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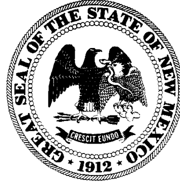

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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Carlsbad Municipal School District
Case No. 2425-31
February 14, 2025

This Report does not require corrective action.

On December 17, 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 Complainant and District's Director of Special Education
- 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. 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 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; including, but not limited to, whether District developed appropriate accommodations for Student;

2. Whether the Student's placement was properly determined and provided in the least restrictive environment (LRE) appropriate for the Student's needs, pursuant to 34 C.F.R. §§ 300.114 through 300.118; 300.327; 300.501; and 6.31.2.11(C) NMAC.

3. Whether Parents was 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;

4. Whether the District provided prior written notice(s) (PWN) that accurately reflect what was discussed and agreed upon at the IEP meeting(s), pursuant to 34 C.F.R. § 300.503 and 6.31.2.13(D)(2) NMAC;

5. Whether District is required to provide special education and related services pursuant to either 34 C.F.R. § 300.104 or 6.31.2.11(N) NMAC;

6. Whether 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. Complainant are Parents of Student.
2. Student attends a District high school.
3. In the State complaint, Parents asserts the following:
   a) Student has been hospitalized 3 times in the past year at District school;
   b) Parents requested a meeting to discuss long-term mental health facility placement for Student;
   c) This meeting occurred on December 13, 2024;
   d) District's Secondary Special Education Coordinator stated that District did not recommend Student going to long-term facility and provided no reasons for the District's position;
   e) Prior to the December 13, 2024 meeting, District personnel supported getting Student the help needed;
   f) The PWN issued from December 13, 2024, meeting did not reflect what was discussed at meeting;
   g) District refused to engage with two facilities to provide Student school work and special education services.

IEP Development and Implementation & Parental Participation

4. Student's eligibility category at all times material to this case, was Emotional Disturbance (ED).
5. In the past year, Student transferred out of District to a different state (March 2024) and then back to District (August 2024).
6. When Student transferred back to District from out of state in August 2024, District provided comparable accommodations in place from the out of state district -- which were, themselves, based on District's 2022 IEP.
7. District then did its own IEP for Student on September 17, 2024.
8. As of September 17, 2024, Student did not need an individualized health plan or school health services as a related service and services included the following (all to occur in the special education setting):
   a) Social Work Services, 60 minutes weekly;
   b) English 150 minutes weekly; and
   c) Math 150 minutes weekly.
9. In the September 17, 2025 IEP, Student's least restrictive environment (LRE) was to be inside the regular class 80% or more of each day at Student's neighborhood school. A Safe Plan was developed as referenced in this IEP, which allowed Student to go to nurse to deescalate.

10. Parents did not object to provisions in the September 17, 2024 IEP.
11. The September 2024 IEP remained in place until a Facilitated IEP (FIEP) meeting was held on January 9, 2025, per agreement of parties after the filing of this State complaint. The January 9, 2025, FIEP meeting resulted in an Amendment to the September 17, 2024, IEP.
12. The January 2025 Amendment added behavioral needs whereas the September 17, 2025, stated there were no behavioral needs.
13. The Addendum also added need for a Functional Behavior Assessment (FBA). The Addendum also increased services for English and Math up to 150 minutes per week and added 1560 minutes per week of behavior management in the regular education classroom.
14. The least restrictive environment (LRE) remained the same as in the September 17, 2024, IEP – 80% or more of each day in regular class with one-on-one support added (reflected in the 1560 minutes per week of behavior management).
15. The January 2025 Amendment also included District putting a new Safety Plan in place for Student and requesting and receiving consent to further evaluate Student to include: Observation of learning environment, social/emotional assessment, and FBA, and an adaptive behavior assessment.

PWNs & Parental Participation

16. PWNs appear to have been created by District for all actions during the relevant time-period.
17. In November of 2024, District sent a PWN related to Parents requested IEP team meeting to discuss Student's reentry after leave for medical reasons.
18. The November 7, 2024 PWN states, among other things, that:
    a) Parents reported tentative future steps related to the student's health and long-term residential treatment (accepted by all team members);
    b) District proposed for Student to sign a Release of Information (ROI), needed due to her age, to allow District to obtain recent medical documentation (accepted by all team members);
    c) District proposed that case manager will provide communication to regular education teachers and staff which will be related to the safety plan (accepted by all team members); and
    d) Parents proposed a schedule change (rejected by IEP Team).
19. The December 13, 2024 PWN states, among other things, that
    a) Parents gave an update on Student's present circumstance and explained that Student went from an ER to an in-state private facility. This facility recommended a longer-term facility, which led to Student's placement in an out-of-state private facility. The current facility is recommending a long-term treatment center (possibly 6 months to one year)(accepted by all team members);

b) Parties discussed and disagreed about whether District had been provided with signed ROIs for the two facilities.
c) Parents requested District pay for long-term facility (rejected by IEP Team because District did not recommend placement at the long-term facility for Student to receive FAPE);
d) Parents explained that the out-of-state facility requires the home district to provide education to students in their care; District stated that the district servicing the facility's area would be responsible, but before such a change would occur, Student should finish classes through home district via APEX assignments (done on a laptop remotely) (accepted by all team members); and
e) The IEP team came up with an academic and servicing plan to best meet Student's needs while completing the semester, to include APEX work with accommodations incorporated by Student's case manager, with grades listed as incomplete (accepted by all team members).

20. Parents assert that the information contained in December 13, 2024 PWN does not accurately reflect the discussion that occurred. Parents sent an email to District clarifying specific language in the PWN. The clarifications did not change the substantive positions of Parents or District, but added specific language used that Parents found unhelpful and dismissive. Both the PWN and Parents' language reflect disparate positions relative to placement of Student into long-term facility by the IEP Team; provision of services by District while Student is in-patient at facility outside the boundaries of District; and payment for the facility.
21. Parents state that they did not receive a PWN from District for the January 9, 2025, FIEP meeting. District provided an email showing attachment of PWN being sent to Parents on January 16, 2025.
22. The content of January 9, 2025, PWN is not at issue for this State complaint and does not relate to issues investigated so details are not provided herein.

<u>Placement of Student & Provision of Services (FAPE) After Change of Placement to Out of State Private Facility</u>

23. The chronology relevant to this State complaint, relative to placement of Student, is as follows:
    a) October 30, 2024, due to a single event after Student transferred back to District, Student had an assessment done at her neighborhood school by a qualified individual who determined she needed to be admitted for further evaluation;
    b) Student went to an in-state facility for further evaluation, and it was determined that Student needed to be admitted into a private in-state facility. This occurred on October 30, 2024. Student was released on November 17, 2024, to care of Parents.

c) The in-state private facility notes that Student was traveling to an out-of-state facility with arrival listed as November 18, 2024; and
d) Student remained in the out-of-state facility until mid-January 2025, whereupon she returned to District.

24. Student's placement in both the in-state facility and the out-of-state facility were medical placements and not educational placements via an IEP team decision. The placement in the in-state facility was a decision made at the emergency room on October 31, 2024. The placement in the out-of-state facility was made by Parents upon advice of staff at the in-state facility.
25. Both the in-state and out-of-state facilities lie outside the boundaries of District.
26. District provided records from the in-state facility and did not provide records from the out-of-state facility.
27. On December 10, 2024, Parents spoke in person with District Superintendent. Parents' recollection of conversation was that Superintendent stated Student would receive up to 90 days of services from neighborhood school while in-patient at the out of state facility; that he has seen such services paid for in the past and that the Director of Special Education would call with more information. Parents state they did not receive a follow-up call from the Director but that she was present at the next IEP Team Meeting. Superintendent's recollection of conversation was that Parents had concerns about the IEP and denial of services and that Superintendent listened to Parents and told Parents the matter would be investigated, but experience was that District did not typically pay for such services and that no commitment on behalf of District was made as such needed to move through the IEP team process.
28. As provided above, Parents and District disagreed about which district (home or local to the two facilities) should provide services for Student and who should pay for such.
29. At the December IEP meeting, Parents and District agreed for District to provide services to Student through the end of the fall semester and over winter break via APEX with accommodations. Parents assert that beyond one day's provision of services, APEX was locked and the promised services were not provided.

<u>Discussion and Conclusions of Law</u>

<u>Issue No. 1:</u> ***Whether 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; including, but not limited to, whether District developed appropriate accommodations for Student.***

The primary vehicle for providing FAPE is through an appropriately developed IEP that is based on the individual needs of the child. *Dear Colleague Letter,* 115 LRP 53903 (OSERS 2015). The IDEA requires a district offer an IEP reasonably calculated to enable a child to make progress

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appropriate in light of their circumstances. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17. The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1,* 137 S. Ct. 988, 994 (2017) (*quoting Honig v. Doe,* 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley,* 458 U.S. 176, 181 (1982)). A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

New Mexico statute, at § 32A-6A-12(A)(13) NMSA provides that a child in an out-of-home treatment or habilitation program shall have, in addition to other rights set forth in the Children's Mental Health and Developmental Disabilities Act, the right to:

> [A] free public education. The child shall be educated in regular classes with nondisabled children whenever appropriate. In no event shall a child be allowed to remain in an out-of-home treatment or habilitation program for more than ten days without receiving educational services. If the child's placement in an out-of-home treatment or habilitation program is required by an individualized education plan that conforms to the requirements of state and federal law, the sending school is responsible for the provision of education to the child. In all other situations, the local school district in which the out-of-home treatment or habilitation program is located is responsible for the provision of educational services to the child. Nothing in this subsection shall limit a child's right to public education under state, tribal or federal law.

Student's placement was not changed for education purposes and was not changed pursuant to an IEP team decision. Student was checked into an out-of-state private facility, upon medical recommendation to Parents from a private in-state medical facility. Thus, § 32A-6A-12(A)(13) NMSA as quoted above controls: [t]he local school district in which the out-of-home treatment

As it relates to the development and implementation of Student's IEP and accommodations, Parents accept both the September 17, 2024, IEP and January 9, 2025, IEP and all corresponding accommodations and their development and implementation are not at issue.

Parents wanted District to develop and implement an IEP that changed Student's placement to a long-term facility between November and December of 2024. However, at this time, Student was medically placed in facilities beyond the boundaries of District which legally results in District not

being responsible to address Student's IEP or accommodations, to include placement, until Student returns to District or to a facility within the boundaries of District.

Because District did not have a legal duty to develop or implement Student's IEP to allow Student to make educational progress in the general education curriculum during the time periods in question, District did not violate 34 C.F.R. §§ 300.321, 300.324; 300.501(b)(c)(1) or 6.31.2.11(B)(1) and 6.31.2.13(c) NMAC.

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

<u>Issue No. 2:</u> Whether the Student's placement was properly determined and provided in the least restrictive environment (LRE) appropriate for the Student's needs, pursuant to 34 C.F.R. §§ 300.114 through 300.118; 300.327; 300.501; and 6.31.2.11(C) NMAC.

Districts must ensure that—

> (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
> (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114(a)(2).

Districts must also ensure that placement decisions for students with disabilities are:

> (1) made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
> (2) made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118; and that the student's placement is determined at least annually, is based on an IEP, and is as close as possible to student's home. 34 C.F.R. § 300.116.

Student's placement was not changed for education purposes and was not changed pursuant to an IEP team decision. Student was placed, first, in an emergency room setting whereupon the medical decision was made to place Student in a private in-state facility. Student was then checked into an out-of-state private facility, upon medical recommendation to Parents from the private in-state medical facility. Thus, § 32A-6A-12(A)(13) NMSA as quoted above controls: [t]he local school district in which the out-of-home treatment or habilitation program is located is responsible for the provision of educational services to the child.

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Because Student's IEP did not change placement, the local school districts in which the out-of-home treatments or habilitation programs were located were responsible for the provision of educational services to the child.

Thus, District did not fail to properly determine or provide placement for Student in the least restrictive environment appropriate for the Student's needs in violation of 34 C.F.R. §§ 300.114 through 300.118; 300.327; 300.501; and 6.31.2.11(C) NMAC.

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

***<u>Issue No. 3:</u>* 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 of a student with a disability must be afforded an opportunity to participate in meetings with respect to: (1) The identification, evaluation, and educational placement of the student; and (2) provision of FAPE to the student. 34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13(C) NMAC.

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.

Parents participated in IEP team meetings for the development of IEPs and to address reentry provisions for Student. The IEP documents and PWNs indicate parental participation and that Parent concerns were considered and addressed. The IEP team did not come to a consensus about payment or provision of services to Student while medically placed in facilities beyond the boundaries of District, but lack of consensus does not violate federal or state law.

The parental participation, input and documentation of disagreements evidence meaningful parental participation in decisions involving the education of Student and District did not violate 34 C.F.R. § 300.501(b) and (c)(1) or 6.31.2.13 (C) NMAC.

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

***<u>Issue No. 4:</u>* Whether the District provided prior written notice(s) (PWN) that accurately reflect what was discussed and agreed upon at the IEP meeting(s), pursuant to 34 C.F.R. § 300.503 and 6.31.2.13(D)(2) NMAC.**

A district must provide prior written notice prior to proposing or refusing to change the provision of FAPE to a child. 34 C.F.R. § 300.503. The content of the notice must include: (1) A description

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of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal. *Id.*

Parents asserted that information contained in December 13, 2024, PWN did not accurately reflect the discussion that occurred. Parents sent an email to District clarifying specific language in the PWN. The clarifications did not change the substantive positions of Parents or District, but added specific language used at the meeting that Parents found unhelpful and dismissive, and which was not contained in the PWN. Both the PWN and Parents' language reflect disparate positions relative to placement of Student into long-term facility by the IEP Team; provision of services by District while Student is in-patient at facility outside the boundaries of District; and payment for the facility.

Actions by District taken from Student's transfer back to District from out of state, through the January IEP, have PWNs associated with them.

The investigation demonstrates that District provided prior written notices (PWN) that accurately reflected what was discussed and agreed upon at the IEP meetings and did not violate 34 C.F.R. § 300.503 or 6.31.2.13(D)(2) NMAC.

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

<u>Issue No. 5:</u> Whether District is required to provide special education and related services pursuant to either 34 C.F.R. § 300.104 or 6.31.2.11(N) NMAC.

New Mexico statute, at § 32A-6A-12(A)(13) NMSA provides that a child in an out-of-home treatment or habilitation program shall have, in addition to other rights set forth in the Children's Mental Health and Developmental Disabilities Act, the right to:

> [A] free public education. The child shall be educated in regular classes with nondisabled children whenever appropriate. In no event shall a child be allowed to remain in an out-of-home treatment or habilitation program for more than ten days without receiving educational services. If the child's placement in an out-of-home treatment or habilitation program is required by an individualized education

> plan that conforms to the requirements of state and federal law, the sending school is responsible for the provision of education to the child. In all other situations, the local school district in which the out-of-home treatment or habilitation program is located is responsible for the provision of educational services to the child. Nothing in this subsection shall limit a child's right to public education under state, tribal or federal law.

Student's placement was not changed for education purposes and was not changed pursuant to an IEP team decision. Student was checked into an out-of-state private facility, upon medical recommendation to Parents from a private in-state medical facility. Thus, § 32A-6A-12(A)(13) NMSA as quoted above controls: [t]he local school district in which the out-of-home treatment or habilitation program is located is responsible for the provision of educational services to the child.

It is unfortunate District (a) stated that it would provide services and then did not provide services and (b) failed to appropriately educate Parents about New Mexico law related to what District is responsible for provision of educational services depending on who or what entity changes placement of student. so that they could make decisions with such knowledge. However, District's failures do not create a legal duty for District to provide educational services when placement is not required by an individualized education plan (IEP) and District, thus, did not fail to provide special education and related services in violation of 34 C.F.R. § 300.104 or 6.31.2.11(N) NMAC.

As to Issue No. 5, the District is not cited.

Issue No. 6: ***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.***

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. Districts are 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 in determining 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 results in the loss of an educational opportunity, or infringes on parents' opportunity to participate in the development of the IEP or deprives the student of an educational benefit. All

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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). At a minimum, IEPs must be reviewed annually. 34 C.F.R. § 300. 324(b).

As discussed in Issues 1 through 4, District did not procedurally or substantively violate Student's rights relative to the development and implementation of an IEP; was not involved in Student's placement in the two in-patient facilities as such were medical and parental placements; Parents were provided meaningful participation; and PWNs were created and provided; and District was not legally required to provide special education or related services while Student was medically and parentally placed outside boundaries of District. Therefore, District did not deny Student FAPE.

As to Issue No. 6, 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.
Deputy General Counsel, Office of General Counsel

Reviewed and approved by:
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