



# DISABILITY RIGHTS NEW MEXICO

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Gary Housepian, Chief Executive Officer

*Promoting and Protecting the Rights of Persons with Disabilities*

October 2, 2023

Special Education Division/OGC  
New Mexico Public Education Department  
300 Don Gaspar  
Santa Fe, NM 87501

Dear Special Education Division Director,

Pursuant to 34 CFR § 300.153 and 6.31.2.13 NMAC, Disability Rights New Mexico (DRNM) is filing this formal state complaint against Albuquerque Public Schools (APS) on behalf of [REDACTED] Student #1, [REDACTED] Student #2, [REDACTED] Student #3, and all similarly situated students within APS.

[REDACTED] Student #1, [REDACTED] Student #2, & [REDACTED] Student #3 are students with disabilities who have Individualized Education Plans (IEPs) that include transportation services. APS has demonstrated a pattern of failing to implement IEPs across the district by not providing transportation to students receiving special education services. Specifically, Albuquerque Public Schools has failed to:

1. Comply with the Individuals with Disabilities Education Act (IDEA) by not providing the “related services” required to allow a child with a disability to benefit from special education services.
2. Comply with the NMAC to allocate sufficient funds, staff, facilities, and equipment to ensure that the requirements of IDEA are met.

I. Background

A. *General facts concerning the group complaint.*

APS serves an estimated 70,447 students. Approximately 23.3 percent, or 16,414, of APS students receive special education services. Since the 2023-2024 school year began on August 3, 2023, many of these students have been without transportation to and from school. On August 30, 2023, Special Education Compliance Officer, Debora Garrison, disclosed via email to DRNM Advocate Leah Diedrick that at Seven Bar Elementary (one of APS’s 143 schools), 31 students were not receiving the transportation services as detailed in their IEPs. Based upon further information and belief, APS is failing to provide special education transportation services to approximately 2,000 students whose IEPs indicate that they require this service.

B. *General facts concerning [REDACTED] Student #1*

█ Student #1 is 9 years old and attends Seven Bar Elementary School. █ Student #1 is in the 3rd grade. █ Student #1 is eligible for special education services through multiple co-occurring disabilities. He is diagnosed with █, █, █, █, and █. Student #1 is also diagnosed with █, █, and █. Student #1 utilizes a pushchair that requires an adult to maneuver the wheelchair to and from each class. █ Student #1 is nonverbal and non-ambulatory. He needs complete supervision and assistance from adults to meet his daily needs.

i. *Chronology of events to germane to █ Student #1's Complaint*

On November 30, 2022, █ Student #1's annual IEP was updated. Page 14 of his IEP states, "The student will receive special education transportation for the duration of this IEP due to the disability and to access the program site. Curb to curb transportation to address needs that are indicated in the IEP will be provided." The IEP also states that █ Student #1 requires security devices such as a harness, tethers, braces, restraints, seat belts or vest and that he requires a wheelchair lift.

On August 3, 2023, Seven Bar Elementary began the 2023-2024 school year. APS did not provide transportation to Student #1 █. █ Student #1's mother, █, found that the school did not have a bus with a chair lift available. After speaking with the school's principal, Student #1's Mother █ was advised to call the APS Transportation Department. When Student #1's Mother █ contacted the Department, she was told by a staff member that the Department did not have a contract with Seven Bar Elementary for special education transportation.

On August 16, 2023, █ Student #1's Mother sent an email to an APS School Board member, Peggy Muller Aragon, explaining the problems with transportation. Student #1's Mother █ explained that she has two children who are placed at different schools, both of which have the same pick up and drop off time. This means that █ Student #1's Mother needs to pick █ Student #1 up early. █ Student #1 misses about an hour and half of educational instruction and other special education services every week due to APS's failure to provide the transportation services outlined in his IEP. This email was forwarded to Scott Elder, APS Superintendent. █ Student #1's Mother also sent this letter to Seven Bar's Head Special Education Teacher, the Seven Bar Elementary Principal, and the APS Transportation Department.

On August 16, 2023, █ Student #1's Mother received an email from Seven Bar's Head Special Education Teacher with information detailing how to receive reimbursement for mileage. On August 28, 2023, other Seven Bar parents experiencing similar issues were offered compensation for mileage, making it clear that APS and Seven Bar do not have a plan in place to remedy this issue in the near future.



her concerns about APS's failure to assign a bus to transport her daughter. She also expressed her concerns about the heavy traffic in the parking lot. *Student #2's Mother* [REDACTED] had concerns for the safety of [REDACTED] *Student #2* and other students due to the excessive traffic. [REDACTED] *Student #2's Mother* also indicated that she was being made late to her own work due to the lack of transportation. Ms. Montoya responded the same day stating that the issue was that "they do not have a driver yet" and recommended that [REDACTED] *Student #2's Mother* contact the APS Transportation Department herself. When [REDACTED] *Student #2's Mother* called APS Transportation, she was given the same information: there was no driver available to provide [REDACTED] *Student #2's* transportation services.

On August 16, 2023, [REDACTED] *Student #2's Mother* sent another text to [REDACTED] *Special Education Teacher* to follow up on the lack of transportation. The teacher reported to *Student #2's Mother* [REDACTED] that "transportation is crazy busy, and buses are contracted out. It sounds like it's a mess." On August 22, 2023, [REDACTED] *Student #2's Mother* reached out by text again to *Special Education Teacher* [REDACTED] and was told that there were no updates.

As reported above, on August 24, 2023, DRNM Advocate Leah Diedrick sent an email inquiring about the plan to provide transportation services to students receiving special education services at Seven Bar Elementary to Debora Garrison, APS Special Education Executive Director for Compliance. Ms. Garrison's response indicated that she was not aware of the issue despite that fact that school had been in session for three weeks. Ms. Garrison stated that she would need to reach out to Seven Bar Elementary School and APS Transportation to formulate a response.

On August 30, 2023, Ms. Garrison sent an email to DRNM stating that 31 students at Seven Bar Elementary had transportation services as a part of their IEPs, and that none of those students were receiving said services. Ms. Garrison stated that the APS Chief Operating Officer and Executive Director of Transportation had "assured me that all 31 students will be routed on a bus and receiving curb-to-curb transportation by the end of next week, Friday September 8, 2023."

On September 8, 2023 [REDACTED] *Student #2's Mother* noticed that two students who use wheelchairs were provided bus transportation services. She spoke with the bus driver to inquire about bus services for her daughter, [REDACTED] *Student #2*. The driver told her that he did not have [REDACTED] *Student #2* on his list and recommended that [REDACTED] *Student #2's Mother* reach out to the APS Transportation Department. Once again, [REDACTED] *Student #2's Mother* called the Transportation Department. The Transportation staff stated that the transportation request they had received was dated for the previous year, and that she and the school would need to submit a new one. *Student #2's Mother* [REDACTED] [REDACTED] contacted the special education teacher, who forwarded her the request. The request was dated for August 2, 2023 and was signed and approved by APS Transportation Manager, John Griego, on August 2nd, 2023 at 11:46 AM.

█ Student #2's Mother was not provided the transportation services required by her IEP until September 21, 2023, seven weeks after the start of the school year.

D. General facts regarding █ Student #3.

█ Student #3 is 16 years old and attends La Cueva High School. █ Student #3 is in the 11<sup>th</sup> grade this year. █ Student #3 is diagnosed with █ and uses a wheelchair and a gait trainer to ambulate. █ Student #3 requires a one-on-one aid to assist him in moving about the school building safely.

i. Chronology of events to germane █ Student #3's Complaint

On September 20, 2022, █ Student #3's most recent IEP was updated. Page 13 of the IEP states that █ Student #3 will be provided with transportation services for the remainder of his IEP. On August 3, 2023, La Cueva High School began the 2023-2024 school year; however, █ Student #3 was not provided with transportation services.

On August 3, 2023, █ Student #3's father, █, called APS Transportation; however, he reports that many of his calls were answered by a machine or the person who he spoke to was unable to answer his questions. █ Student #3's Father called Transportation four separate times that day, at 12:16 PM, 2:49 PM, 4:45 PM, and 4:47 PM.

On August 4, 2023, █ Student #3's Father made four more calls to APS Transportation at 6:47 AM, 6:57 AM, 7:16 AM, and 2:39 PM. █ Student #3's Father was told that La Cueva had not submitted a request for █ Student #3's transportation; however, the school maintained that they had submitted this form on August 2, 2023, and that it had been "approved" by the Transportation Department on August 3, 2023. █ Student #3's father continued to contact █ Student #3's teacher via text and was not given any updates concerning █ Student #3's transportation.

On August 15, 2023, █ Student #3's Father called APS Transportation again. █ Student #3's Father reports that the staff member he spoke with stated that there were 2,000 children in APS "waiting for a bus" and that "he'd get one when (they) got one." █ Student #3's Father reports that the employee answering the phone refused to give him their name.

█ Student #3's Father continued to contact transportation to address the issue. █ Student #3's Father called on August 22, 2023 at 11:22 AM. He called again on August 28, 2023 at 4:01 PM. During this call he was told that APS Transportation had "approved" █ Student #3's transportation request on August 21, 2023, which conflicted with the information he was given during his earlier calls.

As of the date of this complaint, [REDACTED] *Student #3* has yet to receive his IEP-mandated transportation services. [REDACTED] *Student #3's Father* has been transporting [REDACTED] *Student #3* to and from school, often arriving late for work as a result.

## II. Legal Rights Violations

- A. Pursuant to 34 CFR § 300.34 (A) “Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education” There are an estimated 16,414 students who receive special education services enrolled in the district. APS has failed to provide related services to students with transportation outlined in their IEPs across the district. APS has failed to provide FAPE under the Individuals with Disabilities Education Act.
- B. In accordance with 34 CFR § 300.101 and 6.31.2.8 (A) NMAC all public agencies providing special education services are required to ensure FAPE for all students. APS did not meet this requirement by failing to provide transportation to their students with disabilities. Based upon the IEPs that were developed during the previous school year, APS knew that transportation services would be needed, and that enough accessible school busses would be required. However, the district neglected to arrange for adequate special education transportation services to meet student needs for the current school year.
- C. As stated in 6.31.2.9 NMAC, “Each public agency that provides special education or related services to children with disabilities shall allocate sufficient funds, staff, facilities, and equipment to ensure that the requirements of IDEA and all department rules and standards that apply to programs for children with disabilities are met.” Albuquerque Public Schools failed to allocate sufficient funding for transportation to meet the needs of their students receiving special education services. APS failed to allocate sufficient bus drivers to provide transportation services. APS has also failed to allocate appropriate equipment to meet the needs of their students by not having a bus with a chair lift available to transport students with wheelchairs.

## III. Attempts at Resolution

- A. As noted above, [REDACTED], parent of [REDACTED] *Student #1.*, reached out numerous times via phone calls, texts, and emails to school and district staff to resolve this issue.
- B. [REDACTED], parent of [REDACTED] *Student #2.*, attempted numerous time to resolve this issue with school and district staff via phone calls, texts, and emails.
- C. [REDACTED], parent of [REDACTED] *Student #3.*, repeatedly called the APS Transportation department in an attempt to resolve this matter.

IV. Relief Requested.

1. We request that Albuquerque Public Schools immediately arrange for adequate and accessible busses to be provided to all students who have transportation services included in their IEPs.
2. We request that the district provide payment for all parents who have transported their children to and from school when their students' IEPs included special education-related transportation services. We request that this reimbursement be backdated to August 3, 2023, the first day of the 2023-2024 school year.
3. We request that APS provide compensatory services for all students who may have been picked up early or dropped off late due to APS's lack of transportation. Many of these students have missed valuable instruction time as well as other related services.

DRNM is advocating on behalf of all students receiving special education services within Albuquerque Public School District in this matter. You may contact me using the information below.

Sincerely,

Leah Diedrick, BA  
Advocate  
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[REDACTED]

[REDACTED]

[REDACTED]