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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Santa Fe Public Schools
Case No. C2425-47
May 9, 2025**

This Report requires corrective action, pp. 8-9.

On March 10, 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.¹ The 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;

¹ 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 District's responses to the allegations, together with documentation submitted by the Local Education Agency at the request of the PED's independent complaint investigator;
- review of the District's compliance with federal IDEA regulations and state NMAC rules; and
- research of applicable legal authority.

Limits to the Investigation

Federal regulations and state rules limit the investigation of state complaints to violations that occurred not more than one year prior to the date the 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 an 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 the 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 District improperly determined Student's termination from eligibility under the IDEA pursuant to 34 C.F.R. 100(a), 34 C.F.R. 300.305(e)(3), 6.31.2.10(C)(3) NMAC, and 6.31.2.11(G)(5); and
2. Whether the District's actions and/or omissions 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. Student is an eligible student attending the KIVA program in District.
2. Student is on an Individual Education Plan (IEP).
3. Student was born on August 15, 2003.
4. Student will turn 22 years old on August 15, 2025.
5. District students will begin classes for the 2025-2026 school year on August 8, 2025.
6. The Graduation Options section of Student's November 22, 2024, IEP provides that Student will complete school at the end of the 2025-2026 school year.

7. The November 22, 2024, Prior Written Notice (PWN) indicates that Student “will age out of public education at age 22 which will be 05/28/2026.”
8. In February 2025, Student’s KIVA teacher verbally notified that Student must graduate in May 2025.
9. Parents first requested the District provide a written statement regarding the teacher’s verbal notice concerning Student’s updated graduation time frame.
10. In a District email, February 11, 2025, a teacher at the District’s Magnet School responded by to the Parents’ first request, including the following content:

(a) Pursuant to state and federal law, services provided in accordance with this subchapter must be available to all eligible students ages 3-21. Graduation with a regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year will be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to §89.1070 (b)(1), (b)(2)(D), (g)(1), (g)(2), (g)(3), or (g)(4)(D) of this title, whichever comes first.

11. The content of the District’s February 11, 2025, email appears to cite Title 19 of the Texas Administrative Code regarding Graduation Requirements.
12. A February 18, 2025, memorandum from in-house counsel to the District’s Director of Exceptional Student Services, stated, in pertinent part, that:

Under the IDEA a district has no obligation to provide FAPE to students with disabilities between the ages 18 and 21 unless it provides instruction to nondisabled student in the same age group 34 CFR 300.12 (a)(1) [sic]. Which New Mexico does not. This means that an adult student’s eligibility for special education and related services turns on state law. In New Mexico the public schools are required to provide FAPE through age 21. However, the student’s eligibility does not necessarily end on their 21st birthday. New Mexico allows students to continue receiving services until the **end** of the school year in which they turn 21.

In practical terms this means that a student who turns 21 before the end of a school year would no longer be eligible to start the next school year even if they are still 21. If the student turns 21 during the school year they then would be eligible to complete that school year, after which they would no longer be eligible.

To allow a student to continue to receive services after the allowable time frame would be a violation of IDEA under state and federal law.

13. Parents then sent a second request to the District, dated February 26, 2025, seeking citations to New Mexico law(s), code(s), or other information, regarding the KIVA teacher's prior verbal notice of Student's updated May 2025 graduation date.
14. Parents stated in their February 26 2025, request that the "last minute, unplanned, and poorly communicated desire to change [Student's] involvement in KIVA is unacceptable and violates his rights."
15. The District's February 26, 2025, email response to the Parents' second request indicated that the District's February 11, 2025, email did not "address the issue of aging out of program eligibility."
16. Further, the District's February 26, 2025, email response indicated that:

The time between now and the start of next school year is 6 plus months and is not last minute nor is it a violation of your son's rights. *He will not be able to register for classes anywhere within the SFPS district for the 2025-2026 school year as his eligibility has expired.* (Emphasis added.)
17. The District did not convene an IEP team meeting, nor did District issue a PWN, in connection with the District's determination that Student would be required to graduate in May 2025 or that Student would not be allowed to enroll in school for the 2025-2026 school year.
18. District's response to the state complaint concerning age of eligibility stated that:

The Santa Fe Public Schools followed previous guidance which provided that a student's eligibility for receipt of special education services ends and [sic] one of two points. The first being at the end of the student's 21st birth year or at the end of the school year, in which the student reaches the age of 21 years of age and the school year has not ended. In the instant matter that would mean that the student in question whose birthday was at or around the start of the 2024-2025 school year at which time he reached the age of 21 and will complete the current school year. Additionally, if a student receives his diploma at any time before reaching the age of 21 the IEP team can determine that the student's public-school program has concluded and transition services from another agency will take over future programming.
19. Through responses to the investigator's follow-up questionnaire during the investigation, District indicated, through District staff email communications, that an agreement had been reached with Parents whereby the Student would continue attending the KIVA program until May 2026 under the current IEP.

Discussion and Conclusions of Law

Issue No. 1

Whether the District improperly determined Student's termination from eligibility under the IDEA pursuant to 34 C.F.R. 100(a), 34 C.F.R. 300.305(e)(3), 6.31.2.10(C)(3) NMAC, and 6.31.2.11(G)(5).

States generally must make FAPE "available to all resident children with disabilities between the ages of 3 and 21, inclusive..." 34 CFR 300.101 (a). At least one circuit court has interpreted the word "inclusive" to mean that a student's right to FAPE begins on his third birthday and lasts through the end of his 21st year. *See St. Johnsbury Acad. v. State of Vermont Dep't of Educ.*, 34 IDELR 32, 240 F.3d 163 (2d Cir. 2001).

A state's obligation to make FAPE available doesn't necessarily end on an IDEA-eligible student's 21st birthday. State law may allow students to continue receiving services through the end of the school year in which they turn 21, or through the end of their 21st year. *See Memorandum to State Dir. of Special Educ.*, 48 IDELR 76 (OSEP 2007). *See also K.O. v. Jett*, 123 LRP 25769, 0:21-cv-01837, (D. Minn. 08/25/23) (noting that a recent amendment to Minnesota law allowed students with disabilities to receive IDEA services until their 22nd birthdays), and *C.T. v. Verona Bd. of Educ.*, 46 IDELR 274, 464 F. Supp.2d 383, (D.N.J. 2006) (noting that under New Jersey law, students with disabilities who turn 21 before the end of the school year are entitled to receive special education and related services for the remainder of the year).

As noted, states may enact laws to modify the maximum age of IDEA eligibility. In New Mexico, students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, that student shall be allowed to complete the school year and shall continue to receive special education and related services during that school year. If the student turns 22 prior to the first day of the school year, the student is no longer eligible to receive special education and related services. 6.31.2.11(G)(6) NMAC.

In this matter, Student will turn 22 on August 15, 2025. Pursuant to the District's official school calendar for the 2025-2026 school year, classes for students in grades 1-12 begin on August 8, 2025. Therefore, under New Mexico law, Student is allowed to complete the 2025-2026 school year and, further, will be able to continue to receive special education and related services during that school year. *Id.* District's various communications with Parents, beginning in February 2025, regarding Student having to graduate in May 2025 were erroneous.

District's decision to change Student's graduation date was communicated in violation of procedural requirements, including addressing the graduation issue in an IEP meeting or issuing a PWN regarding the District's decision to graduate the Student in May 2025. After the state complaint was filed, an apparent agreement was reached between Parents and the District resulting in Student being allowed to complete the 2025-2026 school year.

As to Issue No. 1, the District is cited, and Corrective Action is required.

Issue No. 2

Whether the District's actions and/or omissions 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.

Students who are eligible for special education services are entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. A district is obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17. The determination of whether there has been a denial of FAPE requires consideration of two components: substantive and procedural. The question one must answer to determine the substantive standard is whether the IEP was "reasonably calculated to allow the child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District*. RE-I, 137 S. Ct. 988 (2017).

All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx. 202 (2d Cir. 2010).

In this matter, there is no evidence that Student was not able to make progress towards goals identified in the IEP. Likewise, there is no evidence that programs and services were not provided. Under the circumstances, the District's actions or inactions did not result in a denial of FAPE.

As to Issue No. 2, the District is not cited.

Required Actions and Deadlines

By May 23, 2025, the District's Special Education Director must assure the OSE in writing that the District will implement the provisions of this Corrective Action Plan (CAP). The OSE requests that the District submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the District's progress with the Corrective Action Plan and to be its point of contact about this complaint from here forward:

Ms. Yaling Hedrick
Corrective Action Plan Monitor
Office of Special Education
New Mexico Public Education Department
300 Don Gaspar Avenue
Santa Fe, NM 87501
Telephone: (505) 795-2571
Yaling.Hedrick@ped.nm.gov

The file on this complaint will remain open pending the PED's satisfaction that the required elements of this Corrective Action Plan are accomplished within the deadlines stated. The District is advised that the 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 the OSE.

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

Please carefully read the entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes. All corrective actions must be completed no later than August 29, 2025, and reported to the OSE no later than September 26, 2025. All documentation submitted to the OSE to demonstrate compliance with the CAP must be clearly labeled to indicate the state complaint case number and step number.

Corrective Action Plan

| Step No. | <u>Actions Required by District</u> | <u>Complete Actions By</u> | <u>Documents Required to be Submitted to PED OSE</u> | <u>Document Due Date</u> |
|-----------------|--|-----------------------------------|---|---------------------------------|
| 1. | As described above, the District will submit a written assurance to the PED OSE Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP). | May 23, 2025 | Written Assurance Letter/Email | May 23, 2025 |
| 2. | The District Special Education Director and the school principal shall meet virtually with the OSE CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the District plans to take to ensure that the violations are corrected and do not recur. The District Director has the discretion to include other District or school administrators or personnel in this meeting. The District Director shall be responsible for arranging this virtual meeting with OSE. | June 6, 2025 | Meeting with NMPED | June 6, 2025 |
| 3. | District will convene an IEP meeting to review Student's educational status to confirm Student's educational programs and services under the IDEA for the 2025-2026 school year. The IEP meeting will be followed by a PWN documenting the IEP meeting and will be sent to Parents. | June 29, 2025 | IEP, PWN | June 29, 2025 |

| Step No. | <u>Actions Required by District</u> | <u>Complete Actions By</u> | <u>Documents Required to be Submitted to PED OSE</u> | <u>Document Due Date</u> |
|-----------------|---|-----------------------------------|--|---|
| 4. | The District shall review and revise, as appropriate, District procedures regarding Student eligibility for special education services and FAPE entitlement through age 21, as provided in relevant New Mexico administrative code provisions. | August 1, 2025 | Copy of Revisions to NMPED for approval prior to District approval | August 15, 2025 |
| 5. | The District shall arrange to provide training to District staff (including special education teachers, special education administrators, behavioral assistants, counselors, diagnosticians and related service providers). The training will be provided by persons independent of the District with expertise in special education who were not involved in responding to this complaint and who are approved by NMPED. The training shall cover the topic(s) related to Student eligibility for special education services and FAPE entitlement through age 21, as provided in relevant New Mexico administrative code provisions. | September 26, 2025 | <p>Submission of proposed training presentation for NMPED approval</p> <p>Confirmation of the date of the training</p> <p>Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance</p> | <p>September 5, 2025</p> <p>September 19, 2025</p> <p>September 26, 2025</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/ Samuel D. Kerr

Samuel D. Kerr

Complaint Investigator

Reviewed by:

/s/ Natalie Campbell

Natalie Campbell, Esq.

Chief Counsel for Special Education

Office of General Counsel

Reviewed and approved by:

DocuSigned by:

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Interim Deputy Secretary, Office of Special Education