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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Tucumcari Public Schools
Case No. C2223-27
January 30, 2023

This Report requires corrective action. See pages 7-8.

On December 1, 2022, there was a complaint filed with the New Mexico Public Education Department's Special Education Division (SED) 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 The SED 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 the Complainant;
- review of the District's responses to the allegations, together with documentation submitted by the District 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 District’s compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Complainant and Special Education Director; and
- research of applicable legal authority.

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); 6.31.2.13(H)(2)(d) NMAC. Any educator ethics issues, or any alleged 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 issue regarding alleged violations of the IDEA, its implementing regulations, and State rules, are addressed in this report:

1. Whether the District failed to provide teachers with Students’ IEPs (Individualized Education Programs), in violation of 34 C.F.R. 300.323(d) and 6.31.2.11(B) NMAC;
2. Whether the District failed to implement Students’ IEPs including accommodations and modifications, in violation of 34 C.F.R. §§ 300.320–300.328 and 6.31.2.11(B) NMAC; and
3. Whether the District’s actions and/or omissions towards the Students resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

1. The ten students who are the subject of this complaint (“Students”) are sixth grade students at the District middle school.
2. At the beginning of the 2022-2023 school year, the District implemented a new policy of shifting elective courses for middle school students each academic quarter (or every nine weeks). Previously, the District changed elective courses each semester.
3. Students initially attended Art as their elective course in the first quarter.
4. Records show that all teachers, including the Art teacher, received Students’ IEPs at the start of the first quarter.

5. The IEPs and supporting records showed Students receiving specialized instruction, related services, IEP goal monitoring, and accommodations/modifications as the 2022-2023 school year began.
6. At the start of the second quarter on October 17, 2022, Students began attending “Intro to Band” as their next elective course.
7. Complainant was the Students’ teacher for Intro to Band.
8. Interviews with both Complainant and the District Special Education Director confirm that from October 17, 2022, until December 1, 2022 (the date the state complaint was filed), the Complainant was not provided with copies of Students’ IEPs.
9. Upon receipt of the state complaint on December 1, 2022, the District provided Students’ IEPs to Complainant. A signature sheet was signed by Complainant acknowledging receipt of these documents.
10. Complainant did not make a request to the District for Students’ IEPs before filing the state complaint.
11. Complainant’s class was in the high school building and Students had to travel between the middle school and high school to attend their band class.
12. Both Complainant and the Special Education Director point to this inter-building travel arrangement as the primary reason why there was an oversight in providing the Complainant with copies of Students’ IEPs.
13. Special Education Director stated that the procedure of providing the accommodations/modifications and goals pages of the IEP to staff working with Students (as contained in the District’s Special Education Handbook) pertained to the delivery of physical, paper copies of those pages to staff. If a teacher or staff person needs additional information about the student’s needs, then they may request a copy of the Student’s IEP.
14. Complainant reports that he was unaware of Students’ disability-related learning needs while teaching Intro to Band to Students because he did not have access to their IEPs. If Complainant knew Students’ accommodations or modifications, he said he would have likely implemented strategies such as placing some students in the front of the classroom to improve their access to musical instruction.
15. The accommodations and modifications listed in Students’ IEPs included positive reinforcement, extra time for oral responses, seated close to the teacher, instructions repeated, simplified directions, checking for understanding, reminders to stay on task, clearly defining in-class behavioral expectations, visual aids, use of occupational therapy strategies as needed, minimize auditory distractions, and frequent reminders of classroom rules.

16. Three students received failing grades or a D in Intro to Band due to a lack of attendance in this course. Some of these absences were due to doctor appointments or undisclosed medical reasons while other absences did not have a listed excuse.
17. Most students showed moderate progress towards achieving their 2022-2023 IEP goals which were focused on academic and social-emotional needs. The Students in general earned passing grades in their various courses at the end of the second quarter.
18. In response to the complaint, the District put in place calendar reminders at the end of each academic quarter to ensure that building administrators and case managers send IEPs to incoming elective course teachers.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to provide teachers with Students' IEPs (Individualized Education Programs), in violation of 34 C.F.R. 300.323(d) and 6.31.2.11(B) NMAC.

A school district must ensure that every staff person responsible for implementing an IEP is provided access to the document and informed of their specific responsibilities for its implementation. 34 C.F.R. § 300.323(d)(2)(i). State regulations also support the federal requirements for teachers accessing IEPs. 6.31.2.11(B)(1) NMAC.

The facts relevant to this issue are very clear. Complainant, serving as a music teacher to the Student cohort, was entitled to access Students' IEPs as part of properly providing special education accommodations and modifications in class. The District did not provide copies of Students' IEPs to Complainant for several weeks during the second academic quarter of the 2022-2023 school year. This evidence supports a finding that the District failed to provide Complainant with Students' IEPs.

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

Issue No. 2

Whether the District failed to implement Students' IEPs including accommodations and modifications, in violation of 34 C.F.R. §§ 300.320–300.328 and 6.31.2.11(B) NMAC.

A material failure to implement an IEP occurs when there is more than a minor discrepancy between the services a school provides to a child with a disability and the services required by the IEP. *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). A District's actions may not constitute a material failure to implement an IEP if the Student shows

academic improvement and staff efforts help Students towards attaining their goals. *A.P. v. Woodstock Bd. of Educ.*, 370 F. App'x 202, 205 (2d Cir. 2010).

Here, the lack of accommodations and modifications provided to Students in their band class was a minor discrepancy in the implementation of Students' IEPs. The evidence shows that all other teachers and staff received the Students' IEPs, delivered specialized instruction, provided related services, monitored the progress of IEP goals, and provided accommodations/modifications as needed. The proportion of IEP services provided to Students far outweighs the lack of accommodations and modifications in band class. Therefore, the District did not materially fail to implement Students' IEPs and any deviation from the IEPs in band class was *de minimis*.

As to Issue No. 2, the District is not cited.

Issue No. 3

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

A student eligible for special education is entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. School districts are obligated to provide FAPE for each student eligible in their district. 6.31.2.9(A), 6.31.2.11(I)(2) NMAC. If an IDEA procedural violation occurs, that violation will constitute a denial of FAPE only if it: (1) resulted in a substantive harm to the child or their parents; (2) deprived an eligible student of an IEP; or (3) resulted in the loss of an educational opportunity. *Boutelle v. Bd. of Educ. of Las Cruces Pub. Sch.*, No. CV 17-1232 GJF/SMV, 2019 WL 2061086, at *7 (D.N.M. May 9, 2019). The substantive legal standard for determining whether a District has offered a student FAPE is whether an IEP is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017).

The District's omission of Students' IEPs from their Intro to Band course during the second academic quarter did not constitute a denial of FAPE. No substantive harm to any of the Students directly stemmed from the District's failure to implement the IEP in band class. For example, three Students received low grades in this course but the poor marks are more attributable to absences due to medical or other unexplained reasons. Students were not otherwise deprived of the programming and services mandated in their IEPs. Furthermore, Students were able to still access Intro to Band as an educational opportunity. The general level of progress Students were making as evinced in their grades and IEP goal progress marks supports a finding that the IEPs were also substantively adequate. For these reasons, the District did not deny Students FAPE.

As to Issue No. 3, the District is not cited.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. 300.323(d) and 6.31.2.11(B) NMAC.	The District failed to provide teachers with Students' IEPs.

Required Actions and Deadlines

By February 6, 2023, the District's Special Education Director must assure the SED in writing that the District will implement the provisions of this Corrective Action Plan (CAP). The SED 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 Avenue
Santa Fe, NM 87501
Telephone: (505) 490-3918
Elizabeth.Cassel@ped.nm.gov

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 SED 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 SED.

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

Please carefully read the 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 March 13, 2023, and reported to the SED no later than March 27, 2023. All documentation submitted to the SED to demonstrate compliance with the CAP must be clearly labeled to indicate the state complaint case number and step number.

Corrective Action Plan

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
1.	As described above, the District will submit a written assurance to the PED SED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	February 6, 2023	Written Assurance Letter/Email	February 6, 2023
2.	The District will update its Special Education Handbook or Resource Manual to permit staff to request electronic or physical copies of a student’s IEP and require that the District make the IEP accessible to the student’s teachers and instructional support providers upon request.	March 13, 2023	Copy of updated Special Education Handbook or Resource Manual	March 27, 2023
3.	Provide Acknowledgement of Receipt of, at a minimum, IEP modifications, accommodations, and goals signed by teachers providing instruction to all special education middle school students in the third and fourth academic quarters.	Within the first week of the beginning of each academic quarter.	Copies of signed Acknowledgement Form.	Within two weeks of the beginning of each academic quarter.

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/ Michael Gadomski

Michael W. Gadomski, Esq.

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:



Deborah Dominguez-Clark

Director, Special Education Division