

**COMPLAINT INVESTIGATION
CHARTER SCHOOL
(#SC072817)**

Report Issued on September 26, 2017

INTRODUCTION

On July 28, 2017 the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and the IDEA regulations, 34 C.F.R. Part 300; and Chapter 388 of the Nevada Revised Statutes and the Nevada Administrative Code (NAC) with regard to the provision of special education services, triennial reevaluation, and Individualized Education Plan (IEP) development for a student with a disability attending a Charter School authorized by the State Public Charter School Authority (SPCSA).

The Parent alleged that the Charter School failed to implement accommodations required by the student's IEP in the 2016/2017 school year, failed to timely reevaluate the student, failed to allow appropriate parent participation in the reevaluation process, and inappropriately modified the student's 2016/2017 IEP with parental consent¹. The Parent's proposed resolution to the Complaint requested that the school put in place rules to ensure IEPs are followed by all school staff, provide the student compensatory education in the form of placement at a school of the Parent's choosing for two years, draft an appropriate IEP for the student, devise a way for the student to raise 2016/2017 grades, and provide an apology to the student and Parent.

All documents submitted by the Parent and the Charter School relevant to the issues in the Complaint, including legal argument, were reviewed in their entirety in this investigation. The Complaint Investigator also received, collected and reviewed additional information as needed during the investigation. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint.

The Charter School's response to the Parent's Complaint argues that the Parent's Complaint should be dismissed pursuant to the IDEA, 34 C.F.R. §300.153(B)(2), for failing to allege sufficient facts to support the Complaint. As with all complaints received by the Nevada Superintendent of Public Instruction, the sufficiency of Parent's Complaint was reviewed and the Complaint was previously deemed sufficient as to the issues set forth for investigation. (NDE Correspondence, dated August 4, 2017)

Responsible Public Educational Agency

¹ Parent raised additional allegations not under the jurisdiction of the Nevada Department of Education (NDE) to investigate. These were referred to appropriate authorities. (NDE Correspondence, dated 8/4/2017)

During the time period of this Complaint, NRS §388A.159 deemed the SPCSA a local educational agency (LEA) for certain purposes, specifically for the purpose of directing the proportionate share of any money available from federal and state categorical grant programs to charter schools which are sponsored by the SPCSA. NRS §388A.223(4) provides that the duties and powers of the charter school do not establish a private right of action against the sponsor of a charter school.

Contrary to these provisions of law, in this case there was a Memorandum of Understanding (MOA) executed for the 2016/2017 school year that expired on June 30, 2017. This MOU provides that under Nevada law the Authority serves as the LEA for charter schools that it authorizes, and the Charter School is, with regard to special education and other matters, a school within that LEA. With regard to State Complaints, the MOA sets forth the respective responsibilities between the SPCSA and the Charter School:

“The Authority will investigate, cooperate with and respond to all special education complaints the Authority receives pertaining to the Charter School. The Authority will inform the school of the complaint within 5 days or prior to any investigation or whichever comes first. The Charter School will cooperate with the Authority in any such investigations and provide the Authority with any and all documentation that is required to respond to complaints within the timelines imposed by the investigating agency. The Charter School will be solely responsible for any and all costs resulting from, arising out of, or associated with the investigation and implementation of appropriate remedies in a manner consistent with Section 2, above, Procedural Safeguards/Due Process Hearings.”²

Upon consideration of Nevada law and regulation and the MOU between the SPCSA and the Charter School in effect during the time period of this Complaint, the NDE provided both the Charter School and SPCSA an opportunity to respond to the Complaint, as well as the Parent. Other than the above referenced MOA and a statement of its position regarding its responsibilities, the SPCSA declined to further engage in the investigative process.

² Excerpt from the referenced MOA provision: “Because the Charter School will manage, and is fiscally responsible for its students’ special education instruction and services, the Charter School will be responsible for any prospective special education and related services, compensatory education and/or reimbursement awarded by a due process hearing officer, court or settlement based on an allegation or allegations that solely the Charter School failed to fulfill its responsibilities under state and federal special education laws and regulations (which include, among other things, identifying students with disabilities, assessing students, conducting IEP team meetings, developing appropriate IEPs, and implementing IEPs). The Authority will be responsible for any prospective special education and related services, compensatory education and/or reimbursement awarded by a due process hearing officer, court or settlement based on an allegation or allegations that the Authority failed to fulfill its responsibilities under state and federal special education laws and regulations.”

COMPLAINT ISSUES

The allegations in the Complaint that are under the jurisdiction of the NDE to investigate through the special education complaint process raise the following issues for investigation:

Issue One:

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's 2016/2017 IEP with regard to helping the student with classwork; the use of the resource room during school hours; and notifying the Parent of the student's grades.

Issue Two:

Whether the Charter School complied with the IDEA and NAC, Chapter 388, with regard to conducting the student's three year reevaluation, specifically whether the three year reevaluation was conducted timely.

Issue Three

Whether the Charter School complied with the IDEA and NAC, Chapter 388, with regard to parent participation in the determination of needed assessments for the three year reevaluation, specifically the decision that the three year reevaluation would not include an IQ test.

Issue Four

Whether the Charter School complied with the IDEA and NAC, Chapter 388, with regard to the development/revision of an appropriate IEP, specifically removing accommodations from the student's IEP without parental consent and developing/revising the student's benchmarks in the 2016/2017 school year without the Parent.

FINDINGS OF FACT

General

1. The student is eligible for special education services pursuant to IDEA and NAC, Chapter 388 and was enrolled in the Charter School for the 2015/2016 and 2016/2017 school years. (4/21/2016 IEP; 3/24/2017 IEP)
2. An IEP Team meeting was conducted to develop an annual IEP on 3/24/17. (Nevada Parental Prior Notice 3/14/2017; 3/24/2017 IEP)

3. An IEP Team meeting was conducted to discuss the student's three year reevaluation and develop an IEP for the 2016/2017 school on 4/21/2016. (Nevada Parental Prior Notice 4/21/2016; 4/21/2016 IEP)
4. Parent attended the 4/21/2016 and 3/24/17 IEP meetings, signed off on implementation of the 4/21/2016 and 3/24/2017 IEPs and received prior written notices for the implementation of the 4/21/2016 and 3/24/2017 IEPs. (4/21/2016 IEP; 3/24/2017 IEP)
5. The 4/21/2016 IEP was in effect in the 2016/2017 school year, through 3/24/2017 when an annual IEP meeting was held. The 3/24/2017 IEP was implemented for the remainder of the 2016/2017 school year. (4/21/2016 IEP; 3/24/2017 IEP³)
6. The 4/21/2016 IEP stated goals and benchmarks for the 2016/2017 school year and indicated specially designed instruction would be provided in Writing and Behavior/Social Skills in the regular education classroom. The following modifications and accommodations are set out:

"Assignments will be explained orally to ensure [Student] understanding;"

"[Student] will have preferential seating which is closer to instruction and away from distractions;"

"[Student] will be [sic.] allowed to go to [sic.] Resource Room to complete independent math work;"

"[Student] will be allowed to go Resource Room to complete assessments;"

"[Student] will have his homework sheet/planner checked by the teacher to ensure he/she is writing his/her assignments/homework;" and,

"Extended time to complete assignments (2 days more than peers) when teacher feels student is being productive;"

Each modification/accommodation had a frequency of "0 minutes per year." (4/21/16 IEP)

7. Progress reporting for the 4/21/16 IEP was to be done by providing quarterly Specialized Progress Reports and Report Cards. (4/21/2016 IEP)
8. The 3/24/2017 IEP indicated goals and benchmarks for the balance of the 2016/2017 school year and the 2017/2018 school year through the next annual review and indicated specially designed instruction in Math, Written Expression,

³ Charter School and Parent provided copies of the referenced IEPs. Charter School provided copies of final IEPs with participant signatures. The final IEPs are what will be referenced.

Behavior and Study Skills/Organization in the regular education classroom. The following modifications and accommodations were set out:

"[Student will be provided a copy of the notes in exchange for an attempt at taking notes" with a frequency of "When notes are assigned;"

"[Student] will be allowed to go to Resource Room to complete assignments" with a frequency of "When math work is assigned;"

"[Student will have his/her homework sheet/planned checked by the teacher to ensure he/she is writing his/her assignments/homework" with a frequency of "Daily at the end of each class period;"

"Grades will be determined collaboratively by Regular Education and Special Education Teacher" with a frequency of "When grades are assigned;"

"[Student] will be given a copy of all textbooks to take home to refer to when doing homework" with a frequency of "When homework is assigned;"

"[Student] will have access to a computer/laptop to take notes and complete lengthy written assignments" with a frequency of "When taking notes or completing lengthy written assign [sic.];"

"Within five school days, [Student] will be allowed to retake tests in which he/she scores below a 60%" with a frequency of "When scores below 60% on assessments;"

"Assignments will be explained orally to ensure [Student] understands" with a frequency of "When assignments are given;"

"[Student]" will be allowed to take a picture of notes and assignments" with a frequency of "When assignments and notes are given;" and,

"Extended time to complete assignments (5 school days from date due in Infinite Campus)" with a frequency of "When assignments are given." (3/24/2017 IEP)

9. Progress reporting for the 3/24/17 IEP was to be done by providing quarterly Specialized Progress Reports and Report Cards. (3/24/2017 IEP)
10. Email correspondence between Charter School staff and the Parent took place throughout the 2016/2017 school year. (Email correspondence dated in September 2016, October 2016, December 2016, February 2017, March 2017, April 2017 and May 2017⁴)

⁴ All electronic mail submitted by Charter School and Parent were reviewed in the investigation of this Complaint. Those referenced have been identified as specifically relevant to, or demonstrative of, facts at issue.

11. Parent expressed numerous concerns about student progress in classes and grades observed in the student's Infinite Campus profile. (Email strings dated 12/4/2016, 3/28/2017, 4/17/2017, and 4/21/2017)
12. Parent expressed concern over the support, or lack there of, being provided to the student by a specific special education teacher in the resource room. (Email strings 2/10/2017, 3/28/2017, 4/18/2017, 4/25/2017) Parent articulated concern over specific assignments and grades and indicated specific assignments on which Parent believed the grade indicated insufficient or ineffective assistance on the part of staff. (Email strings 3/28/17, 4/21/17)
13. After repeated correspondence regarding the student's use of the resource room, the Charter School principal indicated to the Parent via email that the special education teacher would not stay beyond the school day to provide assistance to the student. (Email dated 4/24/2017, Parent's Complaint)
14. The student could choose to access the Resource Room to complete assignments during the school day during the 2016/2017 school year. (Declaration of Charter School Assistant Principal dated 8/16/2017, Declaration of Charter School Special Education Teacher dated 8/16/2017, Email dated 4/24/2017)
15. The Charter School Middle School/High School schedule reflects a school day comprised of eight, fifty-minute periods. The special education teacher in question had a seven period school day, each fifty minutes long, ending at 1:55 p.m. The student's schedule indicates a seven period school day, each fifty minutes long, ending at 1:55 p.m. (MS/HS 2016/2017 SpEd Schedule; Student 16-17 Schedule) The Charter School Middle School schedule includes an eighth period which had a class scheduled in the school's resource room, taught by a middle school teacher beginning at 2:00 p.m. (MS/HS 2016/2017 SpEd Schedule; Email dated 4/25/2017)
16. During the 2016/2017 school year the student sometimes went to the resource room after 1:55 p.m. and received assistance from a special education teacher that was also with the student during English Language Arts. (Email strings dated 3/28/2017, 4/18/2017, 4/24/2017, 4/25/17) The Parent several times referenced these interactions being after 1:55 p.m. or "after school". (Emails dated 2/10/2017, 4/18/2017, 4/21/2017)
17. Specialized Progress Reports were developed for the Student in the 2016/2017 school year on 10/30/2016, 1/30/2017, 3/30/2017, and 6/6/2017. (Student Progress Reports dated 10/30/2016, 1/30/2017, 3/30/2017, and 6/6/2017)
18. It is the practice of the Charter School to deliver Report Cards and Progress Reports to parents via hand delivery to students. The Charter School asserts that, following the Charter School's practice, quarterly Report Cards and Specialized Progress Reports were hand-delivered to the student by a teacher. The Charter School was unable to produce any contemporaneous documentation of the provision of the quarterly Report Cards to the student's Parent.

(Declaration of Special Education Teacher dated 9/18/2017, Email of Charter School Counsel dated 9/18/2017, Requests for Additional Information)

19. An MOA was in place between the Charter School and SPCSA in the 2016/2017 school year providing that, for special education purposes, the SPCSA would be the LEA and the Charter School would be a school within the LEA. This MOA expired June 30, 2017 and had not been renewed at the time of this Complaint. (SPCSA-Charter School MOA; SPCSA Correspondence dated 8/9/2017)

CONCLUSIONS OF LAW

Issue One:

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's 2016/2017 IEP with regard to helping the student with classwork; the use of the resource room during school hours; and notifying the Parent of the student's grades.

IDEA requires that eligible students be provided a free appropriate public education (FAPE). 34 C.F.R. 300.101. A student's IEP describes his/her individual needs and sets out the proper placement and services designed to meet those needs and, thus, provide the student a FAPE. *Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005). Once an IEP is developed for a student, the public agency must implement the student's IEP with all of its required components. 34 C.F.R. 300.323; NAC §388.281. Failure to implement a material portion of the student's IEP results in a denial of FAPE. *Van Duyn v. Baker Sch. Dist. 5J*, 47 IDELR 182 (9th Circ. 2007)

Nevada public agencies are further required to establish a system of records for the purpose of verifying, in relevant part, that each special education student is receiving services appropriate to the student's disability. NAC §388.215.

The facts relevant to the issues in this Complaint indicate that the student's 4/21/2016 IEP was implemented in the 2016/2017 school year, until an annual review was held and the 3/24/2017 IEP was developed. (Finding of Fact (FOF) #5) Parent's Complaint alleges a failure to implement in three areas: 1) failure to help the student with classwork; 2) failure to allow the student to use the resource room during school hours; and 3) failure to notify the Parent of the student's grades.

Review of the extensive communication between Parent and school staff indicates these three allegations are interconnected for the Parent in that emails provided show concrete occasions where the Parent would contact staff to express concern about grades, and raise inquiries about what assistance was being provided to the student with classwork in the resource room. (FOFs #10, 11, 12)

Analysis of these allegations requires a specific review of what the IEPs at issue required the Charter School to provide. The 4/21/2016 and 3/24/2017 IEPs both provide substantively similar accommodations relevant to Parent's allegations. Each requires that

the Student be allowed to go to the Resource Room to complete independent work, with the 4/21/2016 IEP specifically stating "independent math work" and the 3/24/2017 IEP removing the work "math" but indicating a frequency of "when math work is assigned." (FOF #6, #8) These modifications/accommodations essentially require the Charter School to provide access to the Resource Room, rather than establishing any expectations of, or entitlement to, additional instruction or help with classwork in the Resource Room. Documents reviewed establish that the Charter School was providing this access during the school day. (FOF #14) The documents reviewed further establish that Parent's allegations relating to lack of assistance with classwork stem from a concern over the instruction and assistance that was or was/not being provided by teachers in the Resource Room. (FOF #10, #11, #12)

Parent's central allegation regarding access to the Resource Room stems from communications engaged in with the Charter School Principal where the Principal indicated a specific staff member would not be required to provide assistance or tutoring to the student after the end of the school day. (FOF #13) The facts establish that the time in question, after 1:55 p.m., was beyond the student's school day and thus outside of the time when the student's IEP required access to the Resource Room. (FOF #6, #8, #15, #16) Even if, as the reviewed emails suggest, individual staff members and the Parent engaged in any discussion about the student receiving additional help with classwork or homework in the resource room after the school day, this was not required by either of the IEPs in effect in the 2016/2017 school year and cessation of this additional support, if true, does not indicate a failure to implement the IEPs at issue. (FOF #16)

With regard to the notification to Parent of student's grades, both IEPs implemented in the 2016/2017 school year indicate the Method of Reporting Progress will be by providing Parent with Specialized Progress Reports and the Report Card on a quarterly basis. (FOF #7, #9) Only the provision of the student's Report Cards is at issue in this Complaint. Documents reviewed demonstrate the required Report Cards were issued for the student on 10/30/2016, 1/30/2017, 3/30/2017, and 6/6/2017. (FOF #17) Declarations of Charter School staff provided in response to this Complaint indicate that it is the practice of the Charter School to deliver Report Cards and Progress Reports via hand delivery to the student. (FOF #18) Charter School staff indicates a recollection of provision of the documents to the student, but no contemporaneous documentation was provided in response to this issue and the Charter School provides no evidence to demonstrate a system of records for verifying this delivery.

Notwithstanding, extensive email correspondence between the Parent and Charter School staff indicates that Parent was accessing Infinite Campus to track and reference the student's assignments and grades, thus evidencing an awareness of student's progress – as reflected by grades – beyond that which was required by the student's IEPs. (FOF #11, #12)

Therefore, the Charter School implemented the student's 2016/2017 IEP in compliance with the provisions of IDEA and NAC, Chapter 388, with regard to help with classwork and access to the resource room during school hours. However, the Charter School failed to implement the student's 2016/2017 IEP in compliance with the provisions of

IDEA and NAC, Chapter 388, with regard to providing the Parent the student's Report Cards.

Issue Two:

Whether the Charter School complied with the IDEA and NAC, Chapter 388, with regard to conducting the student's three year reevaluation, specifically whether the three year reevaluation was conducted timely.

Under the IDEA and NAC, Chapter 388, NDE is charged with investigating complaints filed regarding special education services. 34 C.F.R. 300.153; NAC §388.318. Violations alleged in the complaint process must have occurred no more than one year prior to the date the complaint was filed. 34 C.F.R. 300.153(c); NAC §388.318(1)(b).

This Complaint was filed with NDE on July 28, 2017. Consistent with the IDEA and NAC, Chapter 388, the NDE has the authority to investigate violations raised one year prior to the filing, in this case, violations alleged from July 28, 2016 forward.

The facts at issue in this Complaint establish that the student's three year reevaluation was conducted on 4/21/2016. (FOF #2) The student's reevaluation occurred more than one year prior to the filing of this Complaint.

Therefore, allegations raised regarding the student's three year reevaluation are outside of the statute of limitations established by the IDEA and NAC, Chapter 388, and not within the jurisdiction of the NDE to investigate or resolve.

Issue Three

Whether the Charter School complied with the IDEA and NAC, Chapter 388, with regard to parent participation in the determination of needed assessments for the three year reevaluation, specifically the decision that the three year reevaluation would not include an IQ test.

Please see discussion articulated about under Issue Two.

Therefore, allegations raised regarding the student's three year reevaluation are outside of the statute of limitations established by the IDEA and NAC, Chapter 388, and not within the jurisdiction of the NDE to investigate or resolve.

Issue Four

Whether the Charter School complied with the IDEA and NAC, Chapter 388, with regard to the development/revision of an appropriate IEP, specifically removing accommodations from the student's IEP without parental consent and developing/revising the student's benchmarks in the 2016/2017 school year without the Parent.

IDEA and NAC, Chapter 388, require periodic review and, if appropriate, revision of each student's IEP. 34 C.F.R. 300.324; NAC §388.281. Review and revisions of IEPs, including revision or removal of any accommodations or benchmarks, must be completed by an appropriately convened IEP Team, including a student's parent or parents. 34 C.F.R. 300.324; NAC §388.281(2)(d). Public agencies are required to obtain informed parental consent prior to the initial provision of special education and related services to a student. 34 C.F.R. 300.300(b); NAC §388.300(1).

The facts at issue in this Complaint indicate that the sole review and revision of the student's IEP in the 2016/2017 school year took place on 3/24/2017. (FOF #3) Parent was provided notice of this meeting, which in fact had been scheduled earlier than previously anticipated for an IEP review, in part to address Parent's ongoing expressions of concerns regarding the student's educational progress. (FOFs #10, #11, #12) Parent and student participated in this IEP Team meeting, including in the revision of the benchmarks for the student's goals, and consented to implementation of the developed IEP. (FOFs #3, #4, #6, #8)

Consistent with the IDEA and NAC, Chapter 388, requirement that revisions to accommodations and benchmarks occur as a result of an IEP Team meeting, revisions to this student's IEP were made at the 3/21/2017 meeting. The resulting IEP contained substantively similar and additional accommodations and benchmarks to those being previously implemented, thus the evidence does not support Parent's allegation that any accommodations were removed in the 2016/2017 review process or that benchmarks were developed/ revised without the Parent's participation. Furthermore, given the 3/21/2017 IEP was after the initial provision of special education and related services to the student, parental consent was not required for any revisions to the accommodations in this IEP.

Therefore, the Charter School complied with the provisions of IDEA and NAC, Chapter 388, in that the Parent's consent was not required for the revisions to the student's accommodations in the 3/21/2017 IEP and the student's benchmarks were revised by the student's IEP Team in a meeting, with the Parent's participation.

ORDER OF CORRECTIVE ACTION

The Charter School is required to take corrective action to address the violation found in this Complaint, specifically the Charter School failed to demonstrate appropriate implementation of the student's IEP with regard to progress reporting. As noted previously, the findings regarding the failure to implement the student's IEP were based, in part, on the absence of a system of records to provide documentation for the purpose of verifying that the student received services appropriate to the disability pursuant to NAC §388.215(5)(b). In light of the Parent's access to and awareness of student's grades, (FOF #11, #12), no student specific remedy is warranted.

Given the expiration of the MOA between the SPCSA and the Charter School, the Charter School is solely responsible for compliance with this Order of Corrective Action.

Notwithstanding, the Charter School is also directed to provide a copy of documentation of compliance with this Order of Corrective Action to the SPCSA.

Directed Action - Systemic

Policies/Procedures

In accordance with NRS §385.175(6), the NDE requests a plan of corrective action from the governing body of the Charter School to correct the identified noncompliance in this Complaint with regard to the absence of a system of records required by NAC §388.215. The ordered corrective action plan must be provided to the NDE within 20 days of the receipt of this Report for approval. In the alternative, the Charter School may notify the NDE within that time period that it will comply with the following:

Within 60 days of the receipt of this Report, the Charter School must develop a policy that describes with specificity the Charter School's mandatory system of records to document the implementation of each student's IEP, including but not limited to, documenting the delivery methods of reporting progress, including Report Cards, to parents. The Charter School must include in the policy information on how to access and maintain the Charter School's form to be used for this purpose. (At the Charter School's discretion, the form can be modified, as needed, for an individual student by the service provider.) The form must provide a way to document the implementation of the required kind/type, amount, location, and frequency of the special education, related services, supplementary aids and services, and/or the modifications or supports for school personnel.

The policy developed within the ordered 60 days must be disseminated to Charter School personnel within 15 days thereafter, with a copy of both provided to the NDE at the time of dissemination.