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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Cuba Independent School District
Case No. C2324-33
March 20, 2024

This Report does not require corrective action.

On January 22, 2024, a complaint was filed with the New Mexico Public Education Department's (PED) 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;
- review of the District's compliance with federal IDEA regulations and state NMAC rules;
- interview with the Complainant; and

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.

- 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 Student's individualized education program (IEP) was developed in a meeting in accordance with 34 C.F.R. §§ 300.320 through 300.324. 34 C.F.R. § 300.320 and 6.31.2.7(B)(10) NMAC.
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. The Student enrolled at the District on August 10, 2023. At the time, the Student had an IEP in effect and was identified by their previous school district as a student with a disability under the primary disability classification of Intellectual Disability (ID).
2. At the time of enrollment, the Student was placed in kindergarten due to their age. However, after obtaining the Student's records from the previous district, the District learned the Student had completed kindergarten. Thus, the Student was then moved to a first-grade classroom.
3. A meeting notice was sent to the Parent on August 23, 2023 for an IEP meeting scheduled for September 19, 2023.
4. An IEP meeting was held on September 19, 2023. In attendance were the parent, Student's guardian, a regular education teacher, a special education teacher, a District representative, the School Psychologist, a speech language pathologist (SLP), an occupational therapist (OT), a Board-Certified Behavior Analyst (BCBA), and a behavior specialist. At that time, a new IEP was developed. Relevant portions of the IEP include:
 - a. The Student's behaviors impede their learning or the learning of others.
 - b. Behavior support accommodations are included.

- c. The IEP contains six goals to support academics, communication, motor skills, and behavior.
 - d. Special education and related services for the remainder of the 2023-24 school year includes:
 - i. Occupational Therapy (OT): 30 minutes/week (special education setting)
 - ii. Speech: 30 minutes/week (special education setting)
 - iii. Physical Therapy (PT): 30 minutes/week (special education setting)
 - iv. Academics: 150 minutes/week (special education setting)
 - v. Life Skills: 225 minutes/week (special education setting w/ special education teacher)
 - vi. Psychological Services: 30 minutes/week (special education setting w/ school psychologist)
5. The prior written notice (PWN) attached to the IEP states, in part, the District proposed assessments be completed in the areas of social work, “recreation,” and functional behavior (FBA).
6. On September 20, 2023, the District requested the Parent’s consent to conduct a counseling and social evaluation and a “recreational therapy” evaluation. The Parent provided their consent the same day.
7. The social work assessments were completed on September 25, 2023; September 27, 2023; and October 4, 2023. The report incorrectly specifies the report date as September 9, 2023. The report indicates the Student qualifies for social work services and recommends services for 30 minutes/week with the focus on improving the Student’s ability to relate to peers and adults and improve their ability to self-regulate. The Complainant conducted the assessments and wrote the report.
8. The Complainant emailed the report to the Special Education Teacher on October 9, 2023 and included two proposed goals with the assumption the IEP team would approve social work services.
9. An IEP meeting was held on October 10, 2023 to change the Student’s placement. It is unclear what precipitated the meeting. The only changes to the IEP include: (1) an indication that the Student requires a behavior plan; (2) an increase in academic service minutes from 150 minutes/week to 225 minutes/week; and (3) a 1:1 aide is included under special education and related services for 1,350 minutes/week. The social work assessment nor social work-related goals or services were discussed.
10. On December 18, 2023, the Complainant emailed the Superintendent stating they were leaving the District. In addition, the Complainant indicated “about a month ago” they received a phone call from the School Psychologist asking that the Complainant quickly write a goal for a new student. The Complainant reluctantly did so. The Complainant stated a week prior to December 18, 2023, they were in an IEP meeting for the student

and the goals Complainant proposed were included in the Student's IEP. The Superintendent responded and asked to what student the Complainant was referring. The Complainant named a student not identified in this complaint.²

11. The Complainant filed the complaint subject to this investigation on January 22, 2024. The acknowledgement letter from the OSE regarding the complaint was emailed to the parties, including the District, on January 24, 2024.
12. A meeting notice was mailed to the Parent on January 24, 2024 for an IEP meeting scheduled for February 7, 2024 to "go over" the social work and recreational therapy evaluation.
13. An IEP meeting was held on February 7, 2024. Relevant changes to the IEP include:
 - a. A social work goal was added.
 - i. Note: The social work goal does not match what was recommended by the Complainant in the October 9, 2023 email.
 - b. Services in the areas of social work for 30 minutes/week were added. Despite the addition of these services in February 2024, the IEP indicates the start date was October 10, 2023.

Discussion and Conclusions of Law

Issue No. 1

Whether the Student's individualized education program (IEP) was developed in a meeting in accordance with 34 C.F.R. §§ 300.320 through 300.324. 34 C.F.R. § 300.320 and 6.31.2.7(B)(10) NMAC.

A district must ensure that the IEP team includes, at minimum: (1) the parents of the student; (2) a regular education teacher; (3) a special education teacher; (4) a representative of the district; and (5) an individual who can interpret the instructional implications of evaluation results. 34 C.F.R. § 300.321(a). At the discretion of the district or parent, other individuals who have knowledge or special expertise regarding the student may be a part of the IEP team. *Id.*

A parent and a district may agree not to convene an IEP meeting to make changes to the student's IEP, and instead develop a written document to amend or clarify the IEP. 34 C.F.R. § 300.324(a)(4).

The Complainant alleged they were called by the School Psychologist during a special education meeting and asked to formulate social work goals for the Student, a student the Complainant asserted they with whom were unfamiliar. First and foremost, the Complainant completed the social work assessment for the Student. Thus, the Complainant was familiar with the Student. Secondly, there is insufficient evidence that the Complainant was called during an IEP meeting for the Student. Specifically, the IEP meeting, in which it may have been feasible for a social work

² The name of the student referenced in the email correspondence was provided to the OSE. Possible deficiencies in the IEP development will be reviewed separately from this investigation.

goal to be discussed, was on October 10, 2023. A social work goal nor was the completed social work assessment discussed at the IEP meeting. The next IEP meeting was not until February 2024, after the complaint was filed.

Moreover, the Complainant was unclear on what date the call could have occurred. First, the Complainant indicated it likely occurred in October. Then, after questioning if the Complainant could have been mistaken about completing a social work assessment for the Student, the Complainant indicated they were called before they were asked to complete the assessment (i.e., September 2023). Either way, the Student's IEP was not amended during or outside of an IEP meeting to include a social work goal until February 2024. In addition, the IDEA does not prohibit a district from preparing a draft IEP prior to an IEP meeting or prohibit staff from meeting in advance of an IEP meeting to prepare for same. *See e.g., Letter to Helmuth*, 16 IDELR 503 (OSEP 1990); *see also T.P. v. Mamaroneck Union Free Sch. Dist.*, 51 IDELR 176 (2d Cir. 2009). Even assuming that the Complainant was initially asked to formulate a social work goal outside of the IEP meeting, there is no violation in this instance because the parent still had the opportunity to participate in the development of the IEP.

For these reasons, there is no evidence that the Student's IEP was not developed in accordance with the IDEA regulations.³

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.

A procedural violation results in a denial of FAPE only if it: (1) impedes the child's right to FAPE; (2) significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of FAPE; or (3) causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

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 above, there is no procedural violation in this matter and a substantive FAPE analysis is not applicable because the adequacy of the Student's IEP was not investigated. Thus, the District did not deny the Student FAPE.

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

³ Through the course of this investigation, potential concerns regarding the adequacy of the Student's IEP were noted. The concerns were provided to the OSE and will be reviewed separately from this investigation.

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

Investigated by:

/s/ Emily Adams

Emily Adams, 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