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NEW MEXICO PUBLIC EDUCATION DEPARTMENT
SPECIAL EDUCATION DIVISION
Complaint Resolution Report
Mission Achievement and Success Charter School
Case No. C2223-42
May 16, 2023

This Report requires corrective action. See pages 11–12.

On February 24, 2023, there was a complaint 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, Chief of Schools, Special Education Coordinator, Case Manager, and Teachers; 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:

1. Whether the Charter School violated Section 504 of the Rehabilitation Act of 1973; and
2. Whether the Charter School was obligated to report Student’s truancy to the New Mexico Children Youth & Families Department (“CYFD”).

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 Individualized Education Program (“IEP”) that was tailored to Student’s individual learning needs, in violation of 34 C.F.R. §§ 300.323–300.328 and 6.31.2.11(B) NMAC;
2. Whether the Charter School failed to revise Student’s IEP based on medical information provided by Parent, in violation of 34. C.F.R. § 300.324(b)(1)(ii)(C) and 6.31.2.11(B)(1) NMAC;
3. Whether the Charter School failed to afford Parent an opportunity to examine Student’s records, in violation of 34 C.F.R. § 300.501(a) and 6.31.2.13(B) NMAC; and
4. 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

Fall 2022 Semester

1. Student is in the 11th grade at the Charter School and he is eligible for special education under the classification of Other Health Impairment (“OHI”).
2. Before the start of the 2022-2023 school year, Student was diagnosed with an eye disorder called Idiopathic Anterior Uveitis. This chronic condition results in inflammation of the eye.
3. Student’s IEP dated March 18, 2022, was in place when Student began their junior year. Services included 186 minutes a day of group instruction in Language Arts and 84 minutes per day of group instruction in Math.
4. Neither the Accommodations/Modifications nor the Medical Information sections of this IEP reference student’s eye condition and how to accommodate it.
5. Due to the severity of symptoms associated with the condition, Parent provided the Charter school a Certificate of Medical Necessity on August 25, 2022. Charter School asserts that they received this certificate on September 27, 2022.
6. The certificate, authored by Student’s treating pediatric rheumatology nurse practitioner, requests that Student be excused for frequent absences because Student cannot attend school and fully participate when there are flare-ups of symptoms.
7. This document recommended an evaluation of Student for Section 504 eligibility so that the Charter School could create a plan to provide Student with accommodations.
8. Furthermore, the certificate also contained a list of proposed accommodations such as allowing for make-up work to be completed within one week of Student being absent.
9. Parent provided Charter School with additional medical documentation on October 25, 2022 and January 26, 2023.
10. Throughout the Fall 2022 semester, the Charter School did not provide the accommodations recommended in the Certificate of Medical Necessity (e.g., excusal of absences and provision of make-up work). Nor was an IEP meeting convened to review the certificate and consider revisions to the IEP.
11. As a general matter, Special Education Coordinator reported that Student could do make-up work but they had to request such work from the teachers and that the teachers would not initiate such opportunities.
12. Meanwhile Student began accumulating absences from school due to symptom flare-ups and the side effects of a specific medication (increased body temperature, nausea, headache, and vomiting) prescribed to treat the condition.
13. Student accrued 35 school day absences in the Fall 2022 semester.

14. On December 6, 2022, Parent and Charter School staff met with each other to address Student's lack of attendance. An attendance contract was proposed but the parties did not sign the contract. Chief of Schools encouraged Parent to submit medical paperwork to the school nurse so that a school healthcare plan could be developed for Student.
15. Chief of Schools stated that a series of attendance letters were sent to Parent at the beginning of the school year to indicate how Student had accumulated three, five, and seven unexcused absences. Ultimately, the initial attendance interventions were unsuccessful in curtailing Student's unexcused absences which continued into the Spring 2023 semester.
16. Student finished the Fall 2022 semester with four C's and one D+ in his courses.

Spring 2022 Semester

17. The ongoing pattern of absences led the Charter School to issue a "Notification of Credit Loss Due to Absences" to the Parent on February 5, 2023.
18. The notice informed the Parent that Student was at risk of not earning credit for his 2022-2023 courses because Student had missed more than 10% of their instructional days at the Charter School.
19. Another attendance meeting between Parent and the Chief of Schools took place in February 2023. Chief of Schools described how the discussion focused on the risk of Student not earning credit and Parent provided additional information about Student's eye condition. Parties agreed to have Parent notify Charter School of any medical-related absences and Charter School would increase their efforts to ensure make-up work was available to Student.
20. On February 7, 2023, Parent states that Deputy Sheriffs came to her home in response to a habitual truancy report filed by the Charter School with CYFD. This incident de-escalated once Parent showed Deputies copies of Student's medical records and Student discussed their medical condition directly with the Deputies.
21. On February 8, the IEP Specialist (Case Manager) contacted Parent to schedule an annual review IEP meeting. The meeting was scheduled for March 7, but Parent later postponed the meeting and proceeded to file a state complaint.
22. Parent reported issues with obtaining a copy of Student's IEP and transcript from the Charter School.
23. Parent initially called to request a copy of Student's IEP and transcript on February 9. A separate online request was made by Parent on February 14.
24. Charter School asserts that Registrar made transcript available for pick up on February 17 and the Special Education Coordinator emailed a copy of Student's IEP to Parent on March 1.

25. The parties conducted a series of facilitated IEP meetings on March 16, 27, and 31.
26. As a result, Student's IEP was revised to incorporate new accommodations such as Student will not be required to meet the Charter School's 90% attendance rate and Student may complete make-up work within 3 days of an absence.
27. According to the Special Education Coordinator, these new accommodations are implemented by requiring Student's teachers to submit make-up work in each course to a folder which is provided to Student and then Student returns the folder with the completed make-up work.
28. Parent confirms that Student is also doing make-up work in class pursuant to the updated IEP.
29. Both the Special Education Coordinator and the IEP Specialist reviewed the new IEP accommodations with all of Student's teachers prior to implementation. This review was documented in an acknowledgement form signed by the teachers.
30. Services in the revised IEP largely remained the same with 84 minutes per day of group instruction in both Language Arts and Math.
31. Math Teacher and English Teacher described how Student receives specialized instruction within a small group of two to four students in the regular education setting.
32. Charter School produced an Individualized School Healthcare Plan ("ISHP") on March 28, 2023. The plan includes strategies for reducing the risk of ocular inflammation while Student is in school.
33. Student achieved their IEP reading goal, was near proficient in their math goal, the writing goal was not monitored due to absences, there were signs of improvement with the behavior goal, and the success skills goal was not achieved.
34. Benchmark testing shows that Student's proficiency in Algebra slightly decreased whereas reading comprehension increased.
35. Currently, Student has accumulated 60 total school day absences for the 2022-2023 school year.
36. Chief of Schools acknowledged that staff turnover at the Charter School during the 2022-2023 school year may have led to gaps in communication among staff about Student's medical needs and how to address them.
37. IEP Specialist stated that Charter School staff did not perceive Student's medical condition as demanding careful consideration which meant that the Student Assistance Team (SAT) did not review Student's medical records to determine whether revisions to the IEP or creation of a Section 504 plan were warranted.

Discussion and Conclusions of Law

Issue No. 1

Whether the Charter School failed to develop and implement an Individualized Education Program (“IEP”) that was tailored to Student’s individual learning needs, in violation of 34 C.F.R. §§ 300.323–300.328 and 6.31.2.11(B) NMAC.

At the start of each school year, the local educational agency must have an IEP in effect for each special education student. 34 C.F.R. § 300.323(a). Once an IEP is developed, the special education and related services outlined in the document must be made available to the student. 34 C.F.R. § 300.323(c)(2). 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). A District’s actions may not constitute a material failure to implement an IEP if the Student shows academic improvement and staff efforts help Students towards attaining their goals. *A.P. v. Woodstock Bd. of Educ.*, 370 F. App’x 202, 205 (2d Cir. 2010).

The IEP dated March 18, 2022 was in effect when Student began the 2022-2023 school year. This IEP provided services and annual goals to address the Student’s areas of learning needs including math and reading. Interviews with the both the math and reading teachers at the Charter School demonstrate that specialized instruction in a small group setting was provided to Student in accordance with the IEP. However, the IEP did not encompass any information about Student’s eye condition after Parent notified the Charter School via multiple submissions of medical documentation at the beginning of the 2022-2023 school year. The reason this information was not examined by the IEP Team, as explained by the Chief of Schools and IEP Specialist, was due to staff turnover and the perception among staff that Student did not have a serious medical condition. The lapse in coordination among Charter School staff as it related to Student’s new medical condition resulted in the continued implementation of an IEP that did not provide reasonable accommodations for Student’s disability and medical needs. Therefore, the IEP dated March 18, 2022, was initially appropriate but its continued implementation throughout the Fall 2022 semester and the beginning of the Spring 2023 semester was a failure on the part of Charter School to develop a new IEP that accounted for Student’s current needs.

The IEP dated March 16, 2023 was specifically revised to accommodate Student’s chronic eye condition. These accommodations include a waiver of the Charter School’s attendance policy and affording Student opportunities to complete make-up work when absent. Teachers were trained on implementing these accommodations and Parent verified that Student is receiving the accommodations. The new accommodations are implemented by teachers submitting make-up

work to a folder so that Student can collect these materials when absent and return the completed work within three days. For these reasons, the Charter School failed to properly develop and implement an IEP that met the Student's disability-related learning needs until the March 16th IEP was developed.

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

Issue No. 2

Whether the Charter School failed to revise Student's IEP based on medical information provided by Parent, in violation of 34 C.F.R. § 300.324(b)(1)(ii)(C) and 6.31.2.11(B)(1) NMAC.

IDEA and its implementing regulations recommend revising an IEP when a parent provides new information about their child's educational needs. 20 U.S.C. § 1414(d)(4)(A)(ii)(III); 34 C.F.R. § 300.324(b)(1)(ii)(C). Whether new information concerning the child requires revisions to the IEP hinges on whether the information itself would prompt a substantive change to the IEP. *MN on behalf of EN v. Katonah Lewisboro Sch. Dist.*, No. 19-CV-6793 (CS), 2020 WL 7496435, at *12, footnote 19 (S.D.N.Y. Dec. 21, 2020).

The anticipated educational needs of the Student changed when he was diagnosed with Anterior Idiopathic Uveitis. Parent submitted a Certificate of Medical Necessity (and other forms of medical documentation on separate occasions) to the Charter School outlining how this medical condition necessitated accommodations at school such as excusals for absences due to condition-related illness and opportunities to makeup work when absent. Although the Charter School received the documentation outlining the need to adjust attendance and schoolwork policies for the Student at the beginning of the 2022-2023 school year, there was no immediate response from the Charter School to incorporate these accommodations into the IEP. In fact, it was not until the facilitated IEP meetings in March 2023 that these accommodations were added to Student's IEP. This unnecessary delay resulted in Student accumulating unexcused absences related to their medical condition and not receiving an organized means of receiving and completing make up work during these absences. This evidence supports a finding that the Charter School failed to revise Student's IEP after Parent had provided new medical information about the significant changes in Student's needs.

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

Issue No. 3

Whether the Charter School failed to afford Parent an opportunity to examine Student’s records, in violation of 34 C.F.R. § 300.501(a) and 6.31.2.13(B) NMAC.

Any parent of a child with a disability is entitled to inspect and review all education records related to the identification, evaluation, educational placement, and provision of FAPE to the child. 34 C.F.R. § 300.501(a). A reasonable amount of time for Districts to provide parents access to educational records is within 45 days from the date of the request. 34 C.F.R. § 99.10(b).

The facts in this case demonstrate that the Charter School provided Parent with access to Student’s records within a reasonable time. The transcript was made available approximately a week after Parent submitted a request. A copy of the IEP was provided to Parent twenty days following her initial request. The responses from the Charter School were within the 45-day timeframe to provide Parent access to her child’s educational records. Furthermore, these records were made available to Parent prior to the series of facilitated IEP meetings which resulted in Parent having access to specific information that enabled her participation in the IEP process. The record in this case demonstrates that Parent was afforded an opportunity to examine Student’s records.

As to Issue No. 3, the Charter School is not cited.

Issue No. 4

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.

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. “To ensure students receive a FAPE, schools must develop an IEP for all eligible students.” *Beer v. USD 512 Shawnee Mission*, No. 21-2365-DDC-TJJ, 2023 WL 2562416, at *6 (D. Kan. Mar. 17, 2023). “An IEP remains the means by which special education and related services are tailored to the unique needs of a particular child.” *Id.* 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).

The Charter School's failure to revise Student's IEP in light of his new medical condition deprived Student of an appropriate IEP. Had the Charter School initially used the IEP process to review Student's medical information at the time when the Parent submitted the Certificate of Medical Necessity, Student's IEP at the beginning of the 2022-2023 school year would have addressed his educational needs as it related to both his primary disability (Other Health Impairment) and medical condition (Anterior Idiopathic Uveitis). The deprivation of an appropriate IEP is underscored by the fact that the Charter School did ultimately develop an IEP that included information and accommodations for Student's medical needs at the series of facilitated IEP meetings in March 2023.

Additionally, there was a loss of educational opportunity because a component of Student's medical accommodations included make-up work during illness-related absences. As explained by the Special Education Coordinator, Student could request make-up work from teachers but such opportunities for credit recovery during periods of extended absences were not readily offered to Student as part of his accommodations under the existing IEP dated March 18, 2022. The loss of these educational opportunities resulted in Student being at risk of not earning course credit as described in the notice letter sent to Parent on February 5, 2023. It was only after the IEP was revised that Student was exempt from strict adherence to the attendance policy and a coordinated set of activities were put in place to offer Student make-up work. Taken together, the Charter School's failure to timely develop and/or revise the Student's IEP based on medical information provided by the Parent was a procedural violation that constituted a denial of FAPE because it deprived Student of an appropriate IEP and resulted in a loss of an educational opportunity.

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

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. §§ 300.323–300.328 and 6.31.2.11(B) NMAC.	Charter School failed to develop and implement an Individualized Education Program (“IEP”) that was tailored to Student’s individual learning needs.
34. C.F.R. § 300.324(b)(1)(ii)(C) and 6.31.2.11(B)(1) NMAC.	Charter School failed to revise Student’s IEP based on medical information provided by Parent.
34 C.F.R. § 300.101 and 6.31.2.8 NMAC.	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 26, 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 December 29, 2023 and reported to the SED no later than January 12, 2024. 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 26, 2023	Written Assurance Letter/Email	May 26, 2023
2.	The Charter School Special Education Director and the school principal 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 Director has the discretion to include other Charter School or school administrators or personnel in this meeting. The Charter School Director shall be responsible for arranging this meeting with SED.	June 2, 2023	Notes from meeting prepared by the Charter School	June 7, 2023

Step No.	Actions Required by Charter School	Complete Actions By	Documents Required to be Submitted to PED SED	Document Due Date
3.	The Charter School will revise its Student Handbook to require that any documentation of a student's new medical condition that is submitted by a parent (e.g., Certificate of Medical Necessity) will be immediately forwarded to the Special Education Director, student's IEP Specialist, and School Nurse for consideration of developing/revising an IEP and ISHP.	July 31, 2023	Copy of Student Handbook approved by governing board	August 11, 2023
	The revised handbook is subject to PED approval prior to its submission to the Charter School Governing Board for ratification.	June 30, 2023	Copy of Copy of revised Student Handbook for PED review and approval	June 30, 2023
4.	<p>The Charter School shall provide training to ALL instructional and administrative Charter School staff on the following topics:</p> <ol style="list-style-type: none"> 1. Revised Student Handbook provision required in Step 4. 2. Process for all staff to follow if they receive student medical information that may affect a student's ability to learn or attend school regularly. <p>This training may be provided by a Charter School staff member.</p>	September 29, 2023	Submission of proposed trainer and proposed presentation for NMPED approval.	August 18, 2023
			Confirmation of the date of the training.	September 1, 2023
			Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.	October 13, 2023
5.	The Charter School shall provide Student with the following compensatory education:	December 29, 2023	Documentation of delivery/provision of compensatory education services, including logs of services.	Monthly from date of compensatory services plan until the

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>
	<p>a. 25 hours of one-to-one math instruction; and</p> <p>b. 25 hours one-to-one reading instruction.</p> <p>These compensatory services are above and beyond the regular services required by Student’s IEP and may be provided by special education teachers of the Charter School who specialize in literacy and math instruction.</p> <p>The schedule for compensatory services should be developed in collaboration with the parent and can include provisions for services in the summer months. The plan for compensatory education shall be documented in Student’s IEP or through a formal prior written notice. Compensatory education time shall not be counted if Student is unavailable due to an excused absence related Student’s identified medical conditions.</p> <p>If the Charter School, due to staffing or other limitations, is unable to provide the required compensatory education, the Charter School shall contract with a private provider to ensure those services are provided.</p>		<p>Prior Written Notice containing plan for compensatory services.</p>	<p>compensatory education hours are completed.</p> <p>June 9, 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/ Michael W. Gadomski
Michael W. Gadomski, Esq.
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