

**COMPLAINT INVESTIGATION  
CHARTER SCHOOL  
(#SC021417)**

**Report Issued on April 12, 2017**

**INTRODUCTION**

On February 14, 2017, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300, and Chapter 388 of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC) in the special education program of a student with a disability enrolled in a public Charter School authorized by the State Public Charter School Authority (SPCSA). Upon discovering the Charter School was a school of the SPCSA, the NDE provided a copy of the Complaint to the SPCSA and both the SPCSA and the Charter School were provided the opportunity to respond to the Complaint.

The Parent alleged the Charter School failed to implement the student's Individualized Education Program (IEP) as follows: special education services when the resource teacher or "push-in" providers were absent; the resource teacher's adjustment of special education service minutes ("push-in" minutes in the general education classroom should not be spent in the resource room or vice versa); remedial education for IEP goals in the resource room (rather than just assistance with current grade level general education classwork); occupational therapy from the beginning of the 2016/2017 school year until late September 2016; behavioral/emotional counseling from the beginning of the 2016/2017 school year until late January 2017; and the student's Behavior Intervention Plan from October 25, 2016 to February 14, 2017 with regard to daily documentation, analysis of target behaviors ever four weeks, and a parent/teacher meeting to review the Behavior Intervention Plan every six weeks. The Parent also alleged the Charter School cut counseling minutes in the November IEP revision without consideration of testing reflecting a need for change.

**Responsible Public Educational Agency**

NRS §388A.159 deems the SPCSA a local educational agency (LEA) for certain purposes, specifically for the purpose of directing the proportionate share of any money available from federal and state categorical grant programs to charter schools which are sponsored by the SPCSA. At the commencement of this investigation, it came to the attention of the NDE that there was a Memorandum of Understanding (MOA) executed on June 25, 2016 that was in effect during the time period of this Complaint. This MOU provides that under Nevada law the Authority serves as the LEA for charter schools that it authorizes, and the Charter School is, with regard to special education and other matters, a school within that LEA. With regard to State Complaints, the MOA sets forth the respective responsibilities between the SPCSA and the Charter School:

"The Authority will investigate, cooperate with and respond to all special education complaints the Authority receives pertaining to the Charter School. The Authority will inform the school of the complaint within 5 days or prior to any investigation or whichever comes first. The Charter School will cooperate with the Authority in any such

investigations and provide the Authority with any and all documentation that is required to respond to complaints within the timelines imposed by the investigating agency. The Charter School will be solely responsible for any and all costs resulting from, arising out of, or associated with the investigation and implementation of appropriate remedies in a manner consistent with Section 2, above, Procedural Safeguards/Due Process Hearings.”<sup>1</sup>

Upon consideration of Nevada law and regulation and the MOU between the SPCSA and the Charter School, the NDE provided both the Charter School and SPCSA an opportunity to respond to the Complaint, as well as the Parent. The SPCSA did not provide any information in response to this Complaint. All documents submitted by the Parent, and the Charter School relevant to the issues in the Complaint were reviewed in their entirety in this investigation. The Complaint Investigator also received, collected and reviewed additional information as needed during the investigation. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint.

## **COMPLAINT ISSUES**

The allegations in the Complaint, as further clarified during the investigation, that are under the jurisdiction of the NDE to investigate through the special education complaint process raise the following issues for investigation:

### **Issue One:**

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, in the implementation of the student’s IEPs in effect in the 2016/2017 school year, with regard to:

- a) Special education from August 22, 2016 through February 9, 2017 when the special education resource teacher or “push-in” providers were absent, the resource teacher’s adjustment of the location of the resource and “push-in” minutes, and remedial education for IEP goals due to student retention for IEP goals in the resource room.
- b) Occupational therapy from the beginning of the 2016/2017 school year until late September 2016.
- c) Behavior/social emotional counseling from the beginning of the 2016/2017 school year until late January 2017.
- d) Behavior Intervention Plan (BIP) from October 25, 2016 to February 9, 2017 with regard to daily documentation, analysis of target behaviors ever four weeks, and a parent/teacher meeting to review the BIP every six weeks.

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<sup>1</sup> Excerpt from the referenced MOA provision: “Because the Charter School will manage, and is fiscally responsible for its students’ special education instruction and services, the Charter School will be responsible for any prospective special education and related services, compensatory education and/or reimbursement awarded by a due process hearing officer, court or settlement based on an allegation or allegations that solely the Charter School failed to fulfill its responsibilities under state and federal special education laws and regulations (which include, among other things, identifying students with disabilities, assessing students, conducting IEP team meetings, developing appropriate IEPs, and implementing IEPs). The Authority will be responsible for any prospective special education and related services, compensatory education and/or reimbursement awarded by a due process hearing officer, court or settlement based on an allegation or allegations that the Authority failed to fulfill its responsibilities under state and federal special education laws and regulations.”

## **Issue Two:**

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, with regard to the IEP Team's consideration of current evaluations in the development of the student's November 2016 IEP, specifically the reduction in counseling minutes.

## **FINDINGS OF FACT**

### **General**

1. The student enrolled in the Charter School for the 2016/2017 school year and classes began on Monday, August 22, 2016. (School Calendar)
2. The student withdrew from the Charter School at the end of the day on February 9, 2017. From August 22, 2016 through February 9, 2017 there were 19 school days and two half school days when school was not in session and one half school day that the student was absent. (The Student Release and Transfer document indicates two days of absences, but no detail was provided; therefore, the Complaint Investigation Team relied on the Student Attendance Detail.) (Student Release and Transfer, Student Daily Attendance Detail, School Calendar)
3. The Parent provided the Charter School the student's IEP in March 2016. During the first week of school the Special Education Department went through IEPs to determine placement and schedules. Special education services started on August 31, 2016. (Complaint, Charter School Response, Behavior Chart)

### **IEPs**

4. The student had multiple IEPs in effect during the student's enrollment in the Charter School:
  - a. The January 20, 2016 revision of the student's November 4, 2015 annual IEP developed/revised when the student was enrolled in another educational agency. This IEP was in effect in the Charter School from August 22, 2016 through November 3, 2016.
  - b. The student's annual IEP was developed on November 4, 2016 by the Charter School and was in effect from November 4, 2016 to November 3, 2017. This IEP was revised on January 30, 2017 and that IEP was in effect from January 31, 2017 up to the date of the student's withdrawal from the Charter School. (IEPs)
5. All of the student's IEPs provided that the student would spend 88 percent of the school day in the regular classroom environment. (IEPs)

### **January 20, 2016 IEP**

6. Six of the seven goals in the student's November 4, 2015 IEP, as revised January 20, 2016, were in the areas of math, writing, and spelling. The student had three math goals, including one in subtraction; two writing goals addressing the conventions of English grammar and usage and simple sentences; and one spelling goal. (IEP)

7. The student's November 4, 2015 IEP, as revised January 20, 2016, included the following special education in effect at the commencement of the 2016/2017 school year in the Charter School:
  - a. Consult behavioral/social skills services to be provided from November 4, 2015 to November 3, 2016 with the frequency of services of 40 minutes a month and the location of the services in general education.
  - b. Direct math services to be provided from November 4, 2015 to November 3, 2016 with the frequency of services of 150 minutes per week with the location of the services in general education and 100 minutes a week with the location of the services in the resource room.
  - c. Direct written language to be provided from November 4, 2015 to November 3, 2016 with the frequency of services of 100 minutes a week with the location of the services in the resource room. (IEP)
8. The student's November 4, 2015 IEP, as revised January 20, 2016, included the related service of direct occupational therapy with the frequency of services of 60 minutes a month with the location of the services on the school campus from November 4, 2015 to November 3, 2016. A related supplementary aid/service was included in the IEP for the same time period: adaptive equipment would be provided by the occupational therapist and revised as needed. The frequency of the service was on occurrence of need in the general education classroom. (IEP)
9. Neither the student's November 4, 2015 IEP or January 20, 2016 revised IEP included any reference to a BIP. The IEP Team, in the consideration of special factors, indicated that the student's behavior did not impede the student's learning or the learning of others and no action was needed to address the student's behavior. The student did have a supplementary aid/service from November 4, 2015 to November 3, 2016 that if the student is showing frustration, the student is allowed a five-minute break to become composed. The frequency of the services was on occurrence of need in the general education classroom. (IEP)

### **November 4, 2016 IEP**

10. Five of the eight goals in the student's November 4, 2016 IEP were in the areas of math, written language and spelling. The student had two math goals, including one in multiplication; two writing goals; and one spelling goal. (IEP)
11. The student's November 4, 2016 IEP included the following special education in effect from November 4, 2016 to November 3, 2017:
  - a. Behavioral/social emotional skills with the frequency of services of 30 minutes a month. The location of the services was in general education/resource room.
  - b. Math with the frequency of services of 100 minutes a month with the location of the services in general education and 100 minutes a month with the location of the services in the resource room.
  - c. Written language with the frequency of services of 100 minutes a month with the location of the services in the resource room. (IEP)
12. The student's November 4, 2016 IEP included the related service of direct occupational therapy from November 4, 2016 to November 3, 2017 with the frequency of services of

60 minutes a month with the location of the services on the school campus. The service was direct and described as slant board with clip, teacher or peer notes to supplement the student's own, allow use of computer with "word predict" or speech to text. A related supplementary aid/service was included in the IEP that adaptive equipment would be provided to the student by the occupational therapist and revised as needed in the general education and resource rooms for the same time period.(IEP)

13. The student's November 4, 2016 IEP included the following supplementary aids/services from November 4, 2016 to November 3, 2017:
- a. Consult/counselor with the frequency of services of 30 minutes a month and the location of the services was in general education/resource room;
  - b. BIP will be implemented with the frequency of services of 100 minutes a month and the location of the services was in the general education classroom/resource room; and
  - c. If student becomes frustrated, the student is allowed a 5-minute "cool down" to compose or ask to see the counselor with the frequency of services of 50 minutes a month and the location of the services was in general education/resource room. (IEP)

### **January 30, 2017 IEP**

14. Six of the nine goals in the student's January 30, 2017 IEP were in the areas of math and writing, speaking and spelling. The January 30, 2017 IEP maintained the two math and writing goals in the November 4, 2016 IEP and added an additional math goal. (IEP)
15. The student's January 30, 2017 included the following special education in effect from January 31, 2017 to November 3, 2017:
- a. Math with the frequency of services of 100 minutes a week with the location of the services in general education and 100 minutes a month with the location of the services in the resource room.
  - b. Written language to be provided from November 4, 2015 to November 3, 2016 with the frequency of services of 100 minutes per month in general education and 100 minutes per week with the location of the services in the resource room. (IEP)
16. The student's January 30, 2017 IEP included the following supplementary aids/services from January 31, 2017 to November 3, 2017:
- a. Consult/counselor (as needed) with the frequency of services of 30 minutes a month and the location of the services was in general education classroom/resource room;
  - b. BIP will be implemented (daily) with the frequency of services of 100 minutes a month and the location of the services was in general education classroom/resource room; and
  - c. If student becomes frustrated, the student is allowed a 5-minute "cool down" to compose or ask to see the counselor with the frequency of services of 50 minutes a month and the location of the services was in general education/resource room. (IEP)
17. The student's related service of direct occupational therapy remained unchanged from the November 4, 2016 IEP, except for the new start date of January 31, 2017 and the

addition of the frequency of daily to the supplementary aid/service of adaptive equipment. (IEP)

## **Absences of Personnel**

18. "A substitute is not provided when special education teachers are absent or in training due to student's confidentiality. Special Education Aides provide services when they are available. . . .Resource Room minutes are made up throughout the week. Ex. Extra 10 to 15 minutes daily." The special education teacher confirmed this response of the Charter School by consistently reporting that from November 21, 2016 to November 29, 2016, when the special education teacher was absent, the student's services were provided by another Charter School special education teacher and aides. There was also documentation that an aide 'substituted' for the special education teacher on December 1, 2016 and the special education teacher checked on the student throughout the day. (The Charter School inconsistently denied special education aides provide specially designed instruction when the special education teacher was absent/unavailable. The Complaint Investigation Team found the documented use of aides more credible.) (Charter School Response Behavior Chart, Charter School Response Special Education Behavior Chart Notes, Notes for Student)
19. The student's special education teacher was absent/unavailable on September 6, 2016, October 31, 2016, November 21, 2016, November 22, 2016, for a half day on November 23, 2016, November 28, 2016, November 29, 2016, December 1, 2016, and for a half day on December 15, 2016. In addition, the special education teacher was absent or unavailable during the student's resource room minutes on November 14, 2016, December 1, 2016 and January 30, 2017. (Special Education Behavior Chart Notes, Notes for Student)
20. The second special education teacher provided an undated signed statement affirming providing the student the resource minutes in math and reading (no report of services in written language) in the resource room on November 21, 2016, November 22, 2016, November 23, 2016, November 28, 2016 and November 29, 2016 when the special education teacher was absent. No documentation was provided on the number of minutes. (Signed Statement, Charter School Response, Behavior Chart)
21. The second special education teacher also reported providing the student the required special education in the general education classroom on November 21, 2016, November 22, 2016, November 23, 2016, November 28, 2016 and November 29, 2016 by discussing the student's work and getting materials before providing the student's services in the resource room. No documentation was provided on the number of minutes and the description of services was insufficient to ascertain whether this service met the requirement of the provision of special education to the student. (Signed Statement)
22. In addition to these five days of absences in which the second special education teacher reported the provision of special education to the student in the general education classroom and resource room, there were additional school days when the special education teacher was absent/unavailable. The Charter School did not provide any documentation regarding the provision of special education to the student by a special education teacher in the resource room or general education classroom on: September 6, 2016, October 31, 2016, December 1, 2016, and December 15, 2016 for a half day

and for the resource room minutes only on November 14, 2016, December 1, 2016 and January 30, 2017. (Review of Record)

23. The Charter School provided documentation dated January 31, 2017 from the special education teacher on the services in the resource room to make up minutes from the day before. The special education teacher indicated that the aides made up all but 20 minutes of math from the day before and the remaining 20 minutes would be added at the end of the day and all the time for English language arts from yesterday was made up. There was no documentation regarding the specific subject matter in English language arts that was made up or that the aides were under the direct supervision of the special education teacher. (Special Education Teacher's January 31, 2017 Notes, Special Education Behavior Chart Notes, Notes for Student)
24. The student's general education teacher for math, science and homeroom was absent on September 13, 2016, for a half day on October 5, 2016, October 6, 2016, November 1, 2016, November 2, 2016, November 3, 2016, three quarters of a day on November 7, 2016, November 21, 2016, for a half day on December 8, 2016 and for a quarter of a day on February 9, 2017. This general education teacher is no longer employed by the Charter School. (Charter School Response. Special Education Teacher Behavior Chart)
25. The Charter School reported that when the student's general education teacher for math, science and homeroom was absent, the special education teacher took the student in the resource room for eight to 10 days in which the student "received more services than IEP minutes." (Conversely, the Charter School reported the student's special education minutes in the general education classroom were provided.) The Charter School was provided an opportunity to clarify this statement regarding the student's removal from the general education classroom and provide documentation that the student received the designated minutes of specially designed instruction for math and written language on those days, and did not. (Charter School Response, Request for Additional Information)

### **IEP Goals: Resource Room**

26. The Charter School provided extensive documentation in response to this Complaint:
  - a. Documentation that was comprised of comments/observations by the student's math and English language arts teachers that the student worked on the subjects of math and English language arts in the general education classroom and the resource room commencing August 31, 2016. However, there was insufficient information in the comments/observation to establish that the reported work in these subjects were related to the student's specially designed instruction and goals in math or written language;
  - b. Almost daily documentation of comments/observations by the student's special education teacher from November 28, 2016. However, there was insufficient information in the daily documentation to establish that the services provided in the resource room and/or the general education classroom were related to the student's goals in math or written language;
  - c. A written statement after-the-fact from the second special education teacher that when she substituted for the special education teacher on November 21, 2016, November 22, 2016, November 28, 2016 and November 29, 2016 the student

worked on multiplication problems in the resource room. The student's November 4, 2016 IEP included a multiplication goal; however, the report does not provide any supporting documentation. (Notes for Student, Behavior Chart, Undated Statement of the Special Education Teacher)

27. With regard to the implementation of the student's IEP goals in the resource room, the Complaint Investigation Team could only find one verifiable incident of the student working on the IEP goals in the resource room: On September 7, 2016, in the resource room, the student worked on subtraction problems and wrote two sentences, answering questions on the board. The student's January 20, 2016 IEP included a subtraction goal and a goal on command of the conventions of standard English when writing. (Behavior Chart Notes)

### **Occupational Therapy**

28. Based on the December 4, 2015 Assistive Technology Assessment Report, the student demonstrates difficulty producing written assessments using pencil and paper. The student did not have a fine motor goal in the January 20, 2016 IEP. The student's IEPs at the Charter School included a goal in fine motor control focused on legibility (formation, spacing, size) as reported by the general education teacher and supported by the special education teacher and occupational therapist. (IEPs)

29. The Charter School contracts with a private agency for occupational therapy services. On September 28, 2016, the occupational therapist reviewed the student's file and the student began to receive occupational therapy on October 13, 2017. The Charter School reports that the occupational therapist made up 15 minutes of missed services by adding extra time into the student's therapy. The student received the following minutes of services during the time period of the Complaint.

- a. 30 minutes on October 13, 2016 in the area of fine motor;
- b. 30 minutes on October 20, 2016 in the areas of fine motor and sensory processing;
- c. 35 minutes on November 3, 2016, that included trying out a slant board in the areas of fine motor, gross motor (adaptive equipment), and sensory processing;
- d. 30 minutes on November 17, 2016 in the areas of fine motor, gross motor (adaptive equipment), and sensory processing;
- e. 30 minutes on December 13, 2016 in the areas of fine motor and gross motor (adaptive equipment). The student asked about the slant board;
- f. 30 minutes on January 10, 2017 in the areas of fine motor and sensory processing;
- g. 35 minutes on January 24, 2017 in the areas of fine motor, gross motor (adaptive equipment), and sensory processing;
- h. 10 minutes on January 31, 2017 in the areas of gross motor (adaptive equipment), and sensory processing. The occupational therapist provided a slant board to the teacher of record and explained the student's familiarity with it;
- i. 35 minutes on February 7, 2017 in the areas of fine motor, gross motor (adaptive equipment), and sensory processing and noted use of slant board in classroom. (Occupational Therapist Log, Charter School Response)

30. The Charter School reported that there was a plan in place to make up all outstanding additional minutes of occupational therapy, but the student was withdrawn from the Charter School. (Charter School Response)



## **Consult/Counselor**

31. The Charter School also contracts with an outside agency for counseling services. The counselor assigned to the student from September 2016 through December 2016 is no longer employed by the agency and a second counselor was assigned to the student after the first counselor left. (Charter School Response, Counselor Statement)
32. The student's November 4, 2016 IEP included, as an assessment in the Present Levels of Academic Achievement and Functional Performance, an observation conducted by the school counselor on November 3, 2016 that included speaking to the student. As a result of this assessment, the counselor suggested that the student be able to utilize the counselor/student support team as a way to de-escalate and refocus when the student is at the peak of frustration and/or anger, as part of the student's behavioral supports. There is documentation that the counselor participated in the student's November 4, 2016 IEP meeting. While there was no documentation of the number of minutes the counselor provided consultation during the IEP meeting, the Complaint Investigation Team determined that it is likely this IEP participation was in excess of 30 minutes. (November 4, 2016 Counselor Report, IEP)
33. In a statement prepared March 28, 2017 by the second counselor, the counselor reported that the first counselor left notes that that the counselor worked with the student to identify things that were frustrating, ask appropriately for time out to deescalate anger, recognize potential problems and seek assistance before they occur, and continue working when feeling frustrated. There was no documentation provided to support this report. (March 28, 2017 Statement of the School Counselor)
34. In the March 28, 2017 statement, the second counselor reported meeting with the student on January 11, 2017 for approximately 30 minutes to become acquainted with the student. The counselor also reported sending the student's Parent an introductory email and expressed wanting to discuss ways to meet the student's 30 minutes per month of behavioral/social emotional skills. On January 20, 2016 the Parent communicated through one of the student's general education teachers that the Parent would like the student to be pulled from music special class for counseling. The counselor sent home a counseling permission slip. The counselor reported providing counseling on January 30, 2017 after receiving the Parent's permission slip. There was no documentation provided other than the statement prepared significantly after the delivery of services. (Charter School Response, March 28, 2017 Statement of the School Counselor)
35. The Charter School did provide six completed work sheets on managing anger with no student name or date. (March 8, 2017 Statement of the School Counselor, Completed Work Sheets)
36. On November 15, 2016, the special education teacher documented that the student was pulled out of English language arts for counseling and saw the counselor again on December 8, 2016. On January 24, 2017, during English language arts, the student went to the counselor after arguing with a peer. However, there is no documentation of the number of minutes of these direct counseling services and no documentation of consult counseling as required by the student's IEP. (Behavior Chart Notes, Notes for Student)

37. The student had a "counselor's pass" to meet with the counselor on an as needed basis. The counselor reports there were several "as needed" counseling sessions; however, no documentation was provided other than the counselor report prepared in March 2017. (March 8, 2017 Statement of School Counselor, Progress Report for Student)

## **BIP**

38. The student had an October 25, 2016 BIP. The targeted behavioral concerns were:

- Following directions from an adult 80 percent of the time, initiating a task and maintaining focus without redirection; and
- Controlling anger, specifically emotionally and socially the student becomes agitated with others and argues in the general education classroom and resource room three out of five days a week. (BIP)

39. The functional behavioral assessment data included in the October 25, 2016 BIP indicated the setting events for the targeted behavioral concerns were that the behaviors may occur in the general education classroom, resource room, cafeteria and playground. (BIP)

40. The October 25, 2016 BIP provided that:

- The progress monitoring data would be collected throughout the day for eight weeks and data would be analyzed on target behaviors every four weeks to determine if the target behaviors were decreasing. This progress monitoring would determine the effectiveness of the BIP.
- The intervention outcome process was that the BIP would be reviewed by the Parent and the teacher at a minimum of every six to nine weeks. Updates and revisions would be done at that time. If the student mastered the target behaviors (9 percent of total points) with consistency, new target behaviors would be looked at, if needed. (BIP)

41. The student's October 25, 2016 BIP included the proactive strategies of earning up to two points per period when the student met the goals of following directions and staying calm. The Charter School provided documentation of a Behavior Point System from the resource room teacher and the English language arts teacher, but did not have this documentation from the general education teacher for math, science and homeroom. While the description on the documentation did not describe the two targeted behaviors, given the point system in the student's BIP, the Complaint Investigation Team determined that the designation of points earned was for the targeted behaviors. From October 25, 2016:

- Data was collected in the resource room over consecutive weeks through February 3, 2017, with the exception of school holidays and 11 days when the teacher was unavailable.
- Data was collected by the general education teacher in English language arts over consecutive weeks through February 3, 2017, with the exception of school holidays and three days of absence. (Kid Pointz)

42. In addition to the Kid Pointz documentation, the Charter School provided the following documentation in support of the implementation of the student's BIP:

- A Progress Report that included a description of the student's services and a list of behaviors. It was filled out on January 31, 2017, February 1, 2017, February 6, 2017 and February 7, 2017. No more than two teachers filled out the Progress

- Report on any of these days. Hand written observations were provided from up to two of the student's teachers for all but one day. (BIP, Progress Report)
- b. Daily documentation in the form of a "Behavior Chart" with information of the student's conduct in the student's math and English language arts classes from August 31, 2016 through February 9, 2017. This Behavior Chart provided daily observations that described the student's conduct in these two classes. However, the Behavior Chart did not focus on the student's targeted behaviors to enable a determination of the effectiveness of the BIP. (Behavior Chart Notes)
  - c. Observation notes from the student's special education teacher from November 28, 2016 until the student withdrew from the Charter School for both the student's math and English language arts classes. The notes did include her observation of the targeted behaviors in these two general education classes and during recess and lunch when the special education teacher had playground and lunch duty. However, the observations did not include frequency data. (Notes for Student)
43. The Charter School did not provide documentation that it implemented the requirement that data on the student's BIP were analyzed on the target behaviors every four weeks to determine if the target behaviors were decreasing or that the student's BIP was reviewed by the student's parent and teacher at a minimum of every six to nine weeks in accordance with the student's October 25, 2016 BIP. In addition, the Charter School did not provide any documentation of the number of minutes in any given month that the student's BIP was implemented. (Review of Record)
44. There was a BIP dated February 9, 2017 provided in the course of the investigation. However, a notation on the BIP indicated that at a January 30, 2017 meeting the Parent wanted changes to the BIP. Given the student withdrew at the end of the day on February 9, 2017, the BIP was never implemented. (BIP)

### **November 4, 2016 IEP and Consideration of Evaluations**

45. The student's prior educational agency issued a multidisciplinary evaluation team report dated October 28, 2015. The agency utilized multiple procedures in the social-emotional assessment of the student. The procedures included a Behavior Assessment System for Children-Second Edition, both the Parent Rating Scale dated September 3, 2015 and the Teacher Rating Scale dated October 15, 2015. The student's November 4, 2016 IEP did not include reference to this Multidisciplinary Evaluation Team Report. (Multidisciplinary Evaluation Team Report)
46. As previously noted, the first counselor conducted an observation of the student in the general education classroom. After the observation of the student, the counselor talked with the student. The observation was documented on November 4, 2016 as an assessment and the counselor participated in the November 4, 2016 IEP meeting. (IEP)
47. The student's November 4, 2016 IEP also included a Behavioral/Social Assessment in the Present Levels of Academic Achievement and Functional Performance conducted on October 21, 2016 by the student's special education teacher. This assessment did not include the administration of an instrument or even a formal behavioral assessment, but included informal observations, documentation and Parent input. (IEP, Response of the Charter School)

## **Progress**

48. For the first quarter of the school year ending October 7, 2016, the student made satisfactory progress on the student's math goals, spelling goal and behavior goal, but made unsatisfactory progress on the two writing goals. By the second quarter progress report on January 6, 2017, the student made satisfactory progress on all of the student's math goals, the spelling goal and one of the writing goals. The student made adequate progress on one writing goal and the behavioral goal. The Charter School did not provide any documentation to support the measurement set forth in each goal. (Progress Reports)
49. The student earned grades in two of the areas in which the student had annual goals in the IEPs in effect: math and writing. Upon withdrawal, the student's grades in math and writing were: D in math (modified from F) and B in writing. (Student Release and Transfer)
50. The Parent provided information, including the cost, on remedial courses/tutoring in the geographic area and a private agency the student had utilized in the past that provided occupational therapy. The Complaint Investigation Team verified the cost of the online tutoring programs in math (\$120.00 for a four week course of one-on-one online coaching) and writing (\$99.00 for an eight week course). The Parent indicated the cost per hour of occupational therapy at the private agency was \$110.00 an hour. The Parent expressed satisfaction with the student's placement in the current educational agency and indicated that any remedy of additional academic work during the school year would be overwhelming for the student, and requested any awarded remedy to be after the last day of school, June 1, 2017. (Parent April 4, 2017 Email)

## **CONCLUSIONS OF LAW**

### **Introduction**

The requirements of the provision of a free appropriate public education (FAPE) to students with disabilities under the IDEA and the NAC, Chapter 388, necessitate that special education and related services and supplemental aids and services are provided in conformity with an IEP. (NAC §388.281(6)(g), 34 C.F.R. §§300.17(d) and 300.101) Pursuant to NAC §386.350, the governing body of the Charter School was required to ensure the educational services provided by the school to students with a disability complied with the requirements set forth in NRS, Chapter 388, and NAC §§388.150 to 388.450, inclusive. (See also NAC §386.150(10)) Therefore, the Charter School was also required to establish a system of records for the purpose of verifying that each student identified as a student with a disability received services appropriate to the disability pursuant to NAC §388.215(5)(b).

While the Charter School attempted to respond to the allegations in this Complaint, as described below, some of the documentation provided was not reflective of the system of records required by NAC §388.215(5)(b) to verify that the student had received the services determined by the student's IEP Team to be appropriate to the disability. Rather, much of the documentation provided represented daily general observations of the student's conduct/behavior or after-the-fact written statements produced in response to this Complaint attesting to the implementation of the student's IEP. Given this documentation either did not represent documentation on or close in time to the delivery of the required IEP services by the service provider and/or did not document the kind and amount of the required services, it did not substantiate the provision of the required services consistent with the student's IEPs.

The Complaint Investigation Team recognizes that some of the personnel responsible for the implementation of the student's IEP are no longer employed by the school and that hampered the ability of the Charter School to respond to this Complaint. However, that does not obviate the requirement to have a system of records in place in accordance with NAC §388.215(5)(b). In fact, a system of records would have allowed the Charter School to verify the student's receipt of services as required by the student's IEP, even after the departure of the providers.

The student enrolled in the Charter School for the 2016/2017 school year and classes began on August 22, 2016. (Finding of Fact (FOF) #1) The student withdrew from the Charter School at the end of the day on February 9, 2017. (FOF #2)

### **Issue One:**

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's IEPs in effect in the 2016/2017 school year, with regard to:

- a) Special education from August 22, 2016 through February 9, 2017 when the special education resource teacher or "push-in" providers were absent, the resource teacher's adjustment of the location resource and "push-in" minutes, and remedial education for IEP goals due to student retention for IEP goals in the resource room.
- b) Occupational therapy from the beginning of the 2016/2017 school year until late September 2016.
- c) Behavior/social emotional counseling from the beginning of the 2016/2017 school year until late January 2017.
- d) BIP from October 25, 2016 to February 14, 2017 with regard to daily documentation, analysis of target behaviors ever four weeks, and a parent/teacher meeting to review the BIP every six weeks.

The student had multiple IEPs that were in effect during the student's enrollment in the Charter School:

- The January 20, 2016 revision of the student's November 4, 2015 annual IEP (hereinafter, the January 20, 2016 IEP) developed/revised when the student was enrolled in another educational agency. It was in effect from August 22, 2016 through November 3, 2016;
- The student's November 4, 2016 annual IEP was developed by the Charter School and was in effect from November 4, 2016 until it was revised on January 30, 2017. The

January 30, 2017 IEP was in effect from January 31, 2017 up to the date of the student's withdrawal from the Charter School. (FOF #4)

The Parent provided the Charter School the student's IEP in advance of the commencement of the 2016/2017 school. However, the Charter School did not begin providing the student the required IEP services until August 31, 2016, seven school days after school began. (FOF#3) As such, with regard to Issue One, the Charter School failed to provide the student all of the disputed services from August 22, 2016 to August 30, 2016, a period of seven school days. The analysis below addresses the provision of the disputed services from August 31, 2016 through February 9, 2017.

## **Special Education (a)**

### **Absence of Personnel**

All of the student's IEPs in effect from August 22, 2016 to February 9, 2017 required the provision of special education in both the general education classroom and the resource room. (FOFs #7, #11, #15) Therefore, when the student's special education teacher was absent, the Charter School was required to ensure the special education in the student's IEP in the areas of math, written language and behavioral/social skills was implemented in both the resource room and the general education classroom during those absences. (NAC §388.281(6)(g), 34 C.F.R. §§300.17(d) and 300.101)

The Charter School has a policy that when a special education teacher is absent or otherwise unavailable, a substitute teacher is not provided due to confidentiality. (FOF #18) In this case, based on the documentation of the Charter School, the Complaint Investigation Team determined that the Charter School employed several measures to address some of the absences of the student's special education teacher: another Charter School special education teacher served the student; a special education aide provided services, when available; or the student's special education teacher attempted to make up the missing minutes of services. (FOFs #18, #20, #21, #23)

The Charter School was required to ensure the student was provided the special education services in the student's IEPs by a qualified special education teacher. (34 C.F.R. §300.18, §300.156) Therefore, the Complaint Investigation Team only considered the documentation provided by the Charter School that verified another special education teacher provided the student the required specially designed instruction during the absences of the special education teacher.

The student's special education teacher was absent or otherwise unavailable to provide any special education services on the equivalent of eight school days. On three additional days, the special education teacher was unavailable to provide the student's minutes in the resource room. (FOF #19)

The Charter School provided an undated signed statement from a second special education teacher that the student was provided the required resource minutes in math and reading, not writing as required, on five of the days the special education teacher was absent commencing on November 21, 2016. No documentation was provided on the number of minutes on each day to verify the provision of the required number of minutes in the resource room. (FOF #20) The second special education teacher also reported providing the student the required special education in the general education classroom during those five days of absences. (FOF #21) However, the Complaint Investigation Team determined that the special education teacher's statement did not include a sufficient description of services to ascertain whether this service in

the general education classroom was of the kind and amount of specially designed instruction required by the student's IEP.

Based on the statements of the special education teachers (FOFs #18, #20, #21) and the reduction of minutes of special education in the student's November 4, 2016 IEP (FOF #11), it is likely that the student received some of the required minutes of special education in the resource room and, possibly, in the general education classroom during these five days of absences. However, given the absence of a date on the written statement; the lack of documentation on the number of minutes of the required services; and the failure to provide the student the required minutes of specially designed instruction in the area of writing, the Complaint Investigation Team determined that this written statement provided in the course of the investigation did not meet the system of records required by NAC §388.215(5)(b) to verify that the student had received the services determined by the student's IEP Team to be appropriate to the disability.

While the Charter School provided documentation dated January 31, 2017 from the special education teacher on the services in the resource room to make up minutes from the day before, the only reference to the special education teacher providing the services was a statement of future intent and prior completion of minutes in summary form. (FOF #23) In addition, the Charter School did not provide any documentation reflective of the system of records required by NAC §388.215(5)(b) to verify that the student was provided special education by a special education teacher in the resource room for the other three days of absences or for the additional three days of resource room minutes when the special education teacher was unavailable. (FOF #22)

Therefore, the Complaint Investigation Team determined that the Charter School failed to implement the student's IEP with regard to the provision of special education in the general education classroom and the resource room when the student's special education teacher was absent on eight school days and in the resource room on an additional three school days.

The student's general education teacher for math, science and homeroom was absent for a total of 10 full or partial school days during the student's enrollment in the Charter School. (FOF #24) The failure to provide the student the required minutes of special education services in the general education classroom was addressed above and the provision of the student's general education services is not within the scope of the special education complaint investigation process.

However, in this case, the general education teacher's absences did impact the implementation of the student's IEP in that the Charter School reported that during these absences, the student was placed in the resource room for the entire time. (FOF #25) It is the Charter School's position that it did not fail to implement the student's IEP during these absences, but rather the student "received more services than IEP minutes." (FOF #25)

All of the student's IEPs provided the student was to receive the behavioral/social skills special education and some of the written language and math special education in the general education classroom. (FOFs #7, #11, #15) In addition, the student's IEP required the student to spend 88 percent of the school day in the regular classroom environment. (FOFs #5) Therefore, the Charter School failed to implement the student's IEP in the general education classroom for the required minutes in that setting on the days the general education teacher was absent.

## **Adjustment of Minutes**

The allegation in the Complaint relevant to the adjustment of the student's service minutes was that the student's special education teacher failed to implement the required minutes of special education in the designated location of services. Specifically, the Parent alleged the Charter School provided the general education minutes in the resource room and the resource minutes in the general education classroom. The Parent did not cite any specific incident in the Complaint or in the supplementary information provided in the course of the investigation with regard to this allegation.

Based on the information provided in the course of the investigation, the Complaint Investigation Team determined there was only one verifiable incident regarding the adjustment of the location of the provision of special education to the student during the time period of this Complaint. This incident was the above cited removal of the student for the school days from the general education classroom to the resource room when the general education teacher was absent. (FOF #25) Therefore, on at least one occasion, the Charter School failed to implement the student's IEP with regard to the required minutes of specially designed instruction in the designated setting.

## **IEP Goals**

Pursuant to the IDEA, 34 C.F.R. §300.320(a)(4), and the NAC §388.284(1)(c), the statement of the special education, related services, supplementary aids and services and program modifications or supports in a student's IEP is to, among other reasons, enable the student to advance appropriately toward attaining the annual goals.

In this case, the Parent alleged that the student was not provided the required remedial education for the student's IEP goals in the resource room, but rather was provided only assistance with current grade level general education classwork. All of the student's IEPs had goals in the areas of math, writing and spelling. (FOFs #6, #10, #14) In addition, while the number of minutes varied, all of the student's IEPs required specially designed instruction in math and written language in the resource room, as well as in the general education classroom. (FOFs #7, #11, #15) As such, the Complaint Investigation Team determined that it is the specially designed instruction in the resource room in the academic subjects of math and written language at issue in this Complaint.

The Complaint Investigation Team noted that for the first quarter of the school year ending October 7, 2016, the student made satisfactory progress on the student's math goals, but made unsatisfactory progress on the two writing goals. By the second quarter progress report on January 6, 2017, the student made satisfactory progress on all of the student's math goals and one of the writing goals, with adequate progress on the other writing goal. (FOF #48)

With regard to the provision of special education services in the resource room, the documentation provided by the Charter School, while extensive on course subjects that included math and writing, did not address the implementation of the student's IEP goals in math and writing. (FOFs #26, #27) The Charter School only provided documentation on the implementation of the student's IEP goals in math and writing in the resource room on seven school days: on September 7, 2016, in the resource room, the student worked on subtraction problems and, with a partner, worked to complete a chart about a story they read in class; and, when the special education teacher was absent, the second special education teacher reported the student worked on multiplication. (FOFs #6, #10, #26, #27)



Given the student's progress from the first quarter of the 2016/2017 school year to the second quarter (FOF #48) and the reduction of minutes in the resource room commencing with the November 4, 2016 IEP (FOFs #11, #15), it is likely the student received some of the required specially designed instruction in math and written language in the resource room to enable the student to meet the student's IEP goals. However, in the absence of any documentation to verify the implementation of the required special education to enable the student to meet the IEP goals in math and writing in the resource room pursuant to NAC §388.215(5)(b), the Complaint Investigation Team determined that the Charter School failed to implement the student's IEP in this regard.

*Therefore, the Charter School failed to comply with the IDEA and the NAC, Chapter 388, in the implementation of the student's IEPs in effect in the 2016/2017 school year, specifically in the areas of special education from August 22, 2016 through February 9, 2017 when the special education resource teacher or "push-in" providers were absent, the adjustment of the location of special education services on one occasion, and the provision of special education for IEP goals in the resource room.*

### **Occupational Therapy (b)**

The student's IEPs in effect during the period of this Complaint all required the provision of the related service of direct occupational therapy with the frequency of services of 60 minutes a month on the school campus. The student's January 20, 2016 IEP included a related supplementary aid/service that adaptive equipment would be provided by the occupational therapist and revised as needed on occurrence of need in the location of the general education classroom. (FOFs #8, #12, #17)

The student's November 4, 2016 and January 30, 2017 IEPs described the related service of direct occupational therapy as slant board with clip, teacher or peer notes to supplement the student's own, allow use of computer with "word predict" or speech to text. A related supplementary aid/service was included in the student's IEP that adaptive equipment would be provided the student by the occupational therapist and revised as needed in general education and resource room for the same time period. The January 30, 2017 IEP provided that the supplementary aid/service regarding adaptive equipment would be implemented daily. (FOFs #12, #17) The Parent did not allege a failure of the Charter School to provide the required kind of occupational therapy (FOFs #28, #29), but rather the provision of any occupational therapy minutes until late September 2016.

The Charter School contracts with a private agency for occupational therapy services. On September 28, 2016, the occupational therapist reviewed the student's file and the student began to receive occupational therapy on October 13, 2017. (FOF #29) The Charter School does not contest that the student was not provided occupational therapy from the commencement of the 2016/2017 school year through September 2016 as alleged in the Complaint. (FOF #30) The Charter School reported that there was a plan in place to make up all outstanding additional minutes of occupational therapy, but the student was withdrawn from the Charter School. (FOFs #29, #30)

Therefore, the Charter School failed to provide the student 60 minutes of occupational therapy in September 2016 and, upon considering the student attended the Charter School from August 22, 2016 to August 31, 2016, the Charter School should have provided, at least, a pro rata amount of the 60 minutes per month required by the student's IEP, approximately 22 minutes of occupational therapy. (FOFs #8, #29)

The additional 15 minutes of occupational therapy the Charter School provided during the time period of the Complaint will be considered in the appropriate remedy in this Complaint. (FOF #29) The 10 minutes of consult occupational therapy provided on January 31, 2017 (FOF #29) will not be considered with regard to the remedy in that the student also had a supplementary aid/service on adaptive equipment in all of the student's IEPs that was in addition to the occupational therapy minutes. (FOFs #8, #12, #18, #29)

*Therefore, the Charter school failed to comply with the IDEA and the NAC, Chapter 388, in the implementation of the student's IEP with regard to the provision of occupational therapy from the beginning of the 2016/2017 school year through September 2016.*

## **Behavior/Social/Emotional Counseling**

The Parent alleged that the student was not provided behavioral/social/emotional counseling from the beginning of the 2016/2017 school year until late January 2017. Contrary to the belief of the Parent, the student's January 20, 2016 IEP in effect at the commencement of the 2016/2017 school year did not include behavioral/social counseling. This IEP provided, as special education, consult behavioral/social skills services to be provided from November 4, 2015 to November 3, 2016 with the frequency of services of 40 minutes a month in general education. This IEP did not include any related service or supplementary aid/service requiring counseling to be provided to the student. (FOFs #7, #8, #9) Therefore, the Charter School did implement the student's IEP from the commencement of the school year to November 3, 2016 with regard to counseling services.

The student's November 4, 2016 IEP in effect from November 4, 2016 through November 3, 2017 also provided, as special education, behavioral/social emotional skills with the reduced frequency of services of 30 minutes a month in the general education/resource room. (FOF #11) Consistent with the prior discussion, this specially designed instruction did not require the student to be provided counseling services. However, the November 4, 2016 IEP added two new supplementary aids/services regarding counseling: consult/counselor with the frequency of services of 30 minutes a month in the general education classroom and resource room; and, if the student became frustrated, the student was allowed a 5-minute "cool down" to compose or ask to see the counselor with the frequency of services of 50 minutes a month and the location of the services was in the general education/resource room. (FOF #13) The student's January 30, 2017 IEP included the consult/counselor service, with the addition of the frequency "as needed", and maintained the service if the student became frustrated. (FOF #16)

It is important to note that contrary to the apparent belief of the Charter School and the Parent, the supplementary aid/service of consult/counselor was to be provided in the general education classroom/resource room as consultation on behalf of the student, not as a direct service to the student. The second supplementary aid/service in the student's IEP regarding asking to see the counselor when frustrated would result in a direct service to the student, when provided. (FOFs #11, #13, #16) As discussed below, the Charter School did provide some direct counseling services to the student instead of the required consult minutes and the Complaint Investigation Team will take that into consideration with regard to the appropriate remedy.

The Charter School contracts with an outside agency for counseling services. The counselor assigned to the student from September 2016 through December 2016 is no longer employed by the agency and a second counselor was assigned to the student. (FOF #31)

The primary documentation provided by the Charter School was simply an after-the-fact written statement by the counselor that services had been provided, including by another service

provider prior to the counselor's association with the Charter School. (FOFs #33, #34) This after-the-fact statement was not reflective of the system of records required by NAC §388.215(5)(b) to verify that the student received the consult counselor services determined by the student's IEP Team to be appropriate to the disability. The Charter School also provided six undated completed work sheets on managing anger with no student name or date. (FOF #35) Due to lack of verification, these worksheets were given no weight by the Complaint Investigation Team.

The Charter School did provide the following documentation recorded on or close in time regarding the provision of direct counseling services to substantiate the provision of the required counseling services commencing November 4, 2016 through January 2017:

- The first counselor conducted an assessment of the student in the general education classroom for the November 4, 2016 IEP and talked to the student. After the observation of the student engaged in the activity, the counselor talked with the student. The observation/assessment was documented on November 4, 2016, but did not include the number of minutes. (FOF #32)
- On November 15, 2016, the special education teacher documented that the student was pulled out of English language arts for counseling and again on December 8, 2016. On January 24, 2017, during English language arts, the student went to the counselor after arguing with a peer. There is no documentation of the number of minutes of these counseling services. (FOF #36)

With no further detail, the student's counselor reported that the student used the "counselor's pass" when the student needed a counseling session. (FOF #37)

There is verifiable documentation that the counselor participated in the student's November 4, 2016 IEP meeting. While there was no documentation of the number of minutes the counselor provided consultation during the IEP meeting, the Complaint Investigation Team determined that it is likely this IEP participation was in excess of 30 minutes. (FOF #32) Therefore, given the beginning date of November 4, 2016 on this IEP, the Complaint Investigation Team determined the Charter School did provide the student the required 30 minutes of consult/counseling in November 2016.

As discussed above, the documentation regarding January 2017 services (FOFs #34, #35, #36) was for direct counseling services and did not meet the requirement of a system of records pursuant to NAC §388.215(5)(b). However, given the consult/counselor service was a monthly service and the Parent did not raise a failure to provide the service for the entire month of January 2017, the Complaint Investigation Team determined that the provision of the consult/counselor service for the month of January 2017 was uncontested.

In the absence of documentation otherwise as required pursuant to NAC §388.215(5)(b), the Complaint Investigation Team determined that the Charter School failed to implement the student's IEP with regard to the provision of the service of consult/counselor for 30 minutes a month in December 2016.

*Therefore, the Charter School implemented the student's IEP from the commencement of the school year to November 3, 2016, in that no counseling service was required, and in the months of November 2016 and January 2017; but failed to implement the student's IEP in December 2016 with regard to the provision of the service of consult/counselor 30 minutes a month.*

## **BIP**

The student's January 20, 2016 IEP did not require the development or implementation of a BIP. On the contrary, the student's IEP Team indicated that the student's behavior did not impede the student's learning or the learning of others and no action was needed to address the student's behavior. (FOF #9)

The student's November 4, 2016 and January 30, 2017 IEPs did include the supplementary aid/service of a BIP to be implemented with the frequency of services of 100 minutes a month in the general education classroom and resource room. (FOFs #13, #16) The January 30, 2017 IEP clarified that the BIP was to be implemented daily. (FOF #16)

The student did have an October 25, 2016 BIP in effect during the period of this Complaint. (FOF #38) The targeted behavioral concerns in the October 25, 2016 BIP were:

- a. Following directions from an adult 80 percent of the time, initiating a task and maintaining focus without redirection; and
- b. Controlling anger, specifically emotionally and socially the student becomes agitated with others and argues in the general education classroom and resource room three out of five days a week. (FOF #38)

The functional behavioral assessment data included in the October 25, 2016 BIP indicated the setting events for the targeted behavioral concerns were that the behaviors may occur in the general education classroom, resource room, cafeteria and playground. (FOF #39)

Given the number of minutes the student was in the general education classroom and the resource room and the daily implementation requirements in the BIP, such as the daily collection of data and the proactive strategies of earning up to two points per period (FOFs #13, #16, #40, #41), the frequency in the student's IEP of a limit of 100 minutes a month is counterintuitive. Given the Charter School did not provide any documentation of the number of minutes in any given month that the student's BIP was implemented (FOF #43), the Complaint Investigation Team determined for purposes of this Complaint that the student's BIP was required to be implemented daily.

In accordance with the student's October 25, 2016 BIP, the Charter School was required to collect progress monitoring data to determine the effectiveness of the BIP throughout the day for eight weeks and analyze it every four weeks to determine if the target behaviors were decreasing. In addition, the student's BIP was to be reviewed by the Parent and teacher at a minimum of every six to nine weeks. (FOF #40)

The only documentation the Charter School provided in the course of the investigation that expressly documented the occurrence of the student's targeted behaviors and implementation of the BIP was the "Kid Pointz" forms. (FOFs #41, #42) The "Kid Pointz" forms documented the number of points the student earned consistent with the student's BIP when the student met the goals of following directions and staying calm. (FOF #41) While this documentation meets the requirement of a system of records to verify that the student received the services determined by the student's IEP Team (NAC §388.215(5)(b)), data were required to be collected for the first eight weeks in all of the student's general education classrooms and on all days in the resource room. While both the student's resource room teacher and the English language arts teacher collected the data, there was no documentation from the student's

general education teacher for math, science and homeroom or in the resource room when the special education teacher was absent. (FOF #41)

The Charter School did not provide any documentation that BIP data were analyzed every four weeks to determine if the target behaviors were decreasing or that the student's BIP was reviewed by the student's parent and teacher at a minimum of every six to nine weeks in accordance with the student's October 25, 2016 BIP. (FOF #43) While there was a February 9, 2017 BIP provided in the course of the investigation that indicated a prior meeting on January 30, 2017, this time period would have exceeded the six to nine weeks to review the student's BIP. (FOF #44)

In the absence of documentation otherwise as required pursuant to NAC §388.215(5)(b), the Complaint Investigation Team determined that the Charter School failed to implement the student's BIP as required by the student's November 4, 2016 IEP with regard to data collection, in some regards, and with regard to the analysis of the data collected every four weeks and the review of the student's BIP every six to nine weeks in all regards.

*Therefore the Charter School failed to comply with the IDEA and the NAC, Chapter 388, in the implementation of the student's IEPs in effect in the 2016/2017 school year from November 4, 2016 to February 9, 2017 with regard to the student's BIP, specifically the required daily documentation in all required settings, analysis of target behaviors, and a parent/teacher review meeting to review the BIP.*

## **Issue Two:**

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, with regard to the IEP Team's consideration of current evaluations in the development of the student's November 2016 IEP, specifically the reduction in counseling minutes.

In accordance with the IDEA, 34 C.F.R. §300.324, and the NAC §388.284(2), in developing each student's IEP, the IEP Team must consider: the strengths of the student; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the student; and the academic, developmental, and functional needs of the student.

As discussed previously, contrary to the belief of the Parent, the student's January 20, 2016, IEP in effect at the commencement of the 2016/2017 school year did not include counseling. The January 20, 2016 IEP provided, as special education, consult behavioral/social skills services to be provided from November 4, 2015 through November 3, 2016 with the frequency of services of 40 minutes a month in general education. (FOF #7) While the minutes of the specially designed instruction of consult behavioral/social skills services were reduced by 10 minutes in the student's November 4, 2016 IEP (FOF #11), the Charter School added two new supplementary aids/services that provided 30 minutes a month of consult/counseling and the ability of the student to ask to see the counselor, if the student becomes frustrated. (FOF #13)

The Parent alleges that the student's IEP Team changed the student's November 4, 2016 IEP in the area of counseling services without consideration of current evaluations; however, the Complaint Investigation Team determined otherwise. The student's IEP does not reference the assessment data in the student's October 28, 2015 Multidisciplinary Evaluation Team Report

(FOF #45) that remained valid; however, the IEP did reference at least one other assessment conducted in the Present Levels of Academic Achievement and Functional Performance: an assessment that was an observation conducted by the school counselor on November 3, 2016. In addition, the counselor participated in the student's November 4, 2016 IEP meeting. (FOF #46) The IEP also included information in the Present Levels of Academic Achievement and Functional Performance from the student's special education teacher regarding the functional needs of the student, including Parent input. (FOF #29) As such, the Charter School did ensure the student's IEP Team considered the results of the most recent evaluation of the student.

*Therefore, the Charter School complied with the IDEA and the NAC, Chapter 388, with regard to the IEP Team's consideration of current evaluations in the development of the student's November 2016 IEP with regard to the student's, counseling minutes.*

## **ORDER OF CORRECTIVE ACTION**

The Charter School is required to take corrective action to address the violations found in this Complaint, specifically the Charter School failed to implement the student's IEP in its entirety. As noted previously, the findings regarding the failure to implement the student's IEP were based, in part, on the absence of a system of records to provide documentation for the purpose of verifying that the student received services appropriate to the disability pursuant to NAC §388.215(5)(b).

In accordance with the MOA between the SPCSA, the Charter School is solely responsible for the cost of the ordered compensatory education. Pursuant to the previously referenced MOA, the SPCSA is the LEA with regard to special education and other matters and the Charter School is a school within the LEA. Therefore, this Order of Corrective Action is also directed to the SPCSA as the LEA to ensure the Charter School's implementation of the Order.

### **Directed Action - Compensatory Education**

#### **Specially Designed Instruction**

Due to the nature of the cited supplementary aids/services and the monthly consult/counselor service for December 2016, it is difficult to quantify the nature and amount of services required to educationally compensate the student for the failure to receive these services. To complicate the matter, the student is no longer enrolled in the Charter School and, while the student is reportedly doing well in the current placement, specific information regarding the student's progress at the new school and emergent needs was not provided during the course of this investigation.

Therefore, the Complaint Investigation Team determined that the compensatory services for failure to implement the required special education and supplementary aids/services in the student's IEP would be directed at augmenting the student's progress in the specially designed instruction in the academic subject(s) designated in the student's IEP that were the subject of this Complaint. (See below systemic remedy that also addresses the failure to provide the student these special education services and the required supplementary aids/services.)

By the second quarter progress report on January 6, 2017, the student made satisfactory progress on all of the student's math goals, the spelling goal and one of the writing goals. The student made adequate progress on one writing goal and the behavioral goal. (FOF #48) The student earned grades in two of the areas in which the student had annual goals in the IEPs in

effect: math and writing. Upon withdrawal, the student's grades in math and writing were: D in math (modified from F) and B in writing. (FOF #49)

The Charter School did not provide any documentation to support the measurement set forth in each goal to support the determinations of progress in the student's Progress Reports. (FOF #48) Therefore, the Complaint Investigation Team considered the Progress Reports in conjunction with the student's grades in the two areas in which the student had annual goals, math and writing, and accorded the student's grades greater weight than the Progress Reports given they were recorded on the Charter School's formal Student Release and Transfer document.

With regard to written language, the Complaint Investigation Team determined that given the student's grade and reported progress in achieving the writing goals, a student specific remedy is not required. However, with regard to math in which the student earned a D (changed from a F), the Complaint Investigation Team determined the award of compensatory education would be calculated based on the failure of the Charter School to implement the student's specially designed instruction in the subject of math on the days of the special education teacher's absences and the required resource minutes to address the student's math goals. (The student was provided additional minutes of specially designed instruction during the adjustment of the student's schedule in the resource room; therefore no student specific remedy is required for that noncompliance. See systemic remedy below.)

Notwithstanding the determination of the failure of the Charter School to provide the specially designed instruction in all regards, upon consideration that it is likely that some specially designed instruction may have been provided to the student (FOFs #21, #22, #26, #27); and the one-on-one nature of the tutoring, the Complaint Investigation Team determined that the student is entitled to the equivalent of 20 hours<sup>2</sup> of compensatory education in math.

Given the Parent's proposed remedy provided in the course of the investigation, the Complaint Investigation Team determined that the 20 hours of required compensatory education would be awarded as compensatory education through the provision of tutoring services through a private provider of the Parent's choosing. The compensatory amount is based on the Parent's proposed remedy of a four week online course in math in the amount of \$120.00. While the Parent may choose an alternative provider of tutoring services in math, the compensatory amount to be paid by the Charter School will not exceed \$120.00.

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<sup>2</sup> The following is the basis for this calculation: with regard to the provision of the specially designed instruction in math and taking into consideration school holidays, the student was required to be provided the following number of minutes of specially designed instruction in math in the resource room during the period of this Complaint:

1. January 20, 2016 IEP from August 22, 2016 through November 3, 2016 (50.5 school days, approximately 10 weeks): 100 minutes a week of math specially designed instruction in the resource room = 1000 minutes (16.6 hours)

2. November 4, 2016 IEP through January 29, 2017: 100 minutes a month of math (five minutes a day) specially designed instruction in the resource room (44.5 school days minus a half day of absence, 44 school days or 2.2 months = 220 minutes (3.6 hours)

3. January 30, 2017 IEP through February 9, 2017 (nine school days): 100 minutes a month (five minutes a day)= 45 minutes (.75 hours).

Rounded up, a total of 21 hours of math specially designed instruction in the resource room.

Absences: After considering the awarded remedial education for resource hours calculated above, the student was required to be provided the following number of minutes of specially designed instruction in math in the general education classroom for the eight days of absences during the period of this Complaint: Two of the days of absences were when the January 20, 2016 was in effect requiring 150 minutes a week (30 minutes a day) of math specially designed instruction in general education = 60 minutes for two days (one hour); six days were when the November 4, 2016 IEP was in effect requiring 100 minutes a month of math (5 minutes a day) specially designed instruction in general education =30 minutes for six days (.5 hour). Rounded up, a total of one and one half hours of services.

## **Related Service: Occupational Therapy**

The Charter School failed to provide the student 82 minutes of occupational therapy during the time period of this Complaint. (FOFs #8, #29) Taking into consideration the additional 15 minutes of occupational therapy the Charter School provided during the time period of the Complaint (FOF #29), the student was not provided 67 minutes of occupational therapy.

Given the Parent's proposed remedy provided in the course of the investigation, the Complaint Investigation Team determined that the 67 minutes of missed occupational therapy services would be awarded as one hour of occupational therapy in the amount of \$110.00 by a provider of the Parent's choosing. The occupational therapy may be provided as either an evaluation or therapy, but the compensatory amount to be paid by the Charter School will not exceed \$110.00

## **Invoices**

Within 15 days of the receipt of this Report, the Charter School must provide the Parent the required information and procedure for the Parent to submit the invoices that verify the provision of the ordered math service and occupational therapy. At the Charter School's discretion, the payment of the invoices may be made directly to the service provider or as reimbursement to the Parent upon receipt of verification of payment. The Charter School's procedure must include payment for the math service and occupational therapy within 30 days of the submission of each invoice (or, if applicable, the verification of payment) to the Charter School.

This compensatory education must be in addition to the required services in the student's IEP in effect at the date of this Report; and must take place during non-instructional hours in the school day or after school or during days students are not in attendance at school. The compensatory services of math and occupational therapy must commence after the date of this Report and must be completed prior to the end of the 2017 calendar year. Any services provided thereafter will not be eligible for reimbursement, even if the compensatory services awarded in this Report have not been completed.

The Charter School must provide documentation to the NDE of the completion of the delivery of the compensatory education and payment of the invoices within 30 days of its payment/reimbursement of the invoices. This documentation must be sent first to the SPCSA to provide them an opportunity to review the documentation and provide the Charter School a signed document signifying agreement of the implementation of this Order. The Charter School must submit the SPCSA's signed document with the required documentation of the implementation of the compensatory education to the NDE.

## **Directed Action - Systemic**

### **Policies/Procedures**

Within 60 days of the receipt of this Report, the Charter School must develop a policy directing all personnel in the school responsible for implementing student's IEPs of the requirements of the IDEA and the NAC, Chapter 388, that:

Special education and related services and supplemental aids and services in students' IEPs (and any program modifications or supports for school personnel on behalf of the



student) must be provided in conformity with the IEP. (NAC §388.281(6)(g), 34 C.F.R. §§300.17(d) and 300.101)

The policy must also describe with specificity the Charter School's mandatory system of records to document the implementation of each student's IEP. The Charter School must include in the policy information on how to access and maintain the Charter School's form to be used for this purpose. (At the Charter School's discretion, the form can be modified, as needed, for an individual student by the service provider.) The form must provide a way to document the implementation of the required kind/type, amount, location, and frequency of the special education, related services, supplementary aids and services, and the modifications or supports for school personnel.

The policy and the form must be submitted to the SPCSA for their approval within the ordered 60 days. Within 15 days after development, the final policy and form must be disseminated to Charter School personnel, including related service providers, who are responsible for the implementation of students' IEPs and provided by the Charter School to the NDE to document implementation of this Order.

## **Procedures**

Within 60 days of the receipt of this Report the Charter School must develop written procedures to ensure the Charter School:

- Reviews each student with a disability's IEP prior to the commencement of a school year, and upon the enrollment of a student with a disability during the school year, and assigns service providers who will be responsible for the implementation of the student's IEP commencing on the first day the student attends school.
- Provides a qualified special education teacher during the absences or unavailability of a student's special education teacher to implement a student's IEP and, if a qualified substitute special education teacher service provider is not available, what steps the Charter School will take to ensure that the students with IEPs served by the special education teacher are provided a FAPE.
- Monitors the implementation of the required kind/type, amount, frequency, and location of services in students' IEPs.

A copy of the procedures must be submitted to the SPCSA for their approval within the ordered 60 days. Within 15 days after development, the procedures must be disseminated to Charter School personnel and provided by the Charter School to the NDE to document the implementation of this Order.

## **Training**

The Charter School must train all school personnel responsible for the implementation of students' IEPs on the above policy and procedures, including the required system of records and form. The training must take place no later than the end of the 2017 calendar year, but ideally prior to the commencement of the 2017/2018 school year. The training must include a method for the Charter School to determine that the participants have mastered the contents of the training and documentation of that mastery. If any personnel are not present on the day of training, the Charter School must provide a written assurance of how and when the absent personnel will be instructed on this information. The Charter School will be responsible for following-up on the training for absent members and reporting to the NDE on its completion.

Given the occupational therapist maintained a system of records (FOF #29) that documented the student received the required number of consultative services, once initiated, at the Charter School's discretion, the occupational therapist who provided services to the student is not required by this Order to attend the above training on the system of records.

The training may be conducted electronically at the Charter School's discretion; however, the Charter School must have documentation of the participants by role and their mastery of the contents. This documentation and any assurances must be provided to the NDE within 15 days of the completion of the training of all required personnel to document the implementation of this Order.