

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL041818)**

Report Issued on June 15, 2018

INTRODUCTION

On April 18, 2018, the Nevada Superintendent of Public Instruction received a Complaint dated April 16, 2018 from a Parent regarding the provision of a free appropriate public education to a student who attended school in the Clark County School District (CCSD) for a portion of the 2017/2018 school year. The Parent alleged the CCSD violated the requirements of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300, or the provisions of the Nevada Administrative Code (NAC) §§388.150 to 388.450 by failing to: provide services after the tenth day of suspension; provide the compensatory services in the student's Individualized Education Program(s) (IEP(s)) in the 2017/2018 school year; and inform the student's teacher of her responsibilities to provide the compensatory services.¹

The IDEA, 34 C.F.R. §300.152(c), provides that if an issue raised in a State Complaint has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and the agency must inform the complainant to that effect. The Nevada Department of Education (NDE) determined that there had been a December 1, 2017 hearing decision and a February 16, 2018 review decision rendered in the 2017/2018 school year involving the student and the same parties. However, upon review of the Due Process Complaint filed on March 20, 2017 and the issues decided in the hearing and the review decisions (Finding of Fact #3), the NDE determined that the issues as stated in the State Complaint were not previously decided in the hearing or review decisions.

In the hearing and appeal proceedings, the Parent requested an interpreter during the due process hearing due to the Parent's limited understanding of spoken English. The Parent was informed that an interpreter would be provided if the Independent Investigator conducted an interview with the Parent during the course of the investigation. In reliance on the absence of a need for translation of written English documents in the hearing and appeal proceedings; the submission of the State Complaint in English; and the absence of a request in the State Complaint for written documents to be translated, the Parent was informed that all correspondence, including the Complaint Report, would be provided in English. The Parent did not request the opportunity to provide information orally regarding the Complaint and no interview with the Parent was required during the course of the investigation.

¹ After the conclusion of the investigation, but prior to the issuance of this Report, the Parent did inform the NDE by email correspondence received June 11, 2018 that her intended allegation was with regard to the misconduct that resulted in the student's suspension and the actions of another student and school personnel. The NDE informed the Parent by letter dated June 11, 2018 that these new allegations were outside the scope of this Complaint investigation and of the Parent's right to withdraw this Complaint, if desired, prior to the issuance of the Report and/or file a new Complaint alleging violation of the IDEA or the NAC relating to special education programs. The Parent did not withdraw this Complaint.

The Parent was also informed that the NDE did not have jurisdiction to investigate the allegation that the student was suspended by the CCSD due to the student's race. The Parent was informed of the opportunity to file a grievance with CCSD alleging an action prohibited by Title VI of the Civil Rights Act and/or to file directly with the Office of Civil Rights, U.S. Department of Education.

All documents and arguments submitted by the Complainant and the CCSD relevant to the issues in the Complaint were reviewed in their entirety in this investigation. The Independent Investigator also received, collected and reviewed additional information as needed during the investigation. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint.

COMPLAINT ISSUES

Upon review of the State Complaint, the NDE determined it was unclear whether the Parent's allegation regarding the provision of educational services after the tenth day of suspension was intended to be a separate issue or to provide supporting facts regarding the alleged failure to provide "compensatory services." Based on that determination, the NDE notified both the Parent and the CCSD in the April 27, 2018 issue letter that if the investigation revealed that the allegation regarding the provision of educational services after the tenth day of suspension was intended to provide supporting facts only for the allegation regarding the implementation of "compensatory services" in the student's IEP, the Report would reflect that determination. Neither the Parent nor the CCSD provided input in this regard in response to the April 27, 2018 issue letter prior to the commencement of the investigation of this Complaint.

During the course of the NDE's investigation, it became clear that the terms "compensatory services" and "compensatory instruction"² used by the Parent in the State Complaint was intended to refer to the educational services included in the student's 2017/2018 IEPs to provide specially designed instruction after the student was suspended for 10 school days in the 2017/2018 school year, not to raise a legal issue with regard to the legal obligation to provide services after a disciplinary change of placement (34 C.F.R. §300.536, NAC §388.265) or a failure to implement a ordered remedy for past denial of educational services. As a result, Issues One and Three set forth in the April 27, 2018 issue letter were combined in the course of the investigation. Therefore, the allegations in the Complaint, that are under the jurisdiction of the NDE to investigate through the special education complaint process raised the following issues for investigation through the student's last day of enrollment in the CCSD in the 2017/2018 school year:

Issue One:

Whether the CCSD complied with the IDEA and NAC with regard to implementing the student's IEP(s) in effect in the 2017/2018 school year from the commencement of the school year, specifically the educational services to be provided to the student after the student was suspended for 10 school days in the 2017/2018 school year.

² The term "compensatory education" mean services that were to be provided to the student as a remedy for the past denial of educational services that were not originally provided. Parents of Student W. v. Puyallup, 31 F.3d 1489; 21 IDELR 723 (9th Cir. 1994).

Issue Two:

Whether the CCSD complied with the IDEA and NAC with regard to ensuring the student's teacher was informed of her specific responsibilities to provide the educational services in the student's IEP after the student was suspended for 10 school days in the 2017/2018 school year.

FINDINGS OF FACT

General

1. Classes began for the student in the 2017/2018 school year on August 14, 2017. The student was withdrawn from CCSD on March 23, 2018 and the Parent began to homeschool the student on April 3, 2018. (2017/2018 CCSD School Calendar, Student Enrollment History, Complaint)
2. During the time period of this Complaint, the student had a May 15, 2017 annual IEP in effect, that was revised that same day and again on June 13, 2017, September 15, 2017 and January 26, 2018 with the stated comment of "manifestation determination" for each of these revisions; and a February 23, 2018 IEP revision following a three-year reevaluation. (May 15, 2017, June 13, 2017, September 15, 2017, and February 23, 2018 IEPs)
3. The due process hearing conducted October 23, 24, and 25, 2017 regarding the student's education in the CCSD resulted in a determination that the student's January 13, 2017 and March 13, 2017 IEPs were fully implemented by providing the student with a one-to-one aide throughout the school day and with additional adult assistance on the bus and that the student's placement in a CCSD special school in the March 13, 2017 IEP was the least restrictive environment for the student. The Hearing Officer's Decision was affirmed by the State Review Officer on appeal. (December 1, 2017 Hearing Officer's Decision, February 16, 2018 State Review Officer's Decision)

Suspension – Educational Services 2017/2018 School Year

4. In the 2017/2018 school year, the student was suspended on August 28, 2017 for one and a half days for threat to staff; on August 31, 2017 for one day for property damage; for 45 consecutive school days from September 6, 2017 through November 8, 2017 for bullying and battery to a student with injury; and on January 11, 2018 and January 12, 2018 for battery of staff. (There is some inconsistency on the number of days of suspension among the documents reviewed. The Student Period Attendance Detail was relied upon as the primary source for the days of suspension in the case of conflict between the data.) (Behavior Detail Report, Student Period Attendance Detail, September 15, 2017 IEP)

5. Out-of-School Alternative Instructional Arrangements (AIA(s)) are used by the CCSD to provide educational services to students removed from school for disciplinary reasons. (May 30, 2018 CCSD Email)
6. The student's IEP Team determined that the educational services of AIA would be provided to the student in the 2017/2018 school year for the September 6, 2017 through November 8, 2017 and January 11, 2018 through January 12, 2018 disciplinary removals of the student. The specially designed instruction of AIA was included in only two of the student's 2017/2018 school year IEPs: the student's September 15, 2017 and January 26, 2018 IEPs. The AIA was removed in the student's February 23, 2018 IEP and the designated location of all of the student's specially designed instruction commencing February 23, 2018 was in the self-contained setting. (September 15, 2017, January 26, 2018, and February 23, 2018 IEPs)

September 15, 2017 IEP

7. The beginning and ending dates for the specially designed instruction of AIA for the student's 45-school day removal from September 5, 2017 through November 8, 2017 was from September 15, 2017 to November 8, 2017³, a consecutive 38-school day period. The frequency of services was 60 minutes per day in a neutral location. At the IEP designated frequency of services, the student was required to receive a total of 38 hours of AIA services from September 15, 2017 to November 8, 2017. (September 15, 2017 IEP, 2017/2018 CCSD School Calendar)

January 26, 2018 IEP

8. The student was suspended again for a period of two days from January 11, 2018 through January 12, 2018 prior to the conduct of a manifestation determination on January 26, 2018 and the AIA Office was contacted for services. The student's January 26, 2018 IEP added AIA to be provided in a neutral location for two hours each day for the two-day suspension day. The AIA services were not required to be provided on the days of the January 11–12, 2018 suspension; rather the services were to be provided from January 26, 2018 through May 14, 2018. (January 26, 2018 IEP, Behavior Detail Report, Student Period Attendance Detail)

AIA Services Provided

9. The CCSD provided the student a total of 21.25 hours of AIA educational services during the period of September 15, 2017 through November 8, 2017 as follows: 4.25⁴ hours in the month of September starting September 22, 2017; 14 hours in October 2017; and 3 hours in November 2017 through November 8, 2017 (including the attempted provision of one hour of services on November 6, 2017). From September 15, 2017 to November 8, 2017, the CCSD provided the student educational services on 12 school days and

³ The student's IEP Team determined this disciplinary removal of the student commenced on September 5, 2017 rather the first day of suspension. It was noted that the student's January 26, 2018 IEP maintained the AIA services in the student's September 15, 2018 IEP for the 45-school day removal through November 8, 2017 even though the end date of November 8, 2017 had passed. Incongruously, the beginning date was changed to January 26, 2018; however, the end date remained as November 8, 2017. (September 15, 2017 and January 26, 2018 IEPs)

⁴ The reported total was for 4.5 hours, but the supporting documentation was for 4.25 hours.

attempted to provide one hour of service on November 6, 2017 when the student was a "no show." Over the 13 school days, the time period for the provision of services ranged from 1 hour to 3 hours for the day of service. (AIA Attendance Verification Log)

10. After November 8, 2017, the CCSD provided an additional 20.75 hours of AIA educational services as follows: 3.5 hours in November 2017; 6⁵ hours in December 2017; 5.5 hours in January 2018 commencing January 12, 2018; and 5.75 hours in February 2018, including 2.5 hours over two days the CCSD attempted to provide AIA services to the student. (On one day the student was not at home and on another occasion the Parent cancelled). During the time period from January 26, 2018, the CCSD either provided or attempted to provide services to the student on five days. On one of the five days, February 3, 2018, the student was provided the designated amount of two hours of AIA. The last documented day of AIA services was when the CCSD's attempted to provide the AIA services on February 19, 2018. (AIA Verification Logs)
11. The CCSD indicated that there were scheduling conflicts with regard to the provision of the AIA services in that the Parent wanted the services to be provided in the student's home. However, the AIA Verification Logs only documented three unsuccessful attempts to provide the student AIA services. These Logs were the only documentation provided by the CCSD to verify the provision and attempted provision of the AIA services in the student's September 15, 2017 and January 26, 2018 IEPs. (May 29, 2018 Emails between the Independent Complaint Investigator and CCSD Representative, AIA Verification Logs, May 17, 2018 Email from an AIA Teacher. This latter email was not contemporaneous with the reported event but was created as a report of events after the filing of the Complaint and, as such, was not considered verifiable documentation of the provision of services.)
12. Given the CCSD did not concede that the student failed to receive the designated AIA services when not documented on the AIA Verification log when questioned by the Independent Investigator, the CCSD was provided another opportunity to submit documentation to verify the provision of services. No further documentation was submitted by the CCSD prior to the issuance of this Report. (May 29, 2018 Emails between the Independent Complaint Investigator and CCSD Representative, Review of Record)

Teacher Informed of IEP Responsibilities

13. The student's September 15, 2017 and January 26, 2018 IEPs that provided the specially designed instruction of AIA had other designated specially designed instruction to be provided to the student during the time periods of the provision of AIA services. There were four IEP goals, all of which were in the area of behavior, and a number of modifications, accommodations and supports in these IEPs. (September 15, 2017 and January 26, 2018 IEPs)
14. There were two teachers who provided the AIA services to the student from September 22, 2017 through the documented attempt to provide services to the student on February 19, 2018. (AIA Verification Logs)

⁵ The reported total was for 5.75 hours, but the supporting documentation was for 6 hours.

15. The CCSD was provided an opportunity to submit documentation that the student's teacher was informed of her specific responsibilities to provide the AIA services in the student's IEP(s) in effect in the 2017/2018 school year. The CCSD's response was that the AIA Office contacts the teacher; however, no documentation was provided to verify the contact included informing the teacher(s) of her specific responsibilities related to implementing the student's IEP. (May 29, 2018 Emails between the Independent Complaint Investigator and CCSD Representative)

CONCLUSION OF LAW

Issue One:

Whether the CCSD complied with the IDEA and NAC with regard to implementing the student's IEP(s) in effect in the 2017/2018 school year from the commencement of the school year, specifically the educational services to be provided to the student after the student was suspended for 10 school days in the 2017/2018 school year.

The requirements of the provision of a free appropriate public education to students with disabilities under the IDEA and the NAC, Chapter 388, necessitate that special education and related services and supplemental aids and services are provided in conformity with an IEP. (NAC §388.281(6)(g), 34 C.F.R. §§300.17(d) and 300.101) In addition, pursuant to NAC §388.215, the CCSD was required to have a system of records for the purpose of verifying the provision of a free appropriate public education to the student.

AIA are used by the CCSD to provide educational services to students removed from school for disciplinary reasons (Finding of Fact (FOF) #5) and it is those services in the student's IEPs that are at issue in this case (FOF #6). Given that the AIA Verification Logs were the only documentation provided by the CCSD during the course of this investigation to verify the provision of the AIA services in the student's IEPs, it is those records that were determinative in the resolution of this Issue, including the CCSD's documented attempts to provide the student services. (FOFs #9-12)

Two of the student's IEPs in the 2017/2018 school year included the specially designed instruction of AIA to provide educational services to the student during or after the student was suspended for student misconduct for 10 school days in the 2017/2018 school year. (FOFs #2, #4, #6, #7, #8):

- a. The student's September 15, 2017 IEP provided the specially designed instruction of AIA to be provided September 15, 2017 to November 8, 2017, a 38-school day period, with the frequency of services of 60 minutes per day. (FOF #7) As such, the student was required to receive a total of 38 hours of AIA services from September 15, 2017 to November 8, 2017. Taking into account the CCSD's attempt to provide one hour of service on November 6, 2017 when the student was a "no show", it is determined that the CCSD provided the student a total of only 21.25 hours of the required 38 hours of AIA services during this time period. In addition, rather than providing the services on 38 consecutive school days during the required period, the CCSD provided the 21.25 hours of services over 13 non-consecutive school days. The CCSD did provide or

attempt to provide at least the required hour a day of services over the 13 school days of service. (FOF #9)

- b. The student's January 26, 2018 IEP provided an additional four hours of AIA to be provided for two hours each day for two days from January 26, 2018 through May 14, 2018. (FOF #8) During the time period commencing January 26, 2018, the CCSD either provided or attempted to provide 5.75 hours of AIA services to the student over five days. However, the student was provided the required two hours of AIA services on only one of the five days. (FOF #10)

Taking the required AIA services in the student's September 15, 2017 and January 26, 2018 IEPs together, the CCSD was required to provide the student 42 hours of AIA services (FOFs #7, #8) and did so (FOFs #9, #10). By providing the required AIA services in the September 15, 2017 IEP after the ending date of November 8, 2017 (FOF #10), the CCSD essentially provided compensatory education to the student for its failure to provide the required hours of service during the time period in the student's IEP. While the Ninth Circuit Court of Appeals has held that there is no obligation to provide a day-for-day compensation for time missed when compensatory education is awarded (*Parents of Student W. supra*), the CCSD did provide hour-for-hour compensatory education service to the student after November 8, 2018.

Even though the CCSD did ultimately provide the required number of hours and the daily amount of AIA services in the September 15, 2017 IEP to the student, the CCSD did not implement the AIA services in the student's IEP at the designated frequency of services; that is, 60 minutes a day on 38 consecutive school days. (FOF #9) The CCSD did implement the total amount of AIA services in the student's January 26, 2018 IEP, but only provided the required two hours of AIA services on one of those days. (FOF #8) Given that the CCSD had until May 14, 2018 to provide the two hours on another school day in accordance with the student's January 26, 2018 IEP and these AIA services were removed in the student's February 23, 2018 IEP prior to this ending date (FOF #6), it was determined that the absence of the CCSD's implementation of this frequency of service on a second school day was not a failure to implement the student's January 26, 2018 IEP.

Therefore, the CCSD complied with the IDEA and NAC with regard to implementing the AIA services in the student's January 26, 2018 IEP but failed to comply with the consecutive school days of AIA services consistent with the dates for service and the frequency of services in the student's September 15, 2017 IEP. Prior to the filing of this Complaint, the CCSD voluntarily remedied the failure to implement the student's September 15, 2017 IEP with regard to the totality of hours of the educational services of AIA provided to the student after the student was suspended for 10 school days in the 2017/2018 school year.

Issue Two:

Whether the CCSD complied with the IDEA and NAC with regard to ensuring the student's teacher was informed of her specific responsibilities to provide the educational services in the student's IEP after the student was suspended for 10 school days in the 2017/2018 school year.

Pursuant to the IDEA, 34 C.F.R. §300.323(d), and NAC §388.281(6)(c), each public agency must ensure that each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation is informed of his or her specific responsibilities related to implementing the student's IEP; and the specific

accommodations, modifications, and supports that must be provided for the student in accordance with the IEP. In addition, as discussed previously, the CCSD was also required to establish a system of records to verify each student identified as a student with a disability received services appropriate to the disability. NAC §388.215(5)(b).

In this case, the student's September 15, 2017 and January 26, 2018 IEPs that provided the specially designed instruction of AIA had other designated specially designed instruction to be provided to the student in effect during the time periods of the provision of AIA services; four IEP goals; and a number of modifications, accommodations and supports. (FOF #13) In accordance with the IDEA, 34 C.F.R. §300.530(d), the AIA services provided to the student during the applicable period of suspension required the student to continue to receive educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. Therefore, the teachers (FOF #14) who provided the AIA services were required to be informed of these specific responsibilities in implementing the student's IEPs.

Based on the documentation of AIA services provided to the student by two teachers (FOFs #9, #10, #14), the student's teachers were informed of the responsibility to provide AIA services to the student. However, the CCSD did not provide any documentation consistent with the requirement in NAC §388.215(5)(b) during the course of the investigation to verify the two teachers were informed of their specific responsibilities in implementing the student's IEPs. In the absence of documentation (FOF #15), it is determined that the CCSD did not fulfill this obligation under the IDEA, 34 C.F.R. §300.323(d), and NAC §388.281(6)(c).

Therefore, the CCSD failed to comply with the IDEA and NAC with regard to ensuring the student's teachers were informed of their specific responsibilities to provide the identified educational services of AIA in the student's IEP after the student was suspended for 10 school days in the 2017/2018 school year.

ORDER OF CORRECTIVE ACTION

The CCSD is required to take corrective action to address the identified noncompliance with regard to the provision of AIA services in the student's September 15, 2017 IEP over consecutive school days consistent with the dates for service at the required frequency; and the failure to inform the student's AIA teachers of their specific responsibilities with regard to the provision of the AIA services.

As discussed previously, the CCSD did provide the student compensatory education for the failure to provide the required number of hours of AIA services in the student's September 15, 2018 IEP. No information was provided in the course of the investigation that the failure to implement the AIA services in the student's September 15, 2017 IEP during the required period of time and at the required frequency and the failure to inform the AIA teachers of their responsibilities relating to implementing the student's IEP impacted the provision of a free appropriate public education to the student in accordance with the IDEA, 34 C.F.R. §300.101(a). Therefore, the CCSD's voluntarily provision of the hour-for-hour compensatory education services to the student after November 8, 2018 is accepted as the individual student remedy to address these violations. However, there is a need for a systemic remedy to prevent the reoccurrence of these violations and to ensure appropriate future provision of AIA services for students with disabilities.

In accordance with NRS §385.175(6), the NDE requests a plan of corrective action (CAP) from CCSD to prevent the reoccurrence of the above identified noncompliance with regard to the future provision of AIA services to all CCSD students with disabilities provided AIA services as a result of disciplinary removals. The CAP must be provided to the NDE prior to the first day for school attendance in the CCSD's 2018/2019 school year and must be approved by the NDE prior to implementation. The CAP must result in the approved systemic actions being completed no later than 60 school days after the NDE's approval of the CAP.