



STATE OF NEW MEXICO  
PUBLIC EDUCATION DEPARTMENT  
300 DON GASPAR  
SANTA FE, NEW MEXICO 87501-2786  
Telephone (505) 827-5800  
[www.ped.state.nm.us](http://www.ped.state.nm.us)

MARIANA D. PADILLA  
SECRETARY DESIGNATE OF PUBLIC EDUCATION

MICHELLE LUJAN GRISHAM  
GOVERNOR

NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Bloomfield Public Schools  
Case No. 2425-27  
February 4, 2025

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

On December 6, 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 complainant;
- review of the District's responses to the allegations, together with documentation submitted by the Local Education Agency (LEA) at the request of the PED's independent complaint investigator;

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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.

- review of the District’s compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Complainant and School employees; 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.

### **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 ensure that the Individualized Education Program (IEP) was available to all teachers in violation of 34 C.F.R. §§ 300.323(d) and 6.31.2.11(b)(1) NMAC;
2. Whether the District failed to ensure that all teachers understood the specific accommodations and/or modifications that must be provided to the Student under the IEP in violation of 34 C.F.R. §§ 300.323(d) and 6.31.2.11(b)(1) NMAC;
3. Whether the LEA disclosed Student’s personally identifiable information (PII) without Parent’s consent, in violation of 34 C.F.R. § 300.622-623 and 6.31.2.13(L) NMAC; and
4. Whether the District’s actions and/or omissions 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 ten years old and is a fifth grader attending Elementary School in the District.
2. The 2024-2025 school year began August 9, 2024.
3. Student is currently under an Individualized Education Plan (IEP) (dated October 2, 2024) with an IEP Amendment (dated January 17, 2025).
4. However, at the beginning of the 2024-2025 school year, Student was attending school under an IEP dated October 11, 2023.
5. Under both IEPs, Student's primary eligibility for services is dyslexia. There is no secondary eligibility noted.
6. Both IEPs address instructional and/or modifications for math and science testing in the classroom setting that includes Text-to-Speech (TTS). Student had headphones to allow for TTS, and Student used the headphones for various school purposes.
7. At the beginning of the 2024-2025 school year, Student's regular classroom teacher (Teacher 1) signed a District Elementary Accommodation and Modifications Signature Form on August 12, 2024, acknowledging receipt of copies of Student's, IEP and Instructional Accommodations and Modifications and Testing Accommodations, along with several other documents. This form was signed 3 days after the school year started.
8. During an interview with the complaint investigator, Teacher 1 indicated it was standard District protocol for a teacher (and other staff providing special education services) to sign the Elementary Accommodation and Modifications Signature Form at the beginning of the school year.
9. Teacher 1 reviewed Student's IEP (dated October 11, 2023) and was familiar with Student's specific accommodations.
10. The District Elementary Accommodation and Modifications Signature Form also reflects signatures not only from Teacher 1 but also from other District personnel, including the music teacher, art teacher, librarian, and physical education teacher.
11. Teachers also have access to an assigned student's IEP through the District's PowerSchool, a cloud-based software system for school districts to manage student information.
12. On August 29, 2024, Student was administered the Fall Northwest Evaluation Association (NWEA) MAP Math Assessment in a small group setting pursuant to the October 11, 2023, IEP. Student used TTS for this assessment.
13. Student's overall score for the Fall NWEA MAP Math Assessment was 188.
14. On September 5, 2024, Teacher 1 forwarded to the Principal a voice message that Parent 1 had left for Teacher 1 on September 4, 2024, containing concerns Parent 1 had with Teacher 1.

15. Parent 1 indicated in that voicemail that Teacher 1 told Student to “hurry up and pack up” to get to Student’s next class. Parent 1 indicated that Teacher 1 should not say this to Student since Student was subject to an IEP.
16. Student was over ten minutes late getting to that next class, a class that was identified in Student’s October 11, 2023, IEP.
17. A second concern expressed in the September 4, 2024, voicemail from Parent 1 was not related to issues raised in the Complaint.
18. A third and separate concern Parent 1 had with Teacher 1 was set forth in the Complaint and indicated that Teacher 1 retaliated against Student in class using a non-verbal signal. This incident occurred after a verbal conversation between Parent 1 and Teacher 1.
19. The Complaint “notes a separate incident” involving Teacher 1.
20. During an interview with the complaint investigator, Parent 1 indicated that this incident was not related to Student’s IEP or related matters.
21. On September 6, 2024, the Assistant Principal spoke with Parent 1 regarding Parent 1’s concerns. The Assistant Principal offered to move Student from Teacher 1’s classroom to Teacher 2’s classroom. Parent 1 became upset with Assistant Principal.
22. Despite these concerns, Parent 1 did not want Student removed from Teacher 1’s classroom.
23. On September 9, 2024, Parent 2 called the District to advise that Parent 1 was unavailable to talk to District personnel. However, Parent 2 indicated Parent 2 wanted to visit with the Principal.
24. During a meeting between Principal and Parent 2, it was agreed that Student would be transferred from Teacher 1’s classroom to Teacher 2’s classroom. That transfer occurred on September 9, 2024.
25. Either on the day of or on the day after the September 9, 2024, transfer, the Special Education Resource Teacher provided Teacher 2 with a copy of Student’s October 11, 2023, IEP.
26. Teacher 2 reviewed the copy of the October 11, 2023, IEP.
27. On October 2, 2024, an annual IEP meeting was held in which Parent 2 and Teacher 2 participated as IEP team members.
28. During the October 2, 2024, IEP Team meeting, the IEP team agreed that the Least Restrictive Environment (LRE) for administering assessments would be changed to the regular classroom, as opposed to a small group setting as set forth in the October 11, 2023, IEP.
29. The new annual IEP became effective on October 2, 2024.
30. As an IEP team member for the new IEP, Teacher 2 was aware of the change in assessment setting to the regular classroom.

31. On December 2, 2024, an email was sent to District teachers, including Teacher 2, regarding the upcoming testing sessions with a reminder about the TTS accommodation. A roster of students (assigned to Teacher 2) needing accommodations was attached.
32. On December 5, 2024, Student was administered the Winter NWEA MAP Math Assessment in the regular classroom as set forth in the October 2, 2024, IEP, but without the TTS accommodation.
33. Teacher 2 did not remind Student that Student could use Student's headphones (which were always available to Student) for the Winter NWEA MAP Math Assessment administered on December 5, 2024.
34. Student's overall score for the Winter NWEA MAP Math Assessment was 195.
35. On that same day of the assessment, the Elementary School's Testing Coordinator identified a procedural implementation irregularity concerning Student's assessment being administered in the regular classroom without the TTS accommodation.
36. The Testing Coordinator reported the procedural irregularity involving Student to the District Assessment/Multi-Level System of Supports (MLSS) Coordinator.
37. On December 5, 2024, the Testing Coordinator reported the procedural irregularity to Parents.
38. On December 5, 2024, the District attempted to communicate with Parent 1 by telephone to offer a retest for the Student. Unable to reach Parent 1, a message was left.
39. Parent 1 did not return the telephone call.
40. Parents filed the Complaint on December 6, 2024.
41. The District Assessment/MLSS Coordinator conducted an investigation into the testing irregularity with a report completed on December 9, 2024.
42. The December 9, 2024, investigation report detailed the testing irregularity and steps taken by the District following the testing event.
43. Further, the December 9, 2024, investigation report found that a procedural error occurred when Teacher 2 did not ensure Student was using her TTS equipment for the Winter 2024 NWEA MAP Math Assessment.
44. The December 9, 2024, investigation report also indicated that the District put measures in place to prevent future recurrences of like procedural irregularities.
45. These measure training and reminders to staff concerning testing protocols.
46. On January 17, 2025, a Facilitated IEP ("FEIP") meeting was held, and Parent 1 was in attendance and participated as an IEP team member.
47. Parent 1 stated during the FIEP meeting that Student did not need to retake the Winter NWEA MAP Math Assessment.

**Discussion and Conclusions of Law**

**Issue No. 1**

**Whether the District failed to ensure that the IEP was available to all teachers in violation of 34 C.F.R. §§ 300.323(d) and 6.31.2.11(b)(1) NMAC.**

After an IEP is written, a district must provide the student with the special education and any related services listed in the IEP. This includes all supplementary aids and services and program modifications that the IEP team has identified as necessary for the student. To do so, a child's IEP must be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. Specifically, 34 C.F.R. § 300.323(d)(1) requires that each public agency must ensure that

The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation.

6.31.2.11(B)(1) NMAC. *See, Reynolds Sch. Dist. 7*, 116 LRP 40139 (SEA OR 08/19/16) (The general education teacher told the Oregon Department of Education he was never fully trained to access the school's online IEP system and lacked electronic access to the child's BIP.).

In this matter, under subsection (1) of 34 C.F.R. § 300.323(d), the District provided copies of Student's IEP to Teacher 1 at the beginning of the 2024-2025 school year. Teacher 1 was aware of specific accommodations required for Student in connection with the Fall NWEA MAP Math Assessment. This Fall assessment was to be administered in a small group setting with TTS pursuant to the October 11, 2023, IEP. Likewise, the District provided a copy of Student's October 11, 2023, IEP to Teacher 2 upon the transfer of Student to Teacher 2's classroom on September 9, 2024.

As an IEP Team member for the October 2, 2024, IEP meeting, Teacher 2, would have been aware that LRE was discussed and resulted in a change to the assessment setting for the Winter NWEA MAP Math Assessment, i.e., the assessment was to be administered in regular classroom setting with TTS pursuant to the October 2, 2024, IEP.

Moreover, the District made Student's IEP accessible online through PowerSchool to each regular education teacher, special education teacher, related services providers responsible for implementing the Student's IEP.

Prior to the Fall and Winter NWEA MAP Math Assessments, the District also circulated an email communication to the regular education teachers containing information regarding the assessments, including information regarding accommodation needs for each student in each teacher's classroom.

The Student's IEP was accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation.

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

**Issue No. 2**

**Whether the District failed to ensure that all teachers understood the specific accommodations and/or modifications that must be provided to the Student under the IEP in violation of 34 C.F.R. §§ 300.323(d) and 6.31.2.11(b)(1) NMAC.**

As noted above, a school district must ensure that each regular teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of a child's IEP has access to each assigned student's IEP. In addition, 34 C.F.R. 300.323(d)(2) and 6.31.2.11(b)(1) NMAC require that Districts ensure each regular teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of a child's IEP is informed of the specific responsibilities related to implementing the child's IEP, including the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. *See, Ashland Sch. Dist., 70 IDELR 112 (SEA WI 2017) (A district's failure to inform teachers and service providers of their specific responsibilities resulted in inconsistent implementation of a student's one-on-one assistance services, sensory diet, and positive behavioral supports.)*

Here, Student's specific accommodations, modifications, and supports were made available with paper copies of the IEP provided to the regular classroom teachers, special education teachers, and related services providers responsible for the implementation of Student's IEP. In addition, this information was available online through PowerSchool as well as communications sent regular classroom teachers, special education teachers, and related services providers responsible for the implementation of Student's IEP prior to each assessment, with an attached list of specific accommodations, modifications, and supports for each student, including Student.

In summary, the District ensured each regular teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of Student's IEP was informed of the specific responsibilities related to implementing the Student's IEP, including the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

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

**Issue No. 3**

**Whether the LEA disclosed Student's personally identifiable information (PII) without Parent's consent, in violation of 34 C.F.R. § 300.622-623 and 6.31.2.13(L) NMAC.**

Pursuant to the provisions of 34 C.F.R. § 300.623(a), each school district collecting, using, or maintaining any personally identifiable information on children under Part B of IDEA shall comply with all applicable requirements of 34 CFR §§ 300.610 through 300.626 and the federal Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99. *See also*, 6.31.2.13(L) NMAC.

The Complaint indicates that Teacher 1 violated FERPA through non-verbal signaling to students in her class that referenced Student. However, Parent 1 confirmed during the interview with the complaint investigator that he did not think the violation described in the Complaint was related to Student's IEP or matters associated with District's special education and related services to Student under the IDEA.

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

**Issue No. 4**

**Whether the District's actions and/or omissions 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.**

If a public school district fails to comply with a procedural requirement under the IDEA, that violation only denies a student FAPE if it is material and deprives the student of educational benefit. 34 CFR 300.513 (a)(2). Thus, a parent or student can only obtain relief by showing that the procedural violation was not *de minimis* and resulted in a loss of educational benefits.

In other words, a school district may be found to have denied a child FAPE if the procedural inadequacies impeded the child's right to a FAPE. *Id.* Often, a district's good faith efforts in other respects can mitigate any educational harm that might result from a minor procedural error. *See*,



*e.g., K.K-M. v. New Jersey Dep't of Educ.*, 124 LRP 14958 (D.N.J. 05/07/24) (Although a district completed assessments four days beyond the deadline for a triennial evaluation and thus violated the IDEA procedurally, the error did not amount to a denial of FAPE. The district regularly addressed the students' changing needs and provided them with appropriate IEPs for three years.).

A district may not be liable for a procedural violation if it is shown that the student made adequate progress despite its error. *See, e.g., William V. v. Copperas Cove Indep. Sch. Dist.*, 77 IDELR 92 (5th Cir. 2020, unpublished), cert. denied, 121 LRP 33988, 142 S. Ct. 72 (2021) (Because a second-grader with dyslexia made progress in the general education curriculum despite a Texas district's failure to find him eligible for IDEA services as a student with a specific learning disability, his parents could not show that the district denied him FAPE.).

To determine whether an implementation failure is material, courts generally compare the quantity and quality of the services actually provided to those required by the IEP. In other words, courts consider the amount of services withheld and the importance of those services. *See, e.g., In re: Student with a Disability*, 75 IDELR 284 (SEA DE 2019) (A Delaware district's failure to notify a culinary arts teacher that a newly enrolled student had an IEP resulting in her failure to provide necessary services amounted to a "*de minimus*" implementation failure.).

In this matter, the District identified a procedural implementation error in failing to ensure Student used TTS capability during the Winter NWEA MAP Math Assessment as set forth in the October 2, 2024, IEP. This error was identified on the same day the assessment was administered, and Parents were notified. Parents did not respond to the District's offer to readminister the test. However, during the January 17, 2025, Facilitated Individual Education Plan (FIEP) meeting, the FIEP team discussed the issue of readministering the Winter NWEA MAP Math Assessment. Parent 1 stated that Student did not need to retake the math assessment.

Further, Student's assessment results for the Winter NWEA MAP Math Assessment reflected a total score that was higher (without TTS) than the Fall NWEA MAP Math Assessment (with TTS) score. The Student still made adequate progress on the assessment. As a result, there was no significant educational harm. *Id.* The failure of the teacher to ensure Student was using TTS services amounted to a *de minimus* procedural implementation error.

When the procedural implementation error was discovered, the District quickly put measures in place to prevent future occurrences, including training and reminders to staff concerning testing protocols.

**As to Issue No. 4, the District is not cited.**

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

Investigated by:

*/s/ Samuel Kerr*

Samuel D. Kerr, J.D., Ed.D.

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