



STATE OF NEW MEXICO  
PUBLIC EDUCATION DEPARTMENT  
300 DON GASPAR  
SANTA FE, NEW MEXICO 87501-2786  
Telephone (505) 827-5800  
[www.ped.state.nm.us](http://www.ped.state.nm.us)

MARIANA D. PADILLA  
SECRETARY OF PUBLIC EDUCATION

MICHELLE LUJAN GRISHAM  
GOVERNOR

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
OFFICE OF SPECIAL EDUCATION  
Complaint Resolution Report  
Roswell Independent Schools  
Case No. C2425-68  
July 18, 2025**

**This Report requires corrective action. See pages 16-23.**

On May 19, 2025, a complaint was filed with the New Mexico Public Education Department's (PED) Office of Special Education (OSE) under the federal Individuals with Disabilities Education Act (IDEA) and the implementing Federal Regulations and State Rules governing publicly funded special education programs for children with disabilities in New Mexico.<sup>1</sup> OSE has investigated the complaint and issues this report pursuant to 34 C.F.R. § 300.152(a)(5) and 6.31.2.13(H)(5)(b) NMAC.

**Conduct of the Complaint Investigation**

The PED's complaint investigator's investigation process in this matter involved the following:

- review of the complaint and supporting documentation from Complainant;
- review of the LEA and Charter's responses to the allegations, together with documentation submitted by the Local Education Agency at the request of the PED's independent complaint investigator;

---

<sup>1</sup> The state-level complaint procedures are set forth in the federal regulations at 34 C.F.R. §§ 300.151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

- review of the Charter's compliance with federal IDEA regulations and state NMAC rules, and therefore, the LEA's compliance as authorizing body for Charter;
- interviews with the Parent and another parent;
- Teacher and SAT team member and
- research of applicable legal authority.

### **Limits to the Investigation**

Federal regulations and state rules limit investigation of state complaints to violations that occurred not more than one year prior to the date complaint is received. 34 C.F.R. § 300.153(c); 6.31.2.13(H)(2)(d) NMAC. Any allegations related to professional or ethical misconduct by an licensed educator or related service provider, or allegations related to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act are not within jurisdiction of this complaint investigation and, as a result, were not investigated.

### **Issues for Investigation**

The following issues regarding alleged violations of the IDEA, its implementing regulations and State rules, are addressed in this report:

1. Whether the Charter/LEA failed in its Child Find obligations toward Student, in violation of 34 C.F.R. §§ 300.111 and 6.31.2.10(A) NMAC; specifically, whether the Charter/LEA;
  - a. Failed to evaluate Student when Parent expressed concerns about Student's academic struggles;
  - b. Failed to evaluate Student when the Charter had reason to suspect Student made be a student with a disability in need of special education;
  - c. Failed to provide Tier 2 and Tier 3 interventions to address academic concerns;
  - d. Failed to ensure meaningful parental participation in decisions concerning the educational program for Student; and  
Failed to provide positive behavioral supports to address any behavior concerns;
2. Whether the Charter/LEA failed to follow the IDEA disciplinary procedures when disciplining Student for violations of the Charter's code of conduct, in violation of 34 C.F.R. § 300.530 and 6.31.2.11(F)(2) NMAC; specifically, whether the Charter/LEA:
  - a. Improperly denied Student participation in field trips with peers;
  - b. Disciplined Student for behaviors that were not violations of the CHARTER's code of conduct;

- c. in school suspension (ISS) for incomplete assignments and/or secluded Student from access to peers; and
  - d. Failed to complete the required disciplinary procedures;
3. Whether the Charter/LEA's actions and/or omissions towards the named Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

**General Findings of Fact**

1. Charter is a public charter school (Charter) authorized by the local educational agency (LEA).
2. The LEA provided PED with assurances of compliance of IDEA Part B as consideration to receipt of IDEA Part B funds from PED. These assurances apply to LEA's oversight duties for any Charter it authorizes.
3. Student has attended the Charter since second grade. Attendance has not been an issue for this Student. Student has not been determined special education eligible but an evaluation is in progress.
4. Beginning in fifth grade, Student began having issues with task completion and grades dropping. That year, the Student Assistance Team (SAT) met to discuss ways to assist Student.
5. The following interventions were provided during the 2023-2024 school year: Reminder from teacher to attend to task (Tapping on desk); Move to a less distracting area as needed; Buddy out system; and Independent activities in place of group activities (when appropriate).
6. Parent reported that Student would end up in tears at home trying to complete homework, especially math. Student was so frustrated that Student shut down and would not complete work. Parent asked the teacher about after school tutoring; she was told that was not available. She was told about summer tutoring but there was a cost associated with summer tutoring.
7. Parent contacted the principal, board members and teachers about Student's struggles but there was no response. The only answer Parent ever received was what tasks the Parents could do to assist Student.
8. At the end of the fifth-grade year, the Charter proposed that Student be retained because Student had not passed any classes and did not have the maturity or necessary skills for successful completion of sixth grade materials. Teacher reported to Parent that Student did not understand basic concepts in math and that was the reason for the suggested retention.
9. Parent objected to retention and Student was promoted to sixth grade over the objections of the Charter.
10. On August 12, 2024, Parent was notified that Student was not turning in work, failing math and not proficient in multiplication facts.

11. At the start of the 2024-2025 school year, Student, who was a sixth grader, continued struggling with task completion and failing grades. Student fell further and further behind in mastery of necessary skills.
12. During the 2024-2025 school year, the Student Assistance Team (SAT) was convened to discuss options for this Student. SAT meetings for this Student were held on August 28, 2024, September 13, 2024, October 16, 2024, November 18, 2024, February 14, 2025 and May 21, 2025.
13. At the November, 18, 2024 SAT meeting, the Charter reported that Parent was told she could make a request for a special education evaluation. The Charter staff did not believe Student needed special education services; Student was capable but not motivated. Since the Charter did not believe that Student needed special education services, they did not propose an evaluation or prepare a prior written notice (PWN).
14. Parent reported that a special education referral was never suggested nor were additional Tier 2 and 3 interventions explained to Parent. Parent stated the only thing discussed was what Parents could do at home and encouraging Student to use online programs for support.
15. The Charter's response stated that in November 2023 (sic, 2024), that Parent did not want Student referred for a special education referral. Parent disputed this and stated she did not know what a special education referral meant.
16. There were multiple emails between the Charter and Parent throughout the sixth-grade year about Student's struggles with math and failing grades.
17. The Charter reported that Student was able to complete the work but there was a consistent lack of effort and/or interest in turning in assignments and refusal to engage in remediation activities to earn passing grades. These factors were contributors to Student's low performance and failing grades.
18. During sixth grade, the Charter instituted a number of interventions to assist Student, but they were not successful, and retention was recommended.
19. The Charter sent a retention/promotion waiver to Parent in May 2025 seeking to retain Student in sixth grade. In that document, it indicated that Student received the following Level 2 interventions: high quality supplemental instructional programs or curricula; pullout instructional time to remediate students on specific skill deficits-based on data; extended time to complete assignments; push-in staff to provide smaller group/individual instruction, more time in small groups or more frequent small group/individual instruction. The Charter also provided level 3 intensive interventions which included pullout services to meet individual needs and longer, more frequent, smaller group or otherwise more intensive interventions.
20. There was no additional explanation in the document for what the interventions entailed. Push in services are not provided in sixth grade, they are limited to elementary school.
21. The Charter stated that the services outlined above were level 2 and level 3 interventions specifically for this Student.
22. Parent reported the first time Parent was aware of any interventions provided to Student was the Retention/Promotion Waiver sent at the end of the 6<sup>th</sup> grade year.

23. Parent requested clarification on what Tier 2 and 3 interventions Student received because she disputed that Student received those supports.
24. The Charter provided limited clarification about the supports received.
25. The Charter shared the following information to the investigator about the Tier 2 and 3 interventions:
  - “High quality supplemental instructional programs or curricula” meaning more direct support during math class and academic mentoring class;
  - “Pullout instruction for specific deficits” was pulling out with small groups during math instruction time or opportunity to meet with staff during lunch study hall or academic mentoring;
  - “Extended time” meant that no set time was listed nor was Student required to meet with specific staff;
  - Push in was not provided in sixth grade;
  - Tier 3 interventions included pull out services and longer, more frequent, small groups including frequent pull out -- sometimes 1-1 during work time in math.
26. Additional interventions available to all students included daily class notes on Google classroom; teacher’s personal cell phone for students; daily emails sent to all students in 6<sup>th</sup> to 8<sup>th</sup> grade; and family and teachers’ comments in Power School.
27. A behavior intervention plan (BIP) was developed by the Charter administrator in October, 2024. No functional behavior assessment (FBA) was completed before the development of the BIP. The Administrator did not attend SAT meetings but based the BIP on the data from PowerSchool and teacher reports. The focus of the BIP was completion of work. Positive behavior strategies were not included in the BIP. The BIP was not revised when Student failed to improve work completion.
28. Student received 1-1 or small group math tutoring from Student’s teacher after the class received instruction. Student was encouraged to use IXL independently to improve skills.
29. Student was provided additional copies of assignments and allowed to hand in assignments late. Student was to write math concepts in a notebook that the teacher would review when completed.
30. Student attended the academic mentorship class every day. This class, which was required for all students, focused on essential academic and executive functioning skills, typing and mindfulness. During the class, students could request to leave for assistance from other teachers. This was student-directed and was not always teacher lead or supervised.
31. The interventions did not change Student’s achievement or task completion rate.
32. The Charter was unable to outline or detail what would trigger the need for a special education referral, and relied on a single score from the end of the year standardized test that indicated Student was proficient in math.
33. Student received three days of ISS for lying to teachers and forgery of Parent’s signature. There were five other disciplinary referrals for this Student for violations of code of conduct but no ISS or OSS was implemented. The behaviors included failure to complete work in whole or in a satisfactory manner, lying and inappropriate language to another Student.

34. When students in the Charter were missing three or more assignments they were required to attend lunch study hall. After a pattern of missing assignments resulting in lunch study hall, Parents were notified by a yellow academic discipline form that the student was required to attend lunch study hall.
35. Student did not start lunch study hall until the second semester of the 2024-2025 school year. Student was required to attend 55 lunch study hall sessions. Students were notified at lunch time that they were required to attend. Students worked in a quiet area with teacher supervision and they could sign out to request assistance from another teacher.
36. Parent reported that Student was in ISS at least once a week. Student was not in ISS but was required to participate in lunch study hall weekly.
37. The number of assignments that Student failed to complete ranged from 3 missing assignments to 8 missing assignments. Incomplete assignments were not limited to math.
38. Teacher and Parent reported that Student was very articulate, smart and when engaged in the class or a project would complete exemplary work. When Student was not engaged, then Student would not complete work. The staff believed that Student lacked motivation and did not want to attend the Charter since friends were at the public school.
39. The Charter stated Parent agreed that Student lacked motivation and she was unable to assist Student because of work and other commitments. Parent disagreed and believed Student was frustrated, particularly in math.
40. Student completed multiple standardized measures during the 2024-2025 school year. On the IMSSA that is given three times a year, Student needed support at the start of the school year in reading and math. By the end of the year, Student was on target in reading and math. Student was proficient in math and reading on the MSSA that is given once a year at the end of the year. The Charter stated test scores indicated that Student was capable of completing the work but Student did not complete and turn in work.
41. The Charter noted that participation in field trips is a privilege not a right. In order to participate in field trips, activity trips and extracurricular activities, a student must 1) maintain a 2.5 GPA in core subjects; 2) have no failing grades; 3 have not more than 2 disciplinary referrals within two months of the field trip and 4) receive no in school suspension (ISS) or out of school suspension (OSS) within two months of the field trip.
42. The Charter has high expectations for behavior and academics and those expectations and field trip requirements are explained to parents and included in the student handbook.
43. Parents were notified in writing one week before a field trip with an explanation of why student was not able to participate in field trip.
44. The Charter noted that the rules applied to all students and other students were also denied participation in field trips.
45. For all field trips, Student was not allowed to participate because of academic concerns including failing classes and/or incomplete work.

46. Parent was called to school on April 24, 2025, to take Student home because Student was allegedly disrespectful. Parent was later contacted by another parent in the class who stated the teacher was having an “attitude,” Student was not disrespectful. Parent contacted school but there was no follow up to her complaint. This incident was not noted on disciplinary records or attendance records.
47. Student failed multiple classes in sixth grade and retention was proposed over the objections of the Parent.
48. Parent requested a special education evaluation of Student and a consent for evaluation was signed on May 21, 2025.
49. The evaluation has started and it is expected that reports will be completed by July 20, 2025. The eligibility meeting will be held once school starts. The first day of school is August 4, 2025.
50. Student will be attending a different school for the 2025-2026 school year. The Charter disenrolled Student on the last day of school; Student has not enrolled in the new school.

### **Discussion and Conclusions of Law**

#### **Relationship between Charter and LEA and how such relates to findings and responsibilities regarding IDEA Part B violations and corrective actions.**

Charter is a public charter school (Charter) authorized by the LEA. The LEA provided PED with assurances of compliance of IDEA Part B as consideration to receipt of IDEA Part B funds from PED. These assurances apply to LEA’s oversight duties for any Charter it authorizes. Thus, non-compliance by an authorized Charter is non-compliance by its authorizing LEA. Below, actions are attributed to the Charter, but corrective action, if any, is cited to the LEA. In some cases, both the Charter and the LEA will need to take corrective action; any corrective action required of Charter is the co-responsibility of Charter and authorizing LEA.

#### **Issue No. 1**

**Whether the Charter/LEA failed in its Child Find obligations toward Student, in violation of 34 C.F.R. § 300.111 and 6.31.2.10(A) NMAC; specifically, whether the Charter/LEA:**

- a. Failed to evaluate Student when Parent expressed concerns about Student’s academic struggles;
- b. Failed to evaluate Student when the Charter had reason to suspect Student made be a student with a disability in need of special education;
- c. Failed to provide Tier 2 and Tier 3 interventions to address academic concerns;
- d. Failed to ensure meaningful parental participation in decisions concerning the educational program for Student; and

**e. Failed to provide positive behavioral supports to address any behavior concerns;**

Child Find is an affirmative, ongoing obligation of an LEA to identify, locate, and evaluate all children with disabilities residing within the jurisdiction who are in need of special education and related services. 34 C.F.R § 300.111(a)(1)(i) and 6.31.2.10(a) NMAC. Whenever an LEA has reason to suspect a student has an IDEA disability and needs special education as a result of that disability, it must evaluate. An LEA cannot stand back and wait for the parents to request an evaluation; the lea must seek out and evaluate IDEA eligible students. *Compton Unified School District v. Addison*, 598 F3d 1181 (9th Cir. 2010), *cert. denied*, 132 S. Ct. 996 (2012).

Failing to meet child find obligations may deny FAPE to a student that should have been identified and may result in compensatory education. *T.B. v. Prince George's County Board of Education*, 897 F3d 566 (4th Cir. 2018), *cert. denied*, 139 Sect. 1307 (2019). When a student suffers substantive harm because of the child find violation, that may be considered a denial of FAPE. *J.N. v. Jefferson County Board of Education*, 12 F4th 1355).

An LEA may initially provide interventions in lieu of referring a child for an evaluation to allow for response to learning and behavior difficulties, but if data demonstrates need for evaluation, initial evaluation may not be delayed. *Letter to Ferrara* (OSEP 2012).

These multi-layer systems of support (MLSS) tiers 1, 2 and 3 interventions are high quality instruction with monitoring of the effectiveness of the interventions to address student's difficulties. *Questions and Answers on Response to Intervention (RTI) and Early Intervening Services (EIS)* (OSERS 2007); and *Letter to Zirkel* (OSEP 2013), and § 6.29.1.9(E) NMAC. MLSS is designed as a comprehensive continuum of evidence-based, systemic practices to support a rapid response to student's needs. 20 U.S.C. 7801. Each tier provides more intense interventions services until the student fails to respond to an intervention. The interventions should be individually determined. *Id.* Significantly, while use of MLSS is required, and while it may inform the LEA as a set of data for a student, when a student continues to have difficulty in general education after interventions have been provided, then the student should be referred for an initial evaluation. *Letter to Ferrara* (OSEP 2012).

**Reason to suspect Student may be eligible for special education.**

Issue 1 concerns whether the Charter had reason to suspect Student might be eligible for special education. 6.31.2.20 (B)(3) NMAC. Prior to fifth grade, Student was successful at the Charter. During the second semester of the fifth-grade year, Student failed to complete and turn in assignments and was failing classes which resulted in the proposal that Student should be retained because of lack of maturity and incomplete fundamental skills needed for success in sixth grade.



That year, Parent reported that Student would be in tears and frustrated when Student attempted to complete homework assignments. Parent contacted the school about concerns. The Charter convened multiple SAT meetings during the 2023-2024 school year. Parent disagreed with the retention and Student was promoted to the sixth grade.

Shortly after the start of the 2024-2025 school, Student continued with the same struggles of work completion. Parent was informed that Student was failing and did not have fundamental skills in math. The Charter convened six SAT meetings during the 2024-2025 school year. The SAT team met in February and then not again until the end of May 2025 when retention was discussed. In October 2024, the administration developed a BIP based on teacher reports and PowerSchool information since the Administrator did not attend all SAT meetings. The BIP was designed to address work completion but was developed without an FBA or positive behavior supports. The BIP was implemented on November 17, 2024, but Student's work completion did not improve and the BIP was not revised.

At the November 17, 2024, SAT meeting, the Charter mentioned that Parent could request a special education referral. The Charter reported that Parent declined an evaluation because Student could not complete the work, Student was not motivated. Parent disputed this and said she never understood she could request an evaluation. Since the Charter did not believe that Student needed special education services, they did not propose an evaluation or prepare a prior written notice (PWN).

Multiple interventions, most of which were available to all students at the Charter were also implemented. After Christmas, lunch study hall was implemented and Student was required to participate 55 times, multiple times per week. Student continued to struggle with work completion and failing grades even with interventions.

**a. Failed to evaluate Student when Parent expressed concerns about Student's academic struggles**

Although Parent reported Student's frustration and her concerns about Student's academic performance, Parent never requested a special education evaluation of Student. The Charter had convened multiple SAT meetings the previous school year and during the 2024-2025 school year and implemented interventions to address Student's struggles with work completion and failing grades. The Charter did not believe Student needed special education services; Student was capable of work but lacked motivation. The Charter may implement interventions to address students that are struggling with academic and behavioral difficulties before a special education referral is made. Expressing concerns without explicit request for evaluation is not enough, alone, to trigger duty for Charter to evaluate Student.

**As to Issue 1a, the LEA is not cited, Corrective Action is not required.**

**b. Failed to evaluate Student when the Charter/LEA had reason to suspect Student made be a student with a disability in need of special education;**

As outlined above, the Charter had sufficient information to suspect that Student may be eligible for special education services. At the November 2024 SAT meeting, the Charter discussed that Parent could make a request for an evaluation. The Charter brought up the issue of a special education referral, this would indicate that the Charter had some suspicions that Student may need special education services. Student, who is bright, articulate and capable of outstanding work when engaged, had failed three semesters of school and the Charter had proposed retention twice. The Charter erred when it failed to make a referral for a special education evaluation. Although it was clear the interventions were not helping Student, the Charter was unable to outline what would trigger the need for a referral but relied on one score from the end of the year standardized test that indicated Student was proficient in math. That is, Student could complete the work, Student would not complete the work. Instead of a referral, the Charter sent a retention/promotion waiver to Parent requesting consent for retention for the following school year. Student was denied access to multiple field trips because of failing grades and poor work completion. Student was subjected to lunch study hall, ISS because of failing grades and poor work completion. The BIP was not revised nor was there a meeting to discuss the 55 lunch study halls which the Charter's form noted were academic discipline. These actions resulted in a Child Find violation.

**As to Issue 1b, the LEA is cited, Corrective Action is required.**

**c. Failed to provide Tier 2 and Tier 3 interventions to address academic concerns;**

The retention waiver listed Tier 2 and Tier 3 interventions for this Student. Some of the interventions were not specific to Student but were required or available to all students. Pull out services were available to Student but they were the responsibility of Student to seek out assistance from staff. Student did not choose to participate in many of the interventions. Although the Charter listed interventions that they were providing, the records are not clear whether all interventions were provided in a consistent manner, especially when Student was often responsible for seeking out staff for assistance. It was apparent that the interventions provided were not effective because Student was still failing classes and retention was the plan. The use of tier interventions is not strictly an IDEA Part B issue and such was made part of the analysis of 1b, above.

**As to Issue 1c, the LEA is not cited, Corrective Action is not required.**

**d. Failed to ensure meaningful parental participation in decisions concerning the educational program for Student;**

Based on the record available to the Investigator, it is unclear about whether Parent had the necessary information to make informed decisions about Student's educational program. Parent attended all SAT meetings and received numerous emails from the Charter about Student's progress or lack thereof and had access to Google classroom and PowerSchool to know about Student's performance. However, the Charter did not provide a clear explanation of the interventions provided or options for Student when Student was failing in 5<sup>th</sup> and 6<sup>th</sup> grade. The Charter brought up a special education referral but the information provided was that Parent could request an evaluation and Charter did not provide a PWN proposing the evaluation. The BIP was developed by the administrator prior to the meeting and presented at the SAT meeting. It is disputed whether Parent refused an evaluation. Based on the information available, Parent had the opportunity to participate in meetings, email chains, access to PowerSchool and other information and ask questions. While the Charter did not always answer Parent's questions nor provide all needed information for the parent to make decisions, the failure is due to Charter not recognizing importance of data it had versus not communicating its current understandings with Parent; Parent was not denied meaningful parental participation.

**As to Issue 1d, the LEA is not cited, Corrective Action is not required.**

**e. Failed to provide positive behavioral supports to address any behavior concerns;**

Student is in process of a special education evaluation and eligibility has not yet been determined. Although positive behavioral supports are encouraged by OSEP to address a student's behavior, it is not required nor are they required for general education students. IDEA does not require a BIP except after a MDR when the behavior is a manifestation of Student's disability. As the instant facts do not have a student who is eligible for special education, there was no violation of Part B of IDEA.

**As to Issue 1e, the LEA is not cited, Corrective Action is not required.**

**The LEA is cited on Issue 1, Corrective Action is required.**

**Issue No. 2**

**Whether the Charter/LEA failed to follow the IDEA disciplinary procedures when disciplining Student for violations of the Charter's code of conduct, in violation of 34 C.F.R. § 300.530 and 6.31.2.11(F)(2) NMAC; specifically, whether the Charter/LEA:**

- a. Improperly denied Student participation in field trips with peers;**
- b. Disciplined Student for behaviors that were not violations of the Charter's code of conduct;**
- c. Imposed in school suspension (ISS) for incomplete assignments and/or secluded Student from access to peers; and**
- d. Failed to complete the required disciplinary procedures**

Under IDEA, an LEA may discipline a student for violation of a code of conduct resulting in removal or suspension from the student's educational program for not more than 10 school days, provided that all students, including non-disabled students, would be subject to the same discipline. 34 C.F.R. § 300.530(b); 6.31.2.11(F)(2) NMAC. A prior written notice (PWN) must be sent before the LEA proposes or refuses to initiate or change the identification, evaluation, educational placement or the provision of FAPE. 34 C.F.R. § 300.503(a).

IDEA provides that the parents of a student who has not been determined eligible for special education and related services to assert any available IDEA protections, in circumstances where the LEA is deemed to have knowledge that the student is a child with a disability. 34 C.F.R. § 534 (a). The LEA has such knowledge, if before the behavior occurred: 1) the parent expressed concern in writing that the child is in need of special education. 34 C.F.R. § 300.534 (b)(1); 2) the parent has requested an evaluation of the student. 34 C.F.R. 300.534(b)(2); or 3) the teacher or other district [LEA] personnel has expressed specific concerns about a pattern of behavior directly to supervisors. 34 C.F.R. § 300.534 (b)(3).

Students with disabilities should have an equal opportunity to participate in nonacademic and extracurricular activities as to those students who are not disabled. Academic and attendance eligibility requirements are in compliance with IDEA when the requirements are uniformly applied to all students in the school. 34 C.F.R. § 104.37.

Students who qualify for IDEA Part B discipline protections have required Manifestation Determination Report triggered when they are removed more than 10 times, either in one action or as a pattern of removals. 34 C.F.R. § 300.530.

When a student has not been determined eligible but the Charter has knowledge that the child may be special education eligible, the disciplinary procedural rules may apply. 34 C.F.R. § 300.534.

The Administrator in October had direct knowledge from Charter personnel of Student's pattern of behavior for failing to complete assignments evidenced by Administrator developing the BIP for Student based on records and teacher reports. This deemed Charter knowledge before discipline actions occurred per: "The teacher of the child, or other personnel of the LEA,

expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.” *Id.* At (b)(3).

**a. Improperly denied Student participation in field trips with peers;**

The Charter has a policy that participation in field trips is a privilege not a right and students must demonstrate appropriate behavior before they can leave campus to participate in field trips. This policy is included in the Charter’s student handbook and is also explained to parents at the start of the school year and one week prior to the field trip when parents are informed about the reason why student cannot participate in the field trip.

As noted by the Charter, the rules apply to all students that attend the Charter and is uniformly applied. Student, who has not been determined eligible for special education services, does not have an IEP that allows for participation in field trips. However, the Administrator in October had direct knowledge from Charter personnel of Student’s pattern of behavior for failing to complete assignments evidenced by Administrator developing the BIP for Student based on records and teacher reports. This deemed Charter knowledge that a Student may be student with a disability See “The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.” 34 C.F.R. 300.534(b)(3).

The question remains whether a timely evaluation of Student and appropriate services would have allowed participation in educational field trips. Although Student had some inappropriate behaviors resulting in ISS, the majority of behaviors and reason for denial of field trips was failure to complete and turn in work. Denial of participation in field trips may seem an extreme is not a violation of Part B of IDEA since it was uniformly applied to all students.

**As to Issue 2a, the LEA is not cited, Corrective Action is not required.**

**b. Disciplined Student for behaviors that were not violations of the Charter’s code of conduct;**

As discussed above, Student had IDEA Part B discipline protections even though not yet evaluated because Charter violated child find and Administrator had knowledge of Student’s pattern of behavior before discipline.

Students must apply for admission to the Charter and agree to the expectations set out in the Charter’s student handbook. The Charter has high expectations for its students which include prohibition of disrespectful behavior and failure to complete work expectations. Student was

disciplined for these and other behaviors that were listed in the Charter's student handbook in a manner uniform to other students and thus were not a violation of Part B of IDEA.

**As to Issue 2b, the LEA is not cited, Correction Action is not required.**

**c. Imposed in school suspension (ISS) for incomplete assignments and/or secluded Student from access to peers;**

As discussed above, Student had IDEA Part B discipline protections even though not yet evaluated because Charter violated child find and Administrator had knowledge of Student's pattern of behavior before discipline.

Student was required to participate in lunch study hall when Student failed to complete or turn in three assignments. Student participate in lunch study hall 55 times during the Spring semester of the 2024-2025 school year. Lunch study hall and the prohibition from participating in field trips denied Student access to peers. However, Student had access to peers at other times. Failure to complete work was part of the Charter's code of conduct. ISS was also imposed three times for misbehavior. The actions of the Charter did not constitute a violation of Part B of IDEA.

**As to Issue 2c, the LEA is not cited, Corrective Action is not required.**

**d. Failed to complete the required disciplinary procedures**

When a student is special education eligible and there is a pattern of behavior or the child has been subjected to ten days of disciplinary removal, a manifestation determination review (MDR) is required. When a student has not been determined eligible but the Charter has knowledge that the child may be special education eligible, the disciplinary procedural rules may apply. 34 C.F.R. § 300.534.

The Administrator in October had direct knowledge from Charter personnel of Student's pattern of behavior for failing to complete assignments evidenced by Administrator developing the BIP for Student based on records and teacher reports. This deemed Charter knowledge before discipline actions occurred per: "The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency." *Id.* At (b)(3).

The second step of the analysis is whether Student's placement was changed – was Student removed more than 10 times in time period for similar behaviors, pursuant to 34 C.F.R. § 300.530?

Student had at least 3 instances of ISS and was required to attend 55 lunch study halls. Student was also subject to a disciplinary removal on April 25, 2025. The discipline applied to student for ISS and lunch study halls was in the same area and same discipline as received by general education students for similar violations of the Charter's code of conduct and thus are not counted as removals.

The child find violation triggered Student's discipline protections under the IDEA Part B, but the number of removals was not greater than 10 and no MDR was required. Charter did not violate IDEA Part B specific to discipline. However, it is noted that 55 lunch detentions alone suggest needed actions beyond a BIP without FBA and data supporting need for evaluation.

**As to Issue 2d, the LEA is not cited, Corrective Action is not required.**

**The LEA is not cited on Issue 2, Corrective Action is not required.**

### **Issue No. 3**

**Whether the Charter/LEA's actions and/or omissions resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.**

The IDEA is meant to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) designed to meet their unique needs. Students who are eligible for special education services are entitled to a FAPE. 34 C.F.R. § 300.101; 6.31.2.8 NMAC. LEAs are obligated to provide a FAPE to students within their jurisdiction who have been determined eligible for special education services. 34 C.F.R. § 300.17.

To be considered a student with a disability under IDEA, a student must meet two requirements: 1) Have a recognized disability under state law, and 2) Need special education and related services as a result of that disability. 34 C.F.R. § 300.8 (a)(1). A student must be evaluated and determined eligible prior to development of an IEP. 34 C.F.R. § 300.306 (a).

Failing to meet child find obligations may deny FAPE to a student that should have been identified and may result in compensatory education. *T.B. v. Prince George's County Board of Education*, 897 F3d 566 (4th Cir. 2018), *cert. denied*, 139 S.Ct. 1307 (2019). When a student suffers substantive harm because of the child find violation, that may be considered a denial of FAPE. *J.N. v. Jefferson County Board of Education*, 12 F4th 1355).

Special Education eligibility for this Student has not been determined, such being the basis of a Child Find violation. The time between when LEA/Charter should have evaluated Student and the evaluation is analyzed to see if student suffered substantive harm. If so, then the violation of

child find is also a denial of FAPE. Corrective action will be dependent upon a later finding of eligibility.

The Charter had sufficient reason to suspect Student may be special education eligible. Retention of Student was proposed last year and this year because of lack of progress and failing grades -- Student was failing academically, suffering substantive harm because of child find violation.

**As to Issue 3, the LEA is cited, Corrective Action is required.**

**Summary of Citations**

<b>IDEA/State Rule Provisions Violated</b>	<b>Description of Violation</b>
34 C.F.R. § 300.111 and 6.31.2.10(A) NMAC	The LEA failed in its Child Find obligations toward Student, when it failed to evaluate Student when the Charter had reason to suspect Student made be a student with a disability in need of special education.
34 C.F.R. § 300.101 and 6.31.2.8 NMAC.	The LEA's actions and/or omissions towards Student resulted in a denial of a free appropriate public education (FAPE).

**Required Actions and Deadlines**

**By August 18, 2025**, Charter and LEA's Special Education Directors must assure the OSE in writing that both entities will implement the provisions of this Corrective Action Plan (CAP). OSE requests LEA coordinate submission of all documentation of the completed corrective actions to the individual below, who is assigned to monitor progress with Corrective Action Plan and to be its point of contact about this complaint from here forward:

Dr. Elizabeth Cassel  
Corrective Action Plan Monitor  
Office of Special Education  
New Mexico Public Education Department  
300 Don Gaspar Avenue  
Santa Fe, NM 87501  
Telephone: (505) 490-3918  
[Elizabeth.Cassel@ped.nm.gov](mailto:Elizabeth.Cassel@ped.nm.gov)

The file on this complaint will remain open pending PED's satisfaction that required elements of this Corrective Action Plan are accomplished within deadlines stated. LEA is advised that OSE will



retain jurisdiction over the complaint until it is officially closed by this agency and that failure to comply with the plan may result in further consequences from OSE.

Each step in this Corrective Action Plan is subject to and must be carried out in compliance with procedural requirements of IDEA 2004 and implementing federal regulations and State rules. Each step also must be carried out within timelines in the Corrective Action Plan. If a brief extension of time for steps in the Corrective Action Plan is needed, a request in writing should be submitted to Corrective Action Plan Monitor. The request should include case number, date for proposed extension, and reason for needed extension. OSE will notify parties of any extension granted.

**Please carefully read entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes. All corrective action must be completed no later than August 18, 2026 and reported to OSE no later than September 6, 2026.** All documentation submitted to OSE to demonstrate compliance with the CAP must be clearly labeled to indicate state complaint case number and step number.

**Corrective Action Plan**

<b>Step No.</b>	<b><u>Actions Required by Charter/LEA</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
<b>1.</b>	As described above, Charter/LEA will submit a written assurance to the PED Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	<b><i>July 28, 2025</i></b>	Written Assurance/Letter/Email	<b>July 28, 2025</b>
<b>2.</b>	Charter and LEA Special Education Directors/School Principal shall meet virtually with OSE CAP Monitor to review Complaint Resolution Report, Corrective Action Plan, and any other measures that Charter/LEA plans to take to ensure that violations are corrected and do not recur. Charter/LEA Director has	<b><i>August 1, 2025</i></b>	Notes from meeting prepared by Charter/LEA	<b>August 8, 2025</b>

<b>Step No.</b>	<b><u>Actions Required by Charter/LEA</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
	discretion to include other Charter/LEA or school administrators or personnel in this meeting. Charter/LEA Director shall be responsible for arranging this virtual meeting with OSE CAP Monitor.			
<b>3.</b>	Charter/LEA Special Education Director will meet with relevant case manager, implementation specialist, and others with special education roles and responsibilities to review Complaint Resolution Report and to ensure that those persons understand this report, violations that were found, and corrective action that will be taken to address violations.	<b>August 15, 2025</b>	Notes from meeting prepared by Charter/LEA, including list of attendees, summary of key points, and specific responsibilities assigned to each participant for ensuring compliance.	<b>August 20, 2025</b>
<b>4.</b>	Charter/LEA will complete initial comprehensive evaluation in all suspected areas of need, especially academic, functional, social and behavioral areas to determine eligibility.	<b>Evaluation will be completed within 30 days of Student being accessible to Charter for such to occur.</b>	<ol style="list-style-type: none"> <li>1. Notice to Parents of evaluation</li> <li>2. Request for Parental Consent</li> <li>3. Written consent or declination from Parent</li> <li>4. Evaluation documents</li> </ol>	<b>July 28, 2025</b>  <b>July 28, 2025</b>  <b>Within 3 work days of receipt</b>  <b>Within 10 days of completion of steps of reevaluation</b>
<b>5.</b>	Charter/LEA shall complete a functional behavior assessment (FBA) of Student. This FBA shall be completed by a BCBA.	<b>August 15, 2025</b>	FBA Report	<b>August 15, 2025</b>

<b>Step No.</b>	<b><u>Actions Required by Charter/LEA</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
<b>6.</b>	<p>Charter/LEA shall convene a facilitated IEP meeting for Student if Student is determined eligible. The facilitated IEP meeting shall address, at minimum:</p> <ol style="list-style-type: none"> <li>1. Lack of work completion</li> <li>2. Services and supports for areas of need</li> <li>3. Behaviors and development of BIP, including completion of FBA</li> <li>4. Additional services, as needed, because of Child Find violation</li> </ol> <p>Facilitator shall be independent of Charter/LEA and shall be selected from PED list of approved facilitators.</p> <p>Facilitator shall be paid for by LEA.</p> <p>Charter/LEA shall ensure a meeting notice is provided in advance of meeting, pursuant to 34 C.F.R. § 300.322. <i>Note:</i> If mutually agreeable to Parent and required staff, meeting may be rescheduled within 10 school days of proposed date.</p> <p>Charter/LEA shall ensure that a copy of IEP is provided to Parent at end of meeting and that all related notices are in Parent's native language.</p> <p>Charter/LEA will also ensure that Parent's preferred mode (hard copy</p>	<b>Within thirty days of completion of evaluation.</b>	<ol style="list-style-type: none"> <li>1. Invitation to IEP meeting</li> <li>2. Agenda for IEP meeting</li> <li>3. IEP</li> <li>4. Prior Written Notice(s)</li> <li>5. Documentation of finalized communication plan distributed to all of Student's teachers and service providers within 5 school days of meeting with confirmation of parent's receipt logged.</li> </ol>	<b>7 days after the FIEP meeting is held</b>

Step No.	<u>Actions Required by Charter/LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	and/or electronic) of communication is established, including language, and a plan put in place to both follow Parent's preferences and that plan communicated out to all teachers and service providers of Student.			
7.	<p>If Student is found eligible for special education and related services, LEA shall provide compensatory education based on calculation of lost educational benefit determined by Student's FIEP as back dated to August, 2024 and as reasonable for benefit of Student.</p> <p>The plan for compensatory services shall be documented in a PWN for the facilitated IEP meeting.</p> <p>LEA shall maintain a PED-approved tracker that includes total compensatory hours owed and provided to Student based on missed services as well as Student need.</p> <p>If a parent declines compensatory education, LEA shall get confirmation in writing and provide such to PED.</p>	<p><b><i>Date Comp services begin will be determined at FIEP and will occur per FIEP PWN until completed.</i></b></p>	<p>Monthly documentation of delivery/provision of compensatory education services, including logs of services recorded in the PED-approved Excel spreadsheet log and a summary progress report submitted each quarter provided by the OSE CAP monitor.</p> <p>Prior Written Notice containing plan for compensatory services.</p>	<p><b>Monthly from date of compensatory services plan until the compensatory education hours are completed</b></p> <p><b><i>7 days after the FEIP meeting is held</i></b></p>

Step No.	<u>Actions Required by Charter/LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	<p>These compensatory services are above and beyond regular services required by Student's IEP.</p> <p>Scheduling compensatory services shall be determined in collaboration with Parent and documented in writing in a Prior Written Notice. Scheduling can include provisions of services in summer months.</p> <p>Services shall be provided in person unless otherwise agreed upon in writing by Parent.</p> <p>If LEA, due to staffing or other limitations, is unable to provide required IEP and compensatory services as outlined Student's IEP and compensatory services plan, LEA is required to contract with private provider to ensure those services are provided.</p> <p>Partial fulfillment of any service hours shall be documented monthly using the PED-approved log, with a summary progress report submitted each quarter.</p>			
8.	<p>Charter/LEA shall review and revise, where necessary, special education policies and procedures regarding:</p> <p>1. When special education referrals are required</p> <p>If Charter/LEA believes no revisions are necessary, current policy</p>	<p><b>August 18, 2025</b></p>	<p>Current policy Charter/LEA believes does not need to be revised</p>	<p><b>August 1, 2025</b></p>

<b>Step No.</b>	<b><u>Actions Required by Charter/LEA</u></b>	<b><u>Complete Actions By</u></b>	<b><u>Documents Required to be Submitted to PED OSE</u></b>	<b><u>Document Due Date</u></b>
	<p>specific to numbered issues below shall be provided.</p> <p>1. When special education referrals are required</p> <p>If revisions are made, or new policy is written, such shall be provided.</p>		<p>Draft of Proposed Policy Revisions for PED Approval</p> <p>Copy of revised Council/Board's approved policy</p>	<p><b><i>August 18, 2025</i></b></p> <p><b><i>Within 5 days of Council/Board's decision</i></b></p>
<b>9.</b>	<p>Charter/LEA shall arrange training for Charter school staff (including special education teachers, special education administrators, and related service personnel) to be provided by a person independent of Charter/LEA with expertise in special education who was not involved in responding to this complaint and who is approved by PED.</p> <p>Training materials/presentation will be provided to CAP Monitor for approval before use.</p>	<b><i>July 28, 2025</i></b>	<p>Submission of proposed trainer and trainer's resume and proposed presentation for NMPED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training</p>	<p><b><i>August 11, 2025</i></b></p> <p><b><i>August 11, 2025</i></b></p> <p><b><i>Within 10 days of training.</i></b></p>

Step No.	<u>Actions Required by Charter/LEA</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
	<p>Training shall address the following special education topics:</p> <ol style="list-style-type: none"> <li>1. Special Education referrals</li> <li>2. When does a Charter/LEA have reason to suspect a child may need evaluation for special education eligibility</li> <li>3. Behavior issues, FBAs and BIPs</li> </ol> <p>Charter/LEA shall also submit a plan for ensuring ongoing training of new hires or staff unable to attend the training.</p>		<p>and plan for addressing the provision of training to those staff not in attendance.</p>	

This report constitutes the New Mexico Public Education Department's final decision regarding this complaint. If you have any questions about this report, please contact the Corrective Action Plan Monitor.

Investigated by:

/s/ Michele K. Bennett, Esq.

Michele K. Bennett, Esq.

Complaint Investigator

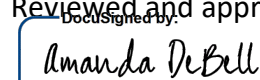
Reviewed by:

/s/ Natalie Campbell

Natalie Campbell, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

  
Amanda DeBell

Deputy Cabinet Secretary, New Mexico Public Education Department