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NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Las Cruces Public Schools  
Case No. 2425-34  
February 28, 2025

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

On January 7, 2025, 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 Complainants (Grandparents);
- 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 Complainants and District Assistant Principal; and

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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.

- 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 District implemented Student's IEP relative to District's responses, action or inaction regarding 2024 incident between Student and other students, in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC;
2. Whether Grandparents were denied meaningful parental participation in decisions involving the education of Student in violation of 34 C.F.R. § 300.321(a)(1); 34 C.F.R. § 300.501(b) and (c)(1) and 6.31.2.13 (C) NMAC; and
3. 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. Complainants are grandparents and legal guardians of Student. They are referred to as Grandparents in this document.
2. Student attends a District high school and has an IEP with eligibility categories of Emotional Disturbance and Other Health Impairment.
3. Student does not have an Individualized Health Plan or an emergency evacuation plan, and does not require assistance to move in and around the school.
4. Student participates in regular physical education and follows District's standard discipline policies.
5. Student's IEP lists the following services:
  - a) 50 minutes weekly, reading service in special education classroom;
  - b) 100 minutes weekly math service in special education classroom;
  - c) 100 minutes weekly special education instruction in general education classroom;

- d) 30 minutes weekly psychologist services in classroom/on campus; and
- e) 30 minutes weekly case management work in special education classroom.
- 6. The IEP indicates that “Mental Health Services Required” and such are listed in the IEP section, “Statement of Special Education/Related Services.” Those services are noted above in paragraph 4.
- 7. Student’s IEP section “Supplementary Aids and Services (Accommodations and Modifications) list multiple accommodations, but there are not accommodations requiring at-will access to psychologist.
- 8. Student does not have a Safety Plan in place.
- 9. On August 27, 2024, a series of events led to Student being battered with injuries by another student.
- 10. In the State complaint, Grandparents assert the following:
  - a) On August 27, 2024, Student was threatened in the bathroom by multiple girls.
  - b) A District administrator (D.A.) heard the commotion in the bathroom and spoke to all girls involved and ended up sending Student back to class. At this time, Student requested to call her Grandparents. D.A. did not allow the call and stated she would call Grandparents. Grandparents assert D.A. did not call them.
  - c) Grandparents assert sub-paragraphs a-c, above, demonstrate D.A.’s failure to adequately assess level of risk the situation presented to Student and failed to protect Student assault [battery].
  - d) When Student attempted to go speak with District psychologist, a second District administrator (D.A.2) informed Student the psychologist was not available – this happened twice.
  - e) Student was attacked by one of the girls from the bathroom incident. She was injured and had to be taken to the hospital.
  - f) District did not reach out to Grandparents until after the fight and after Student had sustained injuries.
  - g) Student was not able to see the psychologist until after the fight.
- 11. In the morning of August 27, 2024, Student was accosted and threatened in the bathroom by 3 other students. D.A. overheard the verbal altercation and spoke with all students involved.
- 12. Student asked to call Grandparents after the bathroom incident and D.A. stated that she would call Grandparents. Student also asked to speak with the psychologist.
- 13. District stated that D.A. attempted to connect Student with psychologist after the verbal bathroom threats, but psychologist was not available. D.A. described Student as not appearing to be distressed and Student did not ask to stay in the office or another space but chose to return to class. After one class period went by, Student came and asked about the psychologist again and D.A. reported that she was still not available, but Student could stay and wait, and that Student chose to leave.

14. District's written response asserts District stated its "records do not reflect any threat of harm asserted prior to this incident that would have warranted any increased supervision or other action by the Administration."
15. District did not provide record of bathroom incident after which D.A.2 interacted with all involved students; the only student incident document relative to this investigation cited the 1:42 p.m. attack on Student but did not reference the earlier bathroom incident.
16. District asserts in its written response that it did not fail to implement Student's IEP because the IEP states that Student will follow the school-wide discipline plan and therefore, District's response to the incident according to its school-wide discipline plan was appropriate. Investigator looked up District's discipline code, LCPS Policy JK, and it states that if a student is involved with "acting with or characterized by verbal, written, or physical intimidation...such "need[s] to be documented under the discipline section of the student information system." Id., at (II)(H)(1) and (III)(C)(1)(f). District concedes a second student was aggressor and that District personnel knew of the threats made in the bathroom.
17. After the physical battery, Student was seen by the school nurse and also was able to meet with the psychologist. District documents show Student met with psychologist at 2:30 p.m. for 30 minutes; notes indicate Student appeared calm.
18. After the physical battery of Student, District called Grandparents. District had not called Grandparents after the bathroom incident and before the battery.
19. Grandparents took Student to hospital where she was treated for injuries.

### **Discussion and Conclusions of Law**

***Issue No. 1: Whether District implemented Student's IEP relative to District's responses, action or inaction regarding 2024 incident between Student and other students, in violation of 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC.***

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 school district must ensure that "as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP." *Id.* See also 6.31.2.11(B)(1) NMAC. A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

Grandparent's position is that:

- 1) District should have made the psychologist available to Student after the bathroom incident and should have followed through with promise to Student to call Grandparents when Student was not allowed to do so; and
- 2) District should have known, based on the bathroom incident, that Student would be attacked later the same day; that District should have kept this attack from happening; and that District's actions were a failure to implement Student's IEP.

District's written response position that because Student followed standard District discipline policy, that meant that District implemented Student's IEP is flawed logic. The discipline policy applied to the aggressor in this incident; Student was not disciplined. Investigator noted that District failed to create a student incident form for the 2-3 students who threatened Student in the bathroom per its policy, but such does not weigh directly on the issues presented in this complaint, nor does it appear to show that District failed to implement Student's IEP when it failed to take these actions.

Looking back on the series of events, District denied Student ability to reach out to Grandparents after the bathroom incident. District should have called Grandparents and informed them of the initial bathroom event. District should have also documented the bathroom incident in a student incident form, per its Discipline Policy, JK. These actions and inactions, however, do not represent a failure to implement Student's IEP, as nothing in Student's IEP requires said actions. District may want to consider convening the IEP Team to determine whether additional interventions are needed to address interpersonal issues with other students. District should monitor interactions with other student (aggressor) for awareness of on-going negative interactions, and if such exist, should take appropriate additional action through Student's IEP.

District did not fail to implement Student's IEP.

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

***Issue No. 2: Whether Grandparents were denied meaningful parental participation in decisions involving the education of Student in violation of 34 C.F.R. § 300.321(a)(1); 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.

Grandparents participated in IEP team meetings for the development of IEP for Student. The IEP documents and PWNs indicate parental participation and that Parent concerns were considered and addressed. While District failed to contact Grandparents after the bathroom incident, as it said it would do, it did not deny Grandparents of meaningful participation in decisions involving the education of Student.

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. 2, the District is not cited.**

***Issue No. 3: 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 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).

Bullying of a student with a disability may rise to the level of a denial of FAPE as such is, for example, ongoing peer harassment that results in the student not receiving "meaningful educational benefit." Dear Colleague Letter (OSERS 2013). Bullying does not have to be related to student's disability. Dear Colleague Letter: Responding to Bullying of Students with Disabilities, (OCR 2014).

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As discussed in Issues 1 and 2, District did not fail to implement Student's IEP and Grandparents were provided meaningful participation. The facts of this case do not represent ongoing harassment of Student. Both the harassment (bathroom incident) and the attack occurred on a single day. These facts do not rise to the level of a denial of FAPE for Student. As discussed above, District should monitor interactions between the aggressor and Student to ensure that bullying does not occur, or, if it does, that appropriate action is taken.

District did not deny Student 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/ 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:

DocuSigned by:

*Margaret Cage*

Margaret Cage, Ed.D.

Deputy Secretary, Office of Special Education