

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
(#CL112321)  
Report Issued on *January 19, 2022***

**INTRODUCTION**

On November 23, 2021, the Nevada Superintendent of Public Instruction received a State Complaint from a Parent alleging violations of the Individuals with Disabilities Education Act, Part B (IDEA), 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300, and provisions of the Nevada Revised Statutes (NRS) or the Nevada Administrative Code (NAC), Chapter 388, for special education programs by the Clark County School District (CCSD). The allegation in the Complaint was that CCSD failed to comply with the State Review Officer's December 18, 2020 decision as required in the IDEA, 34 C.F.R. §300.514, to reimburse the Parent for the 16 hours per week of tutoring services, upon the submission of reasonable documentation, for the period from September 25, 2021 to the implementation date of the new Individualized Education Program (IEP) and to provide direct payment for the cumulative total of 30-minute sessions missed between September 25, 2021 and the implementation date of the new IEP. By letter dated December 4, 2021, the Parent withdrew the allegation with respect to the provision of direct payment for the cumulative total of 30-minute sessions missed between September 25, 2021 and the implementation date of the new IEP on the basis that CCSD had addressed the issue to her satisfaction.<sup>1</sup>

The Parent is an attorney and the Parent's proposed resolution was to provide monetary reimbursement for the time and effort to prepare this Complaint; time lost in preparation, review and attendance at the IEP revision meeting and participating in the holding of the due process hearing and appeal; and compensatory services for the student.

The Parent was informed that while corrective action would be ordered if it was determined that CCSD violated the requirements of Part B of the IDEA or the NRS or NAC for special education programs, the requested monetary remedy of fees for the Parent attorney's professional time spent in preparing the State Complaint and participating in the due process hearing and appeal processes was not available through the State Complaint system. 34 C.F.R. §300.151(b); Federal Register / Vol. 71, No. 156 / Monday, August 14, 2006 / Rules and Regulations, pg.46602.

The Parent previously filed State Complaint #CL020521 regarding CCSD's implementation of an Order in the State Review Officer's December 18, 2020 decision and a Complaint Report was issued. While the allegation in this Complaint is different than the prior allegation, the Parent and CCSD were informed that any relevant Findings of Fact in that final Complaint Report would be reviewed and adopted, as appropriate.

In the December 2, 2021 issue letter to CCSD, NDE requested additional documents and information in order to investigate the State Complaint. CCSD was notified in that same correspondence that if CCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; and specifically reference the documentation provided to NDE that factually supported the denial and that a failure to do so by December 21, 2021 or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. CCSD did timely respond and dispute the allegations of noncompliance in the Complaint in their entirety and specifically referenced the indexed and well-organized documents relevant to that denial.

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<sup>1</sup> In its response to this Complaint, CCSD denied the alleged failure to provide payment for the missed 30-minute occupational therapy sessions in accordance with the State Review Officer's Decision and provided documentation of payments made in April 2021.

The State Complaint, including all attachments; the Parent’s additional written input with regard to the issue in the Complaint; State Complaint Report #CL020521, the State Review Officer’s December 18, 2020 decision, CCSD’s denial of all claims, and all documents submitted by CCSD in response to the issues in the Complaint were reviewed.

The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint and the original source document, where available, was relied upon.

## **COMPLAINT ISSUE**

The allegation in the Complaint that is under the jurisdiction of NDE to investigate through the special education complaint process raises the following issue for investigation:

### **Issue:**

Whether CCSD complied with IDEA and NAC, Chapter 388, and implemented the Order in the State Review Officer’s December 18, 2020 decision to reimburse the Parent for the 16 hours per week of tutoring services, upon the submission of reasonable documentation, for the period from September 25, 2020 to the implementation date of the new IEP.

## **FINDINGS OF FACT**

1. The student is a student with disabilities enrolled in CCSD. (Complaint, State Review Officer’s December 18, 2020 Decision)
2. On October 23, 2020, a Hearing Officer issued a Hearing Decision after conducting the hearing on October 15, 2020 and October 16, 2020 on the Parent’s July 13, 2020 Due Process Complaint. On November 23, 2020, NDE received the Parent’s appeal of the Hearing Officer’s decision. The State Review Officer issued the State Review Decision on December 18, 2020. (State Review Officer’s December 18, 2020 Decision)
3. The parties received the State Review Officer’s Decision by email transmission on December 23, 2021 with hard copy to follow. At the date of the issuance of this State Complaint Report, more than 90 days had passed from the date of the receipt of the Decision. Neither party brought a civil action to appeal the State Review Officer’s Decision. (State Review Officer’s Transmission Record, Review of the Record, Complaint, Information from NDE)
4. In relevant part, the State Review Officer’s December 18, 2020 Decision included the following Order:  
For the substantive denial of FAPE: “The District shall reimburse the Parent for the 16 hours per week of tutoring services, upon the submission of reasonable documentation, for the period of September 25 to the implementation date of the new IEP.” (Reasonable documentation was described in the footnote.) (State Review Officer’s December 18, 2020 Decision)
5. The “reasonable documentation” footnote in the State Review Officer’s December 18, 2020 provided the following: “Reasonable documentation would be a copy of the bills specifying the dates and duration of the services from the provider and the receipts for payment of these bills or any reasonable equivalent according to standard business practice.” (State Review Officer’s December 18, 2020 Decision)
6. With regard to the implementation date of the new IEP referenced in the State Review Officer’s Order in the December 18, 2020 Decision, in relevant part, the Order provided, for the procedural denial of a Free Appropriate Public Education (FAPE): “The District shall promptly, but no later

than January 30, arrange for an IEP team meeting guided by an IEP facilitator appointed by the state education department, so as to provide for meaning collaborative participation to revise the September 25 IEP.” The IEP Team meeting with a State Facilitator took place on January 29, 2021 resulting in a January 29, 2021 IEP, with the implementation date of January 29, 2021. (State Review Officer’s December 18 Decision, NDE Notification of IEP Facilitation, January 29, 2021 IEP)

7. On January 11, 2021, CCSD contacted the Parent that, per the State Review Officer’s Decision, the Parent submit invoices regarding the Parent’s tutoring expenses from September 25, 2020 so CCSD could begin processing the invoices. (January 11, 2021 CCSD Email Communication to the Parent)
8. The Parent responded to the January 11, 2021 CCSD email communication that since, per the State Review Officer’s Order, the tutoring continues to accrue until the implementation of the new IEP, the Parent would get the information to CCSD once that date was finalized. (January 17, 2020 Parent Email Communication to CCSD)
9. On April 19, 2021, CCSD again contacted the Parent requesting documentation of the tutoring sessions and payment receipts to provide the Parent reimbursement for the out-of-pocket tutoring expenses. CCSD indicated that the canceled checks it believed the Parent mentioned would suffice as proof of payment. CCSD also requested the return of a signed Authorization for Release of Confidential Information to allow CCSD to confirm the dates and times of the tutoring. (April 19, 2020 Email Communications between CCSD and the Parent)
10. On June 13, 2021 the Parent contacted CCSD and indicated she had been through her bank records and pulling each check was proving to be “daunting.” In lieu of doing that, the Parent generated and provided the following for each of the two tutors: the hours of the tutoring service; a list of dates associated with the hours, amount and check number, and the amount and check number, separately stated, for each tutor. (Hereinafter referred to as spreadsheet.) The Parent indicated that she would be happy to pull checks if CCSD wanted to “pick and choose some random ones” and CCSD could verify the hours with the student’s tutors, upon her determining how they wanted to be contacted and providing their contact information to CCSD. (June 13, 2021 Parent Email Communication to CCSD, Spreadsheet)
11. CCSD responded to the Parents email communication regarding pulling each check indicating CCSD would respond later regarding needing checks for reimbursement and resent the Authorization for Release of Confidential Information forms. (June 15, 2021, June 21, 2021 CCSD Email Communications to Parent)
12. The Parent provided CCSD the Authorization for Release of Confidential information and the tutors contact information on June 23, 2021 and indicated: I can’t imagine that I would have to provide proof of payment for every single transaction when you were willing to take invoices before.” (June 23, 2021 Parent Email Communication to CCSD)
13. CCSD responded to the Parent’s June 23, 2021 email communication on that same date that an invoice on company letterhead with proof of payment would work. No documentation was provided in the course of the investigation that the Parent provided this permitted equivalent. (June 23, 2021 CCSD Email Communication to Parent, Review of the Record)
14. On June 24, 2021, CCSD contacted both tutors requesting an invoice, if possible, of the number of hours and dates the tutor provided the student tutoring services and at what rate. CCSD indicated that if the tutors did not have an invoice, the tutors could provide CCSD a written declaration of the same information. (June 24, 2021 CCSD Email Communication to Student’s Tutors)

15. Only one of the student's tutors (hereinafter referred to as Tutor One) responded to CCSD's June 24, 2021 inquiry. and provided the date services began, September 21, 2020; the number of hours per week until the student returned to school on March 22, 2021; the number of hours per week from March 22, 2021 through April 6, 2021; and the hourly rate of \$30.00 an hour. Tutor One indicated that, other than the occasional holiday (which was not specified), Tutor One's time was consistent with this schedule. The response from Tutor One did not include an actual or electronic signature or statement regarding the veracity of the provided information. (June 28, 2021 Email Communication from Tutor One to CCSD)
16. The Parent's spreadsheet of dates, hours, and payment amounts were not consistent in all regards with the information provided by Tutor One. The Parent's spreadsheet also included payment for Tutor One prior to the operative date of September 25, 2020 in the State Review Officer's December 18, 2020 Order and payments that exceeded the date of the implementation of the student's January 29, 2021 IEP. (June 28, 2021 Email Communication from Tutor One to CCSD, Parent Spreadsheet)
17. On June 30, 2021, after receipt of the correspondence from Tutor One, CCSD requested pictures (or whatever documentation) of all of the canceled checks from the Parent and that would suffice for the reasonable documentation "as outlined in the order." CCSD noted that either a screenshot or printed picture of the digital version of the check was acceptable. CCSD followed up on July 26, 2021. No documentation or information was provided in the course of this investigation that the Parent provided this requested documentation. (June 30, 2021 and July 26, 2021 CCSD Email Communications to the Parent, Review of the Record)

## CONCLUSIONS OF LAW

### Issue:

Whether CCSD complied with IDEA and NAC, Chapter 388, and implemented the Order in the State Review Officer's December 18, 2020 decision to reimburse the Parent for the 16 hours per week of tutoring services, upon the submission of reasonable documentation, for the period from September 25, 2020 to the implementation date of the new IEP.

Pursuant to NAC §388.315(1), a party may appeal from the decision of a Hearing Officer by filing the required notice of appeal with the NDE Superintendent of Public Instruction within 30 days after receiving the decision. In this case, the Parent filed an appeal of the Hearing Officer's Decision on November 23, 2020 and the State Review Officer issued the State Review Decision on December 18, 2020.<sup>2</sup> (FOF #2)

The decision made by the State Review Officer is final unless a party appeals from the decision of the State Review Officer by initiating a civil action in a court of competent jurisdiction within 90 days after receipt of the decision. NAC §388.315; 34 C.F.R. §§300.514, 300.516. More than 90 days have passed since the parties' receipt of the State Review Officer's Decision with neither party bringing a civil action to appeal the Decision. (FOF #3) As such, for purposes of this Complaint, the State Review Officer's Decision was determined to be a final and enforceable decision. NRS §388.4685; 34 C.F.R. §300.152(c)(3).

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<sup>2</sup> The State of Nevada has a two-tier special education hearing system. That is, the hearing is a local level hearing (even though conducted by a State Hearing Officer) and the final administrative decision is appealable to a State Review Officer. 34 C.F.R. §300.514(b), NAC §§388.315, 388.310(14).

The State Review Officer's December 18, 2020 Decision included remedies for the determined procedural and substantive denial of a Free Appropriate Public Education to the student. Relevant to this Complaint, the Parent alleged CCSD failed to comply only with the following Order in the State Review Officer's December 18, 2020 Decision (hereinafter referred to as Order):

"The District shall reimburse the Parent for the 16 hours per week of tutoring services, upon the submission of reasonable documentation, for the period of September 25 to the implementation date of the new IEP." (Reasonable documentation was described in the footnote.) (Finding of Fact (FOF) #4)

CCSD's obligation to reimburse the Parent under the Order was conditioned upon the Parent's submission of "reasonable documentation", as defined in the Order. It is uncontested that on June 13, 2021 the Parent submitted some documentation for reimbursement to CCSD for the tutoring services provided the student. (FOF #10) What is at issue is whether the documentation met the condition of "reasonable documentation" set forth in the Order to establish the requisite proof of the provision of the tutoring services and payment: "Reasonable documentation would be a copy of the bills specifying the dates and duration of the services from the provider and the receipts for payment of these bills or any reasonable equivalent according to standard business practice." (FOF #5)

The Parent did not provide CCSD the "reasonable documentation" defined as a copy of the bills for the tutoring services with the dates and duration of services and the receipt for payment of these bills as specified in the Order. (FOF #10) The Parent did, however, develop and submit a spreadsheet for reimbursement that reported the hours and dates of the provided tutoring services for each of the two tutors with the associated dollar amount and check number. The spreadsheet included services prior to the operative date of September 25, 2020 in the Order and after the operative implementation date, January 29, 2021 IEP. (FOFs #4, #6, #10, #16) In the transmission of the spreadsheet, the Parent expressed a willingness to pull checks enumerated by check number on the spreadsheet if CCSD wanted to "pick and choose some random ones."<sup>3</sup> The Parent also provided the contact information for the student's tutors to enable CCSD to verify the hours with the tutors. (FOFs #10, #12) Did these submissions meet the standard of a "reasonable equivalent" to the specified copies of bills and receipts for payment "according to standard business practices?"

No. The Parent's submission of a spreadsheet generated by the Parent with an attendant willingness to provide documentation from the bank to verify some of the payments made and contact information for the providers did not meet the standard of a "reasonable equivalent" to a copy of the bills specifying the dates and duration of the services from the provider and receipts for payment "according to standard business practices." Rather than submitting the required "reasonable documentation", the Parent essentially put the onus on CCSD to verify the proof of services rendered and payments made. (FOFs #10, #12)

While not required under the Order, CCSD took several actions after the Parent's submission of the spreadsheet to obtain the requisite "reasonable documentation" to enable processing the ordered reimbursement,<sup>4</sup> including proposing acceptable reasonable equivalents if the requested documentation was unavailable:

1. In response to the Parent raising the provision of an invoice as an alternative to providing proof of payment for each transaction, CCSD provided an opportunity for the Parent to provide an invoice on company letterhead with proof of payment. The Parent did not avail herself of that opportunity, (FOFs #12, #13)

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<sup>3</sup> It was noted that CCSD had previously indicated to the Parent that canceled checks would suffice as proof of payment. (FOF #9). However, CCSD's ability to randomly select and review some of the canceled checks did not meet even this permitted alternative standard.

<sup>4</sup> FOFs #7-#9 set forth actions taken by CCSD commencing January 11, 2021 and the Parent's response to obtain the requisite "reasonable documentation", up to the Parent's submission of the spreadsheet on June 13, 2021.

2. CCSD then attempted to verify the number of hours, dates, and rate with the tutors who provided the services to the student and voluntarily agreed to accept a written declaration of the requested information if the tutors did not have an invoice. (FOF #14) Only Tutor One responded to CCSD's request for documentation and, in lieu of providing invoices, Tutor One provided the hourly rate; the starting and ending dates for services; and summarized the number of hours per week prior to and after the student returned to in-person instruction, other than the occasional unspecified holiday. The response from Tutor One did not include an actual or electronic signature or statement regarding the veracity of the provided information and the information provided was not consistent in all regards with the information in the Parent's previously submitted spreadsheet. (FOFs #15, #16)
3. After receiving the above-mentioned information from only one of the student's tutors, CCSD again requested the Parent submit pictures (or whatever documentation) of all of the canceled checks and indicated that this documentation would suffice for the reasonable documentation "as outlined in the order." The Parent did not submit this alternative permitted "reasonable documentation" to CCSD. (FOFs, #9, #17)

Notwithstanding these actions of CCSD in excess of its obligation under the Order, the documentation provided CCSD did not meet the required documentation as set forth in the Order or any "reasonable equivalent according to standard business practice" that gave rise to CCSD's reimbursement obligation. While the Parent may perceive the submission of "reasonable documentation" as required in the Order to be difficult or excessive, it was a condition of reimbursement that the Parent has not fulfilled to date.

*Therefore, CCSD complied with the IDEA and the NAC, Chapter 388, given that the condition of the submission of reasonable documentation in the Order was not met that required CCSD to reimburse the Parent for the 16 hours per week of tutoring services, for the period from September 25, 2020 to the implementation date of the new IEP.*