

COMPLAINT INVESTIGATION CLARK COUNTY SCHOOL DISTRICT (#CL113016A)

Report Issued on January 25, 2017

INTRODUCTION

On November 30, 2016, the Nevada Superintendent of Public Instruction received a Complaint dated November 28, 2016 from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA) and the Nevada Administrative Code (NAC), Chapter 388, in the special education program of a student with a disability attending school in the Clark County School District (CCSD). The Parent alleged the CCSD had failed to implement the student's June 1, 2016 Individualized Education Program (IEP) with regard to the student's specially designed instruction; behavior intervention plan at the middle school; and the following accommodations: grades negotiated by the teacher of record and the general education teacher; reporting maladaptive behaviors or conflicts to parents before dismissal; providing a safe place (counselor, 'SEIF', social worker) to go when feeling frustrated or angry; providing lead time for schedule or routine changes; and allowing agenda check (or equivalent) to ensure assignments have been written. The Parent alleged that the failure to implement the student's IEP caused the student's behaviors to increase and disciplinary measures and in October 2016, the school made a change of placement to an in-house suspension without conducting an IEP meeting and without providing the services in the student's IEP.

All documents submitted by the Parent and the CCSD relevant to the issues in the Complaint were reviewed in their entirety in this investigation. The Complaint Investigation Team also collected and reviewed additional information as needed during the investigation. The CCSD provided documentation of occurrences outside the time period of the Complaint. While related to the issues, the information was outside the scope of this investigation and was reviewed only for context or as relevant to a corrective order, if appropriate. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint.

COMPLAINT ISSUES

The allegations in the Complaint, further clarified during the investigation, raised the following issues under the jurisdiction of the Nevada Department of Education (NDE) to investigate up to November 28, 2016, the date of the Complaint:

Issue One:

Whether the CCSD complied with the IDEA and NAC with regard to implementing the student's June 1, 2016 IEP from the beginning of the 2016/2017 school year through November 28, 2016, specifically with regard to:

- a. Providing specially designed instruction of 50 minutes per week of behavioral/social skills.**
- b. Providing the supplementary aids/services of grades negotiated by the teacher of record and general education teacher, reporting mal-adaptive behaviors or conflicts to parents before dismissal, providing a safe place to go when feeling frustrated or angry, providing lead time for schedule or routine changes, allowing agenda check (or equivalent) to ensure assignments have been written, and following the behavior intervention plan at the middle school.**

Issue Two:

Whether the CCSD complied with the IDEA and NAC with regard to changing the special education placement of the student, specifically with regard to placing the student in the Schools Targeting Alternative Reform On-Site (STAROn) behavioral program in October 2016.

FINDINGS OF FACT

General

1. The student had an April 21, 2016 annual IEP that was revised on June 1, 2016 and again on October 19, 2016. The October 19, 2016 IEP meeting was conducted to address the behavioral incidents on October 13, 2016 and to conduct a Manifestation Determination. As such, the October 19, 2016 IEP is only relevant with regard to these events. Except with regard to these behavioral incidents and the CCSD's action in response to these incidents, the June 1, 2016 IEP is the IEP that is

relevant to the issues in this Complaint. (IEPs, Behavior Detail Report, November 1, 2016 CCSD Email)

2. The student was in the same middle school in the CCSD for the 2015/2016 and 2016/2017 school years. The 2016/2017 school year began on August 29, 2016. There was one school holiday in September 2016 and one in October 2016. There were seven school days in November 2016 to the date of the Complaint when students were not in attendance. (CCSD Calendar, Attendance Records, Compliance Monitor)
3. During the period of this Complaint, the student was absent on November 4, 2016 for all periods (six) and for four periods on November 3, 2016. (Student Period Attendance Detail)

Implementation of the June 1, 2016 IEP

4. The student had two annual goals in the June 1, 2016 IEP. The first goal was with regard to effectively handling frustrations (escalation) during times of perceived or communicated emotional stress. The second goal was with regard to working to the student's full potential the first time school work was attempted and/or make up missed or late school work when absent, with fading prompts from an adult. These goals were to be measured by observation and documentation by the special education teacher. (IEP)
5. The student's October 23, 2016 IEP Progress Report provided that no progress was made on the student's frustration goal or the student's goal to work to the student's full potential. The projected progress was for some progress only, limited for both. For purposes of comparison, the student's June 1, 2016 IEP Progress Report showed some progress made on each of these goals and the May 2, 2016 IEP Progress Report showed significant progress made. (IEP Progress Report)
6. The student's June 1, 2016 IEP did not include any specially designed instruction in any of the student's general education classes. The only special education in the student's IEP was the specially designed instruction of direct behavioral/social skills 50 minutes a week in the general education classroom from June 1, 2016 to April 20, 2017. (IEP)
7. The CCSD did not provide any documentation on the provision of the specially designed instruction of direct behavioral/social skills 50 minutes a week in the general education classroom during the time period of this Complaint. Upon release from the STAROn program on December 5, 2016, the student's schedule was changed to include a new behavior/social skills class. (Review of Record, December 5, 2016 CCSD Email)

8. The student's June 1, 2016 IEP included the following supplementary aids/services relevant to this Complaint to be provided to or on behalf of the student from June 1, 2016 to April 20, 2017:
 - a. Grades to be negotiated between teacher of record and general education teacher with the frequency of quarter and progress grade "atoms" and in the location of the general education classroom;
 - b. Teacher of record, general education teacher or Dean to report to Parent mal-adaptive behaviors or conflicts before dismissal with the frequency of upon occurrence in the location of the general education classroom;
 - c. Provide a "safe place" (counselor/SEIF/social worker) to go to when feeling frustrated or angry with the frequency of when feeling frustrated or angry in the location of the general education classroom;
 - d. Provide lead time for schedule or routine changes with the frequency of before routine or schedule changes in the location of the general education classroom;
 - e. Check agenda (or equivalent) to ensure assignments have been written with the frequency of completing agenda (or equivalent) in the location of the general education classroom;
 - f. Student has a positive behavior improvement plan (BIP) with the frequency of services throughout the school day and the location of services on the school campus. (IEP)

9. The CCSD was provided the opportunity to provide documentation on the implementation of the above cited supplementary aids/services and specially designed instruction on two occasions. The Findings of Fact reflect the only documentation provided by the CCSD that documents the CCSD's implementation of the student's June 6, 2016 IEP. (Review of Record)

Schedule Change

10. The only evidence of schedule or routine changes for the student provided in the course of this investigation was with regard to the student's removal from the student's regular education program and placement in the STAROn behavioral program and the commencement of the "homework club." (Both changes discussed in detail below.) The release from the STAROn program was after the time period of the Complaint. (Confidential Status Record, Review of Record)

Safe Place

11. On September 1, 2016 and October 12, 2016, the student was sent by a teacher to the counselor when the student became upset. On September 7, 2016, the student went to the counselor on the student's own

initiative when upset. On September 20, 2016 and September 21, 2016 in math class, the student asked to go to the Dean's office to file reports and was allowed to do so. When the student returned agitated and displayed the targeted behavior of "tantruming", the teacher offered the student an opportunity to go somewhere to cool down and the student declined. (Counseling September 1, 2016, September 7, 2016 and October 12, 2016 Meeting Agendas, September 21, 2016 Email)

12. This supplementary aid/service of the provision of a safe place was not in the student's prior April 21, 2016 IEP. It was added to the student's June 1, 2016 IEP and was only in place the last two days of the 2015/2016 school year. (School Attendance Calendar, IEPs)

Grades

13. The student's grades as reported in the first quarter progress report issued on November 17, 2016 were: A in Orchestra, F in English, A in Math, C in Science, and C in United States/Nevada History. The student's grades as reported in the first quarter report card issued on November 17, 2016 were A in Orchestra with satisfactory citizenship, F in English with unsatisfactory citizenship, D in Math with unsatisfactory citizenship, D in Science with satisfactory citizenship, and D in United States/Nevada History with satisfactory citizenship. (First Quarter Progress Report, First Quarter Report Card)
14. The Parent asked CCSD whether the student's grades for the first quarter were negotiated between the teacher of record and the general education teacher. The only documentation provided by the CCSD that the student's grades were negotiated between the teacher of record and the general education teacher during the time period of this Complaint was an email from the student's math teacher in response to the Parent's inquiry on the implementation of this requirement. The math teacher informed the Parent that he had collaborated with the student's teachers to discuss grades. (November 18, 2016 Parent Email, Math Teacher's Email to Parent, Review of Record)
15. The student's grades as reported in the second quarter progress report issued on December 8, 2016 were A in orchestra, D in English, D in United States/Nevada History, F in math and D in Science. The reason for the D in Science included incomplete/missing assignments. (Second Quarter Progress Report)

Check Agenda

16. On September 6, 2016, the Parent contacted CCSD regarding the "homework club" and indicated that there were already issues with the student not keeping track or remembering what needed to be done. The

CCSD responded the "homework club" was due to start on September 12, 2016 and would take place four days a week. The after school homework sessions were to do homework or get tutoring if there was no homework. On September 8, 2016, the Parent clarified the need was for someone to help the student with organizing class to class things and how to keep them straight and to know what the student needed to do each day since the student has trouble keeping each class separate. (September 6, 2016 and September 8, 2016 Parent/CCSD Emails, September 14, 2016 CCSD Email)

BIP, Misconduct, Reporting to Parent Before Dismissal

17. The student had a BIP dated October 23, 2015 which was the BIP in effect during the time period of this Complaint. The targeted behavior was "tantruming", characterized by various behaviors including: ripping papers up; yelling out drawing/scribbling on student's materials, as well as on other students' materials, including school desks and tables; repeatedly breaking then sharpening pencils; crying; putting head in hands; withholding materials from partner or group; refusing to re-enter classroom/designated area; leaving the assigned designated area; throwing objects toward peers and teacher; and refusing to complete work. The functions of the behavior were to avoid demand/request or activity/task in math and/or writing and to gain peer/adult attention. The BIP also included proactive and reactive strategies and replacement behaviors and services to be taught through direct instruction. (BIP)
18. The BIP provided that progress monitoring data on the occurrence of the designated replacement behaviors for "tantruming" would be collected by teachers/designees with the effectiveness of the behavioral strategies tied to the end of the 2015/2016 school year. The team, including the student's Parent, was to work together as the BIP was adjusted through phone/email contact and/or an informal meeting every eight weeks. (BIP)
19. The CCSD held a staffing with CCSD personnel on September 26, 2016 to discuss the student's behavioral concerns. It was noted at the meeting that while the student's behaviors were not seen in the 2015/2016 school year in general that the student's behaviors continued from early April 2016 into the 2016/2017 school year. (Confidential Status Record)
20. On October 3, 2016, the student's case manager notified some of the CCSD personnel working with the student on the initiation of data collection in all of the student's classes indicating that the student has been struggling behaviorally in most of the student's classes and in two of the classes, that the case manager knew of, the student's behavior was seriously impacting the ability to teach other students. The targeted

behaviors were inappropriate 'shoutouts' and respecting personal space. The purpose of the data collection was to collect as much data as possible for when the case manager and administration met with the student's Parents. The CCSD did begin to collect data on these behaviors and the data collection continued after the date of this Complaint. Based on the data forms, some data collection commenced on September 19, 2016. (Data Collection Forms, October 3, 2016 Case Manager Email)

21. On October 4, 2016, the Parent was notified by the Dean of Students that the student went off school grounds the day before and had been having trouble on the school bus and was likely going to receive a bus citation and, if the misconduct continued, the student may receive a bus suspension. (October 4, 2016 CCSD Email to the Parent)
22. On September 21, 2016, the student's math teacher expressed concern to the student's Parent that the student had missed two days of instruction due to being agitated and asked the Parent for any suggestions on what the teacher could do when the student is agitated to calm down and refocus. On October 4, 2016, the student's math teacher requested suggestions from other CCSD personnel on when the student should be sent out when disruptive (citing losing count at 45 occurrences during one period) and how to keep the student in class while still allowing other students to learn. On October 11, 2016, the student was very upset with a score on a math quiz and displayed "tantruming" behavior, including throwing objects, and left the classroom. The student returned after several minutes and was a little calmer but continued the behavior. (September 21, 2016 and October 4, 2016 CCSD Emails)
23. Prior to the incidents on October 13, 2016 that precipitated the referral for expulsion, the following behavioral events occurred that required the disciplinary action of removal in the 2016/2017 school year:
 - a. On September 23, 2016, the student was suspended for one day for aggressive behavior. On September 22, 2016, there was a Required Parent Conference before the suspension and the student was out for all six periods on that day. There was no documentation of contacting the Parent in advance of the student's removal for the scheduled Required Parent Conference.
 - b. On September 27, 2016, the student was placed in an in-house suspension for three periods for disregarding rules/regulations with no documentation of contacting the Parent in advance. (Behavior Detail Reports, Notices of Suspension)
24. On October 13, 2016, the student jabbed a teacher with a pen on the teacher's glasses and arm. The Parent was contacted to pick the student up after this incident. While the student was waiting to be picked up, the student threw two pens into the Dean of Student's face with force. The

student threatened to throw a clipboard, but did not. (Behavior Detail Report)

25. Effective October 18, 2016, the student was suspended from school for two school days for the two cited incidences of battery of staff on October 13, 2016 and was also cited for battery by the school police. In addition to the two school days of suspension, the student was also out for Required Parent Conference on Friday, October 14, 2016 and Monday, October 17, 2016. When the student returned to school after the suspension, the student was placed on in-house suspension on Thursday, October 20, 2016 and on Friday, October 21, 2016. The student was placed in the temporary educational program, the STAROn program commencing Monday, October 24, 2016. (See additional facts regarding this program below.) The Parent was notified of the suspension on October 18, 2016. (Notice of Suspension, Behavior Detail Report)
26. Pending a hearing, the school recommended the student be expelled from the CCSD. The Parent disagreed with the recommendation for expulsion and indicated she was contesting the proceedings. (October 13, 2016 Notice of Suspension, Expulsion Due Process Determination)

Manifestation Determination and Revision of the Student's BIP

27. As noted previously, the purpose of the October 19, 2016 IEP meeting was to address the behavioral incidents on October 13, 2016 and to conduct the Manifestation Determination regarding the misconduct. The October 18, 2016 meeting notice to the Parent stated the proposed actions were to review/revise the student's IEP, conduct the Manifestation Determination and propose a disciplinary change of placement, change the student's special education placement and to discuss Alternative Instructional Arrangements. (IEP, October 18, 2016 Proposed Meeting Arrangements and Notice of District Proposal)
28. The October 19, 2016 IEP included the Review of Dean's Chronology dated October 14, 2016 of the incidents that occurred on October 13, 2016. The stated effect on the student's involvement and progress in general education provided that due to the student's weaknesses in social behavioral skills, the student was having difficulty maintaining appropriate behavior and making appropriate decisions within the general education curriculum and generalized settings and situations. (IEP)
29. In relation to the conduct for which the student was being disciplined, the October 19, 2016 Manifestation Determination resulted in the finding that the conduct in question was determined to be caused by or to have a direct and substantial relationship to the student's disability

and was a manifestation of the student's disability. (Manifestation Determination Summary)

30. The October 19, 2016 IEP did not include any change to the student's accommodations or the student's specially designed instruction. The student's placement remained the same as the June 1, 2016 IEP: the regular class with supplementary aids and services (no removal) and the percentage of time in the regular education environment remained at 100%. The student's IEP Team considered and rejected not only the program rejected in the June 1, 2016 IEP, regular class and special education (e.g. resource) combination, but also considered and rejected a self-contained program. (IEPs, CCSD Email)
31. The Prior Written Notice issued after the October 19, 2016 IEP meeting provides that the IEP Team agreed that the October 19, 2016 IEP met the student's needs and the district considered no other options. (Prior Written Notice)
32. On October 19, 2016, the school requested assistance from the Student Support Services Division to revise the student's BIP and to devise consistent strategies to help improve the student's behavior. The stated behavioral concerns/needs were that the student's behavior had escalated this year in both frequency and severity. The student demonstrated consistent off-task behavior and when questioned or directed by anyone will often become disruptive (yelling out, screaming, making noises) and/or aggressive (hitting, kicking, throwing objects). In response to the request on the form to attach evidence the BIP was being implemented across settings with fidelity, the school responded that all teachers working with the student received a copy of the student's IEP. (Request for Assistance)
33. The student's BIP was not revised after the conduct of the Manifestation Determination. (CCSD Response)
34. On November 1, 2016, the Parent requested a meeting as soon as possible to start a referral to another program; a revised BIP (because it is not working); possibly other services; and other needed changes to the student's IEP. The CCSD responded on November 2, 2016 that there would be an IEP meeting to discuss the best options for the student based on current data and the student's BIP would be updated after the IEP meeting. Again on November 28, 2016 the Parent requested a meeting to discuss a change in services and/or placement on the student's IEP. (Parent Emails)
35. The CCSD did not convene an IEP meeting in response to the Parent's November 1, 2016 and November 28, 2016 requests and, up to at least January 10, 2017, neither the student's IEP nor the student's BIP have been revised. (CCSD Response)

STAROn Program

36. The STAROn program is designed to provide on-site instruction to students who would have been otherwise assigned to an off-site behavioral program. "The goal is to assist students in changing their behaviors so that they may successfully return to their regular classes." The student's school of enrollment at the time of the October 13, 2016 incident did have a STAROn behavioral program. (Middle School STAROn Behavior Program, 2016/2017)
37. The STAROn behavioral program is a closed campus. Upon arrival at school, all students are required to remain in the STAROn portable until dismissal. Students are not allowed on the main middle campus, including athletic fields and student parking areas, without prior administrative permission. The students placed in the STAROn program are banned from all CCSD campuses and events. The students are escorted to breakfast after the general population has left and breakfast and lunch are brought back to the portable for consumption. (Middle School STAROn Behavior Program, 2016/2017)
38. The student was placed in the STAROn program commencing October 21, 2016 and was still in the program on November 28, 2016, the date of the Complaint. The student continued to attend the STAROn program through second period on December 5, 2016 when the student was released from the STAROn program. (Student Period Attendance Detail, STAROn Progress Chart/Log, Behavior Detail Report, December 2, 2016 and December 6, 2016 CCSD Emails)
39. As documented in the student's Confidential Status Record, the Dean of Students reported on October 20, 2016 that the Parent agreed to send the student to the STAROn behavioral program. The CCSD responded to an inquiry from the Complaint Investigation Team that this report in the student's Confidential Status Record was the only documentation of this agreement. (Confidential Status Record, Manifestation Determination Summary, CCSD Response)
40. The Parent's report is contrary to the documentation in the Dean of Student's Confidential Status Record. In response to an inquiry from the Complaint Investigation Team, the Parent reported the following: The Parent was informed at the Manifestation Determination meeting that the student would be returning to regular classes. On the day the student returned to school, October 20, 2016, the Dean of Students called her and informed her that the student was being placed in the STAROn program. The Dean of Students reportedly informed her that the Parent had no say in it unless she agreed to send the student to one of the off-site behavioral schools and, in that case, she would have to provide transportation. Reportedly, the Dean of Student at no point said or implied that the Parent needed to give permission or agree to the student's placement in the STAROn program. When the Parent

reiterated she had been informed that the student would be returning to regular classes, the Dean of Students reportedly indicated that was the determination on the special education side and his determination was on the side of administrative discipline. The Dean of Students indicated he was sending home some paperwork on the STAROn program that the Parent needed to sign and return. The Parent did not sign and return the paperwork. (Parent Response)

41. In response to this Complaint, the CCSD provided some of the assignments in the general education coursework for Science and Math and some grading detail for some of the courses that the student worked on in the STAROn behavioral program: Reading, Orchestra, History, Math, Science, and English. These courses were the courses the student was enrolled in at the time of the assignment to the STAROn program. (CCSD Response, Student's Progress Reports and Report Card)
42. In the 2011 evaluation of the evaluation of the STAROn behavioral program, a substantial percentage of STAROn participants had an IEP (23.4%). However, there was no information provided in the evaluation regarding the implementation of students' IEPs when placed in the STAROn behavioral program. In addition to the opportunities to provide documentation on the implementation of the student's IEP as discussed previously, the CCSD was also provided the opportunity to specifically provide documentation on the implementation of the student's IEP while in the STAROn behavioral program and the CCSD did not. (Review of Record, CCSD Website: 2011 STAROn Evaluation)
43. The CCSD collected data on the student's conduct skills while the student was in the STAROn program for general conduct skills of on time, on task, follow rules and instructions, complete work, appropriate language, get attention appropriately, homework turned in, and prepared for class. The data did not include the BIP targeted behavior of "tantruming." However, the comment area of the Skills Progress Chart for the student included notation of the occurrence of some of the "tantruming" behaviors beginning on November 14, 2016 and continuing for consecutive school days through November 28, 2016 and beyond the period of this Complaint. (Skills Progress Chart)

CONCLUSION OF LAW

Issue One:

Whether the CCSD complied with the IDEA and NAC with regard to implementing the student's June 1, 2016 IEP from the beginning of the 2016/2017 school year through November 28, 2016, specifically with regard to:

- a) Providing specially designed instruction of 50 minutes per week of behavioral/social skills.**
- b) Providing the supplementary aids/services of grades negotiated by the teacher of record and general education teacher, reporting mal-adaptive behaviors or conflicts to parents before dismissal, providing a safe place to go when feeling frustrated or angry, providing lead time for schedule or routine changes, allowing agenda check (or equivalent) to ensure assignments have been written, and following the BIP at the middle school.**

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 are provided in conformity with an IEP. (NAC §388.281(6)(g), 34 C.F.R. §300.17(d)) The CCSD was also required to establish a system of records for the purpose of verifying that each student identified as a student with a disability received services appropriate to the disability pursuant to NAC §388.215(5)(b).

The student's IEP that is relevant to the implementation of the student's specially designed instruction and supplementary aids/services is the June 1, 2016 IEP. (Finding of Fact (FOF) #1) The June 1, 2016 IEP had only two annual goals: the first goal was with regard to effectively handling frustrations (escalation) during times of perceived or communicated emotional stress; and the second goal was with regard to working to the student's full potential the first time school work was attempted and/or make up missed or late school work when absent, with fading prompts from an adult. These goals were to be measured by observation and documentation by the special education teacher. (FOF #4)

As a preliminary matter, the Complaint Investigation Team noted that the student's October 23, 2016 IEP Progress Report, addressing a substantial time period within the scope of this investigation, provided that the student made no progress on the student's frustration goal or the student's goal to work to the student's full potential with the projected progress of some progress, limited for both. For purposes of comparison, the student's June 1, 2016 IEP Progress Report showed some progress made on each of these goals and the May 2, 2016 IEP Progress Report showed significant progress made. (FOF #5) Notwithstanding the student's lack of expected progress since the commencement of the 2016/2017 school year, as of January 10, 2017, the student's IEP Team had not reviewed and revised, if necessary, the student's June 1, 2016 IEP. (FOF #35)

Implementation of the IEP – Specially Designed Instruction

The only special education in the student's June 1, 2016 IEP was the specially designed instruction of direct behavioral/social skills 50 minutes a week in the general education classroom from June 1, 2016 to April 20, 2017. (FOF #6) The student's difficulty in maintaining appropriate behavior and making

appropriate decisions within the general education curriculum and generalized settings and situation was due to the student's weaknesses in social/behavioral skills. (FOF #28)

The CCSD did not provide any documentation on the provision of the required specially designed instruction of direct behavioral/social skills 50 minutes a week in the general education classroom during the time period of this Complaint. (FOF #7) In the absence of the documentation required pursuant to NAC §388.215, the Complaint Investigation Team determined that the CCSD failed to implement the student's IEP in this regard. It was noted that upon release from the STAROn program, the student's schedule was changed to include a new behavior/social skills class. (FOF #7)

Supplementary Aids/Services

Grades

The student's June 1, 2016 IEP included the supplementary aid/service of grades to be negotiated between the teacher of record and the general education teacher with the frequency of quarter and progress grade "atoms" and in the location of the general education classroom. (FOF #8)

Only the first quarter report card and one progress report was issued during the time period of this Complaint. (FOFs #13, #15) The student's grades as reported in this report card were: A in Orchestra with satisfactory citizenship, F in English with unsatisfactory citizenship, D in Math with unsatisfactory citizenship, D in Science with satisfactory citizenship, and D in United States/Nevada History with satisfactory citizenship. The student's grades as reported in the first quarter progress report issued on November 17, 2016 were: A in Orchestra, F in English, A in Math, C in Science, and C in United States/Nevada History. (FOF #13)

The only documentation provided by the CCSD in the course of this investigation regarding this aid/service was a communication from one teacher to the Parent in response to the Parent's inquiry regarding the negotiation of the student's grades for the first quarter. The teacher indicated he had collaborated with the student's teachers to discuss grades. (FOF #14) In the absence of the documentation required pursuant to NAC §388.215, the Complaint Investigation Team determined that the CCSD failed to implement the supplementary aid/service of general education grades to be negotiated between the teacher of record and the general education teacher with the frequency of quarter and progress grade "atoms" in all regards.

Reporting Mal-adaptive Behaviors

The student's June 1, 2016 IEP included the supplementary aid/service of the teacher of record, general education teacher or Dean to report to Parent mal-

adaptive behaviors or conflicts before dismissal with the frequency of upon occurrence in the location of the general education classroom. (FOF #8) Upon consideration of the terminology 'dismissal' in this supplementary aid/service in the student's IEP, the Complaint Investigation Team determined the term "dismissal" was ambiguous.

While it likely was intended to mean a report to the Parent before the student was involuntarily removed from school (see for example CCSD Regulation 5114 on Student Dismissal), it could also have been intended to mean a report to the Parent before the student was released at the end of the school day. In either event, the CCSD did not provide documentation that it either reported to the Parent on all occasions there was the occurrence of mal-adaptive behaviors or conflict before the end of the school day (FOFs #20, #21, #22, #32) or reported to the Parent prior to the student being dismissed from the regular classroom through disciplinary measures for mal-adaptive behaviors or conflicts (FOFs #23, #24, #25). Therefore, the ambiguity of the term did not have to be resolved to reach a determination. In the absence of the documentation required pursuant to NAC §388.215, the Complaint Investigation Team determined that the CCSD failed to implement the supplementary aid/service of reporting to the Parent mal-adaptive behaviors or conflicts before dismissal with the frequency of upon occurrence in the location of the general education classroom.

Safe Place

The student's June 1, 2016 IEP included the new supplementary aid/service to provide a "safe place" (counselor/SEIF/social worker) for the student to go to when the student was feeling frustrated or angry in the general education classroom. (FOFs #8, #12)

There is evidence that on five occasions during the time period of this Complaint, the student was sent to the counselor's office, which is a designated "safe place", provided the opportunity to do so, or the student went on the student's own initiative. (FOF #11) Therefore, the Complaint Investigation Team determined that the CCSD did implement the supplementary aid/service to provide a "safe place" for the student to go to when the student was feeling frustrated or angry in the general education classroom.

Lead Time

The student's June 1, 2016 IEP included the supplementary aid/service to provide lead time for schedule or routine changes with the frequency of before routine or schedule changes in the location of the general education classroom. (FOF #8) The Complaint Investigation Team determined that the only evidence of schedule or routine changes for the student (other than disciplinary removals) was with regard to the student's removal from the

student's regular education program and placement in the STAROn behavioral program and the "homework club." (FOFs #16, #38)

The student did have three days of lead time from October 20, 2016 when the CCSD informed the Parent of the student's placement in the STAROn behavioral program and the placement of the student in the program on October 24, 2016. (FOFs #25, #40) The release from the STAROn program was after the time period of the Complaint.

With regard to the "homework club", the Parent requested the student's participation in the "homework club" on September 6, 2016 and the club did not begin until September 12, 2016. (FOF #16) This delay provided the student five days lead time prior to the commencement of this new routine. Therefore, the CCSD complied with the IDEA and the NAC with the requirement to implement the IEP with respect to the supplementary aid/service to provide lead time for schedule or routine changes with the frequency of before routine or schedule changes in the location of the general education classroom.

Check Agenda

The student's June 1, 2016 IEP included the supplementary aid/service to check agenda (or equivalent) to ensure assignments have been written with the frequency of completing agenda (or equivalent) in the location of the general education classroom. (FOF #8) In at least one course, the student's grade on the second quarter progress report reflected incomplete/missing assignments. (FOF #15)

The CCSD did not provide any documentation on the implementation of the supplementary aid/service to check agenda (or equivalent) to ensure assignments have been written with the frequency of completing agenda (or equivalent). The only documentation provided in the course of this investigation regarding the implementation of this supplementary aid/service was with regard to the Parent's efforts to obtain help for the student through the "homework club" since the student was not able to keep track of or remember what needed to be done. (FOF #16) Given the need for the Parent to seek help on what the student was required to do (FOF #16) and the absence of the documentation required pursuant to NAC §388.215, the Complaint Investigation Team determined that the CCSD failed to implement the student's IEP in this regard.

BIP

The student's June 1, 2016 IEP included the supplementary aid/service of a BIP with the frequency of services throughout the school day and the location of services on the school campus. (FOF #8) The student was in the same

middle school in the CCSD for the 2015/2016 and 2016/2017 school year. (FOF #2)

The student's October 23, 2015 BIP was in effect during the time period of this Complaint. The targeted behavior in the student's BIP was "tantruming", characterized by various behaviors including: ripping papers up; yelling out; drawing/scribbling on student's materials, as well as on other students' materials, including school desks and tables; repeatedly breaking then sharpening pencils; crying; putting head in hands; withholding materials from partner or group; refusing to re-enter classroom/designated area; leaving the assigned designated area; throwing objects toward peers and teacher and refusing to complete work. The BIP included proactive and reactive strategies and replacement behaviors and services to be taught through direct instruction. (FOF #17) The CCSD provided no documentation of the provision of this required direct instruction during the time period of this Complaint.

The BIP also required that progress monitoring data on the occurrence of the designated replacement behaviors for "tantruming" would be collected by teachers/designees with the effectiveness of the behavioral strategies tied to the end of the 2015/2016 school year. (FOF #18) The CCSD did collect data commencing no earlier than September 19, 2016 on the occurrence of one of the student's designated "tantruming" behaviors and a generally described behavior of respecting personal space. (FOF #20) The only other data provided in the course of the investigation related to BIP progress monitoring were some comments on the data collection instrument used in the STAROn behavioral program documenting general conduct skills. (FOF #43)

With regard to any adjustments/revisions of the BIP, the BIP required the team, including the student's Parent, to work together as the BIP was adjusted through phone/email contact and/or an informal meeting every eight weeks. (FOF #18) The CCSD provided no documentation that this was done during the time period of this Complaint. It is of significant concern that even though the October 23, 2015 BIP was tied to the 2015/2016 school year (FOF #18); was already 10 months old by the time the 2016/2017 school year commenced (FOFs #2, #17); the emergence of new aggressive behaviors of hitting and kicking (FOF #19); the escalation of the student's behavior in both frequency and severity (FOFs #23, #24, #32), and the student's lack of expected progress toward the frustration annual goal (FOF #5), the CCSD did not adjust the student's BIP as required.

In the absence of the documentation required pursuant to NAC §388.215, the Complaint Investigation Team determined that the CCSD failed to implement the student's BIP in all regards in the 2016/2017 school year.

Therefore, the CCSD complied with the IDEA and NAC with regard to implementing the student's June 1, 2016 IEP from the beginning of the 2016/2017 school year through November 28, 2016 with regard to providing lead time for schedule or routine changes and a "safe place"

(counselor/SEIF/social worker) to go to when feeling frustrated or angry, but failed to do so with regard to providing specially designed instruction of 50 minutes per week of behavioral/social skills and providing the supplementary aids/services of grades negotiated by the teacher of record and general education teacher, reporting mal-adaptive behaviors or conflicts to parents before dismissal, allowing agenda check (or equivalent) to ensure assignments have been written, and following the BIP at the middle school.

Issue Two:

Whether the CCSD complied with the IDEA and NAC with regard to changing the special education placement of the student, specifically with regard to placing the student in the STAROn behavioral program in October 2016.

In accordance with the IDEA, 34 C.F.R. §300.530(f), and NAC §388.265, upon the determination of a local educational agency, the parent and relevant members of the IEP Team that a student's misconduct was a manifestation of the student's disability, the IEP Team must, if a BIP already has been developed, review the BIP and modify it, as necessary, to address the behavior. Further, except with regard to special circumstances for specifically identified dangerous misconnect pursuant to the IDEA, 34 C.F.R. §300.530(g), not asserted here, the student must be returned to the placement from which the student was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the student's BIP.

In this case, the student's IEP Team determined that the subject misconduct on October 13, 2016 of the battery of staff was caused by or had a direct and substantial relationship to the student's disability and was a manifestation of the student's disability. (FOF #29) The student's IEP Team did not revise the student's BIP to address the misconduct as required by the IDEA, 34 C.F.R. §300.530(f) at or after the October 19, 2016 meeting convened to conduct the Manifestation Determination. (FOF #33) This failure of the CCSD to review the student's BIP after the conduct of the Manifestation Determination was further exacerbated when it failed to do so even after the request of the school to the CCSD, the Student Support Services Division, for assistance to do so or the repeated requests from the Parent to convene the student's IEP Team to revise the student's IEP and BIP. (FOFs #32, #34) As late as January 10, 2017, the CCSD still had not reviewed and revised, as necessary, the student's BIP to address the October 13, 2016 misconduct. (FOF #35)

STAROn Behavioral Program

The student's IEP Team determined in the October 19, 2016 IEP meeting to review the student's behavior and conduct the Manifestation Determination that the student's placement would remain the same as the June 1, 2016 IEP: the regular class with supplementary aids and services (no removal) with the percentage of time in the regular education environment at 100%. The IEP Team considered no other options. (FOFs #30, #31)

The IEP Team's return of the student to the regular class placement from which the student was removed was in accordance with the IDEA, 34 C.F.R. §300.530(f), unless the Parent and the CCSD had agreed to a change of placement as part of the modification of the student's BIP. Given the subsequent assignment of the student to the STAROn behavioral program (FOF #38), it is necessary to consider whether the removal of the student from the regular class with 100% of the time in the regular educational environment was merely a change in the location of the student from one class to the other at the same school or a change of placement.

In the discussion of the 2006 IDEA regulations, the United States Department of Education responded to a request to clarify the difference, if any, between "placement" and "location" as follows:

"Historically, we have referred to "placement" as points along the continuum of placement options available for a child with a disability, and "location" as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services." (Vol. 71 Fed. Reg. pg. 46588 (August 14, 2006))

In *N.D et al., v. State of Hawaii Department of Education*, 600 F.3d 1104, 54 IDELR 111 (Ninth Circuit 2010), the Ninth Circuit Court of Appeals¹ addressed the issue of educational placement finding that under the IDEA a change in educational placement relates to whether the student is moved from one type of program -- i.e., regular class -- to another type -- i.e., home instruction and that a change in the educational placement can also result when there is a significant change in the student's program even if the student remains in the same setting.

In this case, while the STAROn behavioral program is at the same location as the student's regular class placement, the STAROn behavioral program is a closed campus with the expressed goal of returning students to regular classes. (FOFs #36, #37) Upon arrival at school, all students are required to remain in the STAROn portable until dismissal. The students are not allowed on the main middle campus, including athletic fields and student parking areas, without prior administrative permission and are banned from all CCSD campuses and events. Consistently, the students are escorted to breakfast

¹ The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

after the general student population has left and breakfast and lunch are brought back to the portable for consumption. (FOF #37)

As such, the placement of the student in the STAROn behavioral program was a change in the student's determined placement on the continuum of program options from 100% involvement in the regular education environment (FOF #30) to a self-contained program (FOF #37). Furthermore, while there was documentation that the student participated in the general education curriculum in the STAROn behavioral program (FOF #41), in the absence of the documentation required pursuant to NAC §388.215, the Complaint Investigation Team determined the student's IEP was not implemented in the STAROn program (FOF #42). Therefore, the Complaint Investigation Team determined that the placement of the student in the STAROn program was an impermissible removal of the student from the student's current placement and a change of placement.

As discussed above, in accordance with the IDEA, 34 C.F.R. §300.530(f), this change of placement would have been permissible if the Parent and the CCSD had agreed to the change of placement as part of the modification of the student's BIP. While there is inconsistent information regarding whether the Parent agreed to the student's change of placement in the STAROn behavioral program, it is not necessary to resolve this inconsistency, since the change was not part of the modification of the student's BIP as required under the IDEA. (FOFs #33, #39, #40)

Therefore, the CCSD failed to comply with the IDEA and NAC with regard to changing the special education placement of the student, specifically with regard to placing the student in the STAROn behavioral program in October 2016.

ORDER FOR CORRECTIVE ACTION

The CCSD is required to take corrective action to address the determined violations in this Complaint investigation, specifically the CCSD failed to implement the student's IEP in all regards cited in this Complaint other than the supplementary aids/services of providing lead time for schedule or routine changes and a "safe place" (counselor/SEIF/social worker) to go to when feeling frustrated or angry. Due to the failure of the CCSD to implement the student's IEP in all regards and the lack of progress toward the student's IEP goals (FOF #5), a student specific remedy is required as well as a systemic remedy.

Directed Action Plan

Compensatory Education

The below ordered compensatory education must be in addition to the required services in the student's IEP in effect at the date of this Report; may be provided by school personnel; and must take place during non-instructional hours in the school day or after school or during days students are not in attendance at school. The CCSD and the Parent can agree in writing to an alternative service(s); alternative amounts of services; and/or an alternative timeline for the delivery of the service at any time prior to the end of the 2016/2017 school year. Any such written agreement must be provided to the NDE within ten school days of its execution. In the absence of such agreement, the CCSD will implement the following ordered compensatory education no later than the end of the 2016/2017 school year.

1. Given the failure of the CCSD to provide 13 weeks² of the specially designed instruction of direct behavioral/social skills 50 minutes a week in the general education classroom during the time period of this Complaint, the student is entitled to 11 hours (650 minutes rounded up) of compensatory education of direct specially designed instruction of behavioral/social skills. The CCSD must notify the NDE of the completion of the delivery of the compensatory education within 15 school days of its completion.
2. Due to the nature of the supplementary aids/services that the CCSD failed to provide to the student, it is difficult to quantify the nature and amount of additional aids/services required to educationally compensate the student for the failure to receive these services. Upon consideration of the failure to implement the student's IEP in the determined regards, the student's October 23, 2016 IEP Progress Report, the first and second quarter progress reports and report card (FOFs #5, #13, #15), the Parent's proposed resolution in the Complaint, and escalation of the student's misconduct since the commencement of the 2016/2017 school year (FOF#32), the Complaint Investigation Team determined that the compensatory services for failure to implement the required supplementary aids/services, including the student's BIP, would be focused on augmenting the student's behavioral services and the course subjects of English and Math.
 - a. The CCSD must select and assign a specialist in behavior intervention, such as a Behavior Mentor, to assist in the conduct of a functional behavioral assessment and the review and revision, if appropriate, of the student's October 15, 2015 BIP to be completed no later than March 15, 2017. (If a functional behavioral assessment was completed during the period of this investigation with the involvement of a specialist in behavior intervention, the CCSD is not

² The student's absences were not significant during the time period of this Complaint (FOF #3) and, therefore, the amount of compensatory education was not reduced to reflect those absences.

required to conduct another functional behavioral assessment, but must complete the ordered review and revision of the student's BIP, if appropriate, no later than February 22, 2017. If the student's BIP has already been reviewed without the services of a specialist in behavior intervention, it must be reviewed again no later than March 15, 2017 with the involvement of a specialist in behavior intervention.) The specialist must provide any documentation provided to the CCSD personnel in advance of the BIP meeting to the Parent and the Parent must have the opportunity to participate in the development of the BIP. Any misconduct cited in a Behavior Detail Report from October 13, 2016 to the date of the meeting, documentation of the implementation of the student's October 23, 2015 BIP since November 28, 2016, and any IEP progress reports on the student's progress toward the June 1, 2016 IEP behavioral goal must be considered in the review of the BIP.

- b. After the review and revision, if appropriate, of the student's BIP as a result of the ordered meeting, the CCSD must assign a specialist in behavior intervention to review the student's progress in the behavioral skills class, the elimination of the targeted behaviors in the student's BIP, and the student's progress with regard to the identified replacement behaviors on at least a monthly basis until the end of the 2016/2017 school year and, if the specialist recommends an adjustment in the student's BIP, the CCSD must convene a meeting to review the student's BIP and the Parent has the right to participate. From March 16, 2017 to April 14, 2017, the specialist must provide 6 hours of consult services to the student's general education teachers on the implementation of the student's BIP, the collection of data on the implementation of the student's BIP and the elimination of the targeted behavior(s). From April 17, 2017 until the end of the 2016/2017 school year, the consult service hours to the student's general education teachers may be reduced to three hours for every four full or partial school weeks, unless the student's IEP, if revised, requires more service hours.
- c. Given one of functions of the targeted behavior in the student's October 23, 2015 BIP was to avoid demand/request or activity/task in math and/or writing (FOF #17), the student's IEP goal with regard to school work, and the student's grades in Math and English (FOFs #4, #13, #15), the CCSD must provide the student compensatory education in the form of 26 hours of tutoring in the areas of English and Math (calculated at 2 hours a week for the 13 weeks during the period of this Complaint). The tutoring may be provided by school personnel and must take place after school (which may include the "homework club" if there is no homework on a given day) or during days students are not in attendance at school. The compensatory education must be provided to the student no later than the end of the 2016/2017 school year.

The CCSD must provide the NDE documentation of the implementation of this Order within 30 days of the end of the 2016/2017 school year.

IEP Meeting

Unless the CCSD provides documentation of the conduct of an IEP meeting, as agreed upon in November 2016, after the submission of data on January 10, 2017 (FOFs #34, #35), the CCSD must convene an IEP meeting at a mutually convenient time and place with the Parent(s) to review the student's IEP and revise the IEP, if appropriate, no later than 45 days from the issuance of this Report. Documentation of the conduct of the IEP meeting must be provided to the NDE

If the Parent and the CCSD cannot reach agreement with regard to the contents of the student's IEP or BIP, either the Parent or the CCSD can access the State IEP Facilitation or mediation processes or file a due process complaint to resolve any such disagreement through an evidentiary hearing.

Systemic Action

Given the CCSD's noncompliance with regard to the implementation of another student's BIP and IEP in a different middle school in the recently issued Complaint Report #CL113016, the NDE has concluded that a systemic remedy is also appropriate in this case.

Within 90 days of the receipt of this Report, the CCSD must establish (or augment, as needed) a system of records for school personnel to document the implementation of students' IEPs and BIPs in, at least, all middle schools and notify each middle school Principal of the requirement to implement the system of records as soon as possible, but no later than the commencement of the 2017/2018 school year. The system of records must include a model form, or required at the CCSD's discretion, for general education teachers, special education teachers, and related services personnel to document the implementation of the required kind/type, amount, and frequency of the special education, related services and supplementary aids and services in each student's IEP and a system for school site administrative personnel to regularly review the system of records to ascertain whether any intervention is required to timely remedy the failure, if any, to implement a student's IEP or BIP.

The CCSD must provide the NDE documentation of the above ordered system of records in, at least, all middle schools no later than October 1, 2017.