

**COMPLAINT INVESTIGATION**  
**State Public Charter School Authority**  
**(#SC073119)**

**Report Issued on October 11, 2019**

**INTRODUCTION**

On July 31, 2019, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations by a Charter School of the State Public Charter School Authority (SPCSA) with regard to a student's special education program. The allegations in the Complaint were that the Charter School failed to: implement accommodations in the student's out-of-state Individualized Education Program (IEP); allow the Parent to inspect and review the student's education records before the student's IEP Team meeting; take steps to promptly obtain the student's out-of-state education records; convene the IEP Team to develop the student's IEP within 30 days after the determination of eligibility; provide a prior written notice in November 2018 with regard to the Charter Schools refusal to provide all of the Parent's requests; and provide the substitute teacher access to the student's out-of-state IEP. The Parent did not propose any student-specific resolution for the alleged violations, but did propose a systemic remedy involving the conduct of various trainings for Charter School personnel.

Some of the allegations in the Parent's Complaint were not supported by facts as required under the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §300.153, and the Nevada Administrative Code (NAC) §388.318 and were, therefore, not within the scope of this investigation. The Parent was informed of that determination and that the Nevada Department of Education (NDE) did not have jurisdiction to investigate the local school personnel issues or complaints of civil rights violations and was provided information on how to pursue these allegations of noncompliance, if the Parent elected to do so.

**Responsible Public Educational Agency**

There is a Charter Contract dated June 1, 2019 and a May 20, 2019 Memorandum of Understanding (MOU) between the Charter School and the SPCSA. The signed MOU provides the Charter School will adhere to the provisions of the IDEA and applicable Nevada special education laws and regulations to assure that all students with disabilities are afforded a Free Appropriate Public Education (FAPE), including special education and related services. The MOU further indicates that under Nevada law the Authority serves as the LEA for charter schools that it authorizes, and the Charter School is, with regard to special education and other matters, a school within that LEA. With regard to State Complaints, the MOU sets forth the following respective responsibilities between the SPCSA and the Charter School:

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

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

Prior to June 5, 2019, NRS §388A.159 deemed the SPCSA a local educational agency (LEA) for certain purposes, specifically for the purpose of directing the proportionate share of any money available from federal and state categorical grant programs to charter schools which were sponsored by the SPCSA. At the time of the filing of this Complaint, NRS §388A.159 had been amended and deemed the SPCSA a LEA for all purposes, including the provision of FAPE and the provision of special education and related services provided by a charter school sponsored by the SPCSA. AB78, Chapter 338, Statutes of 2019.

Upon consideration of Nevada law and regulation, the NDE provided an opportunity for both the Charter School and SPCSA to submit a written response and documentation responsive to the Complaint. The Charter School submitted a response and the SPCSA did not. The Parent was also provided the opportunity to submit additional documentation supporting the Complaint and did so.

In the August 9, 2019 issue letter to the Charter School and the SPCSA, the NDE requested additional documents and information in order to timely investigate the State Complaint. The Charter School and the SPCSA were notified in that same communication that if the Charter School and the SPCSA disputed the allegations of noncompliance in the Complaint, the submitted documents and information from the Charter School must include specifically referenced content relevant to that denial and that a failure to timely do so would be considered a concession of noncompliance for purposes of the investigation of the State Complaint. The Charter School did timely dispute the allegations of noncompliance in the Complaint and specifically referenced the documents relevant to that denial.

Both the IDEA and the NAC permit an extension of the 60-day timeline to conduct the investigation and issue the written decision if exceptional circumstances exist with respect to a particular complaint. (34 C.F.R. §300.152(b); NAC, §388.318(5)(a)) In this case, the Charter School timely submitted approximately half of the requested information and requested an extension to submit the remaining documents requested by the NDE and a detailed response to the Complaint. Given there were six issues in this Complaint; the extensive amount of requested documentation and information; and the absence of sufficient information for the NDE to complete its investigation, the deadline for the NDE's receipt of documentation from all parties was extended to September 11, 2019. Due to the additional time granted to the parties for the submission of requested documentation/information, the NDE extended the time limit to conclude its investigation and issue the decision from September 29, 2019 to October 11, 2019

The State Complaint, including the extensive attachments, and all documents and information submitted by the Charter School and the Parent in response to 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.

## **COMPLAINT ISSUES**

The allegations in the Complaint that are under the jurisdiction of the NDE to investigate through the special education complaint process raised the following issues for investigation:

### **Issue One:**

Whether the Charter School complied with the IDEA and NAC with regard to the provision of services to the student who had been determined to be eligible for special education by another state and transferred to the Charter School for the 2018/2019 school year, specifically with regard to the Charter's Schools implementation of the following accommodations in the student's out-of-state IEP:

- a. The behavior support/positive behavioral interventions and behavioral data;
- b. Bathroom assistance;
- c. Check for understanding;
- d. Use of a timer;
- e. Visual schedule for transitions; and
- f. Progress report on the student's progress toward the IEP goals.

### **Issue Two:**

Whether the Charter School complied with the IDEA and NAC with regard to the Parent's inspection and review of the student's education records upon the Parent's November 9, 2018 request and before the student's IEP Team meeting.

### **Issue Three:**

Whether the Charter School complied with the IDEA and NAC with regard to obtaining the student's education records from the previous out-of-state public agency.

### **Issue Four:**

Whether the Charter School complied with the IDEA and NAC with regard to conducting an IEP Team meeting to develop the student's IEP within 30 days after it was determined that the student was eligible for special education and related services.

### **Issue Five:**

Whether the Charter School complied with the IDEA and NAC with regard to the provision of a Prior Written Notice in November 2018 in response to the Parent's requests for services in the student's IEP and the conduct of a Functional Behavioral Assessment.

### **Issue Six:**

Whether the Charter School complied with the IDEA and NAC with regard to providing the student's substitute teacher access to the student's out-of-state IEP and informing the teacher of the specific responsibilities related to the teacher's implementation of the

student's IEP.

## **FINDINGS OF FACT**

1. The student was determined to be eligible as a student with a disability by another State and attended that out-of-state public school in the 2017/2018 school year. The student enrolled in the Charter School prior to the commencement of the 2018/2019 school year. The first day of school at the Charter School in the 2018/2019 school year was August 13, 2019. (May 9, 2018 Out-of-state IEP, Complaint, Charter School Response, School Calendar)
2. On August 10, 2018, the Parent provided the student's May 9, 2018 out-of-state IEP to the general education teacher of record and the Charter School IEP Coordinator. The student's speech, academic and functional goals were also provided to the IEP Coordinator and all teachers of record. This IEP had a commencement date of August 20, 2018 with a duration until October 22, 2018. (May 9, 2018 Out-of-State IEP, Complaint, Charter School Response)
3. The Parent consented to the student's evaluation by the Charter School on September 17, 2018. The student was determined to be eligible as a student with disabilities in the State of Nevada by the Charter School on November 7, 2018. (September 13, 2018 Nevada Consent for Evaluation, November 7, 2018 Statement of Eligibility)
4. The Parent withdrew the student from the Charter School on March 14, 2019. (Complaint, Charter School Response)

## **Implementation of IEP**

5. The student's out-of-state May 9, 2018 IEP for the 2018/2019 school year included the following services commencing August 20, 2018 and ending October 22, 2018:
  - a. In-class behavior support by a special education teacher twice a week in Reading and Language Arts class for a minimum of 15 minutes;
  - b. In-class behavior support by a special education teacher twice a week in Math class for a minimum of 15 minutes.
  - c. Direct speech therapy once a week by a speech language pathologist for 30 minutes;
  - d. Accommodations in English, Math, Science, Social Studies and electives/specials general education classes (anticipated frequency was not provided):
    - i. Check for understanding. Check for understanding by having the student repeat the directive;
    - ii. Frequent feedback;
    - iii. Gestural cues;
    - iv. Oral directives;
    - v. Positive reinforcers;
    - vi. Reminders to stay on task;
    - vii. Verbal reminders for transitions;

- viii. Visual count down timer. To assist with transitioning; and
  - ix. Visual schedule.
6. The student's out-of-state IEP had goals in math, reading, writing, behavioral, self-help, and speech with an end date of October 22, 2018. The frequency of progress reporting was quarterly. Relevant to the services at issue in this Complaint, the student's out-of-state IEP had the following goals:
- a. Two behavioral goals. The first goal was, given a predictable and visual schedule, verbal prompting, visual cues, modeling and positive reinforcement, the student would comply with school rules. The second goal was, given a predictable and visual schedule, verbal prompting, visual cues, modeling and positive reinforcement, the student would transition to the appropriate location and task during the school day without being upset. Success on both goals was to be measured using teacher observations and data collection.
  - b. A self-help goal with two objectives with regard to toileting. The student was to achieve the objectives with minimum verbal prompting in the restroom. Success on the goal was to be measured by teacher observation and data collection. (See related Finding of Fact #10 on the manner in which the Charter School implemented these goals.)
7. While there is no written documentation of the consultation with or participation of the Parent in the Charter School's adoption of the student's out-of-state IEP, both the Parent and the Charter School concur that the student was determined to be eligible as a student with a disability in another State and that the Student's May 9, 2018 out-of-state IEP was the governing IEP throughout the student's enrollment at the Charter School. (Complaint, Response, September 13, 2018 Interim IEP, Supplemental Response)
8. In the course of the investigation, the Charter School provided a September 13, 2018 Interim IEP to document its adoption of the May 9, 2018 out-of-state IEP with IEP services to commence September 13, 2018 and an anticipated duration of services of November 15, 2018. (September 13, 2018 Interim IEP, Response, School Calendar)
9. In response to this Complaint, the Charter School indicated it did not have logs or other written documentation of the implementation of the services at issue in this Complaint. There was some documentation in the Complaint and the Charter School Response that, at least on occasion, the Charter School implemented the student's accommodations. Conversely, there was also documentation of the Charter School's failure to implement accommodations, at least on occasion. (Email Communications between the Parent and Charter School, Observation- Functional Behavioral Assessment, Copies of Texts, Pictures in Classroom)
10. The Charter School did offer to provide testimony as to the proper implementation of those accommodations. In the response to the Complaint, the Charter School asserted the following based on statements of the student's general education teacher at the Charter School:
- a. The behavior support/positive behavioral interventions and behavioral data: The cited individual is of the opinion that the student's conduct was managed

professionally, lawfully, in compliance with the IEP, and to the best of the individual's abilities;

- b. Bathroom assistance: The cited individual believes the Charter School complied in full with the student's IEP, escorting the student to the bathroom whenever the student reported a need to go. They did not enter the bathroom with the student, but stood outside and gave oral instructions as necessary;
  - c. Check for understanding; Use of a timer; and Visual schedule for transitions: The cited individual indicated the use and application of these accommodations the majority of the time, if not the vast majority of the time, particularly the first couple of months of the individual's tenure. Such use was not 100%, applied all day and every day; instead certain accommodations were "tweaked or adapted" over time to match the student's individualized behaviors and needs. (Charter School Response)
11. The Charter School provided a Progress Report on October 15, 2018, December 14, 2018 and March 18, 2019:
- a. The October 15, 2018, Progress Report cited by the Parent in the Complaint notes only the student is receiving in-class support for behavior and reported that the student had not had on task behavior yet and had made insufficient progress on the September 13, 2018 Interim IEP. This Progress Report does not include the student's goal(s). (October 15, 2018 Progress Report, Complaint)
  - b. The December 14, 2018 Progress Report referenced the student's speech, transition, social and behavior goals. However, the referenced goals were not the same as the goals in the out-of-state IEP:
    - i. With regard to the speech goal: The student's progress toward the goal was insufficient and the comment indicated the student's current IEP had not been implemented, but that the student had met all previous language goals.
    - ii. With regard to the transition goal: No progress toward the goal was noted and the comment indicated that the student's current IEP had not been implemented, however the student receives support based on previous goals.
    - iii. With regard to the social goal: No progress toward the goal was noted and the comment indicated there was no data to report.
    - iv. With regard to the behavior goal of task completion: No progress toward the goal was noted and the comment indicated there was no data to report.
  - c. The March 18, 2019 Progress Report referenced the same transition, social and behavior goals in the prior Progress Report that were not in the student's out-of-state IEP.
    - i. With regard to the transition goal: Adequate progress toward the goal was noted and the comment reported improvements and that overall the supports in place were aiding the student to develop transitioning skills.
    - ii. With regard to the behavior goal of task completion: Adequate progress toward the goal was noted and the comment reported improvements.
    - iii. With regard to the social goal: Satisfactory progress toward the goal was noted and the comments reported improvements. (Charter School Progress Reports)

### **Inspect and Review Education Records**

12. On Friday, November 9, 2018, the Parent requested a copy of all of the student's records since the student began school in August 2018 and requested the records be provided prior to the November 15, 2018 IEP meeting. The student's November 15, 2018 IEP meeting took place on the third school day after the Parent's request. (November 9, 2018 Parent Letter, School Calendar)
13. When the Charter School informed the Parent that the IEP meeting would have to be postponed to provide all the student's education records, the Parent declined and asked to proceed with the meeting as anticipated without the requested records. The Parent received some of the student's education records at the November 15, 2018 IEP meeting. (Complaint, Charter School Response, November 13, 2018 Parent Email)
14. The Charter School was prepared to provide copies of the student's "confidential folder" to the Parent on December 7, 2018, but the student was not in school and the Charter School indicated the copies would be provided to the Parent at their meeting. There was a noticed IEP meeting on December 14, 2018, 35 days after the Parent's request for a copy of the student's education records. (Complaint, Charter School Response, Nevada Parental Prior Notices– Proposed Meeting Arrangements)

### **Obtain Education Records**

15. As of May 1, 2019, the Charter School had not requested the student's records from the out-of-state school district. (Charter School Response, May 1, 2019 Email from Out-of-state School District)

### **IEP Meeting After Eligibility**

16. The first IEP meeting after the determination of the student's eligibility was on November 15, 2018 and the student's IEP meetings continued over the course of three months. An IEP was not finalized before the student was withdrawn on March 14, 2019. (Complaint, November 15, 2018 Draft IEP, Nevada Parental Prior Notices – Proposed Meeting Arrangements, Charter School Response, Student Period Attendance Detail, Emails between the Parent and the Charter School)

### **Prior Written Notice**

17. The Parent requested a Functional Behavioral Assessment on November 13, 2018. The assistant principal forwarded the request for the Functional Behavioral Assessment to the special education facilitator. (November 13, 2018 Emails between the Parent and the Charter School, November 13, 2018 Behavior Detail Report)
18. On November 25, 2018, the Parent signed a consent form dated November 16, 2018 for the conduct of a Functional Behavioral Assessment. The Functional Behavioral Assessment was done January 18, 2019 and a meeting for the purpose of reviewing the

Multidisciplinary Team Report on the Functional Behavioral Assessment was scheduled for February 6, 2019. (January 22, 2019 Nevada Parental Prior Notice – Proposed Meeting Arrangements, November 16, 2018 Nevada Consent for Evaluation, Email Communications Between the Parent and the Charter School, Summary of Functional Behavioral Analysis)

19. On November 9, 2018, prior to the first IEP meeting, and again on December 13, 2018, the Parents provided written concerns with regard to the student's academic and functional needs and observations to the Charter School and the student's IEP Team. (November 8, 2018 and December 13, 2018 Parent Letter, Email Communications Between the Parent and the Charter School)
20. On December 19, 2018, the Parent asked the Charter School when the Parent would receive a Prior Written Notice related to the refusal to include the Parent's concerns set forth in the Parent Letter of Concern and requested a copy of the revised IEP draft for review. (December 19, 2018 Parent Email to the Charter School)

### **Access to IEP**

21. On August 27, 2018, the substitute teacher's first day in the student's classroom, the Parent provided the teacher a copy of the student's IEP and a document that outlined the student's accommodation from the out-of-state IEP and the student's likes/dislikes, strengths and abilities. (Complaint, Response)
22. The Charter School was unable to locate any documentation of the substitute teacher's receipt of the student's IEP from the Charter School or with regard to specific instructions that were being given to the substitute teacher. However, the Charter School argues that the Charter School did comply with the IDEA in that the substitute teacher was provided the IEP by the Parent. (Response)

## **CONCLUSIONS OF LAW**

### **Issue One:**

Whether the Charter School complied with the IDEA and NAC with regard to the provision of services to the student who had been determined to be eligible for special education by another state and transferred to the Charter School for the 2018/2019 school year, specifically with regard to the Charter's Schools implementation of the following accommodations in the student's out-of-state IEP:

- a. The behavior support/positive behavioral interventions and behavioral data;
- b. Bathroom assistance;
- c. Check for understanding;
- d. Use of a timer;
- e. Visual schedule for transitions; and
- f. Progress report on the student's progress toward the IEP goals.



The requirements of the provision of a FAPE to students with disabilities under the IDEA and the NAC, Chapter 388, necessitate that special education and related services and supplemental aids and services are provided in conformity with an IEP. (NAC §388.281(6)(g), 34 C.F.R. §§300.17(d) and 300.101)

"States and public agencies must maintain documentation sufficient to ensure that a public agency provides FAPE to a child with a disability in accordance with the child's IEP. A State determines the form of documentation deemed sufficient to demonstrate whether its public agencies are in compliance with this requirement....." (*Letter to Broussides*, OSEP June 9, 2010)<sup>1</sup>

Pursuant to NAC §388.215, the State of Nevada has established measures each public agency must take to ensure that every student with a disability in the school district is identified, evaluated and served in the manner appropriate to the unique needs of the student. These measures include the establishment of a system of records that verifies these measures were implemented, including that each student identified as a student with a disability is receiving services appropriate to the student's disability. This requirement for a verifiable system of records is particularly important in the State Complaint system because, unlike due process hearings where testimony is under oath and the Hearing Officer can judge the credibility of the testimony, there is no impartial method other than verifiable documentation to reach a determination that the assertions of the public agency should be believed over the assertions of the complainant or vice versa.

On the face of the Complaint and Charter School Response, this case presented as an alleged violation of the obligations of the receiving public educational agency to an out-of-state transfer student pursuant to the IDEA, 34 C.F.R. §300.323(f), and the NAC §388.263. However, these provisions only apply to a student who is receiving special education services pursuant to an IEP and transfers to the Nevada educational agency *in the same academic school year*. In this case, while the student was a student with a disability from another State who had received services pursuant to an out-of-state IEP, the student did not transfer to the Charter School in the same school year, but rather transferred prior to the commencement of the 2018/2019 school year. (Finding of Fact (FOF) #1) Therefore, the cited provisions in the IDEA, 34 C.F.R. §300.323(f), and NAC §388.263 do not apply.

However, at the beginning of each school year and before the initiation of special education or related services, each public agency must have an IEP in effect for each student with a disability within its jurisdiction. (34 C.F.R. §300.323; NAC §388.281) In response to an inquiry during the promulgation of the IDEA regulations regarding out-of-state transfer students with disabilities who move during the summer, the United States Department of Education, Office of Special Education Programs, cited to this requirement that an IEP must be in effect for each student with a disability: "Therefore, public agencies need to have a means for determining whether children who move into the State during the summer are children with disabilities and for ensuring that an IEP is in effect at the beginning of the school year." (Discussion of the IDEA regulations: Vol. 71 Fed. Reg. pg. 46682 (August 14, 2006))

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<sup>1</sup> This policy letter is publicly available at: <https://sites.ed.gov/idea/policy-guidance/>

Pursuant to the IDEA and the NAC, Chapter 388, the Charter School was required to provide the services and instruction in the student's IEP deemed necessary for the student by the student's IEP Team. (NAC §388.281(6)(g), 34 C.F.R. §300.17(d)) While there is no written documentation of consultation between the Parent and the Charter School on the adoption of the student's out-of-state IEP, both the Parent and the Charter School concur that the student was determined to be eligible as a student with a disability by another State and that the Student's May 9, 2018 out-of-state IEP was the governing IEP throughout the student's enrollment at the Charter School. (FOFs #2, #7) This Complaint and, therefore the scope of the investigation of this issue, is solely focused on the implementation of this IEP commencing with the student's attendance at the Charter School in the 2018/2019 school year.

### **Accommodations in the Out-of-State IEP**

Pertinent to this Complaint, the out-of-state IEP included the following services commencing August 20, 2018 and ending October 22, 2018:

- a. In-class behavior support by a special education teacher twice a week in Reading and Language Arts class for a minimum of 15 minutes;
- b. In-class behavior support by a special education teacher twice a week in Math class for a minimum of 15 minutes.
- c. Accommodations in English, Math, Science, Social Studies and electives/specials general education classes, without indication of anticipated frequency: check for understanding by having the student repeat the directive; gestural cues; oral directives; positive reinforcers; verbal reminders for transitions; visual count down timer to assist with transitioning; and visual schedule. (FOF #5)

Contrary to the allegations in the Complaint, there was not an accommodation for bathroom assistance in the student's out-of-state IEP; however, the student had a self-help goal in toileting and the achievement of the objectives was based on minimal verbal promptings. With regard to the alleged accommodation of behavior support/positive behavioral interventions and behavioral data in the student's out-of-state IEP, the student only had the positive reinforcer accommodation noted above. However, the achievement of the student's two behavioral goals was based not just on the positive reinforcement accommodation, but giving the student a predictable and visual schedule, verbal prompting, visual cues, and modeling. Success on both goals was to be measured using teacher observations and data collection.<sup>2</sup> (FOF #6)

Pursuant to NAC §388.215, the Charter School was required to have a system of records for the purpose of verifying the provision of the services to the student in accordance with the student's out-of-state IEP. The Charter School acknowledged that it did not have logs or other written documentation of the implementation of the services at issue in this Complaint. (FOF #9)

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<sup>2</sup> The scope of the investigation and this Report are limited to the precise services required in the student's IEP in the behavior and toileting areas to advance toward attaining the annual goals. It is also noted that, with regard to this issue, neither the Parent nor the Charter School raised the matter of the beginning or ending date for the provision of services in the out-of-state IEP. On the contrary, as discussed previously, the Parent and the Charter School agreed that it was the governing IEP for the 2018/2019 school year up to the student's withdrawal.

The information gleaned from various communications and other documentation in the course of the investigation did support that, at least on occasion, the Charter School implemented the student's services at issue in this Complaint. However, conversely, there was also documentation the Charter School failed to implement these services. (FOF #9) This latter conclusion is substantiated by the statements from the student's teacher of record provided in the Charter School's Response to this Complaint. While the statements did support the teacher's efforts to implement the student's IEP, at least in part, the statements acknowledged the Charter School's did not consistently implement the services at issue in this Complaint and/or in the manner required. (FOFs #5, #6, #10) Therefore, it is determined that the Charter School did not implement the services at issue in conformity with the student's IEP as required. (NAC §388.281(6)(g), 34 C.F.R. §§300.17(d) and 300.101)

### **Progress Report**

Both the IDEA and the NAC require a student's IEP to include a statement on when periodic reports on the progress the student is making toward meeting the annual goals will be provided. (34 C.F.R. §300.320(a)(3); NAC §388.284(1)(h)) In this case, the student's May 9, 2018 IEP had goals in the subjects of math, reading, writing, behavioral, self-help, and speech. The frequency of progress reporting was quarterly. (FOF #6)

The Charter School did provide Progress Reports on the student performance at a minimum on a quarterly basis as required by the student's May 9, 2018 IEP. (FOF #11) However, the October 15, 2018 Progress Report did not, as required, report on the progress the student was making toward meeting all of the student's goals in the out-of-state IEP. Further, while the December 14, 2018 and March 18, 2019 Progress Reports did report the student's progress on goals, the referenced goals were not in the student's adopted out-of-state IEP. (FOF #11) Therefore, none of these Progress Reports issued by the Charter School in the 2018/2019 school year reported on the progress the student was making toward meeting the annual goals in the IEP in effect. Given the stated goals in the last two Progress Reports were not in the student's IEP in effect, these Reports further substantiate the conclusion the Charter School did not implement the services at issue in conformity with the student's IEP.

*Therefore, it is determined that the Charter School failed to comply with the IDEA and NAC with regard to providing services to the student who had been determined to be eligible for special education by another state and transferred to the Charter School for the 2018/2019 school year, specifically with regard to the student's behavior and toileting goals and related accommodation; checking for understanding; use of a timer; visual schedule for transitions; and providing progress reports on the student's progress toward the IEP goals.*

### **Issue Two:**

Whether the Charter School complied with the IDEA and NAC with regard to the Parent's inspection and review of the student's education records upon the Parent's November 9, 2018 request and before the student's IEP Team meeting.

The NAC §388.287(1) requires parents of a student with a disability be allowed to inspect and review any education records relating to their child which are collected, maintained, or used by a public agency. The public agency must comply with such request without unnecessary delay

and in any event: (a) before an IEP meeting or any hearing relating to the identification, evaluation or placement of the student or the provision of a FAPE; *and* (b) not later than 45 days after the request has been made. (See also 34 C.F.R. §300.613)

Neither the IDEA nor the NAC require an educational agency to provide parents copies of requested education records. Rather, the parents have the right to inspect and review the education records relating to their child. (NAC §388.287; 34 C.F.R. §300.613) This right to inspect and review only includes the right to request that the agency provide copies of education records if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records or, without the copies, any meaningful review of the records is impractical. (NAC §388.287(2)(c); 34 C.F.R. §300.613(b)(2))

In this case, on November 9, 2018, the Parent requested a copy of all of the student's records before the student's November 15, 2018 IEP meeting that was scheduled to take place on the third school day after the Parent's request. (FOF #12) The Charter School opted to provide copies of the student's records to the Parent and that is within their discretion. However, it does not affect the required regulatory timeline to allow the Parent to inspect and review the student's education record, which may have been achievable notwithstanding the limited time period prior to the IEP meeting. In mitigation of the Charter School's failure to comply with NAC §388.287(1) and the IDEA, 34 C.F.R. §300.613, the Parent declined the offer of the Charter School to postpone the IEP meeting to provide her all the student's education records; received some of the student's education records at the November 15, 2018 IEP meeting and was provided the rest at the following IEP meeting 35 days after the Parent's request. (FOFs #13, #14)

In addition to this referenced right of parents to timely inspect and review any education records relating to their child, parents have the right to participate in meetings relating to the identification, evaluation and educational placement of their child, and the provision of a FAPE to their child. Relevant to this Complaint, parents are member of their child's IEP Team and their right of participation is one of meaningful participation. (34 C.F.R. §§300.321 and 300.306, NAC §388.281) In this case, the Parent did not raise an allegation of the absence of meaningful participation as a result of not having access to the student's complete educational record and the Parent demonstrated active participation in the student's IEP meeting on November 15, 2018. (FOF #19)

*Therefore, the Charter School did not comply with the IDEA and NAC with regard to the Parent's inspection and review of the student's education records upon the Parent's November 9, 2018 request and before the student's IEP Team meeting.*

### **Issue Three:**

Whether the Charter School complied with the IDEA and NAC with regard to obtaining the student's education records from the previous out-of-state public agency.

As of May 1, 2019, the Charter School had not requested the student's records from the out-of-state school district. (FOF #15) The Parents allegation with regard to the requirement of the Charter School to obtain the student's records from the out-of-state school district was

premised on the IDEA, 34 C.F.R. 300.323(g). This requirement on the receiving public agency to obtain records is limited to students who transfer within the State or from another State in the same school year. As noted in the discussion under Issue One, the student did not transfer to the Charter School in the same school year, but rather transferred prior to the commencement of the 2018/2019 school year. (FOF #1) Therefore, the cited provision in the IDEA, 34 C.F.R. §300.323(g), and the NAC §388.263 do not apply and neither the IDEA nor NRS/NAC Chapter 388 impose a general requirement on a receiving public agency's responsibility to obtain the records of a student with a disability who enroll in the agency prior to the commencement of a school year. (NAC §388.261 does impose a responsibility on the former school to transmit the education records of a student with a disability.)

*Therefore, in the absence of a requirement to do so, the Charter School complied with the IDEA and NAC with regard to obtaining the student's education records from the previous out-of-state public agency.*

#### **Issue Four:**

Whether the Charter School complied with the IDEA and NAC with regard to conducting an IEP Team meeting to develop the student's IEP within 30 days after it was determined that the student was eligible for special education and related services.

In accordance with the IDEA, 34 C.F.R. §300.323(c), and NAC §388.281(13)(a), each public agency must ensure that a meeting to develop an IEP for a student is conducted within 30 days of a determination that the student needs special education and related services. Pursuant to NAC §388.275, in Nevada, public agencies have the option to develop an Interim IEP for a student who was determined to be eligible for special education in another state. In the event there is an Interim IEP, a determination of eligibility under NAC Chapter 388 must be made before the student is eligible to receive special education in this State and upon the expiration of 30 days after the development of an Interim IEP, an IEP must be developed for a student who is eligible to receive special education in this State in accordance with the requirements of the NAC.

There is no documentation that the Charter School implemented a means prior to the commencement of the school year for determining whether this student who moved into Nevada was a student with a disability in the state of Nevada (See discussion of the IDEA regulations: Vol. 71 Fed. Reg. pg. 46682 (August 14, 2006)) Based on the response of the Charter School and the agreement of the Parent and the Charter School that the student's IEP would be implemented at the commencement of the 2018/2019 school year (FOF #7), it appears that, albeit imprecisely, the Charter School intended to adopt the student's out-of-state IEP as an Interim IEP to ensure the student had an IEP in effect at the beginning of the school year in accordance with the IDEA, 34 C.F.R. §300.323, and NAC §388.281. (The subsequent incongruent September 13, 2018 Interim IEP (FOF #8) does not meet the IEP development requirements of the NAC and appears to be, as the Charter School indicates, the formalization of that prior adoption.) As such, notwithstanding the confusing series of processes employed by the Charter School in this case, given the student was determined to be a student with a disability in another State and the student's out-of-state IEP was adopted at the

commencement of the 2018/2019 school year, NAC §388.275, on the development of an Interim IEP for 30 days, is determined to be the applicable law.

The student was determined to be a student with a disability in the State of Nevada on November 7, 2018 and the first IEP meeting was conducted on November 15, 2019. (FOFs #3, #16) While the Charter School did conduct a meeting to develop the student's IEP within 30 days as required by the IDEA, 34 C.F.R. §300.323(c), and NAC §388.281(13)(a), as discussed above, this case is not that simple. What had to transpire, given the student had an Interim IEP, was upon the expiration of 30 days after the development of an Interim IEP, the student had to be determined eligible in the State of Nevada and an IEP had to be developed in the manner provided by NAC §§388.281 to 388.284. In accordance with NAC §388.275, the Charter School did not timely determine eligibility and develop an IEP for the student after adopting an Interim IEP in August 2018, even taking into consideration the date of both the informal and formal adoption of the student's out-of-state IEP as the Interim IEP.

*Therefore, the Charter School failed to comply with the IDEA and NAC with regard to conducting an IEP Team meeting to develop the student's IEP within 30 days after it was determined that the student was eligible for special education and related services.*

#### **Issue Five:**

Whether the Charter School complied with the IDEA and NAC with regard to the provision of a Prior Written Notice in November 2018 in response to the Parent's requests for services in the student's IEP and the conduct of a Functional Behavioral Assessment.

In accordance with the IDEA, 34 C.F.R. §300.503, relevant to this Complaint, the Charter School was required to notify the Parent within a reasonable time before any proposed or refused action to initiate or change the evaluation of the student or the provision of FAPE to the student. (See also NAC §388.300(8))

The Prior Written Notice serves to inform the parent of the IEP Team's decisions. (U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46691 (August 14, 2006)) As such, a Prior Written Notice is not given to the parent until the public agency has taken final action; that is, after the IEP Team has made its decisions.

In this case, there was no final IEP developed by the student's IEP Team at the Charter School prior to the student's withdrawal from the Charter School. (FOF #16) Therefore, the Charter School had not taken final action on the Parent's proposals proposed prior to or during the course of the development of the student's IEP (FOFs #19, #20) and no Prior Written Notice was required in this regard.

However, upon making the determination with regard to its proposal to conduct a Functional Behavioral Assessment in November 2018 (FOFs #17, #18), the Charter School was required to provide the Parent with a Prior Written Notice pursuant to the IDEA, 34 C.F.R. §300.503(b), and the NAC §388.300 and did not. The fact that the Parent proposed the Functional Behavioral

Assessment and the Charter School accepted that proposal does not change the requirement under the IDEA and the NAC to provide a Prior Written Notice. This response from the United States Department of Education, Office of Special Education Programs (OSEP) is instructive with regard to accepting a Parent's proposal:

"1. Is a notice required regarding a change that is requested by a parent? In the circumstances where an LEA [local educational agency] is not proposing a change but rather agreeing with a change that has been proposed by a parent, would the LEA be required to provide a notice?

OSEP's Response: Yes. Under 34 CFR § 300.503, public agencies are required to give the parents of a child with a disability written notice, that meets the requirements of 34 CFR § 300.503(b), a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child. The purpose of the written notice requirement is to inform parents of a public agency's final action on a proposal or refusal to initiate or change the identification, evaluation, or educational placement, or the provision of FAPE to a particular child. Regardless of how a change to the above factors is suggested, it is the responsibility of the public agency to make a final decision and actually implement any determined change. Therefore, in the circumstances where a public agency is not proposing a change, but rather agreeing with a change that has been proposed by a parent, the public agency would be required to provide prior written notice to the parent, consistent with 34 CFR § 300.503.

2. Is a notice required regarding a change with which the parent agrees, e.g., if during an IEP [individualized education program] meeting the team, including the parent, agrees to a change in the student's services, would the LEA be required to provide a notice?

OSEP's Response: Yes. If, during an IEP meeting, the team, including the parent, agrees to a change in the, child's services, the public agency must provide written notice in accordance with 34 CFR § 300.503. Providing such notice following an IEP Team meeting where such a change is proposed -- or refused -- allows the parent time to fully consider the change and determine if he/she has additional suggestions, concerns, questions, and so forth.

3. More generally, is the notice requirement intended to provide the parent with notice of a proposed change with which the parent does not or may not agree?

OSEP's Response: Nothing in the statute or regulations indicates that the notice is related to a parent's attitude toward any changes proposed or refused by the public agency." (*Letter to Lieberman*, 52 IDELR 18 (OSEP, August 15, 2018))<sup>3</sup>

*Therefore, the Charter School complied with the IDEA and NAC with regard to the absence of a Prior Written Notice in November 2018 in response to the Parent's requests for services in the*

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<sup>3</sup> This letter is publicly available at: <https://www2.ed.gov/policy/speced/guid/idea/letters/2008-3/lieberman081508notice3q2008.pdf>

*student's draft IEP, but did not comply with regard to the provision of a Prior Written Notice upon proposing to conduct a Functional Behavioral Assessment.*

**Issue Six:**

Whether the Charter School complied with the IDEA and NAC with regard to providing the student's substitute teacher access to the student's out-of-state IEP and informing the teacher of the specific responsibilities related to the teacher's implementation of the student's IEP.

Pursuant to the IDEA, 34 C.F.R. §300.323(d), and NAC §388.281(6)(c), each public agency must ensure that: (1) the student's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and (2) each such teacher and provider is informed of his or her specific responsibilities related to implementing the student's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. As noted previously, the Charter School was also required to establish a system of records pursuant to NAC §388.215(5)(b).

The Charter School was unable to locate any documentation of the substitute teacher's receipt of the student's IEP from the Charter School or with regard to specific instructions that were being given to the substitute teacher. (FOF #22) In the absence of documentation, it is determined that the Charter School did not fulfill this obligation under the IDEA, 34 C.F.R. §300.323(d), and NAC §388.281(6)(c).

On August 27, 2018, the substitute teacher's first day in the student's classroom, the Parent provided the teacher a copy of the student's IEP and a document that outlined the accommodations from the out-of-state IEP and the student's likes/dislikes, strengths and abilities. (FOF #21) The Charter School argues that by the Parent providing the substitute teacher the student's IEP on the teacher's first day in the classroom, the Charter School did comply with the IDEA. The Parent's action did ensure the teacher was provided a copy of the student's IEP; was informed of the teacher's responsibilities; and minimized the impact of the failure of the Charter School to do so. However, the Charter School's responsibility to comply with the IDEA, 34 C.F.R. §300.323(d), and NAC §388.281(6)(c) is not excused by the Parent's determination to do so.

*Therefore, the Charter School failed to comply with the IDEA and NAC with regard to providing the student's substitute teacher access to the student's out-of-state IEP and informing the teacher of the specific responsibilities related to the teacher's implementation of the student's IEP.*



## **ORDER OF CORRECTIVE ACTION**

As discussed previously, pursuant to NRS §388A.159, the SPCSA is now deemed the LEA for all purposes, including the provision of FAPE and the provision of special education and related services provided by this SPCSA sponsored charter school. The Charter School is required, under SPCSA supervision, to take corrective action to address the violations found in this Complaint. Specifically the Charter School failed to: implement the student's out-of-state IEP; provide timely access for the Parent to inspect and review the student's records; timely develop the student's IEP; provide a Prior Written Notice on the proposed conduct of the Functional Behavioral Assessment; and ensure the substitute teacher had access to the student's IEP and was informed of responsibilities.

### **Student**

A student-specific remedy was considered in this case given the determined violations. However, the Parent did not propose any student-specific proposed resolution for the alleged violations, but rather proposed a systemic remedy involving the conduct of various trainings for the Charter School Personnel. While the absence of a parentally proposed remedy does not preclude the NDE from ordering a student-specific remedy, given the student's withdrawal from the Charter School, noted mitigating factors, and the absence of definitive information on the current needs of the student, the NDE deferred to the Parent's proposed resolution with regard to a systemic remedy only.

### **Directed Action – Systemic**

#### **Training on Policies/Procedures and System of Records**

In accordance with NRS §385.175(6), the NDE requests a plan of corrective action from the governing body of the Charter School be provided to NDE to correct the identified noncompliance in this Complaint with regard to the above cited failures to comply with the IDEA and NAC, Chapter 388. The corrective action plan (CAP) must be approved by the SPCSA and provided to the NDE for approval within 30 days of the receipt of this Report. The CAP must provide for the following:

1. The conduct of a training for relevant personnel at the Charter School on the requirements of the IDEA and the NAC, Chapter 388, in at least the following areas:
  - The provision of special education and related services and supplemental aids and services in conformity with a student's IEP;
  - The right of parents of a student with a disability to timely inspect and review any education records relating to their child which are collected, maintained, or used by a public agency.
  - The requirements of NAC §388.275 with regard to the exercise of the discretion to develop an Interim IEP;
  - When a Prior Written Notice is required to be provided to a parent of a student with a disability; and
  - Ensuring a student's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is

responsible for its implementation; and each such teacher and provider is informed of his or her specific responsibilities.

The training on the requirements of the IDEA and the NAC, Chapter 388, for relevant personnel must be provided by an individual knowledgeable about these laws; be completed prior to the end of the 2018/2019 school year; and include a method to document the attendees' successful completion of the training.

2. The development of a system of records at the Charter School for, at least, the purpose of verifying the provision of services to students with disabilities in accordance with the student's IEP.

The Charter School must document compliance with this Order of Corrective Action to the SPCSA. The SPCSA will verify compliance and provide documentation to the NDE of the Charter School's compliance with the approved CAP within 60 days of its completion.