Limits to the Investigation**

Federal regulations and state rules limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint is received. 34 C.F.R. § 300.153(c) and 6.31.2.13(H)(2)(d) NMAC. Any educator ethics issues, or any alleged American Disabilities Act (ADA) or Section 504 disability discrimination issues, are not within the jurisdiction of this complaint investigation and, as a result, were not investigated.

### **Issues for Investigation**

The following issues regarding alleged violations of the IDEA, its implementing regulations and State rules, are addressed in this report:

1. Whether the District has in effect and implements policies and procedures to ensure that all children with disabilities who may be in need of special education and related services are

located, evaluated, and identified as required by 34 C.F.R. §§ 300.111 and 300.301-306 and 6.31.2.10(A) NMAC;

2. Whether the District has in effect and implements policies and procedures to ensure that Prior Written Notice is provided to parents who request an initial special education evaluation, as required by 34 C.F.R. § 300.503 and 6.31.2.13(1)(iv) NMAC and 6.31.2.13(D)(2) NMAC;
3. Whether the District has in effect and implements policies and procedures to ensure that the Procedural Safeguards Notice is provided to parents upon request for initial special education evaluation as required by 34 C.F.R. § 300.504 and 6.31.2.13(D)(3) NMAC;
4. Whether the District uses the SAT process to delay or deny the provision of special education evaluations to students with disabilities in the District in violation of 34 C.F.R. § 300.301(b), and 6.31.2.10(D)(1) NMAC; and
5. Whether the District's actions and omissions resulted in a denial of a free and appropriate education (FAPE) to students with disabilities in the District?

### **Findings of Fact**

1. The Parents in this matter filed a state complaint against the District on behalf of a named Student and all other similarly situated students in the District.
2. On April 16, 2021, a completed complaint resolution report involving the individual Student was previously provided to the parties. The following statement of facts involves only the systemic allegations against the District.
3. According to District data, the District is comprised of 144 schools with an enrollment of approximately 82,000 students. The District has 88 Elementary Schools, 5 K-8 Schools, 27 Middle Schools, 13 traditional High Schools, 8 Magnet Schools, 2 Alternative Schools, and 1 Special Education Complex. The District also has 30 authorized Charter Schools. Students with disabilities in the District total 16,421, approximately 19% of student enrollment.
4. The District has adopted and published policies, *Special Education Procedural Directives*, requiring that all children with disabilities aged birth through twenty-one (21) years residing within the District's jurisdictional boundaries are identified, located, and evaluated, including children attending religious or private schools who are in need of special education and related services.
5. The District has adopted policies and procedures to ensure that Prior Written Notice (PWN) is provided to parents who request an initial special education evaluation. However, in instances when the District grants the parent's request to evaluate, the District's policy specifically declines to "substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time." Conversely, in the event that the District refuses a parent's request for an initial evaluation, the District's policy requires that PWN of the District's refusal be provided to the parent within 10 school days of the initial SAT meeting.
6. The District has adopted policies and procedures regarding the Procedural Safeguards Notice

(PSN), but the District's policy does not specifically state that the notice must be provided to parents upon request for an initial special education evaluation.

7. The District has adopted policies and procedures regarding parental consent for an initial special education evaluation (*Special Education Procedural Directives*, 2C), which indicates that the District shall make reasonable efforts to obtain the parents' informed consent but does not provide any direction as to the timing of obtaining parental consent.
8. In response to previous corrective action ordered by the PED with respect to a previous complaint investigation, C1920-09, against the District, in July, 2020, the District adopted a revision to the *Special Education Procedural Directives* regarding the Student Assistance Team: General Screening and Student Intervention Guidelines. These revised procedures describe the process that takes place following a written or verbal request for initial special education evaluation made by a parent or legal guardian of a student in the SAT process, in relevant part, as follows:
  - a. Principal or designee completes Request for Initial Special Education Evaluation and submits to the district office of the SAT liaison;
  - b. Principal notifies the school SAT chair to convene a SAT for the referred student if not already in process;
  - c. The SAT convenes within 10 school days to consider the request for initial special education evaluation in accordance with guidelines published by the SAT Liaison Office;
  - d. If the SAT agrees that an initial special education evaluation is appropriate, the SAT chair will forward the request and the available SAT documents to the district Special Education Department. The SAT chair will ensure copies of this documentation are provided to the parent/legal guardian, placed in the child's SAT working folder, provided to the district General Education compliance officer or designee, and updated into the student's electronic cumulative folder;
  - e. The SAT may disagree with a parent request only if all of the following apply:
    - i. The student is in the Response to Intervention (RTI) process for all areas of suspected disability, including the areas of concern raised by the parent; and
    - ii. The student is currently receiving interventions in all areas of suspected disability including the areas of concern raised by the parent; and
    - iii. It is undisputed by the SAT that the student is currently demonstrating progress appropriate for that student in all areas of suspected disability, including all areas of concern raised by the parent; and
    - iv. On the date the parent requested an evaluation, there already exists documented data, developed through that student's RTI process, unequivocally demonstrating to the SAT that the student is already making appropriate progress in all areas of suspected disability including all areas of concern raised by the parent.
  - f. If the SAT refuses the parent's request for an evaluation, the SAT must provide PWN to the parent within 10 school days from the initial SAT meeting.
  - g. If the SAT agrees to provide an initial evaluation, the evaluation will proceed according to

state and federal law, as well as the District's procedural directives, and such evaluation will occur in parallel with the SAT process at the school. The District's Special Education Procedural Directives do not specifically require the SAT team to issue a PWN at the time that the parents' evaluation request is accepted.

9. The complaint investigator provided a questionnaire to each of the diagnosticians employed by the District. The questionnaires were emailed to the diagnosticians and were returned directly to the complaint investigator for review and analysis. The complaint investigator received a total of 48 completed diagnostician questionnaires out of approximately 108 sent. A careful review of the returned questionnaires reveals the following facts:
10. The District operates three diagnostic testing centers identified as the Northeast, Northwest and Southeast Centers. It appears that these Diagnostic Centers generally follow the same processes, but there are some differences. It appears that over the previous year the District has been implementing some procedure changes, in particular for how these centers receive and assign student evaluations to the diagnosticians. The questionnaire responses do indicate that there are still variations among the centers in how this process works.
11. The process followed by the Diagnostic Centers for a referral from a student's SAT team to an evaluation is generally comprised of the following steps:
  - a. The school's SAT Chair sends the diagnostic center an electronic case file on the student in the General Education side of Synergy<sup>2</sup> upon completion of Tier 1 and/or Tier 2 interventions. All referrals are logged in by a diagnostician technician.
  - b. The diagnostician technician then sends the file to a diagnostician reviewer who reviews the file contents to ensure all necessary paperwork has been completed and included in the file. If any of the necessary SAT documents are not included in the file, the review diagnostician notifies the school's SAT chair of the missing documents needed to proceed. The file is "held" until the necessary SAT documents are submitted and the file is reviewed again.
  - c. Once the file is complete the reviewer places the referral "over the wall," which means that the file is entered as an initial referral on the Special Education side of Synergy. At this point, the student, or student's file, is generally considered as accepted by the Diagnostic Center. The file is then either put in the queue (a physical file drawer or an electronic file) for the next available diagnostician to take, or the file is distributed among team diagnosticians based on the school cluster they are in, or the digital file is electronically distributed based on its submission date and the first available diagnostician regardless of which school the student attends. Many diagnosticians indicated that distribution based on school clusters creates backups because some schools submit more referrals than others, and at times many diagnosticians would have a large number of students waiting for testing and backed up for several months while other diagnosticians on their same team were current. Efforts to standardize the process based on submission date and first availability

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<sup>2</sup> Synergy is the student information system used by the District to collect and maintain student special education information and digital files.

have been met with some resistance.

- d. Once the file is accepted and assigned to a diagnostician, the assigned diagnostician sends a PWN to the parents outlining the areas of referral and the type of assessments required, typically within one week of receiving the file. Previously, the diagnostician would then directly contact the parent and schedule a testing appointment at the Diagnostic Center or school. Currently, the diagnostician completes a test scheduling request form and submits it to the Center's data technician who then contacts the parent to schedule a testing appointment. The data technician has the diagnostician's calendar, and upon contact with the parent schedules the evaluation with the parent.
  - e. On the day of the testing appointment, the diagnostician explains the testing procedure, components and rationale to the parent and answers the parent's questions. If satisfied, the parent signs the Consent for Evaluation form and the diagnostician then conducts the evaluation of the student.
  - f. Upon completion of the evaluation and the Multidisciplinary Evaluation Team (MDT) report, the diagnostician notifies the school's Special Education Teacher requesting that an MDT/IEP meeting be scheduled.
12. The questionnaire responses from many of the diagnosticians identified a number of reasons for delays in the SAT referral evaluation process. These include:
- a. SAT Chairs or staff who are inexperienced or lack training in the SAT process;
  - b. SAT files are not transferred with students upon transfers to another school;
  - c. parents/teachers fail to provide existing outside evaluations or diagnoses of the student prior to, or mention them in the middle of, an evaluation;
  - d. non-Hispanic language barriers;
  - e. the student is homeless or in foster care;
  - f. SAT files are incomplete when the student's information is sent to the Diagnostic Center;
  - g. inability to reach the parent/guardian to schedule an appointment due to outdated/incomplete parent information in Synergy;
  - h. the parents lack voicemail or phone is disconnected;
  - i. parents fail to respond to voicemail/email/note sent home;
  - j. parent and student fail to show up for their appointment or the parent sends another family member/friend without educational rights so consent cannot be obtained;
  - k. parents change their minds about an evaluation and fail to respond or fail to provide consent; and
  - l. student absences, field trips, school breaks, illness, etc. make observation/data gathering stretch out over weeks/months.
13. Many diagnostician responses state that parents are under the mistaken impression that their written or verbal request to school staff for an evaluation immediately starts the 60-day evaluation timeline.
14. Many diagnostician responses indicate that prior to the previous school year, parent requests for evaluation were placed in the evaluation queue in the order they were received, the same

as for SAT referrals, but that now parent requests are placed in the front of the queue in a colored folder to indicate that it relates to a parent request.

15. In response to a request for information, the District provided five spreadsheets regarding the diagnosticians and Speech Language Pathologists (SLP) with whom the district employs or contracts with to provide special education evaluations to students in the District. These spreadsheets provide the following facts:
  - a. During the 2020/2021 school year there were approximately 108 diagnosticians employed by the District, many of whom do not work full-time for the District.
  - b. As of May 18, 2021, the District's diagnosticians were assigned as few as 1-3 evaluations, and as many as 13-17 evaluations.
  - c. As of May 18, 2021, District data shows that there were 147 students who were assigned to a diagnostician for evaluation and were still in the evaluation process.
  - d. During the 2020/2021 school year, the total number of evaluations conducted by District diagnosticians was approximately 2,750, and ranged from a low of 1 to a high 163, with an average of 23. However, the number of diagnosticians who conducted 30 or more evaluations totals only 31.
16. The District does not currently maintain records of the referrals for evaluation or individualized education from the school SAT teams. The lack of required records made completion of this investigation difficult and revealed the lack of any meaningful system within the District to track the evaluation process and timelines. The data that the District was able to submit showed considerable problems with the implementation of its processes and months long delays between student referrals and evaluations.
17. The District's response to the requested information described in the preceding paragraphs came in the form of two spreadsheets.
18. The first spreadsheet regarding students referred to the SAT process in the District included approximately 3,245 students when provided to the investigator (the "SAT Spreadsheet"). However, the SAT Spreadsheet was redacted to remove those student files that were not relevant to the issues presented in this systemic complaint investigation. (i.e., gifted but not twice exceptional students).
19. The number of students in the District identified in the SAT Spreadsheet following the redactions identified above total 1,750 students. This spreadsheet is identified as "SAT Spreadsheet 2."
20. Student demographics for the students identified in the preceding paragraph are as follows:
  - a. 913 male students;
  - b. 837 female students;
  - c. 75 African American students;
  - d. 41 Asian students;
  - e. 1082 Hispanic students;
  - f. 102 Native American students;
  - g. 5 Pacific Islander students;

- h. 444 White students;
  - i. 1 other students (NA, blank); and
  - j. 286 English Language learners.
21. The second spreadsheet provided by the District includes those students whose parents requested a special education evaluation for their student during the preceding year, and total 74 students. However, all of the students in the second spreadsheet are already included in SAT Spreadsheet 2, so the data in this spreadsheet was not analyzed and no findings were included so as to avoid duplicate findings from the data provided by the District.
  22. In view of the very large number of students involved in this investigation, it was determined that the investigation would proceed as follows. First, an analysis of the information provided in SAT Spreadsheet 2 was conducted as to the 1,750 students, as set forth above.
  23. It should be noted that one very limiting factor in this investigation is the amount of information that was not provided in the original spreadsheets from the District. Due to a lack of record-keeping, or the inability of District staff to find documentation responsive to the information requested at the individual schools, the District failed to provide a great deal of the information requested by the complaint investigator.
  24. Second, in order to test the findings obtained from the group of students from SAT Spreadsheet 2, the complaint investigator randomly selected a sample of student files to review. The complaint investigator provided this random sample of 69 students to the District and requested the District to provide the student files of the students on this list. A spreadsheet known as the “SAT File Review Spreadsheet” was created and as many specific data points that could be obtained by an in-person review of all 69 student files were included in this spreadsheet.
  25. The complaint investigator reviewed the SAT File Review Spreadsheet and redacted out irrelevant student files (e.g. students that were gifted and not twice exceptional, students with 504 plan). The number of remaining student files in the SAT File Review Spreadsheet is 49. It should be noted that the SAT File Review Spreadsheet contains data on students referred for an evaluation through SAT process as well as students referred for an evaluation by their parents. The data regarding SAT referrals and parent requests are analyzed separately.
  26. The data from the SAT Data Spreadsheet 2 and the SAT File Review Spreadsheet are summarized below.
  27. The relevant findings derived from the data provided by the District regarding referrals for evaluation from the SAT team are as follows:
    - a. In 53% of the student referrals from SAT, it took over 60 days for the file to be accepted by the Diagnostician Center, with the highest number of days being 681.
    - b. Following a referral from SAT, the SAT team provided the parent with the PSN within 10 days from a SAT team referral 60% of the time, but provided the PSN over 90 days after a SAT team referral 24% of the time.
    - c. The PSN was provided to the parent by the diagnostician over 60 days after referral 75% of the time.
    - d. A PWN was provided to the parent by the diagnostician over 90 days after referral 57.2%

- of the time (the longest being 681 days), and in 51.6% of the time, the diagnostician provided PWN less than 10 days before the evaluation of the student. It should be noted that the vast majority of the time, PWN was provided the day prior to, or the day of, the evaluation, and not at the time of the SAT team referral.
- e. The District requested, and received, signed parental consent for the evaluation over 30 days from the referral 75% of the time, and over 60 days from the referral 54% of the time. The District received parental consent within 10 days of the evaluation 77.2% of the time, with the vast majority being received within one day of the request for consent for evaluation and the evaluation itself.
  - f. The District conducted a student's evaluation over 90 days from referral 69.8% of the time, with the longest time being 686 days.
28. With respect to requests made by a parent for a special education evaluation, parent request data submitted by the District provides the following facts:
- a. The District provided PSN to the parent more than 60 days after the parent request 94% of the time, and over 90 days from the request 77% of the time.
  - b. After the parent request, it took the district over 60 days to have the student's file accepted by the Diagnostic Center 70% of the time, and it took over 90 days 45.6% of the time.
  - c. After the parent request, it took the district over 60 days to provide a PWN to the parent 94% of the time, and it took over 90 days 78% of the time. The vast majority of the time, PWN was provided less than 10 days prior to the evaluation, and in most instances was provided within several days of the evaluation.
  - d. The District requested signed parental consent for the evaluation over 30 days from the initial parent request for evaluation 95.5% of the time and over 60 days from the parent request for evaluation 91.2% of the time. The District received parental consent within 1 week of the request for parent consent 91.4% of the time, with the vast majority being received on the same day of the request for consent for evaluation and the evaluation itself.
  - e. The data indicates that for parent requests, the time from a parent request to an evaluation took over 90 days from the request 89% of the time, with the highest number being 714 days.
  - f. The SAT data indicates that PWNs for refusal to evaluate were only issued in 8 instances. Of those 8 instances, only two contained a corresponding date for the decision of the SAT to refuse a parent request to evaluate. In those two instances, PWNs were issued on the same day that the SAT made the decision to refuse the request to evaluate. However, in one of those two instances, the PWN was not issued until 259 days had passed from the initial parent request.
  - g. The SAT Data included 14 instances in which the SAT made the decision to refuse a parent request to evaluate. 50% of those decisions to refuse to evaluate occurred over 60 days after the parent request, with 28.6% occurring over 150 days.
29. As noted above, an in-person review of randomly selected student files was conducted in order to verify the accuracy of the information provided by the District and to provide a second set

of data points obtained directly by the PED. It should be noted that the lack of information in the student files resulted in a very low number of data points from the files. The facts obtained from the in-person review of SAT referrals are as follows:

- a. In 33% of the student referrals from SAT, it took over 60 days after referral for the file to be accepted by the Diagnostician Center, and 67% of the time it took over 30 days after referral.
  - b. Following a referral for evaluation from SAT, the SAT team provided the parent with the PSN within 30 days after referral 0% of the time, and provided the PSN less than 60 days after referral only 40% of the time.
  - c. The PSN was provided to the parent by the diagnostician over 60 days after referral 60% of the time.
  - d. The diagnostician provided the PWN to a parent over 60 days after the SAT referral for evaluation 66.7% of the time and over 90 days after the SAT team referral 50% of the time, and 0% of the time a PWN was provided less than 30 days before the evaluation of the student. Further, PWN was provided to the parent over 90 days prior to the evaluation 67% of the time and over 30 days 33% of the time.
  - e. The District requested signed parental consent for the evaluation over 30 days from the referral 100% of the time. Consent was received by the District within 10 days of the evaluation 88.9% of the time, with the vast majority being received within one day of the of the request for consent to evaluate and the evaluation itself.
  - f. In 50% of the SAT referrals, the student's evaluation was conducted over 90 days from referral.
30. With respect to requests made by a parent for a special education evaluation, the data from the file review provided the following facts:
- a. The PSN was provided to the parent between 60 and 90 days after the parent request 100% of the time.
  - b. After the parent request for evaluation, it took the district over 60 days to have the student's file accepted by the Diagnostic Center 100% of the time, and it took over 90 days 50% of the time.
  - c. After the parent request, it took the district between 60 and 90 days to provide a PWN to the parent 100% of the time. Notably, the vast majority of the time PWN was provided less than 10 days prior to the evaluation, and in most instances was provided within several days of the evaluation.
  - d. The District requested and obtained informed consent from the parent for the evaluation over 90 days following a parent request 100% of the time, and 100% of the time consent was received less than 10 days prior to the evaluation, and in the vast majority of those instances consent was received within one day of the request for consent to evaluate and the evaluation itself.
  - e. The data indicates that for parent request, the time from a parent referral to an evaluation took over 90 days 100% of the time.

31. In response to previous corrective action ordered by the PED with respect to a previous complaint investigation, C1920-09, against the District, the District provided a “Parent Request Training for SAT Chairs/Teams.” The agenda for this training indicates that SAT Chairs and Teams were instructed regarding parent requests for evaluations, in relevant part, as follows:
  - a. The Principal or administrative designee will meet with the parent and complete the Parent Request for Evaluation Form.
  - b. The SAT Chair will contact the parent “right away to schedule a SAT meeting within 10 days of the signed parent request.”
  - c. The SAT Chair will complete the Initial Meeting Summary form and/or PWN.
  - d. The team, including the parents, will determine the SAT path for the student.
    - i. If there is a concern, Tier 2 interventions will be determined and implemented for the next eight weeks. Parents will be provided the Parent Invite Letter for the Follow-up SAT Meeting at the meeting along with an email of their Parent Rights.“
    - ii. If there is not a concern, the team will complete a PWN refusing to evaluate due to a lack of data showing need. A copy will be given to parents in the meeting along with an email of their Parents Rights.
  - e. The SAT Chair schedules a Follow-up SAT Meeting no more than 10 weeks from the first SAT meeting.
  - f. After the Follow-up SAT Meeting, the student’s completed SAT file will be submitted to the Reviewer for Special Education Evaluation (at the Diagnostic Center). The student will continue to receive Tier 2 services until placement determination occurs.
  - g. “All completed SAT packets for Parent Request have to be turned in 60 days after first SAT meeting.”
32. In its responses to the requests for information submitted to the District in this matter, the District indicated that additional training was provided to District staff in April of the 2020/2021 school year entitled “Parent Requests for Evaluations. The agenda for this training provides as follows:
  - a. SAT Lead emails parent request packet to Special Education Executive Director of Evaluation.
  - b. Parent Request is filed and sent forward to diagnostic manager. Diagnostic Manager places parent request in queue according to date received at the diagnostic center. Request will be filed in a colored folder.
  - c. Screener is notified file has been received. Screener can work on obtaining any missing paperwork from the school.
  - d. Data technician is notified student needs to be placed over the wall.
  - e. Data Technicians will print updates on parent requests each Friday for center manager to track progress.
  - f. Folders will continue to move forward for testing. If paperwork from school is missing diagnostician will inform center manager who will work to obtain paperwork.
  - g. Evaluation will move forward whether school has submitted paperwork or not.

## Discussion and Conclusions of Law

### Issue No. 1

**Whether the District has in effect and implements policies and procedures to ensure that all children with disabilities who may be in need of special education and related services are located, evaluated, and identified as required by 34 C.F.R. §§ 300.111 and 300.301-306, and 6.31.2.10(A) NMAC.**

The IDEA provides that any party may present a complaint with respect to any matter relating to the identification, evaluation, educational placement, or provision of FAPE to a disabled student. 20 USC §1415(b)(6).

Students with disabilities who are eligible under the IDEA are entitled to be appropriately identified, evaluated, placed, and have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. § 300.1(a); 6.31.2.7(B)(19) NMAC. The IDEA and its implementing regulations, and state rules, use the term "Child Find" to describe the affirmative and continuing obligation of school districts to identify, locate and evaluate all children with disabilities residing within the district's jurisdictional boundaries who are in need of special education and related services. 34 C.F.R. § 300.111; 6.31.2.10(A) NMAC. The requirements of Child Find apply to, among others, students who are suspected of being students with a disability and who are in need of special education and related services, even though they are advancing from grade to grade. 34 C.F.R. §§ 300.101(a), 300.111(c)(1); 6.31.2.10(A) NMAC.

The obligation to evaluate arises when there is a reason to suspect a disability and reason to suspect that the disability is adversely affecting a child's educational performance so that the child needs special education services. The threshold for "suspicion" is relatively low. The key is not whether the child is actually qualified, but whether the child should be referred for an evaluation. *Department of Educ., State of Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1194 (D. Hawaii 2001); *School Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928, 942 (E.D. Va. 2010). In an opinion from the Ninth Circuit, which is persuasive, if not precedential authority, the court held that a disability is suspected when the district is put on notice that symptoms of disability are displayed by the child. *See Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1120 (9th Cir. 2016). Notice may come in the form of expressed parental concerns about a child's symptoms, expressed opinions by informed professionals, or less formal indicators, like the behaviors in and out of the classroom. *Id.* at 1121. A school's ineffective use of interventions and lack of a positive response to interventions may also trigger the child find obligation. *Spring Branch Indep. Sch. Dist. v. O.W.*, 961 F.2d 781, 793-94 (5th Cir. 2020).

The federal regulations and state rules provide that a request for an initial evaluation may be made by either the parent or by school staff. 34 C.F.R. § 300.301(b); 6.31.2.10(D)(1)(b) NMAC. Upon receipt of a request for an evaluation, the district must respond within a reasonable timeframe. The

response may not be delayed due to the district's Response to Intervention process. 6.31.2.10(D)(1)(c)(iv) NMAC. *See Letter to Ferrara*, 60 IDELR 46 (OSEP 2012). Neither the federal regulations nor the state rules require that the referral, or parental request, for a special education evaluation be in writing.

Once the District has reason to suspect that a student is a child with an IDEA disability and may need special education, it must take steps to ensure that the child receives a full and individual evaluation. 34 C.F.R. § 300.301(a); NMAC 6.31.2.10(D). The District must then conduct the initial evaluation within 60 days of receiving parental consent. 34 C.F.R. § 300.301(c); NMAC 6.31.2.10(D)(1)(d). There are two exceptions to the 60-day evaluation timeline: (1) if the parent of a child repeatedly fails or refuses to produce the child for the evaluation or (2) if the child enrolls in a school of another public agency after the initiation of the evaluation and prior to a determination as to whether the child is a child with a disability. 34 CFR §300.301(d). Based on consistent information provided by the diagnosticians, it is clear that there are many occasions when the failure to timely conduct an evaluation is the fault of the parents and not the District. However, federal regulations and state rules require prompt and timely actions on behalf of public agencies following a referral for a special education evaluation except in the two above-mentioned situations.

The IDEA and its implementing regulations provide that a public agency must **promptly** request parental consent to evaluate a child to determine if the child needs special education and related services whenever a child is referred for an evaluation. 34 C.F.R. § 300.309(c) (emphasis added). The IDEA and state rules do not specify a time within which parental consent must be obtained. However, delay by a district in seeking parental consent acts to circumvent the timelines for evaluation, and it is not acceptable for a district to wait several months before seeking consent for an evaluation. 71 Fed. Reg. 46540 (2006). *See, e.g., District of Columbia Pub. Schs.*, 12 ECLPR 109 (SEA DC 2015) (finding that the district denied a first-grader FAPE when it failed to provide his parent with referral and consent forms in response to her oral evaluation request in a timely manner). Thus, school districts "would be well-advised to request parental consent for evaluations as soon as possible." *Denver Pub. Sch. Dist.* 77 IDELR 57 (SEA CO 2020) (citing *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008)). The fact that a school may have been implementing interventions with the student during this time, or that the school was experiencing a large number of referrals for evaluation, are not valid excuses for the delay.

New Mexico requires that each public agency, including the District, adopt and implement policies and procedures to ensure that all children with disabilities who reside within the public agency's educational jurisdiction are located, evaluated, and identified in compliance with IDEA. 6.31.2.10 NMAC. The District has adopted policies that are in compliance with both the federal and state requirements and has adopted procedures to implement those policies. If the District were to implement practices that are consistent with its written policies and procedures, the District

would have a robust system to locate, evaluate, and identify children with disabilities who are in need of special education and related services in compliance with federal and state requirements.

As noted above, a great deal of data was collected and analyzed during this complaint investigation. It is concluded that the District has adopted compliant child find policies and procedures, but the District has failed to consistently implement its policies and procedures. The following data summarizes the basis for this conclusion:

1. SAT Data:

a. SAT referrals:

- i. The original data provided by the District indicates that a great deal of SAT data was not collected and maintained by the school SAT teams.
- ii. The District waited to request, and receive, signed parental consent for the evaluation for over 30 days from the original SAT referral 75% of the time and for over 60 days 59% of the time. This is confirmed by the SAT File Review which indicates that the District requested, and received, signed parental consent for the evaluation over 60 days from the referral 100% of the time. Consent was received by the District within 10 days of the evaluation 77.2% of the time, with the vast majority being received within one day of the evaluation. This is confirmed by the SAT File Review which indicates that consent was received by the District within 10 days of the evaluation 93% of the time, with the vast majority being received within one day of the evaluation. A review of the entries confirms the diagnosticians' reports that the practice in the District is for the diagnostician to obtain signed parental consent at the time of, or just prior to, the evaluation being conducted.

b. Parent requests for students in the SAT process:

- i. The original data provided by the District clearly indicates that a great deal of SAT data was not collected and maintained by the school SAT teams.
- ii. The District obtained informed consent from the parent for the evaluation more than 60 days following a parent request for evaluation 93% of the time. This unreasonably long delay in obtaining parental consent following the parent request for evaluation is confirmed by the SAT File Review which shows that consent was requested and obtained over 90 days following a parent request 100% of the time.
- iii. Consent was received by the District less than 10 days prior to the evaluation 77% of the time, and in the vast majority of those instances consent was received within one day of the evaluation. This compares to the SAT File Review which shows that consent was received less than 10 days prior to the evaluation 100% of the time. A review of the data confirms the diagnosticians' reports that the practice in the District is to delay requesting parental consent and for the diagnostician to obtain signed parental consent at the time of, or just prior to, the evaluation being conducted.

After review of the data analyzed across 144 schools and 1,750 student records, it is concluded that clear and ongoing violations of the District's obligations related to child find and evaluations exist. The District's SAT records are incomplete and inconsistent, which in and of itself may be a violation and definitely contributed to the violations noted in this report. *See* 34 C.F.R. § 300.211 ("The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to §§ 300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act"). Although the District's SAT records are incomplete and inconsistent, further contributing to these violations, the records support a conclusion that the District failed to follow its own SAT procedures, failed to obtain timely parental consent, and failed to conduct timely special education evaluations.

The data submitted by the District reveal that parental consent for evaluation is not timely obtained by the District. Instead, the District has a practice of creating delay by waiting until the file is accepted by the Diagnostic Center before attempting to obtain parental consent. Even though the data indicates that evaluations were generally conducted on the same day or within a few days of receiving parental consent, this fact is misleading due to the fact that parental consent was not requested by the District for over 60 days following the initial referral for evaluation 54% of the time for SAT referrals and 93% of the time for parent requests. These violations were consistently noted throughout the data provided by the District and the individual student records reviewed. In some instances, the evaluation timeline exceeded the amount of time permitted by federal and state law by hundreds of days. This self-imposed requirement results in a delay of months, even entire school years, before the District seeks to obtain parental consent for an evaluation. This is a clear violation of the IDEA and state law. Also, among other things, this practice circumvents the requirements of the IDEA and violates the requirement that parental consent be obtained promptly or within a reasonable time. This raises concerns that the practice is intended to conceal obvious delays by manipulating the information required to be reported to the PED regarding federal IDEA indicators on timely evaluations.

Furthermore, the delay caused by the practice of delaying parental consent is compounded by other delays in the District's process. For example, while it is true that a student's complete SAT file must be provided to the Eligibility Determination Team (*See* 6.31.2.10 (D)(1)(c)(iii)), delays caused by SAT and Diagnosticians' procedures, such as the requirement that a complete student file be provided prior to any action by the Diagnostic Centers to schedule evaluations, delay the movement of students through the evaluation process. Additionally, delays in providing parents with the PSN and PWNs further impedes parents' ability to obtain an evaluation for their child.

Therefore, it is concluded that the District does have in effect policies and procedures to ensure that all children with disabilities who may be in need of special education and related services are located, evaluated, and identified, but the District has failed to timely and appropriately implement its policies, and the underlying practices of the SAT and diagnosticians result in excessive delays

in conducting special education evaluations contrary to the requirements of IDEA, federal regulations, and state rules.

*As to Issue No. 1, the District is cited. Corrective action is required.*

**Issue No. 2**

**Whether the District has in effect and implements policies and procedures to ensure that Prior Written Notice is provided to parents who request an initial special education evaluation, as required by 34 C.F.R. § 300.503, and 6.31.2.13(1)(iv) NMAC and 6.31.2.13(D)(2) NMAC.**

The Federal regulations and State rules provide that a parent may request an initial special education evaluation at any time, including during the SAT process. 6.31.2.10(C)(1)(d) NMAC; *see also* 34 C.F.R. § 300.300. When a parent requests an evaluation, the public agency must issue, within a reasonable time after the parent request, a prior written notice indicating whether it is refusing to evaluate the child or agreeing to evaluate the child. 34 C.F.R. § 300.300(a) and 300.309(c) (A public agency must promptly request parental consent to evaluate whenever a child is referred for evaluation, and PWN and PSN are required to be provided to the parent prior to obtaining informed consent.); 6.31.2.10(C)(1)(d); 71 Fed. Reg., 46540, 46637; *See, e.g., Letter to Ferrara*, 60 IDELR 46 (OSEP 2012) (“It has been the Department's longstanding policy that the LEA must respond within a reasonable period of time following the LEA's receipt of the parent's request.”). Additionally, prior written notice must be provided a reasonable time before the public agency proposes or refuses to initiate an evaluation. 34 C.F.R. § 300.503(a); 6.31.2.10(C)(1)(d) and (D)(2)(d) NMAC. The regulations and rules do not define what constitutes a “reasonable” time to provide PWN after a parent’s request and prior to an evaluation. However, it must certainly be enough time for the parent to participate in a meaningful way and respond to the action before it is implemented. *See O'Dell v. Special of St. Louis Cty.*, 503 F. Supp. 2d 1206, 1216 (E.D. Mo. 2007); *Letter to Chandler*, 59 IDELR 110 (OSEP 2012). If the public agency declines the parent’s request for an evaluation, the public agency must issue prior written notice in accordance with 34 C.F.R. § 300.503. The parent can challenge this decision by requesting a due process hearing. 34 C.F.R. § 507(a)(1); 6.31.2.10(D)(1)(c)(iv) NMAC.

The District does have in effect policies and procedures to ensure that PWN is provided to parents who request an initial special education evaluation. However, more often than not, the District does not provide parents with a PWN accepting or rejecting the parental request to evaluate within a reasonable time after the request. The District’s current *Special Education Procedural Directives* indicate that it is the responsibility of the school’s SAT Chair to provide PWN to the parent if the school refuses a parent’s request for a special education evaluation for their child. The District’s policies indicate that this PWN refusing to evaluate the student must be provided to the parent within 10 school days of the initial SAT meeting which shall be held within 10 days of the request.

In the few documented instances in which the SAT issued a PWN of refusal to evaluate, the PWN was issued on the day the decision was made in compliance with the District guidelines. However, this does not account for the time it took for the SAT to finalize a decision to refuse a parent request. The SAT data provided by the District contains only 14 instances in which the SAT refused to grant a parent's request to evaluate. Of those 14 instances, 56% were decisions made over 60 days after the initial request with 28.6% occurring over 5 months after the parent request.

The data also indicates that when the District agrees with the parent to conduct an evaluation, the District's general and consistent practice is to have the diagnostician assigned to evaluate the student prepare and provide PWN to the parent. Many diagnosticians report that the PWN is provided to the parents within five days after the file is assigned to them. However, PWNs are not issued until after the file is accepted for evaluation by the Diagnostic Center which can take, in many instances, hundreds of days. By utilizing this practice, the District operates in direct conflict with Federal and State law to provide a PWN to the parents a reasonable time after the parent request is received by the District and consent is requested for the evaluation.

The District's directive is to provide the PWN a reasonable time before the District conducts the evaluation. However, the data indicates that 52% of the time the PWN is provided less than 10 days prior to the evaluation, and in the majority of those cases, it is provided within only a few days prior to the evaluation. It is concluded that a practice of providing PWN only a few days before, or on, the day of the evaluation is generally not a reasonable time prior to conducting the evaluation, and would not give parents a reasonable opportunity to be informed of, and respond to, the District's proposed evaluation. Furthermore, the delay in issuing the PWN until long after the parent request or SAT referral prohibits the parent from engaging with the District or SAT further regarding the decision to evaluate prior to the evaluation.

Therefore, it is concluded that the District has in effect policies and procedures to ensure that Prior Written Notice is provided to parents upon request for an initial special education evaluation, but those policies and procedures are not "in effect" because the District does not consistently follow them and does not consistently provide PWN within a reasonable time of the request for evaluation when it agrees or refuses to evaluate.

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

### Issue No. 3

**Whether the District has in effect and implements policies and procedures to ensure that the Procedural Safeguards Notice is provided to parents upon request for initial special education evaluation as required by 34 C.F.R. § 300.504 and 6.31.2.13(D)(3) NMAC.**

The IDEA and State rules provide that a copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, among other times, upon initial referral or

parent request for evaluation. 34 C.F.R. § 300.504(a)(1); 6.31.2.13(D)(3) NMAC. It is important to note that neither the Federal regulations nor the State rules require that the referral, or parental request, for a special education evaluation be in writing. Therefore, the District's duty to provide the PSN is triggered by the initial referral or request for evaluation whether presented verbally or in writing.

The District's policies and procedures regarding the PSN do not include a specific provision for providing the PSN to a parent upon an initial referral, or a parent request for a special education evaluation. Moreover, the facts indicate a clear pattern regarding the District's failure to provide PSN to parents upon the initial referral or parent request for evaluation. The data indicates that the District's consistent practice is not to provide a copy of the PSN to the parent at the time of initial referral or parent request. The data indicates that the SAT team provided the parent with the PSN within 10 days 60% of the time, but provided the PSN over 90 days after referral 24% of the time. With respect to parent requests for an evaluation, the data indicates that the PSN was provided to the parents over 60 days after referral 94% of the time, and over 90 days 77% of the time. The district is clearly better with providing the PSN following a SAT referral. However, the data and diagnostician reports indicate that the District's practice with respect to parent referrals of having the diagnostician assigned to evaluate the student provide the PSN to the parent, usually at the time that PWN is provided to the parent, is not timely. It is concluded that this practice by the District is a procedural violation of the IDEA and State rules. Therefore, it is concluded that the District does not have in effect or implement policies and procedures to ensure that the PSN is provided to parents upon request for initial special education evaluation.

*As to Issue No. 3, the District is cited. Corrective action is required.*

**Issue No. 4**

**Whether the District uses the SAT process to delay or deny the provision of special education evaluations to students with disabilities in the District, in violation of 34 C.F.R. § 300.301(b), and 6.31.2.10(D)(1) NMAC.**

The State rules provide that each public agency in the State shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning as set forth in Subsection D of 6.29.1.9 NMAC. 6.31.2.10(B) NMAC. However, a parent may request an initial special education evaluation at any time during the public agency's implementation of tiers 1 and 2 of the three-tier model of student intervention. 6.31.2.10(C)(1)(d) NMAC. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency must evaluate the child consistent with 34 C.F.R. §§ 300.301 through 300.311. If the public agency declines the parent's request for an evaluation, the public agency must issue prior written notice in accordance with 34 C.F.R. § 300.503. 6.31.2.10(C)(1)(d) NMAC. The parent can challenge this decision by

requesting a due process hearing. *Id.* Moreover, consistent with the consent requirement in 34 C.F.R. § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. 34 C.F.R. § 300(b); 6.31.2.10(D)(1)(b) NMAC.

The U.S. Department of Education's Office of Special Education and Rehabilitative Services issued a memorandum dated January 21, 2011, entitled: "A Response to Intervention (RTI) Process Cannot Be Used to delay or deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)." *Memorandum to State Directors of Special Education OSEP 11-07*, 56 IDELR 50 (OSEP 2011). OSEP references 34 C.F.R. § 300.301(b) regarding evaluations, and states that the use of RTI strategies cannot be used to delay or deny a full evaluation. *See* NMTEAM, <https://webnew.ped.state.nm.us/wp-content/uploads/2018/02/NM-TEAM-Technical-Evaluation-and-Assessment-Manual.pdf> at 29. *See also El Paso Independent School District v. Richard R.*, 567 F. Supp. 2d 918, 941, 947–48 (W.D. Tex. 2008).

The facts set forth above clearly indicate that the District's practices do have the effect of delaying and/or denying a timely evaluation to students who are in the SAT process or to students whose parents requested an evaluation. The District's current SAT referral procedures result in unreasonable delays in evaluation of students by requiring approval of the Diagnostic Center and diagnosticians before the evaluation procedures even begin, with 53% of the student SAT referrals in the District taking over 60 days to be accepted by the Diagnostic Center.

Notably, many of the delays cited by the diagnosticians were not found to be caused by the parents or students and are often a result of incomplete information provided by the school to the Diagnostic Center. Moreover, parents are unable to appropriately engage in the process due to the apparent failure of the District to provide timely PSNs and PWNs.

These procedures result in unreasonable delay despite the fact that the decision to refer for evaluation has already been made by the SAT teams. Furthermore, the data clearly indicate that 70% of the time the evaluation of the student occurs over 90 days following the SAT referral, and occurs over 90 days 89% of the time for parent requests. There are many instances of evaluations being conducted hundreds of days after the initial referral, up to a high of 686 days in one case. The District cannot avoid a violation of the 60-day timeline for conducting special education evaluations by the practice of tasking the assigned diagnostician to obtain informed parental consent just prior to, or on the day that the evaluation is actually conducted. This practice does not comport with the IDEA's requirements for prompt and timely actions to identify, evaluate and determine the eligibility and educational placement of a student with a disability and is clearly contrary to the Federal regulations and State rules, as set forth above. Therefore, it is concluded that the District's practices and procedures regarding the SAT process do have the effect of

delaying or denying the provision of special education evaluations to students with disabilities in the District.

*As to Issue No. 4, the District is cited. Corrective action is required.*

**Issue No. 5**

**Whether the District’s actions and omissions resulted in a denial of a FAPE to students with disabilities in the District, in violation of 34 C.F.R. §§ 300.17 and 300.101 and 6.31.2.8 NMAC.**

The Federal regulations and State rules provide that violations of the IDEA may be based on either substantive or procedural violations. However, proving a procedural violation is only a first step to obtaining relief. In *Garcia v. Bd. of Educ. of Albuquerque Pub. Schs.*, 520 F.3d 1116, 1125-26 & n.4 (10th Cir. 2008), the court held that “procedural failures under IDEA amount to substantive failures only where the procedural inadequacy results in an effective denial of a FAPE.”; *quoting Urban ex rel. Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 726 (10th Cir. 1996). Congress provided in the 2004 amendments to the IDEA that to find a denial of FAPE based on a procedural violation, the procedural violation must have: (1) impeded the student's right to a FAPE, (2) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (3) caused a deprivation of educational benefits. 34 C.F.R. §300.513(a)(2).

The District’s unreasonable delays in the evaluation resulting from referrals for students in the SAT process and parent requests significantly impedes student’s right to a FAPE and, for those students eligible for special education and related services, caused a deprivation of education benefits. Students found to be eligible for special education and related services should have begun receiving those services sometimes months before they commenced and, in some instances, students waited over a year to be evaluated and begin receiving services. These delays denied students their right to FAPE and caused significant deprivation of educational benefits.

The District’s policies related to the issuance of PWNs and PSNs after a referral or parent request are insufficient and diminish parents’ ability to participate in the decision-making process. Furthermore, the District practice of regularly waiting months after the initial referral or parent request to issue a PWN and providing an untimely PWN when the District refused the parent request for an evaluation did not permit the parents to meaningfully engage in the decision-making process related to evaluation of their child.

The PED has concluded that the District failed to comply with obligations to locate, evaluate and identify students in the SAT process suspected of having a disability or referred by their parents for an evaluation, which is a substantive violation of the IDEA. It has also been concluded that the District has failed to timely provide parents with the PSN and PWN regarding their student’s

evaluation, and that the District’s practices have had the effect of delaying or denying the timely provision of a special education evaluation to students in the District, which are clearly procedural violations of the IDEA. It is concluded that the procedural violations by the District have impeded the right to a FAPE to students with disabilities in the District and significantly impeded their parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to the students and amount to substantive failures by the District. Further, for those students who were determined to be eligible for special education services following their evaluation, the extensive delays caused by the District would have caused a significant deprivation of educational benefit. Some students went without services for a school year. Therefore, it is concluded that the District’s actions and omissions resulted in a denial of a FAPE to students with disabilities in the District.

*As to Issue No. 5, the District is cited. Corrective Action is required.*

**Summary of Citations**

<b>Statutory and Regulatory Provisions</b>	<b>Citation</b>
34 C.F.R. §§ 300.111 and 300.301-306 and 6.31.2.10(A) NMAC	The District has failed to implement its policies and procedures to ensure that all children with disabilities who may be in need of special education and related services are located, evaluated, and identified.
34 C.F.R. § 300.504 and 6.31.2.13(D)(3) NMAC	The District has failed to implement its policies and procedures to ensure that the Procedural Safeguards Notice is provided to parents upon request for initial special education evaluation.
34 C.F.R. § 300.503, and 6.31.2.13(1)(iv) NMAC and 6.31.2.13(D)(2) NMAC.	The District has failed to implement its policies and procedures to ensure that Prior Written Notice is provided to parents who request an initial special education evaluation.
34 C.F.R. §300.301(b), and 6.31.2.10(D)(1) NMAC.).	The District’s practices regarding the SAT process have delayed or denied the provision of a special education evaluation to students with disabilities in the District.
34 C.F.R. §§ 300.17 and 300.101 and 6.31.2.8 NMAC	The District’s actions and/or omissions resulted in a denial of a free appropriate public education (FAPE) to students with disabilities in the District.

**Required Actions and Deadlines**

By August 23, 2021, the District's Special Education Director must assure the PED in writing that the District will abide by the provisions of this Corrective Action Plan (CAP). The PED requests that the District submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the District's progress with the Corrective Action Plan and to be its point of contact about this complaint from here forward:

Dr. Elizabeth Cassel  
Corrective Action Plan Monitor  
Special Education Division  
New Mexico Public Education Department  
300 Don Gaspar  
Santa Fe, NM 87501  
Telephone: (505) 490-3918  
[Elizabeth.Cassel@state.nm.us](mailto:Elizabeth.Cassel@state.nm.us)

The file on this complaint will remain open pending the PED's satisfaction that the required elements of this Corrective Action Plan are accomplished within the deadlines stated. The District is advised that the PED will retain jurisdiction over the complaint until it is officially closed by this agency and that failure to comply with the plan may result in further consequences from the PED.

Each step in this Corrective Action Plan is subject to, and must be carried out in compliance with, the detailed procedural requirements of the IDEA 2004 and the implementing federal regulations and State rules. If the District needs brief extensions for the steps in the Corrective Action Plan, contact Dr. Cassel.

**Please carefully read the entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes.** All documentation submitted to the SED to demonstrate compliance with the CAP must be clearly labeled to indicate the complaint number, C2021-11, and appropriate step number and submitted electronically to Dr. Cassel.

**All corrective action must be completed no later than August 11, 2022, and reported to the PED SED no later than August 7, 2022.**

**Corrective Action Plan**

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
<b>1</b>	District shall designate a Corrective Action Plan Monitor (District CAP Monitor) to coordinate all corrective action activity required in this CAP within the District. The designee shall be someone other than the District Special Education Director.	<b>8/20/2021</b>	District shall identify the designated CAP Monitor in the initial assurances letter required above.	<b>8/23/2021</b>
<b>2</b>	<p>District shall submit a letter to SED for approval notifying all parents that the District is currently operating under corrective action plan due to PED complaint investigation findings that the District is not currently in compliance with IDEA provisions related to identification and evaluation of students with disabilities. The letter shall include contact information for the District CAP Monitor in the event that a parent has questions or concerns about the corrective action or suspects that their child may have a disability and may be eligible for special education or related services.</p> <p>After receiving SED approval, the letter and Complaint Resolution Report shall also be posted on the District's main website and all parents within the District shall be notified through the District's parent notification system of the letter and Complaint Resolution Report's posting on the District website. Letter and Complaint Resolution Report shall be posted within one week of final notification of approval by SED.</p>	<p><b>8/27/2021</b></p> <p><b>9/8/2021</b></p>	<p>District shall submit letter for approval by SED.</p> <p>SED shall review for approval and advise District of approval</p> <p>Written assurance signed by the District Superintendent that all parents of students enrolled in the District were notified that the letter and Complaint Resolution Report has been posted on the District's website. Written confirmation that the documents were posted on the District's website.</p>	<p><b>8/27/2021</b></p> <p><b>9/1/2021</b></p> <p><b>9/10/2021</b></p>
<b>3</b>	The District shall amend/develop policies and procedures for ensuring that the District's affirmative identification and evaluation	<b>9/24/2021</b>	A copy of the policies/procedures and the minutes from the Board	<b>10/1/2021</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>obligations are met within all District schools including (1) setting and meeting requirements for the issuance of Prior Written Notices and the Procedural Safeguards Notice; (2) timely District decision and response to parent requests for evaluation; (3) timely evaluations arising from parent requests or SAT referrals; and (4) transferring and maintenance of student SAT and special education evaluation records.</p> <p>This policy and procedure shall be developed by an individual with expertise who is approved by the PED.</p>		<p>meetings reflecting approval of the policy and procedure.</p> <p>The resume or CV of the person(s) proposed to develop the policy and procedure to be submitted to PED for approval.</p>	<p><b>9/3/2021</b></p>
<b>4</b>	<p>The District will ensure that the policies and procedures amended/developed in Step 3 are posted on its website and distributed to all school principals and special education staff within the District.</p>	<b>10/15/2021</b>	<p>Written notification that the District has posted the policies and procedures on its website and distributed its policies and procedures to all schools within the District.</p>	<b>10/22/2021</b>
<b>5</b>	<p>District shall submit to periodic file follow-up reviews by SED appointees on a schedule to be determined by SED. The reviews will include review of school and District student files related to SAT and special education evaluations as well as other reviews of SAT and special education evaluations procedures and practices of District schools and the District. The District shall provide any support and access to all documentation and information requested by the appointees throughout the course of the corrective action period. Any failure to cooperate with the auditors may result if further corrective action.</p>	<b>Ongoing</b>	<p>Documentation and/or reports, including any issues of non-compliance, related to this step will be provided to the SED by the SED appointees.</p>	<b>Ongoing</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	Continued noncompliance or unreasonable delays in special education evaluations discovered through these reviews may result in further corrective action.			
<b>6</b>	The District shall meet with the SED Division Director and her staff to discuss the identification and evaluation of all students within the District, adequate staffing resources and plans required to ensure all identification and evaluation obligations are met by the District. This meeting shall include the Superintendent, the District Special Education Director, the District CAP Monitor, Director of Diagnosticians, and the Director of the SAT/MLSS programs within the District. This meeting will result in a written plan for ensuring the District has the resources and plans in place to adequately identify and evaluate all potential students with disabilities within the District as well as a plan to address the current backlog of students awaiting evaluation. This plan may include additional training for District and School level personnel.	<b>Meeting to be held on or before 9/10/2021</b>	Resulting Plan to be submitted to SED for approval.	<b>10/1/2021</b>
<b>7</b>	District shall submit to SED a list of students who are currently waiting for evaluation. The list shall include the names of the students and the date that the SAT team referred the student for evaluation and/or the date that the parent requested evaluation. District shall also submit any other evaluation waiting list(s) that it currently maintains.	<b>9/10/2021</b>	List of students waiting for evaluation and any District waiting lists to be submitted to SED	<b>9/13/2021</b>
<b>8</b>	District shall ensure that all evaluations on the waiting list are completed within 60 days from the date of this report. If	<b>10/11/2021</b>	Documentation of completion of evaluations on waiting list	<b>10/15/2021</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>this requires the District to retain additional diagnostic staff, the District shall take immediate steps to retain that staff.</p> <p>District shall develop a written plan to complete the evaluations and meet with SED representatives to review its plan to complete the evaluations and obtain SED approval for its plan.</p> <p>District shall provide a monthly report identifying the evaluations on lists which have been completed.</p> <p>Please note: The requirement to complete the evaluations on a waiting list does not excuse compliance with federal and state requirements for any new SAT referrals or parent request for evaluation.</p>	<b>9/3/2021</b>	<p>District Plan to be submitted to SED for review prior to meeting with SED.</p> <p>Monthly Report</p>	<p><b>9/3/2021</b></p> <p><b>First business day of every month</b></p>
<b>9</b>	<p>District shall develop a plan for a uniform data collection system that collects and maintains data related to evaluation referrals and requests and timelines in a single place accessible to the District’s Special Education Administration and school staff. The data system shall include, at a minimum for each referred student: (1) the date of a parent request for evaluation and/or SAT team referral for evaluation; (2) the date of issuance of a Prior Written Notice to parent accepting or declining the evaluation request or referral; (3) the date that the Procedural Safeguards Notice is provided to parent after a request or referral for evaluation, (4) the date on which parental consent for evaluation is requested, (5) the date on which parental consent for evaluation is obtained; (6) the date on which the</p>	<b>10/1/2021</b>	<p>Resulting Plan to be submitted to SED for approval.</p>	<b>10/1/2021</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>student is evaluated, (7) the date on which the EDT meets to determine eligibility, and (8) the date on which an eligible student’s IEP is developed. The data system shall include school and grade level information for the purposes of identifying persistent issues related to identification and evaluation at the school level.</p>			
<b>10</b>	<p>The District will follow through with the Plans approved by the SED, including a plan for any additional training and other components outlined in the plan.</p>	<b>Ongoing</b>	<p>Additional required documentation may be required to monitor implementation of plan</p>	<b>Ongoing</b>
<b>11</b>	<p>In addition to or in conjunction with the previously ordered training, the District is required to provide training regarding the District obligations regarding Child Find and evaluations which shall include: (1) the manner in which District staff become aware, or suspected, that a student is a student with a disability who needs an evaluation; (2) the federal and state requirements that the SAT process not be used to delay evaluations; (3) the different ways that a parent may request an evaluation; (4) the requirements for issuing a Prior Written Notice in response to parental request for evaluation, (5) the requirement for issuing a Notice of Procedural Safeguards in response to parental requests for initial evaluation; and (6) how to maintain documentation of parent requests and provision of Prior Written Notice and Notice of Procedural Safeguards.</p> <p>This training shall include information regarding all New policies, procedures, plans and requirements developed as part of Steps 3, 6, 8, and 9 of this CAP</p>	<b>11/22/2021</b>	<p>Documentation of the trainings provided, including all agendas, handouts, and sign-in sheets.</p>	<b>11/29/2021</b>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>In addition to those already ordered to be trained in these areas, this training shall be provided to all district and school level general and special education personnel including counselors, instructional coaches, SAT Chairs and Team members.</p> <p>Any and all trainings described above or contained within any of the abovementioned plans shall be provided by an independent trainer selected by the District and approved by SED.</p>		<p>Identification of the trainers and their résumé or curriculum vitae, as well as the agenda, and training materials for the training must be approved by PED prior to the training.</p>	<p><b>10/29/2021</b></p>
<p><b>12</b></p>	<p>The District will participate in weekly meetings with SED to review status of CAP completion and plan implementation. The frequency of these meetings may be adjusted based on compliance and progress related to each CAP provision. These meetings should be attended by, at a minimum, the District’s Special Education Director as well as the District CAP Monitor.</p>	<p><b>First meeting to occur one week after initial meeting with SED Director</b></p>	<p>Notes of weekly meetings submitted to PED on the day of each of the meetings.</p>	<p><b>Weekly Basis</b></p>

This report constitutes the New Mexico Public Education Department's final decision regarding this complaint.

Investigated by:

*/e/ Wallace J. Calder*  
Wallace J. Calder, Esq.  
Complaint Investigator

Reviewed by:

*/e/ Debra Poulin*  
Debra Poulin, Esq.  
Chief Counsel, Special Education Division

Reviewed and approved by:



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Deborah Dominguez-Clark  
Director, Special Education Division