



October 5, 2020

*Sent via Fax [505] 954-0001 and U.S. Mail*

Deborah Dominguez-Clark, State Special Education Director  
Special Education Division  
New Mexico Public Education Department  
300 Don Gaspar  
Santa Fe, New Mexico 87501

***Re: Organizational State Complaint (Bloomfield School District)***

Dear Ms. Dominguez-Clark:

Please accept this letter as an Organizational State Complaint being filed on behalf of all students with disabilities with Individual Education Plans (IEPs) attending the Bloomfield School District in Bloomfield, NM. This letter includes information required by the New Mexico Public Education Department's "Special Educational Complaint Form." See <https://webnew.ped.state.nm.us/wp-content/uploads/2020/09/State-Complaint-Form.pdf>.

I. **Public Agency or School District serving the Child(ren):** Bloomfield School District

II. **Complainant and Student Information:**

a. Complainant Name:  
Native American Disability Law Center

b. Address (or available contact information):  
Therese E. Yanan, Esq.  
905 W. Apache Street  
Farmington, New Mexico 87401  
(505) 635-9288  
tyanan@natedisabilitylaw.org

Alexis M. DeLaCruz, Esq.  
905 W. Apache Street  
Farmington, New Mexico 87402  
(505) 635-9274  
adelacruz@natedisabilitylaw.org.

III. **Details Concerning Complaint:**

905 W. APACHE STREET • FARMINGTON, NEW MEXICO 87401  
Phone 505-566-5880 • Toll Free 1-800-862-7271 • Fax 505-566-5889

*The Protection & Advocacy System for Native Americans with Disabilities.*

*Funding provided by the Administration on Intellectual & Developmental Disabilities, the Rehabilitation Services Administration, the Center for Mental Health Services, the Social Security Administration, the Arizona Developmental Disabilities Planning Council, the New Mexico Civil Legal Services Commission, the New Mexico Administrative Office of the Courts, the New Mexico Access to Justice Commission*

- a. Please describe how the school district or charter school has violated a requirement of Part B of the Individuals with Disabilities Education Act and the facts relating to the complaint: (Who? What? Where? Why?)

On information and belief, the Bloomfield School District (District) has violated the rights of students with disabilities by: 1) impermissibly and unilaterally reducing the special education and related services minutes in students' IEPs in light of the COVID-19 public health emergency; 2) failing to schedule Individual Education Plan (IEP) Meetings to discuss how the District plans to assess individual student progress (or lack thereof) or decline in skills and determine if the student requires compensatory education services to address deprivation of FAPE due to a lack of services during the Spring 2020 school closure; and 3) stating that the District is not responsible for providing any compensatory service for deprivation of FAPE when the failure to provide services was due to pandemic-related school closure.

The Law Center is aware of the facts giving rise to this complaint through its representation of Native American students with disabilities in the legal custody of Children, Youth and Families Department (CYFD) and advocating for those students' special education needs. However, the Law Center also has represented individual students with disabilities and their families in special education matters in the District. The Law Center is filing this State Complaint on behalf of all of the students with disabilities in the District to ensure the District complies with the requirements of the IDEA during the COVID-19 public health emergency.

*First*, the District impermissibly and unilaterally reduced the special education and related services minutes in students' IEPs in light of the COVID-19 public health emergency without making an individualized determination as to whether that reduction was necessary to provide the student with a free appropriate public education (FAPE). The Law Center currently represents D.G., a 13-year-old sixth grader who is eligible to receive special education services as a student with an Emotional Disturbance and Other Health Impairment. At IEP meetings on April 15 and May 12, 2020 IEP, D.G.'s IEP Team discussed reducing his special education and related services because of the "state-wide school closure" and the fact that a "school setting is currently not an option due to the closure." Over the objection of the Law Center and D.G.'s foster parent and educational decision maker, the District maintained in the Prior Written Notice (PWN) that D.G.'s IEP services were to be "adjusted temporarily" and rejected a proposal by the Law Center and foster parent to create a Learning Plan instead of amending D.G.'s IEP. Instead, the District reduced D.G.'s speech language services from 30 minutes to 10 minutes. D.G.'s reduction of service minutes<sup>1</sup> ultimately resulted in him receiving 27 minutes of reading, math and writing; 2 minutes "for the functional goal;" and 16 minutes for social work. On information and belief, the District made this reduction based on a ratio of "proportionate instructional time," though it's unclear how the District came up with the ratio it used to reduce D.G.'s service minutes. Again, the reduction of service was not based on an individualized determination that this reduction in minutes actually met D.G.'s needs.

The Law Center also represents N.G., a 3-year-old girl who is eligible to receive special education services as a student with an Other Health Impairment. N.G. is in pre-Kindergarten

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<sup>1</sup> D.G.'s operative IEP states he is entitled to receive 180 minutes weekly of reading; 225 minutes weekly of math; 45 minutes weekly of reading; 10 minutes weekly of "functional;" and 30 minutes weekly of social work services. These are the services he requires to be provided a FAPE.

and attends the District's Early Childhood Center (Bloomfield Early Childhood Center or BECC). N.G.'s special education and related services were similarly reduced at her April 20, 2020 IEP Meeting from 840 minutes weekly in cognition and motor services to 150 minutes weekly. Again, this decision was made despite objection from N.G.'s foster parent and advocates. In the PWN, the District noted that the guardian ad litem, foster parent, and CYFD social worker "disagree and feel that the time should remain the same as it was before school closure."

The District violated the IDEA by unilaterally amending N. G. and D.G.'s IEPs based on what the District determined it could provide and not considering their actual educational needs to be provided FAPE. Further, it did so over the objection of other members of the team, including their social worker and foster parent.

*Second*, the District has failed to schedule Individual Education Plan (IEP) Meetings to review student progress and determine if the student requires compensatory education services to address deprivation of FAPE due to a lack of services during the Spring 2020 school closure.

On information and belief, the District has not contacted N.G.'s foster parent and educational decision maker to schedule an IEP Meeting to determine how a deprivation of special education and related services in Spring 2020 may have impacted N.G.'s progress toward her IEP goals. Further, the District has not discussed with N.G.'s foster parent any plan to assess N.G. to obtain that information to inform a decision about the need for compensatory education.

Moreover, the Law Center represents M.B., a 9-year-old boy who attends the 3<sup>rd</sup> grade in the District and is eligible to receive special education services as a student with a Specific Learning Disability. M.B. had an IEP in place during the 2019-2020 school year. However, on information and belief, the District has not contacted M.B.'s mother and educational decision maker to schedule an IEP Meeting to address his need for compensatory education service to address any deprivation of FAPE that may have resulted from the school's Spring closure.

By failing to affirmatively contact parents and guardians of students with IEPs, the District is violating the IDEA, as well as U.S. Department of Education and NMPED guidance that unequivocally requires LEAs, like the District, to ensure they are reviewing data and scheduling IEP Meetings to address what, if any, compensatory education a student is entitled to receive to address any deprivation of FAPE resultant from the public school closures.

*Lastly*, the District violated the IDEA when it stated that it is not responsible for providing any compensatory service for deprivation of FAPE when the District was not responsible for the school closure.

On information and belief, at D.G.'s September 23, 2020 IEP Meeting, the Law Center asked the IEP Team to consider whether D.G. required compensatory education services to address any deprivation of FAPE that resulted from the Spring 2020<sup>2</sup> public school closure. During the IEP Meeting, the District stated it was not required to provide compensatory education because the

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<sup>2</sup> D.G.'s May 12, 2020 entitles him to receive social work services. At the September 23, 2020 IEP Meeting it became clear that D.G. had not provided social work services during the 2020-2021 school year as his IEP requires. On this issue, the District has taken the position that he is entitled to compensatory education services to make up the missed social work time.

COVID-19 public health emergency and related was not the District's fault. On the same day, the Law Center asked the District's Special Education Director, Emily Foose, to "include the request for a determination of whether [D.G.] is eligible for compensatory services in the Prior Written Notice [.] Please also provide your reason for rejecting that request." On information and belief, this request was not included in the Prior Written Notice. While the District has offered to hold another IEP meeting at the parent and Guardian ad litem's request to discuss this issue further, they have failed to provide a clear policy or plan concerning the District's obligations to consider compensatory education services in light of school closures and appear to maintain the position that the reduced services provided in March, April, and May was all that was legally required.

b. Does the complaint allege violations that occurred in the last year?

Yes. The Law Center has been working to address these specific issues since March 2020.

c. Describe a proposed resolution of the problem to the extent known:

The District should be required to review every student with an IEP in the District to assess whether special education and related service minutes were reduced and contact every student's parent or guardian to immediately schedule IEP Meetings to discuss what, if any, compensatory education that student might need to address any deprivation of FAPE from March 2020 to present.

The District should be required to mail information about students' IDEA rights during the COVID-19 public health emergency to every student with an IEP in the District explaining the students' right to have an IEP Meeting to discuss compensatory education, including to address any educational deprivation that resulted from an impermissible reduction in educational or related service.

The District should further be required to train its staff on the requirements of IDEA and how to meet the needs of students with disabilities during COVID-19.

**IV. Signature and Date:**

  
\_\_\_\_\_  
Therese E. Yanan  
Attorney

October 5, 2020  
\_\_\_\_\_  
Date

**V. Mediation:**

The Law Center declines mediation and respectfully requests this State Complaint instead be fully investigated by the PED.

  
\_\_\_\_\_  
Therese E. Yanan

October 5, 2020  
\_\_\_\_\_  
Date

State Complaint v. Bloomfield School District

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Cc: Dr. Kimberly Mizell  
Superintendent  
Bloomfield School District  
325 N. Bergin Lane  
Bloomfield, NM 87413

Fax: (505) 632-4371

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