

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
CHARTER SCHOOL  
(#CL072916)**

**Report Issued on September 23, 2016**

## **INTRODUCTION**

On July 29, 2016, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations in the special education program of a student with a disability attending a Charter School in the Clark County School District (CCSD). The Parent alleged violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300, and Chapter 388 of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC), specifically with regard to the implementation of named accommodations in the student's GeoScience course; the provision of transition services, specifically a well-written course of study and a coordinated set of activities; the scheduling of an Individualized Education Program (IEP) meeting when the student was failing classes; the provision of Extended School Year (ESY) to be decided by the student's IEP Team; and parental participation with regard to educational decisions, understanding the difference between an adjusted and standard diploma at an IEP meeting, and the scheduling of an IEP meeting.

All documents submitted by the Parent and the Charter School relevant to the issues in the Complaint were reviewed in their entirety in this investigation. The Complaint Investigation Team also received, collected, and reviewed additional information as needed during the investigation. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint.

## **COMPLAINT ISSUES**

The allegations in the Complaint, further clarified during the investigation, raise the following issues in the 2015/2016 school year:

**Issue One: Whether the Charter School complied with the IDEA and the NAC, Chapter 388<sup>1</sup>, in the implementation of the student's 2015/2016 IEP, specifically with respect to providing the accommodations to “check for understanding after instructions are given and new material is presented” and “small group to complete and/or review test/quizzes given during the GeoScience class when the teacher was not in the class for a two week period of time and after a switch to an online curriculum and extension of the GeoScience course.**

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<sup>1</sup> Pursuant to NAC§386.350(2), the governing body of a charter school shall ensure that the educational services provided by the school to students with a disability comply with the requirements set forth in Chapters 388 and 395 of NRS and NAC 388.150 to 388.450, inclusive.

- Issue Two:** Whether the Charter School complied with the IDEA and the NAC, Chapter 388, to provide the student with an IEP that included transition services to assist the student in reaching the student's postsecondary goals, specifically a course of study and a coordinated set of activities.
- Issue Three:** Whether the Charter School complied with the IDEA and the NAC, Chapter 388, to provide the student a Free Appropriate Public Education (FAPE), specifically was the Charter School required to schedule an IEP meeting upon the student failing a few courses.
- Issue Four:** Whether the Charter School complied with the IDEA and the NAC, Chapter 388, at the May 31, 2016 IEP meeting in the provision of ESY to the student, specifically with respect to the Charter School representative's denial of ESY services for purposes of credit retention and on the basis of the student's eligibility category and disability.
- Issue Five:** Whether the Charter School complied with the IDEA and the NAC, Chapter 388, with regard to affording the Parent the opportunity to participate in meetings with respect to the provision of a FAPE to the student, specifically:
- a. The Special Education Instructional Facilitator's educational decisions in the email communication dated May 19, 2016 regarding course load, placement, and accommodations related to the student's IEP;
  - b. Did the Charter School take whatever action was necessary at the IEP meeting the week of May 16, 2016 to ensure that the Parent understood the proceedings of the IEP Team meeting with regard to the differences between a standard and adjusted diploma;
  - c. Did the Charter School schedule the June 24, 2016 IEP meeting at a mutually agreed on time and place.

## **FINDINGS OF FACT (FOF)**

### **General**

1. The school at issue in this Complaint is a Charter School sponsored by the CCSD. The student is enrolled in another Charter School in the CCSD for the 2016/2017 school year. (Communication with the Nevada Department of Education (NDE), August 24, 2016 Email on transcripts)
2. The student had a May 13, 2015 IEP and a May 10, 2016 IEP in effect for the 2015/2016 school year. The May 10, 2016 IEP meeting was for the purpose of the annual review of the student's IEP. (IEPs)

3. There was a May 31, 2016 IEP meeting in which the Parent participated, but the student's IEP was not completed. (May 31, 2016 IEP Participation Documentation, Charter School Response)

### **Accommodations in GeoScience Class**

4. The student's May 13, 2015 and May 10, 2016 IEPs had the following accommodations that were required to be implemented in the student's General Education classroom, including for GeoScience. Only the accommodations in subsections a and b are at issue in this Complaint:
  - a. "Check for understanding after instructions are given and when new material has been presented." The frequency of the service was after instructions/new material.
  - b. "Small group to complete and/or review tests/quizzes given." The frequency of the service was for test/quizzes.
  - c. Extended time on test/quizzes and assignment up to 2 days. (The May 10, 2016 IEP added for online/emailed work too.) The frequency was on test/quizzes and assignments.
  - d. Allow the use of calculator when computation is not being assessed. The frequency was in Math and Science classes. (2015/2016 IEPs)
5. The student enrolled in the GeoScience class on August 17, 2015. Due to an unexpected instructor vacancy in the GeoScience Class at the beginning of the 2015/2016 school year, a licensed substitute teacher was assigned to the class and made aware of the student's special education paperwork. On August 20, 2016, three school days after enrollment, the student was transitioned to an online class monitored by the Science Department Chair and the substitute teacher. The student's 2015/2016 IEPs did not prohibit the use of an online course. (2015/2016 IEPs, Charter School Response, August 20, 2015 Receipt of IEP Paperwork, September 15, 2016 Email clarification from Secondary Science Content Specialist, School Calendar)
6. The GeoScience online course was structured so that students completed work at their own pace. "This satisfies most accommodations for time of assignments. As for testing accommodations, all assessments were virtual as well and completed at their own pace." (August 18, 2016 letter to Families, September 15, 2016 Email Clarification from Secondary Science Content Specialist)
7. The Charter School reported they provided the following accommodations for the student in the GeoScience Class after the transition of the student to the online course:
  - a. During study skills classes, the student's resource teacher checked for understanding of content covered during the GeoScience class;
  - b. The student was allowed to take tests and quizzes with the resource teacher in a small group setting during the study skills class.
  - c. During the GeoScience class period, the instructor provided time for students to participate in small groups as they worked through the content.
  - d. Additionally, the following accommodations were made available to the student: after school tutoring; academic support from the Science Department Chair; access to computers during and after class; and extended time to complete the class. (Charter School Response)

8. The Complaint Investigation Team requested documentation of the provision of the accommodations in the student's IEP in the GeoScience class. The documentation provided by the Charter School consisted of lesson plans with statements generally concerning struggling students partnered up with accelerated students in the Geo Science Class and students working independently or in small groups on homework with teacher assistance in the Resource Room. (Science and Resource Room Lesson Plans)
9. The student completed the GeoScience course and received a C as the final grade. (August 24, 2016 Charter School Email on Transcript Correction)

### **Transition Services**

10. The student turned 16 in the 2015/2016 school year. (2015/2016 IEPs)
11. The student's postsecondary goal at the time of the May 13, 2015 IEP was to become a model, clothing designer or veterinarian. The statement of transition services, course of study, was that the student would follow a standard course of study. The statement of transition services, coordinated activities, in the student's IEP required the school to provide the student with the opportunity to research postsecondary options as instruction. The other areas of coordinated activities in the statement of transition services of related services; community experiences; acquisition of daily living skills; and provision of a functional vocational evaluation in the student's IEP included the notation that they were not applicable. The Parent signed that she was in agreement with the components of the IEP. (May 13, 2015 IEP)
12. The student was not sure what the student wanted to do at the time of the May 10, 2016 IEP as the student's postsecondary goal, but Job Corp was an option. The statement of transition services, course of study, was that the student would follow a standard course of study. The statement of transition services, coordinated activities, required, as instruction, the school would provide the student with the opportunity to research postsecondary options. The other areas of coordinated activities in the statement of transition services of related services; community experiences; acquisition of daily living skills; and provision of a functional vocational evaluation included the notation that they were not applicable. The Parent signed that she was in agreement with the components of the IEP. (May 10, 2016 IEP)
13. The Parent's allegation regarding well-written courses of study is based on her Advocate's statement at the May 31, 2016 IEP Team meeting with regard to the inclusion of a statement on the student's receipt of an adjusted diploma and the required courses/credits on the draft IEP. This IEP was not finalized. (Complaint, May 31, 2016 draft IEP)

### **Failing Courses**

14. The student received an F in Geometry in the first and second quarter of the 2015/2016 school year. After the first semester, the student's grades improved and the student received a C in the third and fourth quarter, with a final grade of D. The student received an F in Spanish in the third quarter which ended on March 11, 2016 and a D in Spanish by fourth quarter with a final grade of D for the year. While it appeared that the student

received an F in Geoscience in the first two quarters of the 2015/2016 school year, those grades reflected the online course progress only. The student received a C in the first and second semester of the 2015/2016 school year in GeoScience with a final grade of C. Neither the Parent nor the Charter School requested an IEP Team meeting to revise the student's IEP upon the student's receipt of a failing grade. (Charter School Official Transcript for Student, Review of Documents, Charter School Response, Complaint)

15. The student received direct special education services in the area of Math in the General Education Classroom. The student's May 10, 2016 IEP had two annual goals with one in the area of multistep word problems with numerical equations. The student made no progress on this goal in the first quarter of the 2015/2016 school year and the projected progress was for some progress, limited. The comment on the progress report was that the student struggles to recall needed information to correctly meet this goal, "tutoring is encouraged". The Charter School did not reconvene the student's IEP Team to discuss a revision of the student's IEP to include tutoring. (2015/2016 IEPs, Progress Reports, Charter School Official Transcript for Student)
16. Upon the student's failing grade in Geometry in the first quarters of the 2015/2016 school year, the Charter School staff collaborated with the student's teachers and the student was transferred into another Geometry class with a teacher with experience in working with students with special needs. (Student Class Assignment)

## **ESY**

17. The student's IEPs for the 2015/2016 school year include the statement: "Does the student require Extended School Year services?" The box "No" is checked in the IEPs. Consistently, there was also no notation on the student's IEP in the section on the student's measurable annual goals that provided: "Check here if this goal will be addressed during Extended School Year (ESY)." (2015/2016 IEPs)
18. The Parent and the Charter School agree that the discussion regarding ESY services in the 2015/2016 school year was with regard to the student attending summer school to obtain the credits needed for a standard diploma. The summer school courses recommended by the Charter School were the General Education courses of English and Biology. (Complaint, Transcript Review, Charter School Response)
19. The Parent asserts that the Charter School told the Parent that ESY services were not available to the student due to the student's eligibility category and disability because ESY is for students with more severe disabilities. The Charter School cites the Parent's statement on the Complaint that "ESY is for students with more severe disabilities" as evidence that the IEP Team had discussed ESY with the Parent and, thereby, confirms this statement. (Complaint, Charter School Response)
20. The student received specially designed instruction in Reading and Math in the student's May 13, 2015 and May 10, 2016 IEPs. The student did not receive any related services. (2015/2016 IEPs)

## **Parental Participation – Educational Decisions**

21. On May 19, 2016, the Special Education Instructional Facilitator of the Charter School emailed the Parent on the subject matter entitled “summer school”. The Facilitator indicated that after reviewing the student’s transcripts and progress, that the school believed it was necessary for the student to repeat the current grade in order for the student to receive a standard diploma and “not get overwhelmed with the work that \_\_\_ needs to make up and the work ahead of \_\_\_.” (Blank denotes personally identifiable information.) The Facilitator also discussed the classes the student needed to make up for credit not received and a plan of action for courses to take in the next two school years, including during summer school, and how the student could get “back on track” for the standard diploma. (May 19, 2016 Email and Correspondence)
22. The Facilitator included in the May 19, 2016 correspondence that the school believed the student should not take online classes without direct teacher assistance and direct teacher assistance would not be available during summer school. The correspondence continued that, particularly in English, the student needs a teacher who understands the content as well as the expectations of the course and can modify the content to meet the student’s level and provide the accommodations the student needs. The correspondence ended with the statement that the school believed the course of action was absolutely mandatory to ensure the student’s success in receiving a standard diploma and being ready for life after high school and if the Parent did not agree with this placement that they needed to meet to discuss the student’s options. The correspondence provided the opportunity for the Parent to agree or disagree with the plan and, if the Parent disagreed, to let her know the Parent’s availability to meet to discuss other options. (May 19, 2016 Email and Correspondence, Charter School Response)
23. The Parent notified the Charter School by phone that she did not want to go forward with the recommended course of action and requested a meeting. A meeting was held on May 24, 2016 with the Parent, Principal, Vice Principal, Special Education Instructional Facilitator, Counselor and Special Education teachers. The Special Education Instructional Facilitator “generated a revision to the IEP and the draft was sent home for approval”. (Complaint, Charter School Response)
24. In response to a question from the Complaint Investigation Team, the Charter School responded that it was not their intent to revise the student’s IEP, but rather to provide the Parent additional information. The student’s IEP Team conducted an IEP meeting on May 31, 2016 IEP and the Parent and the Charter School agree that the IEP Team addressed topics that included ESY, summer school, and the course for an adjusted diploma and a standard diploma. The Parent was not ready to make a decision on course load and diploma options at this meeting and the Charter School attempted to schedule a subsequent IEP meeting. (Complaint, Charter School Response)

## **Parent Participation – Understanding**

25. At the May 10, 2016 IEP meeting, the IEP Team conducted a Transcript Review. The assessment results in the student’s Present Levels of Academic Achievement and

Functional Performance provided that the student was currently enrolled in the course of Applied English that did not meet requirements for a standard diploma and that the student would be switched to English 10 next year, with push-in assistance. The student also needed to make up semester 1 Biology, semester 2 English 9, semester 1 Geoscience, and Spanish 1 in order to graduate with a standard diploma. The IEP Team discussed that the student would move from Resource English to General Education English next year to get on track for a standard diploma. (May 10, 2016 IEP, Status Record)

26. On May 20, 2016, the Charter School conducted a Parent meeting with the Parent and Advocate, the Special Education Instructional Facilitator, two Special Education teachers, the Principal and the Vice Principal. The meeting was convened to review the plan put forth for the student to attain a standard diploma which would require the student to complete courses over the summer; repeat tenth grade; and if the student needed course recovery to do so in the next school year. (May 20, 2016 Meeting Notes)
27. At the May 20, 2016 meeting, the Parent stated that a standard diploma was not a priority for the student and the Parent and student had accepted the student getting an adjusted diploma last year and preferred that the student continue on the adjusted diploma track. The Parent said the student did not want to go to college. The Charter School stated that if an adjusted diploma was what they wanted, then a revision IEP could and would be written to change the diploma option and requirements to meet the needs and plans of the student. (May 20, 2016 Meeting Notes)
28. After the May 31, 2016 IEP meeting, the Charter School contacted the Parent and said: "I hope everything was clear today and we left you with a good feeling about the options available. If you have any questions or concerns, let me know and I will clarify anything you want." (May 31, 2016 Charter School Email)

### **Parent Participation – Scheduling the June 24, 2016 IEP meeting**

29. Since the review and revision of the student's IEP was not completed at the May 31, 2016 IEP meeting. On June 22, 2016, the Charter School set a June 24, 2016 tentative date for an IEP meeting and the Parent responded that June 24, 2016 was not good for her. Several telephone contacts were attempted and when contacted the Parent indicated she had not made a decision and needed more time. The final telephone contact was made by the Charter School on June 24, 2016. Subsequent to that date, there was no further discussion of the revision of the student's IEP or a date set. There was no IEP meeting on June 24, 2016. (June 22, 2016 Emails, Complaint Response)

### **CONCLUSION OF LAW**

**Issue One: Whether the Charter School complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's 2015/2016 IEP, specifically with respect to providing the accommodations to "check for understanding after instructions are given and new material is presented" and "small group to complete and/or review test/quizzes given during the GeoScience class when the teacher was not in the class for a two week period of time**

**and after a switch to an online curriculum and extension of the GeoScience course.**

Pursuant to the IDEA, 34 C.F.R. §300.17(d), and NAC §388.281(6)(g), the Charter School was required to provide the services and instruction deemed necessary for the student by the IEP Team.

The student enrolled in the GeoScience class on August 17, 2015. Due to an unexpected instructor vacancy in the GeoScience Class at the beginning of the 2015/2016 school year, a licensed substitute teacher was assigned to the class. On August 20, 2016, three school days after enrollment, the student was transitioned to an online class monitored by the Science Department Chair and the substitute teacher. The student's 2015/2016 IEPs did not prohibit the use of an online course. (FOF #5)

The student's IEPs in effect in the 2015/2016 school year had four accommodations that were required to be implemented in the student's General Education Classroom, including in the GeoScience class. In this case, the Parent only alleged that two of the accommodations were not provided: "Check for understanding after instructions are given and when new material has been presented" and "Small group to complete and/or review tests/quizzes given." (FOF #4)

The Charter School provided information in the course of the investigation that may have satisfied some of the student's accommodations in the GeoScience Class after the transition of the student to the online course. (FOFs #6, #7) However, when the Complaint Investigation Team requested documentation of the provision of the accommodations, the documentation consisted of lesson plans in the GeoScience Class that struggling students were partnered up with accelerated students and, in the Resource Room, that students working independently or in small groups on homework had teacher assistance. (FOF #8) This documentation does not substantiate that the Charter School provided the student the required accommodations in the General Education Classroom to "check for understanding after instructions are given and when new material has been presented" and provide "small group to complete and/or review tests/quizzes given."

In the absence of the documentation required pursuant to NAC §388.215(5) to confirm the Charter School's consistent implementation of the required accommodations (FOF #8) and the Parent's allegation otherwise, the Complaint Investigation Team determined that the Charter School failed to provide the student's accommodations in the GeoScience Class in the 2015/2016 school year. While a systemic remedy is warranted for this failure to implement the student's IEP in the GeoScience Class, given that the GeoScience course has been completed; the student obtained the passing grade of C in the class (FOF #10); and the student is not enrolled in the Charter School for the 2016/2017 school year (FOF #1), no individual student remedy is ordered as a corrective action.

*Therefore, the Charter School failed to comply with the requirements of the IDEA and the NAC, Chapter 388, to implement the student's IEP with respect to providing the accommodations to "check for understanding after instructions are given and new material is presented" and "small group to complete and/or review test/quizzes given in the GeoScience class.*

**Issue Two: Whether the Charter School complied with the IDEA and the NAC, Chapter 388, to provide the student with an IEP that included transition services to**

**assist the student in reaching the student's postsecondary goals, specifically a course of study and a coordinated set of activities.**

In accordance with the IDEA, 34 C.F.R. §300.320(b), and NAC §388.284(1)(f), beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP Team, and updated annually, the student's IEP must include the transition services (including courses of study) needed to assist the student in reaching the student's postsecondary goals. Transition services are defined under the IDEA, 34 C.F.R. §300.43, and NAC §388.133 as a coordinated set of activities for a student with a disability that meet certain requirements and can be provided as special education, if provided as specially designed instruction, or a related service, if required to assist the student with a disability to benefit from special education.

In this case, the student turned 16 in the 2015/2016 school year. (FOF #10) The student had different postsecondary goals at the time the May 13, 2015 and May 10, 2016 IEPs were developed, expressing some indecisiveness at the time of the May 10, 2016 IEP. In both of the student's 2015/2016 IEPs, the IEP Team, including the Parent, determined that the course of study to assist the student in meeting the postsecondary goals was to follow a standard course of study. (FOFs #11, #12)

While the current IDEA regulations did not retain the description of what constitutes a course of study from the March 12, 1999 regulations, "such as participation in advanced-placement courses or a vocational education program", it was not a meaningful exclusion. Rather, the United States Department of Education did not believe the description was necessary to understand and implement the course of study requirement. (Discussion of the IDEA regulations: Federal Register /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations, Pg. 46668)

The NAC §388.284(1)(e) did retain the description for students 14 years or older, specifically the statement of transition services with regard to the student's course of study, include, without limitation, participation in advanced placement courses or a vocational educational program. The NDE IEP Guidelines and Special Education Data Standards for the development/revision of an IEP<sup>2</sup> provide consistent guidance.

In the course of the investigation, it was determined that the Parent's allegation regarding a well-written course of study was based on her Advocate's statement at the IEP meeting on May 31, 2016 on the inclusion of a statement of the student's receipt of an adjusted diploma and the required courses/credits in the draft May 31, 2016 IEP. (FOF #13) This IEP was not finalized. (FOF #3) The Complaint Investigation Team determined that the only IEPs in effect for the 2015/2016 school year, the May 13, 2015 and May 10, 2016 IEPs, included the description of the student's course of study consistent with the requirements of the IDEA, 34 C.F.R. §300.320(b), and NAC §388.284(1)(f).

The student's 2015/2016 IEPs also included a statement of transition services, coordinated activities, specifically that the school would provide the student with the opportunity to research postsecondary options and that the service would be delivered as instruction. The other areas required to be considered as aspects of the student's coordinated activities in the statement of transition services (34 C.F.R. §300.43, NAC §388.133) were listed in the student's 2015/2016

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<sup>2</sup> These documents are publically available at:  
[http://www.doe.nv.gov/Special\\_Education/IDEA\\_Forms\\_\\_\\_\\_Documents/](http://www.doe.nv.gov/Special_Education/IDEA_Forms____Documents/)

IEPs and included the notation that they were not applicable. The Parent signed that she was in agreement with the components of each of the student's 2015/2016 IEPs. (FOFs #11, #12)

*Therefore, the Charter School complied with the IDEA and the NAC, Chapter 388, to provide the student with an IEP that included transition services to assist the student in reaching the student's postsecondary goals, specifically a course of study and a coordinated set of activities.*

**Issue Three: Whether the Charter School complied with the IDEA and the NAC, Chapter 388, to provide the student a FAPE, specifically was the Charter School required to schedule an IEP meeting upon the student failing a few courses.**

Pursuant to the IDEA, 34 C.F.R. §300.324(b)(1), and the NAC §388.281(6)(a), each public agency must ensure that the IEP Team reviews a student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved and revise it, as appropriate. In this case, there is no dispute that the student's IEP was reviewed on an annual basis in the 2015/2016 school year. (FOF #2)

The student received an F in Geometry in the first and second quarter of the 2015/2016 school year and an F in Spanish the third quarter. These failing grades are in courses in which the student received accommodations, and, for Geometry, the student had an annual goal and received specially designed instruction for that subject. (FOFs #4, #15) The student made no progress on the numerical equation goal in the first quarter of the school year and the comment on the student's progress report was that "tutoring is encouraged." (FOF #15)

Neither the Parent nor the Charter School requested an IEP Team meeting to revise the student's IEP upon the student's receipt of a failing grade and, notwithstanding the comment in the area of Geometry on the student's progress report, the Charter School did not reconvene the student's IEP Team to discuss a revision of the student's IEP to include the recommended tutoring for this specially designed instruction or other revision. (FOFs #14, #15) However, the Charter School did take action within their administrative discretion and transferred the student into another Geometry class with a teacher with experience in working with students with special needs. (FOF #16) After the transfer, the student received the grade of C in Geometry in the third and fourth quarter of the school year and a final grade of D. The failing grade of Spanish occurred in the third quarter of the school year which ended on March 11, 2016 and student received a final grade of D in Spanish. While not called for this purpose, the student's IEP was reviewed on May 10, 2016 in the annual review. (FOFs #2, #14)

While a student failing a course(s) during a school year could be indices of a student failing to receive a FAPE, there is no provision in the IDEA or the NAC, Chapter 388, that either equates failing a course for one or two quarters with a denial of FAPE or requires an IEP Team to conduct the periodic review of the student's IEP on this basis. In this case, the student improved the grades in both of the subjects in which there was a failing grade and received a passing final grade in all of the courses. In accordance with the IDEA, 34 C.F.R. §300.324(b)(1), and the NAC §388.281(6)(a), the Charter School did ensure that the IEP Team reviewed the student's IEP not less than annually, to determine whether the annual goals for the student were being achieved and revise it, as appropriate. (FOF #2)

*Therefore, the Charter School complied with the IDEA and the NAC, Chapter 388, to provide the student a FAPE, specifically the Charter School did ensure that the IEP Team reviewed the student's IEP not less than annually and was not required to schedule an IEP meeting upon the student receiving a failing grade during the course of the school year.*

**Issue Four: Whether the Charter School complied with the IDEA and the NAC, Chapter 388, at the May 31, 2016 IEP meeting in the provision of ESY to the student, specifically with respect to the Charter School representative's denial of ESY services for purposes of credit retention and on the basis of the student's eligibility category and disability.**

There are two types of summer programs for students. Summer school is available to students with or without disabilities. ESY services are only available to students with disabilities. Pursuant to the IDEA, 34 C.F. R. §300.106(b), and NAC §388.284(5), the term "ESY services" means, in relevant part, special education and related services that are provided to a student with a disability beyond the normal school year of the public agency in accordance with the student's IEP. (Underlined for emphasis.) In accordance with the IDEA, 34 C.F.R. §300.106(a)(2), and NAC §388.284(5), ESY services must be provided only if a student's IEP Team determines, on an individual basis that the services are necessary for the provision of FAPE to the student. In implementing these requirements, a public agency may not limit extended school year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services (34 C.F.R. §300.106, and NAC §388.284(5)).

The Parent and the Charter School agree that the issue regarding ESY services in the 2015/2016 school year was with regard to the student attending summer school to obtain the credits needed for a standard diploma. The summer school courses recommended by the Charter School were the General Education courses of English and Biology. (FOF #18)

The student only received specially designed instruction in Reading and Math in the 2015/2016 school year. The student did not receive any related services. (FOF #20) While accommodations were provided to the student in all of the student's classes, the English and Science summer school courses were proposed only for credit retention purposes to permit the student to attain a standard diploma. These courses were not proposed or intended to be provided as special education to the student. Therefore, the Complaint Investigation Team determined that the Charter School's recommendation for the student to attend these General Education courses for credit retention constituted a proposal for summer school attendance only, rather than ESY pursuant to the IDEA, 34 C.F. R. §300.106(b), and NAC §388.284(5).

The Parent also asserts that the Charter School told the Parent at the May 31, 2016 IEP Team meeting that ESY services were not available to the student due to the student's eligibility category and disability in violation of the IDEA and the NAC. While the Charter School's statement that "ESY is for students with more severe disabilities" could reflect an impermissible limitation, in context it is more likely that the statement was inartful. The IEP Team did not finalize this IEP and this statement, without more, does not support a determination that the Charter School's refusal to provide summer school for credit retention as ESY services to the student was based on the category or severity of the student's disability. (FOFs #21, #22)

The student's IEP Team, including the Parent, determined that the student did not require ESY services for the 2015/2016 school year, as documented in the student's May 13, 2015 and May

10, 2016 IEPs. (FOF #19) The Parent signed that she was in agreement with the components of both IEPs. (FOFs #11, #12) As such, the student's IEP Team determined the student did not require ESY services for the provision of FAPE to the student and the discussion at the May 31, 2016 IEP meeting with regard to the student's attendance at summer school for credit retention was not inconsistent with that determination.

*Therefore, the Charter School complied with the IDEA and the NAC, Chapter 388, in the provision of ESY to the student, specifically with respect to the Charter School representative's denial of ESY services for purposes of credit retention and the prohibition that ESY may not be limited on the basis of the student's eligibility category and disability at the May 31, 2016 IEP meeting.*

**Issue Five: Whether the Charter School complied with the IDEA and the NAC, Chapter 388, with regard to affording the Parent the opportunity to participate in meetings with respect to the provision of a FAPE to the student, specifically:**

- a. The Special Education Instructional Facilitator's educational decisions in the email communication dated May 19, 2016 regarding course load, placement, and accommodations related to the student's IEP;**
- b. Did the Charter School take whatever action was necessary at the IEP meeting the week of May 16, 2016 to ensure that the Parent understood the proceedings of the IEP Team meeting with regard to the differences between a standard and adjusted diploma;**
- c. Did the Charter School schedule the June 24, 2016 IEP meeting at a mutually agreed on time and place.**

## **Educational Decisions**

In accordance with the IDEA, 34 C.F.R. §§300.321(a)(1) and 300.501(b)(1), and NAC §§388.281(2)(d) and 388.302(1), the parent of the student with a disability is a member of the student's IEP Team and must be afforded an opportunity to participate in meetings with respect to the provision of a FAPE to the student. However, a meeting does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting (34 C.F.R. §300.501(b)(3); NAC §388.302(4)).

The Charter School's May 19, 2016 correspondence included a number of topics with the stated concerns of the Charter School with regard to the student's current program and a recommended detailed course of action. (FOFs #21, #22) It is understandable that the Parent took the far-reaching correspondence as educational decisions made without her participation; however, the Complaint Investigation Team determined that was not the case. In accordance with the IDEA, 34 C.F.R. )300.501(b)(3), and the NAC §388.302(4), the Charter School engaged in preparatory activities and developed a proposal and provided the Parent with that information. The Charter School's offer to discuss the options at a later meeting (FOF #22) and their follow through with the May 31, 2016 IEP meeting (preceded by a Parent meeting on May 24, 2016) (FOFs #23, #24) substantiates the Charter School's stated intent of the May 19, 2016 correspondence to provide additional information and recommendations to the Parent (FOF

#24) and meets the requirements of the IDEA and the NAC with regard to preparatory activities (34 C.F.R. §300.501(b)(3); NAC §388.302(4)).

*Therefore, the Charter School complied with the IDEA and the NAC, Chapter 388, with regard to affording the Parent the opportunity to participate in meetings with respect to the provision of a FAPE to the student, specifically the Special Education Instructional Facilitator's correspondence dated May 19, 2016 regarding course load, placement, and accommodations related to the student's IEP.*

## **Understanding**

In accordance with the IDEA, 34 C.F.R. §300.322(e), and NAC §388.281(6)(f), the public agency must take whatever action is necessary to ensure that the parent who attends the IEP meeting understands the proceedings of the meeting.

There was no IEP meeting conducted the week of May 16, 2016 as alleged in the Complaint. A number of the members of the student's IEP Team met with the Parent on May 20, 2016 during that week; however, it was a Parent meeting rather than an IEP meeting. (FOF #26) While the requirements of the IDEA, 34 C.F.R. §300.322(e), and NAC §388.281(6)(f) only apply to an IEP Team meeting, the Complaint Investigation Team determined the Parent meeting was convened to discuss the student's goal to attain a standard diploma and the steps that must be taken in order to do so. (FOF #26) At this meeting, the Parent stated that a standard diploma was not a priority for the student and the Parent and student had accepted the student getting an adjusted diploma last year and preferred that the student continue on the adjusted diploma track. The Parent said the student did not want to go to college. The Charter School stated that if an adjusted diploma was what they wanted, then a revision IEP could and would be written to change the diploma option and requirements to meet the needs and plans of the student. (FOF #27)

The May 31, 2016 IEP meeting that followed this Parent meeting included the discussion of the options available for the student and the Charter School contacted the Parent after the meeting offering to clarify any questions or concerns the Parent still had. (FOFs #24, #28) There was also a prior May 10, 2016 IEP meeting where the transcript review involved a discussion of the needed credits for the student to graduate with a standard diploma and a course change to meet the standard diploma requirements. (FOF #25) Based on the statement of the Parent at the May 20, 2016 Parent meeting and the discussions of the IEP Team before and after this Parent meeting regarding the adjusted versus the standard diploma, the Complaint Investigation Team determined the Parent understood the IEP proceedings with regard to the difference between these diplomas.

*Therefore, the Charter School complied with the IDEA and the NAC, Chapter 388, with regard to affording the Parent the opportunity to participate in meetings with respect to the provision of a FAPE to the student, specifically with regard to taking the action necessary at the student's IEP meetings to ensure the Parent understood the differences between a Standard and Adjusted Diploma.*

## **Scheduling the IEP Meeting**

Pursuant to the IDEA, 34 C.F.R. §300.322(a)(2), and NAC §388.281(8)(a), a public agency must take steps to ensure that one or both of the parents of a student with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including scheduling the meeting at a mutually agreed on time and place. The notice provided in NAC §388.281(8) is designed to ensure that a parent is provided sufficient notice to enable the parent to make arrangements to participate in such meetings.

The IEP meeting at issue in this Complaint is the scheduling of the June 24, 2016 IEP meeting to continue the IEP Team's review conducted on May 31, 2016. (FOF #24) On June 22, 2016, the Charter School set a June 24, 2016 tentative date for an IEP meeting and the Parent responded that June 24, 2016 was not good for her. Several telephone contacts were attempted and when contacted the Parent indicated she had not made a decision and needed more time. The final telephone contact to schedule the next IEP meeting was made by the Charter School on June 24, 2016. Subsequent to that date, there was no further discussion of the revision of the student's IEP or a date set. There was no IEP meeting on June 24, 2016. (FOF #29)

*Therefore, the Charter School complied with the requirements of the IDEA and the NAC, Chapter 388, to afford the Parent the opportunity to participate in meetings with respect to the provision of a FAPE to the student, specifically with regard to the scheduling of the June 24, 2016 IEP meeting at a mutually agreed upon time and place.*

## **ORDER FOR CORRECTIVE ACTION**

The Charter School is required to take corrective action to address the violation found in this Complaint investigation, specifically the failure to implement the accommodations in the student's IEPs in the GeoScience class.

Within 30 days of the receipt of this report, the Charter School must develop and submit to the NDE a proposed Correction Action Plan (CAP) to train all general education personnel in the student's school who are responsible for implementing IEPs of the necessity to implement accommodations in student with disabilities' IEPs and to maintain a system of records to provide documentation on the implementation of individual students' IEPs.

The CAP must include a method for the Charter School to determine that the participants have mastered the contents of the training and documentation of that mastery. This CAP must be approved by the NDE prior to its implementation.

Following approval of the CAP by the NDE, it must be implemented by January 15, 2017 and a report submitted to the NDE to document its implementation within 15 school days thereafter.