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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Gadsden Independent School District
Case No. 2425-60
June 27, 2025**

This Report does not require corrective action.

On April 30, 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.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 the District's responses to the allegations, together with documentation submitted by the Local Education Agency at the request of the PED's independent complaint investigator;

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.

- review of the District's compliance with federal IDEA regulations and state NMAC rules;
- interviews and/or questionnaires with complainant and District; 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. For these reasons, issues raised in the complaint related to general staff retention matters will not be 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 develop and implement an Individualized Education Plan (IEP) that allowed Student to make progress toward identified goals, in violation of 34 C.F.R. §§ 300.156, 300.320-300.328 and 6.31.2.9, 6.31.2.10, 6.31.2.11 NMAC; specifically, whether the District failed to:
 - a. Provide special education instruction and services through qualified special education personnel;
 - b. Provide instruction associated with IEP goals;
 - c. Implement provisions in the IEP related to behavioral interventions and structured supports identified in response to Student's behavioral issues;
 - d. Collect and provide data in connection with Student's progress toward IEP goals; and
 - e. Convene an IEP meeting to discuss Student's programs and services as requested by Parent.
2. Whether the District's actions and/or omissions in developing and implementing the IEP 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 currently a first grader eligible for special education and related services under the Individuals with Disabilities Act as a child with Autism.
2. The May 22, 2024, IEP indicates that Student receives 315 minutes daily of specialized instruction in functional academics in a Structured Communication Classroom (SCC) as well as weekly minutes in Physical Therapy, Occupational Therapy, and Speech Therapy.
3. Teacher 1, a certified special education teacher, was Student's special education teacher until March 31, 2025.
4. While Parent was first notified that Teacher 1's last day as the Student's special education teacher was April 4, 2025, that date was changed to March 31, 2025.
5. Between April 1, 2025, and April 4, 2025, a substitute teacher took over classroom duties. The substitute teacher was supported by various assistants and related services personnel. The substitute teacher was not licensed for special education.
6. On April 7, 2025, Teacher 2 and Teacher 3 temporally took over as Student's special education teachers.
7. Teachers 2 and Teacher 3 are certified special education teachers duly licensed by the PED.
8. In addition to these two certified special education teachers, Student's class had 5 additional, non-special education certified staff assigned to Student's class, as well as related services personnel.
9. Teacher 2 and Teacher 3 rotated into Student's special education classroom to provide directed instruction for Student.
10. A plan was developed to provide accommodations and supports to address Student's needs. The plan specifically addressed, among other topics, leadership and oversight, staffing, daily structure, behavior support, communication, compliance, and instruction.
11. A schedule was also developed for the Structure Communication Classroom.
12. The schedule included the various responsibilities assigned to Teacher 2 and to Teacher 3, including Unique Curriculum lessons and behavioral supports (as needed).
13. On May 12, 2025, Teacher 4, a new District employee, took over as Student's permanent special education teacher.
14. Teacher 4 is a certified special education teacher duly licensed by the PED.
15. Teacher 4 remains Student's permanent special education teacher.
16. Student's May 22, 2024, IEP lists six IEP goals: (1) Functional Language Arts; (2) Communication Skills with Speech Therapy; (3) Sensorimotor; (4) Functional Math; (5) Social/Emotional Daily Visual Schedule; and (6) Functional Writing.

17. Student's 2024-2025 Progress Reports for Functional Math, Functional Writing, and Functional Language indicate Student was consistently making progress towards the related goals.
18. Student's academic grades for Spring 2025, Quarters 3 and 4, indicate similar grades to Fall 2024, Quarters 1 and 2 for special education instructional subjects.
19. With respect to Student's behavioral issues, the May 22, 2024, IEP identifies positive behavior supports aimed at developing Student's social skills and self-regulation.
20. This May 22, 2024, IEP also sets forth and reflects consideration of the autism strategies that are based on peer-reviewed, research-based educational programming practices to the extent practicable and when needed to provide FAPE.
21. The May 22, 2024, IEP describes Student's manner of demonstrating sensory needs by antecedent behaviors such as jumping, pumping high knees, giggling, pinching his hand, or biting his finger.
22. The May 22, 2024, IEP identifies positive behavior supports aimed at developing social skills and self-regulation, and reflects consideration of the autism strategies. The range of calming strategies are outlined in the IEP.
23. These positive behavior supports include social stories/narratives listed as a type of low-assistive technology, visual support, modification/accommodation; social skills instruction; positive reinforcement (e.g., thanking Student, hugs. etc.); redirect inappropriate behavior by verbally communicating expected behavior; calming strategies; and repeat, clarify and/or simplify directions.
24. Interviews with Teachers confirmed IEP behavior strategies were utilized during the relevant time, including strategies for students with autism.
25. With respect to collecting data and reporting on Student's progress in connection with May 22, 2024, IEP goals, the 2024-2025 Progress Report details progress in relation to stated IEP goals.
26. In addition to progress reports, a daily activity log was kept (between April 7, 2025, and May 12, 2025) and continues to be used to track Student's activities, including pertinent teacher notes or observations.
27. The May 22, 2025, IEP also reflects observations and data Student's present levels and annual measurable goals in identified areas of need.
28. During the May 22, 2025, State-Facilitated IEP Team meeting, Parent "proposed the [Student] receive compensatory time for academic services during the Summer 2025 due teacher absences (no teacher assigned)."
29. The May 22, 2025, PWN reflects IEP acceptance of the Parent's compensatory time request.
30. The documentation provided indicate that appropriate IEP meeting notices were provided to Parent.

31. Parent participated in the IEP meetings in May 2024 and May 2025.
32. The District convened a meeting with a PED facilitator on or about Thursday, May 22, 2025, less than three weeks after Parent's request.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to develop and implement an Individualized Education Plan (IEP) that allowed Student to make progress toward identified goals, in violation of 34 C.F.R. §§ 300.156, 300.320-300.328 and 6.31.2.9, 6.31.2.10, 6.31.2.11 NMAC; specifically, whether the District failed to:

- a. Provide special education instruction and services through qualified special education personnel;
 - b. Provide instruction associated with IEP goals;
 - c. Implement provisions in the IEP related to behavioral interventions and structured supports identified in response to Student's behavioral issues;
 - d. Collect and provide data in connection with Student's progress toward IEP goals; and
 - e. Convene an IEP meeting to discuss Student's programs and services as requested by Parent.
- a. Provide special education instruction and services through qualified special education personnel.**

The Every Student Succeeds Act of 2015 (ESSA) eliminated the mandate that every special education teacher of core academic subjects meet the definition of a "highly qualified teacher," as well as the highly qualified teacher mandate of the IDEA. Instead, it requires that all teachers meet state certification requirements. ESSA requires that each LEA shall provide assurances that all teachers and paraprofessionals working in a program supported with funds under the Act meet applicable state certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification. 20 USC 6311 (g)(2)(J).

ESSA amended the IDEA provision at 20 USC 1412 (a)(14)(C) governing qualifications of special education teachers. The provision now requires that a special education teacher in the state who teaches elementary school, middle school, or secondary school:

- Has either obtained full state certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator) or

passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher, except with respect to any teacher teaching in a public charter school, who shall meet the requirements set forth in the state's public charter school law;

- Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- Holds at least a bachelor's degree.

34 CFR 300.156 (c)(1).

The Student had four days of school wherein the IEP provided for 315 minutes daily of specialized instruction in functional academics in a Structured Communication Classroom (SCC) and such was not provided for by a qualified special education teacher. This is a procedural violation. Such, however, was corrected by District on April 7, 2025. As will be discussed below, such procedural violation did not rise to the level of a denial of FAPE and so because of this conclusion and the fact that the absence of qualified personnel has already been corrected by District, no corrective action is required.

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

b. Provide instruction associated with IEP goals.

The IDEA's implementation mandate does not mean that, to provide FAPE, a district must perfectly implement a student's IEP. The IEP must be implemented as written, including all required components. *See* 34 C.F.R. § 300.323(c) and 6.31.2.11(B) NMAC. 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 (9th Cir. 2005).

After the IEP is written and an appropriate placement determined, the district must provide the student with the special education and related services listed in the IEP. That includes all supplementary aids and services and program modifications that the IEP team has identified as necessary for the student. 34 C.F.R. § 300.323 and 6.31.2.11(B) NMAC. The IDEA's implementation mandate does not mean that, to provide FAPE, a district must perfectly implement a student's IEP. According to most courts, a minor discrepancy between the services provided and the services required under the IEP is not enough to amount to a denial of FAPE. *See I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs.*, 863 F.3d 966, 70 IDELR 86 (8th Cir. 2017) (A Minnesota district's occasional failure to provide Braille instructional materials to a ninth-grader with a visual impairment "for all classroom assignments and instruction" as required by his IEP

did not result in a denial of FAPE.); and *T.M. v. District of Columbia*, Civil No. 2012-1490, 64 IDELR 197 (D.D.C. 2014) (The "short gaps" in the student's services did not amount to a material failure to provide related services.).

In determining whether an implementation failure was material, courts may consider the duration of the failure. *See Turner v. District of Columbia*, 61 IDELR 126 (D.D.C. 2013) (Reasoning that the District of Columbia's failure to provide specialized instruction to a transfer student with other health impairment between the time that he enrolled and the time that an IEP was developed five months later was significant, the District Court held that it constituted a denial of FAPE.). Further, evidence that a student made isolated progress won't help show that he received FAPE if implementation failures caused him to regress overall. Rather, districts must produce evidence that the student made progress that was meaningful in relation to his potential. *See, e.g., Woods v. Northport Pub. Sch.*, Appeal Nos. 11-1493, 11-1567, 59 IDELR 64 (6th Cir. 2012, *unpublished*) (Pointing to the student's academic regression, the 6th Circuit affirmed a District Court's decision that the district denied the student FAPE.).

The District's planned for for addressing Teacher 1's departure from the Student's classroom. A substitute teacher was assigned to the class. A special education teacher (in addition to other support staff in the classroom) was providing one-on-one differentiated instruction on curriculum topics, including Unique curriculum. Progress Reports for the relevant period also indicate work and, in some instances, towards IEP goals. A daily log was also initiated to reflect Student's activities in the classroom.

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

c. Implement provisions in the IEP related to behavioral interventions and structured supports identified in response to Student's behavioral issues.

NMPED has set out additional compliance requirements for districts when developing and implementing IEPs for students with Autism that comprise 11 Strategies for Autism. 6.31.2.11(B)(5) NMAC, specifically, this rule requires that:

For students with autism spectrum disorders (ASD) eligible for special education services under 34 CFR Sec. 300.8(c)(1), the strategies described in Subparagraphs (a) through (k) of this paragraph shall be considered by the IEP team in developing the IEP for the student. The IEP team shall document consideration of the strategies. The strategies shall be based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed to provide FAPE, addressed in the IEP.

In particular, Strategy 4 requires districts to develop and to implement:

[p]ositive behavioral support strategies based on relevant information, including: (i) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and (ii) a behavioral intervention plan focusing on positive behavior supports and developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings.

See, 6.31.2.11(B)(5)(d) NMAC.

The May 22, 2024, IEP details positive behavior supports that include the following:

- social stories/narratives listed as a type of low-assistive technology, visual support, modification/accommodation
- social skills instruction
- positive reinforcement (e.g., thanking Student, hugs. etc.)
- redirect inappropriate behavior by verbally communicating expected behavior
- calming strategies
- repeat, clarify and/or simplify directions

Interviews with Teachers 2 and 4 confirmed that the various behavior strategies listed in May 22, 2024, IEP were utilized regularly.

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

d. Collect and provide data in connection with Student’s progress toward IEP goals.

Although school districts should strive to follow IEPs as closely as possible, the IDEA does not require perfect adherence to a child’s IEP. Minor discrepancies between the services provided and the services called for by the IDEA do not give rise to an IDEA violation. *Van Duyn ex. rel. Van Duyn V. Baker Sch. Dist.* 5J, 502 F.3d 811, 821 (9th Cir. 2007). Additionally, to the extent disagreement arises with a parent’s suggestions, the district is not required to agree to all of a parent’s proposals. *Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648 (8th Cir. 1999).

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 (9th Cir. 2005). Although a student’s IEP need not guarantee progress, a student’s progress can help demonstrate the lack of a material implementation failure. See, e.g., *Plotkin v. Montgomery County Schs.*, 2022 WL 4280170 *6 (D. Md. 2022) (evidence that a third-grader with autism made appropriate progress in math despite a district’s

failure to provide the "pull-out" instruction required by his IEP demonstrated the student received a FAPE.).

Student's Progress Reports for the relevant time period reflect data that indicates Student was working on and/or making progress toward stated IEP goals.

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

e. Convene an IEP meeting to discuss Student's programs and services as requested by Parent.

The IDEA's mandate to provide FAPE does not obligate the district to provide a student with a specific teacher, related service provider, or aide. Consequently, the district has discretion to use any individual who meets the applicable qualifications and training requirements. *See Independent School Dist. No. 11, Anoka-Hennepin*, 36 IDELR 81 (SEA M.M. 2001) ("School Districts have the discretion to determine who will provide students with their programs of special education and are not required to seek parental input when a staffing decision is made."); *Blanchard v. Morton Sch. Dist.*, 52 IDELR 3 (W.D. Wash. 2009), *aff'd* 54 IDELR 277 (9th Cir. 2010) (The district did not violate the IDEA by selecting an aide for a student with autism other than the aide the parent preferred).

Under the IDEA, District was not required to hold a meeting or issue a PWN concerning the change of teachers.

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

Issue No. 2

Whether the District's actions and/or omissions in developing and implementing the IEP 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.

A twofold inquiry is used to determine if a child has been provided with a free appropriate public education. *Bd. of Educ. of Hendrick Hudson Hendrick Sch. Dist. v. Rowley*, 458 U.S. 176, 207 (1982). The initial inquiry is whether the State has complied with the procedures set forth in the IDEA. The second inquiry is whether the individualized educational program developed through the procedures of the IDEA is reasonably calculated to enable the child to receive educational benefits. *Id.* at 207.

“To meet a substantive obligation for FAPE, a district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstance.” *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 999 (2017). The IEP must be “appropriately ambitious in light of [the child’s] circumstances.” *Id.* at 1000. The IEP must be reasonable. The IEP is not required to be ideal. *Id.* at 999.

Further, if a procedural violation does occur, it results in a denial of FAPE only if the procedural issues: (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, comprised the student’s right to an appropriate education, or caused a deprivation of educational benefits. *O’Toole v. Olathe Dist. Sch. Unified Sch. Dist. No. 233*, 144 F. 3d 692, 707 (10th Cir. 1998). In other words, technical deviations alone are insufficient to establish a denial of FAPE. *Urban v. Jefferson Cnty. Sch. Dist. R-1*, 89 F.3d 720 (10th Cir. 1996).

Student’s instruction and supports are evidenced by assessments and data obtained through Student’s initial evaluation and subsequent observations of Student’s performance during the relevant statutory period. In that regard, the IEP is reasonably calculated to allow Student to make progress in light of Student’s unique circumstances and to reflect Student’s changing needs.

Student has made progress toward meeting his IEP goals, which are appropriate to Student’s circumstance. Student has shown progress. District has ensured Student is provided with identified accommodations. Positive behavior supports are developed and implemented. Instructional activities and related services have been individually crafted to reflect specific autism-related factors have been considered and designed in the IEPs. There was no evidence presented that rises to the level of a violation of the substantive obligations for FAPE.

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

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

Investigated by:

/s/ Samuel D. Kerr, Esq.

Samuel D. Kerr, Esq.

Complaint Investigator


Reviewed by:

/s/ Natalie Campbell

Natalie Campbell, Esq.

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