

**SPECIAL EDUCATION DIVISION**  
**Complaint Resolution Report**  
**Case No. C2021-05**  
**December 4, 2020**  
**This Report Requires Correction Action.**  
**See Corrective Action Plan pages 16-18.**

This complaint was filed with the Special Education Division of the New Mexico Public Education Department (PED) on October 5, 2020, 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>

**Scope of Review and Authority**

The PED's SED administers the Federal Regulations and State Rules governing special education programming requirements for children with disabilities. The implementing regulations to the IDEA and the corresponding State Rules require investigations into complaints regarding violations of these provisions. The PED 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 independent complaint investigator's investigation process in this matter involved the following:

- review of the complaint and supporting documentation from complainant;
- review of the district's responses to the allegations, together with additional documentation submitted by the district at the request of the PED's independent complaint investigator;
- telephone contact with the complainants;
- interviews with the school district personnel;
- review of PED covid-related guidance;
- review of the district's compliance with federal IDEA regulations and state NMAC rules;
- and
- research of applicable legal authority.

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<sup>1</sup> The federal IDEA regulations are published at Title 34 of the Code of Federal Regulations (C.F.R.), Part 300. The New Mexico Public Education Department's special education rules are published at Title 6, Chapter 31, Part 2 of the New Mexico Administrative Code (6.3 1.2 NMAC). The state-level complaint procedures are in the federal regulations at 34 C.F.R. §§ 151 to 153 and in the state rules at Subsection H of 6.31 .2.13 NMAC.

### **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) and 6.31.2.13(H)(2)(d) NMAC).

### **Complaint Issues**

1. Whether the district failed to properly implement the Individualized Education Program (IEP) by not providing special education and related services to special education eligible students in violation of 34 C.F.R. § 300.322-300.328; 6.31.2.10 (D) and 6.31.2.11 (B) NMAC?
2. Whether the failure to hold an IEP to discuss the plans for monitoring student's progress and provision of compensatory services during the school closure because of the COVID-19 pandemic, resulted in a denial of a free appropriate public education (FAPE) to special education eligible students in District in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC?
3. Whether the actions and/or omissions of the District towards special education eligible students resulted in the denial of a FAPE in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC?

### **Introduction**

In this complaint, three students were identified, but the complaint also alleged similar allegations regarding all student receiving special education and related services through the District. The District is a public-school district that services students in preschool through 12<sup>th</sup> grade. The complaint alleged that all special education eligible students were denied FAPE due to District's practices related to the COVID-19 pandemic. To address the system wide complaint, a random sample of 30 students from the 489 special education eligible students randomized across disability category and age were reviewed. There was at least one student from each grade prek-12 and the disabilities included multiple disabilities, emotional disturbance, autism, specific learning disability, speech/language, other health impaired, developmental disability, intellectual disability and hearing impairment.

## Findings of Fact

1. All students attended District schools. There were 489 students within the District that were special education eligible. A total of thirty-three students' files were reviewed during the investigation of this complaint. All students' files that were reviewed received special education or special education and related services through the District.
2. Beginning on March 11, 2020, the Governor declared a state of emergency and all schools in the State were closed from March 16 to April 6, 2020.
3. On March 26, 2020, the Governor declared that school buildings would remain closed but districts were responsible for providing remote learning for the remainder of the school year.
4. The District planned for an equitable provision of special education and related services during the school closure. This included supports and accommodations that could be provided while school was closed. The plan and goals were set out in the District's Continuous Learning Plan (CLP).
5. Under the District's plan, the provision of special education services was reduced in proportion to the reduction in the amount of general education provided.
6. The proportionate reduction of services plan was included in the District's CLP submitted to the PED.
7. During the school closure, the plan was for the District to reinforce and maintain skills and content learned, with a particular emphasis on reading and math.
8. The plan included thirty minutes of direct instruction daily through a virtual format for all students. Those students who did not have the option of virtual instruction would receive written packets of instructional materials which could be acquired at the local retail center or, in some cases, were delivered to the family on a weekly basis.
9. Digital activities were also posted on the District's website. Various hotspots for students' use were located throughout the District. There were also opportunities to access another district's online resources for additional support and information.
10. During the school closure in April and May, 2020, technology such as computers were only provided to seniors; other students had access to paper instructional materials if they did not have access to technology.
11. Recommended instructional times varied by age with 45 minutes a day for K-1<sup>st</sup> grade and up to 3 hours a day for high school students. Although encouraged, the

instructional times were not required nor were students' grades impacted by not completing the recommended times.

12. Office hours were also established if students needed additional support from their teachers.
13. Plans were in place to ensure seniors would earn required credits to graduate and earn a high school diploma.
14. Students and families would be contacted biweekly by telephone, email, Instagram, Twitter, Facebook or other alternative means of communication to check in and see how the students were doing.
15. New skills would not be taught nor would learning shift to home schooling with the responsibility of the parents as teachers.
16. For each of the files reviewed, all students had current IEPs with required evaluative data, goals, notices, and other procedural safeguard requirements.
17. The District reported that they held IEP addendum meetings with every special education student's family to discuss the change in special education and related services during the school closure. Meetings were held using Google Meet or by telephone.
18. In at least one of the files reviewed, the parents could not attend the virtual IEP addendum meeting, but agreed that the meeting could be held without their participation; documents would be provided to them after the meeting. If there were any issues in the documents or plan, another addendum meeting was scheduled. A follow up meeting was not required.
19. There was no individualized determination made by the IEP teams about whether the reduction in special education and related services was what each individual student needed to receive FAPE during the COVID-19 school closure.
20. During the school closure in April and May, 2020, special education students still received the same type of special education and related services that were on their IEPs, as determined at the annual IEP meeting held for each student. The amount of services and how the services would be delivered changed.
21. Although parents participated in the IEP addendum meetings, it was not clear that they were provided meaningful parental participation. The District unilaterally reduced the

amount of special education services for each student by the same proportional amount as the reduction in general education for all students.

22. Although some parents objected to the reduction of services, the District made the decision to reduce the services and review the student's progress when school resumed.
23. There was nothing documented on the IEP addendum or Prior Written Notice (PWN) that the IEP team reviewed the individual needs of the student to determine whether the reduction in special education and related services still provided FAPE to the student or whether the circumstances of the school closure impacted individual special education students requiring revision to their IEPs.
24. In the three identified files, the parents/guardians participated in the meetings and voiced objections to the reduction in services and questioned the provision of recovery services when school reopened. Staff from the Native American Disabilities Law Center also contacted the District about those issues.
25. The objections concerning the reduction in services and the provision of recovery services were noted on the addendum and PWN but there was no documentation of the reason for the unilateral reduction in services except that all students' services were reduced because of the COVID-19 school closure.
26. The PWN did not address the issue of recovery services for those students that could not receive FAPE during the school closure or how the unilateral reduction in services for all students met the individualized mandate for IEPs.
27. The IEP addendum documents and PWNs were sent to parents.
28. The special education and related services, as outlined on the pre COVID-19 IEP, would resume at the start of the 2020-2021 school year for all students for whom files were reviewed. This was noted on the IEP addendums and PWNs.
29. The District's plan for recovery services was that the IEP team would make the determination after traditional in-person instruction resumed.
30. The District asserted that because of the school closure and virtual and hybrid learning, it was difficult to assess the special education students and determine whether they needed recovery services.
31. Staff maintained logs of services provided and not provided and that information was to be considered in determining if recovery services will be needed when schools reopen.

32. The District plan specified that recovery services would be determined on an individual basis taking into consideration formal and informal data collected since the school closure in March, 2020, special education and related services that were not provided, and those special education and related services that were provided.
33. The District had not denied or determined that students will or will not receive recovery services.
34. The District acknowledged that recovery services and the need for such services was the responsibility of the District and a plan had been developed to evaluate the need for such services and how they would be provided after schools reopen.
35. Since it was unclear when school would reopen, the District had not implemented the plan for addressing whether recovery services were needed nor how to provide them.
36. In the event that school in a traditional format did not resume until Fall of 2021, the District planned to use the beginning of year benchmark assessments in making recovery services determinations.
37. The discussion and analysis of the need for recovery services would be included on a PWN at some unknown future date.
38. The 2020-2021 school year started with students in the District receiving instruction virtually or through a hybrid format for pre-kindergarten through 3<sup>rd</sup> grade.
39. Students' special education and related services returned to the amount specified on their pre COVID-19 IEPs.
40. Accommodations, modifications and other supports were provided to students as set out in their pre-COVID-19 IEPs in whatever learning format the students were using.
41. Teachers were directed to be persistent in ensuring students were participating in their educational program. Most instruction was provided virtually, but, under certain situations, learning was completed in person.
42. Additional layers of support were included in the plan for the start of the 2020-2021 school year.
43. Home visits were scheduled if students were not fully engaged, and in some situations, outside agencies and volunteers were recruited to ensure students received the necessary resources during the COVID-19 crisis. These identified needs were often more than educational.

44. Virtual learning was through common platforms. Teachers continued to have regular biweekly contact with families to see how things were progressing and if students were completing and turning in their work.
45. The District recognized and attempted to accommodate differences in students' learning including culture, socioeconomic status, rural vs city, communication variables and internet availability and consistency.
46. The District continually strived to be on top of the needs of the students and families that resided in the District and reached out to other agencies and groups that could meet the needs and support the community and families.
47. A majority of Students received direct instruction remotely in both general and special education settings. The frequent contact with teachers and other staff allowed changes in the learning plan for individual students when the plan was not working with a particular student or family.
48. As it became apparent that not all students could participate in virtual learning at set times, lessons were prerecorded and students could access the material on their timeframe. Monitoring continued to determine whether students participated and if needs had changed and plans needed to be altered.
49. In one situation in the 2020-2021 school year, it became apparent that a student needed a larger monitor to access the instructional materials. Because of the biweekly contact, the student quickly received the larger monitor to allow educational progress for this student.
50. During the school closure, all seniors were provided technology like Chromebooks, but since the start of the 2020-2021 school year, any students who has requested technology has received it from the District.
51. The District met required timelines and maintained regular contact with parents and students to ensure students were accessing the curriculum. Students' plans were adjusted as needed including providing alternative formats if the platforms were not accessible for individual students.
52. Some students were thriving under the virtual learning plan; other students struggled with the virtual format but the District staff continued to adapt and alter the learning plans.

53. The District’s plan included a review, at the time of the annual IEP, to ensure that student’s needs, which might have changed during the COVID pandemic, were being met.

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

On March 11, 2020, the Governor of New Mexico declared a public health emergency regarding the COVID-19 pandemic. After declaring the public health emergency, the Governor ordered all public schools to close from March 16, 2020 to April 6, 2020. On March 26, 2020, the Governor ordered all public schools to close for the remainder of the 2019-2020 school year because of the increase in COVID-19 cases.

In an effort to assist school districts around the nation appropriately address school closures due to the COVID-19 pandemic, the U.S. Department of Education released several documents, including a document entitled *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* on March 12, 2020, a document entitled *Fact Sheet: Addressing the Risk of COVID-19 Schools While Protecting the Civil Rights of Students*, on March 16, 2020, and a document entitled *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* on March 21, 2020. These documents clarified that all provisions of the IDEA remained in force and further emphasized that when a school district provides educational services to all students, the school district “must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP.” *Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease Outbreak*, 76 IDELR 77 (OSERS 2020).

The PED also released various documents to assist and support school districts and charter schools as they dealt with the mandated school closures. In the *Implementation Guide for Your Continuous Learning Plan (Guide)*, special education services were addressed. The Guide provides in part:

- “Special education teachers and related service providers will continue to work on IEP and evaluation paperwork within required timelines.” P. 20.
- “Instructional Education Plans (IEPs) may NOT be universally modified.” P. 4.
- “LEAs must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP.” P. 21.
- “The IEP team will need to discuss and document within the IEP or an addendum the agreed upon alternative plan for providing the requisite special education and related services to those students through Prior Written Notice (PWN).” P. 21.



- “Any decisions regarding special education and related services for an individual child should be made by the child’s IEP Team, and should not be based on diagnoses, eligibility categories, or blanket policies.” (Emphasis original). P. 21.

The PED also released documents specifically related to the provision of special education for students with disabilities during the pandemic. On April 2, 2020, the PED issued *Frequently Asked Questions (FAQ): Providing a Free Appropriate Public Education (FAPE) through a Distance Learning Platform during a Closure to Normal School Operations due to the Coronavirus (COVID-19) Pandemic 2020*,<sup>2</sup> to provide guidance to schools and districts on special education.

In July 2020, the PED issued a *Special Education Services Reentry Guidance*, which provided in part:

- As the schools’ service delivery models change, the schools must then ensure the student’s IEP remains appropriate and can be implemented as written. If the IEP cannot be implemented as written, then the schools will need to convene the IEP team and revise the IEP or amend the IEP without a meeting with permission and input from the parents. This continues the process that the school followed in the initial move from face-to-face instruction to complete virtual and/or distance learning.”

## Issue No. 1

### **Whether the district failed to properly implement the Individualized Education Program (IEP) by not providing special education and related services to special education eligible students in violation of 34 C.F.R. §§ 300.322-300.328; 6.31.2.10 (D) and 6.31.2.11 (B) NMAC?**

The IDEA is meant to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) designed to meet their unique needs. *Andrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S. Ct. 988, 994 (2017). A FAPE includes special education and related services that are reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstance. *Id.* at 999; *see also* 34 C.F.R. §§ 300.320 to 300.324; 6.31.2.7(b) NMAC. *Board of Education of Hendrick Hudson Central School District v. Rowley*, 102 S. Ct. 3034, 3050, 458 US 176, 203 (1982). Students with disabilities are students evaluated “as having [specified disabilities] which adversely affects educational performance, and who, because of those disabilities, need special education or special education and related services.” 6.31.2.10(D) and 6.31.2.11(B) NMAC; *see also* 34 C.F.R. § 300.8(a)(1). The IDEA “focuses on ensuring that children with disabilities achieve to high academic standards and have access to the same curriculum as other children.” 71 Fed. Reg.

<sup>2</sup> <https://webnew.ped.state.nm.us/wp-content/uploads/2020/04/Special-Education-FAQ-Final-4-1-20-ddc.pdf>

46,556 (2006). As much as practicable, districts should educate disabled children in the same way they educate children who are not nondisabled. 34 C.F.R. § 300.114(a)

The IDEA mandates that districts are obligated to provide specially designed instruction, provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability. 34 C.F.R. § 300.39(a)(1); *see also* 6.31.2.11(B) NMAC. Specially designed instruction is adapting, as needed, the content, methodology or delivery of instruction catered to the student's unique needs to allow that student access to the general curriculum and make progress. 34 C.F.R. § 300.39(b)(3). A student's unique needs are more than just mastery of academic subjects but may include social, health, emotional, physical, and vocational needs of eligible students. *County of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1468 (1996).

The IEP must be implemented as written, including all required components. 34 C.F.R. § 300.323(c). Minor variations in the implementation of the IEP does not automatically mean that the child was denied FAPE. *See T.M. v. District of Columbia*, 64 IDELR 197, (D.D.C. 2014). Failure to implement material parts of the IEP, however, may be considered a denial of FAPE. *See Sumter County School District 17 v. Heffernan*, 642 F.3d 478, 484 (4th Cir. 2011); *Van Duyn v. Baker School District 5J*, 481 F.3d 770, 882 (9th Cir. 2007); *Houston Independent School District v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000), cert. denied, 531 U.S. 817 (2000); *Neosho R-V School District v. Clark*, 315 F.3d 1022, 1027 n. 3 (8th Cir. 2003); *Turner v. District of Columbia*, 61 IDELR 126 (D.D.C. 2013). 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.App. 202 (2d Cir. 2010).

*“Any decisions regarding special education and related services for an individual child should be made by the child’s IEP Team, and should not be based on diagnoses, eligibility categories, or blanket policies.”* (Emphasis original). *Implementation Guide for Your Continuous Learning Plan* (Guide), New Mexico PED, 2020, P. 21.

During the school closure beginning in March, 2020, the special education eligible students that were reviewed in this complaint unilaterally received a reduction of special education and related services in proportion to the amount of general education services for all students. All District students' educational services were reduced by the same proportion during the March, 2020 school closure. For each of the students, the IEP team met and discussed the reduction of special education and related services in proportion to the reduction of general education services while the school was closed. The proportionate reduction of special education and related services was based on the amount of special education and related services that the students' IEPs required. If a student's IEP provided for speech therapy, occupational therapy and special education services in reading and math, the student still received the services in those categories; however, the amount of special education and related services may have

been reduced from 30 minutes per week to 10 minutes per week. All special education students had the same proportion reduction in their special education and related services, as outlined on their IEPs. There was no individualized determination about whether this proportionate reduction in special education and related services ensured the provision of FAPE for each child. Furthermore, there was no discussion or analysis of whether an individual student had additional needs because of the pandemic closure.

While the reduction in services was determined at the IEP team meeting which included the parent/guardian for the student, there was no indication that this was an individualized decision or that the parents had meaningful parental participation regarding their individual student's educational programs. All of the changes were outlined on a PWN but there was no justification or explanation of how this reduction in services ensured FAPE to the student. Even when a parent expressed concern or disagreed with the reduction, the District reduced the student's services according to its predetermined formula.

The IEP addendum specified that the amount of special education and related services outlined on their pre COVID-19 IEP would begin when school resumed at the start of the 2020-2021 school year but this did not address whether the limited services during the COVID-19 closure or the presence of other needs prevented the individual student from making progress.

When the school year began, all special education and related services outlined on the pre-COVID IEP, including accommodations, modifications and supports, were provided to students. The services may have been provided virtually or in some circumstances, in person, but all services were provided. Students were continually monitored and if changes needed to be made to the amount of services, type of services or how services were provided, that change was made after determination by the IEP team. The District also provided PWNs when changes were made to the provision of FAPE for each student. This continually monitoring provided information that the IEP teams should have reviewed at the start of the 2020-2021 school year to determine whether the reduced special education and related services provided FAPE or if additional recovery services were warranted.

**As to Issue No. 1, the District is cited. Corrective action is required.**

## **Issue No. 2**

**Whether the failure to hold an IEP to discuss the plans for monitoring student's progress and provision of compensatory services during the school closure because of the COVID-19 pandemic, resulted in a denial of a free appropriate public education (FAPE) to special education eligible students in District 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 FAPE included specially designed instruction, provided under public direction that meet the standards of the state in conformity with an IEP. 34 C.F.R. § 300.17. The amount and type of services to be provided are determined by the IEP team. 34 C.F.R. § 300.320. District have an obligation to provide an educational program for a student that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S.Ct. at 999. There is no guarantee, however, any certain level of education or outcome. *Id.* at 998. IEPs must be reviewed annually or as needed, if the student is not making progress or needs have changed. 34 C.F.R. § 300.324 (b).

The District held IEP meetings for all special education students prior to the implementation of the reduction in special education and related services because of the school closure. At those IEP meetings, the provision of services during the school closure and when traditional school resumed was discussed. Recovery services were not determined or denied at that time, but were held in abeyance until school resumed and students' progress could be evaluated. School has resumed, albeit in a nontraditional format, but the District asserted that the recovery services could still not be determined because they had inadequate information. Therefore, students continued to be denied FAPE because, until the time of the annual IEP, there would be no review of whether an individual student has additional needs, determination of whether progress has been made, or the need for recovery services. Moreover, since the District claimed that recovery services cannot yet be determined because of incomplete or inaccurate data, progress could not be demonstrated. Students were being continually monitored and changes had been made to the IEP on an as needed basis. There was sufficient information for the District to determine if recovery services were needed and how to provide those services.

**As to Issue No. 2, the district is cited. Corrective action is warranted.**

### **Issue No. 3**

**Whether the actions and/or omissions of the District towards special education eligible students resulted in the denial of a FAPE in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC?**

Districts have an obligation to provide an educational program for each student that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S.Ct. at 999. IDEA regulations provide that "[E]ach State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a

course or grade, and is advancing from grade to grade." 34 C.F.R. § 300.101(c). IDEA also allows the granting of "appropriate relief" for failing to provide FAPE. 34 C.F.R. § 300.516(c)(3).

Substantive violations of IDEA may result in a denial of FAPE, including failure to provide special education services as mandated in an IEP. Generally, procedural violations do not rise to the level of denial of FAPE. However, when the procedural violations have 1) impeded the child's right to FAPE, 2) significantly impeded the parents' opportunity to participate in decision making process regarding provision of FAPE or 3) caused a deprivation of educational benefits, these violations may result in denial of FAPE. *K.E. v. District of Columbia*, 19 F.Supp. 3d 140, 143 (D.D.C. 2014); *J.L. v. Mercer Island School District*, 592 F.3d 938, 951 (9th Cir. 2010); *C.H. v. Cape Henlopen School District*, 606 F.3d 59, 66 (3rd Cir. 2010). The primary function of an IEP is to develop a plan to achieve academic and functional advancement. *Andrew F.*, 137 S.Ct. at 999.

The COVID-19 pandemic has caused challenges for all school districts as they struggle to provide quality education services including special education and related services virtually. In some instances, virtual learning had been beneficial for some students; whereas it had been a continuing struggle for other students. The District failed to meet its obligation to provide FAPE to the special education eligible students within the District. The proportionate reduction in services for all District special education students disregarded the individualized analysis required under IDEA. Moreover, the District's implementation of the unilateral reduction in services prevented parents from effective parental participation in the development of their student's educational program. This procedural violation was a denial of FAPE.

Although the District had continually monitored the students and modified IEPs as needed, they failed to determine on an individual basis whether the reduction in services provided FAPE or whether additional needs required additional services or supports. The District's assertion that recovery services cannot be determined now because they do not have accurate data on the special education students raises the question of whether progress was made for each student. The *Andrew F.* standard requires an IEP that considers that student's circumstances. Although the circumstances discussed in *Andrew F.* did not anticipate school closures and virtual school, those are the circumstances of each individual special education student and the District had an obligation to develop an IEP that enabled each student to make progress.

It is imperative under IDEA that all special education students have access to educational opportunities. There were many challenges in this District; the District implemented many programs to address those challenges for District students. The District had partnered with outside agencies and volunteer groups to ensure that any obstacles the students faced that may negatively impact on their learning were remedied as much as practical. All students had

been impacted by COVID-19 and remote learning. The District did not address, on an individual basis, the impact for each special education student.

The District had acknowledged that they were responsible for recovery services as needed when school reopened. The District has an ongoing obligation to monitor the progress each special education student had made and modify the IEP as needed. As such, that progress should provide information to determine if recovery services were needed for the school closure last year. If the District can demonstrate that type of progress or lack thereof required by *Andrew F.*, then they should be able to determine whether each individual student is entitled to recovery services, the amount and type of services and how and when they will be provided through the IEP team meeting process. If schools continued to stay closed, the continuing progress monitoring and planned IEP reviews should provide guidance regarding development of a new IEP.

**As to Issue No. 3, the District is cited. Corrective action is required.**

Summary of Citations

Statutory and Regulatory Provisions	Citation
34 C.F.R. §§ 300.322-300.328; 6.31.2.10 (D) and 6.31.2.11 (B) NMAC?	The District failed to properly implement the Individualized Education Program (IEP) by not providing special education and related services to special education eligible students.
34 C.F.R. § 300.101 and 6.31.2.8 NMAC?	The failure to hold an IEP to discuss the plans for monitoring student’s progress and provision of compensatory services during the school closure because of the COVID-19 pandemic, resulted in a denial of a free appropriate public education (FAPE) to special education eligible students.
34 C.F.R. § 300.101 and 6.31.2.8 NMAC	The actions and/or omissions of the District towards special education eligible students resulted in the denial of a FAPE

Required Actions and Deadlines

**By December 11, 2020, the District's superintendent and director of special education must assure the PED in writing that the District will abide by the provisions of this Corrective Action Plan (CAP).** The PED 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:

Dr. Elizabeth Cassel  
Corrective Action Plan Monitor  
Special Education Bureau  
New Mexico Public Education Department  
120 South Federal Place  
Santa Fe, NM 87501  
Telephone: (505) 490-3918  
[Elizabeth.Cassel@state.nm.us](mailto:Elizabeth.Cassel@state.nm.us)

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 PED 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 PED.

Each step in this Corrective Action Plan is subject to, and must be carried out in compliance with, the detailed procedural requirements of the IDEA 2004 and the implementing Federal Regulations and State Rules. If the District needs brief extensions for the steps in the Corrective Action Plan, contact Deborah Dominguez-Clark, Director of the Special Education Bureau.

Please carefully read the 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 December 4, 2021, and reported to the PED SEB no later than December 15, 2021. All documentation submitted to the SEB to demonstrate compliance with the CAP must be clearly labeled to indicate the complaint number, CRR 2021-05.

Corrective Action Plan

Step No.	<u>Actions Required by District</u>	<u>Complete Actions</u>	<u>Documents Required to be provided to the PED</u>	<u>Documents Due to PED by</u>
1.	The District is required to conduct an audit of all special education instruction and related services that students with disabilities have not been provided since April 6, 2020 and provide a report of the audit to PED. The District is also required to provide parents with a list of the type and time for all missed services to each parent whose child did not receive services in the PWN issued at the IEP meetings required below.	Audit must be completed by 2/1/21	Audit Report  Copies of the PWNs as set forth below in Step 3	2/15/21  6/15/21
2.	The District is required to provide parents with IEP progress reports for each reporting period of the school year.	Provide progress reports for each reporting period within two weeks of end of period	Progress Reports	5/31/21
3.	The District is required to schedule an IEP meeting, as soon as possible after completion of the audit required in Step 1 of this CAP, for all eligible special education students in the District. The purpose of the IEP team meeting shall be to review whether the student made progress during the school closure	IEP meeting and plan for recovery services (if warranted) must be held before 5/31/21	Copies of the IEP, PWN , the recovery plans, and documentation of information provided to parents about dispute resolution options and Procedural Safeguards Notice	6/15/21



	<p>and whether recovery services are warranted for failure to meet the student’s needs and provide FAPE. If recovery services are warranted, then the District shall develop a plan to provide appropriate recovery services to ensure the provision of FAPE. The recovery services may be provided during the school day or over the summer as determined by the IEP team. The need for recovery or other services must be made on an individual basis by the IEP team and include the parent’s input as to the schedule for the provision of these services. As part of this IEP process, the District shall ensure that parents are advised of their procedural safeguards and the ability to contest the IEP team decision about recovery services using the dispute resolution options in the IDEA.</p>			
4.	<p>The District shall provide all recovery services required by the plans referenced above.</p>	<p>Recovery services provided by deadlines set in recovery plans.</p>	<p>Documentation of provision of recovery services (i.e., service logs of services provided)</p>	<p>12/15/21</p>


5.	The District will monitor the provision of special education and related services and progress of all special education students in the District and revise the IEPs as needed if students are not demonstrating progress. The District is required to provide parents with IEP progress reports for each reporting period of the school year.	12/4/21	Service logs, quarterly progress notes, and amended IEPs and PWNs for those students that are not making progress.	12/15/21
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This report constitutes the New Mexico Public Education Department's final decision regarding this complaint.

Investigated by:

/s/ Michele K. Bennett  
Michele K. Bennett  
Independent Complaint Investigator

Reviewed and Approved by:

  
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Deborah Dominguez-Clark  
Director, Special Education Division

/s/ Debra Poulin  
Debra Poulin  
Chief Counsel, Special Education Division