

**COMPLAINT INVESTIGATION  
CHARTER SCHOOL  
(#SC050219)**

**Report Issued on June 28, 2019**

**INTRODUCTION**

On May 2, 2019 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. and the IDEA regulations, 34 C.F.R. Part 300; and Chapter 388 of the Nevada Revised Statutes and the Nevada Administrative Code (NAC) with regard to the provision of special education services to a student with a disability attending a Charter School authorized by the State Public Charter School Authority (SPCSA).

The Parent alleged that the Charter School failed to properly maintain student records and failed to timely complete an annual Individualized Education Program (IEP) for the student.

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 Findings of Fact cite the source(s) of the information determined necessary to resolve the issues in this Complaint.

**Responsible Public Educational Agency**

Documents and the Response to the Complaint investigation dated 5/20/2019 submitted by the Charter School in this matter indicate a Memorandum of Understanding (MOU) was executed between the SPCSA and Charter School for the 2017/2018 school year that expired on June 30, 2018 and no MOU was signed for the 2018/2019 school year. The signed MOU provides the Charter School will adhere to the provisions of the IDEA and applicable Nevada special education laws and regulations to assure that all students with disabilities are afforded a Free Appropriate Public Education (FAPE), including assuring that all special education and related services are provided. The MOU further indicates 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 MOU sets forth the following 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.”

At the time of the filing of this Complaint, NRS §388A.159 deemed the SPCSA a local educational agency (LEA) for certain purposes, specifically for the purpose of directing the proportionate share of any money available from federal and state categorical grant programs to charter schools which are sponsored by the SPCSA. During the pendency of the Complaint investigation, an amendment to NRS §388A.159 became effective and deemed the SPCSA an LEA for all purposes, including provision of FAPE, provision of special education and related services and directing the proportionate share funds. AB78, Chapter 338, Statutes of 2019.

Upon consideration of Nevada law and regulation and the MOU between the SPCSA and the Charter School in effect during the time period of this Complaint, the NDE provided notice to both the Charter School and SPCSA regarding this Complaint and provided an opportunity for the Charter School to submit a written response and documentation responsive to the Complaint. The Parent was also provided the opportunity to submit additional documentation supporting the Complaint. The SPCSA acknowledged the Complaint investigation and indicated its availability to provide further information if requested. No further information was requested of the SPCSA.

## **COMPLAINT ISSUES**

The allegations in the Complaint 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 NAC, Chapter 388, in establishing and maintaining a system of records to verify implementation of measures to identify, evaluate and serve students with disabilities, with regard to the student’s April 27, 2018 re-evaluation.

### **Issue Two:**

Whether the Charter School complied with the IDEA and NAC, Chapter 388, with regard to timely conducting the student’s annual IEP review and revision in the 2018/2019 school year.

## **FINDINGS OF FACT**

1. The student is eligible for special education services pursuant to IDEA and NAC, Chapter 388 and was enrolled in the Charter School for the 2017/2018 and 2018/2019 school years. (4/27/2018 IEP; 5/17/2019 IEP)
2. In the 2017/2018 school year, a re-evaluation and an IEP Team meeting were conducted, and an annual IEP was developed on 4/27/2018. (Psycho-Educational Assessment Report Re-Evaluation 4/27/2018; 4/27/2018 IEP)
3. An annual IEP Team meeting was scheduled for 4/8/2019. (Prior Written Notice (PWN) – Proposed Meeting Arrangements dated 4/5/2019; Email correspondence dated 4/8/2019)
4. The annual IEP Team meeting was postponed when a review of the student's confidential file revealed that the re-evaluation documentation from 4/27/2018 was not in the confidential file. The Charter School disclosed to the Parents that the re-evaluation documentation could not be located. (Email correspondence dated 4/8/2019; Charter School Complaint Response 5/20/2019)
5. Subsequent to the identification of the missing documents, the Parents and Charter School staff corresponded to determine next steps and discussed rescheduling the IEP Team meeting on several dates including 5/13/2019, 5/16/2019 and 5/17/2019. (PWN dated 4/27/2019; Email correspondence dated 5/11/2019)
6. On or about 5/10/2019, the re-evaluation documentation was located in a school desk drawer that was used by former Charter School related service providers, including a prior school psychologist. (Email correspondence dated 5/11/2019; Charter School Complaint Response 5/20/2019)
7. On 5/17/2019, an IEP Team meeting was convened and an IEP was finalized for implementation during the remainder of the 2018/2019 school year and beginning in the 2019/2020 school year. (5/17/2019 IEP)
8. The 4/27/2018 IEP indicates the student is to receive specially designed instruction on Behavior/Social Skills from 4/27/2018-4/27/2019 for 150 minutes per week in the Regular Education classroom. (4/27/2018 IEP)
9. The 5/17/2019 IEP indicates the student is to receive specially designed instruction on Behavior - Social/Emotional/Self-Advocacy Skills from 5/17/2019-5/17/2020 for 150 minutes per week in the Regular Education Classroom and Behavior – Direct (Check in/ Check out) from 5/17/2019-5/17/2020 for 50 minutes per week in the Resource Room. This IEP further indicates the Check in/Check out will consist of 5 minutes in the morning and 5 minutes in the afternoon to discuss the student's daily social interactions, concerns, feelings and/or positive affirmations, with a copy of what was discussed sent home daily. (5/17/2019 IEP)

10. The 5/17/2019 IEP contains three Measurable Annual Goals, each with initial benchmarks of the end of the fourth quarter of the 2018/2019 school year. (5/17/2019 IEP)
11. The last day of student attendance for the 2018/2019 school year was May 24, 2019. (Charter School Calendar)
12. The Charter School has policies and procedures in place for the maintenance of student special education records. These procedures call for the maintenance of student documents in a "Confidential File" and for the logging of such documents on a "Confidential Folder Compliance Worksheet." (Special Education Facilitator Month-to-Month Guide; Confidential Folder Compliance Worksheet; Charter School Complaint Response 5/20/2019)
13. The Charter School policies and procedures for maintenance of confidential student files were not followed for the student's 4/27/2018 MDT documents. (Email correspondence dated 5/11/2019; Charter School Complaint Response 5/20/2019)

## **CONCLUSIONS OF LAW**

### **Issue One:**

Whether the Charter School complied with the IDEA and NAC, Chapter 388, in establishing and maintaining a system of records to verify implementation of measures to identify, evaluate and serve students with disabilities, with regard to the student's April 27, 2018 re-evaluation.

Nevada regulations require that each public agency take measures pursuant to 34 C.F.R. §300.111 to ensure, in relevant part, that each eligible student is evaluated and served in the manner appropriate to the unique needs of the student. NAC §388.215. Nevada public agencies are further required to establish a system of records for the purpose of verifying, in relevant part, that each special education student is receiving services appropriate to the student's disability. NAC §388.215.

IDEA regulations require, in relevant part, that participating agencies protect the confidentiality of personally identifiable information at all stages, including storage, and keep records of all access provided to said records. 34 C.F.R. §300.623; 34 C.F.R. §300.614.

The facts relevant to the issues in this Complaint indicate that a re-evaluation was conducted for the student and subsequently discussed by the IEP Team on 4/27/2018, and an IEP was developed for the 2018/2019 school year. (Finding of Fact (FOF) #1, #2) Parent's Complaint alleges a failure to properly maintain records of that 4/27/2018 re-evaluation.

The Charter School asserts, and a review of submitted documents substantiate the assertion, that policies and procedures do exist at the Charter School to establish and maintain the required system of records. (FOF #12) However, Charter School acknowledges, and the facts demonstrate, that those policies and procedures were not followed with regard to the student's 4/27/2018 re-evaluation documentation and those documents were not properly maintained and stored. (FOF #4, #5, #12, #13) The re-evaluation documents were subsequently recovered and relied upon in development of the student's current IEP. (FOF #6, #7)

*Therefore, the Charter School complied with the provisions of IDEA and NAC, Chapter 388, with regard to establishing a system of records to verify implementation of measures to identify, evaluate and serve students with disabilities; however, the Charter School failed to comply with the provisions of IDEA and NAC, Chapter 388, in that Charter School personnel failed to properly implement the established system of records with regard to the student's April 27, 2018 re-evaluation.*

### **Issue Two:**

Whether the Charter School complied with the IDEA and NAC, Chapter 388, with regard to timely conducting the student's annual IEP review and revision in the 2018/2019 school year.

IDEA and NAC, Chapter 388, require public agencies to initiate and conduct team meetings to develop eligible student's IEPs *at least annually*. NAC §388.281(6)(a); *emphasis added*. It is well-settled law that the public agency has an affirmative duty to review and revise, at least annually, an eligible child's IEP, and a public agency cannot abdicate its affirmative duties under the IDEA. *Anchorage Sch. Dist. v. M.P.*, 59 IDELR 91 (9<sup>th</sup> Cir. 2012)

In this matter, the student's prior IEP was completed on 4/27/2018, thus requiring that an annual review occur by no later than 4/27/2019. (FOF #1, #2). The student's current IEP was completed on 5/17/2019, or 15 school days after the expiration of the prior IEP. (FOF #9, #11)

The subsequently completed 5/17/2019 IEP contains specially designed instruction that is similar in substance and amount to that which was in place under the 4/27/2018 IEP for "Behavior/Social Skills," but the 5/17/2019 IEP includes an additional 50 minutes per week of specialized instruction in the resource room in the form of the check-in/check-out process. (FOF #8, #9) Despite the fact that the 5/17/2019 IEP was completed 15 days beyond the expiration of the prior IEP, and only 5 days before the conclusion of the 4<sup>th</sup> quarter, this IEP identifies the 4<sup>th</sup> quarter of the 2018/2019 as the first benchmark for the student's IEP goals. (FOF #10, #11)

While the facts at issue in this matter demonstrate and the Charter School response asserts that the IEP review process was initiated prior to the annual expiration of the 4/27/2018 IEP with the scheduling of IEP Team meetings and correspondence with the parent, this initiation of the process does not satisfy the well-established requirement

that each student's IEP be reviewed at least annually. This line of argument further ignores the fact that the postponements in this matter that led to the delayed IEP review were driven principally by the admitted mis-handling of the student's records. (FOF #4, #5, #6)

*Therefore, the Charter School failed to comply with the IDEA and NAC, Chapter 388, with regard to timely conducting the student's annual IEP review and revision in the 2018/2019 school year.*

## **ORDER OF CORRECTIVE ACTION**

The Charter School is required, under SPCSA supervision, to take corrective action to address the violations found in this Complaint, specifically the Charter School failed to appropriately implement the required system of records and failed to demonstrate timely review of the student's annual IEP.

With regard to Issue One, as noted previously, the findings indicate that policies and procedures were in place for establishing and maintaining the required system of records, but these policies and procedures were not followed with regard to the student's 4/27/2018 re-evaluation.

With regard to Issue Two, as discussed above, the findings establish that the student's annual IEP was completed 15 school days later than it was due and just one week prior to the end of the school year. Accordingly, the ordered corrective action sets out an award of compensatory education minutes that will provide compensation of 50 minutes per week of resource room minutes that could have been delivered in each of the three weeks from the expiration of the 4/27/2018 IEP to the completion of the 5/17/2019 IEP.

Given the effective date of the amendment to NRS §388A.159, the SPCSA is now deemed the LEA for purposes of special education program administration and service provision in the Charter School. Thus, the Charter School will be responsible for compliance with this Order of Corrective Action, and will document that compliance to the SPCSA, who will verify compliance and notify the NDE of the Charter School's compliance within the timeframes identified below.

### **Directed Action – Systemic**

#### **Training on Policies/Procedures**

In accordance with NRS §385.175(6), the NDE requests a plan of corrective action from the governing body of the Charter School, with approval of the SPCSA, be provided to NDE to correct the identified noncompliance in this Complaint with regard to the failure to implement a system of records as required by NAC §388.215. The ordered corrective action plan (CAP) must be provided to the NDE within 20 days of the receipt of this Report for approval. The CAP must provide for the following:

Prior to the start of the 2019/2020 school year, or within 30 days of the NDE's approval of the CAP, whichever is earlier, the Charter School must develop and present a training to all staff who are tasked with the handling of any special education student records regarding the policies and procedures around maintenance of confidential files and utilization of the Charter School's Confidential Folder Compliance Worksheet.

### **Directed Action – Student Specific**

In accordance with NRS §385.175(6), the NDE requests a plan of corrective action from the governing body of the Charter School, with the approval of the SPCSA, be provided to the NDE to correct the identified noncompliance in this Complaint with regard to the failure to timely review and complete the student's 2018/2019 IEP. The ordered CAP must be provided to the NDE within 20 days of the receipt of this Report for approval. The CAP must indicate the timeline within which it will be implemented and shall be completed no later than the end of the first semester of the 2019/2020 school year, and provide for the following:

The Charter School shall provide compensatory education service in the amount of 150 minutes of specially designed instruction Behavior – Direct (Check-in/Check-out) in the Resource Room as further explained in the Accommodations in the student's 5/17/2019 IEP.

The Charter School's plan for implementation shall include a process by which it will consult with the Parents and consider their input on the delivery of the compensatory education services.