

**STATE PUBLIC CHARTER SCHOOL AUTHORITY  
COMPLAINT INVESTIGATION  
(#SC121522)**

**Report Issued on March 24, 2023**

**INTRODUCTION**

On December 15, 2022, the Nevada Superintendent of Public Instruction received a systemic Complaint from a Complainant 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) by the State Public Charter School Authority (SPCSA) and a named charter school.<sup>1</sup>

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.<sup>2</sup> 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 purpose of this State Complaint. 34 C.F.R. §300.151 et seq.; NAC §388.318.

The State Complaint included the names of three individual students<sup>3</sup> and other facts supporting the systemic IEP allegations. The allegations in the Complaint were that: for at least the last two years only one of the six special education resource teachers at the Charter School was a licensed teacher and the rest were licensed substitute teachers; untrained and “unfit” substitute teachers administered and interpreted KTEA and WRAT assessments with the goal of writing new IEPs for students in the 2021/2022 and 2022/2023 school years; Charter School failed to review multiple IEPs (at least two) within the maximum one year time frame; and Charter School failed to provide services for up to a 15-school day time period to students with IEPs that transferred into the Charter School from school districts within the State of Nevada.

Given the Complainant was not the parent of the named students, Nevada Department of Education (NDE) informed the Complainant that in order for the NDE to release any personally identifiable information to the Complainant, including personally identifiable information in the Complaint Investigation Report, NDE must receive parental consent from the named students authorizing the disclosure of such information. 34 C.F.R. §300.622, NAC §388.289. At the time of this Report, the Complainant had not provided NDE parental consent to disclose personally identifiable information related to this State Complaint investigation to the Complainant.

IDEA and Nevada regulations for special education programs require that a Complaint must allege a violation that occurred not more than one year prior to the date that the Complaint was received.

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<sup>1</sup> 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.

<sup>2</sup> While acknowledging its local educational agency status for SPCSA-sponsored charter schools, SPCSA indicated that SPCSA does not provide direct special education to students that attend SPCSA charter schools. That circumstance is not unlike that of other responsible local educational agencies in the State of Nevada.

<sup>3</sup> The Complaint included facts on one named student who transferred to the Charter and two named students with regard to the allegation of the failure to review IEPs periodically, but not less than annually.

34 C.F.R. §300.153(c); NAC §388.318(1)(b). In this case, NDE received the Complaint on December 15, 2022; therefore, the relevant time period commences December 15, 2021 and ends the date of the State Complaint, December 6, 2022 (Hereinafter, relevant time period.)

In the course of the investigation, the Investigation Team determined additional documentation critical to the investigation of the Complaint was required from SPCSA. Due to the extensive request for additional information and the resultant time period to review this critical information, NDE determined there were exceptional circumstances with respect to this State Complaint and extended the timeline for the completion of the investigation and the issuance of the Report to March 27, 2023.

## **COMPLAINT ISSUES**

The allegations in the 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, from December 15, 2021 to December 6, 2022 in the review of IEPs for students with disabilities periodically, but not less than annually.

### **Issue Two:**

Whether SPCSA complied with IDEA and NAC, Chapter 388, for the named student with a disability who transferred to Charter School in October 2022 with an IEP that was in effect in a previous public agency in the State of Nevada, specifically did Charter School provide services comparable to those described in the student's previous IEP until Charter School either adopted the student's previous IEP or developed, adopted, and implemented a new IEP.<sup>4</sup>

### **Issue Three:**

Whether SPCSA complied with the requirements of IDEA and NAC, Chapter 388, to provide qualified personnel, including the necessary content knowledge, with regard to the substitute teachers who served as special education resource teachers at the Charter School from December 15, 2021 to December 6, 2022.

### **Issue Four:**

Whether SPCSA complied with the requirements of IDEA and NAC, Chapter 388, with regard to the licensure/certification and training of persons responsible for administering or interpreting assessments, specifically with regard to the substitute teachers who administered and/or interpreted the KTEA and WRAT assessments from December 15, 2021 to December 6, 2022.

In the December 19, 2022 issue letter to SPCSA, NDE requested additional documents and information in order to investigate the State Complaint. SPCSA was notified in that same

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<sup>4</sup> In accordance with IDEA, 34 C.F.R. §300.153, a Complaint must include not only the statement that there has been a specific violation, but the facts on which the statement is based as it relates to the problem. While the allegation was stated as a systemic allegation for this issue, the facts supporting the allegation included a specific student only with no reference to violations with regard to other students. Therefore, while the other allegations were determined to be systemic allegations, this allegation was determined to be a student-specific allegation.

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 three of the four allegations of noncompliance in the Complaint and referenced the well-organized documents submitted by issue. Specifically:

- Issue One. SPCSA conceded that of 43 annual reviews of IEPs, 10 were late. Of those 10 IEPs, eight IEP reviews were due to a misunderstanding of the regulatory timeline that allowed the review after the expiration of the IEP. All of the IEPs that were late have been completed.
- Issue Two. SPCSA disputed the alleged failure to comply with IDEA and NAC, Chapter 388, with regard to the named transfer student and asserted any failure to provide services were a result of the student's parent and previous school's failure to timely provide the student's IEP and the failure of assigned staff, to provide the services. Notwithstanding this argument, SPCSA expressed a willingness to make up any compensatory time that is owed to the student.
- Issue Three. Citing the teacher shortages in the area of special education, SPCSA disputed the alleged failure to comply with IDEA and NAC, Chapter 388, with regard to the substitute teachers who served as special education resource teachers at the Charter School.
- Issue Four: SPCSA disputed the alleged failure to comply with IDEA and NAC, Chapter 388, with regard to the licensure/certification and training of persons responsible for administering or interpreting the named assessments.

The State Complaint; the additional information submitted to NDE by the Complainant relevant to the issues in the State Complaint; SPCSA's denial of all 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**

1. The Complainant is a former substitute special education teacher of Charter School<sup>5</sup> with a standard substitute teaching license with a substitute endorsement (hereinafter, standard substitute license). (Complaint, SPCSA Response)
2. The first day of the 2022/2023 school year for Charter School was August 8, 2022. (2022/2023 CCSD School Calendar)

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<sup>5</sup> SPCSA and Complainant provided a significant amount of documentation regarding the Complainant's performance of professional duties during the Complainant's term of employment, including salary and employment action. Unless otherwise relevant to the issues in this State Complaint as a member of the group of substitute teachers, that documentation and any assertions of fault, or lack thereof, were determined not to be relevant with regard to SPCSA's responsibility as the local educational agency to comply with IDEA and NAC in the SPCSA-sponsored Charter School's provision of a Free Appropriate Public Education and the provision of special education and related services.

## Periodic Review of IEPs<sup>6</sup>

3. Ten annual IEPs of students during the relevant time period of the Complaint were untimely reviewed, including the two named students in the Complaint:
  - a. A student's IEP required to be reviewed no later than December 6, 2022 was reviewed on December 15, 2022<sup>7</sup>;
  - b. A student's IEP required to be reviewed no later than November 3, 2022 was reviewed on November 10, 2022;
  - c. A student's IEP required to be reviewed no later than October 18, 2022 was reviewed on October 25, 2022;
  - d. A student's IEP required to be reviewed no later than October 17, 2022 was reviewed on October 20, 2022;
  - e. A student's IEP required to be reviewed no later than November 2, 2022 was reviewed on November 29, 2022. SPCSA indicated this IEP meeting was delayed due to the parent requesting the review on another date. However, the first contact with the parent to schedule the IEP meeting was November 7, 2022, after the annual review date;
  - f. A student's IEP required to be reviewed no later than November 8, 2022 was reviewed on November 17, 2022;
  - g. A student's IEP required to be reviewed no later than October 31, 2022 was reviewed on November 7, 2022;
  - h. A student's IEP required to be reviewed no later than November 3, 2022 was reviewed on December 6, 2022. SPCSA indicated this IEP meeting was delayed due to required homebound services. However, the first contact with the parent to schedule the IEP meeting was November 6, 2022, after the annual review date;
  - i. A student's IEP required to be reviewed no later than November 8, 2022 was reviewed on November 28, 2022;
  - j. A student's IEP required to be reviewed no later than October 27, 2022 was reviewed on November 15, 2022. (SPCSA Response, Information Page of Students' IEPs, Student Contact Logs)
4. Of the ten IEPs reviewed past the annual review date, in eight instances Charter School personnel mistakenly thought that the conduct of a Multidisciplinary Team meeting regarding eligibility granted an additional 30 days from the re-evaluation date to conduct the annual IEP review, despite the expiration of the student's IEP. (SPCSA Response, Student IEPs)

## Transfer Student

5. At the beginning of the 2022/2023 school year, the student attended another SPCSA-sponsored charter school for two months, prior to transferring to Charter School. The student attended an out-of-state school in the 2021/2022 school year and had a May 17, 2022 out-of-state IEP in effect through May 17, 2023. (Student Contact Log, SPCSA Response, SPCSA Website, Out-of-State IEP)

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<sup>6</sup> Based on the dates of the named students' IEP reviews during the time period of this Complaint, NDE requested and received documentation of all IEPs for a portion of the applicable Complaint period: from the commencement of the Charter School's 2022/2023 school year to December 6, 2022.

<sup>7</sup> It was noted that for some students, there were some minor discrepancies between the date of the annual IEP meetings on the information page of the student's IEP and the summary in the SPCSA Response. The discrepancies were determined to be insignificant in that the minor differences did not change the determination regarding timeliness.

6. The transfer student's first day of enrollment at Charter School was October 19, 2022. On October 20, 2022, the student's Parent provided Charter School a copy of the May 17, 2022 IEP out-of-state IEP. (Student Contact Log, Student Period Attendance Detail)
7. The prior SPCSA-sponsored charter school had commenced the evaluation of the student at least by September 18, 2022 and was still conducting the evaluation of the student when the student withdrew from the prior charter school. (Student Contact Log)
8. Charter School engaged in a number of activities to obtain the student's education records from both the prior charter school and the out-of-state local educational agency, including a request to the prior SPCSA-sponsored charter school with a records' release on October 20, 2022. As of November 1, 2022, Charter School had not received the records. (Student Contact Log)
9. As of November 3, 2022, Charter School had not received all of the student's education records. On November 9, 2022, Charter School developed an interim IEP (essentially the out-of-state IEP with minimal changes) with services to begin that same day. The parent agreed with all components of the interim IEP and requested the student be evaluated for speech, occupational therapy and adaptive physical education. On January 4, 2023, Charter School obtained written consent to evaluate the student. (Student Contact Log, Student Interim IEP)
10. During the course of the investigation, SPCSA did not provide any SPCSA guidelines or procedures that addressed transfers between different SPCSA-sponsored charter schools. (Review of the Record)

### **Qualified Personnel- Substitutes**

11. From December 15, 2021 to December 6, 2022, Charter School employed thirteen special education teachers with the following licenses, nine of whom were substitutes:
  - a. One professional elementary with an endorsement in all elementary subjects;
  - b. One provisional special education with generalist endorsement;
  - c. One standard special education with a generalist endorsement and an alternative special education license (Interim Route to Certification) with an endorsement in autism; and
  - d. One standard special education with a generalist endorsement.
  - e. Substitutes:
    - i. One standard substitute with an alternative special education license with a generalist endorsement;
    - ii. One alternative special education with a generalist endorsement employed as a substitute.
    - iii. Seven standard substitute license. (One of whom was the Complainant.) Three of these substitute special education teachers served as a special education teacher for Charter school for over a school year and three substitutes are still teaching at Charter School; (State of Nevada License for Educational Personnel, Charter School List of Teachers)
12. In school year 2021/2022, the case load for substitutes with only a standard substitute license was up to 18 students. In school year 2022/2023 up to December 6, 2022, the case

load for substitutes with only a standard substitute license was up to 20 students. (SPCSA Supplemental Response)

13. Based on a provided resume of one of the substitutes with a standard substitute license who is still employed at Charter School, the duties at Charter School include: providing special education professional development for general education teachers; writing IEPs; conducting formal assessments, such as the KTEA Brief-3 and WRAT5 to measure student present levels and to write measurable goals for annual IEPs. Other documentation submitted in the course of the investigation substantiated the conduct of the KTEA Brief-3 and WRAT5 assessments and writing of IEPs by other substitutes with the standard substitute license. (Charter School Substitute Resumes. Licenses, Charter School Email Communication and Newsletter)
14. While some of the substitutes with a standard substitute license had teaching experience, only one had any formalized education in the area of special education through a bachelor of arts program with an emphasis in special education and one started a masters of education in special education program in 2021. (Resumes of Substitutes)
15. Charter School cited the shortage of special education teacher in its response to this Complaint and provided previous job postings for special education teachers on two websites (Indeed and Teacher-Teacher.com). SPCSA indicated that the training of all of its special education teachers ensured they were competent and able to perform their job duties. (SPCSA Response)
16. All new hires are trained by the special education instructional facilitator and Charter School leadership team, including new facilitators and are provided an electronic binder of resources that include: Charter School Policy and Procedures; “IEP Goal Bank”; “IEP Effect Statements k-12”; and “Annual IEP Checklist”; IEP Team required members; examples of Prior Written Notices for different actions; present levels template; extended school year; accommodations checklist; transition; transfer of rights; writing behavior intervention plans and examples; and a sample IEP. The binder was reviewed in a two-hour special education training prior to the commencement of the 2022/2023 school year. (SPCSA Response, SpecEd Binder-Training Resources, Charter School Training and Support Documentation,)
17. The formal training, expressly identified as special education, that Charter School provided prior to the commencement of the 2022/2023 school year to special education teaching staff, was comprised of: three hours on the role of special education - behaviors and support; and one hour on the role of special education, requirements, referral process, and IEPs. After the commencement of the school year, during the relevant time period of the Complaint, there were the following additional trainings: nine hours on the IEP, including how to start an IEP; components of an IEP, how to write an IEP, including writing goals and present levels, and accommodations; one hour on behavior and de-escalation; two hours on compliance and IDEA behavior procedures; eight hours on de-escalating behaviors and restraints; one hour on compliance accommodations, one hour on compliance and resource strategies. At least one training on writing an IEP in August 2022 was optional.<sup>8</sup> (Charter School Training and Support Documentation, August 28, 2022 Email Communication)

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<sup>8</sup> SPCSA did not, as requested, provide a storage device with the training documentation for the administrative record. However, the record does include the link to the documentation.

18. Preparation of the special education staff immediately prior to the 2021/2022 school year was comprised of two hours on what is an IEP and six hours of “Special Education Training” in monthly facilitator meetings. Additional relevant training after the commencement of the 2021/2022 school year for special education staff included: 12 hours of “Special Education Training” in monthly facilitator meetings and two hours on administering the standardized test, the Comprehensive Test of Phonological Processing. There were no documented trainings for the second part of the school year from November 19, 2021 to July 27, 2022. Charter School did also provide special education weekly newsletters that included compliance notes. (Charter School Training and Support Documentation, Newsletters and Email Communications)
19. In its supplemental request for information, NDE requested SPCSA provide any additional documentation that demonstrated SPCSA’s compliance with the required licensure of special education teachers under NAC §388.165 and NRS 388A.518, including documentation of any written approval of NDE’s granting an exception under NAC §388.165. SPCSA did not provide any documentation of a granted exception. Further, SPCSA did not explain, as requested, how the cited trainings in its response ensured the substitute teachers with standard substitute license were “appropriately and adequately prepared and trained, including how those personnel have the content knowledge and skills to service children with disabilities.” (Review of Record)
20. The IEPs developed by the substitute teachers as the special education teacher of the student were assigned to the special education instructional facilitator for review and feedback/correction and the facilitator’s comments/concerns provided significant guidance, corrections, and additions in the areas on concern for the substitute special education teacher to review. (SPCSA Supplemental Response, Review of Record, September 11, 2022, September 20, 2022, October 9, 2022, November 6 and 8, 2022 Email Communications)
21. Based on several IEPs provided in the course of the investigation, substitute teachers served as the special education teacher at the IEP Team meetings and the special educational instructional facilitator served as the local educational representative. (SpecEd Binder-Training Resources, School Email Communication and Newsletter, Student IEPs)

### **Administering/Interpreting Assessments**

22. The Kaufman Test of Educational Achievement (KTEA) is an individually administered, norm-referenced measurement of core academic skills for grades prekindergarten through 12 or ages four through 25. Charter School used the KTEA-3-Brief that measures aspects of three achievement domains: reading, mathematics and written language. (KTEA-Third Edition Brief, SPCSA Response)
23. The Wide Range Achievement Test (WRAT) Fifth Edition administered by the Charter School assesses and monitors reading, spelling and math skills for ages five to 85 plus and is designed to help identify possible learning disabilities. (WRAT5 Pearson Excerpt, SPCSA Response)
24. Both the KTEA-3 Brief and the WRAT5 describe the qualification level for personnel by levels A to C. Both of these assessments require Level B qualifications. Level B provides several options to qualify and, in relevant part with regard to the substitutes with standard

substitute licenses, includes working for an accredited institution. (Pearson KTEA-3 and WRAT5 Qualified Levels)

25. Charter School is an accredited institution. (SPCSA Response, Parent Company Website)
26. The results of these achievement tests were among assessment results relied upon in at least some students' IEPs in the present levels of academic achievement and functional performance. (Review of IEPs Provided, Complainant Additional Documents)
27. Charter School administered the KTEA-3 and WRAT5 to 36 students during the relevant time period, all of the assessments were administered by substitute teachers, except for the assessment of two students with a non-substitute co-assessor.
28. Of the six substitutes who solely administered 34 assessments:
  - a. One who administered the assessment(s) to six students possessed a provisional license in special education with a generalist endorsement;
  - b. One who administered the assessment(s) to 10 students possessed a standard special education license with a generalist endorsement and an alternative special education license;
  - c. One who administered the assessment(s) to three students possessed a standard substitute license with an alternative special education license with a generalist endorsement;
  - d. With regard to the substitute teachers who possessed a standard substitute license: One administered the assessment(s) to seven students; another to five students; and another to three students.<sup>9</sup> (State of Nevada License for Educational Personnel, List of Examiners, Assessments During Relevant Period)
29. At the commencement of the investigation, NDE requested documentation of the training conducted in the administration and interpretation of the KTEA-3 and WRAT5 for the substitutes who administered/interpreted these assessments during the relevant period. While SPCSA asserted each individual who conducted the assessment was qualified to administer it and provided copies of individually administered assessments, no documentation of the training of the substitutes in the administration and interpretation of the KTEA-3 and WRAT5 was provided to NDE. The only documented formal training<sup>10</sup> and support to special education teaching staff was with regard to administering another standardized test, the Comprehensive Test of Phonological Processing. (Charter School Training and Support Documentation)

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<sup>9</sup> There were discrepancies between the number of students in the summary of evaluators and provided assessments conducted; however, this discrepancy did not impact the conclusion regarding the qualifications of the individuals who conducted/interpreted the assessments.

<sup>10</sup> Charter School cited specific unsubstantiated informal support to the substitutes in the administration of the KTEA-3 Brief and the WRAT5 assessments; the administration and scoring of the KTEA-3 Brief and the WRAT5 for two of the substitutes; and one unspecified date of training for another substitute with support such as observation of the administration of the administration and scoring of the assessments. SPCSA also cited the previous experience of a substitute in administering the assessments and attendance at a college class. (Qualifications of "Examiners" Who Were Substitutes)



## CONCLUSIONS OF LAW

### **Issue One:**

Whether SPCSA complied with IDEA and NAC, Chapter 388, from December 15, 2021 to December 6, 2022 in the review of IEPs for students with disabilities periodically, but not less than annually.

Pursuant to IDEA, 34 C.F.R. §300.324(b)(1), and NAC §388.281(6)(a), each public agency must ensure that a student's IEP is reviewed periodically, but not less than annually, by the student's IEP Team to determine whether the annual goals for the student are being achieved and revise the IEP, as appropriate. As indicated in the introduction, SPCSA conceded that 10 students' IEPs, of the 43 annual reviews, were not reviewed on an annual basis in the 2022/2023 school year. The number of days for the failure to timely review the 10 student's IEPs varied from three days to over a month. (Finding of Fact (FOF) #3) Given the substitute special education teachers' content knowledge is at issue in this Complaint, it is of particular concern to NDE that eight of the 10 IEP violations were due to a misunderstanding of the regulatory timeline for the review of the IEPs. (FOF #4)

*Therefore, SPCSA failed to comply with IDEA and NAC, Chapter 388, from December 15, 2021 to December 6, 2022 in the review of IEPs for students with disabilities periodically, but not less than annually.*

### **Issue Two:**

Whether SPCSA complied with IDEA and NAC, Chapter 388, for the named student with a disability who transferred to Charter School in October 2022 with an IEP that was in effect in a previous public agency in the State of Nevada, specifically did Charter School provide services comparable to those described in the student's previous IEP until Charter School either adopted the student's previous IEP or developed, adopted, and implemented a new IEP.

The allegation in this Complaint and the response from SPCSA characterized this student's transfer to Charter School as one between one school district or public agency to another, an event that would be governed by IDEA, 34 C.F.R. §300.323(e) and (f), and NAC §388.263, if the transfer was in the same academic year. However, that is not the case. The student transferred from one SPCSA-sponsored charter school to another SPCSA-sponsored charter school in the same academic year, the 2022/2023 school year. (FOF #5) Notwithstanding the fact that the charter schools are different SPCSA-sponsored charter schools, given SPCSA's status as a local educational agency (NRS §388A.159), the student's transfer in the same academic year was merely a transfer between schools in the same public agency.<sup>11</sup>

If the student was a student with a disability, pursuant to NRS §388A.159, SPCSA would have been responsible for the provision of a Free Appropriate Public Education to the student, including the provision of the student's special education and related services. However, in this case, the prior SPCSA-sponsored charter school was conducting the initial evaluation of the student at the time of the student's transfer to Charter School and the student had not yet been determined to be a student with a disability in the State of Nevada. (FOF #7)

SPCSA did however have an obligation to timely conduct the initial evaluation of the student within 45 school days after the student's parent provided informed written consent, 34 C.F.R. §300.301; NAC §388.337(1), and that timeline was not affected by the transfer between the SPCSA-sponsored

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<sup>11</sup> See the definition of public agency. 34 C.F.R. §300.33; NAC §388.092.

charter schools. No documentation was provided in the course of the investigation of the date the parent provided written consent for the prior SPCSA-sponsored charter school's conduct of the initial evaluation. However, based on the prior SPCSA-sponsored charter school's commencement of the student's initial evaluation at least by September 18, 2022 and the passage of time until Charter School obtained written consent to evaluate the student on January 4, 2023 (FOFs #7, #9), the Investigation Team determined that SPCSA did not conduct the initial evaluation of the student within 45 school days as required by IDEA, 34 C.F.R. §300.301, and NAC §388.337(1).

*Therefore, given the student was not a student with a disability who transferred from one local educational agency in the State of Nevada to another, SPCSA was not required to provide services comparable to those described in the student's previous IEP; however, SPCSA was required to comply with IDEA and NAC, Chapter 388 in the timely conduct of the initial evaluation of the student and did not.*

### **Issue Three:**

Whether SPCSA complied with the requirements of IDEA and NAC, Chapter 388, to provide qualified personnel, including the necessary content knowledge, with regard to the substitute teachers who served as special education resource teachers at the Charter School from December 15, 2021 to December 6, 2022.

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. While recognizing States are facing many challenges caused by the COVID-19 pandemic, including the impact it has had on exacerbating the shortage of special education teachers, the United States Department of Education, Office of Special Education Programs (OSEP), recently reiterated the requirements of the IDEA with regard to the qualifications of special education teachers and other personnel, notwithstanding that shortage:

“Under Section 612(a)(14) of IDEA and 34 C.F.R. § 300.156, the SEA 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. Those qualifications must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school: (1) has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 C.F.R. § 200.56(a)(2)(ii) as such section was in effect on November 28, 2008), or (2) passed the State special education teacher licensing examination and holds a license to teach in the State as a special education teacher, except in the case of a teacher teaching in a public charter school. A teacher teaching in a public charter school must meet the certification or licensing requirements, if any, set forth in the State's public charter school law...”<sup>12</sup>

In Nevada, the licensure requirements for educational personnel, including the qualifications to serve as a substitute teacher, 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). Further, NAC §388.165 requires a special education teacher in a

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<sup>12</sup> This OSEP Memorandum (OSEP 22-01 October 4, 2022) is publicly available at: <https://sites.ed.gov/idea/files/OSEP-Memo-22-01-Personnel-Qualifications-under-IDEA-10-04-2022.pdf>

unit to be licensed in the area of special education, with an endorsement in the area of disability represented by the majority of the students in the unit, unless an exception is granted. Consistently, NRS §388A.518(5) requires that a teacher who is employed by a charter school to teach special education must be licensed to teach special education.

To ensure a thorough investigation, in its supplemental request for information, NDE requested SPCSA provide any additional documentation that demonstrated SPCSA's compliance with the required licensure of special education teachers under NAC §388.165 and NRS §388A.518, including documentation of NDE's written approval granting an exception under NAC §388.165. SPCSA did not provide any documentation of a granted exception. (FOF #19)

During the relevant time period of this Complaint, SPCSA Charter School had 13 special education teachers employed, all of whom possessed active licenses under Chapter 391 of NRS and NAC as teachers in the State of Nevada. Nine of the 13 teachers were employed as substitutes and seven of these substitutes had only standard substitute licenses.<sup>13</sup> Three of the seven substitute special education teachers with standard substitute licenses were employed by Charter School as special education teachers for over a year. (FOF #11)

Therefore, notwithstanding licensure as substitutes under Chapter 391 of NRS and NAC, the seven special education teachers with only standard substitute licenses did not meet the requirements of IDEA, 34 C.F.R. §300.156(c), and NAC §§388.165, 388.171 as qualified personnel. (See also NAC §388A.530 for the applicability of these requirements to the governing body of a charter school.)

In response to this Complaint, SPCSA indicated that the training of all of its special education teachers ensured they were competent and able to perform their job duties. (FOFs #15, #19) Therefore, in addition to the above determination with regard to the absence of the required licensure for qualified special education teachers under IDEA and NAC §§388.165, 388.171, a further determination is made whether the substitute teachers who served as special education resource teachers at the Charter School possessed the requisite content knowledge and skills necessary to serve students with disabilities. NAC §388.171; 34 C.F.R. §300.156(a); NRS §388A.518(5).

Only two of the seven substitutes with standard substitute licenses had any formalized education in the area of special education. (FOF #14) The discernible special education training provided by Charter School prior to the commencement of the 2022/2023 school year was comprised of reviewing the Charter School special education binder for two hours and four hours of additional training. Similarly in the 2021/2022 school year, the training prior to the commencement of the school year was comprised of eight hours of designated special education training. (FOFs #16, #17, #18)

It is acknowledged that Charter School continued to provide some formal training to educational personnel, including the substitute teachers, after the commencement of the 2021/2022 and 2022/2023 school years, including nine hours on how to start an IEP; components of an IEP, and how to write an IEP, including writing goals, present levels, and accommodations, and also provided documented oversight in the development of IEPs. (FOFs #17, #18, #20)

In addition to the absence of a license to teach special education, notwithstanding these training efforts of Charter School, the Investigation Team determined that this preparation/training, including the documented oversight, provided by the SPCSA Charter School was not sufficient to

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<sup>13</sup> Charter School did demonstrate some recruitment efforts for non-substitute special education teachers in the course of the investigation. (FOF #15)

ensure the seven substitutes with standard substitute licenses possessed the necessary content knowledge and skills to teach the assigned students with disabilities and perform the related duties such as writing draft IEPs and providing input as the only special education teacher of the student at IEP meetings.<sup>14</sup> (34 C.F.R. § 300.156(c); NAC §388.171; NRS §388A.518(5))

*Therefore, while SPCSA complied with the requirements Chapter 391 of the NRS and NAC with regard to the licensure of substitute teachers who served as special education resource teachers at the Charter School from December 15, 2021 to December 6, 2022, SPCSA failed to comply with IDEA and NAC, Chapter 388, in that not all of Charter School's substitute special education teachers were adequately prepared and trained and possessed the necessary content knowledge and skills to teach the assigned students with disabilities.*

#### **Issue Four:**

Whether SPCSA complied with the requirements of IDEA and NAC, Chapter 388, with regard to the licensure/certification and training of persons responsible for administering or interpreting assessments, specifically with regard to the substitute teachers who administered and/or interpreted the KTEA and WRAT assessments from December 15, 2021 to December 6, 2022.

Pursuant to IDEA, 34 C.F.R. §300.304(c)(1)(iv), and NAC §388.340(4)(a)(4), in addition to the previously cited requirements to appropriately and adequately prepare and train personnel, a public agency must ensure that the assessments and other evaluation materials used to assess a student under these sections are administered by trained and knowledgeable personnel, including administration in accordance with any instructions provided by the producer of the assessments. NAC §388.330 provides additional requirements that set forth the requisite training and knowledge for the conduct of assessments: any person responsible for administering or interpreting an assessment must possess a license or certificate in the area of the person's professional discipline; and be trained in the area of assessment in question.

In this case, the tests at issue were the KTEA-3 Brief and the WRAT5 achievement tests. The qualification level for personnel administering the test set forth in the instructions provided by the producer of the assessments included an individual working for an accredited institution, and Charter School is an accredited institution. (FOFs #22-#25) Therefore, the individuals met that aspect of the requirements of the law.

Three of the substitute teachers with a standard substitute license solely administered assessments to 17 students. (FOFs #27, #28) In addition to meeting the qualifications of the producer of the assessments, these teachers must also have been trained and knowledgeable in the area of assessment. 34 C.F.R. §300.304(c)(1)(iv); NAC §§388.330, 388.340. The requisite knowledge and training were particularly important since the results of these achievement tests were among

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<sup>14</sup> The duties of the substitute teachers with a substitute endorsement, included "writing IEPs" (FOF #13), presumably draft IEPs given an IEP must be developed/revised by an IEP Team, including the parent, not by a single individual. 34 C.F.R. §300.321; NAC 388.281. It is important to note that the special education instructional facilitator who provided oversight in the writing of draft IEPs was not the teacher of the student and did not serve in that capacity at student's IEP Team meetings. It was the substitute teacher who served as the special education teacher of the student at students' IEP Team meetings. The special education instructional facilitator served only as the Charter School representative, in at least some students' IEP Team meetings. (FOF #21) (While IDEA, 34 C.F.R. §300.321(d), allows a public agency member of the IEP Team to also serve as the agency representative, if the requisite criteria are met, NAC §388.281 does not.)

assessment results relied upon in, at least, some students' IEPs in the present levels of academic achievement and functional performance. (FOF #26)

As previously discussed in Issue Three, SPCSA failed to ensure all of Charter School's substitute special education teachers were appropriately and adequately prepared and trained and possessed the necessary content knowledge and skills to teach the assigned students with disabilities. With regard to Charter School's training of substitute special education teachers in the conduct of assessments and training in achievement tests, the only formal training for which documentation was provided in the course of this Complaint was a two-hour session on administering a standardized test in a different area: Comprehensive Test of Phonological Processing. (FOFs #17, #18)

In the absence of documentation otherwise (NAC §388.215), it is determined that SPCSA failed to ensure all of Charter School's substitute special education teachers who administered the KTEA-3 Brief and the WRAT5, and may also have interpreted them, were trained and knowledgeable in all regards, including training in the area of assessment in question. 34 C.F.R. §300.304(c)(1)(iv); NAC §§388.330, 388.340.

*Therefore, SPCSA complied with regard to the qualification level for personnel administering the tests of working for an accredited institution, but failed to comply with the requirements of IDEA and NAC, Chapter 388, with regard to the training of persons responsible for administering or interpreting assessments, specifically with regard to all of the substitute special education teachers who administered and/or interpreted the KTEA and WRAT assessments from December 15, 2021 to December 6, 2022.*

## **CORRECTIVE ACTION**

As set forth above, SPCSA failed to comply with IDEA and NAC, Chapter 388, in that SPCSA did not: timely review all student's IEPs, at least annually; timely conduct the initial evaluation of the student who transferred between SPCSA-sponsored charter schools; ensure all of Charter School's substitute special education teachers were adequately prepared and trained and possessed the necessary content knowledge and skills to teach assigned students with disabilities; and ensure all of Charter School's substitute special education teachers responsible for administering or interpreting the KTEA-3 Brief and the WRAT5 achievement tests were adequately prepared and trained. Issues One and Two included named individual students; however, given the nature of the Complaint from a third-party Complainant, the parents of the student with disabilities did not participate in the Complaint, and insufficient information was provided in the course of the investigation to ascertain whether student-specific corrective action was required to address the needs of the student.<sup>15</sup> As such, the corrective action is designed to address the appropriate future provision of services for all students with disabilities at the SPCSA Charter School.

### **Directed Action – Systemic**

I. In accordance with NRS §385.175(6), NDE requests a plan of corrective action from the governing body of Charter School be provided to NDE to correct the above cited failures to comply

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<sup>15</sup> However, this determination does not preclude these or other individual parents of students of the SPCSA Charter School from accessing the dispute resolution processes available under IDEA and NAC, Chapter 388, as appropriate.

with IDEA and NAC, Chapter 388. The corrective action plan (CAP) must be approved by the SPCSA and provided to NDE for approval within 30 business days of the receipt of this Report.

SPCSA, as the named local educational agency party to this Complaint, remains responsible for the implementation of this Corrective Action. (The manner in which SPCSA exercises its local educational agency responsibilities relative to the sponsored Charter School, including in the implementation/enforcement of this ordered remedy, is outside the scope of the State Complaint process). SPCSA will verify compliance and provide documentation to NDE of the Charter School's compliance with the approved CAP within 15 business days of its completion.

The CAP must provide for the following:

1. The conduct of a training for relevant personnel at Charter School on the requirements of IDEA and NAC, Chapter 388, in at least the following:
  - a. Prior to the commencement of the 2023/2024 school year: The requirement to review students' IEPs periodically, but not less than annually, including how to calculate the annual time period.
  - b. Prior to the commencement of the 2023/2024 school year: The transfer provisions in IDEA and NAC, Chapter 388, for transfers between local educational agencies, both in-state and out-of-state, in the same school year, as distinguished from the requirements for transfers between SPCSA-sponsored charter schools.
  - c. Training in the area of assessment for all personnel responsible for the administration and interpretation of the KTEA-3 Brief and the WRAT5 achievement tests, prior to the commencement of the testing in the 2023/2024 school year.

The training on the requirements of IDEA and NAC, Chapter 388, for relevant personnel must be provided by an individual knowledgeable about these laws and include a method to document the attendees' successful completion of the training.

2. Charter School's enhanced measurable steps to attract, prepare and retain special education teachers who meet the requirements in IDEA, 34 C.F.R. § 300.156(c); NAC §388.171; and NRS §388A.518(5) prior to and during the 2023/2024 school year, including consideration of the utilization of the available resources in the above-cited OSEP Memorandum.

3. Pursuant to IDEA, 34 C.F.R. §300.156(c)(2), for personnel who have not obtained full State certification as a special education teacher, if that teacher is participating in an alternate route to special education certification program, the CAP will include how Charter School will provide:

- a. Intensive professional development prior to the first day of school for students, and sustained professional development through the school year;
- b. Intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program. The intensive supervision must address Charter School's plans to ensure a qualified special education teacher participates in each student's IEP Team meeting, if the special education teacher of the student does not meet the requirements in IDEA, 34 C.F.R. § 300.156(c); NAC §388.171; and NRS §388A.518(5). (FOFs #20, #21)

4. At the commencement of the 2023/2024 school year, Charter School must submit the licenses of all special education teachers employed at the Charter School to SPCSA to document compliance with the requirements of IDEA, 34 C.F.R. § 300.156(c); NAC §388.171; and NRS §388A.518(5). SPCSA must verify all of the special education teachers employed at Charter School meet these requirements and that verification must be included in the required documented submitted to NDE.

II. NDE also requests a CAP from SPCSA as the local educational agency for SPCSA-sponsored charter schools within 30 SPCSA business days of the receipt of this Report to correct the identified noncompliance regarding transfers of students suspected of being a student with a disability or students with disabilities between SPCSA-sponsored charter schools. The CAP must include the timeline for each action to enable the completion of the actions as soon as possible, but no later than August 1, 2023. SPCSA must provide NDE documentation of the completion of this directed action within 15 business days of its completion. The CAP must provide for the following:

- a. If in existence, the review and revision of SPCSA policies and procedures with regard to the requirements of the IDEA and NAC, Chapter 388, on the transfer of students suspected of being a student with a disability or students with disabilities between SPCSA-sponsored charter schools, including the timelines for the commencement and completion of the initial evaluation for a student suspected of being a student with a disability; and the implementation of a student with a disability's IEP. (If SPCSA does not currently have these policies and procedures, the CAP must provide for the development of the policies and procedures. (FOF #10))
- b. Upon the revision or development of the policies and procedures, as appropriate, the dissemination of the policies and procedures to all SPCSA-sponsored charter schools.
- c. A review of the policies and procedures to facilitate the transfer of students' education records upon students' transfer between SPCSA-sponsored charter schools and revision, if appropriate. If SPCSA determines no revision is necessary for this purpose, the documentation submitted to NDE after the completion of the directed action, must include an explanation of alternative measures taken to address any unnecessary delay in the transmittal of education records between SPCSA-sponsored charter schools.