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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Albuquerque Public Schools
Case No. 2324-16
December 8, 2023

This Report requires corrective action. See pages 17-19.

On September 21, 2023, there was a complaint filed with the New Mexico Public Education Department's (NMPED) Office of Special Education (OSE) 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 OSE 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;
- interviews with the Parent, Teacher; 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 develop and implement an IEP to allow Student to make educational progress in the general education curriculum in violation of 34 C.F.R. §§ 300.324 and 6.31.2.11(B)(1) NMAC; specifically, whether the District,
 - a. Failed to consider all of Student’s educational needs when determining whether a service dog was required for Student to receive FAPE;
 - b. Failed to document accurate and thorough present levels of academic and functional performance (PLAAFP) that provide sufficient information to develop appropriate measurable goals;
 - c. Repeated goals from year to year in language arts, written language, reading and physical education;
 - d. Predetermined Student’s need for a service dog without making an individual determination of how to meet Student’s needs;
 - e. Failed to provide data to demonstrate baseline or progress on goals in multiple areas;
 - f. Failed to complete a functional behavioral assessment (FBA) after it was recommended by the IEP team;
 - g. Made decisions without the consensus of all IEP team members and did not consider all viewpoints in making IEP decisions;
 - h. Failed to consider the inclusion of individualized accommodations and modifications to allow Student to be successful; and

- i. Failed to complete a prior written notice (PWN) that outlined the reasons for rejecting the presence of a service dog for Student while at school.

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. Student, a second grader, has significant medical needs and was eligible for special education under the category of other health impairment, visual impairment and hearing impairment.
2. Previously, Student had a cancerous brain tumor removed and suffered a second bout of cancer but the cancer condition is currently stable.
3. In October of 2023, Student had additional brain surgery which has helped with reducing seizures.
4. Student has seizures, high frequency hearing loss, significant cognitive delays, speech delays, left side weakness and a cortical visual impairment.
5. Student has difficulties with depth perception, over or under steps obstacles, and transitions which could result in falls.
6. Student received food through a feeding tube twice a day at school.
7. Student's viewing distance is 12-18 inches. Busy, loud and complex environments were challenging for Student. Student would scream when overwhelmed.
8. Student has assistive technology supports and other accommodations. The IEP team recommended the completion of an FBA. Student also needed transportation as a related service.
9. Student needed a multi-sensory approach to learning.
10. Student previously attended the New Mexico School for the Blind and Visually Impaired (NMBVI). While in attendance there, Student obtained a service dog.
11. Student has had a service dog for approximately two years.
12. Student's service dog is trained to provide seizure alerts, calming, behavior control, stability and independence for Student.
13. Reports indicated that the service dog would alert when a seizure would occur multiple hours before the seizure. This would allow Student's support system to anticipate and prepare to prevent injury and keep Student safe.
14. The plan at NMBVI was to have the service dog at school but because of the short time remaining before Student completed the program, the service dog remained at home.

15. Student has never had the service dog at school full time.
16. Student's placement in District was an Intensive Global Support 2 ("IGS2") classroom. Student was the only verbal student in that classroom.
17. There were four adults in the classroom with Student and one adult was assigned to monitor Student.
18. Although the staff were not able to detect a seizure in advance like Student's service dog, Student was constantly monitored and assistance was available when a seizure occurred, including nursing support as needed.
19. The service dog would also bark when an active seizure happened and would calm down Student after the seizure as Student could lean on the service dog and support Student when Student was tired and often overwhelmed after the seizure.
20. Parent's primary focus was on independence for Student both in school and out of school with the service dog assisting in achieving this level of independence.
21. Parents believed the service dog would allow Student independence to navigate the school and outside the school.
22. Parent also opined that Student needed the service dog because of medical needs, including seizure detection and safety. They believed the District only considered Student's academic needs when they denied the need for the service dog.
23. Parent reported that the District agreed to the service dog but the family would need to provide a handler. The IEP team determined Student did not need the service dog to receive a FAPE.
24. Although Student was the owner of the service dog, Student was not able to complete all the tasks usually associated with an owner/handler. Student could not consistently give verbal commands or care for the service dog without assistance from an adult handler.
25. Parent acknowledged that Student needed adult assistance with issuing commands for the service dog. However, the service dog also anticipated Student's needs and aided Student without the need for commands.
26. Student had a full-time 1-1 adult educational aide at school.
27. The District noted that even if Student had the service dog at school, Student would still need a 1-1 aide.
28. In February 2023, Student had a new Teacher assigned to the classroom.
29. The Teacher attempted to have Student complete academic work. Student would refuse, scream or become physically aggressive.
30. Parents were informed about Student's screaming and physical aggression and reported that it happened at home as well.
31. At that point, the focus in the classroom switched to managing Student's behavior. The Teacher worked on social-emotional training to lessen the negative behaviors.

32. An IEP meeting was not convened to address the change in focus and determine if additional services were needed.
33. Parent provided the District an email outlining the tasks the service dog was trained to perform and also provided a letter from a pediatric neurologist indicating that Student needed the service dog.
34. At the April 20, 2023 IEP meeting, the Teacher informed Parents that because of Student's behaviors, which prevented completion of academic work, Teacher did not have sufficient data to develop new goals for Student.
35. Parent disputed Teacher's statements about what was discussed at the IEP meeting.
36. The present levels of academic achievement and functional performance (PLAAFP) were based on information from earlier in the year and last year's IEP.
37. The Teacher wanted to continue with the same academic goals for the short term until the Teacher was able to obtain information to update Student's goals.
38. The reading, written language and math goals were the same from the previous IEP. The reason for the repeated goals was not documented on the IEP or PWN.
39. The PWN from the April 20, 2023 IEP meeting stated, "At this time there is not data to support that [Student] requires a service animal to support [Student] at this time. Parents disagree stating the service animal is a valuable and important part of [Student's] life and future."
40. Student's goals in occupational therapy, speech therapy and physical therapy were modified and progress had been documented on the PWN and IEP.
41. Staff had concerns about Student's language skills. There were concerns that Student did not understand or was using language to obtain a reaction from staff. Student would state Student was hungry, "want ice cream" or "tubie hurt" but when the staff would inquire the Student would laugh.
42. Since Student does not always use words appropriately, it would be difficult for Student to be service dog's handler.
43. Parent acknowledged that Student was not able to self-direct the service dog and needed assistance in providing commands because of Student's cognitive and language deficits.
44. Parent noted that the service dog anticipated Student's needs and would stand by Student and provide support and a calming presence for Student.
45. Parent wanted Student's goals to incorporate assistance of the service dog.
46. The District would not agree to include the service dog in goals for Student.
47. The Teacher reported that although the FBA has been completed, it has not been shared with Parents because of technical difficulties. The Teacher also reported that academic goals would be revised at the January IEP meeting.

48. The Teacher planned to seek permission for a comprehensive evaluation of Student at the next IEP meeting because of progress made by Student.
49. District staff noted the few times that the service dog came to school, Student had little contact with the dog and there was limited bonding between Student and the service dog.
50. Parent stated that Student's bonding with the dog has been impacted by not having the service dog with Student at school so that Student could bond with and practice commands with the service dog.
51. Parent stated that Student could not receive the benefits from a service dog if it could not be with Student all day at school.
52. Staff reported that Student was extremely talkative and would share information with teachers about friends and family but never discussed the service dog. Student would not have contact with other dogs at the school but loved aquatic animals.
53. The District reported that since the April 20, 2023 IEP, Student had been making progress on all goals. The screaming had decreased as had the seizures and maladaptive behaviors.
54. Staff reported Student has learned to take a break when overwhelmed instead of screaming or physical aggression. Initially, Student would be prompted to take a break and now Student was able to ask for a break and return to class when Student was ready to work.
55. Student has had no seizures at school since the October 13, 2023 surgery.
56. Student was the line leader for the class and was able to navigate the school independently with the use of the white cane.
57. Student was able to access most of the playground equipment independently.
58. Student was able to run, jump, skip, go down the slide, ride a bike and climb the ladder wall with minimal adult assistance.
59. Staff reported during a recent field trip which Parents attended with the service dog, Student's behavior regressed and Student was not able to complete tasks Student could do independently at school.
60. Although falling was a concern because of Student's left side weakness, Student rarely fell except when attention seeking.
61. Since Student's Teacher started in February 2023, Student has fallen three times, twice was when Student tripped over the service dog.
62. The IEP team determined that Student did not need a service dog to receive FAPE.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to develop and implement an IEP to allow Student to make educational progress in the general education curriculum in violation of 34 C.F.R. §§ 300.324 and 6.31.2.11(B)(1) NMAC; specifically, whether the District,

- a. Failed to consider all of Student’s educational needs when determining whether a service dog was required for Student to receive FAPE;**
- b. Failed to document accurate and thorough present levels of academic and functional performance (PLAAFP) that provide sufficient information to develop appropriate measurable goals;**
- c. Repeated goals from year to year in language arts, written language, reading and physical education;**
- d. Predetermined Student’s need for a service dog without making an individual determination of how to meet Student’s needs;**
- e. Failed to provide data to demonstrate baseline or progress on goals in multiple areas;**
- f. Failed to complete an FBA after it was recommended by the IEP team;**
- g. Made decisions without the consensus of all IEP team members and did not consider all viewpoints in making IEP decisions;**
- h. Failed to consider the inclusion of individualized accommodations and modifications to allow Student to be successful; and**
- i. Failed to complete a prior written notice (PWN) that outlined the reasons for rejecting the presence of a service dog for Student while at school.**

Special education is “specially designed instruction provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability.” 34 C.F.R. § 300.39(a)(1). This specialized designed instruction is adapting the content, methodology or delivery of instruction to address the unique needs of an individual child. 34 C.F.R. § 300.39(b)(3). These unique needs are more than academic needs but can include social, health and emotional needs. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458 (9th Cir. 1996). Behavioral needs are also part of the IEP process and can be addressed in a behavioral intervention plan (BIP). A BIP is usually a component of the IEP to address behaviors that interfere with the student’s learning and are inconsistent with school expectations. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022).

IEPs are developed during an IEP meeting. The IEP team must consider the student's strengths, any concerns of the parents, results of evaluations, and academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a)(1). Parents, as required members of the IEP team, must have adequate information to make informed decisions. 34 C.F.R. § 300.321(a)(1). Every IEP for a student must contain "[a] statement of the child's present levels of academic achievement and functional performance, including --How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children)." 34 C.F.R. § 300.320(a)(1). This statement of PLAAFP assists in determining the needs of an individual student to develop annual goals to allow the student to receive FAPE and make progress in the general education curriculum. *Bakersfield City School District*, 51 IDELR 142 (SEA CA 2008). The PLAAFP must be comprehensive and provide baseline data that reflects all the child's needs, both academic and nonacademic. This also should include relevant background information about needs, strengths, interests and learning styles. 34 C.F.R. § 300.324(a). The PLAAFP must be individualized to reflect the unique needs and abilities of a particular student. *Letter to New*, 211 IDELR 464 (OSEP 1987).

A student who has the need for a service dog may have the service dog at school. The District must provide reasonable accommodations to allow the dog to be at school to assist the student. The District is not obligated to provide a handler. *See, e.g., Alboniga v. School Board of Broward County, Fla.*, 65 IDELR 7 (S.D. Fla. 2015); and *Cedar Falls (IA) Community School District.*, 72 IDELR 224 (OCR 2017).

A child's annual IEP must include measurable annual goals, both academic and functional, that meet the child's needs that result from the child's disability and allow the child to participate in and make progress in the general education curriculum. The IEP goals must address all the child's needs that result from the child's disability. 34 C.F.R. § 300.320(a)(2). Annual goals should reflect what is reasonably expected to be accomplished during the annual IEP period. *Letter to Butler*, 213 IDELR 118 (OSERS 1988). The annual goals should be specific to be able to determine progress made and the specific skills needed to achieve progress on goals. 64 Fed. Reg. 12, 471 (1999). When a student is not making progress on their goals, the IEP team needs to meet to modify the goals or determine the need for additional supports and services. 34 C.F.R. § 300.324(b)(ii)(A). An IEP must be implemented with all required components. 34 C.F.R. § 300.324(b)(ii)(a). However, only material failures of implementation will result in a denial of FAPE. *See Van Duyn v. Baker School District. 5J*, 502 F.3d 811, 822 (9th Cir. 2007).

a. Failed to consider all of Student's educational needs when determining whether a service dog was required for Student to receive FAPE.

At the time of the April 20, 2023 IEP, Parents were seeking to have Student's service dog attend school with Student. They believed that Student needed the service dog to address all the needs related to Student's disability. A letter from Student's pediatric neurologist recommended a service dog as part of Student's IEP. Parents provided an email to the District prior to the meeting outlining what the service dog could assist with including behavior, mobility, seizure alert, assistance and independence. This assistance included seizure detection, calming and behavior management, stability and safety. Student was not able to handle the service dog independently without adult assistance because of Student's cognitive and speech deficits. During interviews and in the District's response, the District at the IEP meeting focused on the academic and mobility needs of Student rather than all of Student's needs related to Student's disabilities. The IEP team determined that Student did not need a service dog at school to receive FAPE. The District noted the Student was able to navigate the building with the use of the cane. District noted that this year Student's seizures and behavior disruptions have decreased without the presence of the service dog and, therefore, the presence of the service dog was not needed for Student to receive FAPE.

Parent and staff reports differ about what was discussed or considered at the IEP meeting. Neither the IEP nor PWN discuss how all of Student's needs (e.g., academic, mobility, medical, and behavioral) would be met and whether the service dog was required to meet Student's needs. There was nothing in the IEP or PWN about consideration of the letter from the pediatric neurologist. The only statement on the PWN is "At this time there is not data to support that [Student] requires a service animal to support [Student] at this time. Parents disagree stating the service animal is a valuable and important part of [Student's] life and future." There was nothing on the IEP or PWN about what factors were considered or the reasons why Student did not need the service dog. The Teacher noted that she was unable to collect data on Student's performance because of Student's maladaptive behavior and refusal. It is unclear what data the District was looking for or how the IEP team would determine Student's need for the service dog since the PWN only stated no data to support need.

There is nothing on the IEP about the impact the service dog would have on the day to day needs of Student that are related to Student's disability. According to the Parents, the service dog is needed for more than mobility and independence. The service dog can detect and assist with seizures as well as be a calming influence for Student in the classroom and support Student physically following a seizure or as Student navigates the building. At the time of the April 20, 2023 IEP meeting, Student used the white cane effectively to navigate the building, but Student

still had behavior needs, seizures and weakness on the left side which impacted Student's access and ability to make educational progress. At the time of the IEP meeting, Student's behavior was affecting Student's academic performance. The Teacher could not work on academics because Student's behaviors were preventing learning and the focus had to be on social-emotional and behavior management. Part of what the dog was trained to do was assist Student with behavior. Since that IEP meeting, Student has made progress on behavior and the seizures and maladaptive behaviors have decreased. Student has been making progress on all goals. Yet, at the time of the IEP, the team was hopeful about turning around the negative behavior but Student was still struggling with self-regulation.

This is not to say that Student needs a service dog to receive FAPE. However, it is required that the IEP team consider all relevant information in determining the need for a service dog as part of Student's IEP. It is also imperative that the District document what was discussed and considered at the IEP meeting and the reasons for the IEP team's decisions which is required to be included on the PWN. Since the IEP and PWN provide limited information about the discussion around the need for a service dog, it cannot be assumed that all relevant information was considered. The IEP should address all of Student's needs related to their disabilities that would allow Student to receive FAPE. It may be that the existing services and supports would address all of Student's needs related to the disability but without that documented on the IEP and PWN, it cannot be assumed that analysis was properly completed. With respect to considering the request for a service dog to address all Student's needs, that was not done and that was a violation.

The District's position that Student can have the service dog in school but the family will need to provide an adult handler for the service dog is an ADA question that is not within the purview of this complaint. The IEP team must meet to determine if Student needs the service dog at school to receive a FAPE.

As to Issue #1a, the District is cited and Corrective Action is required.

b. Failed to document accurate and thorough present levels of academic and functional performance (PLAAFP) that provide sufficient information to develop appropriate measurable goals.

In February 2023, a new teacher was assigned to the IGS2 classroom. Student struggled with the changes in the classroom and a new teacher. Student exhibited significant behaviors which prevented Teacher from instructing Student and collecting accurate academic data for the PLAAFP and development of academic goals. Student's screaming, physical aggression and refusals to complete academic work required a shift in the focus of learning to social-emotional

training for behavioral needs rather than academic needs. The PLAAFP did not include accurate and through levels of performance for Student's related services.

While Student's maladaptive behavior may have been the reason for limited data, the IEP and PWN do not document that information. The IEP meeting was convened on April 20, 2023, but the focus of learning became social-emotional training instead of academics after the new Teacher arrived in February. Prior to changing the learning focus, the IEP team should have been convened to discuss how to address behaviors and lack of progress in academics. When Student was not making progress on goals, the IEP team should similarly reconvene to address the lack of progress on goals and changing needs. The IEP meeting was convened almost two months after the new Teacher's assignment. The teacher stated that the goals remained the same because she was unable to obtain data about Student's academic performance needed to develop goals because of Student's behaviors. The reason for the lack of PLAAFP data in academics is not addressed on the IEP or PWN. Without an accurate PLAAFP, the IEP team cannot develop appropriate goals.

As to Issue #1b, the District is cited and Corrective Action is required.

c. Repeated goals from year to year in language arts, written language, reading and physical education.

See Issue 1b. During the interview with the Teacher, she explained that she could not prepare academic goals because since she started in February 2023, the focus was on behavior management rather than academics because whenever Student was asked to complete academics, Student would scream or refuse to complete work. The Teacher did not have sufficient academic data for the PLAAFP or to develop goals. For this reason, the goals were not changed. This was not an issue with the related service providers. The classroom teacher reported that she discussed this with the Parents at the IEP meeting. Parents disagreed. The discussion or the reason for the repeated goals was not documented on the IEP or PWN. Since that IEP meeting, the Teacher indicated that Student has made progress on goals and new goals could be implemented immediately but an IEP meeting is not scheduled until January 2024 to revise Student's goals. Student's progress since the IEP meeting does not justify the repeated goals. Without documenting on the IEP and PWN the reasons for the same goals, the repetition of goals from year to year is a violation.

As to Issue #1c, the District is cited and Corrective Action is required.

d. Predetermined Student's need for a service dog without making an individual determination of how to meet Student's needs.

See Issue #1a and 1b. The IEP team, in the PLAAFP, outlined Student's individual needs that were related to Student's disability. Student has significant medical needs; the negative behaviors, seizures and stability were all needs related to Student's disability. The IEP team failed to consider or determine how the services and supports in the IEP would address all of Student's needs, especially with respect to ambulatory stability and seizure detection. Although the District noted recently that Student was becoming proficient with the white cane in navigating the building and the screaming and physical aggression had decreased, that was not the case at the time of the IEP meeting. The resulting PWN indicated the need for an FBA. The IEP team rejected the service dog without considering all relevant information in determining Student's needs and how to provide for those needs.

As to Issue #1d, the District is cited and Corrective Action is required.

e. Failed to provide data to demonstrate baseline or progress on goals in multiple areas.

Since the April 20, 2023 IEP meeting, the District provided progress notes that documented Student's progress on all IEP goals, especially in decreasing instances of screaming and other maladaptive behaviors. The frequency of seizures has decreased since the surgery in October. The related service providers also documented progress in all areas. The Teacher indicated that it was time to revise Student reading, writing and math goals at an upcoming IEP meeting in January. The teacher is also recommending a comprehensive evaluation to determine Student's needs given the progress Student had made. There was no violation on this record.

As to Issue #1e, the District is not cited.

f. Failed to complete an FBA after it was recommended by the IEP team.

The IEP team determined at the April 20, 2023 IEP meeting that an FBA was needed. As of the date of this report, the FBA has been completed but has not been uploaded or shared with the Parents. The Teacher reported Student's improved ability to use self-regulation skills have decreased behaviors to the point where a behavior intervention plan (BIP) is not needed. The failure to timely complete the FBA was a violation of Part B of IDEA.

As to Issue #1f, the District is cited and Corrective Action is required.

g. Made decisions without the consensus of all IEP team members and did not consider all viewpoints in making IEP decisions.

Although the goal in IEP team meetings is to reach consensus, that is not always possible. When consensus cannot be reached, it is the obligation of the District to propose an IEP that would provide Student a FAPE. On this record, the IEP team attempted to reach consensus. There was no agreement on whether Student needed a service dog to receive a FAPE. The District proposed an IEP that Student did not need the service dog. However, there were concerns whether all relevant factors were considered during that decision. See Issue 1a. All members of the team and their viewpoints were considered in the decisions made by the IEP team.

As to Issue #1g, the District is not cited.

h. Failed to consider the inclusion of individualized accommodations and modifications to allow Student to be successful.

Student, because of extensive medical and other needs, had accommodations including assistive technology included in the IEP. Student also had a health plan and received tube feedings twice a day. These accommodations were included on the IEP because of Student's particular individual needs. The IEP team did not include an accommodation for a service dog on the IEP because the IEP team had determined that Student did not need the service dog to receive FAPE. There was no prohibition on the service dog at school but the family would need to provide an individual handler if Student had the service dog at school. The accommodation Parents were seeking was the inclusion of a service dog with the District providing an adult handler. Although Parents disagreed and asserted Student needed the service dog, there was discussion about Student's need for the service dog. There was no violation.

As to Issue #1h, the District is not cited.

i. Failed to complete a prior written notice (PWN) that outlined the reasons for rejecting the presence of a service dog for Student while at school.

Following the April 20, 2023 IEP meeting, a PWN was provided to Parents stating "At this time there is not data to support that [Student] requires a service animal to support [Student] at this time. Parents disagree stating the service animal is a valuable and important part of [Student's] life and future." The IEP team determined that Student did not need a service dog to receive a FAPE. A PWN requires documentation of proposals rejected or accepted, the reasons why the decision was made, the information considered and other options or factors that impacted on the decision. 34 C.F.R. § 300.503(b). The District, in its response, opined Student was able to navigate the school building using the white cane and the other areas of concern requiring the

service dog were decreasing or managed. At the time of the IEP, Student's seizures and behaviors were not managed and the service dog was specifically trained in those areas. The PWN did not outline the reasons for refusal, what other options were considered or Student's seizures and behaviors would be addressed. The District failed to develop an appropriate PWN.

As to Issue #1i, the District is cited and Corrective Action is required.

As to Issue #1a, 1b, 1c, 1d, 1f and 1i the District is cited and Corrective Action is required.

As to Issue #1e, 1g and 1h, 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. 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 F.3d 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).

The record established that the IEP developed for Student was reasonably calculated to allow Student to make progress appropriate in light of Student's circumstances. Student has demonstrated progress or mastery on all IEP goals. The negative behaviors have decreased as have the seizures, especially after recent surgery. Considering Student's progress since the IEP was developed on April 20, 2023, there was no substantive denial of FAPE.

There were procedural errors on this record. The IEP team did not consider all Student's needs related to the disability when developing the IEP and the FBA was not timely completed even though the team determined an FBA was needed. The FBA was not shared with Parents. The

Teacher acknowledged that Student was not completing academic work upon her arrival in February 2023 until the IEP meeting on April 20, 2023, but an IEP meeting was not convened to address behavior or lack of progress. Student’s goals and PLAAFP were repeated from the previous IEP because behaviors were impeding Student’s learning but that was not documented on the IEP or PWN. Since May 2023, Student has made progress on all goals and negative behaviors have decreased. Student is more independent and able to navigate the school environment. Student still has extensive needs but the IEP has allowed educational benefit. Parents have participated in the development of the IEP and decisions about their Student’s educational program. Although they wanted the service dog at school with Student, the record demonstrated that Parents were provided meaningful parental participation even though the IEP team made the determination that Student did not need the service dog to receive FAPE.

However, the lack of an accurate PLAAFP (especially in academics) prevented the IEP team from developing new annual goals at the April 20, 2023 IEP meeting. The Teacher indicated Student has mastered the previous goals and should revise Student’s goals at the next IEP meeting. The failure to have an accurate and up to date PLAAFP and goals denied Student an educational opportunity. This resulted in a procedural denial of FAPE.

As to Issue #2, the District is cited and Corrective Action is required.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
<p>34 C.F.R. §§ 300.324 and 6.31.2.11(B)(1) NMAC</p>	<p>The District failed to develop and implement an IEP to allow Student to make educational progress in the general education curriculum, specifically, the District,</p> <p>Failed to consider all of Student’s educational needs when determining whether a service dog was required for Student to receive FAPE;</p> <p>Failed to document accurate and thorough present levels of academic and functional performance (PLAAFP) that provide sufficient information to develop appropriate measurable goals;</p> <p>Repeated goals from year to year in language arts, written language, reading and physical education;</p>

IDEA/State Rule Provisions Violated	Description of Violation
	<p>Predetermined Student's need for a service dog without making an individual determination of how to meet Student's needs;</p> <p>Failed to complete an FBA after it was recommended by the IEP team;</p>
34 C.F.R. § 300.101 and 6.31.2.8 NMAC.	The District's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE).

Required Actions and Deadlines

By December 22, 2023, the District's Special Education Director must assure the OSE in writing that the District will implement the provisions of this Corrective Action Plan (CAP). The OSE 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
 Office of Special Education
 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 OSE 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 OSE.

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 OSE 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 29, 2024 and reported to the OSE no later than April 5, 2024. All documentation submitted to the OSE 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 OSE</u>	<u>Document Due Date</u>
1.	As described above, the District will submit a written assurance to the PED OSE Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	December 22, 2023	Written Assurance Letter/Email	December 22, 2023
2.	The District Special Education Director and the school principal shall meet with the PED OSE Education Administrator assigned to the District and the PED OSE CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the District plans to take to ensure that the violations are corrected and do not recur. The District Special Education Director shall be responsible for arranging this meeting with OSE.	January 16, 2024	Notes from meeting prepared by District	January 30, 2024

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
3.	<p>The District shall convene an IEP meeting as soon as possible to discuss the following items and amend Student’s IEP as appropriate</p> <ul style="list-style-type: none"> • Consideration of a service dog to meet the needs of Student. • FBA and need for a BIP • development of goals in all areas. • Possible need for additional evaluations. <p>If the IEP team determines that additional evaluations are warranted then a PWN and evaluation plan will be provided to parents as soon as possible.</p> <p>The IEP meeting shall be held on a date and time that is convenient for the parent. The parent will be provided with a copy of the IEP and PWN at the conclusion of the IEP meeting.</p> <p>The District shall also ensure that the IEP team includes, but is not limited to, parents, special education teacher, general education teacher, and any related services providers including Student’s aide.</p>	January 30, 2024	<ol style="list-style-type: none"> 1. Invitation to IEP meeting, 2. IEP, 3. Prior Written Notice, and 4. Agenda for IEP team meeting 	February 13, 2024

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
4.	<p>The District shall arrange to provide training to school staff (including special education teachers, special education administrators, and related service personnel), on the following special education topics:</p> <ul style="list-style-type: none"> • Implementation and development of appropriate PLAAFP, IEP goals and services; and • Requirements and development of PWN; • Consideration of all information in determining need for service dogs or other accommodations <p>The training shall be provided by a person with expertise in special education and who is approved by NMPED. The trainer may be an employee of the District.</p>	March 29, 2024	<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>February 2, 2024</p> <p>February 16, 2024</p> <p>April 5, 2024</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/ Michele Bennett

Michele K. Bennett

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:
Margaret Cage

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Margaret Cage, Ed.D.

Director, Office of Special Education