

**DOUGLAS COUNTY SCHOOL DISTRICT
COMPLAINT INVESTIGATION
(#DO052224)**

Report Issued on July 17, 2024

INTRODUCTION

On May 22, 2024, the Nevada Superintendent of Public Instruction received a State Complaint from a student's Parent alleging violations by Douglas County School District (DCSD) 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) in the student's evaluation and eligibility determination as a student with a disability.

While citations are not required in a State Complaint, the stated violations in the State Complaint included citations to the IDEA regulations and NAC, Chapter 388. Based on the facts provided to support the allegations of noncompliance of these cited regulations, the specific allegations were that:

- a. During the Individualized Education Program (IEP) Team meeting conducted on May 22, 2023, the student's IEP Team did not discuss/consider and document a private speech evaluation provided by the Parent¹ to DCSD on May 19, 2023 or provide the Parent a Prior Written Notice relative to this private evaluation.
- b. At the eligibility meeting for speech and language on May 7, 2024, the Parent was not provided the opportunity to complete the pragmatics checklist developed by the test manufacturer that was listed in the scope or determination of needed evaluation data for speech/language.
- c. At the May 7, 2024 eligibility meeting, the Parent disagreed with the process of how the student's eligibility was determined and it was alleged that: the eligibility forms sent to the Parent after the meeting included inaccurate information; DCSD ignored the Parent's need for accommodation to view the documents in other than a virtual format; and, while the Parent's input was provided during the eligibility meeting, initially a Multidisciplinary Team member stated that they would not be considered.
- d. DCSD issued a May 8, 2024 Prior Written Notice that all special education services were terminated without an eligibility category even though the Parent requested a discussion for eligibility under other health impairment at the May 7, 2024 Eligibility Team meeting and DCSD agreed to reconvene the Eligibility Team to do so. A few days later, the Parent requested DCSD reconvene the Eligibility Team to discuss other health impairment eligibility and the Parent received a statement of eligibility form for other health impairment that already had "not eligible" checked. Further, the Prior Written Notice of the reconvening of the Eligibility Team did not include an attachment of the Parent's special education rights. (The Eligibility Team was to reconvene on May 24, 2024, after this State Complaint was filed, to determine the student's eligibility under other health impairment.)
- e. DCSD failed to conduct a comprehensive evaluation for autism or other health impairment in the area of social/emotional and adaptive functioning/skills in that DCSD refused to conduct the Functional Behavior Assessment the Parent requested on March 8, 2024 due to concerns regarding the student's behavior.

¹ While both Parents participated in the events relevant to this State Complaint, the term "Parent" will be used throughout this Report.

The Parent's proposed resolution to address these allegations was for DCSD to conduct four Independent Educational Evaluations: in the area of speech, including social pragmatics/functional communication; a Functional Behavioral Assessment; ABAS-3; and a Neuropsych. In addition, the Parent proposed NDE conduct a training of DCSD employees on IDEA (including general staff and administrative employees).

The allegations within the jurisdiction of NDE through the State Complaint process raise the following issues for investigation in the 2022/2023 and 2023/2024 school years to May 21, 2024, the date of the State Complaint:

Issue One:

Whether DCSD complied with IDEA and NAC, Chapter 388, in the consideration of the speech evaluation obtained at private expense at the May 22, 2023 IEP Team meeting and in the issuance of a Prior Written Notice regarding DCSD's proposal or refusal to do so.

Issue Two:

Whether DCSD complied with IDEA and NAC, Chapter 388, in the administration of assessments and other evaluation measures determined by the IEP Team and other qualified professional to be needed to produce the identified additional data to determine if the student was a student with a disability at the May 7, 2024 eligibility team meeting, specifically the completion of the pragmatics checklist for the Parent.

Issue Three:

Whether DCSD complied with IDEA and NAC, Chapter 388, in the provision of a procedural safeguards notice to the Parent with the notice to convene the student's eligibility team meeting on May 24, 2024.

Issue Four:

Whether DCSD complied with IDEA and NAC, Chapter 388, in the conduct of assessments of the student in all areas related to the suspected disability of autism or other health impairment, specifically the conduct of a Functional Behavioral Assessment requested by the Parent in March 2024 in the area of social/emotional and adaptive functioning/skills due to the Parent's concerns regarding the student's behavior.

NDE's jurisdiction through the special education complaint process is to investigate State Complaints alleging a violation of the requirements of Part B of the IDEA or Nevada law/regulations for special education programs. However, NDE does not have jurisdiction over complaints against a public agency that are outside this limited jurisdiction. The Parent was notified that the allegations included in the State Complaint of an anticipatory violation; personnel issues; and accommodations under the American with Disabilities Act were not within NDE's jurisdiction to investigate through the special education complaint process and was informed of how to pursue the allegations, if the Parent chose to do so. The Parent elected to provide additional information to NDE both orally and in writing and, during the interview, was notified of the process to request an amendment of the State Complaint if she chose to do so. The Parent did not file a request to amend this State Complaint or a second State Complaint during the course of this investigation.

In the May 28, 2024 correspondence from Nevada Department of Education (NDE) regarding the issues in this State Complaint, DCSD was notified that if DCSD disputed the allegations of noncompliance in the State 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 June 14, 2024, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of the State Complaint.

DCSD did timely provide an organized response with required documentation and denied the majority of the allegations, but indicated that meeting notices were not always sent to the Parent in writing as required² and the student's IEP Team brief consideration of the student's Independent Educational Evaluation, as attested by the DCSD speech/language pathologist non-contemporaneous statement, was not documented in either the student's IEP or the Multidisciplinary Team documents. DCSD recognized the need for staff training to ensure compliance in both regards.

The State Complaint, including attachments, and the organized and extensive supplemental information from the student's Parent and DCSD's response, including all claims, arguments, and documents, were reviewed in their entirety in this investigation. The Findings of Fact cite the source(s) of the relevant information determined necessary to resolve the issues in this Complaint.

FINDINGS OF FACT

General

1. The student was enrolled in DCSD in the 2022/2023 and 2023/2024 school years. (State Complaint, Response, Student Daily Attendance, IEPs)
2. During the relevant time period of this State Complaint, the student was eligible as a student with a speech/language impairment with an anticipated three-year reevaluation date of May 22, 2024. The student had a May 22, 2023 annual IEP and a November 13, 2023 revision IEP in effect with the anticipated duration of services to May 22, 2024. Speech/language therapy was the student's sole specially designed instruction. (May 22, 2023 and November 13, 2023 IEPs)
3. On May 24, 2024, after the relevant time period of this State Complaint, DCSD considered the final of three areas of suspected disability and the student was determined no longer eligible as a student with a disability in need of special education. The student's Parents disagreed with the May 24, 2024 determination and the prior determinations that the student was no longer eligible as a student with a disability in need of special education and related services. (April 9, 2024, May 7, 2024 and May 24, 2024 Eligibility Team Reports, Prior Written Notices)

²DCSD's response addressed some of the Parent's allegation that were determined to be outside the scope of this State Complaint investigation. In addition, while the State Complaint did not include an allegation that DCSD failed to comply with the requirement in NAC §388.281(8)(b) requiring an agency to provide the parents of the student written notice of the purpose, date, time and location of the committee meeting and a list of the persons who will attend the meeting, DCSD conceded non-compliance in that regard. While outside the scope of this investigation, given DCSD's self-identification of this incidence of noncompliance in the course of the State Complaint investigation, the State Complaint Investigation Team considered whether this incidence was indicative of a pattern of noncompliance and needed to be addressed through NDE's general supervision system. 20 U.S.C. §§1412(a)(11), 1435(a)(10); 34 C.F.R. §300.149. In this case, given DCSD's self-identification and acknowledgement of the need for appropriate training for staff to ensure compliance as a result of this incident, NDE determined that, without further indication that this noncompliance portends a pattern, no further action was required at this time.

Private Speech Therapy Evaluation

4. On Friday, May 19, 2023, referencing the upcoming IEP Team meeting the following Monday, the student's Parent provided DCSD a copy of the student's February 24, 2023 outpatient speech therapy evaluation conducted by a medical center for DCSD's consideration (Private Evaluation). The medical center administered the following evaluations and assessments in the conduct of the Private Evaluation: The Clinical Evaluation of Language Fundamentals (CELF – 5); Pragmatic Language Evaluation; Support Needs Profile; and Trait Expression Profile. (May 19, 2023 Email Correspondence, Private Evaluation)
5. The student's Parent also provided the student's speech/language pathologist a copy of the Private Evaluation by separate email correspondence. The Parent informed the speech/language pathologist that the Parent wanted the speech/language pathologist to have the Private Evaluation before the scheduled IEP Team meeting and "let's consider" keeping the social/pragmatics goal. (May 19, 2023 Email Communication)
6. The student's May 22, 2023 IEP did not reference the student's Private Evaluation, including in the areas of assessments conducted; assessment results; or in the statement of parent educational concerns. In the areas of language and social/pragmatics, the IEP did include a May 2021 clinical evaluation of language fundamentals and the speech/language pathologists' data collection and review of goals and objectives. The student's Parent agreed with the components of the May 22, 2023 IEP. (May 22, 2023 IEP)
7. The Prior Written Notice provided to the Parent on May 26, 2023 did not notify the student's Parent that any proposed or refused action was taken by the student's IEP Team at the May 22, 2023 IEP Team meeting in response to the Parent's request for consideration of the Private Evaluation. (May 26, 2023 Prior Written Notice)
8. On March 4, 2024, the student's Parent again provided DCSD the Private Evaluation for consideration in the reevaluation of the student, in the event it was possible that another speech assessment would not be needed at that time. The speech/language pathologist responded to the Parent that since the Private Evaluation was over a year old, new testing needed to be completed. No documentation was provided in the course of the investigation that the Private Evaluation was considered by the student's Multidisciplinary Team in the 2024 reevaluation of the student or the determination of whether the student was eligible as a student with a speech/language impairment. (March 4, 2024 Email Communications, Review of the Record)

Pragmatics Checklist

9. The student's speech/language pathologist informed the Parent on February 1, 2024 that the testing process would complete an updated Pragmatics Profile. The Pragmatics Profile is a checklist used to gain information about the student's verbal and nonverbal pragmatic skills that might influence social and academic communication. While the instructions of the producer of the Pragmatics Profile Checklist were not provided in the course of the investigation, based on statements of the examiner, the Checklist was required to be completed with input from parents/caregivers/teachers and other informants who provide information to evaluate verbal and nonverbal contextual communication. (February 1, 2024 Email Communication, April 9, 2024 and May 7, 2024 Evaluation Report)

10. In the review of existing evaluation data for the student's reevaluation on February 27, 2024, the student's Multidisciplinary Team, including the student's Parent, determined that the April 2021 assessment data on Pragmatics-DPP, that included the Parent as an examiner, would be updated. (February 27, 2024 Determination of Needed Evaluation or Reevaluation Data)
11. The student's Parent consented to the reevaluation of the student on February 29, 2024, including speech, language and communication to assess the student's ability to understand, relate to and use language. (February 29, 2024 Parent Consent)
12. DCSD conducted communication assessments in the reevaluation of the student that included the CELF – 5, a standardized measure of receptive and expressive language skills utilized in the Private Assessment, and several assessments in the area of social/pragmatics that included a Pragmatics Profile Checklist and Pragmatics Activities Checklist; Social Language Development Test-Elementary; Expressive Vocabulary Test; and the Peabody Picture Vocabulary Test-V. (April 9, 2024 and May 7, 2024 Evaluation Report)
13. The student's speech/language pathologist completed the student's Pragmatics Profile Checklist without input from the student's Parent. The Checklist was completed with information only from the student's teacher and the examiner. The speech language pathologist's reason for not including the Parent was being "...pretty much strictly concerned about school and academic impact..." (April 9, 2024 and May 7, 2024 Evaluation Report, May 7, 2024 Recording- Reevaluation Meeting)
14. The Pragmatics Activities Checklist completed by the speech/language pathologist is a supplementary social/pragmatics criterion referenced measure used to identify the student's verbal and nonverbal behaviors that may influence social and academic communications. This Checklist was completed after the examiner observed the student's functional communications skills during interactions with the examiner. (April 9, 2024 and May 7, 2024 Evaluation Report)
15. The Parent's concerns in the reevaluation of the student included concerns related to pragmatics and expressive language difficulties associated with behavior and socialization problems and, regarding communication, to be fully functional the student needed to identify emotions for self and others, and speaking and listening skills. (Parent Concerns Reevaluation February 2024, Multidisciplinary Team Report- Reevaluation)

Procedural Safeguards Notice

16. At the student's November 23, 2023 IEP Team meeting, the Parent acknowledged receiving a statement of procedural safeguards under the IDEA and that the rights were explained in the Parent's primary language. (The authenticity of the Parent's signature noted as "signed over google meet" was not contested in the course of the State Complaint investigation.) (November 23, 2023 IEP, Review of the Record)
17. DCSD provided the student's Parent a copy of Special Education Rights of Parents and Students (Procedural Safeguards) on February 28, 2024, along with a copy of the Prior Written Notice of DCSD's proposal to take the action of reevaluating the student's eligibility for continued special education services; the Determination of Needed Evaluation or Reevaluation Data; a Parent/Guardian Interview form; and Parental Consent form to assess the student. (February 28, 2024 Email Communication)
18. DCSD provided the Parent a meeting notice on May 15, 2024 for the continued health impairment eligibility discussion to take place on May 24, 2024. The meeting notice included a statement in

bold: “You have procedural protections under IDEA. These protections are explained in the “Special Education Rights of Parents and Children.” If this notice is given to you in conjunction with your child’s annual IEP meeting, the procedural safeguards accompany this notice. If a copy of the procedural safeguards is not enclosed and you would like a copy, or if you would like help in understanding the content, please contact....” (May 15, 2024 IEP/ET Meeting Notice – Notification of Meeting)

Functional Behavioral Assessment

19. Commencing November 2023, the student’s Parent informed DCSD of concerns regarding the student’s behaviors. On January 22, 2024, the Parent notified DCSD after a playground incident involving another student that: “At this point, I would think that an FBA is warranted as this has gone on for some time. A behavior intervention plan could be added to the IEP.” (Email Communications)
20. DCSD responded to the Parent the same day that the school did not see the student’s actions as a need for a Functional Behavioral Analysis, but rather that “check ins” and reminders are warranted for the students involved. (January 22, 2024 Email Communication)
21. In the review of existing evaluation data for the student’s reevaluation on February 27, 2024, the student’s Multidisciplinary Team/IEP Team members, including the student’s Parent, determined that the November 2020 Behavior Assessment System for Children Third Edition (BASC-3) would be updated in the social/emotional area. The BASC-3 is a screener that rates children in the student’s age range on externalizing and internalizing problems, and adaptive skills. The subtests look at hyperactivity, aggression, conduct problems, anxiety, depression, attention problems, withdrawal, adaptability and social skills. (February 27, 2024 Determination of Needed Evaluation or Reevaluation Data, Multidisciplinary Team Report)
22. The Student’s Multidisciplinary Team did not agree to the conduct of a Functional Behavioral Assessment in the determination of needed reevaluation data of the student. However, the student’s Parent returned the determination form to DCSD with the additional request, dated January 22, 2024 and February 27, 2024, for the conduct of a Functional Behavioral Assessment as part of the reevaluation of the student. (February 27, 2024 Determination of Needed Evaluation or Reevaluation Data, March 8, 2024 Email Communication)
23. On March 8, 2024, DCSD provided the Parent a Prior Written Notice proposing to reevaluate the student by conducting the assessments agreed upon at the February 27, 2024 Multidisciplinary Team meeting, but refusing to conduct the requested Functional Behavioral Assessment. The stated reason was that a Functional Behavioral Assessment is not part of the eligibility process and, in addition, there is no data to support the need for a Functional Behavioral Assessment in the school setting. The action was refused based on teacher observation and school documentation. (March 8, 2024 Parental Prior Written Notice)
24. The student’s reevaluation did include the assessment of the student’s social and emotional condition using the Behavior Assessment System for Children Third Edition (BASC-3). The student’s Parent was a rater along with the student’s regular education teacher and speech/language pathologist/special education teacher. (Multidisciplinary Team Report)
25. The Parent’s written concerns regarding the reevaluation of the student included concerns about the student’s social/emotional/behavioral functioning with specific mention of the student’s engagement in altercations or fights in unstructured activities. The statement of the Parent’s

concerns and the Parent's observations in the school setting were included as an attachment to the student's Multidisciplinary Team Report. (The Parent's observation reports were fully discussed at the eligibility meeting on May 7, 2024 and the Parent requested the report be amended to add the observations.) (Parent Concerns Reevaluation February 2024, Multidisciplinary Team Report-Reevaluation, March 8, 2024 and May 5, 2024 Parent Classroom/Recess Observation Report, May 7, 2024 Email Communication)

CONCLUSIONS OF LAW

As a preliminary matter, it is important to note that, notwithstanding the allegations of noncompliance in the development of the student's May 22, 2023 IEP; the reevaluation of the student; and required notice prior to the conduct of an eligibility meeting, this State Complaint did not raise the substantive appropriateness of the student's May 22, 2023 IEP or the eligibility determinations within the scope of this State Complaint investigation that followed the reevaluation of the student. (DCSD's final determination that the student was no longer eligible as a student with a disability in need of special education occurred after the filing of this State Complaint. (Finding of Fact (FOF) #3)

Issue One:

Whether DCSD complied with IDEA and NAC, Chapter 388, in the consideration of the speech evaluation obtained at private expense at the May 22, 2023 IEP Team meeting and in the issuance of a Prior Written Notice regarding DCSD's proposal or refusal to do so.

In accordance with IDEA, 34 C.F.R. §300.502(c) and NAC §388.450(6), if a parent shares an evaluation obtained at private expense with the public agency, the results of the evaluation must be considered by the public agency, if it meets agency criteria³, in any decision made with respect to the provision of a Free Appropriate Public Education to the student. In addition, pursuant to IDEA, 34 C.F.R. §300.324, and NAC §388.284(2)(a), in developing each student's IEP, the IEP Team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial evaluation or most recent evaluation of the student, and the academic, developmental and functional needs of the student.

"Part B does not contain specific requirements for public agencies to document that a child with a disability has been provided with FAPE in accordance with the child's IEP. However, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76 and 80 are applicable to the Part B program. Section 76.731 requires that a State and a subgrantee must keep records to show its compliance with Federal legal requirements.... Consistent with the EDGAR provisions cited above, States and public agencies must maintain documentation sufficient to ensure that a public agency provides FAPE to a child with a disability in accordance with the child's IEP. A State determines the form of documentation deemed sufficient to demonstrate whether its public agencies are in compliance with this requirement...." *Letter to Broussardes*, (OSEP, June 9, 2010).⁴

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

³ DCSD did not assert that the Private Evaluation failed to meet agency criteria.

⁴ This United States Department of Education policy letter is publicly available at:

<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2010-2/broussardes060910sea2q2010.pdf>

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. Accordingly, verifiable documentation is required to reach a determination whether the assertions of the public agency should be believed over the assertions of the complainant or vice versa.

In this case, DCSD does not contest the Parent provided the Private Evaluation in advance of the student's May 22, 2023 IEP Team meeting, and the facts support that. (FOFs #4, #5) However, there is a divergence between DCSD's assertion that the student's IEP Team considered the Private Evaluation, admittedly briefly, and the Parent's contrary assertion.

In accordance with IDEA, 34 C.F.R. §300.503, and NAC §388.300, DCSD was required to provide a Prior Written Notice a reasonable time before DCSD proposed or refused to initiate or change the provision of a Free Appropriate Public Education to the student that included a description of the action proposed or refused; an explanation of why the agency proposes or refuses to take the action; and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action. While a Prior Written Notice was provided to the student's Parent, neither the Prior Written Notice nor any other verifiable documentation was provided the State Complaint Investigation Team in the course of the investigation that verified the student's IEP Team either considered the Private Evaluation the Parent provided to DCSD at the student's May 22, 2023 IEP Team meeting or refused to do so. (FOFs #6, #7)

Based on the absence of documentation otherwise (NAC §388.215), the State Complaint Investigation Team determined that DCSD did not consider the Private Evaluation of the student as required at the student's May 22, 2023 IEP Team meeting. 34 C.F.R. §§300.324, 300.502(c); NAC §§388.284(2)(a), 388.450(6). Furthermore, this determination is exacerbated by the fact that, when the Parent provided a copy of the Private Evaluation to DCSD again in the reevaluation of the student in March 2024, there is still no record verifying that the student's Multidisciplinary Team considered the Private Evaluation in the reevaluation of the student or the eligibility determination as a student with a speech/language impairment.⁵

Therefore, DCSD failed to comply with IDEA and NAC, Chapter 388, in the consideration of the speech evaluation obtained at private expense at the May 22, 2023 IEP Team meeting and in the issuance of a Prior Written Notice regarding DCSD's proposal or refusal to do so.

Issue Two:

Whether DCSD complied with IDEA and NAC, Chapter 388, in the administration of assessments and other evaluation measures determined by the IEP Team and other qualified professional to be needed to produce the identified additional data to determine if the student was a student with a disability at the May 7, 2024 eligibility team meeting, specifically the completion of the pragmatics checklist for the Parent.

⁵ The United States Department of Education's, Office of Special Education Programs, *Letter to Koscielniak*, 58 IDELR 168 (OSEP, December 19, 2011) is instructive on the requirement that DCSD's proposal or refusal to take action based on the Private Evaluation was one for the student's Multidisciplinary Team, rather than a single provider. This letter is publicly available at: <https://sites.ed.gov/idea/idea-files/policy-letter-december-19-2011-to-denise-koscielniak/>

An evaluation means procedures used in accordance with the IDEA, 34 C.F.R. §§300.304 through 300.311, to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. 34 C.F.R. §300.15. In accordance with IDEA, 34 C.F.R. §300.304(c)(1)(v), and NAC §388.340(4)(a)(5), each public agency must ensure that assessments and other evaluation materials used to assess a student are administered in accordance with any instructions provided by the producer of the assessments.

At issue in this State Complaint is a Pragmatics Profile Checklist. The examiner who administered this assessment was required to complete the checklist with input from parents/caregivers/teachers and others who would provide information to evaluate the student's verbal and nonverbal contextual communication. (FOF #9) The student's Parent was informed in advance of the reevaluation of the student that the Pragmatics Profile Checklist would be completed as part of the reevaluation of the student (FOF #9) and, consistently, the student's Multidisciplinary Team determined that the assessment data on Pragmatics-DPP, including the Parent as an examiner, would be updated in the reevaluation of the student. (FOF #10) The student's Parent consented to the conduct of the reevaluation of the student, including assessments in the area of speech, language and communication. (FOF #11)

Nevertheless, DCSD completed the student's Pragmatics Profile Checklist without input from the student's Parent. (FOF #13) As such, DCSD failed to ensure that Pragmatics Profile Checklist used to assess the student was administered in the manner required. 34 C.F.R. §300.304(c)(1)(v), and NAC §388.340(4)(a)(5).

Therefore, DCSD failed to comply with IDEA and NAC, Chapter 388, in the administration of assessments and other evaluation measures determined by the IEP Team and other qualified professional to be needed to produce the identified additional data to determine if the student was a student with a disability at the May 7, 2024 eligibility team meeting, specifically the completion of the pragmatics checklist for the Parent.

Issue Three:

Whether DCSD complied with IDEA and NAC, Chapter 388, in the provision of a procedural safeguards notice to the Parent with the notice to convene the student's eligibility team meeting on May 24, 2024.

In accordance with IDEA, 34 C. F.R §300.504, and NAC §388.300, a copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents upon initial referral or parent request for evaluation; upon receipt of the first State Complaint; upon receipt of the first due process complaint in a school year; in accordance with cited discipline procedures; and upon request by a parent.

In this case, the Parent acknowledged receiving a statement of procedural safeguards under the IDEA at the student's November 23, 2023 IEP Team meeting. (FOF #16) DCSD provided the Parent a copy of the Procedural Safeguards Notice again on February 28, 2024, along with a copy of the Prior Written Notice of DCSD's proposal to take the action of reevaluating the student's eligibility for continued special education services. (FOF #17)

Neither IDEA nor NAC, Chapter 388, require a Procedural Safeguards Notice to be provided to a parent with a notice to convene an eligibility meeting. 34 C.F.R §300.504; NAC §388.300. Nonetheless, in addition to DCSD's provision of a copy of the Procedural Safeguards Notice on two prior occasions in the 2023/2024 school year, the State Complaint Investigation Team found that DCSD included information on how, if desired, the Parent could obtain a copy of the Procedural Safeguards Notice in the notice of the continued Eligibility Team meeting to take place on May 24, 2024. (FOF #18)

Therefore, DCSD complied with IDEA and NAC, Chapter 388, in the provision of a Procedural Safeguards Notice to the Parent.

Issue Four:

Whether DCSD complied with IDEA and NAC, Chapter 388, in the conduct of assessments of the student in all areas related to the suspected disability of autism or other health impairment, specifically the conduct of a Functional Behavioral Assessment requested by the Parent in March 2024 in the area of social/emotional and adaptive functioning/skills due to the Parent's concerns regarding the student's behavior.

Pursuant to IDEA, 34 C.F.R. §300.530(f), a Functional Behavioral Assessment of a student is only expressly required in the context of a disciplinary removal that constitutes a change of placement. That is not the case here. Similarly, while NAC §388.386 provides standards/procedures if a Functional Behavioral Assessment is conducted, NAC, Chapter 388, does not provide an additional requirement to conduct a Functional Behavioral Assessment outside of the disciplinary removal of a student. Furthermore, while the assessment of social and emotional condition is included in the determination of eligibility for the three suspected eligibility categories considered for this student, a Functional Behavioral Assessment is not. NAC §§388.387, 388.402, 388.405.

“ . . . There is no provision in the IDEA that gives a parent the right to dictate the specific areas that the public agency must assess as part of the comprehensive evaluation; the public agency is only required to assess the child in particular areas related to the child's suspected disability, as it determines appropriate.” *Letter to Unnerstall*, 68 IDELR 22 (OSEP, April 25, 2016).⁶ However, if the agency refuses to conduct the requested evaluation, the agency must provide the parents a Prior Written Notice of the refusal. 34 C.F.R. §300.503; NAC §388.300.

In this case, based on documentation provided in the course of the investigation, commencing in November 2023 the student's Parent informed DCSD of concerns regarding the student's behavior. On January 22, 2024, the Parent expressed thinking that a Functional Behavioral Assessment was warranted. (FOFs #19, #20)

In the review of existing evaluation data for the student's reevaluation on February 27, 2024, the student's Multidisciplinary Team, including the student's Parent, determined that the November 2020 Behavior Assessment System for Children Third Edition (BASC-3) would be updated in the social/emotional area. (FOF #21) The Multidisciplinary Team did not agree to the conduct of a Functional Behavioral Assessment in the determination of needed reevaluation data of the student. However, the student's Parent returned the determination form to DCSD with a request for the conduct of a Functional Behavioral Assessment as part of the reevaluation of the student, noting the date of the Multidisciplinary Team meeting and the date the Parent previously indicated thinking a Functional Behavioral Assessment was warranted. (FOF # 22)

On March 8, 2024, DCSD provided the Parent a Prior Written Notice proposing to reevaluate the student by conducting the assessments agreed upon at the February 27, 2024 Multidisciplinary Team meeting at the Parent's request, but refusing to conduct the requested Functional Behavioral Assessment. The stated

⁶This United States Department of Education, Office of Special Education Programs, policy letter is publicly available at: <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/oseplettertounnerstall4-25-16dyslexia.pdf>

reason was that, based on teacher observation and school documentation, a Functional Behavioral Assessment was not part of the eligibility process and, in addition, there was no data to support the need for a Functional Behavioral Assessment in the school setting. (FOF #23)

Consistent with the determination of the student's Multidisciplinary Team, the reevaluation of the student included the BASC-3 and also included the consideration and documentation of the Parent's concerns and observations of the student. (FOFs #24, #25)

Therefore, DCSD complied with IDEA and NAC, Chapter 388, in the conduct of assessments of the student in all areas related to the suspected disability of autism or other health impairment in that DCSD was not required to conduct the Functional Behavioral Assessment requested by the Parent and provided the Parent a Prior Written Notice of the refusal to do so.

ORDER OF CORRECTIVE ACTION⁷

DCSD is required to take corrective action to address the violations found in this State Complaint investigation, specifically DCSD's failure to consider the Private Evaluation of the student and to administer the Pragmatics Profile Checklist as required.

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. (See also *Doug C. ex rel. Spencer C. v. State of Hawaii, Dep't of Educ.*, 720 F.3d 1038; 61 IDELR 91 (9th⁸ Cir. 2013))

It is uncontested in this case that the student's Parent participated in the student's May 22, 2023 IEP Team meeting and agreed with the student's IEP (FOF #6). In addition, in the 2023/2024 school year, the student's Parent participated in the determination of the areas of assessment in the reevaluation of the student, including the previously administered CELF – 5 in the Private Evaluation (FOFs #4, #12); and, relevant to the determined violations, the eligibility determination whether the student was a student with a speech/language impairment. As such, the documentation provided in the course of the investigation did not evidence the determined violations significantly impeded the Parent's opportunity to participate in the decision-making processes. *Amanda J. v. Clark County School District*, 260 F.3d 1106, 35 IDELR 65 (9th Cir. 2001).

However, to ensure the determined violations did not result in a loss of educational opportunity for the student and to prospectively correct the noncompliance, NDE has determined that both a student-specific corrective action and a systemic remedy are required in this case. In determining the appropriate remedy, the State Complaint Investigation Team considered both the Parent's proposed resolution and DCSD's response.

In accordance with NRS §385.175(6), NDE requests a plan of corrective action plan (CAP) from DCSD within 20 DCSD business days of the date of this Report on DCSD's plan to implement the ordered actions below, including the timeline. **(Note the ordered implementation of the provision of the Pragmatics Profile Checklist to the Parent and, possibly the meeting notice to the Parent, in the student-specific Order One may be required to be completed on or before the submission of the CAP.)** Other than these student-specific action(s) in Order One, the CAP must be approved by NDE prior to implementation.

⁷ Nothing in this State Complaint Report precludes either the Parent or DCSD from accessing the dispute resolution processes available under IDEA and NAC, Chapter 388, as appropriate.

⁸ The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

Documentation of the completion of the approved CAP must be provided to NDE within 14 days of its completion.

Student-Specific

As discussed above, notwithstanding consideration of the Parent's concerns (FOF #15) and the assessments conducted in the areas of concern (FOFs #12 - #14), the State Complaint Investigation Team determined that DCSD's abovementioned violations warrant DCSD's reconsideration of the student's eligibility as a student with a speech/language impairment, after the student's Eligibility Team reviews and considers the omitted Private Evaluation and the Parent's completed Pragmatics Profile Checklist.⁹

Unless an alternative student-specific remedy is otherwise agreed to in writing by DCSD and the student's Parent,¹⁰ the CAP must provide for the following student-specific directed action and provide the timeline to enable the completion of all the actions as soon as possible, but no later than October 30, 2024:

1. As soon as possible, but no later than August 15, 2024, DCSD must provide the Pragmatics Profile Checklist¹¹ to the Parent for parental input. Within 10 school days after receiving the Parent's input, DCSD must issue a meeting notice to the Parent to convene the student's Eligibility Team pursuant to NAC §388.405(5) at a mutually convenient time and place to review and consider DCSD's April, 9, 2024 (reconvened May 7, 2024) determination of the student's ineligibility as a student with a speech/language impairment in light of the Parent's Private Evaluation and the Parent's input into the Pragmatics Profile Checklist.
2. The documentation of the completion of the approved CAP must include the Statement of Eligibility – Eligibility Team Report Speech and Language Impairment and the Prior Written Notice provided the Parent after the review and consideration of the student's eligibility as a student with a speech/language impairment as required in Order One. The description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action must include verification that the Eligibility Team considered the Parent's Private Evaluation and completed Pragmatics Profile Checklist.

Systemic Remedy

No later than August 30, 2024, DCSD must conduct a training for the speech/language pathologist(s), school psychologist, and individual(s) who will serve/serve as the representative of DCSD at students' IEP Team meeting in the 2024/2025 school year at the school the student attended in the 2023/2024 school year.

The training must include the requirements of:

⁹ NDE does not have the authority to make eligibility determinations, rather NDE can order the public agency, on a case-by-case basis, to reconsider an eligibility determination. *OSEP Memorandum 13-08: Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232 (OSEP July 23, 2013). This policy letter is publicly available at: https://sites.ed.gov/idea/files/policy_speced_guid_idea_memosdcltrs_acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf.

¹⁰ If DCSD 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.

¹¹ In the event provision of the Pragmatics Profile Checklist to the Parent is not consistent with Federal copyright law that protects against the distribution of copies of a copyrighted document, such as a test protocol, DCSD must obtain the Parent's input in an alternative manner and provide an explanation in the CAP.

- a. IDEA, 34 C.F.R. §300.304(c)(1)(v), and NAC §388.340(4)(a)(5), on the administration of assessments and other evaluation materials in accordance with any instructions provided by the producer of the assessments.
- b. IDEA, 34 C.F.R. §300.502(c) and NAC §388.450(6), that if a parent shares an evaluation obtained at private expense with the public agency, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of a Free Appropriate Public Education to the student.
- c. DCSD's system of records to document that every student with a disability is evaluated in the manner appropriate to the unique needs of the student. NAC §388.215.

The documentation provided NDE of the completion of the training must include the name of the attendees and the materials utilized in the training.