BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

UNIVERSITY PREPARATORY ACADEMY.

OAH CASE NUMBER 2026021000

ORDER DENYING MOTION TO DISMISS BASED ON LACK OF STANDING

MAY 15, 2026

On Monday, February 23, 2026, Father filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming University Preparatory Academy, called Charter.

OAH held a prehearing conference on April 6, 2026, Administrative Law Judge Laurie Gorsline, presiding. For good cause, the ALJ continued the prehearing conference to May 22, 2026, and the hearing to June 2 through 4, 2026. At the prehearing conference, Charter's attorney argued that Father lacked standing to prosecute the case. When the ALJ indicated that there was no motion before her, Charter's attorney stated that she would file a written motion.

On April 15, 2026, Charter filed a motion to dismiss, asserting that Father lacked standing to prosecute this case because he was no longer Student's educational rights holder based on a January 2026 custody order and a March 2026 custody order which gave Mother sole legal custody.

On April 20, 2026, Father withdrew some of his claims alleged in the complaint, including the request for compensatory education and the entire claim alleged in Issue 4, leaving intact the claims made in Issues 1 through 3. Father also filed written opposition to District's motion to dismiss. In it, he argued, among other things, that both the January and March 2026 orders were temporary, pending the May 1, 2026 family court mediation which orders have expired by June 2, 2026 when this case is scheduled for hearing. Father argued that the March 2026 custody order confirmed Father's rights to access school records and consult with professionals which Father asserted is at the core of the case. Father relied on *Navin v. Park Ridge School District 64* (7th Cir. 2001) 270 F.3d 1147, 1148-1149 (*Navin*) which held that a district court erred in dismissing father's case where divorce decree gave mother custody of student and right to make educational decisions, but also stated father retained rights to inspect child's school records and communicate with school personnel.

In his opposition, Father also claimed that the custody orders could not retroactively displace claims that accrued before the orders at issue were entered. Father asserted that he had independent enforceable rights, and is not merely a proxy for Student's interests, relying on *Winkelman v. Parma City School Dist*. (2007) 550 U.S. 516, 529, 533 [127 S.Ct. 1994] (*Winkelman*). Father also cited *Latynski-Rossiter v. District of Columbia* (D.C. 2013) 928 F.Supp.2d 57 (*Latynski*), for the proposition that parents retain standing to pursue reimbursement claims for past failures even after educational rights transfer to a student upon their 18th birthday. Father also persuasively

distinguished the two primary cases cited by Charter, *Chukwuani v. Solon City School Dist.* (6th Cir. April 21, 2020, No. 19-3574) 2020 U.S. App. Lexis 12863 [nonpub. opn.] (*Chukwuani*) and *Student v. Chaffey Joint Union High School* District (OAH Case No. 2021030191, May 6, 2021) (*Student v. Chaffey*).).

On April 21, 2026, the ALJ issued an interim order regarding the motion to dismiss, requiring additional briefing to rule on the motion. Charter was ordered to file a written reply by April 28, 2026, addressing the arguments made and case authorities cited in Father's opposition, including whether the orders giving Mother sole legal custody expired on May 1, 2026, and whether it was Charter's contention that Father lacked standing to pursue any of the remaining claims or remedies Father did not dismiss, to identify them, as well as any claims or remedies it conceded Father had standing to pursue. The ALJ's order noted that Charter's motion had not addressed the issue of standing as it related to a parent's independent enforceable rights, citing *Winkelman* and *Latynski*. Charter was also ordered to explain why Father did not have an independent right to pursue any claims or remedies given the language of the March 2026 custody order regarding the rights of the non-custodial parent to access school records and information about Student and consult with professionals providing services to Student.

CHARTER'S REPLY TO FATHER'S OPPOSITION

On April 28, 2026, Charter filed a reply to Father's opposition. Charter argues that the January 27, 2026 Order issued by the family court ordered Parents to participate in mediation and granted Mother sole legal custody over Student, pending the mediation. Charter argues that the March 12, 2026 Order issued by the family court affirmed Mother's sole legal custody over Student. Charter argues that it is unclear what changes to custody will occur as a result of the May 1, 2026 mediation. In conclusory

fashion, it asserts that the fact that Father has rights to obtain Student's educational rights has no bearing on whether he meets the legal definition of parent, and that he does not meet that definition.

Charter argues Student's Issue 1 alleges violations occurring prior to the statute of limitations, and any event occurring prior to February 21, 2024, falls outside the statutory period, specifically the claim that Charter refused until January 2024 to provide Parent access to Student's educational records. It also argues that Father's opposition raising the claim about the failure to notify Father of the October 2023 individualized education program team meeting, or IEP team meeting, is not supported by any facts in the complaint that would extend the statute of limitations.

Charter alleges Student was enrolled at Charter from February 21, 2024 through April 3, 2024. It also inconsistently claims Student voluntarily withdrew from Charter between "April 4, 2024 through March 19, 2024." It also states Student was reenrolled at Charter from March 20, 2024 through June 11, 2024, the last day of school. Charter also asserts Student returned to Charter the following school year from August 6 through August 28, 2024, when Student voluntarily withdrew from Charter.

Charter next argues the merits of Issue 1 as related to the claims made by Father regarding the March 2024 IEP team meeting and Charter's interference with Father's ability to participate and predetermination of placement. Charter appears to concede that Father and Mother shared joint custody per the custody order filed February 7, 2024 throughout the statutory period. It argues both Parents received IEP team meeting notices and Father misread the IEP team meeting notice. It also argues Father fails to indicate in his complaint how an IEP that had Mother's full participation resulted in the denial of a free appropriate public education, or FAPE.

In Charter's conclusion, it argues that Student's entire case should be dismissed based on a lack of standing. Charter argues that if OAH determines Father's case can move forward, Father's remedy should be limited to $170.00 of reimbursement based on the statutory period and that the issues be limited to the dates Student was enrolled between February 21 and August 28, 2024.

FATHER'S SURREBUTTAL

First, Father argues that for purposes of the Individuals with Disabilities Education Act, called the IDEA, Mother's sole legal custody expired at the conclusion of the family court mediation on May 1, 2026.

Second, Father also argues that Charter has failed to establish that Father lacks standing to pursue "the retrospective claims at issue." Father points out that in its reply Charter failed to discuss or distinguish *Winkelman, supra,* 550 U.S. 516 and *Latynski, supra,* 928 F.Supp.2d 57, and that Charter offered no explanation for why those cases do not confer standing for Father's "retrospective claims."

Third, Father argues that the custody orders may limit his decision-making authority, but not his IDEA rights. He argues that an order can only affect the rights it expressly addresses, and that the January 2026 order said nothing about access to education records, notice of IEP team meetings, prior written notice or this proceeding. Father argues that the March 12, 2026 custody order preserved those rights, which point, Father notes, was never addressed by Charter.

Fourth, Father claims that Charter is relying on state law for its statute of limitations argument, which Father contends does not apply to IDEA claims. In any event, Father asserts that his reference to Charter's refusal until January 2024 to provide access to Student's records was an estimate he made at the time of filing, but that

Charter continued not to recognize Father's rights until February 28, 2024, a week into the two-year statutory period for this case. Father argues that the family court clarified that Mother and Father had joint custody at a hearing on January 30, 2024, which custody order was entered on February 7, 2024, and provided to Charter on February 21, 2024.

Father also asserts that "the withholding exception" under Title 20 United States Code section 1415(f)(3)(D)(ii) applies to this case. Father also argues that the statutory period begins to run only from the time a party becomes aware of the supporting facts of a claim. On the claims regarding the October 2023 IEP, Father asserts the time period only began to run in April 2026 when he learned about that IEP. Father states he is preparing a motion to incorporate that claim into this case. Father argues that, in any event, "confirmed violations through February 28, 2024 fall within the window" and defeat any statute of limitations-based dismissal, and that Charter's arguments regarding Mother's attendance at the March IEP is an argument for hearing based on the merits.

On May 4, 2026, Father filed a "Notice of Factual Correction." In it, Father clarified that although the April 21, 2026 OAH Order referred to a May 1, 2026 federal court mediation, the mediation was in family court. Also, Father stated that he withdrew certain claims or remedies asserted in his complaint for reasons unrelated to District's motion to dismiss regarding Father's standing.

APPLICABLE LAW

The purpose of the IDEA (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.)

The IDEA conveys rights to parents and children, and grants parents independent, enforceable rights. (*Winkelman, supra,* 550 U.S. 516, 529, 533; see also *Latynski, supra,* 928 F.Supp.2d 57, 62 [parents have standing to pursue reimbursement claims under the IDEA, even after the student has reached the age of majority and IDEA rights have transferred to the student]; but see, Educ. Code § 56041.5.) Because parents enjoy rights under the IDEA, they are entitled to prosecute IDEA claims on their own behalf. (*Winkelman*, *supra*, 550 U.S. at p. 518.)

A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

Due process hearing procedures extend to the parent or guardian. (Ed. Code, § 56501, subd. (a).) The term "parent" is defined in 34 Code of Federal Regulations part 300.30(a) (2006) and Education Code section 56028 subdivision (a) to include biological parents, among others. When there is more than one biological parent, they are both presumed to be a "parent" unless the biological parent does not have legal authority to make educational decisions for the child. (34 C.F.R. § 300.30(b)(1); Ed. Code, § 56028, subd. (b)(1).)

When a judicial decree or order identifies a specific person or persons as having authority to make educational decisions on behalf of a student, that person is determined to be the parent for purposes of the IDEA. (34 C.F.R. § 300.30(b)(2); Ed. Code, § 56028, subd. (b)(2).) When the parents of a student are divorced, the parental rights established by the IDEA apply to both parents, unless a court order or state law specifies otherwise. (*Assistance to States for the Education of Children with Disabilities and Grants for Children with Disabilities*, 71 Fed. Reg. 46568 (August 14, 2006); see also *Letter to Biondi* (October 7, 1997) Office of Special Education Programs (OSEP), *Letter to Best* (January 8, 1998) OSEP, and *Letter to Serwecki*, (February 28, 2005) OSEP.)

In California, joint legal custody means that both parents share the right and the responsibility to make decisions relating to the health, education, and welfare of a child. (Fam. Code, § 3003.) A court can grant joint legal custody without granting joint physical custody. (Fam. Code § 3085.) When a family court makes an order of joint legal custody, the court must specify the circumstances under which the consent of both parents is required to be obtained to exercise legal control of the child and the consequences of the failure to obtain mutual consent. If the court does not state that the consent of both parents is required on an issue, either parent acting alone may exercise legal control of the child. (Fam. Code, § 3083.)

However, "sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child. (Fam. Code, § 3006.)

An order for joint custody may be modified or terminated upon petition of one or both parents or on the court's own motion. (Fam. Code, § 3087.) An order for the custody of a minor child may be modified at any time to an order for joint custody. (Fam. Code, § 3088.)

DISCUSSION

CHARTER'S ATTORNEYS FAILED TO COMPLY WITH THE APRIL 21, 2026 ORDER

The ALJ specifically ordered Charter to address certain matters in their reply brief. Charter failed to comply with the April 21, 2026 Order. Among other things, Charter failed to properly or directly address whether the custody orders giving Mother sole legal custody pending the mediation expired on May 1, 2026. It also continued to fail to properly address the issue of standing as it relates to a parent's independent rights, specifically, the case authority cited in Father's opposition, including but not limited to *Winkleman* and *Latynski.* Despite the ALJ's clear directive, Charter also failed to separately address each of the specific claims and remedies and explain why Father did not have standing to pursue them. Instead of properly and directly complying with the ALJ's Order, Charter raised a new ground for its motion to dismiss, arguing for the first time that some of Father's claims are barred by the statute of limitations, as well as attempting to litigate the merits of the claims, including a claim not raised in the pleading.

The ALJ views the failure to comply with the April 21, 2026 Order as lack of candor by the lawyers, causing the unnecessary expenditure of time by the ALJ. Charter's attorneys Debra Ferdman and Brittnee Gillespie Malone are both admonished for their failure to properly and fully comply with the April 21, 2026 Order. Both attorneys are forewarned that any further violations of OAH orders may result in the exclusion of evidence or other sanctions, including monetary sanctions against them and/or their client.

CHARTER FAILED TO ESTABLISH FATHER DID NOT HOLD EDUCATIONAL RIGHTS AT THE CONCLUSION OF THE MAY 1, 2026 MEDIATION

On January 30, 2024, the family law court made certain findings set forth in a written order dated February 1, 2024, and filed February 7, 2024. The February 1, 2024 Order stated that Parents had joint legal custody of Student, giving both Parents authority to make decisions about Student's education.

On January 27, 2026, the family law court made certain findings set forth in a written order dated January 29, 2026. The January 29, 2026 Order stated, among other things, that Parents were ordered to participate in custody mediation. It also stated, "Pending the mediation, Mother [] shall have legal custody of Student." It also stated that all other orders not inconsistent with the January 29, 2026 Order shall remain in full force and effect.

On March 12, 2026, the family law court made certain findings set forth in a written order dated March 12, 2026. The March 12, 2026 Order stated, among other things, that Mother had legal custody of Student (per prior court order). and that Mother is the "person who decides about the [Student's] health, education and welfare." It also stated that both Parents would have the right to access records and information about Student, including school records, and consult with professionals who are providing services to Student. Father was ordered not to interfere with a March 12, 2026 educational evaluation.

The mediation referred to in the January 29, 2026 Order apparently took place on May 1, 2026, where no agreement was reached regarding custody, and there is no evidence that any other orders were issued by the family court. Father argues that the Mother's sole custody was only temporary, in effect only from January 2026 through the

May 1, 2026 mediation. Father argues that the March 12, 2026 Order was simply an extension of the January 29, 2026 Order based on the "per prior order" language which gave sole custody to Mother pending the mediation. Father argues that absent any contrary order for the period after May 1, 2026, both Parents are again educational rights holders for Student. Father's argument appears consistent with the orders provided to OAH, including the February 1, 2024 Order.

As noted above, Charter failed to offer any contrary interpretation of the various orders. In fact, Charter completely side-stepped the issue the ALJ asked Charter to address in its reply brief -- whether the orders providing sole custody to Mother would expire on May 1, 2026? Instead, Charter glossed over the question posed by the ALJ, merely stating that it was unknown what if any changes to the custody order would occur as a result of the mediation and that Charter was not in control of whether Mother and Father reached agreement. The ALJ can only assume that Charter did not squarely treat with this issue the ALJ asked it to brief was because it had no colorable basis to argue that Father's interpretation is incorrect. Having failed to offer any contrary interpretation or otherwise explain why Mother's sole custody did not expire on May 1, 2026 when the mediation concluded, the ALJ is unpersuaded that Father lacks standing to prosecute the claims set forth in the complaint which have not been withdrawn by Father.

CHARTER FAILED TO ESTABLISH THAT THE MARCH 12, 2026 CUSTODY ORDER EXTINGUISHED FATHER'S RIGHTS TO PURSUE CLAIMS REGARDING FATHER'S RIGHTS TO ACCESS EDUCATIONAL RECORDS AND INFORMATION AND TO CONSULT WITH SERVICE PROVIDERS

Father's complaint alleges in the first problem, or Issue 1, that Charter impeded Parent's participation by, among other things:

- failing to provide Student's records until January 2024; and
- holding the March 2024 individualized education program, or IEP, team meeting without Parent.

As a remedy for Issue 1, Father requests reimbursement for costs associated with Student's enrollment in Acellus Academy during the period of Charter's noncompliance.

Besides failing to establish that Father is not now a holder of Student's educational rights, Charter failed to establish that the March 12, 2026 Order extinguished Father's rights to challenge Charter's failure to provide Student's educational records or Charter's holding of the March 2024 IEP team meeting without Father. As noted above, the March 12, 2026 Order specifically stated that both Parents retained the rights to access school records and information about Student and consult with professionals who are providing services to Student.

Thus, even if the Mother retained sole custody after the May 1, 2026 mediation by virtue of the March 12, 2026 Order, that Order appears to preserve Father's right to access to Student's educational records and information and to consult with Student's educational service providers. In other words, the March 12, 2026 Order did not wipe out all of Father's parental rights. Father, as the noncustodial parent at that time,

retained his IDEA rights to obtain Student's educational records and information and attend IEP team meetings with Student's service providers. (See, e.g., *Navin v. Park Ridge School District 64* (7th Cir. 2001) 270 F.3d 1147, 1148-1149) [finding district court erred in dismissing father's IDEA case based on father's lack of standing where divorce decree gave mother custody of student, including the right to make educational decisions, but also stated father retained rights to inspect child's school records and communicate with school personnel regarding the child's progress and participate in school activities].) Father's rights to obtain Student's records and consult with Student's service providers are clearly within the scope of the educational claims Father is attempting to enforce in Issue 1. As such, Charter failed to establish Father does not have standing to prosecute these claims by virtue of the custody orders issued by the family law court.

CHARTER HAS FAILED TO ESTABLISH THAT FATHER DOES NOT HAVE RIGHTS TO PURSUE CLAIMS ON HIS OWN BEHALF PURSUANT TO WINKELMAN

In *Winkelman*, *supra*, the United States Supreme Court held that parents enjoy independent, enforceable rights under the IDEA which were not limited to procedural and reimbursement-related matters but encompassed the entitlement to a FAPE for their child. (*Winkelman, supra*, 550 U.S. at p. 516.) In that case, the lower court had dismissed the parents' appeal because they did not have an attorney, finding that the IDEA did not allow nonlawyer parents to proceed in *pro per* in federal court. The lower court based its ruling precedent holding that the right to a FAPE belonged only to the child and concluding that the IDEA did not abrogate common law prohibiting nonlawyer parents from representing their minor children. (*Ibid.*)

The United States Supreme Court reversed and remanded the case. The Court disagreed that the sole purpose driving IDEA involvement of parents was to facilitate vindication of a child's rights. (*Id.*, at p. 517.) It rejected the school district's arguments that parents could only be "parties aggrieved" for purposes of challenging a decision in a civil action if the challenge related to certain procedures and reimbursements, making clear that the text and structure of the IDEA created in parents an independent stake not only in the procedures and costs implicated in the process but also in the substantive decision. (*Id.*, at pp. 517-518.) The Court found that the lower court erred in dismissing the Winkelmans' appeal because they did not have an attorney. In addition, because the Court concluded that parents enjoy rights under the IDEA and are entitled to prosecute IDEA claims on their own behalf, it determined that it was unnecessary to reach the school district's argument concerning whether the IDEA entitled parents to litigate their child's claims in *pro per*. (Id., at p. 518.)

Relying on *Winkelman*, the district court in *Latynski*, found that a parent had standing to pursue IDEA claims even though they no longer held their child's educational rights after the child turned 18 years old. (928 F.Supp.2d at pp. 59-62.) The school district argued that because the student was now an adult, parents lacked standing to pursue a claim seeking private school tuition reimbursement based on a challenge to the school district's proposed placement. The hearing officer granted the school district's motion to dismiss and the parents appealed.

The court held that the right to compensation is one of the many independent, enforceable rights that parents enjoy under the IDEA. (*Id.*, at p. 60.) The court found that the school district's argument was flawed in two respects: First, the rights of parents were violated well before student reached 18 years old, when parents held their child's educational rights, and that parent paid several months of tuition before student turned

18 years old. The court stated that parents' right to compensation did not evaporate on their child's 18th birthday, reasoning that the law permitted disabled children and their parents to seek redress from a local educational agency for past violations, even though parents are no longer educational rights holders, and even after the child is no longer protected by the IDEA. (*Id.*, at pp. 60-61.)

Second, the court found that the school district's interpretation of the law would cause "absurd results," allowing a school district to insulate itself from liability by dragging its feet. (*Id.*, at pp. 60-62.) The court refused to endorse any interpretation of the law which might stymie the IDEA's overarching purpose, noting the practical necessity of parent financing to vindicate their child's rights and the manifest incompatibility of interpreting the law in a way to effectively eliminate a parent's right to reimbursement. (*Id.*, at pp. 61-62.) Significantly, the court found that the school district's arguments regarding standing would turn the doctrine of standing on its head. (*Id.*, at p. 62.)

Charter failed to address either *Winkelman* or *Latynski* in its reply brief or explain why they did not apply, despite the ALJ's directive to address them. The primary cases on which Charter relies cited in their original motion are unpersuasive on the issue of Father's standing.

Charter's reliance on *Chukwuani; supra,* is unsuccessful in establishing that Father lacks standing in this case. First, it is an unpublished decision from the Sixth Circuit, and thus, it has no precedential or binding effect in a California proceeding. Second, the mother in *Chukwuani* was given exclusive educational decision-making authority during the pendency of the administrative proceeding, and there was no showing the father in that case ever reacquired such decision-making authority.

In contrast to *Chukwuani*, based on the evidence presented by the parties here, Father appears to have not only reacquired such decision-making authority at the conclusion of the May 1, 2026 family court mediation, the March 12, 2026 Order preserved Father's parental authority vis-à-vis accessing Student's records and consulting with Charter's service providers. Thus, unlike the father in *Chukwauni* who no longer met the definition of "parent" because his ex-wife had been given exclusive educational authority over their child, the record fails to establish that Father does not currently satisfy the definition of a parent for purposes of the IDEA.

Charter's reliance on other OAH rulings is also unconvincing. OAH orders and decisions are not binding authority in subsequent proceedings. (Cal. Code Regs., tit. 5, § 3085.) Furthermore, Charter fails to explain why the ALJ should consider any of those other OAH rulings as persuasive in this case. Apart from *Student v. Chaffey, supra,* (OAH Case No. 2021030191, May 6, 2021), Charter does not describe or address either the facts or the law applied by the ALJs in any of those OAH matters. Charter makes no showing that any of those cases are factually similar to the case at bar, much less explain each ALJ's rationale and demonstrate why that same rationale should apply here.

It is not the ALJ's responsibility to construct or develop a party's argument. (See *Loewen v. Berryhill* (9th Cir. 2017) 707 Fed. Appx. 907, 908 (nonpub. opn.), citing *Carmickle v. Commissioner* (9th Cir. 2008) 533 F.3d 1155, 1161, fn. 2 [the court is not required to address arguments made without specificity]; *Independent Towers of Washington v. Washington* (9th Cir. 2003) 350 F.3d 925, 929 [the court cannot construct arguments for a party, and will only examine issues specifically and distinctly argued in a party's brief]; *In Re: Out of Network Substance Use Disorder Claims Against UnitedHealthcare* (C.D. Cal., October 14, 2022, 8:19-cv-02075-JVS(DFMx)) 2022 WL 17080378, fn. 2 [the court will not perform the work of representing parties]; *Kraim v.*

Virginia, et al. (S.D.W. Va. July 26, 2021, No. 3:21-cv-00326) 2021 WL 3612305, at *7 ["[J]udges are not pigs searching for truffles," and not required to be "mind readers."].)

In fact, instead of doing any substantive analysis of those OAH rulings, Charter has merely copied and pasted into its motion to dismiss a paragraph from the *Student v. Chaffey* OAH Decision, which set forth this same string citation to OAH cases. Although Charter does discuss *Student v. Chaffey, supra,* but that case is inapposite. In that case, the ALJ's rationale for finding that parents lacked standing turned on student attorney's refusal to comply with the ALJ's order and the application of Education Code section 56041.5, that when a student reached the age of 18, all rights accorded to a parent under that part of the Education Code transferred to the student. Here, however, there is no evidence Father has refused to comply with the ALJ's order and Education Code section 56041.5 does not apply in this case because Student is not 18 years of age.

CHARTER HAD LEAVE TO FILE A REPLY BRIEF TO ADDRESS STANDING, NOT TO ASSERT AN ENTIRELY NEW BASIS FOR ITS MOTION TO DISMISS BASED ON THE STATUTE OF LIMITATIONS

As discussed above, on April 21, 2026, the ALJ requested a reply brief from Charter to address Father's standing, particularly, the arguments raised in Father's opposition. Because Charter's reply was limited to the issue of standing, the ALJ limited Father's surrebuttal to only three pages.

Charter did not have leave to assert in its reply brief an entirely new basis for its motion to dismiss based on the statute of limitations, never raised in Charter's original motion to dismiss. And Father was entitled to the opportunity to fully respond in writing to this new argument, without being limited to only three pages. Accordingly, Charter's argument based on the statute of limitations was not considered in ruling on Charter's motion to dismiss.

To the extent that it is appropriate to assert the statute of limitations on a motion to dismiss, Charter must timely serve and file a new motion to dismiss on that ground. Father shall have three business days from service of any new motion to file and serve any written opposition, which is not limited to three pages.

Charter's other arguments in its reply to defeat Father's claim that it interfered with his participation in the March 2024 IEP team meeting, appear to go the merits of the claim. Specifically, the arguments made regarding the adequacy of the notice of March 6, 2024 IEP team meeting, and the sufficiency of having only Mother attend, appear to go to the merits of Father's claim, and require an evidentiary hearing. The same is true regarding Charter's arguments regarding the dates of Student's attendance at Charter which were not only confusing and inconsistent, but go beyond the allegations in the complaint, requiring an evidentiary hearing for the ALJ to make any required factual determinations relevant to the remaining claims.

For all these reasons, Charter's motion to dismiss is denied without prejudice. The matter shall proceed as scheduled unless otherwise ordered.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings