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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Albuquerque School District
Case No. 2423-01
September 13, 2024

This Report does not require corrective action.

On July 16, 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 Local Education Agency 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 and questionnaires with the Principal and Special Education Teacher;
- interviews with General Educators and Parent; 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 allegations related to professional or ethical misconduct by a licensed educator or related service provider, or allegations related to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act are not within the jurisdiction of this complaint investigation and, as a result, were not investigated. For these reasons, the Complaint Investigator did not investigate the following issues raised by the complainant: Issues pertaining to racism, retaliation or disparate treatment.

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 follow the IDEA disciplinary procedures when disciplining Student for violations of the District’s code of conduct, in violation of 34 C.F.R. § 300.530 and 6.31.2.11(F)(2) NMAC; specifically, whether the District,
 - a. Denied Student access to co-curricular activities or school programs because of behavior without providing additional supports and/or services to allow Student to participate with peers;
 - b. Suspended Student for behaviors without determining Student’s involvement and/or providing additional services or supports to reduce negative behaviors; and
 - c. Shortened Student’s school day without determining the need for additional services and/or supports;
2. 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. §§ 300.321, 300.324; 300.501(b)(c)(1) and 6.31.2.11(B)(1) and 6.31.2.13(c) NMAC; specifically, whether the District,
 - a. Promptly convened an IEP team meeting when Student’s disciplinary removals, including suspensions, shortened school days or failure to

- participate in school programs demonstrated an increase during the 2023-2024 school year;
- b. Shared information about disciplinary removals with Parent and allowed Parental participation in decisions to address Student's behavior; and
 - c. Considered the need for additional services and/or supports to address Student's negative behaviors and lack of academic achievement;
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

Background Information

1. Student, who was in the second grade during the 2023-2024 school year, has attended District schools since kindergarten. Student had some significant behavior issues in kindergarten that resulted in over ten office referrals for assault and battery, major incidents and disorderly conduct that began in late October and continued throughout the school year.
2. Student had four major incidents during the first-grade year.
3. A referral was made to the Health and Wellness (HW) team which is a group of staff members including the Counselor, Behavior Redirector, General Education Teacher (Teacher), Parents and Administrators. The HW team would meet to discuss students who needed additional supports and develop an intervention plan to assist those students.
4. The HW team was available to all students but not all students were referred for HW services. The HW team could meet as often as needed but usually met once a semester for each student referred.
5. In first grade, Student was served by an experienced teacher that had success with Student in decreasing behaviors.
6. The HW team began reviewing Student's behaviors and interventions during first grade and the HW team met each semester to discuss Student's needs.
7. Student was not referred to the Student Assistance Team (SAT) or for a special education referral during kindergarten or first grade.

Second Grade

8. On August 14, 2023, Student's Teacher completed the referral form for the HW team to meet to discuss Student.

9. A major incident involving aggravated battery occurred on August 15, 2023. The first day of school was August 1, 2023. Another major incident occurred on August 22, 2023 when Teacher requested support for Student with the SAT team chair.
10. The District used a discipline matrix and had the flexibility to use alternatives to disciplinary removal such as restorative justice or detentions.
11. Disciplinary removals were limited to major behaviors involving physical altercations with peers. For behaviors other than physical altercations, alternative discipline was used.
12. Shortly after the school year started, Teacher implemented interventions to assist Student. Teacher started the development of a functional behavior assessment (FBA) and behavior intervention plan (BIP). Parents were informed about the FBA and BIP, but the Teacher developed the BIP and special education staff were not involved in the process.
13. Teacher noted that Student would act out when an adult was not with Student or monitoring Student's performance.
14. Teacher also noted that Student was struggling academically, particularly in reading and reading readiness. For example, Student was not able write name or read at grade level.
15. It was reported that Student's behaviors negatively impacted academic progress.
16. Student went home early on September 19, 2023 because of a one-day suspension.
17. On September 20, 2023, Student punched another student in the face and received a same day, one-day suspension.
18. An investigation was conducted, and Student admitted to the incident.
19. During investigations, the administration interviewed witnesses, a staff member that reported the incident and the alleged perpetrator (Student). An incident report was included in the District's data system, but neither the notes from the investigation interviews nor the investigative report were retained.
20. A copy of the incident report was sent to the parents, sometimes by sending the report home with the Student. The incident report described the behavior and discipline imposed and did not include details such as who was interviewed or copies of statements. Parents were to sign and return the incident report.
21. Student returned to school on September 21, 2023. A reentry plan meeting was held with the Parents, Student and staff to discuss behavior and develop a plan for Student's return. Parent participated in that meeting.
22. According to the Teacher and Principal, Student had a "challenging" day on September 21, 2023. Behaviors that day were similar in type and frequency to other days but did not result in disciplinary removal. Parents were not informed that Student had a "challenging" day
23. Student was transported to the hospital on September 22, 2023 for a mental health evaluation.
24. Based on evidence provided, they were the only days Student left school early at the request of the District.

Jog-a thon

25. Jog-a-thon was a major fundraiser for the Student's school in the 2023-2024 school year and provided opportunities for all students in all grades to jog for a short period (approximately 30 minutes) to raise money for the school.
26. Parent came to school that day to observe Student and sibling during Jog-a-thon. When Parent was informed Student would not participate in Jog-a-thon, she confronted the Principal and other staff to determine what happened and why Student was not participating.
27. Although the decision that Student would not participate in Jog-a-thon was made by the Principal before the end of school on September 21, 2023, the Teacher, Student and Parents were not informed until the following day.
28. Student went out to morning recess with the second-grade class. While at recess, Student jumped off the play structure and stated that he [Student] wanted to be killed. At the time of recess, neither the Teacher nor Student knew Student would not participate in Jog-a thon.
29. Immediately after recess, Student went to the counselor and completed a suicide assessment. Parent was present during the assessment. Student was referred to the hospital for an evaluation and Parent transported Student to the hospital.
30. Student's second grade class, without Student, participated in the Jog-a-thon from 10:15-10:45 a.m.
31. Student returned to school on September 23, 2023 and a reentry meeting was held with parents present. Additional services and supports were added for Student including walking Student to class and lunch, positive conversations and close adult proximity.

Special Education Services

32. Student continued to exhibit major behavior incidents during the Fall semester, 2023 and also struggled academically. The behavior interventions implemented did not eliminate negative behaviors or address academic concerns. Parents were invited to a SAT meeting on September 27, 2023 where a referral for special education evaluation was discussed.
33. Parental consent for a special education evaluation was signed on September 27, 2023.
34. A multidisciplinary evaluation team (MET) meeting was held on November 15, 2023 and Student was found eligible for special education under the category of other health impairment (OHI) and specific learning disability (SLD) (characteristics of dyslexia).
35. An IEP meeting was held that day and a prior written notice was provided to parents. Student would receive cross categorical services in ELA and math, and speech and language services.

36. The IEP team agreed to the need for an FBA and a behavior goal to address disruptive and unsafe behaviors towards peers. Additional accommodations were included to assist Student in controlling behaviors.
37. The FBA was completed a month later with the revised BIP implemented shortly thereafter.
38. There was a major incident on December 7, 2023 when Student pushed one student into a brick wall and choked another student. Student was suspended for one day because of the incident.
39. Student continued to have negative behaviors but the frequency decreased as the year progressed. Student's negative behaviors that occurred 2-4 times per day at the beginning of the year decreased to 1-2 times per week. The BIP was revised again to include an escort for passing periods. Parent agreed to the changes in the BIP during a March 7, 2024 meeting with Teacher and Special Education Teacher. The need for an escort would be reviewed at the upcoming parent-teacher conferences. Parents did not attend these conferences.
40. Student was suspended again for three days on April 19, 2024 for an incident at the end of the day involving stabbing another Student with a pencil, drawing blood; this occurred after students were throwing pencils in the classroom.
41. Parents were provided written copies of all incident reports that were ultimately filed in the District's data system. Parents stated that reports were sent with Student and they were not informed about the incidents.
42. The District stated that reports were emailed and personally shared with Parents and could also be sent with Student. There was scant documentation of how Parents received notice of incidents.
43. Investigation reports and interviews were not shared with Parents nor maintained by the school.
44. Student made minimal progress both academically and behaviorally during the 2023-2024 school year.
45. A facilitated IEP meeting was held on August 9, 2024 where some changes were made to the IEP. One change was an updated FBA and BIP. A crisis intervention plan and social work referral were planned changes. There was also discussion about the best means of communication between Parents and School. Parents would receive information through email and text. Parents agreed with the IEP as developed.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to follow the IDEA disciplinary procedures when disciplining Student for violations of the District’s code of conduct, in violation of 34 C.F.R. § 300.530 and 6.31.2.11(F)(2) NMAC; specifically, whether the District,

- a. Denied Student access to co-curricular activities or school programs because of behavior without providing additional supports and/or services to allow Student to participate with peers;**
- b. Suspended Student for behaviors without determining Student’s involvement and/or providing additional services or supports to reduce negative behaviors; and**
- c. Shortened Student’s school day without determining the need for additional services and/or supports.**

When a special education student violates the District’s code of conduct, the student is subject to the same disciplinary actions as those that general education students receive until there is a change of placement. A change of placement occurs when the removal is for more than ten consecutive days or the child has been subjected to a series of removals that constitute a pattern because the series of removals totals more than ten school days in a school year or because the behavior is substantially similar to the child’s behaviors in the previous incidents that resulted in removals and additional factors such as the length of each removal, the total amount of time removed and proximity of the removals. 34 C.F.R. § 300.536. If general education students are allowed to participate in extra-curricular or co-curricular activities and the special education student is denied participation, even with additional supports and services, that may constitute a disciplinary removal. When a student is removed from the educational program, including extra-curricular and co-curricular activities, for disciplinary reasons, that would be a disciplinary removal that is included as part of the ten days. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, 81 IDELR 138 (OSERS 2022). The length of the removal is not definitive, any portion of the day would count as a full day of removal. 34 C.F.R. § 300.11.

When a student is removed from school for behavior reasons, it can trigger the District’s responsibility to conduct a manifestation determination review (MDR). The classification of the removal from the school is not the deciding factor; shortening the school day(s) for a student is a repeated, daily exclusion from school (e.g., parents are asked to pick up early or student leaves school early because of behaviors) and qualifies as disciplinary removal(s) that count toward the ten days. *School District of Flint*, 66 IDELR 192 (SEA MI 2015); *Letter to Mason*, 72 IDELR 192 (July 27, 2018); *see also* 34 C.F.R. § 300.530(a)(2). Whether removals constitute a pattern of behavior depends on the length of the removal, the total amount of time and the proximity of the removals. 34 C.F.R. § 300.536(a)(2). When a change of placement occurs, then the District must convene a MDR meeting. 34 C.F.R. § 300.530(e). The MDR meeting must determine whether

the violations of the code of conduct were a manifestation of the child's disability. 34 C.F.R. § 300.530(e).

Although there is no requirement to conduct an MDR prior to the 10 days suspension, Districts have the ongoing obligation to determine and implement interventions including behavioral interventions and supports to receive FAPE in the LRE. Disciplinary removals should trigger the need for an IEP meeting to consider additional supports especially when there is repeated misconduct. *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSPE 2016). The IEP team should consider positive behavioral interventions and supports in response to misconduct that impeded student's learning or others. *Dear Colleague Letter*.

- a. Denied Student access to co-curricular activities or school programs because of behavior without providing additional supports and/or services to allow Student to participate with peers;**

Student had been suspended for one day prior to the Jog-a-thon. Student had behavior incidents but they did not rise to the level of disciplinary removals until the incident on September 20, 2023. The Jog-a-thon was an activity for all students within the school. Student, because of behaviors on September 21, 2023, was denied the opportunity to participate. While the District had the authority to deny Student the opportunity to participate in the Jog-a-thon because of behaviors the previous day, the discipline related to Student's participation in the Jog-a-thon should have been counted as a day of disciplinary removal. By that time in the school year, Student had been sent home on a one-day suspension two days earlier. The Jog-a-thon would count as a second day. Notably, Parents should have been informed when the decision was made that Student would not participate, which did not occur.

While it may have been appropriate to determine if there were supports and services that could have been provided to Student to allow Student to participate in the Jog-a-thon, the School was within its authority to discipline Student by removing the opportunity for Student to participate in the Jog-a-thon. There was no violation of Part B of IDEA.

- b. Suspended Student for behaviors without determining Student's involvement and/or providing additional services or supports to reduce negative behaviors;**

During the 2023-2024 school year, Student was: (1) Suspended one day on September 20, 2023; (2) Denied access to the Jog-a-thon on September 22, 2023; (3) Suspended one day on December 7, 2023; and (4) Suspended three days from April 23-25, 2024. There were investigations by the District for the incidents leading up to each suspension. The District reported that each incident report was shared with Parents. Parents participated in the reentry plan following the

suspensions. Parents were not informed about the Jog-a-thon removal until Parent showed up at the school to watch Student and sibling participate.

The notes and investigative reports for the above listed suspensions were not maintained by the District. The reports provided to Parent and included in District records were limited in details of incidents and the discipline imposed. In each instance, Student admitted that Student committed the infraction. Without the notes, there is no way to know all the circumstances of that resulted in the behavior, including possible antecedents and other student involvement. Without any records, there is no way to verify that others may have instigated or provoked Student. The District's records, with respect to behavior incidents, failed to provide guidance about what constitutes a major versus minor incident and what type of discipline would be imposed since the School deviated from the discipline matrix. There were inconsistencies in dates and types of behaviors that were subject to discipline in the records provided. Since it was unclear when Parents were informed and what information was provided, it was difficult to ascertain the type and frequency of Student's behaviors that made development of appropriate programming challenging.

With respect to provision of additional services and supports for this Student, the Teacher developed an FBA and BIP and implemented positive behavior supports and interventions. This occurred shortly after the start of the school year without the involvement of special education staff. Student was referred to the HW team and SAT team on or before September 27, 2023. A referral was signed on September 27, 2024. Student was evaluated, and an IEP was developed implementing accommodations and behavior goals. A modified FBA and BIP was developed in December after the November, 2023 IEP but needed to be revised again at a meeting on March 7, 2024 that included the Parents.

After the development of Student's IEP and BIP modification, Student continued to exhibit negative behaviors, but the frequency decreased from 2-4 incidents per day to 1-2 incidents per week for Student. The incident on April 19, 2024 was a major incident that, following the District discipline matrix, would justify a suspension.

Neither the IDEA nor New Mexico law prevent special education students from being suspended for violations of the code of conduct. However, when disciplinary removals continue or increase in severity or frequency, it is the obligation of the District to meet and revise the IEP and/or BIP. The District did take action to address Student's behavior in this case. There was no violation of Part B of IDEA.

c. Shortened Student’s school day without determining the need for additional services and/or supports.

A review of District’s 2023-2024 attendance records for Student indicated that Student went home early at District request on two occasions. Student received a one-day suspension with a shortened day on September 20, 2023 for a physical altercation. The discipline imposed was within the discipline matrix for the District and was the first instance of a disciplinary removal for the 2023-2024 school year. On September 22, 2023, Student left school with Parent for an evaluation at the hospital. Based on documents provided, these were the only instances that Student’s days were shortened at District’s request.

Since September 14, 2023, Teacher worked with District staff to manage Student’s behaviors. Additional services and supports were added and revised throughout the year to address Student’s negative behaviors. The IEP included positive behavior supports and a BIP was developed and revised when Student’s negative behaviors continued. There was no violation of Part B of IDEA.

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

Issue No. 2

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. §§ 300.321, 300.324; 300.501(b)(c)(1) and 6.31.2.11(B)(1) and 6.31.2.13(c) NMAC; specifically, whether the District,

- a. Promptly convened an IEP team meeting when Student’s disciplinary removals, including suspensions, shortened school days or failure to participate in school programs demonstrated an increase during the 2023-2024 school year;**
- b. Shared information about disciplinary removals with Parent and allowed Parental participation in decisions to address Student’s behavior; and**
- c. Considered the need for additional services and/or supports to address Student’s negative behaviors and lack of academic achievement.**

The IDEA is meant to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) designed to meet their unique needs. FAPE is administered through an IEP developed by the IEP team and implemented by the district. The IEP must be “reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances.” *Endrew F. V. Douglas County School District RE-1*, 137 S.Ct. 988, 999 (2017); see also 34 C.F.R. §§ 300.320 to 300.324. The primary function of an IEP is to develop a plan to achieve academic and functional advancement. *Endrew F.*, 137 S.Ct. at 999. A student’s unique needs are more than just mastery of academic subjects, but may include social, health, emotional, physical, and vocational needs of eligible students. *County of San Diego v. California*

Special Education Hearing Office, 93 F.3d 1458, 1467 (9th Cir. 1996). It is the responsibility of the IEP team to determine the special education and related services that a student needs to receive FAPE. *Andrew F.*, 137 S.Ct. at 1001.

The IEP must be implemented as written, including all required components. See 6.31.2.11(B) and 6.31.2.11 (F)(1)(a) NMAC and 34 C.F.R. § 300.323(c). An IEP must include:

1. A statement of the child's present levels of academic achievement.
2. A statement of measurable annual goals, including academic and functional goals.
3. A description of how the child's progress toward meeting the annual goals will be measured.
4. A statement of the special education and related services and supplementary aids and services to be provided to the child.
5. An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in the extracurricular or other nonacademic activities.
6. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on statewide and districtwide assessments.
7. The projected date for the beginning of the services and modifications along with the anticipated frequency, location, and duration of those services and modifications.
8. Appropriate, measurable postsecondary goals and the services needed to reach those goals.
9. Not later than one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights under the IDEA with regard to the rights of the child in reaching the age of majority. 34 C.F.R. § 300.320.

Districts must ensure that disabled students are with non-disabled peers at meals, recess and other nonacademic and extracurricular activities to the maximum extent appropriate. 34 C.F.R. § 300.114 (a).

Public agencies or school districts are responsible to seek out and evaluate students that are suspected of having a disability and in need of special education services. 34 C.F.R. § 300.111(a)(1)(i). They cannot rely on referrals from parents but must seek out those students. *Robertson County School System v. King*, 24 IDELR 1036 (6th Cir. 1996, unpublished). Procedural

safeguards must be provided to parents when there has been a referral or request for an evaluation, or parents request their procedural safeguards. 34 C.F.R. § 300.504 (a).

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). Districts must make reasonable efforts to have parents participate in IEP meetings. 34 C.F.R. § 300.322(d).

- a. Promptly convened an IEP team meeting when Student's disciplinary removals, including suspensions, shortened school days or failure to participate in school programs demonstrated an increase during the 2023-2024 school year;**

Student was not referred for a special education evaluation until September 27, 2023 when the referral was discussed and signed by the Parents during a SAT meeting. Student had ten major referrals in kindergarten and four major referrals in first grade. Student was referred to the HW team in first grade for additional services and supports. Student exhibited negative behaviors at the start of the 2023-2024 school year. Student was also struggling academically. Math and reading were challenging; Student was unable to write name or read at a second-grade level. District had reason to suspect in kindergarten that Student had academic and behavior needs and may need additional services, including specialized instruction, to be successful in school but no referral was made.

However, Student's major behaviors decreased significantly in first grade, due in part, to the support of an experienced teacher. Student had been referred to the HW team and they met once a semester to provide additional supports and services to assist Student. Near the start of second grade, September 14, 2023, Teacher made a referral to the HW team. She contacted the SAT chair and was completing referrals for assistance shortly after the school year began. Early in the year, Teacher implemented interventions and completed an FBA and BIP, without the assistance of special education staff. Although a referral may have been warranted earlier, the District acted appropriately in implementing interventions before completing the referral. Because of the success of the behavioral interventions, there was not a definite child find obligation with respect to Student prior to the signing of the referral on September 27, 2023. Since the IEP was developed on November 15, 2023, the District has convened meetings to revise the BIP to provide Student additional supports to manage behaviors. Student has made progress on IEP goals. There was no violation of Part B of IDEA.

b. Shared information about disciplinary removals with Parent and allowed Parental participation in decisions to address Student's behavior.

Whenever Student was suspended, a copy of the incident report was provided to the parents in person and also emailed to them. Parents stated that reports sent home with Student were not received. Whether this indicates that the District did not send the reports with Student or that Student did not provide them to Parents is difficult to ascertain due to the conflicting and sparse records kept by the District. There was scant documentation about information provided to Parents regarding behavior incidents. When Student returned after a suspension, Parent participated in the reentry meeting to determine how best to meet Student's needs, minimize behaviors and encourage success. Parents were made aware of incidents when Student returned after the suspension, if not before. District had contact with one parent more than the other but there was no evidence that Parents were not kept informed about school and Student's behaviors. Parent signed off on the revision of the BIP at a meeting on March 7, 2024. They did not participate in subsequent parent-teacher conferences but they were informed about Student behaviors and needs. There was no violation of Part B of IDEA.

c. Considered the need for additional services and/or supports to address Student's negative behaviors and lack of academic achievement.

Although Student may have been referred, evaluated and received special education services in kindergarten or first grade, the District's decisions not to proceed in this fashion were reasonable given that the Teacher was seeking assistance from the SAT chair and successfully implemented interventions and a BIP to assist Student in managing behaviors. Student was struggling academically both in reading and math but Student's negative behaviors impacted academic progress. Student ultimately began to receive cross categorical special education services. Student demonstrated progress both behaviorally and academically with these supports. Although Student was still suspended on two separate occasions after the IEP meeting and the negative behaviors did not disappear, the frequency of negative behaviors decreased as the year progressed. Also, the District continued to make changes such as escorting Student to class and lunch to address negative behaviors. There was no violation of Part B of IDEA.

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

Issue No. 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 6.31.2.9 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.” *Endrew 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)*.

During the facilitated IEP meeting on August 6, 2024, Parents indicated that they were satisfied with the IEP for Student. Student had made progress both academically and behaviorally following the development and implementation of the November 15, 2023 IEP. Changes were made to the BIP as needed, when Student continued to exhibit negative behaviors. Student was suspended on two occasions after the development and implementation of the IEP. Special education students may be disciplined in the same way as general education students for violation of the code of conduct. IDEA requires that the IEP team meet when there is a pattern of behavior or change of placement that results in disciplinary removals of Student. OSEP also recommends that the IEP team reconvene to determine additional supports and services when Student is not making progress.

The records here demonstrate that Student was making progress on IEP goals. Negative behaviors had decreased to 1-2 times a week from 2-4 times per day prior to the IEP. Student demonstrated academic progress. Although Student was suspended in late April, 2024, progress notes demonstrated that Student had made progress this school year. There were no procedural violations in this record. While the District may not have demonstrated best practices in their actions toward this Student, particularly with respect to record keeping, such did not rise to the level of procedural or substantive violations of IDEA that would constitute a denial of FAPE.

As to Issue No. 3, the District is not cited.

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

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.

Deputy Secretary, Office of Special Education