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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Albuquerque Public Schools
Case No. C2324-27
January 24, 2024

This Report does not require corrective action.

On December 1, 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 and the District Special Education Director; and
- research of applicable legal authority.

Limits to the Investigation

Federal regulations and state rules limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint is received. 34 C.F.R. § 300.153(c); 6.31.2.13(H)(2)(d) NMAC. Any educator ethics issues, or any alleged ADA or Section 504 disability discrimination issues, are not within the jurisdiction of this complaint investigation and, as a result, were not investigated.

Issues for Investigation

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

1. Whether the District failed to ensure Complainant’s parental participation in the IEP process, in violation of 34 C.F.R. § 300.322 and 6.31.2.13(C) NMAC; and
2. Whether the District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

1. Student is a nineteen-year-old high school student who is eligible for special education under the classification of Other Health Impairment (“OHI”).
2. From approximately June 2018 to September 2021, Complainant and Student lived in a foreign country.
3. During this time, the District stated that Student received little education abroad due to a language barrier.
4. Student returned to New Mexico on September 2021 to live with their father (which remains Student’s living arrangement at the present).
5. The following year, Student was initially evaluated and determined eligible for special education. Accordingly, the District developed an IEP to provide Student with academic supports, accommodations, and provide specialized instruction in the areas of English Language Arts, Science, and Study Skills.

6. On January 22, 2023, Student turned eighteen years old at which time the Complainant's parental rights under the Individuals with Disabilities Education Act ("IDEA") transferred to Student.
7. Student initially sought to obtain their GED and forego the 2023-2024 school year at the District. However, Student decided to reenroll at the District on October 31, 2023.
8. Upon reenrollment, the District began to plan for an IEP meeting.
9. The District's response stated that in preparation for this IEP meeting, District staff asked Student whether, as a legal adult, they wanted Complainant to be present at the IEP meeting. According to the District's response, Student responded that they did not wish to have Complainant attend their IEP meeting.
10. On November 29, 2023, a District Special Education Teacher emailed Student asking whether Student they would give permission for Complainant to speak with District staff and attend Student's IEP meetings.
11. Student immediately replied to this email by writing: "I don't give permission for staff to speak with [Complainant] or for her to attend my meetings."
12. Thereafter, an IEP meeting was held that same day. At the meeting Student provided consent to receive special education services. Complainant was not a participant at the meeting.
13. The prior written notice from the IEP meeting includes the following information: "[Student] does not give [Complainant] permission to attend [their] IEP meetings."
14. As part of this investigation, Complainant reported her concerns that Student is not competent to make educational decisions on their own.
15. Complainant does not have guardianship for Student.
16. Student was unresponsive to attempts by the investigator to contact them via telephone and via text.
17. District Special Education Director reported that while Student may struggle with paying attention in class, the consensus among the teaching staff is Student can self-advocate as an adult and engage as a rightful member of their own IEP team.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to ensure Complainant's parental participation in the IEP process, in violation of 34 C.F.R. § 300.322 and 6.31.2.13(C) NMAC.

IDEA ensures that parent of students with disabilities have opportunities to participate in the IEP process. 34 C.F.R. § 300.322. Parental participation includes the right for parents to take part in meetings where a child's IEP is developed or revised. *Id.* The policy rationale for parental

participation is that it will help ensure the provision of a free appropriate public education. 71 Fed. Reg. 46678.

A separate provision in IDEA permits a state to transfer parental rights from the parent to the student upon the student reaching the age of majority under state law. 34 C.F.R. § 300.520. In the State of New Mexico, the transfer of parental rights occurs when the student reaches the age of 18 years old. 6.31.2.13(K) NMAC (*citing* N.M. ST. §§ 12-2A-3, 28-6-1 which are the state laws that hold a person in New Mexico becomes a legal adult upon reaching his or her eighteenth birthday). Neither a school nor an IEP team may determine an adult student's competency upon the transfer of rights to the student. *Id.*

Here, Student had their 18th birthday on January 22, 2023 around which time Complainant's parental rights under IDEA were transferred to Student. There are multiple sources of documentary evidence in the record demonstrating that Student prefers Complainant not be a participating member in their IEP Team meetings. The District has respected Student's preferences and Complainant did not participate in the November 29, 2023 IEP Team meeting. Therefore, Complainant was not denied parental participation in the IEP process because Complainant no longer had that right following the transfer of rights to Student and the District has honored the rights of Student to choose who they invite to their own IEP Team meetings.

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

Issue No. 2

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

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(I)(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).

As discussed *supra*, there is no IDEA procedural violation in this matter because Complainant no longer had the right to parental participation at the time of Student's most recent IEP meeting.

A substantive FAPE analysis is not applicable because the investigation issues did not extend to the adequacy of Student's IEP. For these reasons, the District did not deny Student FAPE.

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

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

Investigated by:

/s/ Michael Gadomski

Michael W. Gadomski, Esq.

Complaint Investigator

Reviewed by:

/s/Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

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Margaret Cage

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Margaret Cage, Ed.D.

Director, Office of Special Education