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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Taos Academy
Case No. 2223-41
April 21, 2023

This Report requires corrective action. See pages 18-21.

On February 22, 2023, a complaint was filed with the New Mexico Public Education Department's (NMPED) Special Education Division (SED) under the federal Individuals with Disabilities Education Act (IDEA) and the implementing Federal Regulations and State Rules governing publicly funded special education programs for children with disabilities in New Mexico.¹ The SED has investigated the complaint and issues this report pursuant to 34 C.F.R. § 300.152 (a)(5) and 6.31.2.13(H)(5)(b) NMAC.

Conduct of the Complaint Investigation

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

- review of the complaint and supporting documentation from 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;

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

- review of the Charter School’s compliance with federal IDEA regulations and state NMAC rules;
- interviews with the Parent and Advocate;
- Interview with Charter School staff including special education director, special education teacher/gifted/regular education teacher; and superintendent; 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 issues regarding alleged violations of the IDEA, its implementing regulations and State rules, are addressed in this report:

1. Whether the Charter School failed to develop and implement an IEP that met all of Student’s educational needs that resulted from Student’s disabilities, in violation 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC; specifically, whether the Charter School,
 - a. Developed and implemented measurable annual goals that address all of Student’s needs;
 - b. Provided the appropriate specialized instruction in all areas of need to allow Student to make educational progress;
 - c. Provided the accommodations and modifications outlined on the IEP in all academic classes;
 - d. Provided documentation of progress on all goals;
 - e. Developed goals or address needs related to emotional disturbance classification;
 - f. Implemented all aspects of the IEP.
2. Whether the Charter School failed to provide Parent(s) their procedural safeguards, in violation of 34 C.F.R. § 300.322; 34 C.F.R. § 300.501(b) and 6.31.2.11(B)(2) and 6.31.2.13(C) NMAC, specifically whether the Charter School,
 - a. Provided Parents with meaningful parental participation;
 - b. Worked with the Parent in developing an appropriate IEP;

- c. Provided prior written notice (PWN) that reflected what happened or was discussed at IEP meetings;
 - d. Determined services and supports during the IEP team meeting;
 - e. Considered Parents' issues and concerns in IEP meetings;
 - f. Made decisions with involvement of all IEP team members.
3. Whether the Charter 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

Background

1. Student was 16 years old and a 10th grade student attending a mixed online-in person charter school at the time of the filing of the complaint.
2. Student's eligibility categories were other health impaired (OHI), emotional disturbance (ED) and gifted.
3. Student had a diagnosis of attention deficit hyperactivity disorder (ADHD) and anxiety which impacted executive functioning skills and resulted in difficulties with organization, note taking and time management.
4. Student's emotional disturbance and anxiety, although improved during the 2022-2023 school year, still impacted Student's learning.
5. Student's annual IEP was developed on April 6, 2022.
6. Parents were provided with draft IEPs before IEP meetings.
7. Student's most recent evaluation was completed on April 29, 2021.

Charter School program

8. The Charter School used a hybrid program where students had the choice to participate 100% virtually, attend in person classes five days a week or some mixture of online and in person classes. Most weeks, Student attended two days per week but would attend more or less depending on the tasks assigned.
9. The Charter School used the Edgenuity online program and had some in-person classes. All students had access to Edgenuity's many online resources and courses that also addressed the needs and goals of Student's IEP.
10. As part of the Edgenuity and Charter School requirements, Parents were to be active partners in their Student's learning and had certain expectations that must be met.
11. This family understood and agreed with the requirements and expectations of the Charter School.

12. The Edgenuity curriculum required the completion of notes in all subject areas.
13. During the fall semester of the 2022-2023 school year, Student did not have notes completed in most classes and had to complete notes within a few weeks' time. Note taking was one of Student's IEP goals.
14. During finals of the 2021-2022 school year, after the April 6, 2022 IEP meeting, Student had not completed notes for all classes. Finals were to be completed using notes from the semester's work.
15. Since Student did not have completed notes, Student failed the English exam. Student had an "A" going into the final on daily work and quizzes.
16. This semester, rather than develop notes, Parent requested, with the agreement of Teacher, that Student return to the fill in the blank Edgenuity notes.

April 6, 2022 IEP

17. Those in attendance at the properly noticed April 6, 2022 IEP meeting included a regular education teacher, special education teacher, charter school representative, counselor, Student and Parents.
18. The IEP stated Student needed to learn to take notes and use them effectively to ensure the successful completion of coursework. Student needed to write down steps in math and create a math notebook.
19. It was also noted that Student needed to commit to the IEP program.
20. Student's present levels of academic and functional performance (PLAAFP) indicated that Student had completed slightly more than 50% of assignments in biology, health, English and geometry. Student's grades were at 85% in all classes, but Student was behind in work completion in all classes.
21. The IEP noted Student was capable of doing quality work but needed reminders, redirection and repetition and exhibited occasional distractibility.
22. Student's needs in the area of self-regulation included meeting with a counselor to work on focusing, completing work, reducing and managing anxiety and learning social skills and strategies to assist with ADHD, organization and anxiety.
23. Student was to receive ninety minutes of special education services. Thirty minutes each of gifted and individual counseling monthly and thirty minutes weekly of special education services.
24. Student had five goals in the areas of executive functioning, anxiety and emotional self-regulation, organization/note taking, post-secondary planning and preparation, and gifted: critical thinking.
25. Informal service logs from the special education and gifted teachers indicated that the services provided were a review of notes and organizational skills. It did not include training

- or specialized instruction on effective notetaking, although staff reported this was regularly done.
26. During interviews with staff, it was reported that Student had received extensive support through Google classroom, ELA enrichment, the use of graphic organizers and 1-1 support in writing and organization.
 27. Staff reported that Student was provided specialized instruction through modeling strategies by numerous staff, providing examples and live 1-1 instruction with special education staff.
 28. Staff recommended supplemental services through Edgenuity that were available to all students at the Charter School.
 29. Student was encouraged to use Edgenuity notes and other supports for assistance with notetaking.
 30. The counseling sessions were designed to address Student's anxiety and self-regulation needs including learning social skills and strategies to assist with Student's ADHD, organization and anxiety.
 31. Student's anxiety and adjustment to school had improved in the past year but it was unclear how much carryover and communication there was between Student's counselor and other service providers.
 32. Student was to receive accommodations and modifications to the general education program. These included reduced distractions, preferential seating, extended time, chunking work and ensuring subtasks were completed before moving on to the next task, using visuals and organizers and breaking instructions into multiple steps.
 33. Preferential seating and extended time were consistently provided. There were examples on this record that visuals and an organizers and other accommodations were provided, but not always used by Student.
 34. Student often stated no assistance was needed with note taking, organization or chunking of work. Student was provided with tools and strategies for improvement in these areas but without someone providing 1-1 assistance, Student did not complete the tasks assigned or use the tools or strategies.
 35. There was limited data for the PLAAFP and Student's needs for IEP goals.
 36. Parents received weekly communication from the school about Student's progress on the Edgenuity program. They would also receive a telephone call if Student was failing a class. This communication did not include any data about progress on special education goals or how the Charter School staff were working on Student's goals.
 37. The April 6, 2022 IEP required progress reports on Student's special education goals each semester.
 38. Parents participated in conferences, and received report cards and weekly communication about Edgenuity progress. Progress notes were documented on the IEP goal page that was printed out and provided to Parents. It was unclear if this was the IEP with illegible goals or

not, but Parents could request a legible copy. The progress notes indicated Student was making progress but did not describe the various strategies attempted and revised or Student's continued difficulty with completing assigned tasks.

39. There was no justification for the need for special education services included in the IEP.
40. Parents attended the IEP meeting and participated in a discussion about needs and services. Parent provided consent for Medicaid reimbursement.
41. Parents were provided with a copy of the April 6, 2022 IEP, but the font for the IEP goals was so small, it was impossible to read, and, therefore, the Parents were not provided with a legible complete copy of the IEP.
42. This copy with the small font size was provided to the investigator as well. Charter staff reported this was a limitation of the computer program used for IEP development. Legible copies were available to staff and Parents, but the initial copy provided to the investigator from both the Parents and the Charter School was illegible. An additional copy with appropriate font size was later provided to the investigator. Staff signed that they had access to Student's IEP and understood the accommodations and modifications.

December 1, 2022 Addendum Meeting

43. An addendum meeting was requested by Parents because of "lack of quantity and quality of note taking" and low performance on tests, particularly finals when quizzes and daily work received high marks.
44. Parents, Advocate and Student attended the addendum meeting via Google Meet, whereas other attendees were all in a conference room with the draft IEP projected and changed contemporaneously.
45. At that December 1, 2022 addendum meeting, Parents and Advocate reported that the Charter School Staff were rude, dismissive and talked over Parents, Advocate and Student and would not let them participate in discussions.
46. Parent and Advocate reported that the Charter School Administrators that were in attendance would go into a breakroom for a discussion and return to the meeting having made decisions without the input or decision from the entire team.
47. This assertion was disputed by Charter School attendees. They reported that all issues were discussed and addressed, and goals were co-drafted by Advocate and School staff.
48. The Charter School, in its written response, stated that the Parents and Advocate could be confrontational and difficult to work with during IEP meetings.
49. The PWN, provided following this meeting, did not include all items outlined in a letter from the Parent and Advocate. The only items listed on the PWN were those that were agreed to at the meeting.

50. During the December 1, 2022 addendum meeting, the Charter School agreed to increase both special education services and gifted services each to 60 minutes per week. The focus in special education would be note taking skills. The focus on gifted services would be note taking, organization and work completion.
51. Student would also be allowed movement breaks. In addition to weekly communication between school and home, there would be a meeting with Parents three weeks before finals to inform Parents of missing assignments.
52. The Charter School also agreed to work with Student to break down essays, projects and large assignments into smaller tasks to assist with the initiation and completion of assigned tasks. As a component of that, the Charter School agreed to develop a plan for starting and completing assigned work.
53. A plan was developed for initiating and completing work, but there was limited information about the effectiveness of the plan, nor any data provided if the plan was successful. The Special Education Coordinator implemented numerous strategies in consultation with Student. When strategies were not effective, a new strategy was implemented. Student still would not complete assigned work and would need to be reminded by special education staff or work 1-1 with staff to complete assigned tasks such as notes or larger projects.
54. Parents were not informed of the changing strategies or Student's incomplete assignments and tasks.
55. Parents reported that the Charter School did not implement the other components in the addendum and without extensive assistance from the Parents, Student would have been failing classes with many missing assignments.
56. A copy of the addendum and PWN were provided to Parents.
57. Since the addendum, Student has had at least three complex assignments that needed to be broken down into subparts.
58. On the first two assignments, which involved research and writing essays, some assistance was provided to Student from Charter School staff on chunking or steps to be completed for the project, but Student still struggled with completing the assigned tasks.
59. Parents provided extensive assistance to Student and Student was able to complete the first two assignments, receiving grades of 100%.
60. On the third assignment, Parent talked to the Teacher about breaking down the assignment into subparts. This was done but the deadlines were during spring break when the Teacher was not available to assist or review the completion of subparts before moving on to the next step.
61. Student has completed minimal work on the third project and Parent has not provided any assistance.

Procedural Safeguards

62. Parents attended the April 6, 2022 and December 1, 2022 IEP meetings and an advocate from the Office of the Special Education Ombud (Advocate) has assisted Parents during the 2022-2023 school year.
63. An annual IEP meeting was held on April 4, 2023 but Parent did not attend. An annual IEP was drafted and another meeting to review that IEP was to be scheduled following the completion of the investigation.
64. The School and Parents had frequent email contact regarding Student's school performance.
65. The Advocate provided a letter outlining Parents' concerns shortly before the December 1, 2022 addendum meeting. Some of the issues were agreed to at the meeting and included in the PWN. The PWN only included the topics agreed to during the IEP and Addendum meetings.
66. At the April 6, 2022 IEP meeting, Parents and Student attended and participated in the discussion and development of Student's IEP and Parent assisted in the development of goals, supports and services.
67. During the December 1, 2022 addendum meeting, Parents, Student and Advocate attended and participated in the discussion. Many of Parents' suggestions, but not all, were included in the Addendum.
68. At both of those meetings, all team members participated in discussions about services and supports for Student which were included in the IEP or addendum.

Discussion and Conclusions of Law

Issue No. 1

Whether the Charter School failed to develop and implement an IEP that met all of Student's educational needs that resulted from Student's disabilities, in violation 34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC; specifically, whether the Charter School,

- a. **Developed and implemented measurable annual goals that address all of Student's needs;**
- b. **Provided the appropriate specialized instruction in all areas of need to allow Student to make educational progress;**
- c. **Provided the accommodations and modifications outlined on the IEP in all academic classes;**
- d. **Provided documentation of progress on all goals;**
- e. **Developed goals or address needs related to emotional disturbance classification;**
- f. **Implemented all aspects of the IEP.**

Special education is “specially designed instruction provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability.” 34 C.F.R. § 300.39 (a)(1). This specialized designed instruction is adapting the content, methodology or delivery of instruction to address the unique needs of an individual child. 34 C.F.R. 300.39 (b)(3). These unique needs are more than academic needs but can include social, health and emotional needs. *County of San Diego v. California Special Education Hearing Office*, 95 F3d 1458 (9th Cir., 1996).

IEPs are to be developed during an IEP meeting. The IEP team must consider the student’s strengths, any concerns of the parents, the results of evaluations, and the academic, developmental and functional needs of the student. 34 C.F.R. § 300.324 (a)(1). Every IEP for a student must contain “[a] statement of the child's present levels of academic achievement and functional performance, including --How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children)” 34 C.F.R. § 300.320 (a)(1). Development of the present levels of academic and functional performance (PLAAFP), goals and services should be done at an IEP meeting with all required members. 34 C.F.R. 300.324 (a)(1). This statement of PLAAFP assists in determining the needs of an individual student to develop annual goals to allow the student to receive FAPE and make progress in the general education curriculum. *Bakersfield City School District*, 51 IDELR 142 (SEA CA 2008). The PLAAFP must be comprehensive and provide a baseline that reflects all of the child’s needs, both academic and nonacademic. This also should include relevant background information about needs, strengths, interests and learning styles. 34 C.F.R. § 300.324 (a). The PLAAFP must be individualized to reflect the unique needs and abilities of a particular student. *Letter to New*, 211 IDELR 464 (OSEP 1987).

A child’s annual IEP must include measurable annual goals, both academic and functional, that meet the child’s needs that result from the child’s disability and allow the child to participate in and make progress in the general education curriculum. The IEP goals must address all of the child’s needs that result from the child’s disability. 34 C.F.R. § 300.320 (a)(2). Annual goals should reflect what is reasonably expected to be accomplished during the annual IEP period. *Letter to Butler*, 213 IDELR 118 (OSERS 1988). The annual goals should be specific to be able to determine progress made and the specific skills needed to achieve progress on goals. 64 Fed. Reg. 12, 471 (1999). When Student is not making progress on their goals, the IEP team needs to meet to modify the goals or determine the need for additional supports and services. 34 C.F.R. § 300.324 (b)(ii)(A). An IEP must be implemented with all required components. 34 C.F.R §300.324 (b)(ii)(a). However, only material failures of implementation will result in a denial of FAPE. See *Van Duyn v. Baker School District*. 5J, 481 F3d 770 (9th Cir. 2007).

a. Developed and implemented measurable annual goals that address all of Student's needs;

During Student's April 6, 2022 IEP, five goals were developed that addressed Student's needs. These goals were in the areas of executive functioning, anxiety and emotional self-regulation, organization/note taking, post-secondary planning and preparation, and gifted: critical thinking. Parents raised concerns that Student was not achieving at the level expected given Student's abilities because of the inadequacies of the IEP. A review of the most recent evaluation and PLAAFP demonstrated that the goals developed, if implemented as written, were reasonably calculated to address Student's needs.

Student had been diagnosed with anxiety and ADHD. The goals for executive functioning, organization and note taking addressed Student's ADHD needs. The goals for anxiety and emotional regulation focused on Student's emotional needs. The critical thinking goal addressed both OHI and ED. The IEP recognized Student's difficulties with task completion and note taking. Special education goals were designed to meet those needs. The receipt of special education services does not guarantee that Student will achieve a certain grade or level of performance. The goals must be reasonably calculated for Student to make progress commensurate with Student's abilities. The goals met that objective.

There were concerns with the implementation of the IEP. During the fall semester of the 2022-2023 school year, Student had not completed the required notes in all classes which was one of the reasons for the addendum meeting. After the addendum and development of a plan for the initiation and completion of assigned tasks, numerous strategies have been tried but they were unsuccessful. Parents were not informed of the numerous strategies attempted that were not working and Student's incomplete work assigned in special education services. School and Parents were to have weekly communication, but this was not discussed. As of the filing of this report, Student has not completed the required work on the third essay. This was a violation of IDEA.

b. Provided the appropriate specialized instruction in all areas of need to allow Student to make educational progress;

The academic goals for Student were focused on note taking, improving organizational skills and reducing anxiety. Student met thirty minutes per week (60 minutes after the December 1, 2022 addendum) with the special education teacher. After the addendum, time was increased to 60 minutes per week in gifted services, as well. The logs from these teachers indicated that the services provided included a review of notes and organizational skills. The logs did not indicate instruction in note taking or organizational skills but rather a review of Student's notes and referral to Edgenuity programs. During interviews, staff described other strategies and

specialized instruction techniques that were used with Student. Student was referred for services available to all students at the Charter School. Student was encouraged to use Edgenuity notes and other supports for assistance with notes. The Charter School developed a plan to ensure Student would complete assignments in a timely manner but according to Parent, Student was still behind on work completion and was in danger of failing classes. There was no information provided to Parents about whether this plan was implemented with fidelity or whether it was successful. Parents reported the plan was not effective in keeping Student on task with work completion. Specialized instruction in note taking, task completion and organization was provided but was not always effective with this Student. This was not a violation of IDEA.

The counseling sessions provided specialized instruction designed to address Student's anxiety and self-regulation needs including learning social skills and strategies to assist with Student's ADHD, organization and anxiety and there has been progress in that area, but Student has still had some emotional reactions in school. Student received appropriate services.

c. Provided the accommodations and modifications outlined on the IEP in all academic classes;

Student was to receive accommodations and modifications in all academic areas. These included reducing distraction, preferential seating, extended time, chunking work and ensuring deadlines were met before moving on to other tasks, visuals and organizers and breaking instruction into multiple steps. The record demonstrated that some accommodations and modifications were consistently provided to Student, such as preferential seating and extended time. Other accommodations were sometimes provided such as the use of visuals and organizers, chunking work and meeting deadlines before moving on to other tasks and breaking instruction into multiple steps. There was evidence that Student was offered 1-1 assistance and declined help with organizational tools such as chunking or note taking assistance or would not complete tasks assigned outside of special education services. However, the school cannot abdicate its responsibility to provide these or additional accommodations if Student declined the accommodations and continued to struggle with work completion. It was the responsibility of the IEP team to meet and determine whether Student needed those accommodations, additional accommodations or other services not addressed by the IEP. The Charter School reported that they were implementing the accommodations and modifications, but Parents disputed this, and Student was still not completing work, using note taking and organizational strategies. If the accommodations and modifications were not provided or not used by Student, the Charter School should have informed Parents and determine if the accommodation and modifications were no longer needed, then remove those accommodations from the IEP. While Students have a responsibility to complete the required work, schools also have a responsibility to ensure that

Student's special education needs are met such that Student can complete work in a timely and effective manner. That was not consistently done here. This was a violation of IDEA.

d. Provided documentation of progress on all goals;

Parents received report cards and weekly progress notes on Edgenuity progress. Progress notes on IEP goals were to be provided to Parents each semester. The progress notes provided were comments on the IEP goal page that Student was making progress. The progress notes for IEP goals did not indicate the numerous strategies attempted and revised nor that Student would not complete assigned work without 1-1 assistance. This information was vital for the Parents to know to assist in the development and/or revision of Student's IEP. Pursuant to the December 1, 2022 addendum, there was to be weekly communication between school and home. Although there was a weekly progress note generated about Student's Edgenuity progress, there was no weekly communication about Student's progress on special education goals or other issues pertaining to Student's special education needs.

IDEA requires that Parents be provided with progress on IEP goals on a regular basis, as specified in the IEP. Although there is no specific form for describing the progress made, the Charter School has an obligation to report on progress on all IEP goals. Although the Charter School provided progress notes that Student was overall making progress on goals, the specifics regarding Student's performance or lack thereof were not shared with Parents. Thorough, complete progress notes would indicate if there was a lack of progress and trigger the need for an IEP meeting to develop strategies to address the lack of progress for this Student. The Charter School did not provide adequate progress reports. This was a violation of IDEA.

e. Developed goals or address needs related to emotional disturbance classification;

On the April 6, 2022 IEP, there was a goal to address anxiety and emotional self-regulation. This goal appeared reasonably calculated to address Student's emotional disturbance needs. Parent participated in the IEP meeting when this goal was developed. Student has been receiving monthly counseling sessions to address anxiety and self-regulation needs. Although there are still emotional concerns and reactions by this Student, there has been progress in this area. There was no violation.

f. Implemented all aspects of the IEP.

See discussions 1a, 1c and 1d above. IEPs are to be implemented as written. Failure to implement material components of an IEP may be determined to be a denial of FAPE. The Charter School failed to appropriately address goals and to consistently provide the accommodations and modifications or modify the IEP. The ambiguous progress notes did not provide the needed

information for Parents to participate fully in the IEP for their Student. This was a violation of IDEA.

As to Issues No. 1a, 1c, 1d, and 1f, the Charter School is cited, and Corrective Action is required. As to Issues No. 1b and 1e, the Charter School is not cited.

Issue No. 2

Whether the Charter School failed to provide Parent(s) their procedural safeguards, in violation of 34 C.F.R. § 300.322; 34 C.F.R. § 300.501(b) and 6.31.2.11(B)(2) and 6.31.2.13(C) NMAC, specifically whether the Charter School,

- a. Provided Parents with meaningful parental participation;**
- b. Worked with the Parent in developing an appropriate IEP;**
- c. Provided prior written notice (PWN) that reflected what happened or was discussed at IEP meetings;**
- d. Determined services and supports during the IEP team meeting;**
- e. Considered Parents' issues and concerns in IEP meetings;**
- f. Made decisions with involvement of all IEP team members.**

The IDEA provides procedural safeguards to parents to ensure a cooperative approach to the development of IEPs. Parents are required members of the IEP team. 34 C.F.R. § 300.321(a)(1). They are entitled to meaningful participation in IEP meetings where they are heard, and districts are responsive to parents' concerns. *R.L. v. Miami-Dade County School Board*, 757 F3d 1173 (11th Cir. 2014). This participation should include consideration of parent's suggestions, and as appropriate, include those suggestions in the IEP. *Deal v. Hamilton County Board of Education*, 392 F3d 840 (6th Cir. 2004). As part of that meaningful participation, they are entitled to a PWN before the school proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE. 34 C.F.R. § 300.503(a). Moreover, the IDEA requires certain members must attend IEP meetings. 34 C.F.R. § 300.321 (a). The required members include the parents, a general education teacher, a special education teacher, a district representative, someone who can interpret instructional implications of evaluations, and when appropriate, the child. 34 C.F.R. § 300.321(a).

a. Provided Parents with meaningful parental participation;

Parents attended both the IEP meeting on April 6, 2022 and the addendum meeting on December 1, 2022. An Advocate attended the December 1, 2022 addendum meeting and has continued to work with Parents on concerns about their Student's educational needs and services. The Parents were provided with draft IEPs before the meeting and raised concerns and suggestions about

supports and services for Student. Some of their suggestions were incorporated in the IEP. The PWNs did not list all items that were discussed at the meeting but only included those items accepted. Parents reported that they were not allowed to make decisions and their concerns were dismissed. This was disputed by Charter School staff. The addendum meeting was requested by the Parent, and changes were made to the IEP after discussion at the meeting. This would support that Parents received meaningful parental participation. There was no violation.

b. Worked with the Parent in developing an appropriate IEP;

Parents were part of the IEP team and participated in discussions and decisions about their Student's education. They were provided with draft IEPs prior to the meeting so they would have an opportunity to review proposals regarding the provision of FAPE for Student. They had the assistance of an Advocate at the December 1, 2022 addendum meeting and subsequent discussions with the Charter School. Parents requested the addendum meeting because they were concerned with the quality and quantity of Student's notes and classroom performance, particularly on final exams. Although the IEP did not incorporate all of Parents' suggestions, that alone does not indicate that Parents were not involved in the development of Student's IEP. Parents wanted Student to achieve commensurate with abilities and faulted the IEP for not meeting Student's needs to allow for good grades. This is not the obligation of the IDEA. The April 6, 2022 IEP was reasonably calculated to allow Student to make progress. When progress was not observed, an addendum meeting was held, and changes were made to the IEP including increased special education services and additional accommodations and modifications. However, Student would not always use the available accommodations and modifications. Parents were active participants in the IEP process. Although the working relationship during the IEP meetings may have been challenging, there was no violation of IDEA.

c. Provided prior written notice (PWN) that reflected what happened or was discussed at IEP meetings;

PWNs were provided after the April 6, 2022 IEP meeting and the December 1, 2022 addendum meeting. Although the PWNs outlined the proposals to which the Charter School agreed, there was no indication on the PWNs of other topics discussed and refused. The PWN must include the topics discussed at the IEP meeting, whether they were parental proposals or school proposals and the refusal or acceptance of each issue with the reasons why it was accepted or rejected. Without this information, the Parents were denied the opportunity to pursue their procedural safeguards for dispute resolution. The PWNs were deficient because they did not include all proposals discussed, with the decision and rationale and this was a violation of IDEA

d. Determined services and supports during the IEP team meeting;

The April 6, 2022 IEP meeting outlined the PLAAFP, the goals, supports and services including accommodations and modifications that were to be provided to Student for the 2022-2023 school year. When Parent raised concerns and requested a meeting, an addendum meeting was held, and additional supports and services were incorporated into the IEP. Although not all of Parents' requests were included in the IEP, discussions and decisions about supports and services were determined at the IEP meetings. Parent and Advocate raised concerns that decisions were made outside of the IEP meetings and the draft IEPs were implemented as written, without agreed changes. Parents requested an addendum meeting; it was held and many of their requests were added to the IEP. This would suggest that the decisions were made at the meeting. See analysis 2a.

e. Considered Parents' issues and concerns in IEP meetings;

See the analysis in issues 2a, 2b and 2c. The Advocate provided a letter of Parents' concerns before the December 1, 2022 IEP meeting. Parents alleged that their concerns were ignored and not addressed by the IEP team. The limited PWN provided by the Charter School and lack of notes from the IEP meetings does not clarify whether all of Parents issues and concerns were addressed. This was a violation of IDEA.

f. Made decisions without involvement of all IEP team members.

See analysis from issue 2e. All required members of the IEP team attended the two IEP meetings. There was no indication on this record that members were not active participants in the development of the IEP team. Decisions by IEP teams are consensus and not a vote. Therefore, if not all members agreed with decisions made by the IEP team that does not mean they were not involved in the decision-making process. There was no violation of IDEA.

As to Issues No. 2c and 2e, the Charter School is cited, and Corrective Action is required. As to Issues No. 2a, 2b, 2d and 2f, the Charter School is not cited.

Issue No. 3.

Whether the Charter 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?

Students who are eligible for special education services are entitled to a free appropriate public education (FAPE). 34 C.F.R. § 300.101; 6.31.2.8 NMAC. Charter schools 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.” *Andrew F. v. Douglas County School District. RE-I*, 137 S. Ct. 988 (2017). The Court in *J.L. v. Mercer Island School District*, 592 F3d 938, 951 (9th Cir. 2010), held that a procedural violation may be a denial of FAPE when it resulted in the loss of an educational opportunity, infringed on parents' opportunity to participate in the development of the IEP or deprived the student of an educational benefit. All circumstances surrounding the implementation of the IEP must be considered to determine whether there was a denial of FAPE. *A.P. v. Woodstock Board of Education*, 370 F. Appx. 202 (2d Cir. 2010).

On this record, Student’s IEP was reasonably calculated to allow Student to make progress appropriate in light of Student’s circumstances. There was no substantive denial of FAPE. However, with respect to procedural violations, the Charter School committed a number of violations. In Issue 1, these included not implementing the IEP, providing all needed accommodations and modifications, documenting progress on all goals, or implementing all aspects of the IEP. On Issue 2, the Charter School did not provide proper PWNs which prevented the determination of whether all of Parents’ concerns were addressed. It should also be noted that there was no justification for the need for special education in the IEP and the goals on the IEP were printed in such a small font as to be illegible. Although Charter School staff reported Parents and staff had access to a legible IEP, the initial IEP provided by Parents and Charter School to the investigator was illegible. It is not the obligation of the Parents to request a legible IEP. Although individually, these violations may not rise to the level of a denial of FAPE, in combination, they denied Student educational benefit which was a denial of FAPE.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. §§ 300.320-300.328 and 6.31.2.11(B)(1) NMAC.	<p>The Charter School failed to develop and implement measurable annual goals that addressed all of the Student’s needs;</p> <p>The Charter School failed to provide the accommodations and modifications outlined in the IEP in all academic classes;</p> <p>The Charter School failed to provide documentation of progress on all goals;</p> <p>The Charter School failed to implement all aspects of the IEP.</p>
34 C.F.R. § 300.322; 34 C.F.R. § 300.501(b) and 6.31.2.11(B)(2) and 6.31.2.13(C) NMAC.	<p>The Charter School failed to provide prior written notice (PWN) that reflected what happened or was discussed at IEP meetings;</p> <p>The Charter School failed to consider Parents’ issues and concerns in IEP meetings.</p>
34 C.F.R. § 300.101 and 6.31.2.8 NMAC.	The Charter School’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE) to the Student.

Required Actions and Deadlines

By May 5, 2023, the Charter School’s Special Education Director must assure the SED in writing that the Charter School will implement the provisions of this Corrective Action Plan (CAP). The SED 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@ped.nm.gov

The file on this complaint will remain open pending the PED’s satisfaction that the required elements of this Corrective Action Plan are accomplished within the deadlines stated. The Charter School 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 August 31, 2023 and reported to the SED no later than September 8, 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 Charter School</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 Charter School will submit a written assurance to the PED SED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	May 5, 2023	Written Assurance Letter/Email	May 5, 2023

Step No.	<u>Actions Required by Charter School</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
2	The Charter School Special Education Director and Executive Director shall meet with the PED SED Education Administrator assigned to the Charter School and the PED SED 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 Special Education Director shall be responsible for arranging this meeting with SED.	May 12, 2023	Notes from meeting prepared by Charter School	May 19, 2023
3	The Charter School Special Education Director will meet with Student’s special education and general education teachers to review the Complaint Resolution Report to ensure that those persons understand the complaint, the violations that were found, and the corrective actions that will be taken to address the violations.	May 19, 2023	Notes from meeting prepared by Charter School	May 26, 2023
5	The Charter School shall convene a facilitated IEP meeting for the Student. The facilitated IEP meeting shall address: <ul style="list-style-type: none"> • Determination and documentation of the PLAAFP and appropriate measurable goals for each area of need where special 	June 5, 2023	1. Invitation to facilitated IEP meetings, 2. IEPs, 3. Prior Written Notices, and 4. Agenda for facilitated IEP team meetings	15 days after the FIEP meeting is held

Step No.	<u>Actions Required by Charter School</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED</u> <u>SED</u>	<u>Document Due Date</u>
	<p>education and related services are provided;</p> <ul style="list-style-type: none"> • Periodic, complete progress reporting plan to ensure effectiveness of IEP and next steps, if progress is not observed; • Maintenance of service logs to document provision of services, progress made, and provider; • Regular contact between school and family and develop a plan to implement the IEP; <p>The Facilitator shall be independent of the Charter School and shall be selected from the PED list of approved facilitators. The Facilitator shall be paid for by the District.</p> <p>The FIEP meeting shall be held on a date and time that is convenient for the parent. The parent will be provided with a copy of the IEP and PWN at the conclusion of the FIEP meeting. The IEP and PWN provided to the parents must be sufficiently legible for the parents to read and understand.</p> <p>The Charter School shall also ensure that the IEP team includes, but is not limited to, parents, special</p>			

Step No.	<u>Actions Required by Charter School</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED SED</u>	<u>Document Due Date</u>
	education teacher, general education teacher, and any related services providers.			
6	<p>The Charter School shall arrange to provide training to Charter School staff (including special education teachers, special education administrators, and related service personnel), on the following special education topics:</p> <ul style="list-style-type: none"> • The roles and responsibilities of the IEP team in the development and implementation of the IEP; • Developing and implementing an appropriate IEP that includes providing services and supports for all areas of eligibility; • Implementation of the IEP and documentation of progress and completion of progress reports; • Preparation of prior written notices that address all of the legal requirements. <p>The training shall be provided by a person with expertise in special education who was not involved in responding to this complaint and who is approved by NMPED.</p>	August 31, 2023	<p>Submission of proposed trainer and trainer’s resume and proposed presentation for NMPED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.</p>	<p>July 24, 2023</p> <p>July 31, 2023</p> <p>September 8, 2023</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
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