



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 PUBLIC EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
Alma d'Arte Charter High School
Case No. 2324-56
July 12, 2024

This Report requires corrective action. See pages 8-11.

On April 16, 2024, a complaint was filed with the New Mexico Public Education Department's (PED) 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 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 District’s compliance with federal IDEA regulations and state NMAC rules;
- interview with Parent on May 24, 2024;
- Charter School Questionnaire completed and returned on July 2, 2024; 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 issues related to alleged violations that occurred prior to April 16, 2024, related to Section 504, or regarding professional conduct of staff.

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 District failed to implement Child Find policies and procedures for the Student, in violation of 34 CFR §300.111 and 6.31.2.10(A) and (D) NMAC.
2. Whether the District’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

1. The Student enrolled at the Charter School in January 2023. The Student was in the ninth grade at the time.
2. At the conclusion of the 2022-23 school year, the Student received poor grades in the majority of their classes. Specifically, the Student had an F in each of algebra, art, biology, culinary intro, and health. The Student had a C in “Platica,” a B in baking, and As in English and PE. In addition, the Student accumulated a total of 89 missed class periods in the five months they were enrolled at the Charter School.
3. The 2023-24 school year began on August 4, 2024.

4. Quarter 1 (Q1) ended on September 22, 2023. The Student received an F in English, Ds in health and chemistry, a C in art, and an A in ceramics. The Student had approximately 37 class absences.
5. Quarter 2 (Q2) ended on December 15, 2023. The Student received Fs in chemistry, art, and health; Ds in world history and print making; and a C in ceramics. The Student had approximately 95 class absences during Q2.
6. Quarter 3 (Q3) began after students returned from winter break on January 4, 2024.
7. On February 6, 2024, the Charter School and Parent had a meeting to discuss the Student's attendance, academic progress, and interventions staff were willing to put in place for the Student. At the meeting, the Parent indicated they had spoken to Charter School staff previously about the Student's medical history and conditions and a plan regarding putting a Section 504 plan (504 plan) in place. The Charter School inquired as to whether medical documentation had ever been previously provided. The Parent indicated they were never asked to provide medical documentation and, shortly thereafter, left the meeting due to rising tempers. Following the meeting, via email, the Charter School requested the Parent sign an attendance contract due to the Student's excessive absences. The Charter School did not request Student's medical documentation nor did it make further comments regarding Section 504 eligibility or special education testing following the meeting.
8. Charter School asserts the attendance contract was the "intervention" to aid Student in their success.
9. On February 12, 2024 the Parent emailed the Charter School's Governing Council regarding the events that led up to February 6, 2024. Parent specifically requested that a 504 plan be put in place.
10. The Governing Council forwarded the email to the Charter School's Chief Academic Officer/Principal. At that time, the Charter School requested the Parent provide the Student's medical documentation.
11. On February 13, 2024, the Parent responded to the Charter School indicating most of the Student's medical information was provided the day before. The Parent also stated a letter diagnosing the Student with severe depression would be forthcoming. On February 14, 2024, the Charter School said once it had all the necessary paperwork they could move forward.
12. Quarter 3 (Q3) ended on March 18, 2024. The Student received Fs in biology, English, and algebra and Ds in world history and art. The Student had approximately 95 class absences during Q3.
13. The medical documentation provided to the Charter School prior to March 22, 2024 includes the following:

- a. Documentation regarding dizziness and a diagnosis of fatty liver disease from September 2021;
 - b. Documentation regarding fatty liver disease from November 2021;
 - c. Documentation confirming presence of fatty liver as of February 2023;
 - d. Documentation regarding an eye exam in April 2023 diagnosing Student with retinal degeneration; and
 - e. Documentation regarding an injury to Student's ankle in February 2024.
14. On March 22, 2024, the Charter School and the Parent met and discussed Student's schedule and the development of a 504 plan. An audio recording of the meeting was provided. Relevant discussion heard on the recording includes:
- a. Charter School states Student qualifies for a 504 plan for their vision problems.
 - b. Charter School suggests Student be placed on a "compressed schedule" to which Parent agrees. The suggested schedule was from approximately 10:00am to 2:00pm.
 - c. Charter School states Student is often found sleeping around the school building or in class.
 - d. Charter School requests the medical documentation diagnosing Student with depression. Parent indicates the documentation was previously provided but they will provide it again the following Monday.
 - e. Charter School says it will implement a modified schedule for two weeks and then a 504 plan meeting can be held to develop a 504 plan.
15. As of March 25, 2024, the Student was placed on a modified schedule. The Student was to start their school day at 10:15am, attend math class until 11:35am, go to lunch until 12:22pm, and then attend English until 1:37pm. At that time, the Student's school day was over.
16. Parent filed this complaint on April 16, 2024.
17. On April 16, 2024 at 3:51pm, the Charter School emailed Parent asking if they were available to meet on April 17, 2024 at 10:00am for a "504 intake meeting." Parent indicated they were unable to make it because they had no notice of the meeting. A meeting was never rescheduled.
18. As of early May, the Student had an F in English and a D in algebra. Charter School asserts Student's poor grades are a result of attendance.
19. Charter School was asked what it did to assist Student in obtaining better grades. It stated the modified schedule, attendance contract, the attempt to schedule a 504 meeting, make-up work, and extended due dates were the attempted interventions to aid Student.
20. As of May 22, 2024, Student has approximately missed 40 class periods during quarter 4. In total, while on a modified schedule, Student missed 12 full days and 12 half days.

21. In total, Student had over 250 missed class periods during the 2023-24 school year. Charter School asserts Parent never provided medical documentation or a doctor's note justifying the absences.
22. Parent asserts a letter dated February 8, 2024 that diagnosed Student with Major Depressive Disorder and Anxiety Disorder by a licensed clinical social worker as early as May 2023 was provided to Charter School. It is unclear whether Charter School has a record of the letter or not.
23. As of the date of this report, there was no evidence that the Charter School has requested parent consent to evaluate Student under Section 504 or the IDEA or that a 504 plan has been developed.

Discussion and Conclusions of Law

Issue No. 1

Whether the District failed to implement Child Find policies and procedures for the Student, in violation of 34 CFR §300.111 and 6.31.2.10(A) and (D) NMAC.

The IDEA mandates that states develop and implement adequate procedures to identify, locate, and evaluate children with disabilities who may need special education and related services. 34 C.F.R. § 300.111(a) and 6.31.2.10(A) NMAC.

An essential element of child identification is the special education referral, which places upon districts an affirmative obligation to evaluate a child where there is (1) a reason to suspect a qualifying IDEA disability and (2) a need for special education and related services. 34 C.F.R. § 300.111(c). A student suspected of having a disability shall be referred for an evaluation without undue delay if the student "demonstrates an obvious need for special education." 6.31.2.10(B)(3) NMAC. The threshold for suspecting a disability is relatively low. *Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001). The actions of a district in terms of whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of the information that it knew, or had reason to know, at the relevant time. *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). It should not be based on hindsight. *Id.*

Excessive absences may trigger a district's child find duties if there is reason to believe the absences are linked to a disability and a need for services. *See e.g., Broward County (FL) Sch. Dist.*, 61 IDELR 265 (OCR 2013).

During the 2023-24 school year, Student's number of absences increased nearly each quarter. In addition, Student's grades got progressively worse. As early as February 2024, Charter School

was provided with medical documentation diagnosing Student with fatty liver disease and retinal detachment and was aware of a possible diagnosis of depression. Student's chronic absenteeism, poor grades, and medical diagnoses, triggered Charter School's child find duty and it should have initiated the process to evaluate Student for special education. Instead, and without a comprehensive evaluation, Charter School shortened Student's school day and offered minimum interventions to assist Student in accessing the general curriculum or benefitting from the academic program provided by the school. Moreover, Charter School made it clear Student had to attend school when on a shortened school day. Student continued to miss a significant amount of school and Charter School did nothing to address the absenteeism. The Charter School's undue delay in identifying and evaluating Student's need for special education and related services constitutes a failure to implement child find obligations, in violation of IDEA and state special education rules.

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

Issue No. 2

Whether the District'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 FAPE. 34 C.F.R. § 300.101; 6.31.2.8 NMAC.

The failure to conduct an evaluation is a procedural violation. *See e.g., District of Columbia Pub. Schs.*, 118 LRP 35382 (SEA DC 07/13/18).

A procedural violation results in a denial of FAPE only if it: (1) impedes the child's right to FAPE; (2) significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of FAPE; or (3) causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Charter School's failure to evaluate Student has potentially impeded Student's right to FAPE. Moreover, if Student is determined eligible for special education and related services, Student may have suffered a deprivation of educational benefits.

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

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 CFR §300.111 6.31.2.10(A) and (D) NMAC	The Charter School failed to evaluate Student after its child find duty was triggered.
34 C.F.R. § 300.101 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 July 22, 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:

Ms. Yaling Hedrick
 Corrective Action Plan Monitor
 Office of Special Education
 New Mexico Public Education Department
 300 Don Gaspar Avenue
 Santa Fe, NM 87501
 Telephone: (505) 795-2571
Yaling.Hedrick@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 November 7, 2024 and reported to the OSE no later than November 21, 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 Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	July 22, 2024	Written Assurance Letter/Email	July 22, 2024
2.	The Charter School Special Education Director and the school principal shall meet virtually with the OSE Education Administrator assigned to the Charter School and the 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 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 virtual meeting with OSE.	July 29, 2024	Notes from meeting prepared by Charter School	August 5, 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>Charter School shall provide a prior written notice that proposes to conduct an initial special education evaluation and seek parental consent for the evaluation.</p> <p>If the Parent refuses to provide consent for the evaluation, then the Charter School will provide a written record of the refusal.</p>	July 29, 2024	<p>Prior Written Notice requesting parental consent to evaluate Student</p> <p>Signed parental consent to evaluate Student or parent’s signed written decision to decline the request to evaluate</p>	<p>August 5, 2024</p> <p>Within 5 days after receipt of consent or decision to decline</p>
4.	<p>Following receipt of parental consent to conduct an evaluation, Charter School shall conduct a comprehensive initial evaluation of Student and issue an evaluation report.</p> <p>Within 15 school days of completing the evaluation report, Charter School shall hold a meeting with Parent to determine Student’s eligibility for special education and related services. The Charter School may utilize a facilitator for this meeting.</p>	<p>Within 45 days of receipt of parental consent</p> <p>Within 15 days of completion of the evaluation report</p>	<p>The completed evaluation report</p> <p>Written Eligibility determination</p>	<p>Within 7 days of completion of the evaluation report</p> <p>Within 7 days after the Eligibility Determination Team Meeting is held</p>
5.	<p>If Student is determined to be eligible for special education and related services, the Charter School shall convene a Facilitated IEP (FIEP) meeting.</p> <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 Charter School.</p> <p>The FIEP meetings shall be held on a date and time that is convenient for the parent. The parent will be</p>	Within 15 days of the Eligibility Determination Team Meeting	<p>1. Invitation to IEP meeting,</p> <p>2. IEP,</p> <p>3. Prior Written Notices, and</p> <p>4. Agenda for IEP team meeting</p>	Within 7 days after the IEP 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 OSE</u>	<u>Document Due Date</u>
	<p>provided with a copy of the IEP and PWN at the conclusion of the FIEP meeting.</p> <p>The Charter School Special Education Director shall participate in the IEP meeting. The Charter School shall also ensure that the IEP team includes, but is not limited to, student, parents, special education teacher, general education teacher, and any related services providers.</p>			
6.	<p>The Charter School will review and, where appropriate, revise its policies regarding Child Find and special education evaluations to explicitly codify its legal obligations to locate, identify, and evaluate all suspected students with disabilities enrolled at the Charter School and to respond to parent requests for evaluations in accordance with the IDEA and state rules.</p> <p>The revised policy is subject to PED approval prior to its submission to its Governing Council for ratification.</p>	October 11, 2024	<p>Copy of revised Council-approved policy</p> <p>Draft of Proposed Policy Revisions for PED approval</p>	<p>October 18, 2024</p> <p>August 30, 2024</p>
7.	<p>The Charter School shall arrange training for school staff (including general education teachers, special education teachers, special education administrators, educational assistants, and related service personnel) to be provided by a person with expertise in special education who is approved by the PED.</p> <p>The training shall address the following special education topics:</p>	September 20, 2024	<p>Submission of proposed trainer and trainer’s resume and proposed presentation for PED 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</p>	<p>August 2, 2024</p> <p>August 16, 2024</p> <p>September 27, 2024</p>

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>
	<p>(1) Child find; Evaluation and Eligibility for Special Education including:</p> <ul style="list-style-type: none"> a. the manner in which Charter School staff become aware, or suspect, that a student is a student with a disability who needs evaluation for special education eligibility; b. requirements of the Charter School when it becomes aware, or suspects, that a student is a student with a disability who needs an evaluation for special education eligibility; c. the Federal and state requirements for responding to a parental request or school referral for a special education evaluation, including the timing of such response and the documentation required; d. eligibility determination requirements of the Charter School after an evaluation is completed. <p>(2) Potential Interventions to address chronic absenteeism, including requirements of the Attendance for Success Act.</p>		<p>those staff not in attendance.</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/ Emily Adams

Emily Adams, 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