

**CLARK COUNTY SCHOOL DISTRICT
COMPLAINT INVESTIGATION
(#CL120523)**

Report Issued on February 2, 2024

INTRODUCTION

On December 5, 2023, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging a violation by Clark County School District (CCSD) of the Individuals with Disabilities Education Act (IDEA) law and regulations, 20 U.S.C. §1400 et seq., 34 C.F.R. Part 300, and Chapter 388 of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC).

The allegation in the Complaint was that the student's Individualized Education Program (IEP) was not being met, causing a denial of a Free Appropriate Public Education. Specifically, the facts supporting the allegation were that this alleged violation was caused by CCSD's failure to provide the student with the related service of specialized transportation with a wheelchair lift for the student to attend school. The Parent indicated that between October 17, 2023, student's first day of school within CCSD, and November 14, 2023, the date of the State Complaint, CCSD provided transportation on only one out of the eighteen school days during this period.

The Parent's proposed resolution to address this allegation was for CCSD to provide transportation to and from school, and to provide compensatory education for the 18 days of school missed, with a minimum of 109 hours.

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 through November 14, 2023:

Issue:

Whether CCSD complied with IDEA and NAC, Chapter 388, in the implementation of the student's IEP in effect in the 2023/2024 school year with regard to providing the student with the related service of daily specialized transportation to and from school.

In the December 11, 2023 Issue Letter to CCSD, CCSD was notified 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; reference to the provided documentation that factually supported the denial; and that a failure to do so by January 4, 2024, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. CCSD did timely provide a response; denied the alleged noncompliance, asserting that CCSD effectuated student's IEP; provided the statement of the factual basis and clearly referenced the provided documentation. CCSD also stated that while it denied the allegation in the Complaint, if NDE determined an alleged violation occurred, CCSD proposed resolving the complaint by providing "forty-five (45) hours of compensatory education services to the student to address Individualized Educational Program (IEP) goals and objectives, to be completed by December 31, 2024."

The Parent's Complaint and CCSD's denial of all claims, arguments and all documents submitted by CCSD in response to the issue in the Complaint, including requested documentation to verify CCSD's implementation of the student's IEP related to the provision of specialized transportation, were reviewed in

their entirety in this investigation. The Findings of Fact cite the source(s) of the information determined necessary to resolve the issues in this Complaint.

FINDINGS OF FACT

General

1. The student is a student with a disability, who enrolled in CCSD on October 17, 2023, with an Out-of-State IEP dated August 21, 2023 (“August 21, 2023 IEP” or “IEP”), which included the provision of specialized transportation to and from school. (August 21, 2023 IEP, CCSD Response)
2. CCSD arranged to provide a school bus, with wheelchair access, for the student beginning October 23, 2023, with pickup and drop off at a named cross street (the “Bus Stop”). (CCSD Transportation Records)
3. The location of the Bus Stop at the cross street and the established time for pickup of the student, 7:21 a.m., was undisputed. No documentation was provided in the course of the investigation that the student’s Parent was notified that the student needed to be at the Bus Stop at a specific time prior to the pickup time. (Review of the Record)
4. There were 15 school days from October 23, 2023 through November 14, 2023. (CCSD 2023-2024 School Calendar)
5. CCSD provided daily records revealing the exact time the school bus arrived, and departed from student’s Bus Stop. (CCSD Transportation Records)
6. The student’s school bus did not arrive at the Bus Stop to pick the student up from October 23 through 26, 2023. Consistently, CCSD attendance records note Student’s absence with “Circumstance Comments: “Bus was not picking up child.” (CCSD Transportation Records, CCSD Attendance Records)
7. October 27, 2023 was a school holiday and the student was home due to illness on October 30-November 1, 2023. (CCSD Attendance Records, October 31, 2023 & November 2, 2023 Email Communications)
8. The student’s school bus picked up and delivered student to school on November 2 and 3, 2023, arriving at the Bus Stop at 7:31¹ a.m. on November 2, 2023, and 7:41 a.m. on November 3, 2023. (CCSD Transportation Records)
9. On November 6, 2023, the student’s school bus arrived at the Bus Stop at 9:04 a.m., but the student’s Parent had already transported the student to school by that time. (CCSD Response, CCSD Transportation Records, November 6, 2023 Email Communication, at 7:48 a.m.)
10. On November 7, 2023, the student’s school bus arrived at 7:26 a.m. and left at 7:29 a.m. The student was sick and did not attend school that day. (CCSD Transportation Records, CCSD Attendance Records, November 7, 2023 Email Communication)

¹ Times are rounded.

11. On November 8, 2023, the student's school bus arrived at the Bus Stop at 7:17 a.m., and left the Bus Stop at 7:20 a.m., one minute before the scheduled pickup time. The student was not in school that day. (CCSD Transportation Records, CCSD Attendance Records)
12. On November 9, 2023, the student's school bus arrived at the Bus Stop at 7:25 a.m., four minutes after the scheduled pickup time, and left the Bus Stop at 7:27 a.m., The student was not in school that day. (CCSD Transportation Records, November 13, 2023 Email Communication, CCSD Attendance Records)
13. CCSD did not have school on November 10, 2023, but on November 13, 2023, the student's school bus arrived at the Bus Stop at 7:17 a.m., and left the Bus Stop at 7:18 a.m., three minutes before the scheduled pickup time. The student was not in school that day. (CCSD Transportation Records, CCSD Attendance Records CCSD 2023-2024 School Year Calendar)
14. On November 14, 2023, the student's school bus arrived at the Bus Stop at 7:09 a.m., and left the Bus Stop at 7:13 a.m., eight minutes before the scheduled pickup time. The student was not in school that day. (CCSD Transportation Records, CCSD Attendance Records)
15. After the relevant time period of this State Complaint, on November 15, 2023, the student's school bus arrived at 7:12 a.m. and left at 7:13 a.m., eight minutes before the scheduled pickup time. The CCSD then suspended the provision of the student's related service of specialized transportation for a period of time due to the student's "non-attendance" for three school consecutive days. (CCSD Transportation Records, CCSD Attendance Records, CCSD Response)

IEP

16. The student's August 21, 2023 IEP called for the student to receive 62 hours per month, or approximately three hours per day² of specialized small group instruction of functional academic skills "in a highly structured self-contained classroom that focuses on basic academics (letters, numbers, writing names), life skills, and functional skills," and 10 hours per month, or 30 minutes per day, of "social language development" in a small group setting. The student also received related services other than transportation on a monthly basis. (August 21, 2023 IEP)
17. The student's scheduled school arrival of 7:45 a.m. and pickup at 2:06 p.m. yields a school day of six hours and 21 minutes. (CCSD Transportation Records)

CONCLUSIONS OF LAW

Issue:

Whether CCSD complied with IDEA and NAC, Chapter 388, in the implementation of the student's IEP in effect in the 2023/2024 school year with regard to providing the student with the related service of daily specialized transportation to and from school.

Implementation of the Student's IEP

² The student's IEP had internal inconsistency in the calculation of minutes per day of this specially designed instruction. The State Investigation Team relied on the frequency of the stated hours per month.

The requirements of the provision of a Free Appropriate Public Education to students with disabilities under IDEA and NAC, Chapter 388, necessitate that special education and related services and supplemental aids and services are provided in conformity with the IEP. 34 C.F.R. §§300.17(d), 300.101; NAC §388.281(6)(e); *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884 (9th Cir. 1995); *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9th Cir. 2007).³

In accordance with IDEA and NAC, Chapter 388, special education and related services must be made “available” to the student in accordance with the student’s IEP as soon as possible after it was developed. 34 C.F.R. §§300.101, 300.323(c); NAC §388.281(6)(e). Neither IDEA nor Nevada law or regulations define the time limitation of “as soon as possible.” However, in the discussion of the 1999 IDEA regulations, the U.S. Department of Education provided guidance on the interpretation of this term as it relates to implementation of IEPs, noting that IEPs “should be implemented without undue delay following the IEP meetings,” but that there may be circumstances that require a short delay in the provision of services, such as making transportation arrangements, citing “within a week or two” as a reasonable period of time. 64 Fed. Reg. 12405, 12579 (March 12, 1999).

In this case, there was a single IEP in effect during the time period of this State Complaint, the student’s August 21, 2023 IEP. (Findings of Fact (FOF) #1) The student enrolled in CCSD on October 17, 2023, and CCSD established transportation services for the student beginning on October 23, 2023. (FOF #2)

In the State Complaint, the Parent asked that the period of CCSD noncompliance for failure to provide specialized transportation begin on October 17, 2023. However, the State Complaint Investigative Team found that by establishing transportation services for student on October 23, 2023, six days after the student’s enrollment, CCSD satisfied their requirement to make the related service of transportation available to student “as soon as possible.” (FOFs #1, #2) 64 Fed. Reg. 12405, 12579 (March 12, 1999). Therefore, the determination of the period of noncompliance for purposes of this State Complaint is October 23, 2023 through November 14, 2023.

Nonetheless, the student’s related service of transportation services did not begin on October 23, 2023, when scheduled, resulting in the student being unable to access special education in conformity with the student’s IEP for four school days. (FOF #6) 34 C.F.R. §§300.17(d), 300.323(c); NAC §388.281(6)(e). *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884 (9th Cir. 1995); *Van Duyn v. Baker School Dist.* 502 F. 3d 811 (9th Cir. 2007).

Once the student’s transportation started on October 26, 2023, after arriving 10-20 minutes late on multiple occasions (FOFs #8, #9, #10), the student’s bus began leaving the Bus Stop prior to the scheduled pickup time (except for an occasion when it arrived four minutes late). (FOFs #5, #11 - #15) The days that CCSD made specialized transportation to school available to the student, but not at the appointed time are not as straightforward because the student’s IEP does not include a specific pickup time. Yet, it was CCSD that determined and set 7:21 a.m. as the pickup time for the student to implement the student’s specialized transportation to school and communicated that time to the student’s Parent. (FOF #3) Accordingly, the State Complaint Investigative Team determined that the appointed time the specialized transportation was to be made available to the student was integral to the implementation of the specialized transportation services in conformity with the student’s IEP. As such, except for those occasions when the student was absent due to illness, CCSD’s material failure to do so on some school days was not in conformity with the student’s IEP. 34 C.F.R. §§300.101, 300.323(c); NAC §388.281(6)(e); *Van Duyn v. Baker School Dist.* 502 F. 3d 811 (9th Cir. 2007).

³ The State of Nevada is in the United States Court of Appeals, Ninth Circuit

Therefore, CCSD failed to comply with IDEA and NAC, Chapter 388, in the implementation of the student's IEP in effect in the 2023/2024 school year with regard to providing the student with the related service of daily specialized transportation to and from school.

ORDER OF CORRECTIVE ACTION

In accordance with IDEA, 34 C.F.R. §300.151(b), in resolving a State Complaint in which the State Education Agency has found a failure to provide appropriate services, the agency, pursuant to its general supervisory authority under IDEA Part B must address: (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) appropriate future provision of services for all children with disabilities.

The State Complaint Investigation Team determined that both a student-specific corrective action, for the failure to provide the student a Free Appropriate Public Education, and a systemic action are required for CCSD's failure to meet the specialized transportation needs in the August 21, 2023 IEP related to picking up and dropping off the student.

In accordance with NRS §385.175(6), NDE requests a plan of corrective action (CAP) from CCSD within 20 CCSD business days of the date of this Report on the provision on CCSD's plan to implement the ordered actions below, including the timeline. The CAP must be approved by NDE prior to implementation and documentation of the completion of the approved CAP must be provided to NDE within 14 days of its completion.

Student-Specific Remedy

The determination of noncompliance with regard to CCSD's failure to implement the student's IEP by providing Student with the related service of daily specialized transportation to and from school does not end the inquiry. The next inquiry is whether a student-specific corrective action is required to address the needs of the student. 34 C.F.R. §300.151(b). This is an individualized determination. Whether the failure to provide the services in a student's IEP is a minor failure or a material failure (*Van Duyn*) is relevant to the determination of whether a student-specific corrective action is required to address the needs of the student. 34 C.F.R. §300.151(b).

"A material failure occurs when the services a school provides to a disabled child fall significantly short of the services required by the child's IEP." "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been a significant shortfall in the services provided." *Van Duyn*.

In this case, CCSD failed to provide the arranged specialized transportation, that acted as the predicate requirement for implementation of the student's IEP, for the entire four-day week of October 23 through October 26, 2023. (FOF #6) Thereafter, during the relevant period of this State Complaint, the school bus often left early or arrived late and, on some of those days, the untimeliness was more than a minor failure and resulted in the student being unable to attend school. (FOF #3, #8 - #14) The State Complaint Investigation Team finds it probative that the student was not provided the opportunity for progress of any kind on those days since the student received no specialized instruction, including the three hours of functional academic training, and half an hour of social language development training in the student's IEP.⁴

⁴ NDE requested documentation of the continued implementation of the student's IEP if the student missed school due to the unavailability of specialized CCSD transportation and CCSD provided no relevant documentation in the course of the investigation. In the absence of documentation otherwise, NAC §388.215, the State Complaint

(FOF #16). Therefore, a student-specific corrective action is required to address the needs of the student. 34 C.F.R. §300.151(b).

Compensatory education is designed to provide the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place. This is a fact-specific determination. *Parents of Student W. ex rel. Student W. v. Puyallup School Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005).

In compensatory education awards, there is no obligation to provide a day-for-day compensation for time missed. *Parents of Student W.* This approach for determining compensatory education is considered ‘qualitative’ in nature, rather than strictly ‘quantitative’ and requires that a compensatory education award be made not merely by establishing the amount of services which were not provided, but that an analysis be done to establish what may make the student whole for the denial of services.

While outside the scope of this investigation, it is of concern that the determined noncompliance in this State Complaint continued on November 15, 2023, resulting in CCSD suspending the student’s related service of specialized transportation for a period of time due to the student’s “non-attendance” on November 13, 14, and 15, 2023. (FOF #15) After the conduct of a qualitative analysis of the determined incidences with material impact within the scope of this investigation and upon consideration of the continuing impact of these incidences on the student’s access to the specialized instruction and related services designed to provide the student educational benefit, *Bd. of Educ. v. Rowley*, 458 U.S. 176, (1982), the State Complaint Investigation Team determined CCSD’s proposed resolution of compensatory education hours in excess of the determined day-for-day compensation for the noncompliance within the scope of this investigation is the appropriate remedy in this case.

Therefore, unless an alternative student-specific remedy is otherwise agreed to in writing by CCSD and the Parent⁵, the CAP must provide for the following student-specific directed actions and provide the timeline to enable the completion of all of the actions as soon as possible, but no later than December 31, 2024:

The provision of 45 hours of compensatory education to address the goals and objectives in the student’s IEP in effect at the time of this Report in the areas of social language development and functional academics. This compensatory education may be provided in one-on-one or small group settings; must be in addition to the services in the student’s IEP; and must be provided during school breaks or before or after school. At CCSD’s discretion, all or part of the compensatory education/services may be provided by a qualified private provider.

CCSD must consult with the student’s Parent(s) on the appropriate means to provide this ordered compensatory education to meet the student’s educational needs and must consider any concerns of the Parent and/or proposals in the development of the compensatory education plan, including the allocation of the compensatory education hours between the areas of social language development and functional academics.

Investigative Team determined that CCSD did not take any steps, on days the student missed school to the unavailability of specialized CCSD transportation, to otherwise implement the student’s IEP.

⁵ If CCSD and the Parent agree to an alternative student-specific remedy, that written agreement must be submitted with the CAP and all required documentation in this Order applies to the implementation of the agreed-upon alternative remedy.

In addition to the above required documentation of completion, CCSD is required to send documentation of the progress toward the provision of the ordered compensatory education to the student **no later than May 31, 2024**, unless the ordered compensatory education was previously completed and documentation provided to NDE of that completion prior to that date.

Systemic Remedy

It is of concern that so little communication took place between CCSD and the student's Parent regarding what became an ongoing problem regarding the provision of daily transportation services to the student. Therefore, in order to ensure that the specialized transportation needs of its students are met on a daily basis, CCSD's CAP must include, at a minimum: (a) training prior to the commencement of the 2024/2025 school year for all bus drivers involved with transporting students with specialized needs to and from school on the requirement to implement the specialized transportation needs in the IEPs for the students on their route, including the requirement that the bus not leave the designated location of the bus stop prior to the designated window of time for pickup, without the student on board or prior written notification that the student will be absent; and (b) the establishment of a written policy/procedure to be provided at the commencement of each school year to parents of students with disabilities with the related service of transportation in their child's IEP, along with the pickup location and time, that includes: the window of time for pickup to ensure the student is at the designated location during the designated window of time, in the event the bus arrives before or after the pickup time; the individual to contact in the event concerns arise in the provision of the related service of transportation to the student; and requires advance written notification to a parent prior to the suspension of services in the event of determined non-attendance/no-show.⁶

The CAP must include a method for CCSD to determine that the participants have mastered the contents of the training.

⁶ This policy/procedure may not preclude any individual parent of students with disabilities from accessing the dispute resolution processes available under IDEA and NAC, Chapter 388, as appropriate.