

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL111918)**

Report Issued on January 23, 2019

INTRODUCTION

On November 19, 2018, the Nevada Superintendent of Public Instruction received a Complaint from a Parent regarding the provision of a Free Appropriate Public Education (FAPE) to a student enrolled in the Clark County School District (CCSD) in the 2018/2019 school year. (The Complaint was dated November 1, 2018 and for some unknown reason there was a delay in the receipt of the Complaint by the Nevada Department of Education (NDE).)

The Parent alleged the CCSD violated the requirements of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300, or the provisions of the Nevada Administrative Code (NAC) §§388.150 to 388.450 with regard to the provision of a FAPE to the student from the beginning of the 2018/2019 school year to the date of the Complaint due to a shortage of staff and resources. Specifically, the Parent alleged that the CCSD failed to: implement the student's Individualized Education Program (IEP) after the student's one-to-one aide was taken away; implement the student's Behavior Intervention Plan; and provide picture cards for the "PECS" program and an IPAD for communication. The Parent's proposed resolution was to provide the student with a one-on-one aide. (Finding of Fact (FOF) #3)

At the time of the receipt of the State Complaint, there was an open Due Process Complaint filed in October 2018 that raised precisely the same allegations set forth in the State Complaint. (FOF #1) In accordance with the IDEA, 34 C.F.R. §300.152(c), the NDE set aside the State Complaint issue that was being addressed in the due process hearing until the conclusion of the hearing. Accordingly, the State Complaint was set aside for five days until the case was closed on November 25, 2018 by Order of Withdrawal as a result of a Resolution Agreement dated November 13, 2018. (FOF #4)

Given the resolution of this case was not reached by a due process decision issued after a hearing, Title 34 C.F.R. 300.152(c) of the IDEA did not apply. However, the NDE requested and received a copy of the Resolution Agreement from both the Parent and the CCSD to determine whether the assumption of jurisdiction over this Complaint was precluded by the Resolution Agreement. While a term of the Resolution Agreement required the Parent to withdraw the request for the due process hearing with prejudice, the NDE determined that the Resolution Agreement did not preclude the filing of this State Complaint. (FOF #6)

Given the allegations were the same in both the Due Process Complaint and State Complaint, the Parent and the CCSD were informed that the agreed upon remedies in the November 13, 2018 Resolution Agreement would be considered in the event it was determined that noncompliance occurred with regard to the designated issues in the Complaint and corrective action was warranted. The Resolution Agreement included the agreement of the parties that it was not and must not be construed as an admission as to the merits of the other party's position or claims raised in the Due Process Complaint. (FOF #5) Accordingly, the NDE did not construe the Resolution Agreement as an admission as to the merits of the claims in this State Complaint.

In the November 30, 2018 issue letter to the CCSD, the NDE requested additional documents and information in order to timely investigate the State Complaint. The documents and information were required to be received by the NDE no later than December 19, 2018. The CCSD was notified in that same communication that if the CCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include specified content relevant to that denial and that a failure to do so by December 19, 2018, or an extended timeline authorized by the NDE, would be considered a concession of noncompliance for purposes of the investigation of the State Complaint.

The CCSD neither provided the documents and information required to conduct the investigation nor disputed the stated noncompliance with regard to this Complaint by the noticed deadline. As such the CCSD was notified on December 27, 2018 by the investigator that the investigation would be conducted based solely on the information in the State Complaint and the assumed concession of the CCSD with regard to the determined issue in the Complaint.

On January 8, 2019, the CCSD did request and was granted the late submission of the documents and information requested by the NDE. However, given the investigation had been completed based on the information in the State Complaint and the determined concession of the CCSD, the CCSD was notified that the information would be considered only with regard to a remedy in the event it was determined that noncompliance occurred with regard to the designated issue in the Complaint and corrective action was warranted.

The State Complaint submitted by the Parent relevant to the issue in the Complaint was reviewed in its entirety in this investigation and all relevant documents and information submitted by the CCSD on January 8, 2019 were considered as described above with regard to the corrective action. The Findings of Fact cite the source of the information determined necessary to resolve the issue in this Complaint.

COMPLAINT ISSUE

The allegations in the Complaint that are 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 student's IEP(s) in effect in the 2018/2019 school year from the commencement of the school year to November 1, 2018, specifically with regard to:

- a. Following the student's Behavior Intervention Plan;
- b. Providing adequate staff after the student's one-to-one aide was taken away;
- c. Providing picture cards for the "PECS" program; and
- d. Providing an IPAD for communication.

FINDINGS OF FACT

Due Process Complaint

1. The Due Process Complaint filed in October 2018 on behalf of the student raised precisely the same allegations set forth in the State Complaint. (Due Process Complaint, State Complaint)

Implementation of the IEP

2. The following facts as stated in the State Complaint are assumed to be correct based solely on the failure of the CCSD to provide requested documents and information necessary to conduct a thorough investigation and the absence of CCSD's denial of the allegations in the Complaint:
 - a. The student had a one-to-one aide since 2015, but the student was not provided a one-to-one aide in the 2018/2019 school year;
 - b. Without the student's one-to-one aide there was not adequate staff to follow the student's IEP;
 - c. The student had a BIP to prevent self-injurious behavior and the BIP was not followed;
 - d. In mid-October the Parent was informed that the student's classroom did not have the picture cards for the "PECS" program to teach communication; and
 - e. The student was not provided an IPAD for communication. (State Complaint)
3. The Parent's proposed resolution in the State Complaint was to provide the student with a one-on-one aide for stated educational and behavioral

reasons. The Parent did not allege that the failure to implement the student's IEP and the BIP was a systemic problem. (State Complaint)

Due Process Complaint – Resolution Agreement

4. The Parent and the CCSD agreed to the following for the student in the November 13, 2018 Resolution Agreement that resulted in the withdrawal of the October 2018 Due Process Complaint and the November 25, 2018 Order of Withdrawal:
 - a. The CCSD agreed to provide a one-to-one aide for the student;
 - b. The CCSD agreed to "convene an IEP" within ten (10) days of the execution of the Resolution Agreement to put a one-to-one aide into the student's IEP;
 - c. The Parent agreed that there were no remaining issues to be resolved or decided through the impartial hearing process by a hearing officer and to withdraw the October 2018 request for a due process hearing. (Resolution Agreement)
5. The Parent and the CCSD agreed that the entry into the Resolution Agreement was not and shall not be construed as an admission as to the merits of the other party's position or claims raised in the Due Process Complaint. (Resolution Agreement)
6. The term of the Resolution Agreement requiring the Parent to withdraw the request for a due process hearing was with prejudice. However, the Resolution Agreement did not preclude the Parent from filing a State Complaint. (Resolution Agreement)
7. The Resolution Agreement was reached after the filing of this State Complaint. (Resolution Agreement)

CONCLUSION OF LAW

Issue:

Whether the CCSD complied with the IDEA and NAC with regard to implementing the student's IEP(s) in effect in the 2018/2019 school year from the commencement of the school year to November 1, 2018, specifically with regard to:

- a. Following the student's Behavior Intervention Plan;
- b. Providing adequate staff after the student's one-to-one aide was taken away;
- c. Providing picture cards for the "PECS" program; and
- d. Providing an IPAD for communication.

The requirements of the provision of a FAPE to students with disabilities under the IDEA and the NAC, Chapter 388, necessitate that special education and related

services and supplemental aids and services are provided in conformity with an IEP. (NAC §388.281(6)(g), 34 C.F.R. §§300.17(d) and 300.101)

Based on the allegations and information in the State Complaint; the absence of the CCSD's denial of the allegations; and the failure of the CCSD to provide requested documents and information necessary to conduct a thorough investigation and counter the allegations, the NDE has determined that:

- a. The student was not provided a one-to-one aide in the 2018/2019 school year;
- b. Without the student's one-to-one aide there was not adequate staff to implement the student's IEP;
- c. The student has a BIP to prevent self-injurious behavior and the BIP was not followed;
- d. The student's classroom did not have the picture cards for the "PECS" program to teach communication; and
- e. The student was not provided an IPAD for communication. (FOF #2)

As such, the student was not provided services in these areas in conformity with the student's IEP from the commencement of the 2018/2019 school year to November 1, 2018.

Therefore, the CCSD failed to comply with the IDEA and NAC with regard to implementing the student's IEP from the commencement of the school year to November 1, 2018, specifically with regard to following the student's BIP; providing adequate staff after the student's one-to-one aide was taken away; providing picture cards for the "PECS" program; and providing an IPAD for communication.

ORDER OF CORRECTIVE ACTION

The CCSD is required to take corrective action to address the identified noncompliance with regard to implementation of the student's IEP. All documents and information provided in the course of this investigation were considered with regard to this Order of Corrective Action.

As discussed previously, the Parent and the CCSD agreed to a Resolution Agreement that resulted in the withdrawal of the Due Process Complaint with precisely the same allegations raised in this State Complaint. This Resolution Agreement was reached after the filing of the State Complaint and provides the remedy of a one-to-one aide requested as the proposed resolution in the State Complaint. (FOFs #3, #4, #7) The Resolution Agreement is enforceable pursuant to the IDEA, 34 C.F.R. 300.510(d)(2). Therefore, it is determined that no further student specific remedy is required as a result of this State Complaint to educationally compensate the student for the failure to implement the student's IEP during the time period of this Complaint.

The IDEA, 34 C.F.R. §300.152, provides that in resolving a Complaint in which the State Education Agency has found a failure to provide appropriate services, the remedy must address not only the failure to provide appropriate services to the

student, but the appropriate future provision of services for all children with disabilities. In this case however, the determined failure to provide services to the student was based solely on the failure of the CCSD to provide requested documents and information necessary to conduct a thorough investigation and the absence of the CCSD's denial of the allegations in the State Complaint. Given the Parent and the CCSD agreed that the terms of the student specific Resolution Agreement may not be construed as an admission as to the merits of the other party's position or claims raised in the Due Process Complaint; the absence of an allegation that the identified noncompliance in this Complaint was a result of a systemic problem (FOF #3); and the absence of definitive information otherwise, the NDE determined that a systemic remedy is not required in this unique case to ensure the appropriate future provision of services for all children with disabilities at the school the student was enrolled in for the 2018/2019 school year.