

COMPLAINT INVESTIGATION
DOUGLAS COUNTY SCHOOL DISTRICT
(#DO101316)

Report Issued on December 9, 2016

INTRODUCTION

On October 13, 2016, the Nevada Superintendent of Public Instruction received a Complaint dated October 10, 2016 from a Parent alleging violations in the special education program of a student with a disability enrolled in the Douglas County School District (DCSD). 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) or the Nevada Administrative Code (NAC) with regard to the DCSD's failure to implement the student's Individualized Education Program (IEP) as a result of the absence of a qualified Board Certified Behavior Analyst (BCBA) doing training and collecting data; and ensuring the required members of the IEP Team were present at the IEP meetings on August 22, 2016 and August 25, 2016, specifically the BCBA to provide information to assist the IEP Team in determining the amount of time required for behavioral analysis training of staff and to establish data collection/analysis for the student.

The Complainant raised an allegation in the Complaint that was not within the jurisdiction of the Nevada Department of Education (NDE) to investigate through the special education complaint process, specifically an allegation regarding the failure to provide the Parent a physical restraint incident report as required by NRS §388.501. The Complainant was referred to the DCSD to obtain information on how to report an aversive intervention violation to the DCSD Board of Trustees.

All documents submitted by the Parent and the DCSD relevant to the issues in the Complaint were reviewed in their entirety in this investigation. The Complaint Investigator 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 from the commencement of the 2016/2017 school year up to the date of the Complaint, October 10, 2016:

Issue One: Whether the DCSD complied with the IDEA and the NAC, Chapter 388, with respect to implementing the student's IEP, specifically with regard to the provision of a BCBA to conduct training, oversee the student's program, and collect data beginning on or about September 23, 2016.

Issue Two: Whether the DCSD 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 August 12, 2016 and August 25, 2016 IEP meetings, specifically a BCBA to provide information to assist the IEP Team with regard to the amount of time required for behavioral analysis training of staff and to establish data collection/analysis for the student.

FINDINGS OF FACT

General

1. The 2016/2017 school year commenced on August 15, 2016. (2016/2017 School Calendar)
2. The student had an October 23, 2015 annual IEP and that IEP was revised multiple times. With regard to the required services of the BCBA beginning on or about September 23, 2016, the student's August 25, 2016 IEP was the relevant IEP. The IEP meeting that preceded the August 25, 2016 IEP meeting was on August 12, 2016, not August 22, 2016 as indicated in the Complaint. (IEPs, Complaint)

Implementation

3. The student's August 25, 2016 IEP included the IEP Team's determination that the student's behavior impeded the student's learning or the learning of others and that positive behavioral strategies, supports and interventions, or other strategies, supports and interventions to address that behavior were addressed in the IEP. (IEP)
4. The student's August 25, 2016 IEP provided the following Supplementary Aids and Services and Related Services from August 25, 2016 to October 23, 2016 with regard to the services of a BCBA:

Supplementary Aids and Services

- a. The student will have access to communication device – BCBA to assist with scheduling and training. The frequency of the service was 380 minutes per day, with no distinction between the allocation of time for access to the device and the time of the BCBA. The location of services was special education and general education;
- b. BCBA will provide program specific training to the case manager and all paraprofessionals with the "CLS" program to address site integration and positive strategies working towards "learn to learn" skills. The location of the services was special education and the frequency of services was 360 minutes per year;
- c. BCBA and staff will provide program training for all staff who works with and supports student in conjunction with the site based Positive Behavior Support Tier System. The location of the services was schoolwide and the frequency of services was 360 minutes per year;

- d. BCBA to review data, recommend changes, make suggestions, and provide written feedback. The location of the services was special education and the frequency of services was 60 minutes per week;

Related Services

- e. Direct Behavior Analysis Services. The location of the services was special education and the frequency of services was 60 minutes per month; and
 - f. Consult Behavior Analysis Services. The location of the services was special education and the frequency of services was 60 minutes per month.
5. On August 30, 2016, the DCSD did contact a contract BCBA inquiring whether she could provide the new services in the student's August 25, 2016 IEP. The DCSD specifically requested the BCBA provide the one hour per week of data graphing and "evaluation" and the required 12 hours of training to be completed before October 23, 2016 (six hours of staff training and six hours of "CLS" training) in the student's August 25, 2016 IEP. (August 30, 2016 DCSD Email to BCBA)
 6. On September 15, 2016, the contract BCBA engaged by the DCSD conducted an observation of the student for the DCSD. The observation of the student was for one and a half hours. This was the last documented BCBA service provided to or on behalf of the student during the course of this investigation. (BCBA Invoice)
 7. On September 23, 2016, the DCSD provided this Parent and other parents an update on the procurement of services. The DCSD had posted the BCBA position as of that date with the intention of hiring a full time DCSD employee and had contacted the University and other agencies that offered contractual services. The DCSD indicated that upon obtaining the behavior analyst services, the DCSD would work with each IEP Team to determine current need and compensatory services appropriate for time/services missed. As of November 21, 2016, the DCSD had still not obtained the services of a BCBA and hoped to have a BCBA on contract prior to Winter break with the understanding that direct services would begin Second Semester. (September 23, 2016 and November 21, 2016 Emails from DCSD)
 8. During the course of the investigation, the DCSD provided the Parent a Prior Written Notice dated November 3, 2016, with an offer of \$500.00 for 65 weeks of the missed service of the one hour per week to review data, recommend changes, make suggestions, and provide written feedback. (November 21, 2016 DCSD Email, November 3, 2016 Prior Written Notice)
 9. The Parent rejected the DCSD's offer indicating that the offer represented a payment of \$7.69 per hour for BCBA services (based on 65 weeks). The DCSD's contract BCBA's fee for services was \$150.00 per hour for professional services, pro-rated in 15 minute segments and \$50.00 per hour for drive time. (BCBA Invoice, November 21, 2016 Parent and Advocate Emails)
 10. There were 27 school days from September 1, 2016 to October 10, 2016, inclusive. This time period included five full school weeks. From September 1, 2016 to October 10, 2016, the student was absent four and a half days. Of those, three and a half days of absence were in one school week. (DCSD 2016/2017 School Calendar, Student Period Attendance Detail)

IEP Team

11. The DCSD invited the contract BCBA to attend the student's August 12, 2016 and August 25, 2016 IEP meetings, but the BCBA was unable to attend the meetings. (August 8, 2016, August 11, 2016, and August 23, 2016 Emails)
12. Prior to the August 12, 2016 IEP meeting, the DCSD requested additional information from the contract BCBA to assist the IEP Team, stating that the DCSD would do its best to move forward at the August 12, 2016 IEP meeting without the BCBA, but wanted to go to the table as prepared as possible with the BCBA's "voice." (August 8, 2016 DCSD Email)
13. The contract BCBA responded to the DCSD's request for additional information with graphs of recent data collected for the student as well as a brief summary of each of the graphs. In response to a request for additional clarification from the DCSD, the contract BCBA provided information on the student's progress and recommendations regarding areas of educational need in summary form. The DCSD forwarded the information from the contract BCBA to the student's Parent and solicited the Parent's questions and thoughts in advance of the meeting with the hope that questions could be addressed before the IEP meeting and the IEP Team would have the information needed to move forward. (August 8, 2016, August 9, 2016, August 11, 2016 DCSD Emails, August 8, 2016 and August 9, 2016 BCBA Emails)
14. Prior to the August 12, 2016 IEP meeting, the contract BCBA also responded to questions from the Parent's advocate on the student's present levels of performance and the number of hours of behavior analysis the student would need for: data review and analysis; changing procedures; training staff (and new school staff) and school wide interventions to support integration with nondisabled peers. However, the BCBA did not respond with specificity to the recommended hours for each of the listed behavior analysis services. Rather, the BCBA responded that if more intensive services were sought, it would be 20 plus hours a week with four to six hours of supervision per month. The BCBA forwarded the email with the embedded responses to the DCSD. (August 11, 2016 Advocate Email, August 12, 2016, BCBA Email)
15. After the August 12, 2016 IEP meeting, the Parent advocate indicated the IEP Team had not been able to complete the IEP at the August 12, 2016 IEP meeting, including the required BCBA Related Services and there were a number of questions that did not get answered due to the fact that there was no BCBA in attendance, including the amount of BCBA time in some regards. The draft August 12, 2016 IEP did not include the Related Services of a BCBA. They were included in the August 25, 2016 IEP. (August 16, 2016 Parent Advocate Email, Draft IEP, IEP)
16. To address the Parent advocate's questions on the amount of behavior analysis the student needed, the DCSD did obtain this information from the contract BCBA prior to the August 25, 2016 IEP meeting. The BCBA indicated that she would need one hour a week for data review and analysis for the student; six hours to train staff (and new school staff) to be completed prior to the annual IEP date of October 23, 2016; and twenty plus hours a week of intensive services with four to six months of supervision. The twenty plus hours a week would be met with the one-to-one aide for the student who would be included in all BCBA support and training, with an additional six hours of BCBA

support prior to the annual IEP date of October 23, 2016. The area of changing procedures in the advocate's list was unclear to the DCSD and the BCBA and the response was that if it was not for hygiene purposes it would be covered under the training. The DCSD provided this information to the Parent on August 24, 2016. (August 24, 2016 Email)

17. The student's Parent and Parent advocate attended the August 25, 2016 IEP meeting. The Parent indicated she agreed with the components of the IEP and signed her understanding that the provisions would be implemented as soon as possible after the IEP went into effect. (IEP)
18. The DCSD identified the student's special education teacher as the individual who attended the August 12, 2016 and August 25, 2016 IEP meetings who was trained and qualified with regard to behavioral strategies, supports and interventions. The special education teacher had to resign due to medical issues and is no longer employed by the DCSD. The information provided by the DCSD was not sufficient to establish that the student's special education teacher who was present at the August 12, 2016 and August 25, 2016 IEP meetings had the required training and qualifications in this regard. (DCSD Response, IEPs)

CONCLUSION OF LAW

Issue One: Whether the DCSD complied with the IDEA and the NAC, Chapter 388, with respect to implementing the student's IEP, specifically with regard to the provision of a BCBA to conduct training, oversee the student's program, and collect data beginning on or about September 23, 2016.

The requirements of the provision of a free appropriate public education (FAPE) 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) The DCSD was 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 pursuant to the NAC §388.215(5)(b).

The student's August 25, 2016 IEP provided the following Supplementary Aids and Services and Related Services from August 25, 2016 to October 23, 2016 with regard to the services of a BCBA:

- a. The student will have access to communication device – BCBA to assist with scheduling and training. The frequency of the service was 380 minutes per day, with no distinction between the allocation of time for access to the device and the time of the BCBA. The location of services was special education and general education;
- b. BCBA will provide program specific training to the case manager and all paraprofessionals with the "CLS" program to address site integration and positive strategies working towards "learn to learn" skills. The location of the services was special education and the frequency of services was 360 minutes per year;
- c. BCBA and staff will provide program training for all staff who works with and supports student in conjunction with the site based Positive Behavior Support Tier System. The location of the services was schoolwide and the frequency of services was 360 minutes

- per year;
- d. BCBA to review data, recommend changes, make suggestions, and provide written feedback. The location of the services was special education and the frequency of services was 60 minutes per week;
 - e. Direct Behavior Analysis Services. The location of the services was special education and the frequency of services was 60 minutes per month; and
 - f. Consult Behavior Analysis Services. The location of the services was special education and the frequency of services was 60 minutes per month. (Finding of Fact (FOF) #5)

On or about September 23, 2016, the DCSD no longer had a contract BCBA or other BCBA responsible for providing services to this student and other students with disabilities with BCBA services in their IEPs. (FOF #7) As a result, during the time period of this Complaint, the DCSD failed to implement the BCBA services in the student's August 25, 2016 IEP (FOF #4) with regard to the provision of training by the BCBA; the BCBA's oversight of the student's program through the review of data, recommendations and suggestions for change, and the provision of feedback; and consult behavior analyst services. The last documented BCBA service provided to the student was the one and one half hour observation of the student conducted on September 15, 2016. (FOF #6) The Parent did not allege the DCSD failed to provide the student the required Direct Behavior Analysis services (FOF #4) in this Complaint.

The DCSD did attempt to engage the services of the contract BCBA to provide the data and training services in the student's August 25, 2016 IEP (FOF #5) and made efforts to procure BCBA services for the district as a whole in September 2016. (FOF #7) However, as of November 21, 2016, the DCSD had still not obtained the services of a BCBA. The only assurance the DCSD provided the Parent on November 21, 2016 was that it hoped to have a BCBA on contract prior to Winter break with the understanding that direct services to the student would begin Second Semester. (FOFs #5, #7)

Therefore, the DCSD failed to comply with the IDEA and the NAC, Chapter 388, with respect to implementing the student's IEP, specifically with regard to the provision of a BCBA to conduct training, oversee the student's program, and collect data beginning on or about September 23, 2016.

Issue Two: Whether the DCSD 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 August 12, 2016 and August 25, 2016 IEP meetings, specifically a BCBA to provide information to assist the IEP Team with regard to the amount of time required for behavioral analysis training of staff and to establish data collection/analysis for the student.

Both the IDEA, 34 C.F.R. §300.321, and the NAC §388.281(2) set forth the mandatory members of each IEP Team for the development and review and revision of a student's IEP: the parent(s) of the student (34 C.F.R. §300.321(a)(1), 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 §388.281(2)(b) and (c)); the public agency representative who has the requisite knowledge and qualifications (34 C.F.R. §300.321(a)(4), NAC §388.281(2)(a)); and an individual who is familiar with the tests and other assessments performed on or by the student and their results and who

can interpret the instructional implications of the results of the evaluation. (34 C.F.R. §300.321(a)(5), NAC §288.281(2)(e))

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. Unless a district and a parent agree/consent otherwise pursuant to the IDEA, 34 C.F.R. §300.321(e)(1) and (2), and NAC §388.281(4) and (5), mandatory IEP Team members are required to attend each IEP meeting, whether it results in a final IEP or not.

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:

“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. . . .” (Bold for emphasis. Vol. 71 Fed. Reg. pg. 46669 (August 14, 2006))

The only issue raised in this Complaint with regard to the attendance of required IEP Team members is the absence of a BCBA at the August 12, 2016 and August 25, 2016 IEP meetings. The DCSD invited the contract BCBA to attend the August 12, 2016 and August 25, 2016 IEP meetings, but the BCBA was unable to attend. (FOF #11) Pursuant to the IDEA, 34 C.F.R. §300.321, and the NAC §388.281(2), a BCBA was not a required member of the student’s IEP Team and the absence of the BCBA was permissible. However, the DCSD was required to ensure that all individuals who were necessary to develop an IEP that would meet the student’s unique needs, and ensure the provision of a FAPE to the student, participated in the student’s IEP meeting:

“As explained in the Committee Reports on the IDEA Amendments of 1997, “Related services personnel should be included on the team when a particular related service will be discussed at the request of the child’s parents or the school.” (H. Rep. No. 105-95, p. 103 (1997); S. Rep. No. 105-17, p. 23 (1997)). For example, if the child’s evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, special transportation services, school social work services, school health services, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child. This written recommendation could be a part of the evaluation report.

A public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child’s unique needs, and ensure the provision of FAPE to the child, participate in the child’s IEP meeting.” (Appendix A to Part 300--Notice of Interpretation: Vol. 64 Fed. Reg. pg. 12478 (March 12, 1999))

In this case, given the behavior of the student was determined to impede the learning of the student or other students (FOF #3), the IEP Team was required to provide positive behavioral strategies, supports and interventions, or other strategies, supports and interventions to address

that behavior. (NAC§388.244(2)(b)) As such, the IEP Team needed to have the requisite information and knowledge to determine the appropriate positive behavioral strategies, supports and interventions, or other strategies, supports and interventions for the student. In addition, both the DCSD and the Parent agreed that BCBA services for the student would be discussed at the August 12, 2016 and August 25, 2016 IEP meetings. (FOFs #11, #12, #13) The DCSD indicated that the student's special education teacher was the IEP Team member with the requisite information and knowledge; however, there was insufficient information to corroborate that in the course of the investigation. (FOF #18)

Prior to the August 12, 2016 IEP meeting, both the DCSD and the Parent's advocate made efforts to obtain information from the contract BCBA to clarify information and obtain the BCBA's recommendations for the student's IEP Team. The DCSD forwarded the information obtained from the BCBA to the student's Parent and solicited additional questions prior to the meeting in an attempt to ensure that the IEP Team would have the information needed to move forward. (FOFs #12, #13, #14) The BCBA did provide written information and recommendations to both the DCSD and the Parent's advocate, including a recommendation regarding frequency and amount of services. However, the written recommendations did not specifically address the recommended hours for each of the behavior analysis services under consideration for the student. (FOFs #13, #14)

It is recognized that the DCSD did attempt to have the BCBA attend the August 12, 2016 IEP meeting and, in lieu of her attendance, to obtain information and recommendations for the IEP Team to be able to develop the student's IEP in this regard. Notwithstanding these attempts, the student's IEP Team did not have the requisite knowledge and/or the necessary written information from the BCBA to determine the frequency and amount of BCBA services the student required at the August 12, 2016 IEP meeting and the IEP Team was unable to complete the student's IEP. (FOFs #11, #12, #13, #14) Therefore, in light of the needs of this student, the DCSD failed to ensure that a qualified provider of behavior analysis services either attended the August 12, 2016 IEP meeting, or provided a written recommendation concerning the frequency and amount of BCBA services to be provided to the student.

Prior to the August 25, 2016 IEP meeting, the DCSD did acquire the necessary written information from the contract BCBA for the IEP Team to make the determination on the nature, frequency, and amount of behavior analysis services the student required. (FOFs #16, #17) The student's IEP was completed at this IEP meeting and the Parent agreed with the IEP. (FOF #17) The DCSD did ensure that all individuals who were necessary to develop an IEP that would meet the student's unique needs participated in the student's August 25, 2016 IEP meeting.

Therefore, the DCSD 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 August 25, 2016 IEP meeting, but not with regard to the August 12, 2016 IEP meeting, specifically a BCBA to provide information to assist the IEP Team with regard to the amount of time required for behavioral analysis training of staff and to establish data collection/analysis for the student.

ORDER FOR CORRECTIVE ACTION

The DCSD is required to take corrective action to address the violations found in this Complaint investigation, specifically the DCSD's failure to provide the student with the BCBA services in the student's August 25, 2016 IEP during the time period of this Complaint and the failure to ensure the student's IEP Team had the necessary information at the August 12, 2016 IEP meeting to make a determination with regard to the amount of time required for behavioral analysis training of staff and to establish data collection/analysis for the student. No student specific remedy is ordered for the student with regard to the latter violation since the violation was corrected at the following August 25, 2016 IEP meeting and an agreed upon IEP was developed; however, a systemic remedy is warranted.

Compensatory Services

In accordance with *Parents of Student W. ex rel. Student W. v. Puyallup School Dist. No. 3*, 31 F.3d 1489; 21 IDELR 723 (9th Cir. 1994):

“ . . . [t]here are cases in other circuits in which courts have rotely awarded a block of compensatory education equal to time lost while a school district denied a free, appropriate public education to a handicapped child. See, e.g., *Valerie J. v. Derry Cooperative School District*, 771 F.Supp. 483 (D.N.H.1991); *Burr by Burr v. Ambach*, 863 F.2d 1071 (2nd Cir.1988), vacated and remanded, 492 U.S. 902, 109 S.Ct. 3209, 106 L.Ed.2d 560, reaff'd on recons., 888 F.2d 258 (1989) (awarding one and one-half years of compensatory education to student who was unable to attend school at all due to state errors and procedural delays). These cases do not contradict a court's power, when considering an equitable remedy, to apply a fact-specific analysis, as the district court did here . . . There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.”

While the Ninth Circuit Court of Appeals¹ has determined that there is no obligation for day-for-day compensation for time missed after the filing of this Complaint, the Complaint Investigation Team determined that it is warranted for the student in this case for the period of time covered by this Complaint.

Directed Action – Student

September 23, 2016 to October 10, 2016

Given that the DCSD did not notify the Parent of its failure to implement the student's BCBA services until September 23, 2016 (FOF #7); the absence of documentation of the provision of services covered in this Complaint in the month of September 2016; and the inclusive scope of the Complaint to the time period “on or about September 23, 2016,” the month of September 2016 is included in this compensatory services order.

The DCSD and the Parent can agree in writing to an alternative service(s); alternative amounts of services; and/or an alternative timeline for the delivery of the service. Any such written agreement must be provided to the NDE within ten school days of its execution. In the absence of such agreement, the DCSD must provide the student the following compensatory services,

¹ The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

over the required services in the student's IEP, no later than the end of the 2016/2017 school year:

1. Twelve hours of staff training as follows: BCBA will provide six hours of program specific training to the case manager and all paraprofessionals with the "CLS" program to address site integration and positive strategies working towards "learn to learn" skills. BCBA and staff will provide six hours program training for all staff who works with and supports student in conjunction with the site based Positive Behavior Support Tier System.
2. Five hours of BCBA services to review student data, recommend changes, make suggestions, and provide written feedback.
3. Seventy-five minutes of Consult BCBA services.

The calculation of the compensatory services time was based on the failure of the DCSD to provide the services of a BCBA in the student's August 25, 2016 IEP with the sole exception of the required 60 minutes of Direct BCBA services in the month of September. (FOF #7) For monthly services, the calculation was prorated for the first week of October that was within the scope of this Complaint. The only service required to be provided on a weekly basis was the Supplementary Aid and Service related to the BCBA's review of data and that service was not impacted by the absence of the student for three and a half days in one school week. (FOF #10)

Student Specific and Systemic Directed Action

Procurement and Commencement of BCBA Services

The scope of this Complaint was limited to the failure to provide BCBA services to this student up to the date of the Complaint, October 10, 2016. However, in the course of the investigation, the NDE discovered that the failure to implement the student's IEP during the time period of this Complaint was not only a student specific failure. Rather, due to the absence of a qualified BCBA at the district level, the DCSD failed to provide required BCBA services in this student's and other students' IEPs (FOF #7) and that failure was expected to continue at least until the commencement of the Second Semester. (FOF #7) Therefore, the NDE determined that, pursuant to its general supervision responsibilities under the IDEA, 34 C.F.R. §300.149, a systemic remedy is also required to ensure the appropriate provision of BCBA services for this student and all other students with disabilities in the DCSD with BCBA services in their IEPs from September 2016 to the end of the 2016/2017 school year. (34 C.F.R. §300.151(b); NAC §388.318(7))

Notwithstanding the impermissible failure to provide this student and other students the required BCBA services during the 2016/2017 school year, the DCSD is to be commended for its intention to remediate the failure to provide the service by offering compensatory services to each student, appropriate for the time/services missed. (FOF #7) Specifically, the DCSD made an offer to parents of the students with disabilities denied BCBA services that upon securing BCBA services the DCSD would work with each IEP Team to determine current need and compensatory services appropriate for time/services missed. (FOF #7)

The DCSD's compensatory services remedy for all students with disabilities denied BCBA services since September 2016 is adopted, with some augmentation, as the NDE's enforcement

mechanism to correct the noncompliance identified in this Report. (34 C.F.R. §300.151(b), NAC §388.318(7)) Accordingly, within 45 days of the receipt of this Report:

1. The DCSD must provide the NDE documentation of its written offer for compensatory services, over the required services in each student's IEP, to remedy the failure to provide BCBA services to:
 - a. The student who is the subject of this Complaint if there was/is any continuing failure to provide the student the BCBA services in the student's current IEP from October 11, 2016 to the date the DCSD secures and provides BCBA services; and
 - b. Any other student whose IEP includes BCBA services who was not provided those services from September 1, 2016 to the date the DCSD secures and provides BCBA services.
2. The documentation of the offer must include the nature, amount and timeline for the provision of the BCBA services to each student and the parent's response to the offer. If an individual parent and the DCSD cannot reach agreement on the compensatory services to be provided to an individual student as a result of the DCSD's failure to provide required BCBA services, this Order of Corrective Action does not preclude either the parent or the DCSD from filing a due process hearing complaint to resolve any such disagreement regarding the provision of a free appropriate public education to the student through an evidentiary hearing or accessing the IEP facilitation or mediation processes. In addition, it does not preclude the filing of a State Complaint for the failure to provide the student the required BCBA services;
3. The agreed upon compensatory services must be delivered to each student by the commencement of the 2017/2018 school year.
4. The DCSD must provide the NDE documentation of the implementation of the agreed upon BCBA compensatory services for each student in accordance with the timeline in each compensatory service plan within 20 school days of the completion of the compensatory services.
5. If the DCSD is unable to provide the agreed upon compensatory services through a DCSD employee or qualified contractor, upon a parent's submission of an invoice for the agreed upon compensatory services provided by a qualified BCBA, the DCSD must pay the BCBA directly for the provision of services or, if the parent paid the invoice, reimburse the individual student's parent upon proof of payment of the BCBA's invoice. Based on the DCSD's compensation criteria for the contract BCBA for the service provided this student on September 15, 2016, compensation for the invoiced amount for each student will be at the amount charged up to \$150.00 per hour, pro-rated for partial time in 15 minute segments, and up to \$50.00 an hour for driving time. (FOFs #8, #9)

Corrective Action Plan (CAP)

Within 30 days of the receipt of this Report, the DCSD is directed to provide to the NDE the following:

1. A description of the procedures that will be implemented to ensure that when BCBA services will be discussed at an IEP meeting at the request of the student's parents or

the school, a qualified provider of that service must, at the DCSD's discretion (unless otherwise a mandatory IEP Team member), either (1) attend the IEP meeting, or (2) provide a written recommendation to the IEP Team of the need for BCBA services; and, if appropriate, a recommendation concerning the nature, frequency, and amount of service to be provided to the student; and another IEP Team member who attends the IEP meeting must be qualified to interpret the instructional implications of any evaluation results that resulted in the recommendation for BCBA services.

2. A description of the method by which the DCSD will ensure representatives of the public agency on IEP Teams in the DCSD are notified of the requirement to implement these procedures and how the DCSD will monitor the implementation of the procedures.

Following approval of the CAP by the NDE, the DCSD must implement the CAP within 30 days and provide documentation of its completion within 15 days of completion.