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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report

Case No. C2324-49

May 10, 2024

This Report does not require corrective action.

On March 13, 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;

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 Complainant, Principal, and Curriculum Coach; 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. For this reason, the Complaint Investigator did not investigate the following issues raised by the complainant: Whether the Charter School discriminated against the Student in violation of Section 504 of the Rehabilitation Act of 1973.

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 Charter School failed to ensure that Student had an equal opportunity to participate in nonacademic and extracurricular activities, in violation of 34 C.F.R. § 300.107 and 6.31.2.11(C)(2)(e) NMAC; and
2. Whether the Charter School’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

Introduction

1. Student is in eleventh grade at the Charter School and eligible for special education under the classification of Specific Learning Disability (with deficits in reading, writing, and math).
2. While Student has some behavioral needs referenced in their IEP dated August 16, 2023, the Prior Written Notice (associated with that same IEP) calls for the Student to follow the school-wide discipline plan because they no longer display serious behaviors that impede their learning.

3. This IEP did not contain any provisions for supplementary aids and services to allow Student to participate in extracurricular activities.
4. Student enrolled in the Charter in October 2023 and the Charter School implemented the aforementioned IEP developed by their prior school.
5. The Charter School has a points system for addressing student misconduct. When a student has accumulated seven points for misbehavior, then the disciplinary consequences is a one-day suspension.

Field Trip

6. On February 29, 2024, the Charter School sent out an email to parents with information about an upcoming field trip on March 8, 2024. Embedded in this email was a link to a permission form for parents to sign electronically and submit to the Charter School.
7. The following week on March 3, 2024, the Charter School sent out a weekly email regarding announcements and updates. In this email, the same information about the field trip including the link to the permission form were contained therein.
8. During that week of school on Wednesday, March 6, 2024, the Student received a disciplinary referral which resulted in them earning a 7th point within the discipline system. Student had displayed a pattern of disruptive behavior in school in the preceding months of the 2023-2024 school year. The incident on March 6 involved Student refusing to do work in class and being disruptive. The same day the Dean of Students at the Charter School told Student that they could still participate in the field trip.
9. The Charter School suspended Student for one day on Thursday, March 7, 2024.
10. The Charter School Curriculum Coach was the staff person responsible for organizing the field trip. At approximately 12 noon on March 7, 2024, the Curriculum Coach closed out the Jotform (an online document) for parents to fill out the permission form. This was done in order for the Curriculum Coach to finish creating the spreadsheets and rosters of students for the field trip.
11. In the afternoon of March 7, 2024 the Curriculum Coach spoke with Student's parent on the phone. Parent asked if Student could still attend the field trip. The Curriculum Coach said the deadline had passed for submitting the form and that field trip preparations were already finalized. Parent asked again for Student to attend field trip and Curriculum Coach said "no."
12. Curriculum Coach relayed this conversation to Charter School Principal and the Principal left Parent a voicemail.
13. On the morning of Friday, March 8, 2024, Parent brought Student to school and requested again that Student be permitted to attend field trip.

14. Parent, Student, Principal, and Curriculum Coach went to Principal's office to discuss this issue. Principal declined to undermine Curriculum Coach's planning efforts and reiterated that Student could not attend because the permission form was not submitted on time.
15. Before Parent left the meeting with Student, Parent said no deadline for submitting the form was posted online.
16. Principal and Curriculum Coach reviewed the online materials and noticed that the initial email with the form did not post the deadline but the advisory email sent out the following Monday did contain the deadline.
17. Principal decided to extend an invitation for Student to still attend the field trip due to the discrepancy in information. Principal called Parent, apologized for the confusion, and asked her to bring Student back to school so that they could participate in the field trip. Mom accepted the apology and told Principal that she would bring back Student.
18. However, Parent called Principal back several minutes later and condemned the Charter School's treatment of Student (and the conversation ended abruptly soon thereafter). Student did not go on the field trip.
19. In their interview, Parent claimed that the way Charter School staff treated Student "made it personal" and that they thought Student "did not deserve to go on the field trip."
20. The Principal stated that the only reason Student missed the field trip was due to Parent not submitting a permission form and that this incident had nothing to do with Student's disability, recent disciplinary punishment, or status as a special education student.
21. The Curriculum Coach reported in their interview that approximately 70–80 students (out of a total of 300 eligible students) missed the field trip because their permission form was not filled out.
22. An IEP meeting was held on March 25, 2024. At this meeting, members of the IEP Team (including the Parent) agreed to add a transition planning provision to Student's IEP which states that "[Student] will be able to participate in events and field trips through the school."

Discussion and Conclusions of Law

Issue No. 1

Whether the Charter School failed to ensure that Student had an equal opportunity to participate in nonacademic and extracurricular activities, in violation of 34 C.F.R. § 300.107 and 6.31.2.11(C)(2)(e) NMAC.

IDEA requires that schools provide the necessary supplementary aides and services to afford children with disabilities an equal opportunity to participate in extracurricular service and activities. 34 C.F.R. § 300.107. When an IEP is silent as to a student's participation in field trips, a school may resolve any potential legal violations by voluntarily revising the IEP to ensure the

student's participation in non-academic and extracurricular activities. *Seminole County School District*, 120 LRP 22135 (SEA FL. 2020).

In this case, the Charter School did afford the Student an equal opportunity to participate on the March 8th field trip. The Parent was provided with the initial email and subsequent advisory notice detailing the information about the field trip and requirements for submitting a parental permission form. When there was confusion over the provision of a specific deadline to submit the form, the Charter School offered to waive the deadline and still let Parent submit the permission form so that Student could still attend the field trip. Then the Charter School worked with the Parent to revise Student's IEP and include language that reaffirmed Student's ability to participate in field trips. Taken together, this information shows that the Charter School both provided an equal opportunity for Student to attend the prior field trip and changed the information in the IEP to guarantee future access to extracurricular activities. The unfortunate miscommunication or misunderstanding that occurred, resulting in Student not participating in the field trip, does not amount to a violation of the IDEA requirements regarding extracurricular activities.

As to Issue No. 1, the Charter School is not cited.

Issue No. 2

Whether the Charter School's actions and/or omissions towards the students 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(1)(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 established in the analysis of Issue No. 1, the Charter School did not commit any IDEA procedural violations. Hence there is no procedural basis to establish a denial of FAPE. The IEP itself does not show any substantive deficiencies that would render it unreasonable for purposes

of promoting Student's educational progress. As such, the evidence in the record does not support a finding that Student was denied FAPE.

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

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