

**CLARK COUNTY SCHOOL DISTRICT
COMPLAINT INVESTIGATION
(#CL092520)**

Report Issued on November 19, 2020

INTRODUCTION

On September 25, 2020 the Nevada Superintendent of Public Instruction received a Complaint from an adult Student alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq., and the IDEA regulations, 34 C.F.R. Part 300; and Chapter 388 of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC) by the Clark County School District (CCSD).

The Student alleged that determinations made by CCSD on 11/15/2019 and 12/16/2019 regarding the Student's ineligibility for special education services failed to comply with the IDEA and NAC. The Student further alleged that CCSD failed to implement provisions of the Student's IEP relating to extra time to complete assignments in AP Chemistry and failed to make an appropriate determination regarding the Student's exit from special education services in May 2020. Finally, the Student alleged that CCSD failed to comply with certain terms of a settlement agreement entered into between the Student and CCSD on 12/12/2019 following a request for a due process hearing.

The Complaint also alleged that, in violation of the Student's Section 504 plan, CCSD personnel inappropriately interfered with the Student's participation in extra-curricular activities; treated the Student disparately in the classroom and in extra-curricular activities; and improperly denied Section 504 eligibility and/or failed to implement the Student's Section 504 plan. The Nevada Department of Education (NDE) does not have jurisdiction to investigate allegations of discrimination, or other civil rights violations under Section 504 of the Rehabilitation Act of 1973 (Section 504) or Title II of the Americans with Disabilities Act of 1990 (ADA), nor does it have jurisdiction concerning the implementation of student plans developed under Section 504. In addition, the Complaint raised allegations of improper changes to, or implementation of, the CCSD's policies relating to matters such as zone variances, high school diploma certifications, and raised allegations regarding school personnel issues. The NDE does not have jurisdiction to investigate the application or implementation of these school district policies, which are unrelated to the IDEA or NRS/NAC, Chapter 388, nor to investigate school personnel issues. Accordingly, these additional allegations were found to be outside the jurisdiction of the special education state complaint process and beyond the scope of this investigation. The Student and CCSD were notified that these claims would not be investigated as a result of that determination.

Student's Complaint and documents submitted with the Complaint, CCSD's denial of all claims and all documents submitted by CCSD in response to the issues in the Complaint, and additional information provided by CCSD in response to follow up inquiries by the Complaint investigation team, were reviewed in their entirety in this investigation. The Findings of Fact cite the source(s) of the information determined necessary to resolve the issues in this Complaint.

COMPLAINT ISSUES

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

Issue One: Whether the CCSD complied with the IDEA and NAC, Chapter 388, with regard to the determination of the Student's ineligibility for special education services on November 15, 2019 and December 16, 2019, specifically whether the CCSD followed procedures and applied required standards under the IDEA and the NAC and reached a determination that was reasonably supported by the student-specific data.

Issue Two: Whether the CCSD complied with the IDEA and NAC, Chapter 388, with regard to implementing the Student's IEP in effect during the 2019/2020 school year, specifically with regard to providing the Student additional time for homework and assignments in AP Chemistry upon the Student's request in the last few school days of May of 2020¹.

Issue Three: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to the determination that the Student should exit from special education services in May of 2020, specifically whether the CCSD followed procedures and applied required standards under the NAC and reached a determination that was reasonably supported by the student-specific data.

Issue Four: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to complying with certain terms of the settlement agreement entered into between CCSD and the Student on December 12, 2019, specifically: allowing the Student to compete for a lead position on the Robotics Team 987; allowing the Student the ability to travel with the Robotics Team 987; timely responding to requests for information from the necessary Independent Educational Evaluation (IEE) provider; and implementing required teacher training concerning the Student's disabilities.

FINDINGS OF FACT

1. The student, born March 23, 2002, is an adult student eligible for special education services pursuant to IDEA and NAC, Chapter 388, under the disability category of autism spectrum disorder and other health impairment. The student was enrolled at CCSD in the 12th grade in the 2019-2020 school year and found eligible for services pursuant to IDEA on April 29, 2020. (Student Academic History; 4/29/2020 Eligibility Team Reports; 5/7/2020 IEP; 5/20/2020 IEP)
2. The Student was referred for an initial evaluation by their² Parents in the 2019-2020 school year. A conference was held to discuss evaluation and the following Areas were identified

¹ Issue Two was initially articulated in the Issues Letter issued to the Complainant and Respondent as: "Whether the CCSD complied with the IDEA and NAC, Chapter 388, with regard to implementing the Student's IEP(s) in effect during the 2019/2020 school year, specifically with regard to providing the Student additional time for schoolwork in AP Chemistry upon the Student's request in the last few school days of May of 2020."

The Issue as articulated in this Report is substantively the same as that articulated in the Issues Letter but has been edited to reflect applicable details that were clarified in the course of the investigation.

² The Student is referred to in this Report by the gender-neutral pronouns "they," "them," and/or "their" to preserve the Student's anonymity and safeguard individually identifiable information./

for evaluation: Health and Sensory/Motor Functioning, Academic Performance/Achievement, General Intelligence, Speech/ Language/Communication and Social and Emotional Condition/Adaptive Skills/ Behavior. The areas specified for evaluation based on concerns were: Health, Academic, General Intelligence, and Social Emotional Condition. Parents signed consent for the evaluation on October 21, 2019. Areas of concern identified by Parents included clinical diagnoses of Tourette Syndrome, Graves' Disease and Asperger's Syndrome. An evaluation was completed by CCSD and a Multidisciplinary Evaluation Team (MDT) meeting was held to discuss the results of the evaluation on November 15, 2019 - 17 school days after Parents confirmed consent for the evaluation. (10/21/2019 Parental Consent for Evaluation; 11/15/2019 MDT Report; CCSD 2019-2020 School Calendar for Students)

3. The MDT Report identified the MDT as a local education (LEA) representative, the Student's Parents, a school psychologist, special education teacher and general education teachers. A school nurse also completed and reported on a Student Health Assessment, including providing a summary of Student's medical history and current issues, and attended the MDT meeting. (11/15/2019 MDT Report)
4. The evaluation conducted of the Student further included assessment of: the Student's cognitive ability, measured by the Reynolds Intellectual Assessment Scales (RIAS-2); the Student's current performance in the general education setting, measured by the Woodcock-Johnson IV Tests of Achievement (WJ-IV) in three curricular areas – reading, mathematics and written language, classroom observation and teacher reports; the Student's social and emotional condition and behavior, measured by Parent Rating Scales, Teacher Rating Scales and a student self-report of the Behavior Assessment System for Children – Third Addition (BASC-3) and classroom observation. Data resulting from these evaluations generally placed the Student within average ranges of performance. More specifically, the WJ-IV indicated the Student performed above-average in mathematics, showing proficient skills in calculation and applied problems. The WJ-IV further indicated the Student was performing at grade level in reading and writing skills, while showing weaker skills in spelling. The BASC-3 rating scales completed by Parents yielded scores in the average range with the exception of Adaptive Skills, where the student scored in the at-risk range, with Parents reporting the Student has difficulty with task completion and maintaining a schedule. The teacher rating scales reflected at-risk Adaptive Skills composite in the at-risk range and referenced difficult with work completion skills. The Student completed the self-report of the BASC-3. The Student scored within the average range on the Emotional Symptoms Index. The Student did not report feelings of anxiety and reported average interpersonal relations, self-esteem, and self-reliance and a positive attitude toward school. The Student did report some difficulty in maintaining close relationships and described some teachers as unfair. (11/15/2019 MDT Report)
5. The MDT found that observations of the Student and teacher reports regarding their academic performance indicated that they required about the same level of support as typical peers in general education in order to demonstrate reading and writing skills that within the average range for their grade level and above the average range for their grade level in mathematics. (11/15/2019 MDT Report)
6. The 11/15/2019 MDT Report did not evidence assessment of the speech, language, and other communication skills of the Student, nor did the report evidence consideration of the Student's sensory regulation, symbolic and imaginative play, activities and special interests, or motor skills. (11/15/2019 MDT Report)

7. The MDT memorialized two qualifying conditions for eligibility: (1) the identification of a disability and (2) determination of a need for special education services and concluded that the data evidenced that the Student's health condition demonstrated the student had a disability but exhibited a level of need for services that could be supported through general education services alone. Parents disagreed with the MDT determination, refused to sign the MDT Report and were provided with a copy of procedural safeguards and parental rights. (11/15/2019 MDT Report; 11/15/2019 Student Confidential Status Record)
8. On December 6, 2019 Parents' signed a subsequent Consent for CCSD to "continue further assessments to evaluate for OHI and AUT [eligibility] as well as speech/language communication." A second MDT meeting was then held to continue discussion of the Parents' concerns of Tourette Syndrome, Graves' disease, and Asperger Syndrome on December 16, 2019 - 33 school days after Parents confirmed consent for the evaluation. (12/6/2019 Parental Consent for Evaluation; 12/16/2019 MDT Report; CCSD 2019-2020 School Calendar for Students)
9. The MDT Report identified the MDT team as a LEA representative, the Student's Parents, a school psychologist, special education teacher and general education teachers. The MDT Report further reports the input of a school nurse, speech language pathologist and consulting school psychiatrist in this evaluation. (12/16/2019 MDT Report)
10. In addition to the evaluations conducted for the 11/15/2019 evaluation, additional assessments of the Student were conducted in the areas of health, behavioral/social skills and autism ratings. An additional observation of the Student in the general education setting was conducting by a consulting school psychologist, where the Student's facial tics were observed. The Student demonstrated appropriate peer and social interactions during this additional observation. (12/16/2019 MDT Report)
11. Autism Spectrum Rating Scales were completed by the Parents and two teachers. The Parents' scales indicated scores that fell into the "Elevated" or "Very Elevated" score range indicating that they were reporting many characteristics similar to youth diagnosed with Autism Spectrum Disorder and more concerns than average. Two teachers completed the Autism Spectrum Rating Scales, one teacher's scores falling generally into the average score range, with the exception of Social/Communication category where the score fell into the "Elevated" range. This teacher's results did not report many characteristics similar to youth diagnosed with Autism Spectrum Disorder. The second teacher's rating scales fell into the "Slightly Elevated" category with this teacher reporting some characteristics similar to youth diagnosed with Autism Spectrum disorder. (12/16/2019 MDT Report)
12. The Adaptive Behavior Assessment Spectrum System – Third Edition (ABAS-3) was conducted with the Student for additional data relating to Adaptive Skills. This assessment measures ten different skill areas and three broad domains of adaptive behavior and provides a total score. The three broad domains of adaptive behavior include the conceptual domain, social domain and practical domain, and, taken together, the scores of these domains are described as the general adaptive composite (GAC). The Student's GAC score "was measured in the extremely low range at a level equal to or better than two percent of his same aged peers." (12/16/2019 MDT Report)
13. The MDT considered a communication evaluation to address Speech Language/Social Communication skills. The Student was described as cooperative and appropriately engaged during the assessment process which included administration of the following assessments: Comprehensive Assessment of Spoken Language-2nd Edition (CASL-2) –

Nonliteral Language, Meaning from Context, Inferred, Double Meaning and Pragmatic Judgment. The results of these assessments were described in the MDT Report and the evaluator's conclusion and recommendation indicated that the Student's communication and language skills fell into the average or above average range for all categories assessed and were adequate for educational purposes. The evaluator specifically indicated that, based on the assessment findings, the Student was not recommended to receive speech/language therapy services. (12/16/2019 MDT Report)

14. The 12/16/2019 MDT acknowledged that the Student had access to certain accommodations based on their 504 plan, including: a pressure pass, additional time, preferential seating, copies of notes, chunking of assignments, rubrics and checks for understanding, but reiterated their finding that the data considered regarding the Student's overall academic performance indicated that they required about the same level of support as typical peers in general education in order to demonstrate reading and writing skills within the average range for their grade level and above the average range for their grade level in mathematics. (12/16/2019 MDT Report)
15. The 12/16/2019 MDT memorialized two qualifying conditions for eligibility: (1) the identification of a disability and (2) determination of a need for special education services. The MDT found that the data evidenced that the Student's health condition demonstrated the student had a disability and acknowledged that the Student did demonstrate many characteristics of Autism Spectrum Disorder. However, the MDT concluded the Student exhibited a level of need for services that could be supported through general education alone and, therefore, was ineligible for special education services. The MDT signature page did not include any signatures or Parent initials. (12/16/2019 MDT Report)
16. Prior to the start of the 2019-2020 school year, and before reaching the age of majority, the Student, through their Parents, had filed for due process hearing pursuant to IDEA, alleging violations of FAPE in the 2018-2019 and 2019-2020, and for due process hearing pursuant to Section 504, alleging disability discrimination in the 2019-2020 School Year. These two requests for hearing were resolved by entry of a Settlement Agreement between the Parties resolving all claims under both IDEA and Section 504 without admission of liability. (12/12/2019 Settlement and Release Agreement³ (Settlement Agreement))
17. The bulk of the Terms, Definitions and Conditions outlined in the Settlement Agreement pertained to the Student's participation in the high school Robotics Teams. (Settlement Agreement Para. 1 (a)-(e))

Pursuant to the terms of the Settlement Agreement, CCSD was required to allow the Student to participate in the Robotics team from January 6, 2020 – May 20, 2020, subject to specific terms outlined in the Agreement. The terms of the Settlement Agreement are silent as to the Student's participating in and/or competing for a "lead position." (Settlement Agreement Para. 1(e)(10))
18. The Settlement Agreement established specific parameters under which the Student would be permitted to participate in travel with the Robotics Team to competitions outside of Clark County, Nevada. Approval of the Principal following no behavioral incidents was

³ The Settlement Agreement was submitted by the Complainant at the time of submission of the Complaint and by CCSD in documents submitted in its Response to the Complaint. These documents were both fully executed; however, the document submitted by the School District was missing Page 2 of 8; therefore, these Findings of Fact rely on the Settlement Agreement submitted by the Complainant.

- required for the Student to participate in Robotics Team travel. (Settlement Agreement Para. 1(e)(10))
19. The Settlement Agreement called for the CCSD to fund an independent educational evaluation (“IEE”), not to exceed \$1500, if the Student was not found eligible under IDEA by CCSD. The Settlement Agreement required that Parties cooperate fully in implementation of the Agreement. No timeframe was set out for completion of an IEE. (Settlement Agreement Para. 1(e)(15))
 20. The Settlement Agreement required CCSD to provide training for the Student’s teachers and high school administrators concerning the Student’s disabilities and Section 504. No timeframe was specified for provision of such training. (Settlement Agreement Para. 1(e)(16))
 21. A Health Conditions Training was held for the high school administrative and teaching staff on February 12, 2020. This training was presented by the high school nurse and a district health services coordinator. The training addressed Section 504 and the following health conditions: Asperger Syndrome, Graves’ Disease, Anxiety and Tourette’s Syndrome. The Student’s current teachers were in attendance at this training. (2/12/2020 Health Conditions Training Slides; 2/12/2020 Training Sign-in Sheet; 5/11/2020 CCSD Compliance Monitoring email).
 22. An IEE of the Student was conducted by Dr. Rhiannon Rager, Rager Diagnostic & Behavioral Health, and a report was produced summarizing the Psychological/Psychoeducational Evaluation completed and recommendations offered. (3/16/2020 Rager Diagnostic & Behavioral Health Psychological/Psychoeducational Evaluation (“3/16/2020 Rager Evaluation”))
 23. In completing her evaluation, Dr. Rager reviewed the Student’s educational records, including, in relevant part, the Student’s 12/16/2019 MDT Report, Academic History, and Grades History. Dr. Rager conducted interviews with the Student on 1/31/2020 and 2/25/2020, with the Student’s Parents on 1/20/2020 and 2/25/2020, with the Student’s independent therapist on 2/26/2020, and with the high school Assistant Principal on 3/12/2020. In addition, Dr. Rager conducted numerous additional assessments, including collecting rating scales, in January, February and March 2020. (3/16/2020 Rager Evaluation)
 24. From January 3, 2020 to March 4, 2020 coaches/mentors for the Robotics Teams maintained notes regarding their observations of and interactions of the Student in the Robotics workshop. These notes memorialized both commonplace incidents of the Student working in the workshop and instances where the Student was determined to have been disregarding or violating the terms of their agreement for participation on the Robotics Team. (Robotics Team Incident Narrative; 11/10/2020 Principal email)
 25. The high school Robotics Team on which the Student participated traveled to a competition out of Clark County on or about March 5, 2020. Following incidents where the Student was determined to be out of compliance with the terms of agreement for participation on the Robotics Team, the high school Principal determined that the Student would not be allowed to participate in travel to this competition with the team and notified the Student’s Parent of this determination on February 21, 2020. (11/10/2020 Principal email; 9/25/2020 State Complaint)

26. CCSD transitioned to virtual instruction due to the COVID-19 pandemic on March 16, 2020 and remained in virtual instruction through the end of the 2019-2020 school year. (2019-2020 CCSD School Calendar; 2019-2020 Teacher Contact Logs)
27. The Student experienced medical complications and additional academic challenges during the second semester of the 2019-2020 school year. (4/20/2020 Student email; 4/20/2020 Teacher email; 4/22/2020 Parents email; 5/15/2020 Teacher email)
28. An MDT meeting was held on April 29, 2020. The MDT team considered updated information regarding the Student, including the Rager Evaluation, and found the Student eligible for special education service. (4/29/2020 MDT Report)
29. The 4/29/2020 MDT memorialized two qualifying conditions for eligibility: (1) the identification of a disability and (2) determination of a need for special education services. The MDT found that the data considered in this evaluation was consistent with NAC eligibility criteria for Health Impairment for Tourette's Syndrome and Graves' Disease and the Student's health impairment did adversely affect the Student's educational performance. The MDT also found that the data considered in this evaluation were consistent with NAC eligibility criteria for Autism Spectrum Disorder ("ASD") and that, "Signs of ASD" appeared to be adversely affecting the Student's educational performance. (4/29/2020 MDT Report)
30. Subsequent to the MDT's determination of eligibility, an IEP team meeting was convened, and an IEP was developed for the Student on May 7, 2020. This IEP memorialized the Student's concern that they had never failed a class and is now failing one. The IEP included, in relevant part, the following Modification, Accommodation, or Support: [Student] will have additional time for homework and assignments as needed, not to exceed 3 days beyond the original due date, unless medically excused. This accommodation had the following beginning and end dates: 5/7/2020 – 5/6/2021; a frequency of service of: When given homework and assignments; and a location of services of: General Education Class.

The Transition section of the IEP has a checked box of "Standard or Advanced High School Diploma." In a further statement of the course of study for transition services it states: Student participates within an academic curriculum with a focus on standard course of study and working towards a standard diploma. (5/7/2020 IEP; 5/7/2020 Notice of Intent to Implement IEP)

31. On May 7, 2020 the Student's teachers were made aware by the Student's Case Manager that an IEP had been executed for the Student, with instructions to review the IEP on the school's electronic record system and a directive to implement the IEP accommodations. (5/7/2020 Case Manager email)
32. On May 14, 2020 the Student sent an email to their Case Manager stating:

"Hi

I am sending this email because I really want to get a passing in AP Chemistry, I have done all the makeup assignments he has posted thus far in Google Classroom and I still seem to be sitting at a 57%. You said to contact you if I needed help with the assignments and so here I am needing help with getting assignments. Please let me know what I can possibly do to get my grade up.

Thank you”

(5/14/2020 Student email)

33. Following the Student’s inquiry to their Case Manager regarding assistance with the AP Chemistry grade, the Case Manager corresponded with the AP Chemistry teacher, and school administration to ascertain compliance with the Student’s required IEP accommodations. The AP Chemistry teacher provided a detailed narrative of work assigned during the final quarter of the school year which took place through virtual instruction. The teacher further confirmed that the grade the Student was receiving was based on performance on assignments that the student had turned in and assignments outstanding since the beginning of virtual instruction.

In response to an inquiry from the Principal on the status of the Student’s assignments, the AP Chemistry teacher confirmed that IEP accommodations were provided and agreed to make available alternate versions of certain missing assignments for the Student to complete because answer keys had already been provided to the students for some of the assignments in question.

The assignments under discussion all predated the Student’s 5/7/2020 IEP and all predated the final week of school; nonetheless, AP Chemistry teacher and school administrator agreed that the Student would be permitted to turn any work to improve their grade until “the last minute,” even after gradebooks had otherwise been closed by teachers, before the close of the school year. (5/15/2020 High School Staff email string; 5/8/2020 High School Staff email string)

34. The IEP Team convened on May 20, 2020 to discuss the Student’s exit from IEP services. The IEP Team reviewed the Student’s transcript and confirmed the Student was on track to pass all the required courses to earn a standard high school diploma, following which the Student would no longer be eligible for special education services. The Student expressed disagreement with this decision, indicating their belief that they did not receive all services and accommodations needed during their academic career and requesting additional time to improve their ACT scores and increase GPA due to adverse health conditions that have increased. The Student expressed their belief that these factors hindered their ability to gain entrance into their desired college/university. (5/20/2020 IEP; 5/20/2020 Notice of Intent to Implement IEP)
35. The last full week of school in the 2019-2020 school year was May 11 – May 15, 2020. The last day of student attendance for the 2019-2020 school year was May 20, 2020. (CCSD 2019-2020 School Calendar for Students)
36. In the 2019-2020 school year, the Student was enrolled in eight classes: English 12, Imaginative Writing, Advanced Placement (AP) Calculus AB, AP Chemistry, Physics Honors, Extended Science Lab, AP US Government and Student Aide. The Student had a Grade Point Average (“GPA”) of 2.167 for the 2018-2019 school year and had a GPA of 2.250 for the 2019-2020 school year. The Student’s weighted GPA was 2.900.

The Student received the following grades for the 2019-2020 school year:

Class	Term 2 Grade	Term 4 Grade
English 12	D	C
Imaginative Writing	A	A
AP Calculus AB	B	D
AP Chemistry	D	F
Physics H	C	C
Extended Science Lab	A	A
AP US Government	D	D
Student Aide	A	A

(Student Academic History; Summary of Student Performance)

37. At the conclusion of the 2019-2020 school year, the Student had satisfactorily earned 28.00 credits and received a standard high school diploma. (Student Academic History; Student State Graduation Record)

CONCLUSIONS OF LAW

Issue One:

Whether the CCSD complied with the IDEA and NAC, Chapter 388, with regard to the determination of the Student's ineligibility for special education services on November 15, 2019 and December 16, 2019, specifically whether the CCSD followed procedures and applied required standards under the IDEA and the NAC and reached a determination that was reasonably supported by the student-specific data.

A student is determined to be a student with a disability and eligible for special education services under IDEA when he/she is evaluated in accordance with §§300.304 – 300.311 of the IDEA implementing regulations and found to have a specifically enumerated disability and, by reason thereof, to need special education and related services. 34 C.F.R. §300.8, NAC §388.093. A student with a health impairment, other than an orthopedic impairment, is eligible for special education services and programs of instructions if an appropriately constituted eligibility team concludes that the student has a health impairment which could reasonably be interpreted as adversely affecting the education performance of the student, and, by reason thereof, requires special education and related services. NAC §388.402. A student with an autism spectrum disorder is eligible for special education services and programs of instruction if an appropriately constituted eligibility team concludes that the student has autism and, by reason thereof, requires special education and related services. NAC §388.387. In considering eligibility pursuant to each of the above-referenced disability categories, the NAC further sets out the required content of such evaluations. NAC §388.402(4), NAC §388.387(3). A student who is found to have a qualifying disability can, nonetheless, be found not to qualify for special education services if support provided through the regular school program is sufficient. 34 C.F.R. §300.8.

The United States Supreme Court has held that the IDEA requires that a student receive an educational benefit, making progress appropriate in the light of that student's circumstances, but it does not guarantee any particular level of education and "cannot and does not" promise any educational outcome. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 69 IDELR 174

(2017), citing *Bd. Of Educ. Of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 553 IDELR 656 (1982).

“The appropriateness of a determination regarding a student’s eligibility should be assessed in terms of its appropriateness at the time of the child’s evaluation and not from the perspective of a later time with the benefit of hindsight.” *L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 68 IDELR 121 (9th Cir. 2016)⁴, citing *Adams v. Oregon*, 31 IDELR 130 (9th Cir. 1999). In making a determination regarding whether a student who has been found to have a disability needs special education services as a result of that disability, an IEP team – or reviewing court – must consider not only whether the student is performing satisfactorily in the general education classroom, but whether that satisfactory performance is as a result of the student’s receipt of specialized services. *Id.* Courts of competent jurisdiction view a “snapshot,” considering whether an IEP team’s eligibility determinations were formed on the basis of relevant information at the time evaluations were conducted, and not on whether or not that determination “worked” based upon information that later becomes available. *Id.*

When resolving a special education State Complaint concerning a school district’s determination regarding a student’s eligibility for special education, NDE must determine both whether the school district followed required procedures and applied appropriate standards, and reached a determination reasonably supported by student-specific data and consistent with IDEA. OSEP Memorandum 13-08 issued on July 23, 2013.⁵

Consistent with this standard articulated by OSEP, initial consideration must be given to whether CCSD “followed required procedures and applied appropriate standards” in the contested eligibility determinations. The eligibility determinations at issue in this investigation are those conducted by MDTs on November 15, 2019 and December 16, 2019. (Findings of Fact (FOFs) #7, #15) A review of the procedures and standards applied to arrive at that determination indicates that CCSD appropriately met the required procedural standards.

Parents requested an evaluation for IDEA eligibility based upon concerns related to the Student’s diagnoses of Tourette Syndrome, Graves’ Disease and Asperger Syndrome in the Fall semester of the 2019-2020 school and signed a consent for evaluation based on those concerns on October 21, 2019. (FOF #2) Evaluations were conducted pursuant to the signed consent, an MDT meeting was held on November 15, 2020. (FOF #3, #4, #5, #6, #7) Parents signed a second consent on December 6, 2019, indicating consent for CCSD to “continue further assessments to evaluate for OHI and AUT” and “speech/language communication” and a second MDT was held to address the same parental concerns on December 16, 2019. (FOF #8, #9, #10)

The documents reviewed establish that these MDT determinations, while discussed and memorialized in two separate meetings and reports, appear to have been more of a continuation of one evaluation process, rather than two distinctly separate processes. (FOFs # 2, #8) In point of fact, both MDT meetings were conducted within 45 school days of the initial October 21, 2019 consent, thus, consistent with applicable law, were timely conducted. NAC §388.337. Accordingly, while the procedural components of each eligibility determination will be discussed in brief, the analysis regarding the reasonableness of the MDT’s ultimate determination will be made as to both determinations taken in tandem.

⁴ *The State of Nevada is in the United States Court of Appeals, Ninth Circuit.*

⁵ This policy letter is publicly available at:

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>

As articulated above, the NAC sets out requirements for identification of a student as a student with a health impairment who is eligible for special education services and instruction, as well as requirements for identification of a student as a student with an autism spectrum disorder who is eligible for special education services and instruction. NAC §388.402; NAC §388.387. At the outset, Parents raised concerns that could place the Student in either disability category. (FOF #2) The November 15, 2020 MDT appears to focus its consideration on the question of the Student's eligibility under the category of OHI. (FOFs #3, #4, #5, #6, #7) The MDT is constituted in a manner consistent with requirements for such a review, and the underlying data considered meets the requirements of the NAC for this consideration. *Id.* The December 16, 2020 MDT appears to build on this consideration, adding additional information to the Student's health assessment, a speech language evaluation, and autism ratings, and thus complying with both the requirements of the NAC for consideration of both OHI and ASD. (FOFs #9, #10, #11, #12, #13) NAC §388.402; NAC §388.387. Of some concern is the fact that the December 16, 2019 MDT Report submitted in response to this Complaint does not specifically name the MDT meeting participants and is not signed by any participant, and thus does not include specific confirmation that all required team members participated in the discussion regarding the eligibility determination. (FOF #15) However, the Complaint does not actually take issue with compliance relating to procedural components of this MDT and, regardless, it is an established principle that a procedural error is harmless if the student is substantively ineligible for IDEA benefits, which is the case in matter at hand. *See R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d. 932, 48 IDELR 60 (9th Cir. 2007)

The uncontested facts in the instant Complaint establish that at those eligibility determination meetings, and consistent with the concerns raised by the Student's Parents in requesting a special education evaluation, the Student was determined to have a disability. [FOFs #2, #7, #15]. In each instance, the MDTs determined that the Student's needs could be met through general education; therefore, the Student was not eligible for services under IDEA as a student with a disability. Thus, the eligibility determinations made by the MDTs, and contested in this Complaint by the Student, turned on the question of whether, by reason of those identified disabilities, the Student required special education services.

As was the case in *L.J. v. Pittsburg Unified Sch. Dist.*, discussed above, the MDT convened by CCSD – with the exception of the Parents who explicitly expressed disagreement with the determination – arrived at the conclusion that the Student's needs could be met in the general education environment. 68 IDELR 121 (9th Cir. 2016). In *L.J.* the Court did find the Student eligible for IDEA services, reversing the decision of the school district, hearing officer and district court, finding that the student in that case was making progress in the general education setting because he was in fact receiving specialized instruction without having been found eligible. *Id.* However, the facts reviewed in this Complaint investigation are distinguishable from those in *L.J.* in that while the student in this matter had access to a minimal number of accommodations in the general education as a result of their 504 plan, the student in *L.J.* was receiving a variety and intensity of services, such as a one-on-one paraeducator, specially designed mental health services, extensive clinical interventions and individualized and persistent modification in the classroom. (FOF #5, #6, #13, #14) *Id.*

In this Complaint, a thorough review of the student-specific data contained in the documents reviewed in this investigation supports the conclusion that this determination was reasonable in light of the circumstances. The MDT Reports themselves, as well as data gathered from a broader review of the Student's academic performance at the time those determinations were made indicates that the MDT's position that the Student's needs didn't require specialized instruction and could be met in the general education setting was reasonable because the evidence demonstrates the Student was receiving an educational benefit in the general education setting and without special education services. (FOFs #5, #6, #7, #13, #14, #15, #36) The Student had been, and was, enrolled

in classes that included not only those that were appropriate for their grade level but were, in fact, Advanced Placement and Honors classes, and was engaging in learning in those settings and making appropriate progress in those courses with the same supports as those afforded to typical peers such that the Student was appropriately progressing toward a regular high school diploma. (FOFs #5, #6, #13, #14, #36)

Furthermore, although the Student and Parents expressed dissatisfaction with the Student's grades in those courses, the analysis of reasonableness doesn't turn on whether the Student's performance could have been optimized with additional specialized instruction, accommodations, modifications or services, but rather on whether the Student needed those special education services to receive an educational benefit. (FOFs #23, #32, #34) See *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (2017) Here, the Student was progressing in a manner consistent with typical peers in high level classes and making appropriate progress toward graduation in a way that leads one to conclude that the determination of the MDT that the Student was receiving an education benefit was reasonable in light of the student-specific data.

This analysis as to the reasonableness of the MDT's determinations is not altered by the Student's later IEE or identification as eligible under IDEA. (FOFs #1, #22, #28, #29) As articulated above, the analysis as to the reasonableness of an eligibility determination is done by taking a snapshot of the period in which the evaluation was conducted and determining the reasonableness of the determination in light of the student-specific data at that time. *L.J. v. Pittsburg Unified Sch. Dist.*, 68 IDELR 121 (9th Cir. 2016), citing *Adams v. Oregon*, 31 IDELR 130 (9th Cir. 1999). Moreover, the documents reviewed also establish that some potentially significant changes had occurred regarding the Student's needs by the time of the April 29, 2020 MDT determination of eligibility, in that the Student was experiencing additional health challenges by that time and instructional modalities attendant to the transition to virtual instruction due to COVID-19. (FOFs #22, #23, #26, #27)

Therefore, CCSD complied with the provisions of IDEA and NAC, Chapter 388, with regard to the determination of the Student's ineligibility for special education services on November 15, 2019 and December 16, 2019 by complying with procedures and standards under the IDEA and NAC and reaching a determination that was reasonably supported by the student-specific data.

Issue Two:

Whether the CCSD complied with the IDEA and NAC, Chapter 388, with regard to implementing the Student's IEP in effect during the 2019/2020 school year, specifically with regard to providing the Student additional time for homework and assignments in AP Chemistry upon the Student's request in the last few school days of May of 2020.

A student's IEP describes his/her individual needs and sets out the proper placement *Schaffer v. West*, 546 U.S. 49, 44 IDELR 150 (U.S. 2005). Once an IEP is developed for a student, the public agency must implement the student's IEP with all of its required components. 34 C.F.R. §§300.17(d), 300.101, and 300.323; NAC §388.281.

As discussed in the analysis of Issue One, above, the Student was first determined eligible on April 29, 2020 and an IEP was developed for the Student on May 7, 2020. (FOFs #28, #29, #30) The May 7, 2020 IEP called for the Student to receive three additional days to complete homework and assignments when needed. (FOF #30). This accommodation was to begin as of the date of the IEP, May 7, 2020 and through the IEPs annual review date of May 6, 2021. (FOF #30)

The allegation raised in the Complaint regarding IEP implementation does not indicate any specific Chemistry homework or assignments, assigned on or after May 7, 2020, which the Student alleges they were denied additional time to complete. The documents reviewed in this investigation establish that in the last week of the school year the Student was in communication with the Chemistry teacher and Case Manager raising concerns about their failing grade. (FOF #32, #33, #35) These communications further establish that the concern expressed about the Student in these communications, and when the IEP Team met to discuss the Student's exit from special education services the specific concern expressed by the Student was about the failing grade, not about specific assignment deadlines that were not being extended. (FOF #32, #33)

The documentation does establish that at an earlier point in May there may have been overdue Chemistry assignments that the Student wasn't permitted to turn in because answer keys for those assignments had already been distributed, but these assignments were over three days later and, critically, they predated the Student's IEP, so the accommodations would not have applied to them. (#33, #34) Notwithstanding this timeline, the documents also establish that the teacher, after discussion with the Principal, agreed to provide alternate assignments for the Student to complete in an attempt to improve the grade and that the Chemistry teacher confirmed the grade the Student had earned was based upon the quality of the work that was turned in, and not on missing homework or assignments. (FOF #33) There is insufficient evidence to determine whether the Student, in fact, completed the alternate assignments. However, there is evidence, from the Student's own email, that indicates all assignments had been turned in and the Student was looking for additional assistance to bring the grade up before the end of the year. (FOF #32, #33) No accommodation in the Student's IEP called for additional work of this nature to be provided to the Student, nor guaranteed any specific outcome in terms of grades. (FOF #30) Moreover, as discussed in Issue One, above, IDEA does not guarantee any particular level of education and "cannot and does not" promise any particular education outcome. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (2017).

Therefore, CCSD complied with the IDEA and NAC, Chapter 388, with regard to implementing the Student's IEP in effect during the 2019/2020 school year and provided the additional time to complete homework and assignments for AP Chemistry in the last school days of May 2020.

Issue Three:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to the determination that the Student should exit from special education services in May of 2020, specifically whether the CCSD followed procedures and applied required standards under the NAC and reached a determination that was reasonably supported by the student-specific data.

A student's graduation with a regular high school diploma terminates a school district's responsibility to provide that student with a FAPE. 34 C.F.R. §102. IDEA does not specify necessary criteria for graduation; however, states and districts may establish graduation criteria, goals and objectives in the student's IEP. 62 Fed. Reg. 12, 556 (1999). The NAC requires that the IEP of a high school student include, if appropriate, the special requirements or adjusted standards that the student must meet for graduation from high school. NAC §388.340(8). In the absence of such special requirements or adjusted standards, and consistent with IDEA, graduation with a regular high school diploma will terminate a student's eligibility for special education.

The Student's May 7, 2020 was silent as to any special requirements or adjusted standards for the Student to receive a regular high school diploma and identified a standard high school diploma as the Student's course of study. (FOF #30) At the conclusion of the 2019-2020 school year, to

confirm that the Student had completed the required coursework for receipt of a standard high school diploma, the Student's IEP Team met to confirm completion of the required coursework, which the Student did not contest, and memorialized that the completion of this degree terminates the Student's eligibility for special education services under IDEA. (FOF #34) The Student satisfactorily completed the required credits and received a standard high school diploma. (FOF #37)

Therefore, CCSD complied with the IDEA and NAC, Chapter 388, with regard to the determination that the Student should exit from special education services in May of 2020, followed procedures and applied required standards under the NAC and reached a determination that was reasonably supported by the student-specific data.

Issue Four:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to complying with certain terms of the settlement agreement entered into between CCSD and the Student on December 12, 2019, specifically: allowing the Student to compete for a lead position on the Robotics Team 987; allowing the Student the ability to travel with the Robotics Team 987; timely responding to requests for information from the necessary Independent Educational Evaluation (IEE) provider; and implementing required teacher training concerning the Student's disabilities.

Following resolution of a due process complaint by a hearing officer decision or settlement agreement, the student - or parents of student under the age of majority - who was the subject of a due process complaint may file a Complaint with the NDE regarding the LEA's compliance with the settlement agreement. NRS §388.4685.

The Student's Parents filed a special education due process complaint against the CCSD which was resolved by a Settlement Agreement executed by Parties on December 12, 2019. (FOF #16) To determine compliance with the terms of this Agreement, the terms of the Agreement were reviewed, as was documentary evidence provided by both the Student and CCSD. Each allegation of noncompliance with the Settlement Agreement is discussed in turn below.

Student competition for Robotics Team lead

The Student's Complaint alleges a violation on the part of CCSD of the terms of the Settlement Agreement regarding the Student's ability to, and receive support in, pursuit of a "lead position" on the Robotics Team 987. Despite extensive terms relative to the Student's participation in the high school Robotics team, the Settlement Agreement is silent on the topic of the Student's competition for anything termed a "lead position" on the team. (FOF #16, #17) No documents submitted by either Party to this Complaint provided any further clarification on the position of "team lead" or CCSD's compliance, or noncompliance, with the Student's ability to pursue such a position relative to the terms of the Settlement Agreement. CCSD generally denied any noncompliance with the terms of the Settlement Agreement regarding the Student's ability to compete for a "lead position" on the high school Robotics Team. While the Student may have believed that the terms of the Settlement Agreement entitled them to participate in competing for a "lead position," in the absence of a provision in the Settlement Agreement with regard to the "lead position", there is no term to enforce through the state complaint process.

Student travel with the Robotics Team

With regards to the Student's participation on the Robotics Team, the Student's Complaint also alleges that they were not permitted to travel to an out-of-state competition with the Robotics Team, in violation of the terms of the Settlement Agreement. The Settlement Agreement establishes parameters for the Student to participate in travel with the Robotics Team to competition outside of Clark County. These parameters do not create an affirmative entitlement to this opportunity, but rather establish that the high school Principal may provide approval, following no behavioral incidents on the part of the Student, for the Student to engage in such travel and to inform the Student of such a determination 10 days before any such travel. (FOFs #16, #17).

The Principal, based upon documented incidents where the Student was determined not to have met behavioral expectations around participation with the Robotics Team, denied approval for the Student to travel to a March 5, 2020 competition. (FOFs #17, #24, #25) Consistent with the terms of the Settlement Agreement, the Principal had the authority to arrive at this determination and informed the Student's Parent of the determination on February 21, 2020, more than 10 days prior to the competition. (FOFs #17, #25)

Timely provision of information to IEE provider

Pursuant to the terms of the Settlement Agreement entered into by the Parties, in the event the Student was found ineligible for special education services, CCSD was required to fund an IEE, up to \$1500. (FOFs #16, #19) The Settlement Agreement, while requiring generally that Parties cooperate fully in its implementation, was silent as to any timeline applicable to the IEE. (FOF #19). On December 16, 2020, following consideration of eligibility by the MDT, the Student was determined not eligible for special education. (FOF #15) The Student and their Parents then pursued an IEE. (#22, #23) The IEE Report evidences that information was received from CCSD, including CCSD making staff available for participation in interviews necessary to conduct the evaluation. (FOF #23) Accordingly, the documents reviewed in the Complaint establish that CCSD appropriately cooperated in the Student's obtaining of the IEE. No documents reviewed suggested any undue delay in this cooperation; moreover, no specific timeline was required for this cooperation in the Settlement Agreement.

Implementation of required teacher training

Consistent with the terms of the Settlement Agreement, CCSD was required to provide training to the Student's teachers and high school administrators regarding the Student's disabilities and Section 504. (FOF #16, #20) Throughout the eligibility process engaged in prior to entry of the Settlement Agreement, the Student's identified disability diagnoses were referenced as Tourette Syndrome, Graves' Disease, and Asperger Syndrome. (FOFs #2, #8) On February 21, 2020, CCSD presented a Health Conditions Training to high school staff addressing Tourette Syndrome, Graves' Disease and Autism Spectrum Disorders⁶. (FOF #21) Training sign-in sheets, when correlated to the Student's Report Card and correspondence regarding the Student, demonstrate that the Student's current teachers were in attendance at this training, as were high school administrators. (FOF #21, #31, #36)

⁶ Documentation of identified concerns leading to the Student's evaluation make reference to their diagnosis of Asperger's Syndrome. The term "Autism Spectrum Disorder" is defined as including the condition of Asperger's disorder. NAC §388.028. Accordingly, training on ASD is found to comply for purposes of providing training regarding Asperger's.

Therefore, CCSD complied with the IDEA and NAC, Chapter 388, with regard to complying with each of the terms of the 12/12/2019 Settlement Agreement which the Student contested in this Complaint; specifically, with regards to: the Student's ability to travel with the Robotics Team, providing timely responses to the IEE provider completing an evaluation of the Student, and implementing required teacher training concerning the Student's disabilities.

With regard to the allegation that CCSD violated the terms of the Settlement Agreement on the Student's ability to compete for a lead position on the Robotics Team 987, in the absence of this term in the Settlement Agreement, the CCSD also complied with the IDEA and NRS/NAC, Chapter 388, with the Settlement Agreement in that regard.