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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Pecos Independent School District
Case No. 2223-31
February 16, 2023

This Report does not require corrective action.

On December 20, 2022, there was a complaint filed with the New Mexico Public Education Department's (NMPED) 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, Elementary Special Education Case Manager, High School Special Education Case Manager, 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 issues regarding alleged violations of the IDEA, its implementing regulations, and State rules, are addressed in this report:

1. Whether District personnel modified the IEP and/or other special education documents, without the involvement of the IEP team, after the IEP team had met and decisions were made about needs and services of Students to allow them to receive a free appropriate public education (FAPE) in violation of 34 C.F.R. § 300.324; 34 C.F.R. § 300.321 and 6.31.2.11(B), and;
2. Whether the District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

1. There are ninety-four students on IEPs in District.
2. Complainant is the Middle School Special Education Teacher/Case Manager at District.
3. The Special Education Director (Director) started with the District in July 2022.
4. The majority of IEP meetings were held in person, with an occasional virtual IEP meeting. Copies of IEP documents from virtual meetings were sent home the same day or the following day after the meeting depending on the IEP.

5. The normal practice was to have draft IEPs prepared before the scheduled IEP meeting with the draft IEP projected during the meeting to allow changes to be made in real time. Then, at the conclusion of the meeting, the IEP, and Prior Written Notice (PWN) would be sent home with the Parents.
6. Since Director's arrival, changes have been made to the IEP process including finalizing IEPs before the conclusion of the IEP meetings. Other recommended changes included having draft IEPs prepared three or more days before the meeting so the Director could review and make sure the IEPs were compliant.
7. Some staff provided IEPs for review prior to the meeting, others did not and would present the draft IEP at the IEP meeting.
8. All Students with a classification of Intellectual Disability (ID) were included in a life skills program. This program was matched to the state standards and covered all academic areas in addition to traditional life skills. Each student's program was aligned with individual needs and goals.
9. Complainant listed four special education files where it was claimed the IEP and other special education documents were changed outside of the IEP meeting without the involvement or consent of the IEP team.
10. Complainant reported concerns to the Superintendent about changing the REED after the meeting. The Superintendent, in a letter, indicated that the Director had changed the Review of Existing Evaluation Data (REED) form after the IEP meeting, and the issue was resolved with the Director. The Director no longer made changes after meetings.
11. The Director indicated the REED was changed after the meeting because there was a typographical error. The REED indicated that no additional evaluations were to be completed when the team determined that an updated reevaluation was needed. This was the only change made to the REED.
12. The District maintained records that indicate the time and date when anyone accessed the IEP forms.
13. A review of those records indicated that multiple staff had access to the files after the IEP date, including Complainant and Director.

Student 1

14. Student 1 was an eighteen-year-old senior, planning to graduate in May 2023. Student 1 had been previously determined eligible under a specific learning disability (SLD).

15. The IEP team determined that updated testing would assist in Student 1's exit plan which included graduation under the ability option. Director, a qualified diagnostician, completed the updated testing.
16. An eligibility determination team (EDT) and IEP meeting were held on November 10, 2022.
17. Student 1 had always struggled in reading and writing and had received extensive services in all areas in a special education classroom. Student 1's IEP included seven goals in the areas of social/emotional, reading, math, science, life skills, work study, and social studies. There was no written language goal. Student 1 received 26 hours of special education services per week.
18. These services included 60 minutes per week of social work, 250 minutes per week in math, 250 minutes per week in English, 250 minutes per week in science, 250 minutes per week in social studies, 250 minutes per week in life skills and 250 minutes per week in work study.
19. Student 1 plans on being a welder after graduation.
20. The student profile on the IEP indicated that Student 1's academic progress in reading, written expression, and mathematics is significantly delayed.
21. After completion of the reevaluation in October and early November 2022, Student 1 was reclassified as intellectual disability (ID) and a new IEP was developed. The type and amount of services did not change after the reclassification but referrals to outside agencies were made in the 2022 IEP.

Student 2

22. Student 2 was a fifteen-year-old, ninth grade student eligible under the category of ID.
23. Student 2 was last evaluated on August 30, 2022, because Student 2 had been making little progress in the general education program.
24. The plan was for Student 2 to graduate under the ability option.
25. Student 2's result from the assessment indicated very low intellectual ability (< 40) with extremely low scores in academic achievement across all domains.
26. On the September 2, 2022, IEP, Student 2 had seven goals in the areas of physical therapy, executive functioning/life skills, communication, reading, math, career readiness, and social emotional.

27. Student 2 received 19.17 hours of special education and related services per week with the majority of the day in the special education classroom.
28. Student 2's program was primarily within the life skills program used by the District.
29. Concerns were raised that the goals, particularly the math goal, developed at the IEP meeting were not reflective of Student's abilities and were prepared by someone unfamiliar with Student 2 or abilities.
30. The original goal involved the identification of fractions and comparative values.
31. The goal on the final IEP was "When subtracting fraction with like denominators (halves, thirds, fourths) [Student 2] will be able to accurately solve for the difference at 70% accuracy in weekly trials utilizing the Unique Software System, or similar program, by the end of the IEP as measured by Work Samples."
32. There were also two short term objectives: one involving matching shapes with real world objects and identifying right triangles.
33. The final goal was discussed and determined at the IEP meeting.
34. The IEP or goals had not been provided to the Director prior to the meeting. The Director objected to the proposed goal at the meeting because according to Complainant, the goal was unfeasible and did not reflect state standards.
35. There was no evidence anything was changed on the IEP or supporting documents after the IEP meeting.

Student 3

36. Student 3 was a twelve-year-old, seventh grade student with an eligibility category of specific learning disability (SLD). Previously, the eligibility category was other health impaired (OHI).
37. Student 3 was due for a reevaluation on November 12, 2022. The District had made multiple attempts to schedule a timely meeting but Parents were unavailable.
38. A REED was completed on November 16, 2022; the IEP was completed the same day without the parents.

39. The results of the REED indicated there were significant discrepancies in the previous evaluations which warranted updated cognitive and academic assessments in the areas of English/Language Arts, specifically reading.
40. Complainant alleged that Student 3 had significant needs in written language as supported by the student profile and Present Levels of Academic and Functional Performance (PLAAFP).
41. It was further alleged that the IEP team agreed to a writing goal which was removed from the IEP after the completion of the IEP meeting on November 16, 2022.
42. A review of the PLAAFP and Student Profile from the November 16, 2022, IEP did not list any concerns in written language except on the accommodations and modifications page, it stated, "Provide graphic organizers to introduce the new ideas or to help organize thoughts during the prewriting process."
43. The IEP was finalized at 10:28 a.m. on November 18, 2022. There was no indication in the computer tracking system that goals were removed or modified after the IEP meeting.

Student 4

44. Student 4 was a twelve-year-old, sixth grade student with an eligibility category of ID - language arts and mathematics. The previous eligibility category was SLD
45. An IEP meeting and REED were held on October 20, 2022. The Director was not present at that meeting.
46. After the completion of the REED it was determined that further assessments were needed to determine how best to serve Student 4.
47. The Director, after reviewing the REED, noted that there was a typographical error on the form indicating Student 4 did not need additional evaluations.
48. The form was changed on October 21, 2022, to indicate additional evaluations were warranted.
49. The IEP was finalized on October 24, 2022.
50. A comprehensive evaluation was completed on December 2, 2022, and the report was issued on December 12, 2022.

51. In that report it was noted that Student 4's intellectual ability score was 61. Student 4 was low in basic reading, very low in math calculation and math problem solving, and written expression. Student 4 also had low adaptive skills across all domains.

Discussion and Conclusions of Law

Issue No. 1

Whether District personnel modified the IEP and/or other special education documents, without the involvement of the IEP team, after the IEP team had met and decisions were made about needs and services of Students to allow them to receive a free appropriate public education (FAPE) in violation of 34 C.F.R. § 300.324; 34 C.F.R. § 300.321 and 6.31.2.11(B).

IEPs are to be developed during an IEP meeting. The IEP team must consider the student's strengths, any concerns of the parents, the results of evaluations, and the academic, developmental, and functional needs of the student. 34 C.F.R. § 300.324 (a)(1). The required members of the IEP team include the parents of the child, a general education teacher, a special education teacher, a district representative, and a person who can interpret evaluation results. Other individuals with specific knowledge or expertise may also be invited to the IEP meeting. 34 C.F.R. § 300.321 (a). Development of the PLAAFP, goals, and services should be done at an IEP meeting with all required members. 34 C.F.R. 300.324 (a)(1). Addendums to the IEP do not have to be made at an IEP meeting but can be made without an IEP meeting with the agreement of the parents. 34 C.F.R. § 300.324 (a) (4). Districts must document attempts to schedule IEP meetings at a mutually agreed time and place but can proceed with an IEP meeting if the District is unable to convince parents to attend. 34 C.F.R. § 300.322 (d).

During a reevaluation, the IEP team and other professionals must review existing data concerning a student to determine if additional evaluations are needed. 34 C.F.R. § 300.405 (a). The REED does not have to happen during an IEP meeting. 34 C.F.R. 300.305(b). See also *Letter to Anonymous*, 48 IDELR 136 (OSEP 2007). However, a REED should be completed by the entire IEP team including the parents, if possible.

The Complainant alleged that the Director changed components of the IEP outside the IEP team meeting without the involvement or agreement of all IEP team members. Those allegations are not supported by the facts.

Student 1. The team agreed that an updated evaluation was needed. Following the evaluation, it was determined by the EDT team that Student was more appropriately classified under ID

instead of SLD. All students with an ID classification were receiving some form of life skills programming but a review of the IEP for Student 1 demonstrated a need for life skills and other special education programming.

Student 2. The Complainant alleged that because of the Director's lack of familiarity with students and their abilities, the goals were inappropriate or required Students to work on frustration level skills beyond their current levels. Student 2 was reevaluated on August 30, 2022, with an IEP meeting held on September 2, 2022. At that IEP meeting, seven goals were developed which reflected the Student Profile and PLAAFP. One proposed goal in math was changed during the meeting from identifying fractions to subtracting fractions. The concern was the goal was developed by a math teacher who did not know Student 2 or their abilities. There was no evidence that the math goal was changed after the IEP meeting. Discussion of goals, needs, and services were appropriate discussions at IEP meetings.

Student 3. The IEP meeting and REED were held for Student 3 without the presence of the Parents. There were repeated documented attempts to schedule a mutually agreeable time with Parents but the District was unable to find a time and the meeting was held without the Parents. Although Complainant alleged that Student had significant written language difficulties, there was nothing noted on the Student Profile or PLAAFP that Student had needs in the area of written language. Student was to be evaluated because of discrepancies in previous assessments to determine if additional services were warranted. Student was reclassified as SLD from a previous classification of OHI. Tracking indicated that the IEP was finalized and provided to Parents on November 18, 2022, but there were no indications that changes were made outside of the IEP meeting.

Student 4. A REED and IEP were completed on October 20, 2022. The Director was not present at the meeting but in reviewing the documents after the meeting, it was noted that the REED indicated that additional evaluations were not needed when the team believed additional assessments were needed. Changes were made to the REED without the involvement of the IEP team. When this was discovered, this was referred to the Superintendent, who resolved it with the Director.

Complainant alleged four examples of when the Director changed IEPs and other special education documents outside of the IEP team meeting without the consent or involvement of the IEP team. A review of those four students did not indicate that changes were made to the IEPs after the IEP team meeting. The Director made suggestions and changes before or during the IEP meeting but not after the conclusion and finalization of the IEP documents. In one instance, the Director changed the REED document to reflect the intent of the team for the need

for a reevaluation. While changes should not be made to the REED after the IEP meeting, the change made was a purely typographical error that did not change the substance of the REED but instead reflected the intent of the team concerning the reevaluation. The Superintendent addressed the matter with the Director and the matter was resolved. A review of the IEP and supporting documents would indicate that the goals corresponded to the PLAAFP and the needs of the particular students.

As to Issue No. 1, the District is not cited.

Issue No. 2

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

Students who are eligible for special education services are entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. Districts are obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17. The determination of whether there has been a denial of FAPE requires consideration of two components: substantive and procedural. The question one must answer to determine the substantive standard is whether the IEP was "reasonably calculated to allow the child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas County School District. RE-I*, 137 S. Ct. 988 (2017). The Court in *J.L. v. Mercer Island School District*, 592 F3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it resulted in the loss of an educational opportunity, infringed on parents' opportunity to participate in the development of the IEP or deprived the student of an educational benefit. All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx 202 (2d Cir. 2010). IEPs must be reviewed, at least, annually. 34 C.F.R. § 300.324 (b).

There was no evidence of a denial of FAPE on this record. The minor change on the REED by the Director did not rise to the level of a procedural violation but reflected the intent of the IEP team of the need for further assessments.

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

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:

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Reviewed by:

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