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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Case No. C2223-34
Estancia Municipal School District
March 6, 2023

This Report requires corrective action. See pages 24-25.

On January 5, 2023, a complaint was filed against Estancia Municipal School District (District) with the New Mexico Public Education Department's Special Education Division (SED) under the federal Individuals with Disabilities Education Act (IDEA) and the implementing Federal Regulations and State Rules governing publicly funded special education programs for children with disabilities in New Mexico.¹ The 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 complaint investigator's investigation process in this matter involved the following:

- review of the complaint and supporting documentation from the complainant;
- review of the District's responses to the allegations, together with documentation submitted by the District at the request of the PED's independent complaint investigator;

¹ The state-level complaint procedures are set forth in the federal regulations at 34 C.F.R. §§ 300.151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

- review of the District’s compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Parents and Parents’ advocate; 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 no 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. There are no issues raised by the Complainant in the Complaint which have not been investigated by the complaint investigator.

Issues for Investigation

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

1. Whether the District failed to conduct age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, prior to developing postsecondary goals for Student’s IEP, as required by 34 C.F.R. §300.320(b); and 6.31.2.11(G)(3) NMAC;
2. Whether the District failed to include in Student’s IEP appropriate measurable post-secondary goals and transition services related to independent living skills based upon age-appropriate transition assessments, as required by 34 C.F.R. §300.320(b); and 6.31.2.11(G)(3) NMAC; and
3. Whether the District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

1. The District is a local education agency under State law and, as such, is responsible for developing and implementing the IEPs of eligible special education students enrolled in the District.
2. The complainant in this matter is the Native American Disability Law Center (Complainant), which provides legal representation for Student, who is currently in the custody of New Mexico's Children, Youth and Families Department (CYFD).
3. The Student who is the subject of this complaint investigation, is currently 16 years old and resides with foster parents (Parents). Student is currently in the 11th grade for the 2022-2023 school year and attends a high school in the District (School).
4. Student transferred to the District on October 29, 2021, from another school district in the state where Student attended 7th – 9th grades. Student transferred to the District with an IEP developed by Student's previous school district.
5. Prior to developing a new IEP for Student following Student's transfer, the District conducted a psychoeducational evaluation of Student by a licensed Educational Diagnostician. A report was issued by the Diagnostician dated November 10, 2021, which indicates that the evaluation was conducted mainly through a review of Student's previous health, medical, psychological, and educational records. A review of the November 10, 2021, evaluation report indicates that this evaluation does not contain any specific transition-related recommendations by the diagnostician.
6. On November 10, 2021, an eligibility determination/IEP team meeting was held and it was determined that the Student was eligible to receive special education services, and an IEP was developed for Student. This was the first IEP that was implemented by the District when Student turned 16 years old.
7. The Student's November 10, 2021, IEP provides, in relevant part, as follows:
 - a. Identified Disabilities:
 - i. The Student is eligible to receive special education services under the primary disability classification of Specific Learning Disability (SLD) in the area of dyslexia, and the area of need indicated is listening comprehension;
 - ii. A secondary disability is identified as Emotional Disturbance (ED) in the areas of basic reading skills, reading fluency skills, written expression, oral expression, and listening comprehension.
 - b. Transition Planning is included in the IEP:
 - i. Student Profile section: the Student's vision statement indicates a desire to work in the veterinary sciences, and includes statements regarding employment, community participation, recreation and leisure, post-secondary training and learning and daily/independent living skills.

- ii. Strengths and concerns/recommendations for the Student were included in this section.
 - 1. Academic: state and district assessments and language assessments. Student's GPA following 9th grade was 2.571. It was noted that Student was having trouble in Family and Consumer Science, Integrated General Science and Math That Matters.
 - 2. Recreation and Leisure: Student enjoys playing the guitar.
 - 3. Community Participation: Student is in guitar at the high school.
 - 4. Jobs and Job Training: it is indicated that the Student was administered the O*NET as a transition assessment, which indicated that Student's highest score was in the artistic category.
 - 5. Post-Secondary Training or Learning: no transition assessment was identified, but it was noted that Student "will need support in [Student's] post-secondary training in performance arts."
 - 6. Independent Living: no information was included in this section.
 - 7. Other Areas: it is indicated that the Student is polite, hardworking and talks to peers depending on the class.
 - 8. Additional Information: there were no private evaluations or psychological educational evaluations noted. It was noted that Student "has a history of self-harm and has been supervised by special education teachers in the past and checked in on when spending too much time in the bathroom."
- c. Post-Secondary Goals were included in the IEP:
 - i. Education/Training: "In order to support [Student's] post-secondary goal of becoming a veterinarian, [Student] will research one trade school, with the support of secondary staff by 11/10/22." The Transition Assessment used to identify this goal was the O*NET administered on 2/1/21, which indicated that Student's highest domain was Artistic.
 - ii. Employment: "[Student] will be employed with supports in the areas of veterinary sciences." The Transition Assessment used to identify this goal was the O*NET administered on 2/1/21, which indicated that Student's highest domain was Artistic.
 - iii. Independent Living: There was not a goal or transition assessment identified in this area.
- d. Courses of Study were identified in the IEP to help Student reach Student's post-secondary goals. The then-current, and present year, courses of study are as follows:

- i. School Year 2021-2022: Algebra I, Biology I, English 9, PE, Health, Life Skills, NM History, and Study Skills.
 - ii. School Year 2022-2023: Life Skills, English 10, Geometry, World History, Integrated General Science, Guitar, and Work-study.
- e. Present Levels of Academic Achievement and Functional Performance (PLAAFP):
 - i. Social/Emotional and Behavior: the IEP indicates that in the Student's previous placement, Student received a psychoeducational evaluation in January 2021, and a Social Work evaluation in May, 2020. It was recommended that Student continue to receive school social work services.
 - ii. Math: "[Student] is able to work independently and quietly when the material is chunked and [Student] is given the opportunity to earn reinforcement."
 - iii. Written Language: [Student's] overall performance for English language arts was in Level 3 (approached expectations).
 - iv. Reading: Student assessments indicate Student is weak in vocabulary and stronger in comprehension of literature and informal text, with an overall 6th grade level average.
 - v. Communication Skills: Student was observed to read and write independently. Student's answers were written in complete sentences and were correct.
- f. Annual Goals were developed in the above-identified areas.
- g. Transition Planning activities were designed to assist Student in reaching Student's lifespan transition goals in the following areas:
 - i. Employment: Student will join work-study to learn general employable skills.
 - ii. Related Services: Social-Emotional Regulation skills will be provided by the school social worker.
 - iii. Community Experiences: Student will attend all field trips, college fairs, and trade school visits as they are offered.
 - iv. Independent Living: Student will participate in activities of daily living and self-help activities in the life skills classroom to promote independence.
 - v. Postsecondary Education/Instruction: Student will be encouraged to participate in outside resources in the community such as DVR for postsecondary instruction.
- h. Special Education and Related Services during the 2021-2022 school year:
 - i. Individual Speech Services for 30 minutes per week with the SLP in the special education setting.

- ii. Individual and/or Group setting Math for 236 minutes per week with the special education teacher in the special education setting.
- iii. Individual and/or Group Setting Reading for 236 minutes per week with the special education teacher in the special education setting.
- iv. Individual and/or Group Setting advisory-social emotional services for 160 minutes per week with the special education teacher in the special education setting.
- v. Individual and/or Group Setting Social Work Services for 60 minutes per week with the Social Worker in the special education setting.
- vi. Individual and/or Group Setting Work experience for 236 minutes per week with the special education teacher aide in the special education setting.
- vii. Individual and/or Group Setting Life Skills for 236 minutes per week with the special education teacher in the special education setting.
- i. Special Education and Related Services through November 10, 2022, during the 2022-2023 school year:
 - i. Individual Speech Services for 30 minutes per week with the SLP in the special education setting.
 - ii. Individual and/or Group Setting Social Work Services for 60 minutes per week with the Social Worker in the special education setting.
 - iii. Individual and/or Group setting Math for 236 minutes per week with the special education teacher in the regular classroom.
 - iv. Individual and/or Group Setting Reading for 236 minutes per week with the special education teacher in the regular classroom.
 - v. Individual and/or Group Setting advisory services for 160 minutes per week with the special education teacher in the special education setting.
 - vi. Individual and/or Group Setting Work experience for 236 minutes per week with the special education teacher aide in the special education setting.
 - vii. Individual and/or Group Setting Life Skills/Behavior Support for 236 minutes per week with the special education teacher in the special education setting.
- j. Prior Written Notice (PWN) dated November 10, 2021, was attached to Student's IEP and provides, in relevant part, as follows:
 - i. Proposed goals/objectives, service times and accommodations and modifications were reviewed, discussed, modified, and agreed-upon.
 - ii. It was noted that Student needs to focus on post-secondary goals and that Student would like to become a veterinarian.

- iii. It was proposed and accepted that Student's IEP meets the requirements of Indicator 13.
 - iv. The Parent signed consent for the District to proceed with the actions indicated on the PWN.
 - k. The November 10, 2021, IEP team meeting was attended by the Student, Parent and CYFD caseworker and school staff.
- 8. On April 21, 2022, Student's caseworker at CYFD arranged for Student to receive a comprehensive Neuropsychological Re-Evaluation by an independent Clinical Neuropsychologist. A report was produced by this evaluator dated April 25, 2022.
- 9. The April 25, 2022, Neuropsychological Re-Evaluation provides, in relevant part, as follows:
 - a. Clinical diagnoses:
 - i. Language Disorder;
 - ii. Post-Traumatic Stress Disorder;
 - iii. Major Depressive Disorder, Recurrent, with Mood Congruent Psychotic Features, with Anxious Distress;
 - iv. Specific Learning Disorder with Impairment in Reading;
 - v. Specific Learning Disorder with Impairment in Mathematics;
 - vi. Specific Learning Disorder with Impairment in Written Expression;
 - vii. Attention Deficit/Hyperactivity Disorder, Combined Presentation (by history).
 - b. Recommendations:
 - i. Educational: Student continues to qualify for special education services and it was recommended that Student's impairments include Speech/Language Impairment (SLI).
 - 1. Student should receive at least 30 minutes per week of speech/language intervention services.
 - 2. Student should receive direct instruction in reading.
 - 3. Student should receive support in classes with a heavy language component.
 - 4. It was recommended that reading instruction and speech therapy focus on improving Student's grade and age equivalents with reading and language to obtain reading abilities at a 6th grade level in order to independently navigate the community.
 - 5. Various classroom Accommodations were recommended.
 - ii. Student may benefit from career/vocational counseling through a vocational rehabilitation program.
 - iii. Home/Community:

1. Given Student's impaired adaptive functioning, Student would likely benefit from occupational therapy to improve student's adaptive functioning skills:
 - a. Student may have difficulty learning to drive. It was recommended that OT focus on driving and consider a driving evaluation to determine if Student will require modifications. If it is determined that Student would be unable to drive, Student's guardians should be encouraged to teach Student how to navigate other modes of transportation such as public transit.
 - b. "In particular, OT may focus on eating/drinking, washing/bathing, health, using money, traveling, household chores, and food preparation."
10. On August 8, 2022, Complainant sent an email to the District's Special Education Director requesting an IEP team meeting on August 17, 2022, or later. The Special Education Director responded on August 10th indicating that an IEP team meeting could probably be scheduled for August 17, 2022. The Complainant, Student, Parent and the District thereafter agreed to meet for an IEP team meeting on August 17, 2022.
11. On August 12, 2022, Complainant sent an email to District with an attached copy of the April 25, 2022, Neuropsychological Re-Evaluation, and included a list of recommendations from the Neuropsychological Re-Evaluation which Complainant and Student requested be discussed by the IEP team and added to Student's IEP, as follows:
 - a. "Consider updating eligibility to include speech/language impairment; Support in classes with a heavy language component; Accommodations listed in the recommendation section of the report (PG 12 and 13); Additional/updated transition assessments; Update student profile and post-secondary goals; Add transition goals."
 - b. "Services: Therapy with school psychologist; Maximum amount of speech/language services; Addition of use of reading programs to [Student's] reading goal (AlphabetPhonics, DISTAR, Wilson Reading, Lindamood-Bell, and/or Orton-Gillingham); Transition services including, but not limited to, Occupational Therapy, career counseling, training on employment related skills (like creating a resume and cover letter and interviewing), independent living skills, and connection with VR agency this year rather than waiting until [Student's] senior year."
12. On August 16, 2022, Student took the O*NET Student Interest Profiler as a transition assessment. Student's highest score of 24 was in the Artistic category. "People with Artistic interest like work that deals with the artistic side of things, such as acting, music,

art, and design. They like: “creativity in their work” and “work that can be done without following a set of rules.”

13. The documentation indicates that Student’s IEP team met on August 17, 2022, September 14, 2022, September 23, 2022, and October 12, 2022, to review and revise Student’s IEP. Student’s IEP was finalized on October 12, 2022.
14. The PWN dated October 12, 2022, was attached to the October 12, 2022, IEP and provided to the Parent. The October 12, 2022, PWN describes and details the discussions of the IEP team as a “running log” of the IEP team meetings held on August 17, September 14, September 23, and October 12, 2022, and provides, in relevant part, as follows:
 - a. August 17, 2022:
 - i. The IEP team members present were the General Education and Special Education teachers, Social Worker, Student, Parent, Special Education Director, District LEA, Complainant, and Student’s CYFD caseworker.
 - ii. The IEP team reviewed and accepted Student’s post-secondary employment goal as follows: “After High School, [Student] will attend college to become a fashion designer.” It was indicated that Student took the O*NET Interest Survey assessment, which supports this goal.
 - iii. The IEP team reviewed, and agreed with, the Annual Goals proposed for Student.
 - iv. The IEP team reviewed Indicator 13. “It was noted that” Indicator 13 of the State Performance Plan required by the Individuals with Disabilities Education Act of 2004 is the percent of youth with IEPs age 16 and above that have an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age-appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student’s transition services needs. There also must be evidence that the student was invited to the IEP team meeting where transition services are to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to the IEP team meeting with the prior consent of the parent or student who has reached the age of majority.”
 - v. The Complainant provided the Neuropsychological Re-Evaluation Report on Student dated April 25, 2022, to the IEP team. It was noted that the District Diagnostician, School Psychologist and OT will review the evaluation report “to determine if those results can be accepted by the district.”

- vi. The Complainant requested the addition of therapy with the school psychologist and occupational therapist to Student's IEP schedule of services. It was noted that the District will consult with the Central Regional Educational Cooperative regarding the request for therapy services to be provided by a school psychologist and will consider OT services at the next IEP team meeting.
 - vii. The IEP team discussed the Work Experience Program offered through the School, and Student indicated interest in working with the janitorial staff.
 - viii. The team agreed to invite DVR to attend the next IEP meeting.
 - ix. The Complainant requested that Student receive the maximum amount of Speech services allowed, and the team agreed to determine this at the next IEP team meeting.
 - x. The meeting was tabled and rescheduled to September 14, 2022.
- b. September 14, 2022:
- i. At the meeting the CYFD caseworker informed the district that the Parent could not attend, so the meeting was rescheduled to September 23, 2022.
- c. September 23, 2022:
- i. The Student will be able to continue to work as a custodial assistant.
 - ii. It was agreed that Student will receive 45 minutes per week of school Social Work services.
 - iii. Complainant inquired if DVR would be able to assist the District to identify an outside OT provider that the District could contract with to assist Student with independent living skills. After researching this question, DVR stated that they were unable to help the District find an OT provider.
 - iv. Complainant requested that the District provide Student with OT services focusing on life skills development as outlined in the Neuropsychological Evaluation provided to District. District's OT observed Student in the educational setting and indicated that Student's needs were not severe enough to qualify for OT services. "The district OT focuses on fine/gross motor skills and not life skills." The District rejected Complainant's request that Independent Living Skills training be provided to Student by the OT. The General education teacher indicated that she has observed Student's good independent skills at school and Student is doing well with self advocacy and taking care of herself. CYFD caseworker stated that Student is developmentally behind peers and feels that the District needs to provide as many supports for her as possible.
 - v. The School Social Worker proposed that she work with Student on Independent Living Skills. The Complainant and CYFD caseworker objected

to this and indicated that they would like independent living skills to be addressed by the OT rather than the Social Worker.

- vi. The general education teacher proposed that Student take a family and consumer science class and driver's education to develop independent living skills. The Complainant stated that these independent living skills needed to be provided by an OT. The proposal for a family and consumer science class and a driver's education class was accepted by the District.
 - vii. The District proposed obtaining a formal OT evaluation from the District's OT. The Complainant was not comfortable with the District's OT completing an evaluation because the Complainant believes the OT does not work with students in this area. The Complainant indicated she did not object to the District obtaining a life skills evaluation by a qualified provider.
 - viii. The Complainant indicated that she would like the District to address life skills such as hygiene and meal planning and preparation. The District agreed to address these concerns through coursework.
 - ix. The meeting was thereafter tabled and rescheduled for October 12, 2022.
- d. October 12, 2022:
- i. The District reconvened the IEP team on October 12, 2022, to continue discussing Student's IEP. The parties attending this meeting included the Parent, Student and Complainant, as well as District staff.
 - ii. The Complainant proposed that functional goals of eating/drinking, washing/bathing, health, using money, traveling, household chores, and food preparation be included in the IEP as transition goals as recommended by the Neuropsychological Evaluation. The District rejected the Complainant's request to add functional goals of eating/drinking, washing/bathing by an OT because ancillary services were provided to benefit the Student in special education and Student does not demonstrate a need in these areas to benefit from special education services or to access the general education curriculum. During Student's senior year, the following courses will be added to support Student's functional goals recommended by the Neuropsychological Evaluation:
 - 1. Applied Math will be added to Student's course of study for her Senior year to address functional goals of balancing a checking account and managing money.
 - 2. Drivers education will also be added during Student's Senior year to assist with learning to drive.

- iii. Complainant did not agree with using Applied Math and Drivers Ed classes to teach functional skills but wanted them in addition to OT.
 - iv. The IEP Team proposed that functional goals for independent living be supported by the school Social Worker. Complainant proposed that functional/transitional goals be added to the IEP in every area of concern listed in the Neuropsychological Evaluation. The District agreed to add money management as a transitional goal but rejected adding hygiene and driver's education as transitional goals because District does not believe that Student has a deficit in these areas that would directly have a negative impact on Student's ability to access the general education curriculum. Student and Parent agreed that a functional goal for money management would increase Student's independent living skills.
 - v. Complainant proposed that the Transition page in the IEP include independent living skills in every area of concern listed on the Neuropsychological Evaluation. This was rejected because the District does not believe that Student has a deficit in all of these areas that would directly have a negative impact on Student's ability to access the general education curriculum and does not need the services to benefit from special education.
 - vi. Complainant requested that District send her a copy of the proposed IEP and PWN for her to review due to time constraints. District agreed to email a PDF copy of the IEP and PWN for Complainant to review prior to finalizing the documents. Complainant will review the proposed documents and provide feedback to the District. If District agrees with the feedback, the IEP and PWN will be finalized, and if District does not agree with Complainant's proposed changes, the IEP team will reconvene and finalize the IEP and PWN.
15. Complainant and District staff exchanged several emails regarding changes or additions to Student's IEP and the PWN. These changes were incorporated into the documents.
16. On November 14, 2022, a final draft of the IEP and PWN was provided to Complainant.
17. Student's IEP dated August 17, 2022, provides, in relevant part, as follows:
- a. Transition Planning is included in the IEP:
 - i. Student Profile section: Student's vision statement indicates that Student plans on attending college to become a fashion designer after high school, and includes statements regarding employment, community participation, recreation and leisure, post-secondary training & learning, and includes a daily/independent living statement, which indicates that Student helps out around the house, carries groceries inside, cleans the bathroom, and

cleans her room, and further states that Student wants to live independently and wants to improve her independent living skills.

ii. Strengths and concerns/recommendations for the Student were included in this section.

1. Academic: Student's GPA after 10th grade improved to 3.09. It was noted that Student received "A" grades in Life Skills.
2. Recreation and Leisure: Student enjoys reading, drawing and video games.
3. Community Participation: Student enjoys taking care of friends and extended family members. Student likes to go shopping.
4. Jobs and Job Training: It is indicated that the Student was administered the O*NET on August 16, 2022, as a transition assessment, which indicates that Student is interested in a job where Student can have creativity in Student's work, as well as work that can be completed without following a set of rules.
5. Post-Secondary Training or Learning: Student was administered the O*NET on August 16, 2022, as a transition assessment, which indicates that Student is interested in a job where Student can have creativity in Student's work, as well as work that can be completed without following a set of rules.
6. Independent Living: Parent indicates that Student helps out around the house, carries groceries inside, cleans the bathroom, and cleans Student's room. The April 25, 2022, Neuropsychological Re-Evaluation Report indicates the following adaptive functioning concerns reported by the CYFD caseworker:
 - a. Student reportedly required reminders for hygienic tasks.
 - b. Student was able to dress.
 - c. Student was reportedly able to follow a recipe to cook, but struggled to measure the appropriate amount of ingredients with the measuring cup. Student was reportedly able to prepare food on the stove while supervised, but put in the wrong cooking time and "blew up" the microwave.
 - d. Student was able to clean up after herself and help with chores, wash her clothing (although it was noted that she put everything into one load), and read a digital clock but not an analog watch.

- e. Student is able to count money but would struggle to estimate the change in a transaction and does not have a bank account or manage any bills independently.
 - f. Student requires the assistance of an adult to take her medications, order refills and schedule her own medical appointments.
 - g. Student does not have a driver's license, has reportedly never used a navigation system or used public transportation independently.
- 7. Other Areas: it is indicated that the Student is polite, hard working and talks to peers depending on the class, but Student has asked to leave classes in which preferred peers do not attend and has displayed shouting behavior which Student says is due to a lack of sleep.
- 8. Additional Information: District considered the following assessments:
 - a. WAIS-IV: Scaled Scores ranged from low average to average ranges;
 - b. Neuropsychological Re-Evaluation Report: the Woodcock Johnson-IV indicates mild to moderate impairment in reading and ranged from mild to moderate impairment to below average scores in math.
- b. Post-Secondary Goals were included in the IEP:
 - i. Education/Training: "After high school graduation, [Student] will attend college to obtain a degree in fashion design." The Transition Assessment used to identify this goal was the O*NET administered on August 16, 2022, which indicated that Student's highest score of 24 was Artistic.
 - ii. Employment: "After graduating college, [Student] will seek employment as a fashion designer. The Transition Assessment used to identify this goal was the O*NET administered on August 16, 2022, which indicated that Student's highest score was Artistic.
 - iii. Independent Living: There was not a goal or transition assessment identified in this area.
- c. Courses of Study were identified in the IEP to help Student reach Student's post-secondary goals. The then-current, and present year, courses of study are as follows:
 - i. School Year 2022-2023: US History/Geography, Horticulture, Advisory, ELA 3, Algebra 2, and Work Study.

- ii. School Year 2023-2024: Drivers Ed/Publications, ELA, Applied Math, Government/Economics, Art 2, Family & Consumer Science, and Career Exploration/Work Skills.
- d. Annual Measurable Goals were developed to support Student's Post-Secondary Goals in the following areas:
 - i. Reading/Career Readiness;
 - ii. Social/Emotional;
 - iii. Written Language/Career Readiness;
 - iv. Transition/Independent Living: This is a new goal area, and no baseline data is available. Student's attorney has requested Student receive services deemed necessary by a Neuropsychological Evaluation dated April 25, 2022. District does not see the same concerns in the areas identified by the neuropsychological evaluation and will address concerns within the school's scope.
 - 1. Annual Goal: "By 10/12/2023, in order to support [Student's] post-secondary goal of becoming a fashion designer and independent living, [Student] will demonstrate her ability to utilize and manage her money by creating a budget, manage her bank card, balance her account, bank management, read a bank statement, using the money she earns to pay for travel, food, etc. on 4 out of 5 assignments as measured by portfolio."
 - v. Communication; and
 - vi. Math.
- e. Transition Planning activities were designed to assist Student in reaching Student's lifespan transition goals in the following areas:
 - i. Employment: Case manager will help Student research careers and employment opportunities in fashion design with services from DVR.
 - ii. Related Services:
 - 1. Case manager will monitor Student's IEP and ensure services are being met appropriately. Case manager will also monitor Student's academic progress to ensure that they are in the LRE to access the general education curriculum.
 - 2. SLP services will be provided to support Student in developing Student's expressive/receptive language skills.
 - 3. Social Work services will be provided to support Student in developing positive social and emotional coping skills.
 - iii. Community Experiences: The District will provide field trips and career opportunity events to support Student in accessing the community.

- iv. Independent/Daily Living and Self Help: Money management.
 - v. Postsecondary Education/Instruction: Case manager will assist Student in researching post-secondary institutions that provide fashion design programs.
 - f. With respect to the question of whether Student will need independent living services from an outside agency, the box marked “Yes” was checked.
 - g. Special Education and Related Services during the 2022-2023 school year:
 - i. Individual and/or Group Setting Language Arts for 235 minutes per week by regular education and special education teachers in the Regular Classroom.
 - ii. Individual and/or Group Setting Math for 235 minutes per week with the special education teacher/aide in the Regular Classroom.
 - iii. Individual and/or Group Setting Speech Services for 30 minutes weekly with the SLP and special education teacher in the Special Education Setting.
 - iv. Individual and/or Group Setting Social Work Services for 45 minutes per week with the Social Worker and special education teacher in the Special Education Setting.
 - v. Individual and/or Group Setting Other: advisory for 235 minutes per week with the special education teacher aide in the Special Education Setting.
 - h. Special Education and Related Services through November 10, 2023, during the 2023-2024 school year:
 - i. Individual and/or Group Setting Language Arts for 235 minutes per week by regular education and special education teachers in the Regular Classroom.
 - ii. Individual and/or Group Setting Math for 235 minutes per week with the special education teacher/aide in the Regular Classroom.
 - iii. Individual and/or Group Setting Speech Services for 30 minutes weekly with the SLP and special education teacher in the Special Education Setting.
 - iv. Individual and/or Group Setting Social Work Services for 45 minutes per week with the Social Worker and special education teacher in the Special Education Setting.
 - v. Individual and/or Group Setting Other: advisory for 235 minutes per week with the special education teacher aide in the Special Education Setting.
18. On October 12, 2022, the District completed the NSTTAC Indicator 13 Checklist. All of the boxes marked “Yes” were checked including the box asking whether the IEP meets the requirements of Indicator 13.

19. On November 21, 2022, Complainant sent an email to the Special Education Director indicating that she had reviewed and approved the IEP and PWN and attached her signature. The final copy was emailed to Complainant on December 19, 2022.
20. Student's grades and progress reports for 2021-2022 (10th grade) and 2022-2023 (11th grade) are as follows:

STUDENT'S GRADES

Year/Sem./Quarter	ELA	Math	Science	History	Guitar	Work/Study	Life Skills
2021/2022 S1	B	B	B	C		P	A
S2	A	A	D	C	P	P	A

Year/Sem./Quarter	ELA	Math	Horticulture	History	Studio Art II	Work/Study
2022/2023 S1	C	B	A	C	A	P
S2						

STUDENT'S PROGRESS REPORTS-ACADEMIC

Progress Rep.	Math	Social/Emotional	Written Expression	Reading	Communication
2021/2022 Q1	N/A	N/A	N/A		
Q2	Suff. Prog.	Suff. Prog.	Suff. Prog.	Suff. Prog.	No. Prog.
Q3	Suff. Prog.	Suff. Prog.	Suff. Prog.	Suff. Prog.	Suff. Prog.
Q4	Suff. Prog.	Suff. Prog.	Suff. Prog.	Suff. Prog.	Suff. Prog.
2022/2023 Q1	Suff. Prog.				

STUDENT'S PROGRESS REPORTS-TRANSITION

Progress Rep.	Math	Social/Emotional Life Skills	Written Language Career Readiness	Reading Career Readiness	Commun. Skills	Indep. Living
2022/2023 Q1	No Prog.-new	Suff. Prog.	No Prog.-new	No Prog.-new	Suff. Prog.	
Q2	Suff. Prog.	Suff. Prog./Suff. Prog.	Suff. Prog.	Suff. Prog.	Suff. Prog.	

21. The above chart indicates that Student's grade reports for 10th grade show that Student is doing well academically and is progressing from grade to grade. The Semester 1 grades for 11th grade show Student is doing well over all except for ELA which is slightly lower than the end of 10th grade. The Semester 2 grades for Student's 11th grade year have, of course, not yet been reported.
22. The chart identifying Student's Progress Reports indicates that Student is progressing in all goal areas with reports. Also, it should be noted that the reports tie into the criteria

for mastery and do have hard data. However, the progress reports for Independent Living were not prepared. The documentation indicates that this goal was new for Q2, was initiated after November 21, 2022, and had no baseline data.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to conduct age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, prior to developing postsecondary goals for Student’s IEP, as required by 34 CFR §300.320(b); and 6.31.2.11(G)(3) NMAC.

Students with disabilities who are eligible under the IDEA are entitled to be appropriately identified, evaluated, placed, and have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1(a). “Central to IDEA is the requirement that local school districts develop, implement, and annually revise an individualized education program (IEP) calculated to meet the eligible student’s specific educational needs. 20 U.S.C. § 1414(d).” *Thompson R2-J School Dist. v. Luke.*, 540 F.3d 1143, 1144 (10th Cir. 2008).

The IDEA Federal regulations and State Rules contain almost identical provisions related to developing post-secondary goals and transition services in the IEPs of students with disabilities. The State rule regarding Transition Services is set forth below:

(3) State rules require the development of measurable post-school goals beginning not later than the first IEP to be in effect when the child turns 14, or younger, if determined appropriate by the IEP team, and updated annually thereafter. Pursuant to 34 CFR Sec. 300.320(b), the IEP shall include:

(a) appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;

(b) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(c) a statement that the child has been informed of the child’s rights under this title, if any, that will transfer to the child on reaching the age of majority.

(4) Measurable post school goals refer to goals the child seeks to achieve after high school graduation. The goals shall be measurable while the child is still in high school. In addition, the nature of these goals will be different depending on the needs, abilities, and wishes of each individual child.

6.31.2.11(G)(3) NMAC. This rule clearly indicates two important requirements related to post-secondary goals in the IEP that are relevant to the issues in this investigation. The first is that post-secondary goals related to independent living skills are not mandatory in an IEP, but must be developed “where appropriate.” The second requirement is that if measurable post-secondary goals related to independent living skills are determined to be appropriate, such goals must be based on age-appropriate transition assessments.

The language in the above-cited rule makes it clear that a district must conduct age-appropriate assessments related to training, education and employment for eligible students because post-secondary goals must be developed in each of these areas. The assessment related to training, education and employment must be conducted, and related post-secondary goals must thereafter be developed. As the facts above show, the District did conduct an age-appropriate assessment related to training, education and employment, and transition goals were developed in these areas. However, the process with respect to independent living skills is not necessarily the same. As described in *Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 09/01/11), “the only area in which postsecondary goals are not required in the IEP is in the area of independent living skills. ... It is up to the child's IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE.” [Emphasis added] 71 Fed. Reg. 46668 (Aug. 14, 2006). . . The requirements for postsecondary IEP goals apply, whether or not the student's skill levels related to training, education, and employment are age appropriate. In all cases, the IEP Team must develop the specific postsecondary goals for the student, in light of the unique needs of the student as determined by age-appropriate transition assessments of the student's skills in these areas.” If the IEP team determines that goals related to independent living skills are appropriate, it would then be necessary to conduct age-appropriate assessments prior to developing goals.

In order to determine whether the District failed to conduct age-appropriate transition assessments for the Student related to independent living skills, it must first be determined whether Student’s IEP Team determined that IEP goals related to the development of independent living skills are appropriate and necessary for the Student to receive FAPE. This question was considered at length during the series of IEP team meetings held on August 12, September 23, and October 12, 2022, that ultimately resulted in Student’s October 12, 2022, IEP. The Complainant argues in the Complaint that during these meetings, “multiple members of the IEP team, including [Student], [Student’s] CYFD caseworker, and [Student’s] foster father had expressed that [Student] needed to improve [Student’s] independent living skills in order to achieve [Student’s] goal of living independently.” Complainant further provided the District with a copy of the April 25, 2022, Neuropsychological Re-Evaluation Report with findings and recommendations regarding Student’s independent living skills. The Neuropsychological Re-

Evaluation Report recommended that Student receive independent living skills post-secondary goals and related services in the areas of driving, eating/drinking, washing/bathing, using money, traveling, household chores and food preparation. Complainant requested that transition goals be added to Student's IEP to address each of the independent living skills listed in the Neuropsychological Re-Evaluation Report, and that an outside OT be hired to work on these goals with Student.

The District rejected the proposals by Complainant regarding the need for independent living skills goals and services, except in the area of money management. The District argued that the Neuropsychological Re-Evaluation Report is one data point among many that the District considered regarding the Student's need for goals and services to address independent living skills. The October 12, 2023, PWN indicated that the IEP team discussed at length all of the independent living skills identified in the Neuropsychological Re-Evaluation Report. The facts further indicated that District assessed Student's need for independent living skills transition goals and services in the areas requested by Complainant through prior psychoeducational evaluation, conversations with Student and the Parent, collected data and information from Student's work performance and classes, collected information and observations from Student's teachers, and collected information and observations by the District OT and Social Worker who worked with Student. The District further argued that the courses of study for Student during Student's current (11th) and 12th grade years, which include driver's education, consumer science, applied math, work-study and work skills and career opportunities, will support Student in improving the independent living skills Student will need to attend college and live independently after high school. It is concluded that the District reasonably considered Student's independent living skills, and determined that Student does not need transition goals and services related to independent living skills, other than for money management. However, it is further concluded that the documentation does not include an age-appropriate assessment of Student related to money management, conducted by the District prior to developing a transition goal for Student's IEP.

Therefore, as to the requested independent living skills transition goals and services in the areas of driving, eating/drinking, washing/bathing, traveling, household chores and food preparation, the District did not fail to conduct age-appropriate transition assessments related to independent living skills, prior to developing postsecondary goals for Student's IEP. However, as to the requested independent living skills transition goal and services in the area of money management, the District did fail to conduct an age-appropriate transition assessment prior to developing a postsecondary goal for Student's IEP.

As to issue No. 1, the District is cited and corrective action is required.

Issue No. 2

Whether the District failed to include in Student's IEP appropriate measurable post-secondary goals and transition services related to independent living skills based upon age-appropriate transition assessments, as required by 34 CFR §300.320(b); and 6.31.2.11.G(3) NMAC.

Issue No. 2 is obviously closely related to Issue No. 1, but involves a specific inquiry into whether the District failed to include in Student's IEP appropriate measurable post-secondary goals and transition services related to independent living skills. A review of the facts above indicates that Student's IEP does not contain any independent living skills goals related to driving, eating/drinking, washing/bathing, traveling, household chores and food preparation. The facts also show that Student's IEP team determined that it was appropriate to include a measurable post-secondary goal and transition services related to money management in Student's IEP. However, as noted above, the documentation does not include an age-appropriate assessment given to Student in the area of money management. Therefore, it is concluded that the Student's IEP does include an appropriate measurable post-secondary goal and transition services related to money management, but it cannot be concluded that such goal was based upon an age-appropriate transition assessment.

As to Issue No. 2, the District is cited, and corrective action is required.

Issue No. 3

Whether the District's actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

The Federal regulations and State rules provide that violations of the IDEA may be based on either substantive or procedural violations. As noted above, the District has been cited for a procedural violation of the IDEA as to Issues Nos. 1 and 2. However, proving a procedural violation is only a first step to obtaining relief. In *Garcia v. Bd. of Educ. of Albuquerque Pub. Schs.*, 520 F.3d 1116, 1125-26 & n.4 (10th Cir. 2008), the court held that "procedural failures under IDEA amount to substantive failures only where the procedural inadequacy results in an effective denial of a FAPE."; quoting *Urban ex rel. Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 726 (10th Cir. 1996). Congress provided in the 2004 amendments to the IDEA that to find a denial of FAPE based on a procedural violation, the procedural violation must have: (1) impeded the student's right to a FAPE, (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (3) caused a deprivation of educational benefits. 34 C.F.R. §300.513(a)(2).

It is concluded that the Student's progress reports, report cards, District assessments and observations show that the student generally made progress on the Student's goals during the period in question in this complaint investigation. When a student with a disability is participating in the general curriculum, good report card grades suggest that the student has made progress and such progress, in turn, strongly suggests that the student received FAPE. See *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982). See also *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017) (holding an IEP typically should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade"). However, while good grades can be evidence of compliance with the IDEA's FAPE mandate, they do not end an inquiry into whether a district provided FAPE. The IDEA expressly cautions that: "Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade." 34 CFR § 300.101 (c)(1).

In the present matter, the complaint investigator has carefully weighed all of the evidence regarding Student's progress in the general education curriculum and Student's progress on her academic, functional and transitional goals, against the District's procedural violation regarding a failure to base Student's independent living skills goal on an age-appropriate transition assessment. After review, it is concluded that the District's procedural violation does not rise to the level of a substantive violation of the IDEA. Therefore, it is concluded that the District's actions and/or omissions towards the Student did not result in a denial of FAPE.

As to Issue No. 3, the District is not cited.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 CFR §300.320(b); and 6.31.2.11(G)(3) NMAC.	The District failed to conduct an age-appropriate transition assessment related to independent living skills, prior to developing a postsecondary goal for Student's IEP.
34 CFR §300.320(b); and 6.31.2.11.G(3) NMAC.	The District failed to include in Student's IEP appropriate measurable post-secondary goals and transition services related to independent living skills based upon age-appropriate transition assessments.

Required Actions and Deadlines

By March 17, 2023, the District's Special Education Director must assure the SED in writing that the District will implement the provisions of this Corrective Action Plan (CAP). The SED requests that the District submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the District's progress with the Corrective Action Plan and to be its point of contact about this complaint from here forward:

Dr. Elizabeth Cassel
Corrective Action Plan Monitor
Special Education Division
New Mexico Public Education Department
300 Don Gaspar Avenue
Santa Fe, NM 87501
Telephone: (505) 490-3918
Elizabeth.Cassel@ped.nm.gov

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

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

Please carefully read the entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes. All corrective action must be completed no later than August 8, 2023, and reported to the SED no later than August 23, 2023. All documentation submitted to the SED to demonstrate compliance with the CAP must be clearly labeled to indicate the state complaint case number and step number.

Corrective Action Plan

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
1.	As described above, the District will submit a written assurance to the PED SED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	March 17, 2023	Written Assurance Letter/Email.	March 17, 2023
2.	<p>The District shall conduct age-appropriate transition assessments of the student's skills related to money management.</p> <p>The District shall convene an IEP team meeting before the start of the 2023-2023 school year to determine whether Student has additional post-secondary transition needs related to money management.</p>	<p>May 31, 2023</p> <p>August 8, 2023</p>	<p>Completed Evaluation Report</p> <p>PWN from IEP Meeting</p>	<p>Within 15 days of completing evaluation report.</p> <p>Within 15 days of holding the IEP meeting.</p>
3.	<p>The District shall arrange to provide training to School special education staff (including special education teachers, special education administrators, and related service personnel). The training should be provided by a person with expertise in special education post-secondary transition who is approved by NMPED. This trainer may be an employee of the District.</p> <p>The training shall address the following special education topics:</p> <ul style="list-style-type: none"> • when and how to conduct appropriate transition assessments of students with IEPs, including 	May 31, 2023	<p>Submission of proposed trainer and trainer's resume and proposed presentation for NMPED approval.</p> <p>Confirmation of the date(s) of the training.</p> <p>Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.</p>	<p>April 7, 2023</p> <p>April 7, 2023</p> <p>June 9, 2023</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
	<ul style="list-style-type: none"> a. types of assessments to use for assessing training, education, employment and Independent Living Skills of eligible students, b. where to find appropriate assessment tools, c. the appropriate timing for conducting transition assessments, d. developing transition goals and services based on age-appropriate assessments. • determining whether a student needs independent living skills goals and services, including <ul style="list-style-type: none"> a. assessing independent living skills gaps, b. collection, and consideration of data regarding a student’s independent living skills. 			

This report constitutes the New Mexico Public Education Department's final decision regarding this complaint. If you have any questions about this report, please contact the Corrective Action Plan Monitor.

Investigated by:

/s/ Wallace J. Calder

Wallace J. Calder, Esq.

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:

/s/ Timothy Crum

Deborah Dominguez-Clark ← For

Director, Special Education Division