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NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
SPECIAL EDUCATION DIVISION  
Complaint Resolution Report  
Case No. C2122-18  
June 10, 2022

**This report does require corrective action. See pages 23-32.**

This complaint was filed with the Special Education Division (SED) of the New Mexico Public Education Department (PED) on March 15, 2022, 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> The SED 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 Agency's responses to the allegations, together with documentation submitted by the Agency at the request of the PED's independent complaint investigator;

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<sup>1</sup> The state-level complaint procedures are set forth 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.

- review of the Agency’s compliance with federal IDEA regulations and state NMAC rules;
- interviews with Agency Special Education Director, Teacher, Special Education Teacher, Educational Program Coordinator, Student and Advocates; 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 educator ethics issues, or any alleged ADA or Section 504 disability discrimination issues, are not within the jurisdiction of this complaint investigation and, as a result, were not investigated.

The New Mexico Higher Education Department (NMHED) was a named party to the complaint filed by Disability Rights of New Mexico on behalf of named inmate and others similarly situated and are incarcerated with the New Mexico Corrections Department (NMCD). While some general education services may be provided to inmates by NMHED, the Local Education Agency (LEA) responsible for the provision of special education services for those inmates that are eligible for special education is the NMCD. Additionally, those students taking classes to further their post-secondary education are not entitled to special education services under the IDEA in those classes, but may be entitled to accommodations through the American with Disabilities Act (ADA). **The jurisdiction of this complaint investigation does not lie with ADA complaints and, therefore, the NMHED is dismissed from the complaint.**

Shortly before the complaint report was filed, the advocates on behalf of the named Student 1, raised additional issues regarding receipt of required medications and access to recreational services. Although recreational services were on the previous IEP for Student 1, they are no longer listed on the IEP and without further information regarding need for those services, that is not an IDEA issue and will not be addressed in this report. Also, although the advocates indicated that Student 1 has not been receiving needed medication and memory deficits impact on Student 1’s ability to meet the institutional requirements for timely obtaining medication, this is a facility issue and is not within the jurisdiction of the NMPED since medication is not addressed on Student 1’s IEP.

### **Issue for Investigation**

The following issue regarding alleged violations of the IDEA, its implementing regulations and State rules, are addressed in this report:

1. Whether the Agency failed to develop and implement an IEP that provided Student a free appropriate public education (FAPE) in violation of 6.31.2.11(B)(1) NMAC and 34 C.F.R, §§ 300.320-300.328 by failing to provide special education and related services to Student who is incarcerated;
2. Whether the Agency failed to conduct an IEP meeting to document change of placement and determine provision of special education and related services to Student since December 18, 2021 in violation of 6.31.2.8 NMAC, 34 C.F.R. § 300.323(e), and 20 U.S.C. § 1414(d) (2)(C)(i)(I);
3. Whether the Agency failed to develop and implement IEPs for other incarcerated individuals that had not yet received a high school diploma or its equivalent and were entitled to special education and related services in violation of 6.31.2.11(B)(1) NMAC and 34 C.F.R §§ 300.320-300.328; and
4. Whether the Agency's actions and/or omissions towards the Student and other similarly situated individuals resulted in a denial of a FAPE, in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

### **General Findings of Fact**

1. Twenty-eight inmates in the custody of the New Mexico Corrections Department (NMCD or Agency) were under the age of twenty-two at the time of filing of the complaint. Of those inmates, nine had previously earned their high school diploma or its equivalent. One recently aged out of eligibility. Nine had revoked consent for special education services. One died and two were no longer in the custody of NMCD. Five students were special education eligible and were on IEPs. Since the filing of the complaint, two have revoked or are in the process of revoking consent for special education services.
2. The NMCD has written policies and procedures for intake, child find, eligibility determination, evaluation and reevaluation, development and implementation of IEPs, provision of special education and related services, and revocation of consent.

### **Intake Procedures**

3. When an inmate under the age of 22 arrived at a correctional facility, they were subject to an intake process which could be as short as one week or as long as two months. The inmate completed a screening form which, among other information, requested if inmate had received special education or other services or if there were any factors that impeded their learning.
4. Following completion of the intake process, the inmates would go to their assigned correctional facility where they would be put in quarantine for one week before they were put into their initial Transition Accountability Plan (TAP) where the inmate and staff made a plan about transition needs including educational services.
5. NMCD would also review NMPED STARS (Student Teacher Accountability Reporting System) historical data records to determine if inmates had received special education services in the past but did not list on the intake form.
6. For an inmate who had received special education services in the past, prior records were requested and a letter was sent out to the inmate about the services available, a meeting was scheduled and the inmate was provided with a copy of procedural safeguards.
7. NMCD policy provides that inmates could access special education services at the intake facility, but usually special education services were not provided until after the end of the quarantine period and a change of placement IEP meeting had been held.
8. It usually took two to four weeks or sometimes longer before an inmate was enrolled and received educational services after they have been placed at the facility.
9. NMCD operated eight State facilities and two private facilities. All facilities operated educational programs with certified special education teachers. The five students that were reviewed in this complaint were housed in one of the State facilities.
10. At NMCD facilities, the educational programs all follow a similar structure, but may differ on time, methods of instruction and days of service.

### **Revocation Procedures**

11. Nine of the twenty-eight inmates on the list of special education eligible students revoked consent for services. Information including the signed revocation forms were requested and reviewed.
12. There was uncertainty whether the students understood or could read the revocation documents. For example, one person withdrew from services, but returned later for services.
13. Notes were provided for another person who revoked consent. The form was signed April 5, 2022 but termination was effective on April 4, 2022.

14. The notes from the revocation raised concerns about this student's understanding because the student's IEP was completed on February 28, 2022. The person sought time to review documents before signing. The person was transferred to another facility on March 9, 2022 and at a Zoom meeting on March 31, 2022, the person agreed to revoke consent for services.
15. On another revocation form, the witness' name was typed, not signed.
16. When an inmate who had previously received special education services no longer wanted to receive special education services, a letter outlining the revocation of services process was sent to the inmate explaining what revocation means and the consequences of revocation of consent. Inmates also received a copy of the procedural safeguards prior to the completion of the revocation.
17. The Special Education Teacher met with each inmate who wanted to revoke consent to answer any questions and explain what revocation meant for that inmate.
18. Not all inmates were required to receive education services through the Inmate Literacy Program (ILP) and many of the inmates that revoked consent reported they did not want the special education label at the correctional facility because it was a sign of weakness.
19. Inmates could change their mind and come back later for special education services, but the process would start from the beginning and the request for services must occur before they aged out of eligibility.

### **Referrals and Child Find**

20. Every week, the Special Education Director received information from the screening for all new inmates that were under 22 years of age.
21. The information provided would include those who had received special education services at a previous school. The Director would notify the Special Education Teacher to begin the process of implementing the IEP, obtain records and schedule a meeting to revise the IEP or complete the revocation paperwork.
22. Information from the intake or from referrals from the General Education Teacher within the facility could lead to a child find referral, but that rarely happened with inmates.
23. If a referral was made, the matter would be referred to the Special Education Director, who would meet with the inmate and Teacher to discuss concerns.
24. Supports and other services would be provided to the inmate prior to the start of a referral process.
25. Although there was a procedure for referring inmates in need of special education services, no initial referrals had been made within the last year.

### **Evaluations and Reevaluations**

26. Inmates that arrived on an IEP and that were due for a reevaluation would be scheduled for an evaluation.
27. Inmates who were due for a reevaluation would have a REED completed by the diagnostician, an IEP survey would be completed, information including work product and observation would be collected.
28. Any assessments needed would then be completed, an eligibility meeting scheduled, and then an IEP developed.
29. The educational team then met to discuss next steps including when the inmate would age out and talked about an ALP plan, similar to a 504 plan for accommodations for when the inmate left.
30. Evaluations that required specialists, such as speech language evaluations, were delayed because of lack of providers, necessary vetting of providers, and other requirements of the correctional facility.
31. In some instances, inmates that were on IEPs would be reevaluated because there were questions about whether the special education services on their IEPs were still required.
32. There was no record of an inmate that was reevaluated because the inmate needed additional services.
33. There were mental health, behavioral and medical services available within the correctional facility that were provided to inmates outside of the IEP process and referrals could be made for those services without involving special education services.

### **Provision of Special Education and Related Services**

34. An updated IEP was developed for an inmate that arrived at the correctional facility on an IEP. Placement at a correctional facility was considered to be a change of placement and often service times and services were modified or reduced because of correctional facility requirements.
35. Each facility had a General Education Teacher and Special Education Teacher within the facility. There were also tutors available to assist the inmates.
36. Educational services for all inmates were for two and one-half hours in the morning and two and one-half hours in the afternoon four days a week. Most inmates attended the morning or afternoon session and did not attend both sessions but that was an option, if requested.
37. Similar educational programs were available at all eleven correctional facilities.
38. Although the length and number of cancellations varied, up to one-fourth of the educational sessions were cancelled or delayed because of needs of the correctional

- facility. The decision to cancel sessions was not made or shared until shortly before the start of the session.
39. When a session was cancelled for reasons other than a security lockdown, the teachers went to the pods to provide brief instruction and packets for inmates to work on in their cells.
  40. Usually if the facility was locked down for a day, the next day the teachers would try to make arrangements for the pod visits if the facility remained closed.
  41. The afternoon session was scheduled to begin at 12:30 p.m., however, the inmates often arrived between 1:00-1:30 p.m. and they were done with classes at 3:00 p.m.
  42. All inmates within an educational program arrived together and left together. Although it was possible for inmates to remain after hours, it was rare and usually only for a few minutes.
  43. There were approximately nine inmates in a class. Since inmates were at different levels, the inmates received differentiated instruction and much of the work was self-directed.
  44. All inmates were working on completion of the high school equivalency test (HiSET). Those inmates who were special education eligible would leave the general education program for receipt of special education services.
  45. Special education services were provided through a pull-out program twice a week for the amount of time specified in the IEP. Thus, if a student received 60 minutes of special education services per week that would be from the 8-10 hours of general educational services received that were scheduled per week.
  46. Related services such as speech services had not been provided to inmates because the facility has been unable to obtain providers or assessment professionals to determine the need for related services.
  47. NMCD was hoping to have this resolved and a speech provider available within the next two weeks. A professional was retained to complete a speech language assessment beginning on June 9, 2022. They have not been able to obtain a speech language therapist to provide services yet.
  48. All inmates have reentry goals especially as they approached release times so they could be successful in life after incarceration. Transition plans for special education inmates included the participation of Vocational Rehabilitation Services.
  49. The Agency in its response acknowledged that change of placement IEPs were not timely completed with respect to the named Student.
  50. For five of the special education eligible inmates, the length of time from placement in NMCD until receipt of services was more than a month. Two students revoked services

## High School Diploma

51. The goal for all inmates receiving educational services was to complete the HiSET.
52. NMCD reported that they reviewed the records for all special education eligible students and determined whether it was easier for the student to obtain the high school diploma or HiSET based on a number of factors including number of credits needed. The decision about whether the student earned a high school diploma or HiSET was up to the student.
53. The inmates did not choose whether to complete a high school diploma or HiSET.
54. All inmates in the educational program were working on HiSET. Once they had successfully completed the HiSET, they could begin to take college or vocational classes.
55. Special education eligible inmates could work toward obtaining their high school diploma after they had received their HiSET. Inmates earned their high school diploma using the Edgenuity online program, a credit recovery program which was recently implemented within the Agency.
56. The inmate had to initiate the request to complete the high school diploma, this was not part of the NMCD plan.
57. Very few inmates that completed their HiSET have gone on to earn their high school diploma.
58. One inmate who was close to completing the work required for a high school diploma wanted to receive the diploma and the inmate initiated the request to earn a high school diploma. The facility worked with the inmate's previous school to complete the required work and the inmate earned the diploma from their previous high school.
59. Working with the previous high school to earn a diploma was a rare occurrence. This particular inmate was able to do so because the inmate needed very few credits to earn a high school diploma.
60. An inmate has the option of earning a high school diploma from their prior public school depending on the number of outstanding credits needed.
61. Usually, when an inmate wanted to earn a high school diploma, the inmate would use Edgenuity to obtain the needed credits and earn a diploma from NMCD.
62. Most inmates receiving educational services were mandated to be there through the ILP program, not all special education students were mandated to be in educational programs. Occasionally inmates volunteered for educational services.
63. When inmates entered the educational program, the first 10-12 hours were for completion of the Test of Adult Basic Education (TABE) to gauge their level of proficiency on the five subtests of the HiSET.
64. Inmates with low scores on the TABE were given assistance to prepare them for successful completion of the HiSET.



65. As the inmates progressed, they were again given the TABE and when they scored high enough, they then began the process of studying for the HiSET.
66. All inmates, including special education eligible inmates, followed the same pattern within the education system.
67. Two subject areas were worked on each class day and although inmates may be at different levels, they were all preparing to successfully complete the HiSET.
68. There would be class discussions about particular topics and then inmates would work on packets based on their skill level.
69. History and science were often completed as a class, while English and math instruction was differentiated.
70. For any given subject, inmates received 30 minutes of lecture/power point, then the teacher modeled what to do, went through the worksheet together then each inmate did their own work until the end of class or the start of new subject area.
71. Inmates took work back to their pods if not completed and earned “extra credit” for returning completed work.
72. When the instructor was gone from the facility for training, inmates were provided packets to work on in their pods.
73. When the instructor was gone without prior notice, inmates remained in their pods during instructional time with no services or makeup time.
74. Some inmates had access to a study buddy on the pods which had supplemental subject specific materials on a handheld “Playstation” type device.
75. Inmates used Khan Academy computer program to reinforce skills taught in classroom.
76. Some of the other inmates provided tutoring to other inmates.

### **Student 1**

77. Student 1 was the named student in the complaint. The Agency was aware that Student 1 had not received special education services while previously incarcerated and that Student 1 was entitled to 250 hours of compensatory education as the result of a complaint filed on behalf of Student 1 for failing to provide special education services.<sup>2</sup> 75 hours of compensatory education was made available or provided to Student 1 in his previous place of incarceration.
78. Student 1 was a twelfth-grade student on a modified graduation pathway.
79. An IEP dated August 26, 2021 from Student’s previous placement where Student was in a correctional facility provided for 250 minutes of ELA, 250 minutes of financial literacy, 250 minutes of economics/government, 250 minutes of physical science, 250 minutes of U.S.

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<sup>2</sup> State Complaint C2021-16.

- history, and 250 minutes of Algebra. Student also had 45 minutes for speech and recreation therapy and opportunities for creative writing.
80. The REED that was completed on August 26, 2021 noted that Student needed services in math calculation and problem solving, written language, social communication and behavior. It also noted that Student needed to continue with speech services to work on receptive and expressive language and social communication.
  81. Student was eligible under the category of autism and speech.
  82. Student received services in math calculation, math problem solving, written language, behavior and speech services: receptive, expressive language and social communication.
  83. Student first arrived at an NMCD facility on October 7, 2021. The screening was completed on November 18, 2021. Although the screening indicated that Student had Asperger's and had previously received special education services, the records were not referred to the Special Education Coordinator.
  84. Student was eligible to receive adult education services beginning December 20, 2021 but this did not include special education services.
  85. Although Student had requested the IEP be implemented as soon as Student was placed in NMCD custody; Student never received any special education services until almost a month after arrival at the present facility.
  86. On February 4, 2022, Student was transferred to the present facility. Student had first contact with the educational program at this facility on March 7, 2022. Student spent the first two weeks completing TABE testing.
  87. Student 1's April 22, 2022 IEP, developed when Student was in NMCD custody, provided 45 minutes in math, 45 minutes in written language, 45 minutes in social communication/social skills, and 45 minutes in transition services
  88. Student 1's April 22, 2022 IEP did not address the memory issues that had been identified at Student's prior school.
  89. The PWN provided for an FBA and possible BIP to be completed during the 2022 school year. There was nothing in the records to indicate the need for an FBA and BIP other than Student previously received behavior services. This has not been completed. Student provided consent for an evaluation to include ability, achievement and social communication.
  90. There was some ambiguity about whether Student wanted to earn a high school diploma. Student 1, during the interview, expressed an intention to earn a high school diploma after completion of the HiSET. This was also noted on the recent IEP. The facility expressed the contrary view that Student wanted to complete HiSET and take college courses without obtaining a high school diploma.
  91. Student also understood that educational programs were required or inmate would be subject to discipline.

92. Although the April 22, 2022 IEP provided for 3 hours of specialized instruction in written language, math, social communication/social skills and transition, Student 1's schedule was 30 minutes of history, 30 minutes of algebra and 30 minutes of English/language arts on one day. The other day Student worked on 30 minutes of creative writing, 30 minutes of financial literacy and 30 minutes of physical science.
93. Student 1 only received 60 minutes per week in creative writing and math, the remaining 120 minutes were in the subject areas that were part of the HiSET and were not needs listed on the IEP.
94. These subject areas were not part of the goals on Student's IEP.
95. The schedule did not include services in receptive or expressive language or social communication.
96. Student was to also participate in physical education as listed on the IEP, but has not been allowed to participate.
97. Student has transition goals listed on the IEP.
98. The Special Education Teacher's logs, which were incomplete, indicated that Student received on average 5-15 minutes of direct services for any given week. There was no evidence in the logs that Student received the three hours of specialized instruction per week that were outlined in the IEP.
99. Student 1 reported that students work on their own most of the time; teachers were present to assist if needed but it was the Student's responsibility to finish the work.
100. When Teachers were not there, no services were provided, except homework packets in the pods.
101. Student reported 15-20% of the time educational services were cancelled because of needs of the facility, no educational services and no make up for time missed were provided.
102. Student believed the special education supports and services received were appropriate. Student wanted a balance between school and work that minimized homework. Student stated the focus of services with the Special Education Teacher was working on passing the HiSET.

## **Student 2**

103. Student entered NMCD custody on October 29, 2021.
104. Student signed a release of information to obtain records from previous school, but the authorization for exchange of information was not signed until April 14, 2022.
105. Student was in the ninth grade; Student was last determined eligible on April 29, 2016. Student was eligible under the categories of specific learning disability (SLD) and

- emotional disturbance (ED). Student needed assistance in reading comprehension, written language, math calculation, and math problem solving.
106. The last IEP received was dated January 6, 2021. This IEP was from the previous school.
  107. On that IEP, Student received 750 minutes of special education services, 30 minutes in social studies, 240 minutes in ELA, 30 minutes in social work, 240 minutes in life/work skills and 240 minutes in math each week.
  108. Student's reading level was 2.6, math was 3.95 and language was 1.8.
  109. Student wanted to earn a high school diploma.
  110. An April 25, 2022 memorandum from the Education Programs Manager to the Special Education Coordinator noted that student "may need help beyond what she can provide in a class setting...I don't think that our education department currently has the resources to help [student] with [student's] special education."
  111. Student revoked consent to receive services on May 2, 2022. It was unclear whether Student understood the consequences of revocation.

### **Student 3**

112. Student 3 was placed in the custody of NMCD on September 30, 2020. The screener was not completed in a timely manner and, therefore, the Special Education Office was not notified that Student was special education eligible until end of March of 2021. The Office requested and received the special education file on April 1, 2021.
113. Student 3 was eligible for special education services under the category of SLD with services in reading and math. Student was a ninth grader on a modified graduation pathway.
114. Student's last IEP was dated April 4, 2018. In that IEP Student received 4 hours per week of reading and 4 hours of math. In the 9<sup>th</sup> grade, Student was reading at the 3<sup>rd</sup> grade level. Student was limited English proficient. Student's math skills were at 2.9 and language was at a 2.4.
115. Student requested a delay in education services through July 1, 2021.
116. Although special education services were available for Student beginning November 19, 2021, due to facility and other issues and Student's failure to request special education services and Special Education Office failed to follow up, Student did not begin special educational services until April 26, 2022.
117. It was unclear from the records whether Student understood or could read the IEP related documents.
118. The facility was working on developing an IEP and a REED was scheduled for May 29, 2022.
119. It is unclear what services Student 3 had been receiving and if these services were based on a previous IEP. The last IEP provided to the investigator was from 2018.

#### **Student 4**

120. Student 4 was eligible under SLD category as an eleventh grader on a modified graduation track.
121. Student 4 was placed in the custody of NMCD on July 22, 2020.
122. According to the NMCD records, Student 4 entered the educational program at the facility on October 5, 2020.
123. A REED and IEP were completed on March 23, 2021
124. Student's most recent IEP was completed on March 31, 2022.
125. In Student's 2016 IEP, Student received 1028 minutes per week of special education services, but under the March 23, 2021 IEP, Student received only two hours of services per week and the IEP stated 1.63 hours per week.
126. Student has received mental health/behavioral services in the past, but not on the March 31, 2022 IEP.
127. Student was reading at a 4<sup>th</sup> to 5<sup>th</sup> grade reading level and needed assistance in math, reading, written language and transition.
128. The PWN from the most recent IEP stated that "change in service time is suitable to [Student's] environment and needs." This is the same language used on all IEPs that were developed by the NMCD.
129. It is noted that Student's goals on the most recent IEP were the same as the 2021 IEP.
130. In recent TABE testing, Student was only tested in math and reading and was not proficient in three of the math concepts and it was noted that Student was not prepared for the HiSET.
131. Student has not successfully completed the HiSET and was scheduled for release in the near future.
132. Goals have been centered on completion of HiSET and preparation for next steps after release.

#### **Student 5**

133. Student 5 was eligible for special education services under SLD and was a tenth grader on a modified graduation track.
134. Student was required to be in the ILP.
135. Student's reading level was 4<sup>th</sup> to 5<sup>th</sup> grade.
136. Student had been diagnosed with anxiety, depression, mood disorders, ADHD, and PTSD.
137. Student has had significant trauma for which Student has received medical treatment for over ten years. Due to behaviors, Student had been in four residential treatment facilities prior to placement at a NMCD facility.

138. Student's August 31, 2021 IEP from prior placement provided for 960 minutes of special education services per week. These included 15 minutes of social work services, 240 minutes for ELA, 240 minutes for social studies, 240 minutes for science and 240 minutes for math.
139. Student's IEP addendum from October 11, 2021, the first day of educational services, reduced services to 2 hours per week.
140. Under that IEP addendum, Student was to receive 30 minutes for ELA, 30 minutes for social studies, 30 minutes for math, 30 minutes for science and no time for behavioral support. Student could ask for behavioral services as needed.
141. The service logs provided significantly less special education services than the IEP required, sometimes only 10-15 minutes per week.

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

#### **Issue No. 1**

**Whether the Agency failed to develop and implement an IEP that provided Student a free appropriate public education (FAPE) in violation of 6.31.2.11(B)(1) NMAC and 34 C.F.R. §§ 300.320-300.328 by failing to provide special education and related services to Student who is incarcerated?**

All rights afforded to students with disabilities under IDEA are not waived by sole reason that the eligible student is incarcerated. *Dear Colleague Letter*, 64 IDELR 249 (OSEP/OSERS 2014). IDEA applies to incarcerated individuals and correctional facilities must continue to provide IEP services and prepare special education students for post-incarceration transition. *Letter to Chief State School Officials and State Attorneys General*, 8 GASLD 57, United States Department of Education, (June 9, 2014).

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. FAPE is administered through an IEP developed by the IEP team and implemented by the educational program. The IEP must be "reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances." *Andrew F. V. Douglas County School District RE-1*, 137 S. Ct. 988 (2017); *see also* 34 C.F.R. §§ 300.320 to 300.324. The primary function of an IEP is to develop a plan to achieve academic and functional advancement. *Andrew F. v. Douglas County School District. RE-1*, 137 S. Ct 989, 69 IDELR 171 (2017). 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 Education Hearing*

*Office*, 93 F.3d 1458 (9th Cir. 1996). It is the responsibility of the IEP team to determine the special education and related services that a student needs to receive FAPE. *Andrew F. V. Douglas County School District RE-1*, 137 S. Ct. 988 (2017).

The IEP must be implemented as written, including all required components. See 6.31.2.11(B) & 6.31.2.11 (F)(1)(a) NMAC; 34 C.F.R. § 300.323(c). Failure to implement material parts of the IEP may be considered a denial of FAPE. See *Sumter County School District 17 v. Heffernan*, 642 F.3d 478 (4th Cir. 2011); *Van Duyn v. Baker School District 5J*, 502 F.3d 811 (9th Cir. 2007); *Houston Independent School District v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000), cert. denied, 531 U.S. 817 (2000); *Neosho R-V School District v. Clark*, 315 F.3d 1022 (8th Cir. 2003). Failing to provide needed supports and services can be a denial of FAPE. *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016).

With respect to those students who are incarcerated, the IEP must be implemented even in a temporary setting or modified to meet the needs of the facility. *Unified School District No. 1 v. Connecticut Department of Education*, 780 A.2d 154 (Conn. App. 2001); see also *Alexander S. et al v. Boyd*, 876 F. Supp. 773 (D.S.C. 1995) (class action suit that ruled special education services must be provided even in a temporary location). The correctional facility may modify the IEP because of penological interests, but this must be an individual determination and there must be a balance of the security and safety interests with the educational needs of the inmates. *New Hampshire Department of Education and New Hampshire Department of Corrections v. City of Manchester and Adams*, 95-573-M, (D.N.H. 1996); *V.W. v. Conway*, 236 F. Supp 3d 554 (N.D.N.Y. 2017); *A.T. v. Harder*, 298 F. Supp. 3d 391 (N.D.N.Y. 2018). Shortage of personnel is not an excuse for failure to implement the IEP in a prison setting. See *Baltimore County Public Schools*, 119 LRP 14627 (MD SEA 2019). Moreover, the detention facility can provide for a student to earn their grade equivalency diploma (GED) instead of a high school diploma if there are sufficient individual penological interests of the facility. This must be determined on an individual basis and cannot be automatically applied system wide. *Letter to Duncan*, 73 IDELR 264 (OSEP 2019).

Student 1 was placed in the custody of the NMCD on October 7, 2021, yet Student did not receive special education services, even though they were requested, until March 7, 2022. Student 1 was placed at the current facility on February 17, 2022. Although the facility indicated that special education students could receive the special education services on their IEP once they were within the NMCD system, Student 1 reported that services were requested at the time of intake, but no services were provided until March 7, 2022. Although speech services were part of the IEP, Student has still not received speech services. Student 1 provided consent for a speech evaluation to determine if there was a continued need for speech services, but that has not been completed although the facility stated it should happen within the next two weeks.

Based on Student 1's April 22, 2022 IEP, Student 1 was to receive 3 hours of special education services per week. These services were provided through a pull-out program from the regular education program. Student has not received any speech services since placement with NMCD because of lack of a provider. Student was being assessed for the need for speech services at the time of the report, but the facility did not have a qualified evaluator to complete the testing. Reports from the facility indicate that approximately one-quarter of the time, educational services were not provided because of the needs of the facility. Therefore, if Student 1 was not receiving regular education services, then Student 1 was not receiving special education services. Moreover, Student 1 was scheduled for 90 minutes of services twice a week for special education services to work on special education goals. The incomplete logs from the Special Education Teacher indicated that Student was receiving 5-15 minutes on average of direct services, nowhere near the mandated amount on the IEP. The rest of the time Student was on the computer or working on other work. The Special Education Teacher reported that the schedule each week for Student 1 was 30 minutes of history, 30 minutes of algebra and 30 minutes of English/language arts on one day. The other day Student worked on 30 minutes of creative writing, 30 minutes of financial literacy and 30 minutes of physical science. These were not related to Student 1's special education goals, but were related to successful completion of the HiSET. There has been some confusion about whether Student 1 wanted to obtain a high school diploma or to successfully complete the HiSET. All students in the educational program, whether they are special education or not, were working toward completion of the HiSET. That was the goal for all inmates and was not related to the penological needs of the facility. Student 1 was not provided with an option of earning a high school diploma or completing HiSET. If Student 1 wished to pursue a high school diploma after completion of HiSET, that was an option through Edgenuity, the online credit recovery program and Student requested it.

Thus, in summary, Student 1 did not receive special education services until March 7, 2022, more than five months after Student 1 was initially placed with the NMCD. Student 1 requested services at the time of the intake but no services were provided until three weeks after Student 1 arrived at the present placement. The special education services that were provided were related to the HiSET and not Student 1's special education goals. The Special Education Teacher did not provide all the special education services outlined on Student 1's IEP and/or there were no educational services because the educational program was shut down because of the needs of the facility. Student has yet to receive speech services or be evaluated for a continuing need for speech services because of the facility's difficulty with finding qualified providers. Student has not had the opportunity for physical education while incarcerated even though it is listed on the IEP. Student was not provided with an opportunity to earn a high school diploma in lieu of completion of the HiSET. The Agency failed to properly implement Student 1's IEP.



***As to Issue No. 1, the Agency is cited. Corrective Action is required.***

**Issue No. 2**

**Whether the Agency failed to conduct an IEP meeting to document change of placement and determine provision of special education and related services to Student since December 18, 2021 in violation of 6.31.2.8 NMAC, 34 C.F.R. § 300.323(e), and 20 U.S.C. § 1414(d)(2)(C)(i)(I)?**

One way a change in placement can occur is when a change in location substantially alters the educational program of a special education student. 71 Fed Reg. 46, 558 (2006). When a change of placement occurs, the agency must provide procedural safeguards to the special education eligible student and provide notice. 34 C.F.R. § 300.504 and 34 C.F.R. § 300.503 (a). IEP team meetings are required when the student's educational program is substantially changed. Students placed in the correctional facility are similar to transfer students. When the Student was transferred to the correctional facility, the Agency responsible for provision of special education services must provide services comparable to those the student received in the old district until it either: (1) adopts the IEP developed by the old district; or (2) develops, adopts, and implements a new IEP. 34 C.F.R. § 300.323(e); 6.31.2.11(H)(1) NMAC. Procedural safeguards provide for a PWN anytime the district proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of FAPE. 34 C.F.R. § 300.503(a); 6.31.2.13 (D)(2) NMAC. Although there is no set time for adopting the old IEP or developing and implementing a new IEP, guidance from OSERS indicates this must occur within a reasonable time to avoid "undue interruption" in provision of special education services. *Questions and Answers on Individualized Education Programs (IEPs), Evaluations and Reevaluations*, 111 LRP 63322 (OSERS 09/01/11).

Student 1 was eligible for special education services at the time Student was transferred to the custody of the NMCD. 34 CFR 300.320-300.328; 6.31.2.11(B) NMAC. Under New Mexico law, the Agency is responsible for the provision of special education services to incarcerated students. 6.31.2.11(K)(6) NMAC. Therefore, the Agency was responsible for the provision of special education services for this Student. 34 C.F.R. §§ 300.320-300.328; 6.31.2.11(B) NMAC. The Agency must conduct an IEP meeting regarding change of placement or provide a prior written notice (PWN). 6.31.2.13(D) NMAC.

The Agency knew at the time of intake that Student 1 was a special education eligible student who had been on an IEP. The Agency was also on notice that a complaint had been filed on behalf of Student 1 regarding the failure of the previous District to provide special education services while Student was incarcerated at a private facility. The Agency was aware that Student 1 was entitled to compensatory education from that District because of the failure to provide special

education services. Student 1 informed the Agency at the time of intake that Student 1 was special education eligible and requested provision of special education services. Once Student was placed at a NMCD facility, this was a change of placement requiring an IEP meeting and PWN. An IEP meeting with the requisite PWN was completed, but not until April 22, 2022, long after Student 1 had been placed in the custody of NMCD. There was nothing provided to indicate that the delays in holding an IEP meeting were the result of unforeseen or penological circumstances. On the contrary, the Agency in its written response acknowledged the delay in holding the change of placement IEP. This was a violation of Part B of IDEA and New Mexico regulations.

***As to Issue No. 2, the Agency is cited. Corrective Action is required.***

### **Issue No. 3**

**Whether the Agency failed to develop and implement IEPs for other incarcerated individuals that had not yet received a high school diploma or its equivalent and were entitled to special education and related services in violation of 6.31.2.11(B)(1) NMAC and 34 C.F.R §§ 300.320-300.328?**

Students in the custody of the Department of Corrections are entitled to IEP services until they reach the age of 21 or have earned a regular high school diploma. 34 C.F.R. § 300.101(a) and 34 C.F.R. § 300.102(a)(3)(i). Graduation with anything less than a high school diploma does not terminate special education eligibility if the student had not aged out. 34 C.F.R. § 300.102(a)(3)(i); 6.31.2.7(F)(2) & 6.31.2.11(G)(5) NMAC. A regular high school diploma is defined as "the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned with the alternate academic achievement standards described in section 111(b)(1)(E) of the ESEA... [and a] regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential." 34 C.F.R. § 300.102. Moreover, the agency cannot terminate special education services because the student is non-cooperative. *Letter to Borucki*, 16 IDELR 884 (OSEP 1990). For incarcerated students, FAPE is required when the students have not aged out or received their high school diploma and been previously identified and received services but left school before incarceration or did not have an IEP but had been identified as a child with a disability. 34 C.F.R. § 300.8.

IDEA requires FAPE for eligible students with disabilities, even those in adult corrections institutions; it does, however, provide that the IEP or placement may be changed for a "bona fide security or compelling penological interest that cannot otherwise be accommodated." 34 C.F.R. § 300.324(d)(2). Students who are incarcerated and will not be released prior to aging out of

eligibility may not receive transition planning and transition services because of their sentence. 34 C.F.R. § 300.324(d)(1).

The NMCD has written policies regarding the implementation of IDEA and provision of FAPE, but this investigation found that these policies were not consistently followed by the agency. According to records provided from NMCD, there were 28 students within the appropriate age requirements that were in the custody of NMCD. The number of inmates changed daily and the Director of Special Education received weekly notice of new inmates that may be within the appropriate age ranges. With Student 3, the Director was not informed of special education status for over five months and Student started educational services again April 26, 2022. Of those 28 students, 9 have revoked consent and one of the 5 students that was on an IEP revoked consent for services. While the plan the Agency has implemented when a student considers revocation of consent for special education services did meet the requirements of IDEA and New Mexico law, there were a large number of students revoking consent and it might be appropriate for the Agency to revisit the procedures to encourage students to continue with special education services and verify inmates' understanding of the documents.

The main goal for the educational program at the Agency was completion of the HiSET. Obtaining a high school diploma was discouraged and happened after the HiSET was completed. The five students that were special education eligible were not offered the option of a high school diploma instead of completion of the HiSET. Under IDEA and New Mexico state law, those students who have not obtained a regular high school diploma or reached the age of 21 were still entitled to special education services. Statements from the Agency staff indicate that if an inmate wanted to work with the previous school to earn a diploma, that would be the inmate's responsibility. Edgenuity was also an option for credit recovery to earn the high school diploma, but that has been a recent addition and has not been pursued by many inmates.

In addition, the Child Find procedures were limited in the identification of inmates that might be special education eligible. The procedures that were outlined for all inmates at intake was appropriate, but once the inmates were within the system or receiving educational services, there was no formal process or plan for Child Find. Guidance from the US Department of Education suggests that many of the inmates are special education eligible and that in planning for educational programs for incarcerated individuals, all the rights and protections of IDEA apply, and the Agency must prepare the inmates for success post-incarceration. *Letter to Chief State School Officials and State Attorneys General*, 8 GASLD 57, United States Department of Education, (June 9, 2014). It is impossible to know the number of inmates that might need special education services but have not been identified or those that were receiving services but the services were inadequate to meet the inmate's individual needs. There were many outside services available

for inmates within the prison system including mental health, behavioral, drug and alcohol treatment, and medical. While these were available to any inmate that needed them, this did not address the ongoing educational needs of inmates that might benefit or initially qualify for special education services. Related services have not been regularly provided at the facility, even though inmates needed those services. With respect to Student 1, speech was part of the IEP, but services were not provided because of limitations in finding available providers given the restrictions of the prison system. The Agency did not pursue teletherapy or other options to provide the required related services.

Reviewing the logs of Students 4 and 5, it again appeared that the focus of the educational program was successful completion of the HiSET. The time listed on the logs did not correspond to the times on the IEP and the description of services was focused on passing HiSET. Student 2 revoked at the end of May but given the records that were provided to the investigator, all students were not provided appropriate special education services and were not provided with the option of completion of a high school diploma. The Agency did not develop and implement appropriate IEPs for these similarly situated Students. The focus in the educational program was self-directed learning to achieve completion of HiSET to move on to college or vocational classes. While those goals might be important for post incarceration success it denied the Students the special education services they were entitled to.

***As to Issue No. 3, the Agency is cited. Corrective Action is required.***

#### **Issue No. 4**

**Whether the Agency's actions and/or omissions towards the Student and other similarly situated individuals resulted in a denial of a 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. Agencies, such as the NMCD are obligated to provide a FAPE to students within their authority 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). The Court in *J.L. v. Mercer Island School District*, 592 F.3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it resulted in the loss of an educational opportunity, infringed on parents' opportunity to participate in the development of the IEP or

deprived the student of an educational benefit. 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). A failure to provide behavioral and other supports that does not allow the student to receive educational benefit may be a denial of FAPE. *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016).

A review of the IEPs for three of the five students that were receiving special education services demonstrated a significant reduction in the amount and type of special education and related services the inmates received. For example, Student 4 received 1028 minutes per week at the previous placement, services within NMCD were reduced to two hours of specialized instruction per week, if the facility was not on lock down. Student 5, who had received 960 minutes per week and had significant mental health history, received two hours per week of services with no mental health services on the IEP. These IEPs were not reasonably calculated to allow the inmates to make educational progress; the IEPs were not focused on the individual students' needs, but were more aligned with the needs of the facility. These students received significant special education services at their previous schools, yet, the majority of the IEPs provided only two hours of special education services per week and based on the logs, students received much less than the two hours. Related services, such as mental health or speech language, were not addressed on the IEP. Moreover, these IEPs were not, appropriately implemented and, in some areas, namely speech services, there were no services provided. These failures amounted to a substantive denial of FAPE for each of the inmates receiving special education.

There were also procedural violations. The Agency acknowledged the delay in holding an IEP meeting and implementing special education services for Student 1. Student 1 was denied an educational opportunity and educational benefit. The remaining special education eligible students also were denied educational benefit when the focus was on obtaining the HiSET and not addressing the individual needs of the student inmates. Moreover, as discussed in Issue 3, the Agency's Child Find and Revocation procedures deprived the special education eligible students of educational opportunity and meaningful participation when the records indicate the students may not have understood their rights or all needs may not have been properly identified. These were procedural violations that rose to the level of a denial of FAPE for these student inmates.

***As to Issue No. 4, the Agency is cited. Corrective Action is required.***

**Summary of Citations**

<b>Statutory and Regulatory Provisions</b>	<b>Citation</b>
6.31.2.11(B)(1) NMAC and 34 C.F.R, §§ 300.320-300.328.	The Agency failed to develop and implement an IEP that provided Student a free appropriate public education (FAPE) by failing to provide special education and related services to Student who is incarcerated.
6.31.2.8 NMAC, 34 C.F.R. § 300.323(e), and 20 U.S.C. § 1414(d) (2)(C)(i)(I).	The Agency failed to conduct an IEP meeting to document change of placement and determine provision of special education and related services to Student since December 18, 2021.
6.31.2.11(B)(1) NMAC and 34 C.F.R §§ 300.320-300.328.	The Agency failed to develop and implement IEPs for other incarcerated individuals that had not yet received a high school diploma or its equivalent and were entitled to special education and related services.
6.31.2.11(B)(1) NMAC and 34 C.F.R §§ 300.320-300.328.	The Agency’s actions and/or omissions towards the Student and other similarly situated individuals resulted in a denial of a FAPE, 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

**Required Actions and Deadlines**

**By June 24, 2022**, the Agency’s Special Education Director must assure the PED in writing that the Agency will abide by the provisions of this Corrective Action Plan (CAP). The PED requests that the Agency submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the Agency’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 Division  
 New Mexico Public Education Department

300 Don Gaspar Avenue  
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 Agency 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 Agency needs brief extensions for the steps in the Corrective Action Plan, contact Deborah Dominguez-Clark, Director of the Special Education Division.

**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 June 10, 2023, and reported to the PED SED no later than June 30, 2023.** All documentation submitted to the SED to demonstrate compliance with the CAP must be clearly labeled to indicate the complaint number, **C2122-18**.

**Corrective Action Plan**

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
1.	As described above, the Agency will submit a written assurance to the Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	<b>June 24, 2022</b>	Written Assurance Letter/Email	<b>June 24, 2022</b>
2.	The Agency Special Education Director shall meet with SED Director, the EA assigned to the Agency, and the CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the Agency plans to take to ensure that the violations are corrected and do not recur. The Agency Director has the discretion to include other Agency administrators or personnel in this meeting. The Agency Director shall be responsible for setting up this meeting with SED.	<b>July 1, 2022</b>	Notes from meeting prepared by Agency	<b>July 8, 2022</b>
3.	The Agency shall develop a comprehensive plan to address the following identified issues: (1) prompt identification of students eligible and willing to receive special education services; (2) prompt creation of IEPs for students entering an Agency facility that are eligible and willing to receive special education services;	<b>August 1, 2022</b>	Plan submitted to PED for review and approval.  Monthly Progress Reports regarding the implementation of this Plan, including data summarizing the identification of students and log of	<b>August 1, 2022</b>  <b>Monthly beginning August 31, 2022</b>



<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>(3) prompt delivery of services to students eligible and willing to receive special education services;</p> <p>(4) provision of information to prospective students regarding their right to special education and the impact of their decision to revoke consent for special education services; and</p> <p>(5) provision of information to students regarding their right to continue their education for the purpose of obtaining a high school diploma.</p> <p>This Plan shall also include a proposal for the complete provision of compensatory education to be provided to current students as required by this CAP.</p>		special education provided.	
<b>4.</b>	<p>The Agency shall arrange to provide training to Agency staff (including special education teachers, special education administrators, related service personnel, educational diagnosticians and evaluators regarding:</p> <p>(1) identifying and evaluating needs of students who are or may be in need of special education, and</p>	<b>September 30, 2022</b>	<p>Confirmation of the date of the training</p> <p>Confirmation of attendees at the training and plan for addressing provision of training to those staff not in attendance</p>	<p><b>September 2, 2022</b></p> <p><b>October 14, 2022</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>(2) developing and implementing the IEP to provide FAPE in the prison facility.</p> <p>This training may include information regarding special considerations for the provision of FAPE for incarcerated students.</p> <p>The Agency shall provide this training through an independent person who was not involved in the District’s response to this state complaint and has expertise in special education requirements.</p>			
5.	<p>The Agency shall provide training to Agency staff (including special education teachers, special education administrators, related service personnel, educational diagnosticians and evaluators, as well as personnel responsible for the inmate intake process) regarding internal policies and procedures and the plan described above for promptly identifying and serving students eligible and willing to receive special education services.</p> <p>This training may be provided by personnel of the Agency and can be held in conjunction with the required training above.</p>	<b>September 30, 2022</b>	<p>Confirmation of the date of the training</p> <p>Confirmation of attendees at the training and plan for addressing provision of training to those staff not in attendance</p>	<p><b>September 2, 2022</b></p> <p><b>October 14, 2022</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
6.	<p>The Agency shall provide compensatory education services to each student in the following amounts:</p> <p>Student 1: 98 hours (in addition to the hours required in section 7 of this CAP);  Student 3: 195 hours;  Student 4: 112 hours; and  Student 5: 60 hours.</p> <p>As described above, the Agency shall develop a plan for the provision of compensatory education services which shall be approved by PED. Compensatory education should be provided in areas of need identified in the students' current IEPs.</p> <p>These compensatory services are above and beyond the services required by each students current IEP. The schedule for compensatory services shall include the summer months if such services cannot be provided during the traditional school year.</p> <p>Due to the barriers to providing services in the prison setting, the plan for provision of compensatory education services may exceed the one-year timeline with the approval</p>	<p><b>Compensatory Education completed by June 10, 2023 unless an extension is granted by PED</b></p> <p><b>August 1, 2022</b></p>	<p>Monthly log documenting delivery of compensatory education services.</p> <p>Plan submitted to PED for review and approval.</p>	<p><b>Log and communication each month through June 10, 2023</b></p> <p><b>August 1, 2022</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>of the PED. A proposed plan that exceeds the one-year deadline will not be approved unless it includes compensatory education during the summer of 2022 and 2023.</p> <p>If necessary, these hours shall be continued after a student’s 22<sup>nd</sup> birthday until all hours are completed. Compensatory education must continue if a student is permanently released from NMCD custody.</p> <p>If the Agency, due to staffing or other limitations, is unable to provide the required compensatory services as outlined in the compensatory education services plan, the Agency is required to contract with a private provider to ensure those and other needed services are provided. The Agency shall promptly work with the private provider to obtain access to the prison facility for the purpose of providing services.</p> <p>The Agency shall document and provide to PED any decision by a student to refuse this compensatory education in whole or in part OR any student’s unwillingness to participate in any compensatory</p>			

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	education made available to a student.			
7.	<p>In addition to the compensatory education described above, the Agency shall also work with the District involved in Case No. C2122-16 to provide Student 1 with the remaining 175 hours of compensatory education ordered in C2021-16.</p> <p>The plan for compensatory education described in section 6 shall include plans for the provision of these additional compensatory education hours and shall include plans to provide necessary access to Student 1 for the provision of this compensatory education hours. To the extent necessary, the District shall be responsible for any additional costs associated with the provision of these compensatory education hours.</p> <p>The Agency shall document and provide to PED any decision by Student 1 to refuse this compensatory education in whole or in part OR Student 1's unwillingness to participate in any of these compensatory education hours made available to Student 1.</p>	<p><b>Compensatory Education completed by June 10, 2023 unless an extension is granted by PED</b></p> <p><b>August 1, 2022</b></p>	<p>Monthly log documenting delivery of compensatory education services.</p> <p>Plan submitted to PED for review and approval.</p>	<p><b>Log and communication each month through June 10, 2023</b></p> <p><b>August 1, 2022</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>Due to the barriers to providing service in the prison setting, the plan for provision of these compensatory education services may exceed the one-year timeline with the approval of the PED. A proposed plan that exceeds the one-year deadline will not be approved unless it includes compensatory education during the summer of 2022 and 2023.</p> <p>If necessary, these hours shall be continued after Student 1's 22<sup>nd</sup> birthday until all hours are completed.</p>			
<b>8.</b>	<p>The Agency shall offer Student 2, in writing, the opportunity to restart the general and special education program in the NMCD facility. The offer shall include an offer of 128 hours of compensatory education. This offer shall be made within 14 days of the release of this Complaint Resolution Report. The Student shall be given 14 days to respond to this offer indicating the acceptance or rejection of the offer.</p> <p>The Agency shall document and provide to PED any decision by Student 2 to refuse this compensatory education in whole or in part OR Student 2's unwillingness to participate in any</p>	<p><b>June 24, 2022</b></p> <p><b>July 8, 2022</b></p>	<p>Written Offer of Services to Student 2.</p> <p>Documentation of Student 2's Decision regarding offer of services.</p>	<p><b>June 24, 2022</b></p> <p><b>July 11, 2022</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>of these compensatory education hours made available to Student 2.</p> <p>If Student 2 chooses to restart the education program, the Agency will hold an IEP meeting within 14 days of Student 2's decision to do so. The compensatory education plan shall be included in the resulting IEP. The special education and compensatory education services shall be based on the IEP team's assessment of the areas in which student most needs assistance. In revising Student 2's IEP, the Agency shall consider all reasonable educational programs and services, including a one-on-one aide, to provide Student 2 with a FAPE.</p> <p>The plan for compensatory education described in section 6 shall include plans for the provision of Student 2's compensatory education hours and shall include plans to provide necessary access to Student 2 for the provision of this compensatory education hours.</p> <p>Due to the barriers to providing service in the prison setting, the plan for provision of the compensatory education services may exceed the one-year timeline with the approval of PED. A</p>	<p><b>14 Days after acceptance of offer of services</b></p> <p><b>Compensatory Education completed by June 10, 2023 unless an extension is granted by PED</b></p>	<p>Copy of IEP Attendance sheet, IEP, PWN, and other related documents.</p> <p>Monthly log documenting delivery of compensatory education services.</p>	<p><b>1 week after IEP meeting is held.</b></p> <p><b>Log and communication each month through June 10, 2023</b></p>

<b>Step No.</b>	<b><u>Actions Required by District</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
	<p>proposed plan that exceeds the one-year deadline will not be approved unless it includes compensatory education during the summer of 2022 and 2023.</p> <p>If necessary, these hours shall be continued after Student 2's 22<sup>nd</sup> birthday until all hours are completed.</p>			

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 by:

*/s/ Miguel Lozano*

Miguel Lozano, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:



Deborah Dominguez-Clark

Director, Special Education Division