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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Bloomfield School District
Case No. C2223-32
February 17, 2023

This Report requires corrective action. See page 10.

On December 21, 2022, there was a complaint filed¹ 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.² 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;

¹ In their response the District challenged the standing of Students' Treatment Coordinator to file a state complaint. The implementing regulations of IDEA permit any "organization or individual" to submit a state complaint. 34 C.F.R. § 300.153(a); 6.31.2.13(H)(2)(a). Accordingly, SED accepted the state complaint for purposes of investigation.

² 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 responses to the allegations, together with documentation submitted by the District at the request of the PED's independent complaint investigator;
- review of the District’s compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Foster Parent, Treatment Coordinator, Special Education Director, and Principal; 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 the District failed to meet its affirmative child find obligation by using the Multi-Layered Systems of Support to delay or deny the provision of full and individual evaluation evaluations of the Students following parental requests for an evaluation, in violation of 34 C.F.R. § 300.301 and 6.31.2.10(D)(1) NMAC;
2. Whether the District failed to provide Students’ parent/legal guardian with prior written notice following the District’s refusal to begin the initial evaluation process, in violation of 34 C.F.R. § 300.503(a)(2) and 6.31.2.13(D)(2) 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. Students 1 & 2 (“Students”) were enrolled with the District on April 25, 2022. They finished the 2021-2022 school year in first grade.
2. Upon enrollment, the District did not receive detailed information about the Students’ educational history from the prior school district, including whether Students had attended kindergarten.
3. Further adding to the lack of information about the Students’ current educational needs was the fact that Students were placed with Foster Parent only three days prior to their enrollment in the District.
4. Students’ earlier lives intersected with the family court and placement in a children’s home.
5. Testing from the previous school district showed Student #1 scoring in the 5th percentile in reading and the 11th percentile in math. Student #2’s testing presented as 7th percentile in reading and 11th percentile in math.
6. Following the end of first grade, the District Principal placed Students in summer school to receive additional instruction in math and science.

Interventions and Testing

7. Students began the 2022-2023 school year in second grade at a District elementary school.
8. Benchmark testing at the start of the school year showed the Students continuing to score low in reading and math.
9. The District responded to this pattern of sustained deficits by recommending academic interventions for Students. These services consisted of Students working with a Reading Intervention Specialist four days a week to develop skills in phonics and reading.
10. Beginning in October 2022, Students also began attending after-school tutoring three days a week. Tutor uses specific reading and math programs to target Students’ deficits in these academic areas.
11. Parent-Teacher Conferences were held for Students on November 3, 2022. Foster Parent told one Teacher that Student #2 may need an IEP. The Teacher replied that Student #2 was responding well to interventions and that the next step would be a review of the intervention data with the Student Assistance Team (“SAT”).
12. Teachers reported that Students are responding well to reading and math interventions.
13. Tutor observed Students acquiring academic skills as well as displaying an ability to process and retain information.

14. Testing and screening data supports these views with both students generally showing positive trends in their overall reading, math, and phonics.
15. Student #1's Istation scores in reading went from 3rd percentile in September 2022 to 12th percentile in December 2022. Istation math scores showed an uneven positive trend but the Principal explained that Student #1 rushed through their most recent test when it was administered by a substitute teacher.
16. Within the same timeframe, Student #2 has achieved an increase in their Istation reading scores from 4th percentile to 9th percentile. Math scores rose slightly but remained in the 6th percentile between September 2022 and December 2022.
17. A Phonics Screener captured both students going from learning Skill 2 CVC words at the start of the 2022-2023 school year to learning Skill 6 Vowel Teams by the end of the first semester.

Foster Parent Letter

18. On November 30, 2022, Foster Parent submitted a letter to the District requesting Students "be put on a [sic] IEP status" because they would benefit from additional educational resources being available to them. Foster Parent also asked in the letter "[w]hat is required to make this happen as soon as possible?"
19. Principal responded by calling Foster Parent and students' outside Treatment Coordinator that same day.
20. In the call with the Foster Parent, Principal explained how District was using the Multi-Layered Systems of Support ("MLSS") process to provide Students with extra educational support and services and that an initial SAT Team meeting would be scheduled to review the effectiveness of current interventions.
21. Principal similarly explained the SAT process to the Treatment Coordinator and they agreed to convene a SAT Team meeting. These conversations were summarized in an email from the Principal to Foster Parent and Treatment Coordinator.
22. District did not issue a Prior Written Notice in response to Foster Parent's letter.
23. Principal stated in their investigation interview that they did not interpret either the letter or the subsequent calls with Foster Parent and Treatment Coordinator as a request to evaluate Students to determine their eligibility for special education.
24. In contrast, Foster Parent stated that they submitted the November 30th letter with the intention of having the Students tested for special education. Foster Parent believed that Students had difficulty focusing in school and would benefit from a smaller classroom environment with individualized instruction.

25. Treatment Coordinator had spoken with Foster Parent and encouraged them to submit an evaluation request in writing because Foster Parent felt that Students needed more educational assistance than they were currently receiving.
26. The Treatment Coordinator recalled telling the Principal during the November 30th call that the rationale for Foster Parent's submission of the letter was to request an initial special education evaluation.
27. Principal stated that once the District received the state complaint filed by Treatment Coordinator on December 21, 2022, the District treated the complaint as a formal request to evaluate Students and their SAT files were forwarded to District's central office as the next step in the evaluation referral process.
28. A couple of weeks later on January 3, 2023, District received a faxed letter from Students' doctor recommending Students undergo speech evaluation due to signs of stuttering speech. The District promptly obtained parental consent to conduct a speech screening. Results of the screening are still pending.
29. Teacher for Student #1 stated that student's stammering was not impacting their educational progress in class.

SAT Team Meeting

30. A meeting among the members of the Student Assistance Team was held on January 18, 2023 to review how Students were responding to Tier II interventions.
31. The SAT Team recommended Students continue receiving Title I reading interventions and classroom teacher math interventions until the end of the 2022-2023 school year. Students would start receiving counseling from school social worker once or twice a week.
32. Both the Foster Parent and Treatment Coordinator stated that District staff at the meeting said that another SAT Team meeting would be held later in the school year to further assess the effectiveness of interventions.
33. Foster Parent has seen Students make educational progress with their interventions by displaying gradually acquired academic skills such as recognizing letters in the alphabet, knowing their numbers, sounding out words, and increasing their reading fluency.
34. Foster Parent thinks Students did not attend preschool or kindergarten and that Students would be at grade level in reading and math if they had. The Principal echoed this view and believed that Students needed an opportunity to catch up in school.
35. Principal said that Students' testing scores at the end of this year will be considered in determining whether retaining Students in second grade for another year would be in their best interests.
36. Aside from academic struggles and Student #1's stuttering, neither Foster Parent, Treatment Coordinator, or Principal witnessed any other signs to suspect that Students

may have disabilities requiring special education. Although clinicians working with Treatment Coordinator noted that Students present with signs of unspecified trauma.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to meet its affirmative child find obligation by using the Multi-Layered Systems of Support to delay or deny the provision of full and individual evaluation evaluations of the Students following parental requests for an evaluation, in violation of 34 C.F.R. § 300.301 and 6.31.2.10(D)(1) NMAC.

Child find is an affirmative obligation of state and local educational agencies to identify, locate, and evaluate children who are suspected of having a disability. 34 C.F.R. § 300.111(a). The child find duty is triggered when a school district has reason to suspect that a student has a disability and special education may be required to address their disability-related educational needs. *Boutelle v. Bd. of Educ. of Las Cruces Pub. Sch.*, No. CV 17-1232 GJF/SMV, 2019 WL 2061086, at *9 (D.N.M. May 9, 2019). Academic struggles in school may not rise to the level of triggering the child find duty if non-academic stressors, such as family issues, readily explain those difficulties. *D.T. by & through Yasiris T. v. Cherry Creek Sch. Dist. No. 5*, 55 F.4th 1268, 1275 (10th Cir. 2022). Therefore, a school district will only be liable for failure to evaluate a student for special education if school officials overlook clear signs of disability or there is no rational justification for declining to evaluate. *Mr. P v. W. Hartford Bd. of Educ.*, 885 F.3d 735, 750 (2d Cir. 2018).

The evidence set forth in the record does not constitute a reasonable basis to suspect that Students may have disabilities and need special education. The relevant circumstances of Students' nascent lives provide a more reasonable explanation for their current academic difficulties. All parties strongly doubt that Students had access to early childhood education such as prekindergarten or kindergarten. Students' homelife was complicated by shifting family court custody arrangements which transferred Students from a group care setting to a foster home placement. The personal hardships Students faced as young children resulted in the District having to focus on developing Students' foundational academic skills because Students had not yet had a meaningful opportunity to develop them. And Student #1's periodic signs of stammering did not rise to the level of creating a barrier to their learning. Therefore, the District's child find obligation was not triggered by Students' academic deficits because these learning difficulties stemmed from a prior lack of appropriate instruction.

The District also did not use the MLSS process to delay evaluations of the Students. The actions by District officials demonstrate a good faith effort to deliver a coordinated framework of

intervention services to support Students' learning. For example, the District utilized summer school, a reading intervention specialist, classroom math interventions, afterschool tutoring, benchmark testing, and an initial SAT Team meeting to promote Students' growth in their academic skills. While the District's position that Foster Parent's letter did not request an evaluation is less persuasive, the sincere intent in using the MLSS process to bolster Students' educational progress supports a finding that school officials did not specifically use MLSS itself to delay or deny an evaluation.

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

Issue No. 2

Whether the District failed to provide Students' parent/legal guardian with prior written notice following the District's refusal to begin the initial evaluation process, in violation of 34 C.F.R. § 300.503(a)(2) and 6.31.2.13(D)(2) NMAC.

If a parent requests that their child be evaluated for special education, then the school district must either initiate the evaluation process by seeking parental consent or issue a prior written notice explaining the reasons for refusing to evaluate. 34 C.F.R. § 300.503(a)(2); 6.31.2.13(D)(2) NMAC. When a parent is unsure of how to submit a request for an evaluation, the school district may need to take additional actions so that a parent's right to seek an evaluation is not substantially limited. OSEP Policy Letter 22-05 (Nov. 1, 2022). Some examples of reasonable and appropriate responses from the school district include: "providing the parent with information and assistance such as a copy of its notice of procedural safeguards required under IDEA; further explaining the right to, and procedures for, initiating an evaluation under IDEA; and providing any assistance the parent requires to submit the request." *Id.*

While Foster Parent did not use specific language or terminology such as "evaluation" in their letter to the District, the message conveyed in the letter was that Foster Parent believed Students may qualify for special education and was seeking assistance from the District to begin the process of determining Students' eligibility. As such, a plain reading of the letter supports a reasonable inference that Foster Parent was requesting the District perform initial evaluations of Students. The District's response, via the Principal's phone calls to Foster Parent and Treatment Coordinator, reflect a genuine effort to explain the degree of interventions the District was currently using to enable Students' learning. However, the email summarizing these conversations does not address Foster Parent's request that Students be put on "IEP status" or provide information on the evaluation referral process.

In this case, the District failed to provide Foster Parent with a prior written notice explaining the reasons for the District's refusal to evaluate. The District also did not take any additional steps to facilitate Foster Parent's request for evaluation. Had the District taken such steps it likely

would have clarified any misunderstanding regarding the request for an evaluation and should have triggered the District to provide a formal response through a prior written notice.

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

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(l)(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).

Here, the District's procedural violation of not issuing a prior written notice in response to the Foster Parent's letter did not amount to a FAPE denial. No substantive harm has resulted to Students or Foster Parent. Students receive extensive support and services throughout their school day. The District has started the evaluation process in response to Treatment Coordinator's filing of the state complaint. Students were not deprived of an IEP because their eligibility for special education remains an open question pending evaluation results. Students have not experienced a loss in educational opportunity because the breadth of intervention services (reading specialist, classroom math interventions, afterschool tutoring, and social work counseling) offers plentiful learning opportunities for Students. The weight of evidence supports a finding that Students were not denied 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. § 300.503(a)(2) and 6.31.2.13(D)(2) NMAC.	The District failed to provide Students’ parent/legal guardian with prior written notice following the District’s refusal to begin the initial evaluation process.

Required Actions and Deadlines

By February 27, 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 April 14, 2023 and reported to the SED no later than April 21, 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 27, 2023	Written Assurance Letter/Email	February 27, 2023
2.	<p>The District shall arrange training for school staff (including principals, assistant principals, special education teachers, special education administrators, and related services providers) to be provided by a person with expertise in special education who is approved by NMPED.</p> <p>The training shall address the following special education topics:</p> <ol style="list-style-type: none"> 1. Parent requests for evaluation and required response through a prior written notice. (This training shall include information regarding new deadlines for response to parent requests for an evaluation, effective July 1, 2023.) 	April 14, 2023	<p>Submission of proposed trainer and trainer’s resume and proposed presentation for NMPED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.</p>	<p>March 17, 2023</p> <p>March 17, 2023</p> <p>April 21, 2023</p>

This report constitutes the New Mexico Public Education Department's final decision regarding this complaint. If you have any questions about this report, please contact the Corrective Action Plan Monitor.

Investigated by:

/s/ 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