

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL102419)
Report Issued on December 20, 2019**

INTRODUCTION

On October 24, 2019, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging a violation by the Clark County School District (CCSD) in a student's special education program. The allegations in the Complaint were that CCSD committed negligence and negligent infliction of emotional distress by failing to implement the "curb to curb" transportation in the student's Individualized Education Program (IEP) on October 25, 2018 in violation of the Individuals with Disabilities Education Act (IDEA) and the Nevada Administrative Code (NAC).

The Parent was informed in the November 1, 2019 issue letter that while the Nevada Department of Education (NDE) had jurisdiction through its State special education complaint process to investigate the allegation that the CCSD failed to implement the student's IEP, the NDE did not have jurisdiction to investigate allegations of negligence and negligent infliction of emotional distress. The Parent was further informed that while corrective action would be ordered if it was determined that the CCSD violated the requirements of Part B of the IDEA, or the Nevada Revised Statutes or Nevada Administrative Code for special education programs, the requested monetary remedies of consequential and special damages; punitive and exemplary damages; treble damages; interest; and attorney's fees and costs were not available through the State Complaint system. The Parent did not provide any educational information on the student's special education and related services in the 2019/2020 school year or propose any student specific or systemic educational remedy in the State Complaint or in the course of the investigation.

In the State Complaint, the Parent requested all future correspondence and any inquiries in reference to the State Complaint investigation be directed to the Parent in care of a named attorney. The attorney subsequently filed a statement of representation of the Complainant Parent and student. After verification, the NDE determined it was authorized to disclose personally identifiable information to the attorney of record in accordance with the IDEA, 34 C.F.R. §§300.9 and 300.622 until and unless the Parent instructed the NDE otherwise in the course of this investigation. With regard to the allegations of negligence as described above, given the safety of children and the protection of children from abuse and neglect is paramount, prior to the notice of representation the NDE suggested the Parent may wish to consult an attorney to determine other actions that could be taken if the Parent believed the student had been neglected or endangered by the CCSD.

In the November 1, 2019 issue letter to the CCSD, the NDE requested additional documents and information in order to investigate the State Complaint. The documents and information were required to be received by the NDE no later than November 20, 2019 in order to timely investigate the Complaint. The CCSD was notified in that same correspondence that if the CCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the allegations and specified content relevant to that denial

and that a failure to do so by November 20, 2019 or an extended timeline authorized by the NDE, would be considered a concession of noncompliance for purposes of this State Complaint.

Given the failure of the CCSD to provide the requested information, the NDE commenced the investigation of the State Complaint based solely on the information in the State Complaint. Consistent with the notice in the November 1, 2019 issue letter, the CCSD's failure to deny the alleged noncompliance with the accompanying request information in support of the denial was determined to be a concession of noncompliance for purposes of the State Complaint. On November 25, 2019, subsequent to the commencement of the investigation and determined concession, the CCSD requested an extension to submit the CCSD's response. Notwithstanding the determined concession, the NDE provided the CCSD an opportunity to submit the requested documents and information prior to the issuance of the Report for consideration in the determination of any corrective action, as appropriate, and the CCSD timely did so. (It was noted that these documents and information did not call into question the determination of noncompliance for purposes of this State Complaint.)

The Parent's State Complaint and the documents submitted by the CCSD were reviewed in their entirety in this investigation. The Findings of Fact cite the source(s) of the information determined necessary to resolve the issue in this Complaint.

COMPLAINT ISSUE

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

Issue:

Whether the CCSD complied with the IDEA and NAC with regard to implementing the "curb to curb" transportation in the student's IEP(s) in effect in the 2018/2019 school year on October 25, 2018.

FINDINGS OF FACT

1. The student's January 29, 2018 IEP was in effect on October 25, 2018 and included the related service of transportation. The service type for the transportation was "direct" with the location of services being "curb to curb." (January 29, 2018 IEP)
2. The student's January 29, 2018 IEP also included a supplementary aid that the student should be accompanied by an adult until the student learns where to go when transitioning with the location of services on school campus. This supplementary aid was the only service in the student's IEP that addressed supervision of the student and the IEP did not explicitly indicate the student was to be placed on the bus by school personnel. (January 29, 2018 IEP)
3. On October 25, 2018, the student did not board the school bus scheduled to bring the student from school to the student's home and this fact was not discovered by the

student's Parent until the bus arrived at the student's home. Neither the State Complaint nor the documentation submitted by the CCSD identified the reason the student failed to board the school bus on that day. (State Complaint, Review of CCSD Documents)

4. The Parent notified the CCSD Special Education Instructional Facilitator on October 30, 2018 that the student had not gotten on the bus at school on October 25, 2018 and was missing for four days before the student was found. (State Complaint, Confidential Status Record)
5. While the student is enrolled in the CCSD for the 2019/2020 school year, the student attends a different school from the school that is the subject of this Complaint. (State Complaint)

CONCLUSIONS OF LAW

Issue:

Whether the CCSD complied with the IDEA and NAC with regard to implementing the "curb to curb" transportation in the student's IEP(s) in effect in the 2018/2019 school year on October 25, 2018.

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. (34 C.F.R. §§300.17(d) and 300.101; NAC §388.281(6)(e)) In this case, the student's January 29, 2018 IEP included the direct related service of transportation with the location of services being "curb to curb." (Finding of Fact (FOF) #1) On October 25, 2018, the student did not board the school bus scheduled to bring the student from school to the student's home. (FOFs #3, #4)

The student's January 29, 2018 IEP also included a supplementary aid that the student should be accompanied by an adult until the student learned where to go when transitioning, with the location of services on school campus. (FOF #2) Neither the State Complaint nor the documentation submitted by the CCSD identified the reason the student failed to board the school bus on October 25, 2018. (FOF #3) Therefore, it is unclear whether this supplementary aid was applicable on the day the student failed to board the school bus and, contrary to the assertion in the State Complaint, the IEP did not explicitly indicate the student was to be placed on the bus by school personnel. (FOF #2) Nevertheless, the NDE determined that given the requirement of the student being provided transportation from the "curb" at school while under the supervision of the CCSD, it was implicit that the CCSD supervise the student to the extent necessary to ensure the student boarded the bus and, as such, the student was not provided the related service of "curb to curb" transportation on October 25, 2018 in conformity with the student's IEP.

Therefore, the CCSD failed to comply with the IDEA and NAC with regard to implementing the "curb to curb" transportation in the student's IEP(s) in effect in the 2018/2019 school year on October 25, 2018.

ORDER OF CORRECTIVE ACTION

The CCSD is required to take corrective action to address the violation found in this Complaint at the school the student attended in the 2018/2019 school year, specifically the failure to implement the "curb to curb" transportation in the student's IEP on October 25, 2018. Given more than a year has passed since the occurrence of this noncompliance; the student is attending a different school in the 2019/2020 school year (FOF #5); and the Parent did not provide any educational information on the student's special education and related services in the 2019/2020 school year or propose any student specific educational remedy in the State Complaint or in the course of the investigation, the remedies in this Complaint are systemic in nature rather than student specific.

Corrective Action Plan

In accordance with NRS §385.175(6), the NDE requests a plan of corrective action from CCSD to correct the identified noncompliance in this Complaint. The ordered Corrective Action Plan (CAP) must be provided to the NDE for approval within 20 days of the receipt of this Report. The CAP must indicate the timeline within which it will be implemented and provide for the following:

1. The investigation of the cause of the failure of school personnel at the school the student attended in the 2018/2019 school year to supervise the student to the extent necessary to ensure the student boarded the bus at the end of the school day on October 25, 2018;
2. A school specific CAP to prospectively address the identified cause or the occurrence, in the event no cause is determined given the passage of time, to ensure the implementation of the IEPs of other students with disabilities at that school at the end of the school day with "curb to curb" transportation in their IEPs; and
3. Given the safety implications of a failure to ensure a student with a disability boards the mode of transportation provided by the CCSD on school premises, provision of a copy of this Report to the CCSD Board of Trustees.

The CAP must be approved by the NDE prior to implementation. Following completion of the CAP as described above and NDE approval, documentation of the completion of the CAP must be provided to the NDE no later than 60 days from the approval date of the CAP.