

COMPLAINT INVESTIGATION CHARTER SCHOOL (#SC020817)

Report Issued on April 17, 2017⁹

INTRODUCTION

On February 8, 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). The Parent identified the Charter School as a school of the SPCSA and provided a copy of the Complaint to both the SPCSA and the Charter School.

The Parent alleged the Charter School failed to implement the student's Individualized Education Program (IEP) with regard to 15 specifically enumerated services, including special education, related services and accommodations, and the provision of specialized progress reports; the Charter School's acted based on availability of services; and imposed disciplinary actions for manifestations of the student's disability that impeded the implementation of the student's IEP.

The Parent also raised an allegation regarding the discriminatory treatment of the student when being picked up from school. The Nevada Department of Education (NDE) does not have jurisdiction through the special education complaint investigation process to investigate complaints of discrimination or other civil rights violations Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§705, 794, 794a, 794b; 34 C.F.R. Part 104. The Parent was referred to the appropriate offices of the SPCSA and the Office of Civil Rights, US Department of Education in this regard.

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

⁹ A typographical error was corrected on April 24, 2017 and the Report reissued with only that correction.

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 July 9, 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."¹

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. Other than the above referenced MOA, the SPCSA did not provide any additional information in response to this Complaint. All documents submitted by the Parent and the Charter School relevant to the issues in the Complaint, including legal argument, 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.

Amendment

In the course of the investigation it was determined that, contrary to the assertion that a statement of facts supporting all of the allegations was included in the extensive attachment to the Complaint, some of the allegations in the Complaint did not include the facts as required by the IDEA, 34 C.F.R. §300.153. The NDE notified the Parent and the Charter School and the SPCSA of the specific allegations that were not supported by facts and provided a clarification of what was required to meet the IDEA standard. The Parent was provided an opportunity to amend the Complaint and timely did so, providing a copy to the Charter School and the SPCSA. The NDE accepted the amendment that included supporting facts/documentation for all but two of the itemized allegations of failure to implement the student's IEP. The allegations regarding the student's supplementary aids/services of cues of "smooth speech" when speaking too slow

¹ 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."

and cues of “slow down and take a breath” when speaking too fast and modify times, distances, steps, and repetitions for success and peer pace were not supported by a statement of facts. As such, the NDE terminated the investigation on these two allegations, but proceeded with the investigation on the rest of the allegations in the Complaint.

The Parent, Charter School and SPCSA were provided an additional opportunity to provide information or respond to the newly stated supporting facts that clarified the specifically alleged noncompliance. Both the IDEA and the NAC permit an extension of the 60-day timeline to conduct the investigation and issue the written decision if exceptional circumstances exist with respect to a particular complaint. (34 C.F.R. §300.152(b); NAC §388.318(5)(a)) The NDE determined that the filing of an amendment and the additional opportunity to provide information to respond to the Complaint constituted exceptional circumstances. Therefore, the Report timeline was extended from April 9, 2017 to April 21, 2017. All documents submitted by the Parent and the Charter School relevant to the amendment were also reviewed in this investigation.

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 March 9, 2016 IEP with regard to:

1. Providing specially designed instruction in:
 - a. Reading, 250 minutes per week;
 - b. Written language, 250 minutes per week;
 - c. Physical education/per curriculum, 300 minutes per week;
 - d. Adaptive physical education services as identified in the student’s measurable goal, specifically written to be implemented by the adaptive physical education teacher and the general education teacher; and
 - e. Math, 250 minutes per week.
2. Providing related services of:
 - a. Occupational therapy, specifically 100 minutes per year; and
 - b. Speech/language therapy, specifically 30 minutes per month.
3. Providing the following supplementary aids and services:
 - a. Occupational therapy to monitor/provide equipment, environmental modifications/accommodations and/or trainings as needed for educational access;
 - b. Progress reported to parent if scores under 70 percent;
 - c. Test administrator or proctor may record student’s responses on student’s answer document;
 - d. Appropriate size furniture to promote sitting posture;
 - e. Additional adult assistance;
 - f. Be given copies of notes and PowerPoint presentation;

- g. Homework instruction sent home for homework clarification;
 - h. Agenda² to communicate homework instructions and assignments; and
 - i. Teacher to check agenda for legibility.
4. Reporting progress, specifically, providing specialized progress reports to the parents as indicated in the March 9, 2016 IEP.

Issue Two:

Whether the Charter School complied with the disciplinary procedures under the IDEA and the NAC, Chapter 388, with respect to suspending the student for three days on October 20, 2016.

Issue Three:

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, with respect to providing the student the services and instruction deemed necessary by the student's IEP Team in the March 9, 2016 IEP, specifically with regard to the school's September 9, 2016 proposal to reduce the student's level of IEP services based on the availability of services at the school.

FINDINGS OF FACT

General

1. The student enrolled in the Charter School at the commencement of the 2016/2017 school year. Classes began on August 29, 2016. (Charter School 2016/2017 School Calendar)
2. The student had a March 9, 2016 IEP developed by another Nevada public educational agency that was in effect during the student's enrollment in the Charter School in the 2016/2017 school year. (IEP)
3. On March 28, 2016, prior to the enrollment of the student in the Charter School, the Parent provided the director of special education for the Charter School a copy of the student's March 9, 2016 Multidisciplinary Team Report and IEP. (March 6, 2016 Charter School Email, March 28, 2016 Parent Email)
4. While the Official School Withdrawal Form was not signed by both the Parent and Charter School until November 10, 2016, as agreed upon by the Parent and the Charter School, the date of the withdrawal/exit of the student was October 24, 2016. (Student Period Attendance Detail, Official School Withdrawal Form, November 10, 2016 Charter School Email)
5. Up to the date of the student's withdrawal from the Charter School, the student was absent only one day for three periods and was suspended for three days. From August

² The terminology "planner" is also used by the Parent and the Charter School. The terms agenda and planner are used interchangeably in this Report.

29, 2016 to October 24, 2016, there were three school days when students were not in attendance and one minimum day. Excluding the days when students were not in attendance and the days the student was removed from school, the student was in attendance at the Charter School for 33 school days from August 29, 2016 to October 24, 2016. (Charter School Calendar)

Implementation of the March 9, 2016 IEP

6. Relevant to this Complaint, the student's IEP included the following annual goals:
 - a. Two goals in a classroom setting in the area of English language arts: one in oral reading with appropriate rate and expression and one in the production of clear and coherent paragraphs. The goals were to be measured by observation, documentation and work samples as implemented by the special education, general education teacher and staff;
 - b. A math goal on mathematical operations and strategies in a general education setting to be measured by observation, documentation and work samples as implemented by the special education, general education teacher and staff;
 - c. A goal addressing object movement skills while in physical education class that the student would perform object movement skills in a variety of settings achieving a criteria of four out of five trials as measured by observation, documentation and work samples as implemented by the adaptive physical education teacher and general education physical education teacher;
 - d. A goal on social communication skills on the school campus to be measured by observation and documentation as implemented by the general education teacher and special education teacher and supported by speech/language pathologist. (IEP)

7. The student's IEP included the following special education services to this Complaint:
 - a. Direct specially designed instruction of reading for 250 minutes a week in general education from August 1, 2016 to March 8, 2017;
 - b. Direct specially designed instruction of written language for 250 minutes a week in general education from August 1, 2016 to March 8, 2017;
 - c. Direct specially designed instruction of physical education/per curriculum in general education, listed twice with the combined minutes of 300 a week from August 1, 2016 to March 8, 2017;
 - d. Direct specially designed instruction of math for 250 minutes a week in general education from August 1, 2016 to March 8, 2017; and
 - e. Direct specially designed instruction of study skills for 250 minutes a week in general education from August 1, 2016 to March 8, 2017. The provision of the student's study skills was not a subject of this Complaint (IEP)

8. The student's IEP included the following related services relevant to this Complaint:
 - a. Consult occupational therapy on the school campus from August 29, 2016 to March 8, 2017 for 100 minutes per year. The student's IEP also had consult occupational therapy in the amount of 20 minutes per year for the time period of March 9, 2016 to August 28, 2016, prior to the student's enrollment in the Charter School;
 - b. Consult speech/language therapy on the school campus from August 29, 2016 to March 8, 2017 for 30 minutes per month. (IEP)

9. The student's IEP specified that the method for reporting progress toward meeting the student's annual goals would be through a Specialized Progress Report and the projected frequency of reporting was quarterly. There was a related supplementary aid/service that progress was to be reported to the Parent if scores were under 70 percent. (IEP)

10. The student's IEP included the following supplementary aids and services relevant to this Complaint with a beginning date of March 9, 2016 and an ending date of March 8, 2017:
 - a. Occupational therapy to monitor/provide equipment, environmental modifications/accommodations and/or trainings with the frequency of services as needed for educational access on the school campus;
 - b. Progress reported to Parent if scores under 70 percent. The frequency was upon occurrence and the location of the service was in the general education class;
 - c. A test administrator or proctor may record the student's responses on the student's answer document. The location of the service was on the school campus and the frequency was during testing;
 - d. During table top activities, appropriate size furniture to promote sitting posture (shoulders relaxed, forearms/feet supported). The location of the service was on the school campus;
 - e. Additional adult assistance with the frequency of services during whole group, individual work and instruction. The location of the service was on the school campus;
 - f. Student to be given copies of notes and PowerPoint presentations with the frequency of services as "fine motor activities" and the location of services in the general education classroom; and
 - g. Supplementary aids and services (consolidated) with regard to homework:
 - i. Homework instruction sent home for homework clarification nightly when sending homework and the location of the services of the resource room and general education class;
 - ii. Agenda to communicate homework instruction and assignment with the frequency of services as daily and the location of services of the resource room and general education class; and
 - iii. Teacher to check agenda for legibility with the frequency of services as daily and the location of services as the general education class. (IEP, Parent Amendment)

11. The student's teachers received a full copy of the student's IEP on September 21, 2016. Prior to that date, a "snapshot" of the student's IEP was provided to the student's teachers and they were informed of how to obtain a copy of the full IEP. The dates of receipt for the "snapshot" were as follows: math teacher on September 7, 2016; physical education teacher on September 22, 2016; theatre on September 9, 2016. There is no documentation of the date the science or English language arts teachers received the student's IEP. On September 1, 2016, the English language arts teacher was informed she would receive the IEP the following day. When the science teacher was made aware of the student's IEP, the teacher contacted the student's parents on September 14, 2016. (Signed Receipt Forms, September 1, 2016 Charter School Email, IEP Snapshot, Response to the Complaint)

12. The IEP Snapshot provided to the student's teachers was not excerpts from the student's IEP, but rather a summary of the IEP information. The IEP Snapshot did include a summary of each of the student's Academic/Behavior Goals, Services/Direct Service minutes and Classroom Accommodations. However, the Snapshot did not include:
- a. The student's goal on social communication skills that was to be implemented not only by the speech/language pathologist, but the student's general education and special education teachers.
 - b. Any of the benchmarks or short-term objectives associated with the included goals;
 - c. The method of measurement and the criteria for the stated goals;
 - d. The designation of the student's specially designed instruction as direct in the general education classroom;
 - e. The frequency and location of the student's supplementary aids/services;
 - f. A full description of some of the supplementary aids/services, such as describing the purpose of the appropriate sized furniture to promote the posture of sitting with shoulders relaxed, forearms/feet supported. (IEP Snapshot)
13. In response to the Complaint, the Charter School provided the schedule of the special education teacher. The schedule showed assigned classes, not students. The special education teacher was assigned to the student's fourth period class, Math Enrichment, and for 26 minutes to the student's fifth period class, Math 6, and to the student's sixth period class, English Language Art 6. (Special Education Teacher's Schedule, Student's Schedule)
14. Based on the student's service schedule, the special education teacher's schedule and the Charter School's description of the student's schedule and support, the Complaint Investigation Team determined the student's schedule relative to the specially designed instruction that are the subject of this Complaint was as follows:
- a. 50 minutes per day of reading/writing in science class with an instructional aide present "to support reading/writing", but not the special education teacher;
 - b. 50 minutes per day of reading/writing in English language arts class with the special education teacher present;
 - c. 50 minutes per day in Math Enrichment with the special education teacher present;
 - d. 20 minutes per day of Math 6 with the special education teacher present (possibly 26 based on the special education teacher's schedule); and
 - e. 50 minutes a day in physical education. (Student Service Schedule, Special Education Teacher's Schedule, September 13, 2016, September 16, 2016, October 18, 2016 and October 21, 2016 Charter School Emails, October 20, 2016 Parent Email)
15. Relevant to the provision of the supplementary aids/services that are the subject of this Complaint, the student was assigned to the resource room 50 minutes per day to receive support in organizational/study skills. The student also was assigned to a theatre class for 50 minutes, but was removed from the class for 23 minutes of the 50 minute class for study skills. (Student Service Schedule, Special Education Teacher's Schedule,

September 13, 2016, September 16, 2016, October 18, 2016 and October 21, 2016 Charter School Emails, October 20, 2016 Parent Email)

16. The only documentation on the provision of the direct specially designed instruction of reading, written language and math in the student's IEP by the special education teacher was a note on September 1, 2016 regarding the student's conduct, a completed instructional work sheet for a class and an observation outside class on September 26, 2016 and a blank Skill Sheet for Tracking Progress on Goals/Objectives. No completed form was provided in the course of the investigation. The teacher is no longer employed at the Charter School (Charter School Response)

Physical Education

17. The student was scheduled to receive only 250 minutes of physical education per week, not the 300 minutes in the student's IEP. (Student Schedule, September 13, 2016, September 16, 2016, October 21, 2016 Charter School Emails, October 20, 2016 Parent Email)
18. As of October 20, 2016, the Charter School was in the process of interviewing an adaptive physical education teacher and the Parent was informed that once the person was hired the Charter School would owe compensatory time for any minutes on the student's IEP not met. The November 4, 2016 Progress Report noted the student had made no progress on the physical education goal with regard to the first quarter objective/benchmark due to lack of a qualified teacher. Two adaptive physical education teachers were hired on November 1, 2016 and the Charter School reiterated the obligation to provide compensatory time. (October 20, 2016, October 26, 2016 and November 1, 2016 Charter School Emails, November 4, 2016 Progress Report)
19. The Charter School provided the general physical education teacher's written input in response to the Complaint regarding the student's participation in physical education class; however, no documentation supporting the input was provided in the course of the investigation. The teacher reported working with the student individually on throwing with opposition and kicking a soccer ball, measured by distance. An aide and special education teacher or aide would reportedly come in twice a week for adult assistance. The teacher also reported the requirement to be given copies of notes and PowerPoint presentations was not applicable. As a general matter, the teacher indicated that most days in class the student refused to participate and to follow rules and used avoidance techniques. (Response to the Complaint)

Occupational Therapy

20. On September 13, 2016, the occupational therapist requested the student's IEP. The occupational therapist knew the student was supposed to get occupational therapy, but did not have access to the student's IEP to obtain the minutes. The occupational therapist was provided a copy of the student's IEP that same day. (September 13, 2016 Charter School Emails)
21. The occupational therapist consulted with the student's physical education teacher on October 25, 2016 for .17 hours and on September 15, 2016 for .08 hours. These

consultations equaled 15 minutes. The occupational therapist cancelled a subsequent consultation on November 1, 2016 due to the student's absence. In response to the Complaint, the occupational therapist indicated she attended the November 2, 2016 meeting with the student's teachers regarding the student's behaviors and how the student was doing. (Occupational Therapist Log for Student, October 25, 2016, October 26, 2016, and November 1, 2016 Charter School Emails, Responses of the Charter School)

22. The occupational therapist provided equipment information for the student to the special education facilitator with web links for cushions and a slant board for the student on November 2, 2016. The links were for an inflatable seat cushion, a vestibular sitting wedge and a slant board/clipboard. (November 2, 2016 Charter School Email)
23. Without reference to the involvement of the occupational therapist, the English language arts teacher reported that environmental modifications were provided including preferential seating close to the door and free of crowding and an empty seat next to the student for one to one assistance and space for the student to spread out, and headphones when working on reading programs online. The math teacher also reported the student had preferential seating close to the door and board. There was no documentation provided in the course of this investigation that the occupational therapist monitored the student's need for equipment, other environmental modifications/accommodations and/or trainings for the student to access education after receiving the student's IEP on September 13, 2016. (Charter School Response, September 13, 2016 Charter School Emails, Record Review)

Speech Therapy

24. The student's speech/language pathologist was provided either the IEP Snapshot or the full IEP on August 30, 2016. The speech/language pathologist provided the following consult services on behalf of the student during the time period of this Complaint: a total of 30 minutes on September 1, 2016 to the student's teachers; a total of 30 minutes on October 4, 2016 (which may have been provided on October 3, 2016) to the student's general education teachers; and 1 hour on November 4, 2016 during a team conference. (Speech/language Pathologist Log, August 30, 2017 Charter School Email)
25. In the September 1, 2016 consultations to the student's teachers, the speech language pathologist informed them of the consult services for the student, her availability for questions or concerns, what the student was working on, and that she would touch base with them to check on progress once a month. The speech/language pathologist also engaged in an email exchange with the student's English language art teacher on September 1, 2016 and the theater teacher from September 6, 2016 to September 7, 2016 on the student's needs. On October 3, 2016, the speech/language pathologist emailed the student's general education teachers on the student's progress on goals/benchmarks and reminded the teachers of the student's accommodations on the rate of speech. (Speech/language Pathologist Log, September 1, 2016 and October 3, 2016 Charter School Emails)

Math

26. The Charter School provided the math teacher's written input in response to the Complaint; however, except as indicated, no documentation supporting the input was provided in the course of the investigation. The teacher indicated that the following services in the math class relevant to the Complaint were provided to or on behalf of the student:
- a. The special education teacher escorted the student to and from the class from August 2016 to October 2016 and remained in the class with the student.
 - b. The student's progress reports were sent out twice a quarter in the student's communication folder. In addition, the teacher communicated directly with the student's tutor as requested by the student's Parent, including with regard to the completion of homework and test corrections.
 - c. The special education teacher and the student's tutor completed written portions of assignments and assessments for the student at times.
 - d. The student was given all work in printed form in the math class and the special education teacher wrote the student's homework in the communication folder.
 - e. The Parent stopped using the agenda and the teacher was instructed to begin using the communication folder instead mid-September. There was a homework and classwork tracker provided to the Parent on two days. (Response to the Complaint, September 12, 2016 Parent/Tutor Email, Homework and Classwork Tracker)

Science

27. The Charter School provided the science teacher's written input in response to the Complaint; however, except as indicated, no documentation supporting the input was provided in the course of the investigation. As a general matter, the science teacher indicated the student showed no initiative or interest in class. The teacher indicated that the following services in the science class relevant to the Complaint were provided to or on behalf of the student:
- a. Progress was recorded on Infinite Campus.
 - b. Quizzes were read and a test administrator or proctor wrote answers when time was limited.
 - c. Homework instructions were sent home for clarification at times for atypical assignments and the teacher responded to emails answering any additional questions. The Parent confirmed the science teacher's communication on October 5, 2016, regarding the placement of homework assignments in the communication folder, as requested by the tutor. Documentation of a response to the Parent's question was provided.
 - d. An adjusted agenda was used to communicate homework instructions and assignments. Documentation was provided on September 20, 2016 that the student recorded the reading assignment in the planner. Additional documentation was provided for three of six school days in October 2016.
 - e. The teacher checked the agenda for legibility when the student had not already left the room.
 - f. The teacher provided the student typed notes prior to a lesson. The requirement to be given copies of notes and PowerPoint presentations was not applicable.

- g. Additional adult assistance was not applicable in the science class.
(Response of the Charter School, September 20, 2016 Charter School Email, Parent Amendment, Complaint)
28. On September 20, 2016, the Charter School science teacher provided the Parent the user name and password to access the digital science edition, informed the Parent of the reading assignment, that the student recorded the assignment in the student's planner, how the student was to respond to questions on the assignment and that the student had a hard copy of the questions. (September 20, 2016 Charter School Email)
29. In response to the Parent's request, the Charter School science teacher began sending homework assignments through the student's communication folder rather than through the digital science textbook. On a weekly basis a Science Log was provided so the student had a daily checklist of the student's homework in science. (October 5, 2016 Charter School Email, Weeks of October 10, 2016, October 17, 2016 Science Logs with homework)
30. On October 6, 2016, the Parent expressed appreciation to the science teacher for providing homework details in the communications folder. (October 6, 2016 Parent Email)

English Language Arts

31. The Charter School provided the English language arts teacher's written input in response to the Complaint; however, except as indicated, additional documentation supporting the input was not provided in the course of the investigation. As a general matter, the teacher indicated that the student was unresponsive to attempted accommodations, was extremely apathetic and resisted engaging in tasks. The teacher indicated that the following services in the English language arts class relevant to the Complaint were provided to or on behalf of the student:
- a. Beginning September 5, 2016, a special education teacher "pushed in" to the class for 50 minutes per day "most of the time" to support reading and writing.
 - b. With regard to progress reported if scores were under 70 percent, the teacher indicated verbal and email communication and incomplete classwork was sent home.
 - c. Tests were read aloud and the student's responses were recorded by the test administrator (the teacher or special education teacher) at all times.
 - d. Adult assistance was provided the student during class accessing items in the backpack, packing up at the end of the class, opening water bottle if asked, carrying the backpack or assisting with the elevator.
 - e. Notes were displayed on classroom anchor charts and specific skills necessary for assignment completion are printed and given to students. All classwork was presented orally and visually and assignments include written direction.
 - f. Modified time and assignment expectations were always given to the student and homework instruction was consistently sent home for homework clarification. In addition, one-on-one "scaffolding", and small-group skill-specific remediation were reported as provided. Documentation was provided on time modification on a project on October 7, 2016.

- g. The communication folder was used to communicate homework instruction based on the Parent's request. Documentation was provided for use of the communication folder on September 19, 2016.
 - h. Homework started the week of September 12, 2016 and the Parent was notified by email communication. Documentation was provided.
 - i. The student did not write in the agenda. All written communication, including homework, was written by the teacher. (Response to the Complaint, September 7, 2016 Charter School Email, September 19, 2016 and October 7, 2016 Tutor Emails and Response, Regarding Student Document)
32. The Parent contacted the Charter School repeatedly expressing concerns regarding the implementation of the student's IEP. (September 20, 2016 Parent Emails, Parent Amendment, Parent Phone Logs/Emails)
33. The Parent also expressed concerns with regard to access issues for the student at the school, including mobility concerns related to the student being required to carry belongings between classes and using the flights of stairs. The Parent discussed the student's mobility issues with the school nurse on August 29, 2016 and an elevator pass was provided to the student on that same day. (School Nurse's Status Log, Student Health Information for School Year 2016/2017, August 29, 2016 Charter School Email)

Appropriate Sized Furniture

34. The Present Levels of Academic Achievement and Functional Performance in the student's March 9, 2016 IEP includes the Occupational Therapy Report that provides that the student can demonstrate functional sitting posture when performing seat work at a desk or computer area with verbal and tactile cues and the use of equipment (wedge and round cushion). Teaching staff in the 2015/2016 school placement and the student were trained on proper body mechanics to promote functional sitting posture (to decrease slouching and possible upper extremity fatigue), safe use of adaptive equipment and strategies to help improve attention to task. (IEP, March 9, 2016 Multidisciplinary Evaluation Team Report)
35. At the student's prior school, the student utilized a therapeutic cushion, assistive typing devices, a slanted desk, and modified writing options. Without further explanation or documentation: the math teacher reported an appropriate sized desk and chair was provided to the student; the English language arts teacher reported the student's height, stature and posture were not adversely affected by traditional classroom furniture and that the seating accommodated the ability to stretch out as needed, or even stand if necessary. The science and physical education teachers reported this service regarding appropriate sized furniture to promote sitting posture was not applicable. (Charter School Response, Parent Amendment)

Adult Assistance

36. The student had a one-to-one aide in the prior school to provide the student additional adult assistance. The requirement of additional adult assistance in the student's IEP during whole group, individual work and instruction did not require the provision of a one-to-one aide to the student. The Parent did concede that the student may have been

provided adult assistance sporadically for some of the courses with differing personnel with differing job titles. The math teacher indicated the student would work with the special education teacher's assistance for a reward. (Parent Amendment, IEP, March 15, 2017 Charter School Correspondence)

Record Test

37. The Parent asserted in the amendment to the Complaint that testing documents were not returned to the Parent to show proctor recorded answers. The supplementary aid/service that a test administrator or proctor may record the student's responses on the student's answer document did not require any notice to the Parent. (IEP, Parent Amendment)

Notes/PowerPoint

38. The Parent asserts that during a Parent meeting on September 22, 2016, the Charter School conceded that the student's accommodation to be given copies of notes and PowerPoint presentations was not being provided. No documentation was provided of this concession. (Parent Amendment)

Progress Report/Reported

39. October 27, 2016 was the end of the Charter School's first grading period. The student's first quarter grades in academic classes were: passing in the Math Enrichment class and D in the Math 6 class; F in English language arts; D in science (the D grade represented 61.22 percent), F in physical education (the F grade representing 50 percent), and F in theatre (the F grade in theatre represented 25 per cent). (Student Report Card, November 11, 2016 and November 14, 2016 Charter School Emails)
40. There was a November 4, 2016 IEP Progress Report on the first quarter objectives (not the goal as a whole) for four of the six goals in the student's March 9, 2016 IEP. The goals relating to the student working independently and social communication skills were not included in the Progress Report. The student made unsatisfactory progress on all reported goals. The Parent reports she did not get a Progress Report during the student's enrollment in the Charter School. (November 4, 2016 Progress Report, Interview with Parent)
41. In the Charter School's response to this Complaint, the Charter School asserted that while the student's grades did fall below 70% before withdrawing, it was because after the student was suspended the student never returned to class. The teacher's explanations/comments on the student's Grade Report and Progress Report did not corroborate this statement. (Student Report Card, School Calendar, Grade Report, IEP Progress Report, Written Input From Advocacy Teacher, Charter School Response, November 4, 2016, November 10, 2016, November 11, 2016 and November 14, 2016 Charter School Emails)

Homework

42. On September 7, 2016 and September 12, 2016, the Parent sent an email to the Charter School from the student's tutor stating that the Parent and tutor would like all of the student's homework placed in the communications folder so that all of the student's homework was in one place. (September 7, 2016 and September 12, 2016 Parent/Tutor Emails)
43. The Charter School did not provide a copy of the agenda used to communicate instructions and assignments for the student between the school and home. The Parent did provide excerpts from the student's agenda from August 29, 2016 to October 28, 2016. There was nothing recorded on the agenda for the majority of the school days. The copies of the agenda were cryptic and faint and it was difficult for the Complaint Investigation Team to ascertain legibility. There were two notations on the agenda that appeared to be the student's somewhat illegible hand writing and an adult's reprinted notation and three apparent adult notations of homework. (Agenda with Notations, Parent Response)
44. On September 27, 2016, the Parent contacted the student's special education teacher asking the teacher to ensure the student's planner is being used. On October 5, 2016, the special education facilitator of the Charter School contacted the student's special education teacher and instructed the teacher to make sure the student's agenda was completed daily and that it would be helpful if more details/notes were added so it was clear what needed to be worked on at home. In addition, the special education facilitator indicated that, while a teacher's use of a communication folder was great, to avoid confusion with teachers' different systems everything needed to be written in the agenda as well so that there was a central place for information for all of the student's classes. (September 27, 2016 Parent Email, October 5, 2016 Charter School Email)
45. On October 4, 2016, the student's tutor sent the student's English language arts, science and math teachers an email indicating that the student's daily planner was not being used and requested the student be assisted in filling it out daily since it allowed the tutor to know what the student is responsible for completing. In a September 8, 2016 email communication to the student's English language arts teacher, the Parent indicated the communication folder was critical and hoped everyone would get used to using it and keeping the student's day planner up to date. (October 4, 2016 Parent/Tutor Emails)
46. On October 21, 2016, the special education facilitator instructed the team members implementing the student's IEP to document implementation of the IEP on a daily basis, specifically the accommodations and progress report. An accommodation checklist with the student's accommodations was recommended to enable each teacher to check off daily when accommodations are being provided. (October 21, 2016 Charter School Emails)
47. The student's IEP did not include modified or shortened assignments. The student's teachers modified time and assignment expectations and the curriculum. The Charter School acknowledged that was not in the student's IEP, but was to ensure the student was successful. On October 21, 2016, the Charter School told the student's teachers that

modified work was not in the student's IEP and the student was expected to complete grade level work until the student's IEP is revised. (Charter School Response, October 21, 2016 Charter School Emails)

September 9, 2016 Proposal

48. On September 9, 2016, the special education facilitator of the Charter School notified the Parent that the Charter School was unable to implement the student's IEP as currently written and would need to revise the student's IEP. The Charter School informed the Parents that the Charter School was not part of the local school district and they did not have the same resources therefore, the level of services is not the same as what they could offer. The Charter School informed the Parent that it would reach out to the Parent with the date and time to hold the IEP revision. (September 9, 2016 2016 Charter School Email)
49. On September 9, 2016, the Charter School provided the Parent the student's current minutes in the student's IEP as compared to the services the Charter School was able to provide the student in the subject areas of need:
- a. Reading for 250 minutes per week in regular education. The Charter School was able to provide 125 minutes per week in regular education;
 - b. Written Language 250 minutes per week in regular education. The Charter School was able to provide 125 minutes per week in regular education;
 - c. Math for 250 minutes per week in regular education. The Charter School was able to provide 125 minutes per week in regular education;
 - d. Study skills for 250 minutes per week in the resource room. The Charter School was able to provide 250 minutes per week in the resource room, but it would take the place of the student's only elective, theatre;
 - e. Physical education for 300 minutes per week in regular education. The Charter School was able to provide 100 minutes per week in regular education (for one semester);
 - f. The related services of consult occupational therapy for 100 minutes per year and consult speech of 30 minutes a month would "stay the same." (September 9, 2016, September 15, 2016 Charter School Emails)
50. The Charter School characterized the reduction of minutes of services it was able to provide the student as due to the "service delivery model" at the Charter School. In the Charter School's response to the Complaint, the Charter School reiterated that the student's IEP from the school district did not fit the Charter School's model and approach of delivery and that this effort was to tailor the IEP to the student's specific needs in a way that would integrate the Charter Schools special education services delivery model. (September 15, 2016 Charter School Email, Charter School Response)
51. When the director of special education for the Charter School notified the special education facilitator at the Charter School regarding the commencement of an adaptive physical education teacher, the director indicated that: "Only student's with IEPs would qualify for Adaptive PE. Let's not add more students until we know ____ availability." (Blank denotes the teacher's name.) (October 26, 2016 Charter School Email)

52. In response to a question from the Complaint Investigation Team, the Charter School explained that the September 9, 2016 proposal was to provide the student assistance during independent work time in general education by a special education teacher/instructional assistant. The Charter School reiterated that it had provided the required minutes of instruction in the IEP, other than the 300 minutes in Physical Education, and that the IEP required that those minutes be in general education, not special education. (March 15, 2017 Charter School Correspondence)
53. On September 16, 2016, the SPCSA contacted the Charter School and indicated that the Parent had called with a complaint that the Charter School was revising the student's IEP to fit the Charter School model without have data to guide the IEP Team and appeared to cut the student's direct special education instruction. The SPCSA indicated: "I would highly advise that your school implement this student's IEP as written with specific resources and supports and collect data to back up any revisions that the team want to present to the parent in an IEP revision meeting. . . . Please decide who is calling this parent back to respond to her concerns and the school's plan of action as soon as possible. . . ." (September 16, 2016 SPCSA Email)
54. After reviewing the SPCSA's September 16, 2016 email, the special education facilitator of the Charter School indicated ". . . So now we need to implement __ IEP as written and not do a revision on Wednesday? I'm sorry I thought our services were different and we didn't have to provide the same services written in____, but after reading _____ email I am not sure what the process is when a student enrolls with services that is (sic) totally different than what we have. . . ." (line demarks personally identifiable information: student, other district and SPCSA representative). (September 16, 2016 Charter School Email)
55. On September 19, 2016, the Charter School scheduled a meeting with the Parent to discuss the Charter School's programs, how the student's IEP was being implemented and for the Parent to share her concerns. The meeting was not scheduled as an IEP meeting. (September 19, 2016 Charter School/Parent Emails, Charter School Appointment Email)
56. On September 22, 2016, the Charter School and the school staff met with the Parent to "talk about a revision to the IEP to match the service delivery model" at the Charter School. Reportedly, the meeting included the Parent, the Charter School principal, vice principal, special education coordinator, special education facilitator, the student's special education and general education teachers. However, the Charter School and the Parent agree that this was not an IEP meeting. At the conclusion of the meeting, the special education facilitator provided the Parent her recommendations for the student's revised services:
- a. Reading 125 minutes per week;
 - b. Writing 125 minutes a week;
 - c. Math 250 minutes per week;
 - d. Physical education 250 minutes per week; and
 - e. Study skills 250 minutes per week. (The student would be pulled from English language arts in the seventh period for study skills/reading/writing.) (Charter School Student Schedule with Handwritten Notes, Parent Response)

57. An IEP meeting was not conducted on the Charter School's September 9, 2016 and September 22, 2016 proposals to reduce the student's level of IEP services as reflected in the special education facilitator's communications to the Parent. The student's IEP was not revised subsequent to these proposals. (September 15, 2016 and September 22, 2016 Charter School Emails, Complaint Response, Review of Record)
58. On October 18, 2016, the special education facilitator suggested the student's IEP be revised to add more effective accommodations that match the student's needs. The facilitator also recommended doing social skills during the student's resource room period and doing a daily behavior plan. (October 18, 2016 Charter School Email)
59. On October 21, 2016, the Charter School sent a meeting notice to the Parent proposing a meeting date of November 8, 2016. The proposed meeting was to revise the student's IEP with the explanation that the revision is being proposed to provide more academic/behavioral support because of academic and behavioral concerns. The meeting never occurred and the student was withdrawn from school effective October 24, 2016. (Proposed Meeting Arrangement Notices)
60. The student had a private tutor during the time period of this Complaint and the tutor continues to work with the student. The tutor is paid \$40.00 an hour for professional services and no additional costs/expenses. (Tutor Invoice)

Discipline

61. While enrolled in the Charter School, the student had three incidents of misconduct that resulted in a Behavior Detail Report and formal discipline:
- a. On September 28, 2016 in the morning, there was an event of Inappropriate Physical Contact during class and the resolution was a conference by the school counselor with the student about appropriate touching and exercises for developing personal space and a call to the student's mother.
 - b. On September 28, 2016 in the afternoon, there was another event of Inappropriate Physical Contact and the resolution was a conference by the school counselor with the student and the student's Parent.
 - c. On October 18, 2016, there was an event of Detrimental Behavior. In addition to a parent/teacher conference, after an investigation of the incident, the student was suspended for three days beginning October 19, 2016 and ending October 21, 2016. (Behavior Detail Report)
62. At the Parent's request, the Charter School convened a meeting on November 8 2016 to discuss the student's enrollment. The Parent, the executive director of the Charter School and other personnel were present. The Charter School indicated the Parent had provided some additional insight into the student's disability and the administration was willing to revisit the disciplinary action taken. The team also wanted to meet with the Parent to revisit the student's IEP to ensure that it was meeting the student's academic and social needs. (November 8, 2016 Parent Email, November 8, 2016 Charter School Email)
63. The Charter School Progressive Discipline Plan for 2016/2017 school year for all students includes the types of infractions and intervention/consequences from Level I to Level IV.

While the specific misconduct identified as Detrimental Behavior was not listed as an infraction, the Complaint Investigation Team determined the misconduct was variously described as an infraction in the Progressive Discipline Plan. When suspensions are assigned for students, suspensions start at a minimum of three days. (Progressive Discipline Plan)

64.The three day suspension on October 19, 2016 was the first disciplinary removal in the 2016/2017 school year. (Review of the Record)

65.After the Parent withdrew the student from the Charter School, the suspension was removed from the student’s discipline record. (November 14, 2016 Charter School 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).

The Complaint Investigation Team commends the Charter School for its thorough attempt to respond to each of the many allegations in this Complaint, most notably through the efforts of the general education teachers in the subjects in which the student was to receive special education (Finding of Fact(s) (FOF) #19, #26, #27, #31) and the two related service providers. (FOFs #20 – 25). However, a number of the responses did not include documentation that verified that the student did receive the services determined by the student’s IEP Team to be appropriate to the disability.

Belatedly, on October 21, 2016, the Charter School instructed the team members implementing the student’s IEP to document implementation of the IEP on a daily basis, specifically the accommodations and progress report. An accommodation checklist with the student’s accommodations was recommended to enable each teacher to check off daily when accommodations are being provided. (FOF #46) The student withdrew from the Charter School effective October 24, 2016 (FOF #4), and as evidenced in the application of the law to the facts in this section of the Complaint, a number of the findings are adverse to the Charter School for the absence of the required system of records (NAC §388.215(5)(b)) to support the Charter School’s assertions that the student did receive the services determined to be appropriate to the disability by the student’s IEP Team.

Pursuant to the IDEA, 34 C.F.R. §300.323(d), and NAC §388.281(6)(c), each public agency must ensure that: (1) the student's IEP is accessible to each regular education teacher, special

education teacher, related services provider, and any other service provider who is responsible for its implementation; and (2) each such teacher and provider is informed of his or her specific responsibilities related to implementing the student's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

The student enrolled in the Charter School for the 2016/2017 school year and classes began on August 29, 2016. (FOF #1) The student had a March 9, 2016 IEP that was in effect during the student's enrollment in the Charter School. (FOF #2) The Parent provided the director of special education for the Charter School a copy of the student's March 9, 2016 Multidisciplinary Team Report and IEP prior to enrollment. (FOF #3) Notwithstanding the Parent's advance provision of the student's IEP to the Charter School, the student's teachers and other service providers were not informed of their responsibilities with regard to the student's IEP until after the 2016/2017 school year was underway.

In the course of the investigation, the Complaint Investigation Team determined that the student's general education teachers were provided only an IEP Snapshot of the student's IEP at various times ranging from September 1, 2016 to September 22, 2016, with an explanation of how to access the student's IEP (FOF #11). There is no record that the general education teachers accessed the student's IEP until September 21, 2016 (FOF #11)

The IEP Snapshot provided to the student's general education teachers did not provide excerpts from the student's IEP, but rather provided a summary of the IEP information. Unfortunately, this summary did not include critical information on the student's required special education, related services and supplementary aids/ services. (FOF #12) As such, it was not until September 21, 2016 that the student's general education teachers were informed of the precise supplementary aid/service they were responsible for providing the student in their respective classes and on the school campus; their role in the measurement of the student's IEP goals; the student's benchmarks or short-term objectives for each goal, a social communication goal that included implementation by the general education teachers; and the nature of the specially designed instruction in the general education calls as direct. (FOF #12) Once informed of the existence of the student's IEP, the Complaint Investigation Team recognizes the student's general education teachers in English language arts, math and science made obvious efforts to maximize the student's success.

The requirement in the IDEA, 34 C.F.R. §300.323(d) and NAC §388.281(6)(c) that school personnel be provided access to a student's IEP and informed of their specific responsibilities related to implementing the student's IEP is fundamental: "This provision is necessary to ensure proper implementation of the child's IEP and the provision of FAPE to the child." (United States Department of Education's Discussion of the 1999 and 2006 IDEA regulations: Vol. 64 Fed. Reg. pg. 12583, (March 12, 1999); Vol. 71 Fed. Reg. pg. 46681 (August 14, 2006)) The Charter School's failure to do so was a significant factor impacting its ability to implement the student's IEP in all regards at the commencement of the 2016/2017 school year.

Issue One:

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's March 9, 2016 IEP with regard to

providing the designated specially designed instruction³, related services and supplementary aides and services as set forth below.

Issue One (1)(1): Special Education

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's March 9, 2016 IEP with regard to:

1. Providing specially designed instruction in:
 - a. Reading, 250 minutes per week;
 - b. Written language, 250 minutes per week;
 - c. Physical education/per curriculum, 300 minutes per week;
 - d. Adaptive physical education services as identified in the student's measurable goal, specifically written to be implemented by the adaptive physical education teacher and the general education teacher;
 - e. Math, 250 minutes per week.

Math and English Language Arts

Pertinent to this Complaint, the student's IEP required the provision of direct special education services of: reading for 250 minutes a week in general education, written language for 250 minutes a week in general education, and math in general education for 250 minutes a week. (FOF #7)

The student's IEP included two goals in a classroom setting in the area of English language arts: one in oral reading with appropriate rate and expression and one in the production of clear and coherent paragraphs. The goals were to be measured by observation, documentation and work samples as implemented by special education, general education teacher and staff. The student's IEP also included a math goal on mathematical operations and strategies in a general education setting to be measured by observation, documentation and work samples as implemented by special education, general education teacher and staff. (FOF #6) The student made unsatisfactory progress on the student's math, reading and writing goals for the first quarter of the 2016/2017 school year. (FOF #40)

The student's schedule included 250 minutes a week in an English language arts class that included reading and writing with a special education teacher present; and 250 minutes in science with an instructional aide present "to support reading/writing." With regard to math, the student was scheduled to receive 350 minutes to 380 minutes a week of math with a special education teacher present. The 350 to 380 minutes a week of math actually exceeded the required minutes for the provision of the specially designed instruction of math to the student. (FOFs #13, #14)

³ Special education is specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. (34 C.F.R. §300.39). It is the student's IEP that sets forth the statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel. (34 C.F.R. §300.320(a)(4)).

Based on the student and special education teacher's schedules alone, the student was provided the required number of **minutes** in the general education classroom in the subjects at issue. However, the student's IEP required the provision of direct special education 500 minutes a week in reading/writing and 250 minutes per week in math. (FOF #7)

There was a special education teacher present in the math classes and one of the classes in which the student was to receive the direct specially designed instruction for reading/writing for 250 minutes per week. (FOFs #13, #14) However, in the course of the investigation, it was determined that the special education teacher only attended the English language arts class from September 5, 2016 on for 50 minutes per day "most of the time. (FOF #31) The second class in which the student was purportedly provided the additional 250 minutes per week of direct specially designed instruction in reading/writing was a science class. Given the subject matter of the class, the absence of a special education teacher (FOF #13), and the absence of table top activities with seats (FOF #35) to facilitate reading/writing, the Complaint Investigation Team determined the student did not receive the required direct special education 250 minutes a week in reading/writing in the science class.

Further, while the special education teacher was present in the student's math classes and one of the classes for reading/writing, there was a paucity of documentation provided in response to this Complaint from the Charter School on the special education teacher's provision of the required direct special education services to the student in any of the above areas of special education services. The only documentation was a note of the student's conduct, an observation note and a work sheet. (FOF #16) This documentation does not support the required minutes a week of direct specially designed instruction relative to the student's math, reading and writing goals. (FOFs #6, #7)

It is recognized that the special education teacher is no longer employed at the Charter School (FOF #16) 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 special education teacher.

Based solely on the student's and special education teacher's schedules, it is likely that the student received some of the 250 minutes of the 500 required minutes of direct specially designed instruction in reading and writing while in the English language arts class and some of the required direct specially designed instruction in math during the 350 to 380 minutes a week in the math classes. However, 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 direct specially designed instruction in reading, written language and math for the required minutes.

Therefore, the Charter School failed to comply with the IDEA and the NAC, Chapter 388, in the implementation of the student's March 9, 2016 IEP with regard to providing the specially designed instruction of 250 minutes per week of reading; 250 minutes per week of written language, and 250 minutes per week of math.

Adaptive Physical Education

The student's March 9, 2016 IEP included an annual goal that the student would perform object movement skills while in physical education class in a variety of settings and achieve a criterion of four out of five trials. This goal was to be measured by observation, documentation and work samples as implemented by the adaptive physical education teacher and general education physical education teacher. (FOF #6) The student's IEP included the specially designed instruction of direct physical education/per curriculum in general education with the combined minutes of 300 a week from August 1, 2016 to March 8, 2017 to address this goal. (FOF #7) The student had made no progress on the physical education goal with regard to the first quarter objective/benchmark in object movement skills due to lack of a qualified teacher. (FOFs #6, #18)

The Charter School acknowledges that the School did not have a qualified adaptive physical education teacher for the first quarter of the 2016/2017 school year and, further, that the student only received 250 minutes of the required 300 minutes on physical education in the student's IEP in the general education class. (FOFs #17, #18) The Charter School informed the Parent that upon hiring the adaptive physical education teacher, the student would be provided with compensatory time for any minutes on the student's IEP not provided. Two adaptive physical education teachers were hired on November 1, 2016 and the Charter School reiterated the obligation to provide compensatory time. (FOF #18) However, on November 10, 2016, the student withdrew from the Charter School effective on October 24, 2016. (FOF #4)

In response to the Complaint, the Charter School indicated that while an adaptive physical education teacher was not available, the physical education teacher worked on movement skills and an aide and a special education teacher or aide would come in twice a week for adult assistance. However, no documentation supporting even this minimal assistance of the special education teacher was provided in the course of the investigation. (FOF #13) It is important to note that, even if documentation was provided to verify the assistance of the special education teacher, this assistance would still fall short of what the student's IEP required; that is, 300 minutes per week of direct specially designed instruction of physical education/per curriculum.

Given the acknowledgement of the Charter School of the unavailability of an adaptive physical education teacher and the reduced number of minutes the student was in the general education physical education class, the Complaint Investigation Team determined the student did not receive the required direct special education of physical education in the general education classroom and the adaptive physical education services as identified in the student's measurable goal.

Therefore, the Charter School failed to implement the direct specially designed instruction of adaptive physical education services as identified in the student's measurable goal, specifically written to be implemented by the adaptive physical education teacher and the general education teacher, and the required 300 minutes per week of specially designed instruction of physical education/per curriculum.

Issue One (2): Related Service

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's March 9, 2016 IEP with regard to providing the related services of 100 minutes per year of occupational therapy; and 30 minutes per month of speech/language therapy.

Occupational Therapy

The student's IEP included the related service of consult occupational therapy on the school campus from August 29, 2016 to March 8, 2017 for 100 minutes "per year." (FOF #8) While stated in the student's IEP as minutes per year, given the beginning and ending dates and the use of similar language prior to the student's enrollment in the Charter School for the time period of March 9, 2016 to August 28, 2016, a period of almost six months, (FOF #8), the Complaint Investigation Team determined the 100 minutes "per year" were to be provided from August 29, 2016 to March 8, 2017 a period of a little over six months.

The occupational therapist was not provided access to the student's IEP until September 13, 2016. (FOF #20) There was documentation that the occupational therapist consulted with the student's physical education teacher on September 15, 2016 and October 25, 2016 for a total of 15 minutes and attempted to provide consult services on November 1, 2016. The occupational therapist also provided equipment information for the student on November 2, 2016 through email correspondence to the Charter School. In the response to the Complaint, the occupational therapist indicated she also attended the November 2, 2016 meeting with the student's teachers regarding the student's behaviors and how the student was doing. (FOFs #21, #22)

While the Official School Withdrawal Form was not signed by both the Parent and Charter School until November 10, 2016, the date of the withdrawal/exit of the student was October 24, 2016. (FOF #4) Therefore any consultative services provided after the date of the student's withdrawal were not considered by the Complaint Investigation Team for purposes of this Complaint, except as it demonstrates the Charter School's intended implementation of continued occupational therapy to the student.

As discussed above, the beginning and ending dates for the consultative occupational therapy services in the student's IEP for the 2016/2017 school year (FOF #8) constituted a period of time of a little over six months and the student was enrolled in the Charter School for almost two months. Given the consult occupational therapy was not on a weekly or monthly basis, so long as 100 minutes of this related service were provided to the student during the designated time period, the Charter School would have implemented the student's IEP. The Charter School still had approximately four months to provide the 100 minutes of consult occupational therapy services up to March 8, 2017. The Charter School did provide 15 minutes of consultation on behalf of the student in September and October 2016 and demonstrated the continued implementation of the service thereafter. (FOFs #21, #22)

The special education complaint process is for violations that have occurred (34 C.F.R. §300.153(b)(1)), not anticipatory violations. Given the absence of NDE's jurisdiction over anticipatory violations, since the Charter School had up until March 8, 2017 to provide the 100 minutes of consult occupational therapy services to the student, the NDE has no further jurisdiction over this matter.

Speech/Language Therapy

The student's March 9, 2016 IEP provided the student consult speech/language therapy on the school campus from August 29, 2016 to March 8, 2017 for 30 minutes per month. (FOF #8) The student's speech/language pathologist was provided either the IEP Snapshot or the full IEP on August 30, 2016. (FOF #24)

The speech/language pathologist provided the following consult services on behalf of the student during the time period of this Complaint prior to the student's withdrawal on October 24, 2016: a total of 30 minutes on September 1, 2016 to the student's teachers; and a total of 30 minutes on October 4, 2016 (which may have been provided on October 3, 2016) to the student's general education teachers. (FOF #25)

In the September 1, 2016 consultations to the student's teachers, the speech/language pathologist informed them of the consult services for the student, her availability for questions or concerns and that she would touch base with them to checking on progress once a month. The speech language pathologist also engaged in an email exchange with the theater teacher on September 6, 2016 to September 7, 2016 to check on the student's scheduled presentation and on October 3, 2016 on the student's progress on goals/benchmarks. (FOF #25) Based on the documentation of the log of service and supported by email consultations, the speech language pathologist provided the required speech language therapy for the student during the student's enrollment in the Charter School.

Therefore, the NDE did not have jurisdiction over the anticipatory violation of the provision of 100 minutes of consult occupational therapy services to the student and the Charter School complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's March 9, 2016 IEP with regard to the related service of speech/language therapy, specifically 30 minutes per month.

Issue One (3): Supplementary Aids and Services

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's March 9, 2016 IEP with regard to providing the following supplementary aids and services:

- a. Occupational Therapy to monitor/provide equipment, environmental modifications/accommodations and/or trainings as needed for educational access
- b. Progress reported to parent if scores under 70 percent
- c. Test administrator or proctor may record student's responses on student's answer document
- d. Appropriate size furniture to promote sitting posture.
- e. Additional adult assistance

- f. Be given copies of notes and PowerPoint presentation.
- g. Homework instruction sent home for homework clarification.
- h. Agenda to communicate homework instructions and assignments
- i. Teacher to check agenda for legibility.

As a preliminary matter, the Charter School relied primarily on reports from some of the student's teachers to verify the provision of the required supplementary aids/services to the student in the general education classroom. The reports of the student's general education teachers were credible; however, as described below, these reports did not substantiate the provision of these accommodations consistent with the student's IEPs in all regards, particularly for those aids/services required to be implemented throughout the school campus.

3(a) Occupational Therapy

The student's IEP included the supplementary aid/service of the occupational therapist to monitor/provide equipment, environmental modifications/accommodations and/or trainings with the frequency of services as needed for educational access on the school campus. (FOF #10) As previously discussed, the student's occupational therapist did not receive the student's IEP until September 13, 2017. (FOF #20) Therefore, the occupational therapist was not even made aware of her responsibility to implement this supplementary aid/service until that date.

The Charter School did implement some environmental modifications on behalf of the student through other service providers:

- The Parent discussed the student's mobility issues, including the student being required to carry belongings and use the flights of stairs with the school nurse on August 29, 2016. An elevator pass was provided to the student on that same day. (FOF #33)
- The student's English language arts teacher and math teacher also reported that environmental modifications were provided for the student in these classes, including preferential seating close to the door. (FOFs 26, #31)

At minimum, the mobility issues expressed by the Parent on August 29, 2016 (FOF #33) and the student's Present Levels of Academic Achievement and Functional Performance in the student's March 9, 2016 IEP regarding seating equipment and training on proper body mechanics (FOF #34) were sufficient to trigger the need for this aid/service from the occupational therapist for the student's educational access in accordance with the student's IEP. There was no documentation provided in the course of this investigation that the occupational therapist monitored the student's need for equipment, other environmental modifications/accommodations and/or trainings for the student to access education prior to the date of the student's withdrawal from the Charter School. (FOF #4)

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 occupational therapist monitoring/providing equipment and environmental modifications/accommodations as needed for educational access on the school campus.

3(b) Under 70 Percent

The student's IEP included the supplementary aid/service that progress was to be reported to the Parent if scores were under 70 percent. The frequency was upon occurrence from March 9, 2016 to March 8, 2017 and the location of the service was in the general education class. The supplementary aid/service did not require a method of reporting. (FOFs #9, #10)

Given the student's first quarter grades in academic classes included a grade of D in one of the math classes; F in English Language Arts; D in Science, F in physical education, and F in Theatre (FOF #39), the Complaint Investigation Team determined that it is more likely than not that the student's scores fell under 70 percent during the first quarter the student was enrolled in the Charter School.

The only teachers of the student who responded to this Complaint with regard to this supplementary aid/service reported:

- Verbal and email communication and incomplete classwork were sent home when the student's scores were under 70 percent by the English language arts teacher. (FOF #31);
- The student's progress reports were sent out twice a quarter in the student's communication folder by the math teacher (FOF #26); and
- The student's progress was recorded on Infinite Campus by the science teacher. (FOF #27)

Based on the report of the English language arts teacher, this supplementary aid/service may have been provided as required in the student's IEP for this class. Neither the math or science teachers reported sufficient information to ascertain that their methods of providing progress was upon each occurrence of scores being under 70 percent and the student's general education teachers in theatre and physical education did not report implementation of this aid/service.

Therefore, given the absence of any report from the student's teachers in theatre and physical education where the student received a failing grade, and documentation otherwise verifying the student received this aid/service as required by 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 reporting progress to the Parent if scores were under 70 percent.

(c) Record Answers

The student's IEP included the supplementary aid/service that during testing, a test administrator or proctor may record the student's responses on the student's answer document. The location of the service was on the school campus and the frequency was during testing. (FOF #10)

The only fact provided by the Parent on which this allegation of noncompliance was based was that testing documents were not returned to the Parent to show proctor recorded answers. This supplementary aid/service did not require any notice to the Parent of its implementation, including testing documents to be returned to the Parent. (FOF #10)

Importantly, this supplementary aid/service was not a mandatory service to be provided to the student by the Charter School, but rather permissive. No information was provided to the Complaint Investigation Team in the course of the investigation that the Charter School failed to consider this supplementary aid/service or prohibited the exercise of this discretion during any testing of the student. On the contrary, the math, science and English language arts teachers reported the exercise of this discretion:

- The English language arts teacher reported that tests were read aloud and the student's responses were recorded by the test administrator (the teacher or special education teacher) at all times. (FOF #31)
- The science teacher also reported that quizzes were read and a test administrator or proctor wrote answers when time was limited. (FOF #27)
- The math teacher reported that the student's special education teacher and the student's tutor completed written portions of assignments and assessments for the student at times. (FOF #26)

Given the discretionary nature of this supplementary aid/service and in the absence of any information that the Charter School prohibited the exercise of this discretion, the Complaint Investigation Team determined that the Charter School implemented the student's IEP with regard to the supplementary aid/service that during testing, a test administrator or proctor may record the student's responses on the student's answer document.

(d) Appropriate Size Furniture

The student's IEP included the supplementary aid/service that during table top activities, appropriate size furniture to promote sitting posture (shoulders relaxed, forearms/feet supported). The location of the service was on the school campus. (FOF #10)

The Charter School provided responses with regard to implementation of this supplementary aid/service from only some of the student's general education teachers:

- Without further explanation, the math teacher reported an appropriate sized desk and chair was provided to the student;
- The English language arts teacher reported that the student's height, stature and posture were not adversely affected by traditional classroom furniture. Seating accommodated the ability to stretch out as needed, or even stand if necessary; and
- The science and physical education teachers reported this service was not applicable. (FOF #35)

Given the lack of clarity of what constitutes appropriate sized furniture for the student in the statement of the supplementary aid/service, the Complaint Investigation Team considered the Present Levels of Academic Achievement and Functional Performance in the student's March 9, 2016 IEP regarding promoting the student's functional sitting posture (to decrease slouching and possible upper extremity fatigue). (FOF #34)

The Present Levels also provide that the student can demonstrate functional sitting posture when performing seat work at a desk or computer area with verbal and tactile cues and the use of equipment (wedge and round cushion). Teaching staff in the 2015/2016 school

placement and the student were trained on proper body mechanics to promote functional sitting posture (to decrease slouching and possible upper extremity fatigue), safe use of adaptive equipment and strategies to help improve attention to task. (FOF #34)

Even the reports of some of the student's teachers did not attest that the desk and chair provided to the student promoted the student's sitting posture (shoulders relaxed, forearms/feet supported). Rather, at best, the furniture for table top activities did not adversely affect the student's posture. After the date of the withdrawal of the student, the Complaint Investigation Team did note that the occupational therapist, belatedly, provided equipment information on November 2, 2016 for the student to the Charter School with links for cushions and a slant board. (FOFs #4, #22)

Therefore, in the absence of documentation otherwise as required pursuant to NAC §388.215(5)(b), the Complaint Investigation Team determined that the Charter School did not implement the supplementary aid/service that during table top activities, appropriate size furniture must be provided the student to promote sitting posture (shoulders relaxed, forearms/feet supported).

(e) Additional Adult Assistance

The student's IEP included the supplementary aid/service of additional adult assistance with the frequency of services during whole group, individual work and instruction. The location of the service was on the school campus. (FOF #10) Based on the description of the service, the Complaint Investigation Team determined that this service did not require a one-to-one aide as desired by the Parent, but rather the provision of additional adult assistance to the student by a provider during whole group, individual work and instruction.

The Charter School provided responses with regard to some, but not all of the student's classes, relative to the provision of additional adult assistance to the student:

- An instructional aide was present in the student's science class reportedly to support the student's reading/writing. (FOF #14) (However, conversely the science teacher reports that the service to the student of additional adult assistance was not applicable.) (FOF #27)
- A special education teacher was present in the student's English language arts class and reportedly with the student in Math Enrichment classes and for a portion of the student's Math 6 class. (FOFs #14, #26, #31)
- The English language art's teacher reports the student was provided adult assistance during class accessing items in the backpack, packing up at the end of the class, opening water bottle if asked, carrying the backpack or assisting with the elevator. (FOF #31)
- An aide and special education teacher or aide reportedly would be present in the physical education class twice a week for adult assistance. (FOF #19)

Given the special education teacher's and instructional aide's assignment to some of the student's classes and reports of adult assistance by the student's general education teachers, it is likely that the student was provided adult assistance at times during some of the student's classes. However, in the absence of documentation otherwise as required pursuant to NAC §388.215(5)(b) that the student was provided such adult assistance throughout the school campus during whole group, individual work and instruction, the Complaint Investigation Team determined that the Charter School failed to implement the student's IEP in this regard.

(f) Copies of Notes and PowerPoint presentation

The student's IEP included the supplementary aid/service that the student would be given copies of notes and PowerPoint presentations with the frequency of services as "fine motor activities" and the location of services in the general education classroom. (FOF #10) The Parent asserts that during a Parent meeting on September 22, 2016, the Charter School conceded that the student's accommodation to be given copies of notes and PowerPoint presentations was not being provided. However, there is no documentation that the Charter School conceded the failure to implement the student's IEP in this regard. (FOF#38)

Contrary to this assertion of the Parent, the Charter School reported its implementation of this required aid/service as follows:

- The student was given all work in printed form in math (FOF #26);
- In the English language art, notes were displayed on classroom anchor charts and specific skills necessary for assignment completion are printed and given to students. All classwork was presented orally and visually and assignments include written direction (FOF #31);
- The science teacher provided the student typed notes prior to a lesson; therefore, the requirement to be given copies of notes and PowerPoint presentations was not applicable (FOF #27); and
- The physical education teacher responded that the requirement to be given copies of notes and PowerPoint presentations was not applicable. (FOF #19)

After the careful review of the statement of the required supplementary aid/service, the Complaint and all information provided in the course of the investigation, the Complaint Investigation Team determined that this IEP requirement developed by another public educational agency lacked clarity with regard to **when** the Charter School was required to implement this supplemental aid/service. (This lack of clarity is apparent even in the varying reports of the general education teachers as to the timing and manner when the required service was provided to the student.)

Upon consideration of this lack of clarity and the absence of any facts that establish the Charter School and the Parent's mutual understanding of the event of "fine motor activities" that was to trigger the frequency of this supplemental aid/service, there is insufficient information to come to a determination as to the probable truth of the matter. Therefore, the Complaint Investigation Team is unable to make a determination whether the Charter School complied with the IDEA and the NAC, Chapter 388, with respect to the supplementary aid/service that the student would be given copies of notes and PowerPoint presentations upon "fine motor activities." There is no finding of compliance or noncompliance.

(g)(h)(i) Homework

The student's IEP included multiple supplementary aids/services relating to homework:

- Homework instruction sent home for homework clarification nightly when sending homework and the location of the services of the resource room and general education class;

- Agenda to communicate homework instruction and assignment with the frequency of services as daily and the location of services of the resource room and general education class; and
- Teacher to check agenda for legibility with the frequency of services as daily and the location of services as the general education class. (FOF #10)

The Charter School provided the following responses with regard to the implementation of these required aids/services in the general education class:

- The math teacher reported the Parent stopped using the agenda and the teacher was instructed to begin using the communication folder instead in mid-September. The special education teacher wrote the student's homework in the communication folder. There was documentation of homework instruction being sent home and a classwork tracker provided to the Parent on two days.
- The science teacher reported that in response to the Parent's request, the teacher began sending homework assignments through the student's communication folder and homework instruction was provided at times for atypical assignments. Documentation was provided of homework assignments and instruction being sent through the student's communication folder through the Parent's confirmation and expressed appreciation to the science teacher for providing homework details in the communications folder. The teacher also responded to emails answering any additional questions from the Parent, and documentation was provided of a response. The science teacher reported using an adjusted agenda to communicate homework instructions and assignments, specifically, on a weekly basis a Science Log was provided so the student had a daily checklist of the student's homework in science.
- The English language arts teacher reported that homework instruction was consistently sent home for homework clarification. Documentation was provided that homework started the week of September 12, 2016 and the Parent was notified by email communication. Based on the Parent's request, the English language arts teacher used the communication folder for homework instruction and documentation was provided for its use on September 19, 2016. (FOFs #26, #27, #31)

The only documentation provided in the course of the investigation regarding the use of an agenda to communicate homework instruction and assignments was on September 20, 2016 and three of six school days in October 2016. As reported by the student's teachers, the Parent asked the Charter School to use a communication folder to communicate the student's homework instruction and assignments for the student. (FOFs #42) It appears that when the math, science and English language arts teachers all accommodated the Parent's request to use the student's communication folder, they, logically, assumed the Parent intended its use in lieu of the agenda as set forth in the student's IEP. (FOF #10) That was not the case, as evidenced by subsequent requests by the Parent and student's tutor to use the agenda in addition to the communication folder (FOFs #44, 45)

The use of a communication folder rather than the agenda for this purpose was inconsistent with the student's IEP. (FOF #10) Pursuant to the IDEA, 34 C.F.R. §300.324, and the NAC

§388.281(2), any change to the student's IEP was required to be made by the student's IEP Team. Therefore, even if the Charter School wanted to accommodate the Parent's request to use the communications folder, it was obligated to also implement the student's IEP in effect and use the student's agenda to communicate homework instruction. The Charter School subsequently instructed the special education teacher to make sure the student's agenda was completed daily, regardless of the various systems the student's teachers used to communicate homework instruction. (FOF #46)

The Complaint Investigation Team took into consideration the mitigating factor that the Charter School's failure to use the student's agenda to communicate homework was a result of acquiescing to the Parent's request to use a communication folder. However, while there was documentation that some of the student's teachers sent homework assignments and instructions home for the student on some school days in either the communication folder or the agenda, the Charter School did not provide documentation that, when there was homework, homework assignments and instructions were sent home nightly. (FOFs #26, #27, #31)

With regard to the supplementary aid/service that teachers would check the student's agenda for legibility daily, documentation was provided that, on at least a few occasions, both the student and the student's teacher(s) entered the student's homework instruction in the student's agenda and some evidence that the student's illegible writing was corrected. The faint copies of the agenda on days when it was utilized made it difficult for the Complaint Investigation Team to ascertain whether readability was due to illegible writing or the quality of the copies. (FOF #43) Nonetheless, other than this limited documentation, the only report of checking for legibility when the student wrote in the agenda was that the science teacher checked the agenda for legibility when the student had not already left the room and that it was not necessary in the English language arts class. (FOFs #27, #31) Since checking the agenda for legibility was to be implemented daily in the general education class and the resource teacher was also responsible for entries, the provided documentation was insufficient to implement this aid/service.

Therefore, in the absence of the 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 in all regards with regard to:

- Homework instruction sent home for homework clarification nightly when sending homework and the location of the services of the resource room and general education class;
- Agenda to communicate homework instruction and assignment with the frequency of services as daily and the location of services of the resource room and general education class; and
- Teacher to check agenda for legibility with the frequency of services as daily and the location of services as the general education class.

(4) Specialized Progress Report

In accordance with the IDEA, 34 C.F.R. §300.320(a)(3)(ii), and NAC §388.284(1)(h), a student's IEP must include when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. In this case the student's IEP specified that

the method for reporting progress toward meeting the student's annual goals would be through a Specialized Progress Report and the projected frequency of reporting was quarterly. (FOF #9) The student was enrolled in the Charter School for only one quarter. (FOF #4)

There was a November 4, 2016 IEP Progress Report on the first quarter objectives (not the goal as a whole) for four of the six goals in the student's March 9, 2016 IEP. The goals relating to the student working independently and social communication skills were not addressed in the Progress Report. (FOF #40) As such, the Charter School did not report on the progress the student was making toward all of the student's annual goals as required by the IDEA, 34 C.F.R. §300.320(a)(3)(ii), and NAC §388.284(1)(h)

The November 4, 2016 IEP Progress Report established the Charter School did develop a Progress Report; however, there is no documentation that the Parent was provided a copy of the Report, and that is a contested fact. (FOF #40) Given the absence of a Specialized Progress Report that addressed all of the student's goals as required by the student's IEP, it is unnecessary for the Complaint Investigation Team to make a determination on whether the Parent was provided the November 4, 2016 IEP Progress Report.

Therefore, except for the supplementary aid/service that the student would be given copies of notes and PowerPoint presentations upon "fine motor activities" for which neither compliance nor noncompliance was found and the supplementary aid/service regarding recording the student's answers on tests, the Charter School failed to comply with the IDEA and the NAC, Chapter 388, in the implementation of the student's March 9, 2016 IEP with regard to providing the supplementary aids/services in the student's IEP that were a subject of this Complaint.

Issue Two:

Whether the Charter School complied with the disciplinary procedures under the IDEA and the NAC, Chapter 388, with respect to suspending the student for three days on October 20, 2016.

Pursuant to the IDEA, 34 C.F.R. §300.530 and NAC §388.265, school personnel may remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension for limited purposes, including for not more than 10 consecutive school days to the extent those alternatives are applied to student without disabilities. A disciplinary removal for not more than 10 consecutive school days is not a disciplinary change of placement under the IDEA, 34 C.F.R. 300.536(a)(1), and the NAC §388.265 and, as such, the requirements regarding the conduct of a manifestation determination (34 C.F.R. §300.530(e)) and services (34 C.F.R. §300.530(d)) are not triggered during the removal.

While enrolled in the Charter School, the student had three incidents of misconduct that resulted in a Behavior Detail Report and discipline. The incidents on September 28, 2016 were resolved through a conference with the Parent and student. On October 18, 2016, there was an event of Detrimental Behavior and, in addition to a parent/teacher conference, the student was suspended for three days beginning October 19, 2016 and ending October 21, 2016. (FOF #61)

The Charter School's Progressive Discipline Plan for all students for the 2016/2017 school year included the type of infractions and intervention/consequences assigned to all students. (FOF #63) The student's conduct was variously described as an infraction in these procedures and the length of the suspension was consistent with the consequences for all students.

Since the three day suspension was the first disciplinary removal of the student at the Charter School for the 2016/2017 school year (FOF #64), the Charter School had the authority to suspend the student for three days for this violation of a code of student conduct pursuant to the IDEA, 34 C.F.R. §300.530 and NAC §388.265. In addition, given the Charter School's Progressive Discipline Plan for all students for the 2016/2017 school year included this type of infraction and intervention/consequences for all students (FOF #64), the three day suspension for the misconduct on October 18, 2016 also met the condition under the IDEA, 34 C.F.R. §300.530, and NAC §388.265 that the disciplinary removal must be to the extent those alternatives are applied to student without disabilities.

The Charter School removed the student's suspension from the student's discipline record after the student's withdrawal from the Charter School. (FOFs #4, #62, #65)

Therefore, the Charter School complied with the disciplinary procedures under the IDEA and the NAC, Chapter 388, with respect to suspending the student for three days on October 20, 2016.

Issue Three:

Whether the Charter School complied with the IDEA and the NAC, Chapter 388, with respect to providing the student the services and instruction deemed necessary by the student's IEP Team in the March 9, 2016 IEP, specifically with regard to the school's September 9, 2016 proposal to reduce the student's level of IEP services based on the availability of services at the school.

In the response to the Complaint, the Charter School argued the applicability of the IDEA, 34 C.F.R. §300.530(e) (sic) and NAC §388.263 with regard to a student with a disability who transfers to a new public agency in the same state and enrolls in a new school to this case. Pursuant to the IDEA, 34 C.F.R. §300.323(e), and NAC §388.263, if a student with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school **within the same school year**, the new public agency (in consultation with the parents) must provide a FAPE to the student (including services comparable to those described in the student's IEP from the previous public agency), until the new public agency either adopts the student's IEP from the previous public agency; or develops, adopts, and implements a new IEP that meets the applicable requirements of the IDEA. Given that this student did not enroll in the Charter School in the same year, but rather enrolled at the commencement of the school year, these provisions of law are not applicable to this case.

For purposes of clarification, it is also important to establish that, contrary to the legal argument of the Charter School, this issue is neither about the legal right of the Charter School to review and revise the student's IEP in accordance with the IDEA and the NAC, Chapter 388,

nor the ability of a public educational agency to reduce a student's service minutes, when appropriate. A reduction in service minutes would be valid in principle if it is linked to the student's unique needs and linked to the student's goals. (*Adams v. State of Oregon*, 195 F.3d 1141; 31 IDELR 130 (9th Cir. 1999))

This Complaint is about whether the Charter School met the requirements of the IDEA and the NAC. Chapter 388, that the determination of the specific special education and related services and supplementary aids and services a student requires and the student's goals must be made on an individual basis by the student's IEP Team pursuant to the IDEA, 34 C.F.R. §§300.320 through 300.324, and the NAC §388.281 and §388.284. It is the student's unique needs that must be the basis for an IEP Team's decisions regarding the provision of services that are appropriate for the individual student. (34 C.F.R. §§300.1, 300.17, 300.39)

". . . [t]he IDEA statute and Part B regulations . . . both make clear that services for a child must be identified and provided based on the unique needs of the child. One of the goals of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education ["FAPE"] that emphasizes special education and related services designed to meet their unique needs. . . . Special education under the IDEA is "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. . . ". . . It is through the individualized education program (IEP) that the child's special education and related services are identified. In determining a child's IEP content, the Part B regulation at 34 CFR § 300.347 (a)(3) requires that a child's IEP include "a statement of special education and related services and supplementary aids and services to be provided to the child or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to the child." Parents are members of the IEP team and through the IEP process, a parent can also discuss with school officials different approaches that would appropriately meet their child's unique needs." (*Letter to Anonymous*, 37 IDELR 126 (OSEP February 12, 2002)⁴)

In this case, the Charter School notified the Parent on September 9, 2016 that the Charter School was unable to implement the student's IEP as currently written and would need to revise the student's IEP. The Charter School indicated it would reach out to the Parent with the date and time to hold the IEP revision. (FOF #48) The Charter School explained to the Parent that the Charter School was not part of the local public educational agency and they did not have the same resources; therefore, the level of services in the student's IEP was not the same as what they could offer. (FOF #48) The Charter School provided the Parent the student's current minutes in the student's IEP as compared to the services the Charter School was able to provide the student in the subject areas of need as follows:

- a. Reading for 250 minutes per week in regular education. The Charter School was able to provide 125 minutes per week in regular education;
- b. Written Language 250 minutes per week in regular education. The Charter School was able to provide 125 minutes per week in regular education;
- c. Math for 250 minutes per week in regular education. The Charter School was able to provide 125 minutes per week in regular education;

⁴ This OSEP policy letter is publically available at:
<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/all2002.html>

- d. Study skills for 250 minutes per week in the resource room. The Charter School was able to provide 250 minutes per week in the resource room, but it would take the place of the student's only elective, theatre;
- e. Physical education 300 minutes per week in regular education. The Charter School was able to provide 100 minutes per week in regular education (for one semester);
- f. The related service of occupational therapy for 100 minutes per year of consult and speech of 30 minutes a month consult would "stay the same." (FOF #49)

On September 16, 2016, the SPCSA contacted the Charter School and indicated that the Parent had called with a complaint that the Charter School was revising the student's IEP to fit the Charter School model without have data to guide the IEP Team. The SPCSA indicated: "I would highly advise that your school implement this student's IEP as written with specific resources and supports and collect data to back up any revisions that the team want to present to the parent in an IEP revision meeting. . . ." (FOF #53)

After receiving the SPCSA's communication, the special education facilitator at the Charter School expressed confusion regarding the obligation of the Charter School when a student transfers from a district. The special education facilitator indicated that since the services in the Charter School were different she thought that the Charter School did not have to provide the same services included in the student's IEP by the district. (FOF #54)

On September 22, 2016, the Charter School and the Parent met to "talk about a revision to the IEP to match the service delivery model" at the Charter School. Both the Parent and the Charter School agree that this meeting was not an IEP meeting. At the conclusion of the meeting, the special education facilitator of the Charter School provided the Parent her recommendations for the student's revised services. The recommendation changed the September 9, 2016 proposal in some regards: the 250 minutes of the student's direct specially designed instruction in study skills in the resource room would be divided between study skills and reading and writing; the specially designed instruction of reading and writing in the general education class would remain at the same levels as previously proposed, 125 minutes per week; the specially designed instruction of math would be restored to the 250 minutes per week; and physical education would be increased to 250 minutes per week, but less than the 300 minutes in the student's IEP. (FOFs #49, #55, #56)

The Charter School characterized the proposed reduction of minutes of services as a matter of the model of service delivery at the Charter School in that the student's IEP from the prior public educational agency did not fit the Charter School's model and approach of delivery and that this effort was merely to tailor the IEP to the student's specific needs in a way that would integrate the Charter Schools special education services delivery model. (FOF #50) While provisions of the IDEA and NAC, Chapter 388, recognize that schools may have different service delivery models⁵, the Complaint Investigation Team determined that based on the stated reasons for the Charter School's September 9, 2016 and September 22, 2016 proposals to reduce the minutes of the student's IEP services, this was not simply a divergent service model situation. On the contrary, relying on the Charter School's own characterization of these proposals, they were based on the availability of resources at the Charter School, not the

⁵ See for example the previously cited provisions regarding the transfer of students within the State, 34 C.F.R. §300.323(e) that require services comparable to those described in the child's IEP from the previous public agency, rather than the precise service delivery model.

student's unique needs, and that is violative of the IDEA and the NAC.⁶ (34 C.F.R. §§300.1, 300.26, 300.39; *Letter to Trigg*, 50 IDELR 48 (OSEP November 30, 2007)⁷)

While the Charter School did schedule an IEP meeting with the Parent for November 8, 2016, the meeting never occurred since the student was withdrawn from school effective October 24, 2016. (FOFs #55, #56, #59) Given that an IEP meeting was not conducted on the Charter School's September 9, 2016 and September 22, 2016 proposals to reduce the student's level of IEP services, the Charter School did not make a formal proposal to reduce the student's services after the revision of the student's IEP (FOFs #57, #59). (*Union School District v. B. Smith*, 15 F.3d 1519; 20 IDELR 987, 990 (9th Cir. 1994)) However, the Charter School came perilously close, particularly given the September 22, 2016 meeting with the Parent reportedly included the Charter School principal, vice principal, special education coordinator, special education facilitator, the student's special education and general education teachers. (FOF #56)

Therefore, the Complaint Investigation Team determined the Charter School did not violate the IDEA and the NAC, Chapter 388, given the Charter School did not act on the informal proposals with a formal proposal reached after an IEP meeting. These proposals, however, portend a systemic problem and/or a lack of knowledge that, pursuant to the IDEA and the NAC, Chapter 388, the determination of services must be based on the unique needs of the student, rather than the availability of resources at the Charter School. As such, the informal proposals of the Charter School to reduce the student's services based on availability of resources will be considered in the systemic directed action for Issue One in the Order of Corrective Action.

Therefore, the Charter School complied with the IDEA and the NAC, Chapter 388, with respect to providing the student the services and instruction deemed necessary by the student's IEP Team in the March 9, 2016 IEP, specifically with regard to the school's proposal(s) to reduce the student's level of IEP services based on the availability of services at the school.

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 this Ordered Directed Action Plan.

⁶ See also FOF #51 that further demonstrates another determination made on the availability of resources.

⁷ This OSEP policy letter is publically available at:

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/all2007.html>

Directed Action - Student

Compensatory Education

Due to the nature of the supplementary aids/services that the Charter School failed to provide to the student, it is difficult to quantify the nature and amount of additional aids/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 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 academic subjects that were the subject of this Complaint through the provision of services through a private provider. (See below systemic remedy that addresses the failure to provide the student these special education services and the required supplementary aids/services.)

The student was in attendance in the Charter School for 33 school days (FOF #5) Notwithstanding the determination of the failure of the Charter School to provide the specially designed instruction in all regards, upon consideration of the determination that it is likely that some specially designed instruction may have been provided to the student; the number of minutes of math exceeded the IEP requirement (FOF #14); and the one-on-one nature of the tutoring, the Complaint Investigation Team determined that the student is entitled to 80 hours of the compensatory education of direct tutoring in the subjects of reading, writing and math.⁸

The 80 hours of awarded compensatory education must be in addition to the required services in the student's IEP in effect at the date of this Report. They 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 direct tutoring must commence after the date of this Report and be completed prior to the end of the 2017 calendar year. Any services provided thereafter will not be eligible for reimbursement, even if the number of hours awarded in this Report has not been completed.

The student had a private tutor during the time period of this Complaint and the tutor continues to work with the student. The tutor is paid \$40.00 an hour for professional services and no additional costs/expenses. (FOF #60) Based on this established amount, payment for this compensatory service is capped at an hourly rate of \$40.00. The Order assumes the continued provision of services from this service provider; however, at the Parent's discretion, the ordered tutoring services may be provided by an alternative private qualified provider who is in the business of providing tutoring services to students with disabilities.

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 invoices that verify the provision of the ordered tutoring services provided after the date of this Report. At the Charter School's discretion, the payment of the invoices may be made directly to the service provider or as

⁸ Calculation is based on the five weeks of the required 750 minutes a week of IEP specially designed instruction in reading, writing and math and the 300 minutes of specially designed instruction in physical education equal 5,250 minutes of service. These minutes amount to 87.5 hours, reduced given the likelihood of the provision of some of the required services while the student was enrolled in the Charter School.

reimbursement to the Parent upon receipt of verification of payment. The Charter School's procedure must include payment for the tutoring services within 30 days of the submission of the invoice (or, if applicable, the verification of payment) to the Charter School.

The Charter School must provide documentation to the NDE of the completion of the delivery of the compensatory education and payment/reimbursement of all invoices within 30 days of its completion of this Order of compensatory education. 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 on 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 special education facilitators and other personnel responsible for implementing student's IEPs of the requirements of the IDEA and the NAC, Chapter 388, that:

1. 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)
2. The determination of the specific special education and related services and supplementary aids and services (and any program modifications or supports for school personnel on behalf of the student) a student requires and the student's goals must be made on an individual basis by the student's IEP Team pursuant to the IDEA, 34 C.F.R. §§300.320 through 300.324, and the NAC §388.281 and §388.284. It is the student's unique needs that must be the basis for an IEP Team's decisions regarding the provision of services that are appropriate for the individual student. (34 C.F.R. §§300.1, 300.17, 300.39)

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 also develop written procedures:

- That ensure each student's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and each such teacher and provider is informed of his or her specific responsibilities related to implementing the student's IEP; and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP. The procedure must include how the Charter School will ensure this required accessibility takes place prior to the commencement of each school year, and upon the enrollment of a student with a disability during the school year, to ensure implementation of the student's IEP commencing on the first day the student attends school and how the Charter School will document the above procedure has been implemented.
- Monitors the implementation of the required kind/type, amount 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 thereafter to document the implementation of this Order.

Training

The Charter School must train the special education director, special education facilitator(s) and all personnel, responsible for the implementation of students' IEPs on the above policies 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 and speech/language pathologist maintained a system of records (FOFs #21, #24) that documented the student received the required minutes of consultative services, at the Charter School's discretion, the occupational therapist and speech/language pathologist are not required by this Order to attend the portion of the above ordered 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.