

STATE PUBLIC CHARTER SCHOOL AUTHORITY

COMPLAINT INVESTIGATION

(#SC110223)

Report Issued on December 29, 2023

INTRODUCTION

On November 2, 2023, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA) and Nevada Administrative Code (NAC) by the State Public Charter School Authority (SPCSA) and a named charter school, hereinafter Charter School.

The allegation in the Complaint was that the student's October 12, 2022 IEP was not implemented in the areas of speech therapy, reading, and writing during the 2022/2023 school year and the commencement of the 2023/2024 school year, up to October 10, 2023. The Parent included the following calculation of the total number of minutes SPCSA failed to provide the student in the facts supporting the alleged violation: 880 minutes of speech therapy; 2,640 minutes of writing; and 2,640 minutes of reading. The Parent's proposed resolution was for compensatory time for speech therapy, reading, and writing for the services not received as outlined in the student's October 12, 2022 IEP and for the IEP to be implemented as written going forward.

SPCSA is the local educational agency for all purposes for the charter schools it sponsors, including the provision of a Free Appropriate Public Education to each enrolled student and the provision of special education and related services by the SPCSA-sponsored charter school. NRS §388A.159. Charter School is sponsored by SPCSA and, as such, SPCSA is the responsible local educational agency for purposes of this State Complaint.

In accordance with IDEA and NAC, Chapter 388, a State Complaint must include a violation that occurred no more than one year prior to the date of receipt. 34 C.F.R. §300.153; NAC §388.318(1)(b). The United States Department of Education explained the purpose of this provision in the IDEA regulations: "Limiting a complaint to a violation that occurred not more than one year prior to the date that the complaint is received will help ensure that problems are raised and addressed promptly so that children receive FAPE. We believe longer time limits are not generally effective and beneficial to the child because the issues in a State Complaint become so stale that they are unlikely to be resolved." *Federal Register* / Vol. 71, No. 156 / Monday, August 14, 2006 / Rules and Regulations, pg. 46606. Given the date of receipt of the State Complaint with required content on November 2, 2023, the Parent was informed that the time period of the investigation will address the alleged violations commencing November 2, 2022.

In the November 13, 2023 issue letter to SPCSA, NDE requested additional documents and information in order to timely investigate the State Complaint. The documents and information were required to be received by the NDE no later than November 30, 2023, and if submitted electronically, hard copy was required to arrive at NDE no later than December 4, 2023. SPCSA was prominently notified in that same communication that if SPCSA disputed the alleged noncompliance, the documents and information provided by SPCSA 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. SPCSA was explicitly notified that failure to do so by November 30, 2023, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. (NDE acknowledged that SPCSA would obtain information from Charter School to respond to the Complaint, but that the response and documentation/information must be signed and submitted by SPCSA as the responsibility local educational agency.)

SPCSA provided documents and information electronically by the required date with a transmittal email informing NDE of the location of the uploaded requested documentation. The documents and information provided by SPCSA did not include the noticed denial of the alleged noncompliance; a brief statement of the factual basis for the denial; and/or specifically reference the documentation provided to NDE that factually supported the denial.¹ Therefore, in accordance with NDE's notice to SPCSA in the November 13, 2023 issue letter, failure of SPCSA to do so is considered a concession of the issue in this State Complaint.

Notwithstanding SPCSA's determined concession of the issue in this case, the State Complaint and all documentation and information submitted by the Parent and SPCSA relevant to the issue in the Complaint were reviewed and considered with regard to the ordered corrective action to address the needs of the student and the appropriate future provision of services for all children with disabilities. 34 C.F.R. §300.151(b); NAC §388.318(8). The Findings of Fact cite the source of the information determined necessary for that purpose.

COMPLAINT ISSUE

The allegation that is under the jurisdiction of NDE to investigate through the special education complaint process, as further clarified in the course of the investigation, raises the following issue for investigation in the 2022/2023 school year commencing November 2, 2022 and in the 2023/2024 school year to October 10, 2023:

Issue:

Whether SPCSA complied with IDEA and NAC, Chapter 388, in the implementation of the student's October 12, 2022 IEP, specifically with regard to the provision of:

- a. Specially designed instruction in the location of the resource room of reading at the frequency of 240 minutes per month; and of writing at 240 minutes per month.
- b. The related service of direct speech/language in the location of the speech room at the frequency of 80 minutes per month.²

FINDINGS OF FACT

1. The student was enrolled in Charter School in the 2022/2023 and 2023/2024 school years. (Student Attendance Detail, State Complaint)
2. The last day of school for students in the 2022/2023 school year in the Charter School was May 25, 2023. The first day of school for students in the 2023/2024 school year in the Charter School was August 9, 2023. (Charter School Calendars)
3. The student had an October 12, 2023 IEP in effect from November 2, 2022 to October 10, 2023, the relevant time period of this State Complaint. The student was to spend 93% of the school day in the regular education environment and be provided specially designed instruction in reading and

¹ SPCSA also did not timely submit the required hard copy of the documents and information; or sign the submission as the responsibility agency. It was also noted that the provided hard copy did not include all electronically submitted documents.

² The Parent's calculation of the specifically alleged total number of minutes SPCSA failed to provide the student was included in the preliminary statement of the issue. However, the State Complaint Investigation Team determined that the calculation would be considered in the Order of Corrective Action on the basis of facts determined in the course of the investigation.

writing in the location of the resource room and direct speech/language therapy in the location of the speech room. The student's IEP Team determined the student did not require extended school year services. Relevant to this State Complaint, commencing October 12, 2022 to October 11, 2023, the student was to be provided:

- a. The specially designed instruction of reading at the frequency of 240 minutes per month; and writing at 240 minutes per month.
 - b. The related service of direct speech/language at the frequency of 80 minutes per month. (October 12, 2022 IEP)
4. The student's IEP did not distinguish the required number of minutes per month for partial months or occurrence of school holidays. In the 2022/2023 school year, from November 2, 2022 to the end of the 2022/2023 school year, there were seven months of school. In the 2023/2024 school year, relative to the required months of service up to October 10, 2023, there were three months of school, with three remaining weeks in the month of October after October 10, 2023. (October 12, 2022 IEP, School Calendars)

Implementation of the October 12, 2022 IEP

5. Consistent with the determined concession in this case, the documentation provided by SPCSA included a legal memorandum between Charter School and legal counsel on the absence of contemporaneous speech service logs documenting the student received the speech services in the student's IEP. Charter School's legal counsel indicated that, in the absence of the student's specific speech service logs in 2022-2023 and consistent with Charter School's "commitment to its students," Charter School had no choice but to provide compensable hours to the student who is the subject of this State Complaint. (November 27, 2023 Memorandum: Speech Service Logs – Nevada Department of Education)
6. In the course of this investigation, based on Charter School's review of service logs, Charter School offered the Parent compensatory services in the area of writing in the 2022/2023 school year for 780 minutes; and, for the 2023/2024 school year, 300 minutes in the area of reading and 300 minutes in the area of writing. (October 26, 2023 Letter to Student's Parent)
7. A service log was provided for the provision of speech/language therapy to the student for the months of September and October 2023 with the name of the speech/language pathologist; the duration and time of the sessions. Based on this service log, 110 minutes were provided the student in September and 70 documented minutes in October to October 16, 2023. No documentation was provided in the course of the investigation documenting the provision of speech/language therapy to the student in the 2022/2023 school year. (Speech/Language Pathologist Service Log, Review of the Record)
8. SPCSA provided documentation of sessions, for the stated duration of 30 minutes, on a computerized print-out for the days of each month from November 2022 through April 2023 for the provision of reading and writing to the student in the resource room. SPCSA did not provide any authentication information for the service logs. Even assuming this documentation is verifiable, a pattern of failure to provide the student the required minutes of writing was apparent with a minimum of only 120 minutes to a maximum of 180 minutes provided to the student each month. No documentation was provided for the provision of reading or writing in May 2023. Based on the stated duration of 30-minute sessions, the number of minutes of reading for the remaining six months, ranged from a high of 540 minutes in a month to a low of 270 minutes, with an average of

405 minutes. (These calculations include availability of the services on a day the student was absent.³) (Resource Service logs)

9. SPCSA also provided hand-written service logs for the provision of specially designed instruction to the student that included the initials of the provider, the student's name, service area, month and service minutes, but lacked the school year or calendar year. Assuming these service logs were in support of specially designed instruction provided the student in the 2023/2024 school year, they lack credibility due to internal inconsistencies and the included calculation of provided minutes on days when there was no school. Even assuming this documentation is verifiable, these service logs support Charter School's failure to provide all required minutes of the specially designed instruction of reading and writing in the first two months of the 2023/2024 school year. Instead of a total of 480 minutes of writing, Charter School failed to provide 300 minutes and, instead of a total of 480 minutes of reading, Charter School failed to provide 300 minutes. (These calculations also include availability of the services on a day the student was absent.) (Hand Written Service Logs)

Student Progress

10. The first quarter of the 2022/2023 school year ended on October 11, 2022. Charter School's report cards provide performance level scores, ranging from one, the lowest score meaning emergent or incomplete, to four, the highest score meaning exceeding. By the fourth quarter of the 2022/2023 school year, the student earned a performance level of one in reading and a performance level of one in writing, with the exception of one score of 1.5, signifying near-approaching, in using technology to publish writing in a single setting. (Report Card 2022/2023 for Student)
11. The first quarter of the 2023/2024 school year ended on October 11, 2022. Performance levels for the student were only available for one area of reading, informational text, and two elements of writing and the student earned a performance level of two and one-half (near-meeting) in these areas.
12. During the relevant time period of this State Complaint, the student's progress reports in the 2022/2023 school year all showed satisfactory progress toward the student's IEP goals. No goal was met by the end of the school year. For the first quarter of the 2023/2024 school year, the student's progress report showed the student continued to make satisfactory progress toward the student's reading and writing goals and met the goal in speech/language. (Student Progress Reports)

CONCLUSION OF LAW

The requirements of the provision of a Free Appropriate Public Education to students with disabilities under IDEA and NAC, Chapter 388, necessitate that special education and related services and supplemental aids and services are provided in conformity with an IEP. 34 C.F.R. §§300.17(d), 300.101; NAC §388.281(6)(e); *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884 (9th Cir. 1995); *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9th Cir. 2007).⁴ In accordance with IDEA and NAC, Chapter 388, special education and related services must be made "available" to the student in accordance with the student's IEP as soon as possible after it was developed. 34 C.F.R. §§300.101, 300.323(c); NAC §388.281(6)(e). In this case, the

³ For the second to fourth quarters of the 2022/2023 school year, the student was absent 26 school days, all unexcused. In quarter one of the 2023/2024 school year, the student was absent 14 full school days and two partial days, but all but one of those days were excused absences. (Student Period Attendance Detail, Report Cards)

⁴ The State of Nevada is in the United States Court of Appeals, Ninth Circuit

student had an October 12, 2023 IEP in effect during the relevant period of this State Complaint. (Finding of Fact (FOF) #3)

Pursuant to NAC §388.215, SPCSA is also required to have a system of records for the purpose of verifying the provision of a Free Appropriate Public Education to a student. This requirement for a verifiable system of records is particularly important in the State Complaint process because, unlike due process hearings where testimony is under oath; cross examination of witnesses is available; and there is an opportunity for the Hearing Officer to judge credibility on matters with conflicting evidence, this process is an investigation process. There is no impartial method in this investigative process 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.

As previously discussed, SPCSA is deemed to have made a concession of noncompliance for purposes of this State Complaint. While not required in light of this determined concession, the State Complaint Investigation Team also noted that Charter School conceded areas of noncompliance in the documentation provided in response to this State Complaint. (FOFs #5, #6) Correspondingly, the documentation provided by SPCSA in response to this State Complaint did not reflect the existence of a verifiable system of records at Charter School in that the documentation was either nonexistent, most notably with regard to the provision of speech/language therapy to the student in the 2022/2023 school year or lacked overall integrity.⁵ (FOFs #7 - #9)

Therefore, SPCSA failed to implement the student's October 12, 2022 IEP from November 2, 2022 to October 10, 2023, specifically the required provision of:

- a. Specially designed instruction in the location of the resource room of reading at the frequency of 240 minutes per month; and of writing at 240 minutes per month; and*
- b. The related service of direct speech/language in the location of the speech room at the frequency of 80 minutes per month.*

ORDER OF CORRECTIVE ACTION

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

The State Complaint Investigation Team determined both a student-specific corrective action and a systemic action is required to address SPCSA's failure to timely implement the student's IEP and the absence of a system of records required by NAC §388.215. Even though SPCSA conceded noncompliance in this case, all documents and information provided in the course of the investigation were considered with regard to this Order of Corrective Action.

In accordance with NRS §385.175(6), NDE requests a plan of corrective action (CAP) from SPCSA within 20 SPCSA business days of the date of this Report on SPCSA's plan to implement the ordered actions below, including the timeline. The CAP must be approved by NDE prior to implementation and

⁵ The lack of integrity of Charter School's system of records is exemplified by the provided documentation for the monthly provision of the student's specially designed instruction for the 2022/2023 school year. The documentation not only lacked authentication but credibility in that the reported service minutes ranged from an excessively high number of minutes of reading per month (more than twice the number of minutes in the student's IEP) to a low that was still in excess of the number of minutes in the student's IEP. As such, the documentation raises questions of authenticity or, at least, the appearance of the student being impermissibly removed from the regular education class a greater percentage of the time than the IEP provided. (FOFs #3, #8)

documentation of the completion of the approved CAP must be provided to NDE within 14 days of its completion.

I. Student-Specific Remedy

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

The State Complaint Investigation Team determined that in this case SPCSA fell significantly short of providing the services the student's IEP Team determined were required to provide the student a Free Appropriate Public Education. Notwithstanding the consistent reports of the student's satisfactory progress toward meeting the student's IEP goals, the State Investigation Team found the student's grades in reading and writing in the 2022/2023 school year particularly probative of a material failure to implement the student's May 22, 2023 IEP. (FOFs #10 - #12) *Van Duyn v. Baker School District*, 502 F.3d 811, 107 LRP 51958 (9th Cir. 2007). As such, a student-specific remedy is required.

Compensatory education is designed to provide the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place. This is a fact-specific determination. *Parents of Student W. ex rel. Student W. v. Puyallup School Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005).

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

Based solely on SPCSA's determined concession in this case: the student did not receive 1680 minutes of reading and 1680 minutes of writing in school year 2022/2023 and 480 minutes of reading and 480 minutes of writing in the 2023/2024 school year for the months prior to October 10, 2023. (Given there were three remaining weeks for Charter School to complete the required minutes in the month of October 2023, this compensatory education calculation does not include the seven school days to October 10, 2023.) During that same time period, based solely on the determined concession, the student did not receive 560 minutes of speech/language therapy in the 2022/2023 school year and 160 minutes in the 2023/2024 school year. (FOFs #2, #3)

The State Investigation Team determined that notwithstanding the lack of integrity of the Charter School's system of records, it is likely that the student was provided some of the required minutes of specially designed instruction in reading and writing and, given the verifiable documentation, the minutes of speech/language therapy in September 2023. (FOFs #7 - #0) The ordered compensatory education/service reflects that consideration.

Unless an alternative student-specific remedy is otherwise agreed to in writing by SPCSA and the Parent⁶, the CAP must provide for the following student-specific directed actions and provide the timeline to enable the completion of the ordered compensatory education/service as soon as possible, but no later than one year⁷ from the date of this Report:

1. The provision of 54 hours⁸ of compensatory education of outside classroom support of tutoring for the student in the areas of reading and writing. The individual providing the tutoring must coordinate with the student's school to support the student's class curriculum and assignments.
2. The provision of 10 hours of speech/language therapy.

This compensatory education and service must be in addition to the services in the student's IEP and must be provided during school breaks or extended school year (FOF #3) or before or after school. At SPCSA's discretion, all or part of the compensatory education/service may be provided by a qualified private provider.

SPCSA must consult with the student's Parent(s) on the appropriate means to provide this ordered compensatory education and service to meet the student's educational needs and must consider any concerns of the Parent and/or proposals in the development of the compensatory education/services plan.

In addition to the above required documentation of completion, SPCSA is required to send NDE documentation of the progress toward the provision of the ordered compensatory education and service to the student **no later than June 28, 2024**, unless the ordered compensatory education/service was previously completed and documentation provided to NDE of that completion prior to that date.

II. Systemic Remedy

Upon consideration of the prior determined absence of a system of records in a SPCSA-sponsored charter school⁹, the State Complaint Investigation Team determined a systemic remedy was required to ensure the appropriate future provision of services for all children with disabilities in SPCSA-sponsored charter schools. Therefore, in accordance with NRS §385.175(6), SPCSA's CAP must include the following ordered systemic actions:

⁶ If SPCSA and the Parent agree to an alternative student-specific remedy, that written agreement must be submitted with the CAP and all required documentation in this Order applies to the implementation of the agreed-upon alternative remedy.

⁷ This Order is in effect until all compensatory education/service hours have been provided to the student, even if student is withdrawn from Charter School.

⁸ This determination was based on the following calculation based solely on the determined concession and the likelihood some reading and writing minutes were provided by the Charter School during this nine-month period. For the 2022/2023 school year: the student was to be provided reading and writing for a total of 480 minutes a month. Seven months of the absence of the student's specially designed instruction equals 3360 minutes or 56 hours of reading and writing; the student was to be provided speech/language therapy 80 minutes a month. Seven months of the absence of speech/language therapy equals 560 minutes or 9.33 hours total. For the 2023/2024 school year the student was to be provided reading and writing for a total of 480 minutes a month. Two months of the absence of the student's specially designed instruction equals 960 minutes or 16 hours of reading and writing and, with regard to speech/language therapy, 160 minutes or 2.66 hours. The calculation above reflects the additional minutes provided in September 2023 of speech/language therapy. (FOFs #2, #3, #7 - #9)

⁹ There was a CAP ordered in a 2017 State Complaint for another SPCSA-sponsored charter school to establish a system of records to comply with NAC §388.215. The 2017 Order was prior to SPCSA becoming 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. NRS §388A.159. Therefore, while no negative inference was drawn with regard to this State Complaint, the prior noncompliance supports the existence of a systemic problem.

- A. As the local educational agency for SPCSA-sponsored charter schools, within 60 business days of the date of this Report SPCSA must revise SPCSA policies and procedures to include the requirements of NAC §388.215 with regard to the establishment of a system of records for the purpose of verifying that each student identified as a student with a disability is receiving special education and related services in accordance with the student's IEP. A verifiable system of records must document the implementation of the required kind/type, amount, location, and frequency of the special education, related services, supplementary aids and services, and/or the modifications or supports for each student with a disability. As such, the form of documentation must identify the service; the date of the service; location; duration; and the name and, preferably, the signature of the service provider who authenticates the integrity of the documentation. (At SPCSA's discretion, if required, the signature may be electronic.)

- B. Upon the revision of SPCSA's policies/procedures, SPCSA must disseminate a memorandum prior to the commencement of the 2024/2025 school year notifying SPCSA-sponsored charter schools of the requirement for the establishment of a system of records with the above-described components. With regard to the Charter School involved in this State Complaint, SPCSA's documentation of the completion of the approved CAP provided to NDE must include documentation that Charter School has a verifiable system of records that meets the above specifications to be implemented no later than the commencement of the 2024/2025 school year.