

## **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

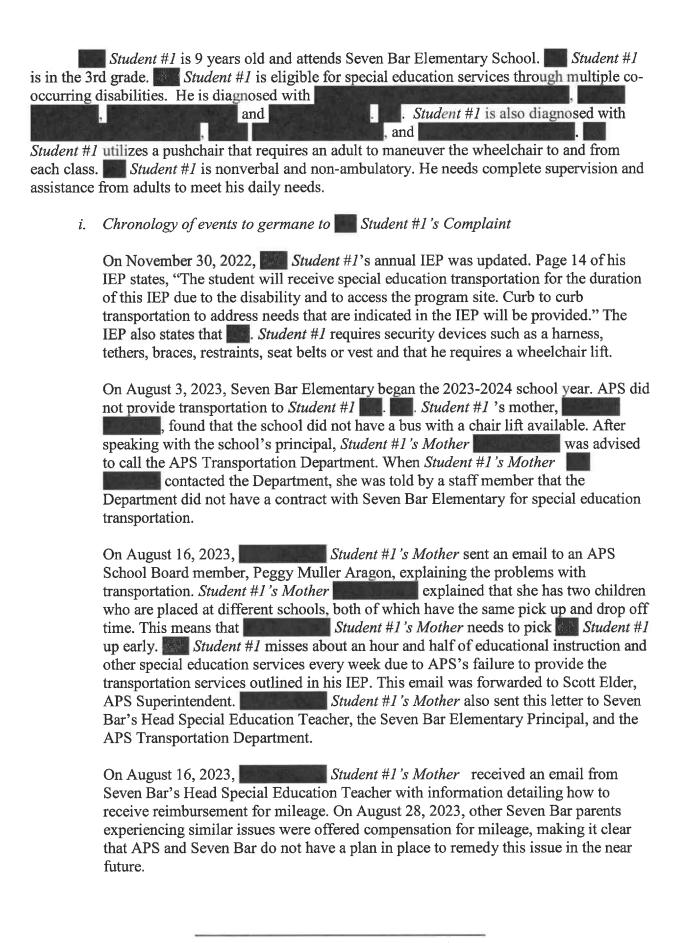
Dear Special Education Division Director,

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

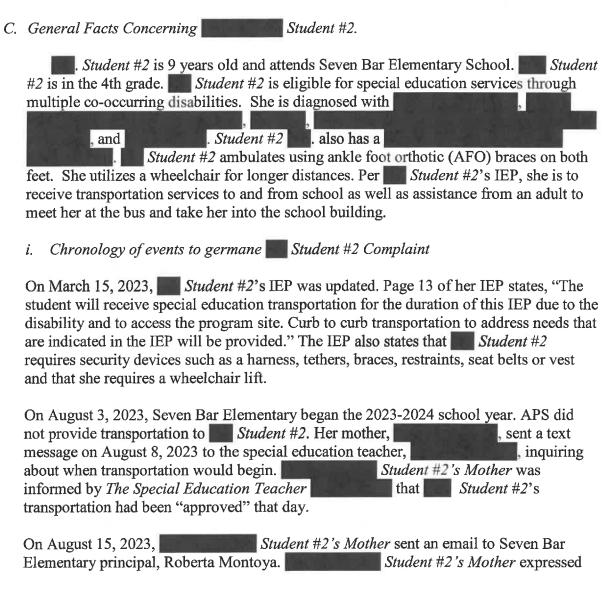
| B. General facts concerning | Student #1 |
|-----------------------------|------------|
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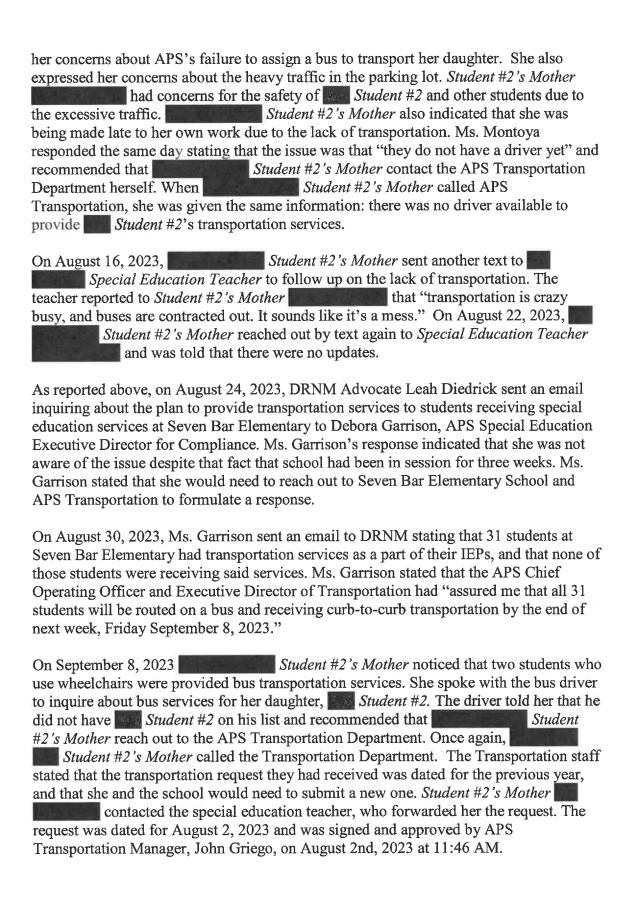


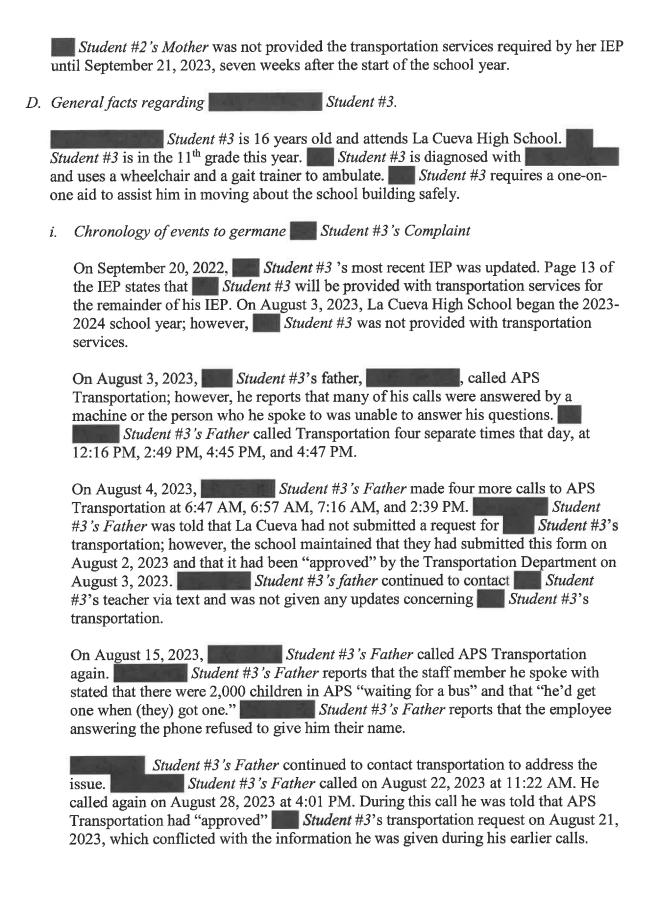
On August 24, 2023, DRNM Advocate Leah Diedrick sent an email inquiring about the plan to provide transportation services to students receiving special education services at Seven Bar Elementary to Debora Garrison, APS Special Education Executive Director for Compliance. Ms. Garrison's response indicated that she was not aware of the issue despite the 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 responded via email to Leah Diedrick, writing "Our Chief Operating Officer and Executive Director of Transportation have 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."

Student #1 was assigned a bus on September 8, 2023. However, not all students at Seven Bar were provided their IEP-required transportation by this date.







As of the date of this complaint, Student #3 has yet to receive his IEP-mandated transportation services. Student #3 's Father has been transporting 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, same as a parent of student #1., reached out                      |
|----|---|
|    | numerous times via phone calls, texts, and emails to school and district staff to |
|    | resolve this issue.   |
| B. | parent of Student #2, attempted numerous time to resolve                          |
|    | this issue with school and district staff via phone calls, texts, and emails.     |
| C. | parent of 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 E-mail: ldiedrick@drnm.org

Phone: (505) 218-7722

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