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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Gadsen Independent School District
Case No. 2324-08
October 20, 2023

This Report does not require corrective action.

On August 23, 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 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;
- 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;
- interview with the Special Education Coordinator; 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 provide Parents meaningful parental participation when they provided speech and language services after the IEP team determined Student no longer needed speech services, in violation of 34 C.F.R. § 300.300(b) and 6.31.2.11(B)(2) and 6.31.2.13(F) NMAC;
2. Whether the District violated Student’s FERPA rights when they shared Student’s suspected need for speech services with classmates, in violation of 34 C.F.R. § 300.610 and 34 C.F.R. § 300.612 and 6.31.2.13(L) NMAC;
3. 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. Student was a seventh grader and eligible for special education services under the category of Other Health Impaired (OHI).
2. Student was reevaluated on March 27, 2023 in speech and language. The results from that evaluation indicated that Student no longer needed speech services.

3. Student remained eligible for special education services (although the issues in the complaint only referred to the provision of speech services).
4. At an IEP meeting on May 24, 2023, the IEP team agreed that Student no longer needed speech services and would be dismissed from speech therapy.
5. The prior written notice from that meeting summarized the IEP team recommendation that Student was dismissed from speech.
6. Although the IEP indicated that Student had been dismissed from speech, that information was not included on the District's record keeping system for all students.
7. Prior to the start of the 2023-2024 school year, the Speech Therapist received a copy of the speech caseload which included Student's name.
8. The Speech Therapist did not verify the information with the Student's IEP but relied on the caseload list.
9. On August 21, 2023, the start of the 2023-2024 school year, Student was in science class when the speech therapist came to get Student for speech.
10. The speech therapist informed the teacher that Student was going to speech.
11. The speech therapist told the Student in front of the class, "you need to go to speech."
12. The teacher reported that usually "they call on the phone and I send the student out."
13. The teacher did not observe any reaction from the other students nor were there any comments or teasing.
14. Student told the speech therapist that Student was no longer in speech. The speech therapist did not recall Student saying anything.
15. Student participated in group speech therapy that day. The Speech Therapist noted that Student was very articulate and wondered about dismissing Student from speech.
16. Parent contacted the school that same day and an investigation was conducted substantiating that Student was called out for speech even though Student had been dismissed from speech.
17. Both the data clerk, who was responsible for updating the Student Information System, and the speech therapist, who did not verify Student's dismissal on the IEP and announced Student's speech services to the class instead of calling on the telephone, were given reprimands.
18. The District acknowledged that they erred in providing speech services to Student and violating Student's privacy by not following District protocol for calling on the telephone to request students.
19. The District developed procedures and a written plan to inform all staff that Student is to be contacted via the telephone if they are called out of class.
20. A plan was developed for the Special Education Director to review entries into the Student Information System every two weeks.

21. The District plans to meet within the next two weeks to determine if additional procedures or policies need to be revised to address concerns.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to provide Parents meaningful parental participation when they provided speech and language services after the IEP team determined Student no longer needed speech services, in violation of 34 C.F.R. § 300.300(b) and 6.31.2.11(B)(2) and 6.31.2.13(F) NMAC.

Parents are mandatory members of the IEP team. 34 C.F.R. § 300.321(a)(1). Districts must provide parents with meaningful parental participation in any decisions involving the identification, evaluation and educational placement of the student and provision of FAPE. 34 C.F.R. § 300.501(b). Parents have the right to consent or refuse the provision of special education services. 34 C.F.R. § 300.9(c)(2). IEPs are to be implemented as written. 34 C.F.R. § 300.323(c)(2).

Parents attended the May 24, 2023 IEP meeting and agreed to dismiss Student from speech services. Unintentionally, the speech therapist at the middle school did not review the May 24, 2023 IEP and since Student's name was listed on the caseload, the speech therapist went to the classroom to get Student for speech and Student participated in one speech session. When the District was put on notice, they investigated and acknowledged their mistakes and have put plans in place to ensure this does not happen again. Parents had meaningful participation in IEP decisions. The entire IEP team agreed that Student no longer needed speech, however, the speech therapist at the middle school was not aware of that decision. The misunderstanding of the speech therapist as to the IEP's team recommendation to discontinue speech therapy services does not amount to a denial of parental participation in the IEP process.

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

Issue No. 2

Whether the District violated Student's FERPA rights when they shared Student's suspected need for speech services with classmates, in violation of 34 C.F.R. § 300.610 and 34 C.F.R. §.300.612 and 6.31.2.13(L) NMAC.

Federal and state law provide for confidentiality of any personally identifiable information collected or maintained by the District. 34 C.F.R. § 300.610 and 6.31.2.13(L) NMAC. This

information cannot be shared without permission of the parents. 34 C.F.R. § 300.612 and 34 C.F.R. § 99.2 (FERPA).

Student's identification as a student with a disability who received special education or related services is personally identifiable information that was shared with other students in a classroom. The District protocol was to call on the classroom telephone when students were to leave the room and not announce the reason for the departure in front of the other students. The Speech Therapist did not follow protocol and was reprimanded for that. The District has also reminded the Speech Therapist and other staff about District protocol. The District acknowledged the error and has put a procedure in place to ensure this does not happen again. This was a violation of District protocols and not a FERPA violation.

As to Issue #2, the District is not cited.

Issue #3

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. A District is 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).

Student was eligible for special education services under the May 24, 2023 IEP. There were no allegations that Student was denied FAPE for receiving one speech therapy session after Student was dismissed from speech. There were procedural violations on this record when Student's personally identifiable information was shared with Student's classmates without Parents' permission. The teacher reported there was no reaction or teasing from other students after Student was called out of the classroom for speech services. That procedural error does not rise

to the level of a denial of FAPE. Nor was there any compelling evidence to support a finding of a substantive denial of FAPE.

As to Issue #3, 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:

/s/ Michelle Bennett

Michele K. Bennett, Esq.

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:

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Margaret Cage

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Margaret Cage, Ed.D.

Director, Special Education Division