

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
(#CL031422)  
Report Issued on May 12, 2022**

**INTRODUCTION**

On March 14, 2022, the Nevada Superintendent of Public Instruction received a State Complaint from a Parent alleging violations by Clark County School District (CCSD) in a student's special education program. The allegations in the Complaint were that CCSD failed to implement the student's May 7, 2021 Individualized Education Program (IEP) with regard to providing the following supplementary aids, services and supports, at all or thoroughly, in the general education and special education classrooms: implementing and following the student's May 7, 2021 Behavior Intervention Plan (BIP) from August 9, 2021 through March 4, 2022 and, from August 9, 2021 through "at least" March 4, 2022, providing home-school communication weekly; breaking multi-step tasks into 1-2 steps before giving the next direction; permitting the use of digital tools for writing instead of paper and pencil; and the occupational therapist's provision of adaptive equipment (fine motor/visual perceptual supports). In the facts supporting the believed failure to implement the student's BIP, the Parent also indicated she did not believe the proper steps, to include a functional behavioral analysis or data collection, were taken to rewrite the BIP.

The Parent's proposed resolution was the provision of compensatory education and compensatory services, specifically:

- a. At least three hours of professional, educational tutoring to be provided by an entity, of the Parent's choosing, outside of CCSD for each week the student's supplementary aids/services were not implemented from August 9, 2021, through March 4, 2021;
- b. Compensatory services for professional, comprehensive behavioral support to be provided by an entity, of the Parent's choosing, outside of CCSD to include a functional behavioral assessment, individualized behavior planning, teaching frustration tolerance techniques, among other behavioral support; and
- c. One hour of professional therapy from a trained licensed clinical therapist, neuropsychologist or social worker, to be provided by an entity, of the Parent's choosing, outside of CCSD, to help the student regain emotional regulation techniques, to reduce anxiety and stress and increase positive self-image.

The statement of the believed violations also included a summary statement that CCSD failed to implement "at least" the five specifically stated student's supplementary aids, services and supports through "at least" March 4, 2022. Upon consideration of the Complaint as a whole and the absence of the required facts on which these statements were based (34 C.F.R. §300.153(b)(2)), the Parent was informed that it was determined that these statements were ones of concern and/or speculation only, and not within the jurisdiction of NDE to investigate through the special education complaint process. The Parent responded to this notification that she fully understood these issues with the Complaint. (Parent's Email Correspondence to NDE, March 21, 2022)

**COMPLAINT ISSUE**

The allegations in the Complaint that are under the jurisdiction of NDE to investigate through the special education complaint process raise the following issue for investigation:

**Issue:**

Whether CCSD complied with the IDEA and NAC, Chapter 388, in the implementation of the student's May 7, 2021 IEP in effect in the 2020/2021 school year from August 9, 2021 through March 4, 2022, specifically with regard to implementing the following supplementary aids and services in the student's May 7, 2021 IEP:

- a. The student's May 7, 2021 BIP, including the procedures to be followed to review and revise the interventions/supports in the BIP;
- b. Home-school communication weekly;
- c. Break multi-step tasks into 1-2 steps before giving the next direction;
- d. Use of digital tools for writing instead of paper and pencil; and
- e. The occupational therapist's provision of adaptive equipment (fine motor/visual perceptual supports).

In the March 18, 2022 issue letter to CCSD, NDE requested additional documents and information in order to investigate the State Complaint. CCSD was notified in that same correspondence that if CCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; and specifically reference the documentation provided to NDE that factually supported the denial and that a failure to do so by April 7, 2022 or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. CCSD did timely respond and dispute the allegations of noncompliance in the Complaint in their entirety and specifically referenced the well-organized documents relevant to that denial.

The State Complaint, CCSD's denial of all claims, and all documents submitted by CCSD in response to the issues in the Complaint were reviewed and considered in their entirety in the investigation of this Complaint. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint and the original source document, where available, was relied upon.

## **FINDINGS OF FACT**

1. The student was enrolled in CCSD for the 2021/2022 school year that began August 9, 2021 and will end May 25, 2022. There were 125 school days and 28 school weeks from August 9, 2021 through March 4, 2022 (hereinafter, the relevant period). The student was absent for most or all of the school day for 10 of those school days and, of these absences, the student was absent for more than half of the school week twice. (Student Period Attendance Detail, 2021/2022 CCSD School Calendar for Students)
2. The student had a May 7, 2021 annual IEP in effect during the relevant period and the Parent agreed with the components of the IEP. In addition to the reason of the development/review of the student's IEP, behavior and teacher concerns were listed as the reason for the conduct of the IEP Team meeting. (May 7, 2021 IEP)
3. The student's May 7, 2021 IEP designated three potential instructional models for different stages of the COVID 19 pandemic reopening process and indicated that CCSD would only implement the instructional model approved by the CCSD Board of Trustees. The instructional model for the 2021/2022 school year was full-time in-person instruction for all grades at all schools five days a week. (May 7, 2021 IEP, CCSD Website – May 24, 2021 Press Release)
4. The student's educational placement was a combination of the regular class and special education class. The student was in the regular education school environment 46% of the school day. The total number of hours in the student's school day is six hours and 36 minutes and the student spends

two hours and 30 minutes of each day school day in academic classes in the regular educational setting. (May 7, 2021 IEP, CCSD Response)

5. The student's most recent multi-disciplinary evaluation in 2019 indicated that the student continued to demonstrate significant cognitive and academic deficits in the areas of math reasoning, math computation, reading comprehension, written expression, and behavioral/social skills. (May 7, 2021 IEP)
6. Relevant to the issue in this Complaint, at the time of the development of the student's May 7, 2021 IEP, the student's present levels of academic achievement and functional performance were as follows:
  - a. Writing can be very frustrating for the student and is not a preferred task, however with support the student is able to complete tasks. The student would rather type than use paper and pencil. The student continues to have access to keyboarding for typing assignments and uses a Chromebook. The student "relies on extra time and modified writing tasks within the general education setting." When the student focuses and with the use of a slant board, the student has better control when holding a writing/coloring utensil.
  - b. The student "benefits from a structured environment with chunked/segmented assignments (5-to-10-minute time frames), one and two step directions with multiple prompts, cues and redirections." The student also "benefits from specific time frames, consistent routines, expectations, and implementation of a structured, consistent behavior plan with positive intervention supports."
  - c. The student becomes frustrated when a topic is not of interest or is asked to complete a non-preferred activity/assignment. The student demonstrates that frustration by using strategies such as asking for breaks, announcing being done or not wanting to finish, or, on a few occasions, arguing. (May 7, 2021 IEP)
7. At the student's May 7, 2021 IEP Team meeting, the IEP Team considered and determined that the student's behavior impeded the student's learning or the learning of others; and the student required assistive technology devices and services. These special factors were addressed in the student's IEP. (May 7, 2021 IEP)
8. The student's May 7, 2021 IEP include five annual goals: two in the area of behavioral/social; one in written expression; one in reading; and one in math. In relevant part, the student had:
  - a. Written expression: "By Annual Review Date, [ ]<sup>1</sup>, will copy or type to produce two complete 3–5-word sentences with appropriate capitalization and punctuation while adhering to proper letter sizing and spacing, achieving a criteria of 3 out of 4 trials as measured by observation, documentation and work samples as implemented by Special Education Teacher, and supported by Occupational Therapy." This goal is also to be addressed in the extended school year;
  - b. Behavioral/social skills:
    - i. "By annual review date, [ ] will remain on task for 15 minutes by visually attending and completing work, achieving a criteria of 3 out of 4 trials as measured by observation, documentation and work samples, as implemented by Special Education Teacher and teaching staff." This goal is also to be addressed in the extended school year; and
    - ii. "By annual review date, [ ] will transition from one activity/center to the next, achieving a criteria of 4 out of 5 trials as measured by observation, documentation and work samples, as implemented by Special Education Teacher and teaching

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<sup>1</sup> [ ] denotes the deletion of personally identifiable information.

staff.”

9. Relevant to this Complaint, the student’s May 7, 2021 IEP included the following supplementary aids and services (modification, accommodation, or support for student or personnel) to be provided from May 7, 2021 to May 6, 2022:
  - a. A BIP to be implemented throughout the school day in the location of special education and general education;
  - b. Home-School communication with the frequency of services weekly in the location of special education and general education;
  - c. Break multi-step tasks into one to two steps before giving next direction with the frequency of services during multi-step tasks in the location of special education and general education;
  - d. May use digital tools for writing instead of paper pencil with the frequency of services during writing tasks in the location of special education and general education; and
  - e. Occupational therapist to provide adaptive equipment (fine motor/visual perceptual supports). The frequency of the aid/service was during writing tasks in the location of special education and general education. (May 7, 2021 IEP)
10. On, August 5, 2021, prior to the commencement of the school year, the student’s special education teacher provided the student’s IEP and BIP to “stakeholders.” (Student Confidential Status Record)

**BIP**

11. The student’s May 7, 2021 BIP included the following:
  - a. Targeted behavior: “When given a non-preferred task, the student does not initiate the task, but instead engages in repetitive movements to avoid working on non-preferred task such as writing tasks”;
  - b. Replacement behavior: “The desired goal is that the student will follow directions to attain a task within the first prompt and earn a token”;
  - c. Methods to modify antecedents, intervention/teaching strategies to teach replacement behavior; consequence strategies with reinforcement of replacement behavior with a reinforcer menu and response to problem behaviors; and
  - d. An implementation and progress monitoring plan: “The special education teacher will gather duration data two times a week. Data will be reviewed for effectiveness of the BIP. The BIP will be reviewed with the team and parents to revise the BIP every quarter.” (May 7, 2021 BIP)
12. Commencing approximately February 2022, the student began to demonstrate a change in behavior/attitude:
  - a. On February 17, 2022, one of the student’s general education teachers contacted the Parent expressing a concern regarding the student’s new behavior/attitude, specifically laughing during an assignment to get other students to laugh; saying slang words out loud during a test; and getting into the space of the student next to the student and putting a pencil in the student’s face.
  - b. On February 23, 2022, after the Parent initiated contact with another one of the student’s general education teachers regarding the student’s grades, the teacher informed the Parent of uncharacteristic behaviors after the teacher returned from an absence, specifically difficulty with peers exemplified by persistence in calling a student by a non-preferred name; and avoidance behavior such as asking to use the restroom or go home when faced

with a difficult or non-preferred task. (February 17, 2022 – February 23, 2022 Email Communications, Student Confidential Status Record)

13. On February 24, 2022, the student’s special education teacher contacted the Parent to discuss a minor incident when there was a substitute teacher. The Parent inquired about the BIP and how well it was being implemented. The special education teacher went over strategies with the Parent for the team "to better implement BIP and accommodations." (February 24, 2022 Email Communication, Student Confidential Status Record)
14. The Parent memorialized her concerns on February 25, 2022 to the student’s special education teacher regarding the implementation of the student’s supplementary aides and services, specifically noting the “inconsistent receipt of weekly home-school communications; failure to implement the student’s BIP to date; failure to collect data every two weeks on the effectiveness of the BIP and review and revise it quarterly.” In response to an inquiry on any insights on the change in the student’s behavior, the student’s Parent noted some events that may be related to the student’s change in behavior. (February 24, 2022 Parent Email Communication)
15. In response to the Parent’s email communication, the special education teacher reassured the Parent by email on February 25, 2022, that the special education teacher would be “making sure all accommodations are being followed with fidelity, so [ ] is better supported throughout the day.” The special education teacher followed up by reviewing the student’s current BIP and accommodations with all stakeholders, including visual supports and the checklist as directed by the student’s BIP. A checklist for the BIP was in existence on February 25, 2022. (February 25, 2022 CCSD Email Communication, Student Confidential Status Record)
16. On February 28, 2022, the student’s special education teacher sent a draft revision of the student’s BIP to the Parent for review. The Parent reviewed the draft BIP and provided the special education teacher some concerns. The Parent and the special education teacher communicated back and forth several times and the special education teacher systematically responded to the Parent’s concerns and questions, revising the BIP based on the Parent’s concerns and providing a copy of the revised BIP to the Parent. (February 28, 2022, March 1 - 3, 2022 and March 21, 2022 Email Communications, March 1, 2022 BIP, Student Confidential Status Record)
17. On March 3, 2022 the student’s special education teacher uploaded the student’s revised BIP into “Infinite Campus”; distributed it in person to all stakeholders; and reviewed the BIP in person with each of the student’s teachers. On March 3, 2022, the student’s special education teacher also reviewed the student’s accommodations in person with all stakeholders. On March 24, 2022, the student’s special education teacher reviewed the data collection on the BIP and emailed the student’s Parent. (Student Confidential Status Record)
18. Both the May 7, 2021 and March 1, 2022 BIPs included a functional behavior assessment summary (hypothesis statement). However, there was no documentation provided in the course of the investigation that a comprehensive functional behavioral assessment was conducted prior to the development or revision of the student’s BIP. (May 7, 2021 and March 1, 2022 BIP)

### **Home-School Communication**

19. During the relevant period, counting several Saturday and Sunday communications, the student’s special education teacher communicated with the Parent on the following school weeks: three times during school week one; three times during school week two; twice during school week three; once

during school week four; once during school week five; none during school week six; once during school week seven; once during school week nine (first quarter report sent home); once during school week 10; none during school week 11; once during school week 12; once during school week 13; once during school week 14; once during school week 15; none during the shortened school week 16; twice during school week 17; none during school week 18; once during school week 19; twice during shortened school week 20 (including second quarter report sent home); once during school week 21; none during shortened school week 22; once during school week 23; once during school week 24; none during school week 25; once during school week 26; twice during school week 27; three times during school week 28, with the last communication during the relevant period on March 3, 2022. While most of these communications were initiated by the student's special education teacher, some were responses to inquiries of the Parent. The occupational therapist contacted the Parent on March 2, 2022. (Student Confidential Status Record)

20. From the commencement of the 2021-2022 school year through at least December 16, 2022, one of the student's general education teachers corresponded regularly back and forth with the Parent regarding work assignments and other matters. (Email Correspondence)
21. The Parent initiated contact with two of the student's other general education teachers regarding the change in the student's grades from the first semester to the second semester. The reported cause for the change in grades was largely due to not turning in completed assignments and, in one subject area, had been happening for about two weeks. One of the student's general education teachers acknowledged that the teacher had not been as proactive in informing the Parent when assignments were due or missing in the second semester. (Complaint, February 17, 2022 – February 24, 2022 Email Communications)
22. After the relevant period, commencing March 5, 2022, for the first time in that school year, the Parent was provided a weekly report with feedback from three of the student's general education teachers and four of the student's teachers completed the form for the week of March 15, 2022. On March 7, 2022, CCSD also developed a Weekly Parent Communication form designed for school-home communication to provide the Parent with progress from student's teachers and BIP data collection and to aid in increasing school-home communication. (Student Weekly Parent Communication Form, Student Confidential Status Record)

### **Multi-Steps**

23. The only documentation provided in the course of the investigation with regard to the student's supplementary aid/service on multi-steps were samples of the student's work assignments during the relevant period:
  - a. The sample assignments in one general education academic area, with notations, demonstrated modifications, such as shortened tasks, color coding, and alternating typing with a teacher or aide. Some notations of the teacher on the samples indicated that these assignments had been broken into sections. However, it does not appear the notations on the samples were contemporaneous with the assignment and, nonetheless, the samples did not reflect that multi-step tasks were broken into one-two steps before giving the next direction.
  - b. Samples assignments from three other general education academic areas ranged from one page to nine pages in length with multi-step tasks. There was no evidence the multi-step tasks on these assignments were broken down for the student with directions given after each one-two steps. (Sample Worksheets/Assignments)

## Digital

24. At the time of the development of the student's May 7, 2021 IEP, the student had access to keyboarding for typing assignments and used a Chromebook at school. (The student had the use of a second Chromebook at home.) During the relevant period of this Complaint, the student's use of the Chromebook at school was documented several times at the commencement of the 2021/2022 school year and in the third quarter of the 2021/2022 school year. (May 7, 2021 IEP, March 11, 2022 Progress Reports, Confidential Status Report, January 14, 2022, February 3, 2022 and March 1, 2022 Log Entries for Occupational Therapy, Email Communications)
25. CCSD provided assistive technology services to/on behalf of the student on March 10, 2022, with the focus on technology, and provided a "Co-Writer" and Orbit note (PDF annotator) support and made several recommendations for the student's use of technology. (2021/2022 Assistive Technology Summary)

## Adaptive Equipment

26. In addition to the direct provision of occupational therapy as a related service 45 minutes per month on the school campus (not at issue in this Complaint), during the relevant period, the occupational therapist provided services related to adaptive equipment (fine motor/visual perceptual supports) for writing to or on behalf of the student including:
  - a. On August 28, 2021, the occupational therapist consulted with the student's special education teacher to provide adaptive paper to help with the student's letter sizing and placement to the baseline. The student was also provided a "Grotto Pencil Grip" to assist with the student's pencil grasp, and upon the occupational therapist's suggestion of a slant board to help with the field of vision and wrist positioning when writing, the special education teacher ordered a slant board;
  - b. On September 22, 2021, during the provision of direct occupational therapy, the occupational therapist used highlighter paper to help provide visual cues for placement of letters and the slant board was provided for use in the classroom to help with eye gaze and wrist positioning. The student used the student's own thick pencil;
  - c. On January 6, 2022, during the provision of direct occupational therapy, the student participated in the classroom writing task utilizing highlighted paper and boxed letters for appropriate letter sizing;
  - d. On January 14, 2022, the occupational therapist provided consultation with others and ordered large font stickers for the student to use on the Chromebook for increased visual size;
  - e. On February 3, 2022, during the provision of direct occupational therapy, the occupational therapist provided the student and the special education teacher enlarged stickers for the student's use on the keyboard when typing in class;
  - f. On March 1, 2022, the occupational therapist contacted the student's Parent by telephone and discussed possible assistive technology options, such as a PDF reader and voice to text options. Parent stated that the concern for the student was to complete written work in any way possible and believes typing is the most functional option. The occupational therapist also discussed the approaches tried to date in the school year, including using a slant board, boxed letters, "golf" pencil, pencil grip and highlighter paper. The Parent indicated these had all be used in the past, but had not helped due to the student's low motivation to write. The occupational therapist and the Parent collaborated on typing programs. The occupational therapist suggested typing.com, dance mat and the Parent brought up

Keyboarding Without Tears. The plan reached was to put in a Keyboarding Without Tears request as well as an assistive technology request;

- g. On March 1, 2022, the occupational therapist consulted with the assistive technology team about adding assistive technology services for the student and submitted an assistive technology equipment request and equipment order.
- h. On March 10, 2022, assistive technology personnel were present during the direct provision of occupational therapy with a few extensions such as Co:Writer. The occupational therapist also provided the Parent Keyboarding without Tears information to start working with the student on the activities at home. (Confidential Status Record, Log Entries for Occupational Therapy)

## **Student's Progress**

27. The student's May 7, 2021 IEP established the method for reporting progress as a specialized progress report on a quarterly basis. The student's progress toward the annual goals of written expression, reading, math, and behavioral/social skills and the extent to which the annual goals could be met by the end of the IEP year during the relevant period was satisfactory on all of the student's annual goals. The following additional relevant comments were included in the student's IEP Progress Reports during the relevant period:
- a. With regard to the student's writing goal on the October 28, 2021 Progress Report, the student's teacher commented that the student had been writing more and there were "no behavior issues to speak of."
  - b. With regard to the student's writing goal in the January 5, 2022 Progress Report, the student's teacher commented that the student continued to make growth; was excelling socially, but making slow growth on the student's academic goals; and was easily distracted by classmates and needed continuous support to actively work on academic skills.
  - c. In the March 11, 2022 Progress Report, the relevant comments were that:
    - i. With regard to the student's behavioral/social skills goal on transition: the student transitions from one activity to the next along with peers; the only time the student needs prompting is if the activity is a written activity; and the student requires less than three prompts to start typing.
    - ii. With regard to the on-task behavioral/social skills goal, the student was demonstrating the ability to remain on task with less than three prompts for 10 minutes and starting tasks in four out of five trials in most classes.
    - iii. With regard to written expression, the student was able to copy sentences on paper, but required frequent check-ins and support for it to be done legibly. The student continued to improve with typing, including the ability to use the backspace button to correct errors without prompting. (May 26, 2021, October 28, 2021, January 5, 2022, and March 11, 2022 Progress Reports)
28. Secondary Progress Reports show a student's progress at a specific moment in time, usually the day the report is generated. The student's Secondary Progress Reports for the 2021/2022 school indicated the student's progress grade lowered from an A grade in the first quarter of the year in math, science and English to a D grade in math and science and to a B grade in English by the third quarter. The student maintained an A progress grade in Art for all three quarters and in physical education for the first two quarters. (Student's 2021/2022 Secondary Progress Report, CCSD Response)
29. As compared to Secondary Progress Reports, it is the Secondary Report Cards that show the final grade for the designated time period and include any end of the term assessments or make-up work

in the final grade. With regard to the student's courses in the 2021/2022 school year, the student's Secondary Report Card reported:

- a. The student earned an A grade in all subjects for the first semester of the 2021/2022 school year. (In math the student did have a B grade the second quarter, but still earned an A grade for the semester.) For the third quarter for the 2021/2022 school year, the student earned an A grade in English, reading, math and art, but earned a B grade in science and a D grade in computer science and applications.
- b. The student received achievement awards for straight A grades in all subjects for the first quarter and all As and Bs for the second quarter in the 2021/2022 school year and a "goal getter" award in October 2021.
- c. The student had either an outstanding or satisfactory grade in citizenship for all subjects and received an achievement award for earning an outstanding in citizenship for all subjects in the first quarter for the 2021/2022 school year. There were no negative comments on the student's behavior; however, there were comments on the student's perseverance when faced with difficulty and, in science, a comment that "[C]hallenges with completing work with guidance." (Student's 2021/2022 Report Card)

## CONCLUSIONS OF LAW

IEPs are binding under the IDEA and a school is obligated to provide services "in conformity with" students' IEPs. *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884 (9th Cir. <sup>2</sup> 1995); *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9th Cir. 2007); *Schaffer v. Weast*, 546 U.S. 49 (U.S. 2005); 34 C.F.R. §§300.17(d), 300.101; NAC §388.281(6)(e).

"States and public agencies must maintain documentation sufficient to ensure that a public agency provides FAPE to a child with a disability in accordance with the child's IEP. A State determines the form of documentation deemed sufficient to demonstrate whether its public agencies are in compliance with this requirement...." (*Letter to Broussides*, OSEP June 9, 2010)<sup>3</sup>

Pursuant to NAC §388.215, the State of Nevada has established measures each public agency must take to ensure that every student with a disability in the school district is identified, evaluated and served in the manner appropriate to the unique needs of the student. These measures include the establishment of a system of records that verifies that each student identified as a student with a disability is receiving services appropriate to the student's disability. This requirement for a verifiable system of records is particularly important in the State Complaint system because, unlike due process hearings where testimony is under oath and the Hearing Officer can judge the credibility of the testimony, there is no impartial method other than verifiable documentation to reach a determination that the assertions of the public agency should be believed over the assertions of the complainant or vice versa.

In this case, there was a single IEP in effect during the time period of this Complaint, the student's May 7, 2021 annual IEP. (Finding of Fact (FOF) #2) The student's IEP Team determined that, given the student's educational needs, the student's progress in both general and special education classes required supplementary aids and services, in addition to specially designed instruction and the related service of occupational therapy, to enable the student with a disability to be educated with nondisabled students to the

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<sup>2</sup> The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

<sup>3</sup> This Office of Special Education Programs (OSEP) policy letter is publicly available at: <https://sites.ed.gov/idea/policy-guidance/>

maximum extent appropriate. 34 C.F.R. §300.42, NAC §388.132. (FOFs #9, #26) The student's Parent agreed with the components of the May 7, 2021 IEP. (FOF #2)

At issue in this Complaint are the following supplementary aids and services in the student's IEP:

- a. A BIP to be implemented throughout the school day in the location of special education and general education;
- b. Home-School communication with the frequency of services weekly in the location of special education and general education;
- c. Break multi-step tasks into one to two steps before giving next direction with the frequency of services during multi-step tasks in the location of special education and general education;
- d. May use digital tools for writing instead of paper pencil with the frequency of services during writing tasks in the location of special education and general education; and
- e. Occupational therapist to provide adaptive equipment (fine motor/visual perceptual supports) during writing tasks in the location of special education and general education. (FOF #9)

## **BIP**

At the time of the development of the student's May 7, 2021 IEP, the student's IEP Team determined that the student's behavior impeded the student's learning or the learning of others. The identified behavior of concern was the student's avoidance strategies when an activity/assignment is not of interest or is non-preferred. In that regard, the student "benefits from specific time frames, consistent routines, expectations, and implementation of a structured, consistent behavior plan with positive intervention supports." (FOFs #2, #6, #7)

Consistent with these determinations of the student's IEP Team, the supplementary aid/service of the student's BIP was required to be implemented throughout the school day in the location of special education and general education. The targeted behavior in the BIP was with regard to the student's avoidance strategies when given a non-preferred task. The BIP included methods to modify the antecedent; intervention/teaching strategies to teach the desired replacement behavior; consequence strategies of reinforcement of replacement behavior with a token toward a reinforcer menu; and a response to problem behaviors. (FOFs #9, #11) Prior to the commencement of the 2021/2022 school year, the student's special education teacher provided the student's IEP and BIP to "stakeholders." (FOF #10)

In February 2022, three of the student's teachers separately reported behavioral incidents, specifically the student's engagement in a minor incident and the demonstration of uncharacteristic behaviors/attitudes of concern. One of the 'uncharacteristic' behaviors cited was the student's avoidance behaviors when faced with a non-preferred task, the targeted behavior addressed in the student's BIP. (FOFs #11 - #13) The failure of one of the student's teachers to recognize the avoidance behavior as one addressed by the student's BIP; and CCSD's response at the time of the reported behaviors to better implement the student's BIP and accommodations and to ensure all accommodations are being followed with fidelity support the Parent's allegation that CCSD failed to implement the student's BIP. (FOFs #14, #15)

The student's May 7, 2021 BIP also included an implementation and progress monitoring plan that required the student's special education teacher to gather duration data twice a week; the review of the data to determine the effectiveness of the BIP; and the review and revision of the BIP with the "team" and the Parent every quarter. (FOF #11) It is recognized that CCSD did provide quarterly progress reports on the student's behavioral/social skills goals every quarter during the relevant period. (FOF #27)

However, the quarterly review of the student's progress toward the annual behavioral/social IEP goals does not fulfill the requirement that the student's team and the Parent conduct the review/revision of the student's BIP quarterly. (FOF #11) While the student's special education teacher did confer with the student's Parent in the review and revision of the student's BIP at the end of the third quarter of the 2021/2022 school year, and the draft BIP was revised based on the Parent's concerns (FOF #16), this review also did not satisfy the requirement in the student's BIP for the student's "team" and the Parent to conduct the review and revision quarterly.

No documentation was provided in the course of this investigation that the student's BIP was implemented in either special education or general education during the relevant period; that CCSD gathered duration data twice a week; or reviewed to determine the effectiveness of the student's BIP. Therefore, upon consideration of the above-described information and in the absence of verifiable documentation otherwise pursuant to NAC§388.215, it is determined that CCSD failed to implement the student's BIP during the relevant period.

It is recognized that after the February 2022 behavioral incidents and prior to the filing of this Complaint, CCSD did implement measures to correct this determined failure of CCSD to implement the student's May 7, 2021 BIP by distributing to, and reviewing the student's revised BIP with, all stakeholders on March 3, 2022, including the student's teachers; implementing the required data collection; and reviewing the data on March 24, 2022. (FOF #17)

### **Multi-step**

The student "benefits from a structured environment with chunked/segmented assignments (5-to-10-minute time frames), one and two step directions with multiple prompts, cues and redirections." (FOF #6) Consistently, the student's supplementary aid/service regarding multi-step tasks in the May 7, 2021 IEP required all multi-step tasks to be broken into one to two steps before giving the next direction with the frequency of services during multi-step tasks in the location of special education and general education. (FOF #9)

The only documentation provided in the course of this investigation regarding CCSD's implementation of this supplementary aid/service were some samples of the student's work assignments that did not evidence all the multi-step tasks were broken into one to two steps before giving the next direction. (FOF #23) (Even if these samples demonstrated that on some occasions the multi-step tasks assigned to the student were appropriately broken down, it would not be determinative that it was done with regard to all multi-step tasks in both special education and general education.) As such, based on the documentation provided in the course of the investigation and the absence of verifiable documentation otherwise (NAC §388.215), it is determined that CCSD failed to implement the student's IEP with regard to breaking down multi-step tasks as required.

### **Home-School Communication**

The student's supplementary aid/service regarding home-school communication in the May 7, 2021 IEP required these communications on a weekly basis for both special education and general education. (FOF #9) Based on documentation provided in the course of the investigation, the student's special education teacher did communicate with the Parent during 22 of the 28 school weeks during the relevant period. (FOF 19) However, based on verifiable documentation provided in the course of the investigation (NAC §388.215), only one of the student's general education teachers communicated weekly with the Parent, and only for a portion of the school year. (FOFs #20, #21) Therefore, it is determined that CCSD failed to implement the student's May 7, 2021 IEP with regard to the supplementary aid/service of home-school

communication for six of the 28 school weeks for special education and every week during the relevant period with regard to all of general education.

After the relevant period, and prior to the filing of this Complaint, CCSD initiated measures to correct the past noncompliance with regard to home-school communications. CCSD developed and commenced implementing a form/method designed for school-home communication to provide the Parent with progress from student's teachers and BIP data collection and to aid in increasing school-home communication. (FOF #22)

## **Digital**

The student's supplementary aid/service in the student's May 7, 2021 IEP regarding digital tools provided the student "may use digital tools for writing instead of paper pencil" during writing tasks in both special education and general education. (FOF #9) As stated, the standard is not whether the student *used* a digital tool for writing instead of a paper/pencil, but rather whether the student was *allowed to use* digital tools in lieu of paper and pencil during writing tasks.

While CCSD did not systematically document the student's allowed use of digital tools, documentation was provided that the student had use of, and did use, a Chromebook at school at the commencement of the 2021/2022 school year and the third quarter of the 2021/2022 school year. (FOF #24) Given the nature of this supplementary aid/service; the student's documented use of the Chromebook; and the absence of any documented incidences where CCSD did not allow the student to use digital tools for writing; the investigation team determined it was reasonable to assume the student had use of this digital tool during the second quarter of the 2021/2022 school year, as well as the documented first and third quarters. Therefore, it is determined that CCSD did implement the student's May 7, 2021 IEP with regard to allowing the student to use digital tools in lieu of paper/pencil during writing tasks.

It was noted that after the relevant period, CCSD also provided assistive technology services to/on behalf of the student with the focus on technology and made several recommendations for the student's additional use of technology. (FOF #25))

## **Adaptive Equipment**

The student's May 7, 2021 IEP required the student receive direct occupational therapy as a related service for 45 minutes per month on the school campus during the relevant period, and the provision of that service is not at issue in this Complaint. In addition to this related service, the student's May 7, 2021 IEP required the occupational therapist to provide adaptive equipment as a supplementary aid/service. The term 'adaptive equipment' was described as "fine motor/visual perceptual supports." The frequency of the aid/service was during writing tasks in both special education and general education. (FOF #9)

The supplementary aids/services in the student's May 7, 2021 IEP were modifications, accommodations, or support for student or personnel. (FOF #9) Given the wording of this supplementary aid/service, most notably the absence of a requirement that the aid/service of adaptive equipment was required to be provided directly to the student by the occupational therapist during writing tasks, all documentation provided in the course of the investigation on the implementation of this aid/service to, or on behalf of, the student was considered. 34 C.F.R. §300.320(a)(4).

During the relevant period, the occupational therapist provided fine motor/visual perceptual supports for writing to or on behalf of the student on at least six different occasions over the approximate seven months of school, including during a classroom writing task while providing direct occupational therapy. On March 1, 2022, the occupational therapist also contacted the Parent to discuss possible assistive technology

options; the approaches tried to date in the school year; and collaborated with the Parent on typing programs and an assistive technology request. After talking to the student's Parent, the occupational therapist immediately followed through with the CCSD assistive technology team that same day and assistive technology services were provided to the student after the relevant period. (FOF #26)

As such, it is determined that CCSD did implement the student's May 7, 2021 IEP with regard to the occupational therapist providing adaptive equipment (fine motor/visual perceptual supports) to/on behalf of the student for use during writing tasks.

*Therefore, CCSD complied with the IDEA and NAC, Chapter 388, with regard to implementing the student's supplementary aids/services with regard to the occupational therapist's provision of adaptive equipment and the permissive use of digital tools for writing instead of paper and pencil; but failed to comply with the IDEA and NAC, Chapter 388 with regard to the implementation of the student's May 7, 2021 BIP, including the procedures to be followed to review and revise the interventions/supports in the BI; home-school communication weekly; and breaking multi-step tasks into 1-2 steps before giving the next direction.*

## **CORRECTIVE ACTION**

As set forth above, CCSD failed to implement the student's IEP with regard to the student's May 7, 2021 BIP, including the procedures to be followed to review and revise the interventions/supports in the BIP; breaking multi-step tasks into 1-2 steps before giving the next direction; and weekly home-school communications. However, a finding of noncompliance through the state complaint process of the failure of a local educational agency to implement a student's IEP does not end the inquiry. Whether the failure to provide the services in a student's IEP is a minor discrepancy or a material failure is relevant to the determination whether a student-specific corrective action is required to address the needs of the student. 34 C.F.R. §300.151(b). This is an individualized determination: "A material failure to implement an IEP occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP..." *Van Duyn v. Baker School District*, 502 F.3d 811, 107 LRP 51958 (9th Cir. 2007).

### **Student-Specific Remedy**

In this case, CCSD's failure to implement the student's May 7, 2021 BIP, including the procedures to be followed to review and revise the interventions/supports in the BIP; breaking multi-step tasks into 1-2 steps before giving the next direction; and weekly home-school communications in the location of general education fell "significantly short of the services required by the child's IEP" (*Van Duyn*) and was, therefore, a material failure to implement the student's IEP. With regard to home-school communications in special education, CCSD's failure to implement the student's IEP on six of the 28 school weeks (two of which were shortened school weeks) (FOF #19) is determined to be a minor failure.

It is recognized that, based on the student's Progress Reports, the student reportedly made satisfactory progress toward the student's goals as of the third quarter of the 2021/2022 school year and earned A and B grades in most of the student's academic subjects and some awards of achievement. The student's grade in science, however, went from an A grade to a B grade in the third quarter and the student earned a D grade in computer science and applications. (FOFs #27 - #29) In addition, notwithstanding the student's Progress Reports, there was other documentation that showed, at minimum, that the student did not make the expected educational progress toward the achievement of the student's annual goals, including, the persistence of the student's targeted behavior in the student's BIP, along with the emergence of new

behaviors; the student's slow growth on academic goals; and the need for continuous support to actively work on academic skills. (FOFs #12, #27)

Therefore, in accordance with NRS §385.175(6), the NDE requests a plan of corrective action (CAP) from CCSD within 30 calendar days from the date of this Report to address the identified noncompliance of the failure to implement the student's IEP. The CAP must be approved by the NDE prior to implementation. Following CCSD's implementation of the approved CAP, CCSD must submit a report to the NDE documenting the implementation of the approved CAP no later than 30 calendar days after implementation.

Given the voluntary systemic efforts CCSD took to correct the identified non-compliance in this case (FOFs #15, #17, #22) and the existing requirement in NAC §388.215 that CCSD establish a system of records for the purpose of verifying that each student identified as a student with a disability receive services appropriate to the disability, it has been determined that a systemic remedy is not required in this case. However, a student-specific is required.

### **Compensatory Education/Services**

Compensatory education is designed to provide the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place. This is a fact-specific determination. (*Parents of Student W. ex rel. Student W. v. Puyallup School Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005)) In compensatory education awards, there is no obligation to provide a day-for-day compensation for time missed. *Parents of Student W.* This approach for determining compensatory education is considered 'qualitative' in nature, rather than strictly 'quantitative' and requires that a compensatory education award be made not merely by establishing the amount of services which were not provided, but that an analysis be done to establish what may make the student whole for the denial of services.

Both the Parent and CCSD are commended for their thoughtful proposed resolutions for this Complaint in the event it was determined that CCSD did not comply with the IDEA and NAC, Chapter 388, with regard to the alleged failure to implement the student's IEP. Due to the nature of the supplementary aids/services, it is difficult to quantify the educational benefits the student would have accrued, but for the identified noncompliance, and the nature and amount of additional aids/services required to educationally compensate the student. Therefore, the investigation team carefully considered and provided deference to these proposed resolutions in the determination of the appropriate compensatory education/services for the student.

CCSD and the Parent are encouraged to continue to work together throughout this process. CCSD must consult with the student's Parent(s) on the appropriate means to provide this ordered compensatory education/services to meet the student's educational needs and must consider any concerns of the Parent and/or proposals in the development of the compensatory education/services plan. **Unless otherwise agreed to in writing by CCSD and the Parent**, the CAP must provide for the following student-specific directed actions and provide the timelines for each to enable the completion of all of the actions as soon as possible, but no later than December 30, 2022:

1. 81 hours<sup>4</sup> of compensatory education/services to address the student's IEP goals and benchmarks in effect in the 2022/2023 school year. This compensatory education/services must include behavioral support services to include teaching the student behavioral regulation techniques and

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<sup>4</sup> There were 28 school weeks from the commencement of the 2020/2021 school year through March 4, 2022 and the student was absent for more than half of two school weeks. 81 hours represents 3 hours per week slightly reduced due to the student's absences.

must be in addition to the services in the student's IEP. The compensatory education/services must be provided during school breaks or before or after school. At CCSD's discretion, all or part of the compensatory education/services may be provided by a qualified private provider.

2. A referral, with the Parent's consent, of the student to a social worker or, at CCSD's discretion, a clinical therapist or other qualified person, to assess the student with regard to emotional/behavioral regulation and to make recommendations for consideration by the student's IEP Team. In addition, the qualified provider must provide a minimum of one hour of direct services to the student to address any identified concerns.
3. Assign a behavior specialist, such as a Behavior Mentor, to assist CCSD personnel in the conduct of a functional behavioral assessment of the student (FOF #18) and in the review/revision of the student's IEP and BIP:
  - a. The functional behavioral assessment of the student must be conducted within 40 school days of the receipt of this Report or, if later, within 40 days of the receipt of the Parent's consent to conduct the assessment.<sup>5</sup> The functional behavioral assessment must include a review of the student's records for health and medical factors which may influence the targeted behavior, and a review of the history of the targeted behavior to include the effectiveness of any intervention previously used. At CCSD's discretion, the functional behavioral assessment may be conducted by a qualified private provider.
  - b. The conduct of a review/revision of the student's IEP<sup>6</sup> as soon as possible after the completion of the directed functional behavioral assessment and assessment and recommendation of the social worker (or other qualified personnel as set forth above), to consider the student's behavioral needs, including whether the student requires any positive behavioral strategies, supports and interventions, or other strategies, supports and interventions to address the student's behavior beyond the development and implementation of the student's BIP. The behavioral specialist must either be a member of the IEP Team involved in this review /revision of the student's IEP or submit, in writing, input to the Parent and other members of the IEP Team on the review/revision of the student's IEP prior to the review occurring.
  - c. Conduct a review/revision of the student's BIP. The team<sup>7</sup> of individuals who conduct the review and revision of the student's BIP must include the student's Parent, the student's special education teacher and at least one of the student's general education teachers in a subject area addressed in the student's annual goals in the May 7, 2021 IEP. The behavioral specialist must either be a member of the team involved in this review /revision of the student's BIP or submit, in writing, input to the Parent and the other members of the team, into the review/revision of the student's BIP, prior to the review occurring.

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<sup>5</sup> *Letter to Anonymous*, 59 IDELR 14 (OSEP April 9, 2012). "If a public agency conducts a functional behavioral assessment (FBA) to assist in determining whether an individual child is a child with a disability and the nature and extent of the special education and related services that the child needs, it is considered an evaluation under Part B and the regulation at 34 CFR § 300.15. The FBA must be conducted in accordance with the evaluation procedures in 34 CFR §§ 300.304-300.311. Part B evaluations and reevaluations are subject to the IDEA's notice requirements in 34 CFR §§ 300.503-300.504, and parental consent requirements in 34 CFR § 300.300." This letter is publicly available at: <https://sites.ed.gov/idea/idea-files/policy-letter-april-9-2012-to-individual-personally-identifiable-information-redacted/>

<sup>6</sup> Given the review date of the student's May 7, 2021 IEP is May 6, 2022, if the student's annual IEP Team meeting has already occurred at the time of the receipt of this Report, CCSD and the Parent may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP pursuant to IDEA, 34 C.F.R. §300.324(a)(4).

<sup>7</sup> The student's current BIP does not designate the review of the BIP by the student's IEP Team or otherwise identify the members of the team, other than the Parent. (FOF #11)