

**In the Matter of**

**STUDENT,**

**Petitioner,**

v.

**Case No. DPH 1213-13**

**ALBUQUERQUE PUBLIC SCHOOLS,**

**Respondent.**

**FINAL DECISION OF THE DUE PROCESS HEARING OFFICER  
DISMISSING THE DUE PROCESS COMPLAINT**

**Jane B. Yohalem, Due Process Hearing Officer**

This matter comes before the due process hearing officer upon the District's motion to dismiss or for summary judgment.<sup>1</sup> The District claims that dismissal is required because the hearing officer lacks both subject matter and personal jurisdiction to address Student's challenge to his graduation, by a Texas school district, with a regular high school diploma.<sup>2</sup> The District claims that the issuance of a high school diploma by the State of Texas ended Student's eligibility under the Individual's with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401, *et. seq.*, and that unless and until his graduation is overturned or rescinded by a hearing officer or court with jurisdiction to do so, the District has no duty to provide special education or related services to Student.

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<sup>1</sup> As part of its responsive pleading in this matter, the District submitted documentation, including Student's high school transcript and Student's May, 2012, Texas IEP. Although the legal import of these documents is contested by Student, there is no dispute about the authenticity of these documents. The hearing officer has considered these documents in reaching her decision. To this extent, the District's motion to dismiss is more properly characterized as a motion for summary judgment.

<sup>2</sup> The Copperas Cove Independent School District in Copperas Cove, Texas, is referred to as the "Texas district" in this decision.

Student opposes the District's motion and affirmatively seeks a ruling by the hearing officer that he has not received a regular high school diploma in Texas and that, if he did, the diploma was issued in violation of the IDEA and of Texas law and is, therefore, ineffective to terminate his eligibility for IDEA services in New Mexico. Citing both procedural and substantive violations of the IDEA, Student further claims that the Texas district denied him a free appropriate public education (FAPE) during the 2011-2012 school year and that the New Mexico District has denied him a FAPE and continues to deny him a FAPE during this school year. Student, by motion, seeks to amend his complaint to expand on his claims of denial of FAPE by both the Texas school district and the New Mexico District. Student also alleges that, even if he is ineligible for special education services under the IDEA, the District, by agreeing to provide such services from August through October, bound itself either as a matter of contract law or by estoppel to continue to provide such services. Student seeks an evidentiary hearing on all issues. Finally, Student seeks compensatory education for the period from October 2, 2012, when Student was first excluded from school (prior to the filing of his due process complaint), until November 29, 2012, when the hearing officer's stay-put order went into effect.

Each of these issues will be addressed in turn.

### **BACKGROUND**

Student, who is 19 years old, moved to Albuquerque from Texas during the summer after the completion of the 2011-2012 school year in Texas. Student previously had moved to Texas from Connecticut in 2011, when he was 18 years old. During the 2011-2012 school year, he qualified for and was provided special education in Texas as a student with Autism Spectrum Disorder.

It is undisputed that in May, 2012, the Texas district convened an IEP meeting and that the IEP team decided, over Parent's objection, that Student met the requirements for graduation with a

regular high school diploma under Texas law. Exhibit A to District's Response. Parent, pursuant to a power of attorney from Student, filed a due process complaint in Texas on May 22, 2012, prior to Student's graduation, challenging the IEP team's decision to graduate Student and also alleging that the transitional services plan and other special education services provided to Student and procedures followed during the school year by the Texas district denied Student a FAPE under the IDEA. Exhibit D to District's Response.

When Student's family moved to Albuquerque, New Mexico, during the summer of 2012, Student, through Parent, voluntarily dismissed Student's pending Texas due process complaint. *Id.* Although Student continued to object to his graduation, he dismissed the complaint because he and Parent believed that his graduation in Texas would not be relevant to his schooling in Albuquerque. Student registered for school in the District prior to the start of the 2012-2013 school year. Parent did not inform the District of Student's graduation in Texas nor did he mention the Texas due process proceeding or his decision to dismiss that proceeding. The District placed Student in a transitional program while it evaluated him, obtained his records from Texas, and prepared for an IEP meeting.

On October 1, 2012, the District reviewed Student's transcript from Texas. The transcript indicated that Student had been awarded a regular high school diploma in Texas on June 1, 2012. Exhibit B to District's Response. The District cancelled the scheduled IEP meeting and removed Student from school based on its conclusion that Student had graduated and was no longer eligible for educational services. The District continued to exclude Student from school after the due process complaint was filed in this matter on December 12, 2012, based on its belief that Student's current educational placement was as a high school graduate.

Following the filing of the due process complaint, the parties made an effort to reach a resolution. Indeed, it appeared that an agreement had been reached at the November 2, 2012, resolution session. After asking for additional time to consider the agreement, Student rejected the agreement on November 8, 2012. After a brief delay to allow Student and Parent time they requested to seek counsel, the hearing officer conducted a telephone conference with the parties on November 14, 2012.

Following that conference, Parent, by motion, sought to recuse the hearing officer. The hearing officer denied that motion by decision dated November 20, 2012. A copy of that decision is attached and incorporated herein.

On that same date, in response to the District's challenge to Parent's standing, the hearing officer clarified that the only proper party to this case is Student because all rights under the IDEA transferred to Student when he reached the age of majority in New Mexico. Parent's continued participation was permitted by solely pursuant to his power of attorney from Student. A copy of that November 20, 2012, decision is attached and incorporated herein.

On November 28, 2012, the hearing officer entered a stay-put decision and order requiring the District to return Student to his transitional program during the pendency of this due process proceeding. A copy of the hearing officer's stay-put decision and order is attached and incorporated herein.

## DECISION

### **I. The District's Motion to Dismiss or for Summary Judgment and Student's Claims in Response.**

In its Response to the due process complaint and again in its motion to dismiss or for summary judgment, the District contends that dismissal of Student's due process complaint is required here because: (1) a New Mexico hearing officer lacks subject matter jurisdiction to hear Student's claim that a Texas school district violated the IDEA by graduating Student from high school; (2) even if the hearing officer has subject matter jurisdiction, a New Mexico hearing officer lacks personal jurisdiction over a Texas school district with no presence in New Mexico and, therefore, the proper party cannot be brought before this hearing officer; (3) the hearing officer's authority is limited by State regulations to denials of educational services by New Mexico Local Education Agencies (LEA's) and other New Mexico public agencies; and (4) the Student's claim for a free appropriate public education in New Mexico was mooted by Student's graduation in Texas, which terminated his eligibility for services under the IDEA.

Student has responded to the District's motion to dismiss asking the hearing officer to hold: (1) that the documents provided to the District by the Texas school and submitted to the due process hearing officer as part of the District's Response to the due process complaint are not sufficient as a matter of law to establish that Student graduated from high school in Texas; (2) that no graduation occurred because Student never physically received a high school diploma; (3) in the alternative, any graduation of Student in Texas was of no effect because Student's filing of a due process complaint in Texas triggered the Act's stay-put provisions and thereby prevented any graduation from becoming effective; (4) even if Student did graduate in Texas with a regular high school diploma, the New Mexico hearing officer has authority to determine whether the graduation occurred in

violation of the Texas requirements for a regular diploma and the IDEA requirements governing graduation of a Student with a disability who is under 22 years of age.

**A. The Filings by Both Parties Are Timely.**

As a preliminary procedural issue, Student has claimed that the hearing officer should not consider the District's motion to dismiss because it was filed too late. The hearing officer denies the request to exclude the District's motion as untimely. First, the motion merely restates arguments already made by the District in its responsive pleading very early in the case. Second, Student has submitted a steady stream of argument in opposition to the District's jurisdictional arguments and in support of Student's position both before and after receiving the District's motion. Moreover, Student was given additional time to respond to the District's motion and has filed a lengthy response. Fairness demands that, if the hearing officer is going to consider all of the pleadings and arguments filed by Student since November 14, 2012, she must also consider the additional pleading filed by the District. The hearing officer, therefore, finds all of these pleadings filed by both sides, including the District's motion to dismiss and the Student's responses to that motion, to be timely. Student's request to strike the District's motion to dismiss as late-filed is denied.

**B. The Documentation Submitted by the District Conclusively Establishes that Student Graduated in Texas with a Regular High School Diploma.**

The jurisdictional issues raised by the District and those raised by Student in opposition turn, first and foremost, on whether Student graduated in Texas with a regular high school diploma. If no graduation occurred, as Student contends, Student is plainly entitled to full IDEA services in New Mexico as a student with a disability who is under 22 years of age when school began this year. 34 C.F.R. § 300.102(a)(1); 6.31.2.7 (F)(1)(c) NMAC; NMSA 1978, 22-13-8. If, however, Student graduated with a regular high school diploma, then he is no longer eligible for services under the

IDEA. 34 C.F.R. § 300.102(a)(3)(i); *Letter to Richards*, 17 IDELR 288 (OSERS 11/23/90) (eligibility for special education and related services ceases upon graduation from high school). A regular high school diploma must be a degree that is fully aligned with the State's academic standards for regular students. It does not include an alternative degree such as a certificate of course completion (an alternative used in Texas) or a general educational development credential (GED). 34 C.F.R. § 300.102(a)(3)(iv).

Student challenges the adequacy of the documentation of his graduation provided to the District by the Texas district and filed of record in this matter with the District's Response to the due process complaint and motion to dismiss. Student claims that only a diploma is sufficient to document graduation. Student contends, in addition, that because he never received an actual physical diploma from the Texas high school, he has not graduated.

The hearing officer accepts as true Student's unchallenged representation that he has never received a physical diploma or attended a graduation ceremony. Nonetheless, the hearing officer concludes that the documents in the record are sufficient under Texas law to conclusively establish Student's graduation from a Texas high school with a regular high school diploma.

Texas law specifically provides that graduation from high school is established by the very documentation introduced into the record by the District in this proceeding: a State of Texas Academic Achievement Record (AAR) with the seal of the State of Texas High School Program affixed to it. Texas Education Code, § 28.025(e) (each school district shall report the academic achievement record of students who have completed a minimum, recommended, or advanced high school program on transcript forms. The forms must clearly identify whether a student received a diploma or a certificate of coursework completion); Texas Administrative Code, § 74.61 ("[t]he transcript or academic achievement record (AAR), rather than the diploma, records individual

accomplishment, achievements, and courses completed and displays appropriate graduation seals”) (emphasis added); Texas Administrative Code, § 74.14(d) (“[a]student who completes high school graduation requirements shall have attached to the academic achievement record a seal approved by the State Board of Education”).

In Student’s case, the *State of Texas Academic Achievement Record* attached as Exhibit B to the District’s Response provides a “date of graduation” of June 1, 2012, identifies the type of graduation program as “Minimum,” one of three paths leading to a regular high school diploma under Texas law. See Texas Administrative Code, § 89.1070(b) and (f) and Exhibit C to District’s Response. The transcript is signed by the school registrar and has the seal of the State of Texas High School Program confirming Student’s graduation affixed. Exhibit B to District’s Response.

As noted above, Student has also argued that the Texas district’s failure to give him a physical diploma prevented the graduation from becoming effective. Student’s argument is not supported by the IDEA case law. Where graduation requirements have been completed and graduation is established as required by the law of the state where the graduation occurred, IDEA cases have not required that the student receive a physical diploma. *T.M. v. Kingston City Sch. Distr.*, 59 IDELR 254 (N. D. N.Y. 9/18/12); *Sammons v. Polk County School Board*, 165 Fed.Appx. 750 (11<sup>th</sup> Cir. 2006) (graduation occurred on the date graduation requirements were completed by student, not on date diploma was received); *T.S. v. Independent School District No. 54, Stroud, Okla.*, 265 F.3d 1090, 1096 (10<sup>th</sup> Cir. 2001) (postulating that graduation is effective for IDEA purposes when all requirements for graduation have been completed whether or not a diploma has been received).

**C. The Mere Filing of a Due Process Complaint by Student Does Not Void the Graduation.**

Student also argues that his graduation is not effective because he filed a due process complaint in Texas on May 22, 2012, challenging the IEP team's graduation decision. Exhibit D to District's Response. Student's argument is founded on case law which allows a student or parent who timely challenges a graduation decision by filing a due process complaint to remain in the student's then-current educational placement pending the resolution of the complaint. *Sammons v. Polk County School Board*, 165 Fed.Appx. 750 (11<sup>th</sup> Cir. 2006); *R.Y. v. Hawaii*, 54 IDELR 4 (D. Hawaii 2010); *Cronin v. Bd. of Educ. of East Ramapo Cent. Sch. Dist.*, 689 F.Supp. 197, 202 n.4 (S.D.N.Y. 1988). Although Student is correct that schooling is permitted to continue in the student's current program during the pendency of the due process proceeding challenging a graduation pursuant to the Act's stay-put provision, 20 U.S.C. § 1415(j), and that other due process rights remain available to the student, full eligibility for services under the Act is restored only if the Student prevails in the due process proceeding or on appeal and the graduation is invalidated.

In this case, the hearing officer has required the District to continue Student in his then-current placement pursuant to the Act's stay-put requirement during the pendency of this proceeding. *See* attached 11/20/12 decision and order. The fact that Student is entitled to a stay-put placement during the pendency of this due process proceeding, however, is not the same as a ruling that Student's graduation is void or that the graduation must be rescinded. Only a ruling that the graduation violated the IDEA can restore Student's full eligibility for services under the IDEA. No such ruling has issued either in Texas (where Student's due process complaint seeking to void the graduation was withdrawn without prejudice to refiling) or in this proceeding. Therefore, Student

remains ineligible for IDEA services apart from those required by the Act's stay-put provision, 20 U.S.C. § 1415(j).

**D. Student Has Failed to State a Claim Against the New Mexico District for Improper Graduation.**

The IDEA requires that, before a regular high school diploma terminating IDEA eligibility can be awarded to a student with a disability, the student must meet all of the state's requirements for graduation with a regular high school diploma and meet relevant IDEA requirements as well. 34 C.F.R. § 300.102(a)(3).

Student's claim that these requirements were not met when the Texas school district awarded him a regular high school diploma is plainly a claim of violation of the IDEA and denial of FAPE by the Texas district, not by the New Mexico District. It is the Texas district that graduated Student pursuant to Texas law and procedures. It is the Texas district that was required under the IDEA to both to provide prior written notice to Student and to conduct a due proceeding if the Student filed a due process complaint challenging the graduation. *Mosely v. APS*, 483 F.3d 689, 692-693, fn 4 (10<sup>th</sup> Cir. 2007). Any challenge to the IEP team's decision that Student satisfied graduation requirements and that he was provided the procedural and substantive protections of the IDEA must be brought against the Texas school district. Any remedy due to Student must be provided or at least reimbursed by the district which violated Student's rights.

The fact that Student has moved out of the Texas school district does not cut off his right to file a due process complaint against that district and to seek an appropriate compensatory remedy. *Lewis Cass Intermediate Sch. Dist. v. M.K. ex rel. J.K.*, 290 F.Supp.2d 832, 838-39 (W.D. Mich. 2003); *112 L.R.L. by Lomax v. District of Columbia*, 59 EDELR 273 (D.D.C. 2012).

The final question then relevant to whether Student has stated a claim against the District is whether there is some provision of law which requires the District to ignore Student's Texas graduation or requires it to make an independent determination as to Student's status. First, the IDEA eligibility regulations expressly provide that a student's eligibility for services ends upon high school graduation with a regular diploma. 34 C.F.R. § 300.102(3). The provision is absolute in its language. It does not require that a district where the student seeks to enroll determine whether the student meets that district's or that state's graduation requirements. The sole question is whether the student has graduated from any high school with a regular high school diploma.

In addition to the language of the IDEA regulations at issue, high school graduation is a change in legal status under the law of the state awarding the diploma. Therefore, other states, including New Mexico, are required to give full faith and credit to an out-of-state diploma. U.S. Constitution, Art. IV, § 1 ("Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State"). Student's diploma was granted under the authority and seal of state of Texas and, unless and until it is overturned or rescinded by a Texas agency or court, it must be honored by New Mexico government agencies, hearing officers and courts.

For the reasons stated here, there is simply no cognizable claim for improper graduation against the New Mexico school district. Therefore this claim must be dismissed.

**E. A New Mexico Hearing Officer's Jurisdiction is Limited to IDEA Violations By New Mexico Public Agencies.**

As the District correctly argues, a New Mexico hearing officer lacks jurisdiction under the law to address alleged violations of the IDEA which were committed by other states' agencies. *See* 34 C.F.R. § 300.500 (authorizing each state to ensure that public agencies, defined as agencies within

the state, provide procedural safeguards for review of these agencies' decisions on the identification, evaluation and provision of services to student's with disabilities); NMSA 22-13-5 (authorizing the public education department to develop rules and procedures governing the educational programs administered by public agencies within the state); NMCA 6.31.2.13(I)(3); NMCA 6.31.2.(9). The hearing officer's authority is, therefore, limited to New Mexico public agencies.

**F. The Hearing Officer Lacks Personal Jurisdiction Over a Texas School District.**

Even if the hearing officer had the authority under the law to hear claims against an out-of-state district, neither the hearing officer nor state or federal courts in New Mexico on appeal would have personal jurisdiction over an out-of-state district. As a constitutional matter, personal jurisdiction requires that the out-of-state entity have certain minimum contacts with the forum state so that maintaining the action does not offend traditional notions of fair play and substantial justice. *McIntosh v. Navaro Seed Co.*, 81 N.M. 302, 466 P.2d 868 (1970); *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1090 (10<sup>th</sup> Cir. 1998) (“a court may exercise personal jurisdiction over a nonresident defendant only so long as there exist ‘minimum contacts’ between the defendant and the forum state”). That is plainly not the case here, where the Texas district is neither present in New Mexico, nor has it transacted any business in New Mexico. The constitutional standard protects a defendant who has no meaningful contact with the state from the burdens of defending far from home. *Id.* In this case, the Texas district is not a party to this proceeding, nor could it be made a party. For this reason as well, IDEA claims against a Texas school district must be brought in Texas and not before a New Mexico hearing officer.

For these reasons, the hearing officer concludes that she has no jurisdiction to address whether Student's Texas graduation was valid and appropriate under the IDEA. Unless and until

that graduation is rescinded by a Texas agency or court, Student is ineligible for IDEA services in New Mexico, with the exception of the stay-put placement during the pendency of this proceeding and any appeals.

## **II. Student's Contract and Estoppel Claims Against the District.**

Student claims that under principles of either contract law or estoppel the District is bound to provide educational services to Student even if the IDEA does not require the provision of such services. The hearing officer's jurisdiction is limited by New Mexico law and regulations to the resolution of issues arising under the IDEA. NMCA 6.31.2.13(I)(1). Because Student's contract or estoppel claim does not arise under the IDEA, the hearing officer lacks jurisdiction to resolve these claims. Jurisdiction over contract and estoppel claims is vested in the courts, and not in the hearing officer.

## **III. Student's Claim Against the District for Denial of FAPE.**

As set forth above, Student is ineligible for special education services in New Mexico because he has graduated with a regular high school diploma in Texas. Unless and until his graduation is overturned in a proper forum, he is ineligible for IDEA services in the District. Therefore, Student's claim that the District failed to provide him with the full procedural and substantive protections of the IDEA, thereby denying him a FAPE, will be dismissed by the hearing officer. Student was not entitled to services under the Act and cannot complain that the services offered by the District failed to measure up to IDEA standards.

#### **IV. Student is Not Entitled to Compensatory Education for the Brief Delay in His Stay-Put Placement.**

Student also seeks an award of compensatory education based on APS's failure to continue Student's educational program beginning on October 2, 2012, the date the District received and reviewed the Texas transcript. The hearing officer found that the District is required under the stay-put provisions of the IDEA to maintain Student's transitional placement during the pendency of this due process proceeding (which was filed on October 12, 2012, not on October 2, 2012).

In the Tenth Circuit, of which New Mexico is a part, whether compensatory education is appropriately awarded depends on whether the student was denied a FAPE by the District. *Erickson v. Albuquerque Public Schools*, 199 F.3d 1116 (10<sup>th</sup> Cir. 2000). In the Tenth Circuit, violations of the stay-put provision do not entitle a Student to compensatory education unless the student prevails on his claim that he was denied a FAPE during the stay-put period. *Id.* If the stay-put violation did not result in the denial of a FAPE, the hearing officer lacks authority to award compensatory education for the violation of the stay-put provision: it is merely a procedural error. *Id.* Although some other courts have permitted an award of compensatory education when there is a stay-put violation, the hearing officer is bound by the law in the Tenth Circuit. *Compare, R.Y. v. Hawaii*, 54 IDELR 4 (D. Hawaii 2010).

As set forth above, because Student had graduated from high school, the District did not deny Student a FAPE when it excluded him from class. Student, therefore, is not entitled to compensatory education for the delay implementing his stay-put placement.

**V. Clarification of the Hearing Officer's November 28, 2012,  
Stay-Put Decision.**

The District has, by motion, asked for clarification of the hearing officer's ruling that the District violated stay-put by excluding Student from school when it learned of his high school graduation and not reinstating him when Student filed a due process complaint challenging his graduation. The hearing officer clarifies that she did not mean to suggest that the District acted egregiously or in bad faith. The District at all times acted reasonably and in the good faith belief that its interpretation of the stay-put provision was correct.

Although the hearing officer granted Student's stay-put request, the hearing officer found the decision to be difficult and complex. It was reached only after the hearing officer distinguished a number of authorities which support the District's claim that the stay-put provision was inapplicable in this case because Student failed to timely object to the graduation or withdrew his opposition to the graduation, waiving his stay-put rights. *See, e.g., T. S. v. Independent School Distr. No. 54, Stroud, Oklahoma*, 265 F.3d 1090, 1096 (10<sup>th</sup> Cir. 2001); *Carl B. v. Mundelein High Sch. Dist. 120 Bd. of Educ.*, 20 IDELR 263 (N.D. Ill. 1993); *Sammons v. Polk County School Board*, 165 Fed.Appx. 750 (11<sup>th</sup> Cir. 2006).

Nor was the delay in the stay-put decision attributable to the actions of the District. It arose from a series of brief delays. First, Parent requested a delay in considering the motion filed on October 27, 2012, until after the resolution session on November 2, 2012, "should a resolution not be successful." The resolution session appeared to be successful, based on Parent's report. When the agreement was rejected by Parent and Student on November 8, 2012, there was a brief postponement of the pre-hearing conference scheduled by the hearing officer, again at Parent's request, to allow Student and Parent to attempt to retain counsel. The conference was conducted on

November 14, 2012, and the stay-put order was entered within two weeks following the conference. When the hearing officer's stay-put order was entered, the District promptly implemented it.

Therefore, no egregious or bad faith conduct by the District here justifies an exception to the rule in the Tenth Circuit denying compensatory education for a stay-put violation which did not result in the denial of FAPE to Student.

#### **VI. Student's Motion to Amend Due Process Complaint.**

Student seeks to amend his due process complaint. Absent the consent of the opposing party, the decision on whether to allow amendment of a due process complaint is within the discretion of the hearing officer. 34 C.F. R. § 300.508(d)(3).

The hearing officer denies the request to amend the complaint on two bases. First the proposed amendments do not raise new issues. They instead simply expand on issues already raised in the original complaint. The amendments are in the form of argument on these issues. The hearing officer is permitted to consider those additional arguments without amendment of the complaint and has done so. Amendment of the complaint would not change the result here and would simply delay the resolution of this matter. *See* 34 C.F. R. § 300.508(d)(4).

Second, to the extent any new issues are raised by the proposed amended complaint, the new claims all relate to either the Student's claim that the Texas school district denied him a FAPE preceding his graduation or to the Student's claim that the District denied him a FAPE during this school year. Any additional claims along these lines are not different in nature or kind from the claims dismissed by the hearing officer for lack of jurisdiction or denied based on the hearing officer's decision that Student had no right to a FAPE during this school year given his graduation in Texas. Again, these amendments would merely delay decision and would not change the result.

For these reasons, therefore, the hearing officer denies Student's motion to amend his complaint.

### **CONCLUSION**

For the reasons stated above, the District's *Motion to Dismiss or for Summary Judgment* is granted and Student's Due Process Complaint is hereby dismissed in its entirety. Student's motion to amend his due process complaint is denied.

### **RIGHT TO APPEAL**

Any party aggrieved by this decision has the right to bring a civil action in a State or federal court of competent jurisdiction pursuant to 20 U.S.C. § 1415(I) (2004), 34 C.F.R. 300.516, and NMAC 6.31.2.13(I) (25) (2007). Any such action must be filed within 30 days of receipt of the hearing officer's decision by the appealing party.

**THIS DECISION IS ENTERED THIS THE 12<sup>th</sup> DAY OF JANUARY, 2013.**

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Jane B. Yohalem  
Due Process Hearing Officer

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this *Final Decision of the Due Process Hearing Officer* was mailed by certified mail to the Secretary of Education, State of New Mexico Public Education Department, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 and to counsel for the District and to the *pros se* Petitioner and Parent by e-mail in PDF format, as well as by certified U.S. mail, on January 12, 2013, to the following addresses:

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Petitioner *Pro Se*, and Petitioner's Agent Pursuant  
to a Power of Attorney, *Pro Se*

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Jane B. Yohalem  
Due Process Hearing Officer