

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL090916)**

Report Issued on November 8, 2016

INTRODUCTION

On September 9, 2016, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA) and the Nevada Administrative Code (NAC), Chapter 388, in the special education program of a student with a disability attending school in the Clark County School District (CCSD). The Parent alleged the CCSD had failed to: provide the parent an opportunity to participate in the student's May 4, 2016 Individualized Education Program (IEP) meeting in that the date of the meeting was not mutually agreed upon; provide an interpreter and have the required IEP Team members present, specifically the Speech and Language Pathologist and Occupational Therapist, at the May 11, 2016 and May 25, 2016 IEP meetings; and include the student's need for air conditioned specialized transportation in the student's IEP.

The Parent's Complaint was typewritten in English and signed by the Parent. The Complaint did not include the Parent's request for an interpreter and/or translator in her native language. Upon review of the Complaint and consideration of the allegation regarding the Parent's native language, the Nevada Department of Education (NDE) provided both English and translated notices and this Report¹ to the Parent.

On October 12, 2016, the Parent contacted the NDE and indicated she wanted to withdraw the Complaint due to a successful IEP meeting subsequent to the filing of the Complaint. The NDE offered to call the Parent back with an interpreter and the Parent declined. The Parent was informed the NDE required a written withdrawal of the Complaint from the Parent prior to the timeline for the issuance of the Report in order for the withdrawal to be effective. The NDE provided this information and a withdrawal form to the Parent in writing in both English and the Parent's stated native language. The NDE did not timely receive a written withdrawal of the Complaint from the Parent and the NDE notified the CCSD that, in the absence of a written withdrawal of the Complaint, the investigation would be completed and a Report issued. The CCSD did not respond to the NDE's notice prior to the issuance of the Report.

All documents submitted by the Parent and the CCSD relevant to the issues in the Complaint were reviewed in their entirety in this investigation. The Complaint Investigation Team also collected and reviewed additional information as needed during the investigation. The Findings

¹ As discussed later in this Report, the NDE was not required to make a determination whether the Parent's stated native language met the definition of the IDEA. As such, to ensure compliance, the Report was translated into the Parent's stated native language. Due to the expectation of the Parent's withdrawal of this Complaint and the required translation of this Report, while this Report is timely issued in English, the translation of the Report in the Parent's stated native language required additional time. Therefore, for the sole purpose of the translation of the Report, the NDE is extending the 60-day Complaint timeline pursuant to the IDEA, 34 C.F.R. §300.152(b), for a period of one week to permit the issuance of the Report to the Parent in both English and the stated native language.

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, raised the following issues under the jurisdiction of the NDE to investigate:

Issue One:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with respect to parent participation, specifically:

- a. **Ensuring that the Parent was present at the May 4, 2016 IEP Team meeting or afforded the opportunity to participate;**
- b. **Taking whatever action was necessary by arranging an interpreter in the Parent's native language² at the May 11, 2016 and May 25, 2016 IEP meetings to ensure the Parent understood the proceedings; and**
- c. **Considering the concerns of the Parent at the May 25, 2016 IEP meeting, specifically the Parent's request for the accommodation of air-conditioned specialized transportation.**

Issue Two:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388 with respect to ensuring the required members of the IEP Team were present at the student's May 11, 2016 and May 25, 2016 IEP meetings, specifically the Speech and Language Pathologist and the Occupational Therapist.

FINDINGS OF FACT (FOF)

General

1. The student enrolled in the CCSD in August 2014. (Registration Form)
2. The student had a May 6, 2015 IEP and a May 4, 2016 IEP in effect in the 2015/2016 school year. The 2015/2016 school year ended on June 2, 2016. (May 4, 2015 IEP, Internal CCSD Emails)

May 4, 2016 IEP Meeting

3. The CCSD and the Parent agree that the CCSD conducted the student's annual IEP meeting on May 4, 2016 without the Parent in attendance. (IEP, Complaint, CCSD Response)

² The Parent's named native language is not displayed to ensure the protection of personally identifiable information.

4. In response to this Complaint, the CCSD provided a copy of a written meeting notice to the Parent dated April 20, 2016 with a tentative meeting date of May 4, 2016 at 8:00 AM and a second Meeting Notice dated the day of the IEP meeting, May 4, 2016. The Meeting Notice forms had an opportunity for the Parent to indicate the desire to attend with the option of proposing another date. There is no signature or notation by the Parent on the forms provided to the Complaint Investigation Team and it is unknown when the Notices were provided to the Parent. (Meeting Notices)
5. In some other manner, the Parent informed the school that she wanted to participate in the student's IEP meeting, but could not participate on May 4, 2016. The Parent requested the IEP meeting be rescheduled so that she could attend with her advocate. (Confidential Status Record, Complaint)
6. It is unknown when the Parent notified the CCSD that she would be unable to attend the May 4, 2016 IEP meeting, but, assuming it was due to illness as the CCSD reports, it may have been on the day of the IEP meeting. (CCSD Internal Emails)
7. The student's teacher notified the CCSD Special Education Instructional Facilitator assigned to the student's school that the student's Parent was unable to attend the student's IEP meeting on May 4, 2016 due to illness and the Parent did not want to participate in the meeting by phone, but wanted to attend in person. The teacher indicated the Parent was able to attend the IEP meeting the following week, but the student's IEP would be out of compliance at that time. (CCSD Internal Emails)
8. The Special Education Instructional Facilitator responded to the student's teacher that the CCSD guidelines are that the IEP meeting be held under these circumstances without the Parent present. "CCSD Guidelines are that we hold the IEP in these circumstances without parent present. Per Compliance and Monitoring, we are not to hold IEP past the due date in these type of circumstances. . . [t]he federal law does not allow us to let the IEP go out of compliance-even if the parent requests we do so. We can offer to meet with the parent when they are feeling better and review the entire IEP and schedule a revision if needed but we may not let the IEP go out of compliance because the parent was not able to attend on the date scheduled." (CCSD Internal Email)
9. The student's IEP Team, including the Parent, conducted another IEP meeting for the student on September 8, 2016. The Parent signed in agreement with the components of the IEP and her understanding that its provisions would be implemented as soon as possible after the IEP went into effect. The Parent informed the NDE that the IEP Team was able to work through her concerns. (September 8, 2016 IEP, Parent Interview)

May 11, 2016 and May 25, 2016 Meetings with the Parent

10. On May 11, 2016, the Parent and the student's special education teacher had a meeting. There was no information provided in the course of this investigation that this meeting was an IEP meeting. On the contrary, CCSD's response to a request for additional information on this meeting confirmed the May 11, 2016 meeting was not an IEP meeting. (Review of Documents, CCSD Response)
11. The CCSD issued a written meeting notice to the Parent dated May 17, 2016 with a tentative meeting date of May 25, 2016 at 8:00 AM to develop the student's IEP. The Parent responded in writing that she would attend the meeting at the time and place specified and she would be accompanied by an advocate. The Parent did attend the May 25, 2016 meeting along with her advocate. (May 17, 2016 Meeting Notice, May 25, 2016 IEP Attendance Page)
12. While the May 25, 2016 meeting was scheduled and convened to be a review and revision of the May 4, 2016 IEP, the IEP revision was "tabled" to reconvene in the fall of 2016 to invite representatives from transportation, adaptive physical education, Occupational Therapy, Physical Therapy and the Speech and Language Pathologist to attend to discuss "the parent's concerns and clarify present levels." The CCSD then converted the scheduled May 25, 2016 IEP meeting to a Parent meeting. (CCSD Response, Confidential Status Record, Complaint)

Interpreter

13. When the Parent registered the student in the CCSD in August 2014, the Parent responded with the language English to each of the following in the Home Language Survey: First language(s) learned by the student; Language(s) spoken by the student with friends; Language(s) used in the Home; and Language for School Correspondence. (CCSD Registration Form)
14. The Primary Language Spoken in the Home is noted as English in the student's IEPs. (May 6, 2015 and May 4, 2016 IEPs, May 25, 2016 IEP Participation Page)
15. At the scheduled and convened May 25, 2016 IEP meeting, the Parent requested an interpreter in her stated native language for the first time. The Parent did not have a second language status at the time of the scheduled and convened IEP meeting and no interpreter was provided. (Complaint, Status Record)

Concerns of the Parent

16. The Parent wanted a representative from transportation to be present for the revision of the student's IEP scheduled for May 25, 2016. The Parent expressed her concern at the IEP meeting of the lack of air-conditioning on the school bus due to the student's asthma and requested air-conditioning on the school bus be included in the student's IEP. (Status Record)

IEP Team

17. The student received Speech Therapy and Occupational Therapy as related services in both the May 6, 2015 and May 4, 2016 IEPs. The Speech and Language Pathologist and the Occupational Therapist participated in the development of the student's May 6, 2015 IEP. (IEPs)
18. The only issue raised with regard to IEP Team members in this Complaint was the absence of the student's Speech and Language Pathologist and Occupational Therapist at the May 11, 2016 and the May 25, 2016 IEP meetings. As noted previously, there was no information provided in the course of this investigation that the May 11, 2016 meeting was other than a meeting between the Parent and the special education teacher. However, the May 25, 2016 meeting was scheduled and convened as an IEP meeting. (May 4, 2016 IEP, Confidential Status Record, CCSD Response, Complaint)
19. The Meeting Notice issued to the Parent for the May 25, 2016 IEP meeting indicated: "The following additional persons have been notified about the meeting and may be in attendance." The student's Speech and Language Pathologist and the Occupational Therapist were listed among those persons who were notified of the meeting and might be in attendance, but they did not attend. (IEP Meeting Notice, May 25, 2016 IEP attendance page)
20. The student's May 4, 2016 IEP that was scheduled to be reviewed and revised at the May 25, 2016 IEP meeting included assessment results from the Speech and Language Pathologist and Occupational Therapist. The assessment conducted by the Speech and Language Pathologist was described as observation and documentation for the year. The assessment conducted by the Occupational Therapist is listed only as "annual Occupational Report." (May 4, 2016 IEP)
21. The Parent had questions regarding the Speech Therapy and Occupational Therapy results and wanted the Speech and Language Pathologist and the Occupational Therapist present at the May 25, 2016 IEP meeting to discuss the student's present levels and related service minutes. (Complaint)

22. The special education teacher was the individual who attended the convened IEP meeting on behalf of the CCSD who was able to interpret the instructional implications of the Occupational Therapy and Speech Therapy evaluation results. (CCSD Response)

CONCLUSIONS OF LAW

Issue One:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with respect to parent participation, specifically:

- a. Ensuring that the Parent was present at the May 4, 2016 IEP Team meeting or afforded the opportunity to participate;**
- b. Taking whatever action was necessary by arranging an interpreter in the Parent's native language at the May 11, 2016 and May 25, 2016 IEP meetings to ensure the Parent understood the proceedings; and**
- c. Considering the concerns of the Parent at the May 25, 2016 IEP meeting, specifically the Parent's request for the accommodation of air-conditioned specialized transportation.**

May 11, 2016 and May 25, 2016 IEP Meetings

Given both Issue One and Issue Two involve meetings with the Parent held on May 11, 2016 and May 25, 2016; it is necessary, as a preliminary matter, to determine the precise nature of the meetings held on those days. While a meeting was conducted on May 11, 2016 with the Parent and the special education teacher, there was no information provided that this meeting was other than a Parent meeting. (FOF #10) Therefore, the Complaint Investigation Team determined it was not an IEP meeting.

The May 25, 2016 meeting is more complicated. The May 25, 2016 IEP meeting was scheduled and convened as an IEP meeting and the Parent attended the scheduled IEP meeting with her advocate. (FOFs #11, #12) At some point during the IEP meeting, the IEP revision was "tabled" by the CCSD to reconvene in the fall of 2016 to invite representatives from transportation, adaptive physical education, Occupational Therapy, Physical Therapy and the Speech and Language Pathologist to attend to discuss the Parent's concerns and to clarify present levels. The CCSD then converted the scheduled May 25, 2016 IEP meeting into a Parent meeting. (FOF #12)

Opportunity to Participate

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 notice sufficiently far in advance of the meeting to enable the parent to make arrangements to participate in such meetings.

In this case, the CCSD issued a written meeting notice to the Parent dated April 20, 2016 with a tentative meeting date of May 4, 2016 at 8:00 AM and issued a second notice on the day of the IEP meeting. The proposed May 4, 2016 IEP meeting date was only two days before the student's annual review date. (FOFs #2, #11)

The meeting notice on the day of the meeting, on its face, is not sufficiently far in advance of the meeting as required by the NAC §388.281(8) and the CCSD did not provide any documentation when the April 20, 2016 meeting notice was provided to the Parent or that the IEP meeting was scheduled for a date agreeable to the Parent. As such, the Complaint Investigation Team was unable to make a determination that the meeting notice was provided sufficiently in advance of the meeting to enable the Parent to attend. Since the Parent intended to attend the May 4, 2016 IEP meeting and the reason for the Parent's inability to attend the meeting was reportedly illness on the day of the scheduled meeting (FOFs #5, #6), this absence of documentation is not determinative in this case.

The CCSD and the Parent agree that the CCSD conducted the student's annual IEP meeting without the Parent in attendance and that the Parent wanted to participate. (FOF #3) It does appear that the CCSD offered to allow the Parent to participate in the IEP meeting by telephone (FOF #7); however, the Parent did not agree to use this alternative means of participation and that is required by the IDEA, 34 C.F.R. §§300.322(c), 300.328, and NAC §388.281(10).

The Complaint Investigation Team understands that, due to the CCSD's scheduling of the IEP meeting only two days before the annual review date and the inability of the Parent to meet until the following week (FOFs #2, #5, #11), the CCSD was in the position of violating the requirement under the IDEA, 34 C.F.R. §300.324(b)(1), and the NAC §388.281(6)(a) to review the student's IEP not less than annually or violating the requirement to afford the Parent the opportunity to participate under the IDEA, 34 C.F.R. §300.322(a)(2), and NAC §388.281(8)(a). In *Doug C. v. State of Hawaii Department of Education*, 720 F.3d 1038, 61 IDELR 91 (Ninth Circuit 2013), the Ninth Circuit Court of Appeals addressed the very dilemma the CCSD faced:

"The more difficult question is what a public agency must do when confronted with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP. In considering this question, we must keep in mind the purposes of the IDEA: to provide disabled students a free appropriate public education and to protect the educational rights of those students. 20 U.S.C. § 1400(d). It is also useful to consider our standard for determining when a procedural error is actionable under the IDEA. We have repeatedly held that "procedural inadequacies that result in the loss of educational opportunity or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE." Shapiro, 317 F.3d at 1079; see also *Amanda J.*, 267 F.3d at 892. When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE. In reviewing an agency's action in such a scenario, we will allow the agency reasonable latitude in making that determination.

In this case, the Department was allegedly confronted with two options: including Doug

C. in the meeting and missing the IEP annual deadline by several days or proceeding with the IEP meeting without Doug C. but meeting the annual deadline. As discussed supra, the Supreme Court and this court have both repeatedly stressed the vital importance of parental participation in the IEP creation process. We have further held that delays in meeting IEP deadlines do not deny a student a FAPE where they do not deprive a student of any educational benefit. See *A.M. v. Monrovia*, 627 F.3d 773, 779 (9th Cir. 2010) ("Whether or not Defendant exceeded the thirty-day limit, A.M. suffered no deprivation of educational benefit and therefore has no claim."). Under the circumstances of this case, the Department's decision to prioritize strict deadline compliance over parental participation was clearly not reasonable."

"Even if the Department's theory of the case was supported by the facts, the Department's argument that it absolutely could not reschedule the IEP meeting for a date even a few days after the annual deadline in order to include Doug C. is untenable. Waiiau's testimony suggests, and the Department's counsel represented at oral argument, that if the annual deadline passed without a new IEP, services would "lapse." The district court took a similar position. We reject this argument because it is premised on the erroneous assumption that the Department is authorized (let alone required) to cease providing services to a student if his annual IEP review is overdue. The IDEA mandates annual review of a student's IEP. 20 U.S.C. § 1414(d)(4); see also 34 C.F.R. § 300.324(b)(1)(i). However, the Department cites no authority, nor could it, for the proposition that it cannot provide any services to a student whose annual review is overdue. There may, of course, be circumstances in which accommodating a parent's schedule would do more harm to the student's interest than proceeding without the parent's presence at the IEP. . . . We trust, however, that such circumstances will be rare given the central role parents have in helping to develop IEPs."

Neither the CCSD nor the Parent provided any information to lead the Complaint Investigation Team to determine that this was a case where delaying the student's IEP to assure the Parent's participation would have caused more harm to the student's interest than proceeding to revise the student's IEP without the Parent.

Pursuant to the IDEA, 34 C.F.R. §300.322(d), and the NAC §388.281(10), a public agency may conduct an IEP meeting without a parent in attendance, **if** the agency is unable to convince the parents that they should attend and the agency keeps a record of its attempts to arrange a mutually convenient time and place. NAC §388.281(11) also provides that if the reasonable efforts of the public agency to involve the student's parents are unsuccessful, then the parents are deemed unavailable and the public agency must develop an IEP without the parents. However, like the parent in *Doug C.*, this is not a case where the Parent affirmatively refused to attend the meeting; the CCSD's efforts to involve the Parent were unsuccessful; or the CCSD could not convince the Parent to attend despite its best efforts. On the contrary, the Parent wanted to participate in the IEP meeting in person and asked for the IEP meeting to be rescheduled and the CCSD refused to do so. (FOFs #5, #7) Therefore, the CCSD failed to comply with the IDEA, 34 C.F.R. §300.322(a)(2), and NAC §388.281(8)(a), to take steps to ensure that the Parent was present at each IEP Team meeting or was afforded the opportunity to participate.

The CCSD did attempt to rectify the violation of denying the Parent the opportunity to participate in the development of the student's May 4, 2016 IEP by scheduling an IEP revision meeting on May 25, 2016, with the Parent's participation. (FOFs #11, #12) It was previously established that at some point at the May 25, 2016 IEP meeting, the CCSD tabled the review and revision of

the student's IEP. (FOF #12) Given the CCSD's Special Education Instructional Facilitator suggested the review of the IEP with the Parent after-the-fact based on actual or perceived guidance from the CCSD Compliance and Monitoring Office, for the sake of thoroughness, it is worthwhile asking: Would an IEP meeting after the fact negate this violation? No.

"Finally, the Department argues that there was no violation here because the Department held a follow-up IEP meeting with Doug C. present on December 7. We rejected a similar argument in Shapiro. We held that where an agency violates the IDEA by producing a new IEP without the participation of the child's parents, "[a]fter-the-fact parental involvement is not enough" because the IDEA contemplates parental involvement in the "creation process." Shapiro, 317 F.3d at 1078. It is uncontested that, at the time of the December 7 meeting, the new IEP was already completed and adopted. Therefore, the after-the-fact meeting is not enough to remedy the Department's decision to hold the initial IEP meeting, in which they created the IEP and changed Spencer's placement, without Doug C." *Doug C. Supra*.

To be clear, both of the predicaments described above would violate the IDEA and the NAC, Chapter 388. It is the relative weight of the noncompliance that the *Doug C.* decision addresses and the resultant denial of a free appropriate public education due to the serious infringement of the Parent's opportunity to participate. The noncompliance is exacerbated in this case since the CCSD could have avoided it by scheduling the student's annual IEP meeting sufficiently in advance of the annual review date to accommodate unforeseen events, such as the illness of a required IEP Team member, as occurred in this case, or the inability to complete the student's IEP in a single meeting, as occurred at the May 25, 2016 IEP meeting.

Therefore, the CCSD failed to comply with the IDEA and the NAC, Chapter 388, with respect to parent participation, specifically ensuring that the Parent was present at the May 4, 2016 IEP Team meeting or afforded the opportunity to participate.

Interpreter

Pursuant to 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 understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents whose native language is other than English. Native language is defined in the IDEA, 34 C.F.R. §300.29(a)(1), when used with respect to an individual who is limited English proficient, to mean, in relevant part, the language normally used by that individual.

In this case, the Parent requested an interpreter in her stated native language at the student's convened May 25, 2016 IEP meeting. (FOF #15) Prior to the May 25, 2016 IEP meeting, the CCSD was not put on notice of the Parent's stated native language since the Parent had declared English as the language used in the home and the language to be used in school correspondence up until that point. (FOFs #13, #14) Given the absence of prior notice of the Parent's stated native language and the CCSD's tabling of the review and revision of the student's IEP during the course of the meeting (FOF #12), the Complaint Investigation Team determined that the CCSD did not violate the requirements of the IDEA, 34 C.F.R. §300.322(e), and NAC §388.281(6)(f) at the May 25, 2016 convened IEP meeting. The Parent also alleged the absence of an interpreter at the May 11, 2016 IEP meeting. As discussed previously, in addition to the absence of any notice of the Parent's stated native language at that time, the May 11, 2016 meeting was not an IEP meeting subject to the IDEA, 34 C.F.R. §300.322(e), and NAC §388.281(6)(f).

Therefore, the CCSD complied with the IDEA and the NAC, Chapter 388³, with respect to parent participation, specifically no action was necessary to arrange for an interpreter in the Parent's native language at the May 11, 2016 Parent meeting and the convened May 25, 2016 IEP meeting to ensure the Parent understood the proceedings.

Concerns of the Parent

The May 25, 2016 meeting was scheduled and convened as an IEP meeting. (FOF #11, #12) In accordance with the IDEA, 34 C.F.R. §300.324(a)(1)(ii), and NAC 388.284(2)(a), in developing each student's IEP, the IEP Team must consider the concerns of the parents for enhancing the education of their child. At the May 25, 2016 convened IEP meeting, the Parent expressed her concern of the lack of air-conditioning on the school bus due to the student's asthma and requested it be included in the student's IEP. (FOF #16) The Parent also wanted a representative from transportation to be present for the revision of the student's IEP.

This Parental concern regarding student's transportation service was one of the reasons why the IEP Team tabled the further revision of the student's IEP until the fall of 2016 when the representative of transportation and other specialties could be invited to discuss "the parent's concerns and clarify present levels." (FOF #12) As such, the Complaint Investigation Team determined the student's IEP Team did consider the transportation concerns of the Parent expressed at the convened May 25, 2016 IEP meeting as required by the IDEA, 34 C.F.R. §300.324(a)(1)(ii), and NAC 388.284(2)(a).

³ Pursuant to the IDEA, 34 C.F.R. 300.153(b)(1) and the NAC §388.318(1), the State Complaint process is only for allegations of violations under the IDEA and the Nevada special education laws and the discussion of applicable law in this Report is, therefore, restricted to that.

Therefore, the CCSD complied with the IDEA and the NAC Chapter 388, with respect to parent participation, specifically considering the Parent's request for the accommodation of air-conditioned specialized transportation at the convened May 25, 2016 IEP meeting.

Issue Two:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388 with respect to ensuring the required members of the IEP Team were present at the student's May 11, 2016 and May 25, 2016 IEP meetings, specifically the Speech and Language Pathologist and the Occupational Therapist.

Both the IDEA, 34 C.F.R. §300.321, and the NAC §388.281(2) set forth the mandatory members of an IEP Team for the development and review and revision of a student's IEP: the parent of the child (34 C.F.R. §300.321(a); NAC §388.281(2)(d)); the regular education teacher and special education teacher of the student (if the student is or may be participating in the regular education environment) (34 C.F.R. §300.321(a)(2) and (3); NAC §288.281(2)(b) and (c)); the public agency representative who had the requisite knowledge and qualifications (34 C.F.R. §300.321(a)(4); NAC §288.281(2)(a)); and an individual who was familiar with the tests and other assessments performed on or by the student and their results and who could interpret the instructional implications of the results of the evaluation. (34 C.F.R. §300.321(a)(5); NAC §288.281(2)(e))

The student received Speech Therapy and Occupational Therapy as related services. (FOF #17) The only issue raised in this Complaint with regard to the attendance of required IEP Team members is the absence of these related service providers at the May 25, 2016 IEP meeting and the May 11, 2016 meeting. (FOF #19) As previously discussed, the May 11, 2016 meeting was a Parent meeting, not an IEP meeting, (FOFs #10, #19) and, as such, the IDEA, 34 C.F.R. §300.321, and the NAC §388.281(2) regarding IEP Team members did not apply to the meeting. The May 25, 2016 meeting with the Parent was scheduled and convened as an IEP meeting (FOFs #11, #12, #18, #19) and the mandatory IEP Team members were required to be present during the partial conduct of an IEP meeting.

In accordance with the IDEA, 34 C.F.R. §300.321(a)(6), and NAC 388.281(3), at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate, are also members of an IEP Team. In the discussion of the 2006 IDEA regulations, the United States Department of Education responded as follows to comments regarding adding additional mandatory IEP Team members such as Occupational Therapists:

"It would be inappropriate to require that individuals with specific professional knowledge or qualifications attend all IEP Team meetings. These decisions should be made on a case-by-case basis in light of the needs of a particular child. Section 300.321(a)(6), consistent with section 614(d)(1)(B)(vi) of the Act, already allows other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, to be included as members of a child's IEP Team at the discretion of the parent or the agency. Therefore, we decline to make the changes recommended by the commenters. . . ." (Vol. 71 Fed. Reg. pg. 46669 (August 14, 2006))

In this case, the Parent had questions regarding the Speech Therapy and Occupational Therapy assessment results in the student's IEP and wanted the Speech and Language Pathologist and

Occupational Therapist present at the May 25, 2016 IEP meeting to discuss the student's present levels and related service minutes. (FOF #21, #22) The CCSD did notify the student's Speech and Language Pathologist and Occupational Therapist of the May 25, 2016 IEP meeting; but the related service providers did not attend the IEP meeting. (FOF #19) As non-mandatory members of the student's IEP Team, their absence was permissible.

However, the IDEA, 34 C.F.R. §300.321(a)(5), and NAC §288.281(2)(e) did require the CCSD to ensure the attendance of an individual who was familiar with the Speech Therapy and Occupational Therapy assessment results and who could interpret the instructional implications of the results of the assessment results. These same sections of law permit this individual to be one of specifically cited members of the IEP Team that include the student's special education teacher. In this case, the special education teacher was the individual attending the convened IEP meeting who was able to interpret the instructional implications of the Occupational Therapy and Speech Therapy assessment results. (FOF #22) As such, the CCSD was not required to have the Speech and Language Pathologist and Occupational Therapist present at the convened May 25, 2016 IEP meeting for that purpose.

Therefore, the CCSD complied with the IDEA and the NAC, Chapter 388 with respect to ensuring the required members of the IEP Team were present at the student's May 25, 2016 IEP meeting, specifically the Speech and Language Pathologist and the Occupational Therapist were not required to attend the IEP meeting nor the Parent meeting on May 11, 2016.

ORDER FOR CORRECTIVE ACTION

The CCSD is required to take corrective action to address the determined violation in this Complaint investigation, specifically the CCSD failed to ensure that the Parent was present at the May 4, 2016 IEP Team meeting or afforded the opportunity to participate. Based on the CCSD's conduct of an IEP meeting for the student on September 8, 2016 and the Parent's satisfaction that the IEP Team was able to work through her concerns (FOF #9), no student specific action is required to address this violation.

Policy Directive

Given that the cause of the predicament in this Complaint was the scheduling of the student's IEP meeting only two days before the annual review date, within 30 days of the receipt of this Report⁴ the CCSD is directed to notify all special education teachers and the CCSD administrative representatives at the student's school who attend IEP meetings of the necessity to schedule students' annual IEP review dates sufficiently in advance of that date to ensure compliance if the IEP meeting is cancelled for some reason or is not completed on the scheduled day.

In addition, within 30 days of the receipt of this Report, the CCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP) to establish (or augment, as needed) and implement a system of tracking and alerts available at the student's school to ensure annual IEP review dates are scheduled sufficiently in advance of annual IEP meeting dates to ensure compliance. The CAP must include an explanation of how the system will be implemented at the school and the timeline.

⁴ All dates for the Order for Corrective Action are upon the receipt of the CCSD's English version of this Report.

The CAP must be approved by the NDE prior to implementation. Following approval of the CAP by the NDE, it must be implemented within 60 days and a report submitted to the NDE to document its implementation within 15 school days of implementation.

Revision of Policy

The conduct of the student's May 4, 2016 IEP meeting took place without parent participation due to an actual or perceived policy of the CCSD Compliance and Monitoring Office. Therefore, within 30 days of receipt of this Report, the CCSD must develop and submit to the NDE a proposed CAP as follows:

1. If possible, ascertain the source of the actual or perceived CCSD written guidelines that, if the dilemma discussed in *Doug C.* occurs, that CCSD personnel are expected to proceed and conduct the IEP meeting without the parent.
2. If in existence, review and revise any such written policy to ensure its consistency with *Doug C.* If a written policy is not in existence either issue a directive to relevant school and district personnel, including the Compliance and Monitoring Office personnel and Special Education Instructional Facilitators, or revise the CCSD Special Education Procedures Manual and inform the relevant school personnel of the revision in this regard. (The policy/directive must include the expectation that school personnel will not cause the *Doug C.* dilemma by their scheduling practices.)
3. The CAP must be approved by the NDE prior to implementation. Following approval of the CAP by the NDE, the CCSD must complete this development/revision of policy and issue it to relevant school and district personnel within 60 days and submit a report to the NDE to document its implementation within 15 school days after issuance.