

**CLARK COUNTY SCHOOL DISTRICT
COMPLAINT INVESTIGATION
(#CL092523)**

Report Issued on December 5, 2023

INTRODUCTION

On September 25, 2023, the Nevada Superintendent of Public Instruction received a Complaint dated September 20, 2023 alleging violations by Clark County School District (CCSD) of the Individuals with Disabilities Education Act (IDEA) law and regulations, 20 U.S.C. §1400 et seq., 34 C.F.R. Part 300, and Chapter 388 of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC). The State Complaint was jointly filed by a legal aid center and the Parent of the named student (hereinafter, Complainant).¹

The allegations in the 46-page State Complaint were that CCSD substantially failed to implement a February 3, 2023 due process hearing decision with regard to:

- Providing the student the ordered language program in accordance with the program design and publisher specifications of daily instruction in 90-minute blocks, with both digital and face-to-face components; use of the program materials; and for the duration of the 2022/2023 school year (alleging the Order included Extended School Year) and for the 2023/2024 school year;
- Providing the student’s specialized reading instructor face-to-face training conducted by the company for the ordered program within 30 days of the Order; and
- Conducting complete language and assistive technology evaluations in that the OWLS-II assessment was incomplete due to the failure to administer the OWLS-II subtests linked to reading and writing; the Arizona-4 assessment failed to evaluate phonology linked to reading difficulties; and the assistive technology evaluation was a review of records only, rather than testing, observation, or other interaction with the student.

In addition, the Complainant alleged that CCSD failed to provide the student’s Parent meaningful participation in the Individualized Education Program (IEP) process, specifically CCSD failed to:

- Provide the student’s evaluation reports from the ordered evaluations prior to or after the March 10, 2023 and March 24, 2023 IEP Team meetings at which they were discussed, despite the Parent’s multiple requests, and provide the student’s progress report for the end of the year;
- Provide the Parent timely notice of the March 10, 2023 and March 24, 2023 IEP Team meetings; convene the IEP Team meetings at a mutually agreeable time and place and, as a result, conducted the March 24, 2023 IEP Team meeting ordered by the Hearing Officer without the Parent, even after the Parent asked to reschedule; and failed to have required IEP Team members present at the March 10, 2023 IEP Team meeting in that an individual was not present to discuss the student’s reading program; and
- Provide the required detail in the statement of the specially designed instruction of reading in the self-contained classroom in the student’s March 24, 2023 IEP to effectively monitor implementation.

¹ Consent from the Parent of the student authorizing the disclosure of personally identifiable information to the legal aid center with regard to this State Complaint was provided in the enclosure with the State Complaint. 34 C.F.R. §300.622; NAC §388.289.

The Complainant's proposed resolution to address the allegations regarding the implementation of the Hearing Officer's decision provided 11 detailed proposed remedies for each alleged violation, including one in the alternative. The proposed resolution for the allegation of the denial of meaningful Parent participation provided eight detailed remedies, including the provision of specifically stated compensatory education.

Pursuant to IDEA, 34 C.F.R. §300.152(b), Nevada Department of Education (NDE) has the authority to permit the extension of the 60-day timeline for the submittal of the final report in a State Complaint investigation due to exceptional circumstances. In this case, exceptional circumstance existed given the number of allegations to be investigated; substantial documentation to be reviewed; and the reduced time period to complete the investigation due to the decision being due during the observed State holiday of Thanksgiving, November 23-24, 2023. Therefore, NDE extended the time limit to conclude its investigation and issue the decision from November 24, 2023 to December 8, 2023 to allow for sufficient time for NDE to conduct its investigation and issue the Complaint Investigation Report.

The allegations within the jurisdiction of NDE through the State Complaint process, raise the following issues for investigation:

Issue One:

Whether CCSD complied with the requirements of IDEA and NAC, Chapter 388, and implemented the Hearing Officer's February 3, 2023 due process hearing decision with regard to:

- a. Providing the student the ordered language program for the duration of the 2022/2023 school year, including, if required, during Extended School Year, and the 2023/2024 school year in accordance with the program design/publisher specifications of daily instruction in 90-minute blocks, with both digital and face-to-face components and use of the program materials;
- b. Providing the student's specialized reading instructor face-to-face training conducted by the company for the ordered program within 30 days of the Order; and
- c. Conducting complete language and assistive technology evaluations with regard to the administration of the OWLS-II subtests linked to reading and writing; the evaluation of phonology linked to reading difficulties on the Arizona-4 assessment; and, including, if required, the administration of assessments in the assistive technology evaluation in addition to a review of existing evaluation data.

Issue Two:

Whether CCSD complied with the IDEA and NAC, Chapter 388, specifically with regard to the student's Parent meaningful participation in the IEP process, specifically whether CCSD:

- a. Upon request, provided the student's evaluation reports from the evaluations ordered by the Hearing Officer prior to or after the March 10, 2023 and March 24, 2023 IEP Team meetings and/or provided the Parent the opportunity to inspect and review the reports;
- b. Provided the student's fourth quarter progress report for the 2022/2023 school year on the progress the student made toward meeting the annual goals in the student's IEP;
- c. Scheduled the March 10, 2023 and March 24, 2023 IEP Team meetings for a time and at a place that was mutually agreed upon by the Parent and CCSD and provided written notice early enough to ensure that the Parent would have an opportunity to attend;
- d. In the conduct of the March 24, 2023 IEP Team meeting, was authorized to conduct the meeting without the Parent in attendance;
- e. Had the required IEP Team members present at the March 10, 2023 IEP Team meeting, specifically an individual present to discuss the student's reading program; and

- f. Ensured the student's IEP Team provided the required detail in the statement of the specially designed instruction of reading in the self-contained classroom in the student's March 24, 2023 IEP.

The State Complaint also includes an allegation of misleading information about various matters related to the ordered language program. While the issue with regard to providing the student the ordered language program in accordance with the program design and publisher specifications was accepted, the Complainant was informed that NDE does not have jurisdiction over local personnel matters, such as statements of personnel that may be perceived as misleading. The Complainant requested reconsideration of the absence of jurisdiction over local personnel matters.

After consideration of the Complainant's argument and NDE's jurisdiction in the State Complaint process over alleged violations of IDEA or Chapter 388 of the NRS and NAC (34 C.F.R. §300,153(b)(1); NAC §388.318), the Complainant was informed that the issues as stated in the October 2, 2023 issue letter would stand. However, the Complainant was further informed that the argument in the reconsideration correspondence would be considered in the investigation of this State Complaint regarding the implementation of the ordered language program and, if noncompliance was determined as a result of the investigation, the documentation provided in the course of this investigation relative to the alleged misleading statements would be considered in the determination of the appropriate remedy for the student.

Pursuant to NAC §388.215, the State of Nevada has established measures each public agency must take to ensure that every student with a disability in the school district is identified, evaluated and served in the manner appropriate to the unique needs of the student. These measures include the establishment of a system of records that verifies these measures were implemented, including that each student identified as a student with a disability is receiving services appropriate to the student's disability. This requirement for a verifiable system of records is particularly important in the State Complaint process because, unlike due process hearings where testimony is under oath; cross examination of witnesses is available; and there is an opportunity for the Hearing Officer to judge credibility on matters with conflicting evidence, this process is an investigation process.

There is no impartial method in this investigative process other than verifiable documentation to reach a determination that the assertions of the public agency should be believed over the assertions of the complainant or vice versa, even recognizing Complainant provided a notarized sworn Affidavit from the Parent in this case.² Therefore, in the investigation of this State Complaint, only assertions with verifiable documentation were relied upon to counter contrary documentation, with particular weight given to documentation that was contemporaneous or near in time to the event.

In the October 2, 2023 issue letter to CCSD, NDE requested additional documents and information in order to investigate the State Complaint. CCSD was notified in that same correspondence that if CCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; reference to the provided documentation that factually supported the denial; and that a failure to do so by October 20, 2023, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. CCSD did timely provide a response; denied the alleged noncompliance generally; and provided the requisite statement of the factual basis and documentation. CCSD did concede

² Similarly see this OSEP policy letter regarding the absence of the burden of proof in the State Complaint process: *Letter to Reilly*, 64 IDELR 219 (OSEP November 3, 2014). This policy letter is publicly available at: <https://sites.ed.gov/idea/idea-files/policy-letter-november-3-2014-to-atlee-reilly/>

that the student's specialized reading instructor did not receive the ordered face-to-face training conducted by the company for the ordered program within 30 days of the Order. (Issue One(b))

Both CCSD and the Complainant are recognized for the exceptionally well-organized and referenced documentation provided in the course of this State Complaint process. The State Complaint, including all enclosed documents and information, and CCSD's denial of all claims and all documents submitted by CCSD in response to the issues in the Complaint were reviewed in their entirety in this investigation. The Findings of Fact cite the source(s) of the information determined necessary to resolve the issues in this State Complaint.

FINDINGS OF FACT

1. The student is a student with a disability and was/is enrolled in CCSD in the 2022/2023 and 2023/2024 school years and attended the same school for the two school years at issue. (Hearing Officer's Decision, State Complaint, IEPs, Student Enrollment History)
2. The student's IEP in effect in the 2022/2023 school year was a March 25, 2022 IEP with IEP services through March 24, 2023, the IEP review date. (March 25, 2022 IEP)
3. The first day of school for students in the CCSD 2023/2024 school year after the issuance of the Hearing Officer's February 3, 2023 Decision was February 6, 2023 and the last day of school was May 22, 2023. The first day of school in the 2023/2024 school year was August 7, 2023. (CCSD 2022/2023 and 2023/2024 School Calendars for Students)
4. The student's March 25, 2022 IEP included Extended School Year services for the student. The appropriateness of some aspects of the student's March 25, 2022 IEP was addressed in the Hearing Officer's Decision. (Hearing Officer's Decision, Issue II, March 25, 2022 IEP)
5. The student was a "no show" for the Extended School Year program that started June 23, 2022. (Student Enrollment History)

Hearing Decision

6. On May 5, 2022, a Due Process Complaint was filed regarding the provision of special education to a student with a disability in CCSD.³ (Hearing Officer's Decision)
7. In the February 3, 2023 Hearing Officer's Decision, the Hearing Officer ordered the following:
 - a. "Based upon the above Findings of Fact and Conclusions of Law, **it is hereby ordered:** that District⁴ is to fund an IEE to determine the appropriate scope of Student's current educational needs. The IEE evaluator is to receive a copy of the 2019 IEE as a baseline. The IEE shall be initiated within 30 days of this Order.
 - b. **It is further ordered** that District conduct a complete language evaluation to determine if phonological or language deficits may be impacting reading or academic achievement. The evaluation shall be completed within 30 days of this Order.
 - c. **It is further ordered** that District conduct an assistive technology evaluation to determine how best to support Student with speech-to-text and text-to-speech functions so Student can keep up in class while being taught to read. The evaluation shall be completed within 30 days of this Order.

³ The Parent's representative at the Due Process Hearing is one of the Complainants in this State Complaint.

⁴ "District" is CCSD.

- d. **It is further ordered** that Student’s IEP team shall convene within 14 days after receipt of the IEE, language and assistive technology evaluations, unless otherwise agreed upon by Parent and School.
- e. **It is further ordered** that District continue to provide Student with the Voyager Language! program (a research based, structured literacy program) through the remainder of the 2022-2023 school year, and for the 2023-2024 school year due to the length of time it took for District to obtain the program and begin working with Student, that Student continue to receive 1:1 instruction, and that all teachers utilizing the program receive face-to face sessions for initial or advanced training provided by Language! Live within 30 days of this Order, or for Student’s future teachers no later than 21 days after Student is placed in teacher’s class.” (February 3, 2023 Hearing Officer’s Decision)

Evaluation of the Student

Language and Phonology

8. The CCSD speech/language pathologist conducted an evaluation of the student over two sixty-minute sessions on February 13, 2023 and February 15, 2023 using the Oral and Written Language Scales-II (OWLS-II) assessment; the Pragmatic Language Observation Scale (PLOS); and the Arizona Articulation and Phonology Scale, Fourth Edition (Arizona-4).
9. The student’s receptive, expressive and pragmatic language skills were assessed using the OWLS-II Listening Comprehension Scale, that measures oral language reception (the understanding of spoken language), and the Oral Expression Scale, that measures oral language expression, (the use of spoken language); and the PLOS, a standardized rating scale based on pragmatic language behaviors readily seen in instructional settings. (Speech, Language, Communication Assessment Multidisciplinary Evaluation Team Report, Test Publishers⁵)
10. The Arizona-4 is an evaluation of articulatory and phonological skills that consists of three individual tests: word articulation (a measure of articulatory ability as expressed in the production of single words); sentence articulation (a measure of articulatory ability as expressed in the production of sentences); and phonology (a measure of phonological impairments). The Arizona-4 is designed to help clinicians identify individuals who need speech sound services. It does not include a reading test. (Speech, Language, Communication Assessment Multidisciplinary Evaluation Team Report, Test Publisher⁶)
11. It is uncontested that the assessment of the student in February 2023 did not include the administration of the OWLS-II Reading Comprehension Scale, that measures reception written language, (reading and comprehending written language), and the Written Expression Scale, that measures expressive written language (writing). (State Complaint, CCSD Response, Speech, Language, and Communication Assessment Multidisciplinary Evaluation Team Report, Test Publisher⁷)

⁵ Description of PLOS from Hammill Institute, the test publisher: <https://hammill-institute.org/1018-2/> and of OWLS-II from WPS, the test publisher: https://ecom-cdn.wpspublish.com/prod/media/wpsmedia/owls-ii_quick_reference.pdf

⁶ Description of Arizona-4 from WPS, the test publisher: <https://www.wpspublish.com/arizona-4-arizona-articulation-and-phonology-scale-fourth-revision#:~:text=Arizona%2D4%20measure%3F-.The%20Arizona%2D4%20measures%20speech%20intelligibility%2C%20articulatory%20impairment%2C%20and.quick%2C%20easy%20to%20use%20assessment.>

⁷ https://ecom-cdn.wpspublish.com/prod/media/wpsmedia/owls-ii_quick_reference.pdf

12. WPS, the test publisher, states that OWLS-II has the following benefit: “Provides a complete and integrated picture of oral and written language skills across a wide age range test...” “The OWLS-II scales can be administered separately or together.” “Although the scales can be used separately, together they provide a comprehensive score profile to pinpoint language delays, identify strengths and weaknesses in each area, and guide intervention.” (OWLS-II Product Description⁸)
13. As a result of the administration of the Listening Comprehension and Oral Expression Scales of OWLS-II; PLOS; and Arizona-4, the CCSD speech/language pathologist determined that: the student exhibits very mild deficits in the area of language characterized by difficulty with complex sentence use/sentence structure, lexical ambiguity, word retrieval, and adjusting language based on social situation. The student presented with average articulation, phonology, fluency and voice skills. The student’s current speech/language skills do not interfere with the student’s ability to adequately communicate or have an adverse social, emotional, or academic effect. The student’s current language needs can best be addressed within the language rich environment of the classroom through natural occurrence of a variety of situations. Based on the assessment findings and observations, the speech/language pathologist did not recommend the student receive speech/language therapy services. (Speech, Language, Communication Assessment Multidisciplinary Evaluation Team Report)

Assistive Technology

14. An assistive technology assessment of the student was completed on February 21, 2023 by CCSD’s assistive technology itinerant instructor. The evaluation methods used were a review of reports and work samples; IEP review; and teacher (case manager) and special education instructional facilitator interviews. The assessor planned to meet with the student to review some of the available assistive technology tools, but the school staff said the student was hesitant and may have anxiety around new people. On the day of the assessment the student also went home early due to illness. (CCSD Assistive Technology Services Assessment Report)
15. At the time of the assistive technology assessment the student had been using the written expression supports of a word processor and a computer and speech-to-text support in “Google docs,” called “Voice Typing” to write papers. The results of the assessment reported on the student’s use of the voice typing tool and the assistive technology instructor recommended that the student receive the written expression support of CO:Writer and Snap&Read to help with the student’s class while the student receives support for reading and writing and text-to-speech voices in Bookshare. (CCSD Assistive Technology Services Assessment Report)

Language!

16. Language! is a research based, structured literacy program. Voyager Sopris Learning (Voyager Sopris), the maker of Language!, describes Language! as “...an intensive intervention for students in grade 4-12 who are substantially below grade-level expectations for literacy. With an explicit, systematic approach that is proven to accelerate the growth of struggling readers and nonreaders...” Each unit in the Language! Program has 10 lessons. (Hearing Officer’s Decision, Voyager Sopris: Language! – Why We Need Comprehensive Literacy Solutions for Adolescents, pp 12-13; Language! - Proven to Close the Literacy Achievement Gap, pp. 3, 21; Language! Teacher Edition, Volume 1)

⁸ <https://www.wpspublish.com/owl-ii-oral-and-written-language-scales-second-edition.html>

17. Voyager Sopris has multiple reading programs/products. Language! Live is a different program than Language! While Language! is an intensive literacy intervention curriculum for grades 4-12, Language! Live is to reinforce literacy foundations for grades 5-12.⁹ The Language! Live program highlights the blended instruction approach of teacher-guided instruction and online instruction and practice. The State Complaint and supporting documents included both Language! and Language! Live references and exhibits. (See for example Complainant Exhibits 23-25, 32.) (Voyager Sopris Website, September 20, 2023 Email Communication, Language! Live - From Research to Reading, Review of Record, Voyager Sopris Language!, Proven to Close the Literacy Achievement Gap, Voyager Sopris -Language!, Why We need Comprehensive Literacy Solutions for Adolescents, State Complaint, Hearing Officers Decision)
18. The school the student attended in CCSD in the 2022/2023 and 2023/2024 school years purchased Language! for the student and is a licensed user. No license was provided in the course of the investigation that CCSD is also a licensed user of Language! Live. (Hearing Officer's Decision, Language! Licenses for Named School, Review of the Record)
19. While the Language! program is designed to be delivered in 90 minutes of daily instruction to students: "Language! adjusts to fit different schedules. In each schedule below, time is distributed strategically according to the number of minutes in the schedule. In the same number of days, the number of lessons completed will vary depending on the number of minutes of instruction per day." Examples are provided for 90-minute lessons and 45-minute lessons. The examples show that in a 90-minute lesson plan, one and one-half units will be completed and in a 45-minute schedule only one unit is completed. "The Voyager Sopris Implementation Specialists work with districts to develop a custom implementation schedule." (Voyager Sopris Language! - Proven to Close the Literacy Achievement Gap, p. 21, Voyager Sopris -Language!, Why We need Comprehensive Literacy Solutions for Adolescents, p. 11)
20. The instructional components in Language! are comprised of: a teacher edition; student text; interactive text; assessment tools; and technology tools. The technology tools are supplied for teachers and students. "Those designed for teachers help them develop materials to meet specific instructional needs. Other interactive tools allow students to practice skills and content. Together these tools are a valuable resource to teachers to differentiate instruction." However, Language! also provides: Implementation Flexibility: Print, Blended, or digital delivery. After the filing of this State Complaint, Voyager Sopris confirmed that the implementation of Language! can be through hardcopy materials, digital access or a combination of the two and that there is no requirement to be online. (Voyager Sopris Language!, Proven to Close the Literacy Achievement Gap, pp. 3, 22, Voyager Sopris -Language!, Why We need Comprehensive Literacy Solutions for Adolescents, pp. 11, 13, October 6, 2023 – November 20, 2023 Email Communications between CCSD and Voyager Sopris)
21. The Language! program has an assessment system that includes ongoing assessment which regularly tests student mastery of the content, concepts and skills taught in the curriculum to ensure teachers have current information in order to adjust pacing or provided instructional support activities. At the end of each book, the summative assessments assess the critical skills of literacy through both norm-referenced and curriculum-based measures. Language!'s database allows teachers and administrators to record, track, and report student test results, including through a

⁹ <https://www.voyagersopris.com/products/reading> The State Complaint Investigation Team noted that the Complainant cited both Language! and Voyager Language! Live documentation in support of the State Complaint allegations.

report of progress at the individual student level. The Language! Live has dashboards for both students and teachers to organize and track their progress. (Voyager Sopris Language!, Proven to Close the Literacy Achievement Gap, p. 16)

22. CCSD implements the Language! program with the student one-to-one with face-to-face instruction exclusively. Each lesson with the student is a 50-minute block of time. The 50-minute block of time corresponds to the class schedule for classes at the school the student attends. (CCSD Response, Teacher Instruction and Data, 2022/2023, 2023/2024 Student Schedule for Student)
23. The student's March 25, 2022 and March 24, 2023 IEPs provide that the student's course of study is a standard course of student toward earning a standard high school diploma, which requires the completion of all applicable course requirements. The CCSD English Language Arts instructional framework for grade levels that include the student's grade level establishes a 50-minute schedule for students to earn credits in that subject. (Grade Level - English Language Arts Instructional Framework: 50 Minutes Schedule, CCSD Response, March 25, 2022 and March 24, 2023 IEP, Student Academic History)
24. The Hearing Officer made a finding in the February 3, 2023 Hearing Officer's Decision that the Language! curriculum was used with the student in the 2022/2023 school year and CCSD "attempted" to use Language! curriculum three times a week. (Hearing Officer's Decision Finding of Fact #65)
25. The same credentialed teacher who serves as a learning strategist who provided the Language! lessons to the student at the time of the due process hearing continued providing this instruction as the sole provider of the program in the 2023/2024 school year. The learning strategist did not receive the face-to-face training ordered by the Hearing Officer. (Hearing Officer's Decision, January 19, 2023 Hearing Transcript, pp 143-144, CCSD Response)
26. CCSD informed the Parent that the teacher providing the Language! lessons to the student had not received the ordered training at the IEP meeting on March 10, 2023. On March 20, 2023, the first school day thereafter, CCSD corrected the statement of who was providing the Language! lessons to the student through an email communication to the Parent and again indicated the provider, the learning strategist, had not been trained. (March 10, 2023, March 20, 2023 Email Communications)
27. The Language! program was provided to the student in the 2022/2023 and 2023/2024 school years using the program materials. The documentation provided to support CCSD's implementation of the program with the student included the focus of lessons on the date implemented and drills and pretest scores for some lessons. (Teacher Instruction and Data)
28. Prior to the issuance of the Hearing Officer's Decision, the last Language! lesson provided to the student on January 9, 2023 was Unit 1-lesson 6. CCSD's implementation of Learning! curriculum with the student after the issuance of the Hearing Officer's Decision in 50-minute sessions in the 2022/2023 school year commenced March 20, 2023. Over a period of 10 full school weeks and four partial school weeks after February 3, 2023, to the last day of school for students on May 22, 2023, Language! was used with the student twice a week on two school weeks as follows: March 20, 2023 - started Language! 1.8; March 21, 2023, finished Language! 1.8; April 18, 2023, Language! 2.4 started; April 19, 2023 Language! 2.4 finished. The student was absent from February 3, 2023 through the end of the 2022/2023 school year for nine full school days and three partial days and on one school day the student engaged in inappropriate behavior on the way to reading and was returned to class. These absences reduced the number of school days available in the week of February 20, 2023 and April 24, 2023 to one school day of instruction. CCSD did not

make Language! available to the student for 10 school weeks when the student was present for more than one school day. (Student Period Attendance Detail, CCSD Documentation Periods/Activity)

29. Over a period of five full school weeks and two partial school weeks in the 2023/2024 school year through the school week of September 18, 2023 – September 22, 2023, Language! was provided to the student, in 50-minute sessions twice a week on five school weeks; and once on one school week (It was, however, made available to the student twice in that school week and then student was absent two school days in that same week.) CCSD did not make Language! available to the student on one school week, the first week of school in the 2023/2024 school year.¹⁰ (Student Period Attendance Detail, CCSD Documentation Periods/Activity)¹¹

Parental Participation

Evaluation Reports

30. CCSD received the student’s speech/language assessment report¹² on Thursday, March 2, 2023 and the assistive technology assessment report on Friday, March 3, 2023. CCSD filed the reports in the student’s “confidential folder.” (Confidential Status Record)
31. On March 10, 2023, after the student’s March 10, 2023 IEP Team meeting, CCSD provided the student’s Parent both of the assessment reports as attachments to email correspondence, along with the meeting notices for the second IEP Team meeting on March 21, 2023. The transmittal correspondence expressly indicated that the meeting notices, the student’s draft IEP and the reports from the speech/language pathologist and assistive technology department were attached.¹³ The student’s Parent responded to the email communication with a request for the scheduling of the second IEP Team meeting on a Friday, if possible. (March 10, 2023 Email Communications)
32. The Parent did not request a copy of these assessment reports prior to the March 10, 2023 IEP Team meeting and it is unknown whether the Parent requested the evaluation reports during the March 10, 2023 IEP Team meeting. Nonetheless, both the student’s Parent and advocate did so after the March 10, 2023 IEP Team meeting, after CCSD had already transmitted the reports. In response, CCSD indicated the reports had been sent previously and referenced the email communication with

¹⁰ August 15, 2023 - started Language! lesson 3.1 (attempted that same school week on August 16, 2023 and student was absent); August 17, 2023 – finished Language! lesson 3.1; August 24, 2023 - started Language! lesson 3.2; August 25, 2023 – finished Language! lesson 3.2; Attempted August 29, 2023 and the student refused to attend; August 31, 2023 – started Language! lesson 3.3; September 1, 2023-finished Language! lesson 3.3; September 6, 2023 - started Language! lesson 3.4; September 7, 2023 - finished Language! lesson 3.4; missed school September 11, 2023; sometime during the week of September 11, 2023 to September 15, 2023 - finished Language! lesson 3.5; September 20, 2023 – started Language! lesson 3.6. (The student was absent September 19, 2023 and September 21, 2023 which reduced the school week to three days of attendance, one of which, September 18, 2023, the student requested to wait until the next day and the teacher agreed.) (Student Period Attendance Detail, CCSD Documentation Periods/Activity)

¹¹ In the absence of documentation otherwise pursuant to NAC §388.215, only those school weeks with documentation supporting the implementation of the Language! program with the student were determined to be in accord with the Hearing Officer’s Order.

¹² The speech/language assessment report included the results of the OWLS-II assessment; the PLOS; and the Arizona-4.

¹³ The State Complaint Investigation noted that the copy of the transmittal email sent to the Parent’s advocate was not a forwarded email or, at minimum, the complete email communication and did not show the attachments in the original email communication sent to the Parent. The State Investigation Team found the original email communication to the Parent that the Parent responded to more convincing and, accordingly, gave it greater weight.

the reports attached. There is no documentation that the Parent requested an opportunity to inspect and review the student's education records generally during the time period of this State Complaint investigation. (State Complaint, March 10, 2023, March 27, 2023 Email Communications, Review of the Record)

33. The speech/language pathologist and assistive technology itinerant who conducted the student's speech/language and assistive technology evaluations were in attendance at the March 10, 2023 IEP Team meeting and discussed the results of the evaluations in the development of the student's present levels of academic achievement and functional performance. (State Complaint, March 24, 2023 IEP, Confidential Status Record)
34. As of March 27, 2023, the student's IEE had not yet been received by CCSD. CCSD indicated on that date that an additional IEP Team meeting would be scheduled upon receipt to address those findings. (March 27, 2023 Email Correspondence)

Progress Reports

35. The method for reporting the student's progress toward the annual goals in both the March 25, 2022 and March 24, 2023 IEP was a specialized progress report with the projected frequency of quarterly. (IEPs)
36. CCSD issued a May 22, 2023 Fourth Quarter Progress Report on the student's progress toward the annual goals and the extent to which the annual goals in the student's March 24, 2023 IEP could be achieved by the end of the student's IEP year. This Progress Report was sent home to the Parent. (May 22, 2023 Progress Report, Confidential Status Record, March 24, 2023 IEP)

March 10, 2023 IEP Team meeting

37. One of the considerations of CCSD in the scheduling of the student's March 10, 2023 IEP Team meeting was the Hearing Officer's Order to convene within 14 days from the receipt of the student's ordered assessments, which would be during spring break, and the furthest date out to schedule the student's ordered IEP Team meeting was March 10, 2023, the day before spring break. (March 7, 2023 Email Correspondence, Review of the Record, 2022/2023 CCSD School Calendar for Students)
38. On Monday, March 6, 2023, CCSD provided the student's Parent a prior notice of CCSD's proposal to develop the student's IEP that included speech/language concerns and a meeting arrangements notice and informed the Parent in the transmittal that the meeting was set for Friday, March 10, 2023 and for the Parent to let CCSD know if the Parent had any questions or concerns. The meeting arrangement notice indicated that if the tentatively set time was not convenient to the Parent to review various options that included an alternative proposed date and time. There is no record that the Parent returned the notice with an alternative date and time. CCSD also attempted to contact the Parent by telephone on March 6, 2023 regarding the scheduled March 10, 2023 IEP Team meeting and left a message. On March 7, 2023, CCSD again attempted to contact the Parent by telephone regarding the March 10, 2023 meeting, and left a message. (March 6, 2023 Prior Notice of Proposal to Meet, March 6, 2023 Meeting Arrangements Notice, Review of the Record, Confidential Status Record)
39. On March 8, 2023, the student's Parent contacted CCSD; apologized for not getting back sooner but the Parent was waiting to hear back from the advocate to see if the date and time would work and as soon as the Parent heard back the Parent would let CCSD know. On March 8, 2023, CCSD

sent a second notice of the proposal to develop the student's IEP. On March 9, 2023, CCSD informed the Parent that since the Parent had not yet heard back from her advocate, the Parent was welcome to participate in the IEP Team meeting without her advocate and, as an accommodation, an additional meeting could be scheduled once the advocate was available. (March 7, 2023 Email Correspondence, March 8, 2023 Prior Notice of Proposal to Meet)

40. The Parent and the advocate did attend the March 10, 2023 IEP meeting. The review of the IEP was completed up to the specially designed instruction section and the student's Parent and advocate wanted more time to review the IEP. CCSD and the Parent agreed to reconvene the IEP Team at a later date after spring break (March 13, 2023 to March 17, 2023) to complete the review. That same day, CCSD sent the following as attachments to the Parent: the draft IEP: the speech/language and assistive technology assessment reports; and a new meeting notice and prior notice to reconvene on March 21, 2023, the second school day after spring break. The stated reason was to comply with the Hearing Officer's Order and stay in compliance with the student's IEP due date. (State Complaint, Confidential Status Record, March 10, 2023 Email Correspondence)
41. The allegation in the State Complaint regarding the attendance of required IEP Team members at the March 10, 2023 IEP Team meeting was only with regard to an individual present who implemented the student's reading program, Language!, since the Complainant had questions about the student's reading instruction and wanted to ensure the reading goals and the reading program were aligned. The student's present levels of academic achievement and functional performance in the student's March 24, 2023 IEP regarding reading included assessment results derived from the observation of the student's teacher's, documentation and reading work samples. The special education facilitator, the student's regular education and special education teacher and the speech/language pathologist and assistive technology itinerant who conducted the student's assessments ordered by the Hearing Officer were in attendance. The learning strategist who provided the student the Language! lessons was not in attendance. (State Complaint, CCSD Response, March 10, 2023 Email Communication, CCSD Response, March 24, 2023 IEP)

March 24, 2023 IEP Team Meeting

42. Upon receipt of the meeting notices on March 10, 2023, the day before spring break, for the March 21, 2023 IEP Team meeting the Parent responded mid-afternoon that, if possible, on a Friday would be best. (March 10, 2023 Email Correspondence)
43. The first school day after spring break, Monday, March 20, 2023, at 7:48 AM in the morning, CCSD sent an email communication to the Parent and Team members that per the request of the Parent the IEP Team meeting had been moved to Friday, March 24, 2023. Updated copies of the prior notice and meeting arrangement notice with the March 24, 2023 date and time were attached. (March 20, 2023 Email Correspondence, Meeting Arrangements Notice, Prior Notice of Proposal to Meet)
44. The student's IEP Team convened on March 24, 2023 and when the student's Parent did not log on to the meeting link after 15 minutes, CCSD called the Parent and the Parent indicated that she was unaware of the meeting. The Parent requested the IEP Team reconvene at a later date. After consideration, CCSD refused to reconvene at a later date on the basis that the Hearing Officer's Order required an IEP Team meeting to be "completed" to address the student's speech/language and assistive technology assessments within 14 days of receipt. The Parent requested more time to review the March 24, 2023 IEP with the advocate and agreed to reconvene for a revision if advised by the advocate to do so. CCSD agreed to reconvene the student's IEP Team to revise the student's IEP if any changes were needed after the Parent reviewed the IEP with the advocate. On March

27, 2023, CCSD repeated this offer to reconvene to the Parent's advocate. (March 24, 2023 IEP, March 24, 2023 Notice of Intent to Implement IEP, Status Conference Notes, March 24, 2023, March 27, 2023 Email Communications,)

45. The IEP Team, without the student's Parent present for more than two minutes of the meeting, completed the student's IEP and transmitted the IEP to the Parent along with the Prior Written Notice to implement the IEP, with a delayed implementation date of April 3, 2023. In the course of the investigation, no documentation was provided that the student's Parent or advocate requested CCSD reconvene the student's IEP Team to revise the March 24, 2023 IEP. (Google Link Participation, March 24, 2023 IEP, March 24, 2023 Notice of Intent to Implement IEP, Status Conference Notes, Review of the Record)

Specially Designed Instruction of Reading

46. The student's specially designed instruction of reading in the student's March 24, 2023 IEP includes the beginning and ending dates of the service; the frequency of the service (minutes per week); and the location of the service of self-contained. (March 24, 2023 IEP)
47. The Complainant's allegation regarding the lack of specificity in the student's March 24, 2022 IEP is that the statement of the student's specially designed instruction of reading does not include the Hearing Officer's ordered one-to-one provision of Language! to the student. (State Complaint)

CONCLUSIONS OF LAW

Issue One:

Whether CCSD complied with the requirements of IDEA and NAC, Chapter 388, and implemented the Hearing Officer's February 3, 2023 due process hearing decision with regard to:

- a. Providing the student the ordered language program for the duration of the 2022/2023 school year, including, if required, during Extended School Year, and the 2023/2024 school year in accordance with the program design/publisher specifications of daily instruction in 90-minute blocks, with both digital and face-to-face components and use of the program materials;
- b. Providing the student's specialized reading instructor face-to-face training conducted by the company for the ordered program within 30 days of the Order; and
- c. Conducting complete language and assistive technology evaluations with regard to the administration of the OWLS-II subtests linked to reading and writing; the evaluation of phonology linked to reading difficulties on the Arizona-4 assessment; and, including, if required, the administration of assessments in the assistive technology evaluation in addition to a review of existing evaluation data.

In accordance with NAC §388.310(17), a decision made in a hearing conducted pursuant to NAC §388.310 is final unless the decision is appealed pursuant to NAC 388.315. (See also 34 C.F.R. §300.514) In this case, the February 3, 2023 Hearing Officer's Decision was not appealed and is, therefore final and enforceable. Pursuant to IDEA, 34 C.F.R. §300.152(c)(3), NDE has jurisdiction through the State Complaint process over a State Complaint alleging a public agency's failure to implement a due process hearing decision. As a preliminary matter, the Complainant's argument in this case included drawn inferences of the Hearing Officer's implied intent in some of the Orders. The enforceability and scope of this investigation was confined to whether CCSD implemented the Orders as stated, without speculation or inference.

Issue One(a)

Language! Program

In relevant part, the February 3, 2023 Hearing Officer's Decision ordered the following: "It is further ordered that District continue to provide Student with the **Voyager Language! program** (a research based, structured literacy program) through the remainder of the 2022-2023 school year, and for the 2023-2024 school year due to the length of time it took for District to obtain the program and begin working with Student, that Student continue to receive 1:1 instruction, and that all teachers utilizing the program receive face-to face sessions for initial or advanced training provided by **Language! Live** within 30 days of this Order, or for Student's future teachers no later than 21 days after Student is placed in teacher's class." (Bold for emphasis.) (Finding of Fact (FOF) #7)

Voyager Sopris has multiple reading programs/products. Language! Live is a different program than Language!. Language! is an intensive literacy intervention curriculum for grades 4-12, Language! Live is to reinforce literacy foundations for grades 5-12. The State Complaint and supporting documents included both Language! and Language! Live references and exhibits. (FOF #17)

The school the student attended in CCSD in the 2022/2023 and 2023/2024 school years purchased Language! for the student and is a licensed user. No license was provided in the course of the investigation, that the school or CCSD is a licensed user of Language! Live. (FOF #18) The Hearing Officer ordered CCSD to provide the student the Language! program and CCSD implemented the Language! program with the student, not the Language! Live program, prior to the issuance of the Hearing Officer's Decision and thereafter. (FOFs #7, #22, #27, #28, #29)

There are different program design/publisher specifications for each of the programs. The following specifications were at issue in this case:

Face-to-Face

The Language! Live program highlights the blended instruction approach of teacher-guided instruction and online instruction and practice. (FOF #17) However, Language! can be implemented through hardcopy materials, digital access or a combination of the two and there is no requirement to be online. (FOF #20) In this case, CCSD elected to implement the Language! curriculum with the student with face-to-face instruction exclusively. Therefore, in the absence of the Hearing Officer ordering otherwise, CCSD's determination to employ face-to-face instruction one-to-one instruction with the student, rather than a combination of face-to-face and digital instruction was within CCSD's discretion.

90 Minutes

Relevant to this State Complaint, the Language! curriculum is designed to be delivered in 90 minutes of daily instruction to students; however, Language! adjusts to fit different schedules. (FOF #19) In this case, CCSD elected to implement the Language! curriculum with the student in 50-minute blocks of time. The 50-minute blocks of time correspond to the class schedule for classes at the school the student attends and allows the student to maintain credits toward the completion of the student's course of study. (FOFs #22, #23, #24) The State Complaint Investigation Team determined that not only does the Language! program provide CCSD the discretion to adjust the implementation schedule in this manner, the rationale for doing so was appropriate to the student's unique situation.

Provision of the Language! Program

Voyager Sopris Learning (Voyager Sopris), the maker of Language!, describes Language! as “...an intensive intervention for students in grade 4-12 who are substantially below grade-level expectations for literacy. With an explicit, systematic approach that is proven to accelerate the growth of struggling readers and nonreaders...” Likewise, the Hearing Officer expressly identified Language! as a “research based, structured literacy program.” (FOFs #7, #16)

CCSD did use the program materials and provided the student the ordered Language! program during the relevant period of this State Complaint (FOFs #27 - #29) However, in order to determine whether CCSD implemented the Language! program with the student in the manner required, the State Complaint Investigation Team must determine whether it was implemented in a structured, systematic manner.

Each unit in the Language! program has 10 lessons. (FOF #16) Prior to the issuance of the Hearing Officer’s Decision, the last Language! lesson provided to the student on January 9, 2023 was Unit 1-lesson 6. CCSD’s implementation of Learning! program with the student after the issuance of the Hearing Officer’s Decision did not evidence a structured utilization of the program since the student advanced from Unit 1- lesson 6 to lesson 1.8 to lesson 2.4. In addition, over a period of 10 full school weeks and four partial school weeks after February 3, 2023, to the last day of school for students on May 22, 2023, CCSD did not make Language! available to the student for 10 school weeks when the student was present for more than one school day.¹⁴ (FOF #28)

In the 2023/2024 school year, other than the unexplained usage of Unit 3.1 at the commencement of the school year after completing Unit 2.4 the prior school year, CCSD made the Language! program available to the student in a structured systemic manner. However, CCSD did not make Language! available to the student on one school week, the first week of school in the 2023/2024 school year. (FOF #29)

Language!’s database allows teachers and administrators to record, track, and report student test results, including through a report of progress at the individual student level.¹⁵ (FOF #21) Insufficient documentation was provided in the course of the investigation for the State Complaint Investigation Team to determine if the Language! program required a specific structure of recording, tracking, and reporting the student’s test results. In this case, with regard to the assessment of the student, CCSD did document the student’s progress in the Language! program to some extent, including some drills and pretest scores for some lessons. (FOF #27)

Extended School Year

In relevant part, by definition, Extended School Year Services means special education and related services that are provided to a student with a disability outside/beyond the normal school year of the public agency. 34 C.F.R. §300.106; NAC 388.284(5). In this case, even though the Hearing Officer was aware that the student had some Extended School Year services in the March 25, 2022 IEP (FOF #4), the Hearing Officer’s Order to provide the student Language! program was “through the remainder of the 2022-2023 school year, and for the 2023-2024 school year.” (FOF #7) Therefore, the State Complaint Investigation Team determined that CCSD complied with the Hearing Officer’s Order by implementing the Language! program during the regular/normal school year. (While not determinative in this finding, the State Investigation

¹⁴ While it is acknowledged that CCSD may not have received the February 3, 2023 Hearing Officer’s Decision until the week of February 6, 2023, given the Hearing Officer’s Order was for CCSD to “continue to provide” the structured Language! program, the first school week after the Order was issued was included in this calculation.

¹⁵ Language! Live has dashboards for both students and teachers to organize and track their progress. (FOF #21) The utilization of dashboards was referenced in the State Complaint.

Team notes that the student did not attend the provided Extended School Year program that commenced June 23, 2022. (FOF #5))

Issue One(b)

Instructor Training

The same credentialed teacher, the learning strategist, who provided the Language! lessons to the student at the time of the due process hearing has continued to provide this instruction in the 2023/2024 school year and was the sole provider of the program during the relevant time period of this State Complaint. As indicated in the Introduction, CCSD conceded that the student's specialized reading instructor did not receive the ordered face-to-face training conducted by the company within 30 days of the Order. (FOFs #25, #26)

Issue One(c)

Language and Assistive Technology Evaluations

In relevant part, the February 3, 2023 Hearing Officer's Decision ordered the following: "b. It is further ordered that District conduct a complete language evaluation to determine if phonological or language deficits may be impacting reading or academic achievement. The evaluation shall be completed within 30 days of this Order. c. It is further ordered that District conduct an assistive technology evaluation to determine how best to support Student with speech-to-text and text-to-speech functions so Student can keep up in class while being taught to read. The evaluation shall be completed within 30 days of this Order." (FOF #7)

Both the Complainant and CCSD agree that CCSD conducted a language evaluation and assistive technology evaluation and the State Complaint Investigation Team consistently found that the evaluations were conducted and completed within the time period in the Order. (FOFs #8, #14) The allegation in this State Complaint is that the OWLS-II assessment was incomplete due to the failure to administer the OWLS-II subtests linked to reading and writing; the Arizona-4 assessment failed to evaluate phonology linked to reading difficulties; and the assistive technology evaluation was a review of records only, rather than testing, observation, or other interaction with the student.

Language and Phonology

As described above, the Hearing Officer's Order was for CCSD to conduct a "complete language evaluation" and the stated purpose of the evaluation was "to determine if phonological or language deficits may be impacting reading or academic achievement." (FOF #7) The CCSD speech/language pathologist conducted the language evaluation of the student using the Oral and Written Language Scales-II (OWLS-II) assessment; the Pragmatic Language Observation Scale (PLOS); and the Arizona Articulation and Phonology Scale. (FOF #8)

Receptive, Expressive and Pragmatic Language Skills

The student's receptive, expressive and pragmatic language skills were assessed using the OWLS-II Listening Comprehension Scale, that measures oral language reception, and the Oral Expression Scale, that measures oral language expression; and the PLOS Scale, a standardized rating scale based on pragmatic language behaviors readily seen in instructional settings. (FOF #9) It is uncontested that the assessment of the student in February 2023 did not include the administration of the OWLS-II Reading Comprehension Scale, that measures reception written language and the Written Expression Scale, that measures expressive

written language. (FOF #11) Assessments and other evaluation materials must be administered in accordance with any instructions provided by the producer of the assessments. 34 C.F.R. §300.304(c)(1); NAC §388.340(3)(a). In accordance with the test publisher's the OWLS-II scales can be administered separately or together (FOF #12), as was done here.

Articulation and Phonological Skills

The speech/language pathologist also evaluated the student using the Arizona-4 assessment. The Arizona-4 is an evaluation of articulatory and phonological skills to help clinicians identify individuals who need speech sound services. The Arizona-4 does not include a reading test. (FOF #10)

As a result of the administration of these three assessments of language skills, receptive, expressive and pragmatic; articulation; and phonology, the speech/language pathologist determined that the student exhibits very mild deficits in the area of language characterized by difficulty with complex sentence use/sentence structure, lexical ambiguity, word retrieval, an adjusting language based on social situation and has average articulation, phonology, fluency and voice skills. The speech/language pathologist addressed the impact of the student's current language skills on academics and, as a result of the administered assessments, determined that the student's current speech/language skills do not interfere with the student's ability to adequately communicate or have an adverse social, emotional, or academic effect. (FOF #13)

Based on the comprehensiveness of the language and phonology evaluation of the student and the assessor's determination of academic effect, that would include reading and academic achievement, the State Complaint Investigation Team determined that CCSD did conduct a "complete language evaluation" as ordered.

Assistive Technology

As discussed above, the Hearing Officer ordered CCSD to conduct "an assistive technology evaluation to determine how best to support Student with speech-to-text and text-to-speech functions so Student can keep up in class while being taught to read." An assistive technology evaluation of the student was completed on February 21, 2023 using the methods of a review of reports and work samples; IEP review; and teacher (case manager) and special education instructional facilitator interviews. The assessor planned to meet with the student to review some of the available assistive technology tools, but the school staff said the student was hesitant and may have anxiety around new people. On the day of the assessment the student also went home early due to illness. (FOF #14)

As exemplified by IDEA, 34 C.F.R. §300.305(a), and NAC §388.336(1), evaluation procedures do not exclude the review of existing evaluation data as was done in the assistive technology evaluation in this case, except for the conduct of the two interviews. As a result of this information and data, the assessment reported on the student's use of speech-to-text support and included recommendations of written expression support and text-to-speech devices. (FOF #15) In the absence of any ordered assessment in the Hearing Officer's Order, the State Complaint Investigation Team determined that CCSD did conduct an assistive technology evaluation as ordered that included information/data on how best to support the student with speech-to-text and text-to-speech functions so the student could keep up in class while being taught to read.

Therefore, CCSD complied in part and failed in part to comply with IDEA and NAC, Chapter 388, in the implementation of the Hearing Officer's February 3, 2023 Decision. Specifically:

A. CCSD complied with regard to:

- 1. Conducting complete language evaluation and assistive technology evaluation; and*
- 2. In the absence of a requirement to use digital instruction and 90-minute instructional*

blocks, the implementation of Language! program during the regular school year with face-to-face instruction in 50 - minute blocks.

B. CCSD failed to comply with regard to:

1. *Providing the student's specialized reading instructor face-to-face training conducted by the company for the ordered program within 30 days of the Order; and*
2. *Making the ordered Language! program available to the student in a structured, systematic manner consistent with the program design for 10 school weeks in the 2022/2023 school year and one school week in the 2023/2024 school year during the relevant time period of this State Complaint.*

Issue Two:

Whether CCSD complied with the IDEA and NAC, Chapter 388, specifically with regard to the student's Parent meaningful participation in the IEP process, specifically whether CCSD:

- a. Upon request, provided the student's evaluation reports from the evaluations ordered by the Hearing Officer prior to or after the March 10, 2023 and March 24, 2023 IEP Team meetings and/or provided the Parent the opportunity to inspect and review the reports;
- b. Provided the student's fourth quarter progress report for the 2022/2023 school year on the progress the student made toward meeting the annual goals in the student's IEP;
- c. Scheduled the March 10, 2023 and March 24, 2023 IEP Team meetings for a time and at a place that was mutually agreed upon by the Parent and CCSD and provided written notice early enough to ensure that the Parent would have an opportunity to attend;
- d. In the conduct of the March 24, 2023 IEP Team meeting, was authorized to conduct the meeting without the Parent in attendance;
- e. Had the required IEP Team members present at the March 10, 2023 IEP Team meeting, specifically an individual present to discuss the student's reading program; and
- f. Ensured the student's IEP Team provided the required detail in the statement of the specially designed instruction of reading in the self-contained classroom in the student's March 24, 2023 IEP.

Evaluation Reports

The Hearing Officer's February 3, 2023 Decision ordered CCSD to conduct a complete language evaluation and assistive technology evaluation within 30 days of this Order and that the student's IEP Team convene within 14 days after receipt of the IEE, language and assistive technology evaluations. The Order did not require CCSD to provide the Parent a copy of the evaluations. (FOF #7) Therefore, the general requirements of IDEA and NAC, Chapter 388, apply.

Pursuant to IDEA, 34 C.F.R. §300.613, the parents of a student must be allowed to inspect and review any education records relating to their child that are collected, maintained, or used by the public agency. (See also NAC §388.287.) The public agency must comply with a request of the parent to do so without unnecessary delay and before any meeting regarding an IEP, or any hearing or resolution session and in no case more than 45 days after the request has been made. 34 C.F.R. §300.613; NAC §388.287(1).¹⁶

In this case, CCSD received the student's speech/language assessment report on March 2, 2023 and the assistive technology assessment report on March 3, 2023. (FOF #30) The speech/language pathologist and

¹⁶ IDEA, 34 C.F.R. §300.306 regarding the determination of eligibility and the provision of a copy of the evaluation report and the documentation of determination of eligibility was not raised by the Complainant in this State Complaint and consistently the State Complaint Investigation Team found it inapplicable to the facts of this case.

assistive technology itinerant who conducted the student's speech/language and assistive technology evaluations were in attendance at the March 10, 2023 IEP Team meeting that the student's Parent attended. The assessors reported the results of the evaluations in the development of the student's present levels of academic achievement and functional performance. (FOF # 33) It is unknown if the Parent requested the evaluation reports during the March 10, 2023 IEP Team meeting. However, that fact is not of consequence to reach a determination in this case since after the IEP Team meeting on March 10, 2023 CCSD sent the speech/language and assistive technology assessment reports as an attachment to an email communication to the Parent and the email communication was received by the Parent. Thereafter the Parent requested a copy of the assessment reports already transmitted, as did the Parent's advocate. In response, CCSD referred the Parent and the advocate to the email communication with the previously transmitted reports. (FOFs #31, #32)

Therefore, CCSD complied with IDEA and NAC, Chapter 388, with regard to the student's Parent meaningful participation in the IEP process by the timely provision of the student's evaluation reports from the evaluations ordered by the Hearing Officer upon or prior to the Parent's request in accordance with IDEA, 34 C.F.R. §300.613, and NAC §388.287(1).

Progress Reports

In accordance with IDEA, 34 C.F.R. §300.320(a)(3), and NAC §388.284(1)(h), a student's IEP must include when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. The method for reporting the student's progress toward the annual goals in both the March 25, 2022 and March 24, 2023 IEP was a specialized progress report with the projected frequency of quarterly. (FOF #35) CCSD issued a May 22, 2023 Fourth Quarter Progress Report on the student's progress toward the annual goals in the student's March 25, 2023 IEP and the extent to which the annual goals could be achieved by the end of the student's IEP year. This Progress Report for the end of the school year was sent home to the Parent. (FOF #36) As such, CCSD complied in this regard.

Therefore, CCSD complied with IDEA and NAC, Chapter 388, specifically with regard to the student's Parent meaningful participation in the IEP process by the provision of the student's fourth quarter progress report for the 2022/2023 school year on the progress the student made toward meeting the annual goals in the student's IEP.

Mutually Convenient Time and Place

The parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of a student and the provision of a Free Appropriate Public Education to the student. 34 C.F.R. §§300.322, 300.501; NAC §388.302. Parental participation in the IEP creation process is of vital importance under the IDEA. *Doug C. ex rel. Spencer C. v. State of Hawaii, Dep't of Educ.*, 720 F.3d 1038; 61 IDELR 91 (9th Cir.).

Pursuant to IDEA, 34 C.F.R. 300.322(a)(2), and NAC §388.281(8), CCSD was required to notify the student's Parent of the meeting early enough to ensure that the Parent had an opportunity to attend; and schedule the student's IEP Team meeting(s) at a mutually agreed upon time and place. Pursuant to NAC §388.281(8)(b), the notice must be in writing and "early enough" is further described as "sufficient notice to enable the parent to make arrangements to participate in such meetings."

It is the March 10, 2023 and March 24, 2023 IEP Team meetings that are at issue in this case. The IEP Team meetings were in response to the Hearing Officer's Order that CCSD convene the student's IEP Team within 14 days after receipt of the IEE, language and assistive technology evaluations, unless otherwise

agreed upon by Parent and school. (FOF #7) Both the Complainant and CCSD appear to have interpreted the Hearing Officer's Order as ordering the student's IEP Team to convene upon the receipt of the student's speech/language and assistive technology assessments. That is not what the Order says. The Order required the student's IEP Team to convene within 14 days after receipt of the IEE, language **and** assistive technology evaluations, unless otherwise agreed upon by Parent and school. As of March 27, 2023, the IEE had still not been received by CCSD. (FOF #34) Nonetheless, that is not at issue in this State Complaint, and the parties' interpretation of the earlier timeline and the resultant sense of urgency was a factor in the scheduling and conduct of the student's IEP Team meetings, as was the student's annual March 25, 2022 IEP. (FOF #2)

March 10, 2023 IEP Team Meeting

On Monday, March 6, 2023, CCSD provided the student's Parent a prior notice of CCSD's proposal to develop the student's IEP that included speech/language concerns and a meeting arrangements notice and informed the Parent in the transmittal that the meeting was set for Friday, March 10, 2023 and for the Parent to let CCSD know if the Parent had any questions or concerns. The meeting arrangement notice indicated that if the tentatively set time was not convenient to the Parent to review various options that included an alternative proposed date and time. There is no record the Parent returned the notice with an alternative date and time. CCSD also attempted to contact the Parent by telephone on March 6, 2023 regarding the scheduled March 10, 2023 IEP Team meeting and left a message. On March 7, 2023, CCSD again attempted to contact the Parent by telephone regarding the March 10, 2023 meeting, and left a message. (FOF #38)

On March 8, 2023, the student's Parent contacted CCSD; apologized for not getting back sooner and explained the Parent was waiting to hear back from the advocate to see if the date and time would work. That same day, CCSD sent a second notice of the proposal to develop the student's IEP. (FOF #39) The Parent and the advocate did attend the March 10, 2023 IEP meeting. (FOF #40)

Neither the IDEA nor NAC, Chapter 388, set a specific time period for the notice in advance of an IEP Team meeting, in fact, the United States Department of Education, Office of Special Education Programs, expressly declined to do so in the promulgation of the 2006 IDEA regulations. The Department's rationale for not doing so was that how far in advance parents must be notified of a meeting would vary based on a number of factors, such as travel distance and availability of childcare.¹⁷ In this case there was only a four-day notice for the IEP Team meeting. However, on its face, that is not violative of IDEA and NAC, Chapter 388 since it is a case-by-case determination whether the advance notice is "early enough" since, in some cases four days would be "sufficient notice to enable the parent to make arrangements to participate in such meetings." 34 C.F.R. 300.322(a)(2); NAC §388.281(8).

In this case, CCSD received the second ordered assessment on Friday, March 3, 2023 (FOF #30); provided the notice to the Parent on the following Monday, March 6, 2023 (FOF #38); March 10, 2023 was the Friday before spring break, during which the 14-day timeline in the Order was perceived to fall (FOF #37); and the Parent did not provide an alternative date and time in response to CCSD's meeting notice. (FOF #38) Therefore, the State Complaint Investigation Team determined that, in the case, the student's Parent was afforded the opportunity to participate in that the advance notice was not unreasonable, and, given the Parent attended, it was "sufficient notice to enable the parent to make arrangements to participate in such meetings." 34 C.F.R. 300.322(a)(2); NAC §388.281(8).

March 24, 2023 IEP Team Meeting: Advance Notice and Without the Parent

¹⁷*Discussion of the IDEA regulations*: Vol. 71, Fed. Reg. pp. 46677 - 46678 (Aug. 14, 2006).

At the March 10, 2023 IEP Team meeting, CCSD and the Parent agreed to reconvene the IEP Team at a later date to complete the review after spring break. CCSD sent the Parent a meeting notice that same day, March 10, 2023, scheduling the IEP Team meeting on March 21, 2023, the second school day after spring break. (FOF #40) The Parent responded to that proposed date mid-afternoon that same day that, if possible, on a Friday would be best. (FOF #41) At the commencement of the first school day after spring break, Monday, March 20, 2023, CCSD sent an email communication to the Parent and other IEP Team members that, per the request of the Parent, the IEP Team meeting had been moved to Friday, March 24, 2023. Updated copies of the prior notice and meeting arrangement notice with the March 24, 2023 date and time were attached. (FOF #43)

CCSD did provide an advance written notice on March 10, 2023 of the proposed March 21, 2023 date for the IEP Team meeting (FOF #40); rescheduled the IEP Team meeting to March 24, 2023 to accommodate the Parent's request for a Friday (FOF #42); and provided a written notice to the Parent of the revised date for the IEP Team meeting the Monday before the Friday meeting (FOF #43). While the notice of the rescheduled date was once again a short advance notice, *solely* with regard to the scheduling of this March 24, 2023 IEP Team meeting at a mutually convenient time and place, upon consideration of the foregoing, the State Complaint Investigation Team determined that CCSD did notify the student's Parent of the meeting early enough to ensure that the Parent had an opportunity to attend; and scheduled the student's IEP Team meeting at a mutually agreed upon time and place. 34 C.F.R. 300.322(a)(2); NAC §388.281(8).

However, pursuant to NAC §388.281(10), if parents do not acknowledge receipt of the meeting notice, the public agency must make additional attempts to notify them, which may include, without limitation, attempts to notify them by telephone or through a visit to their home or place of employment. The public agency must keep detailed records of any telephone calls, correspondence or visits made to a parent's home or place of employment pursuant to this section and their results, if any. If the reasonable efforts of the public agency to convince the student's parents to attend or participate in the meeting through the use of alternative methods are unsuccessful, the parents shall be deemed unavailable and the public agency must conduct the meeting and develop an IEP for the student without the parents. NAC §388.281(11); 34 C.F.R. §300.322.

In this case, the student's IEP Team convened on March 24, 2023 consistent with the written meeting notice to the Parent and, when the student's Parent did not log on to the meeting link after 15 minutes, CCSD called the Parent and the Parent indicated that she was unaware of the meeting. The Parent requested the IEP Team reconvene at a later date. After consideration, CCSD refused to reconvene at a later date on the basis that the Hearing Officer's Order required an IEP Team meeting to be "completed" to address the student's speech/language and assistive technology assessments within 14 days of receipt. (FOF #44)

The Parent requested more time to review the March 24, 2023 IEP with the advocate and agreed to reconvene for a revision if advised by the advocate to do so. CCSD agreed to reconvene the student's IEP Team to revise the student's IEP if any changes were needed after the Parent reviewed the IEP with the advocate. (FOF #44) The IEP Team, without the student's Parent present other than for two minutes at the commencement of the meeting, completed the student's IEP and transmitted the IEP to the Parent along with the Prior Written Notice to implement the IEP, that included a delayed implementation date of April 3, 2023. On March 27, 2023, CCSD repeated this offer to reconvene to the Parent's advocate. In the course of the investigation, no documentation was provided that the student's Parent or advocate requested CCSD reconvene the student's IEP Team to revise the March 24, 2023 IEP. (FOFs #44, #45)

Was the Parent deemed unavailable in this case? No. While CCSD did provide the Parent a revised written notice of the March 24, 2023 IEP Team meeting, thereafter, there were no additional written or oral notices provided to the Parent, even though the Parent did not acknowledge the new IEP Team meeting date. As

such, the Parent was not deemed unavailable and CCSD was not authorized to conduct the meeting and develop the student's IEP without the Parent. NAC §388.282(10), (11); 34 C.F.R. §300.322.

The absence of other methods to ensure the Parent's attendance is of particular concern in this case since the record is replete with the Parent expressing an absence of knowledge regarding documentation sent to her as attachments to email correspondence, even when referenced in the body of the email communication, e.g. the speech/language and assistive technology assessments. (FOF #31) Consistently, when CCSD contacted the Parent the day of the March 24, 2024 IEP Team meeting the Parent indicated that she was unaware of the meeting and requested the IEP Team reconvene at a later date. (FOF #44)

The State Complaint Investigation Team understands that by proceeding without the Parent, CCSD was attempting to comply with not only the Hearing Officer's Order, but the student's impending annual due date for the March 25, 2022 IEP. As such, CCSD was in the position of violating the requirement under IDEA, 34 C.F.R. §300.324(b)(1), and 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 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.

"... Under the circumstances of this case, the Department's decision to prioritize strict deadline compliance over parental participation was clearly not reasonable." "... 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 CCSD nor the Complainant provided any information to lead the State 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. Further the student's IEP Team had already been convened within 14 days of CCSD's receipt of the speech/language and assistive technology assessments consistent with the Hearing Officer's Order, and, even under an alternative interpretation, the Order permitted CCSD and the Parent to agree otherwise on the date to convene. (FOFs #7, #40)

Like the parent in *Doug C.*, this is not a case where the Parent affirmatively refused to attend the meeting;

CCSD's efforts to involve the Parent were unsuccessful; or CCSD could not convince the Parent to attend despite its best efforts. On the contrary, the Parent wanted to participate in the IEP meeting and asked for the IEP meeting to be rescheduled and CCSD refused to do so. (FOF #44) Therefore, CCSD failed to comply with IDEA, 34 C.F.R. §300.322(a)(2), and NAC §388.281(8)(a), to take sufficient steps to ensure that the Parent was present at each IEP Team meeting and was afforded the opportunity to participate.

CCSD did attempt to rectify the violation of denying the Parent the opportunity to participate in the development of the student's March 24, 2023 IEP by repeated offers to schedule an IEP revision meeting with the Parent's participation after-the-fact and the Parent agreed to reconvene for a revision if advised by the Parent's advocate to do so. (FOFs #44, #45) However, notwithstanding the Parent's concurrence, the Ninth Circuit Court of Appeals has repeatedly rejected that solution as satisfying IDEA's parental participation requirements.

"...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 regarding parental participation and the review of an IEP annually would violate IDEA and 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.

Therefore, CCSD complied in part and failed in part to comply with IDEA and NAC, Chapter 388, with regard to parental participation. Specifically:

- A. *CCSD complied with regard to:*
 - 1. *Scheduling the March 10, 2023 and March 24, 2023 IEP Team meetings for a time and place that was mutually agreed upon by the Parent and CCSD; and*
 - 2. *Providing written notice early enough to ensure that the Parent would have an opportunity to attend.*
- B. *CCSD failed to comply with regard to the student's Parent meaningful participation in the IEP process by the conduct of the March 24, 2023 IEP Team meeting without the Parent in attendance.*

IEP Team Members

Both IDEA, 34 C.F.R. §300.321, and NAC, §388.281, set forth the mandatory members of a student's IEP Team. The State Complaint allegation regarding the attendance of required IEP Team members at the March 10, 2023 IEP Team meeting was only with regard to an individual present to discuss the student's ordered reading program, Language! The Complainant did not allege that the individual who implemented the Language! program was required to be present by the Hearing Officer's Order or was a mandatory member of the IEP Team under IDEA or NAC, Chapter 388. Rather the Complainant's concern was that the individual who was implementing the Language! program was not present to respond to the Complainant's questions about the student's reading instruction at the meeting and to ensure the reading goals and the reading program were aligned. (FOF #41)

The learning strategist who provided the student the Language! lessons was not in attendance at the March 10, 2023 IEP Team meeting. However, the student's regular education teacher; special education teacher; special education facilitator; and the speech/language pathologist and assistive technology itinerant who

conducted the student's assessments ordered by the Hearing Officer were all in attendance. (FOF #41) The student's present levels of academic achievement and functional performance in the student's March 24, 2023 IEP regarding reading also included assessment results derived from the observation of the student's teacher's, documentation and reading work samples and the speech/language assessment of any deficit in phonological or language that may be impacting reading or academic achievement. (FOF #41)

The statement of the annual goal in a student's IEP is designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and meet each of the student's other educational needs that result from the student's disability. A program or curriculum does not determine an annual goal, but rather is used to enable the student to advance appropriately toward attaining the determined annual goal. 34 C.F.R. §300.320; NAC §388.284.

The IEP Team members in attendance at the student's March 10, 2023 IEP Team meeting had the knowledge and ability to develop the student's annual goals without the individual who provided the student the Language! lessons in attendance, as evidenced by the completed March 24, 2023 IEP. (FOF #45) The attendance of the learning strategist was neither mandated by IDEA or NAC, Chapter 388 nor necessary for the purpose of developing the student's goals. Given the Complainant's questions regarding the Language! program, it is also noted that an IEP Team meeting is to develop, review, and revise a student's IEP, 34 C.F.R. §§300.320, 300.324. Not every meeting between a Parent and school staff is for that purpose. As such, any questions the Complainant had regarding the Language! or other curriculum used with the student could be answered in another manner/forum.

Therefore, CCSD complied with the IDEA and NAC, Chapter 388, specifically with regard to the student's Parent meaningful participation in the IEP process with the required IEP Team members present at the March 10, 2023 IEP Team meeting.

Specially Designed Instruction of Reading

In accordance with IDEA, 34 C.F.R. §300.320(a), and NAC §388.284(1)(g), a student's IEP must include the statement of the special education and related services and supplementary aids and services, and a statement of the program modifications or supports for school personnel that will be provided to the student and the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. IDEA also expressly provides that nothing in 34 C.F.R. §300.320 shall be construed to require that additional information be included in a student's IEP beyond what is explicitly required in 20 U.S.C. §1400 (in accord in this regard). 34 C.F.R. §300.320(d).

The Complainant's allegation regarding the lack of specificity in the student's March 24, 2022 IEP is that the statement of the student's specially designed instruction of reading does not include the Hearing Officer's ordered one-to-one provision of Language! to the student. (FOF #47) The student's March 24, 2023 IEP includes the student's specially designed instruction of reading and includes the beginning and ending dates of the service; the frequency of the service (minutes per week); and the location of the service in self-contained. (FOF #46) IDEA and NAC, Chapter 388, require no more, nor does the Hearing Officer's Order. Further, the Hearing Officer's Decision stands on its own as final and enforceable.

Therefore, CCSD complied with the IDEA and NAC, Chapter 388, specifically with regard to ensuring the student's IEP Team provided the required detail in the statement of the specially designed instruction of reading in the self-contained classroom in the student's March 24, 2023 IEP.

ORDER OF CORRECTIVE ACTION

In accordance with IDEA, 34 C.F.R. §300.151(b), in resolving a State Complaint in which the State Education Agency has found a failure to provide appropriate services, the agency, pursuant to its general supervisory authority under IDEA Part B must address: (1) the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) appropriate future provision of services for all children with disabilities.

The State Complaint Investigation Team determined both a student-specific remedy for the failure to provide the student the ordered Language! program for a period of 11 school weeks and to train the instructor who provided the Language! program as well as a systemic corrective remedy for CCSD's development of the student's March 24, 2023 IEP without the Parent is required and failure to implement the Hearing Officer's Order in all regards were required in this case. In determining the appropriate corrective action, the State Complaint Investigation Team considered the Complainant's and CCSD's proposed remedies, in the event noncompliance was found.

In accordance with NRS §385.175(6), NDE requests a plan of corrective action (CAP) from CCSD within **20 CCSD business days** of the date of this Report on the provision of CCSD's plan to implement the ordered actions below, including the timeline. (**Note the earlier face-to-face training ordered below prior to the date of the submission of the CAP.**) The CAP must be approved by NDE prior to implementation and documentation of the completion of the approved CAP must be provided to NDE within 14 days of its completion.

Student-Specific Remedy

Whether the failure to provide the services in a student's IEP is a minor discrepancy or a material failure is relevant to the determination whether a student-specific corrective action is required to address the needs of the student. 34 C.F.R. §300.151(b). This is an individualized determination: "A material failure to implement an IEP occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP..." and the services "...a school provides to a disabled child fall significantly short of the services required by the child's IEP. *Van Duyn v. Baker School District*, 502 F.3d 811, 107 LRP 51958 (9th Cir. 2007).

The State Complaint Investigation Team determined that, similarly, the failure to provide the student the ordered Language! Program for a period of 11 school weeks¹⁸ and to train the instructor of the program as ordered fell significantly short of the ordered services in the Hearing Officer's Decision to provide the student a Free Appropriate Public Education. As such, a student-specific remedy is required.

Compensatory education is designed to provide the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place. This is a fact-specific determination. *Parents of Student W. ex rel. Student W. v. Puyallup School Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005).

In compensatory education awards, there is no obligation to provide a day-for-day compensation for time missed. *Parents of Student W.* This approach for determining compensatory education is considered

¹⁸ CCSD's failure to provide to Language! Program to the student during the first week of the 2023/2024 school year may have been a minor shortfall relative to the time period; however, taken together with the noncompliance after the issuance of the Hearing Officer's Order in the 2022/2023 school year, a student-specific remedy is required for the complete 11 school week period.

‘qualitative’ in nature, rather than strictly ‘quantitative’ and requires that a compensatory education award be made not merely by establishing the amount of services which were not provided, but that an analysis be done to establish what may make the student whole for the denial of services. In this case, particularly given the individual providing Language! was not provided the ordered training in the provision of the program, one-to-one compensatory education is warranted.

Unless an alternative student-specific remedy is otherwise agreed to in writing by CCSD and the Parent¹⁹, the CAP must provide for the following student-specific directed actions and provide the timeline to enable the completion of all of the actions as soon as possible, but no later than one year from the date of this Report:

1. The provision of compensatory education of an additional 22 Language! lessons²⁰ each to be provided to the student in no less than a 50-minute session, or if the student completes all of the Units in the Language! program in the 2023/2024 school year prior to the completion of these ordered compensatory lessons, the remainder of the ordered 22 lessons must be completed with the lessons from Language! Live program in sequential order until the compensatory 22 lessons have been provided to the student in no less than 50-minute sessions.
2. Commencing no later than January 15, 2024, the provision of, at minimum, the report of progress at the individual student level for the student in the Language! program (or Language! Live program if started during the 2023/2024 school year) at least every two weeks through the duration of the 2023/2024 school year.
3. Within **15 business days** of the date of this Report, the completion (if started), or alternatively the commencement and completion no later than 20 business days from the date of this Report of the face-to-face training provided by Language! Live of all of the student’s teachers utilizing the ordered Language! program with the student.²¹ The Hearing Officer’s Order was for the conduct of face-to-face initial or advanced training provided by Language! Live. Upon consideration of the determined failure of CCSD to comply with that Order, and the use of the ordered Language! program with the student, not Language! Live, **if the Parent and CCSD agree otherwise**, the training may be provided by Language! on the Language! program rather than the Language! Live program. In addition, if any of the compensatory lessons are provided through Language! Live in accordance with Order One in this State Complaint, the student’s teachers utilizing the Language! Live program must receive training provided by Language! Live prior to the commencement of the Language! Live program with the student.

This compensatory education must be in addition to the services in the student’s IEP and continued provision of Language! to the student as ordered by the Hearing Officer’s Decision and must be provided during school breaks or before or after school. At CCSD’s discretion, all or part of the compensatory education may be provided by a qualified private provider.

CCSD must consult with the student’s Parent(s) on the appropriate means to provide this ordered compensatory education to meet the student’s educational needs and must consider any concerns of the Parent and/or proposals in the development of the compensatory education plan. In addition, CCSD must

¹⁹ If CCSD and the Parent agree to an alternative student-specific remedy, that written agreement must be submitted with the CAP and all required documentation in this Order applies to the implementation of the agreed-upon alternative remedy.

²⁰ The Hearing Officer made a finding in the February 3, 2023 Hearing Officer’s Decision that CCSD “attempted” to use Language! curriculum three times a week in the 2022/2023 school year. (FOF #24) Taking that into consideration, the 22 lessons were based on CCSD’s failure to provide the student 50-minute sessions at least twice a week over 11 school weeks.

²¹ The State Complaint Investigation Team considered the misstatement of CCSD regarding the provider of the Language! lessons and determined that the one school day between the statement and the correction did not impact the above ordered remedy. (FOF #26)

consult with the Parent on whether the optimal method to provide the Parent formal written notices and other required communications, including the reports of progress in Order Two of this State Complaint for the duration of the 2023/2024 school year, is by mail; email communication; or sending them home with the student. CCSD must document the Parent's response and include that preferred method in all such notices/reports for the duration of the 2023/2024 school year.

In addition to the above required documentation of completion, CCSD is required to send documentation to NDE of the progress toward the provision of the ordered compensatory education to the student **no later than June 1, 2024**, unless the ordered compensatory education was previously completed and documentation provided to NDE of that completion prior to that date.

While a systemic remedy is required for CCSD's conduct of the March 24, 2023 IEP Team meeting without the student's Parent, no further student-specific action is required to address this determined noncompliance. The State Complaint Investigation Team made this determination upon consideration of the overall protections of IDEA and NAC Chapter 388 in the review and revision of IEPs; the passage of eight months since the March 24, 2023 IEP Team meeting; the absence of a documented request from the Parent or her representative to reconvene the student's IEP Team to review and revise the student's IEP thereafter (FOF #45); the IEP annual review date of March 23, 2024; and the above-ordered compensatory education.

Systemic Remedy

The CCSD's proposed CAP must provide for:

1. The training of all mandatory school personnel members of IEP Teams who participate in the development of IEPs for students with disabilities at the school the student attended at the time of this State Complaint regarding the parental participation requirements in IDEA, 34 C.F.R. §300.322, and NAC §388.282(10) and (11) and the restrictive exception of unavailability to permit a school to conduct the meeting and develop an IEP without a student's parents. In addition to the requirements of IDEA and NAC, Chapter 388, the training may include the CCSD's notice practices to implement the IDEA and NAC, Chapter 388, set forth in the CCSD Special Education Procedures Manual, Section 7.2.

This training must take place no later than prior to the commencement of the 2024/2025 school year and the CAP must include a method for CCSD to determine that the participants have mastered the contents of the training as set forth above and documentation of that mastery.

2. The development of procedures to ensure the implementation of Order(s) in a Hearing Officer's Decision with fidelity until all ordered remedies are completed. The procedures must include the process to monitor the implementation of Hearing Officer's Order(s); tracking mechanism(s) with alerts prior to the ordered date of completion; and documentation of the implementation of all Orders, to be maintained in accordance with IDEA record retention policies²² and provided to NDE, Office of Inclusive Education, in a timely manner to verify the implementation of each Hearing Officer's Decision with Orders requiring action to be taken by CCSD.

²² This OSEP policy letter is publicly available at: <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdeltrs/osep-letter-to-anonymous-2-27-17-recordretention.pdf>