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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Case No. C2122-17
May 24, 2022

This Report requires corrective action. See pages 16–19.

This complaint was filed with the Special Education Division (SED) of the New Mexico Public Education Department (PED) on March 11, 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.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 independent complaint investigator's investigation process in this matter involved the following:

- review of the complaint and supporting documentation from complainant;
- review of the District's responses to the allegations, together with documentation submitted by the District at the request of the PED's complaint investigator;
- review of the District's compliance with federal IDEA regulations and state NMAC rules;

¹ 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.

- interviews with the Complainant, Principal of the Charter School, Behavioral Health Program Manager, Special Education Teacher, Special Education Director of Public School District, and Superintendent of Public School District, 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. For this reason, the Complaint Investigator did not investigate the following issues raised by the complainant:

- Whether the School discriminated against Student by excluding him from school.

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 School failed to develop an IEP for the Student from January 10, 2022 to the present that if implemented would provide the Student with a FAPE, in violation of 6.31.2.11(B)(1) NMAC and 34 C.F.R. § 300.324(a);
2. Whether the School failed to provide Student with an IEP and educational program that allowed for the Student to be educated in the Least Restrictive Environment, in violation of 6.31.2.11(C) NMAC and 34 C.F.R. § 300.114(a);
3. Whether the School failed to address Student's behavioral needs resulting in the increased exclusion of Student from school, in violation of 6.31.2.11(F) NMAC and 34 C.F.R. § 300.324(a)(2)(i);
4. Whether the School failed to convene an IEP meeting from February 14, 2022 to the present in response to a request by the parents and their advocates, in violation of 6.31.2.13(C) NMAC and 34 C.F.R. § 300.501;
5. Whether the School failed to implement the Student's Individualized Education Program (IEP) from January 10, 2022, to the present while the Student receives at-home instruction, in violation of 6.31.2.11(B)(1) NMAC and 34 C.F.R. §§ 300.320-300.328; and

6. Whether the School'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

Student

1. Student is a 13-year-old in the 8th grade who is identified as eligible for special education on the basis of a specific learning disability.
2. During the 2021-2022 school year, Student attended a charter school (Charter School) authorized by the local public school district (District).
3. Student originally transferred to Charter School from another school district in January 2020. At that time, the Charter School received an IEP from the outside school district. Charter School then assumed responsibility for developing the Student's IEPs for the 2020-2021 and 2021-2022 school years.
4. The 2021-2022 IEP for the Student was developed on April 29, 2021. Programming included specialized instruction in reading and math. The IEP also contained speech-language therapy and counseling as related services.
5. Student attended in-person classes at the Charter School until January 10, 2022. Specialized instruction in reading (90 minutes per week) and math (310 minutes per week) was provided to Student by the Special Education Teacher in a small group classroom.
6. Speech therapy was provided to address the Student's deficits in speech fluency which manifested in the form of stuttering. The IEP contained an annual goal to increase the Student's fluency by speaking in a range of collaborative discussions among the speech therapist, Charter School staff, and student peers.
7. Speech therapy services ended on November 1, 2021, due to lack of Student engagement and verbal agreement from the Complainant.
8. The IEP was not amended following the discontinuation of speech therapy.
9. At the time speech therapy ceased, Student had partially achieved the objectives within their IEP speech goal of increasing fluency skills during moments of stuttering.
10. Student received counseling by outside provider. This counseling was overseen by Student's Behavioral Health Program Manager who also worked with Student's family in obtaining any additional services for Student.

Behaviors

11. During the first semester of the 2021-2022 school year, Student received 8 disciplinary referrals due to behaviors such as defiance of school personnel, ignoring staff directives, and truancy.
12. Principal reports that Student displayed consistent pattern of not wearing his mask in school which is against school health protocols.
13. Charter School staff are trained in the PAX Good Behavior Game which is a behavior prevention program designed to increase student self-regulation.
14. PAX was used with the Student. Several disciplinary notices document how Student received multiple “spleems” which is the PAX term for teacher observations of unwanted student behaviors.
15. Complainant reports that they were required to pick Student up from school on four occasions between the months of October and November. Principal reports that Student was picked up from school at least twice this school year.
16. The Charter School did not conduct a functional behavioral assessment (FBA) or implement a behavior intervention plan (BIP) to address the Student’s behaviors.
17. Principal reports that an FBA was not conducted because Student’s prior IEP from another school district did not show Student as having a history of behavioral needs that warranted formal behavior interventions.
18. Principal further reports that Charter School staff perceived Student’s defiance as a task avoidance behavior and not a manifestation of Student’s disability.

December Meeting

19. On December 16, 2021, the Charter School convened an internal staff meeting. Participants included the Principal and teachers for the Student’s academic and elective courses.
20. Principal reports that the meeting was convened to address student’s ongoing behavioral incidents and lack of academic engagement.
21. At this meeting the participants reviewed Student’s IEP, remote learning performance, and disciplinary referrals.
22. Staff discussed whether changes to the in-school class schedule or time away in another room could serve as additional supports to maintain Student’s participation in the general education setting. These options were declined because staff determined a change in schedule at school would not mitigate the defiance behaviors and the Charter School did not have the staffing available to monitor Student in a time away room.

23. At the conclusion of this meeting the Charter School recommended changing the Student's educational placement to 1:1 at-home instruction (provided by Complainant), learning packets for academic classwork, and asynchronous remote learning for elective coursework.
24. Principal reports that the rationale for the change in placement was to avoid further disciplinary action and increase student's academic engagement through at-home learning.
25. The Charter School did not treat this meeting as an IEP team meeting because they planned to convene an annual IEP review meeting in April 2022. No prior written notice was issued for this meeting. Student's IEP was not revised to reflect the change in placement.
26. Principal acknowledges that not convening an IEP meeting prior to changing Student's placement was an IDEA procedural violation.
27. The Charter School directive to change Student's educational placement was communicated to Complainant at a parent-teacher conference on January 5th. A letter detailing the alternate class schedule was provided to Complainant at the conference.
28. Complainant reports that the directive to change Student's educational placement was already decided before the parent-teacher conference and therefore Complainant felt powerless in advocating to maintain Student's current placement.

Homebound Instruction

29. From January 10th, 2022 to April 13th, 2022 Student was on homebound instruction.
30. Complainant reports that while Student was at home Student could not receive direct assistance from their special education teacher when Student did not understand assignments.
31. Complainant was the only person providing tutorial support to Student while on homebound instruction. Complainant reports they struggled to provide instruction in mathematics to Student due to the advanced nature of Geometry and Algebra lessons.
32. Special Education Teacher came to Student's home to drop off learning packets and monitor Student when they took assessments.
33. While some instruction was provided to Student via Zoom, Special Education Teacher reports that no in-person specialized instruction or interventions were provided to Student while Student learned at home. Special education teacher monitored while Student took assessments at home.
34. Teacher stated that Student learned at a moderate level during homebound instruction but that Student's rate of learning was much higher upon Student returning to school.

35. Complainant states that Student could not access asynchronous remote learning lessons due to a poor internet connection at home and that the internet connectivity issue was confirmed by the special education teacher and communicated to the Charter School.
36. In contrast, Principal reports that Student would not go to area of family's home with better internet activity and avoid remote learning by entering incorrect passwords to log into online learning courses.
37. The Charter School did not send any staff to Student's home to provide tutoring to Student.
38. Student received weekly learning packets in English Language Arts and Mathematics. Only three learning packets in Science, two learning packets in History, and one learning packet in Social Studies were provided to Student.
39. Principal reports that the lack of consistent learning packets in Science and Social Studies was due to teachers not continuing to assign additional learning packets to Student if Student did not complete and hand in the learning packet for that week.
40. Principal stated that Student did the most amount of academic work in ELA and Math while on homebound instruction.
41. The Charter offered quarterly grade reports, MAPS assessment scores, and speech therapy discharge summary as examples of IEP progress reports.
42. Student's IEP goal in reading and math consisted of taking MAPS assessments at regular intervals during the 2021-2022 school year to indicate areas of needed intervention. This goal was similar to the reading and math goal from the 2020-2021 IEP which also included taking MAPS assessments.
43. Principal reports that the Charter School did not convene a meeting at the end of the 3rd academic quarter to assess educational progress because a state complaint was already filed which led the parties to discuss this topic at the April 13th Facilitated IEP meeting.
44. Principal concedes that the way the IEP was implemented while the Student was on homebound instruction may not have provided the Student FAPE. Principal stated that the Charter School made a good faith effort to educate the Student but that the actions in placing Student at home may not have adhered to IDEA procedures.

Request for IEP Meeting

45. On February 14, 2022, Student's Behavioral Health Program Manager emailed the Principal requesting an IEP meeting on behalf of Complainant to discuss the Student's IEP, developing a BIP, and reviewing the appropriateness of Student's educational placement at home.
46. In response, Principal informed the Behavioral Health Program Manager that the Charter School could not discuss student information with an outside third party.

47. Behavioral Health Program Manager replied that they would inform Complainant of the Principal's response and determine what further steps Complainant wished to take in advocating for Student.
48. No further correspondence was exchanged regarding a request for an IEP meeting.

Facilitated IEP Meeting

49. The parties participated in a facilitated IEP meeting on April 13, 2022.
50. At the meeting the IEP team recommended returning the Student to in-person learning at the Charter School.
51. Student began attending the Charter School in-person on April 19, 2022.
52. Other additional recommendations by the IEP team included a review of Student's academic needs to revise IEP goals for remainder of 2021-2022 school year and conducting a triennial reevaluation.

Public School District

53. The Public School District is the authorizer for the Charter School.
54. In this role, the Public School District issues Part B IDEA funds to the Charter School for the provision of special education. They also send related service providers to the Charter School's Pre-K program.
55. The Charter School provides the Public School District with information attesting to IDEA compliance as necessary for state reporting purposes.
56. Aside from these activities, the Public School District have minimal interaction with the Charter School as it relates to the Charter School's delivery of special education.
57. In fact, the District's response to the state complaint argues that their role as an authorizer to the Charter School is akin to a fiduciary relationship in which the District's involvement with the Charter School is limited to the processing of applications so that the Charter School may receive educational funding.
58. The current charter contract between the District and the Charter School states that both parties will work collaboratively to serve special education students and their parents at the Charter School.

Discussion and Conclusions of Law

Issue No. 1

Whether the School failed to develop an IEP for the Student from January 10, 2022 to the present that if implemented would provide the Student with a FAPE, in violation of 6.31.2.11(B)(1) NMAC and 34 C.F.R. § 300.324(a).

For each student eligible for special education, a school district must develop an Individualized Education Program (IEP) that provides a free appropriate public education (FAPE). *Sytsema ex rel. Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). The obligation of developing an IEP is ongoing because a school district must ensure that an IEP is reviewed and revised if the child displays a lack of educational progress in the general education curriculum. 34 C.F.R. § 300.324(b)(ii)(A). Furthermore, a child's placement must be based on the child's IEP at both the IEP development and revision stages. 34 C.F.R. § 300.116(b)(2). Accordingly, the modification of a child's educational program from a full school day to a partial school day without a formal written agreement or by way of an IEP meeting constitutes a failure to conform with IDEA requirements for developing an IEP. *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 799 (5th Cir. 2020), *cert. denied sub nom. Spring Branch Indep. Sch., Dist. v. O. W. By Next Friend Hannah W.*, 141 S. Ct. 1389, 209 L. Ed. 2d 129 (2021).

Here, the Charter School originally developed an IEP for the Student on April 29, 2021. The educational placement for the Student in this IEP was the Charter School with corresponding small group instruction for reading and math. When Charter School staff met internally on December 16, 2021, it was to review the Student's IEP and discuss the appropriateness of the Student's current placement. Yet the decision to switch to 1:1 family tutoring and change the Student's placement to homebound instruction was not reflected in an updated IEP because the Charter School neither obtained a written agreement with Complainant nor convened an IEP meeting. Therefore, an IEP was neither reviewed nor revised to reflect these substantive changes in delivery of instruction and educational placement for the Student. By doing so, the Charter School failed to develop an IEP while the Student was on homebound instruction starting on January 10th until the facilitated IEP meeting on April 13th.

As to Issue No.1 the Charter School is cited. Corrective Action is required.

Issue No. 2

Whether the School failed to provide Student with an IEP and educational program that allowed for the Student to be educated in the Least Restrictive Environment, in violation of 6.31.2.11(C) NMAC and 34 C.F.R. § 300.114(a).

The least restrictive environment mandate requires school districts to educate special education students with their non-disabled peers to the maximum extent appropriate. 20 U.S.C. § 1412(a)(5)(A). The two-part *Daniel R.R.* test for determining whether a school district has complied with the LRE requirement is: (1) whether education in a regular education classroom with the use of supplemental aids and services can be satisfactorily achieved; and (2) if placement in a regular education classroom cannot be achieved, whether the school district has mainstreamed the child to the maximum extent appropriate. *T.W. v. Unified Sch. Dist. No. 259, Wichita, Kan.*, 136 F. App'x 122, 127 (10th Cir. 2005); *see also Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989). In applying the first prong of this test, courts consider additional non-exhaustive factors including: (1) steps the school district has taken to accommodate the child in the regular classroom, including the consideration of a continuum of placement and support services; (2) comparison of the academic benefits the child will receive in the regular classroom with those she will receive in the special education classroom; (3) the child's overall educational experience in regular education, including non-academic benefits; and (4) the effect on the regular classroom of the disabled child's presence in that classroom. *G.W. v. Boulder Valley Sch. Dist.*, No. 16-CV-00374-PAB-SKC, 2019 WL 4464130, at *14 (D. Colo. Sept. 18, 2019).

Principal states that the Charter School tried accommodating the Student in the regular classroom by using the PAX behavior techniques for encouraging more positive behavior. The Charter School also considered implementing a "time away" accommodation but it was declined because the Charter School did not have the staffing to monitor the Student while in time away. However, the discussion of these accommodations did not take place with Complainant because the December 16th meeting happened outside of Complainant's presence. The failure to fully discuss least restrictive environment is an IDEA procedural violation because it impeded the Student's family from meaningfully participating in the decision-making process for determining an appropriate placement. *See e.g., Brown v. D.C.*, 179 F. Supp. 3d 15, 27–28 (D.D.C. 2016) (school district's failure to discuss LRE at the IEP meeting deprived student of opportunity to make determination about whether proposed placement is adequate).

The record shows that the academic benefits between the regular education setting at the Charter School and homebound instruction weigh in favor of the regular education classroom. While the Student reportedly did more consistent coursework in ELA and Math while at home, there was considerably less work completed by the Student in their other academic courses because teachers were not providing learning packets each week. Therefore, the academic benefits which the Student derived from learning at home are undermined by the uneven delivery of instruction. Furthermore, the Special Education Teacher reported that Student learns at a greater rate when provided in-person, specialized instruction and interventions. This evidence favors a conclusion that homebound instruction was not the least restrictive

environment because the Charter School presented the Student with a more reliable and effective setting for learning in all academic areas when Student attended in-person.

The nonacademic benefits of the regular classroom at the Charter School also outweigh those at home. One of the Student's primary needs is improving speech fluency skills. The teachers and non-disabled peers in the regular education classroom provide the Student with an appropriate environment to practice their public speaking so that Student's speech could become more fluent. For that reason, the non-academic benefits at the Charter School support a conclusion that homebound instruction is not the least restrictive environment.

Student displayed negative behaviors at the Charter School and these behaviors did rise to the level of being disruptive in the regular education classroom. Student behaviors included arguing with teachers, talking in class during quiet time, and not wearing a facemask while in class. Taken together, a preponderance of evidence shows that the LRE factors weigh in favor of the regular education setting at the Charter school because there was no discussion to accommodate the Student in the regular education classroom and the Student derived both academic and non-academic benefits in this setting. Student was denied a least restrictive environment while on homebound instruction.

As to Issue No.2 the Charter School is cited. Corrective Action is required.

Issue No. 3

Whether the School failed to address Student's behavioral needs resulting in the increased exclusion of Student from school, in violation of 6.31.2.11(F) NMAC and 34 C.F.R. § 300.324(a)(2)(i).

When developing an IEP for a special education student, a school district is required to consider certain special factors. 34 C.F.R. § 300.324(a)(2). In cases where a student displays behavior that impedes their learning, an IEP Team must consider the use of positive behavioral interventions and other strategies to address the behavior. 34 C.F.R. § 300.324(a)(2)(i). The development of behavior goals, conducting a Functional Behavioral Assessment (FBA), or implementing a Behavior Intervention Plan are the types of other strategies school districts are encouraged to use for students exhibiting problem behaviors. 6.31.2.11(F) NMAC.

In this case, the Charter school did use some positive behavioral interventions with the Student in the form of the PAX Good Behavior Game. These interventions were listed in the accommodations and modifications section of the Student's IEP. Other interventions such as the use of a supervised time away room were declined because the Charter School did not have the staffing to support the Student in a time away room.

The effectiveness of the IEP's behavioral interventions, specifically the PAX techniques, were limited. Student's off-task and non-compliant behaviors remained constant during the first two quarters of the 2021-2022 school year. Despite the sustained pattern of behaviors, the Charter School did not consider any other behavioral interventions on the basis that the Student did not have a prior history of displaying behaviors that impeded their learning. The ongoing behaviors resulted in at least two partial-day out of school suspensions and culminated in the Student's placement on homebound instruction. These facts establish that the Charter School did not carry out appropriate behavioral planning in the Student's IEP which led to an increased exclusion of the Student from school.

As to Issue No.3 the Charter School is cited. Corrective Action is required.

Issue No. 4

Whether the School failed to convene an IEP meeting from February 14, 2022 to the present in response to a request by the parents and their advocates, in violation of 6.31.2.13(C) NMAC and 34 C.F.R. § 300.501.

Both federal and state regulations require the parents of a child with a disability be afforded an opportunity to participate in meetings with respect to the educational placement of the child. 34 C.F.R. § 300.501(c); 6.31.2.13(C) NMAC. A parent includes an individual acting in the place of a biological parent such as a grandparent or other such type of relative. 34 C.F.R. § 300.30(a)(4).

On February 14, 2022, Student's Behavioral Health Program Manager emailed the Principal to request an IEP meeting for the Student. Principal replied that they could not respond to a third-party request for an IEP meeting. The Principal did not contact the Complainant to determine if the request was made on her behalf prior to responding to the request. The Behavioral Health Program Manager wrote back to the Principal and stated they would inform the Student's family of the Principal's response. No further communication about a request for an IEP meeting transpired.

Here, the Behavioral Health Program Manager explicitly stated in their meeting request that they were acting on behalf of the Complainant who meets IDEA's legal definition of a "parent." Furthermore, the Charter School had already made a change in the Student's placement without updating the IEP. These circumstances warranted convening an IEP meeting and Complainant was within their rights to play an active part in the modification of Student's IEP by requesting said meeting through the Behavioral Health Program Manager. The refusal of the Principal to honor an IEP meeting request constitutes a denial of meaningful parental participation.

As to Issue No.4 the Charter School is cited. Corrective Action is required.

Issue No. 5

Whether the School failed to implement the Student’s Individualized Education Program (IEP) from January 10, 2022, to the present while the Student receives at-home instruction, in violation of 6.31.2.11(B)(1) NMAC and 34 C.F.R. §§ 300.320-300.328.

A material failure to implement an IEP occurs when there is more than a minor discrepancy between the services a school provides to a child with a disability and the services required by the IEP. *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The failure to provide any specialized instruction within an educational setting constitutes a material failure to implement an IEP. *Turner v. D.C.*, 952 F. Supp. 2d 31, 40–42 (D.D.C. 2013).

Here, the Student’s 2021-2022 IEP called for 90 minutes per week of specialized instruction in reading and 310 minutes per week of specialized instruction in math. In contrast, the Student did not consistently receive specialized instruction from their special education teacher while on homebound instruction. Principal reports that special education teacher’s role during the homebound instruction period was limited to delivering learning packets to Student and administering assessments. Based on these facts, the Charter School failed to implement Student’s IEP while they were at home because the lack of specialized instruction in reading and math was a substantial discrepancy in the services required by the IEP.

As to Issue No.5 the Charter School is cited. Corrective Action is required.

Issue No. 6

Whether the School’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.

A student eligible for special education is entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. School districts are obligated to provide FAPE for each student eligible in their district. 6.31.2.9(A), 6.31.2.11(I)(2) NMAC. If an IDEA procedural violation occurs, that violation will constitute a denial of FAPE only if it: (1) resulted in a substantive harm to the child or their parents; (2) deprived an eligible student of an IEP; or (3) resulted in the loss of an educational opportunity. *Boutelle v. Bd. of Educ. of Las Cruces Pub. Sch.*, No. CV 17-1232 GJF/SMV, 2019 WL 2061086, at *7 (D.N.M. May 9, 2019). The substantive legal standard for determining whether a District has offered a student FAPE is whether an IEP is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017).

State law requires a public school district to monitor the legal compliance of charter schools under their authority. NMSA 1978 § 22-8B-5.3. Each local charter school authorized by a public

school district is responsible for conforming to state and federal laws related to the provision of special education. NMSA 1978 § 22-8B-4. When a charter school is authorized by the public school district, it remains the responsibility of the public school district to ensure the requirements of IDEA Part B are met because state law has not designated another entity to assume this role. 34 C.F.R. § 300.209(b)(2); 6.31.2.11(l)(2)(c) NMAC; *see also Gallegos v. Albuquerque Pub. Sch.*, 2013 WL 12335298, at *12 (D.N.M. Feb. 28, 2013) (holding that an LEA is liable for ensuring that a locally chartered charter school complies with IDEA). Accordingly, a public school district that authorizes a local charter school is liable for a student being denied FAPE at the authorized charter school.

There were multiple procedural violations with the Student's IEP. No IEP was developed for the Student while they were on homebound instruction. The Charter School did not discuss least restrictive environment with the Complainant at an IEP meeting. Complainant was denied an opportunity to meaningfully participate in the development of Student's IEP after the Charter School ignored Complainant's request for an IEP meeting. The cumulative effect of these procedural violations is the Student was denied FAPE because there was a substantive harm to parent participation in the IEP development process, Student was deprived an IEP while placed at home, and homebound instruction resulted in the loss of receiving the special educational programming outlined in the existing IEP. Additionally, the material failure to implement Student's existing IEP while on homebound instruction was a serious IDEA procedural violation which standing alone constitutes a denial of FAPE.

The substantive adequacy of the IEP hinges on how it was designed to enable the Student's progress (with consideration of the Student's disability-related needs). The 2021-2022 IEP contained services to address the Student's deficits in reading, math, and speech fluency. Yet the IEP goals and progress monitoring of said goals were deficient. The reading and math goal of taking MAPS assessments is vague and does not make clear what specific skills is required for Student to achieve the goal. This goal was also repeated from the 2020-2021 IEP. Student did not achieve their speech therapy goal before this service was discontinued which resulted in the IEP containing a speech goal without a corresponding related service. This evidence supports a conclusion that the IEP was substantively inadequate to provide the Student FAPE because the IEP goals did not address the child's disability-related needs.

The cumulative effect of several procedural violations as well as the failure to implement the IEP establish two separate procedural denials of FAPE. The IEP was neither substantively designed to enable the Student's educational progress based on their disability-related learning needs. For these reasons, the Student was denied FAPE on both procedural and substantive grounds.

The District bears the ultimate responsibility for remedying the Charter School's denial of FAPE. Contrary to the District's position that couches their relationship with the Charter School as a

purely transactional one, the District’s status as an LEA locally authorizing a charter school carries responsibilities under IDEA that are in addition to its primary funding/reporting obligations. The District, as an LEA charter school authorizer, is required to both **monitor and support** the Charter School in complying with IDEA requirements such as the provision of FAPE. *Frequently Asked Questions about the Rights of Students with Disabilities in Pub. Charter Schs. Under the Individuals with Disabilities Educ. Act.*, 69 IDELR 78 (OSERS 2016). The spirit of these responsibilities is referenced in the charter contract which states that the District and Charter School will collaborate in meeting needs of special education students at the Charter School. In this case the Charter School denied the Student FAPE and the District, as the charter school authorizer, is legally accountable for this violation.

As to Issue No.6 the Charter School and the District is cited. Corrective Action is required.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
6.31.2.11(B)(1) NMAC and 34 C.F.R. § 300.324(a)	The Charter School failed to develop an IEP for the Student from January 10, 2022 to the present that if implemented would provide the Student with a FAPE.
6.31.2.11(C) NMAC and 34 C.F.R. § 300.114(a)	The Charter School failed to provide Student with an IEP and educational program that allowed for the Student to be educated in the Least Restrictive Environment.
6.31.2.11(F) NMAC and 34 C.F.R. § 300.324(a)(2)(i)	The Charter School failed to address Student’s behavioral needs resulting in the increased exclusion of Student from school.
6.31.2.13(C) NMAC and 34 C.F.R. § 300.501	The Charter School failed to convene an IEP meeting from February 14, 2022 to the present in response to a request by the parents and their advocates.
6.31.2.11(B)(1) NMAC and 34 C.F.R. §§ 300.320-300.328	The Charter School failed to implement the Student’s Individualized Education Program (IEP) from January 10, 2022, to the present while the Student receives at-home instruction.

IDEA/State Rule Provisions Violated	Description of Violation
6.31.2.8 NMAC and 34 C.F.R. § 300.101.	The Charter School’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE).

Required Actions and Deadlines

By May 31, 2022, the Special Education Director for both the District and the Charter School must assure the SED in writing that their respective schools will implement the provisions of this Corrective Action Plan (CAP). The SED requests that the District and Charter School 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@state.nm.us

The file on this complaint will remain open pending the PED’s satisfaction that the required elements of this Corrective Action Plan are accomplished within the deadlines stated. The District is advised that the 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 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 December 16, 2022 and reported to the SED no later than January 13, 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 Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	May 31, 2022	Written Assurance Letter/Email	May 31, 2022
2.	The District shall assign a staff person to act as the District CAP monitor whose responsibility will be to ensure the Charter School’s compliance with this CAP in conjunction with the PED CAP Monitor. The monitor may be the District’s Special Education Director. This monitor must attend the CAP review meeting as outlined below.	May 31, 2022	Letter of designation	May 31, 2022
3.	The District Special Education Director, Charter School Principal, and Special Education Coordinator/Lead shall meet with the PED SED EA assigned to the District and the PED CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the District and Charter School plan to take to ensure that the violations	June 3, 2022	Notes from meeting prepared by the District.	June 10, 2022

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>
	<p>are corrected and do not recur. The District Director has the discretion to include other District/Charter administrators or personnel in this meeting. The District Director shall be responsible for setting up this meeting with SED.</p>			
<p>4.</p>	<p>The District shall provide training to Charter School administrators, special education leads, and special education staff and related service providers on the following topics:</p> <ul style="list-style-type: none"> • IEP Development and Implementation; • IEP Goals and Progress Monitoring; • IEP Meeting Notice and Parent Participation Requirements; and • Educational Placement and Determination of Least Restrictive Environment. <p>This training shall be provided to the Charter School staff at the beginning of the 2022-2023 school year. District staff may also attend the training.</p> <p>The District 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>	<p>September 2, 2022</p>	<p>Confirmation of the date(s) of the training</p> <p>Confirmation of attendees at the training with submitted documentation of signed attendance sheet from all attendees and plan for addressing provision of training to those staff not in attendance.</p> <p>Submission of proposed trainer and trainer’s resume and proposed presentation for NMPED approval.</p>	<p>August 19, 2022</p> <p>September 16, 2022</p> <p>July 15, 2022</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>
	This person must be approved by NMPED.			
5.	<p>The Charter School, in conjunction with the District, shall provide 93 hours of compensatory education to Student consisting of one-to-one tutoring on a schedule agreed upon by the Student, Parent, District, and Charter School. The District and Charter School shall evenly split the cost of compensatory education.</p> <p>The subject of the compensatory education services shall be based on the Student’s deficits in reading, math, and speech fluency. The compensatory education services can consist of specialized instruction and/or related services. The compensatory education may be used over the summer months but must be completed by December 31, 2022.</p> <p>The plan for the compensatory services should include the parents or guardians and Student and can be developed through an IEP team meeting or an IEP amendment without a meeting based on the parent or guardian’s preference.</p>	December 31, 2022	<p>Detailed log of compensatory hours provided to the Student that includes dates of service, types of service and number of hours provided to the Student.</p> <p>Attendance sheet for IEP meeting held and IEP or IEP amendment developed with plan for compensatory services that includes parent/guardian OR written confirmation of lack of response or rejection of compensatory services by parent/guardian.</p>	<p>January 16, 2023</p> <p>June 14, 2022</p>

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED</u> <u>SED</u>	<u>Document Due Date</u>
	The award of compensatory education follows the Student to any school setting and the District must attempt to work with the Student's High School or the Parent to facilitate the receipt of compensatory education.			
6.	The District shall provide a detailed plan that identifies who at the District is responsible for supervising and monitoring the Charter School's delivery of special education. The plan shall identify the specific responsibilities of the District-assigned supervisor.	August 24, 2022	Copy of supervision plan to be approved by PED.	September 7, 2022

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/

Michael W. Gadomski, Esq.
Complaint Investigator

Reviewed by:

/s/

Miguel Lozano, Esq.
Chief Counsel, Special Education Division

Reviewed and approved by:



Deborah Dominguez-Clark
Director, Special Education Division