



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us

ARSENIO ROMERO, PH.D.
SECRETARY OF EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
The MASTERS Program
Case No. C2324-45
May 3, 2024**

This Report requires corrective action. See pages 18-19.

On March 6, 2024, a complaint was filed with the New Mexico Public Education Department's (NMPED) Office of Special Education (OSE) 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 OSE 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 joint complaints and supporting documentation from complainants;
- 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 Complainants, Head of School, and Special Education Coordinator; 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 complainants: (1) whether the Charter School committed any legal violations concerning gifted students; (2) whether the Charter School violated Section 504 of the Rehabilitation Act of 1973; (3) whether the Charter School violated the Americans with Disabilities Act; and (4) whether the Charter School committed any legal violations concerning their handling of personnel matters.

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 conduct child find of students suspected of having disabilities, in violation of 34 C.F.R. § 300.111 and 6.31.2.10(A) NMAC;
2. Whether the Charter School failed to provide qualified staff to implement students' IEPs, in violation of 34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC;
3. Whether the Charter School failed to include mandatory meeting members at IEP meetings, in violation of 34 C.F.R. § 300.321(a) and 6.31.2.7(B)(11) NMAC;
4. Whether the Charter School failed to make IEPs accessible to staff and inform staff of their specific responsibilities related to implementing students' IEPs, in violation of 34 C.F.R. § 300.323(d) and 6.31.2.11(B) NMAC;
5. Whether the Charter School failed to properly develop students' IEPs, in violation of 34 C.F.R. §§ 300.324–300.328 and 6.31.2.11(B) NMAC;

6. Whether the Charter School failed to implement students' IEPs, in violation of 34 C.F.R. § 300.323(c) and 6.31.2.11(B) NMAC;
7. Whether the Charter School failed to educate students in the least restrictive environment, in violation of 34 C.F.R. § 300.114(a) and 6.31.2.11(C) NMAC;
8. Whether the Charter School denied parental participation in the IEP process, in violation of 34 C.F.R. § 300.501(b)–(c) and 6.31.2.13(C) NMAC;
9. Whether the Charter School failed to abide by IDEA disciplinary procedures when responding to misconduct by students with disabilities or students suspected of having disabilities, in violation of 34 C.F.R. §§ 300.530–300.537 and 6.31.2.11(F) NMAC; and
10. Whether the Charter School's actions and/or omissions towards the students 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

Introduction

1. The Charter School is a state authorized charter school serving high school students.
2. Approximately 38 students at the Charter School are identified as eligible for special education.
3. Among the services at the Charter School are an Academic Lab (which functions as a resource room overseen by a Special Education Teacher) and a Learning Lab (which is primarily used by students as either a study hall or an alternative testing site).
4. The Charter School also enables students to access a college campus educational setting as a means for preparing for post-secondary life.

Accessing IEPs

5. At the beginning of the 2023-2024 school year, the Charter School began transitioning to PowerSchool as its new student information system.
6. This shift came with a series of short-term measures to ensure that staff had access to students' IEP information.
7. On August 17, 2023, the Charter School Special Education Director set up a Google Drive folder (entitled "SPED/504 Accommodations") containing students' IEP accommodation pages for staff to implement.

8. Both Complainants (hereinafter Complainant A and Complaint B) claimed they had difficulty finding information about their students' IEPs on the Google Drive folder.
9. Complainant B reported that they did not receive a roster of Special Education students from the Charter School at the start of the school year. Complainant B further explained that not all of their student's IEPs or accommodation information were accessible in the Google Drive folder set up by the Charter School.
10. Complainant A confirmed that special education student information was hard to find on the Google Drive folder or that student information was missing from the folder.
11. The Charter School response to the complaints states that the Google Drive folder had subfolders for students across 9th to 12th grades which all contained IEP accommodation pages of the IEPs.
12. The Special Education Director described the Google Drive folder as a piecemeal approach until PowerSchool was set up.
13. As the Charter School began using PowerSchool in October 2023, the Special Education Director had to transfer records over to this program which included uploading or recreating IEPs onto the new system.
14. The transfer of files to PowerSchool meant staff could not use PowerSchool initially to access students' IEPs. Both Complaints A and B confirmed the limited access to records when the Charter School started using PowerSchool in October 2023.
15. Complainant B explained that she and other staff were not as familiar with PowerSchool and needed training to use it, yet this training was not provided.
16. PowerSchool continued to have glitches. Accordingly, the Special Education Director created a spreadsheet with hyperlinks in January 2024 so that staff could have easier access to IEPs and related information.
17. Yet Complainant A said this spreadsheet system was still difficult to navigate because information was not readily available to confirm the existence of an accommodation if a student was requesting it (such as using the Learning Lab for independent study or asking for an alternative test site).

Child Find and Discipline

18. Complainant B brought forth allegations that the Charter School failed to reasonably identify three students (hereinafter Students 1, 2, and 3 respectively) as students suspected of having disabilities and that these students were inappropriately disciplined.
19. The Charter School Head of School explained each student's situation during the investigation interview process.

20. Student 1 is a 10th grade student who transferred to the Charter School this year. At the start of school, the Charter School was not aware of Student 1's special education status based on the enrollment paperwork and conversations with student's mother.
21. About a month after the start of the 2023-2024 school year, the Special Education Director learned that Student 1 had an IEP at their previous school which prompted the Charter School to request a copy of the IEP and start implementing it as a transfer IEP.
22. There was also a separate non-special education matter involving Student 1 that occurred around December 2023. Based on the behavior of Student 1 in relation to this incident and student's perceived educational needs in the classroom, the Head of School sought consent for additional testing of Student 1 to evaluate in all areas of suspected disability. This testing was completed. Student 1 had an IEP Team meeting on April 2, 2024 to review the evaluation and revise their IEP.
23. Head of School denies any allegation that they were seeking to send Student 1 to another school due to the non-special education matter.
24. Student 2 displayed behavioral needs (disruptive in class) and engaged in forms of cyberbullying.
25. The Charter School implemented behavioral supports for Student 2 in response to their pattern of behaviors.
26. Head of School, as an intervention strategy, suggested Student 2 visit other local public high schools to ascertain whether he may prefer to no longer attend the Charter School. After Student 2 visited the public high school, he reaffirmed his commitment to attending the Charter School.
27. Based on student's observed needs, the Head of School recommended that Student 2 receive a Section 504 plan. The mother of Student 2 agreed with this proposal and Student 2 now receives accommodations which include accessing the Learning Lab for additional educational support.
28. Student 2 did have to stay home two days until parent-teacher meetings could be held to address behaviors but these penalties did not result in a disciplinary change in placement triggering procedural safeguards.
29. Student 3 also presented with disruptive behaviors and was involved in the same cyberbullying incident.
30. Head of School discussed how the Charter School held a group mediation session among the different students implicated in the cyberbullying incident.
31. Additionally, the Head of School talked with Student 3's parent about whether Student 3 qualified for a Section 504 plan. At the time of this conversation the parent declined to go forward with pursuing a Section 504 plan for Student 3.
32. Similar to Student 2, Student 3 was only suspended for one or two days this school year.

33. Head of School reported that Student 3 has shown progress at school as evinced by an improvement in grades in their classes.

Qualifications of Staff

34. Complainant A alleged that the Charter School's use of the Learning Lab was inappropriate because it was "not consistently staffed by qualified content specialists."
35. During their investigation interview, the Special Education Director said that the Learning Lab was staffed by himself, Director of the Academic Lab, a Special Education and Resource Math teacher, and an Educational Assistant. The Learning Lab was also colloquially referred to by as "[Special Education Director]'s Room."
36. The Special Education Director is licensed with the following: (a) Level Three-B: Pre K-12 Administrative; (b) Level Three-A Instructional Leader: Pre K-12 Special Education; and (c) Level Three-A Instructional Leader: Pre K-12 Specialty Area.
37. The Director of the Academic Lab is licensed with the following: (a) Level Three-A Instructional Leader: 6-12 Secondary; (b) Level Three-B: Pre K-12 Administrative; and (c) Level Three-A Instructional Leader: Pre K-12 Special Education.²
38. The Special Education and Resource Math Teacher is licensed with the following: (a) Level Three: Pre K-12 Educational Assistant; (b) Limited Level One Extension: Pre K-12 Special Education; and (c) Limited Level One Extension: Pre K-12 Specialty Area.
39. The Educational Assistant is licensed in the following: (a) Level Three: Pre K-12 Educational Assistant; and (b) Level One Pre K-12 Substitute Teacher.
40. Pursuant to the Charter School's response and the interview of the Special Education Director, the Learning Lab is not a classroom (teaching specific subjects) but rather a place for students to receive academic support (or serve as an alternative test site as necessary).

Student Sample

41. As part of the investigation, a sample of twelve special education students were selected for record review.
42. As the Special Education Director explained in their interview, when IEPs were transferred to PowerSchool during the 2023-2024 school year, the listing of services in the IEPs took on unconventional terms such as collaboration, skill building, academic lab, tutoring, and individual IEP support.

² While less relevant to this investigation because the Charter School operates as a high school, Director of Academic Lab also has a Level Three-A Instructional Leader license in K-8 Elementary.

43. An IEP listing “collaboration” as a service meant in practice that a student would receive tutoring in the Academic Lab (i.e. Resource Room). Individual IEP support was not so much a service as a marker on the document so that a student’s accommodations would populate in PowerSchool for teachers to access.
44. Another unique feature of the sample IEPs were accommodations that permitted a student to use an alternative testing site or the Learning Lab (during individual work time) “upon student request.”
45. At the same time, the Special Education Director was diligent in having parent sign off on any amended copies of IEPs throughout the 2023-2024 school year and the records from the student sample showed parents taking no issues with either service or accommodation amendments.
46. The use of these accommodations by two Students (hereinafter Students 4 and 5 respectively) created tension in Complainant A’s classroom.
47. Complainant A took issue with how Students 4 and 5 would elect to go the Learning Lab as a means of school task avoidance.
48. In contrast, Special Education Director explained that the “upon student request” language was inserted into these accommodations to assist these students with self-advocacy via communicating their needs. When asked if either Student 4 or 5 had tried to exploit these accommodations to avoid classwork, Special Education Director stated that he had addressed this concern directly with Student 5 and there were no further issues.
49. In December 2023, the Special Education Director held several IEP Team meetings to review and revise accommodations in students IEPs. Some of these meetings were held in response to concerns from Complainant A about how the “upon student request” accommodations could be used by students to avoid classwork. Special Education Director said the IEP Team meetings allowed discussions about how to implement accommodations across settings and clarify the language for accommodations between state testing and in-class.
50. A further review of the sample student records showed that most students were generally integrated into regular education class settings throughout the school day while the Academic Lab could provide specialized instruction to students for part of the school day. For students with more severe intellectual or developmental disabilities, the Charter School made a point to bring in additional staff with these students so that they were included in regular education academic classes (these services were listed as “Math Inclusion, “English Inclusion,” or “Reading Inclusion”).
51. Complainant A alleged that their math courses had a disproportionate number of special education students.

52. The Charter School responded to this allegation by claiming that Complainant A had four teaching assistants assigned to their classes to assist with Complainant A's instruction and students' learning in class.
53. In the second half of the 2023-2024 school year, the Charter School chose to transfer Student 4, Student 5, another Student (hereinafter Student 6), and three other students from Complainant A's Geometry class to another class called "Alternative Geometry." This decision was made by the Head of School in response to parent concerns about Complainant A objections to implementing accommodations (including those triggered at the student's request) in the students' IEPs. The Special Education Director explained that this course was taught by a qualified teacher (who has a Level One Alternative: Grades 6-12 Second license with an endorsement in Mathematics) and that the math curriculum mirrored that of Complainant A's course.
54. Among the materials submitted in the student sample were several "letters of support" from parents of special education sample students describing their gratitude for how the Charter School has delivered special education programming, services, and accommodations to their children.
55. The Prior Written Notices from the student sample show parents participating in IEP Team meetings throughout the 2023-2024 school year. The Charter School also convened IEP Team meetings (in addition to annual review meetings) when parents raised concerns about their child's special education.
56. Students in the sample were generally making progress in their education. Generally, grades ranged from A's to B's with some student having a failing grade in a class. It should be noted that the email records from the sample show extensive intervention from the Special Education Director to work with students who were at risk of failing a course.
57. IEP Goal Progress reports revealed a general pattern of students making sufficient progress on their goals.
58. Benchmark academic testing also showed most students having grade level academic skills.

IEP Meetings

59. The Charter School has a practice of using Google Forms to collect teacher input on students such as their present levels of academic achievement and other current data.
60. Complainant A stated that they filled out the forms thoroughly for each student in preparation for IEP Team meetings. However, Complainant A claimed that they never saw any of their input from the forms incorporated into IEPs following IEP Team meetings.

61. Complainant B took issue with providing teacher input with the Google Form because it did not allow for an exchange of ideas among educators if the person filling out the form was not invited later to the IEP Team meeting.
62. The Charter School proactively addressed the gaps in the teacher input Google form system this school year by having outside consultants work with teachers to complete the form and inviting all teachers or staff who work with a student to that student's IEP Team meeting (with substitute teachers in place to cover the classes during the meeting).
63. A review of the student sample showed before the shift in policy (as described in the preceding paragraph) the Charter School regularly had the following staff person attend the IEP Team meetings: (a) Student; (b) Parent; (c) LEA Representative (typically the Head of School or Special Education Director); (d) Special Education Teacher; and (e) Regular Education Teacher.
64. Special Education Director clarified that the Special Education Teacher and Regular Education Teacher historically invited to the IEP Team meetings were those who taught in subjects that the student had deficits in.

Discussion and Conclusions of Law

Issue No. 1

Whether the Charter School failed to conduct child find of students suspected of having disabilities, in violation of 34 C.F.R. § 300.111 and 6.31.2.10(A) NMAC.

Child find is a legal obligation under IDEA in which a school must proactively identify, locate, and evaluate students who are suspected of having a disability and may need special education or other academic supports. *D.T. by & through Yasiris T. v. Cherry Creek Sch. Dist. No. 5*, 55 F.4th 1268, 1273–74 (10th Cir. 2022). The child find duty is triggered when a school has a reasonable suspicion that a child has a disability and must evaluate that child within a reasonable time thereafter. *J.M. v. Summit City Bd. of Educ.*, 39 F.4th 126, 137 (3d Cir. 2022). A delay in completing the identification of a child with disability is reasonable if the school takes proactive steps towards compliance with its child find duties. *Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781, 793 (5th Cir. 2020).

Here, the Charter School met its child find obligation. For Student 1, the school was prompt in obtaining student's IEP (after being put on notice of student's status as a special education student) from their prior school and implementing it shortly thereafter. Based on the student's displayed needs in school and a separate non-special education matter, the Charter School took

the initiative to reevaluate Student 1 to better understand their current disability-related needs. This reevaluation was then reviewed at an IEP Team meeting and the IEP was revised accordingly.

The educational needs of Students 2 and 3 were addressed by a system of increasing interventions by the Head of School. Student 2 ultimately received a Section 504 Plan that provides structured academic in the Learning Lab and accommodations to ensure they access their access similar to non-disabled peers. The Charter School also attempted to identify Student 3 through the Section 504 process but did not go forward with identification due to the preference of the parent. These three cases show the Charter School took reasonable efforts to timely identify students suspected of having disabilities.

As to Issue No. 1, the Charter School is not cited.

Issue No. 2

Whether the Charter School failed to provide qualified staff to implement students' IEPs, in violation of 34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC.

IDEA and its implementing regulations require special education teachers to meet certain qualifications for providing specialized instruction. 34 C.F.R. § 300.156. Those requirements are that a person has either full state certification as a special education teacher, or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher. 34 C.F.R. § 300.156(c)(1)(i). The same personnel qualification provisions do not permit these certification/licensure requirements to be waived on an emergency, temporary, or provisional basis. 34 C.F.R. § 300.156(c)(1)(ii). It is an IDEA procedural violation if a person serves as a special education teacher without the appropriate qualifications and the students' parents are not informed. *A.W. v. Loudon Cnty. Sch. Dist.*, No. 3:20-CV-76, 2022 WL 4545609, at *11 (E.D. Tenn. Sept. 28, 2022).

The Learning Lab primarily functioned as a study hall for special education students to use either for independent study or as an alternative testing site. The person overseeing this room was a fully licensed special education teacher (the Special Education Teacher) with additional support from three other educators. More importantly, the Learning Lab did not fall along the continuum of special education services because it operated as a general education study hall (albeit with staff trained to provide special education) with no specific academic instruction taking place.

The teacher who provides instruction in the Alternative Geometry class (the program set up by the Head of School to handle several of Complainant A's former students) has a Level One

Alternative: Grades 6-12 Second license with a specific endorsement in math. This class does not require that the teacher be a qualified special education teacher because they are not tasked with providing specialized math instruction. For these reasons, the Charter School provided qualified staff both in the Learning Lab and Alternative Geometry classroom.

As for Issue No. 2, the Charter School is not cited.

Issue No. 3

Whether the Charter School failed to include mandatory meeting members at IEP meetings, in violation of 34 C.F.R. § 300.321(a) and 6.31.2.7(B)(11) NMAC.

An IEP team consists of mandatory members who must attend an IEP meeting. 34 C.F.R. § 300.321. Those mandatory members include the parents, one regular education teacher, one special education teacher, a school representative (who is qualified to provide specially designed instruction, is knowledgeable about general education curriculum, and is knowledgeable about the availability of resources), an individual capable of interpreting evaluation results (which may be one of the preceding members), other individuals with knowledge of the child (a discretionary member), and the child (as appropriate). 34 C.F.R. § 300.321(a)(1)–(7).

Here, the Charter School maintained the appropriate quorum of mandatory members at students' IEP Team meetings. The Charter School includes their high school students at the meetings with their parents. The Head of School or Special Education Director serves as the LEA Representative and at least one Special Education Teacher and one Regular Teacher were present for IEP meetings (which was usually determined by which teachers were working with the student to address their disability-related deficits). The Charter School then changed their meeting policy this school year to expand IEP Team meeting invitations to every teacher a student has with support from substitute teachers to facilitate this increase in teacher participation. Based on this evidence, the Charter School has included IEP Team mandatory members at all times relevant to this investigation.

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

Issue No. 4

Whether the Charter School failed to make IEPs accessible to staff and inform staff of their specific responsibilities related to implementing students' IEPs, in violation of 34 C.F.R. § 300.323(d) and 6.31.2.11(B) NMAC.

An IEP must be accessible to a special education student's regular education teacher, special education teacher, relate service provider, and any other service provider responsible for implementing the document. 34 C.F.R. § 300.323(d)(1). The lack of training on a school's online IEP system which results in difficulties accessing a student's IEP documents constitutes an IDEA violation. *Reynolds Sch. Dist. 7*, 116 LRP 40139 (SEA OR Aug. 19, 2016).

Here, the Charter School failed to make IEPs accessible to their staff during the 2023-2024 school year. Both Complainants presented persuasive oral evidence and supporting email documentation to show that access to their students' IEPs, especially their accommodations or modifications, were hampered by a series of irregular systems for storing special education documents. This evidence is further supported by the fact that the Charter School went through an ever-changing structure for providing IEP document access that went from a Google Drive folder, a staggered roll-out of PowerSchool, and a spreadsheet with hyperlinks to access student documents. Therefore, Complainants' evidence and the inconsistency in the Charter School's approach to providing IEP access supports a finding that the Charter School failed in their responsibility for enabling IEP accessibility and informing staff of their IEP responsibilities.

As for Issue No. 4, the Charter School is cited and corrective action is required.

Issue No. 5

Whether the Charter School failed to properly develop students' IEPs, in violation of 34 C.F.R. §§ 300.324–300.328 and 6.31.2.11(B) NMAC.

When developing an IEP, a school must encompass various information about the student's needs as well as a description of the special education, related services, and supplemental aides and services to be provided to the student. 34 C.F.R. § 300.320(a). The description of services is critical to the adequacy of an IEP because the design of the services is meant to meet the annual IEP goals for addressing a student's disability-related learning deficits. *Nicholas H. through Jeffrey H. v. Norristown Area Sch. Dist. of Norristown, PA*, No. 16-CV-1154, 2017 WL 569519, at *4 (E.D. Pa. Feb. 13, 2017). However, the lack of specificity in describing services may be harmless where the parent in fact understands the offer of services (thereby preserving a parent's right to

participate in the IEP development process). *B.M. ex rel. R.M. v. Encinitas Union Sch. Dist.*, No. 08CV412-L JMA, 2013 WL 593417, at *12 (S.D. Cal. Feb. 14, 2013).

Several IEPs in the student sample had a description of services that were not plainly obvious as to what those services entailed. Examples of these services were collaboration, skill building, academic lab, tutoring, and individual IEP support. The general ambiguity of these descriptions constitutes a procedural IDEA violation because they do not actually describe the service a student receives in practice. However, the use of these terms in IEPs did not deny the sample students an educational benefit because the Charter School implemented the described services (students with collaboration, academic lab, and tutoring equating to resource room or individual IEP support ensuring a student received their accommodations in class). The records also show parents understanding the contents of their IEPs as evinced in prior written notice and correspondence associated with IEP amendments (thereby enabling parental participation). Consequently, the unclear service descriptions in the IEPs were an IDEA procedural violation but did rise to level of a substantive FAPE denial.

As to Issue No. 5, the Charter School is cited and corrective action is required.

Issue No. 6

Whether the Charter School failed to implement students' IEPs, in violation of 34 C.F.R. § 300.323(c) and 6.31.2.11(B) NMAC.

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).

The weight of the evidence from this investigation supports a finding that the Charter School diligently sought to implement each of their students' IEPs. There are instances where Complainants may not have implemented accommodations or modifications of students' IEPs due to difficulties accessing that information in the Charter School's record system. However, there is nothing in the record that shows any short gaps in the implementation of students' IEPs was a material failure especially when the Charter School took measures (e.g., amending IEPs, moving students to another class) to ensure the continuity of IEP implementing throughout the 2023-2024 school year. Therefore, the Charter School did not fail to materially implement students' IEPs.

As to Issue No. 6, the Charter School is not cited.

Issue No. 7

Whether the Charter School failed to educate students in the least restrictive environment, in violation of 34 C.F.R. § 300.114(a) and 6.31.2.11(C) NMAC.

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

The structure of the Charter School has very few self-contained (special education students only) classroom settings. The Academic Lab, which functions as a Resource Room, is limited to special education students. Learning Lab is a mixture of students with disabilities and non-disable peers in need of additional studying supports. The Alternative Geometry Class was set up with special education students but this was only done after the Charter School exhausted strategies to encourage Complaint A's implementation of student accommodation in their own geometry classroom. Even those students with more intensive disability-related learning needs were educated in regular classroom settings with supports from additional staff. This information in the records supports a finding that the Charter School consistently strove to keep their special education students in the least restrictive environment by promoting the integration of special education students in general education settings.

As to Issue No. 7, the Charter School is not cited.

Issue No. 8

Whether the Charter School denied parental participation in the IEP process, in violation of 34 C.F.R. § 300.501(b)–(c) and 6.31.2.13(C) NMAC.

A parent has a general right to participate in the IEP process which includes identifying a student with a disability, evaluation, educational placement, and the provision of FAPE. 34 C.F.R. § 300.501(b). Participation must also be meaningful which means affording parents an opportunity to express their views and staff considering their input with open minds. *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004).

There is nothing in the record (prior written notices or emails with parents) that shows the Charter School denying parents their right to meaningfully participate in their child's IEP meetings. In fact, the records from the students sample show active engagement and correspondence between the Charter School staff and families to reach a consensus on how best to craft the student's IEP. Furthermore, when parents raised concerns about how an IEP was being implemented, either IEP meetings were convened or IEP amendments proposed to address those issues. As follows, the Charter School did not deny parents from meaningful participation in the IEP process.

As to Issue No. 8, the Charter School is not cited.

Issue No. 9

Whether the Charter School failed to abide by IDEA disciplinary procedures when responding to misconduct by students with disabilities or students suspected of having disabilities, in violation of 34 C.F.R. §§ 300.530–300.537 and 6.31.2.11(F) NMAC.

IDEA contains specific procedural safeguards for disciplining students with disabilities. 34 C.F.R. §§ 300.530–300.537. There are also limitations on disciplining students where the school is deemed to have knowledge of a student's disability. 34 C.F.R. § 300.534(a). In these instances, the student is afforded the same protections regarding discipline (such as a manifestation determination review). *Id.*

Here, the Student 1, 2, and 3 all arguably displayed patterns of behavior which brought forth concerns from staff to the Charter School administrators that could deem the Charter School to have knowledge that the students were children with disabilities. In each case, the Charter School sought to either obtain a prior IEP (Student 1) or seeking testing to determine student's eligibility under Section 504 or IDEA (Students 2 and 3). Nor did any of these students' behaviors

rise to a level of suspension which may have triggered the need to convene a manifestation determination review meeting. Due to the Charter Schools' proactive measures to fulfill its child find duties, there was no failure to abide by IDEA disciplinary procedures.

As to Issue No. 9, the Charter School is not cited.

Issue No. 10

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

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

The two procedural IDEA violations were IEP inaccessibility and IEP development. While the issue of accessibility to IEPs appears to have impacted some staff in properly obtaining student information, there is no evidence that this resulted in the loss of an educational opportunity for any student within the sample. Similarly, the deficiencies in developing clear descriptions of services in the IEPs did not result in substantive harm to either child or parent. For these reasons, neither IDEA procedural violation rose to the level of a FAPE denial.

Substantively, the IEPs were designed with specific services, supports, and accommodations to enable each student's educational progress. This conclusion is supported by the overall pattern of academic success as captured through good grades, sufficient IEP goal progress, and grade level results from benchmark testing. Consequently, the IEPs were sufficient to provide students with a free appropriate public education.

As to Issue No. 10, the Charter School is not cited.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.323(d) and 6.31.2.11(B) NMAC.	The Charter School failed to make IEPs accessible to staff and inform staff of their specific responsibilities related to implementing students' IEPs.
34 C.F.R. §§ 300.324–300.328 and 6.31.2.11(B) NMAC.	Charter School failed to properly develop students' IEPs.

Required Actions and Deadlines

By May 10, 2024, the Charter School's Special Education Director must assure the OSE in writing that the Charter School will implement the provisions of this Corrective Action Plan (CAP). The OSE 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
 Office of Special Education
 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 OSE 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 OSE.

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 OSE 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 30, 2024 and reported to the OSE no later than September 6, 2024. All documentation submitted to the OSE 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 OSE</u>	<u>Document Due Date</u>
1.	As described above, the Charter School will submit a written assurance to the PED OSE Corrective Action Plan (CAP) Monitor that it will abide by the provisions of this CAP.	May 10, 2024	Written Assurance Letter/Email	May 10, 2024
2.	The Charter School Head of School and Special Education Director shall meet with the PED OSE Education Administrator assigned to the Charter School and the PED OSE 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 has the discretion to include other school administrators or personnel in this meeting. The Charter School Special Education Director shall be responsible for arranging this meeting with the OSE CAP Monitor.	May 17, 2024	Notes from meeting prepared by the Charter School.	May 17, 2024

Step No.	<u>Actions Required by Charter School</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
3.	<p>The Charter School shall conduct a review of all IEPs in collaboration with staff from Regional Education Cooperative 6's (REC 6) IEP Project Team.</p> <p>The Charter School shall ensure that all requested IEP related documents are made available to the REC 6 IEP Project Team.</p> <p>The review shall include, at a minimum, availability of IEPs among relevant staff at the Charter School and accurate service descriptions.</p>	June 14, 2024	Report/Notes regarding recommendations arising from REC 6 review of IEPs.	June 21, 2024
4.	The Charter School shall arrange for REC 6 IEP Project Team to provide all recommended training(s) to Charter School instructional staff (including regular education teachers, special education teachers, special education administrators, and related service personnel) based on their review of IEP review required in Step 3.	August 30, 2024	<p>Confirmation of the date of the training(s).</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 31, 2024, 2024</p> <p>September 6, 2021</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 Gadomski

Michael W. Gadomski, Esq.

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:
Margaret Cage

1D32A08CC33B4F2...
Margaret Cage, Ed.D.

Director, Office of Special Education