

STATE PUBLIC CHARTER SCHOOL AUTHORITY
COMPLAINT INVESTIGATION (#SC052423)
Report Issued on September 1, 2023

INTRODUCTION

On May 25, 2023 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 IDEA regulations, 34 C.F.R. Part 300, and Chapter 388 of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC) in a student's special education program by the State Public Charter School Authority (SPCSA) and a named charter school.¹

SPCSA is the local educational agency for all purposes for the charter schools it sponsors, including the provision of a Free Appropriate Public Education to each enrolled student and the provision of special education and related services by the SPCSA-sponsored charter school. NRS §388A.159. The named charter school, hereinafter Charter School, is sponsored by SPCSA and, as such, SPCSA, not Charter School, is the responsible local educational agency for purposes of this State Complaint under State law, including any findings of noncompliance in this State Complaint and/or orders of corrective action. 34 C.F.R. §300.151 et seq.; NAC §388.318.

The allegations in the Complaint were that SPCSA and Charter School did not comply with IDEA and NAC with regard to:

1. The provision and implementation of the student's Individualized Education Program (IEP).
2. The parent's inspection and review of the student's education records upon the multiple parental requests.
3. Obtaining the student's education records from the prior local educational agency prior to the student's IEP meeting.
4. Conducting an IEP Team meeting to develop the student's IEP within the requirement of days or adopt the existing IEP from the prior local educational agency.
5. Providing a Prior Written Notice in response to the parent's requests for services in the student's IEP; the conduct of a Functional Behavioral Assessment; and occupational therapy assessment.

The parent's proposed resolution was:

1. Specifically stated number of hours of remediation in areas of reading (122 hours), written expression (93 hours), and math (116 hours) through private tutoring at a center of the parent's choice through compensatory education hours.
2. An additional 93 hours of compensatory education in social/behavior.
3. Independent Educational Evaluation at public expense: occupational therapy and Functional Behavioral Assessment.
4. Reimbursement for homeschool curriculum supplies that were required as a result of having to withdraw from public charter school totaling \$164.81.
5. Reimbursement for the student's advocate in the amount of \$2,320.00 with stated reason.
6. Office supply copies to file the State Complaint totaling \$409.44.
7. Evaluation with Pediatric Developmental Specialist to follow up on initial medical autism diagnosis by school, with stated reason.

¹ See also NAC §388A.530 that requires the governing body of a charter school to ensure the educational services provided by the school to students with a disability comply with the requirements set forth in Chapter 388 of NRS and NAC 388.150 to 388.450, inclusive.

8. School and staff that work with students with IEPs receive training in the parental rights and procedural safeguards afforded by IDEA, FERPA and student privacy and the Governing Board certify and approve all staff acting as LEA administrative designees, provide professional staff development and training specifically to autism spectrum disorder and develop policies to support this.
9. Other available remedies available to the Complaint investigator.
10. Full and bound hard copy of student's educational file.

With regard to the proposed resolution of reimbursement for the costs of the advocate and filing expenses, the Parent was informed that these monetary expenses are not available through the State Complaint system. However, the Parent was informed that if, as a result of the investigation, it is determined that SPCSA violated the IDEA and/or NAC, Chapter 388, Nevada Department of Education (NDE) would order an appropriate remedy or corrective action necessary to resolve the Complaint. 34 C.F.R. §300.151(b).

The Parent's State Complaint was filed in the required manner and met the minimum content to be accepted. However, it was extremely difficult to ascertain the specific alleged violation and facts upon which the allegations were based given the Parent's reliance on citations of law in the 21-page State Complaint and references to 75 exhibits totaling approximately two reams of paper, rather than a statement of supporting facts. 34 C.F.R. §300.153(b); NAC §388.318. Only the allegations of SPCSA's violation of a requirement of IDEA and NAC, Chapter 388 that were specifically stated in the Parent's "Formal Letter of Complaint" with the required inclusion of facts on which the statement was based were accepted for investigation. In the course of the investigation, the Parent indicated an intent to file an amendment to the May 24, 2023 State Complaint to include additional allegations and did so on July 3, 2023 by filing a new State Complaint: #SC070323.

In accordance with its State Complaint procedures, NDE has the discretion to make an amendment determination upon the receipt of a new Complaint from a complainant with an open State Complaint. *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46603. While this new State Complaint was filed approximately 40 days after State Complaint #SC052423, all of the allegations of noncompliance (see below) occurred during the same three-month period that the student was enrolled in the SPCSA-sponsored Charter School and are related to the original State Complaint. Since the student was no longer attending Charter School and a delay in the completion of the investigation would not have an impact on the student, NDE determined that to ensure an effective and efficient investigation this new State Complaint would be treated as an amendment to State Complaint #SC052423, rather than a new State Complaint.

Pursuant to IDEA, 34 C.F.R. §300.152(b), an extension of the 60-day timeline for the submission of the final report in a complaint investigation is allowed due to exceptional circumstances. Initially SPCSA requested, and was granted, an extension of time to submit a response given the voluminous documentation provided by the Parent with the State Complaint. Upon the acceptance of the amendment of the State Complaint, NDE determined that ensuring both the Parent and SPCSA had adequate time to provide additional information in response to the new allegations in the amended State Complaint again constituted exceptional circumstances. Therefore, the NDE extended the time period in State Complaint #SC052423 to conclude its investigation and issue the decision from the continued date of August 2, 2023 to September 1, 2023. (The fact that both the Parent and Charter School expressed an interest in participating in State Mediation to resolve the Complaint was also a consideration in the determined extension period.)

The allegations of noncompliance in the second State Complaint were numerous and, as such are stated in summary form. The allegations were that the Charter School failed to: allow the Parent to record IEP meetings; implement the student's September 27, 2022 IEP in some regards; provide the Parent an appropriate IEP in a timely manner; address the Parent's concerns and discuss issues prior to the final IEP meeting; respond to all of the Parent's emails/concerns; provide a draft IEP before each IEP meeting;

provide a certified special education teacher in the resource room; respond to the Parent's request for a Functional Behavioral Assessment and Behavior Intervention; and the accuracy of raw data. There were no new proposed resolutions requested.

NDE does have jurisdiction through its special education complaint process to investigate State Complaints alleging a violation of the requirements of Part B of the IDEA or the Nevada Administrative Code for special education programs. The parent was informed that not every interaction with, or expected procedures of, a local educational agency or school of the local educational agency are protected by these laws and, as such, NDE does not have jurisdiction over complaints against a public agency that are outside this limited jurisdiction. Accordingly, the Parent was informed that the following allegations included in the State Complaint were not within NDE's jurisdiction to investigate through the special education complaint process:

- Personnel issue of ignoring or not responding to the Parent's emails or the dynamics at meetings;
- Local procedures such as the use of google docs and data collection processes;
- Asserted sloppy practices and inconsistencies in documents and school forms or general statements of disagreements that were not alleged to be a violation of IDEA or NAC, Chapter 388;
- While the allegations with facts on which the statements were based with regard to SPCSA's failure to implement specific services in the student's September 27, 2022 IEP were accepted as issues in this State Complaint, speculative allegations regarding SPCSA's possible failure to implement were not. 34 C.F.R. §300.153.

Since State Complaint #SC070323 was accepted as an amendment of State Complaint #SC052423, both filed State Complaints were combined into one State Complaint and will be referred to as State Complaint #SC052423 in this Report. The allegations in the Complaint and Amended Complaint that are under the jurisdiction of NDE to investigate through the special education complaint process raise the following issues for investigation:

Issue One:

Whether SPCSA complied with IDEA and NAC, Chapter 388, with regard to the Parent's right to inspect and review the student's education records, specifically with regard to the Parent's requests on September 28, 2022, October 3, 2022, October 12, 2022, and January 3, 2023.

Issue Two:

Whether SPCSA complied with IDEA and NAC, Chapter 388, after the student enrolled in Charter School within the same school year, to take reasonable steps to promptly obtain the student's education record from the previous local educational agency; and, either adopt the student's previous Nevada IEP; or develop a new IEP for the student within 30 days; or, alternatively, to have an IEP in effect at the commencement of the school year.

Issue Three:

Whether SPCSA complied with the requirements of IDEA and NAC, Chapter 388, to implement the student's IEP, specifically with regard to the student's weekly minutes of specially designed instruction at the commencement of the 2022/2023 school year in a resource room; the student's one-to-one aide; and modes of communication between the school and Parent for weekly/monthly reports in the student's previous Nevada IEP.

Issue Four:

Whether SPCSA, after the completion of the student's September 27, 2022 IEP, complied with the requirements of IDEA and NAC, Chapter 388, with regard to providing the Parent a Prior Written Notice and, if so, whether the Prior Written Notice included SPCSA's proposals or refusals in response to the Parent's requests for a one-to-one aide, the conduct of a Functional Behavioral Assessment, Behavior Intervention Plan, and occupational therapy assessment.

Issue Five:

If the Parent's right to participate in the student's September 1, 2022, September 7, 2022 and, September 27, 2022 IEP meetings under IDEA and/or the NAC, Chapter 388, included the following rights, whether SPCSA complied with the requirements of IDEA and the NAC, Chapter 388:

- a. To record the student's September 2022 IEP meetings and a meeting on October 6, 2022 with a service provider;
- b. To discuss the Parent's concerns as requested prior to the September 27, 2022 IEP meeting;
- c. To receive a draft IEP in advance of the student's September 1, 2022, September 7, 2022 and, September 27, 2022 IEP meetings;
- d. To set the date of August 17, 2022 by which the Charter School must hold the student's IEP Team meeting;
- e. To have the student's IEP be developed in a certain number of IEP meetings held within a specific time period.

Issue Six:

Whether SPCSA complied with the requirements of IDEA and the NAC, Chapter 388, of the required content of the student's September 27, 2022 IEP with regard to a signature on the IEP of an attendee who participated at the first IEP meeting; and only two benchmarks on the student's functional behavioral annual goal.

Issue Seven:

Whether SPCSA complied with the requirements of IDEA and the NAC, Chapter 388, to implement the student's September 27, 2022 IEP, specifically with regard to the conduct of the occupational therapy evaluation, monthly behavior data reports, including all behavior incidents, and weekly reports from the student's general education teacher.

Issue Eight:

Whether SPCSA complied with the requirements of IDEA and NAC, Chapter 388, to provide qualified personnel, specifically the student's special education teacher in the resource room at the Charter School.

In the June 6, 2023 and July 7, 2023 issue letters to SPCSA, NDE requested additional documents and information in order to investigate the State Complaint. SPCSA was notified in that same correspondence that if SPCSA disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; and specifically reference the documentation provided to NDE that factually supported the denial and that a failure to do so by the set or an extended timeline authorized by NDE would be considered a concession of noncompliance for purposes of this State Complaint. SPCSA did timely respond and disputed the allegations of noncompliance in the Complaint generally and referenced the documents submitted by issue in the June 30, 2023 response and provided some additional documentation in SPCSA's August 1, 2023. While SPCSA did not specifically deny the issues to the amendment of the State Complaint, NDE

did, in this instance, accept the general denial as sufficient for purposes of adherence to the NDE requirement.

The State Complaint, including all attachments and documentation²; the clarification relevant to the issues in the State Complaint provided by the Parent in an interview with NDE; SPCSA's denial of claims; and all documents submitted by SPCSA in response to the issues in the Complaint were reviewed and considered in their entirety in the investigation of this Complaint. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint and the original source document, where available, was relied upon.

FINDINGS OF FACT

General

1. The student is a student with a disability and enrolled in Charter School on April 29, 2022 and participated in the Charter School's enrichment summer camp in the summer of 2022 prior to the commencement of the 2022/2023 school year. The summer camp was not part of Charter School's extended school year academic program. (Complaint, SPCSA Response, May 31, 2022 Email Communication)
2. The student's first day of school in the 2022/2023 school year was August 8, 2022 and the student withdrew on November 10, 2022 to receive instruction as a homeschooled student. (Student Enrollment History, 2022/2023 School Calendar, Complaint)
3. Charter School cites the reason for the withdrawal for the student to receive instruction as a homeschooled student. The Parent cites the reason as the Charter School's "failure to comply with State and Federal laws of special education. Lack of communication on school's part and disintegration [sic] of trust on parent's part." (Complaint, Response)
4. The student had a number of absences from the commencement of the 2022/2023 school year up to the student's withdrawal, including during the first week of school. Commencing October 10, 2022, the student was on a new schedule at the Parent's election of only a half day. (Student Period Attendance Detail, August 8, 2022 Email Communication)

Request for Records

5. On April 29, 2022, Charter School requested the student's education records from the prior Nevada local educational agency "Infinite Campus" and on that same day the prior local educational agency made those records available in the same manner, with instructions to access the student's Section 504 accommodation plan that was not included. The student's education records provided to the Charter School included the student's August 18, 2021 IEP; IEPs back to school year 2018/2019; the student's special education evaluation; and other special education documents. (Infinite Campus Log)

August 18, 2021 IEP

² While all of the extensive documents were reviewed in this investigation, only the documents relevant to the issues in this State Complaint were relied upon in the Findings of Fact.

6. The student was reevaluated by the prior local educational agency on November 14, 2021, was determined to be a student with a disability, and the next reevaluation was anticipated to be November 9, 2024. The student's August 18, 2021 IEP was a revision IEP to the student's annual January 22, 2021 IEP and was in effect from August 18, 2021 until January 21, 2022. The next IEP review date was January 21, 2022. The student attended a private school for a period of time after the student's attendance at the Nevada local educational agency and the Charter School was unaware whether an IEP was created or implemented by the private school and no documentation was provided otherwise in the course of the investigation. (Student's IEPs, Special Ed Contact Log, Multidisciplinary Team Report)
7. The student's August 18, 2021 IEP was designed with three potential instructional models and included the frequency of special education services for each of the potential models. The student had the following special education services relevant to this State Complaint when in-person:
 - a. Specially designed instruction: social behavior (lunch, recess, specials) for 400 minutes per week in general education; behavior/communication (reading) 375 minutes per week in self-contained and 150 minutes per week in general education; behavior/communication (math) for 350 minutes per week in self-contained and 150 minutes per week in general education; and behavior/communication (writing) for 250 minutes per week in self-contained and 150 minutes per week general education.
 - b. Related services: An occupational therapy assessment in the location of self-contained; and
 - c. Supplementary aids and services in both the location of general education and self-contained that included a one-time development of a Functional Behavioral Assessment and 18 other supplementary aids and services that included a one-to-one aide during instruction to assist with participation in the least restrictive environment in both general education and special education; teachers' communication weekly on social and behavioral (positive as well as immediate concerns); and the case manager's review of behavioral data and "collaborate changes" with Parent and data will be charted and sent home monthly.
 - d. The student's placement was in a self-contained program with 46% of the school day in the regular education environment. (August 18, 2021 IEP)
8. The student's Parent agreed with the components of the August 18, 2021 student's IEP. (August 18, 2021 IEP)
9. Prior to the commencement of the 2022/2023 school year, the Parent informed the principal of Charter School of the Parent's concerns that the student's IEP be followed by day one in the 2022/2023 school year. The principal and the Parent communicated multiple times prior to the commencement of the 2022/2023 school year regarding the student and the Parent referenced services in the student's IEP, including reminding the student's case manager the student's IEP required a one-to-one aide in the classroom with the student. (June 6, 2022, July 2022, August 3, 2022, August 4, 2022 Email Communications)
10. On August 4, 2022, the Charter School informed the Parent that the student's IEP had expired and the student would receive a new one as soon as Charter School assessed the student, which should happen quickly. The Parent responded that while the IEP was expired, it remained in effect until Charter School updated it. (August 4, 2022 Email Communications)
11. On August 4, 2022, the Charter School responded to these emails: "...Until we have a current IEP constructed by our school psychologist and our special education facilitator [] is considered general education and we don't provide additional services. We welcome [] ABA therapist [] has been working with. Of course, we believe [] will qualify and we will provide what is needed based on [] qualifications. Please keep in mind we do not have a 100% self contained (sic)

classroom, yet. Our physical space is limited but we will maximize all of our resources to accommodate [] based on [] qualifications.” (August 4, 2022 Email Communications)

12. On August 7, 2022, the student’s Parent contacted Charter School and informed the school that the Parent did not want to leave the student unsupported, especially the first week of school with lots of big changes for the student. The Parent informed the school that the student would be picked up each day that week when the private ABA therapist left at designated times from 11:50 A.M. to 1:00 P.M. (August 7, 2022 Email Communication)
13. On August 8, 2022, the first day of school, the Charter School provided the Parent a Notice of Temporary Placement (Parent Consent Form) that indicated that based on a review of the student’s August 18, 2021 IEP and November 15, 2018 evaluation, the student was identified with a specifically named category of disability; the student’s recommended placement was general education/special education as the student’s temporary placement pending formal diagnostic review of eligibility data as required by NAC. (No citation to NAC is provided on the Notice of Temporary Placement.) Relevant to this State Complaint, there were no annual goals, specially designed instruction, the related service of an occupation therapy assessment, or supplementary aids or services listed to be provided. (Notice of Temporary Placement – Parent Consent Form)
14. The Parent signed the Notice of Temporary Placement the morning of August 8, 2022, but that same day asked the teacher what the paper signed was for because of being unsure. The student’s teacher referred the Parent to the special education instructional facilitator, but believed the form was informing the Parent that the student’s IEP had expired and the Charter School had 30 days during which to develop a new IEP. (August 8, 2022 Email Communication, Notice of Temporary Placement – Parent Consent Form)
15. On August 9, 2022, the Parent met with Charter School and sent a confirmation email the next day confirming Charter School agreed the IEP could be implemented as written without holding an interim IEP meeting to make revisions and that if any part of the IEP could not be implemented within the first 30 days, Charter School would communicate the specifics to the Parent. The Parent did not receive a direct response from the Charter School on the implementation of the student’s expired IEP. (August 10, 2022, August 15 2022 Email Communications)
16. Referencing the Notice of Temporary Placement in its response to this State Complaint, Charter School indicated that with the 2021 IEP then in effect, Charter School turned to getting a more up-to-date interim IEP in place to serve as a 30-day bridge to a new, “full-scale” IEP. Prior to the filing of this State Complaint, on August 17, 2022, Charter School referenced the 30 days to develop the student’s IEP by September 8, 2022 and, later, on August 24, 2022 informed the Parent that the upcoming IEP Team meeting was to develop an interim IEP for the student. (Response, August 17, 2022, August 24, 2022 Email Communications)
17. Charter School provided an August 16, 2022 notice to the Parent proposing to reevaluate the student’s eligibility for continued special education services for the stated reason of the development/review of the student’s IEP. Additional factors for the proposed action were concerns of the Parent and staff and the Multidisciplinary Team’s determination that the student’s IEP needed to be written. (August 16, 2022 Prior Written Notice)
18. On August 16, 2022 the Parent signed consent for the reevaluation of the student. (Nevada Consent for Evaluation)

19. On August 18, 2022, effective immediately, the Parent withdrew the August 16, 2022 consent for the student's reevaluation with the explanation that the Parent did not understand the proposed evaluations or who would be administering them. The Parent proposed a meeting with a formal Prior Written Notice. (This withdrawal of consent was referenced as "curious" in the SPCSA response to this State Complaint, but not relied upon relative to the student's IEP in effect or any delay in the development of the student's September 27, 2022 IEP. The student's IEP Team relied upon other data in the development of the IEP. The Parent later consented to the conduct of a speech, language and communication assessment. (August 18, 2022 Email Communication, September 6, 2022 Nevada Consent for Evaluation)
20. On August 21, 2022, the Charter School prepared a draft schedule to send with a Prior Written Notice to the Parent to implement the student's out-of-date IEP. The Charter School indicated that the student was owed 17.25 minutes and additional time would be added to the student's schedule in the special education room to recoup that time for the next 17 days. On August 22, 2022, the Charter School sent a notice entitled Nevada Parental Prior Notice - Proposed Meeting Arrangements (characterized in the Charter School's response as a Prior Written Notice) to implement the student's expired IEP. (August 21, 2022 Email Communication, Nevada Parental Prior Notice- Proposed Meeting Arrangements)
21. On August 23, 2022, SPCSA suggested that in addition to the issuance of a Prior Written Notice to implement the student's out-of-date IEP, the Charter School issue a Prior Written Notice to develop an interim IEP "that will bring []³ into compliance." (August 23, 2023 SPCSA Email Communication)

Provision of Specially Designed Instruction – Commencement of the School Year to September 27, 2022

22. On August 4, 2022, the Charter School informed the Parent that there was no self-contained classroom at the school at that time, but that the school would maximize their resources to accommodate the student. (August 4, 2022 Email Communication)

Resource Room

23. From August 8, 2022 through August 19, 2022, the student's placement in Charter School was solely in general education (a period of 10 school days). The student was absent for one of those school days and attended only half days on seven school days when the Parent elected to reduce the time in the absence of the student's one-to-one aide. From August 22, 2022 to September 27, 2022, the date the Charter School IEP was developed, Charter School made a placement in the "Resource Room" available for variable periods of time during the five school weeks for a total of 4105 minutes:
 - a. August 22, 2022 to September 2, 2022 (10 school days) for approximately 200 minutes a day for a total of 2000 minutes for the two school weeks.
 - b. The week of September 6, 2022 to September 9, 2022 for 155 minutes with no Resource Room available to the student on September 7, 8, and 9, 2022 for a total of 155 minutes for the school week. (While Charter School provided documentation that the student was placed in the Resource Room on September 5, 2022, a school holiday, this documentation was not credible.)

³ [] denotes the deletion of personally identifiable information for reasons of confidentiality. In this case, it is the name of the student's Charter School.

- c. From September 12, 2022 through September 23, 2022, a total of two school weeks All school days for approximately 195 minutes per day for a total of 1950 for the two school weeks. (Documentation of Student Schedule, 2022/2023 School Calendar, August 8, 2022 Email Communication)
24. In the course of the investigation, SPCSA did not provide documentation of the specially designed instruction provided to the student while in the Resource Room and/or the implementation of the weekly minutes of specially designed instruction provided to the student in each subject areas as set forth in the student's IEP in effect at the commencement of the 2022/2023 school year. SPCSA also did not provide documentation of the student's progress toward the annual goals in the adopted August 18, 2022 IEP from August 8, 2022 to September 27, 2022, the date the student's Charter School IEP was developed. (Review of the Record)
25. The student's Parent objected to the student being isolated from other students during the student's placement in the Resource Room. (August 18, 2022 Email Communication)

Commencement of the School Year to September 27, 2022 – One-to-One Aide and Weekly/Monthly Reports

26. With regard to the student's one-to-one aide, SPCSA cited in its response that the Charter School allowed the student to have the Parent's provided ABA therapist for a number of weeks. The ABA therapist was not allowed to provide the services to the student at the Charter School after October 9, 2022. (Response, October 9, 2022 Email Communication)
27. While there was a significant amount of email communications between the student's general education teacher, special education teacher and the Parent at the commencement of the school year, and some of it was related to the student's social and behavioral conduct (positive as well as immediate concerns), documentation was not provided in the course of the investigation that the communications were weekly from August 8, 2022 to September 27, 2022. (Email Communications, Review of the Record)
28. Based solely on the documentation provided by the Parent, commencing September 6, 2022 to September 26, 2022, the Charter School collected behavior/social data on some days. (There are additional data sheets without any date.) The Parent did receive those data sheets on September 27, 2022. There was no documentation that the student's case manager reviewed behavioral data, collaborated changes with the Parent, and data was charted and sent home monthly in August 2022. (Behavior Chart, Student Observation Forms, Internal Email Communications, Meeting Notes, Review of the Record)

Charter School IEP

29. The Parent and Charter School agreed to a September 1, 2022 IEP meeting for the student and the Charter School sent an August 29, 2022 Proposed Meeting Arrangements Notice for the meeting to develop the student's IEP. (August 18, 2022, August 24, 2022 Email Communications, Nevada Parental Prior Notice - Proposed Meeting arrangements)
30. On September 1, 2022, the student's IEP Team, including the student's Parent, met to develop the student's annual IEP. The IEP Team was unable to complete the development of the student's IEP

at that meeting and additional IEP Team meetings were conducted on September 7, 2022 and September 27, 2022. (Nevada Parental Prior Notice - Proposed Meeting Arrangements, Draft IEP)

31. The student's September 27, 2022 Charter School IEP was an annual IEP with services to begin on September 27, 2022. The next IEP review date was September 26, 2023. The student's date of eligibility was changed to November 9, 2021 with an anticipated three-year reevaluation date of November 8, 2024. The multi-disciplinary team report dated November 9, 2021 relied on assessments conducted in November of 2018 to determine the student's eligibility and additional data, such as observations, were relied upon in the statement of present levels of academic achievement and related developmental needs in the IEP. (September 27, 2022 IEP)
32. The September 27, 2022 IEP included the annual goals in the following areas: speech sounds; expressive language; pragmatic reading; writing; math; behavior; behavior (social); and behavior (functional). language; receptive language; The student had three behavior annual goals, with two of the three including benchmarks for the second, third and fourth quarter and one goal of functional behavior with two benchmarks for different behavior by the end of the third quarter. The IEP notes that the student's Parent disagreed with the three behavior goals. The student's special education services were as follows:
 - a. Specially designed instruction in reading for 960 minutes per month in the location of special education; writing for 960 minutes per month in the location of special education; math for 640 minutes per month in the location of special education; social skills for 320 minutes per month in the location of special education; behavior for 320 minutes per day in the location of special education; and behavior for 960 minutes per month in general education.
 - b. Related services: Direct speech/language for 160 minutes per month in the location of the speech therapy room beginning date of September 6, 2022 (prior to the date of the IEP); and an occupational therapy assessment with the beginning date of September 1, 2022 (prior to the date of the IEP) and the end date of August 31, 2023.
 - c. Supplementary aids and services. The 11 supplementary aids and services had a beginning date of September 6, 2022 (prior to the date of the IEP). The supplementary aids/services included weekly communication between staff and Parents regarding "behavioral and social" in the location of general education and special education and the service that behavior data would be monitored and results provided to the Parents on a monthly basis in both general education and special education. (The SPCSA-provided final IEP did not include discernible end date, frequency of services and location for all of the supplementary aids and services. The Parent's provided IEP was relied upon for that information). There was an additional aid/service of staff facilitating social and peer to peer interactions in small group and one-to-one setting during unstructured school general education times.
 - d. The student's placement was in a regular class and special education class (e.g., resource) combination with 52% of the school day in the regular education environment. (September 27, 2022 IEP)
33. The student's Parent actively participated in the student's Charter School IEP Team meetings, including the September 27, 2022 meeting. The Parent disagreed with all or part of the student's IEP. (September 27, 2022 IEP, September 27, 2022 Email Communication)
34. It is uncontested that an individual, a school psychologist, attended the first IEP Team meeting on September 1, 2022; was not in attendance at the student's September 27, 2022 IEP Team meeting; and did not sign the September 27, 2022 final IEP as a participant. The individual was listed as a participant. (State Complaint, September 27, 2022 Email Communication, Response)

Implementation of the September 27, 2022 IEP - One-to-One Aide and Weekly/Monthly Reports, Occupational Therapy Evaluation,

35. No documentation was provided in the course of the investigation that supported the collection/monitoring of behavior data after the development of the student's September 27, 2022 IEP and provision of the results to the Parent. (Behavior Chart, Student Observation Forms, Internal Email Communications, Meeting Notes, Review of the Record)
36. While there were a significant number of email communications between the Parent and personnel at the Charter School after the development of the student's September 27, 2022 IEP, no documentation was provided in the course of the investigation that the Parent was provided weekly communication from the student's general education teacher regarding the student's behavioral and social conduct. (Email Communications, Review of the Record)
37. As of September 27, 2022, Charter School secured an occupational therapist and informed the Parent that consent would be obtained prior to the initiation of the assessment. The occupational therapist contacted the Parent on October 31, 2022 to schedule a time to discuss the conduct of the student's occupational therapy evaluation. No occupational therapy evaluation of the student was conducted between September 27, 2022 and the student's withdrawal from school on November 10, 2022. (September 27, 2022, October 31, 2022 Email Communications, Review of the Record)
38. Other than an October 7, 2022 progress report that indicated that there has not been adequate time since the annual IEP relative to evaluating the student's progress toward the annual goals, no other report of the student's progress toward the IEP goals was provided in the course of the investigation. (October 7, 2022 Progress Report, Review of the Record)

After the September 27, 2022 IEP Meeting

39. At an October 6, 2022 meeting with the Parent, Charter School notified the Parent that the student could begin to transition from the clinical support to academic support. On October 7, 2022, the student's Parent notified Charter School that the student's ABA therapy was medically necessary and that due to matters such as scheduling/insurance the Parent had limited options with regard to how/when the student received treatment. To that end, the Parent notified the school of the student's new schedule that the Parent hoped would be a temporary measure and the student would be able to return to school full time. (October 6, 2022 Meeting Notes, October 7, 2022 Email Communication)
40. On October 9, 2022, Charter School indicated the school could not implement the IEP due to the student's absences on the new schedule the Parent had provided. The schedule would cause the student to miss 58% of each school day and not attend at all on Fridays. On October 10, 2022, Charter School notified the student's Parent that based on the required number of minutes of instruction for the student's grade, the proposed schedule would not allow those minutes and the minutes in the student's IEP to be met. (October 9, 2022, October 10, 2022 Email Communications)
41. On October 10, 2022, The Charter School requested the student's Parent provide documentation from the student's physicians that the student's physical or mental condition or behavioral health prevented or rendered inadvisable the student's attendance at school or application to student. (October 10, 2022 Email Communication)
42. On October 11, 2022, the Charter School decided to come up with a new proposal for the Parent that included offering a Functional Behavioral Assessment by contract personnel and developing a

Behavioral Intervention Plan; offering a facilitated IEP with contracted personnel; and revising the student's IEP to ensure the student was back on campus by 11:00 AM. (October 11, 2022 Email Communication)

Inspect and Review Education Records

43. On September 27, 2022, at the student's IEP Team meeting, the Parent requested the student's confidential file. By email communication later that same day, the Parent requested specifically named documents such as all raw data collection for the student and service logs and indicated "basically if it has to do with [], I am requesting a copy of it." (Meeting Notes, September 27, 2022 Email Communication)
44. Charter School did not use service logs prior to the development of the student's September 27, 2022, but maintained that information in the student's special education contact log. The absence of the service log was one factor that caused the Parent to believe some of the student's education records were being withheld. On September 27, 2022, the Parent acknowledged receipt of "raw data school sheets." The sheets reflected daily behavior charting of the student's behavior such as out of seat and refusal to follow directions during different periods of the school day. (Special Education Contact Log, September 26, 2022, October 4, 2022 Email Communication, State Complaint, Behavior Charts)
45. The Charter School provided the Parent a hard copy of documents on October 4, 2022 in response to the request and provided an explanation of the location of the documents on the electronic system. (October 3, 2022, October 4, 2022 Email Communications)
46. The Parent acknowledged to SPCSA that while the Parent felt there should be more data, it was possible that the documentation did not exist. While unsure if it matched what was previously provided by the school, in response, SPCSA provided one of the requested documents, the contact log, (October 6, 2022 Email Communications)
47. Upon withdrawing the student from Charter School on November 10, 2022, the Parent requested copies of the student's complete educational file and listed specific documents to be included. On January 3, 2023, the Parent informed Charter School that the Parent had not received the requested student's complete educational file, including specifically requested documentation. (November 10, 2022, January 3, 2023 Email Communications)
48. Charter School responded to the Parent on January 3, 2023 that it was the school's belief that all records have been provided. The Parent referenced the absence of two months of data since the provision of the student's records in September 2022 and indicated the records previously provided were "incomplete and inaccurate." (January 3, 2023 Email Communications)

Prior Written Notice

49. After the completion of the student's September 27, 2022 IEP, Charter School provided the Parent a notice entitled: Nevada Parental Prior Notice – Proposed Meeting Arrangements. This Notice was identical to the other similarly entitled notices prior to the conduct of the student's IEP Team meetings, including the transmission of the form for the Parent to respond to a proposed meeting date. The contents of this Notice were as follows:
 - a. Proposed or refused action: "Implementing the Individualized Educational Program developed for the student on ____ (date)." (No data provided)
 - b. The action is being proposed or refused because of: "Other: Implementation of IEP."

- c. The following actions were considered: “Not Applicable.” These options were rejected because: “Implementation of IEP.”
 - d. The action proposed or refused above is based on the following evaluation procedures, assessment, records, or reports: “Not applicable.”
 - e. The following factors are relevant to the proposal or refusal: “None.”
 - f. A statement that the Parent has procedural protections under IDEA rights with language on sources to contact, with no contact information provided.
- (September 27, 2023 Nevada Parental Prior Notice – Proposed Meeting Arrangements)
50. In response to an inquiry from the student’s teacher regarding which IEP goals should be implemented, SPCSA informed the Charter School on September 28, 2022 that the previous IEP was out of compliance and the current IEP, even though not agreed upon, was the IEP to be implemented and an intent to implement Prior Written Notice should be send to the Parents. (September 28, 2022 Email Communication)
51. Prior to and after the September 27, 2022 IEP Team meeting, the student’s Parent referenced the outstanding issues of the Functional Behavioral Analysis; a one-to-one aide; and time spent in the general education environment (least restrictive environment) and other concerns. (September 12, 2022, September 23, 2022, September 27, 2022 Email Communications, Meeting Notes)
52. SPCSA acknowledged in its response that there was a disagreement between the Parent and the Charter School at the IEP meetings regarding the Parent’s request for occupational testing and functional behavior analysis. A Behavior Intervention Plan based on other assessments was also discussed as sufficing in lieu of a Functional Behavioral Assessment. Email communications between the Parent and the Charter School document a number of additional proposals of the Parent that the IEP Team considered and accepted or rejected. (SPCSA Response, September 1, 2022, September 27, 2022 Email Communications, Meeting Notes)

Parental Participation

53. The Parent was a very active participant in the student’s education while at the Charter School and provided the Charter School numerous expectations and requests, including during the development of the student’s Charter School IEP. (Email Communications)

Record the student’s IEP Team meeting

54. On August 30, 2022, the student’s Parent requested the Parent be allowed to record the IEP Team meeting. At the September 1, 2022 IEP Team meeting, the Parent asked again twice to record the meeting. The Charter School declined and took meeting notes instead. These detailed meeting notes were provided to the student’s Parent. (August 30, 2022 Email Communication, September 1, 2022 Meeting Notes)
55. On September 26, 2022, the Parent again requested to record the IEP Team meeting to be held the next day and the Charter School declined, but again indicated the Charter School would take notes for the Parent. These detailed meeting notes were provided to the student’s Parent. (September 26, 2022 Email Communication, September 27, 2022 Meeting Notes)
56. The Parent’s stated reason for the request to record was solely to keep track of all of the important information being discussed. The Parent did not inform Charter School of any disability that required the meeting be recorded for access due to a disability and actively and knowledgably

participated in all three meetings. (August 30, 2022, September 26, 2022, September 27, 2022 Email Communications)

57. On October 5, 2022, the Parent requested permission to record a meeting the next day with the Charter School and an outside provider and indicated that if Charter School declined the request the Parent requested someone take notes. Charter School did provide the Parent meeting notes and the notes reflected the Parent actively participated in the meeting. (October 5, 2022 Email Communication, October 5, 2022 Meeting Notes)

Draft IEP

58. On August 18, 2022, and again on August 23, 2022, August 24, 2022, August 25, 2022, and August 30, 2022, the Parent requested that Charter School provide the Parent with the proposed IEP changes (IEP draft), particularly the updated present levels in advance of the IEP Team meeting. The Parent set dates by which the Parent should receive the draft to enable the Parent to review it prior to the IEP Team meeting. (August 18, 2022, August 24, 2022, August 25, 2022, August 30, 2022 Email Communications)
59. On September 23, 2022, prior to the student's September 27, 2022 IEP Team meeting, the student's Parent again requested a copy of a draft IEP to be completed by the Charter School and provided the date of no later than September 21, 2022. The Parent was provided a copy of the student's draft IEP the Friday before the student's Monday IEP Team meeting. (September 23, 2022 Email Communication, Complaint)

Set Date and Time for IEP Team Meetings

60. On August 4, 2022, the student's Parent requested an IEP Team meeting be convened by August 17, 2022 to discuss the possibility of a transition plan for a modified school day and specifically indicated the request was separate from the update of the student's August 18, 2021 expired IEP. On August 23, 2022, the Parent sent a copy of that prior request to SPCSA to document that the Parent had requested an IEP Team meeting and informed SPCSA that no response was received from Charter School. No documentation was provided in the course of the investigation that Charter School responded to the Parent's August 4, 2022 request for the IEP Team Meeting for the stated purpose. (August 4, 2022 Email Communication, August 23, 2022 Email Communication, Review of the Record, Response)
61. On September 12, 2022, the student's Parent sent an email to the student's IEP Team members setting forth the Parent's concerns that still needed to be addressed and indicated the Parent would be happy to collaborate to provide insight and support before the September 27, 2022 IEP Team meeting. (September 12, 2022 Email Communication)
62. On September 12, 2022, the Parent informed the Charter School that the September 27, 2022 needed to be the last IEP Team meeting and expressed the hope that the Charter School would reach out to the Parent and others in "crafting" the student's IEP. The Charter School responded to the Parent's stated concerns that they would be discussed with the IEP Team at the meeting. (September 12, 2022, September 23, 2022 Email Communications)

Qualified Personnel - Special Education Teacher

63. The student's special education teacher is also the special education facilitator at Charter School and served as the student's special education teacher at all of the student's IEP Team meetings at

Charter School. The name of the special education teacher of the student was different than the name of the staff member the Parent cited in the allegation in this State Complaint as the individual the student worked with in the resource room. (The Parent indicated to the Parent's knowledge the student's IEP was not being implemented by a credentialed special education teacher.) (Complaint, Response, IEPs)

64. The special education teacher of the student in the resource room held the following State of Nevada licenses: a professional elementary license in grade levels k-12 with an endorsement in all elementary subjects; a professional special education license k-12 with an endorsement as a generalist; a professional special education license for 0-7 years with an endorsement in early childhood developmentally delayed; and a professional early childhood license with an endorsement in all early childhood subjects. The two special education licenses were originally issued in 2013. (State Of Nevada License for Educational Personnel, Response)
65. The special education teacher of the student in the resource room also earned a Masters of Science in special education and successfully completed continuing education professional development courses in the 2021/2022 and 2022/2023 school years. (University Degree, Certificates of Completion)

CONCLUSIONS OF LAW

Issue One:

Whether SPCSA complied with IDEA and NAC, Chapter 388, with regard to the Parent's right to inspect and review the student's education records, specifically with regard to the Parent's requests on September 28, 2022, October 3, 2022, October 12, 2022, and January 3, 2023.

Pursuant to IDEA, 34 C.F.R. §300.613, the parents of a student must be allowed to inspect and review any education records relating to their child that are collected, maintained, or used by the public agency. (See also NAC §388.287.) The public agency must comply with a request of the parent to do so without unnecessary delay and before any meeting regarding an IEP, or any hearing or resolution session and in no case more than 45 days after the request has been made. 34 C.F.R. §300.613; NAC §388.287(1).

The term "education records" under the IDEA, 34 C.F.R. §300.611(b), means the type of records covered under the definition of "education records" in Title 34 C.F.R. Part 99 (the regulations implementing the Family Educational Rights and Privacy Act (FERPA)). FERPA defines "education records" as those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution.⁴ It is important to note that there are exceptions to what constitutes an education record. For example, records of a teacher that are in the teacher's sole possession and are not accessible or revealed to any other person except a substitute are not an "education record." 34 C.F.R. §99.3.

Similarly, not every piece of paper, like a student's quiz is "maintained" by the public agency: "The ordinary meaning of the word "maintain" is "to keep in existence or continuance; preserve; retain." *Random House Dictionary of the English Language* 1160 (2d ed. 1987)." As the United States Supreme Court in determined with regard to a student's quiz, "...the student papers are not, at that stage, "maintained" within

⁴ Chapter 388 of the NRS and NAC, Chapter do not define the term "education record" or "educational record". The general confidentiality provisions for pupils in NRS §392.029(9) does define "education record" by incorporating the FERPA definition.

the meaning of § 1232g(a)(4)(A).” *Owasso Independent School District v. Falvo*, 534 U.S. 426 (2002).

In this case, the student’s Parent requested the student’s education records on multiple occasions, commencing September 27, 2022 at the student’s IEP Team meeting. After the meeting, the Parent specifically named documents such as all raw data collection for the student and service logs and indicated “basically if it has to do with [], I am requesting a copy of it.” (Finding of Fact (FOF) #43) The Parent acknowledged receipt of the “raw data school sheets” charting the student’s daily behavior on September 27, 2022 and on October 4, 2022 Charter School timely provided the Parent a hard copy of the documents in response to the request and provided an explanation of the location of the documents. (FOFs #44 - 45) 34 C.F.R. §300.613; NAC §388.287(1).

The difficulty in this case is that other than the absence of two months of data since the provision of the student’s records in September 2022, the Parent did not identify specific records to which the Parent was denied access to that were documented as being maintained by Charter School. The Investigation Team determined that the referenced months of data were likely the raw data sheets recording the student’s daily behavior at school previously provided in September 2022. (FOFs #47, #48) Raw data sheets such as these daily behavior charts of a student’s classroom behavior are not typically “maintained” by an educational agency in a student’s education record, *Owasso Independent School District v. Falvo*, 534 U.S. 426 (2002), and, given the Charter School collected behavior/social data on only some school days previously, the documentation may not exist. The Parent even acknowledged at one point in the requests for education records that, while the Parent felt there should be more data, it was possible that the documentation did not exist. (FOF #46) Without more, upon consideration of that acknowledgement and that at least one of the requested and provided documents was not maintained in the manner expected (FOF#44), the Complaint Investigation Team determined that the Parent’s belief that the records previously provided were “incomplete and inaccurate” or the absence of daily data sheets was insufficient to counter the documentation that the Charter School timely provided the Parent the right to inspect and review the student’s education records. (FOFs #47, #48)

Therefore, SPCSA complied with IDEA and NAC, Chapter 388, with regard to the Parent’s right to inspect and review the student’s education records in response to the Parent’s requests.

Issue Two:

Whether SPCSA complied with IDEA and NAC, Chapter 388, after the student enrolled in Charter School within the same school year, to take reasonable steps to promptly obtain the student’s education record from the previous local educational agency; and, either adopt the student’s previous Nevada IEP; or develop a new IEP for the student within 30 days; or, alternatively, to have an IEP in effect at the commencement of the school year.

If a student with a disability who is receiving special education services pursuant to an IEP transfers to a school district in the State of Nevada in the same academic school year and enrolls in a school, the Nevada local educational agency must, in consultation with the Parent, provide the student with a Free Appropriate Public Education, including services which are comparable to the services described in the student’s out-of-state IEP. The provision of a Free Appropriate Public Education, including these comparable services, are required to be provided to the student until such time as the agency conducts an evaluation of the student and develops a new IEP, if determined appropriate. NAC §388.263(1); 34 C.F.R. §300.323(e). In order to facilitate the transition for a student previously served by another public agency in the same state, the new public agency is also required to take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled. 34 C.F.R. §300.323(g).

In this case, while the student previously attended school in another Nevada local educational agency in the 2021/2022 school year, immediately prior to the student's enrollment in the Charter School the student attended a private school, not a public agency in Nevada. (FOF #6) In addition, the student's transfer to the Charter School was not in the same academic year, but a different academic year. (FOF #2) Therefore, the above-cited transfer provisions in IDEA and NAC, Chapter 388, do not apply in this case. NAC §388.263(2); 34 C.F.R. §300.323(e).

Nonetheless, SPCSA was required to ensure that the student had an IEP in effect at the beginning of the school year and before providing special education and related services to the student. NAC §388.281(1); 34 C.F.R. §300.323(a). Relevant to this student, NAC §388.275 provides the authority for a local educational agency to develop an interim IEP who is being considered for special education and related services if the student was determined to be eligible for special education by another public agency. Upon the expiration of 30 days after the development of an interim IEP, an IEP must be developed for the eligible student. NAC §388.275. Given the student was determined to be eligible for special education by another public agency (FOF #6), Charter School was authorized to develop an interim IEP for the student to be in effect for up to 30 days. NAC §388.275.

Did Charter School develop a new interim IEP for the student or simply adopt the student's August 2021 IEP at the commencement of the 2022/2023 school year? Given the series of conflicting events in this case, it is unclear (FOFs #10, #13, #14, #16, #20, #21), and that is a problem since both the Parent and Charter School needed to know what IEP was in effect. 34 C.F.R. §§300.17(d), 300.101, 300.323; NAC §388.28.

What is clear is that the Parent made significant efforts to ensure Charter School was aware of the student's needs and had the student's prior IEP before the commencement of the 2022/2023 school year. The principal and the Parent communicated multiple times prior to the commencement of the 2022/2023 school year regarding the student and the Parent referenced the services in the student's IEP, including reminding the student's case manager the student's IEP required a one-to-one aide in the classroom with the student, and conveyed the Parent's concern that the student's IEP be followed by day one in the 2022/2023 school year. (FOFs #9, #10) Charter School did timely request and obtain the student's education record from the previous local educational agency on April 29, 2022, significantly in advance of the 2022/2023 school year. (FOF #5)

On August 4, 2022, Charter School informed the Parent that since the student's previous IEP had expired, the student would be considered general education and would not be provided additional services until the student was assessed by Charter School and had a Charter School IEP. (FOFs #10, #11) Further, while the student's previous placement was in a self-contained program with 46% of the school day in the regular education environment (FOF #7), Charter School informed the Parent that Charter School did not have a self-contained classroom yet. (FOFs #7, #11)

On the first day of school, August 8, 2022, Charter School provided the Parent a Notice of Temporary Placement (Parent Consent Form) that indicated that based on a review of the student's August 18, 2021 IEP and November 15, 2018 IEP, the student was identified with a specifically named category of disability; and the student's recommended temporary placement was general education/special education, pending formal diagnostic review of eligibility data as required by NAC. (No reference to NAC §388.275 was provided on the Notice of Temporary Placement.) The Notice did not include any annual goals for the student; specially designed instruction; the related service of an occupational therapy assessment or supplementary aids or services for this temporary placement. (FOF #13) The Parent signed the Notice of Temporary Placement Consent Form the morning of August 8, 2022. (FOF # 14)

In its response to this State Complaint, Charter School relied upon this Notice of Temporary Placement as verification of the adoption of the student's expired August 18, 2021 IEP. (FOF #16) As such, the Complaint Investigation Team determined that, albeit imprecisely, Charter School's adoption of the expired August 18, 2021 IEP the morning of the first day of school as a diagnostic placement was the student's interim IEP to ensure the student had an IEP in effect at the beginning of the school year in accordance with IDEA, 34 C.F.R. §300.323, and NAC §388.281.

However, in accordance with NAC §388.275, upon the expiration of 30 days after the development of this interim IEP, Charter School was required to develop the student's IEP. While the student's IEP Team met to develop the student's IEP on September 1, 2022, Charter School did not comply with NAC §388.272 in that the student's IEP was not developed until September 27, 2022, after the expiration of the permissible 30-day period.⁵

Therefore, SPCSA complied with IDEA and NAC, Chapter 388, after the student enrolled in Charter School in a new school year and, while the student was not a transfer student within the meaning of IDEA and NAC, Chapter 388, took reasonable steps to promptly obtain the student's education record from the previous local educational agency and had an interim IEP in effect at the commencement of the school year; but did not comply with NAC §388.272 to develop the student's IEP until September 27, 2022, after the expiration of the permissible 30-day period.

Issue Three:

Whether SPCSA complied with the requirements of IDEA and NAC, Chapter 388, to implement the student's IEP, specifically with regard to the student's weekly minutes of specially designed instruction at the commencement of the 2022/2023 school year in a resource room; the student's one-to-one aide; and modes of communication between the school and Parent for weekly/monthly reports in the student's previous Nevada IEP.

The requirements of the provision of a Free Appropriate Public Education to students with disabilities under IDEA and NAC, Chapter 388, necessitate that special education and related services and supplemental aids and services are provided in conformity with an IEP. 34 C.F.R. §§300.17(d), 300.101; NAC §388.281(6)(e); *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884 (9th Cir. 1995); *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9th Cir. 2007).⁶ In accordance with IDEA and NAC, Chapter 388, this requirement would necessitate special education and related services be made "available". In addition, pursuant to NAC §388.215, SPCSA was required to have a system of records for the purpose of verifying the provision of a Free Appropriate Public Education to the student.

It is the implementation of the student's IEP in effect at the commencement of the 2022/2023 school year prior to Charter School's development and implementation of the September 27, 2022 IEP that is in question in this issue. As discussed under Issue Two, the student's August 18, 2021 IEP was determined to have been adopted by Charter School as the student's interim IEP in effect at the commencement of the school year.

Specially Designed Instruction

⁵ It was noted that the Parent withdrew the consent for Charter School's student's reevaluation of the student. (FOFs #17-#19) While referenced as "curious" in SPCSA response to this State Complaint, the withdrawal of consent was not relied upon for any delay in the development of the student's September 27, 2022 IEP and the student's IEP Team relied upon other data in the development of the IEP. (FOFs #19, #31)

⁶ The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

Based on the State Complaint, the scope of this investigation was limited to the provision of specially designed instruction in accordance with the student's August 18, 2021 IEP in-person in a location of self-contained, described by both the student's Parent and Charter School as the "Resource Room." The specially designed instruction in the student's August 18, 2021 IEP provided: behavior/communication (reading) for 375 minutes per week in self-contained; behavior/communication (math) for 350 minutes per week in self-contained; behavior/communication (writing) for 250 minutes per week in self-contained. (FOF #7) The number of minutes of required specially designed instruction in the location of self-contained totaled 975 minutes per week.

Prior to the commencement of school, Charter School informed the Parent that there was no self-contained classroom at the school at that time, but that the school would maximize their resources to accommodate the student. (FOF #22) For a period of 10 school days, the student's placement in Charter School was solely in general education. (FOF #23)

Based on the documentation provided by Charter School, commencing August 22, 2022 Charter School made a placement in the Resource Room available to the student for variable periods of time. SPCSA did not, however, provide documentation of the specially designed instruction provided to the student while in the Resource Room and/or the implementation of the weekly minutes of specially designed instruction provided to the student in each subject areas as set forth in the student's IEP. (FOF #24) Even assuming Charter School provided the specially designed instruction in each subject area as set forth in the student's IEP, Charter School failed to provide the student the required minutes of specially designed instruction from August 8, 2022 up to the development of Charter School's September 27, 2022 IEP. (FOF #31) Specifically, from August 8, 2022 through September 26, 2022, the student was to receive a total of 6825 minutes of specially designed instruction over the seven school weeks and only received 4,105 minutes of instruction, including the determined extra 50 minutes in the first two weeks of the student's placement in the Resource Room, which results in the student not receiving 2720 minutes (approximately 45.3 hours) of required specially designed instruction from August 8, 2022 to September 27, 2022. (FOFs #7, #23)

One-to-One Aide and Mode of Communication

The student's August 18, 2021 IEP adopted by Charter School required the provision of a number of supplementary aids and services that included a one-to-one aide during instruction to assist with participation in the least restrictive environment in both general education and special education; the student's teachers would communicate weekly on social and behavioral (positive as well as immediate concerns); and the case manager would review behavioral data and collaborate changes with the Parent and data would be charted and sent home monthly. (FOF #7)

SPCSA did not contest the Parent's allegation that Charter School failed to provide a one-to-one aide during the applicable time period. Rather, SPCSA cited in its response that the Charter School allowed the student to have the Parent's provided ABA therapist for a number of weeks at school. (FOFs #9, #11, #26) The Parent's provision of an ABA therapist for the student's clinical support (FOF #58) did not relieve SPCSA of the responsibility to implement the student's IEP by the provision of a one-to-one aide and, as such SPCSA failed to implement the student's IEP in this regard.

There was a significant amount of email communications between the student's general education teacher, special education teacher and the Parent at the commencement of the school year, and some of it was discernable as being related to the student's social and behavioral conduct (positive as well as immediate concerns). However, even taking this documentation under consideration, documentation was not provided that the communications from the student's teachers to the Parent of the required information was done

every school week from August 8, 2022 to September 27, 2022, as required by the student's adopted August 18, 2022 IEP. (FOF #27)

Based solely on documentation provided by the Parent, commencing September 6, 2022 to September 26, 2022, Charter School collected and charted behavior/social data on some days and the data sheets were provided to the Parent on September 27, 2022. (FOF #3) There was no documentation provided in the course of the investigation that the student's case manager reviewed behavioral data and collaborated changes with the Parent or that data was charted in August 2022 and sent home that month. (FOF #28) In the absence of documentation otherwise (NAC §388.215), it is determined that SPCSA failed to implement the student's IEP in accordance with IDEA, 34 C.F.R. §§300.17(d), 300.101, and NAC §388.281(6)(e) with regard to the supplementary aids and services of specified weekly communications and behavior/social data.

Therefore, SPCSA failed to comply with the requirements of IDEA and NAC, Chapter 388, at the commencement of the 2022/2023 school year to implement the student's IEP with regard to the student's weekly minutes of specially designed instruction in a resource room; the student's one-to-one aide; communication between the school and Parent and weekly/monthly reports.

Issue Four:

Whether SPCSA, after the completion of the student's September 27, 2022 IEP, complied with the requirements of IDEA and NAC, Chapter 388, with regard to providing the Parent a Prior Written Notice and, if so, whether the Prior Written Notice included SPCSA's proposals or refusals in response to the Parent's requests for a one-to-one aide, the conduct of a Functional Behavioral Assessment, Behavior Intervention Plan, and occupational therapy assessment.

Relevant to this State Complaint, there are two notices required under IDEA and NAC, Chapter 388, with regard to the development of a student's IEP: a notice to the parent prior to the IEP meeting; and a notice after the IEP is final of the public agency's proposals and refusals. The notice prior to the conduct of an IEP Team meeting (meeting notice) is to ensure that the parent will have an opportunity to attend and in Nevada that notice is required to be in writing. 34 C.F.R. §300.322; NAC§388.281(8)(b). After the development of the student's IEP, in accordance with IDEA, 34 C.F.R. §300.503(a), and NAC §388.300(8), a parent must be provided a written notice with specific content, in this case, a reasonable time before the public agency proposes or refuses to initiate or change the provision of a Free Appropriate Public Education to the student.

This requirement of a Prior Written Notice is significant: "We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement placement, if any." *Union School District v. B. Smith*, 15 F.3d 1519, 20 IDELR 987, 990 (9th Cir. 1994).

Both the Parent and Charter School agree that the Parent made a number of proposals at the IEP Team meetings to develop the student's September 27, 2022 IEP, some of which the IEP Team accepted and some of which the IEP Team rejected. (FOFs #33, #51, #52) Yet, while the printed form included the elements of a Prior Written Notice, the September 27, 2022 Nevada Parental Prior Notice – Proposed Meeting Arrangements provided to the Parent after the development of the student's IEP was identical to the other similarly entitled Notices issued prior to the conduct of the student's IEP Team meetings, including the transmission of the form for the Parent to respond to the proposed meeting date. (FOF #49) The repeated statement of Charter School to implement the student's IEP did not convert this form from a meeting notice

to a Prior Written Notice required under IDEA, 34 C.F.R. §300.503(a), and NAC §388.300(8), and while SPCSA appeared to recognize that (FOF #50), no legally compliant Prior Written Notice was provided to the Parent of the Charter School's proposals and refusals to provide the student a Free Appropriate Public Education after the development of the student's September 27, 2022 IEP.

Therefore, SPCSA failed to comply with the requirements of IDEA and NAC, Chapter 388, with regard to providing the Parent a Prior Written Notice that included the required contents of the proposals and refusals after the development of the student's September 27, 2022 IEP.

Issue Five:

If the Parent's right to participate in the student's September 1, 2022, September 7, 2022 and, September 27, 2022 IEP meetings under IDEA and/or NAC, Chapter 388, included the following rights, whether SPCSA complied with the requirements of IDEA and the NAC, Chapter 388:

- a. To record the student's September 2022 IEP meetings and a meeting on October 5, 2022 with a service provider;
- b. To discuss the Parent's concerns as requested prior to the September 27, 2022 IEP meeting;
- c. To receive a draft IEP in advance of the student's September 1, 2022, September 7, 2022 and, September 27, 2022 IEP meetings;
- d. To set the date of August 17, 2022 by which the Charter School must hold the student's IEP Team meeting;
- e. To have the student's IEP be developed in a certain number of IEP meetings held within a specific time period.

The parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of a student and the provision of a Free Appropriate Public Education to the student. 34 C.F.R. §§300.322, 300.501; NAC §388.302. Parental participation in the IEP creation process is of vital importance under the IDEA. *Doug C. ex rel. Spencer C. v. State of Hawaii, Dep't of Educ.*, 720 F.3d 1038; 61 IDELR 91 (9th Cir.).

Notwithstanding that one of the very purposes of IDEA is to ensure the rights of students with disabilities and their parents are protected, 20 U.S.C. §1400(d), 34 C.F.R. §300.1, IDEA recognizes that the rights are not limitless. For example, the right of a parent of a student with a disability to be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a Free Appropriate Public Education to the student does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision or preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. 34 C.F.R. §300.501.

While each of the Parent's allegations are addressed below, as a preliminary matter, it appears that the Parent, while well-intentioned, may have been misinformed of the extent of the rights of parental participation under IDEA and NAC, Chapter 388, and that is indeed unfortunate since that misinformation appears to have impacted the relationship between Charter School and the Parent during the student's brief tenure at Charter School.

Record Meetings

Neither IDEA nor NAC, Chapter 388, address the use of a recording device at an IEP Team meeting or other meeting between the public agency and a parent of a student with disabilities: "Part B does not address the use of audio or video recording devices at IEP Team meetings, and no other Federal statute either

authorizes or prohibits the recording of an IEP Team meeting by either a parent or a school official. Therefore, a State educational agency or public agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP Team meetings....” (*Letter to Anonymous*, Question Seven, 112 LRP 52263 (Office of Special Education Programs (OSEP), March 7, 2012) This March 7, 2012 OSEP policy letter included a prior consistent OSEP letter dated June 4, 2003 that discussed the matter in more detail, and noted that “[I]f a public agency has a policy that prohibits or limits the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under Part B....” (*Letter to Anonymous*, 40 IDELR 70 (OSEP, June 4, 2003)⁷

In this case, the Parent did ask Charter School to record the student’s September 1, 2022 and September 27, 2022 IEP Team meetings and a meeting on October 5, 2022 with Charter School and an outside provider. Charter School denied the Parent’s requests, but did provide the Parent detailed meeting notes of the two IEP Team meetings and the meeting with the outside provider. (FOFs #54, #55, #57) The Parent’s stated reason for the request to record the student’s two IEP Team meetings was to keep track of all of the important information being discussed. The Parent did not inform the Charter School of any disability that required the meeting being recorded for access due to a disability or a need to record the meetings to ensure the Parent understood the contents of the student’s IEP or IEP process, including the opportunity to participate. (FOF #56) On the contrary, the meeting notes aptly demonstrate the Parent’s active and knowledgeable participation in the student’s IEP Team meetings and the meeting with the outside provider. (FOFs #53, #57) Therefore, no exception to the Charter School policy was warranted in this case.

Discuss Concerns in Advance and Draft IEP

Pursuant to IDEA, 34 C.F.R. §300.322, each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate. The public agency must provide a parent a meaningful opportunity to participate in the IEP formulation process. *M.M. v. Lafayette School District*, 64 IDELR 31; 12-15769 (9th Cir. 2014). In this case, the student’s Parent was present at all three of the meetings to develop the student’s September 27, 2022 IEP and, as described above, actively participated. Neither IDEA nor NAC, Chapter 388, require a public agency to meet with a parent between IEP meetings for preparatory purposes and in this case, the documentation is replete that the student’s Parent clearly expressed her concerns prior to, during and after the IEP Team meetings. (FOFs #33, #51, #52)

Similarly, neither IDEA nor NAC, Chapter 388, require a public agency to develop a draft IEP and, if inexistence, while considered a good practice, to provide a parent a copy of any draft proposals prepared by the agency in advance of the IEP Team meeting:

“With respect to a draft IEP, we encourage public agency staff to come to an IEP Team meeting prepared to discuss evaluation findings and preliminary recommendations. Likewise, parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child’s needs and the services to be provided to meet those needs. We do not encourage public agencies to prepare a draft IEP prior to the IEP Team meeting, particularly if doing so would inhibit a full discussion of the child’s needs. However, if a public agency develops a draft IEP prior to the IEP Team meeting, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents. The public agency also should provide the parents with a copy of its draft proposals, if the agency has developed them, prior to

⁷ These OSEP policy letters are publicly available at:

<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2012-1/redacted030712vvsurvey1q2012.pdf>
<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2003-2/redact060403iep2q2003.pdf> .

the IEP Team meeting so as to give the parents an opportunity to review the recommendations of the public agency prior to the IEP Team meeting, and be better able to engage in a full discussion of the proposals for the IEP. It is not permissible for an agency to have the final IEP completed before an IEP Team meeting begins” he Analysis of Comments and Changes to the IDEA 2004 final regulations states that.” (See 71 FR 46678, August 14, 2006.)

In this case, the Parent repeatedly requested Charter School provide the Parent a draft IEP in advance of the scheduled IEP Team meetings; set the date by which the Parent should receive the draft IEP; and offered to meet before the September 27, 2022 IEP Team meeting to discuss the Parent’s concerns. (FOFs #58, #59, #61, #62) While Charter School did provide the Parent a draft IEP prior to the final September 27, 2022 IEP Team meeting (FOF#59), it was not required. Therefore, in the absence of a requirement to do so, SPCSA complied with the requirements of IDEA and NAC, Chapter 388 with regard to the Parent’s requests to discuss the Parent’s concerns between IEP Team meetings and to receive a draft IEP in advance of IEP Team meetings.

To Set Dates and Limitations

Pursuant to IDEA, 34 C.F.R. 300.322(a)(2), and NAC §388.281(8), Charter School was required to schedule the student’s IEP Team meeting(s) at a mutually agreed upon time and place. As previously discussed, Charter School was also required to have an IEP in effect for the student at the commencement of the school year and to review the student's IEP periodically, but not less than annually. 34 C.F.R. §§300.323, 300.324(b); NAC §388.281. If a Parent requests an IEP Team meeting to review and revise a student’s IEP, the public agency is required to provide the parent a Prior Written Notice of the agency’s proposal/refusal to do so. 34 C.F.R. §300.503(a); NAC §388.300(8).

On August 4, 2022, the student’s Parent requested an IEP Team meeting be convened by August 17, 2022 to discuss the possibility of a transition plan for a modified school day. Charter School did not respond to the Parent’s request for the IEP Team meeting for that stated purpose. (FOF #60) While Charter School was not required to convene an IEP Team meeting for that purpose at the Parent’s request as alleged in the State Complaint, Charter School was required to provide the Parent a Prior Written Notice of the refusal to provide the student a Free Appropriate Public Education in that regard, and did not. (FOF #60)

With regard to the development of the student’s September 27, 2022 IEP, the student’s Parent did not allege Charter School violated the requirement to schedule the student’s IEP Team meeting(s) at a mutually agreed upon time and place. 34 C.F.R. 300.322(a)(2); NAC §388.281(8). Rather, these allegations arose from the Parent’s attempt to exercise some control over the lengthy and delayed development of the student’s IEP at the Charter School. (FOFs #12 - #16, #60, #62) Given the Charter’s School noncompliance with regard to the timely development of the student’s Charter School IEP (see Issue Two), the Parent’s increasing frustration with the development of the student’s IEP is understandable. However, that fact did not afford the Parent the unilateral right to schedule the student’s IEP Team meeting(s) and set limitations.

Therefore, SPCSA complied with the requirements of IDEA and NAC, Chapter 388, in that the Parent’s right to participate in the student’s September 1, 2022, September 7, 2022 and, September 27, 2022 IEP meetings under IDEA and/or the NAC, Chapter 388, did not include the alleged rights/expectations of the Parent; however, upon the Parent’s request on August 4, 2022 to conduct an IEP Team meeting, SPCSA was required to provide the Parent a Prior Written Notice proposing or refusing to do so, and did not.

Issue Six:

Whether SPCSA complied with the requirements of IDEA and the NAC, Chapter 388, of the required content of the student’s September 27, 2022 IEP with regard to a signature on the IEP of an attendee who participated at the first IEP meeting; and only two benchmarks on the student’s

functional behavioral annual goal.

In accordance with IDEA, 34 C.F.R. §300.321, and NAC §388.281, a student's IEP Team is comprised of required members, including the student's Parent. While it is a common practice for local educational agencies in the State of Nevada to have agency members of a student's IEP Team confirm their participation by signature at the IEP Team meeting, neither the IDEA nor NAC, Chapter 388, require such a practice. Therefore, the absence of an IEP Team member's signature who participated in the student's IEP Team meeting (FOF #34) does not violate either the IDEA or NAC, Chapter 388.

NAC §388.284(1)(b) also requires a student's IEP to include not only a statement of the student's measurable annual goals, but benchmarks or short-term instructional objectives. (See also 34 C.F.R. §300.320(a).) In this case, the student's September 27, 2022 IEP had three behavior annual goals, with two of the three including benchmarks for the second, third and fourth quarter and one goal of functional behavior with two benchmarks for different behavior by the end of the third quarter. (FOF #32) Other than requiring more than one benchmark ("benchmarks") for an annual goal, neither the IDEA nor the NAC require a specific number of benchmarks for each annual goal.

Therefore, SPCSA complied with the requirements of IDEA and the NAC, Chapter 388, of the required content of the student's September 27, 2022 IEP in that no signature is required of IEP Team attendees and the student's functional behavioral annual goal included more than one benchmark.

Issue Seven:

Whether SPCSA complied with the requirements of IDEA and the NAC, Chapter 388, to implement the student's September 27, 2022 IEP, specifically with regard to the conduct of the occupational therapy evaluation, monthly behavior data reports, including all behavior incidents, and weekly reports from the student's general education teacher.

As previously discussed, the requirements of the provision of a Free Appropriate Public Education to students with disabilities under the IDEA and NAC, Chapter 388, necessitate that special education and related services and supplemental aids and services must be made "available" in conformity with an IEP. 34 C.F.R. §§300.17(d), 300.101. In addition, pursuant to NAC §388.215, SPCSA was required to have a system of records for the purpose of verifying the provision of a Free Appropriate Public Education to the student.

In relevant part, the student's September 27, 2022 IEP provided the student the related service of an occupational therapy assessment during the time period from September 1, 2022 to August 31, 2023 and the supplementary aid/services of weekly communication between staff and Parents regarding "behavioral and social" in the location of general education and special education and the service that behavior data would be monitored and results provided to the Parents on a monthly basis in both general education and special education. (FOF #32)

Occupational Therapist Assessment

Upon securing an occupational therapist, Charter school informed the Parent of that fact and that consent would be obtained prior to the initiation of the occupational therapy assessment. The occupational therapist contacted the Parent on October 31, 2022 to schedule a time to discuss the conduct of the student's occupational therapy assessment; however, no occupational therapy assessment of the student was conducted prior to the student's withdrawal from school on November 10, 2022. (FOFs #2, #37) Given the availability of the related service of the occupational therapy assessment during the duration of the service in the student's September 27, 2022 IEP and the withdrawal of the student prior to the end date of August

31, 2023, SPCSA did not, as alleged, fail to implement the student's IEP in this regard.

Behavior/Social Communications and Data

Based solely on the documentation provided by the Parent, commencing September 6, 2022 to September 26, 2022, Charter School did collect behavior/social data on some days and the Parent did receive data sheets on September 27, 2022. However, no documentation was provided in the course of the investigation that supported the collection/monitoring of behavior data for the month after the development of the student's September 27, 2022 IEP, and prior to the student's withdrawal and provision of the results to the Parent. (FOF #35)

Similarly, while the pattern of a significant number of email communications continued between the Parent and personnel at the Charter School after the development of the student's September 27, 2022 IEP, no documentation was provided in the course of the investigation that the Parent was provided weekly communication between the student's general education teacher and the Parent regarding the student's behavioral and social conduct. (FOF #36) It is acknowledged that commencing October 10, 2022, the student only attended Charter School for a half day at Parent's election (FOFs #4, #39); however, that did not relieve Charter School from the responsibility to implement these supplementary aids/services in the student's IEP for the time period the student was in attendance.

In the absence of documentation otherwise (NAC §388.215), it is determined that SPCSA failed to implement the student's IEP in accordance with IDEA, 34 C.F.R. §§300.17(d), 300.101, and NAC §388.281(6)(e) to provide the supplementary aids and services of monitoring the student's behavior data, providing the results to the Parent from September 27, 2022 through October 27, 2022, and weekly communications from the student's general education teacher and the Parent regarding the student's behavioral and social conduct.

Therefore, SPCSA complied with the requirements of IDEA and the NAC, Chapter 388, to implement the student's September 27, 2022 IEP with regard to the conduct of the occupational therapy evaluation, but failed to comply with regard to the supplementary aids and services of monthly behavior data reports and weekly communications from the student's general education teacher regarding the student's behavioral and social conduct.

Issue Eight:

Whether SPCSA complied with the requirements of IDEA and NAC, Chapter 388, to provide qualified personnel, specifically the student's special education teacher in the resource room at the Charter School.

Pursuant to IDEA, 34 C.F.R. §300.156(a), a State Education Agency must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of IDEA Part B are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. In Nevada, the licensure requirements for educational personnel are set forth in Chapter 391 of NRS and NAC. For special education teachers, NAC §388.171 incorporates by reference the additional requirements cited above in IDEA, 34 C.F.R. § 300.156(c). Consistently, NRS §388A.518(5) also requires that a teacher who is employed by a charter school to teach special education must be licensed to teach special education.

In this case, the individual identified by Charter School as the student's special education teacher in the Resource Room consistently served in that capacity at the student's IEP Team meetings. Based on the special education teacher's licenses to teach in the State of Nevada and earned degrees, the student's special education teacher met the licensure requirements for educational personnel in Chapter 391 of NRS and

NRS §388A.518(5) and had the content knowledge and skills to serve children with disabilities. 34 C.F.R. §300.156(a); NAC §388.171. There was no documentation provided in the course of the investigation that supported that the other individual named in the State Complaint served as the special education teacher of the student in the Resource Room. (FOFs #63 - #65)

Therefore, SPCSA complied with the requirements of IDEA and NAC, Chapter 388, to provide qualified personnel, specifically the student's special education teacher in the resource room at the Charter School.

ORDER OF CORRECTIVE ACTION

SPCSA is required to take corrective action to address the violations found in this Complaint investigation, specifically, SPCSA's failure to implement the student's adopted August 18, 2021 IEP (Issue Three) and September 27, 2022 IEP (Issue Seven) and the failure to provide the Parent a Prior Written Notice after the development of the student's September 27, 2022 IEP (Issue Four) and in response to the Parent's request for an IEP Team meeting on August 4, 2022 (Issue Five).

In accordance with IDEA, 34 C.F.R. §300.151(b), in resolving a State Complaint in which the State Education Agency has found a failure to provide appropriate services, the agency, pursuant to its general supervisory authority under IDEA Part B must address: (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) appropriate future provision of services for all children with disabilities.

The Complaint Investigation Team determined both a student-specific corrective action for the failure to provide the student a Free Appropriate Public Education and a systemic corrective action for the failure to provide the Parent a Prior Written Notice are required.

Student-Specific Remedy

Whether the failure to provide the services in a student's IEP is a minor discrepancy or a material failure is relevant to the determination whether a student-specific corrective action is required to address the needs of the student. 34 C.F.R. §300.151(b). This is an individualized determination: "A material failure to implement an IEP occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP..." and the services "...a school provides to a disabled child fall significantly short of the services required by the child's IEP." The child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided. *Van Duyn v. Baker School District*, 502 F.3d 811, 107 LRP 51958 (9th Cir. 2007).

With regard to whether student-specific corrective action is required to address the needs of the student, this case is complicated since the student was only enrolled in Charter School for three months; the student had a number of absences; and SPCSA did not provide any documentation of the student's progress toward the relevant goals in the student's IEPs. (FOF #24, #38) The Complaint Investigation Team determined that in the absence of that documentation, the failure of the Charter School to implement the services the student's IEP Teams determined the student required in order to receive a Free Appropriate Public Education, notably the student's specially designed instruction and one-to-one aide was a material failure, *Van Duyn v. Baker Sch. Dist.* and a remedy is required.

Compensatory education is designed to provide the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place. This is a fact-specific determination. *Parents of Student W. ex rel. Student W. v. Puyallup School Dist.* No. 3, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C.

Cir. 2005). In compensatory education awards, there is no obligation to provide a day-for-day compensation for time missed. *Parents of Student W*. This approach for determining compensatory education is considered ‘qualitative’ in nature, rather than strictly ‘quantitative’ and requires that a compensatory education award be made not merely by establishing the amount of services which were not provided, but that an analysis be done to establish what may make the student whole for the denial of services.

In determining the appropriate remedy for the determined non-compliance, the Complaint Investigation Team considered that upon the provision of specially designed instruction in the Resource Room commencing August 22, 2022, the instruction was provided as individualized instruction rather than in a group of students. Therefore, even though there was no documentation of the minutes of specially designed instruction in each area provided to the student while in the Resource Room, it was determined that compensatory education was not warranted for the documented minutes of instruction for the time period from August 22, 2022 to September 27, 2022, but is for the short-fall of minutes of instruction and for the period of 10 school days when the student was not provided any specially designed instruction. Further, given the student’s absences the first week of school was for the reason of the failure of SPCSA to have the required special designed instruction (FOF #12, #23) available to the student, these absences do not impact this determination. The Parent’s proposed resolution of this State Complaint and the fact that the student is no longer enrolled in Charter School was taken into consideration in the framing of this remedy.

CORRECTIVE ACTION PLAN

In accordance with NRS §385.175(6), NDE requests a plan of corrective action (CAP) from SPCSA within 45 days of the date of this Report. The CAP must be approved by the NDE prior to implementation. Within 15 days of completion of the CAP, documentation must be provided to NDE. In addition, SPCSA is required to send documentation of the progress toward the provision of the ordered compensatory education to the student no later than March 1, 2024, unless the ordered compensatory education was previously completed and documentation provided to NDE of that completion prior to that date.

Systemic Corrective Action

The proposed CAP must provide for the participation of the Charter School Principal, special education instructional facilitator and special education teachers (if other than the facilitator), to participate in a training no later than January 15, 2024 regarding the difference between a meeting notice and a Prior Written Notice, the contents of the Prior Written Notice, and instruction on how to complete the required contents with specificity. The documentation upon completion of the CAP must include SPCSA’s determination of the satisfactory completion of the training and the materials used in the training.

Compensatory Education

Unless an alternative remedy is otherwise agreed to in writing by SPCSA and the Parent, the CAP must provide for the following student-specific directed actions and provide the timeline to complete the compensatory education as soon as possible, but no later than September 1, 2024:

1. The provision of 45 hours of compensatory education/services⁸ to the student in the form of one-to-one instruction. The compensatory hours must be: in the subject areas of specially designed instruction in the student’s current IEP, and if the student does not have a current IEP other than

⁸ Two school weeks times 975 a week of the specially designed instruction minutes in the student’s adopted August 18, 2022 IEP (1,950 minutes equal 32.5 hours). During the five weeks from August 22, 2022 through September 26, 2022, the student should have been provided 4875 minutes of instruction (five times 975) and was provided 4105 minutes, a short fall of 770 minutes (approximately 12.8 hours), for a total of 45.3 hours, rounded to 45 hours.

the Charter School student's September 27, 2022 IEP, in the subject areas of reading, writing, math, and social and functional behavior in the proportionate amounts of designated minutes in the September 27, 2022 IEP for the total of the 45 hours.

2. To ensure these services are in addition to the services the student currently receives, the compensatory education minutes must be provided during school breaks, such as during the summer or other school holidays, or before or after school based on Charter School's schedule of the time periods students are in attendance and the student's current school schedule of the time periods the student is required to be in attendance. At SPCSA's discretion, the services can be provided by Charter School qualified personnel at the Charter School site (with transportation offered to the Parent) or all or part of any ordered compensatory education may be provided by a qualified private provider at an alternative location in the area of the student's residence, including at the student's home.

SPCSA, Charter School, and the Parent are encouraged to continue to work together throughout this process. SPCSA, or at SPCSA's discretion, Charter School, must consult with the student's Parent on the appropriate means to provide the ordered compensatory education to meet the student's educational needs and must consider any concerns of the Parent and/or proposals in the development of the compensatory education plan. (To ensure there is no misunderstanding, SPCSA must consider these concerns and proposals of the Parent and document that consideration for NDE's review after the completion of the CAP, but unless an alternative remedy is agreed to in writing by SPCSA, or at SPCSA's discretion Charter School, and the Parent, the final determination of whether the ordered compensatory service of specially designed instruction is provided by Charter School personnel at the Charter School site or by a qualified provider at an alternative location in the area of the student's residence is the sole determination of SPCSA.)