



VAMSHI RUDRAPATI

Director

1201 Main Street, Suite 300, Columbia, SC 29201

October 01, 2021

Gates School
Summer Brown, Principal
Stephanie Sams, Chairman of the Board of Directors
5010 Wetland Crossing Road
North Charleston, SC 29418

RE: Notice of Noncompliance

To School Leader and Board Members,

The Charter Institute at Erskine (“Charter Institute”) is the charter school sponsor of your school, Gates School (the “School”). To fulfill this role and comply with the South Carolina Charter Schools Act of 1996 as amended and located at S.C. Code Ann. § 59-40-10 *et seq.* (the “Act”), the Charter Institute has a responsibility to regularly monitor the performance and legal and fiscal compliance of the School. This specifically includes conducting oversight activities, notifying a school of perceived problems, and taking appropriate corrective actions in response to identified deficiencies, including requiring a school to develop and execute a corrective action plan within a specified timeframe (S.C. Code Ann. § 59-40-55(A)). As you are aware, the Charter Institute has a system developed for all schools to monitor the programming for all special services including students with disabilities served at the School. As a result of recent data collections, the Institute staff has identified a pattern of noncompliance to Federal and State laws and regulations. This letter serves to outline ongoing areas of noncompliance and concern identified by staff, and also serves to formally notify you that the School is in breach of the terms of its charter and contract, and ultimately, in violation of the commitment made to the students and families who attend Gates School.

Based on information and evidence reviewed, the Charter Institute finds that your School has deficiencies in the following areas:

Special Education

Failure of Services to be Provided as Required by Student IEPs:

- *School Not Providing Special Education Services as listed in the IEP*
- *School Committed procedural errors by removing a 1:1 aide for two students who transferred into Gates without an IEP team meeting or prior written notice to the parents*
- *Failure to follow charter regarding special education staffing.*

Based on evidence collected through the Action, Results, Commitment, and Support (ARCS), school site visit, and a desk audit from the Institute, the school currently has 46 identified students with disabilities who have active Individual Education Programs (IEPs) across all grade levels. Currently, the school has one certified special education coordinator who is responsible for the delivery of specially designed instruction for all students

(outside of related services such as Occupational Therapy, Speech Language Therapy, etc). As of 9/24/2021, the students who require a special education teacher to provide services total approximately 14,051 minutes of indirect service, or 234 hours weekly. Also, the student IEPs require an additional approximate 2,960 minutes of direct services or 49 hours weekly by a special education teacher. (See **Appendix 1.**)

Based on interviews with the staff during a site visit on September 14th and review of the weekly school coordinator's schedule submitted by the School on September 17th, it is evident that the school special education coordinator is not providing students with special education instruction delivered by a special education teacher, neither direct nor indirect services. (See **Appendix 2.**) The School submitted an updated school coordinator schedule on September 27th with times of services; however, this schedule does not address the individual services that are outlined in the student IEPs and has as many as 41 students from all grade levels receiving services at the same time. (See **Appendix 3.**) Additionally, the school has stated that the "general education teachers are providing the specialized special education instruction" and the special education coordinator consults with every teacher as needed, which is not in alignment with the student's IEPs. An additional schedule was submitted indicating that the general education teacher provides these services. (See **Appendix 4.**) This does not follow the school's charter which states that students who require more intensive instruction and interventions, have Individual Education Plans (IEPs), and are taught by a Special Education teacher. (See Gates School Charter, page 16.)

The charter further states on page 20 that "a highly trained special education teacher, who individualizes, and monitors lessons based on the student's individual needs, will provide instruction and service" and on page 33 states that "[m]any Gates School students will enter with an Individual Educational Plan (IEP) in place and they will be provided special education services immediately. Other students will not be identified as needing special education services until later in the school year. Gates School will hire the appropriate number of special education teachers to ensure that all IEP services are implemented." It is evident from the desk audit, that standardized services have been included in each of student's IEPs that are not individualized to each unique student need resulting from the child's disability which is not offering a continuum of placements, as is required by the IDEA.

Additionally, the School removed two different students' 1:1 aide (educational assistants) without an IEP team meeting to make the decision, without a prior written notice provided to the parent, and without the data to support making this change to these students' transfer IEPs. These changes were made to the IEP upon initial enrollment and without any documentation of the appropriate procedural actions required by the IDEA.

As a result of a lack of appropriate special education teachers, staffing, and scheduling, the School is not providing the specially designed instruction by a special education teacher according to students' IEPs since August 18, 2021. This has resulted in the School failing to be able to fulfill its requirements to serve students with disabilities as required by and in violation of the Individuals with Disabilities Act (IDEA).

The school's charter specifically states, "Gates School will hire the appropriate number of special education teachers to ensure that all IEP services are implemented. Special Education staff will include (in the first year of operation), but is not limited to, a lead special education teacher who serves as Coordinator and oversees special education compliance." The charter further states, "During its inaugural year, Gates School will employ a Special Education Coordinator and at least one (1) other special educator (or more if needed as determined by enrollment) and each will address the needs of either the elementary school or middle school students." To date, the School has hired one certified special education teacher to serve 46 students and this one certified teacher will be out on maternity leave starting next week with no concrete plan on how students will receive services during this time.

Title III

Not identifying or providing services for students identified as Multilingual Learners

Federal mandate requires that all districts identify students whose home language is one other than English for potential English language development eligibility. The Home Language Survey (HLS) is a legally binding document that is administered once at initial enrollment in all public South Carolina schools. Based on information collected on a site visit made to the School by Institute Staff on 9/14/21, there were only 3 out of 104 students Home Language Surveys (HLS) on file for all students. The School stated that the records had not been obtained due to challenges related to the registrar and COVID-19, however the School should have systems and

other personnel in place able to ensure that processes afforded for its students continued, as required by federal law. There has not been any flexibility provided by the US Department of Education nor Congress as would be required for the processes required for the identification of English Language Learners. More concerning, an email dated 8/29/21 from the Gates' Title III coordinator to the Institute stated that the WIDA assessment for identification of Multilingual Learners was "not a part of the school model." (See **Appendix 5**.) These are Civil Rights afforded to every student enrolled in a public school.

The School has legal responsibilities to its students and cannot use its AEC designation or school mission as a reason for denying its students their basic rights and protections under the law. The School is required to follow all federal and state laws explicitly written into its approved charter and in its School's contract, and failure to do so constitutes noncompliance, violation of law and the School's charter.

Equitable Admissions

The School has admissions practices that are not aligned with its charter and charter contract. Evidence produced in both the recent student appeal and collected in the ARCS indicates that the School does not have a clear enrollment procedure that ensures fair and equitable practices for enrollment that are aligned with its charter, Sponsor requirements, and the applicable state and federal laws.

Conclusion

The School is an Alternative Education Campus (AEC) with a mission to serve primarily students with disabilities (students with identified dyslexia and reading difficulties); therefore, the School should have prioritized properly staffing its school with special education teachers in preparation for serving its intended population. Of gravest concern, the School continues to reason that as an AEC it is allowed to unilaterally make changes to student IEPs based on the School's educational model and continues to loosely and incorrectly interpret its responsibility to the student IEPs and the IDEA, which has resulted in numerous areas of noncompliance and is a detriment to its students. Furthermore, the School is not following the tenants of its charter. The School's charter outlines the provisions of special education services to be provided by a special education teacher.

As a result of the identified concerns, the Institute issues the School this *Notice of Non-Compliance* and requires the School to complete the following Corrective Action Plan:

1. Immediately hire appropriately credentialed special education teacher(s) and any support staff that will serve the students according to their IEPs and create schedules that are reflective of all services outlined in every student's IEP. Submit evidence of completion to the Institute by November 01, 2021.
2. Audit all IEP records, determine and calculate what services have not been provided for every student. Submit evidence of completion to the Institute by November 01, 2021.
3. Submit service logs for all students with IEPs to the Institute by November 01, 2021.
4. After approval of the above corrective actions by the Institute, the School will hold any potential denial of Free and Appropriate Education (FAPE) IEP team meetings to determine all necessary compensatory services as identified following Institute guidance. Submit evidence of completion to the Institute by November 01, 2021.
5. Obtain all students' Home Language Surveys, complete all necessary processes for identification and placement for any applicable students. Submit evidence of completion by November 01, 2021.
6. Submit the School's admission and enrollment process and procedures that aligns with its charter, including details for each part of the process. List names and titles of school staff who are responsible for each part of the process. Submit evidence of completion by November 01, 2021.

All evidence of completed corrective actions must be submitted to and approved by the Institute. The Charter Institute will continue to monitor and evaluate corrective activities according to the timelines set forth above, which may include unannounced site visits to the School.

Finally, due to the serious and grave concerns of special education noncompliance issues outlined in this *Notice of Noncompliance*, the Charter Institute is **immediately freezing student enrollment** for the School. The Institute will unfreeze enrollment once the Institute Special Education team deems the school is in compliance with the concerns related to services with students with disabilities.

Please note that failure to resolve all other issues and comply with the legal requirements outlined in this *Notice of Non-Compliance* may result in further corrective action to include:

- Continued freeze of student enrollment; and
- Initiation of charter revocation procedures in accordance with state law.

In an effort to further support the School, the Charter Institute is available at any time to answer questions around these legal requirements or talk through School plans for resolution to the outstanding areas of concern. We look forward to supporting the decisions you make and plans you develop to address these identified deficiencies. Thank you in advance for your cooperation in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Vamshi Rudrapati
Director
The Charter Institute at Erskine

CC: Cameron Runyan, Chief Executive Officer (via email only)
Celina Patton, Chief of Student Services (via email only)