



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us

ARSENIO ROMERO, PH.D.
SECRETARY OF EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Albuquerque Public Schools
Case No.2223-48
July 17, 2023

This Report does not require corrective action.

On May 9, 2023, 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 complaint was held in abeyance because of a pending federal court hearing on the status of the case. A final order was issued on June 9, 2023. The deadline for completion of the complaint report was extended until July 17, 2023. 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 complainant;

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 responses to the allegations, together with documentation submitted by the District at the request of the PED's complaint investigator;
- review of the District’s compliance with federal IDEA regulations and state NMAC rules;
- 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. Any information outside of the one-year timeframe is included as background information.

Issues for Investigation

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

Whether the District failed to implement the March 30, 2021 Order of the Hearing Officer in due process hearing DPH 2021-06 when developing and implementing the IEP for Student in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC and 6.31.2.13(H)(4) NMAC?

Procedural Findings of Fact

1. On October 8, 2020, the Parent filed a due process hearing request with the NMPED.
2. There was a five-day due process hearing (DPH 2021-06) held beginning January 11, 2021, and concluding January 19, 2021.
3. The hearing officer issued a 57-page decision on March 30, 2021.
4. The District appealed the decision to the District Court for the State of New Mexico, which upheld the Due Process Hearing Officer (DPHO) decision in an Order dated December 13, 2021.
5. The District then appealed the decision to the 10th Circuit Court of Appeals, which affirmed the DPHO decision in a written opinion on December 12, 2022.
6. On January 4, 2023, jurisdiction was transferred back to the lower court/agency.
7. On June 9, 2023, there was an Order issued closing the federal case.

8. The issue in this complaint relates primarily to the District's compliance with the ordered remedy in DPH2021-06.
9. Specifically, the hearing officer Ordered the following:

The District is directed to provide Student 1/1 daily reading instruction during school day (in place of an elective and for 60 minutes daily, 5 days per week) at the school campus (or remotely if campuses are closed due to public health orders) from a Certified Academic Language Therapist ("CALT") or dyslexia therapy-level trained instructor, who is or is not an APS employee, (The DPHO notes, for example, that Chris Fox may qualify as a dyslexia therapist, although she is not CALT,). The selected contractor or employee must be acceptable to Petitioners. The selected instructor or employee will be given authority by APS to select a reading instruction curriculum specific to dyslexia therapy (e.g., Sounds and Syllables or Wilson Reading) for a student of D.A.'s severity and age; with such reading instruction to continue through Student's APS education until completion of the program whether that be in two school years or more, and at APS expense; and with such reading instruction to also be available for Student each summer beginning with summer 2021; with attendance of the selected contractor or employee at all IEP meetings.
10. There were other components of the Order that are not relevant to this complaint and will not be addressed herein.
11. In the DPH Order, the Hearing examiner noted "In this instance, the DPHO concludes that APS failed to ensure that Student's teachers had the professional training, professional development, and oversight throughout the school year, to ensure that they had the capacity to provide the instruction Student required to enable him to make progress appropriate in light of his circumstances." During the pendency of the appeals, the District implemented the DPH Order in DPH2021-06.
12. During the time that the Reading instructor (RI) worked with Student, Parents never raised objections about the RI's qualifications, but praised the work of Student's reading instructor.
13. At the IEP meeting on May 13, 2021, Parents commented that they wanted dyslexia services for Student five days a week from a dyslexia therapist.
14. In a June 3, 2021, email from Parent to the District, Father commented that the summer schedule worked for the family and Student did not need transportation. There was no comment regarding RI's lack of qualifications or dissatisfaction with the plan.
15. Beginning June 2021, Student received 1/1 reading instruction at a District facility from a certified special education teacher with advanced training in various dyslexia methodologies.

16. Wilson Reading was the reading curriculum used with Student and lesson plans and service logs demonstrated that this curriculum was implemented with fidelity.
17. Student began 1/1 daily reading instruction from the District in June 2021. Student worked with the same reading instructor (RI) from June 2021 until October 13, 2022, when Parents requested that District stop reading instruction.
18. A Student summary report for the 2021-2022 school year indicated that Student worked with RI one hour a day, five days a week. Student was absent four days the first semester and 14 days the second semester. This report noted the progress Student had made while working with the RI. Student had completed Step 7 in Wilson Reading. This summary was included in the present levels of academic achievement and functional performance (PLAAFP) for the IEP.
19. During a May 29, 2022 telephone call with Parent, the Parent wanted to focus on benchmarks in reading and wanted Student to complete Step 10. There were no comments regarding RI's qualifications.
20. In a June 10, 2022 message from Parent in the special education contact log, Parent indicated that Student would not be participating in ESY that summer, and both Parents were pleased with Student's reading instruction during the school year.
21. In a September 2, 2022, email between Parent and RI, the RI offered virtual lessons, and Parent and Attorney were agreeable to this approach.
22. On October 17, 2022, Parent contacted the RI and stated in an email, "We have decided to end [Student's] Wilson tutoring for the time being. We thank you for your dedication to our boy, and hope you continue to give the gift of reading to many more dyslexic students. You've been great and we wish you the best."
23. Student has not participated in reading instruction since that time, although the RI was available to continue reading instruction with Student.
24. Student continued to be eligible for special education under the category of specific learning disability (dyslexia) at a multidisciplinary eligibility report dated April 13, 2023, and an IEP that was developed that same day.
25. The Parents left the IEP meeting before the IEP was completed.
26. Student has severe dyslexia and continued to struggle with decoding and reading grade levels texts.
27. The PLAAFP in the April 13, 2023, IEP outlined Student's reading and written language skills and weaknesses. No reading level was provided because Student had not taken any state or district assessments.
28. Student's goals for the coming year noted Student still struggled with reading and comprehension of literature at grade level and writing multi-paragraph essays.

29. To be recognized as a CALT, an individual must have completed accredited courses of study that provide extensive training and practicum experiences in multisensory structured language teaching (Structured Literacy).
30. There are no known requirements for a dyslexia therapy-level trained instructor.
31. "In this instance, the DPHO concluded that [District] failed to ensure that Student's teachers had the professional training, professional development and oversight throughout the school year, to ensure that they had the capacity to provide the instruction Student required to enable him to make progress appropriate in light of his circumstances."
32. With the exception of the use of [employee] as an example of a dyslexia therapist, the DPHO did not define requirements or factors to consider when identifying a dyslexia therapy - level trained instructor. The exact term does not appear to be used in the field or as part of specific dyslexia related therapy programs.
33. Although some states require a CALT to work with dyslexic students, New Mexico does not require advanced training such as a CALT to be a certified special education teacher working with dyslexic students.
34. There are many recognized programs in dyslexia and literacy training including Wilson, Orton-Gillingham, CERI certification from the International Dyslexia Association, Dyslexia Certification Program from Dyslexia Training Institute, Center for Effective Reading Instructor and Structured Literacy Dyslexia Specialist to name a few.
35. The Hearing Officer in DPHO 2021-06 indicated that a District employee who had testified at the hearing met the qualifications of a dyslexia therapy-level trained instructor.
36. During the due process hearing, that employee, who no longer is with the District, compared a CALT to a Wilson Dyslexia therapist. That employee was not a CALT.
37. "[Employee] is employed by [District] to do professional development for teachers in Wilson training and the Spire program, which are programs for children with dyslexia. She worked for Cooperative Education Services as a consultant and trainer in reading."
38. "According to [Employee], students who have dyslexia need daily instruction to help them 'internalize the concepts they're learning.'"
39. Although this employee was not a certified "Wilson Dyslexia Therapist," she was a certified trainer for Wilson Reading and completed many supervised Wilson trainings.
40. Another witness at the hearing, who was a District reading resource teacher and CALT, testified that "the delivery and intensity of reading instruction should be matched to the severity of each individual student's needs."
41. The DPHO noted that "The State Educational Agency (SEA) is required by IDEA "to establish and maintain qualifications to ensure that personnel ...are appropriately and

adequately trained, including that those personnel have the content knowledge and skills to serve children with disabilities.” 20 U.S.C. § 1412 (a)(14)(a). “

42. The Reading Instructor (RI) who worked with Student was certified by the NMPED through 2024 as a Level IIIA instructional leader (prek-12) in special education.
43. The RI was not a CALT.
44. The RI was listed as certified Wilson instructor on the Wilson Reading webpage.
45. The RI had a master’s degree in special education and completed many seminars, symposiums and trainings in literacy and dyslexia.
46. Those certificates included:
 - Local certified facilitator from Lexi Learning Systems in reading literacy
 - Structured Literacy and Dyslexia 101, NMPED
 - LETRS (Language Essentials for Teacher of Reading and Spelling): Unit 1
LETRS learning
 - National Board Certified in Literacy-Reading-Language Arts/Early and Middle Childhood
 - Wilson: Dyslexia Practitioner
 - Reading System Level 1
 - Group Mastery Practicum Level 11
 - Upper Steps
 - Just Words
 - Advanced Orthographic Mapping
 - SWIDA (Southwest International Disability Association):
Completed training in April 2022.

Issue

Whether the District failed to implement the March 30, 2021 Order of the Hearing Officer in due process hearing DPH 2021-06 when developing and implementing the IEP for Student in violation of 34 C.F. R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC and 6.31.2.13(H)(4) NMAC?

The NMPED may use appropriate enforcement actions consistent with its general supervisory authority under 34 C.F.R. §§ 300.600 and 300.608. Thus, the NMPED has the authority to determine whether the District implemented the Order in DPHO 2021-06. There is no private right of action with respect to a claim that a special education teacher is not highly qualified. 34 C.F.R. § 300.18 (f).

An IEP must include a “statement of the special education, related services, and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child.” 34 C.F.R. § 300.320 (a)(4). The specific methodology to be used and the certified

instructor that will be working with a particular student are within the discretion of the District. 71 Fed. Reg. 46,665 (2006). See also 34 C.F.R. § 300.320 (d)(1).

The Decision and Order in DPH 2021-06 was issued in 2021 and appealed to the federal district court of New Mexico and the 10th Circuit Court of Appeals. At each level, the decision of the hearing officer was upheld. During the pendency of the appeals, the District implemented the Order and provided reading instruction to Student from a qualified reading instructor (RI).

The Order in DPH 2021-06 outlined the qualifications of the dyslexia instructor and provided suggestions as to the methodology to be used with Student. The Order did not mandate a specific methodology but provided suggestions regarding appropriate methodologies such as Wilson Reading or Sounds and Symbols. Wilson Reading was the primary curriculum implemented with Student.

The Order required daily 1/1 reading services from a CALT or dyslexia therapy-level trained instructor. While there is guidance on the qualifications for a CALT, there is no such guidance on the qualifications of a dyslexia therapy-level trained instructor. There was no disagreement that the RI did not have a CALT. The Order specified a CALT or dyslexia therapy-level trained instructor. Unfortunately, the Hearing Officer did not provide guidance on what was required to be a dyslexia therapy-level trained instructor but indicated that a teacher at the District would meet that requirement. This teacher was no longer with the District. Moreover, this teacher did not have a CALT, nor was she certified as a Wilson instructor. She had been a Wilson trainer and participated in the multiple trainings with Wilson but did not hold dyslexia certification from Wilson Reading.

The RI who has worked with Student has received training from numerous organizations that work with students with dyslexia, including Wilson Reading, LEXI Learning Systems, LETRS, the International Disability Association, and dyslexia instruction provided by the NMPED. The RI has met the requirements for certification as a special education teacher in New Mexico and was Board certified in literacy, reading, language arts for early and middle childhood prior to beginning to work with Student. The RI does not have a CALT certification. It is impossible to determine exactly what the Hearing Officer meant by a dyslexia therapy-level trained instructor, but clearly the RI that has worked with Student has met the requirements for certification in the State of New Mexico and has National Board Certification. In addition, the RI has pursued training in several methodologies for working with dyslexic students and has not limited training to only one methodology such as Wilson Reading.

While the DPH order does not specifically define requirements or factors to consider when identifying a dyslexia therapy - level trained instructor, the RI likely meets the intent of the DPHO as the RI appears to be sufficiently qualified to successfully provide dyslexia therapy to Student with fidelity. The RI provided daily 1/1 reading services using the Wilson Reading Program for 60 minute periods, 5 days per week, for one and one-half years. Student made progress on reading goals while working with the RI, as noted by the Parents. A review of

Student's PLAAFP on the IEP and the MET documents demonstrated that Student has made progress on special education goals in reading and writing while working with the RI.

The DPH Order did provide that the instructor must be acceptable to the Parents. This Student worked with the RI for one and one-half years without objections from Parents as to the RI's qualifications, and Student continued to demonstrate progress during that time. "During the time that the RI worked with Student, Parents never raised objections about RI's qualifications, but rather praised the work of the RI and the progress Student had made while working with the RI. When Student was removed from services in October, 2022, the reasons listed did not include RI's qualifications but rather praised the RI, stating "We have decided to end [Student's] Wilson tutoring for the time being. We thank you for your dedication to our boy, and hope you continue to give the gift of reading to many more dyslexic students. You've been great and we wish you the best." The Parents decision to stop the 1/1 reading instruction for Student does not demonstrate that the Order was not properly implemented.

The District has met its obligation to develop and implement an appropriate IEP with specific dyslexia related services as required by the Order in DPHO 2021-06.

As to the Issue in this Complaint, the District is not cited.

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

Investigated by:

/s/ Michele Bennett

Michele K. Bennett, 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