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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
West Las Vegas Public Schools
Case No. 2425-20
December 20, 2024

This Report does require corrective action. See pages 10-12.

On October 25, 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 District's responses to the allegations, together with documentation;
- review of District's compliance with federal IDEA regulations and state NMAC rules;
- interview with Dr. Vidal Martinez, Principal of Student's School and Parent.
- research of applicable legal authority.

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.

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.

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 District failed to implement Student's accommodations as set forth in the Student's IEP, as required by 34 C.F.R. § 300.320(a)(4); and 6.31.2.11(B)(1) NMAC;
2. Whether District ensured that personnel providing special education and/or related services to Student were qualified and appropriately licensed, pursuant to 34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC;
3. Whether Parents were denied meaningful parental participation in decisions involving the education of Student in violation of 34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13 (C) NMAC; and
4. Whether District's actions and/or omissions towards 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 first grader at District. Complainant is Parent of Student.
2. Student had an Individualized Educational Program (IEP) in place as he moved into first grade. Student's eligibility is based on developmental delay, which is appropriate eligibility for his age.
3. Parent alleges that District is not implementing Student's IEP. Specifically, Parent alleges that a special education teacher ("Teacher") was pulled from Student's school to work certain days at other schools, leaving Student without provision of his accommodations per his IEP and without personnel providing special education being qualified and appropriately licensed. Specifically, Parent states that:

- a. Teacher was only at Student's school on two days per week and that one of these days, Friday, is an "activity day" with no curriculum instruction. To wit, Parent alleges that Student has access to Teacher for academic instruction one day per week between October 2, 2024, and October 16, 2024;
 - b. After Teacher's resignation on October 16, 2024, Student has had no qualified and appropriately licensed teachers providing his special education and related services;
 - c. Student has not had his individual or group setting instruction or academic supports required by his IEP.
4. Parent also alleges denial of meaningful parental participation because as of filing this Complaint, District had not "formally" informed parents of any of the above changes and that Parent learned of the situation because she had called Teacher directly.
5. Parent contacted the school principal, and a meeting occurred on October 21, 2024. At the meeting, Parent learned that the school had no teacher/personnel qualified or appropriately licensed to provide special education and/or related services. Parent also learned Student was behind in progress testing due to lack of provision of accommodations.
6. Student's IEP is up to date with the most recent evaluation on November 21, 2022.
7. Student's IEP notes that there are difficulties with vocabulary and clear speech and occupational therapy is offered. Student is provided special education accommodations for District-Wide Assessments.
8. Instructional accommodations and/or modifications for Student include:
 - a. All academic areas;
 - b. Minimize auditory and visual distractions, preferential seating;
 - c. Visual aids, multimodal and/or multisensory presentation, opportunity to have instruction repeated, short instructions;
 - d. UDL [Universal Design for Learning] tools such as Snap and Read, Co-Writer and Text to Speech and Speech to text software, material at current academic level;
 - e. 1:1 support as needed;
 - f. In-classroom testing supports such as extended time, incomplete assignments sent home, human reader and human scribe; and
 - g. Grades determined by general education instructor in collaboration with special education teacher on work completed....
9. Student's IEP provides 60 minutes weekly for special education teacher time in a special education setting; 120 minutes weekly with special education teacher in regular classroom; 30 minutes weekly with speech-language therapist in special education setting; and 15 minutes weekly with occupational therapist in special education setting.

10. Parent's specific allegation of non-provision is that Student has not received 60 minutes/week pull-out time to special education setting or the 120 minutes weekly with special education teacher in regular classroom. Parent does not know whether other accommodations such as multisensory presentation and UDL tools is occurring.
11. With no special education teacher at Student's school every day from October 2, 2024, to October 16, 2024, and no special education teacher available on any days after October 16, 2024, Student's special education services and some accommodations were not implemented. District provided information that preferential seating, extended time, incomplete assignments sent home and iStation testing has occurred (iStation testing was missed and then recently the guidance counselor has caught Student up with all iStation testing).
12. UDL tools such as Snap and Read, Co-Writer and Text to Speech and Speech to text software were not available to Student per the IEP. All time with special education teacher did not occur daily per the IEP from October 2 to present.
13. The investigation shows that Student has received speech-language therapy and occupational therapy consistently.
14. District's response regarding the lack of provision of accommodations stated that it was unsure about parental participation and the provision of FAPE to Student.
15. District stated that a special education teacher was provided to Student up to individual's resignation – thus conceding that since October 16, 2024, there was no qualified and appropriately licensed personnel to provide special education. District did outline its attempts to retain such.
16. District could not provide Prior Written Notice or other notice sent by District to parent notifying of the change in implementation of Student's IEP and/or District's involvement of parent in these changes.
17. District has re-hired the special education teacher who began working at Student's elementary school on November 25, 2024.

Discussion and Conclusions of Law

Issue No. 1:

Whether District failed to implement Student's accommodations as set forth in the Student's IEP, as required by 34 C.F.R. § 300.320(a)(4); and 6.31.2.11(B)(1) NMAC.

Special education is "specially designed instruction provided at no cost to the Parents that is intended to meet the unique needs of a child with a disability." 34 C.F.R. § 300.39(a)(1). This

specialized designed instruction is adapting the content, methodology or delivery of instruction to address the unique needs of an individual child. 34 C.F.R. § 300.39(b)(3).

Once the IEP is developed, it must be implemented with fidelity by staff that have the appropriate training, experience and credentials to assist students. 34 C.F.R. 300.323(c). An IEP must be implemented with all required components. 34 C.F.R § 300.324(b)(ii)(a). However, only material failures of implementation will result in a denial of FAPE. *See, Van Duyn v. Baker School District, 5J, 502 F.3d 811, 822 (9th Cir. 2007).*

Student's IEP had the following accommodations required:

1. Instructional accommodations and/or modifications for Student include:
 - a. All academic areas;
 - b. Minimize auditory and visual distractions, preferential seating;
 - c. Visual aids, multimodal and/or multisensory presentation, opportunity to have instruction repeated, short instructions;
 - d. UDL tools such as Snap and Read, Co-Writer and Text to Speech and Speech to text software, material at current academic level;
 - e. 1:1 support as needed;
 - f. In classroom testing supports such as extended time, incomplete assignments sent home, human reader and human scribe; and
 - g. Grades determined by general education instructor in collaboration with special education teacher on work completed....
2. Student's IEP provides 60 minutes weekly for special education teacher time in a special education setting; 120 minutes weekly with special education teacher in regular classroom; 30 minutes weekly with speech-language therapist in special education setting; and 15 minutes weekly with occupational therapist in special education setting.

With no special education teacher at Student's school every day from October 2, 2024, to October 16, 2024, and no special education teacher available on any days after October 16, 2024, Student's special education services and some accommodations were not implemented. District provided information that preferential seating, extended time, incomplete assignments sent home and iStation testing has occurred (iStation testing was missed and then recently the guidance counselor has caught Student up with all iStation testing).

UDL tools such as Snap and Read, Co-Writer and Text to Speech and Speech to text software were not available to Student per the IEP. All instructional time with special education teacher did not occur daily per the IEP from October 2, 2024, to November 24, 2024.

District failed to provide Student with accommodations as mandated in his IEP.

As to Issue No. 1, the District is cited, Corrective Action is required.

Issue No. 2:

Whether District ensured that personnel providing special education and/or related services to Student were qualified and appropriately licensed, pursuant to 34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC.

Once the IEP is developed, it must be implemented with fidelity by staff that have the appropriate training, experience and credentials to assist students. 34 C.F.R. § 300.323(c). Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR § 300.156. § 6.31.2.9(B)(9)(a) NMAC. A local superintendent or governing body of a charter school shall give written notice to parents of those students who are being taught for longer than four consecutive weeks by a substitute teacher or by a person who is not qualified to teach the grade or subject. § 6.63.10.13 NMAC.

Due to Student not having access to a special education teacher daily, between October 2, 2024 and November 24, 2024, District did not have qualified and appropriately licensed personnel to implement Student's IEP. District has re-hired the special education teacher who began working at Student's elementary school on November 25, 2024.

As to Issue No. 2, the District is cited, Corrective Action is required.

Issue No.3:

Whether Parents were denied meaningful parental participation in decisions involving the education of Student in violation of 34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13 (C) NMAC.

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). In the context of requiring meaningful involvement and input from a student's parents in the IEP, the parents must be provided with prior written notice of any change in the provisions of a student's free appropriate public education. *See Logue v. Unified Sch. Dist.*

No. 512, 153 F.3d 727 (10th Cir. Jul. 16, 1998). Pursuant to 34 C.F.R. §300.503. “a school district must give prior written notice whenever it proposes to change, or it refuses to change, any aspect of a child’s education.” *Murray v. Montrose County Sch. Dist. RE-1J*, 51 F.3d 921, 925 (10th Cir. 1995).

Districts must make reasonable efforts to have parents participate in IEP meetings. 34 C.F.R. § 300.322(a and c) and 6.31.2.13(C) NMAC. IEP team decisions are to be obtained by consensus, if possible, but at a minimum, parents’ concerns are to be considered and addressed if provided. 6.31.2.10(G)(3)(a) NMAC.

A public agency shall give written notice that meets the requirements of 34 CFR Sec. 300.503 to the parents of a child with a disability within a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. If the notice relates to a proposed action that also requires parental consent under 34 CFR Sec. 300.300, the public agency may give notice at the same time it requests parental consent. 6.31.2.13(D)(2) NMAC.

On October 2, 2024, when District made changes to Teacher’s schedule and availability at Student’s school, impacting implementation of the IEP, District did not provide parent with PWN or any notice. Likewise, District did not notify parent when the sole special education teacher resigned from District on October 16, 2024. Parent was allowed to voice concerns based on her initiative contacting Teacher directly and her subsequent request for meeting with District. District did set and attend meeting but could not remedy deficiencies as no special education teacher or qualified substitute could be retained. District’s failure to notify parent of its inability to implement Student’s IEP due to lack of a qualified teacher, denied Parent the right to meaningfully participate in decisions related to Students education.

As to Issue No. 3, the District is cited, Corrective Action is required.

Issue No.4:

Whether District’s actions and/or omissions towards 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.

The cornerstone for analysis of whether a free appropriate public education has been or is being provided is within the four corners of the IEP itself. *See Sytsema*, 538 F.3d at 1316. As noted above, Student’s IEP provides that IEP services will be provided by a special education teacher.

This was not done. This violation, detailed in Issue Number 1, is a substantive violation and a denial of FAPE.

If a procedural violation occurs, then it results in a denial of a free appropriate public education only if the procedural inadequacies: (1) impeded a child's right to a free appropriate public education, (2) significantly impeded the parent's opportunity to participate in the decision-making process for a provision of a free appropriate public education; or (3) caused deprivation of educational benefit. 34 C.F.R. 300.513(a)(2). Procedural defects are insufficient to set aside an IEP unless a rational basis exists to believe the procedural errors seriously hampered the parents' opportunity to participate in the decision process, compromised the student's right to an appropriate education, or caused a deprivation of educational benefits. *See O'Toole*, 144 F.3d 692 at 707 (10th Cir. 1998). In other words, technical deviations alone are insufficient to establish a denial of free appropriate public education. *See Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 726 (10th Cir. 1996).

Procedural violations must adversely impact the student's education or significantly impede on the parent's opportunity to participate in the process. *See Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008). Procedural defects must amount to substantive harm for compensatory services. *See Garcia v. Bd. of Educ. of Albuquerque Pub. Sch.*, 520 F.3d 1116, 1125-26 (10th Cir. 2008).

State rules require District to have properly licensed special education staff implement IEPs of special education students. The facts set forth above clearly indicate that an appropriately licensed teacher was not provided for a period. The facts also show that District failed to notify parent that Student was not receiving services from a licensed, qualified special education teacher. This lack of notice prevented parent from meaningful participating in decision-making processes regarding implementation of Student's IEP. It is concluded that the procedural violation of the IDEA that District is cited for under Issue No. 3 significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and therefore constitutes a substantive violation.

District's actions and/or omissions towards Student and parent of Student resulted in a denial of a FAPE.

As to Issue No. 4, the District is cited, Corrective Action is required.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.320(a)(4); and 6.31.2.11(B)(1) NMAC	District failed to implement Student’s accommodations as set forth in the Student’s IEP
34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC	District failed to ensure that personnel providing special education and/or related services to Student were qualified and appropriately licensed
34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13 (C) NMAC	Parents were denied meaningful parental participation in decisions involving the education of Student
34 C.F.R. § 300.101 and 6.31.2.8 NMAC	District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE)

Required Actions and Deadlines

By January 6, 2025, the Charter School’s Special Education Director must assure the OSE in writing that the Charter School will implement the provisions of this Corrective Action Plan (CAP). The OSE requests that the Charter School submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the Charter School’s progress with the Corrective Action Plan and to be its point of contact about this complaint from here forward:

Ms. Yaling Hedrick
 Corrective Action Plan Monitor
 Office of Special Education
 New Mexico Public Education Department
 300 Don Gaspar Avenue
 Santa Fe, NM 87501
 Telephone: (505) 795-2571

The file on this complaint will remain open pending the PED’s satisfaction that the required elements of this Corrective Action Plan are accomplished within the deadlines stated. The District is advised that the OSE will retain jurisdiction over the complaint until it is officially closed by this agency and that failure to comply with the plan may result in further consequences from the OSE.

Each step in this Corrective Action Plan is subject to and must be carried out in compliance with the procedural requirements of the IDEA 2004 and the implementing federal regulations and

State rules. Each step also must be carried out within the timelines in the Corrective Action Plan. If a brief extension of time for the steps in the Corrective Action Plan is needed, a request in writing should be submitted to the Corrective Action Plan Monitor. The request should include the case number, the date for the proposed extension, and the reason for the needed extension. The OSE will notify the parties of any extension granted.

Please carefully read the entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes. All corrective action must be completed no later than June 30, 2025, and reported to the OSE no later than July 7, 2025. All documentation submitted to the OSE to demonstrate compliance with the CAP must be clearly labeled to indicate the state complaint case number and step number.

Corrective Action Plan

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
1.	As described above, District will submit a written assurance to the PED OSE Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	January 6, 2025	Written Assurance	January 6, 2025
2.	District Special Education Director and the school principal shall meet with the PED OSE Education Administrator assigned to the District and the PED OSE CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that District plans to take to ensure that the violations are corrected and do not recur. The District Special Education Director shall be responsible for arranging this meeting with OSE.	January 17, 2025	Notes	January 24, 2025

<p>3.</p>	<p>The School shall provide Student with the following compensatory education:</p> <ul style="list-style-type: none"> a. 480 minutes total for special education teacher time in a special education setting b. 960 minutes with special education teacher in regular classroom. <p>These compensatory services are above and beyond the regular services required by Student’s IEP. Student should not be removed from core or elective classes to receive compensatory service minutes.</p> <p>The schedule for compensatory services should be developed in collaboration with the parent and may include provisions for services in the summer months.</p> <p>The plan for compensatory education shall be documented through a formal prior written notice.</p> <p>If the District cannot provide compensatory education through District employed providers, it shall contract with a private provider to deliver these hours of compensatory education.</p>	<p>June 30, 2025</p>	<p>Documentation of delivery/provision of compensatory education services, including logs of services recorded in the PED-approved Excel spreadsheet log provided by the OSE CAP monitor.</p> <p>Prior Written Notice containing plan for compensatory services</p>	<p>Monthly from date of compensatory services plan until the compensatory education minutes are completed</p> <p>February 1, 2025</p>
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<p>4.</p>	<p>The District shall arrange to provide training to District staff (including special education teachers, special education administrators, diagnosticians and related service personnel). The training shall be provided by a person independent of the District with expertise in special education who was not involved in responding to this complaint. The training shall be conducted at District’s expense.</p> <p>The training shall address the following special education topics:</p> <ol style="list-style-type: none"> 1. Ensuring Appropriately qualified staff; 2. Issuance of Prior Written Notices; 3. Meaningful parental participation when circumstances change that impact the students receipt of FAPE; and 4. Provision of accommodation and modifications. 	<p>March 7, 2025</p>	<p>Submission of proposed trainer and trainer’s resume and proposed presentation for NMPED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.</p>	<p>January 22, 2025</p> <p>February 10, 2025</p> <p>March 14, 2025</p>
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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/ 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