

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

DEVIN ZIEGLER,

Plaintiff,

vs.

D-132-CV-2026-00041  
No. D-101-2026-\_\_\_\_\_

LOS ALAMOS PUBLIC SCHOOLS by and  
through LOS ALAMOS PUBLIC SCHOOLS  
SCHOOL BOARD, JENNIFER GUY, KAYOKO  
NETTLETON, MAYA CAMERON, AND KARLA  
CRANE,

Case assigned to Martin, Anastasia R.

Defendants.

COMPLAINT FOR VIOLATIONS OF THE FAMILY MEDICAL LEAVE ACT,  
AMERICANS WITH DISABILITIES ACT, SECTION 504 OF THE REHABILITATION ACT  
OF 1973, HUMAN RIGHTS ACT, AND WHISTLEBLOWER PROTECTION ACT

Plaintiff Devin Ziegler (“Ziegler”), through counsel, Trent A. Howell, brings this  
Complaint against Los Alamos Public Schools by and through the LAPS Public Schools School  
Board (collectively, “LAPS”), Jennifer Guy (“Guy”), Kayoko Nettleton (“Nettleton”), Maya  
Cameron (“Cameron”), and Karla Crane (“Crane”).

SUMMARY OF CLAIMS

1. This action is brought for redress of Defendants’ violations of the Family and  
Medical Leave Act (“FMLA”), 29 U.S.C. § 2601 *et seq.*, Americans with Disabilities Act of  
1990 (“ADA”), 42 U.S.C. § 12101 *et seq.*, as amended by the ADA Amendments Act of 2008,  
Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1491 (2002) (“IDEA”),<sup>1</sup> Section  
504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 701 *et seq.*, New Mexico

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<sup>1</sup> From 1975 to 1990, IDEA was the Education for Handicapped Children Act (“EHA”).  
Retitled as IDEA in 1990, the statute and its enabling regulations provide assistance and  
protections in education for “children with disabilities” and their families.

Human Rights Act (“HRA”), NMSA § 28-1-1, *et. seq.*, and New Mexico Whistleblower Protection Act (“WPA”), NMSA § 10-16C-4 NMSA 1978, *et seq.*, and for Ziegler’s communications attempting to benefit the public, to oppose and to confront Defendants’ noncompliance, and to address the matters of public concerns recognized and legislatively codified in each of those statutes, as well as under the New Mexico Public Education Department (“PED”) regulations and standards for operating the State’s public schools with due regard for the rights of children with disabilities, and as subject of extensive litigation in the years-long *Yazzie/Martinez* litigation pending in this First Judicial District Court (*Martinez v. PED*, No. D-101-CV-2014-00793 *consolidated with Yazzie v. PED*, No. D-101-CV-2014-02224), where Judge Sarah Singleton on July 28, 2018 found the State of New Mexico, by and through PED, was failing to provide students—especially low-income, Native American, English language learner (ELL), and students with disabilities—the programs and services necessary for them to learn and thrive, and challenged the state’s failure to sufficiently fund these programs and services .

2. Defendants’ violations arise from a common nucleus of operative facts, in which they knowingly, willfully, and without good-faith basis or belief of legality harassed and retaliated against Ziegler for advocating IDEA compliance as to students in 2024 and 2025; retaliated against Ziegler’s complaints of personal harassment and retaliation in February and March 2025; also resisted accommodation of, discriminated, and retaliated against Ziegler based on disability in February through May 2025; demoted Ziegler in May 2025; and constructively discharged Ziegler from employment effective July 21, 2025. Over all these time periods, Defendants resisted accommodation of, harassed, discriminated, and retaliated against students and Ziegler from 2024 to present, based on serious health/medical condition, disability, and

opposition/participation acts in which Ziegler asserted her own and others' rights as employees, students, and/or persons accessing public accommodations, receiving services, or participating in programs provided by LAPS as a governmental entity and recipient of federal funds.

### JURISDICTION AND VENUE

3. Venue is appropriate because the actions complained of are conduct and employment practices of Defendants, who operate and employed/controlled and influenced terms and conditions of employment of Ziegler in Los Alamos County, within the First Judicial District of New Mexico, subject to the employment laws of the State of New Mexico. And such actions subject Defendants to the personal jurisdiction of this Court as to this civil action. *Id.*

4. The facts above and herein make this action timely, confer jurisdiction over the parties and subject matter hereto in the First Judicial District of New Mexico, and make this District a proper venue in which Ziegler may file this lawsuit.

5. State courts have concurrent jurisdiction over private lawsuits to enforce rights under FMLA, *see* 29 U.S.C. § 2617, ADA, *see* 42 U.S.C. § 12117(a) and 42 U.S.C. § 12133, and Section 504, *see* 29 U.S.C. § 794.

### PARTIES AND STATUTORY DESCRIPTORS

#### PLAINTIFF DEVIN ZIEGLER

6. Ziegler was an employee (as a former Assistant Coordinator of Student Services (“ACSS”) at LAPS in Los Alamos County from August 2024 through July 2025 and former Special Education Inclusion Teacher (“SEI Teacher”) from August 2023 through July 2024).

7. Ziegler is a certified Educational Diagnostician in both Texas and New Mexico. Before joining LAPS, she worked in Frisco ISD and Denton ISD, high-compliance Texas districts that follow MLSS/RTI and IDEA processes with full fidelity. In those prior districts, as

a diagnostician, Ziegler frequently received evaluation packets from Texas and other states (Alabama, Louisiana, California) and rarely saw referrals lacking proper MTSS/MLSS documentation.

8. Ziegler’s IDEA, ADA, Section 504, and HRA-related expertise includes:
  - a. administering/interpreting standardized assessments under IDEA Part B;
  - b. managing evaluation timelines and ensuring parental consent compliance;
  - c. conducting and leading IEP meetings in both TX and NM;
  - d. drafting compliant Prior Written Notices (“PWN,” a crucial procedural safeguard requiring schools to provide parents written documentation before changing or refusing to change a child’s special education identification, evaluation, or placement), Evaluation Reports, and Eligibility Determinations;
  - e. ensuring compliance with Section 504, ADA, Free Appropriate Public Education (“FAPE,” a legal right under IDEA and Section 504), and Child Find (a federal mandate under IDEA requiring school districts to identify, locate, and evaluate all children with suspected disabilities from birth through age 21);
  - f. designing and delivering professional development on the MTSS trainings, RTI Implementation, the SAT processes, and evaluation fidelity; and
  - g. overseeing compliant evaluation documentation and timelines under:
    - i. IDEA (§300.301–311),
    - ii. Section 504,
    - iii. ADA Title II,
    - iv. Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U. S. C. § 1232g, (Confidentiality & Record Handling),

- v. NMAC 6.31.2.10 (Documentation, Consent, Timelines), and
- vi. NMSA 22-13-32 (MLSS Implementation & Training).

9. Due to this legal background, in her employment prior to LAPS, Ziegler received frequent assignment to challenging or high-stakes IEP meetings where compliance concerns arose. Administrators sought her expertise to ensure IDEA procedural safeguards and parent participation were followed.

10. In light of Ziegler's clear qualification and ability to perform the essential duties of her Position, with or with reasonable accommodations (including, but not limited to—as discussed below—a reasonable period of FMLA leave and slight changes to her office arrangement and worker interactions), the adverse actions referenced herein, as well as timing among all these events, suggests LAPS retaliated and allowed retaliation against Ziegler for her reports and efforts to oppose non-compliance, as well as for her protected medical conditions and leave/accommodation requests.

11. Ziegler is a qualified individual with a serious health/medical condition and disability (including but not limited to Post-Traumatic Stress Disorder (“PTSD”) and Bipolar Disorder (“BD”)) within the meaning of the FMLA, ADA, Section 504, HRA, and WPA.

12. Ziegler is a person with a disability and serious health/medical condition within the meaning of the FMLA, 29 U.S.C § 2611(11), ADA, 42 U.S.C § 12102, Section 504, 29 U.S.C. § 791(f), and HRA, NMSA § 28-1-2(o) and NMSA § 28-1-7(a), as she has mental and/or physical impairments (Post-Traumatic Stress Disorder and Bipolar Disorder) that cause substantial limitations to “major life activities,” such as sleeping, concentrating, and thinking. *See* ADA Amendments Act of 2008, Section 4 (amending Section 3 of 42 U.S.C. 12102).

13. Ziegler prior to her termination from LAPS also had a record of disability and had

been regarded as having a disability, including but not limited to her actual, diagnosed mental and/or physical impairments.

14. Ziegler was known by LAPS to have a representative/advocating “relationship or association” under 42 U.S.C. § 12112(b)(4) and 29 U.S.C. § 705(22) with the many LAPS students and families for whom she sought ADA and Section 504 rights and protections, such as opposing their being excluded from the participation in, denied the benefits of, or subjected to discrimination the programs and activities of LAPS within the meaning of 29 U.S.C. § 794(a).

15. Ziegler when advocating disability rights/protections of LAPS *employees* under NMSA § 28-1-7(a) or *students* under NMSA § 28-1-7(f) (access to public services, facilities, accommodations, or goods) or NMSA § 28-1-7(m) (participants in governmental services or programs) engaged in opposition/participation activity broadly protected by NMSA § 28-1-7.

16. Ziegler when advocating disability right/protections of LAPS students was engaged in activities to serve the public benefit and to protect the rights of “children with disabilities” and “parents of such children” within the meaning of IDEA, 20 U.S.C. § 1400.

17. Ziegler is “qualified” within the meaning of the ADA, Section 504, and HRA as Ziegler meets the requirements for the position of ACSS and can perform the essential functions of this position, having been employed by Defendants for approximately one year.

18. Ziegler was an “eligible employee” with the meaning of FMLA, 29 U.S.C. 29 U.S.C. § 2611(2)(a), because she had been employed by LAPS for at least 12 months and 1,250 hours of service during the prior 12 months.

FURTHER PUBLIC BENEFITS SERVED BY ZIEGLER’S ADVOCACY

19. As documented in the written LAPS job description, Ziegler’s ACSS Position duties included Multi-Layered System of Supports (“MLSS”), Student Assistance Team

(“SAT”), related services, and special education support and evaluation processes (collectively, “Special Education Processes”).

20. MLSS, SAT, and special education evaluation processes involve several Federal and State special education laws, including IDEA, §300.301–§300.311 (evaluation procedures, parental consent prerequisites, and timelines); NMAC 6.31.2.10 & NMSA 22-13-32 (New Mexico MLSS implementation, documentation, and training standards); Section 504, § 794 (nondiscrimination and access for students with disabilities); ADA, Title II (nondiscrimination and access for students with disabilities); and HRA, § 28-1-7(F) and (M) (nondiscrimination and access for students with disabilities in “public accommodations” and in “services and programs” provided by a governmental entity) (collectively, “Special Education Laws”).

21. In turn, each time Ziegler advocated for LAPS to conform to Special Education Processes and Laws, she was engaging in efforts for a public benefit and to pursue the public interest for the State’s public schools to comply with NMHRA, as protected by § 28-1-7(I)(3). Each time she challenged LAPS’ noncompliance with Special Education Processes and Laws, she was “opposing [an] unlawful discriminatory practice” under NMHRA, as protected by § 28-1-7(I)(2). And each time Defendants punished Ziegler in response, they engaged in or attempted to engage in, aid, abet, incite, compel, or coerce unlawful practices under § 28-1-7(I)(1); threats, reprisal or discrimination for protected opposition under § 28-1-7(I)(2); and/or willful obstruction under § 28-1-7(I)(3).

22. Under NMPED MLSS guidance and IDEA Part B, every evaluation for a suspected disability—especially Specific Learning Disability (SLD)—must include a documented review of MLSS/SAT data before any testing begins, including the following steps:

- a. The SAT Team must review data from the MLSS team and confirm that

Layer I–III interventions were implemented, monitored, and adjusted with documented progress.

b. After review, the SAT team determines if the data justify a special education referral or if more interventions are needed.

c. When sending a referral for a special education evaluation, the SAT team states that they have reviewed the evidence and found sufficient evidence to indicate that MLSS was implemented and the student was not making adequate progress. Therefore, the student should be referred for special education testing.

d. At the end of the testing, when writing the evaluation report, it is required for the evaluator to verify whether MLSS was conducted. This is also indicated on the PWN page when starting an IEP for a new special education student. These signatures certify that Child Find and FAPE obligations were met before the evaluation.

e. No testing or data collection may occur before written parental consent. Verbal consent does not meet the legal requirement under IDEA §300.301(b)–(c) and NMAC 6.31.2.10.

23. Routinely, LAPS violated these standards by skipping the MLSS review, initiating evaluations early, and falsifying documentation, including signatures indicating MLSS completion. The district also accepted verbal parent consent and began testing before obtaining written signatures.

24. In all the above violations of Special Education Processes, LAPS disserved the student population, disserved the public interest in health and education, and submitted dubious classifications (and “claims”) of students (receiving associated public funding) under State and Federal law.

25. But when Ziegler reported these issues and requested system corrections, LAPS leadership dismissed the concerns, blocked further MLSS training, and publicly undermined Ziegler, effecting and prompting further retaliation.

26. Related to the compliance issues Ziegler was escalating at LAPS, in September 2024, Plaintiffs in *Yazzie/Martinez* filed a *Non-Compliance Motion and Request for Remedial Action* against PED. Plaintiffs sought enforcement against the State/PED under Judge Sarah Singleton’s July 28, 2018 Order, finding that the State was failing to provide students—especially low-income, Native American, English language learner (ELL), and students with disabilities—the programs and services necessary for them to learn and thrive, and challenged the state’s failure to sufficiently fund these programs and services. And on April 28, 2025, Judge Matthew Wilson agreed PED has not been complying with prior orders in *Yazzie/Martinez*, and the State needs a plan to ensure progress is made and tracked. With these findings, this Court again affirmed that the public education rights of disadvantaged students, including children with disabilities, remain of immediate and paramount public concern and interest.

DEFENDANT LAPS

27. LAPS at all relevant times was an arm of the State of New Mexico and can be sued pursuant to § 10-16C-4 NMSA 1978.

28. LAPS is a “public school district” within the meaning of NMSA § 22-4-1.

29. LAPS, through its “local school board” has the capacity to be sued pursuant to NMSA § 22-5-4(e).

30. LAPS, through its “local school board” employs a “local superintendent” pursuant to NMSA § 22-5-4(b).

31. LAPS has employed and now employs Guy as its “local superintendent” and

“chief executive officer” within the meaning of NMSA § 22-5-14.

32. LAPS is a “local education agency” within the meaning of 34 C.F.R. § 300.28.

33. LAPS is a “program or activity” within the meaning of Section 504, 29 U.S.C. § 794(b)(2).

34. LAPS is “receiving federal financial assistance” within the meaning of Section 504, 29 U.S.C. § 794(a).

35. LAPS is a “person” and “employer” of Ziegler within the meaning of FMLA, 29 U.S.C § 2611(4), ADA, 42 U.S.C § 12111(5), Section 504, 29 U.S.C. § 791(f), HRA, NMSA § 28-1-2(B) and (A).

36. LAPS is a “public employer” within the meaning of WPA, NMSA § 10-16C-2(C).

37. LAPS is a “public accommodation” within the meaning of HRA, NMSA § 28-1-2(h) and NMSA § 28-1-7(f).

38. LAPS is a “governmental entity” within the meaning of HRA, NMSA § 28-1-2(bb) and (cc) and NMSA § 28-1-7(m).

39. LAPS is a covered entity within the meaning of the FMLA, IDEA, ADA, 42 U.S.C § 12111(2), Section 504, HRA, and WPA.

DEFENDANTS GUY, NETTLETON, CAMERON, AND CRANE

40. Defendants Guy, Nettleton, Cameron, and Crane are “persons” and “employers” of Ziegler within the meaning of FMLA, 29 U.S.C § 2611(4), and HRA, NMSA § 28-1-2(B) and (A). Guy is LAPS Superintendent. Nettleton is LAPS administrative staff. Cameron is LAPS Human Resources staff. Crane is Director of Student Services. All, upon information and belief, are both domiciled and employed by LAPS within the First Judicial District.

## BASIC FACTS/TIMELINE

41. As further illustration of the above referenced reports, Ziegler's ADA, IDEA, Section 504, HRA, and WPA-protected acts, opposition, and disclosures included the following.

42. From September 2024 to early 2025, Ziegler was pressing for LAPS to change to comply with Special Education Laws and Processes. She worked and planned to reduce inappropriate special education referrals by strengthening pre-referral interventions and data collection. She led SAT professional development, created flowcharts, case-study materials, and digital tools, and analyzed data showing both that many referrals lacked adequate MLSS documentation and that over-identification patterns existed for Native American and ESL students (the latter of which—the Bureau may note—may raise other NMHRA questions, such as whether LAPS practices discriminated by having a disparate impact on Native American and ESL students). She was on track for Los Alamos Middle School ("LAMS") to be the pilot site for a new MLSS documentation system (including a PowerSchool MLSS tab) she helped create and was beginning to roll out district-wide.

43. Over a period from September 2024 through April 2025, Ziegler also informed Nettleton and Crane, Ziegler's direct supervisor, of her struggles with anxiety and PTSD. In response, Crane was initially, nominally supportive. But Nettleton promptly used the information to find ways to stress and undermine Ziegler's health and work. LAPS as a whole only used the information to undermine and in no way support Ziegler's ability to continue performing her Position, with or without accommodations. And LAPS refused to police or limit the interpersonal dynamics with coworkers in a way that would accommodate Ziegler's conditions and allow Ziegler a calm, manageable work environment.

44. In addition, in oral and written submissions to Crane on February 4, 2025 and

March 2025 reports to HR/Cameron, Ziegler conveyed to Defendants that she was suffering a hostile work environment beginning to impact her ability to perform compliance-related work duties, including incidents with GATE, Section 504, SAT, ILP/ESY planning, related service support, and counselor communications.

45. Defendants escalated hostilities against Ziegler in close connection with (weeks of) Ziegler engaging in these protected activities and making these protected disclosures. Ziegler suffered harassment and retribution. The LAPS Superintendent and other leadership repeatedly undermined, publicly criticized, and ridiculed her. They intentionally excluded Ziegler from key meetings, decision-making, and communications necessary to fulfill her role, while continuing to include other comparator employees (coworkers who (A) did not, themselves, have physical or mental disabilities, and/or (B) had not pushed for compliance or opposed LAPS' non-compliance with retained full access).

46. On April 21, 2025, during two back-to-back meetings, Guy (with Crane and Nettleton present in the first meeting and Cameron present in the second meeting) yelled at Ziegler (adopting a tone she did not use with other comparator employees), falsely accused Ziegler of misconduct, and (after the first meeting) repeatedly questioned Ziegler about recording the meeting. As grounds for these accusations, Guy accepted false allegations by a colleague without investigation, having the effect (as apparently intended) of stigmatizing and isolating Ziegler.

47. On April 22, 2025, Ziegler advised Guy and Crane that Ziegler had been treating for years with Bipolar Disorder. While offering this as context for the prior day's events, Ziegler assured Crane that Ziegler could – with such treatment – perform her job. During the prior day's exchange, Ziegler had also requested the reasonable accommodation of maintaining her office

space at LAPS in a way that would be less stressful and anxiety inducing (that is, instead of being banished from her office and moved to LAMS for the rest of the year). Despite the reasonableness of Ziegler's request and the context of it being disability-related, Defendants rejected Ziegler's requested accommodation while failing to propose any other or to engage in any "interactive process" regarding accommodations.

48. Defendants' retaliation continued through May 2025, including a dismissive May 12, 2025 HR email that minimized Ziegler's concerns and assured Ziegler the hostile environment would remain, unabated. For example, in one email, Guy both recommended that Ziegler file for FMLA and, at the same time, demoted Ziegler. As the stress of Defendants' harassment and retaliation continued to mount, on May 12, 2025, Ziegler filed paperwork giving LAPS notice of anticipated leave under FMLA in connection with Ziegler's own serious medical condition and/or physical/mental disability, as again disclosed in that paperwork.

49. On May 12, 2025, at 6:16 AM, Ziegler sent HR a protected medical disclosure linking her inability to return to work to the April 21, 2025 meetings, and Ziegler stated her absence should be documented as medically necessary. Within four hours of this protected communication, Ziegler received notification of my demotion, duty restrictions, and reassignment.

50. The timing shows close temporal proximity between Ziegler asserting FMLA rights and Defendants' adverse actions.

51. Defendants' stated reasons for this demotion also shifted (from 'drama' narrative to restructuring) and were contradicted by LAPS's May 2, 2025 excellent performance evaluation of Ziegler.

52. And similarly situated employees who did not take FMLA leave (e.g., Nettleton)

retained full duties and were protected, while Ziegler was removed from her role. And Nettleton was subsequently the sole person in training to replace Nettleton and Ziegler's supervisor, Crane.

53. LAPS demoted and unfavorably reassigned Ziegler on May 12, 2025 – the same day she filed paperwork giving notice of FMLA leave and again disclosing her own medical conditions protected under the ADA and NMHRA. LAPS then further actually or constructively terminated Ziegler in July 2025. (Notably, this was also just ten days after Ziegler's annual performance review, which had rated Ziegler "excellent.")

54. On August 22, 2025, New Mexico Public Education Department ("PED"), Office of Special Education ("OSE") concluded its investigation of a separate IDEA complaint against LAPS and issued a Complaint Resolution Report ("CRR"). *See Exhibit 1.*

55. The August 22, 2025 CRR from PED/OSE cited LAPS for, among others:

- a. failing to develop a proper IEP pursuant to 34 C.F.R. § 300.320 and 300.324, and 6.31.2.11 NMAC,
- b. failing to include all proposals and/or refusals to initiate or change the identification, evaluation, education placement of the child, or the provisions of FAPE to the child pursuant to 34 C.F.R. § 300.503,
- c. failing to provide the procedural safeguards notice with a full explanation of all the procedural safeguards available under IDEA regulations, pursuant to 34 C.F.R. § 300.504;
- d. failing to implement the IEP properly, pursuant to 34 C.F.R. § 300.323 and 6.31.2.11(B)(1) NMAC; and
- e. thereby denying a student FAPE pursuant to 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

Ex. 1.

56. The CRR confirms LAPS during the time of Ziegler's employment was engaged in multiple violations of IDEA, just as Ziegler since September 2024 had been attempting to warn them, avoid, and bring into legal compliance. *Id.*

57. The CRR also confirm the matters on which Ziegler was advocating were for the public benefit, in the public interest, and of public concern—being matters on which PED saw a public need to investigate, to issue citations against LAPS, and to require corrective action. *Id.*

58. To this date, despite Superintendent Guy's demonstrated intolerance and hostility towards persons with disabilities, LAPS on its public website continues to list her as the point of contact for any questions with respect to ADA Title II and Section 504 rights/compliance. *See Exhibit 2.*

59. In all these ways, LAPS deliberately cultivated a hostile environment to undermine Ziegler's performance; to destabilize Ziegler's mental and physical health; to thwart Ziegler's efforts to bring LAPS into legal compliance with Special Education Laws and Processes; to assure Ziegler further requests for accommodation or—at least—to cease being targeted for her medical conditions were in vain; and thereby to pressure Ziegler to resign and/or constructively discharge Ziegler from employment. Under such conditions, LAPS finally accomplished its objective, and on medical advice, Ziegler was unable to enter a contract for the next school year.

60. The United States Court of Appeals for the Tenth Circuit has held a defendant engages in intentional disability-based discrimination if it is “deliberately indifferent” to ADA and Section 504 requirements. *See J.V. v. Albuquerque Pub. Schs.*, 813 F.3d 1289, 1298 & n.6 (10th Cir. 2016) (applying deliberate-indifference standard to a Title II damages claim); *Barber*

*v. Colorado Dep't of Revenue*, 562 F.3d 1222, 1228 (10th Cir. 2009) (same as to a Section 504 damages claim). A plaintiff need not show the defendant acted with “ill will or animosity toward the disabled person.” *Barber*, 562 F.3d at 1228. Rather, a plaintiff can simply demonstrate: “(1) [the defendant acted with] ‘knowledge that a harm to a federally protected right is substantially likely,’ and (2) ‘a failure to act upon that . . . likelihood.’” *Id.* at 1229 (quoting *Duvall v. County of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001)).

61. LAPS by its deliberate indifference to ADA and Section 504 requirements exhibited its intent to engage in disability-based discrimination.

62. LAPS also exhibited its deliberate indifference by summarily demoting and retaliating against one of its most critical employees for protecting children with disabilities within just weeks after this Court—in its *Yazzie/Martinez* hearing on April 28, 2025—highlighted once again that the need for protection and programs for these students is off immediate and paramount public interest and concern.

63. The position of ACSS is an administrative position without essential physical requirements.

64. Ziegler disclosed her disabilities to Defendants in early 2025 and requested reasonable accommodations thereafter.

65. Ziegler’s reasonable accommodations requests were denied without explanation or invitation to engage in the interactive process.

66. Further, after Ziegler’s requests, Defendants escalated a pattern of harassment and retaliation against Ziegler that eventually culminated in termination.

67. The essential functions of Ziegler’s position are to ensure Defendants’ compliance with federal and state law regarding persons with disabilities; receive and process student

requests for reasonable accommodations; provide advocacy and guidance to students with disabilities; and provide education regarding accessibility and disability services to students, staff, and faculty.

68. An atmosphere allowing Ziegler to speak up without fear of reprisal on ADA, IDEA, Section 504, and HRA rights was essential to her own job performance and to LAPS's compliance with those laws. And much of Ziegler's work as ASSC included explicitly opposing, on behalf of students, practices on the part of faculty, staff and administrators that may amount to "unlawful discriminatory practice" under state law or "discrimination" under federal law.

69. In discharge of her essential job functions, Ziegler advocated on behalf of individual students for reasonable accommodations.

70. Given their education, experience, "expertise," and LAPS duties and authority, the reports to and inaction by Guy (LAPS Superintendent), Nettleton (LAPS Administrative Staff), Cameron (LAPS Human Resources), and Crane (LAPS Director of Student Services and Ziegler's direct supervisor) are imputable to LAPS as specific proof of an institutional intent to engage in disability-based discrimination and to have "anti-disability" bias as a motivating factor in its adverse employment action. *See Fed. R. Evid. 801(d)(2)* (allowing use of statement against opposing party if: "(C) ... made by a person whom the party authorized to make a statement on the subject; or (D) ... made by the party's agent or employee on a matter within the scope of that relationship and while it existed").

71. By general agency law, awareness of such facts by Guy, Nettleton, Cameron, and Crane, within the course and scope of their compliance-related jobs, is imputed to the principal, LAPS. Under New Mexico law, "Since a corporation can act only through its officers, agents and employees, it is necessarily chargeable with the composite knowledge of its officers and

agents acting within the scope of their authority.” *Sawyer v. Mid-Continent Petroleum Corp.*, 236 F.2d 518, 520 (10th Cir. 1958) (applying New Mexico law) (citing 19 C.J.S., Corporations, § 1081, p. 618); *Trinity Universal Ins. Co. v. Rocky Mountain Wholesale Co.*, 353 F.2d 574, 577 (10th Cir. 1965) (applying New Mexico law); Restatement (Second), Agency, § 275. Similarly, under NMHRA, a manager’s knowledge of an illegal employment practice imputes to the corporation. *See Ocana v. American Furniture Co.*, 2004-NMSC-018, ¶ 34, 135 N.M. 539, 551

72. In *Ocana*, the New Mexico Supreme Court held that in evaluating who is authorized to receive binding notice of an NMHRA illegal employment practice for a corporation, the question is whether the individual has managerial authority or was part of the corporation’s management. *Id.*

73. Imputing Guy’s particular knowledge is especially appropriate, since her statutory office as Superintendent is “the chief executive officer of the school district” and since here specific statutory duties include those to “carry out the educational policies and rules,” “administer and supervise the school district,” “assign, terminate or discharge all employees,” and “perform other duties as required by law.” NMSA § 22-5-14.

74. Imputing Guy’s direct knowledge and comments regarding Ziegler to LAPS is also apt with respect to issues of Defendants’ HRA and punitive-damage liability, because the Tenth Circuit holds scienter of senior controlling officers of a corporation may be attributed to the corporation itself to establish liability when those senior officials were acting within the scope of their apparent authority. *See Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1106-07 (10th Cir. 2003) (citing *Suez Equity Investors, L.P. v. Toronto Dominion Bank*, 250 F.3d 87, 100-01 (2d Cir. 2001) (holding that the scienter of an agent of a corporate defendant is attributable to the corporation as a primary violator of § 10(b) and Rule 10b-5 of the Securities Exchange Act

of 1934); *Cromer Finance Ltd. v. Berger*, Nos. 00 Civ. 2284(DLC) & 00 Civ. 2498(DLC), 2002 WL 826847, at \*7-8 (S.D.N.Y. May 2, 2002) (holding that scienter of partner of accounting firm could be imputed to the firm itself under traditional agency principles); *In re JDN Realty Corp. Sec. Litig.*, 182 F.Supp.2d 1230, 1246 (N.D.Ga. 2002) (holding that scienter of chief executive officer of defendant corporation was attributable to the corporation); 2 Thomas Lee Hazen, *Treatise on the Law of Securities Regulation* § 12.8[4], at 444 (4th ed. 2002) (“[K]nowledge of a corporate officer or agent acting within the scope of authority is attributable to the corporation.”)

75. Further, by leaving Guy, Nettleton, Cameron, and Crane with authority over LAPS supervision and HR functions with respect to Ziegler even after LAPS knew or should have known of their “anti-disability” bias, LAPS:

a. knowingly “utilize[ed] standards, criteria, or methods of administration” that “have the effect of discrimination on the basis of disability” and “perpetuate the discrimination of others who are subject to common administrative control,” 42 U.S.C. § 12112(b)(3);

b. willfully institutionalized “discriminat[ion] against a qualified individual on the basis of disability,” *id.*;

c. signaled to both students and employees of LAPS that HR and the administration at large were no more than a catch-and-kill trap or dead-end alley for complaints of disability discrimination or retaliation;

d. again displayed “deliberate indifference” to the requirements of ADA, Section 504, and HRA, by:

i. avowing “knowledge that a harm to a federally protected right is substantially likely”; and

ii. admitting its “failure to act upon that ... likelihood,”

*Barber*, 562 F.3d at 1229 (quoting *Duvall*, 260 F.3d at 1139); and

e. thus admitted its past and future intent to discriminate based on disability. *See J.V.*, 813 F.3d at 1298 & n.6; *Barber*, 562 F.3d at 1228.

76. In turn, Ziegler alleges Defendants willfully, maliciously, and recklessly:

- a. aided, abetted, compelled or coerced the commission of unlawful discriminatory practice based on disability and serious medical condition and based on Ziegler's relationship/association with disabled persons for whom she advocated;
- b. engaged in threats and reprisals against her for her opposition of unlawful discriminatory practice based on disability and serious medical condition (on behalf of others and on behalf of herself);
- c. willfully obstructed and prevented her and others from complying with provisions of the ADA, HRA, and other state and federal laws;
- d. retaliated against her by taking adverse employment actions against her;
- e. denied requests for reasonable accommodations (including leave requests) and refused to engage in the interactive process to address any concerns with those requests; and
- f. engaged in a pervasive pattern of harassment against her that fostered a hostile work environment.

77. Based on the above reports, notices, inactions, and retaliatory actions by the individual Defendants within the course and scope of their LAPS employment, Ziegler further asserts Defendants did the foregoing in willful, malicious, and reckless violation of FMLA, ADA, Section 504, HRA, and WPA.

78. In turn, Ziegler, on December 15, 2025 filed a Charge of Discrimination with New Mexico Human Rights Bureau ("NMHRB") and Equal Employment Opportunity Commission ("EEOC"), obtaining an NMHRB Letter of Determination, issued on February 3, 2026, and an EEOC Notice of Rights to Sue issued on or about February 12, 2026, making Ziegler's ADA and NMHRA Complaint timely filed within 90 days thereafter.

79. In all the above, Defendants engaged in a pattern of preying upon known disabilities of an employee (Ziegler), undermining her job performance, reducing her authority within LAPS, and destabilizing her physical and/or mental condition to a point that would either drive her into medical leave, forced resignation, or fabricated grounds for termination.

## SEPARATE STATUTORY DEFINITIONS AND ELEMENTS

80. Under ADA, Sec. 504, HRA, and WPA, Defendants discriminated against Ziegler and others “on the basis of disability” as defined by 42 U.S.C. § 12112; engaged in unlawful discriminatory practice “because of disability or serious medical condition” as defined by § 28-1-7(a) NMSA 1978; and retaliated against, interfered with, coerced, or intimidated Ziegler and others because:

a. Under ADA, Defendants by the same actions “aided or encouraged” other individuals in the exercise or enjoyment of ADA rights pursuant to 42 U.S.C. § 12203(b);

b. Under ADA, Ziegler by the same actions “opposed” employment practices made unlawful by ADA,<sup>2</sup> and “charged, testified, assisted, or participated” in ADA-related investigations, proceedings, or hearings pursuant to 42 U.S.C. § 12203(a);

c. under HRA, Ziegler by the same actions and by their protests against the other, above treatment “opposed any unlawful practice ... testified or participated in” a proceeding under HRA, for which they were entitled to protection against “any form of threats, reprisal or discrimination” pursuant to NMSA § 28-1-7(I)(2); and

d. under WPA, Ziegler suffered retaliation as a direct result of engaging in protected activity, making good-faith protests, lawfully defending themselves, and invoking clear, legal rights, against Defendants’ acts of discrimination and retaliation.

## ADDITIONAL JURISDICTIONAL FACTS

81. The statutory claims asserted herein under HRA and WPA are not subject to the

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<sup>2</sup> Such oppositional activities “include the many ways in which an individual may communicate explicitly or implicitly opposition to perceived employment discrimination.” EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (August 25, 2016) at 4. <https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm>

New Mexico Tort Claims Act (“NMTCA”), which was enacted in 1976.

82. Amended several times since 1976, by a legislature fully aware of the existence of NMTCA, HRA is an express legislative waiver of the partial immunity otherwise created by the NMTCA.

83. HRA defines its covered employers to include “any person employing four or more persons and any person acting for an employer” and defines “person” to include “the state and all of its political subdivisions.” *See* §28-1-2 (A) and (B) NMSA 1978.

84. In addition, while setting forth the process by which an aggrieved person may appeal any administrative determination to the district court, HRA dictates “the state shall be liable the same as a private person.” *See* §28-1-13 (D) NMSA 1978.

85. Finally, enacted in 2010, by a legislature fully aware of the existence of NMTCA, WPA is an express legislative waiver of the partial immunity otherwise created by the NMTCA.

86. WPA not only defines its covered employers to include public employers; the entire statute is expressly limited to public employers. *See* § 10-16C-2 (C) NMSA 1978. That is, the entire purpose and effect of WPA is to create specific liability of public employers in waiver of prior NMTCA immunity.

87. Pursuant to the New Mexico Supreme Court decision in *Luboyeski v. Hill*, 117 N.M. 380, 382, 872 P.2d 353, 355 (1994), NMTCA does not supersede or override WPA.

88. Nevertheless, pursuant to § 4-46-1 (A) NMSA 1978, Defendants had both “actual notice” and “written notice” of the occurrence giving rise to this Complaint within less than 90 days of said occurrences.

89. Ziegler has satisfied all preconditions that would otherwise apply to sue under the NMTCA, § 4-46-1 (A) NMSA 1978.

90. In compliance with HRA and ADA, Ziegler also initiated with NMHRB and EEOC timely Charges of Discrimination, pursuant to NMSA § 28-1-10(A); and prior to the expiration of 90 days from the date of service of EEOC's and HRB's orders/notice of rights to sue, filed this Complaint/Notice of Appeal in the federal district court where the discriminatory practices occurred and where Defendants do business, pursuant to NMSA § 28-1-13(A).

91. Pursuant to the WPA, NMSA §10-16C-6, Ziegler timely filed this Complaint prior to the expiration of two years from the date on which the retaliatory actions occurred.

92. Because the operative facts of Ziegler's FMLA, ADA, and Section 504 claims so closely relate to those of their HRA and WPA claims, the court has jurisdiction over the parties and subject matter pursuant to HRA, NMSA § 28-1-13(A), and WPA, §10-16C-4 NMSA 1978.

#### CAUSES OF ACTION

##### COUNT I

##### FMLA DISCRIMINATION & RETALIATION/ INTERFERENCE WITH EXERCISE OF RIGHTS *(against all Defendants)*

93. Ziegler repeats and realleges the preceding allegations as though again herein fully set forth.

94. All Defendants are an "employer" within the meaning of 29 U.S.C § 2611(4).

95. All Defendants were, or acted directly or indirectly in the interest of, Ziegler's "employer" within the meaning of 29 U.S.C § 2611(4)(a).

96. LAPS was engaged in commerce or in any industry or activity affecting commerce within the meaning of 29 U.S.C § 2611(4)(a).

97. LAPS employed 50 or more employees for each working day during 20 or more calendar workweeks in 2022 or 2023 within the meaning of 29 U.S.C § 2611(4)(a).

98. Guy, Nettleton, Cameron, and Crane acted directly or indirectly in the interest of LAPS, because they:

- a. have the power to hire and fire employees;
- b. Supervise and control employee work schedules or conditions of employment;
- c. determine the rate and method of payment; and/or
- d. maintain employment records.

99. Ziegler was and is otherwise qualified to perform the essential functions of her position.

100. At the time Defendants terminated Ziegler had a “serious health condition” under 29 U.S.C § 2611(11).

101. At all times in 2025, Ziegler was an “eligible employee” within the meaning of 29 U.S.C § 2611(2).

102. At all times in 2025, Ziegler had been employed at least 12 months by Defendants within the meaning of 29 U.S.C § 2611(2).

103. At all times in 2025, Ziegler had at least 1, 250 hours of service for Defendants during the previous 12-month period within the meaning of 29 U.S.C § 2611(2).

104. At all times in 2025, Ziegler was entitled to and had not exhausted 12 workweeks of leave pursuant to 29 U.S.C § 2612(a)(1).

105. As of May 12, 2025, Ziegler had given notice to her employer that she was seeking FMLA paperwork to request future, additional days of leave pursuant to 29 U.S.C § 2612(a)(1).

106. Because the FMLA requires an employee to provide his employer “not less than 30 days’ notice” before taking leave for foreseeable medical treatment, 29 U.S.C. § 2612(e)(2),

giving such notice reasonably must be and is “protected activity” for purposes of an FMLA retaliation claim. *See Wehrley v. Amer. Fam Mut. Ins. Co.*, No. 12-1079 (10th Cir. January 3, 2013) (citing *Pereda v. Brookdale Senior Living Communities, Inc.*, 666 F.3d 1269, 1276 n.8 (11th Cir. 2012); *Erdman v. Nationwide Ins. Co.*, 582 F.3d 500, 509 (3d Cir. 2009); *Skrjanc v. Great Lakes Power Serv. Co.*, 272 F.3d 309, 314 (6th Cir. 2001) (“The right to take . . . leave pursuant to the FMLA includes the right to declare an intention to take such leave in the future.”)).

107. Defendants willfully interfered with, restrained, and denied Ziegler’s exercise of and attempt to exercise FMLA rights within the meaning of 29 U.S.C § 2615. Ziegler suffered tangible, adverse employment actions, including but not limited to that Defendants terminated the employment of Ziegler effective July 2025.

108. On such bases, Defendants committed:

- a. willful interference with Ziegler’s exercise of FMLA rights in violation of 29 U.S.C § 2615(a)(1); and
- b. willful discrimination against Ziegler in violation of 29 U.S.C § 2615(a)(2).

109. Under 29 U.S.C § 2617, Defendants are liable to Ziegler:

- a. for damages equal to—
  - i. the amount of any wages, salary, employment benefits, or other compensation denied or lost to Ziegler by reason of the violation
  - ii. the interest on the amount described in clause (i) calculated at the prevailing rate;
  - iii. an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii);
- b. for such equitable relief as may be appropriate, including employment,

reinstatement, and promotion; and

c. reasonable attorney fees, and litigation costs including but not limited to expert fees.

110. Pursuant to 29 U.S.C § 2617(c), this action has been brought less than 2 years after July 2025—the date on which LAPS terminated Ziegler.

COUNT II –DISABILITY/SERIOUS HEALTH/MEDICAL CONDITION  
DISCRIMINATION AND RETALIATION  
*(against Defendant LAPS with respect to ADA and Section 504,  
and against all Defendants with respect to HRA)*

111. Ziegler repeats and realleges the preceding allegations as though again herein fully set forth.

112. In violation of the ADA, 42 U.S.C. § 12203(a) and (b), Section 504, and HRA, § 28-1-7 (a), (i)(1), and (i)(2) NMSA, Defendants engaged in an unlawful discriminatory practice in matters of compensation, terms, conditions, and privileges of employment (including pay, prestige, and treatment, a hostile work environment, demotion, and actual or constructive termination of employment) against persons otherwise qualified because of disability and serious medical condition; coerced, intimidated, threatened, or interfered with Ziegler in the exercise or enjoyment of, or on account of her having exercised or enjoyed, or on account of her having aided or encouraged any other individual in the exercise or enjoyment of ADA and NMHRA rights; and engaged in, aided, abetted, incited, compelled and/or coerced forms of threats, reprisal, retaliation against Ziegler for having “participated” in ADA and NMHRA complaints or proceedings and “opposed [an] unlawful discriminatory practice” with respect to the same conduct by Defendants.

113. Section 504 prohibits interference with the exercise of rights granted by the law to individuals with disabilities.

114. Section 504 incorporates anti-retaliation provisions of Title VI of the Civil Rights Act of 1964, which “prohibits recipients from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege . . . or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.” 34 C.F.R. §104.61 and 34 C.F.R. §100.7(e).

115. ADA provides, “no person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by” the ADA. 42 U.S.C. § 12203(a).

116. Because ADA and Section 504 anti-retaliation clauses are virtually identical, they are generally analyzed together.

117. Non-disabled individuals who have “opposed any act or practice made unlawful” by Title II of the ADA have standing to sue under the anti-retaliation provisions of the ADA. Thus, teachers and parents who advocate for disabled students have standing to raise retaliation claims. And in turn, LAPS knew Ziegler’s representative advocacy for disabled students and staff was protected “opposition” under ADA and Section 504.

118. Similarly, Ziegler’s representative advocacy for disability rights/protections of LAPS employees under NMSA § 28-1-7(a) or students under NMSA § 28-1-7(f) or (m) was opposition/participation activity broadly protected by NMSA § 28-1-7.

119. As noted above, the supposed non-discriminatory reason Defendants have offered for mistreating and terminating Ziegler is a mere pretext for discrimination.

120. Defendants never viewed, identified, or escalated any purported concerns with Plaintiff as matters warranting discipline until after Plaintiff disclosed her disabilities and began advocating for disability rights and complaining of mistreatment. *See Metzler v. Fed. Home Loan Bank*, 464 F.3d 1164, 1174 (10th Cir. 2006) (explaining that “evidence of pretext may

include [evidence of an employer's] prior treatment of plaintiff").

121. Defendants' purported justifications for discipline and mistreatment rely upon false accusations and false descriptions of conduct. *See Kendrick v. Penske Transp. Servs., Inc.*, 220 F.3d 1220, 1230 (10th Cir. 2000) (a plaintiff may prove pretext by producing evidence that "the defendant's stated reason for the adverse employment action was false,"); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000) (from the falsity of Defendants' explanation, the Court "can reasonably infer . . . that [Defendants are] dissembling to cover up a [retaliatory] purpose").

122. Even if there were any accuracy in the allegations, the conduct alleged against Plaintiff did not amount to a violation of the severity Defendants claim, let alone grounds for mistreatment or termination. *Young v. Dillon Cos.*, 468 F.3d 1243, 1250 (10th Cir. 2006) ("The relevant "falsity" inquiry is whether the employer's stated reasons were held in good faith at the time of the discharge, even if they later prove to be untrue, or whether plaintiff can show that the employer's explanation was so weak, implausible, inconsistent or incoherent that a reasonable fact finder could conclude that it was not an honestly held belief but rather was subterfuge for discrimination").

123. Defendants have knowingly omitted context of events to cast Plaintiff in a false, negative light. *See Smothers v. Solvay Chems., Inc.*, 740 F.3d 530, 542 (10th Cir. 2014) (finding fundamental unfairness and inadequacy of employer's investigation—including the decision makers deliberately preventing plaintiff from defending his actions and reaching their conclusions based on one-sided information—permitted jury to infer pretext and precluded summary judgment).

124. Defendants gave inconsistent, changing explanations for what the adverse actions

against Plaintiff would be and for why those actions were justified. *See Timmerman v. U.S. Bank, N.A.*, 483 F.3d 1106, 1113 (10th Cir. 2007) (“An employee may show pretext based on ‘weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions’ in the employer’s claimed legitimate, non-discriminatory reason such that a rational trier of fact could find the reason unworthy of belief.”).

125. Defendants have not articulated a fixed, objective standard under which they found Plaintiff deserved mistreatment, discipline, or termination, more than other employees. *See Denney v. City of Albany*, 247 F.3d 1172, 1185 (11th Cir. 2001) (“A subjective reason is a legally sufficient, legitimate, nondiscriminatory reason if the defendant articulates a clear and reasonably specific factual basis upon which it based its subjective opinion.”) (quoting *Chapman v. Al Transport*, 229 F.3d 1012, 1033-34 (11th Cir. 2000)) (emphasis added).

126. However Defendants may phrase the standard of conduct, under that standard, they treated other employees more favorably than Plaintiff. *See Sonntag v. Shaw*, 22 P.3d 1188, 1203 (N.M. 2001) (acknowledging that a “jury can properly infer the ultimate fact of intentional discrimination from disparate treatment”).

127. The apparent reasons Defendants treated other employees more favorably are that they are persons who have not declared any disability or advocated for Defendants to comply with disability laws including NMHRA, ADA, and Section 504. *See Kendrick*, 220 F.3d at 1230 (explaining that, to prove pretext through evidence of deviation of an unwritten company policy or practice, a plaintiff often provides evidence that she was treated differently from other similarly-situated employees who violated work rules of comparable seriousness).

128. Defendants violated their own HR policies, because Defendants:

- a. did not investigate Plaintiff’s complaints at all;

- b. did not receive, document, process, investigate, or resolve Plaintiff's complaints through neutral, unbiased, disinterested persons;
- c. retaliated against Plaintiff for invoking the complaint process; and
- d. attempted to intimidate Plaintiff from further complaints.

*See Kendrick*, 220 F.3d at 1230 (explaining that a plaintiff can demonstrate pretext by presenting (1) evidence that the defendant acted contrary to a written company policy prescribing the action to be taken by the defendant under the circumstances or (2) evidence that the defendant acted contrary to an unwritten policy or contrary to company practice when making the adverse employment decision affecting the plaintiff); *Twigg v. Hawker Beechcraft Corp.*, 659 F.3d 987, 1003 (10th Cir. 2011) (“deviation” evidence can “permit[] a reasonable inference that [the employer] acted with an ulterior motive and . . . engineered and manufactured the reasons [it] proffered for terminating [the employee’s] employment.”) (quoting *Doebele v. Sprint/United Mgmt. Co.*, 342 F.3d 1117, 1138 n.11 (10th Cir. 2003)).

129. While doing so, and in stark contrast, Defendants engineered, exaggerated, solicited complaints and statements to manufacture and magnify, categorically credited, withheld notice from Plaintiff of, and proceeded to take corrective action based upon (before giving Plaintiff any opportunity to address) any possible insinuation of misconduct by Plaintiff. *See Kendrick, supra; Twigg, supra.*

130. Regardless whether it conformed to their own policies, Defendants’ conduct did not comply with generally accepted HR practices, *see Maller v. Community College of Beaver County*, 43 F.Supp.3d 495, 513 (W.D. Penn. 2014) (finding genuine issue of material fact as to pretext based on expert testimony that employer did not conduct its purported restructuring plan in accordance with “standard HR standards”); *Ferretti v. Pfizer, Inc.*, No. 11-CV-04486 (N.D.

Cal. January 10, 2013); available at

[https://scholar.google.com/scholar\\_case?case=17748243018221683134&q=ferretti+v+pfizer+in+c&hl=en&as\\_sdt=6,32](https://scholar.google.com/scholar_case?case=17748243018221683134&q=ferretti+v+pfizer+in+c&hl=en&as_sdt=6,32) (allowing expert testimony and finding genuine issue of material fact as to pretext on whether employer complied with “generally accepted HR practices”); and *Hernandez v. City of Vancouver*, No. CO4-5539FDB, 2009 WL 279038 (W.D. Wash. Feb. 5, 2009) (allowing expert testimony “as to proper governance standards” and “the City’s deviation from good HR practices” because it was relevant and “could assist the jury because the average juror is unlikely to be familiar with HR management policies and practices.”); *Smothers, supra* (finding fundamental unfairness and inadequacy of employer’s investigation—including the decision makers deliberately preventing plaintiff from defending his actions and reaching their conclusions based on one-sided information—permitted jury to infer pretext and precluded summary judgment).

131. Even if ultimate decisionmakers were neutral toward Plaintiff on basis of disability/disability-advocacy (which Plaintiff denies), their adverse, discipline, and termination decisions rested on persons exhibiting hostility toward Plaintiff on that basis, thus permitting—under the “Cat’s Paw” doctrine—a jury to infer Defendants’ termination was tainted by the discriminatory/retaliatory animus of Guy, Nettleton, Cameron, Crane, and their direct subordinates, on whose reports Defendants relied, and thus also permitting a finding that the proffered reason for acting against and/or firing Plaintiff is pretextual. *See E.E.O.C. v. BCI Coca-Cola Bottling Co.*, 450 F.3d 476, 484 (10th Cir. 2006) (““In the employment discrimination context, “cat’s paw” refers to a situation in which a biased subordinate, who lacks decisionmaking power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action.”)

132. Under ADA, 29 U.S.C. §§ 12117, 12203, and 12205, Section 504, 29 U.S.C. § 794a, and HRA, NMSA § 28-1-13, Defendants are liable to Plaintiff for her resulting compensatory damages, including but not limited to back pay, front pay, employee benefits, and emotional distress, liquidated and punitive damages for the willfulness, malice, and recklessness Defendants displayed in the above acts, and for reasonable attorney fees, and litigation costs including but not limited to expert fees.

COUNT III – WPA RETALIATION  
*(against Defendant LAPS)*

133. Plaintiff repeats and realleges the preceding allegations as though again herein fully set forth.

134. Plaintiff by the above complaints and opposition to Defendants’ FMLA, ADA, IDEA, Section 504, and HRA violations:

A. communicate[d] to the public employer or a third party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act;

B. provide[d] information to, or testifie[d] before, a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; **and**

C. object[ed] to or refuse[d] to participate in an activity, policy or practice that constitutes an unlawful or improper act.

*See* §10-16C-2 (C)(3) NMSA 1978.

135. The disability-related conduct of Defendants upon which Plaintiff advocated, reported, and complained constituted reasonably-perceived “unlawful or improper acts” within the meaning of WPA, because they involved “a practice, procedure, action or failure to act on the part of a public employer” that:

(1) violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state;

- (2) constitutes malfeasance in public office; or
- (3) constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public.

See §10-16C-2 (E) NMSA 1978.

136. Defendants took retaliatory actions against Plaintiff for these reports in the form of a hostile work environment, demotions, and termination of Plaintiffs' employment. *Lerma v. N.M. Dep't of Corrections*, 2024-NMCA-011, *cert. granted* ("Our Legislature has defined 'retaliatory action' broadly as 'any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment'" (citing § 10-16C-2(D) NMSA); *Dart v. Westall*, 2018-NMCA-061, ¶ 23, 428 P.3d 292 (concluding the evidence sufficed to support a jury finding of "retaliatory action" under the WPA where the defendant reassigned the plaintiff to a new division, "created a hostile work environment, made humiliating comments about him to his colleagues, issued him a substandard work vehicle, and required him to surrender his key to the forensic lab and cease investigating his caseload of crimes against children").

137. On such bases, Defendants committed whistleblower retaliation in violation of NMSA § 10-16C-3.

138. Under NMSA § 10-16C-4, Defendants are liable to Plaintiff for actual damages, including but not limited to back pay, front pay, lost employee benefits including but not limited to retirement benefits under the Public Employees Retirement Association, and emotional distress, reinstatement to the position and seniority status Plaintiff would have had but for the violation, two times the amount of back pay with interest on the back pay, compensation for special damages including emotional distress sustained as a result of the violation, and litigation

costs and reasonable attorney fees.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court order as to her claims for violations of FMLA, ADA, Section 504, HRA, and WPA, that Plaintiff be awarded damages, including but not limited to unpaid or underpaid wages; back and front pay and benefits; pre- and post-judgment interest as permitted by law; emotional distress; additional liquidated damages in the amount of the same foregoing; punitive damages; costs and reasonable attorneys' fees; damages under NMSA §10-16C-4(A) including actual damages including back pay, reinstatement, two times the amount of back pay, interest on the back pay, special damages including emotional distress and associated medical bills; and the same and further common-law damages pursuant to NMSA §10-16C-4(C); costs and attorney fees pursuant to NMSA §10-16C-4(A); and any such other and further relief as the Courts deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all issues so triable.

Filed this day of April 27, 2026.

Respectfully Submitted,

-/s/ - Trent A. Howell -  
Electronically filed & signed-  
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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Los Alamos Public Schools  
Case No. C2526-01  
August 22, 2025**

**This Report requires corrective action. See pages 14-18.**

On July 1, 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 LEA's responses to the allegations, together with documentation submitted by the Local Education Agency 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 and Parent Advocate on August 12, 2025;
- interview with the Special Education Teacher and Assistant Principal on August 13, 2025;
- interview with the Coordinator of Student Services and Assistant Coordinator of Student Services on August 18, 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.

### **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 LEA developed an individualized education program (IEP) that was tailored to Student's unique needs and reasonably calculated to enable the Student to make progress appropriate in light of their circumstances, pursuant to 34 C.F.R. §§ 300.320 and 300.324; and 6.31.2.11 NMAC.
2. Whether the LEA properly implemented the Student's IEP(s), pursuant to 34 C.F.R. § 300.323 and 6.31.2.11(B)(1) NMAC.
3. Whether the LEA provided Parent with access to Student's educational records upon Parent's request for same, pursuant to 34 C.F.R. §§ 300.501(a) and 300.613; and 6.31.2.13(B) NMAC.
4. Whether the LEA'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. Prior to the 2024-25 school year, Student lived and attended school in a different state. Pursuant to an evaluation conducted in October 2022 by a school district in the other state, Student was identified as a student with a disability under the primary classification of autism. The IEP in effect during the 2023-24 school year was dated October 9, 2023.
2. Student enrolled at District on July 23, 2024. No later than July 31, 2024, District was in receipt of the October 9, 2023 IEP.
3. Sometime prior to the start of the school year, it was decided that Student would be best served in the Intensive Learning Program (ILP) classroom. The ILP classroom is a classroom for students with severe intellectual disabilities, including students with autism or language impairments, who have very individualized needs and require a modified curriculum. The ILP classroom is taught by Special Education Teacher and has educational assistants (EAs) to support the teacher. During the 2024-25 school year, six students were supported by Special Education Teacher and four EAs in the ILP classroom.
4. The ILP classroom has a retractable partition wall within the center of the classroom. District provided pictures of the classroom showing how the wall can function. Special Education Teacher reported that the wall was never fully extended during the 2024-25 school year, which would in effect create two separate spaces in the ILP classroom. Rather, the wall was only partially extended and, at all times, students were able to freely walk between and enter the two spaces. Also shown in the pictures is a moveable room divider. The pictures show the room divider to the side of the ILP classroom, not near the retractable partition wall.
5. The first day of the 2024-25 school year was August 7, 2024. Student was in the fifth grade and Student's October 9, 2023 IEP was implemented. Relevant information in the IEP includes:
  - a. Student's behavior impedes their learning or the learning of others.
  - b. Five IEP goals were included to address academics, toileting, communication, and social-emotional/behavior.
  - c. Special education services included social work and speech language.
  - d. The "program" designated was a program for Autism Spectrum Disorder. It indicates Student would be in the special education setting between 1,475 to 1,975 minutes per week and in the general education setting for a maximum of 90 minutes per week.

- e. Included in the IEP was a comment from Student's previous general education teacher. The comment indicates Student always attended music class with Student's nondisabled peers.
6. Parent alleges sometime in August or September 2024, Parent observed food expelled from Student's rectum. Parent asserts Student must have been able to place food inside Student's rectum while at school. No documentation was provided regarding the incident and District staff were unaware of it.
7. District reports between the start of the school year and September 9, 2024, Student was given the opportunity to attend recess and specials with their nondisabled peers and attend "calendar" in the general education classroom. Special Education Teacher stated Student most often chose not to attend specials and never went to the general education classroom for "calendar." Student's weekly schedule provided by District does not designate a time for specials but does designate two different times each day for Student to attend recess.
8. An IEP meeting was held, and a new annual IEP was developed and dated September 9, 2024. Relevant information in the IEP includes:
  - a. Information regarding Student's success transitioning to the classroom after recess.
  - b. It was reported that at the time of development, Student had not been able to attend specials or the general education classroom.
  - c. The present levels of academic achievement and functional performance (PLAAFP) indicate District needed additional time to assess Student's reading and math skills due to Student's behaviors. However, some present levels were included. For example, Student was able to write 23 letters correctly, identify 6 out of 20 sight words, correctly write numbers up to ten, but was unable to correctly identify coins.
  - d. A behavior intervention plan (BIP) was included.
  - e. Two IEP goals with three objectives each were included. Specifically:
    - i. Goal 1: "[Student] will follow a 3-step process to complete an adult-directed activity or routine to engage in [the] school environment and learning activities as measured by the objectives below"
      1. Objective 1: "[Student] will demonstrate self-advocacy skills by independently following a bathroom routine (scheduled times/changes, hand hygiene, clothing management)"
      2. Objective 2: "[Student] will participate in an adult-directed tabletop activity across school settings by completing a 3-step task (e.g., following directions, turn-taking, etc.) in 3/5 opportunities"

3. Objective 3: “[Student] will advocate to engage in an alternative activity or request a break during tabletop activities by using pictures, verbalizations (w/ appropriate volume), gestures, etc.”
- ii. Goal 2: “[Student] will follow a schedule to transition throughout [the] school day and participate in school activities as measured by the objectives below”
  1. Objective 1: “[Student will follow a daily schedule to access [the] school environment to support transitions, foster a sense of predictability, and promote engagement in learning opportunities with the use of supports as needed in 4/5 school days.”
  2. Objective 2: “[Student] will transition between 3 locations in the school building, using supports as needed (front-loading, visual, sensory supports).”
  3. Objective 3: “[Student will demonstrate self-advocacy by using total communication (verbalizations, signs, gestures, picture cards, etc.) to indicate [word omitted] basic needs/wants during the school day (hungry thirsty, hurt, etc.)”
- f. Accommodations include, in part:
  - i. Adult support for transitions, inclusion opportunities, classroom routines, and task completion.
  - ii. Adult support outside of the classroom to ensure safe movement in crowded environments
  - iii. Daily school to home communication
- g. Student’s LRE was “inside regular class less than 40% of day”
- h. Student was to participate in all activities (e.g., recess, lunch, electives, etc.) with students without disabilities.
- i. Special Education Services included:
  - i. Intensive Learning Program: 32 hours/week (85% in the special education settings; 15% in the general education setting)
  - ii. Extra adult support throughout the day
    1. No other additional information was included.
- j. Related Services included:
  - i. Occupational Therapy: 0.50 hours/week (special education setting)
  - ii. Speech: 1 hours/week (special education setting)
  - iii. Social Behavior Support: 1 hours/week (special education setting)
9. The prior written notice (PWN) regarding the September 9, 2024 IEP meeting provides little information regarding the proposals and options considered. Specifically, the PWN states the IEP would be implemented on September 9, 2024 and a safety plan and BIP were

- developed. The PWN makes no mention regarding the decision not to include academic IEP goals or other proposals that may have been considered.
10. The BIP developed at the meeting includes eight identified behaviors that support strategies were to address. The eight identified behaviors include: saying “no” loudly; putting items in ears, nose, mouth, or inside clothing; shouting/screaming; eating non-food items; “transitioning between activities;” banging head; biting; and hair pulling. Each of the eight behaviors have antecedent strategies to utilize, replacement behaviors, “teaching opportunities,” and consequences if Student engages in the identified behavior(s).
  11. On September 11, 2024, the finalized IEP, BIP, Safety Plan, and procedural safeguards notice was emailed to Parent. The email indicates a hard copy would also be sent home. The procedural safeguards notice is a notice previously prepared by District. The notice includes all the information required by 34 C.F.R. § 300.504 except for information related to attorneys’ fees under 34 C.F.R. § 300.517. The notice provides a link to a complete copy of the procedural safeguards on the NM PED website. However, the link is not accurate.
  12. Daily home to school communication logs were provided by District. In the log provided, the first day a log was generated was on September 20, 2024. Between then and October 8, 2024, information included in the log was primarily limited to Student’s behaviors and use of the restroom. Very seldom does the log indicate what Student did all day or if Student attended recess or specials.
  13. Parent asserts they were told at parent-teacher conferences during the week of October 7, 2024 that Student was being partitioned away from the other students in the ILP classroom. District asserted in the interview with Investigator that Student was never partitioned away from other students in the ILP classroom and that the retractable wall was never fully extended which allowed Student to move throughout either side of the classroom, when desired.
  14. Beginning on October 15, 2024, the daily log began to provide significantly more information about Student’s minute-by-minute or hour-by-hour activities. The daily log never once mentions allowing Student the opportunity to attend recess or specials. In addition, it appears Student’s days were spent eating, sleeping, drawing, or playing with blocks. Also included in the daily log are pictures. As early as October 8, 2024, the pictures very clearly show that the retractable partition wall is nearly fully extended and the moveable wall divider was used to close the gap, dividing the ILP classroom into two separate spaces. The pictures clearly contradict District’s assertion that the retractable partition wall and wall divider were never used to divide the classroom. In the pictures, there are no signs (e.g., personal belongings, school work, etc.) that other students were on Student’s side of the ILP classroom.
  15. On the afternoon of November 3, 2024, Parent emailed District stating they would like Student to be integrated in class more often. Parent also stated they would like Student to

have opportunities to go outside. District staff did not respond to Parent's email. Thus, Parent sent another email the afternoon of November 4, 2024. Specifically, Parent emailed District stating the communication log for that day indicated Student was in a room by themselves and had no opportunities for peer interaction or to go outside. At that time, Parent requested "all data recorded that has been used to make this decision." In response, District indicated a staffing meeting was to occur on November 6, 2024 and Parent's concerns would be discussed then. District also offered to hold an IEP meeting. District did not say anything specifically regarding Parent's request for data. On November 5, 2024, Parent replied stating the IEP may need amended to include academics, bathroom protocols, and change Student's LRE but that it could be addressed after the staffing meeting. Parent then forwarded the email correspondence to the Superintendent expressing the same concerns that Student had been in a room by themselves, had not been provided opportunities to go outside, interact with peers or participate in academics, and was coming home with feces on their body.

16. The daily log that included pictures showing Student was isolated to one side of the ILP classroom was no longer used after November 6, 2024.
17. Presumably after the staffing meeting, on November 6, 2024, Special Education Teacher emailed Parent stating the purpose of the "space" created for Student was to provide Student with a "reset before re-integrating with [their] peers." After the interview with Investigator, Special Education Teacher asserted the space was only partially partitioned off from the ILP classroom and that all students were allowed to use the space.
18. On November 7, 2024, the principal emailed Parent stating staff were in the process of updating Student's schedule to reflect the opportunities Student would have to interact with peers, go to recess, and engage in academics. The daily schedule was provided to Parent on November 12, 2024. District asserts the daily schedule sent was the daily schedule always used for Student during the 2024-25 school year.
19. Beginning on November 12, 2024, the daily log was updated to include information regarding academics, recess opportunities, inclusion opportunities, and behaviors. The log was to be emailed to Parent every day.
20. The daily log for the remainder of the school year indicates Student was given the opportunity to attend recess twice a day. If Student refused to attend, the daily log documented the refusal. The daily log does not indicate Student was given the opportunity and/or did attend electives with their nondisabled peers.
21. On May 17, 2025, Student was taken to urgent care. While there, it was discovered that both of Student's ears were compacted with blue Play-Doh. Parent asserts, following the discovery, all playdough kept at school was returned to Parent including one empty blue Play-Doh container. It is unclear how long the Play-Doh was in Student's ears before it was discovered.

22. During the 2024-25 school year, Student was sent home on two occasions (November 22, 2024 and March 6, 2025) due to vomiting. On one additional occasion (March 3, 2025), District requested Parent retrieve Student early for vomiting, however, Parent refused to do so. In addition, on two other occasions (November 15, 2024 and May 7, 2025) District requested Parent retrieve Student from school early due to gastrointestinal episodes; Parent complied with those requests.
23. The daily log includes many instances in which scatolia occurred. The log indicates Student was cleaned and/or clothes were changed following each instance. There are two instances in which it was not clear if Student tolerated staff to thoroughly clean up all fecal matter on Student's body.

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

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

***Whether the LEA developed an individualized education program (IEP) that was tailored to Student's unique needs and reasonably calculated to enable the Student to make progress appropriate in light of their circumstances, pursuant to 34 C.F.R. §§ 300.320 and 300.324; and 6.31.2.11 NMAC.***

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). The IEP is the means by which special education and related services are "tailored to the unique needs" of the student. *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176 (1982).

In the complaint, Parent alleged Student was sent home for disability-related behaviors, Student was able to put a foreign substance in their ears while at school, and scatolia incidents were not handled appropriately. Based on Parent's allegations, Student's September 9, 2024 IEP was analyzed to determine if it was reasonably calculated to address the concerns identified by Parent.

First, Student was sent home a few times for vomiting or gastrointestinal issues. Parent indicated the vomiting was self-induced, a known behavior. There is no documentation in the September 9, 2024 IEP regarding self-induced vomiting, nor is there any indication the self-induced vomiting impacted Student's access to FAPE. Therefore, there is insufficient evidence to conclude the IEP should have addressed self-induced vomiting. On the other hand, scatolia was a known behavior and incidents involving scatolia were documented and appropriately addressed.

Second, Parent raised concerns about appropriate supervision of and assistance to Student. The IEP includes adult support during transitions, inclusion opportunities, classroom routines, and task completion. In addition, the IEP includes “adult support” throughout the day as a special education service, although no other details were included. While the IEP reflects that adult support would be available, the support was not sufficiently defined in the IEP. Any failure to implement the adult support will be addressed under Issue No. 2.

Although Parent’s allegations were specific, the investigation required a review of Student’s IEP in its entirety. Pursuant to NMPED’s general supervisory authority under 34 C.F.R. § 300.149, additional concerns with the IEP were identified.

An IEP must include measurable goals designed to “[m]eet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum.” 34 C.F.R. § 300.320(a)(2). *See also Letter to Hayden*, 22 IDELR 501 (OSEP 1994) (stating IEP goals must address each of the student’s identified needs that require special education or related services, as documented in the present levels of performance). For students who take alternate assessments aligned to alternate achievement standards, short term objectives or benchmarks are required. *Id.* at 300.320(2)(ii). Short term objectives serve as intermediate steps for measuring progress towards the annual goal. Short term objectives are not a substitute for annual goals. *See e.g., Edinburg Consol. Indep. Sch. Dist.*, 109 LRP 72776 (SEA TX 04/25/09).

Here, the September 9, 2024 IEP includes two annual IEP goals with three objectives each. However, the objectives are not written as intermediate steps to meet the annual goal but instead function as separate, unrelated goals. For example, under Goal #1, the first objective requires Student to independently follow a bathroom routine while the second objective requires Student to complete a three-step tabletop activity. Student’s ability to independently follow a bathroom routine has no correlation to Student’s ability to complete a tabletop activity. Moreover, the annual goal itself lacks clear measurability, as its attainment depends on the success of the three objectives with varying mastery criteria.

In addition, although the PLAAFP reflects that Student’s academic skills (e.g., reading and math) are below grade-level expectations, the IEP contains no academic-related goals. District reports that Parent requested the omission of academic goals, while Parent reports that District stated Student’s behaviors needed to be addressed first. However, the PWN does not document the decision to exclude academic-related goals, in violation of 34 C.F.R. § 300.503 The absence of academic goals, an identified area of need, renders the IEP deficient.

In conclusion, the September 9, 2024 IEP failed to include sufficient detail regarding adult support, measurable annual academic goals, and corresponding intermediate goal objectives

with clear measurability of annual goals. Thus, the IEP was not reasonably calculated to enable Student to make progress appropriate in light of their circumstances, as required by *Andrew F.*

Of importance, during the Parent interview, it was brought to the Investigator's attention that the procedural safeguards provided by District may not comply with the IDEA. The General Findings of Fact support that the procedural safeguard notice does not include all content required by 34 C.F.R. § 300.504. Therefore, corrective action will be required.

**As to Issue No. 1, LEA is cited, and Corrective Action is required.**

**Issue No. 2**

***Whether the LEA properly implemented the Student's IEP(s), pursuant to 34 C.F.R. § 300.323 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." *Andrew 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).

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.

Parent alleged adult support and supervision were not consistently provided and Student was not educated in the identified LRE.

First, Parent identified two incidents in which adult support and supervision lapsed. The IEP suggests that Student should have adult supervision at all times. Therefore, it is difficult to reconcile how Student could insert food in their rectum and, later, a foreign substance in their ears without staff noticing or intervening. These incidents demonstrate that District failed to provide the adult support required by the IEP.

Second, the IEP states Student would be educated in the ILP classroom with other students with disabilities, participate in all activities with students without disabilities, and spend 15% of the week in the regular education setting. However, daily communication logs and photographs indicate for a period Student was routinely separated from their peers in the ILP classroom, did

not participate in activities (i.e., lunch<sup>2</sup> and electives) with nondisabled peers, and never accessed the regular education classroom.

The isolation within the ILP classroom for a period four or more weeks and the lack of documented opportunities to attend electives reflect a material implementation failure. Moreover, reducing Student's opportunities to participate in the identified LRE without parental agreement or PWN is inconsistent with the requirements of the IDEA. Accordingly, the District materially failed to implement Student's IEP, resulting in a denial of FAPE.

**As to Issue No. 2 LEA is cited, and Corrective Action is required.**

**Issue No. 3**

***Whether the LEA provided Parent with access to Student's educational records upon Parent's request for same, pursuant to 34 C.F.R. §§ 300.501(a) and 300.613; and 6.31.2.13(B) NMAC.***

Under the IDEA, parents are afforded the opportunity to inspect and review their child's education records. 34 C.F.R. § 300.613(a). *See also* 34 C.F.R. §§ 300.501(a). Accordingly, a school district must permit the parents to inspect and review any education records related to their child that were collected, maintained, or used by the school district. *Id.* at 300.613(a). A parent must be permitted to review their child's education records "without unnecessary delay," and in no case more than 45 days after the request. *Id.*

On November 4, 2024, Parent requested the data District used when deciding to isolate Student from other students in the ILP classroom. Although District denies Student was isolated, photographs from the time period in question show Student was in fact isolated. However, there is no indication that District collected, maintained, or used any data when deciding to partition the ILP classroom. The IDEA does not require districts to create new records in response to a parental request for same. Accordingly, no violation is found.

**As to Issue No. 3, LEA is not cited.**

**Issue No. 4**

***Whether the LEA'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.***

FAPE must be made available to all children with disabilities. 34 C.F.R. § 300.101; 6.31.2.8 NMAC.

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<sup>2</sup> Although the IEP indicated Student would participate in lunch with their nondisabled peers, there is no indication the IEP Team intended or planned for Student to eat lunch with their nondisabled peers. Inclusion during lunch was marked in error.

School districts must provide FAPE for each student who resides within the school district’s educational jurisdiction. 6.31.2.9(A) NMAC.

A procedural violation constitutes a denial of FAPE if it: (1) impedes the child’s right to FAPE; (2) significantly impedes the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE; or (3) causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2). A substantive legal standard for determining whether a district offered a student FAPE is whether the IEP was reasonably calculated to enable the child to make progress appropriate in light of their circumstances. *Andrew F.*, 137 S. Ct. 988 (2017).

The failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17. However, not every deviation from the IEP results in a denial of FAPE. *See I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs.*, 70 IDELR 86 (8th Cir. 2017). Only material implementation failures qualify as a denial of FAPE. *See e.g., Van Duyn v. Baker Sch. Dist. 5J*, 47 IDELR 182 (9th Cir. 2007), *reprinted as amended*, 107 LRP 51958 , 502 F.3d 811 (9th Cir. 2007). “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP.” *Id.*

As noted above, the IEP was missing essential elements and there were material implementation failures. These errors result in a denial of FAPE.

**As to Issue No. 4, LEA is cited, and Corrective Action is required.**

**Summary of Citations**

<b>IDEA/State Rule Provisions Violated</b>	<b>Description of Violation</b>
34 C.F.R. §§ 300.320 and 300.324 6.31.2.11 NMAC	The LEA failed to develop an IEP reasonably calculated to meet Student’s unique needs.
34 C.F.R. § 300.503	The LEA failed to include all proposals and/or refusals to initiate or change the identification, evaluation, educational placement of the child, or the provision of FAPE to the child.
34 C.F.R. § 300.504	The LEA failed to provide procedural safeguards notice with a full explanation of all the procedural safeguards available under the IDEA regulations.
34 C.F.R. § 300.323 6.31.2.11(B)(1) NMAC	The LEA failed to properly implement Student’s IEP.
C.F.R. § 300.101 6.31.2.8 NMAC	The LEA’s actions and/or omissions towards the Student resulted in a denial of FAPE to the Student.

**Required Actions and Deadlines**

**By September 8, 2025**, LEA's Special Education Director must assure the OSE in writing that LEA will implement the provisions of this Corrective Action Plan (CAP). OSE requests LEA submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor LEA's progress with Corrective Action Plan and to be its point of contact about this complaint from here forward:

Dr. Elizabeth Cassel  
Corrective Action Plan Monitor  
Office of Special Education  
New Mexico Public Education Department  
300 Don Gaspar Avenue  
Santa Fe, NM 87501  
Telephone: (505) 490-3918  
[Elizabeth.Cassel@ped.nm.gov](mailto:Elizabeth.Cassel@ped.nm.gov)

The file on this complaint will remain open pending PED's satisfaction that required elements of this Corrective Action Plan are accomplished within deadlines stated. LEA is advised that OSE will retain jurisdiction over the complaint until it is officially closed by this agency and that failure to comply with the plan may result in further consequences from OSE.

Each step in this Corrective Action Plan is subject to and must be carried out in compliance with procedural requirements of IDEA 2004 and implementing federal regulations and State rules. Each step also must be carried out within timelines in the Corrective Action Plan. If a brief extension of time for steps in the Corrective Action Plan is needed, a request in writing should be submitted to Corrective Action Plan Monitor. The request should include case number, date for proposed extension, and reason for needed extension. OSE will notify parties of any extension granted.

**Please carefully read entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes. All corrective action must be completed no later than August 29, 2026 and reported to OSE no later than September 12, 2026.** All documentation submitted to OSE to demonstrate compliance with the CAP must be clearly labeled to indicate state complaint case number and step number.

**Corrective Action Plan**

<b>Step No.</b>	<b><u>Actions Required by LEA</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
<b>1.</b>	As described above, LEA will submit a written assurance to the PED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	<b>August 29, 2025</b>	Written Assurance Letter/Email	<b>August 29, 2025</b>
<b>2.</b>	LEA Special Education Director and School Principal shall meet virtually with OSE CAP Monitor to review Complaint Resolution Report, Corrective Action Plan, and any other measures that LEA plans to take to ensure that violations are corrected and do not recur. LEA Director has discretion to include other LEA or school administrators or personnel in this meeting. LEA Director shall be responsible for arranging this virtual meeting with OSE CAP Monitor.	<b>September 5, 2025</b>	Notes from meeting prepared by LEA	<b>September 16, 2025</b>
<b>3.</b>	LEA Special Education Director will meet with relevant case manager, implementation specialist, and others with special education roles and responsibilities to review Complaint Resolution Report and to ensure that those persons understand this report, violations that were found, and corrective action that will be taken to address violations.	<b>September 8, 2025</b>	Notes from meeting prepared by LEA, including list of attendees, summary of key points, and specific responsibilities assigned to each participant for ensuring compliance.	<b>September 15, 2025</b>

<b>Step No.</b>	<b><u>Actions Required by LEA</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED</u></b> <b><u>OSE</u></b>	<b><u>Document Due Date</u></b>
4.	<p>LEA shall update its procedural safeguards notice so that the notice includes a full explanation of the procedural safeguards identified in 34 C.F.R. § 300.504.</p> <p>The procedural safeguards notice must be updated so that the link to the NM PED’s procedural safeguard notice is accurate.</p> <p>The updated procedural safeguards notice must be provided to all parents with students with disabilities upon completion.</p>	September 18, 2025	Updated procedural safeguards notice	September 18, 2025
5.	<p>LEA shall convene a facilitated IEP meeting for Student. This may serve as both Student’s annual IEP and required FIEP under this CAP. The facilitated IEP meeting shall address, at minimum:</p> <ol style="list-style-type: none"> <li>1. Annual IEP goals, ensuring the objectives are intermediate steps of the corresponding annual goal and that academic goals are considered/included;</li> <li>2. What adult support Student needs, ensuring the support included is detailed enough so that the District’s level of commitment regarding that support is clear;</li> <li>3. The appropriate LRE, ensuring activities that Student will not be involved in the regular education environment are not included;</li> </ol>	September 9, 2025	<ol style="list-style-type: none"> <li>1. Invitation to IEP meeting</li> <li>2. Agenda for IEP meeting</li> <li>3. IEP</li> <li>4. Prior Written Notice(s)</li> </ol>	September 16, 2025

<b>Step No.</b>	<b><u>Actions Required by LEA</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED</u></b> <b><u>OSE</u></b>	<b><u>Document Due Date</u></b>
	<p>4. Whether a functional behavior assessment should be conducted; and</p> <p>5. The compensatory education required in #6.</p> <p>Facilitator shall be independent of LEA and shall be selected from PED list of approved facilitators. Facilitator shall be paid for by LEA.</p> <p>LEA shall ensure a meeting notice is provided in advance of meeting, pursuant to 34 C.F.R. § 300.322. <i>Note:</i> If mutually agreeable to Parent and required staff, meeting may be rescheduled within 10 school days of proposed date.</p> <p>LEA shall ensure that a copy of IEP and updated procedural safeguards required in #4 is provided to Parent at the end of meeting.</p> <p>LEA shall ensure the PWN includes all proposals and refusals.</p>			
<b>6.</b>	<p>LEA shall provide the following compensatory education:</p> <ol style="list-style-type: none"> <li>1. English Language Arts special education services for 20 hours</li> <li>2. Math special education services for 20 hours</li> </ol> <p>The plan for compensatory services shall be documented in a PWN for the facilitated IEP meeting.</p>	<b>Beginning as determined in the FIEP and continuing until completed.</b>	Monthly documentation of delivery/provision of compensatory education services, including logs of services recorded in the PED-approved Excel spreadsheet log and a summary progress report submitted each quarter provided by the OSE CAP monitor.	<b>Monthly from date of compensatory services plan until the compensatory education hours are completed and Progress Report submitted quarterly to PED</b>

<b>Step No.</b>	<b><u>Actions Required by LEA</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED</u></b> <b><u>OSE</u></b>	<b><u>Document Due Date</u></b>
	<p>LEA shall maintain a PED-approved tracker that includes total compensatory hours owed and provided to Student based on missed services as well as Student need.</p> <p>If a parent declines compensatory education, LEA shall get confirmation in writing and provide such to PED.</p> <p>These compensatory services are above and beyond regular services required by Student’s IEP. LEA may consider ESY services to comply if such do not already occur for Student.</p> <p>Scheduling compensatory services shall be determined in collaboration with Parent and documented in writing in a Prior Written Notice. Scheduling can include provisions of services in summer months.</p> <p>Services shall be provided in person unless otherwise agreed upon in writing by Parent.</p> <p>If LEA, due to staffing or other limitations, is unable to provide required IEP and compensatory services as outlined Student’s IEP and compensatory services plan, LEA is required to contract with private provider to ensure those services are provided.</p>		<p>Prior Written Notice containing plan for compensatory services.</p>	<p><b><i>7 days after the FIEP meeting is held</i></b></p>

<b>Step No.</b>	<b><u>Actions Required by LEA</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED</u></b> <b><u>OSE</u></b>	<b><u>Document Due Date</u></b>
	<p>Partial fulfillment of any service hours shall be documented monthly using the PED-approved log, with a summary progress report submitted each quarter.</p>			
<p><b>7.</b></p>	<p>LEA shall arrange training for school staff (including special education teachers, special education administrators, and related service personnel) to be provided by a person independent of LEA with expertise in special education who was not involved in responding to this complaint and who is approved by PED.</p> <p>Training materials/presentation will be provided to CAP Monitor for approval before use.</p> <p>Training shall address the following special education topics:</p> <ol style="list-style-type: none"> <li>1. IEP development, including goals and services to address all identified areas of needs, measurable IEP goals, intermediate goal objectives, and including enough detail regarding services and accommodations;</li> <li>2. IEP implementation, including educating students in the identified LRE; and</li> <li>3. Required contents of PWN</li> </ol> <p>LEA shall also submit a plan for ensuring ongoing training of new hires or staff unable to attend the training.</p>	<p><b>September 29, 2025</b></p>	<p>Submission of proposed trainer and trainer’s resume and proposed presentation for NMPED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training via Sign-In sheets with training date and time and plan for addressing the provision of training to those staff not in attendance.</p>	<p><b>September 8, 2025</b></p> <p><b>September 8, 2025</b></p> <p><b>October 9, 2025</b></p>

This report constitutes the New Mexico Public Education Department's final decision regarding this complaint. If you have any questions about this report, please contact the Corrective Action Plan Monitor.

Investigated by:

/s/ Emily Adams

Emily Adams, Esq.  
Complaint Investigator

Reviewed by:

/s/ Natalie Campbell

Natalie Campbell, Esq.  
Supervising Attorney, Office of Special Education

Reviewed and approved by:

Signed by:  
  
Jill Vice

Deputy Secretary, Office of Special Education, New Mexico Public Education Department

## Contact Us

### We Would Love to Hear From You!

If you have any questions about our schools, please contact us via e-mail.

- ▶ Athletic Questions
- ▶ Title IX Questions
- ▶ Business Office Questions
- ▶ PowerSchool Questions
- ▶ Registration Questions
- ▼ Title II or Section 504 Questions

Contact Jennifer Guy at [j.guy@laschools.net](mailto:j.guy@laschools.net)

### Los Alamos Public Schools

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Info Line: (505) 663-2223

### School Contact Information

- ▶ Aspen Elementary School
- ▶ Barranca Elementary School
- ▶ Chamisa Elementary School