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NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
SPECIAL EDUCATION DIVISION  
Complaint Resolution Report  
Case No. C2122-23  
May 27, 2022

**This report does require corrective action. See pages 15-17.**

This complaint was filed with the Special Education Division (SED) of the New Mexico Public Education Department (PED) on March 31, 2022, under the federal Individuals with Disabilities Education Act (IDEA) and the implementing Federal Regulations and State Rules governing publicly funded special education programs for children with disabilities in New Mexico.<sup>1</sup> The SED has investigated the complaint and issues this report pursuant to 34 C.F.R. § 300.152 (a)(5) and 6.31.2.13(H)(5)(b) NMAC.

**Conduct of the Complaint Investigation**

The PED's independent complaint investigator's investigation process in this matter involved the following:

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

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<sup>1</sup> The state-level complaint procedures are set forth in the federal regulations at 34 C.F.R. §§ 151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

- review of the Charter School’s compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Special Education Director, Principal, Diagnostician, and Parents; 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.

**Issues for Investigation**

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

1. Whether the Charter School failed to timely conduct a comprehensive evaluation of Student, in violation of 34 C.F.R. § 300.111, 34 C.F.R. § 300.306 and 34 C.F.R. § 300.101 and 6.31.2.10 (A), (F) (1) and 6.31.2.8 NMAC, specifically whether the Charter School
  - a. Failed to complete the necessary steps in the identification, evaluation and eligibility of Student;
  - b. Failed to complete a review of existing evaluation data (REED),
  - c. Failed to conduct a comprehensive evaluation instead of relying on outside evaluations; and
  - d. Failed to complete the multidisciplinary eligibility review when determining Student’s eligibility;
2. Whether the Charter School developed and implemented an IEP that would allow Student to receive FAPE by failing to conduct a comprehensive evaluation that would provide the information to determine needs and develop goals and special education services for Student in violation 34 C.F.R. §§ 300.324-328 and 6.31.2.11(B)(1); and
3. Whether the Charter School’s actions and/or omissions towards the Student resulted in a denial of 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. Student, who was seven, attended a State Charter School (Charter School) and was eligible for special education services under the categories of developmental delayed (DD) and speech-language impairment (SLI).
2. Although the Charter School had operated for several years, the 2021-2022 school year was the first year that the elementary program operated.
3. During the fall, there were multiple staffing changes including the principal, special education director and special education teachers.
4. Documents concerning Student were missing which the Charter School staff believe was a result of the staffing changes.
5. Student had received private speech language services since Student was two years of age.
6. Student had been previously homeschooled and enrolled at Charter School in the fall of 2021.
7. On September 7, 2021, in an email to the special education director, Parents requested that Student be tested through multi-layered systems and support (MLSS). Student was struggling academically and socially. Student had been in speech services since Student was two and Parents wanted school to provide services. The Parents were also concerned that Student may have a specific learning disability (SLD).
8. Parents also provided a comprehensive evaluation of Student from Autism Specialists that indicated Student had a sensory processing disorder and post-traumatic stress disorder (PTSD). This evaluation did not include academic testing.
9. No one from the Charter School followed up with the Parents to determine whether they wanted a comprehensive evaluation for special education or whether additional MLSS interventions would be implemented.
10. Parents continued to send emails inquiring about the status of their Student's evaluation and need for services.
11. Student was screened in the area of reading during the week of September 20-24, 2022.
12. In a September 24, 2021 email, the Screener indicated that Student was at risk for dyslexia, alphabet knowledge, recognition of sound and symbol connections and information recall. Student also had some risk for phonemic and phonological awareness. The email directed that Student would be supported in areas of need.
13. In an October 6, 2021 email, Parents requested a copy of the screenings; Charter School provided the summaries to Parents on October 7, 2021.
14. Student began a classroom intervention plan on October 18, 2021, where Student was pulled out of the classroom three times a week for two interventions to work on phonological awareness.

15. There were no records of a discussion or consent for intervention services.
16. On November 1, 2021, Parents contacted the Charter School again to inquire about the status of Student's testing because they had heard nothing since the results of the screening. They wanted to know if Student was referred to student assistance team (SAT) or multi-disciplinary team (MDT) because Student was being pulled out of class two to three times a week.
17. Although Student had been receiving private speech services, the Charter School did not seek consent to evaluate for the need for speech services or address any other concerns of Parents.
18. In a November 9, 2021, email, the special education coordinator indicated to Charter School staff that the review of existing evaluation data (REED) and eligibility determination team (EDT) were ready, and an EDT/IEP meeting needed to be scheduled.
19. On November 10, 2021, Parent provided copies of private evaluations from Student's pediatrician to the Charter School. The pediatrician diagnosed Student with Autism and Attention Deficit Hyperactivity Disorder (ADHD).
20. The Diagnostician reviewed the Autism Specialists (AS) report and indicated that Student would qualify for special education services under the category of DD and no additional assessments were needed. The Diagnostician did not meet with Student prior to the determination. The Diagnostician did not address speech needs.
21. In their review, the Diagnostician noted that Student's cognitive and communication skills were average and the two autism measures did not indicate autism. Moreover, the results from the AS report were within the last year and were the same assessments used by the Charter School to determine autism eligibility.
22. A notice of meeting for an EDT/IEP meeting on November 12, 2021, was sent on November 8, 2021.
23. This meeting was originally intended to be a SAT meeting, but after the Diagnostician reviewed the reports, it was modified to be an EDT and IEP meeting because of the DD determination.
24. The REED was not completed at the meeting nor was other health impaired (OHI) considered as an eligibility category because not all members were privy to the diagnoses in the Pediatrician's report. The Pediatrician's November 2, 2021 report was provided to the Charter School shortly before the EDT meeting. The Diagnostician did not review that report prior to the review for eligibility.
25. The Diagnostician did address autism as an eligibility category and ruled it out but did find Student eligible under DD.
26. The AS report included a cognitive measure, Weschler Preschool and Primary Scale of Intelligence, 4th Edition (WPPSI) and language measure, Clinical Evaluation of Language Fundamentals- 5<sup>th</sup> Edition (CELF-5) which indicated average scores in both areas. There were

two autism measures, the Vineland Adaptive Behavior Scales, Third Edition (VABS-3) and Autism Diagnostic Observation Schedule, Second Edition (ADOS-2) which did not indicate autism. There was also the Dunn's Short Sensory Profile (Dunns) which demonstrated sensory processing issues.

27. Parents disagreed with the DD eligibility and were concerned that no one had met with their Student before determining eligibility.
28. Parents participated in the November 12, 2021, EDT and IEP meeting. They signed off on both the eligibility determination and IEP. It was agreed at that meeting that Student would have a speech evaluation and occupational therapy assessment.
29. Two consent forms were signed by Parent. One form was consent for a speech and OT evaluation and the other provided for a speech evaluation and classroom observation.
30. The IEP included goals in the area of reading, math, and written language. Student received 3.5 hours per week of special education services pursuant to the November 12, 2021 IEP.
31. Another IEP meeting was held on December 12, 2021 when Student was determined eligible for speech articulation and the related service for speech was added to the IEP.
32. Neither the classroom observation nor an occupational therapy evaluation were completed within the 60 days of consent.
33. On March 9, 2021, the Parents again requested a comprehensive evaluation of Student.
34. On March 14, 2021, the Special Education Coordinator in an email to the Parents summarized the results from the Autism Specialists report and explained why this evaluation was valid for determining special education eligibility.
35. Parents were concerned throughout the school year that they were not kept informed about the requested evaluation or Student's progress.
36. The Parents and Charter School personnel met to discuss next steps. A plan was proposed which included a full evaluation including an OT evaluation to be completed by the end of the school year and weekly notice of their Student's progress.
37. The consent for evaluation was signed on April 6, 2022. The evaluation would include intellectual, academic, achievement, behavior/psychological, and phonological processing testing.
38. Parents expressed concern about Student's lack of progress and even decline in reading and writing.
39. The progress records from the Charter School indicate Student has made progress in all goals, especially in math.
40. The OT evaluation has been completed and report drafted. The remaining evaluations were scheduled to begin on May 3, 2022.

## Discussion and Conclusions of Law

### Issue No. 1

Whether the Charter School failed to timely conduct a comprehensive evaluation of Student, in violation of 34 C.F.R. § 300.111, 34 C.F.R. § 300.306 and 34 C.F.R. § 300.101 and 6.31.2.10 (A), (F) (1) and 6.31.2.8 NMAC, specifically whether the Charter School:

- a. Failed to complete the necessary steps in the identification, evaluation and eligibility of Student;
- b. Failed to complete a review of existing evaluation data (REED);
- c. Failed to conduct a comprehensive evaluation instead of relying on outside evaluations; and
- d. Failed to complete the multidisciplinary eligibility review when determining Student's eligibility?

Districts have an ongoing affirmative duty to locate and identify students suspected of having a disability. *Boutelle v. Bd. of Educ. of Las Cruces Pub. Sch.*, No. CV 17-1232 GJF/SMV, 2019 WL 2061086, at \*9 (D.N.M. May 9, 2019). Autism, Speech-Language Impairment, Specific Learning Disability and Other Health Impairment are disabilities identified in IDEA. 6.31.2.10(A) NMAC; 34 C.F.R. § 300.8(c). Child find applies when a district suspects a child has a disability and is in need of special education services, even if the student is maintaining passing grades. 34 C.F.R. § 300.111(c)(1).

A district must look for potential special education eligible students; it cannot take a back seat and wait for others to refer students for an evaluation. *Compton Unified School District v. Addison*, 54 IDELR 71 (9th Cir. 2010), *cert. denied*, 132 S. Ct. 996 (2012). Districts need to be aware of signs that should trigger a suspicion that a student may be eligible for special education services. *Krawietz v. Galveston Independent School District*, 900 F.3d 673 (5th Cir. 2018). *See, e.g., Cincinnati City Schools*, 115 LRP 26069, 12 ECLPR 111 (SEA OH 2015).

Evaluations under the IDEA are conducted to determine if a student has a disability requiring specialized instruction and related services so that the student can make progress in general education. 6.31.2.13(F)(1) NMAC; 34 C.F.R. § 300.300(c)(1). *See also* 34 C.F.R. §§ 300.304 -300.315 and 71 Fed Reg 46,548 (2006). Once consent is obtained, a district has an obligation to conduct a full and individual evaluation at no cost to the parent. 6.31.2.10(D) NMAC. An evaluation may be lacking if it does not provide the needed information to determine goals and develop appropriate supports and services a student may need. *A.W. v. Middleton Area School District*, 65 IDELR 16 (M.D. PA 2015). Failing to conduct a thorough evaluation and relying on existing data may be a denial of

FAPE if the IEP team has insufficient information to determine student's needs and services. *New Mexico Public Education Department*, 115 LRP 12278 (SEA NM 2015). A district should consider, but is not required to conduct, a comprehensive evaluation if a valid private evaluation report is provided that indicates a potential disability that may warrant special education services. 34 C.F.R. § 300.305.

When a request for an evaluation is received, the district must seek consent to complete the evaluation or provide a PWN indicating why they are not completing the evaluation, such as the district will be implementing specific layer 2 or 3 MLSS interventions. 34 C.F.R. § 300.503(a)(2). They may not reject a referral or delay an initial evaluation solely because MLSS services have not been provided. See *Memorandum to State Directors of Special Education*, 116 LRP 21359 (OSEP 04/29/16); See also *Artichoker v. Todd Cty. Sch. Dist.*, No. 3:15-CV-03021-RAL, 2016 WL 7489033, at \*7 (D.S.D. Dec. 29, 2016) (holding that the RTI process cannot be used to delay an initial evaluation). A student must undergo an initial evaluation to determine eligibility. 34 C.F.R. § 300.301. That evaluation may be from an outside agency if the evaluation is valid and provides sufficient information to determine eligibility and develop an IEP that provides FAPE. 34 C.F.R. § 300.301.

***Issue No. 1(a): Whether the Charter School failed to complete the necessary steps in the identification, evaluation and eligibility of Student***

Parents requested an evaluation or MLSS interventions in a September 7, 2021 email. The parents' email indicated potential special education eligibility in the areas of speech and SLD and also need for MLSS interventions. The Parents also provided a private comprehensive evaluation report from the Autism Specialists. Although the request was not clear about whether the Parents were seeking a special education referral or were seeking additional supports and services for their Student through the MLSS or some other process, the Charter School did not follow up with the Parents to determine what additional supports they were requesting or to request more information about the private evaluation to determine if Student may be eligible for special education services. The Charter School should have treated this as a request for evaluation and sought consent for an evaluation or declined the evaluation and provided a PWN.

In this case, the Diagnostician reviewed the outside evaluation and determined that it met the criteria of a valid, comprehensive evaluation and provided sufficient information for the Student to be determined eligible under the category of DD. There was also sufficient information in that evaluation and school reports to develop an IEP that would provide Student FAPE. Neither the Diagnostician nor the entire IEP team were provided with the Pediatrician's report which included diagnoses of autism and ADHD. The Diagnostician opined that the assessment results from the Autism Specialists' report indicated that Student would not be eligible under the category of autism.

There was insufficient information available in that report about whether Student had ADHD and, therefore, it could not be determined that Student was eligible under the category of OHI. The Diagnostician had made her review and conclusions about DD eligibility on the basis of the Autism Specialists Report and before seeing the ADHD diagnosis in the Pediatrician's Report. Although a REED was not completed and included in the file, the Diagnostician went over with the Parents the rationale for DD eligibility and why the Student was not eligible under autism at the November 12, 2021 IEP meeting. At that same meeting, an IEP was developed for Student. Parents participated in both the EDT determination and IEP development.

At the IEP meeting, the Parents disagreed with the eligibility category for their child but provided consent for provision of special education services. The Parents also requested a speech and occupational therapy evaluation for Student. There were two consent forms signed on November 12, 2021 that together provided for a speech evaluation, occupational therapy evaluation and classroom observation. Another IEP meeting was held on December 12, 2021 where speech as a related service was added to the IEP. Since that time, Student has received services in speech, math, reading and written language. The OT evaluation and classroom observation have not yet been completed and reviewed. Following the filing of this complaint, the Charter School and Parents agreed to conduct a comprehensive evaluation before the end of the school year. That evaluation is in process.

As early as September 7, 2021, the Parents had requested an evaluation of their child and Tier 2 interventions. They had also provided a copy of an Autism Specialists Report to the Charter School, which included reports of some but not all academic evaluations. They also informed the Charter School that Student had been receiving private speech services since Student was two. The Charter School did not seek consent to evaluate nor did they issue a PWN regarding why they were not evaluating Student. Later, Parents provided Charter School with a copy of the Pediatrician's report with additional diagnoses included ADHD, but again the Charter School did not seek consent to evaluate Student. Parents continued to follow up with the Charter School about their Child's lack of progress and difficulties in school. The Diagnostician, without input from the IEP team, indicated that the Autism Specialists report without additional assessments was enough information to determine that Student was eligible under DD and an IEP could be developed. The Diagnostician did not meet Student nor were any additional assessments completed with the exception of the phonological/dyslexia screening prior to the EDT/IEP meeting on November 12, 2021. Student was found eligible under DD and an IEP was developed. At that meeting, it was also determined that additional assessments in SL and OT were needed as was a classroom observation. The Charter School failed to meet multiple requirements in its identification and evaluation of Student. Although Parents may not have submitted specific requests for evaluation, they did provide the school with sufficient information to determine that Student should have been evaluated for

multiple eligibility categories. Despite this fact, the School did not provide timely responses to parent requests for evaluation or seek parental consent to evaluate based on information provided by Parents. Additionally, the Charter School, after deciding to evaluate the student failed to provide timely evaluations on multiple occasions.

***Issue No. 1(b): Whether the Charter School failed to complete a review of existing evaluation data (REED).***

The Diagnostician completed a REED using the information from the outside evaluation and believed that no additional data was needed to determine eligibility under the category of DD or to develop an appropriate IEP. Diagnostician also explained their analysis to the Parents at the EDT/IEP meeting. However, there was no REED completed or included in the special education file, it was only in the Diagnostician's working file. Although the formal REED document may not be required, the completion of the REED process was necessary to determine if sufficient information was available to determine eligibility and ascertain Student's needs to develop an appropriate IEP that provided FAPE. The Diagnostician completed the required process and explained her analysis to the Parents at the EDT/IEP meeting, and the IEP team agreed with the decision. Based on this evidence, there was no violation.

***Issue No. 1(c): Whether the Charter School failed to conduct a comprehensive evaluation instead of relying on outside evaluations.***

The IEP team was not required to complete a comprehensive evaluation if it was determined that the outside evaluation provided the necessary information needed to determine eligibility and develop an IEP. Here, the IEP team determined that the outside evaluation was valid and comprehensive such that additional evaluations were not warranted to determine eligibility and develop an IEP. However, the Parents in their request for an evaluation also expressed concerns about speech services, since Student had been receiving speech services since the age of 2 and they were concerned about a SLD. Also, the phonological and dyslexia screenings demonstrated that Student was at risk in those areas yet no further testing was recommended nor consent requested for a reading evaluation. It was agreed at the EDT/IEP meeting that additional evaluations in the area of speech, OT and a classroom observation were needed and consent was provided. A speech evaluation was completed and services added to the IEP. The other evaluations are in the process of being completed. There was a violation because the Charter School failed to conduct an evaluation in all suspected areas of disability.

***Issue No. 1(d): Whether the Charter School failed to complete the multidisciplinary eligibility review when determining Student’s eligibility.***

At the EDT/IEP meeting on November 12, 2021, the team went through the outside evaluation and determined Student was eligible under the category of DD. During that process, the EDT considered the eligibility categories of both Autism and DD. At that meeting, it was determined that the Student was not eligible under Autism, but was eligible under DD. The Pediatrician’s report indicated a diagnosis of autism and ADHD, but the report was not available to all team members at the EDT meeting. OHI was not considered by the EDT, nor was Speech or SLD. Since not all suspected areas of disability that the Parents expressed concern about were not evaluated, they were not considered as potential eligibility categories. Also, without having assessment information about ADHD, SLD or Speech, it could not be determined whether there were additional needs of Student that were not being addressed by the IEP. The Charter School’s failure to comprehensively assess and identify Student’s needs constituted a violation.

***As to Issue No. 1, the Charter School is cited for parts a, c and d. Corrective Action is required.***

**Issue No. 2**

Whether the Charter School developed and implemented an IEP that would allow Student to receive FAPE by failing to conduct a comprehensive evaluation that would provide the information to determine needs and develop goals and special education services for Student in violation 34 C.F.R. §§ 300.324-328 and 6.31.2.11(B)(1)?

The IDEA is meant to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) designed to meet their unique needs. FAPE is administered through an IEP developed by the IEP team and implemented by the district. The IEP must be “reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances.” *Andrew F. V. Douglas County School District RE-1*, 137 S. Ct. 988 (2017). See also 34 C.F.R. §§ 300.320 to 300.324. The primary function of an IEP is to develop a plan to achieve academic and functional advancement. *Andrew F. v. Douglas County School District. RE-1*, 137 S. Ct 989, 69 IDELR 171 (2017). A student’s unique needs are more than just mastery of academic subjects, but may include social, health, emotional, physical, and vocational needs of eligible students. *County of San Diego v. California Special Education Hearing Office*, , 93 F3d 1458 (9th Cir. 1996). It is the responsibility of the IEP team to determine the special education and related services that a student needs to receive FAPE. *Andrew F. V. Douglas County School District RE-1*, 137 S. Ct. 988 (2017).

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

The Charter School developed and implemented an IEP for Student at the November 12, 2021 IEP meeting. Speech was added to the IEP on December 12, 2021 after a speech evaluation was completed. Since that time after receipt of special education and related services, Student has been making progress on all of the goals: speech, reading, written language and math. Student has not made as much progress in reading as Parents hoped for, but has made some progress. At the time of the EDT, the Student was only eligible under the category of DD, and based on the information that was available, the IEP was reasonably calculated to allow Student to make progress. Furthermore, the Charter School and Parents agreed to a comprehensive evaluation to be completed before the end of the school year. If the results of that evaluation indicate additional supports and services are needed, the IEP can be amended to include those supports and services. It would be impossible to determine prior to the completion of the pending evaluation if Student had additional needs or Student was denied FAPE because of the evaluation was not completed until the end of the school year. It is significant that Student has been making progress since the IEP was implemented.

The documented progress that Student has made does not excuse the delays and lack of communication among Charter School staff and the Parents. The OT evaluation and classroom observation were not completed within the 60 days of receiving consent for those evaluations. Also, the Charter School failed to obtain consent for an evaluation or send a PWN to notify Parents of the Charter School's refusal to evaluate Student and decision to implement MLSS (as requested by Parent in the original request for an evaluation). The information from the dyslexia and phonological screening also provided information regarding Student's reading skills, this information was used and considered in the development of the IEP.

Parents repeatedly contacted the Charter School about evaluations and services for their Student, but there was no follow up with the Parents until the EDT/IEP meeting on November 12, 2021, except for the summary of the screening tests that were sent to Parents. Beginning October 28, 2021, Student received intervention services at least two to three times per week, but there was no record that this was discussed with Parents or that Parents agreed to intervention services. All

of the team members were not privy to the outside evaluations and information about Student. These actions may have impacted on Student's eligibility and special education services, but the Student was determined eligible on November 12, 2021, an IEP was developed, Student made progress on all goals, and Parents participated in the determination of eligibility and development of Student's IEP. The Charter School's delays and failure to take action on parent requests and concerns constituted procedural violations despite the fact that Student made progress and the Charter School did eventually evaluate and identify additional needs of the student which were included in a subsequent IEP.

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

### **Issue No. 3**

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

Students who are eligible for special education services are entitled to a FAPE. 34 C.F.R. § 300.101; 6.31.2.8 NMAC. Districts are obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17. The determination of whether there has been a denial of FAPE requires consideration of two components: substantive and procedural. The question one must answer to determine the substantive standard is whether the IEP was "reasonably calculated to allow the child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District. RE-I*, 137 S. Ct. 988 (2017). The Court in *J.L. v. Mercer Island School District*, 592 F.3d 938, 951 (9<sup>th</sup> Cir. 2010), held that a procedural violation may be a denial of FAPE when it resulted in the loss of an educational opportunity, infringed on parents' opportunity to participate in the development of the IEP or deprived the student of an educational benefit. All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx 202 (2d Cir. 2010). A failure to provide behavioral and other supports that does not allow the student to receive educational benefit may be a denial of FAPE. Dear Colleague Letter, 68 IDELR 76 (OSERS/OSEP 2016).

The record here indicates that the IEP developed on November 12, 2021 and amended on December 12, 2021 was reasonably calculated to allow Student to make progress and Student did make progress on all IEP goals. Charter's delays in completing a comprehensive evaluation of Student to determine if Student had additional needs warranting additional services, were procedural violations, but an appropriate IEP that provided a FAPE was developed and implemented for this Student. The procedural violations do not rise to the level of a denial of FAPE. The Parents

participated in the eligibility determination and development of the IEP, there was no loss of educational opportunity and Student received an educational benefit.

***As to Issue No. 3, the Charter School is not cited. No Corrective Action is required.***

**Summary of Citations**

<b>Statutory and Regulatory Provisions</b>	<b>Citation</b>
34 C.F.R. § 300.111, 34 C.F.R. § 300.306 and 34 C.F.R. § 300.101 and 6.31.2.10 (A), (F) (1) and 6.31.2.8 NMAC.	<p>The Charter School failed to timely conduct a comprehensive evaluation of the Student by</p> <ul style="list-style-type: none"> <li>a. Failing to complete the necessary steps in the identification, evaluation and eligibility of Student;</li> <li>b. Failing to conduct a comprehensive evaluation instead of relying on outside evaluations; and</li> <li>c. Failing to complete the multidisciplinary eligibility review when determining Student’s eligibility.</li> </ul>
34 C.F.R. §§ 300.324-328 and 6.31.2.11(B)(1)	<p>The Charter School failed to conduct a comprehensive evaluation that would provide the information to determine needs and develop goals and special education services for Student.</p>

**Required Actions and Deadlines**

**By June 13, 2022**, the Charter School’s Special Education Director must assure the PED in writing that the Charter School will abide by the provisions of this Corrective Action Plan (CAP). The PED requests that the Charter School submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the Charter School’s progress with the Corrective Action Plan and to be its point of contact about this complaint from here forward:

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

The file on this complaint will remain open pending the PED's satisfaction that the required elements of this Corrective Action Plan are accomplished within the deadlines stated. The Charter School is advised that the PED will retain jurisdiction over the complaint until it is officially closed by this agency and that failure to comply with the plan may result in further consequences from the PED.

Each step in this Corrective Action Plan is subject to, and must be carried out in compliance with, the detailed procedural requirements of the IDEA 2004 and the implementing federal regulations and State rules. If the Charter School needs brief extensions for the steps in the Corrective Action Plan, contact Deborah Dominguez-Clark, Director of the Special Education Bureau.

**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 May 13, 2023, and reported to the PED SED no later than June 1, 2023.** All documentation submitted to the SED to demonstrate compliance with the CAP must be clearly labeled to indicate the complaint number, **C2122-23**.

**Corrective Action Plan**

<b>Step No.</b>	<b><u>Actions Required by Charter School</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
1.	As described above, the Charter School 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).	<b>June 3, 2022</b>	Written Assurance Letter/Email	<b>June 3, 2022</b>
2.	The Charter School Special Education Director shall meet with the PED SED EA assigned to the Charter School and the PED CAP Monitor to review the Complaint Resolution Report, the Corrective Action Plan, and any other measures that the Charter School plans to take to ensure that the violations are corrected and do not recur. The Charter School Director has the discretion to include other Charter School administrators or personnel in this meeting. The Charter School Director shall be responsible for setting up this meeting with SED.	<b>June 13, 2022</b>	Notes from meeting prepared by Charter School	<b>June 17, 2022</b>

<b>Step No.</b>	<b><u>Actions Required by Charter School</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
<b>3.</b>	<p>The Charter School will draft a plan for tracking and responding to parental requests for evaluation and development of appropriate IEPs for those who are determined eligible. This plan must include</p> <ul style="list-style-type: none"> <li>a. the role and consideration of outside evaluations in eligibility determinations;</li> <li>b. sharing of outside evaluations and other information with all members of the IEP team;</li> <li>c. communication with parents; and</li> <li>d. timely completion and documentation of evaluations.</li> </ul> <p>The Charter School shall review and revise their policies and procedures as needed to ensure that they are consistent with the plan approved by NMPED.</p>	<b>July 1, 2022</b>	The Charter School will submit plan and related policies and procedures to NMPED for approval.	<b>July 15, 2022</b>
<b>4.</b>	The Charter School will hold a facilitated IEP meeting as soon as all of the pending evaluations are completed to determine appropriate eligibility and amend the IEP, as needed.	<b>June 3, 2022</b>	A copy of the IEP, Evaluation Reports, attendance records and other supporting documents will be provided to NMPED.	<b>June 15, 2022</b>

<b>Step No.</b>	<b><u>Actions Required by Charter School</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED SED</u></b>	<b><u>Document Due Date</u></b>
5.	<p>The Charter School will provide training to all Charter School staff regarding:</p> <ol style="list-style-type: none"> <li>a. identification, evaluation and eligibility for special education and provision of FAPE;</li> <li>b. parental requests for evaluation and required responses; and</li> <li>c. parent participation in the eligibility determination and IEP processes.</li> </ol> <p>This training shall be developed and provided by an independent person(s) with expertise who has not been involved in responding to this Complaint and who is approved by the NMPED.</p>	<b>August 31, 2022</b>	<p>The agenda and training materials including outlines, power points and other materials to be submitted to NMPED for approval.</p> <p>The resume or CV of the person(s) proposed to provide the training and a draft of the proposed training to be submitted to NMPED for approval.</p> <p>Attendance Records</p>	<p><b>August 15, 2022</b></p> <p><b>August 1, 2022</b></p> <p><b>Within two weeks of completion of all training sessions.</b></p>

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/ Michele K. Bennett*

Michele K. Bennett

Independent Complaint Investigator

Reviewed by:

*/s/ Miguel Lozano*

Miguel Lozano, Esq.

Chief Counsel, Special Education Division

Reviewed and approved by:



Deborah Dominguez-Clark

Director, Special Education Division