



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](http://www.ped.state.nm.us)

MARIANA D. PADILLA  
SECRETARY DESIGNATE OF PUBLIC EDUCATION

MICHELLE LUJAN GRISHAM  
GOVERNOR

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
MASTERS Program (The) Charter School  
Case No. 2425-26  
January 31, 2025**

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

On December 4, 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.<sup>1</sup> 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 Local Education Agency at the request of the PED's independent complaint investigator;

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<sup>1</sup> The state-level complaint procedures are set forth in the federal regulations at 34 C.F.R. §§ 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;
- review of Charter School questionnaire submitted, completed, and returned by Special Education Director on January 10, 2025;
- review of Charter School questionnaire submitted, completed, and returned by Head of School on January 16, 2025;
- interview with Parent on January 14, 2025 and January 17, 2025;
- interview with Special Education Director on January 17, 2025; 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 allegations related to professional or ethical misconduct by a licensed educator or related service provider, or allegations related to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act are not within the jurisdiction of this complaint investigation and, as a result, were not investigated.

### **Issues for Investigation**

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

1. Whether the LEA properly implemented the Student’s individualized education program (IEP), specifically, by providing all special education and related services, supplementary aids and services, and educating Student in the identified least restrictive environment (LRE), pursuant to 34 C.F.R. § 300.323 and 6.31.2.11(B) NMAC.
2. Whether the Student’s change in placement on or around April 2024 was properly determined and in the LRE appropriate for the Student’s needs, pursuant to 34 C.F.R. §§ 300.114 through 300.118; 300.327; 300.501; and 6.31.2.11(C) and 6.31.2.13(C) NMAC.
3. Whether the IEP Team included all required members, consistent with 34 C.F.R. § 300.321(a) and 6.31.2.7(B)(11) NMAC.
4. Whether the LEA ensured the personnel providing special education and/or related services was qualified under the state licensure requirements, pursuant to 34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC.

5. Whether the LEA disclosed Student's personally identifiable information ("PII") without Parent's consent, in violation of 34 C.F.R. §§ 300.622-623 and 6.31.2.13(L) NMAC.
6. Whether the LEA'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. During the 2022-23 school year, Student was enrolled at a different district and had a 504 plan. Due to medical reasons, Student had to take a medical leave from the previous district in which they attended during the spring of 2023. With the belief that Charter School offered a more flexible structure, and concern regarding Student's health, Parent enrolled Student at Charter school for the 2023-24 school year.
2. Prior to the start of the 2023-24 school year, on July 30, 2023, Parent provided Student's previously implemented 504 Plan to Charter School.
3. The 2023-24 school year began on August 14, 2023.
4. Student was placed on a 504 plan at Charter School on September 18, 2023. It is unclear why Student was not placed on a 504 plan at the beginning of the 2023-24 school year.
5. On September 22, 2023, Charter School was provided medical documentation dated September 11, 2023 diagnosing Student with chronic fatigue with associated comorbidities (e.g., attention deficit hyperactivity disorder [ADHD]). Charter School was also in receipt of medical documentation diagnosing Student with ADHD and a neuropsychological evaluation dated July 10, 2015.
6. Special Education Director stated in an email to Parent, "Since [Student's] documents are outdated, we must schedule [Student] to be retested. We can put [Student] on a 504 in the meantime."
7. Student began having increased medical issues during the fall of 2023. By the end of September 2023, Student's absences became much more frequent.
8. On November 4, 2024, Charter School conducted an "Administrative Review of Outside Evaluation." It is unclear why the administrative review was delayed until November. The administrative review consisted of reviewing the medical report dated September 11, 2023 diagnosing Student with chronic fatigue, a March 2018 medical diagnosis of ADHD, a neuropsychological evaluation completed in July 2015, and then-current school-based information. The determination was that Student met the criteria for special education services under the eligibility category of Other Health Impairment (OHI). The IEP team was to hold a meeting to determine eligibility and develop an IEP and/or consider a 504 plan. Despite the recommendation, an IEP meeting was not held following the administrative review. It is unclear why.

9. In December 2023, Charter School suggested homebound services for the spring semester. A meeting was held on December 13, 2024 to discuss the offer of homebound services. In attendance was Head of School, Special Education Director, and Parents. According to Special Education Director, homebound services were offered under the assumption that Student would be found eligible for special education services. At that time, the proposal was that an educator would provide homebound services one to two times a week on Student's online courses for the semester. Following this meeting, Parent was put in contact with the proposed homebound services educator.
10. The first semester of the 2023-24 school year ended on December 15, 2024. Student was absent for either a partial or full day for upwards of 38 school days. In addition, Student received four Fs, two Cs, and one A in the classes in which Student was enrolled.
11. On December 19, 2023, Charter School sent a formal meeting invitation to Parent. The purpose of the meeting was "initial IEP." The attendees listed included, a regular education teacher (e.g., Special Education Director), special education teacher (e.g., homebound teacher [hereinafter referred to as "Charter School Instructor"]), a district representative, and Student. Parents were not included on the list of invited attendees. The meeting was to be held on January 25, 2024.
12. A meeting was held on January 16, 2024. In attendance was Head of School, Special Education Director, Charter School Instructor, Student's private educational therapist, and Parents. A Google calendar meeting invite was sent via email sometime prior to the meeting. At the meeting, homebound services were discussed, in addition to Student's special education eligibility and the to-be-developed IEP. The IEP was unable to be fully developed at the meeting so it was tabled until the next meeting to be held on January 25, 2024.
13. On January 17, 2024, Charter School Instructor provided homebound services for the first time. Charter School Instructor was at Student's residence for approximately 75 minutes. Homebound services were also provided for 75 minutes for each of January 22, 2024; January 24, 2024; and January 29, 2024. Student went to school and received services on January 31, 2024.
14. An IEP meeting occurred on January 25, 2024. In attendance was Head of School, Special Education Director, Charter School Instructor, Student's private educational therapist, and Parent. Discussions continued to develop the IEP. In addition, Parent was informed a special education evaluation would need to be conducted. The IEP meeting continued on February 1, 2024. All the same people were in attendance, in addition to Student.
15. Following the meeting, a draft of the IEP was emailed to Parent on February 7, 2024. On February 11, 2024, Parent requested minor changes to the IEP and also inquired as to extended school year (ESY) services, as the IEP indicated ESY services were not necessary. In response, Special Education Director stated ESY services are for "students with severe

disabilities who are unable to retain information over the summer.” Parent signed the finalized IEP on February 12, 2024.

16. The finalized IEP is dated January 25, 2024. Relevant portions of the IEP include:
- a. Student is not in need of ESY services.
  - b. Student is not on target with graduation requirements. Student will take credit recovery courses to catch up on missing credits.
  - c. Instructional Accommodations and Modifications include, in part:
    - i. Environment: Homebound instruction
    - ii. Instructional Presentation Mode: Student will take self-paced courses
    - iii. All text and curriculum were to be posted digitally and to be accessible at Student’s residence
    - iv. Extra time for assignments and quizzes; reduce work that is not directly related to critical skills; focus on quality over quantity
  - d. Identified Area of Need: Sustained Attention
    - i. Goal: “Within one year, in preparation for post-secondary education and employment, [Student] will independently prepare, start, and complete classroom assignments/activities 75% of the time, as assessed by teacher observation and data.”
  - e. Identified Area of Need: Career Readiness
    - i. Goal: “[Student] will work towards transitioning from Home Bound to in-person classes by next semester to better prepare [Student] for meeting [word omitted] graduation requirements and socialization skills. [Student] will attend 75% of the school week.”
  - f. Special education and related services include:
    - i. Homebound: 180 minutes/week provided by a special education teacher aide (special education setting)
      1. Special Education Director stated homebound services included off-site teacher support designed to help Student stay on track and complete assignments. Student was to have access to the homebound teacher in-person and virtually.
    - ii. Curriculum Planning: 30 minutes/week provided by a special education teacher aide (special education setting)
      1. Special Education Director stated curriculum planning was teacher “preparation for homebound services.” When asked for further details, Special Education Director stated they did not know what was done during “curriculum planning” and to ask Charter School Instructor.
  - g. The “Setting” indicates Student is in the regular classroom 80%+ of the school day.

- h. Progress was to be provided quarterly.
17. The prior written notice (PWN) attached to the IEP includes the following, in part:
- a. Recent evaluation data indicates Student continues to demonstrate a need for special education services to address deficits in sustained attention. Student is eligible for special education services under the category of OHI.
  - b. Student will receive homebound services due to current health issues that impede Student's ability to attend school in person.
  - c. Current evaluations are adequate to determine eligibility for OHI. Additional evaluation is needed to determine the impact of Student's health conditions on neurological functioning in regard to academics and to determine giftedness.
  - d. A review of classroom data does not demonstrate significant regression over breaks. ESY is not appropriate at this time.

Parent was requested to provide consent "to proceed with the action(s) indicated on the [PWN]." Parent affixed their signature on February 12, 2024.

18. On February 12, 2024, Student requested that homebound services be provided later in the day as Student was exhausted at the regularly scheduled time at 10:45 a.m. Charter School Instructor said there was not a later time they were available.
19. On February 15, 2024, Charter School informed Parent that Student was scheduled for evaluation testing on February 19, 2024. Parent requested testing be postponed until additional medical records were provided so that the evaluator could be familiar with Student's medical history. In response, evaluation testing was postponed until April 5, 2024.
20. Between February 12, 2024 and February 29, 2024, Student received 325 minutes of homebound services.
21. It is unclear how many homebound service minutes were provided in March 2024.
22. On April 8, 2024 Charter School Instructor informed Student and Parent that Instructor would no longer be providing homebound instruction to Student as Instructor was needed on campus.
23. On April 11, 2024, Special Education Director emailed Parent stating, in part, they wanted to set up time for Student to come to campus via Uber once a week as Charter School Instructor was no longer able to meet with Student at Student's residence. Parent responded on April 18, 2024 requesting that, in part, the IEP be implemented as written and a new teacher of record be assigned. Special Education Director replied asking when Parent was available for a meeting. A Google calendar invite was sent for a meeting to occur on April 23, 2024.
24. In attendance at the April 23, 2024 meeting was Special Education Director, Charter School Instructor, Head of School, Assistance Head of School, Parents, and Student's private educational therapist. In part, Student's in-person attendance was discussed. No changes were made to the January 25, 2024 IEP nor was a PWN sent at any time following the meeting.

25. Between April 5, 2024 and April 17, 2024, the assessments needed to conduct the evaluation were completed. The evaluation report is dated May 5, 2024 and was provided to Parent on May 13, 2024.
26. On May 13, 2024, Charter School proposed to hold a meeting in June 2024 to discuss the evaluation report. Parent indicated they were unavailable on the proposed dates. In response, Special Education Director said if the team was unable to meet, they would have to finalize the IEP. Internal communication between school staff indicate confusion whether the deadline to hold a meeting or family involvement took precedence.
27. Between April 8, 2024 and May 17, 2024, the end of the school year, Student was on campus one time. No other services were provided.
28. Student was disenrolled from Charter School prior to the start of the 2024-25 school year. Student is actively working for a GED. In part because Student is obtaining a GED, Parent was not interested in any student-level corrective action. For this reason, student-level corrective action will not be included in the corrective action plan.
29. Parent alleged that a document was made available on Charter School's website that included a list of special education students and their assigned special education advisor. The document in question includes several staff member names and a list of students for whom the staff member is to "advise." Special education students are included under the Special Education Director and Special Education Teacher's names. The only staff who are supposed to have access to the list include the school registrar, Special Education Director, Head of School, and Assistant Head of School.
30. Parent alleged Charter School Instructor was not qualified to be a special education teacher. As of July 1, 2023, Charter School Instructor held a "Level One Alternative 6-12 Secondary" license. Charter School asserts Charter School Instructor acted under the direction of Special Education Director who holds, in part, a Level Three Pre K-12 Special Education license.

### **Discussion and Conclusions of Law**

#### **Issue No. 1**

***Whether the LEA properly implemented the Student's individualized education program (IEP), specifically, by providing all special education and related services, supplementary aids and services, and educating Student in the identified least restrictive environment (LRE), pursuant to 34 C.F.R. § 300.323 and 6.31.2.11(B) NMAC.***

The complaint alleged that Student's IEP was not properly implemented for several reasons. Upon investigating the merits of the complaint, additional IDEA violations or misunderstandings were found, specifically related to: (1) child find, (2) comprehensive evaluations, (3) meeting notices, (4) mandatory IEP team members, (5) IEP development and revisions, (6) the difference

between instruction in the home, an IDEA placement, and homebound instruction available to all students as a regular education accommodation used for temporary illness or injury, and (7) progress monitoring. Due to the limitations on the investigatory time period, not all potential violations are actionable here. Nonetheless, each is discussed below. Any corrective action required will be limited per the one-year investigatory time period.

### Child Find and Eligibility

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.

In evaluating a student with a disability, the evaluation must be sufficiently comprehensive to identify all the student’s special education and related services needs. 34 C.F.R. § 300.304(c)(6) and 6.31.2.10(G)(1) NMAC.

By mid-September 2023, at the latest, it was evident that Student may be in need of special education services. Charter School was aware of Student’s medical diagnoses and Student’s attendance began to falter. For unknown reasons, Charter School failed to act until early November 2023 when an administrative review was conducted and recommended that Student be identified as a student with a disability. Even then, Charter School did not take the steps necessary to identify Student and develop an IEP until January-February 2024, despite the recommendation to do same. Moreover, despite only having an evaluation that was over eight years old, Charter School failed to comprehensively evaluate Student prior to determining Student’s eligibility and only requested parent consent for same in February 2024, after eligibility had been determined.

Charter School should have requested parent consent to conduct an evaluation to determine Student’s eligibility no later than October 2023 and then proceeded with conducting the evaluation. Due to Charter School’s failure to act, Student was not identified as a student eligible for special education services until February 2024, when Charter School provided a PWN regarding same. However, due to Charter School’s failure to comprehensively evaluate Student, the IEP developed is likely not reasonably calculated to enable Student to make progress



appropriate in light of Student's circumstances. See *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017).

Finally, Charter School was required to obtain informed consent from Parent prior to the initial provision of special education and related services to Student. Student received homebound services for the first time on January 17, 2024. An IEP had yet to be developed at the time, nor had parental consent been obtained prior, in violation of 34 C.F.R. § 300.300(b) and 6.31.2.13(F)(1) NMAC.

#### Development of the IEP

As stated above, without a recent comprehensive evaluation, Charter School was unable to develop an IEP reasonably calculated to enable Student to make progress. In addition, other procedural violations were found. Specifically, Parent was not provided appropriate notice for each IEP-related meeting and it is questionable whether the IEP team consisted of the mandatory members. These violations will be discussed in more detail under the issues below.

Notwithstanding, the IEP that was developed has several issues. First, there are no present levels. See 34 C.F.R. § 300.320(1). Even though it would be difficult to establish sufficient present levels without a recent comprehensive evaluation, Charter School could have included something about Student's then-current present levels but it did not.

Second, the goals developed are not measurable. *Id.* at 300.320(2). There is no baseline data, nor do the goals, as written, pass the "stranger test." The stranger tests states that an IEP must not be vague and can be understood and implemented by someone unfamiliar with the student. *Mason City Community School District*, 46 IDELR 148 (SEA IA 2006). Here, for example, one IEP goal requires that Student "attend 75% of the school week." It is unclear if Student is to attend 75% of the school week in-person on campus or Student's availability for homebound services given Student's frequent absences.

Third, the special education services included are also not specific enough to pass the stranger test. For example, it is unclear what curriculum planning is. Moreover, based on what Special Education Director stated, curriculum planning is not actually a special education service. The IDEA defines "special education" as specially designed instruction that adapts the content, methodology, or delivery of instruction to meet the unique needs of the student with a disability. 34 C.F.R. § 300.39. Planning time for school staff is not specially designed instruction. Thus, it should not have been included as a special education service for Student.

Fourth, there is little evidence that Charter School considered services to address Student's needs, including ADHD and anxiety, so that Student may return to a less restrictive placement. While there was aspiration that Student would attend school more consistently, it is difficult to

ascertain how that was realistic without addressing the issues precluding Student from attending school in the first place.

Fifth, the IEP indicated Student is in the regular classroom 80% or more of the school day, which is an entirely false representation. Student was homebound. Simply because Student was only to receive a limited number of service minutes a week does not change Student's placement.

Sixth, there are questions as to whether the amount of services were based on Student need or staff availability. *See e.g., Abington Heights Sch. Dist.*, 112 LRP 16163 (SEA PA 03/13/12) (finding a denial of FAPE when there was no consideration given to determining whether ten hours of weekly instruction, delivered in the late afternoon, was reasonably calculated to assure meaningful progress for the student, given the physical conditions that adversely affected the student's ability to attend to instruction). In addition, despite indicating Student needed 180 minutes/week of homebound instruction, Charter School Instructor was only available and/or scheduled to provide instruction for a maximum of 150 minutes/week.

Finally, it is clear that ESY services were not actually discussed at the meetings. Of further concern is that Special Education Director appears to have an incorrect understanding of who may or may not be eligible for ESY services. Special Education Director stated in an email to Parent that ESY services are only for those students with "severe disabilities who are unable to retain information over the summer." First, ESY is not only for students with severe disabilities. 34 C.F.R. § 300.106. *See also 71 Fed. Reg. 46582 (2006)*. Secondly, a regression analysis is not the only standard for determining whether a student is in need of ESY services. Other standards that have been identified by the courts include significantly jeopardized analysis (*see e.g., MM v. School Dist. of Greenville County*, 303 F.3d 523 (4th Cir. 2002)), regression-reequipment analysis (*see e.g., Cordrey v. Euckert*, 917 F.2d 1460 (6th Cir. 1990), *cert. denied*, 499 U.S. 938 (1991)), and additional factor analysis (*see e.g., Johnson v. Independent Sch. Dist. No. 4*, 921 F.2d 1022 (10th Cir. 1990), *cert. denied*, 500 U.S. 905 (1991)). *See also* Mountain Plains Regional Resource Center, *Extended School Year Services For Parents and Educators*, dated 2006. The IEP team should have discussed and determined Student's need for ESY services; the decision was not for Special Education Director to make unilaterally.

### IEP Implementation

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17. The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994

(2017) (*quoting Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* See also 6.31.2.11(B)(1) NMAC.

An IEP must include a description of when periodic reports on progress will be provided. 34 C.F.R. § 300.320(c)(3)(ii).

First, since parental consent was received for the initial provision of services, Student received no more than 780 minutes of services through the end of the 2023-24 school year. Deducting time when Student was unavailable for services, Student was entitled to receive over 2,000 hours of “homebound instruction.” Charter School failed to provide the required service minutes.

In addition, not only did Charter School fail to produce progress reports, but it failed to progress monitor at all.

Finally, although the IEP incorrectly characterizes Student as being in the regular classroom 80% or more of the school day, Charter School ceased providing homebound services, in effect changing Student’s LRE, without convening the proper meeting forum and members. By not providing services in Student’s identified LRE, Charter School failed to implement the IEP.

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

**Issue No. 2**

***Whether the Student’s change in placement on or around April 2024 was properly determined and in the LRE appropriate for the Student’s needs, pursuant to 34 C.F.R. §§ 300.114 through 300.118; 300.327; 300.501; and 6.31.2.11(C) and 6.31.2.13(C) NMAC.***

Parents must be afforded an opportunity to participate in meetings regarding, in part, their child’s educational placement. 34 C.F.R. §300.501. The IEP team, including the parents, are to determine a child’s placement. 34 C.F.R. §§ 300.116 and 300.327 and 6.31.2.11(B)(2). The district must use the procedures described in 34 C.F.R. § 300.322(a) through (b)(1). 34 C.F.R. §300.501(c)(2). The regulations at 34 C.F.R. § 300.322(a) state a district must take steps to ensure that the parents are present at IEP meetings or afforded the opportunity to participate in same. The district must provide notice, including the purpose, time, location, and attendees of the meeting to the parents. *Id.* at 300.322(b)(1). See also 6.31.2.11(B)(2) and 6.31.2.13(D)(1).

A district is required to provide notice a reasonable time before the district proposes to change the educational placement of the child. 34 C.F.R. § 300.503(a) and 6.31.2.11(C)(2)(h) NMAC.

Per the January 25, 2024 IEP, Student's placement was in the most restrictive LRE – homebound. Without convening an IEP meeting, and without prior notice to Parent, Charter School ceased providing home instruction and informed Parent that Student would have to come to campus on a weekly basis to receive services. The decision regarding Student's placement was not for Special Education Director to decide on their own. Charter School was required to convene an IEP meeting, discuss its proposal with the IEP team, including Parent, be open to other proposals, and then decide if Student's placement should change. Only after an IEP meeting was held should Charter School have provided PWN regarding the decisions made. Then, after a reasonable amount of time had passed following the PWN could Student's placement, possibly, have changed. Charter School violated multiple provisions of the IDEA by changing Student's placement without convening an IEP meeting and providing PWN of any decisions made.

Furthermore, while a meeting was held on April 23, 2024 to discuss the changes to Student's educational programming, including placement, there is no evidence that Charter School came to the meeting with an open mind and willingness to consider Parent's position. Charter School predetermined Student's change in placement denying Parent the opportunity to be involved in the decision-making process.

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

**Issue No. 3**

***Whether the IEP Team included all required members, consistent with 34 C.F.R. § 300.321(a) and 6.31.2.7(B)(11) NMAC.***

An IEP team must include (1) the parents of the child; (2) one regulation education teacher of the child; (3) one special education teacher of the child; (4) a representative of the district; (5) an individual who can interpret the instructional implications of evaluation results; (6) other individuals who have knowledge or special expertise regarding the child, at the discretion of the parent or district; and (7) the child, when appropriate. 34 C.F.R. § 300.321(a) and 6.31.2.7(B)(11) NMAC.

First, as indicated above, Charter School failed to provide proper notice of meetings required by 34 C.F.R. § 300.322(b). Charter School has only sent one formal meeting invite to Parent; Parent was notified of most other meetings through a Google calendar invite, if at all. The Google calendar invites indicated some, perhaps not all, invited attendees. However, there is no information regarding the purpose or location of the meeting (e.g., only virtual or option for in-person attendance). Furthermore, the one formal meeting invitation sent to Parent is lacking. Parents are not included on the attendee list, there is no location identified, and the purpose of "initial IEP" is vague and incomplete because the IEP meeting was also intended to discuss Student's eligibility but the notice makes no mention of same.

Moving on, there were at least four meetings that could be considered IEP meetings – January 16, 2024; January 25, 2024; February 1, 2024; and April 23, 2024. Based on the one formal meeting invite that was sent, Charter School Instructor was intended to be the special education teacher. However, as discussed below, Charter School Instructor did not hold the required licensure to be a special education teacher. Therefore, Charter School Instructor cannot be considered the special education teacher. In their place, Special Education Director could be considered the special education teacher. However, at the April 23, 2024 meeting, despite Charter School’s requirement that Student receive services on campus, no general education teacher was present, in violation of 34 C.F.R. § 300.321.

Finally, Parent alleged that Student’s private therapist was often deliberately excluded from communications. An individual deemed to have knowledge or special expertise regarding Student is an optional participant. At Parent’s discretion, Student’s private therapist may be invited to IEP meetings. Student’s private therapist received the Google calendar invites, after Parent’s request, and was in attendance at the IEP meetings. Any email communication that Student’s private therapist was not included on by Charter School, whether intentional or by accident, is outside of the scope of the IDEA.

Of importance, following the completion of the evaluation report, Special Education Director seemed to be more concerned with adhering to the permitted time frame to convene the IEP team, per 6.31.2.10(J)(1) NMAC, than ensuring Parent was afforded the opportunity to participate. Charter School is reminded that Parent participation takes precedence over a deadline. With that said, Charter School should seek to convene a meeting well in advance of the deadline to ensure the meeting can occur before the deadline and with all mandatory IEP team members in attendance. Charter School must make substantial efforts to secure parent attendance at an IEP meeting, but may move forward without a parent, if all efforts fail. See 34 C.F.R. § 300.322.

**As to Issue No. 3, the Charter School is cited, and Corrective Action is required.**

**Issue No. 4**

***Whether the LEA ensured the personnel providing special education and/or related services was qualified under the state licensure requirements, pursuant to 34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC.***

State educational agencies (SEAs) are required to establish and maintain qualifications of special education teachers. 34 C.F.R. § 300.156.

In New Mexico, each local education agency (LEA) is bound by the rules enumerated at 6.31.2 NMAC. Specifically, 6.31.2.9(B)(9) requires LEAs to ensure personnel serving children with disabilities be qualified under state licensure requirements.

The state licensure requirements regarding special education teachers can be found at 6.61.6.8 NMAC. The licensure requirements for a special education teacher require that the person seeking licensure (1) hold a bachelor's degree from a regionally accredited college or university; completion of specific credits, courses, and teaching hours; and satisfy the requirements of "a highly qualified beginning pre K-12 special education teacher" or (2) possess a valid certificate for the appropriate grade level and type. See 6.61.6.8 NMAC.

Charter School Instructor did not hold the licensure required by NMAC to provide special education services to Student. Despite Charter School's assertion that Charter School Instructor was acting under the direction of Special Education Director, that is no evidence to support this assertion. In fact, when asked what the special education service of "curriculum planning" entailed, Special Education Director said they did not know and Charter School Instructor should be consulted. If Charter School Instructor was acting under the direction of Special Education Director, Special Education Director would have been able to answer the question posed. Charter School is required to employ staff that hold the appropriate licensure to provide special education services to students with disabilities, and it failed to do so.

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

**Issue No. 5**

***Whether the LEA disclosed Student's personally identifiable information ("PII") without Parent's consent, in violation of 34 C.F.R. §§ 300.622-623 and 6.31.2.13(L) NMAC.***

The IDEA requires a public agency to protect the confidentiality of any personally identifiable data, information and records it collects or maintains. 34 C.F.R. § 300.610. Per 34 C.F.R. § 300.32, personally identifiable information (PII) refers to information that contains:

- (a) The name of the child, the child's parent, or other family member;
- (b) The address of the child;
- (c) A personal identifier, such as the child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Generally, parent consent must be obtained before PII is disclosed. 34 C.F.R. § 300.622.

Here, Parent alleges that Student's name was included on a list posted on Charter School's website that identified Student as a special education student to be advised by a named special

education teacher. Charter School asserts the list is only accessible to a select few staff members and was not knowingly disclosed.

Parent is in possession of the list that includes Student's name, amongst others. While it is unknown who retrieved the list and provided it to Parent, Parent assures it was none of the people who are to have access to it. Although it is possible that the student list could have been obtained and distributed without appropriate authorization and without knowledge of Charter School administration, there is sufficient evidence that the list which identifies Student was disclosed to a person(s) that should not have been in possession of same. As a result, Charter School has violated 34 C.F.R. § 300.622.

**As to Issue No. 5, the Charter School is cited, and Corrective Action is required.**

**Issue No. 6**

***Whether the LEA'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.***

FAPE must be made available to all children with disabilities. 34 C.F.R. § 300.101; 6.31.2.8 NMAC. School districts must provide FAPE for each student who resides within the school district's educational jurisdiction. 6.31.2.9(A) NMAC. Violations of the IDEA may be based on either substantive or procedural violations. A procedural violation constitutes a denial of FAPE 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). A substantive legal standard for determining whether a district offered a student FAPE is whether the IEP was reasonably calculated to enable the child to make progress appropriate in light of their circumstances. *Andrew F.*, 137 S. Ct. 988 (2017).

The failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17. However, not every deviation from the IEP results in a denial of FAPE. *See I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs.*, 70 IDELR 86 (8th Cir. 2017). Only material implementation failures qualify as a denial of FAPE. *See e.g., Van Duyn v. Baker Sch. Dist. 5J*, 47 IDELR 182 (9th Cir. 2007), *reprinted as amended*, 107 LRP 51958, 502 F.3d 811 (9th Cir. 2007). "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Id.*

There were several procedural IDEA violations. Specifically, (1) failure to refer Student for a special education evaluation without undue delay; (2) failure to obtain informed consent from Parent prior to the initial provision of services; (3) failure to implement the IEP; (4) failure to convene the IEP team prior to changing Student's educational placement and provision of FAPE;

(5) failure to provide Parent the opportunity to participate in decisions regarding Student’s placement and educational programming; (6) failure to provide prior written notice; (7) failure to provide adequate notice of IEP meetings; (8) failure to include all mandatory meeting participants; (9) failure to use fully certified special education staff; and (10) failure to protect the confidentiality of Student’s PII. Of the violations numbered above, violations 1, 3, and 9 impeded Student’s right to FAPE and/or caused a deprivation of educational benefit, resulting in a denial of FAPE. Violations 2, 4, 5, and 6 significantly impeded Parent’s opportunity to participate in the decision-making process, resulting in a denial of FAPE. Violations 7, 8, and 10 are simply procedural violations that did not result in a denial of FAPE, per 34 C.F.R. § 300.513(a)(2).

Substantively, The IEP developed was not reasonably calculated, denying Student FAPE.

**As to Issue No. 6, the Charter School is cited, and Corrective Action is required.**

**Summary of Citations**

<b>IDEA/State Rule Provisions Violated</b>	<b>Description of Violation</b>
34 C.F.R. § 300.111(c) 6.31.2.10(B)(3) NMAC	Charter School failed to refer Student for a special education evaluation without undue delay.
34 C.F.R. § 300.300(b) 6.31.2.13(F)(1) NMAC	Charter School failed to obtain informed consent from Parent prior to the initial provision of special education and related services to Student.
34 C.F.R. §§ 300.320 and 300.324 6.31.2.11 NMAC	Charter School failed to develop an IEP reasonably calculated to meet Student’s unique needs.
34 C.F.R. § 300.320(c)(3)(ii) 6.31.2.11(B)(1) NMAC	Charter School failed to implement Student’s IEP.
34 C.F.R. §§ 300.116; 300.327; and 300.501 6.31.2.11(B)(2) and 6.31.2.13(C) NMAC	Charter School changed Student’s placement without convening an IEP meeting or providing Parent the opportunity to participate in decisions regarding Student’s placement.
34 C.F.R. § 300.503 6.31.2.11(C)(2)(h) and 6.31.2.13(D)(2) NMAC	Charter School failed to provide prior written notice a reasonable time before District proposed to change Student’s educational placement and/or the provision of FAPE to Student.
34 C.F.R. § 300.322 6.31.2.11(B)(2) NMAC and 6.31.2.13(D)(1)	Charter School failed to provide adequate notice of IEP meetings.
34 C.F.R. § 300.321(a) 6.31.2.7(B)(11) NMAC	Charter School failed to have all mandatory members at the April 23, 2024 IEP meeting.



IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.156 6.31.2.9(B)(9) NMAC	Charter School failed to use fully certified staff when providing special education services to Student.
34 C.F.R. § 300.610; 300.622 6.31.2.13(L) NMAC	Charter School failed to protect the confidentiality of personally identifiable information of students with and without disabilities.
34 C.F.R. § 300.101 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) to the Student.

**Required Actions and Deadlines**

**By February 10, 2025**, 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](mailto: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 June 15, 2025 and reported to the OSE no later than June 30, 2025.** 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**

<b>Step No.</b>	<b><u>Actions Required by Charter School</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
<b>1.</b>	As described above, the Charter School will submit a written assurance to the PED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	<b>February 10, 2025</b>	Written Assurance Letter/Email	<b>February 10, 2025</b>
<b>2.</b>	Both Charter School Special Education Directors and the Head of School 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 has the discretion to include other Charter School or school administrators or personnel in this meeting. The Charter School Special Education Director shall be responsible for arranging this virtual meeting with OSE.	<b>February 14, 2025</b>	Notes from meeting prepared by District	<b>February 21, 2025</b>

<b>Step No.</b>	<b><u>Actions Required by Charter School</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED</u></b> <b><u>OSE</u></b>	<b><u>Document Due Date</u></b>
3.	Both Charter Special Education Directors will meet with case managers and special education teachers and related service providers to review the Complaint Resolution Report to ensure that those persons understand the complaint, the violations that were found, and the corrective action that will be taken to address the violations.	<b>February 21, 2025</b>	Notes from meeting prepared by District	<b>February 28, 2025</b>
4.	Charter School shall develop a plan to ensure that all students with disabilities were/are provided specialized instruction and related services included in their respective IEPs, by fully certified special education staff. This plan shall include: <ol style="list-style-type: none"> <li>1. Identification of any and all needed service providers based on students' IEPs;</li> <li>2. Plan to recruit and retain needed providers that are not currently employed or contracted to perform service;</li> </ol>	<b>March 7, 2025</b>	Written Plan to be approved by PED	<b>March 14, 2025</b>
5.	Charter School shall review and revise, where necessary, its special education policies regarding the following: <ol style="list-style-type: none"> <li>(1) child find;</li> <li>(2) when to conduct a comprehensive evaluation;</li> <li>(3) obtaining informed consent;</li> <li>(4) IEP meeting notices;</li> <li>(5) when prior written notice is required;</li> <li>(6) ESY services; and</li> </ol>	<b>May 30, 2025</b>	Copy of revised Council-approved policy  Draft of Proposed Policy Revisions for PED approval	<b>June 6, 2025</b>  <b>April 28, 2025</b>

<b>Step No.</b>	<b><u>Actions Required by Charter School</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED</u></b> <b><u>OSE</u></b>	<b><u>Document Due Date</u></b>
	<p>(7) maintaining confidentiality of personally identifiable information.</p> <p>The revised policies are subject to PED approval prior to its submission to its Governing Council for ratification.</p>			
<b>6.</b>	<p>The Charter School shall permit Regional Education Cooperative 6's (REC 6) IEP Project Team to provide monthly instructional coaching and support in IEP development and implementation for special education teachers and other service providers that work directly with students with disabilities at the Charter School.</p> <p>The Charter School shall work with REC 6 to plan coaching schedule and shall ensure that appropriate arrangement are made to optimize coaching opportunities for Charter School Staff. Coaching will be funded by the OSE.</p>	<b>Monthly for the remainder of the 24-25 School Year</b>	<p>Monthly Coaching Summary from REC 6 IEP Project Team</p> <p>Coaching Schedule and Plan</p>	<p><b>Monthly for the remainder of the 24-25 School Year</b></p> <p><b>February 21, 2025</b></p>
<b>7.</b>	<p>The Charter School shall arrange training for school staff (including special education teachers, special education administrators, and related service personnel) to be provided by a person independent of the Charter School with expertise in special education who was not involved in responding to this complaint and is approved by the PED. The trainings will be funded by the Charter School.</p>	<b>April 18, 2025</b>	<p>Submission of proposed trainer and trainer's resume and proposed presentation for NMPED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training</p>	<p><b>March 7, 2025</b></p> <p><b>March 21, 2025</b></p> <p><b>April 25, 2025</b></p>

<b>Step No.</b>	<b><u>Actions Required by Charter School</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
	<p>The training shall address the following special education topics:</p> <ol style="list-style-type: none"> <li>1. Child find;</li> <li>2. Informed consent for Evaluation;</li> <li>3. Comprehensive evaluations;</li> <li>4. IEP Meeting notices;</li> <li>5. Mandatory IEP meeting members;</li> <li>6. Prior written notices;</li> <li>7. IEP development, including, at minimum:               <ol style="list-style-type: none"> <li>(a) present levels;</li> <li>(b) measurable annual goals; (c) special education and related services; and</li> <li>(d) placement decisions and the continuum of alternative placements</li> </ol> </li> <li>8. ESY services;</li> <li>9. Implementing an IEP as written;</li> <li>10. Progress monitoring;</li> <li>11. Licensure required for staff providing special education services; and</li> <li>12. Confidentiality of personally identifiable information</li> </ol>		<p>and plan for addressing the provision of training to 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*

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Margaret Cage, Ed.D.

Deputy Secretary, Office of Special Education