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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Explore Academy - Albuquerque  
Case No. C-2425-63  
July 11, 2025**

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

On May 13, 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> 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 Local Educational Agency's (LEA's) responses to the allegations, together with documentation submitted by the 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 LEA's compliance with federal IDEA regulations and state NMAC rules;
- interview with the Parent on June 10, 2025;
- review of District Questionnaire submitted, completed, and returned by LEA on June 12, 2025;
- review of District Questionnaire follow-up materials submitted June 30, 2025;
- interview with an LEA Special Education Teacher and Elementary Case Manager of the Student on June 24, 2025;
- interview with the LEA Social Worker of the Student on June 24, 2025;
- interview with the LEA Case Manager of the Student on June 24, 2025;
- interview with the LEA Special Education Coordinator and Lead Teacher on June 27, 2025; and
- research of applicable legal authority.

### **Limits to the Investigation**

Federal regulations and state rules limit investigation of state complaints to violations that occurred not more than one year prior to the date 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 jurisdiction of this complaint investigation and, as a result, were not investigated. For these reasons, the Complaint Investigator did not investigate the following issues raised by the complainant: allegations regarding professional or ethical misconduct, or allegations that are not ripe for investigation.

### **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 Charter School failed to protect the confidentiality of personally identifiable information, in violation of 34 C.F.R. §300.610; 6.29.1.9(F)(1) NMAC.

### **General Findings of Fact**

1. Student is classified as a student with a disability under the primary classification of Autism with a secondary classification of Gifted, pursuant to a reevaluation that took place in March 2025.

2. During the 2024-2025 school year, an annual Individualized Education Program (IEP) was developed for the Student during the Student's seventh-grade year. The IEP is dated March 27, 2025. Relevant portions of the IEP include:
  - a. The Student exhibits behaviors that impede his learning or that of others. Positive behavioral interventions, strategies, and accommodations are included in the IEP. Annual goals (with short-term objectives or benchmarks), when appropriate, are included in the IEP.
  - b. Student's behaviors do require a behavior intervention plan (BIP).
3. The Student's BIP was updated during a meeting on April 25, 2025. Relevant portions of the BIP include:
  - a. Two disciplinary referrals occurred between the date of the IEP meeting on March 27, 2025, and the meeting to review and update the BIP on April 25, 2025.
  - b. In the section titled "Desired Replacement Behaviors" with persons responsible, it states that all school staff will foster the practice of managing disruptive behaviors like offensive language and horseplay by implementing the strategies in this BIP when interacting with Student.
4. During the BIP meeting on April 25, 2025, various items and options were proposed by the public agency and or the parent(s)/guardians(s) included in the Prior Written Notice (PWN) of Proposed Actions within the IEP. Relevant action includes:
  - a. Acceptance of a proposal by the Parent expressing concerns about teacher training regarding the BIP. A note about the acceptance is that the team agrees that all staff will receive training on how to effectively implement the BIP and use the appropriate language when communicating with the student.
5. On the signature page for consent for the school district to proceed with the action(s) indicated on the Prior Written Notice of Proposed actions, both parents and the student indicated consent to the actions on April 25, 2025.
6. A meeting was held after school on May 1, 2025, on or about 3:00 pm with all staff in the flex/cafeteria area to review the Student's BIP. Relevant notes include:
  - a. For purposes of the May 1, 2025, meeting, "all staff" was defined as staff members who interact with the student and or could merit disciplinary consequences to the Student during a school day.
  - b. There were no video or audio recordings of the meeting.
  - c. Ten hard copies of a redacted version of the Student's BIP were available to staff during the meeting.
  - d. No additional presentation materials, other than the redacted BIP, were developed for the meeting.
  - e. The meeting lasted approximately 15 minutes.

- f. The calendar invitation notifying staff of the meeting on May 1, 2025, did not include the Student's name.
- 7. The school's annual notification of parents and eligible students of their rights under FERPA through the distribution and publication of the Explore Academy Parent/Student Handbook. Relevant portions include:
  - a. Notification that generally, the school must have written permission from the parent, guardian, or eligible student to release any information from a student's education record.
  - b. Notification that the school may disclose educational records, without consent, to school officials with legitimate educational interest.

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

#### **Issue No. 1**

**Whether the Charter School failed to protect the confidentiality of personally identifiable information, in violation of 34 C.F.R. §300.610; 6.29.1.9(F)(1) NMAC.**

The Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records and prohibits disclosure of personally identifiable information (PII) without consent unless an exception applies. "Education records" is broadly defined to mean those records that are related to a student and are maintained by an education agency or institution. 34 C.F.R. § 99.3. PII includes not only names but indirect identifiers such as unique behavioral incidents if they allow a reasonable person to identify the student. 34 C.F.R. § 99.3.

Under 34 CFR § 99.31(a), PII from a student's educational record can be disclosed without parental consent to school officials who have a legitimate educational interest, such as those responsible for implementing a student's Individualized Education Program (IEP) and or Behavior Intervention Plan (BIP). Additionally, under 34 C.F.R. § 99.30, parents may consent to disclosure of PII by providing written, signed, and dated permission specifying the records, the purpose, and the recipients.

The provisions of FERPA apply to all students receiving special education and related services under the Individuals with Disabilities Education Act (IDEA) and the New Mexico Administrative Code. 34 C.F.R. §300.610; 6.29.1.9(F)(1) NMAC.

The May 1, 2025, meeting was held to train staff on the implementation of the Student's updated BIP. Interviews confirmed that the meeting attendees were limited to staff who had knowledge of the Student and or might interact with him in contexts that could involve behavior or discipline. Although the number of staff in attendance was extensive, it was justified by the Student's behavioral history, including the number of disciplinary reports, referrals, and suspensions

referenced in the April 25, 2025, BIP meeting, and the campus calendar and layout which allows the Student to encounter staff from both the middle and high school levels during instructional and non-instructional times. Based on this, the staff in attendance met the definition of having a legitimate educational interest under FERPA.

Even if this exception did not apply, the Prior Written Notice (PWN) signed by parents and Student on April 25, 2025, authorized the disclosure for staff training on the BIP. The consent met all requirements under 34 C.F.R. § 99.30, including the specific records (BIP), purpose (training), and recipients (all school staff).

Because the disclosure was supported by both the legitimate interest exception and prior written consent, the redaction of materials and omission of the Student's name during the May 1, 2025, meeting were prudent and precautionary, not legally required.

The May 1, 2025, meeting was held in a common area after school to accommodate the number of staff in attendance. Staff testimony and evidence submitted consistently indicated that all materials shared during the meeting were redacted, and the Student's name was not used at any point in the presentation or discussion of the Behavior Intervention Plan (BIP). School personnel were also stationed at entrances to the meeting space to ensure that only invited staff were present. Testimony also confirmed that the meeting was paused if an individual was observed coming towards the room and resumed only after that individual was redirected. Although holding the meeting in a common area carried some risk, the school took appropriate and proactive steps to minimize the risk of unauthorized PII disclosure.

**As to Issue No. 1, LEA is not cited.**

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

Investigated by:

/s/ Jana Rosborough

Jana Rosborough

Complaint Investigator

Reviewed by:

/s/ Natalie Campbell

Natalie Campbell, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

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Amanda DeBell

Deputy Cabinet Secretary, New Mexico Public Education Department