

**COMPLAINT INVESTIGATION CLARK COUNTY SCHOOL DISTRICT
(#CL113016)**

Report Issued on January 19, 2017

INTRODUCTION

On November 30, 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 implement the student's January 22, 2016 Individualized Education Program (IEP) during the 2015/2016 Extended School Year by failing to provide the 80 minutes of the related service of speech in July 2016 and curb-to-curb transportation services from July 1, 2016 to July 21, 2016. The Parent also alleged the student's January 22, 2016 IEP was not implemented in the 2016/2017 school year in that speech and curb-to-curb transportation had not been provided since the start of the school year and the student's Behavioral Intervention Plan in the January 22, 2016 IEP was not implemented following a disciplinary episode during the months of September and October 2016.

All documents submitted by the Parent and the CCSD relevant to the issue 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. Both the Parent and the CCSD provided documentation of occurrences outside the time period of the Complaint. While related to the issues, the information was outside the scope of this investigation and was reviewed only for context or as relevant to a corrective order, if appropriate. 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, raised the following issues under the jurisdiction of the Nevada Department of Education (NDE) to investigate up to November 30, 2016:

Issue One:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's May 9, 2016 IEP during the Extended School Year (ESY), specifically with regard to:

- a) **Speech/Language Therapy, specifically providing the student with 15 minutes of Speech/Language Therapy services when the IEP identified 80 minutes per month in July 2016.**
- b) **Curb-to-curb transportation from July 1, 2016 to July 21, 2016.**

Issue Two:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's May 9, 2016 IEP, specifically with regard to:

- a) **Curb-to-curb transportation since the start of the 2016/2017 school year.**
- b) **Speech/Language Therapy at the middle school since the start of the 2016/2017 school year.**
- c) **Behavior Intervention Plan during the months of September and October 2016 after disciplinary episodes.**

FINDINGS OF FACT

General

1. The student's initial IEP as a student with a disability in need of special education and related services in the CCSD was the January 22, 2016 IEP. The January 22, 2016 IEP was revised on May 9, 2016. Contrary to the Parent's allegation, it is the May 9, 2016 IEP that is relevant to the issues in this Complaint. (IEPs, Complaint)
2. The student moved from an elementary school program to a middle school program for the 2016/2017 school year. (Complaint, CCSD Response)
3. The 2016/2017 school year at the middle school the student attends began on August 29, 2016. There were three school days in August 2016; 21 school days in September 2016; 20 school days in October 2016; and 15 school days in November 2016 up to the date of the Complaint. (CCSD School Calendar, Attendance Records, Compliance Monitor)
4. For the 2016/2017 school year up to the date of the Complaint, the student was absent September 15, 2016 for all periods and for one period on September 28, 2016, October 14, 2016 and October 24, 2016. The student had one period of unverified absence on October 19, 2016 and November 10, 2016. These unverified absences were on the same day as an in-house suspension. (2016/2017 Student Period Attendance Detail, Behavior Detail Report)

Extended School Year

Speech/Language Therapy

5. The student's May 9, 2016 IEP required the student be provided ESY. The student's 2015/2016 ESY commenced on July 1, 2016 and ended on July 29, 2016. (IEP, CCSD Response)
6. The student's May 9, 2016 IEP provided direct Speech/Language Therapy as a related service in the ESY for 80 minutes a month in the speech room. It is uncontested that the required 80 minutes of ESY Speech/Language Therapy were not provided to the student during the 2015/2016 ESY. While the Parent believed only 15 minutes of Speech/Language Therapy were provided to the student, the Complaint Investigation Team determined that the student received 30 minutes of Speech/Language Services on July 7, 2016. The Speech Language Pathologist attempted to serve the student again on July 15, 2016; however, the student had transferred to a different school and no additional Speech/Language Therapy was provided during the ESY. (IEP, Smart Logbook: Service Log Report)

7. The CCSD did offer alternatives to the Parent on how the CCSD would make up the Speech/Language Therapy not provided the student during the ESY. The plan of the CCSD, as of September 19, 2016, was for the student to receive additional services each week to make up for the minutes the Speech/Language Therapy was not provided. The Parent agreed with this recommendation. (September 19, 2016 CCSD Email, Parent Response)

Transportation

8. The student's May 9, 2016 IEP provided direct curb-to-curb transportation as a related service in the ESY, 10 times a week. (IEP)
9. The student started ESY on July 1, 2016. The student attended one school for seven school days through July 12, 2016 and then transferred to another school on Wednesday, July 13, 2016. The student attended the second school through July 29, 2016. (Complaint, Parent Interview, CCSD Email and Response, Student Enrollment History)
10. The CCSD assigned the student to the first ESY school and also assigned the student to the second ESY school effective July 13, 2016. The transfer to the second ESY school was voluntary on the part of the Parent who elected to transfer the student to the school since it was closer to the student's residence. (Parent/CCSD Response)
11. It is uncontested that the student was not provided transportation by CCSD for ESY until July 21, 2016. The Parent contacted the CCSD repeatedly regarding the absence of the related service of transportation. (Complaint, CCSD Response, Parent Interview)
12. There were 13 school days from July 1, 2016 through July 20, 2016. The student was absent on one of those days, July 19, 2016. The student's Parent provided transportation for the student on the seven school days the student attended the first ESY program and on the five school days the student attended the second ESY program before the CCSD transportation commenced. (CCSD Email and Response, ESY School Calendar)
13. Enrollment data in the CCSD is not loaded electronically during ESY to reflect any enrollment changes. The failure of the data to load electronically was the explanation provided in internal CCSD correspondence regarding the failure to provide the required minutes of the student's ESY Speech/Language Therapy. (September 19, 2016 CCSD Email)
14. The first school the student attended during ESY was 4.6 miles from the student's residence, using the fastest driving route. The second school the student attended during ESY was 1.8 miles from the student's residence, using the fastest driving route. (Google Maps)
15. The CCSD provided 54 cents a mile as reimbursement for the use of a private car in the 2016 Calendar year. (CCSD Mileage/Travel/Expense Claim)
16. The CCSD's Procedures Manual establishes the reasonable time for working out transportation arrangements of three to five days. In response to this Complaint, the

CCSD indicated that it can take up to 10 days to route transportation when a student changes school. (Procedures Manual, pg. 124, CCSD Response)

17. The CCSD's policy provides that upon enrollment of a student, a parent may elect to transport the student until busing begins. It is also the CCSD's policy that a parent can request reimbursement from the CCSD if they elect to drive a child to the school when all services are provided except for transportation. The Parent had not received any compensation for the parentally provided transportation at the time of the investigation. (CCSD Case Management Procedures, Parent/CCSDResponse)
18. The CCSD entered into a Voluntary Resolution Agreement with the United States Department of Education, Office of Civil Rights, in 2012, OCR Reference No. 10121002. The corrective action in the Resolution Agreement, in relevant part, requires the following steps to be taken for students who have not been assigned active transportation services: If the parent wants the service and is currently transporting the child to/from school, offer a Parental Allowance and mail the parent the necessary forms; contact school staff to verify enrollment; and submit a high priority Transportation Action Request. The Transportation Action Request is processed and transportation services are initiated as soon as possible. (Voluntary Resolution Agreement - 2012 OCR Reference No. 10121002)
19. The Voluntary Resolution Agreement also requires supervision of transportation as a related service in IEPs and corrective action to take place immediately if unnecessary delays are discovered. (Voluntary Resolution Agreement - 2012 OCR Reference No. 10121002, CCSD Email)

2016/2017 School Year

Transportation

20. It is the Parent's position that due to the beginning and ending dates of May 9, 2016 to January 21, 2017 for the related service of transportation in the student's May 9, 2016 IEP, transportation is required to be provided in the 2016/2017 school year and was not. The CCSD concurs that transportation was not provided to the student as a related service in the 2016/2017 school year; however, it takes the position that transportation is in the student's IEP only for ESY in the 2015/2016 school year. (Complaint, Parent Interview/Response, CCSDResponse)
21. The ESY transportation as a related service in the student's May 9, 2016 IEP included the beginning and ending dates of May 9, 2016 to January 21, 2017. The IEP also included a related service transportation form with these same dates. The Complaint Investigation Team noted that all of the student's services in the May 9, 2016 IEP had an end date of January 21, 2017, which would align the IEP with the annual IEP review. The page for related services in the student's May 9, 2016 IEP has transportation pre-printed on the form on two lines and only one line is marked for transportation for the student and it is during the ESY program. In contrast, the student's other related service of Speech/Language Therapy with these same dates provides the service during ESY and separately lists Speech/Language Therapy as a related service outside of the ESY program. It was also noted that the student's January 22, 2016 IEP also consistently included transportation as a related service for the ESY program only. (IEPs, Transportation –Related Services -1IEP)

Speech/Language Therapy

22. The student's May 9, 2016 IEP provided direct Speech/Language Therapy as a related service for 160 minutes a month in the speech room. (IEP)
23. On September 19, 2016, the CCSD indicated that the student had not been provided Speech/Language Therapy since the student's enrollment at the middle school on August 29, 2016. From the commencement of the 2016/2017 school year until the date of the Complaint, November 30, 2016, the student was provided Speech/Language Therapy as follows:
 - a. For the month of September, including the first week that included three days in August: 40 minutes on September 21, 2016; 30 minutes on September 26, 2016; and 40 minutes on September 30, 2016, for a total of 110 minutes.
 - b. For the month of October: 40 minutes on October 3, 2016; 40 minutes on October 7, 2016; 40 minutes on October 11, 2016; 15 minutes on October 21, 2016; and 45 minutes on October 31, 2016, for a total of 180 minutes. However, 20 of the minutes on October 31, 2016 were added to make up for services not provided in the ESY.
 - c. For the month of November up to November 30, 2016: on November 9, 2016, the student was directed by the teacher to attend speech and the student refused to leave class to attend speech and no minutes were provided; on November 24, 2016, the student was directed by the teacher to attend speech and the student again refused to leave class to attend speech and no minutes were provided; 30 minutes of Speech/Language Therapy were provided on November 18, 2016 when an adult escorted the student to speech and back; and on November 29, 2016, the student was directed by the teacher to attend speech and the student again refused to leave class to attend speech and no minutes were provided. There were four opportunities for the student to be provided Speech/Language Therapy and a total of 30 minutes of provided Speech/Language Therapy in November 2016. (Smart Logbook: Service Log Report, September 19, 2016 CCSD Email)
24. During the time period of this Complaint, the CCSD raised a question with the Parent whether the student required the Speech/Language Therapy in the student's May 9, 2016 IEP. (Complaint, CCSD Email to Parent)

Behavior

25. The assessment results for the 2015/2016 school year of the student's "social and behavior" in the present levels of academic achievement and functional performance in the May 9, 2016 IEP indicate that the student responds well to praise, controls behavior in a highly structured setting with prompts, and has difficulty with staying on task as the student likes to talk. The first quarterly progress report on May 18, 2016 indicated that the student had made some progress on the student's goals to stay on task and deal with frustration. The student's annual goal to use self-control strategies when feeling frustrated or angry was required to be addressed during ESY. (IEP, IEP Progress Report)
26. The student's May 9, 2016 IEP included supplementary aid/services from May 9, 2016 to May 9, 2017 that included a Positive Behavior Intervention Support Plan (BIP) to be implemented during instruction and all activities on the school campus. (IEP)

27. At the time of the May 9, 2016 IEP, the student had an April 27, 2016 BIP. The targeted behavioral concerns in the student's April 27, 2016 BIP were for off-task behavior and dealing with frustration. The student's off-task behavior included blurting random things for no reason, talking to a peer, fidgeting/stretching in the seat, kicking feet up on desk, getting out of the seat and walking around the classroom. The function of the behavior was likely avoidance of tasks that appear too difficult or seeking attention. (BIP)
28. The April 27, 2016 BIP required frequency and rate data to be collected by the special education staff and general education teachers upon occurrence of dealing with frustration and off-task behaviors. The frequency of how the student deals with frustration and off task behavior was to be collected daily and the BIP was to be adjusted every eight weeks or as needed as determined by data collection. (BIP)
29. The student's April 27, 2016 BIP was in effect during the months of September and October 2016. By the time the student began the 2016/2017 school year at the middle school, more than eight weeks had passed since the BIP had been adjusted. The student's BIP was not revised until November 7, 2016. (BIPs)
30. The student's teacher in fourth period math did collect data on the targeted behavioral concerns in the student's April 27, 2016 BIP on a daily tally sheet from October 3, 2016 up to the date of this Complaint. The tally sheet also functioned as a reinforcement method in that the student could earn a reward for positive comments on the targeted behavior consistent with one of the proactive and reactive strategies in the student's BIP. The student performed overall well with regard to staying on task in the month of October in Math class, but not with regard to dealing with frustration. (Student Daily Tally in Math, CCSD Response)
31. Commencing September 14, 2016, another one of the student's teachers collected data on the student's conduct of blurting out, arguing, and getting out of the seat. While blurting out and getting out of the seat were identified as part of the student's off-task behavior in the April 27, 2016 BIP, the conduct of arguing with the teacher was a new behavior. The data was collected upon the occurrence of these behaviors multiple times on September 14, 2016; September 20, 2016; September 22, 2016; September 29, 2016; and October 3, 2016. On October 4, 2016, in addition to these prior observed behaviors, the student threw objects and continued the prior behavior on October 5, 2016; October 8, 2016; October 24, 2016; and November 3, 2016. (Student Observation Tool)
32. During the months of September and October 2016, the following behavioral events occurred that warranted disciplinary consequences:
 - a. On September 13, 2016, the student ate someone else's food in the cafeteria and received a lunch detention. (There was no Behavior Detail Report provided in the course of the investigation regarding this incident.);
 - b. On September 30, 2016, an event of disregarding rules/regulations occurred in an outside area and the Behavior Detail Report indicated that progressive discipline was required to be followed since the student had been previously warned;
 - c. On October 11, 2016, an event described as a campus disruption occurred on the athletic field or playground with the consequence of a conference with the student;

- d. On October 19, 2016, an event described as a personal communication device occurred with the consequence of a warning;
 - e. On October 19, 2016, another event occurred in the locker room or gym of class disruption involving lights and the consequences were an in-house suspension for five periods (with one period of unverified absence noted in absences); a conference with the student and a phone call to the Parent; and
 - f. On October 21, 2016, the student caused major injury to another student in the hallway or stairs. The consequences were a conference with the student, 50 minutes of detention, and a phone call to the Parent. (Behavior Detail Reports, Counseling Contact Log, Complaint)
33. The escalation of the student's misconduct warranting a Behavior Detail Report continued into November 2016 with two separate incidences of aggressive behavior against another student and an incident of inappropriate touching. (Behavior Detail Reports)
34. The student's revised November 7, 2016 BIP included a "Functional Behavioral Assessment Summary" with the Dean's review of 12 incidents, including hitting, injuring a student, inappropriate playing with a student, and disruption to instruction and the classroom environment. The targeted behavioral concerns were for failure to comply with classroom and campus rules without causing disruption or injuries to other students. The proactive strategies and intervention strategies included staying on-task and dealing with frustration. The BIP is to be reviewed quarterly. (BIP)

CONCLUSION OF LAW

Applicable to both issues in this Complaint, the requirements of the provision of a free appropriate public education to students with disabilities under the IDEA and the NAC, Chapter 388, necessitate that special education and related services are provided in conformity with an IEP. (NAC §388.281(6)(g), 34 C.F.R. §§300.17(d) and 300.101) Pursuant to the NAC §388.215(5)(b), the CCSD was also required to establish a system of records for the purpose of verifying that each student identified as a student with a disability received services appropriate to the disability.

Issue One:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's May 9, 2016 IEP during ESY, specifically with regard to:

- d) Speech/Language Therapy, specifically providing the student with 15 minutes of Speech/Language Therapy services when the IEP identified 80 minutes per month in July 2016.**
- e) Curb-to-curb transportation from July 1, 2016 to July 21, 2016.**

Speech/Language Therapy

The student's May 9, 2016 IEP (Finding of Fact (FOF) #1) provided direct Speech/Language Therapy as a related service in the ESY for 80 minutes a month. The student's ESY program was during one month, the month of July. (FOF #5) It is uncontested that the required 80 minutes of ESY Speech/Language Therapy were not provided to the student during the 2015/2016 ESY. The student did receive 30 minutes of Speech/Language Services. (FOF

#6) Therefore, the CCSD failed to provide the student 50 minutes of the Speech/Language Therapy during ESY as required by the student's IEP. The Complaint Investigation Team noted that the CCSD did provide 20 minutes of compensatory Speech/Language Therapy to the student on October 31, 2016 to make up for services not provided in the ESY. (FOF #7)

Curb-to-Curb Transportation

As soon as possible following the development of the IEP, special education and related services must be made available to the student in accordance with the student's IEP. (NAC §388.281(6)(e), 34 C.F.R. §§300.103(c) and 300.323(c))

In this case, the student's May 9, 2016 IEP provided direct curb-to-curb transportation as a related service in the ESY. (FOF #8) The student's ESY commenced on July 1, 2016 and ended on July 29, 2016. (FOF #5) On July 1, 2016, the student started ESY in the school that the CCSD assigned the student to and then transferred to another school from July 13, 2016 through July 29, 2016. While the CCSD did assign the student to the second ESY school, it was voluntary on the part of the Parent who elected to transfer the student to the school since it was closer to the student's residence. (FOFs #9, #10) It is uncontested that the student was not provided transportation by CCSD for ESY until July 21, 2016. The Parent repeatedly contacted the CCSD regarding the absence of the related service of transportation. (FOF #11)

In the absence of the required ESY transportation, the student's Parent provided transportation for the student on the seven school days the student attended the first ESY program and on the five school days the student attended the second ESY program before the CCSD transportation commenced. (FOF #12)

Nevada law, regulations, or guidelines do not define the time limitation "as soon as possible" in NAC §388.281(6)(e). However, in the discussion of the 1999 IDEA regulations, the United States Department of Education provided guidance on the interpretation of this term as it related to the implementation of initial IEPs:

"It would not be appropriate to add an outside timeline under §300.342(b) for implementing IEPs, especially when there is not a specific statutory basis to do so. However, with very limited exceptions, IEPs for most children with disabilities should be implemented without undue delay following the IEP meetings described in §300.342(b)(2).

There may be exceptions in certain situations. It may be appropriate to have a short delay (e.g., (1) when the IEP meetings occur at the end of the school year or during the summer, and the IEP team determines that the child does not need special education and related services until the next school year begins); or (2) when there are circumstances that require a short delay in the provision of services (e.g., finding a qualified service provider, or making transportation arrangements for the child).

If it is determined, through the monitoring efforts of the Department, that there is a pattern of practice within a given State of not making services available within a reasonable period of time (e.g., within a week or two following the meetings described in §300.343(b)), this could raise a question as to whether the State is in compliance with that provision, unless one of the exceptions noted above applies." (64 Fed. Reg. pg. 12579 (March 12, 1999))

The CCSD's Procedures Manual establishes a reasonable time for working out transportation arrangements of three to five days. (FOF #16) Given the student's May 6, 2016 IEP was

almost two months prior to the commencement of ESY on July 1, 2016 and the CCSD's assignment of the student to the school, the CCSD had sufficient time to work out transportation arrangements to ensure that the student's related service of transportation was implemented upon the commencement of ESY on July 1, 2016, and did not.

In the case of the transfer of the student from the first ESY school to the second ESY school in the middle of a school week (FOF #9), the Complaint Investigation Team determined that the CCSD did require additional time at that point to work out the routing of transportation. However, the Complaint Investigation Team declines to adopt the 10 days the CCSD indicates was required to change transportation for this student as unreasonable. In this case, the student was not provided transportation as required by the student's IEP prior to the transfer to the second ESY school; the CCSD was repeatedly made aware of the absence of the service by the student's Parent; and the short duration of the student's ESY program made a longer delay unreasonable. (FOFs #5, #10, #11, #16)

Upon consideration of the Voluntary Resolution Agreement with the United States Department of Education, Office of Civil Rights, in 2012 (OCR Reference No. 10121002) (FOFs #18, #19), given the CCSD's discovery of the unnecessary delay in the provision of the related service of transportation since the commencement of ESY, corrective action should have taken place immediately. Therefore, the Complaint Investigation Team determined that with regard to the transportation of the student upon being transferred on Wednesday, July 13, 2016, even if arrangements were unable to be made immediately given there was no break in attendance, the transportation of the student should have commenced no later than Monday, July 18, 2016. This is consistent with the CCSD's Procedures Manual that establishes a reasonable time for working out transportation arrangements of three to five days. (FOF #16) Therefore, the CCSD failed to provide the student the required related service of transportation during ESY in accordance with the IDEA and the NAC, Chapter 388 from July 1, 2016 through July 12, 2016 and from July 18, 2016 through July 20, 2016. (See Order for Corrective Action regarding the parentally provided transportation from July 13, 2016 through July 15, 2016.)

Consistent with the Voluntary Resolution Agreement and the CCSD's Case Management Procedures, in the absence of required transportation services, parents may elect to transport the student until busing begins and request reimbursement from the CCSD. (FOFs #17, #18) In this case, the Parent elected to provide the related service of transportation from the date the student attended ESY on July 1, 2016 until the first day the CCSD provided transportation on July 21, 2016, with the exception of July 19, 2016 when the student was absent from school. (FOFs #11, #12) The reimbursement rate for transportation service payments for the 2015/2016 school year is 54 cents a mile. (FOF #15) At the time of the investigation, the Parent had not received any compensation for the parentally provided transportation during the ESY. (FOF #17)

Therefore, the CCSD failed to comply with the IDEA and the NAC, Chapter 388, in the implementation of the student's May 9, 2016 IEP during ESY, specifically with regard to implementing the required 80 minutes of Speech/Language Therapy and transportation as a related service to the student from July 1, 2016 through July 12, 2016 and from July 18, 2016 through July 20, 2016.

Issue Two:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's May 9, 2016 IEP, specifically with regard to:

- a) Curb-to-curb transportation since the start of the 2016/2017 school year.**
- b) Speech/Language Therapy at the middle school since the start of the 2016/2017 school year.**
- c) BIP during the months of September and October 2016 after disciplinary episodes.**

Curb-to-Curb Transportation

Both the Parent and the CCSD are in agreement that the student has not been provided transportation as a related service from the commencement of the 2016/2017 school year. The dispute in this case is whether the student's IEP requires transportation to be provided to the student as a related service during the 2016/2017 school year. (FOF #20)

As discussed above, the student's May 9, 2016 IEP provided for curb-to-curb transportation as a related service for the student during the ESY program. (FOF #8) The beginning and end dates for the ESY transportation were from May 9, 2016 to January 21, 2017. The IEP also included a related service transportation form with these same dates. (FOF #21) The Complaint Investigation Team examined the May 9, 2016 IEP as a whole, including the dates for other services and the distinction in the provision of Speech/Language Therapy in both the ESY and in the school year. (FOF #21) While the end date for the ESY transportation services is beyond the 2015/2016 ESY program (FOF #21) and may be the source of the confusion in this case, the Complaint Investigation Team determined the student's May 9, 2016 IEP did not include transportation as a related service during the regular school year.

Therefore, the CCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's May 9, 2016 IEP, specifically with regard to curb-to-curb transportation since the start of the 2016/2017 school year.

Speech/Language Therapy

The student's May 9, 2016 IEP provided direct Speech/Language Therapy as a related service for 160 minutes a month in the speech room. (FOF # 22) Since the commencement of the school year up to November 30, 2016, the student received no Speech/Language Therapy for the first week of the 2016/2017 school year that included 3 school days in the month of August and 2 school days in the month of September; the student received 110 minutes of services for the month of September; 160 minutes for the month of October, excluding the 20 minutes of compensatory service; and 30 minutes of Speech/Language Therapy the month of November. (FOF #23)

It is recognized that the CCSD attempted to provide Speech/Language Therapy on four occasions in the month of November and the student refused to attend speech on three of those occasions. However, when the student was escorted to and from speech, the student did attend and receive the service. (FOF #23) Upon consideration that this service was not required to be provided on a specific day or week of the month, the emergence of arguing behavior in September 2016, and the targeted behavioral concerns and functions of the behavior in the student's April 27, 2016 and November 7, 2016 BIPs (FOFs #22, #27, #31), the CCSD's availability of the Speech/Language Therapy for the student on three school

days in November 2016 without more was determined by the Complaint Investigation Team to be insufficient to excuse the monthly service requirement.

While there was some discussion regarding the student's need for the related service of Speech/Language Therapy in the amounts required in the May 9, 2016 IEP (FOF #24), until and unless the student's IEP was revised, the CCSD was required to implement it in conformity with the student's IEP pursuant to NAC §388.281(6)(g) and the IDEA, 34 C.F.R. §§300.17(d) and 300.101. This conclusion neither precludes the student's IEP Team's prospective review and/or revision of the student's IEP with regard to whether Speech/Language Therapy is required to provide the student a free appropriate public education nor precludes the Parent's and/or CCSD's access to appropriate dispute resolution procedures to resolve any disagreement regarding the student's need for the service.

Therefore, the CCSD failed to comply with the IDEA and the NAC, Chapter 388, in the implementation of the student's May 9, 2016 IEP, specifically with regard to 160 minutes a month of Speech/Language Therapy at the middle school since the start of the 2016/2017 school year.

Behavior Intervention Plan

The student's May 9, 2016 IEP incorporated the student's BIP that was to be implemented during instruction and all activities on the school campus. (FOF #26) The incorporated April 27, 2016 BIP was in effect during the months of September 2016 and October 2016 at issue in this Complaint and was not revised until November 7, 2016. (FOFs #26, #27, 29)

The targeted behavioral concerns in the student's April 27, 2016 BIP were for off-task behavior and dealing with frustration and the function of the behavior was likely avoidance of tasks that appeared too difficult or seeking attention. (FOF #27) Frequency and rate data was required to be collected by the special education staff and general education teachers upon the occurrence of dealing with frustration and off-task behaviors. The frequency of how the student dealt with frustration and off-task behavior was to be collected daily and the BIP was to be adjusted every eight weeks or as needed as determined by the data collection. (FOF #28)

In this case, it is the implementation of the student's BIP after disciplinary episodes in September 2016 and October 2016 that is at issue. While appearing rather straightforward as an issue, during the course of the investigation it was determined that the situation was more complicated than it appeared on the surface. As noted above, the targeted behavioral concerns in the student's April 27, 2016 BIP were for off-task behavior and dealing with frustration. (FOF #27) The specifically named misconduct subject to disciplinary consequences in the months of September 2016 and October 2016 (FOF #32) were not for off-task behavior and dealing with frustration and there was insufficient evidence to determine whether the incidences arose from those targeted behavioral concerns.

However, even with the minimal data available on the implementation of the student's BIP in September 2016 and early October 2016, it is apparent that the student was struggling with dealing with frustration and on-task behavior (FOFs #30, #31) and was no longer making the progress reported in May 2016 (FOF #25). On the contrary, with the emergence of the new misconduct of throwing objects and insubordination in September 2016 and early October 2016, the student's behavior was deteriorating. (FOF #31) Beginning September 30, 2016, the student's misconduct on the school campus had resulted in behavioral events that warranted disciplinary consequences and that misconduct continued to escalate until

October 21, 2016 when the student caused major injury to another student. (FOF #32) The student's misconduct continued into November 2016 with two separate incidences of aggressive behavior against another student and an incident of inappropriate touching. (FOF #33)

Given the lack of progress of the student dealing with frustration and on-task behavior and the evident escalation of the student's misconduct during the months of September and October 2016 (FOFs #30, #31, #32), the Complaint investigation Team determined that the provision in the BIP that is the most pertinent to this Complaint is the requirement that the BIP was to be adjusted every eight weeks or as needed as determined by data collection. (FOF #28) By the time the student transferred to the middle school in the 2016/2017 school year, the BIP was already outdated and needed to be adjusted due to the passage of eight weeks alone. (FOFs #2, #3, #28)

Based on the terms of the BIP (FOF #28), the required data collection was critical for the CCSD to ascertain whether the student's BIP needed to be adjusted, particularly given the student's advancement from an elementary school to a middle school. (FOF #2) The CCSD did implement the student's BIP in part with regard to data collection in two of the student's classes during October 2016 and in one class beginning mid-September 2016. (FOFs #30, #31)

In the absence of any additional documentation to demonstrate the implementation of this requirement in the student's BIP pursuant to NAC §388.215, the Complaint Investigation Team determined that the CCSD failed to implement the data collection requirements in all regards during the months of September 2016 and October 2016. (FOF #28) Given the escalation of the student's conduct in the months of September 2016 and October 2016 (FOFs #31, #32), the Complaint Investigation Team further determined that the requirement that the student's BIP be adjusted as needed was also triggered by at least mid-October 2016. The review and revision of the student's BIP did not occur until on November 7, 2016. (FOF #34)

While the failure of the CCSD to implement these provisions in the student's BIP in all regards during the months of September 2016 and October 2016 did not impact the consequences imposed on the student for the disciplinary episodes, it may have contributed to the escalation of the student's misconduct and the corresponding need for progressive discipline. The review and revision of the student's BIP on November 7, 2016 BIP supports this conclusion in that the targeted behavioral concerns of dealing with frustration and staying on task in the April 27, 2016 BIP were noted in the proactive strategies to limit the occurrence of the emergent problem behaviors and to teach replacement behaviors. (FOF#34)

Therefore, the CCSD failed to comply with the IDEA and the NAC, Chapter 388, in the implementation of the student's May 9, 2016 IEP, specifically with regard to the BIP during the months of September and October 2016 after disciplinary episodes.

ORDER FOR CORRECTIVE ACTION

The CCSD is required to take corrective action to address the violations found in this Complaint investigation regarding the CCSD's failure to implement the student's May 9, 2016 IEP during ESY, specifically with regard to implementing the required 80 minutes Speech/Language Therapy and transportation as a related service to the student during ESY in all regards; Speech/Language Therapy at the middle school since the start of the

2016/2017 school year; and the student's BIP during the months of September and October 2016 after disciplinary episodes.

Directed Action

Transportation

Within 14 days of the receipt of this Report, the CCSD is directed to provide the procedures and required documentation to the Parent to request reimbursement for parentally provided transportation from July 1, 2016 through July 12, 2016 and on July 18, 2016 and July 20, 2016. As noted previously, the student was absent from school on July 19, 2016. (FOF #12) (While the finding of noncompliance was with regard to these dates, this directed action does not preclude the Parent from requesting and receiving reimbursement from July 13, 2016 through July 15, 2016 per the CCSD's policy set forth in FOF #17 and the Voluntary Resolution Agreement set forth in FOF #18.)

Upon the Parent's submission of the request for reimbursement, the reimbursement amount at 54 cents a mile (FOF #15) must be paid no later than 90 days thereafter. Unless the CCSD determines the mileage is greater than the amount cited on publically available maps as set forth in FOF #14, the mileage reimbursement must be at these cited distances.

Assuming the Parent's submission of the request for reimbursement, within 30 days of providing reimbursement to the Parent, the CCSD must provide the NDE documentation of the request and payment.

Speech/Language Therapy

The student is entitled to 210 minutes of compensatory Speech/Language Therapy for the services the CCSD failed to provide during the ESY and the 2016/2017 school year up to the date of the Complaint. The compensatory Speech/Language Therapy must be in addition to the required services in the student's IEP in effect at the date of this Report; may be provided by school personnel; and must take place during non-instructional hours in the school day or after school or during days students are not in attendance at school. The compensatory Speech/Language Therapy must be provided to the student no later than the end of the 2016/2017 school year. The content and timeline for the delivery of the compensatory education may be changed if the CCSD and Parent agree to the change in writing and the CCSD provides any such agreement to the NDE at any time prior to the end of the 2016/2017 school year. (While a failure, if any, to provide required Speech/Language Therapy after November 30, 2016 is not within the scope of this Complaint, it is hoped that, if there is any such failure, that the CCSD and the Parent will be able to amicably resolve any continued noncompliance.)

The calculation of the compensatory Speech/Language Therapy time was based on the failure of the CCSD to provide 30 minutes of Speech/Language Therapy during the ESY (after reduction for the 20 minutes of compensatory Speech/Language Therapy provided in October 2016) and the 180 minutes not provided from September 2016 through November 2016. (The first week of school with three days only in the month of August 2016 was included in the calculation for September 2016.) (FOFs #5, #23)

The CCSD must provide documentation to the NDE of the completion of the delivery of the compensatory Speech/Language Therapy within 30 days of its completion.

BIP

The CCSD must select and assign a specialist in behavior intervention, such as a Behavior Mentor, to assist in the review and revision, if appropriate, of the student's November 7, 2016 BIP to be completed no later than the quarterly review date of February 7, 2017. (If the BIP has already been reviewed without the services of a specialist in behavior intervention, it must be reviewed again no later than March 7, 2017 with the involvement of a specialist in behavior intervention.) The specialist must provide any documentation provided to the CCSD personnel in advance of the BIP meeting to the Parent and the Parent must have the opportunity to participate in the development of the BIP. Any misconduct cited in a Behavior Detail Report from November 7, 2016 to the date of the meeting, documentation of the implementation of the student's November 7, 2016 BIP, and IEP progress reports on the student's progress toward the May 9, 2016 IEP behavioral goals must be considered in the review of the BIP.

After the review and revision, if appropriate, of the student's BIP as a result of the ordered meeting, the CCSD must assign a specialist in behavior intervention to review the student's progress on at least a monthly basis until the end of the 2016/2017 school year and, if the specialist recommends an adjustment in the student's BIP, the CCSD must convene a meeting to review the student's BIP and the Parent has the right to participate. Until the end of the 2016/2017 school year, the specialist must also be available as a consultant up to two hours a month to respond to requests for technical assistance in the implementation of the student's BIP from the student's special education and general education teachers.

The CCSD must provide the NDE documentation of the implementation of this Order within 30 days of the end of the 2016/2017 school year.

If the Parent and the CCSD cannot reach agreement with regard to the contents of the BIP, either the Parent or the CCSD can access the State IEP Facilitation or mediation processes or file a due process complaint to resolve any such disagreement through an evidentiary hearing.

Corrective Action Plan (CAP)

ESY

Given that enrollment information does not update during ESY (FOF #13) and that may have been a factor in the CCSD's failure to provide the student the required related services of transportation and Speech/Language Therapy, within 30 days of the receipt of this Report, the CCSD must develop and submit to the NDE a proposed CAP for ensuring enrollment data is updated during ESY and provided to the appropriate CCSD personnel to notify providers, including related service providers, of the change in enrollment no later than two school days after the enrollment change.

The CAP must be approved by the NDE prior to implementation. Following approval of the CAP by the NDE, it must be in place by June 1, 2017 and documentation must be submitted to the NDE of the implementation of the system by July 14, 2017.