

COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL071216)

Report Issued on September 8, 2016

INTRODUCTION

On July 14, 2016, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations in the special education program of a student with a disability attending school in the Clark County School District (CCSD). The Parent alleged violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300, and Chapter 388 of the Nevada Revised Statutes and the Nevada Administrative Code (NAC), specifically with regard to the failure to evaluate after referral; the conduct of a Manifestation Determination; implementation of a Behavior Plan; provision of services after in-house suspensions; and limiting participation in the development of the student's Individualized Education Program (IEP) due to extreme time constraints.

As set forth in the Findings of Facts below, it became apparent in the course of the investigation that for a portion of the time period of this Complaint, the student attended the CCSD either as a student without disabilities or as a student with a disability under Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. Sections 705, 794, 794a, 794b; 34 C.F.R. Part 104. The Nevada Department of Education's (NDE) jurisdiction in this State Complaint process is over allegations of violations of the IDEA and NAC, Chapter 388. Therefore, the scope of this investigation was limited to those allegations alleging a violation of the IDEA and the NAC, Chapter 388.¹

All documents submitted by the Parent and the CCSD relevant to the issues in the Complaint were reviewed in their entirety in this investigation. The Complaint Investigation Team 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

The allegations in the Complaint, further clarified during the investigation, raise the following issues:

Issue One: Whether the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to evaluate the student and determine eligibility as a student with a disability under the IDEA, specifically upon referral of the student by a CCSD employee and/or the Parent with the suspicion that the

¹ This determination does not preclude the Parent from pursuing other remedies available to the Parent, including the grievance procedures available under Section 504.

student had a disability and was in need of special education and related services.

Issue Two: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with respect to the suspension of the student with a disability under the IDEA and the NAC, Chapter 388, specifically:

- a. The conduct of a Manifestation Determination during the 2015 - 2016 school year with the involvement of the Parent after the in-school suspensions constituted a disciplinary change of placement;
- b. Whether the student received behavioral intervention services and modifications that were designed to address the behavior violation so that it did not recur, specifically the development of a Behavior Plan² after the disciplinary change of placement;
- c. Whether the student continued to receive educational services during the disciplinary change of placement, so as to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP, specifically with regard to access to a special education teacher.

Issue Three: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, to schedule an IEP meeting at a mutually agreed upon time with respect to the IEP meetings held on March 23, 2016, April 4, 2016 and April 13, 2016.

FINDINGS OF FACT (FOF)

General

1. The 2015 - 2016 school year began August 24, 2015 and ended June 1, 2016. (CCSD School Calendar)
2. The student was determined eligible for Section 504 on February 1, 2016 and, at the time of the Parent's referral for evaluation for eligibility for special education, the student had a Section 504 Plan and BIP with accommodations in the classroom to help with behaviors. (Section 504 Evaluation Summary and Accommodation Plan, March 16, 2016 Multidisciplinary Evaluation Team (MDT) Report, February 1, 2016 BIP)
3. The student was determined eligible for special education and related services on March 15, 2016 and the student's initial IEP was completed on April 13, 2016. (MDT Report, April 13, 2016 IEP)

² The student's behavior plans were referred to in the Complaint and by the CCSD variously as behavior plans, positive behavior plans, and positive intervention behavior support plan. These plans are all referred to as BIP(s) in this Report.

The student received the following grades for the third quarter of the 2015 – 2016 school year in subjects in which the student was provided specially designed instruction: English – B, Math – F; Science – D, with “shows improvement”; US/NV History – B. (2015-2016 Report Card)

Referral

1. The Parent alleged that a CCSD employee referred the student for evaluation as a student with a disability in November 2015. Neither the CCSD nor the Parent had documentation of a November 2015 CCSD employee referral. Upon request, the Parent clarified that the referenced referral was for Section 504. (Complaint, Review of Documents, August 16, 2016 Parent Email)
2. The Parent referred the student for an initial evaluation for special education and related services on February 17, 2016. (February 17, 2016 Referral Letter to the CCSD)
3. On February 18, 2016, the CCSD issued a Prior Written Notice to the Parent proposing to evaluate and identify the student’s special education needs. The reasons for the proposed evaluation were Parent concerns and behavior concerns. (February 18, 2016 Prior Written Notice)
4. The evaluation of the student was completed and the student was determined eligible for special education as a student under the category of Emotional Disturbance on March 15, 2016. The Parents participated in the MDT meeting. (MDT Report)
5. From the Parent’s referral on February 17, 2016 to the conduct of the initial evaluation of the student and determination of eligibility on March 15, 2016, 19 school days lapsed. The date the Parent consented to the conduct of the initial evaluation was not provided by the CCSD or the Parent during this investigation. (School Calendar, MDT Report, February 17, 2016 Referral Letter to the CCSD)

Suspension of the Student

1. The student’s April 13, 2016 IEP had behavioral goals and objectives and direct specially designed instruction addressing behavioral/social skills and accommodations, including a BIP. The student’s IEP allowed the student to seek a calm place when feeling frustrated, anxious, or emotional or to use a “pressure pass”. (April 13, 2016 IEP)
2. The student had two BIPs in the 2015 – 2016 school year; one dated February 1, 2015 when the student was a student with a disability under Section 504 and one dated April 13, 2016 that was developed subsequent to the determination of the student’s eligibility

as a student with a disability in need of special education. (February 1, 2016 BIP, April 13, 2016 BIP)

The BIP implementing the April 13, 2016 IEP noted on average the student had three explosive episodes per week that could immediately become aggressive, with the potential for administration/counselor to become involved for supports to assist in de-escalating the incident. The BIP included the targeted behavioral concerns of handling frustrating circumstances and accepting redirection/directives from authoritative figures, noting that the student will become agitated, irritated, frustrated quickly and verbally threatening. The student's BIP provides a final reactive strategy if other strategies are unsuccessful that if the student is unable to calm and the behavior escalates, the student may be sent to the counselor and then to the Dean (if behavior persists beyond counselor's assistance). In-school (referred to as in-house by CCSD) suspension was not a reactive strategy in the student's BIP or IEP. (April 13, 2016 BIP, April 13, 2016 IEP)

There are six periods in a school day in the CCSD. In the 2015 – 2016 school year, the student received the following disciplinary removals :

Prior to the determination of eligibility as a student with a disability under the IDEA and NAC, Chapter 388:

Suspension: September 3, 2016 for three periods; September 8, 2015 for all periods; December 18, 2015 for one period; seven consecutive days for all periods from January 4, 2016 to January 12, 2016 followed by January 13, 14, and 15, 2016 for two periods each day; January 26 and 27, 2016 for all periods; and February 16, 17, 18, 2016 for all periods.

Temporary Removal upon the issuance of a Notice of Required Parent Conference (RPC): October 9, 2015 for four periods; October 12, 13, 14, 2015 for all periods; December 15 and 16, 2015 for all periods; January 21 and 22, 2016 for all periods; and March 10 and 11, 2016 for all periods.

In-school suspensions: February 4 and 5, 2016 for one period; February 12, 2016 for four periods and March 15, 2016 for one period;

After the determination of eligibility as a student with a disability under the IDEA and NAC, Chapter 388:

In-school suspensions: March 16, 2016 for all periods; April 4, 2016 for three periods and April 5, 2016 for all periods; April 7, 2016 for one period; May 13, 2016 for all periods; May 20, 2016 for two periods and continuing on May 23, 24, 25, 2016 for all periods. (Behavioral Detail Report, Student Behavior Attendance Detail, CCSD School Calendar)

According to the Behavior Detail Reports, the exclusion through the issuance of a RPC on March 10 and 11, 2016 was for insubordination after the teacher attempted to direct the student to the Counseling Office. The in-school suspensions from March 16, 2016 through May 25, 2016 occurred after the following incidents and interventions:

On March 16, 2016 all day for “battery student” that occurred on March 15, 2016 with in-school suspension as the first resolution;

On April 4, 2016 for three periods for “verbal confrontation” with in-school suspension the only documented resolution/intervention that continued on April 5, 2016;

On April 7, 2016 for one period for failure to comply with school rules resulting in the student being sent to the Dean’s office after a possible conference with student;

On May 13, 2016 all day for an incident the preceding day after the student threatened harm, resulting in the student being sent directly to the Dean’s office; and

On Friday, May 20, 2016 for two periods for failure to comply with the Dean’s directive to comply with school rules and yelling at the Dean. The May 20, 2016 in-house suspension continued the following Monday through Wednesday, May 23 – 25, 2016. (Behavior Detail Report, Student Period Attendance Detail)

No Manifestation Determination was conducted for disciplinary removals of the student during the 2015 – 2016 school year. (Review of Documents)

The CCSD was provided two opportunities to submit documentation on the activity the student was engaged in during the in-school suspensions. The CCSD submitted no documentation that the student received services during the in-school suspensions or after the issuance of RPCs or that the CCSD engaged in any procedure to determine the extent to which services were needed. The student reported to the Parent that the student did not do anything during in-school suspensions. (Review of Documents, CCSD Response, Parent Response, August 17, 2016 CCSD Email)

Mutually Agreed Upon Time

1. Commencing at 7:15 AM, the student's IEP Team met on March 23, 2016, April 6, 2016 and April 13, 2016 to develop the student's April 13, 2016 IEP. (IEP Information Pages)
2. The CCSD provided the Parent a meeting notice in advance of the March 23, 2016, April 6, 2016 and April 13, 2016 IEP meetings. The CCSD did not have documentation that the Parent was notified in advance of the need for multiple IEP meetings. (Notice on Proposed Meeting Arrangements, August 17, 2016 CCSD Email)
3. The Parent's sole allegation regarding the scheduling of the March 23, 2016, April 6, 2016, and April 13, 2016 IEP meetings was that the development over three days was due to the extreme time limits imposed by the school on the meetings. The Parent attended the March 23, 2016, April 6, 2016 and April 13, 2016 IEP meetings along with her advocate. (Complaint, IEP Information Pages)

CONCLUSION OF LAW

Issue One: Whether the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to evaluate the student and determine eligibility as a student with a disability under the IDEA, specifically upon referral of the student by a CCSD employee and/or the Parent with the suspicion that the student had a disability and was in need of special education and related services.

In accordance with the NAC §388.337(1)(a), with some exceptions not applicable in this case, when the CCSD determined that good cause existed to evaluate the student, it was required to conduct the initial evaluation within 45 school days after the Parent provided informed written consent. (See also IDEA, 34 C.F.R. §300.301(c)) The first referral to the CCSD for evaluation as a student with a disability in need of special education and related services was the Parent's referral of the student for an initial evaluation for special education and related services on February 17, 2016. (FOFs #5, #6) The following day, the CCSD issued a Prior Written Notice to the Parent proposing to evaluate the student and to identify the student's special education needs. (FOF #7)

The evaluation of the student was completed and the student was determined eligible for special education as a student under the category of Emotional Disturbance on March 15, 2016. (FOF #8) While the date the Parent consented to the conduct of the initial evaluation was not provided to the Complaint Investigation Team, it was not required in this case since only 19 school days lapsed from the Parent's referral on February 17, 2016 to the conduct of the initial evaluation of the student and determination of eligibility on March 15, 2016. (FOF #9)

Therefore, the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to evaluate the student and determine eligibility as a student with a disability under the IDEA upon the referral of the Parent and the CCSD's determination that good cause existed to evaluate the student.

Issue Two: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with respect to the suspension of the student with a disability under the IDEA and the NAC, Chapter 388, specifically:

- a. The conduct of a Manifestation Determination during the 2015 - 2016 school year with the involvement of the Parent after the in-school suspensions constituted a disciplinary change of placement;**
- b. Whether the student received behavioral intervention services and modifications that were designed to address the behavior violation so that it did not recur, specifically the development of a BIP after the disciplinary change of placement;**
- c. Whether the student continued to receive educational services during the disciplinary change of placement, so as to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP, specifically with regard to access to a special education teacher.**

Protections Prior to Eligibility?

There are an extensive number of exclusionary disciplinary removals prior to the determination on March 15, 2016 that the student was a student with a disability in need of special education under the IDEA and the NAC, Chapter 388. (FOF #13) However, as discussed in the introduction, the NDE's jurisdiction in this Complaint process is limited to allegations of violations of the IDEA and NAC, Chapter 388. As such, with the limited exception noted below, those disciplinary removals of the student when the student was considered to be without disabilities or was a student with a disability under Section 504 are not removals counted for purposes of the determination whether the CCSD's removals of the student with a disability from the student's current educational placement caused a disciplinary change of placement under the IDEA and NAC, Chapter 388.

Some of the exclusionary removals of the student took place between the Parent's referral for evaluation as a student with a disability under the IDEA and NAC, Chapter 388, on February 17, 2016 and the determination of the student's eligibility on March 15, 2016. (FOFs #3, #6, #13) Pursuant to the IDEA, 34 C.F.R. §300.534, incorporated by reference in NAC §388.265(1), the student would be protected even though the student was not determined eligible for special education and related services if the CCSD had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. Among other bases, a public agency is deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action occurred, the parent requested an evaluation of the student under the IDEA evaluation procedures (34 C.F.R. §300.534(b)(2)). In this case, not only is there a basis of knowledge due to the Parent's referral of the student for evaluation, the student was subsequently determined eligible as a student with a disability in need of special education. Therefore, exclusionary disciplinary removals of the student after February 17, 2016 to the end of the school year, June 1, 2016 (FOF #1), are within the scope of this investigation with regard to the applicability of the protections of the IDEA.

What is a Disciplinary Change of Placement?

The Parent's allegations in this Complaint were with regard to the conduct of a Manifestation Determination, the modification of the student's BIP, and continued educational services with regard to the in-school suspensions of the student in the 2015 – 2016 school year. The additional rights for students with disabilities under the IDEA, 34 C.F.R. §300.530, and NAC, Chapter 388, are premised on the public agency's decision to change the placement of the student with a disability because of a violation of a code of student conduct. Therefore, it must first be determined whether the relevant in-school suspensions of the student with a disability constituted a disciplinary change of placement.

Is an in-school suspension considered a removal to be counted toward a disciplinary change of placement pursuant to the IDEA, 34 C.F.R. §300.530? In some cases. In the discussion of the IDEA regulations in 2006, the United States Department of Education provided the following clarification:

“It has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in §300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy. Portions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in §300.536.” (Discussion of the IDEA regulations: Federal Register /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations, Pg. 46715)

The United States Department of Education applies this same rationale to other exclusionary disciplinary removal measures without the provision of required educational services.³ Therefore, the removals of the student with the issuance of a RPC (FOF #13) after the Parent's referral on February 17, 2016 and determination of eligibility on May 15, 2016 will also be considered a disciplinary removal if the student was not afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the student's IEP, and continue to participate with nondisabled students to the extent the student would have in the current placement.

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. The CCSD did not provide any documentation that the student continued to receive educational

³ “The Department would apply the same analysis to the use of exclusionary discipline measures that apply to in-school suspensions, for purposes of 34 CFR §300.530. In the Preamble to the August 14, 2006 final Part B regulations, the Department explained: “It has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in 34 CFR §300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy.” The explanation concludes by indicating that whether an in-school suspension would constitute a day of suspension would depend on the unique facts and circumstances of each case. 71 Fed. Reg. 46715 (Aug. 14, 2006).”(August 1, 2016 Memorandum from the United States Department of Education, pg. 13, footnote 29) This Memorandum is publically available at: <http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>

services as required by the IDEA, 34 C.F.R. §§300.101(a), during the removals resulting from the in-school suspensions or the issuance of a RPC. (FOF #16) In the absence of documentation, the Complaint Investigation Team determined that these removals would be considered as part of the days of suspension under the IDEA, 34 C.F.R. §300.530, to determine whether, at any point, the in-school suspensions from March 16, 2016 exceeded 10 school days.

From the date of the Parent's referral for evaluation as a student with a disability, the following exclusionary disciplinary removals occurred:

- The student was suspended on February 18, 2016. It was the third day in a three-day suspension;
- The student was excluded from school for misconduct by the issuance of a RPC on March 10 and 11, 2016 for all periods and for one period on March 15, 2016;
- The student was removed to an in-school suspension on March 16, 2016 for all periods; April 4, 2016 for three periods; April 5, 2016 for all periods; April 7, 2016 for one period; May 13, 2016 for all periods; May 20, 2016 for two periods and May 23, 24, 25, 2016 for all periods. (FOF #13)

As indicated above, the suspension on February 18, 2016 commenced prior to the Parent's referral of the student for evaluation as a student with a disability. In accordance with the IDEA, 34 C.F.R. §300.534, since the referral was not before the occurrence of behavior that precipitated the disciplinary action, this day of suspension will not be counted as a day of removal for purposes of this Report.

The exclusionary disciplinary removals after the determination that the student was a student with a disability in need of special education totaled six full days and three partial days. However, when taken together with the removals after the Parent's referral and prior to the eligibility determination when the student was already protected under the IDEA, 34 C.F.R. §300.534, and the NAC, Chapter 388, exclusionary disciplinary removals were imposed on the student for eight full days and four additional partial days. (FOF #13) With regard to the partial school days, the Complaint Investigation Team determined that, for the exclusions within the NDE's jurisdiction, there were two school days the student attended school for five periods and was excluded for one; one school day the student attended for four periods and was excluded for two periods; and one school day the student attended for three periods and was excluded for three periods. (FOF #13)

Pursuant to the NAC §388.265(5)(b), for purposes of this section on suspension, expulsion or exclusion of a student with disability, "school day" means any day, including a partial day, that students are in attendance at school for instructional purpose. This definition under the NAC neither includes any exceptions to the amount of time represented by the partial day nor includes the limitation in the IDEA, 34 C.F.R. §300.11(c)(2), that a school day has the same meaning for all children in school, including children with and without disabilities. The NDE has not issued any guidance or directive to date on the manner in which partial day exclusions, regardless of the number of periods, would be counted in the determination of disciplinary removals.

In accordance with the IDEA, 34 C.F.R. §300.536(a), for purposes of disciplinary removals of a student with a disability from the student's current educational placement, a change of

placement occurs if the removal is for more than 10 consecutive school days; or the student with a disability has been subjected to a series of removals that constitute a pattern. A series of disciplinary removals constitute a pattern if the series of removals total more than 10 school days in a school year; because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and because of such additional factors as the length of each removal; the total amount of time the student has been removed; and the proximity of the removals to one another. In this case, the disciplinary removals within the scope of this Complaint were not imposed for 10 consecutive school days at a time in the 2015 – 2016 school year; rather, they were a series of removals for misconduct totaling 12 school days, including the partial school days of removal. (FOF #13)

While the factors pursuant to the IDEA, 34 C.F.R. §300.536(a)(2), are not exclusive factors, based on the available data, the Complaint Investigation Team was able to determine that the removals ranged from weekly exclusion to a period of five weeks between exclusions; ranged from one period in a school day to three periods for four days and all periods for eight days; and the exclusions were for misconduct identified as insubordination, verbal confrontation, harm and threatened harm (FOF #14).

The IDEA, 34 C.F.R. §300.536(b), requires the public educational agency to determine on a case-by-case basis whether a series of removals constitute a change of placement. This is not an unfettered right. A public agency's determination is subject to review through due process⁴ and judicial proceedings (34 C.F.R. §300.536(b)(2)).⁵ Given the specific availability of this alternative remedy to parents regarding a disagreement with a disciplinary change of placement decision, the Complaint Investigation Team declines to substitute its judgment for the CCSD's with regard to whether the cumulative number of exclusionary disciplinary removals of the student constituted a disciplinary change of placement pursuant to the IDEA, 34 C.F.R. §300.536. Therefore, for purposes of this Report, the cumulative 12 school days of removal of the student did not constitute a disciplinary change of placement.

Manifestation Determination

In accordance with the IDEA, 34 C.F.R. §300.530(e), within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the student's IEP Team must review all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the agency's failure to implement the student's IEP. Since the cumulative 12 school days of removal were not determined to constitute a disciplinary change of placement for purposes of this Report, the CCSD was not required to conduct a Manifestation Determination pursuant to the IDEA, 34 C.F.R. §300.530, and did not. (FOF #15)

⁴ Pursuant to the IDEA, 34 C.F.R. §300.507, a Parent may file a Due Process Complaint on matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education to the child

⁵ In the discussion of the IDEA 2006 regulations, the United States Department of Education responded as follows to a comment: Comment: One commenter requested an explanation of what recourse parents have if they disagree with the public agency's change in placement decision for a child who violates a code of student conduct. Discussion: If a parent of a child with a disability disagrees with any decision regarding a disciplinary change in placement of a child under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), the parent may request a due process hearing pursuant to §300.532. (Discussion of the IDEA regulations: Federal Register /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations, Pg. 46729)

BIP after the Disciplinary Change of Placement

In accordance with the IDEA, 34 C.F.R. §300.530(f)(1), and the NAC, Chapter 388, if the conduct of a Manifestation Determination resulted in a determination that the misconduct was a manifestation of the student's disability, the IEP Team must either conduct a functional behavioral assessment, unless the local educational agency had conducted one before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or if a BIP already had been developed, review the BIP, and modify it, as necessary, to address the behavior.

As discussed previously, the CCSD was not required to conduct a Manifestation Determination and no determination was made that the conduct was a manifestation of the student's disability. Therefore, the CCSD was not required to comply with the requirements of the IDEA, 34 C.F.R. §300.530(f)(1), to review the student's BIP and modify it upon making a determination that the conduct was a manifestation of the student's disability.

The Complaint Investigation Team noted that the student's BIP had only been in effect for a little over a month by the end of the series of exclusionary disciplinary removals in the 2015 – 2016 school year. However, it is of concern that the vast majority of the violations of the code of student conduct that resulted in the removals were targeted behaviors in the student's BIP with specific reactive strategies. (FOFs #10, #12, #14) While the CCSD complied with the requirements under the IDEA and the NAC with regard to the required modification of the student's BIP in this Complaint, the United States Department of Education's recent cautionary guidance in the memorandum cited in Footnote 3 is noteworthy: "Removals from the current placement generally do not address the needs of a child with a disability for positive behavioral interventions and supports. Accordingly, we remind States, LEAs, and IEP Teams that while 34 CFR §300.530 explicitly permits school personnel to implement short-term disciplinary removals from the current placement, such removals may indicate a need to review and revise the child's IEP to address his or her behavioral needs. In addition, exclusionary disciplinary measures that do not constitute a removal from the current placement may also indicate the need to review and revise the child's IEP."

Services

Although, for purposes of this Report, the disciplinary removals in this case did not constitute a change of placement, after the student with a disability had been removed from the current placement for 10 school days in the same school year the school was required to follow a specific process to determine the appropriate services to be provided the student beginning on the 11th school day that the student was removed (34 C.F.R. §300.530(b)(2) and (d); NAC §388.265(4)). The Parent specifically noted the student's lack of access to a special education teacher in the Complaint during the in-school suspensions. However, the requirement under the IDEA, 34 C.F.R. §§300.101(a) and 300.530(d), with regard to services in this context is the provision of services as needed to provide a free appropriate public education so as 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

Pursuant to the IDEA, 34 C.F.R. §300.530(d)(4), since the 11th and 12th day of removal in the school year were for two consecutive days, school personnel, in consultation with at least one of the student's teachers, could have determined the extent to which services were needed so as 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. There was no information provided in the course of this investigation that the CCSD school personnel engaged in this required procedure or provided the student any educational services during these two days of exclusion. (FOF #16)

Upon consideration of the overall number of periods the student was excluded from school after the basis of knowledge was established and the number of disciplinary removals after the 10 cumulative school days of removals (FOF #13), the Complaint Investigation Team determined that, for purposes of this Report, there was insufficient information to make a determination of the extent to which the student needed educational services on the 11th and 12th days of removals so as to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP.

Therefore, since the in-school suspensions did not constitute a disciplinary change of placement for purposes of this Report, the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to the conduct of a Manifestation Determination and the review/modification of the student's BIP. While the student did not receive educational services beginning on the 11th school day that the student was removed, there was insufficient evidence to make a determination whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to the requirement that the student continue to receive educational services, as needed.

Issue Three:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, to schedule an IEP meeting at a mutually agreed upon time with respect to the IEP meetings held on March 23, 2016, April 4, 2016 and April 13, 2016.

Pursuant to the IDEA, 34 C.F.R. §300.322(a)(2), and NAC §388.281(8)(a), a public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including scheduling the meeting at a mutually agreed on time and place. The notice provided in NAC §388.281(8) is designed to ensure that a parent is provided sufficient notice to enable the parent to make arrangements to participate in such meetings.

The student's April 13, 2016 IEP was developed over three meetings on March 23, 2016, April 6, 2016 and April 13, 2016 and each IEP meeting commenced at 7:15 AM. (FOF #17) The CCSD provided the Parent a meeting notice in advance of the March 23, 2016, April 6, 2016 and April 13, 2016 IEP meetings. (FOF #18) In this case, the sole allegation regarding the scheduling of these IEP meetings was that the development over three days was due to the extreme time limits imposed by the school on the meetings.

Neither the IDEA nor NAC, Chapter 388, address the specific amount of time to be allocated to conduct an IEP meeting or the conduct of the IEP meeting over multiple days. In this case, the March 23, 2016, April 6, 2016 and April 13, 2016 IEP meetings were scheduled and conducted at a time agreed upon by the Parent and the CCSD and the Parent was able to make arrangements and to participate in the meeting with her advocate. (FOFs #18, #19)

Therefore, the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to scheduling an IEP meeting at a mutually agreed upon time with respect to the IEP meetings held on March 23, 2016, April 4, 2016 and April 13, 2016.