COMPLAINT INVESTIGATION CLARK COUNTY SCHOOL DISTRICT (#CL061713)

Report Issued on 9/6/13

INTRODUCTION

On June 17, 2013, the Nevada Superintendent of Public Instruction received a Complaint dated June 12, 2013 from a parent (Parent or Complainant) alleging violations in the special education program of a student with disabilities attending the Clark County School District (CCSD). The Complaint entailed 28 pages of allegations of violations with 65 pages of attachments. As such, it is impractical to list all of the Complainant's allegations; however, they will be referenced throughout the Report in relation to the applicable issues. As a general matter, the Parent's allegations involved the student's Individualized Educational Program (IEP) meetings; IEP content and development; IEP implementation, parental participation, meeting notices; review of the student's IEP; placement; functioning of the student's hearing aids; prior written notice (prior written notice); and reevaluation of the student in the 2012/2013 school year.

Due to the nature of many of the allegations, the Nevada Department of Education (NDE) informed the Complainant at the outset of the investigation that it does not have the authority through the special education complaint process to overturn decisions of the student's eligibility, IEP or placement teams. Rather, the NDE does, if noncompliance is found, have the authority to order a district to take specific action, such as implement an agreed upon IEP or reconvene the IEP Team to review the student's IEP. (34 IDELR 264 (OSEP 2000))¹ The Complaint also included allegations outside the jurisdiction of the State Complaint process and those allegations were not accepted for investigation and the Complainant was so notified.

In accordance with the IDEA, 34 C.F.R. §300.152(b), the NDE may extend the timeline for the completion of a complaint investigation and issuance of its findings due to exceptional circumstances. Due to the unavailability of essential school personnel that needed to be interviewed during the summer break, the NDE extended the timeline for the Complaint to September 6, 2013.

PERSONS PROVIDING INFORMATION

The investigation team reviewed documents and information received from the following individuals:

- Complainant
- Special Education Instructional Facilitator (SEIF)
- Principal
- Special Education Teacher
- Speech and Language Pathologist
- Teacher of the Deaf and Hard of Hearing (also referenced as Itinerant Teacher)
- Regular Education Teacher
- Audiologist
- Instructional Coordinator
- Representative from the Tutoring Club

DOCUMENTS REVIEWED

¹ Since the IDELR resource (or LRP if cited) may not be readily available to the Complainant, Office of Special Education Program (OSEP) policy letters are also available on the OSEP website: http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/index.html

Due to the extensive amount of documentation submitted by the Complainant and the CCSD, the documents reviewed by the complaint investigation team and relied upon in this Report are cited in the Findings of Fact under each Issue. The investigation did include the review of the Complaint and all attachments and all of the CCSD documentation submitted in response to the Complaint, as well as all supplemental documentation requested by the complaint investigation team and timely received.

ISSUE ONE

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to ensuring that the student's IEP meetings held on March 5, 2013 and April 15, 2013 included the mandatory CCSD IEP Team members during the meetings, specifically:

- a. Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);
- b. Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
- c. A representative of the public agency who had the requisite knowledge and qualifications; and
- d. An individual who could interpret the instructional implications of evaluation results?

Summary of Allegations: The Complainant alleged that at the March 2013 IEP meeting not all the required IEP Team members, specifically the School Psychologist, Instructional Coordinator, and IEP Facilitator, were present and during the IEP meeting in April 2013 various required IEP Team members, specifically the Principal, Instructional Coordinator and Itinerant Teacher, left during the course of the meeting.

FINDINGS OF FACT (FOF)

- 1. The student was identified as a student with a hearing impairment and received special education from the CCSD during the time period of the Complaint. The student wore two hearing aids, one for each ear. (Multidisciplinary (MDT) Report, Speech and Language Pathologist)
- 2. The student had a March 7, 2012 annual IEP. The student's next completed annual IEP was dated May 14, 2013 and was developed during the course of three IEP meetings held on 3/5/13, 4/15/13 and 5/14/13. (3/7/12 and 5/14/13 IEPs)
- 3. The CCSD convened the March 5, 2013 IEP meeting to begin the development of the student's annual IEP. After the preliminary matters were completed, the Parent expressed concerns about the student's needs not being met and left the meeting. The meeting was adjourned. (3/5/13 IEP, Principal)
- 4. The Parent, the student (for a short period of time), a Local Educational Agency (LEA) representative, a Regular Education Teacher, Special Education Teacher, a Speech and Language Pathologist, an Audiologist, a Teacher of the Deaf and Hard of Hearing, the Principal and the School Nurse were at the March 5, 2013 IEP meeting. (3/5/13 IEP, Principal, LEA representative)
- 5. The student's Multidisciplinary/IEP Team reconvened on April 15, 2013 and discussed the student's reevaluation results, determined the student's continued eligibility as a student with a

- hearing impairment, and discussed the Present Levels of Academic Achievement and Functional Performance for the IEP. (4/15/IEP; MDT Report, SEIF, Principal)
- 6. The Parents, the student, a LEA representative, a Regular Education Teacher, Special Education Teacher, the Speech and Language Pathologist, an Audiologist, a Teacher of the Deaf and Hard of Hearing, the Principal, Instructional Coordinator and the School Nurse were at the April 15, 2013 IEP meeting. (4/15/13 IEP)
- 7. The student's IEP Team reconvened on May 14, 2013 and completed the student's IEP. (5/14/13 IEP)

Regular Education Teacher

8. The Regular Education Teacher who participated in the development of the student's IEP at the March 5, 2013 and April 15, 2013 IEP meetings was the student's regular education teacher. (3/5/13 and 4/15/13 IEPs, SEIF)

Special Education Teacher

9. The Special Education Teacher who participated in the development of the student's IEP at the March 5, 2013 and April 15, 2013 IEP meetings was the special education teacher of the student. (3/5/13 and 4/15/13 IEPs, SEIF)

Representative of the Public Agency

10. The LEA Representative who attended the March 5, 2013 IEP meeting was a resource teacher. The LEA Representative who attended the April 15, 2013 meeting was the SEIF. Both the resource teacher and the SEIF routinely served as the LEA representatives at IEP meetings and were qualified to provide and supervise the provision of specially designed instruction and were knowledgeable about the general education curriculum and the resources of the CCSD. (3/5/13 and 4/15/13 IEPs, SEIF)

Instructional Implications of Evaluation Results

- 11. The reevaluation of the student occurred after the March 5, 2013 IEP meeting. While no evaluation results were discussed at the adjourned March 5, 2013 IEP meeting, the participants included the student's Speech and Language Pathologist, Audiologist, Nurse, Teacher of the Deaf and Hard of Hearing, the student's Regular Education Teacher and Special Education Teacher. (3/5/13 IEP, SEIF)
- 12. The reevaluation results and the student's Present Levels of Academic Achievement and Functional Performance were discussed at the April 15, 2013 IEP meeting. The participants included the student's Speech and Language Pathologist, Audiologist, Teacher of the Deaf and Hard of Hearing, Nurse, Regular Education Teacher, Special Education Teacher and SEIF. (4/15/13 IEP)
- 13. The student's Regular Education Teacher present at the IEP meetings routinely administered curriculum tests to students, including the administered DIBELS, AIMSWEB, the Discovery Assessment, the Star, and the CRT (criterion referenced tests) and could write goals and objectives based on their results. (Regular Education Teacher)
- 14. The student's Special Education Teacher present at the IEP meetings had administered the achievement test that was administered to the student by the School Psychologist in the 2013

reevaluation, to other students, was familiar with its components and could write goals and objectives based on its results. (Special Education Teacher)

- 15. The SEIF present at the 4/15/13 and 5/14/13 IEP meetings had administered and interpreted the achievement test that was administered to the student by the School Psychologist in the 2013 reevaluation, to many students and could write goals and objectives based on its results. (SEIF)
- 16. The School Nurse present at the IEP meetings is familiar with basic vision tests, had administered many of them and could determine what the student's present levels of performance were based on their results. (Principal)
- 17. The Teacher of the Deaf and Hard of Hearing present at the IEP meetings was familiar with audiology reports and tests and was able to review their results and write goals and objectives based on those results. (Teacher of the Deaf and Hard of Hearing, Principal)
- 18. The Speech and Language Pathologist has administered various speech and language assessments, including to the student for the 2013 reevaluation, and was able to write goals and objectives based on their results. (Speech and Language Pathologist)
- 19. The School Psychologist, Instructional Coordinator, and IEP Facilitator were not designated mandatory members at the March 5, 2013 IEP meeting and the Principal, Instructional Coordinator, and Itinerant Specialist were not designated mandatory members at the April 15, 2013 IEP meeting. (3/5/13 and 4/15/13 IEPs)

CONCLUSIONS OF LAW AND REASONS

Both the IDEA, 34 C.F.R. §300.321, and the NAC §388.281(2) set forth the mandatory members of each IEP Team for the development and review and revision of a student's IEP. It is the mandatory LEA members of the IEP Team that were at issue in this Complaint, specifically the regular education teacher and special education teacher of the student (34 C.F.R. §300.321(a)(2) and (3); NAC §388.281(2)(b) and (c)), the LEA representative who had the requisite knowledge and qualifications (34 C.F.R. §300.321(a)(4); NAC §388.281(2)(a)); and an individual who could interpret the instructional implications of evaluation results (34 C.F.R. §300.321(a)(5); NAC §388.281(2)(e)). While the student's IEP was completed at the May 14, 2013 IEP meeting (FOF #7), it was the two prior meetings on March 5, 2013 and April 15, 2013 only that were at issue here.

The CCSD did convene an IEP meeting on March 5, 2013. After the preliminary matters were completed, the Parent expressed concerns about the student's needs not being met and left the meeting. Thereafter, the meeting was adjourned. (FOF #3) A LEA representative, a Regular Education Teacher, Special Education Teacher, a Speech and Language Pathologist, an Audiologist, a Teacher of the Deaf and Hard of Hearing, the Principal and the School Nurse were at the March 5, 2013 IEP meeting. (FOF #4)

The student's MDT/IEP Team reconvened on April 15, 2013 and discussed the student's reevaluation results, determined the student's continued eligibility, and discussed the Present Levels of Academic Achievement and Functional Performance for the IEP. (FOF #5) A LEA representative, a Regular Education Teacher, Special Education Teacher, a Speech and Language Pathologist, an Audiologist, a Teacher of the Deaf and Hard of Hearing, the Principal, Instructional Coordinator and the School Nurse were at the April 15, 2013 IEP meeting. (FOF #6)

The Regular Education Teacher and the Special Education Teacher who participated in the development of the student's IEP at the March 5, 2013 and April 15, 2013 IEP meetings were the

student's teachers. (FOF #s 8 and 9) As such, these mandatory members of the IEP Team met the requirements of the IDEA and the NAC. (34 C.F.R. §300.321(a)(2) and (3); NAC §388.281(2)(b) and (c))

In accordance with the IDEA and the NAC (34 C.F.R. §300.321(a)(4); NAC §388.281(2)(a)), the representative of the public agency who is the member of an IEP Team must be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; be knowledgeable about the general education curriculum; and about the availability of resources of the public agency. In this case, the LEA Representative who attended the March 5, 2013 IEP meeting was a resource teacher. The LEA Representative who attended the April 15, 2013 meeting was the SEIF. Both the resource teacher and the SEIF routinely served as the LEA representatives at IEP meetings and were qualified to provide and supervise the provision of specially designed instruction, are knowledgeable about the general education curriculum and about the resources of the CCSD. (FOF #10) Therefore, the LEA Representatives at both the March 5, 2013 and April 15, 2013 IEP meetings had the requisite knowledge and qualifications under the IDEA and the NAC (34 C.F.R. §300.321(a)(4); NAC §388.281(2)(a)).

In accordance with the IDEA, 34 C.F.R. §300.321(a)(5), an individual who can interpret the instructional implications of evaluation results is a mandatory member of a student's IEP Team. This individual may also serve in another capacity as one of the other mandatory Team members of the district. The NAC §388.281(2)(e) further provides that the individual must be familiar with the tests and other assessments performed on or by the pupil and their results. Taken together, these two provisions establish not only the mandatory presence of this IEP Team member at each IEP meeting, but the requisite qualifications of familiarity with the assessments and ability to interpret the instructional implications. There are no other qualifications in the IDEA and the NAC for this Team member.

It is important to note that this mandatory member of the Team is not required to be the individual who administered the assessment and in fact "[A]n individual who is qualified to conduct a particular assessment does not necessarily have the skills or knowledge to assist the IEP Team in determining the special education, related services, and other supports that are necessary in order for the child to receive FAPE." (Vol. 71 Fed. Reg. pg. 46670 (August 14, 2006))

In this case, the reevaluation of the student occurred after the March 5, 2013 IEP meeting. While no evaluation results were discussed at the adjourned March 5, 2013 IEP meeting, the participants included the student's Speech and Language Pathologist, Audiologist, Nurse, Teacher of the Deaf and Hard of Hearing, the student's Regular Education Teacher and Special Education Teacher. (FOF #10) The reevaluation results and the student's Present Levels of Academic Achievement and Functional Performance were discussed at the April 15, 2013 IEP meeting. The participants included the student's Speech and Language Pathologist, Audiologist, Teacher of the Deaf and Hard of Hearing, Nurse, Regular Education Teacher, Special Education Teacher and SEIF. (FOF #11)

These identified members of the student's IEP Team at both the March 5, 2013 and the April 15, 2013 IEP meetings had familiarity with the administered assessments, their results, and were able to interpret the instructional implications of the results individually or collectively, including, for the April 15, 2013 meeting, the achievement test administered by the School Psychologist. (FOF #s 12–18) As such, the student's IEP Team did have the requisite member(s) who could interpret the instructional implications of evaluation results and was familiar with the tests and other assessments performed and their results in accordance with the IDEA and the NAC. (34 C.F.R. §300.321(a)(5); §388.281(2)(e))

The Complainant's concern was with regard to the absence of the School Psychologist, Instructional Coordinator, and IEP Facilitator at the March 7, 2013 IEP meeting and the Principal, Instructional Coordinator, and Itinerant Specialist presence throughout the April 15, 2013 IEP meeting. (FOF #18) None of these individuals were designated mandatory members and as such neither their presence at or

throughout the student's IEP meeting was required under the IDEA or NAC. (34 C.F.R. §300.321; NAC §388.281(2))

Therefore, the complaint investigation team determined that the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to the mandatory CCSD members of the IEP Team at the student's March 5, 2013 and April 15, 2013 IEP meetings.

ISSUE TWO

Whether the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to the meeting notices for the March 2013 and April 2013 IEP meetings, specifically did the list of the persons who would attend the March 5, 2013 meeting include all seven CCSD employees in attendance and, for the April 15, 2013 meeting, the Instructional Coordinator in attendance?

Summary of Allegations: The Complainant alleged that, for the March 2013 IEP meeting, only four CCSD persons were listed on the IEP Meeting Notice although seven CCSD persons were present and, the Instructional Coordinator was present at the April 2013 IEP meeting although not included on the IEP Meeting Notice.

FINDINGS OF FACT

- 1. The IEP Meeting Notice for the March 5, 2013 IEP meeting included only four CCSD personnel. Eight CCSD personnel attended the meeting as participants. (3/5/13 IEP; 2/21/13 Meeting Notice)
- 2. The IEP Meeting Notice for the April 15, 2013 IEP meeting did not include the Instructional Coordinator. The Instructional Coordinator did attend the meeting. (Complaint, April 5, 2013 Meeting Notice; April 15, 2013 IEP)
- 3. After expressing concerns about the student's needs not being met, the Parent left the March 5, 2013 IEP meeting and the CCSD adjourned the meeting thereafter. (Principal, 3/5/13 IEP)
- 4. The Complainant did not ask for the April 15, 2013 IEP meeting to be adjourned and rescheduled upon the attendance of the Instructional Coordinator. (4/15/13 IEP, Audiologist, Principal, Regular Education Teacher, SEIF)

CONCLUSIONS OF LAW AND REASONS

In accordance with the IDEA, 34 C.F.R. §300.322(a), the CCSD was required to provide a notice to the Parent in advance of the March 5, 2013 and April 15, 2013 IEP meetings to ensure the Parent was present at the meeting or afforded an opportunity to participate. The notice was required to indicate who would be in attendance. (34 C.F.R. §300.322(b)) While the notice under the IDEA can either be oral, written, or both (17 IDELR 1105 (OSEP, 1991)), the NAC §388.281(8) requires a written notice, including a "list of the persons who will attend the meeting."

In this case, the CCSD provided a written meeting notice to the Parents for both the March 5, 2013 and the April 15, 2013 IEP meetings that did include a list of persons who would attend the meeting. (FOF #s 1–2) (While the notice indicated who was notified about the meeting and may be in attendance, since the IDEA and the NAC require the notice to include who will be in attendance, for purposes of this

Complaint, the list is presumed to be the list of who would be in attendance. (34 C.F.R. §300.322(b)); NAC, §388.281(8))

The meeting notice for the March 5, 2013 IEP meeting included only four CCSD personnel. Eight CCSD personnel attended the March 5, 2012 IEP meeting as participants. (FOF #1) The meeting notice for the April 15, 2013 IEP meeting did not include the Instructional Coordinator and the Coordinator did attend the April 15, 2013 IEP meeting. (FOF #2) As such, the CCSD failed to notify the Parent of all of the persons who would be in attendance at the March 5, 2013 and April 15, 2013 IEP meetings in accordance with the IDEA and the NAC.

"As a general matter, if a public agency fails to fulfill the notice requirements in 34 CFR §300.322, the parent may request that the IEP Team meeting be rescheduled.... Alternatively, the public agency may choose to conduct the IEP Team meeting without that individual's attendance to avoid rescheduling the meeting." (50 IDELR 259 (OSEP, 2008))

In this case, albeit unrelated to the attendance of participants who were not included in the notice, consistent with the guidance from the United States Department of Education, the Parent left the March 5, 2013 IEP meeting and the CCSD adjourned the meeting thereafter. (FOF #3) The Parent did not ask for the April 15, 2013 IEP meeting to be adjourned and rescheduled. (FOF #4) On the contrary, as discussed under Issue One, the Parent did not object to the presence of the Instructional Coordinator, but rather alleged that the CCSD violated the law since he did not attend the entire IEP meeting.

Therefore, the complaint investigation team determined that the CCSD did not comply with the requirements of the IDEA and the NAC, Chapter 388, with regard to the meeting notices for the March 2013 and April 2013 IEP meetings in that the list of the persons who would attend the March 5, 2013 meeting did not include all CCSD employees in attendance and, for the April 15, 2013 meeting, did not include the Instructional Coordinator. In this case, the failure to comply with the meeting notice requirements of the IDEA and the NAC is determined to be a procedural inadequacy only due to the adjournment of the March 5, 2013 IEP meeting and the Parent's acquiescence to the presence of the Instructional Coordinator at the April 15, 2013 IEP meeting.

ISSUE THREE

Whether the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to parental participation, specifically with regard to the Parent's receipt of a draft IEP in existence before or at the March 5, 2013 IEP meeting and before the April 15, 2013 IEP meeting?

Summary of Allegations: The Complainant alleged that draft documents were not provided to the Parents on or before the March 2013 or before the April 2013 meeting.

FINDINGS OF FACT

- 1. The May 14, 2013 IEP was developed at IEP meetings held on March 5, 2013, April 15, 2013 and May 14, 2013 IEP. The Complainant attended the March 5, 2013 and the May 14, 2013 IEP meeting and both of the student's Parents attended the April 15, 2013 IEP meeting. (3/5/13, 4/15/13 and 5/14/13 IEPs)
- 2. The CCSD convened the IEP meeting on March 5, 2013. After the preliminary matters were completed, the Parent expressed concerns about the student's needs not being met and left the meeting. The meeting was adjourned. (3/5/13 IEP, Principal)

- 3. After the discussion of the 2013 reevaluation results at the April 15, 2013 IEP meeting, the IEP Team only addressed the student's Present Levels of Academic Achievement and Functional Performance prior to adjourning. The majority of the student's IEP was developed at the IEP meeting on May 14, 2013. (4/15/13 IEP, 5/14/13 IEP, Principal)
- 4. The CCSD did not provide any documentation that a draft IEP was provided the Parent(s) before either the March 5, 2013 or April 15, 2013 IEP meeting.
- 5. The Special Education Teacher/Case Manager was responsible for sending out meeting notices for IEP meetings. It was the Special Education Teacher's practice, once the meeting date was agreed to by the parent, to send home a copy of the draft IEP for the upcoming meeting. There was a draft IEP for the March 5, 2013 IEP meeting. A draft IEP was given to the student to take home to the Parent prior to the March 5, 2013 IEP meeting. (Special Education Teacher, Regular Education Teacher)
- 6. At the March 5, 2013 IEP meeting, the draft IEP was projected on the wall. (Complaint, Special Education Teacher)
- 7. There was also another draft IEP for the April 15, 2013 IEP meeting that included Present Levels of Academic Achievement and Functional Performance that reflected the results of the student's reevaluation. The CCSD indicated the Parent was provided a draft document IEP prior to the April 15, 2013 IEP meeting. The Parent did acknowledge receipt of the draft IEP, but only at the April 15, 2013 meeting. (Special Education Teacher, Complaint)

CONCLUSIONS OF LAW AND REASONS

In accordance with the IDEA, 34 C.F.R. §300.501, and the NAC §388.302, the parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to the provision of a free appropriate public education to the child. (See also 34 C.F.R. §§300.321(a)(1) and 300.322 and NAC §388.281.) In this case, the Parent does not allege a denial of parental participation at the student's IEP meetings in general, but rather alleges that the failure to provide the Parent(s) a copy of the student's draft IEP prior to the March 5, 2013 and April 15, 2013 IEP meetings affected the Parent's ability to engage in a full discussion of the proposed IEP.

In the discussion of the 1999 IDEA regulations, the United States Department of Education provided some guidance with regard to draft IEPs:

"The commenter's request that the public agency provide parents with a copy of the IEP 10 days before the meeting is inconsistent with the requirements of this part, which requires that the IEP be developed at the IEP meeting. However, to the extent that preliminary information is available in the agency that may affect discussions and decisions at the meeting related to their child's IEP, it is expected that the information would be provided to the parents sufficiently in advance of the meeting so that they can participate meaningfully in those discussions and decisions on an equal footing with other members of the IEP team. It is not necessary to set out a specific timeline for this information to be provided." (Vol. 64, Fed. Reg. pg. 12406 (March 12, 1999))

In this case, the May 14, 2013 IEP was developed at IEP meetings held on March 7, 2013, April 15, 2013 and May 14, 2013. The Complainant attended the March 5, 2013 and the May 14, 2013 IEP meetings and both of the student's Parents attended the April 15, 2013. (FOF #1)

While the CCSD had a routine practice of providing parents a copy of any draft IEP in advance of the meeting and took action in accordance with that practice, there was no documentation that the Parent(s)

received the existing draft IEPs before the March 5, 2013 and April 15, 2013 IEP meetings. (FOF #s 4, 5 and 7) At minimum, however, the Parent(s) was provided access to the draft IEP at the March 5, 2013 meeting electronically and by printed copy at the April 15, 2013 IEP meeting. (FOF #s 6–7) It is important to note that the Complainant did not allege failure to receive a copy of a draft IEP in advance of the May 14, 2013 at which the majority of the student's IEP was developed. (FOF #s 2–3)

While, as the United States Department of Education indicates, there is an expectation that preliminary information will be available in advance of the IEP meeting, neither the IDEA nor the NAC mandate the provision of such information, but rather require the Parent to be afforded an opportunity to participate as a member of the student's IEP Team. (34 C.F.R. §§300.321 and 300.501; NAC §§388.281 and 388.302) Even if the Parent(s) did not receive a draft IEP prior to the student's March 5, 2013 and April 15, 2013 IEP meetings, it was provided to the Parent(s) at the meetings and the complaint investigation team determined that this still enabled the Parent to participate meaningfully in those discussions and decisions that took place at the March 5, 2013 and April 15 IEP meeting with regard to the development of the May 14, 2013 IEP.

Therefore, the complaint investigation team determined that the CCSD complied with the parental participation requirements of the IDEA and the NAC, Chapter 388, specifically with regard to the Parent's access to the student's draft IEP at the March 5, 2013 and April 15, 2013 IEP meetings.

ISSUE FOUR

Whether the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to the IEP Team's consideration of special factors for the student's May 14, 2013 IEP, specifically with regard to:

- a. If the student's behavior impeded the student's learning or that of others, the provision of positive behavioral strategies, supports and interventions, or other strategies, supports and interventions to address that behavior;
- b. The language and communication needs of the student, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
- c. Whether the student needed assistive technology devices and services?

Summary of Allegations: The Complainant alleged that a behavior plan and language and communication needs of a hearing impaired student were not addressed and assistive technology devices and services were not completely explored.

FINDINGS OF FACT

- 1. With regard to the consideration of special factors, the student's May 14, 2013 IEP included the following determinations:
 - a. No action was needed with regard to the student's behavior impeding the student's learning or the learning of others;
 - b. The student was deaf or hard of hearing and communication needs were addressed in the IEP:
 - c. The student required assistive technology devices and services and the nature and extent of the devices and services are addressed in the IEP.
 (May 14, 2013 IEP)

Behavior

- 2. The student did not respond well to correction of errors and was easily distracted from class work. (4/15/13 MDT Report)
- 3. While the student was distractible and did not always respond well to the correction of errors, the IEP Team did not believe this rose to the level of needing anything behaviorally in the May 14, 2013 IEP since it could be addressed with normal classroom interventions. The Parent did not indicate any concerns about the student's behavior or request a behavioral goal at the IEP meetings for the May 14, 2013 IEP. (SEIF, Principal, Special Education Teacher)

Communication

- 4. The student had an annual goal addressing communication in the May 14, 2013 IEP. The goal was with regard to curriculum based vocabulary to be implemented by Special Education staff and General Education Teacher and supported by the Speech and Language Pathologist. (5/14/13 IEP)
- 5. The student's May 14, 2013 IEP included:
 - a. The designated related service of Speech/Language Therapy direct for 60 minutes a month in the speech room and consultative services from the Teacher for the Deaf and Hard of Hearing 20 minutes a semester in general education.
 - b. Supplementary aids and services addressing clarification of information and directions, reading techniques to aid comprehension, preferential seating, and ear and eye directionality toward the source of sound. (5/14/13 IEP)

Assistive Technology

- 6. The student's May 14, 2013 IEP included the following related supplementary aids and services related to Assistive Technology Devices and Services: Closed captioning for audio instructional video materials when available; CCSD will provide and maintain a FM system to be used throughout the school day during instruction; for independent reading and reading activities the student will read aloud into the FM 'mic' with a frequency "for all independent reading work" and the itinerant teacher to provide in-service for all staff working with the student. (5/14/13 IEP)
- 7. In each of the student's classrooms, the teachers wore a dangling microphone to facilitate the amplification for the student that is an FM stereo system (FM amplification system) to assist with hearing. All the teachers used it. The CCSD also provided the student with an additional FM stereo system that required the teachers to wear a different microphone to facilitate hearing for the student. The FM amplification system and the FM stereo system operated on different frequencies and did not conflict with each other. (Principal, Audiologist)

CONCLUSIONS OF LAW AND REASONS

Due to the allegations and other issues in this Complaint regarding the needs of students with hearing impairments in general, as a preliminary matter it is important to discuss the individually-oriented nature of the IDEA and NAC, Chapter 388. (NAC §388.284(1)(c); 34 C.F.R. §300.320(a)(4); 58 IDELR 168 (OSEP 2011)) In accordance with the IDEA and the NAC, the determination of the specific special education and related services and supplementary aids and services a student requires

must be made on an individual basis by an IEP Team. (NAC §388.284(1)(c); 34 C.F.R. §300.320(a)(4)) This individualized determination is based on the child's unique needs. (58 IDELR 168 (OSEP 2011); 33 IDELR 249 (OSEP 2000); 37 IDELR 126 (OSEP 2002); Vol. 71, Fed. Reg. pp. 46540, 46549 (August 14, 2006))

Consistent with these requirements, "...decisions regarding the provision of services that are appropriate for an individual child must be based on the child's unique needs, and not on the disability category in which the child is classified." (33 IDELR 249 (OSEP 2000); 37 IDELR 126 (OSEP 2002); Vol. 71, Fed. Reg. pp. 46540, 46549 (August 14, 2006)) Therefore, while a particular service may be required for one student with a hearing impairment as a part of the student's free appropriate public education, the determination of whether a child requires it to receive educational benefit may also not be based on the child's disability category.

As such, the determination in this Issue and throughout this Complaint on the substantive matters of the content of the student's IEP and the evaluation of the student were individually determined and were not based on the student's disability category.

Behavior

In accordance with the IDEA, 34 C.F.R. §300.324(a)(2)(i) and (b)(2), and the NAC §388.284, in the case of a child whose behavior impedes the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. The NAC, Chapter 388, further requires that if the IEP Team determines that the behavior of the pupil impedes the learning of the pupil or other pupils, provide positive behavioral strategies, supports and interventions, or other strategies, supports and interventions must be provided to address that behavior. (NAC §388.284(2))

In this case, it was established that the student did not respond well to correction of errors and was easily distracted from class work. (FOF #2) The IEP Team did consider whether the student's behavior impeded the student's learning or others at the May 14, 2013 IEP meeting. (FOF #s 1a and 3) The Parent, as a member of the IEP Team, did not indicate any behavioral concerns or request a behavioral goal for the student at the IEP meetings for the May 14, 2013 IEP. (FOF #3) After the requisite consideration of this special factor in accordance with the IDEA, 34 C.F.R. §300.324, and the NAC §388.284(2), the student's IEP Team did not believe the identified distractibility and response to correction rose to the level of needing anything behaviorally in the May 14, 2013 IEP outside of the normal classroom interventions. The complaint investigation team determined that the IEP Team's determination that no action was needed with regard to the student's behavior impeding the student's learning or the learning of others (FOF #1a) was reasonably supported by the student-specific data.

Therefore, the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to the IEP Team's consideration of special factors for the student's May 14, 2013 IEP, specifically with regard to whether the student's behavior impeded the student's learning or that of others, the provision of positive behavioral strategies, supports and interventions, or other strategies, supports and interventions to address that behavior.

Communication

In accordance with the IDEA, 34 C.F.R. §300.324(a)(2)(iv) and (b)(2), and the NAC §388.284(2)(e), a student's IEP Team must consider the communication needs of the pupil, and in the case of a pupil who is deaf or hard-of-hearing, consider the pupil's language and communication needs, opportunities for direct communications with other pupils and professional personnel in the pupil's language and communication mode, academic level and full range of needs, including, without limitation, opportunities for direct instruction in the pupil's language and communication mode.

In this case, the student's IEP Team did consider this special factor at the May 14, 2013 IEP meeting and determined that the student was deaf or hard of hearing and communication needs were addressed in the IEP. (FOF #1b) The student had an annual goal addressing communication in the May 14, 2013 IEP. The goal was with regard to curriculum based vocabulary to be implemented by Special Education staff and General Education Teacher and supported by the Speech and Language Pathologist. (FOF #4) The student services in the May 14, 2013 IEP included the designated related service of Speech/Language Therapy direct for 60 minutes a month in the speech room and consultative services from the Teacher for the Deaf and Hard of Hearing 20 minutes a semester in general education, supplementary aides and services and assistive technology devices and services to address the student's language and communication needs. (FOF #5) The complaint investigation team determined that the IEP Team did consider and address the student's language and communication needs and the determinations are reasonably supported by the student-specific data.

Therefore, the complaint investigation team determined that the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to the IEP Team's consideration of special factors for the student's May 14, 2013 IEP, specifically with regard to student's language and communication needs, opportunities for direct communications with other pupils and professional personnel in the student's language and communication mode, academic level and full range of needs, including, without limitation, opportunities for direct instruction in the student's language and communication mode.

Assistive Technology

In accordance with the IDEA, 34 C.F.R. §300.324(a)(2)(v) and (b)(2), and the NAC §388.284(2)(f), a student's IEP Team must consider whether the child needs assistive technology devices and services. In this case, the Complainant did not allege the IEP Team did not consider whether the student required assistive technology or services, but rather those devices and services were not completely explored.

Assistive technology devices and services must be addressed in a child's IEP to the extent that these devices and/or services are needed to ensure that the child receives a free appropriate public education. On the other hand, an IEP need not address those devices or services if the IEP Team determines that they are not needed as part of the child's special education, related service, or supplementary aids and services. (24 IDELR 854 (OSEP 1996)) Therefore, the student's IEP Team was not required to explore all available assistive technology services, but rather to individually consider and determine those assistive technology devices and services the student required to be afforded a free appropriate public education. (NAC §388.284(1)(c); 34 C.F.R. §300.320(a)(4); 58 IDELR 168 (OSEP 2011))

The student's May 14, 2013 IEP provided that the student did require assistive technology devices and services and the nature and extent of the devices and services were addressed in the IEP. (FOF #1c) The student's May 14, 2013 IEP included the following supplementary aids and services related to Assistive Technology Devices and Services: Closed captioning for audio instructional video materials when available; CCSD will provide and maintain a FM system to be used throughout the school day during instruction; for independent reading and reading activities the student will read aloud into the FM 'mic' and the itinerant teacher to provide in-service for all staff working with the student. (FOF #6) The FM stereo system actually provided two different operational systems that did not conflict with each other. (FOF #7) Therefore, the student's IEP Team did consider and determine those assistive technology devices and services the student required to be afforded a free appropriate public education and the determinations were reasonably supported by the student-specific data. (NAC §388.284(1)(c); 34 C.F.R. §300.320(a)(4); 58 IDELR 168 (OSEP 2011))

Therefore, the complaint investigation team determined that the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to the IEP Team's consideration of special factors

for the student's May 14, 2013 IEP, specifically with regard to the consideration of whether the child needs assistive technology devices and services.

ISSUE FIVE

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to:

- a. The development of the annual goals and determination of the supplementary aids and services and program modifications or supports for school personnel in the student's May 14, 2013 IEP and the determination of specially designed instruction as well as the absence of the need for extended school year services. Specifically, did the IEP Team consider:
 - (i) The strengths of the student;
 - (ii) The concerns of the Parent for enhancing the education of the student;
 - (iii) The results of the initial or most recent evaluation of the student; and
 - (iv) The academic, developmental, and functional needs of the student;
- b. The determinations of the above in the student's IEPs in effect for the 2012/2013 school year were reasonably supported by the student-specific data?

Summary of Allegations: The Complainant alleged the student did not receive a specifically designed instructional program to include specific learning issues associated with hearing impairments and that the IEP did not address everything a hearing impaired student needs. With great detail, the Complainant further alleged that the CCSD did not consider the strengths of the student, concerns of the Parent, including concerns regarding the music room, and the student's needs in the development of the annual goals and determination of the supplementary aids and services and program modifications or supports for school personnel in the student's IEPs in effect for the 2012/2013 school year. For the May 2013 IEP, the Complainant alleged the determination of specially designed instruction and the absence of the need for extended school year services did not include these considerations. In addition, the Complainant alleged that the IEP lacked short-term objectives; the frequency for the modification regarding the microphone for the FM transmitter, using the music room as an example; "zero" goals were met for school year 2012/2013 and the March 7, 2012 IEP goals and May 14, 2013 IEP goals were nearly identical. The Complainant alleged that the student achieved success in fewer goals this year than in the past 5 years yet the May 14, 2013 IEP decreased special services from the previous IEP and the IEP Team never addressed an extended school year.

FINDINGS OF FACT

- 1. The only IEP in effect for the 2012/2013 school year that was developed between June 17, 2012 and June 17, 2013 (the date the Complaint was received) was the May 14, 2013 IEP. The student's prior IEP was developed March 7, 2012. (3/7/12 and 5/14/13 IEPs)
- 2. The May 14, 2013 IEP included a statement of student strengths: "[Student] enjoys reading out loud. [Student] is creative, pleasant and works well with others." (5/14/13 IEP)

Concerns of the Parent

3. The May 14, 2013 IEP included a statement of parent educational concerns: "[Parent] is concerned with [student's] reading comprehension, and that [student] can read a paragraph and cannot understand what [student] has read. Parent is also concerned that [Parent] requested an IEP in October, and no IEP was held. Parent disagrees with the wording "with or without: and stated that [student] is only functional WITH hearing aids not without." (5/14/13 IEP)

- 4. The Parent expressed concern at the March 5, 2013 IEP meeting regarding the proposal to discontinue the student's individualized speech sessions and concerns about the student's needs not being met and left the meeting. The meeting was adjourned. (Complaint, Principal)
- 5. The Speech and Language Pathologist recommended discontinuing speech therapy at the March 5, 2013 IEP meeting on the basis of the student's achievement of the speech goals, all of which were with respect to articulation. Subsequently, the student's language and communication needs generally were assessed as an aspect of the student's reevaluation. Following the reevaluation, the IEP Team determined there were language delays, specifically with respect to expressive language, and Speech and Language services were included in the May 14, 2013 13 IEP. (Speech and Language Pathologist, 5/14/13 IEP)
- 6. At the April 15, 2013 IEP meeting, the Parent expressed concerns about whether or not the student could hear adequately in some of the classrooms, including the music room. (Music was a general education class for the student.) As a result of the Parent's concerns regarding whether the student could hear in the student's classrooms using the hearing aids, the Principal requested that the CCSD Audiologist conduct a test of all the classrooms and the tests were conducted later in April. The Audiologist determined that the decibel levels in the special education room, the regular classroom, the library and the art room were low enough for the student to hear. The Audiologist found that the decibel level in the music room was very loud, but thought that due to the age of the building no structural alterations could be done. The Audiologist also found that the decibel level in the physical education room was loud; however, concluded it was not a concern because most of the student's physical education was conducted outside. (Principal)
- 7. The Audiologist met with the music teacher to explain how to adjust the decibel levels for the student. The Audiologist explained to the music teacher that the FM amplification and FM stereo systems did not conflict with each other and that both could be operational. However, should the student indicate that there was distracting feedback, the music teacher had several options: 1) move the student to different parts of the room; 2) turn off the FM amplification system or 3) turn off the FM stereo system to attempt to reduce feedback or if the noise from some of the music activities was too high. (Principal) (See also Finding of Fact 7, Issue Four)
- 8. The Parent did not raise any concerns or provide input with regard to the development of the student's goals and short-term objectives at the May 14, 2013 IEP meeting. (Principal, SEIF, Regular Education Teacher)

The Results of the Most Recent Evaluation and the Academic, Developmental, and Functional Needs

- 9. The student was referred for reevaluation in February 2013 and the Multidisciplinary Team Report (MDT) was dated April 15, 2013. The evaluation procedures included:
 - a. Medical History, Vision Screening, Hearing Screening, Review of School Records;
 - b. Audiology Report;
 - c. Communication Update:
 - d. Curriculum Based Measurement (Dibels, Discovery Assessments, CRTs);
 - e. Wechsler Individual Achievement Test, Third Edition (WIAT-III); and the School Psychologist's individual and classroom observations, including demonstrated strengths; and
 - f. Teacher Report. (4/15/13 MDT Report)

- 10. The MDT Report included recommendations as follows:
 - a. Audiological: Preferential seating up front near instruction source; FM system to be provided and maintained by CCSD; Gain attention before beginning instruction; Check for understanding avoiding 'yes/no answers' and closed captioning when available.
 - b. Speech/Language Assessment: It is recommended the student continue to receive speech services to support expressive language development. (4/15/13 MDT Report)
- 11. In the May 14, 2013 IEP, the following results were included in great detail in the student's Present Levels of Academic Achievement and Functional Performance:
 - a. A February 22, 2013 health assessment;
 - b. Teacher for the Deaf and Hard of Hearing's observation, data collection and folder review:
 - c. Information from assessments including:
 - Reading assessments: Wechsler Individual Achievement Test (WIAT-III); STAR test to measure reading comprehension with identified concerns in word reading and comprehension;
 - ii. Math Assessments: WIAT-III; and Discovery with identified concerns in the areas of math problem solving and numerical operations;
 - iii. Writing: WIAT-III and Writing Prompt with identified concerns in writing compound and complex sentences and paragraphs, spelling punctuation and grammar;
 - iv. Teacher observation including a need for amplification and accommodations, including to address the student's off-task behavior; DIBELS, AIMSWEB, DISCOVERY, CORE Reading Assessment Profile; and
 - v. Speech/Language Pathologists Observations; Clinical Assessment of Articulation and Phonology; Receptive One-Word Picture Vocabulary Test; Oral Written Language Scale with identified concerns with expressive language. (5/14/13 IEP)
- 12. The Present Levels of Academic Achievement and Functional Performance in the May 14, 2013 IEP included the effect of the assessment results on the student's involvement and progress in general education curriculum. (5/14 IEP)
- 13. The student's May 14, 2013 IEP included six annual goals: two in reading; one in math; one in writing; and two in communication/speech. Each goal has three to four short-term objectives. (5/14/13 IEP)
- 14. The student's five goals in the student's March 7, 2012 IEP were in the areas of speech/communication, reading, math. The two reading goals in the May 14, 2013 IEP were substantively the same as the two reading goals in the March 7, 2012 IEP, but there was an additional short-term objective for one reading goal in the May 14, 2013 IEP. The math goal was substantively the same as the March 7, 2012 IEP, except multiplication problems were no longer restricted to one step-problems in the May 14, 2013 IEP. The May 14, 2013 IEP included a new writing goal and two different speech/communication goals. (3/7/12 and 5/14/13 IEPs)
- 15. The student's IEP Progress Report for the March 7, 2012 IEP included three reports on May 14, 2012, November 21, 2012, and March 7, 2013, two of which were in the 2012/2013 school year. As noted previously, by the third trimester, March 7, 2013, the student met the speech

goal of articulation. The status of the student's progress toward the other goals was reported at "some progress made" and the reason for not meeting the goals was "more time needed". The Regular Education Teacher's comments by the third trimester indicated that the student had increased reading fluency from 88 words to 122 words per minute (123 words per minute is the minimum for his grade), but continued to struggle in reading comprehension. (11/19/12 Progress Report, Report Card and Teacher Comments, MDT Report)

- 16. On the district-wide Discovery Assessments, the student showed "good growth" by April 2013 and the Regular Education Teacher indicated the student made growth in math that was also reflected in classroom performance. The student's overall writing skills as measured by a spelling subtest and a paragraph writing prompt indicated the student was in the average range on spelling with some success in writing. (MDT Report, Report Card and Teacher Comments)
- 17. The student's Report Card for the 2012/2013 school year included two grades in academic subjects: Social Studies and Science/Health. While the student received the grades of D and F respectively in the first Trimester, the student received a final grade of C in both subjects. (2012/2013 Report Card)
- 18. The student's May 14, 2013 IEP had specially designed instruction in reading, direct, for a total of 250 minutes a week and consult in content areas 30 minutes a week; in math, direct, for 150 minutes a week; written language direct for 150 minutes a week and consult for 30 minutes a week; and additional consult from the Teacher for the Deaf and Hard of Hearing for 20 minutes a semester. (5/14/13 IEP)
- 19. As compared to the student's March 7, 2013 IEP, the student's May 14, 2013 IEP included:
 - a. Decrease of 10 minutes a semester of consult by the Teacher for the Deaf and Hard of Hearing;
 - b. Same amount of consult (30 minutes a month) for Reading Comprehension in general education, same amount of direct instruction in general education in "Reading" (150 minutes) and a change in "Reading" from consult in general education 30 minutes a month to 100 minutes a week of direct instruction in the Resource Room;
 - c. Decrease in direct services in Written Language from 200 minutes a week in the Resource Room to 150 minutes a week and the same amount of consult services in Written Language 30 minutes a month in general education;
 - d. Decrease in Math of direct for 200 minutes a week in the Resource Room to 150 minutes a week; and
 - e. Speech/Language Therapy of direct was decreased from 120 minutes a month to 60 minutes a month.
- 20. With some variation, the student's May 14, 2013 IEP included four of the five recommended audiological supplementary aids and services and speech services described in Finding of Fact number 10. (5/14/13 IEP)
- 21. The student's IEP included a designated "no" in response to the question: Does the student require extended school year services? (5/14/13 IEP)
- 22. The IEP Team discussed whether extended school year was warranted and the discussion included that the student had not regressed over the prior summer and the student was making progress. The Parent did not request or make any comments regarding the determination on extended school year at the IEP meetings for the May 14, 2013 IEP. (5/14/13 IEP, SEIF, Special Education Teacher, Principal)

CONCLUSIONS OF LAW AND REASONS

In accordance with the IDEA, 34 C.F.R. §300.324(a)(1), and the NAC §388.284(2)(a), in developing each child's IEP, the IEP Team must consider: (i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child; (iii) The results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child. It is the May 14, 2013 IEP that is the subject of this allegation, since it is the only IEP developed with the time frame of the Issue. (FOF #1)

"We believe that an SEA, in resolving a complaint challenging the appropriateness of a child's educational program or services or the provision of FAPE, should not only determine whether the public agency has followed the required procedures to reach that determination, but also whether the public agency has reached a decision that is consistent with the requirements in Part B of the Act in light of the individual child's abilities and needs." (Discussion of the IDEA regulations: Vol. 71, Fed. Reg. pg. 46601 (August 14, 2006)) "The SEA may likely find that the public agency has complied with Part B requirements if the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific data." (34 IDELR 264 (OSEP 2000))

Therefore, in addition to determining whether the student's IEP Team considered the above standards in the IDEA and the NAC in the development of the student's May 14, 2013 IEP, a further determination will be made whether the student's resultant annual goals, supplementary aids and services and program modifications or supports, specially designed instruction, and determination regarding extended school year services were reasonably supported by the student-specific data.

Strengths of the Student and Concerns of the Parent

The May 14, 2013 IEP included documentation of the IEP Team's consideration of the strengths of the student and concerns of the Parent. With regard to the strengths of the student, the strengths were reading out loud, being creative, pleasant and working well with others. (FOF #2) The 2013 reevaluation results considered by the IEP Team in the development of the student's IEP included additional specifically assessed strengths. (FOF #9)

Parents are an integral part of the IEP process and an educational agency is required to consider their concerns and any information they provide at the meeting. However, the agency is not required to adopt the parents' recommendations; but is required to provide a prior written notice that includes a detailed explanation of why the agency was not adopting the parents' recommendations and to explain any other options it considered and why it did not adopt those options. (32 IDELR 206 (OSEP 1999))

The IEP did specifically note the educational concern of the Parent on the May 14, 2013 IEP with regard to the student's reading comprehension (FOF #3) and the IEP reflected an increase in direct specially designed instruction in the area of reading. (FOF #19b) In addition, prior to leaving the March 5, 2013 IEP meeting, the Parent expressed concern regarding the proposal to discontinue the student's individualized speech sessions and concerns about the student's needs not being met. (FOF #4) Prior to the May 14, 2013 IEP meeting, the CCSD conducted assessments in the revaluation of the student, including the student's language and communication needs generally. (FOF #9) Therefore, the CCSD considered the Parent's concerns with regard to the student's needs through the conduct of assessments and the consideration of the evaluation results in the May 14, 2013 IEP. (FOF #11) With regard to the need for Speech and Language services, upon the determination that the student had language delays in the area of expressive language, those needs were also addressed in the May 14, 2013 IEP. (FOF #5)

At the April 15, 2013 IEP meeting, the Parent expressed concerns about whether or not the student could hear adequately in some of the classrooms. (FOF #6) Later in April, the CCSD Audiologist conducted a test of all the classrooms and determined the decibel level in the music room was problematic for the student. Upon the Audiologist's conclusion that the age of the structure would preclude a structural alteration in the music room, the Audiologist explained to the music teacher how to accommodate the student. Therefore, the CCSD was responsive to the Parent's concerns by conducting a facility assessment and addressing the concerns with regard to the noise level in the student's classrooms. (FOF #s 6–7)

The Complaint also included an allegation regarding the absence of short-term objectives and the frequency of the use of the student's FM system in the student's IEP, expressly using the music class as an example. However, the student's IEP did include short-term objectives and the Parent did not raise any specific concerns or provide input in the development of the student's goals and short-term objectives in the May 14, 2013 IEP. (FOF #12) While the IEP Team did not include the particulars of the above discussed explanation of the Audiologist in the student's May 14, 2013 IEP with regard to the accommodations in the music room, a general education class, the IEP did include that the CCSD would provide and maintain a FM system to be used throughout the school day during instruction in general education. (FOF #20 and see Issue Four, FOF #6) Therefore, based on the above stated parental concerns during the development of the student's IEP, the student's May 14, 2013 IEP did reflect that the IEP Team considered and addressed the concerns of the Parent.

Evaluation Results and Academic, Developmental and Functional Needs

The student was referred for reevaluation in February 2013 and the Multidisciplinary Team Report (MDT) was dated April 15, 2013. The evaluation procedures included:

- a. Medical History, Vision Screening, Hearing Screening, Review of School Records;
- b. Audiology Report;
- c. Communication Update; Curriculum Based Measurement (Dibels, Discovery Assessments, CRTs);
- d. Wechsler Individual Achievement Test, Third Edition (WIAT-III); session and classroom observations; and
- e. Teacher Report. (FOF #9)

The student's Present Levels of Academic Achievement and Functional Performance in the May 14, 2013 IEP included an extensive description of the reevaluation results, including both existing data and assessments conducted, and the effect of the assessment results on the student's involvement and progress in general education curriculum. The Present Levels of Academic Achievement and Functional Performance included the:

- a. February 22, 2013 health assessment;
- b. Teacher for the Deaf and Hard of Hearing observation, data collection and folder review;
- c. Information from assessments including:
 - i. Reading assessments: Wechsler Individual Achievement Test (WIAT-III); STAR test to measure reading comprehension with identified concerns in word reading and comprehension;
 - ii. Math Assessments: WIAT-III; and Discovery with identified concerns in the areas of math problem solving and numerical operations;
 - iii. Writing: WIAT-III and Writing Prompt with identified concerns writing compound and complex sentences and paragraphs, punctuation and grammar;

- iv. Teacher observation including a need for amplification and accommodations, including to address the student's off-task behavior; DIBELS, AIMSWEB, DISCOVERY, CORE Reading Assessment Profile; and
- v. Speech/Language Pathologists Observations; Clinical Assessment of Articulation and Phonology; Receptive One-Word Picture Vocabulary Test; Oral Written Language Scale with identified concerns with expressive language. (FOF #s 10-12)

Upon consideration of the above listed strengths of the student, concerns of the Parent, and Present Levels of Academic Achievement and Functional Performance, the complaint investigation team determined that the student's May 14, 2013 IEP included consideration of the student's academic, developmental, and functional needs, strengths, evaluation results, and concerns of the Parent in the development of the student's May 14, 2013. The IEP Team's consideration of this information with regard to the student's current educational needs did not necessarily resolve the Complainant's primary concern whether this information was considered in the development of the student's annual goals and the determination of the supplementary aids and services and program modifications or supports for school personnel and the determination of specially designed instruction and the need for extended school year services. So the inquiry cannot end here.

Reasonably Supported by the Student-Specific Information

Goals

The student's May 14, 2013 IEP included:

- Two reading goals with four short-term objectives each and specially designed instruction reflecting the student's assessed need in the areas of word reading and comprehension and the Parent's concern. (FOF #s 3, 13, 14, and 18)
- One math goal with three short-term objectives and specially designed instruction reflecting the student's assessed need in the areas of math problem solving and numerical operations and progress. (FOF #s 13, 14, and 18)
- One writing goal with four objectives and specially designed instruction reflecting the student's assessed needs in writing and some progress. (FOF #s 13 and 18)
- Two speech and language goals with three objectives each and the related service of speech therapy reflecting the student's needs in speech and language and achievement of a prior year's goal. (FOF #s 4, 13, and 19)

In support of the alleged violation of the IEP Team to develop the student's annual goals in the May 14, 2013 IEP after the required consideration of the evaluation of the student, the concerns of the Parent and the student's academic, developmental, and functional needs, the Parent cited that the 2012 and 2013 IEP goals were nearly identical because the student met "zero" goals in the 2012/2013 school year.

A closer examination of the student's annual goals from the March 7, 2012 IEP and the May 14, 2013 IEP was warranted to ensure that this allegation did not negate the above discussed compliance with procedures and standards and to ensure that the apparent factual support of the annual goals by the student-specific information was not merely superficial.

The student's five goals in the student's March 7, 2012 IEP were in the areas of speech/communication, reading, and math. The two reading goals in the May 14, 2013 IEP were substantively the same as the two reading goals in the March 7, 2012 IEP, but there was an additional short-term objective for one reading goal in the May 14, 2013 IEP. The math goal was substantively the same as the March 7, 2012

IEP, except multiplication problems were no longer restricted to one step-problems in the May 14, 2013 IEP. There was a new writing goal and the two speech/communication goals were different. (FOF #14) While it is of concern that several of the student's IEP goals that were designed to be capable of achievement on an annual basis (34 C.F.R. §300.320(a)(2); NAC §388.284(1)(b)) were substantially the same in the student's 2012/2013 and 2013/2014 IEPs, that fact alone was not determinative on this Issue.

By the third trimester of the 2012/2013 school year, the student met the speech goal of articulation. However, the student only made "some progress" toward the other goals with the given reason that more time was needed. The progress was reflected in increased reading fluency, growth in math, spelling in the average range and some success in writing, and a final Report Card grade in the academic subjects of Social Studies and Science/Health of a C rising from a first Trimester grade of D and F respectively. (FOF #s 15–17) (It is acknowledged that the private tutoring services acquired by the Parent may have impacted the increase in reading fluency. See Findings of Fact 9 and 10 for Issue Seven.)

While the student's achievement of the IEP goals did not meet the IEP Team's, including the Parent's, expectation of anticipated annual growth, the student did make progress in the 2012/2013 school year contrary to the allegation of the Parent of "zero growth". Therefore, the fact that some annual goals, or aspects of the goals, from the prior IEP were carried forward into the student's May 14, 2013 IEP does not negate the above conclusion that the determination of the IEP Team, in this case, was reasonably supported by the student-specific data in that the student's IEP Team did consider the student's present levels and areas of progress and it was reflected in the development of the student's annual goals and determination of services.

Specially Designed Instruction, Speech Therapy, Supplementary Aids and Services

The Audiological and Speech and Language Assessments included several recommendations:

- a. Audiological: Preferential seating up front near instruction source; FM system to be provided and maintained by CCSD; Gain attention before beginning instruction; check for understanding avoiding yes/no answers and closed captioning when available.
- b. Speech/Language Assessment: It is recommended the student continue to receive speech services to support expressive language development. (FOF #10)

The student's May 14, 2013 IEP included the continuation of speech services for expressive language development consistent with the recommendation of the Speech and Language Pathologist after the reevaluation of the student and the Parent's concern for continued services. (FOF #s 5, 10 and 19) The student's IEP also included, with some variation, four of the five above recommended audiological supplementary aids and services and addressed the teacher's concern for amplification and accommodations, including off-task behavior. (FOF #s 10, 11, and 20)

There was variance from the March 7, 2012 IEP and the May 14, 2013 IEP with regard to the number of minutes of specially designed instruction and the related service of speech therapy. However, this variance represented both increases and decreases in the number of minutes among the services and changes with regard to the direct and consultative nature of the instruction. One notable increase of services was in the area of reading from consult in general education 30 minutes a month to 100 minutes a week of direct instruction in the Resource Room. (FOF #s 18–19) Upon examination of the Present Levels of Academic Achievement and Functional Performance, including the student's progress in some areas and the annual goals, these determinations of the IEP Team were reasonably supported by the student-specific data, including a heightened focus of specially designed instruction on reading, the primary educational concern of the Parent.

Extended School Year

Notwithstanding the allegation in this Complaint regarding the need of the student for extended school year services in the May 14, 2013 IEP, the Parent did not request or make any comments regarding the determination on extended school year at the May 14, 2013 IEP meeting. The student's IEP Team did consider whether the student required extended school year services and determined that such services were not warranted given that the student had not regressed over the prior summer and the student was making progress. This determination is reasonably supported by the student-specific data. (FOF #s 21–22)

In conclusion, upon consideration of the facts set forth above, the complaint investigation team determined that the CCSD followed the required procedures and applied the required standards in the IDEA and the NAC in the development of the student's May 14, 2013 IEP, specifically the student's annual goals and supplementary aids and services and program modifications or supports for school personnel and specially designed instruction and determination of the absence of a need for extended school year services. The student's May 14, 2013 IEP reflected the student's educational needs and was reasonably supported by the student data. That is as far as the jurisdiction of the NDE goes in the State Complaint process with regard to the determination of the student's receipt of a free appropriate public education. (34 IDELR 264 (OSEP 2000); Vol. 71, Fed. Reg. pg. 46601 (August 14, 2006))

Therefore, the complaint investigation team determined that the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to the development of the annual goals and determination of the supplementary aids and services and program modifications or supports for school personnel in the student's May 14, 2013 IEP and the determination of specially designed instruction and the absence of the need for extended school year services. Specifically, the IEP Team considered (i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child; (iii) The results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child. Further, the determinations of the above in the student's IEP in effect for the 2012/2013 school year were reasonably supported by the student-specific data.

ISSUE SIX

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to the implementation of the student's IEPs in effect for the 2012/2013 school year, specifically the measurement of the student's progress toward meeting the annual goals and when periodic reports would be provided?

Summary of Allegations: The Complainant alleged that adequate monitoring was not done as required in the March 2012 IEP and, with two exceptions, weekly progress reports required in the IEP were never done. Further, Parents were not timely notified of problems that arose during the school year.

FINDINGS OF FACT

- 1. The student's March 7, 2012 IEP provided that the method for reporting progress toward annual goals would include both the District Report Card and Specialized Progress Reports (also referred to as IEP Progress Reports) and the frequency would be the same as the student's peers. The student's May 14, 2913 IEP retained this same method of reporting progress. (3/7/12 and 5/14/13 IEPs)
- 2. The student's school operated on a trimester system and Report Cards and IEP Progress Reports were issued three times a year, at the end of each trimester. For the period of time addressed by the Complaint, the trimesters ended on November 30, 2012, March 8, 2013 and June 5, 2013. (Principal)

- 3. IEP Progress Reports were issued for the student on November 21, 2012, March 8, 2013 and June 4, 2013 representing the three trimesters in the 2012/2013 school year. (IEP Progress Reports, Principal)
- 4. The student was provided a Report Card for each Trimester in the 2012/2013 school year and a final grade and a Third Trimester report on the student's proficiency level on the academic standards. The Report Card also included Teacher Comments for each Trimester. (Report Card)
- 5. The student's March 7, 2012 IEP required the following supplementary aid/service: "Weekly note/email home to check progress in general education classroom/curriculum." These weekly notes/email were not retained as a supplementary aid/service in the May 14, 2013 IEP. (3/7/12 and 5/14/13 IEPs)
- 6. During the time period of the Complaint, the Parent only received a weekly report on October 18, 2012 and November 18, 2012. (Complaint, Regular Education Teacher)

CONCLUSIONS OF LAW AND REASONS

In accordance with the IDEA, 34 C.F.R. §300.324(a)(3), and the NAC §388.284(1)(h), a student's IEP must include when periodic reports on the progress of the student toward meeting the annual goals will be provided by the use of quarterly or other periodic reports, concurrent with the issuance of report cards, or other means. The student's March 7, 2012 IEP provided that the method for reporting progress toward annual goals would include both the District Report Card and IEP Progress Reports and the frequency would be the same as the student's peers. The student's May 14, 2913 IEP retained this same method of reporting progress. (FOF #1)

Since the student's school operated on a trimester system, Report Cards and IEP Progress Reports were issued three times a year, at the end of each trimester. For the period of time addressed by the Complaint, the trimesters ended on November 30, 2012, March 8, 2013 and June 5, 2013. (FOF #2) The IEP Progress Reports during this time period were issued on November 21, 2012, March 7, 2013 and June 4, 2013. (FOF #3) The student was provided a Report Card for each Trimester with comments in the 2012/2013 school year and a final grade and a Third Trimester report with comments on the student's proficiency level on the academic standards. (FOF #4)

In addition to the above method of reporting progress in the student's IEP, the student's March 7, 2012 IEP included an additional periodic report as a supplementary aid/service: a weekly note/email home to check progress in general education classroom/curriculum. This service of periodic weekly notes/email was not retained in the May 14, 2013 IEP. (FOF #5) During the time period of the Complaint, the Parent only received a weekly report on October 18, 2012 and November 18, 2012. (FOF #6)

Pursuant to the NAC and the IDEA, the CCSD was required to provide the services and instruction deemed necessary for the student by the IEP Team. (NAC §388.281(6)(g), 34 C.F.R. §300.17(d)) In this case, consistent with the student's IEP, the CCSD did issue IEP Progress Reports and District Report Cards at the same frequency as the student's peers. However, the CCSD did not, with the exception of two weeks, send a weekly note/email home to check the student's progress in the general education classroom/curriculum in the 2012/2013 school year up to the effective date of the May 14, 2013 IEP.

Therefore, the complaint investigation team determined that the CCSD did comply with the IDEA and the NAC, Chapter 388, with regard to the implementation of the student's IEPs in effect for the 2012/2013 school year with regard to the measurement of the student's progress toward meeting the annual goals and when periodic reports would be provided with the issuance of the IEP Progress Reports and Report Cards. However, the CCSD did not comply with the supplemental service of a

weekly report of the student's progress in the 2012/2013 school year up to the effective date of the May 14, 2013 IEP.

ISSUE SEVEN

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to:

- a. The review of the student's IEP periodically, but not less than annually, in the 2012/2013 school year; and
- b. The issuance of a prior written notice upon the CCSD's refusal to convene an IEP meeting in response to the Parent's request in October 2012?

Summary of Allegations: The Complainant alleged that the student's IEP was not revised for the entire school year, although Discovery test results and failing grades were evident in the first trimester and there was no action taken following the Parent's request for a revised IEP in October 2012.

FINDINGS OF FACT

- 1. The student's annual IEP for 2012 was March 7, 2012 and was required to be reviewed by March 7, 2013. (3/7/12 IEP)
- 2. The CCSD scheduled the annual IEP Meeting for March 5, 2013. (Meeting Notice, Confidential Status Record)
- 3. The CCSD held an IEP meeting for the student on March 5, 2013 and again on April 15, but the new annual IEP was not completed until May 14, 2013 and not implemented until May 24, 2013. (IEPs, Confidential Status Record)
- 4. At the Parent/Teacher conference in October 2012, the Parent indicated to the Regular Education Teacher and the Special Education Teacher that she wanted the Special Education Teacher to spend time teaching the student only reading, not Math. When the teachers explained to the Parent that they had to follow the IEP, the Parent indicated that she was unhappy with the IEP and she wanted to invoke her rights to have a new IEP. (Complaint, Regular Education Teacher)
- 5. In an email to the Principal on March 6, 2013, the Parent provided written information regarding the prior requests for an IEP meeting for the student commencing in October 2012 with no result, including a quoted prior request: "For the fourth time I am invoking my rights to have an IEP meeting." (3/6/13 email)
- 6. Site-based special education staff were responsible for initiating and conducting meetings for developing, reviewing and revising a student's IEP. There was no addition written policy with regard to the process for a parent to request an IEP meeting. (CCSD Written Policy)
- 7. At the student's school, when a parent requested an IEP meeting, the teacher, if a regular education teacher, reported the request to the special education teacher. The special education teacher then met with the principal or the SEIF to begin the scheduling process for the IEP meeting, if one would be scheduled. (Principal)
- 8. The CCSD did not schedule an IEP meeting as a result of the Parent's request in October 2012 or issue a prior written notice refusing to schedule the IEP meeting. (Complaint, Prior Written Notices, CCSD Response to request for documentation)

- 9. On November 3, 2012, the Parent purchased 64 hours of tutoring from the Tutoring Club to provide tutoring to the student in the area of reading at a cost of \$38.28 per hour. The Tutoring Club's reading program had been approved by the NDE for Title I Elementary and Secondary Education Act. (Tutoring Club Invoice; email from the Tutoring Club, Representative from the Tutoring Club)
- 10. The student began receive tutoring services on November 3, 2012 and the last tutoring session was on May 9, 2013. As of August 21, 2013, the Parent paid \$1800.00 for the tutoring services and there was a balance of \$685.00 due. There were seven hours of services remaining to be provided to the student. The student progressed in reading in the area of vocabulary, enrichment skills, and reading comprehension since the commencement of the tutoring. The Parent requested monetary reimbursement for these educational expenses as a proposed resolution in the Complaint. (Complaint, Tutoring Club Invoice; email from the Tutoring Club, Reading Progress Report)
- 11. There were 26 school weeks between November 1, 2012 and May 24, 2013, the date of the implementation of the May 24, 2013 IEP. (Academic Calendar, 5/14/13 Prior Written Notice)

CONCLUSIONS OF LAW AND REASONS

Pursuant to the IDEA, 34 C.F.R. §300.324 and the NAC §388.281(6)(a), each public agency must ensure that the IEP Team reviews a student's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revise it as necessary. In this case, the student's annual IEP for 2012 was March 7, 2012 and was required to be reviewed by March 7, 2013. (FOF #1) While the CCSD commenced the review of the student's IEP on March 5, 2013, the review was not completed until May 14, 2013. (FOF #s 2–3) As such, the CCSD failed to comply with the requirements of the IDEA, 34 C.F.R. §300.324, and the NAC §388.281(6)(a).

At the Parent/Teacher conference in October 2012, the Parent indicated to the Regular Education Teacher and the Special Education Teacher that she wanted the Special Education Teacher to spend time teaching the student only reading, not Math. When the teachers explained to the Parent that they had to follow the IEP, the Parent indicated that she was unhappy with the IEP and she wanted to invoke her rights to have a new IEP. (FOF #s 4–5) While this request for an IEP meeting was not in writing, the CCSD written policy did not require a Parent to submit a written request to a specific individual. (FOF #s 6–7)

"Although a public agency is responsible for determining when it is necessary to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP Team meeting at any time. However, if the agency refuses to grant the parent's request, the agency must provide written notice to the parents of the refusal, including an explanation of why the agency has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. See 64 Fed. Reg. 12476 (Mar 12, 1999)." (112 LRP 52263 (OSEP 2012))

The CCSD neither scheduled an IEP meeting as a result of the Parent's request nor issued a prior written notice refusing to schedule the IEP meeting. (FOF #8) Even if the CCSD disagreed that the student's IEP needed to be reviewed prior to the annual IEP, failure of the CCSD to take either compliant option is violative of the IDEA and the NAC. (34 C.F.R. §§300.324 and 300.503; NAC §§388.281(6)(a) and 388.300)

On November 3, 2012, the Parent purchased 64 hours of tutoring from the Tutoring Club to provide tutoring to the student in the area of reading. The student began the services on November 3, 2012 and the last tutoring session was on May 9, 2013. As of August 21, 2013, the Parent paid \$1800.00 for the

tutoring services and there was a balance of \$685.00 and seven hours of services remaining. The student progressed in reading in the area of vocabulary, enrichment skills, and reading comprehension since the commencement of the tutoring. (FOF #9) The Parent requested monetary reimbursement for these educational expenses of reading tutoring as a proposed resolution in the Complaint. (FOF #10)

As noted in the Findings of Fact numbers 18 and 19 under Issue Five, the student's May 14, 2013 IEP replaced the 30 minutes of consultation services in reading a month with an additional 100 minutes a week of direct specially designed instruction in Reading in the Resource Room. This increase of direct services supports the parent's unilateral augmentation of tutoring services in reading. The complaint investigation team noted that the Tutoring Club's reading program had been approved by the NDE for Title I Elementary and Secondary Education Act students (FOF #9) and the CCSD did not object to the award of such reimbursement due to a failure to otherwise meet State standards or the nature of the services themselves in the course of this investigation.

Upon consideration of the May 14, 2013 IEP, the student's progress in private tutoring and the failure of the CCSD to either schedule an IEP meeting or issue a prior written notice in October 2012 and to timely complete the review of the student's IEP by March 7, 2013, the complaint investigation team determined that compensatory reimbursement was warranted in this case to reimburse the Parent for the services she acquired for the student after the CCSD failed to timely respond to her concerns with regard to the student's needs in the area of reading. (See Order for Corrective Action-Compensatory Reimbursement.)

Therefore, the complaint investigation team determined that the CCSD failed to comply with the IDEA and the NAC, Chapter 388, with regard to its obligation to review the student's IEP periodically, but not less than annually, in the 2012/2013 school year; and by neither convening an IEP meeting nor issuing a prior written notice of the CCSD's refusal to convene an IEP meeting in response to the Parent's request in October 2012.

ISSUE EIGHT

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, in ensuring:

- a. The student's May 14, 2013 educational placement determination included the participation of the Parent and was based on the student's IEP and in the least restrictive environment; and
- b. The student's May 14, 2013 IEP included an explanation of the extent, if any, to which the student would not participate with nondisabled children in the regular class and in extracurricular and other nonacademic activities?

Summary of Allegations: The Complainant alleged that the Parent was not involved in placement considerations; no discussion of placement being accepted or rejected took place during the March, April or May IEP team meetings; and the student's change of placement was not based on the student's current IEP and evaluation. Further, based on the student's prior progress in a self-contained environment and citing behaviors of inattentiveness and learning barriers, the Parent believed the discussion should have included the type of environment for the student to effect maximum improvement.

FINDINGS OF FACT

1. The only educational placement determination made for the student from March 2013 to the end of the 2012/2013 school year was at the May 14, 2013 IEP meeting. (5/14/13 IEP)

- 2. The May 14, 2013 IEP included the placement considerations for the student. The student's placement in the regular class with supplementary aids and services (no removal) was rejected and regular class and special education (e.g. resource) combination was selected. (5/14/13 IEP)
- 3. The placement determination on the continuum of program options in the May 14, 2013 IEP was the same as the placement determination in the March 7, 2012 IEP. (3/7/12 and 5/14/13 IEPs)
- 4. While there was a variance of allocation of time among the subject areas in the March 7, 2012 and the May 14, 2013, the student was removed from the general education environment for specially designed instruction the same amount of time: 400 minutes a week for direct instruction in the resource room. (3/7/12 and 5/14/13 IEPs)
- 5. The May 14, 2013 IEP included a "Justification for Placement Involving Removal From Regular Education Environment". The justification included what the student required and why the interventions needed to be in a highly structured setting rather than in the general education environment and the potential harmful effects of the placement on the student. (5/14/13 IEP)
- 6. The Parent attended the May 14, 2013 IEP meeting and the Parent's signature was on the placement page of the IEP providing the Placement Considerations and Justification for Placement. The Parent disagreed with all of the IEP. (5/14/13 IEP)
- 7. The Parent did not provide input at the May 14, 2013 IEP meeting that the Parent wanted the student to be placed in a self-contained classroom or any placement different from the one agreed to by the rest of the IEP Team. (SEIF, Principal, Special Education Teacher, Regular Education Teacher)
- 8. The IEP Team did not consider the more restrictive placement of a self-contained classroom because of the student's academic, social and behavioral level and because of the progress the student made in the 2012/2013 school year in the regular class and special education (e.g. resource) combination. (5/14/13 IEP, SEIF, Special Education Teacher, Regular Education Teacher)

CONCLUSIONS OF LAW AND REASONS

In accordance with the IDEA, 34 C.F.R. §300.116, and the NAC §388.245(6), the placement of a student with a disability must be determined by a group of persons, including, without limitation, the parents of the student and other persons who are knowledgeable about the student, the meaning of the evaluation data and the placement options. "The placement of a student is the determination of the point along the continuum of placement options available for a child with a disability." (50 IDELR 48 (OSEP 2007); 37 IDELR 10 (OSEP 2001); Discussion of the IDEA regulations: Vol. 71, Fed. Reg. pp. 46587 and 46588 (Aug. 14, 2006))

In this case, the only educational placement determination made for the student from March 2013 to the end of the 2012/2013 school year was at the May 14, 2013 IEP meeting. (FOF #1) The Parent attended the May 14, 2013 IEP meeting and the Parent's signature was on the placement page of the IEP providing the Placement Considerations and Justification for Placement. (FOF #6) Therefore, contrary to the Parent's allegation, the Parent was a member of the group of persons, in this case the student's IEP Team, who made the placement decision for the student in accordance with the IDEA, 34 C.F.R. §300.116, and the NAC §388.245(6).

The IDEA, 34 C.F.R. §300.116, and the NAC §388.245(6) require a student's placement determination to be made in conformance with the requirements of least restrictive environment, be based on the

student's IEP and be as close as possible to the child's home. (The latter is not at issue.) In accordance with these requirements of least restrictive environment, a public agency must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occur only when nature of severity of the disability is such that education in the regular classes with supplementary aids and services cannot be achieved satisfactorily.

The requirements of least restrictive environment must be balanced with the requirement that the student with disabilities receive a free appropriate public education. (Wilson v. Marana Unified Sch. Dist. No. 6, 735 F.2d 1178 (9th Cir. 1984)) "The group making the child's placement decision must consider the factors addressed in 34 CFR § 300.116 in determining whether a child with a disability should be removed from a less restrictive to a more restrictive setting. There is no requirement in Part B or the Part B regulations for data or measurement to document when a child with a disability should be moved from a less restrictive to a more restrictive placement. Rather, the placement group would make this decision for each child on an individual case-by-case basis, and the child's IEP forms the basis for the placement decision. 34 CFR § 300.116(b)(2)." (112 LRP 52263 (OSEP 2012))

In this case, the student's IEP Team considered and rejected the student's placement in the regular class with supplementary aids and services (no removal) and selected the student's placement in the regular class and special education (e.g. resource) combination. (FOF #2) The placement determination in the May 14, 2013 IEP was the same on the continuum of program options as the placement determination in the March 7, 2012 IEP and, notwithstanding variance among the subject areas, the student was removed from the general education environment for specially designed instruction the same amount of time, 400 minutes a week for direct instruction in the resource room. (FOF #s 3–4)

The Parent did not provide input at the May 14, 2013 IEP meeting that the Parent wanted the student to be placed in a more restrictive self-contained classroom or any placement different from the one agreed to by the rest of the IEP Team. (FOF #7) Based on the student's IEP and the progress the student made in the 2012/2013 school year in the regular class and special education (e.g. resource) combination, the IEP Team did not consider the more restrictive placement of a self-contained classroom because of the student's academic, social and behavioral level and because of the progress in the less restrictive regular class and special education combination. (FOF #8)

Consistent with the requirements of least restrictive environment, the IDEA, 34 C.F.R. 300.320(a)(5), and the NAC §388.281(1)(l) also require a student's IEP to include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in extracurricular and other nonacademic activities with students who are not disabled. The May 14, 2013 IEP included a "Justification for Placement Involving Removal From Regular Education Environment". Consistent with the IDEA and the NAC, the justification included an explanation of what the student required and why the interventions needed to be in a highly structured setting rather than in the general education environment and the potential harmful effects of the placement on the student. (FOF #5)

The complaint investigation team determined that the CCSD complied with the IDEA, 34 C.F.R. §300.116, and the NAC §388.245(6) with regard to the placement of the student in the least restrictive environment. Further, the IEP Team's placement determination was reasonable given the student's May 14, 2013 IEP and the need to balance the requirements of least restrictive environment and the provision of a free appropriate public education to the student. (Wilson v. Marana Unified Sch. Dist. No. 6, 735 F.2d 1178 (9th Cir. 1984))

Therefore, the complaint investigation team determined that the CCSD complied with the IDEA and the NAC, Chapter 388, in ensuring the student's May 14, 2013 educational placement determination included the participation of the Parent; and was based on the student's IEP and in the least restrictive environment; and the student's IEP included an explanation of the extent, if any, to which the student

would not participate with nondisabled children in the regular class and in extracurricular and other nonacademic activities.

ISSUE NINE

Whether the CCSD complied with the IDEA with regard to ensuring the student's hearing aids worn in school were functioning properly from October 2012 to the end of the 2012/2013 school year?

Summary of Allegations: The Complainant alleged that the CCSD did not check the functioning of the student's hearing aids until April 2013 when the issue was raised by the Parent and the student's hearing aids were not turned on for two weeks in October 2012 and the Parent was never notified.

FINDINGS OF FACT

- 1. No documentation was presented by the CCSD that the hearing aids were checked.
- 2. The student was in the fourth grade during the 2012/2013 school year. Normally, students after first grade, are expected to, and able to, check their hearing aids themselves. In the case of the student, the student would often turn the hearing aids off and, at times, hide them. (Audiologist, Regular Education Teacher, Principal)
- 3. At the beginning of the 2012/2013 school year, the Teacher of the Deaf and Hard of Hearing told the student's Regular Education Teacher how to check to see if the hearing aids were on. She did not tell any of the other staff in the school working with the student how to check to see if the hearing aids were on. (Principal)
- 4. At the beginning of each school day, the Regular Education Teacher asked the student if the hearing aids were on and working. She physically checked the student's hearing aids to see if the batteries were working and the hearing aids were on two times a week. The other teachers began checking the hearing aids in March of 2013. (Regular Education Teacher, Principal)
- 5. The student's hearing aids were broken on January 11, 2013 at school and the Parent was notified. On January 25, 2013, the student's hearing aid batteries died and the Parent was notified. (Nurse Progress Notes)

CONCLUSIONS OF LAW AND REASONS

Pursuant to the IDEA, 34 C.F.R. §300.113(a), each public agency is required to routinely check the hearing aids worn in school by children with hearing impairments, including deafness, to ensure they are functioning properly. No documentation was presented by the CCSD that the student's hearing aids were checked on a routine basis from October 2012 to the end of the 2012/2013 school year. (FOF #1)

At the beginning of the 2012/2013 school year, the Teacher of the Deaf and Hard of Hearing told the student's Regular Education Teacher how to check to see if the hearing aids were on. No other staff working with the student in the school was instructed on this aspect of the functioning of the student's hearing aids. (FOF #3) The Regular Education Teacher did routinely ask the student if the hearing aids were on and working at the beginning of every school day and also physically checked the student's hearing aids to see if the batteries were working and the hearing aids were on two times a week. (FOF #4)

Starting in March of 2013, the student's other teachers began checking the hearing aids. (FOF #4) In addition, CCSD school personnel did observe the improper functioning of the student's hearing aids on

two occasions in the 2012/2013 school year and notified the Parent. (FOF #5)

The student was in the fourth grade during the 2012/2013 school year. (FOF #2) It is the position of the CCSD that normally, students after first grade, are expected to, and able to, check their hearing aids themselves. This position would not, of course, obviate the CCSD's responsibility to ensure the proper functioning of hearing aids pursuant to the IDEA, 34 C.F.R. §300.113.

In this case, the student would often turn the hearing aids off and, at times, hide them. (FOF #2) Based on the student's known proclivity to turn the hearing aids off and even hide the hearing aids, the normal expectation of the CCSD regarding the sufficiency of students' routine checking of hearing aids and the CCSD's reliance on the student to inform an adult of improper functioning was not reasonable. As such, while the CCSD did check the proper functioning of the student's hearing aids from October 2012 to the end of the 2012/2013 school year in some regards, it did not meet the standard under the IDEA of routinely checking to ensure the proper functioning of the student's hearing aids.

Therefore, the complaint investigation team determined that the CCSD did not comply with the IDEA with regard to ensuring the student's hearing aids worn in school were functioning properly from October 2012 to the end of the 2012/2013 school year.

ISSUE TEN

Whether the CCSD provided the parent a prior written notice in accordance with the IDEA and the NAC, Chapter 388, a reasonable time prior to implementing the CCSD's proposal for the provision of a free appropriate public education in the May 14, 2013 IEP?

Summary of Allegation: The Complainant alleged the Parent did not receive a Notice to Implement the IEP until May 21, 2013.

FINDINGS OF FACT

- 1. The CCSD's "Notice of Intent to Implement IEP" form was the prior written notice for the CCSD's proposal or refusal regarding a student's educational program as a result of an IEP. (Notice of Intent to Implement Form)
- 2. The Notice to Implement was dated May 14, 2013 and indicated the date sent/given was May 14, 2013 with a proposed implementation date of May 24, 2013. (Notice of Intent to Implement)
- 3. The Parent attended the May 14, 2013 IEP meeting and acknowledged by signature that she disagreed with the IEP. The statement of disagreement included a statement that the Parent understood that the school district was required to provide written notice of any intent to implement the IEP and if the Parent wished to prevent its implementation the Parent must submit a written request for a due process hearing to the local school district superintendent. (5/14/13 IEP)
- 4. At the end of the May 14, 2013 IEP meeting, the CCSD orally notified the Parent that the CCSD would implement the student's IEP on the eleventh day if not notified by the Parent by the end of the 10th day. The Parent acknowledged that she understood this and left the meeting prior to the Special Education Teacher being able to make a copy of the completed May 14, 2013 IEP and the May 14, 2013 Notice to Implement. (Special Education Teacher, CCSD Confidential Status Record,)

- 5. The Special Education Teacher sent the copy of the completed May 14, 2013 IEP and the May 14, 2013 Notice to Implement home with the student at the end of the day on May 14, 2013. (Status Record, SEIF, Special Education Teacher)
- 6. On May 16, 2013 another copy of the Notice to Implement was given to the student to take home at the end of the school day. (Status Record, Special Education Teacher)
- 7. On May 17, 2013, the Parent requested a copy of the student's IEP and related forms from the May 14, 2013 meeting. (5/17/13 Email)
- 8. The CCSD mailed another copy of the Notice of Intent to Implement to the Parent on May 16, 2013 and, after attempting unsuccessfully to fax the Notice to the Parent on May 20, 2013, sent a copy home with the student. The Parent confirmed receipt of the Notice to Implement on May 21, 2013. (Complaint, CCSD Confidential Status Record))
- 9. The Parent did not file a request for a due process hearing or take any other action from May 21 to May 24, 2013 to delay the implementation of the student's IEP and the CCSD implemented the IEP on May 24, 2013. (5/14/13 IEP, Special Education Teacher, SEIF)

CONCLUSIONS OF LAW AND REASONS

In accordance with the IDEA, 34 C.F.R. §300.503, and the NAC §388.300, a parent must be provided a written notice a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. A change in the IEP for a child would constitute a change in the provision of free appropriate public education, and the public agency would therefore be required to provide written notice that included all of the content. (17 IDELR 1105 (OSEP 1991))

In this case, the Complainant did not dispute the receipt of the prior written notice upon the change in the student's IEP on May 14, 2013, but rather whether the notice was provide a reasonable time before the implementation of the IEP. (Complaint) Neither the IDEA or the NAC provide a specific timeline for a prior written notice: "We do not believe that it is necessary to substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time...prior written notice is provided in a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable." (Discussion of the IDEA regulations: Vol. 71, Fed. Reg. pg. 46691 (August 14, 2006))

The Parent attended the May 14, 2013 IEP meeting and acknowledged by signature that she disagreed with the IEP. The statement of disagreement included a statement that the Parent understood that the school district was required to provide written notice of any intent to implement the IEP and if the Parent wished to prevent its implementation the Parent must file for a due process hearing. (FOF #3) At the end of the May 14, 2013 IEP meeting, the CCSD orally notified the Parent that the CCSD would implement the student's IEP on the eleventh day if not notified otherwise by the Parent by the end of the tenth day. The Parent acknowledged that she understood this and left the meeting prior to the Special Education Teacher being able to make a copy of the completed May 14, 2013 IEP and the May 14, 2013 Prior Written Notice/Notice to Implement. (FOF #4)

The CCSD's Notice to Implement the student's IEP was dated May 14, 2013, the day of the IEP meeting with a proposed implementation date of May 24, 2013. (FOF #2) The CCSD implemented the IEP on May 24, 2013. (FOF #9)

There was a factual dispute regarding when the Complainant received the Notice to Implement the student's IEP. The Complainant alleged the Notice to Implement was not received until May 21, 2013,

several days prior to the implementation of the student's IEP and the CCSD asserted it made multiple attempts to provide the Parent the Notice to Implement, beginning the day of the IEP meeting. (FOF #s 5–8) While there was no documentation of the date of the Parent's receipt of the Notice to Implement, there was written documentation in the Notice to Implement that the Notice was sent/given to the Parent on May 14, 2013. (FOF #2)

The purpose of the written notice requirement is to inform parents of a public agency's final action on a proposal or refusal to initiate or change the identification, evaluation, or educational placement, or the provision of free appropriate public education to allow the parent time to fully consider the change and determine if he/she has additional suggestions, concerns, questions, and so forth. 56 IDELR 141 (OSEP 2010)) In this case, the Parent was at the May 14, 2013 IEP meeting and was orally informed of the implementation of the student's IEP on May 24, 2013 unless the Parent notified the CCSD otherwise. (FOF #4) The Parent's presence at the meeting and oral notification of the date the IEP would be implemented did not diminish the CCSD's obligation under the IDEA and the NAC to provide a prior written notice. However, it is a relevant consideration regarding the determination of what constituted a reasonable period of time for the Parent prior to implementation of the student's IEP.

Even assuming the Parent did not receive the Notice to Implement until May 21, 2013, given the Parent's awareness of the IEP, disagreement with its contents, and understanding that the IEP would be implemented on May 24, 2013 (FOF #s 2–4), the Parent still had several days to, at minimum, notify the CCSD that additional time was required to file for a due process hearing, if that was the desired action, or otherwise request a delay in implementation and did not do so. (FOF #9) Upon consideration of the foregoing, the complaint investigation team determined that the Parent was provided a written prior notice a reasonable period of time prior to the implementation of the student's IEP in accordance with the IDEA, 34 C.F.R. §300.503, and the NAC §388.300.

Therefore, the complaint investigation team determined the CCSD provided the parent a prior written notice in accordance with the IDEA and the NAC, Chapter 388, a reasonable time prior to implementing the CCSD's proposal for the provision of a free appropriate public education in the May 14, 2013 IEP.

ISSUE ELEVEN

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, in the April 2013 reevaluation of the student, specifically:

- a. The assessment tools and strategies gathered relevant functional, developmental, and academic information about the student's hearing impairment, including information provided by the Parent; and
- b. The CCSD employees who administered assessments and other evaluation materials to the student were trained and knowledgeable?

Summary of Allegations: The Complainant alleged that none of the information provided by the Parent was considered and that the assessment did not include facts and challenges for hearing impaired students, including information of support and equipment for the needs of a hearing impaired student. Additionally, the Complainant alleged that assessments were done by CCSD employees who did not appear to even be familiar with hearing impaired children.

FINDINGS OF FACT

1. The student was referred for evaluation on February 14, 2013 by the student's Multidisciplinary Team. The educational concerns were reading, speech and hearing. (4/15 MDT Report)

- 2. The March 1, 2013 Parent Consent for Evaluation designated assessment areas and methods that might be included in the reevaluation, including the areas of Health and Sensory/Motor Functioning; Academic Performance/Achievement and General Intelligence and Speech/Language Communication. The Parent signed the Consent for Evaluation on March 1, 2013. (3/1/13 Parental Consent for Evaluation)
- 3. The 2013 reevaluation of the student included the administration of the following assessment tools:
 - a. Clinical Assessment of Articulation and Phonology, administered by the Speech and Language Pathologist
 - b. Receptive One-Word Picture Vocabulary Test administered by the Speech and Language Pathologist
 - c. Expressive One-Word Picture Vocabulary Test administered by the Speech and Language Pathologist
 - d. Oral-Written Language Scale administered by the Speech and Language Pathologist.
 - e. Classroom observations across several settings and teacher and student interviews by the School Psychologist
 - f. An Academic Achievement Test, the Wechsler Individual Achievement Test-Third Edition, and test session observations administered by the School Psychologist. The WIAT-III including the following Subtests: Word Reading; Reading Comprehension; Pseudoword Decoding. Math Problem Solving, Numerical Operations and Spelling administered by the School Psychologist
 - g. Audiological assessment (2/27/13) administered by a community audiologist
 - h. Vision and Health assessment administered by the School Nurse
 - i. Information provided by the student's Parent. (4/15/13 MDT Report, Speech and Language Pathologist)

(4/15/13 MDT Report)

- 4. The student's reevaluation included consideration of currently available data on the student including:
 - a. The student's previous reevaluation dated April 20, 2010
 - b. IEP Progress Reports
 - c. Information regarding the student's current classroom performance
 - d. Current Academic Functioning as follows: IEP Progress Reports, Classroom teacher reports, Dibels reading fluency probes, Discovery Assessments, STAR reading, and CRT data from prior year

(4/15/13 MDT Report)

- 5. The Parents received a copy of the MDT Report and by signature acknowledged, receipt and review of the report and an understanding that they could submit a written response to propose changes to the report and the right to request to review the information used as a basis for the report. No written response was submitted by either of the Parents. (MDT Report, Review of documentation)
- 6. The student's Multidisciplinary Team included:
 - a. School Psychologist
 - b. Special Education Teacher
 - c. Teacher of the Deaf and Hard of Hearing who has a certificate to teach Hearing Impaired students 3-21 years

- d. Parents
- e. School Nurse
- f. Regular Education Teacher
- g. Speech and Language Pathologist
- h. Audiologist

(4/15/13 MDT Report)

- 7. Professionals who are involved in psychological or educational testing and who have training in the use of individually administered assessment instruments are qualified to administer and interpret the WIAT-III. (WIAT-III Manual)
- 8. The CCSD School Psychologist who administered the WIAT-III was a licensed school psychologist for grades kindergarten to twelfth grade. (License)
- 9. The CCSD School Nurse who administered the health and vision assessment was a licensed school nurse for grades kindergarten to twelfth grade. (License)
- 10. The CCSD Speech and Language Pathologist who administered and interpreted the speech and language assessments was a licensed speech and language pathologist for ages three to twenty-one. (License, Speech and Language Pathologist)
- 11. The community audiologist who administered the audiology assessment was selected by the Parent and the Report submitted to the CCSD. (MDT Report)

CONCLUSIONS OF LAW AND REASONS

a. Functional, Developmental and Academic Information

In accordance with the IDEA, 34 C.F.R. §300.304, and the NAC §388.340(1), in conducting an evaluation of a student with disabilities, the public agency is required to use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information concerning the pupil, including, without limitation, information provided by the parent that may assist in the determination of the student's continued eligibility and educational needs and content of the student's IEP. In this case, the Complainant alleged that the CCSD did not include facts regarding the student's hearing impairment and the student's challenges /or information provided by the Parent.

The student was referred for evaluation on February 14, 2013 by the student's Multidisciplinary Team. The educational concerns were reading, speech, and hearing. (FOF #1) The March 1, 2013 Parent Consent for Evaluation designated assessment areas and methods that might be included in the reevaluation, including the areas of Health and Sensory/Motor Functioning; Academic Performance/Achievement and General Intelligence and Speech/Language Communication. The Parent signed the consent on March 1, 2013. (FOF #2)

The 2013 reevaluation of the student included the administration of: four speech and communication tests; an academic achievement test and classroom observations and teacher and student interviews, an audiological assessment, and a vision and health assessment. (FOF #3) In addition, the student's reevaluation included consideration of currently available data on the student including: the student's previous reevaluation dated April 20, 2010; the student's IEP Progress Reports, and current academic functioning and classroom performance. The MDT Report also indicated that the reevaluation included information provided by the student's Parent. (FOF #3)

Upon consideration of the educational concerns of the Multidisciplinary Team in the referral of the student for reevaluation (FOF #1); parental consent to the designated assessment areas and methods

(FOF #2); the actual assessments conducted (FOF #3); and available information considered in the reevaluation of the student (FOF #4), the complaint investigation team determined that the CCSD did use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information regarding the student in the conduct of the 2013 reevaluation, including information regarding the student's hearing impairment, in accordance with the IDEA, 34 C.F.R. §300.304, and the NAC §388.340(1). Further, as discussed under Issue One and Issue Five, the information did assist the student's IEP Team in the determination of the student's continued eligibility as a student with disabilities and the student's educational needs and content of the student's IEP. (34 C.F.R. §300.304, and the NAC §388.340(1))

The Parents were at the April 15, 2013 MDT meeting, received a copy of the MDT Report and by signature acknowledged, receipt and review of the report and an understanding that they could submit a written response to propose changes to the report and the right to request to review the information used as a basis for the report. No written response was submitted by either of the Parents. (FOF #5) Based on the MDT Report and in the absence of a response from the Parent(s) regarding the noted consideration of information provided by the student's Parent in the evaluation process, the complaint investigation team determined that the CCSD also considered information from the Parent in the reevaluation of the student in accordance with the IDEA, 34 C.F.R. §300.304, and the NAC §388.340(1).

Therefore, the complaint investigation team determined that the CCSD complied with the IDEA and the NAC, Chapter 388, in the April 15, 2013 reevaluation of the student, specifically with regard to the assessment tools and strategies used to gather relevant functional, developmental, and academic information about the student's hearing impairment, including information provided by the Parent.

b. Trained and Knowledgeable Personnel

Pursuant to the IDEA, 34 C.F.R. §304(c)(1)(iv), and the NAC §388.340(4)(a)(4), a public agency must ensure that the assessments and other evaluation materials used to assess a child are administered by trained and knowledgeable personnel. The NAC §388.330(1) and (2) provides additional requirements that set forth the requisite training and knowledge, specifically "Any person responsible for administering or interpreting an assessment...must: 1) Possess a license or certificate in the area of the person's professional discipline; and 2) Be trained in the area of assessment in question."

In this case, the CCSD administered the following assessments in the reevaluation of the student:

- a. Clinical Assessment of Articulation and Phonology, administered by the Speech and Language Pathologist
- b. Receptive One-Word Picture Vocabulary Test administered by the Speech and Language Pathologist
- c. Expressive One-Word Picture Vocabulary Test administered by the Speech and Language Pathologist
- d. Oral-Written Language Scale administered by the Speech and Language Pathologist.
- e. Classroom observations across several settings and teacher and student interviews by the School Psychologist
- f. An Academic Achievement Test, the Wechsler Individual Achievement Test-Third Edition, and test session observations administered by the School Psychologist. The WIAT-III including the following Subtests: Word Reading; Reading Comprehension; Pseudoword Decoding. Math Problem Solving, Numerical Operations and Spelling administered by the School Psychologist
- g. Audiological assessment (2/27/13) administered by a community audiologist
- h. Vision and Health assessment administered by the School Nurse (FOF #3)

The CCSD personnel who administered the assessments were the Speech and Language Pathologist, the School Psychologist, and the School Nurse. The audiological assessment was performed by a

community audiologist who was selected by the Parent and the Report submitted to the CCSD. (FOF #11) As such, it was only the license/certificate and training of the three CCSD personnel that were the subject of the investigation with respect to this Issue.

While the WIAT-III did not require administration by a psychologist ((FOF #7), it was administered by the CCSD School Psychologist who was a licensed school psychologist for grades kindergarten to twelfth grade. (FOF #8) The CCSD School Nurse who administered the health and vision assessment was a licensed school nurse for grades kindergarten to twelfth grade (FOF #9). The CCSD Speech and Language Pathologist who administered the speech and language assessments was a licensed speech and language pathologist for children ages three to twenty-one (FOF #10). In addition, in accordance with NAC §388.370, the interpretation of the assessment of the student's speech, language or other communication skills must be made by a speech and language specialist, and in this case, it was done by the Speech and Language Pathologist. (FOF #10)

By virtue of these licenses/certificates, the CCSD personnel had training in the assigned areas of assessment. (See Issue One, FOF #s 11–18 for additional information regarding experience in the administration of the assessments.) Therefore, all of the CCSD personnel who administered the assessments were trained and knowledgeable pursuant to the IDEA, 34 C.F.R. §304(c)(1)(iv), and the NAC §§388.330(1) and (2) and 388.340(4)(a)(4).

As a final matter, while the IDEA and the NAC require evaluation procedures, for example, to address a student's suspected disability and the selection and administration of assessments to students with impaired sensory manual or speaking skills (34 C.F.R. §300.304(c)), the requirement that the evaluator be trained and knowledgeable does not require the individuals who administer the assessments to have the training and knowledge in the specific area of disability, or suspected disability, of the student as the Parent desired. (34 C.F.R. §304(c)(1)(iv); NAC §§388.330(1) and (2) and 388.340(4)(a)(4))

Therefore, the complaint investigation team determined that the CCSD complied with the IDEA and the NAC, Chapter 388, in the April 2013 reevaluation of the student in that the CCSD employees who administered assessments and other evaluation materials to the student were trained and knowledgeable.

ORDER FOR CORRECTIVE ACTION

The CCSD is required to take corrective action to address the violations found in this complaint investigation, specifically the CCSD: 1) did not include the names of all the CCSD employees who would attend the IEP meetings on March 5, 2013 and April 15, 2013 in the meeting notices sent to the Parent; 2) did not provide the supplemental service of a weekly report of the student's progress to the Parent as required by the March 7, 2012 IEP; 3) did not review the student's IEP periodically, but not less than annually; 4) did not convene an IEP meeting or issue a prior written notice notifying the Parent of its refusal to convene an IEP meeting in response to the Parent's request in October 2012 and 5) did not ensure that the student's hearing aids worn in school were functioning properly.

Pursuant to the discussion in Issue Seven above, the complaint investigation team determined compensatory education was warranted for the failure of the CCSD to respond to the Parent's October 2012 request for an IEP meeting and to timely complete the review of the student's IEP on an annual basis. In the absence of the IEP Team's determination regarding the student's need for additional specially designed instruction at the time of the Parent's request for a review of the student's IEP, the complaint investigation team determined compensatory reimbursement was warranted for the cost of 43.33 hours of services provided by the Tutoring Club.

This amount was based on calculated reimbursable hours beginning November 1, 2012, a reasonable time after receiving the request sometime in October if an IEP meeting were to be conducted, and the

additional minutes of direct instruction in reading that were included when the annual IEP was completed up to the date of the implementation of the May 14, 2013 IEP (100 minutes a week times 26 weeks = 2,600 minutes: 2600 minutes divided by 60 minutes = 43.33 hours). Therefore, the CCSD is ordered to reimburse the Parent for the cost incurred for 43.33 hours of reading tutoring at the Tutoring Club

The hourly cost of each of the hours of tutoring was \$38.28. The CCSD shall, within 30 days of receipt of this Report, provide the Parent with any CCSD forms and information necessary to obtain reimbursement from the CCSD in the amount of \$1,658.67 (\$38.28 times 43.33 hours = \$1,658.67).

Within 30 days of receiving this information, including the bills and evidence of payment to the Tutoring Club for these hours of service, the CCSD shall issue reimbursement to the Parent in the amount of \$1,658.67.

Professional Development/Training

Within 30 days of the receipt of this Report, the CCSD must develop and submit to the NDE a proposed Correction Action Plan (CAP) to review and revise as necessary, written policies and procedures as appropriate to comply with the IDEA and the NAC, Chapter 388 with regard to:

- 1. Including on IEP Meeting Notices, the names of CCSD employees who will be attending IEP meetings
- 2. Providing supplemental services as required by IEPs
- 3. Reviewing IEPs periodically, but not less than annually
- 4. Convening an IEP meeting on the request of parents or notifying parents requesting an IEP meeting of the refusal to convene an IEP meeting
- 5. Ensuring that students' hearing aids worn in school are functioning properly

Further, the CAP must include the plan to train appropriate personnel in the CCSD who are responsible for implementing IEPs about the policies and procedures listed in #1–#5 above.

The CAP must be approved by the NDE prior to implementation. Following approval of the CAP by the NDE, it must be implemented within 30 days and a report must be submitted to the NDE to document its implementation no later than 30 days after its implementation.