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NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Animas Public Schools  
Case No. 2425-11  
November 8, 2024

**This Report does not require corrective action.**

On September 10, 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.<sup>1</sup> 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 Parent;
- review of the District's responses to the allegations, together with documentation;
- review of the District's compliance with federal IDEA regulations and state NMAC rules;
- interview with the Parent.
- research of applicable legal authority.

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<sup>1</sup> 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.

### **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.

### **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 developed and implemented an IEP reasonably calculated to allow Student to make progress, including but not limited to appropriate behavioral interventions, and to receive a free appropriate public education (FAPE) in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC;
2. 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;
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**

1. Student is a 6 year old, first grade student at the District's Elementary School and is eligible for special education services under the eligibility of autism and speech or language impairment. Student was initially placed on an Individualized Educational Program (IEP) on November 2, 2022.
2. Student has an IEP in place developed in October 2023. Student is due for an annual review on October 23, 2024. Parent recently requested a reevaluation of Student and District notified Parent that it will schedule a psychosocial evaluation of student pursuant to Parent's request. District sent Parent a consent form and a Prior Written Notice; the documents had not been returned at the time District provided its information for the investigation.

3. District has been advised that Parent intends to disenroll Student. If Student is not disenrolled, District will convene an IEP meeting after a reevaluation is completed in order to assess whether the IEP needs to be modified to reflect the information contained in the reevaluation.
4. The current IEP, with its corresponding Prior Written Notice (PWN), was developed and accepted by the Team on October 23, 2023. Parent was a member of this IEP Team.
5. This IEP states that Student will follow the school-wide discipline plan and that such is the most appropriate for this Student. The IEP does not indicate that Student requires modifications for discipline or a Behavioral Intervention Plan (BIP).
6. Under the "Area of Need: Behavior/Adaptive Functional" on the IEP, it notes that Student has "shown great improvement towards her goal. When the teacher instructed the whole class on what to do (transitions from one activity to another) [Student] willingly followed. [Student] waited for the teacher to help her out with the activity while sitting down on her chair). [Student] can stay on the carpet and sit down on her chair for the whole activity. The use of a timer with an alarm is effective for her."
7. In the "Instructional Accommodations and/or Modifications" section for "Behavior Management", the IEP requires daily positive reinforcement during instruction.
8. IEP notes "Regular" physical education as appropriate and that Student does not require assistance to move in and around the school.
9. Parent stated in Complaint that Student received "corporal punishment" when District had Student do laps around the school for not lining up at recess. Parent also stated a belief of the right to "specific procedures and protections if the school takes certain disciplinary actions towards your child."
10. District states that a District Aid told Student to do a single lap around the tennis court on a single day for "throwing herself on the floor and failing to follow directions to line up for lunch." District's position is: (1) Having Student walk 1 lap for refusing multiple times to follow a direction is not corporal punishment; (2) District has policy prohibiting corporal punishment (Animas School Board Policy J-4650 JKA); and (3) District would have staff reflect on alternatives to having students walk laps when addressing student conduct and or behavior. District provided this information to Parent in an email sent on September 9, 2024.

## **Discussion and Conclusions of Law**

### **Issue No. 1:**

**Whether the District developed and implemented an IEP reasonably calculated to allow Student to make progress, including but not limited to appropriate behavioral interventions, and to receive a free appropriate public education (FAPE) in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC.**

The IDEA is a federal law that makes available a free appropriate public education (FAPE) to eligible children with disabilities. 34 C.F.R. § 300.1.

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. *Endrew 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). However, a district need not implement a student’s IEP perfectly. See *I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs.*, 863 F.3d 966 (8th Cir. 2017). Only a material failure to implement an IEP violates the IDEA. *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9<sup>th</sup> cir. 2005).

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).

The Parent’s explicit allegations can be taken to assert that District did not properly implement Student’s IEP.

IEP states that Student will follow the school-wide discipline plan and that such is the most appropriate for this Student. There is no dispute that the IEP in place is not appropriate for Student. IEP does not check off that Student requires modifications for discipline or a Behavioral

Intervention Plan (BIP). IEP notes “Regular” physical education as appropriate, and notes that Student does not require assistance to move in and around the school.

Nothing in Student’s IEP prohibits District having Student walk 1 lap around the tennis court as discipline or behavioral redirection when Student failed multiple times to follow a District employee’s directive to line up for lunch.

The District did not fail to properly implement Student’s IEP when it required student to walk a lap as a behavioral intervention or as a form of discipline.

**As to Issue 1, District is not cited.**

**Issue No. 2:**

**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.**

Under IDEA, a district may discipline a student for violation of a code of conduct resulting in removal or suspension from the student’s educational program for not more than 10 school days, provided that all students, including non-disabled students, would be subject to the same discipline. 34 C.F.R. § 300.530(b); 6.31.2.11(F)(2) NMAC. Districts can impose disciplinary action against a special education eligible student but those disciplinary actions cannot adversely affect goals and objectives on the IEP and must not be discriminatory. *OSEP Memorandum 95-16, 22 IDELR 531 (OSEP 1995).*

When the placement of a special education student is changed because of a violation of the code of conduct, a manifestation determination must be completed. 34 C.F.R. 300.530(E). A change of placement occurs when the removal is more than 10 school days or there is a series of removals that constitute a pattern. 34 C.F.R. § 300.356(a).

According to Office of Special Education and Rehabilitative Services (OSERS), corporal punishment involves paddling, spanking, or other forms of physical punishment imposed on a student. Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions, July, 2022. Corporal punishment is prohibited by New Mexico law. NMSA § 22-5-4.3(B).

This investigation does not indicate that corporal punishment was used against Student. Having Student walk a lap around the tennis court may be defined as a redirection as a form of behavior

intervention, or as discipline. Regardless, it was a single incident and even if defined as discipline, did not rise to level of a change in placement requiring a Manifest Determination Review. It also did not adversely affect goals and objectives on the IEP as it occurred during recess and not during instructional time and the facts do not indicate discriminatory use of the behavioral intervention.

The IDEA disciplinary procedural safeguards were not triggered by requiring student to walk 1 lap as a behavioral intervention or a form of discipline. Therefore, the District did not fail to implement the IDEA disciplinary procedures in this instance.

**As to Issue 2, 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 6.31.2.8 NMAC.**

To determine whether FAPE was provided, the United States Supreme Court in the *Rowley* case, established a two-part test:

1. Has the district complied with the procedures set forth in the IDEA?
2. Is the IEP reasonably calculated to enable the child to receive an educational benefit?

If the two-part test is satisfied, FAPE was provided. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (1982).

A procedural violation results in a denial of FAPE 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).

IEP and its provisions are not in dispute. The incident did not occur during or effect instructional time for Student. The incident did not trigger the need for an MDR, nor did it represent corporal punishment. There is no procedural error or any evidence that District has not implemented an IEP reasonably calculated to allow Student to make progress and receive an educational benefit.

**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/ Natalie Campbell*

Natalie Campbell

Complaint Investigator

Reviewed by:

*/s/ Miguel Lozano*

Miguel Lozano, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:

*Margaret Cage*

Margaret Cage, Ed.D.

Deputy Secretary, Office of Special Education