

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN EDUCATION  
DIVISION OF PERFORMANCE & ACCOUNTABILITY  
SPECIAL EDUCATION COMPLAINT INVESTIGATION REPORT

**Complainant:** **Alexis DeLaCruz**  
Native American Disability Law Center  
3535 E 30<sup>th</sup> Suite 201  
Farmington, NM 87402

Case #: SC-19-342

**Public Agency:** **Dr. Tonya Knight, Principal**  
**John Begay, Special Education Coordinator**  
PO Box 307  
Many Farms, Arizona 86538

**COMPLAINT DECISION**

**Donald Griffin**  
Supervisory Education Specialist  
Bureau of Indian Education  
Division of Performance and Accountability  
1849 C Street NW  
Mailstop 3609 – MIB  
Washington, DC 20240

**Date of Report:** December 10, 2019

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On October 15, 2019, the United States Department of Interior, Bureau of Indian Education (BIE), Division of Performance and Accountability (DPA) received a complaint filed by Alexis DeLaCruz (Complainant), on behalf of all transition age students and alleging a violation of Part B of the Individuals with Disabilities Education (IDEA) by Many Farms High School (School), which is under the jurisdiction of the BIE.

The BIE is considered the State Education Agency (SEA) and is responsible for dispute resolution for all schools under the supervision of the BIE. It has general supervisory responsibility for special education compliance over all Schools under its jurisdiction and receiving federal special education funding.

The BIE is responsible for the timely investigation of special education complaints. Pursuant to the Federal Regulations implementing the IDEA, 34 C.F.R. §§300.151 through 300.153, DPA commenced an investigation, assigned an independent complaint investigator to investigate the allegations in the complaint, and issue a report to DPA for its review. Consistent with the IDEA and Federal Regulations, DPA issues the following Findings of Fact, Conclusions, and Decision.

**Issues:**

1. Whether the School denied transition age students a Free Appropriate Public Education (FAPE) in violation of 34 C.F.R. §§300.17 and 300.101 by unilaterally amending the students' IEPs to remove the option for students to obtain diplomas.
2. Whether the School complied with IDEA's procedural requirements pursuant to Subpart E of the federal regulations implementing the IDEA. Specifically,
  - a. Whether the School provided the Parents of transition age students the opportunity to participate in the IEP process consistent with 34 C.F.R. §§300.321, 300.322 and 300.327; and
  - b. Whether the School provided Prior Written Notice (PWN) as required by 34 C.F.R. §300.503.

**Investigatory Process:**

- The investigator reviewed the following records:
  - Original letter of complaint; and
  - Documentation provided the School relevant to the issues raised in the complaint.
  - Additional information provided by the School during the investigation.
  - Additional information provided by the Complainant during the investigation.
- The investigator interviewed the following parties:
  - The Complainant; and
  - The Principal.

The Complainant and DPA were given the opportunity to submit additional information for consideration during the investigation of this complaint.

**Applicable Federal Regulations:**

34 C.F.R. §300.17	Free Appropriate Public Education
34 C.F.R. §300.101	Free Appropriate Public Education
34 C.F.R. §300.321	IEP Team
34 C.F.R. §300.322	Parent Participation
34 C.F.R. §300.327	Educational Placements
34 C.F.R. §300.503	Prior Written Notice

**Relevant Time Period:**

Pursuant to 34 C.F.R. §300.153(c), DPA has the authority to investigate allegations of violations that occurred not more than one year from the date the original complaint was received. The complaint was received on October 15, 2019. Therefore, the period of time relevant to this investigation is October 16, 2018 through October 15, 2019. Records beyond this one year period may be reviewed to conduct a thorough investigation. Findings of noncompliance, if any, shall be limited to the one year period of time.

**Findings of Fact:**

1. The School is located in the state of Arizona.
2. The Complainant indicated that the School unilaterally changed the diploma pathway for several of its students with disabilities without providing PWN or permitting parental input. The Complainant further reported that parents of students at the School were never informed of graduation requirements and had no knowledge until fall of 2019 that a Certificate of Completion in lieu of diploma was being considered by the School. No IEPs were amended in advance of the School's decision to change the diploma path for some students to a Certificate of Completion.
3. The 2019-2020 School Handbook references that each school board acts in accordance with the policies outlined in "25 CFR and 62 BIAM." (p. 7)
4. The Bureau of Indian Affairs Manual, 62 BIAM 4.12 describes High School Graduation Requirements. In relevant part, the manual states:
  - C. Specific Requirements
    - (1) Credits. A student must satisfactorily complete 20 units in a four year high school program unless the state in which the school is located requires more credits. If the state requires more credits, the school must meet the requirements of that state.

. . .
    - (2) Mandatory Graduation Units. A student must earn credit in the following units of course work. Schools may establish academic or vocational requirements in excess of the following minimum requirements.

. . .
    - (g) If the state in which the school is located has additional units required then these requirements must also be met.
5. The 2019-2020 School Handbook further specifies that 24 credits are required to graduate from the School. "Measurable mastery of instructional objectives set for their grade level as stated in 25 CFR §36.31" is needed for promotion. Criterion referenced tests shall be used to measure mastery of instructional objectives.

6. The minimum academic standards for the basic education of Indian children requires, in relevant part, that promotion toward credits necessary for graduation be based primarily on “measurable mastery of the instructional objectives.” 25 C.F.R. §36.31.
7. According to the Principal in an August 4, 2019 email, all students in the School have historically received standard diplomas regardless of curriculum modifications that may have been made for students with disabilities. In the same email, the Principal noted that this could become a “contentious” issue.
8. In a series of emails from August 19 to 24, 2019 between a BIE Education Program Specialist and a parent affected by the School’s decision to change diploma pathways for her son, the parent repeatedly asks for more information regarding the need for the change away from diplomas to certificates for her son. The parent further indicated that the use of “certificate” in her son’s IEP was forced on her, as she was not given a chance to participate in the decision.
9. In September 25, 2019 email, the Special Education Head Teacher confirmed that the meeting with parents regarding the change to receiving a Certificate of Completion for students receiving curriculum modifications would be held October 3, 2019.
10. On September 26, 2019, the Principal indicated in an email that one of the parents would want the policy in writing.
11. Also on September 26, 2019, the School sent parents an invitation to a meeting. The invitation stated, in relevant part:

The purpose of the meeting is to inform you about the Certificate of Completion with the BIE District Special Education Specialist. More information regarding this matter will be thoroughly discussed. Any questions or concerns that you have can be addressed at this time.
12. The School convened the meeting with parents on October 3, 2019. Complainant reports that the tone of the meeting was derogatory toward students and parents. The decision to change diploma pathways to a Certificate of Completion was presented as final.
13. In its response to this complaint, the School provided approximately 38 pages of information labeled “Info to [School] Parents 10-03-2019.” This information included relevant sections of the Elementary and Secondary Education Act; a 2014 guidance letter regarding graduation from the Office of Special Education and Rehabilitative Services; the February 2019 *DRAFT* document Questions and Answers: Graduation and Students with Disabilities from the Arizona Department of Education; a document entitled Arizona High School Graduation Requirements; Precision High School graduation requirements and course catalogue; and Arizona Alternate Assessment Participation Guidelines and Eligibility Determination.
14. The Complainant shared a copy of an October 8, 2019 letter written by one of the parents affected by the School’s decision. In salient part, the letter stated:

During our IEP meeting on August 7-8, 2019, we were told by the new principal, [Principal] and [BIE Special Education Program Specialist], that [Student] would not be able to receive a high school diploma, only a certificate.

...

She and the Principal proceeded to change "Diploma" to "Certificate" in [Student's] IEP. I disagreed with this and stated that I would like to have it left as "Diploma" until we receive something in writing from the Solicitor. This did not occur.

...

To this day none of the parents have received anything in writing. When this was mentioned at the meeting, [BIE Special Education Program Specialist] said they did not have to give us anything in writing since they haven't heard anything back from the Solicitor.

15. An October 28, 2019 letter from the Acting Associate Deputy Director of the Navajo District responded to parents' concern outlined in the letter above. The letter stated that the Navajo District was working to address the issue in a timely manner, working closely with legal counsel to "find a resolution which will meet the needs of all parties involved."
16. In a November 15, 2019 letter from the Office of the Solicitor of the United States Department of the Interior Attorney Adviser to the Complainant offered the following:

To be clear, BIE's position is that not every student is entitled to a high school diploma. However, if a student with a disability is not going to receive a high school diploma, this must be clearly documented in the student's IEP, and the school must clearly communicate its expectations about the level of rigor required to obtain a high school diploma. In the coming weeks and months, BIE will be working to further clarify achievement standards, and the requirements for receiving a high school diploma.
17. The School did not provide any records to support that written notice was provided to parents prior to making the change to a Certificate of Completion rather than a high school Diploma for some special education students.
18. There was no information in the record to indicate that parents were given the opportunity to participate in the decision to amend student IEPs to reflect the change to a Certificate of Completion.
19. When interviewed, the Principal stated that PWN should be given only after the IEP meeting in which a change is made, describing the word "prior" in the name of the notice as a "misnomer."
20. The School provided a list of 28 students of transition age. The Complainant reported that five families had contacted her organization with concerns regarding the change. The School indicated one or two students were affected by the change. The actual number of students currently affected and the other students with disabilities that will be affected in the future remains unclear.

## Conclusions:

1. The IDEA requires the BIE, as the SEA or lead agency, to be responsible for general supervision of all BIE schools to ensure compliance with IDEA and BIE standards. 34 C.F.R. §300.149.
2. Each eligible student with a disability is entitled to receive FAPE, defined, in relevant part, as special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA and the IDEA; and are provided in conformity with an IEP. 34 C.F.R. §300.17.
3. The FAPE standard was set by the landmark United States Supreme Court decision in the *Rowley* case. The Court held that an IEP must provide a “basic floor of opportunity.” Determining the “contours of an appropriate education must be decided on a case by case basis.” *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (1982).
4. The *Rowley* Court established a two-part test to decide whether FAPE was provided:
  - (i) Has the state (i.e. public agency) complied with the procedures set forth in the IDEA?
  - (ii) Is the IEP developed through IDEA’s procedures reasonably calculated to enable the child to receive educational benefit?
5. The *Rowley* case sheds light on what FAPE would look like in many cases, where a child participates in the general classroom and curriculum. *Rowley* did not provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level (or obtain a regular diploma).
6. The Supreme Court subsequently issued a decision that articulates the FAPE standard for students with more significant educational impairments and limited access to the general curriculum. While there is no bright line rule defining what is required of a school, the Court made it clear that “[t]o meet its substantive obligations under the IDEA, a school must offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child circumstances.” *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (2017).
7. The IEP must aim to enable the child to make progress. “After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” The instruction offered must be “*specifically* designed” to meet a child’s “*unique* needs” through an “[i]ndividualized education program.” *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (2017).
8. An IEP must include a statement of a student’s present levels of academic achievement and functional performance, including how the student’s disability affects involvement and progress in the general education curriculum (the same curriculum as for nondisabled children). 34 C.F.R. §300.320(a).

9. IEPs for students of transition age (the IEP in place when the student turns 16 years of age) must include:

- (i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (ii) The transition services (including courses of study) needed to assist the child in reaching those goals.

*34 C.F.R. §300.320(b).*

10. The IEP requirements compel IEP teams to discuss a student's progress in the general curriculum, transition plans beyond high school, and the course of study to needed to assist the student with the plan. Encompassed in this requirement is an IEP team determination on whether a student would work towards a regular high school diploma, or whether some other method of school completion is warranted in light of the student's unique educational needs.

11. The opportunity for parent participation in the IEP team process is a fundamental procedural safeguard. *34 C.F.R. §§300.321, 300.322.* The lack of opportunity for meaningful parental participation may result in a denial of FAPE. *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6th Cir. 2004), *cert. denied, on remand*, 46 IDELR 45 (E.D. Tenn. 2006), *aff'd*, 49 IDELR 123 (6th Cir. 2008). A school must show that it came to the meeting with an open mind and was "receptive and responsive" to the parents' position at all stages, rather than cutting the conversation short when parents express their concerns. *R.L. v. Miami-Dade County School Board*, 63 IDELR 182 (11th Cir. 2014)

12. When changes need to be made to the IEP, a parent is entitled to PWN before implementing (or refusing to implement) the change. *34 C.F.R. §300.503.* PWN must be given a reasonable time before the School proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of FAPE. While it is true that PWN would be sent after an IEP team meeting where changes are proposed, it is equally true that a reasonable amount of time must pass before implementing the change. *71 Federal Register 46691.*

13. The United States Department of Education, Office of Special Education Programs, has issued the following guidance on the timing of PWN, in salient part:

A local educational agency (LEA) must provide prior written notice when a school district proposes or refuses to initiate or change the provision of FAPE in an IEP Team meeting. There is no requirement in the Individuals with Disabilities Education Act (IDEA) regarding the point at which the written notice must be provided as long as it is provided a reasonable time before the LEA actually implements the action. This provides parents, in the case of a proposal or refusal

to take action, a reasonable time to fully consider the change and respond to the action **before it is implemented**.

*Letter to Chandler*, 59 IDELR 110 (OSEP 2012). (Emphasis added.)

14. Providing parents with verbal notice as a substitute for the written notice does not fulfill the PWN requirements. *Union Sch. Dist. v. Smith*, 20 IDELR 987 (9th Cir. 1994).
15. When the School changed a student's graduation path without input from the IEP team, including the parent, or without issuing PWN before implementing the change, the School acted unilaterally, violating the IDEA. A procedural violation that significantly impedes a parent's opportunity to participate in the IEP decision-making process, as in this case, rises to the level of a denial of FAPE. *34 C.F.R. §300.513*.
16. It is important to note that the IDEA is silent on diploma requirements. The BIE and the School have the right and obligation to determine graduation standards consistent with state in which the school is located. *20 U.S.C. §6311 et seq.*, *25 C.F.R. §36.31*, and *62 BIAM 4.12*.
17. It is equally important to consider that graduation with a regular diploma fully aligned to the state's curriculum ends or terminates a student's right to receive FAPE. *34 C.F.R. §300.102*.

The Office of Special Education and Rehabilitative Services cautioned states as follows:

Giving IEP teams authority to apply different standards for promotion or graduation to students with disabilities will result in those students being taught to different, and potentially lower, standards than other students without disabilities, thus depriving them of the same opportunities to learn that are available to their non-disabled peers.

*Letter to White*, 63 IDELR 230 (OSERS 2014).

18. Therefore, it is imperative that IEP teams fully discuss and explore diploma pathways for all transition age students. Unfairly denying a regular diploma may have discriminatory and deleterious effects. Awarding a diploma to a student who has not yet met all graduation requirements may have the effect of ending the student's right to receive FAPE in the future. Such an important decision can only be entrusted to the IEP team, statutorily charged with the duty of designing FAPE based on a student's unique circumstance.

### **Decision:**

1. Whether the School denied transition age Students a Free Appropriate Public Education (FAPE) in violation of 34 C.F.R. §§300.17 and 300.101 by unilaterally amending the students' IEPs to remove the option for students to obtain diplomas.

**The BIE finds a violation of IDEA. The School implemented changes to graduation requirements, unilaterally amending students' IEPs without following IDEA's procedural safeguards and materially affecting students' post-secondary opportunities.**

2. Whether the School complied with IDEA's procedural requirements pursuant to Subpart E of the federal regulations implementing the IDEA.

a. Whether the School provided the Parents of transition age students the opportunity to participate in the IEP process consistent with 34 C.F.R. §§300.321, 300.322 and 300.327.

**The BIE finds a violation of IDEA. The School failed to include the Parents of school age students the opportunity to participate in the IEP process prior to making unilateral changes to students' diploma options.**

b. Whether the School provided Prior Written Notice (PWN) as required by 34 C.F.R. §300.503.

**The BIE finds a violation of IDEA. There is no information in the records provided by the School to support a conclusion that PWN was provided prior to implementing IEP changes.**

**Corrective Action Plan:**

1. The School shall retain an independent expert in the field of special education to provide at least six (6) hours of professional development/training for all School staff on the IEP process, including transition planning requirements, IEP amendments, PWN, and parent participation.

The professional development shall be delivered according to the following requirements:

- a. The training shall be completed by March 1, 2020.
- b. Verification shall include an agenda with date(s), name(s) of the presenter(s), copies of any materials used in the training, and staff sign-in sheets.
- c. Verification shall be submitted to the BIE by March 15, 2020.

2. The School shall develop a written guidance on graduation options and requirements for students with disabilities. Once approved, the guidance shall be disseminated to the parents of all special education students of transition age and to adult students. The guidance shall be developed and disseminated according to the following requirements:

- a. The School shall present adopted guidance on graduation options and requirements for students with disabilities to the BIE by March 15, 2020.
- b. The BIE shall review the adopted guidance for compliance with IDEA and report its findings to the School by April 15, 2020.
- c. If edits are needed in order to be in compliance with IDEA, those edits shall be finalized, adopted by the School, and approved by the BIE by May 15, 2020.

- d. The final guidance shall be disseminated to parents and adult students by May 30, 2020.
3. The IEPs for all students affected by this decision shall be reviewed by a student's respective IEP team to review and revise, if necessary, the transition plan, graduation pathway, and course of study consistent with this decision. The parent shall have the opportunity for input, and PWN shall be issued before implementing any change to the educational placement or provision of FAPE to the student. The reviews shall take place according to the following requirements:
    - a. The School shall provide the BIE with a list of students affected by this decision by January 15, 2020.
    - b. The School shall convene the IEP team for each student on the list by February 15, 2020.
    - c. Evidence of completion, including meeting invitations, IEP amendments, and PWNs shall be provided to the BIE for each student on the list by March 1, 2020.

Any inquiries or submissions regarding this decision shall be directed to Nancy Ka'Won, (narcy.kawon@bie.edu) at the Bureau of Indian Education, Division of Performance and Accountability, 1001 Indian School Road NW, Suite 149, Albuquerque, New Mexico 87104.

Submitted to DPA this 10th day of December, 2019.



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Lenore Knudtson, BIE Appointed Complaint Investigator

Issued this 10th day of December, 2019.

Donald Griffin, Supervisory Education Specialist, DPA

cc: Charles Sherman  
Jeffrey Hamley  
Edie Morris  
Chaitna Sinha  
Jennifer Wiginton-  
Narcy Ka'Won  
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