

**COMPLAINT INVESTIGATION  
NYE COUNTY SCHOOL DISTRICT  
(#NY013013)**

**Report Issued on 6/7/13**

**INTRODUCTION**

On 1/30/13, the Nevada Superintendent of Public Instruction received a complaint (Complaint) dated 1/25/13 from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA) and violations of the Nevada Administrative Code (NAC) by the Nye County School District (NCS D) with respect to the implementation of the student's individualized educational program (IEP).

The Nevada Department of Education (NDE) determined that the quantity and complexity of the allegations raised in the Complaint, as well as the unavailability of school personnel during the spring break to interview, constituted exceptional circumstances warranting an extension pursuant to the IDEA, 34 C.F.R. §300.152(b), and the NAC §388.318(5)(a) and extended the time period to conclude its investigation and to issue the report.

Subsequently, the Parent filed another complaint, dated 4/2/13, alleging violations of the IDEA and the NAC by the NCS D that, with two exceptions, were the same substantive issues already accepted for investigation in the Complaint. The NDE exercised its discretion to accept the additional allegations as part of its investigation of the #NY013013 Complaint and amended that Complaint accordingly. (Discussion of the IDEA regulations: 71 Fed. Reg. pg. 466033 (August 14, 2006)) Future references to Complaint in this report encompass the allegations in both complaints.

With the receipt of the Complaint referenced in the above paragraph, pursuant to 34 C.F.R. §300.152(b), the NDE again extended the 60-day time limit by an additional 35 days to June 7, 2013. This second extension was required for further exceptional circumstances, specifically to ensure that the complaint investigation team had an adequate amount of time to complete its investigation of the issues to include the additional time frame covered by the second complaint.

The Parent, in addition to the allegations accepted for investigation, raised allegations concerning events that had occurred outside the time period for which the NDE had jurisdiction to investigate and issues over which the NDE did not have jurisdiction to investigate. The Parent was informed that these concerns and any associated remedies were not within the jurisdiction of the NDE to address through the complaint process. Further, there were several allegations of a failure to implement accommodations in the student's IEP that, upon review of the student's IEPs, were not included in the content of the IEPs and, therefore, no further investigation was warranted of those allegations.

The allegations set forth in the Complaint that were accepted by the NDE for investigation were:

### **With respect to Math**

1. The student did not receive the services and instruction as required in the transition plan in the 5/11/11 IEP with respect to Math.
2. The Math required by the 5/10/12 IEP was not covered in the 2012 extended school year (ESY).
3. The student was supposed to gain one full year in Math per the 5/11/11 IEP and this did not happen.
4. The student did not receive a minimum of 30 minutes of specially designed instruction per week in the Math classroom from the regular education teacher or the special education teacher as required by the 11/15/12 IEP.
5. The student did not receive the services and instruction required in the transition plan in the 5/10/12 IEP with respect to Math.

### **With respect to Language Arts (L.A.)**

6. The student did not receive 50/min/week with the special education teacher in the general education classroom and did not receive 180/min/week in the resource room for Language Arts (L.A. or English) per the 5/11/11 IEP.
7. The student did not receive the services and instruction in English as required in transition plan in the 5/11/11 IEP.
8. The student was supposed to gain one full year in L.A. per the 5/11/11 IEP and did not.
9. The student did not receive L.A. from the special education teacher in the resource room for 4 periods/week as required by the 5/10/12 IEP because the special education teacher failed to teach the grade appropriate content.
10. One L.A. goal, that the student will gather information and write a rough draft on becoming a veterinarian technician, did not happen during the first semester as required by the 5/12/12 IEP.
11. The student did not receive the services and instruction in English as required in transition plan in the 5/10/12 IEP.

### **With respect to accommodations for assignments**

12. The student was not granted additional time to make up work as required by the 5/11/11 IEP, the 5/10/12 IEP and the 11/15/12 IEP.
13. The assignments in Biology, World History, Psychology, U.S. History and Algebra 1 were not modified as required by the 11/15/12 IEP.
14. The Math and Resource teacher did not sign the daily agenda as required by the 11/15/12 IEP through 4/8/13.

### **With respect to testing**

15. The Science tests and other tests above the student's grade level were not read to the student during the 9<sup>th</sup> grade as required by the 5/11/11 IEP.
16. The student did not read tests aloud to staff members and received prompts between 11/15/12-4/8/13.

17. On 2/4/13 and 2/27/13 in Biology, the student was not sent to the resource room to take the test or allowed to sit in an area separate from the class for reading, correcting and modifying tests per 11/15/12 IEP.
18. On 2/4/13 in U.S. History, the student was sent to the resource room to read the test aloud but no one listened to the student or corrected the student as required.
19. The student reviewed very little material for the reading proficiency exam.
20. The student did not receive instruction for the proficiency exams as required by the 5/10/12 IEP and the 11/15/12 IEP.
21. The accommodation for reading the Science and Math Proficiency Exams aloud to the student was not provided.

**With respect to education in the least restrictive environment (LRE)**

22. The student was placed in the resource room for L.A. by the 5/10/12 IEP committee and moved to the resource room for World History when the services should all have been provided in the general education environment with supports which was the least restrictive environment.

**COMPLAINT ISSUES**

The allegations articulated in the Complaint, and further clarified during the investigation, raised the following issue for investigation **for the time period 1/30/12–4/2/13.**

Issue: Whether the NCSD complied with federal and state requirements to implement the IEPs with respect to providing:

1. Specially designed instruction in Math:
  - a. Services and instruction in Math per the 5/11/11 Transition Plan in the 5/11/11 IEP.
  - b. Meeting the goal of one year's growth in Math per the 5/11/11 IEP.
  - c. Teaching Math during 2012 ESY as required by the 5/10/12 IEP.
  - d. Providing 30 minutes of instruction in the Math class as required by the 5/10/12 IEP from early December 2012 to 1/10/13.
  - e. Course of study and instruction in Math per the 5/10/12 Transition Plan in the 5/10/12 IEP.
2. Specially designed instruction in Language Arts:
  - a. 50/min week in the regular education classroom per the 5/11/11 IEP.
  - b. L.A. instruction in the resource room per the 5/11/11 IEP.
  - c. 4 periods a week in the resource room as required by the 5/10/12 IEP.
  - d. Teaching the student to research and write a paper.
  - e. Services and instruction in English per the 5/11/11 Transition Plan in the 5/11/11 IEP.
  - f. Meeting the goal of one year's growth in English per the 5/11/11 IEP.

- g. Services and instruction in English per the 5/10/12 Transition Plan in the 5/10/12 IEP.
- 3. Accommodations for assignments
    - a. Reducing assignments in Biology, World History, Psychology, U.S. History and Algebra 2 as required by the 11/15/12 IEP.
    - b. Providing additional time to make up work as required by the 5/11/11 IEP, the 5/10/12 IEP and the 11/15/12 IEP.
    - c. Providing the signatures of the Math and Resource teachers on the Daily Planner as required by the 11/15/12 IEP.
  - 4. Accommodations for testing
    - a. Reading Science tests above the student's grade level in the 9<sup>th</sup> grade as required by the 5/11/11 IEP.
    - b. Permitting student to read tests aloud to an adult and be prompted as required by the 11/15/12 IEP.
    - c. Providing any instruction for proficiency review and testing required by the 5/10/12 IEP and the 11/15/12 IEP.
    - d. Reading the Proficiency exams in Science and Math aloud to the student.
  - 5. Placement in the regular education environment required by the 5/10/12 IEP, specifically with respect to L.A. and World History.

### **PERSONS PROVIDING INFORMATION**

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

- 1. Parent
- 2. Director of Special Education
- 3. Special Education Coordinator
- 4. Principal
- 5. Case Manager/Special Education teacher/Resource teacher
- 6. English teacher for the 2011/2012 school year (English 9 teacher)
- 7. Special Education Aide
- 8. Math teacher for the 2012/2013 school year (Math teacher)

### **DOCUMENTS REVIEWED**

The documents received and reviewed by the investigation team included the following:

- 1. Complaint
- 2. Additional parent input submitted on 2/21/13, 3/25/13, 4/13/13, 5/20/13
- 3. 5/11/11 Annual IEP
- 4. 5/10/12 Annual IEP
- 5. 11/15/12 IEP revision
- 6. 2011/2012 and 2012/2013 NCSD Calendars (Calendars)

7. Student's attendance records (Attendance)
8. Student's class schedules (Schedules)
9. Sample notes from English teacher
10. Student grade sheets (Grades)
11. Specialized progress reports for 2011/2012 and 2012/2013 school year
12. Sample tests and assignments from Parent and NCSD
13. 1/28/13 Email from NCSD Superintendent to Parent
14. 4/17/13 Email from Principal
15. English 9 Teacher's notes and grade sheets from 2011/2012 school year (English 9 Notes)
16. Specialized progress reports for 2011/2012, 2012/2013 (Specialized Progress Reports)
17. Report Cards for 2011/2012, 2012/2013 (Report Cards)

## **FINDINGS OF FACT (FOF)**

### **General FOF**

1. This investigation involved a tenth grade student eligible for special education as a student with a specific learning disability. School days at the student's school were Monday–Thursday. (Review of IEPs, Principal)
2. During the time period of this investigation, there were three IEPs in effect: the 5/11/11 IEP (for 14 weeks under the jurisdiction of the NDE to investigate, one week of which was Spring Break) the 5/10/12 IEP and the 11/15/12 IEP. The 11/15/12 IEP was a revision of the accommodations of the 5/10/12 IEP and will be referenced in this complaint investigation report when the accommodations in that revision are addressed. (Calendars, 5/11/11 IEP, 5/10/12 IEP, 11/15/12 IEP or collectively IEPs as appropriate)
3. The student's IEPs included some instruction in what were identified as a 'CC classroom'. A CC classroom referred to a regular (or general) education classroom with a regular education teacher and a special education teacher or special education aide being present some of the time. The Resource teacher was the Special Education teacher and the Case Manager for the student and all three terms are used interchangeably in this report. (Principal, Resource teacher)
4. The student was enrolled in general education for Math (pre Algebra), English, Science, Health, Computer Literacy, Health and Physical Education for the 2011/2012 school year covered by the 5/11/11 IEP, including the Transition Plan. This represented the general education requirements to receive a standard diploma. (Schedules, Principal)
5. For the school year covered by the 5/10/12 IEP, the student was enrolled in regular education for Math, Biology, Psychology, U. S. History, World History and Life Skills English. This represented the standard high school course of study to receive a high

school diploma, prepare for proficiency exams and prepare for postsecondary school. (Schedules, Principal)

6. The complaint investigation team requested documentation from the NCSD with respect to all issues and, where documentation was not provided, it is noted in the FOFs below.

**Specific FOF**

**Specially Designed instruction in Math**

7. The 5/11/11 IEP stated, in the Transition Plan under the “Course of Study Section” that the focus of the student’s course of study would be “[Student] will follow the general education requirements in order to receive a standard diploma” and under the “Instruction Section” that “Basic instruction with support in Math...” (5/11/11 IEP)
8. The 5/11/11 IEP had one Math goal stating that the student would increase knowledge in the area of Math by one grade level. Two short-term objectives stated that the student would identify the process needed to solve given Math problems and determine how and when to break a problem into simpler parts. The student received a passing grade in Math for the 2011/2012 school year. No documentation was available to determine whether the short-term objectives were addressed. (5/11/11 IEP, Report Card, Review of documents)
9. The student achieved growth in the Math goals for the 2011/2012 school year and received a passing grade. (4/16/12 Specialized Progress Report, Grades)
10. The student’s Math scores on the academic achievement tests reported on the 5/11/11 IEP and the 5/10/12 IEP were as follows:

	5/11/11 IEP	5/10/12 IEP
	Grade Level	Grade Level
Calculation	7.5	8.3
Math Fluency	5.9	n/a
Applied Problems	3.8	3.8

(5/11/11 and 5/10/12 IEPs)

11. The 5/10/12 IEP required ESY services for the student. (5/10/12 IEP)
12. The student had one Math goal for ESY 2012. (5/10/12 IEP)
13. The student attended ESY during summer of 2012 for 8 four hour days. In ESY the Special Education teacher stated that he taught Math to the student 2 hours a day using a workbook the Parent asked him to use. The Principal routinely observed the Special Education teacher teaching Math on a number of days during the 2012 ESY. No documentation was available with regard to the teaching of Math during ESY. (Special Education teacher, Principal, Review of documents)

14. The Parent believed that the Special Education teacher did not teach any Math, with the exception of one day, during ESY. (Parent)
15. The 5/10/12 IEP required that the student receive 30 minutes of specially designed instruction in the Math class in the general education classroom. (5/10/12 IEP)
16. For four school weeks, between early December 2012 to 1/10/13, the special education teacher did not provide 30 minutes/week of specially designed instruction in the general education classroom. (Math teacher, Parent)
17. The student achieved 85% of the Math goal, 90% of one of the short-term objectives and 80% of the others by the third quarter of the 2012/2013 school year. (Specialized Progress Report)
18. A review of the student's Math work did not demonstrate the Math teacher taught word problems, which were the subject of the two short-term objectives in the Math goal for the 5/10/12 IEP. (Special Education Coordinator, Parent, 5/10/12 IEP)
19. Word problems are included on the Math proficiency tests. (Parent, independent verification by complaint investigation team)
20. The 5/10/12 IEP stated in the Transition Plan, under the "Course of Study Section" that the focus of the student's course of study would be "Passing all curriculum courses required to receive the diploma, pass proficiency exams, and prepare for postsecondary school". Under the "Instruction Section" the Transition Plan stated that the student would receive "Specialized instruction in Math ... to help pass proficiency tests and prepare [Student] for postsecondary school." (5/10/12 IEP)

#### **Specialty Designed Instruction in L.A.**

21. The 5/11/11 IEP stated that the student would receive specialty designed instruction in English 9 for 50 minutes/week in the CC English Class. (5/11/11 IEP)
22. The student did not receive specialty designed instruction in the CC English class. (English 9 Teacher)
23. The student was provided instructional support addressing the L.A. goals of the 5/11/11 IEP in the CC English class by the English 9 teacher. (English 9 teacher, English 9 Notes)
24. The 5/11/11 IEP stated that the student would receive specialty designed instruction "in Pre-Algebra and Language Arts 180 min/week in the resource room." The Parent believed that the 180 min/week referred to 180/min/week in the resource room for L.A. and the NCSD believed that it referred to a combination of 180/min/week as needed in totality for Math and L.A. There was no documentation of the amount of time the student

received L.A. instruction in the resource room. (5/11/11 IEP, Schedules, Review of documents, Complaint, Principal)

25. The 5/11/11 IEP included one L.A. goal that stated the student would increase knowledge in the area of L.A. by one grade level. The short-term objectives addressed spelling, creating multiple paragraphs, using appropriate strategies when reading for different purposes and decoding and encoding words. The student achieved 50% of the L.A. goal and 65% of the short-term objectives by the end of the third quarter of the 2011/2012 school year. (5/11/11 IEP, Specialized Progress Report).
26. The 5/11/11 IEP stated, in the Transition Plan under the “Course of Study Section” that the focus of the student’s course of study would be “[Student] will follow the general education requirements in order to receive a standard diploma” and under the “Instruction Section” the student would receive “Basic instruction with support in ...English.” (5/11/11 IEP)
27. The 5/10/12 IEP stated in the Transition Plan, under the “Course of Study Section” that the focus of the student’s course of study would be “Passing all curriculum courses required to receive the diploma, pass proficiency exams, and prepare for postsecondary school”. Under the “Instruction Section” the Transition Plan stated that the student would receive “Specialized instruction in ...English to help pass proficiency tests and prepare [Student] for postsecondary school.” (5/10/12 IEP)
28. The student’s L.A. scores on the academic achievement tests reported on the 5/11/11 IEP and the 5/10/12 IEP were as follows:

	5/11/11 IEP	5/10/12 IEP
	Grade Level	Grade Level
Reading fluency	4.5	6.4
Spelling	3.7	4.0
Passage Comprehension	2.7	3.8

(5/11/11 and 5/10/12 IEPs)

29. The 5/10/12 IEP stated that the student would receive specially designed instruction in L.A. “4 periods/week when school is in session and student is available” in the resource room. (5/10/12 IEP)
30. The student was enrolled in Life Skills English, a L.A. class, in the resource room for 4 periods/weeks when school was in session and the student was available. (Attendance, Schedules)
31. The 5/10/12 IEP included 3 L.A. goals. Two of the L.A. goals, each with two objectives, addressed improving spelling skills to a 6<sup>th</sup> grade level and improving reading comprehension at least one grade level. The student made progress towards the two L.A. goals and objective throughout the 2012/2013 school year. (Specialized Progress Reports)

32. The third and final L.A. goal in the 5/10/12 IEP required that the student conduct independent research on the requirements for becoming a veterinarian technician and write a report by the annual review date. One of the short-term objectives stated that a rough draft would be completed by the end of the first semester and the final completed by the end of the second semester. The NCSD did not provide an opportunity or instruction for the student to conduct the independent research or write the rough draft the first semester. (12/10/12 IEP, Specialized Progress Report, Principal)

### **Accommodations for Assignments**

33. The 11/15/12 IEP stated “Core Content class assignments in which Language Arts play a part will be modified to 50% ...” in the general education classroom. (11/15/12 IEP Revision)

34. The Core Content classes in which L.A. played a part were Psychology, U.S. History, World History, and Science. (Principal)

35. No documentation was presented demonstrating that all the core content classes in which L.A. played a part were modified to 50%. (Review of documents)

36. The 5/11/11 IEP included an accommodation stating “Student will be allowed an additional week to turn in missing assignments after each 3 week progress reporting date. Turned-in assignments will have a 10% deduction” with a frequency of “1 x per/3 wk grading period” in the general classroom. The 5/10/12 IEP and 11/15/12 IEPs included an accommodation that stated “At the end of each school week, assignments not completed will be sent home to be completed by the next school day.” (5/11/11 IEP, 5/10/12 IEP, 11/15/12 IEP)

37. Other than in the general education English 9 class, no documentation was presented demonstrating that the student was allowed an additional week to turn in missing assignments as required by the 5/11/11 IEP although teachers reported that the student was permitted to take home incomplete assignments and complete them by the end of the next school day. There was also no documentation that all the general education teachers consistently allowed the student additional time to turn in work pursuant to the requirements of the 5/10/12 and 11/15/12 IEPs. (Principal, Review of documents, English 9 teacher, English 9 Notes)

38. The 11/15/12 IEP Revision included an accommodation stating that “[Student] will keep a Daily Planner listing assignments and signed by teachers signifying complete or incomplete assignments to be checked by Case Manager on the last day of school week....” (11/15/12 IEP Revision)

39. The Math Teacher believed it was the responsibility of the student to bring the Daily Planner to him at the end of the class period and on the rare occasions that the student brought it to him at the end of the class period, he signed it. (Math Teacher)

40. Neither the Math teacher nor the Special Education teacher, in the role of L.A. teacher, signed the Daily Planner each day. (Review of documents)
41. While the Case Manager checked the Daily Planner on the days the student presented it to him, the student did not present it to him daily. Further, the Case Manager did not check the planner on the last day of each school week. (Case Manager, Review of documents)

### **Accommodations for Testing**

42. The 5/11/11 IEP included an accommodation stating “Student may be allowed to go to the resource room for assistance on assignments & tests. Science tests will be read to the student” for 15/minutes a week in the general education class. (5/11/11 IEP)
43. The student did not request that the Science teacher read the tests to the student and the Science teacher did not read any tests to the student. (Principal)
44. The 11/15/12 IEP Revision included an accommodation that stated “[Student] will read aloud tests to adult staff member and staff member will monitor/prompt where student verbalizes incorrectly” each time a test is given in the General Education classroom. (11/15/12 IEP Revision)
45. Tests were not read aloud to the student each time a test was given in the General Education classroom because the student did not request it and turned down the offer when it was given. (Principal)
46. The student’s IEP Accommodations Form for the Nevada Proficiency Examination Program (NPEP) in the 5/10/12 IEP stated that “Test administrator or proctor may (**as needed**)... read/re-read the words of the Math and/or Science test(s) in English, to the student....” (5/10/12 IEP)
47. The student was asked, as witnessed by three people, if the student wished the Science and Math Proficiency exams to be read aloud and declined. Based on the student’s response to the question, the test administrator/proctor determined reading the exams aloud to the student was not needed. (4/17/13 Email, Principal)
48. The 5/10/12 IEP stated in the Transition Plan, under “Instruction” that the student would receive “Specialized instruction in Math and Language Arts to help pass proficiency tests and prepare [Student] for postsecondary school.” (5/10/12 IEP)

### **Placement in the LRE**

49. The 5/10/12 IEP committee reviewed and rejected placement of the student in a regular class with supplementary aids and services (no removal) and selected a regular class and special education class (e.g. resource) combination for the student. The 5/10/12 IEP

included the justification for the placement involving removal from the regular education environment. The 5/10/12 IEP required placement of the student in the regular education environment for 86% of the time and in the special education class, i.e. resource room, for 14% of the time. The student was placed in the regular education environment 86% of the time and in the resource room for 14% of the time. The Parent signed that she agreed with the 5/10/12 IEP. (5/10/12 IEP, Schedule)

50. On 11/19/12 the student was placed in the resource room for World History without a change in the 5/10/12 IEP of placement for 86% of the time in the regular education environment. On 1/20/13 the student was moved back to the regular education class for World History. The time spent in the resource room for World History resulted in the student being removed from the regular education environment in excess of 14% of the time for approximately two months. (Principal)

51. Subsequent to the filing of the Complaint, the student was placed back in the regular education classroom for World History. (Principal)

## **CONCLUSIONS OF LAW AND REASONS**

Issue: Whether the NCSD complied with federal and state requirements to implementing the IEPs with respect to providing:

1. Specially designed instruction in Math:
  - a. Services and instruction in Math per the 5/11/11 Transition Plan in the 5/11/11 IEP.
  - b. Meeting the goal of one year's growth in Math per the 5/11/11 IEP.
  - c. Teaching Math during 2012 ESY as required by the 5/10/12 IEP .
  - d. Providing 30 minutes of instruction in the Math class as required by the 11/15/12 IEP from early December 2012 to 1/10/13.
  - e. Course of Study and instruction in Math per the 5/10/12 Transition Plan in the 5/10/12 IEP.
2. Specially designed instruction in Language Arts:
  - a. 50/min week in the regular education classroom per the 5/11/11 IEP.
  - b. L.A. instruction in the resource room per the 5/11/11 IEP.
  - c. 4 periods a week in the resource room as required by the 5/10/12 IEP.
  - d. Teaching the student to research and write a paper.
  - e. Services and instruction in English per the 5/11/11 Transition Plan in the 5/11/11 IEP.
  - f. Meeting the goal of one year's growth in English per the 5/11/11 IEP.
  - g. Services and instruction in English per the 5/10/12 Transition Plan in the 5/10/12 IEP.
3. Accommodations for assignments

- a. Reducing assignments in Biology, World History, Psychology, U.S. History and Algebra 2 as required by the 11/15/12 IEP.
  - b. Providing additional time to make up work as required by the 5/11/11 IEP, the 5/10/12 IEP and the 11/15/12 IEP.
  - c. Providing the signatures of the Math and Resource teachers on the Daily Planner as required by the 11/15/12 IEP.
4. Accommodations for testing
    - a. Reading Science tests above the student's grade level in the 9<sup>th</sup> grade as required by the 5/11/11 IEP.
    - b. Permitting student to read tests aloud to an adult and be prompted as required by the 11/15/12 IEP.
    - c. Providing any instruction for proficiency review and testing required by the 5/10/12 IEP and the 11/15/12 IEP.
    - d. Reading the Proficiency exams in Science and Math aloud to the student.
  5. Placement in the regular education environment for L.A. and World History as required by the 5/12/12 IEP.

State regulations at NAC §388.281(6)(g) require that the public agency shall “provide the services and instruction deemed necessary for the pupil by the [IEP] committee.” (See also 34 C.F.R. §300.323(c)(2))

State regulations at NAC §388.215(5) require a school district to take measures to ensure every resident student with a disability is served in the manner appropriate to the unique needs of the student. These measures are required to include the establishment of a system of records for the purpose of verifying that each student with a disability is receiving services appropriate to the student's disability.

### **Specially designed instruction in Math**

#### **a. Transition Plan in the 5/11/11 IEP with respect to Math**

The 5/11/11 IEP included a Transition Plan that required that the student follow the general education requirements in order to receive a standard diploma and that the student be provided basic instruction with support in Math. (FOF #7) The student was enrolled in the general education courses required to receive a standard diploma. (FOF #4) Other than two short-term objectives relating to solving Math problems (FOF #8), the IEP did not include any further specificity with regard to the “support in Math” and the Complainant did not provide any specific facts relating to the allegation in the Complaint.

It is important to note that only 13 instructional weeks of the 5/11/11 IEP are at issue during the time period of this Complaint as there was a spring break of a week during the 14 weeks the 5/11/11 IEP was under the jurisdiction of the complaint investigation team with respect to

this Complaint. (FOF #2) Given the absence of contrary information from the Complainant; the student's enrollment in general education Math; documentation of the student's achievement of educational growth in Math for the 2011/2012 school year; and receipt of a passing grade (FOFs #9, #10), the complaint investigation team determined the student was provided with the general education requirements to receive a standard diploma and received basic instruction and support in Math pursuant to the requirements of the NAC §388.281(6)(g) that required the public agency to "provide the services and instruction deemed necessary for the pupil by the [IEP] committee." (See also 34 C.F.R. §300.323(c)(2))

*Therefore the complaint investigation team determined that the NCSD complied with state and federal regulations to implement the student's 5/11/11 IEP with respect to providing the services and instruction in Math required by the Transition Plan.*

#### **b. One Year's Growth in Math per the 5/11/11 IEP**

The 5/11/11 IEP had one Math goal stating that the student would increase knowledge in the area of Math by one grade level. (FOF #8) As discussed previously, only 13 instructional weeks are at issue in this with respect to the 5/11/11 IEP and the student achieved educational growth in Math. (FOFs #9, #10) Notwithstanding this documented growth and contrary to the Complainant's allegation, the IDEA does not guarantee the achievement of the goals and objectives in an IEP, but rather requires the agency to provide the required services and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP. (See the IDEA regulations effective prior to the 2006 regulations, 34 C.F.R. §300.350, and the discussion in the 2006 regulations, 71 Fed. Reg. pg. 46664 (August 14, 2006)). Note that the deletion of the provision in 2006 was because it was unnecessary due to the entitlement to a free appropriate public education (FAPE). Consistent with the prior conclusion, the complainant investigation team determined that the NCSD provided the services and instruction deemed necessary for the pupil by the IEP committee. (NAC §388.281(6)(g); 34 C.F.R. §300.323(c)(2))

*Therefore the complaint investigation team determined that the NCSD complied with state and federal regulations to implement the student's 5/11/11 IEP with respect to implementing the 5/11/11 IEP Math goal.*

#### **c. Math Instruction in the 2012 ESY**

The 5/10/12 IEP required ESY instruction in Math addressing one math goal. (FOF #11, #12) The student's ESY was for a period of 8 four hour days. (FOF #13) The NAC §388.215(5) requires a school district to take measures to ensure every resident student with a disability is served in the manner appropriate to the unique needs of the student. These measures are required to include the establishment of a system of records for the purpose of verifying that each student with a disability is receiving services appropriate to the student's disability.

The Parent agreed that Math was provided on one day of ESY. (FOF #14) While the complaint investigation team took note that the Principal and the Resource teacher stated that the Math instruction was provided throughout the 2012 ESY (FOF #13), the NCSD provided

no documentation to verify that the student received the appropriate services, in this case ESY instruction in Math. This formal requirement for a system of records has an important purpose that is not merely technical. A system of records prevents the very situation that arose in this Issue of “he said” versus “she said”. The complaint investigation team declines to decide this issue based on assertions. Therefore, absent the documentation that the NCSD provided the services and instruction deemed necessary for the pupil by the IEP committee, the complaint investigation team concluded the 2012 ESY Math services were not provided for 7 of the 8 instructional days.

*Therefore the complaint investigation team determined that, absent any documentation to the contrary, the NCSD did not comply with the state and federal regulations with respect to providing Math instruction throughout the 2012 ESY.*

**d. Thirty minutes of Math instruction as required by the 5/10/12 IEP**

The 5/10/12 IEP required that the student receive 30 minutes a week of specially designed instruction in Math in the general education classroom. (FOF #15) The NCSD conceded that for four school weeks, between December 2012 and January 10, 2012, the student was not provided the required 30 minutes/week of specially designed instruction in the general education classroom. (FOF #16) The NCSD was required by the NAC §388.281(6)(g) to “provide the services and instruction deemed necessary for the pupil by the [IEP] committee” and failed to do so when it did not provide the student with the 30 minutes of specially designed instruction in Math for four school weeks.

*Therefore the complaint investigation team determined that the NCSD did not comply with state and federal regulations to implement the student’s 5/10/12 IEP when it did not provide thirty minutes of specially designed Math instruction as required for a period of four school weeks.*

**e. Transition Plan in the 5/10/12 IEP with respect to Math**

The 5/10/12 IEP Transition Plan included a statement that the focus of the student’s Course of Study would be “Passing all curriculum courses required to receive the diploma, pass proficiency exams, and prepare for postsecondary school”. Under the “Instruction Section” the Transition Plan stated that the student would receive “Specialized instruction in Math ... to help pass proficiency tests and prepare [Student] for postsecondary school”. (FOF #20) The complaint investigation team determined that the statements of focus/purpose were the intended goal for the student’s course of study. As discussed previously, the NCSD was not accountable for the attainment of the goal, but rather was required to provide the required services and make a good faith effort to assist the child to achieve the goal.

The NCSD provided the curriculum courses required for the student to receive a diploma, and prepare for postsecondary school, including enrolling the student in the Algebra 1 class. (FOF #5) It was noted by the complaint investigation team that the student did make progress towards one of the math goals and two of its short-term objectives. (FOF #17) However, the IEP required more. Word problems are included on the Math proficiency tests. (FOF #19) A

review of the student's Math work did not demonstrate the Math teacher taught word problems, which were the subject of the two short-term objectives in the Math goal for the 5/10/12 IEP. (FOF #18)

The NCSD was required to provide the services and instruction deemed necessary by the IEP committee (NAC §388.281(6)(g)) and did not do so with respect to the provision of specialized instruction in Math in the Transition Plan in all regards. (See the related issue, **Specially Designed Instruction in Math: "d"** above).

*Therefore the complaint investigation team determined that the NCSD failed to comply with state and federal regulations to implement the 5/10/12 Transition Plan with respect to providing the specialized instruction in Math in all regards.*

### **Specially designed instruction in Language Arts:**

#### **a. 50/minutes/week in regular classroom per the 5/11/11 IEP**

The 5/11/11 IEP stated that the student would receive specially designed instruction in English 9 for 50 minutes/week in the CC English Class. (FOF #21) The NCSD conceded that the student did not receive specially designed instruction in the CC English class. (FOF #22) Pursuant to the NAC §388.281(6)(g), the NCSD was required to provide the specially designed instruction in English 9 for 50 minutes a week in the CC English Class but did not do so.

*Therefore the complaint investigation team determined that the NCSD did not comply with state and federal regulations to provide the specially designed instruction in English in the regular classroom per the requirements of the 5/11/11 IEP.*

#### **b. L.A. instruction in the resource room per the 5/11/11 IEP**

The 5/11/11 IEP stated that the student would receive specially designed instruction "in Pre-Algebra and Language Arts 180 min/week in the resource room." The Parent believed that the 180 min/week referred to 180/min/week in the resource room for Language Arts and the NCSD believed that it referred to a combination of 180/min/week as needed in totality for Math and L.A. The clarity of the student's IEP is not an issue in this Complaint and the complaint investigation team does not need to resolve the actual commitment of resources for purposes of this issue. Regardless of how much time was required to be spent on L.A. instruction in the resource room, there was no documentation of the actual amount of time that was spent on L.A. instruction in the resource room. (FOF #24)

Pursuant to NAC §388.215(5), the NCSD was required to have a system of records to verify that the student received the services appropriate to the student's disability. As discussed previously, absent documentation that the NCSD provided the specially designed instruction in L.A., in addition to Math instruction, the complaint investigation team determined that the required L.A. services were not provided in accordance with the NAC §388.281(6)(g). The complaint investigation team did note that the student achieved 50% of the L.A. goal and

65% of the short-term objectives by the end of the third quarter of the 2011/2012 school year (FOF #25) and that progress was considered relative to the remedy.

*Therefore the complaint investigation team determined that, absent any documentation to the contrary, the NCSD did not comply with state and state regulations to provide the specially designed instruction of L.A. in the resource room per the 5/11/11 IEP.*

**c. 4 periods of L.A. instruction a week in the resource room per the 5/10/12 IEP**

The 5/10/12 IEP stated that the student would receive specially designed instruction in L.A. “4 periods/week when school is in session and student is available” in the resource room. (FOF #29) The student was enrolled in Life Skills English, a L.A. class, in the resource room for 4 periods/week when school was in session and the student was available. (FOF #30) In addition, the student made progress toward two out of three of the annual L.A. goals. (FOF #31) (See discussion in **Specially Designed Instruction in Language Arts: “d”** below for a discussion of the third annual goal). Pursuant to the NAC §388.281(6)(g), the NCSD was required to provide the student with 4 periods of L.A. instruction a week in the resource room and did so.

*Therefore the complaint investigation team determined that the NCSD did comply with state and federal regulations to implement the 5/10/12 IEP when it provided 4 periods of L.A. instruction a week in the resource room.*

**d. Research and write a paper**

One of the L.A. goals in the 5/10/12 IEP required that the student conduct independent research on the requirements for becoming a veterinarian technician and write a report by the annual review date. One of the short-term objectives stated that research and a rough draft would be completed by the end of the first semester (FOF #32) While the goal indicated the student would conduct “independent research”, the student’s IEP also called for specially designed instruction in L.A. as discussed above, and the student did not receive any with regard to this goal. The NCSD’s failure to provide this specially designed instruction was inconsistent with the requirements of the NAC §388.281(6)(g). As discussed above in **Specially Designed Instruction in Language Arts: “c”**, the student did receive the amount of specially designed instruction in L.A. in totality required by the 5/10/12 IEP, although no instruction time was allocated towards this goal.

*Therefore the complaint investigation team determined that the NCSD did not comply with state and federal regulations to implement the 5/10/12 IEP with respect to the L.A. goal of researching and writing a paper on becoming a veterinarian technician.*

**e. Transition Plan in the 5/11/11 IEP with respect to English**

The 5/11/11 IEP stated, in the Transition Plan under the “Course of Study Section” that the focus of the student’s course of study would be “[Student] will follow the general education

requirements in order to receive a standard diploma” and under the “Instruction Section” the student would receive “Basic instruction with support in ...English”. (FOF #26)

While the student was not provided specially designed instruction in the CC English class as discussed previously in **Specially Designed Instruction in Language Arts: “a”**, the student was provided the general education requirements needed to receive a standard diploma (FOF #5) and received the basic instruction with support in English. (FOF #23) Pursuant to the NAC §388.281(6)(g), the NCSD was required to provide the student the services and instruction deemed necessary by the IEP committee with respect to providing basic support in English per the Transition Plan and did so.

*Therefore the complaint investigation team determined that the NCSD complied with state and federal regulations to implement the 5/11/11 Transition Plan with respect to providing the instruction in English.*

**f. One year’s growth in English per the 5/11/11 IEP**

The 5/11/11 IEP included one L.A. goal. The L.A. goal stated the student would increase knowledge in the area of L.A. by one grade level. That goal included a short-term objective addressing spelling, creating multiple paragraphs, using appropriate strategies when reading for different purposes and decoding and encoding words. (FOF #25)

The student’s performance on L.A. achievement tests showed that the student increased Reading Fluency by 2.9 grade levels, Spelling by 3/10th of a grade level and Passage Comprehension by a little more than 1 grade level. (FOF #28) As discussed previously, the IDEA does not guarantee the achievement of the goals and objectives in an IEP, but rather requires the agency to provide the required services and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP. (See the IDEA regulations effective prior to the 2006 regulations, 34 C.F.R. §300.350, and the discussion in the 2006 regulations, 71 Fed. Reg. pg. 46664 (August 14, 2006))

With regard to the provision of specially designed instruction in L.A. in the 5/11/11 IEP, this issue was previously discussed in **Specially Designed Instruction in Language Arts: “a” and “b”** above.

*Therefore the complaint investigation team made no further determination with regard to this issue.*

**g. Transition Plan in the 5/10/12 IEP with respect to English**

The 5/10/12 IEP stated in the Transition Plan, under the “Course of Study Section” that the focus of the student’s course of study would be “Passing all curriculum courses required to receive the diploma, pass proficiency exams, and prepare for postsecondary school”. Under the “Instruction Section” the Transition Plan stated that the student would receive “Specialized instruction in ...English to help pass proficiency tests and prepare [Student] for postsecondary school.” (FOF #27)

For the school year covered by the 5/10/12 IEP, the student was enrolled in regular education for Math, Biology, Psychology, U. S. History, World History and Life Skills English. This represented the standard high school course of study to receive a high school diploma, prepare for proficiency exams and prepare for postsecondary school. (FOF 5) Life Skills English was specially designed instruction taught in the resource room (FOF #30) and was provided to the student as discussed in **Specially Designed Instruction in Language Arts: “c”** above. Pursuant to the requirements of the NAC §388.281(6)(g), the NCSD was required to provide the student the services and instruction deemed necessary by the IEP committee with respect to providing specialized instruction in English and did so.

*Therefore the complaint investigation team determined that the NCSD did comply with state and federal regulations to implement the 5/10/12 Transition Plan with respect to providing the “Course of Study” and the specially designed instruction in English.*

### **Accommodations for Assignments**

#### **a. Reducing assignments as required by the 11/15/12 IEP**

The 11/15/12 IEP stated “Core Content class assignments in which L.A. play a part will be modified to 50% ...” in the general education classroom. (FOF #33) The Core Content Classes in which L.A. played a part were Psychology, U.S. History, World History and Science. (FOF #34)

While documentation was presented that some teachers on some occasions reduced assignments as required by the 11/15/12 IEP, no documentation was provided that all the core content class assignments in which L.A. played a part were modified to 50%. (FOF #35) As discussed previously, in the absence of required documentation to verify that the student received the services appropriate to the student’s disability, the complaint investigation team determined that the NCSD failed to provide the required modification for all Core Content class assignments in which L.A. played a part. Pursuant to the requirements of the NAC §388.281(6)(g), the NCSD was required to reduce all the assignments in all the core content classes to 50% in accordance with the student’s IEP and failed to do so.

*Therefore the complaint investigation team determined that, absent any documentation to the contrary, the NCSD did not comply with state and federal regulations to implement the requirements to reduce assignments as required by the 11/15/12 IEP.*

#### **b. Additional time to make up work**

The 5/11/11 IEP included an accommodation stating “Student will be allowed an additional week to turn in missing assignments after each 3 week progress reporting date. Turned-in assignments will have a 10% deduction” with a frequency of “1 x per/3 wk grading period” in the general classroom. The 5/10/12 IEP and 11/15/12 IEPs included an accommodation stating “At the end of each school week, assignments not completed will be sent home to be completed by the next school day.” (FOF #36) Other than for the English 9 teacher, the

NCSD was unable to provide documentation that the student was allowed an additional week to turn in missing assignments as required by the 5/11/11 IEP. No documentation was provided that the student was consistently provided additional time to turn in work as required by the 5/10/12 IEP and the 11/15/12 IEP. (FOF #37) As discussed previously, in the absence of documentation to verify the student received these services appropriate to the student's disability, the complaint investigation team determined that the NCSD failed to provide the required accommodation of additional time to make up work in all regards. The NCSD was required, pursuant to NAC §388.281(6)(g) to provide the services and instruction deemed necessary by the IEP committee and did not do so with respect to the requirements to provide additional time to make up work.

*Therefore the complaint investigation team determined that, absent any documentation to the contrary, the NCSD failed to comply with federal and state regulations to implement the requirements in the IEPs to allow additional time to make up work.*

### **c. Signatures of Math and Resource teachers on Daily Planner**

The 11/15/12 IEP Revision included an accommodation stating that “[Student] will keep a Daily Planner listing assignments and signed by teachers signifying complete or incomplete assignments to be checked by Case Manager on the last day of school week....” (FOF #38) Neither the Math teacher nor the Resource teacher, in the role of L.A. teacher, signed the Daily Planner each day. They only signed it when the student presented it to them for their signature as they didn't feel it was necessary to sign it unless the student brought it to them. (FOFs #39, #40, #41)

While the requirement to keep the planner was designated in the IEP as the student's responsibility, it was the responsibility of the NCSD to sign the planner and for the Case Manager to check it on the last day of the school week. (FOF #38) Importantly, the latter required service would have revealed the absence of signatures signifying complete or incomplete assignments and allowed the NCSD to take action with regard to ensuring the provision of the required accommodation. The NCSD was required, pursuant to NAC §388.281(6)(g) to provide the services and instruction deemed necessary by the IEP committee and failed to do so as the Math teacher and the Resource teacher, in the role of L.A. teacher, did not sign the Daily Planner as required and it was not checked on the last day of every school week.

*Therefore the complaint investigation team determined that the NCSD did not comply with state and federal regulations to implement the requirements of the 11/15/12 IEP with respect to the Math and Resource teacher signing the Daily Planner and the Case Manager checking it at the end of the week.*

## **Accommodations for Testing**

### **a. Reading Science tests aloud to student as required by the 5/11/11 IEP**

The 5/11/11 IEP included an accommodation stating “Student may be allowed to go to the resource room for assistance on assignments & tests. Science tests will be read to the student” for 15/minutes a week in the general education class. (FOF #42) The Science teacher did not read any tests to the student nor did the student request that tests be read. (FOF #43) While the provision in the student’s 5/11/11 IEP with regard to going to the resource room was a response to the student’s desire for assistance, the provision that Science tests be read to the student included no such condition.

*Therefore the complaint investigation team determined that the NCSD did not comply with state and federal regulations to implement the requirements of the 5/11/11 IEP with respect to providing the accommodation of reading Science tests aloud to the student.*

**b. Student reading tests aloud to an adult and being prompted per the 11/15/12 IEP.**

The 11/15/12 IEP Revision included an accommodation that stated “[Student] will read aloud tests to adult staff member and staff member will monitor/prompt where student verbalizes incorrectly” **each time a test is given**” (emphasis added) in the general education classroom. (FOF #44)

Tests were not read aloud to the student each time a test was given in the general education classroom. (FOF #45) While the teachers did not read the tests aloud because the student did not request tests to be read aloud or the student turned down the offer to read the tests aloud, the provision that tests be read aloud to the student included no such conditions. The NCSD was required, pursuant to NAC §388.281(6)(g) to provide the services and instruction deemed necessary by the IEP committee and failed to do so with regard to the accommodation in the 11/15/12 of reading tests to the student.

*Therefore the complaint investigation team determined that the NCSD did not comply with state and federal regulations to implement the requirements of the 11/15/12 IEP with respect to reading tests aloud to the student.*

**c. Instruction for Proficiency review and testing required by the 5/10/12 IEP**

The 5/10/12 IEP stated in the Transition Plan, under “Instruction” that the student would receive “Specialized instruction in Math and Language Arts to help pass proficiency tests and prepare [Student] for postsecondary school.” (FOF #48) With regard to the provision of specially designed instruction in L.A. in the 5/10/12 IEP as it relates to the Transition Plan, this issue was previously resolved under **Specially Designed Instruction in Language Arts: “g”** above.

With regard to the provision of specially designed instruction in Math in the 5/10/12 IEP as it relates to the Transition Plan, this issue was previously resolved under **Specially Designed instruction in Math: “e”** above.

*Therefore the complaint investigation team made no further determination with regard to this issue.*

**d. Reading the Proficiency Exams in Science and Math aloud to the student per the 5/10/12 IEP**

The 5/10/12 IEP included an IEP Accommodation Form for the NPEP stating that the test administrator/ proctor **may (as needed)** (emphasis added) read/re-read the words of the Math and/or Science test(s) in English to the student. (FOF #46) The student was asked, when the Proficiency exams were to be administered, if the student wished the Science and Math Proficiency exams to be read aloud and declined the offer. Thus the test administrator/proctor determined that reading the tests aloud was not needed (FOF #47) and, in the absence of any further specification in the IEP, the complaint investigation team determined that the interpretation of “as needed” was reasonable. Pursuant to the requirement of the NAC §388.281(6)(g), the NCSD was required to provide the services and instruction deemed necessary by the IEP committee with respect to the accommodation for the Proficiency Exams in Math and Science did so.

*Therefore the NCSD complied with state and federal regulations with respect to the requirement to read the Proficiency exams to the student.*

**Placement of the student in the LRE as required by the 5/12/12 IEP**

With regard to the percentage of time in the regular educational environment in the student’s the 5/10/12 IEP, the IEP committee, including the Parent, determined that the student would be in the regular education environment 86% of the time and removed from that environment to the special education classroom only 14% of the time. (FOF #49) The NCSD implemented the student’s IEP in the regular education environment 86% of the time and in the resource room for 14% of the time with respect to placement in the resource room for L.A. consistent with the student’s 5/10/12 IEP.

However, with regard to World History, on 11/19/12, the student was placed in the resource room for World History. (FOF #50) Subsequent to the filing of this Complaint on 1/20/13, the student was returned to the regular educational environment for World History. (FOF #51) The additional time spent in the resource room for World History resulted in the student being removed from the regular education environment in excess of the 14% of the time designated in the student’s IEP for several months. Pursuant to the NAC §388.281(6)(g), the NCSD was required to implement the student’s IEP in the regular education environment 86% of the time, and for a several month period, did not.

*Therefore the complaint investigation team determined that the NCSD did not comply with state and federal regulations when it placed the student in World History in the special education environment for several months.*

**ORDER FOR CORRECTIVE ACTION**

The NCSD is required to take corrective action to address the violations found in this Complaint when it failed to implement the student’s IEPs.

### **Compensatory Education**

Based on the totality of the information regarding the issue in this complaint, and consideration of the academic growth the student made in some areas as discussed above in this report, 27 hours of compensatory education is warranted. The compensatory education is calculated and rounded up to the nearest hour as follows: 1) 2 hours x the seven days of the 2012 ESY for Math instruction that was not provided; 2) 30 minutes x 4 for the 4 weeks specialized Math instruction was not provided from early December 2012 through January 10, 2013 for 30 minutes/week and 3) 50 minutes x 13 due to the failure to provide 50 minutes of specialized instruction in L.A. per week in the general education classroom during the 13 weeks school was in session and under the jurisdiction of the complaint investigation team to consider with respect to the 5/11/11 IEP.

It is ordered that, unless the Parents and the NCSD agree otherwise, the NCSD must provide the 27 hours of compensatory education to the student. The NCSD must consult with the Parents on the content and scheduling of the 27 hours of compensatory service. If the NCSD and the Parent cannot reach agreement on the scheduling of the compensatory service, the NCSD must provide the compensatory education either outside the student's school day or year or during non-instructional time during the school day unless such non-instructional time is included in the student's IEP as a nonacademic service.

The compensatory education must be provided no later than December 30, 2013 unless otherwise agreed to by the Parents and the NCSD and documentation of the provision of the service must be provided to the NDE within 30 days of complying with this order.

### **Professional Development/Training**

Within 30 days of the receipt of this report, the NCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP) to train appropriate personnel in the NCSD who are responsible for implementing IEPs at the student's school about the requirements to provide the services and instructions in the IEPs as written.

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 in any case, by September 30, 2013 and a report must be submitted to the NDE to document its implementation by November 30, 2013.