



State of Arizona
Department of Education

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NOV 17 2010

Tom Horne
Superintendent of
Public Instruction

November 16, 2010

Ms. Marcia Lee, Owner and Charter Holder
Back-to-Basics Charter School
1529 W. McDowell Road
P O Box 2208
Peoria, AZ 85380

RE: Back-to-Basics Charter School: Reference Number 2173

Dear Ms. Lee:

On September 24, 2010, our office received a formal state administrative complaint from Mr. John Nyberg (Complainant), alleging that the Back-to-Basics Charter School (School) is in noncompliance in special education matters relating to the following four students: [REDACTED] (Student N); [REDACTED] (Student O); [REDACTED] (Student P); and [REDACTED] (Student Q).

As required by 34 C.F.R. §§ 300.151-300.153 and the Arizona Administrative Code R7-2-405.01, our office conducted an investigation into this matter. This investigation included contact with the following: the Complainant; Ms. Jill Plonski, special education coordinator; Ms. Sandra Geraghty, special education teacher; Ms. Le Ellyn Nyberg, teacher; Mr. Jorge Vega, site director; Ms. Rachel Landau, teacher; Ms. Lisa Piccininni, speech-language pathologist; Ms. Janet Hnat, site director; Ms. Nancy Winship, former employee of the School; and you. In addition, the Students' records maintained by your School were reviewed, as were documents and emails provided by the Complainant and other staff members.

The Complainant's allegations apply to three schools that operate under two separate charters, both of which you own. For this reason, two separate Letters of Findings are being issued: the Letter of Findings for Back-to-Basics Charter School is enclosed; the Letter of Findings specific to Scottsdale Horizons will be issued separately under reference number 2170. In accordance with 34 C.F.R. § 300.152(a), these written decisions address each allegation in the complaint and include our findings of fact, conclusions of law, and the reasons for our final decisions.

Although it is typical for a parent to file a complaint, the regulations that implement the Individuals with Disabilities Education Act (IDEA) also permit organizations or individuals to file complaints. [34 C.F.R. § 300.153(a)] Because complaints are usually filed by parents, they are routinely sent a copy of the Letter of Findings as a matter of course. However, because the Complainant in this instance is not a parent of any of the students named in this complaint, and because this Letter of Findings includes personally identifiable student information, the Complainant will not automatically receive a copy of this Letter of Findings. He has been informed that he can receive a redacted copy of this Letter of Findings by requesting one in writing from this office.

Even though the parents of the students named in this complaint did not file this complaint and may be unaware that a complaint has been filed on behalf of their child, they will receive a copy of this Letter of Findings, along with a cover letter (see Example) explaining to them that the IDEA regulations permit others to file complaints and that this state administrative complaint was filed by the Complainant on behalf of their child.

In addition, the cover letter will offer to the parents the services of the Arizona Department of Education/Exceptional Student Services (ADE/ESS) so that they fully understand the allegations, the investigation, and the implications of the corrective action that is hereby ordered. In this regard, we will conduct a parent forum, conduct conference calls, or have individual conversations with any parents who wish to avail themselves of this opportunity.

Please do not hesitate to contact the ADE/ESS Education Program Specialist assigned to your School, or me, if our office can be of further assistance to you. If you have any questions regarding the corrective action, please contact me at 520-628-6616.

Sincerely,



Bob Fitzsimmons
Education Program Specialist/
Complaint Investigator
Exceptional Student Services
Phone: 520-628-6616
Fax: 520-628-6324



Kacey Gregson
Director of Dispute Resolution
Exceptional Student Services
Phone: 602-364-4011
Fax: 602-364-0641

cc: Ms. Jill Plonski, Director of Special Education, Back-to-Basics Charter School
Ms. DeAnna Rowe, Executive Director, Arizona Board for Charter Schools
ADE File

ec: Ms. Allison Freeman, Education Program Specialist, Exceptional Student Services, ADE



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

Example

November 16, 2010

Parent name
Address
Address

RE: Back-to-Basics Charter School: Reference Number 2173

Dear Parent:

I am writing to inform you that on September 24, 2010, Mr. John Nyberg, a former employee of the Scottsdale Horizons Charter School, filed a state administrative complaint against the Back-to-Basics Charter School (School) on behalf of your child and other special education students at the School (Students). He alleges that the School has failed to properly implement the Students' individualized education programs (IEPs), and that the School is therefore in violation of the Individuals with Disabilities Education Act (IDEA). While it is typical for a parent to file such a complaint, the law permits anyone to make a complaint. Therefore, in accordance with 34 C.F.R. §§ 300.151-300.153 and the Arizona Administrative Code R7-2-405.01, our office conducted an investigation into this matter.

Attached you will find a copy of the Letter of Findings issued as a result of the investigation just completed. In order to maintain confidentiality, your child is identified in the Letter of Findings as Student ____.

The School should be in contact with you shortly to discuss the compensatory educational services that this office has ordered the School to provide your child to make-up for its lapse in providing special education instruction and related services in accordance with your child's IEP. If your child does not receive the compensatory educational services by the due dates indicated in the Letter of Findings, please contact Bob Fitzsimmons as soon as possible at the number below.

Finally, the information in the Letter of Findings and in the corrective action may be confusing. The Arizona Department of Education/Exceptional Student Services (ADE/ESS) will be happy to conduct a parent forum, conduct telephone conference calls, or have individual conversations with any of the parents involved so that we can address your concerns and answer any questions you may have. To make your wishes known regarding these options, please contact Mr. Fitzsimmons.

Sincerely,

Bob Fitzsimmons
Education Program Specialist/
Complaint Investigator
Exceptional Student Services
Phone: 520-628-6616
Fax: 520-628-6324

Kacey Gregson
Director of Dispute Resolution
Exceptional Student Services
Phone: 602-364-4011
Fax: 602-364-0641

cc: Ms. Marcia Lee, Charter Holder and Owner, Scottsdale Horizons Charter School
Ms. Jill Plonski, Special Education Coordinator, Scottsdale Horizons Charter School
Ms. DeAnna Rowe, Executive Director, Arizona State Board for Charter Schools
ADE File

ec: Ms. Allison Freeman, Education Program Specialist, Exceptional Student Services, ADE

Complainant: Mr. John Nyberg
Public Education Agency: Back-to-Basics Charter School
Reference Number: 2173
Investigator: Bob Fitzsimmons
Date Issued: November 16, 2010

LETTER OF FINDINGS

Introduction

The charter holder for Back-to-Basics Charter School, Ms. Marcia Lee, is also the charter holder for Scottsdale Horizons. Two different charter schools operate under the Scottsdale Horizons corporate umbrella: Peoria Horizons Charter School and Montage Academy. All three schools (Back-to-Basics Charter School, Peoria Horizons Charter School, and Montage Academy) are identified by the Complainant in his complaint form, and the allegations apply equally to all three schools. Although this Letter of Findings focuses on the Back-to-Basics Charter School, it also includes information about special education services at Peoria Horizons and Montage Academy. This is because the staff members who provide special education and related services at Back-to-Basics Charter School are the same as those who provide services at Peoria Horizons and Montage Academy. Therefore, to determine whether the Complainant's allegations are true, it was necessary to look at the totality of services provided at all three schools. However, the particular students attending Peoria Horizons and Montage Academy are not identified below; they are discussed separately in a different Letter of Findings: reference number 2170. The following students attend Back-to-Basics Charter School and were specifically identified by the Complainant.

Student N is a 7-year-old male who is eligible to receive special education and related services under the category of speech-language impairment (SLI). He is currently enrolled in the School and is in a first grade general education classroom.

Student O is an 11-year-old male who is eligible to receive special education and related services under the categories of mild mental retardation (MIMR)¹ and SLI. He is currently enrolled in the School and is in a sixth grade general education classroom for part of his day and in a special education resource room for the remainder of his school day.

Student P is a 10-year-old male who is eligible to receive special education and related services under the categories of MIMR and SLI. He is currently enrolled in the School and is in a fifth grade general education classroom for part of his school day and in a special education resource room for the remainder of his school day.

Student Q is a nine-year-old female who is eligible to receive special education and related services under the category of specific learning disability (SLD) [for basic reading, reading comprehension, written expression, math reasoning]. She is currently enrolled in the School and is in a fourth grade general education classroom for most of her school day and in a special education resource room for the remainder of her school day.

¹ President Obama recently signed into law Rosa's law, which mandates a change in terminology. Henceforth, the term "intellectual disability" will replace "mental retardation." However, the IDEA regulations have not yet been updated, and the term MIMR appears in several of the IEPs discussed in this letter of findings. Therefore, for the purpose of clarity, this letter of findings will rely on the older terminology.

Issues and Findings

1. Whether the School implemented the Students' individualized education programs (IEPs) in the current school year.

The Complainant alleges that the School has failed to provide the special education instruction or related services that are identified in the four Students' IEPs². Specifically, the Complainant alleges that the School failed to provide these eligible students with special education instruction and related services from the first day of the school year on August 11, 2010 until this state administrative complaint was filed on September 24, 2010. Further, he believes that the School continues to be in noncompliance because he surmises that the School has not yet begun to provide special education instruction to the Students.³ Finally, he alleges that the School could not have provided the related services identified on the Students' IEPs because the School does not have on staff, or under contract, any of the related service providers that are necessary to fully implement the Students' IEPs.

The School does not deny the allegations and admits that it did not provide special education instruction and related services to any eligible student at any of the three campuses early in the current school year. The School reports that its usual practice in the fall of each school year is to wait until enrollment stabilizes in the first two weeks of the year, and that during this time it examines the IEPs for all students identified eligible to receive special education and related services. Then, when it knows the extent of the services, it is obligated by law to provide, it contracts with professionals who have the required skills and certifications to provide the various services that are needed. Then, according to the School, it provides the forward-facing services in accordance with the Students' IEPs, while at the same time providing the backward-facing compensatory educational services to make-up for any lapse in providing services while the arrangements for service providers were being made. The School reports that it was slow in getting special education services started in the current school year due to the incompetence of some of its staff; the School reports that because of errors in reports that outlined the mandated services, it had to begin anew, which caused additional delay in providing services.⁴

The Individuals with Disabilities Education Act (IDEA) and its implementing regulations obligate schools to make a free appropriate public education (FAPE) available to students with disabilities, which means that the eligible student is entitled to special education and related services that are provided **in conformity with an IEP**. [20 U.S.C. § 1401(9); 34 C.F.R. § 300.17(d)] (Emphasis added) The regulations state that an IEP must be **in effect** at the beginning of each school year. [34 C.F.R. § 300.323(a)] The IDEA regulations do not impose specific time limits for the implementation of a student's IEP; however, the regulations do state that "[a]s soon as possible following development of the IEP, special education and related service [must be] made available to a student in accordance with the child's IEP." [34 C.F.R. § 300.323(c)(2)] Federal regulations that implement the IDEA further state that there can be ". . . no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined." [34 C.F.R. §300.103(c)]

² When the term "Students" is used in this letter of findings, this generally refers to Students N through Q, unless the context specifically refers to all the students (Students A through Q) eligible for special education at all three of the schools referenced in this Letter of Findings.

³ The Complainant was employed at the School until September 24, 2010 when he resigned. He therefore has no direct knowledge of the Students or the services they received after this date.

⁴ Ms. Marcia Lee, the charter holder, claims that the incompetence of the Complainant led to the delay in services. She also claims that because he is no longer employed at the School, he is a disgruntled employee whose allegations are false.

To determine whether or not the School is providing special education instruction in alignment with IEPs, this investigator totaled the number of minutes per week that are specified in the four Students' IEPs.⁵ The total amount of special education instruction that the School is obligated to provide each week is 2,850 minutes/week, or 47.5 hours/week.⁶ The School has one certified and highly qualified special education teacher,⁷ but she only works there part-time; she works from 10:30 a.m. until 2:00 p.m. two days a week, from 10:30 a.m. until 3:30 p.m. two days a week, and from 11:30 a.m. until 3:30 p.m. on Fridays.⁸ The IEPs of two of the Students indicate that they are to be taught in self-contained special education classrooms; however, they are in the general education environment for part of their school day and in a special education resource room for the remainder of their school day. This same special education teacher has teaching duties at both of the other schools referenced in this Letter of Findings. Therefore, even though three of the four Students at the School are sometimes taught together in the same classroom, it is not possible, given the teacher's duties at the other two schools, her travel time, and the part-time nature of her schedule, for her to provide all of the forward-facing special education instructional services that the School is obligated by the four Students' IEPs to provide.

To determine whether or not the School is providing related services in alignment with the Students' IEPs, this investigator totaled the number of minutes each week that are specified in the four Students' IEPs. Each of the four Students is entitled to 60 minutes of speech-language services each week. Student P is entitled to 100 minutes/week of daily living skills instruction. In addition, Student Q is entitled to 60 minutes/quarter of consult services from an occupational therapist. The School does not have an occupational therapist on staff or under contract. The School is not providing instruction in daily living skills. The School only began to provide speech services during the week on October 11, 2010, but it does not appear that the four Students have received their full allotment of speech-language services since that date. It is clear that the School does not have adequate staff to provide the forward-facing related services that it is obligated by the four Students' IEPs to provide.

There is no dispute that special education instruction and related services were not provided at the start of the current school year. Although the special education teacher who now provides the bulk of direct special education instruction at the three schools was available to provide these services at the start of the school year, she actually did not provide direct services until the week of September 27, 2010, and then not to all of the Students who were eligible to receive them.⁹ Given her part-time schedule and her other duties, it is not possible that this teacher can also provide the backward-facing compensatory educational services necessary to make-up for the School's lapse in providing the mandated special education instruction from the start of school until the last week of September. Similarly, the speech-language pathologist (SLP) does not have sufficient hours to provide the backward-facing compensatory speech services that are owed to the Students.¹⁰

⁵ Reviewing the IEPs of Students A-Q and adding up the minutes of services mandated by their IEPs took an hour to accomplish. It is perplexing to this investigator that this same task conducted by school personnel took many weeks. Further, the separate efforts by different School personnel to show the amount of services resulted in three reports that are different.

⁶ See Appendix A. It shows the individual data that lead to these totals. It includes information on the provision of special education services at all three schools.

⁷ Between the three schools referenced in this letter of findings, there are two certified special education teachers, but only one provides direct services to the four Students at the School. The other special education teacher attends mostly to administrative tasks for the three schools.

⁸ The teacher takes a 30-minute lunch break during her scheduled hours.

⁹ This teacher met the Students and reviewed records on September 24, but did not begin direct service delivery until the following week. The School reports, erroneously, that the time the special education teacher spends reviewing records and preparing can be counted toward the amount of direct service that is owed to an eligible student; the amount of time specified in an IEP for special education and related services refers to the amount of direct instruction to be received by the eligible student.

¹⁰ Several staff members report that they have repeatedly advocated for additional staff, including special education teachers and related service providers, but that the charter holder has denied each request. These staff members report that the charter holder has said it would be too expensive, and that the staff would have to find other ways to address the needs of the Students.

The evidence shows that the School, at the end of the 2009–2010 school year, fully anticipated that the special education students then on its roster would be returning in the fall of the current school year. To be in compliance with the regulations that implement the IDEA, the School needed to have staff on board to provide services when school began on August 11, 2010. The School's position that it can delay services, even for a two-week period while it studies the situation in order to assemble its staff, is incorrect.¹¹ Further, the School's position that it cannot begin to provide any services at all until the totality of the services is known, quantified, and verified is also incorrect.¹²

A lack of resources, or the lack of qualified staff, does not relieve a school of its obligation to provide services in accordance with a student's IEP. This is true even in times when a school is experiencing budgetary constraints or when a school experiences difficulty in recruiting and retaining qualified staff. The regulations are clear that a school is obligated to put into effect at the start of each school year the services that are identified on IEPs. The evidence in this case is abundant and clear: the School failed to provide any special education instruction from August 11 until the week of September 27, 2010 – a time period of more than six weeks. Further evidence shows that when it did begin to provide special education instruction, it failed to provide all the services to all of the Students who were legally entitled to receive them. In addition, the School has failed throughout the current school year to provide any of the 100 minutes/week of daily living skills instruction to Student P. In regard to related services, the evidence shows that the School has not provided any OT in the current school year. In regard to speech–language services, the evidence shows that it was not until the week of October 11, 2001 that the School began to provide any speech services, but the School's recordkeeping system is such that it is difficult to determine whether or not the Students are *now* receiving all of the speech–language services they are entitled to.¹³ Finally, the School has not begun to provide compensatory educational services to make-up for its lapse in providing the services that it is obligated as a matter of law to provide. The School is not providing the forward-facing special education instruction and related services in accordance with the Students' IEPs, and it does not have adequate staff to provide the backward-facing compensatory educational services needed to make the Students whole. Therefore, the School is in noncompliance.¹⁴

Additional Area of Noncompliance

There was one additional area of noncompliance that was not raised by the Complainant in his letter of complaint, but was identified by this investigator during the investigation process.

¹¹Although the School reports that there is a two-week delay in providing special education services, the reality is that the delay is much longer, because it takes time, usually many weeks, to locate and contract with the providers of those services.

¹²The federal regulations that implement the IDEA state that when a child with a disability who has an IEP transfers to a new school, the new school (in consultation with the parents) must provide a FAPE to the child (including services comparable to those described in the child's IEP from the previous school) until the new school either (1) adopts the child's IEP from the previous school; or (2) develops, adopts, and implements a new. [34 C.F.R §300.323(e)(1)(2)] There is nothing in the regulations that allows a school to delay for many weeks the provision of mandated services until all records arrive or until the new school hires additional staff.

¹³The only SLP providing speech services does not have a regular schedule; she reports that she works approximately two hours a week at each of the three schools. Such an irregular schedule obligates the School to make-up services when a Student is absent, something it would not be obligated to do if she had a fixed schedule. Her billing records include her travel time; so it is not possible to determine the total amount of direct services she has provided by examining these records. She reports that she keeps a log of services provided, but she makes no indication in the log about whether or not the service on any particular day is forward-facing or compensatory. She reports that she makes this calculation twice yearly, so it is not possible until the end of the school year to determine whether or not any compensatory services are even necessary, and by then it is too late to provide any compensatory services that may be owed.

¹⁴There is but one special education teacher who provides the majority of special education instruction, yet the School was obligated at the start of the current school year to provide over 91 hours/week of services between the three campuses. Even after four students withdrew in September, the School was still obligated to provide over 79 hours/week of services. At the start of the current school year, the School was obligated to provide over nine hours/week of speech services, and it is currently obligated to provide over five hours/week of speech services.

1. The School failed to provide the required educational placement for two students whose IEPs indicate that they are to be taught in self-contained special education classrooms.

The IDEA regulations state that schools "must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services." [34 C.F.R. § 300.115(a)] This continuum must include "instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions." [*Id.* at subsection (b)(1)] Placement decisions must be made by a group of persons, including the parents, and others knowledgeable about the child, the meaning of the evaluation data, and the placement options, and must be **based on the child's IEP**. [34 C.F.R. § 300.116]

The District failed to provide the appropriate educational placement for Students O and P, whose IEPs state that they are to be educated in self-contained special education classrooms. Although they are in a special education resource classroom for part of their day, they are in the general education environment for several hours each day. Therefore, because the School is not educating these students in the appropriate educational placement spelled out in their IEPs, the School is in noncompliance.

Corrective Action Required

The School must make available the compensatory educational services outlined below. The initiation of all compensatory services provided by School personnel must begin as soon as possible and must be completed by the deadlines listed below, but in no case later than April 22, 2011. All compensatory services that the School will pay outside agencies to provide must be paid for in full by April 22, 2011, even if the particular service will be provided after this date (a summer program, for example). Compensatory services must be provided outside of the regular school schedule and cannot be provided in lieu of on-going services. If the parents decline the School's offer to provide or pay for compensatory services, the School must send written proof that the parents declined the services. All required documentation for the corrective action below must be submitted to the ADE/ESS by the deadlines below, but in no case later than April 29, 2011.

The amount of compensatory services was determined with the assumption that all forward-facing services in accordance with all of the Students' IEPs would be completely in place by December 1, 2010. If circumstances are such that the provision of forward-facing services in any particular area outlined below does not occur by the December 1 date, then the amount of compensatory services outlined below will be automatically increased proportionately according to the formulas outlined below. Because the School's records are not in all cases clear, complete, or reliable, this investigator made assumptions about the dates when instructional services and related services actually began. If the School has clear and reliable documentation that it provided services to some/all of the Students earlier than indicated below, it can, by November 29, 2010, petition this office in writing to reduce the amount of compensatory services owed to a particular student or students. In this case, it must submit clear and reliable documentation that the service was provided, along with a signed statement from the service provider that attests to the accuracy of the School's documentation.

The School and the parents can agree to a greater or lesser amount of compensatory services if, for example, there is a specific program that the parties agree will meet the needs of the student. For example, it may be that the School owes 60 hours of compensatory services, and there is a summer program of 50 hours or 70 hours that the parties agree will suffice. In such an instance, the School can pay for the lesser or greater amount of services. In this way, the ADE/ESS provides some degree of flexibility to allow the parties to reach agreement so that the Students receive the services to which they are entitled.

Finally, the corrective action that follows falls into two categories: global requirements that affect all three schools and compensatory services for Students N-Q. The global corrective actions are not included in the letter of findings for the other complaint referenced earlier (2170). This is because listing them in both letters of findings could lead to unnecessary confusion for School personnel. Therefore, to keep things simple, the global corrective actions that apply to all three campuses are presented below, followed by corrective action relating to compensatory services for Students N-Q. (See Appendices B and C for a schedule of corrective action due dates)

Global Corrective Action Affecting All Three School Campuses

1. The School must send a letter of assurance signed by the charter holder that it is providing, by December 1, 2010, all special education instruction and related services to Students A–Q in accordance with their IEPs. Further, the letter must indicate that the School will continue to provide all mandated services identified in the IEPs for the remainder of the current school year. The letter of assurance must be sent to Mr. Bob Fitzsimmons, Correction Action Compliance Monitor, Arizona Department of Education/Exceptional Student Services; 400 W. Congress Street, Suite 241; Tucson, AZ 85701 by **December 3, 2010**.
2. The School must provide the parent(s) of Students A–Q with an individualized prior written notice (PWN) that explains that the School proposes to provide (or pay for others to provide) the specified amount of compensatory services and its reasons for doing so. (Each PWN must indicate that the School is in noncompliance with federal and state regulations because it has not provided special education instruction and related services in accordance with the Students' IEPs in the current school year.) A copy of each PWN must be sent the Correction Action Compliance Monitor at the above referenced address by **November 29, 2010**.
3. To assist the School with the delivery of compensatory services, forward-facing special education services in accordance with the IEPs of Students A–Q, and the creation of the action plan (See #7 below), the School must hire or contract with an educational consultant with extensive special education experience and current knowledge about IDEA regulations. (Upon request, the ADE/ESS will provide a list of possible consultants, but the School is not obligated to hire from this list.) This consultant must be approved by the ADE before he/she begins working. A letter from the School outlining the qualifications and experience of the consultant the School wants to hire must be sent to the Corrective Action Compliance Monitor at the above referenced address by **December 3, 2010**.
4. Once the special education consultant is hired or contracted, the School must send a letter that indicates the name of the consultant, the number of hours the consultant will work on a weekly basis, the consultant's start date, and a commitment to continue this arrangement until April 29, 2011, or until all corrective action documentation is submitted and accepted by the ADE/ESS. This letter must be sent to the Corrective Action Compliance Monitor at the above referenced address by **December 17, 2010**.
5. Because the School's current SLP's work schedule does not permit her to add additional hours, the School must immediately secure the services of another SLP to provide compensatory speech–language services. The School must send a letter signed by the charter holder that states that another SLP has been either hired or contracted by the School to provide compensatory speech services to Students A–Q who needs these services. This letter must include the name and qualifications of the SLP, written assurance that the School will provide all compensatory speech–language services owed to Students A–Q, and a statement that all compensatory speech–language services will be completed as soon as possible, but no later than February 4, 2011. The letter must be sent to the Corrective Action Compliance Monitor at the above referenced address by **December 3, 2010**.

6. The District must develop a draft written action that **delineates in detail** the steps school personnel shall take to ensure the following: (a) that special education instruction and related services are provided in accordance with continuing students' IEPs from the first day of each subsequent school year; (b) that comparable special education instruction and related services are provided to new students as soon as possible upon their enrollment (relying on parent or verbal information from the previous school if records are not immediately available); and (c) that the School has available the full continuum of educational placements as required by law. A draft copy of the written action plan (which must include some in-service training for staff) must be sent for review and approval to the Corrective Action Compliance Monitor at the above referenced address by **January 7, 2011**.
7. After the written action plan has been reviewed and approved by the ADE, a copy of the finalized version must be sent to all special education instructional staff, special education administrative staff, school psychologists, principals, assistant principals, and others who attend, however infrequently, IEP meetings. A copy of the finalized written action plan and a letter from the District indicating that the written action plan has been distributed according to the directions above must be sent to the Corrective Action Compliance Monitor at the above referenced address by **February 4, 2011**.

Compensatory Services for Students N-Q

8. The School must provide Students O and P with a self-contained special education classroom (taught by a certified and highly qualified special education teacher) by **December 1, 2010**. The School must send the following documentation: a letter signed by the charter holder that states that both students are in a self-contained special education classroom taught by a certified and highly qualified special education teacher; a statement signed by the charter holder that this placement will remain in place until such time as the two Students' IEP teams determine that a different educational placement is appropriate and warranted; and a copy of the current certification of the special education teacher assigned to the self-contained classroom. The documentation must be sent to Mr. Bob Fitzsimmons, the Corrective Action Compliance Monitor, 400 W. Congress Street, Suite 241; Tucson, AZ 85701 by **December 7, 2010**.
9. The School must provide Student P with two hours of consultative OT services by December 10, 2010. Proof that these services were provided (including a signed statement by the OT who provides the services, his/her contact information, a written summary/schedule of the dates/times of all sessions, a list of School personnel who were consulted with, and a written summary of what was accomplished) must be sent to the Corrective Action Compliance Monitor by **December 17, 2010**.
10. Regarding Students N-Q, the School must send a letter of assurance signed by the charter holder that includes the following: the current amount of speech-language services that these students are entitled to receive (60 minutes/week); a statement that the School will provide at least this amount of speech-language services until such time as their IEPs are amended; and a statement that the School will provide compensatory services (see #12) to completely make up for its lapse in providing speech-language services to these students in the current school year in accordance with their IEPs. The letter of assurance with the above information must be sent to the Corrective Action Compliance Monitor at the above referenced address by **December 3, 2010**.
11. Regarding Students N-Q, the School must make available to each Student 16 hours of compensatory speech-language services to be provided by a licensed speech-language pathologist (SLP). These compensatory hours must be in addition to the current school day, and can be provided before school, after school, in the evenings, on weekends, during school breaks, or a time agreed to by the Student's parents and the School. (If the School provided any

speech-language services by a SLP between August 11 and December 1, 2010 [a 16-week period], it can request in writing that the 16 hours be reduced for a specific Student. In this instance, it must send a signed statement by the SLP that a specific number of hours of speech-services actually were provided in the current school year prior to December 1, 2010.) A letter stating that the 16 compensatory hours were provided (or proof that the parents declined the compensatory hours) and proof that these services were provided (including a signed statement by the SLP and a written schedule that shows the dates/times of all compensatory sessions) must be sent to the Corrective Action Compliance Monitor by **February 4, 2011**.

12. The School must make available to Student N - 1,600 minutes (27 hours, rounded) of compensatory educational services for its lapse in providing any instruction in daily living skills in the current school year. The School must send proof that the 27 compensatory hours were provided (including a schedule of dates/times) or proof that the services were offered but declined to the Corrective Action Compliance Monitor at the above referenced address by **March 4, 2011**.
13. The School must make available to Student O - 28 hours of compensatory services for its failure to provide any special education instruction for the first seven weeks of the school year (1,200 minutes/wk = 240 minutes/day = 4 hours/day x 7 weeks = 28 hours.) Proof that the 28 compensatory hours were provided or declined (including a schedule of dates/times of all sessions and the name, contact information, and qualifications of the provider) must be sent to the Corrective Action Compliance Monitor at the above referenced address by **March 4, 2011**.
14. The School must make available to Student P - 26 hours of compensatory services for its failure to provide any special education instruction for the first seven weeks of the school year. (1,100 minutes/wk = 220 minutes/day = 3.66 hours/day x 7 weeks = 25.66 hours [rounded to 26].) Proof that the 26 compensatory hours were provided or declined (including a schedule of dates/times of all sessions and the name, contact information, and qualifications of the provider) must be sent to the Corrective Action Compliance Monitor at the above referenced address by **March 4, 2011**.
15. The School must make available to Student Q 52.5 hours of compensatory services for its failure to provide any special education instruction for the first seven weeks of the school year. (450 minutes/wk x 7 weeks = 3,150 minutes = 52.5 hours) Proof that the 10.5 compensatory hours were provided or declined (including a schedule of dates/times of all sessions and the name, contact information, and qualifications of the provider) must be sent to the Corrective Action Compliance Monitor at the above referenced address by **April 29, 2011**.

As stated in the federal regulations, the State Educational Agency (SEA) has the responsibility to "Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (i) Findings of fact and conclusions; and (ii) The reasons for the SEA's final decision." [34 C.F.R. § 300.152(a)(5)] Therefore, this Letter of Findings is final and is not subject to appeal.

If the Students have not received the corrective action(s) due by the date(s) noted above, please inform the Arizona Department of Education/Exceptional Student Services (ADE/ESS) office immediately.

Done this 16th day of November 2010.



Bob Fitzsimmons
ADE/ESS Complaint Investigator



Kacey Gregson
Director of Dispute Resolution