

**CLARK COUNTY SCHOOL DISTRICT  
COMPLAINT INVESTIGATION  
(#CL120623)**

**Report Issued on February 2, 2024**

**INTRODUCTION**

On December 6, 2023, the Nevada Superintendent of Public Instruction received a Complaint from a Parent<sup>1</sup> alleging violations 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).

In accordance with IDEA and NAC, Chapter 388, a State Complaint must include a violation that occurred no more than one year prior to the date of receipt. 34 C.F.R. §300.153; NAC §388.318(1)(b). The United States Department of Education explained the purpose of this provision in the IDEA regulations: “Limiting a complaint to a violation that occurred not more than one year prior to the date that the complaint is received will help ensure that problems are raised and addressed promptly so that children receive FAPE. We believe longer time limits are not generally effective and beneficial to the child because the issues in a State Complaint become so stale that they are unlikely to be resolved.” *Discussion of IDEA regulations*, 71 Fed. Reg., 46540, 46606 (August 14, 2006). While the State Complaint included the time period prior to December 6, 2022, the student’s Parent was informed that due to this one-year time limitation, the time period of the investigation would address the alleged violations commencing December 6, 2022, one year prior to the date of receipt of the State Complaint.

The Parent’s allegations of noncompliance within the NDE’s jurisdiction were that CCSD:

1. Violated its Child Find obligations and denied the student a Free Appropriate Public Education by failing to conduct an initial evaluation under IDEA and NAC and find the student eligible for special education services since December 6, 2022 to the date of the State Complaint, December 6, 2023;
2. Denied meaningful parental participation in all decisions regarding a Free Appropriate Public Education, pursuant to NAC §388.302 that requires qualified professionals and the parent to make the determination on eligibility pursuant to IDEA, 34 C.F.R. §300.306, when CCSD unilaterally refused to determine the student eligible as a student with a disability on the basis of a parentally-provided neuropsychological evaluation (hereinafter, “independent evaluation”) and proposed to conduct an evaluation on October 10, 2023. The Parent indicated that the independent evaluation was sufficient for CCSD to determine the student eligible and yet CCSD delayed insisting it needed to evaluate again, in the very same areas in which CCSD already had current and sufficient information; and
3. Pursuant to NAC §388.450(6), failed to consider the results of the independent evaluation provided to CCSD on October 5, 2023 in CCSD’s October 10, 2023 decision with respect to the provision of a Free Appropriate Public Education to the student.

The Parent’s proposed resolution was to order CCSD to convene an IEP Team with 14 days of the “Hearing Officer’s” decision to determine the student eligible and to provide compensatory education services for

---

<sup>1</sup> This State Complaint was filed by one, not both, of the student’s Parents with the non-complainant Parent being listed as an additional contact. Some of the communications/actions cited in this Report in the Findings of Fact and Conclusions of Law involved the non-complainant Parent. For ease, the term “Parent” will be used in the Findings of Fact and Conclusions of Law to refer to one or both of the student’s Parents.

CCSD's denial of a Free Appropriate Public Education. The Parent was informed that a NDE State Complaint Investigation Team would investigate this Complaint, and as appropriate order a corrective action if noncompliance is found. However, unlike the authority of a Hearing Officer in a due process hearing, the State Complaint Investigation Team is not authorized to make a determination whether a student is eligible as a student with a disability. Rather, if noncompliance is found, the corrective action would require CCSD to convene an eligibility team to make that decision upon completion of the administration of assessments and other evaluation measures in accordance with IDEA and Nevada law and regulations.

NDE noted that a Due Process Complaint was filed by CCSD on November 17, 2023 involving the student and CCSD and was withdrawn upon reaching a resolution in the matter. NDE requested and received documentation from CCSD that while the matter was resolved and withdrawn by CCSD, it was not by settlement agreement. (January 2, 2024 CCSD Response, Withdrawal, November 28, 2023 Email Communication) As such, NDE's assumption of jurisdiction over this Complaint was not precluded or impacted by the outcome of the previously filed Due Process Complaint.

The allegations in the Complaint under the jurisdiction of NDE to investigate through the special education complaint process raise the following issues for investigation up to December 6, 2023, the date of the State Complaint:

**Issue One:**

Whether since December 6, 2022, CCSD complied with IDEA and NAC, Chapter 388, with regard to conducting an initial evaluation of the student if good cause existed to suspect the student had a disability under IDEA and NAC, Chapter 388, specifically whether CCSD followed required procedures and applied required standards under IDEA and NAC and reached a determination that was reasonably supported by the student-specific data.

**Issue Two:**

Whether, if required, CCSD complied with IDEA and NAC, Chapter 388, with regard to CCSD's October 10, 2023 unilateral refusal to determine the student eligible as a student with a disability on the basis of the independent evaluation and proposal to conduct an evaluation, specifically:

- a. Parental participation in the determination pursuant to IDEA, 34 C.F.R. §300.306, and NAC §388.302; and
- b. Consideration of the results of the independent evaluation provided to CCSD on October 5, 2023 in the determination pursuant to NAC §388.450(6).

In accordance with IDEA, 34 C.F.R. §§300.9 and 300.622, NDE must also obtain parental consent before personally identifiable information is disclosed to unauthorized parties. While the State Complaint was signed by the Parent of the student only, it was transmitted by a law firm and contact information for members of the law firm was also included in the State Complaint for two members of the law firm. The Parent was informed that in order for the NDE to release any personally identifiable information to these named members of the law firm, including the Complaint Investigation Report, NDE must receive parental consent authorizing the disclosure of such information to these specifically named individuals that met the requirements of IDEA, 34 C.F.R. §300.622, NAC §388.289. NDE did not receive parental consent to release personally identifiable information to the named members of the law firm during the course of the investigation.

In the December 12, 2023 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; reference to the provided documentation that factually supported the denial; and that a failure to do so by January, 5, 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 well-organized response; denied the alleged noncompliance; and provided the requisite statement of the factual basis and documentation.

The Parent's Complaint and CCSD's denial of all claims and all documents submitted by CCSD in response to the issue in the Complaint 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**

1. The student was enrolled in CCSD in the 2022/2023 and 2023/2024 school years and, when the student was of preschool age, the student was eligible as a student with a disability with developmental delay in the area of social or emotional condition. (October 4, 2022 Multidisciplinary Team Report, Student Period Attendance Detail)
2. Commencing in school year 2021/2022, the student received services under a Section 504 Accommodation Plan, including in school year 2023/2024, based on diagnosed disorders that affected the major life activity of learning. (September 2, 2021, September 1, 2022 and September 1, 2023 Section 504 Evaluation Summary and Accommodation Plans)
3. Prior to the relevant time period of this State Complaint, the student was referred to CCSD in the 2022/2023 school year by the student's Parent due to concerns and deficits that included anxiety at school. Based on the referral information, CCSD suspected serious emotional disturbance and, several months before the relevant time period of this State Complaint, an initial evaluation of the student was conducted and a Multidisciplinary Team Report issued on October 4, 2022. At that time, the student was determined not to be eligible as a student with a disability by the student's Multidisciplinary Team. The student's Parent attended the Eligibility Team meeting and agreed with the determination. (October 4, 2022 Multidisciplinary Team Report, October 4, 2022 Statement of Eligibility – Serious Emotional Disturbance, Confidential Status Record)
4. In school year 2023/2024, the student's pediatrician referred the student for a neuropsychological assessment due to concerns regarding the student's moods and anxiety. The student's Parent also raised concerns to the clinical psychologist in the conduct of the neuropsychological assessment relating to the student's mathematical abilities, forgetfulness, rushing through tasks, nervousness and intrusive thoughts about death. (October 4, 2023 Independent Child Neuropsychological Evaluation Report)
5. The October 4, 2023 neuropsychological assessment of the student by a clinical psychologist:
  - Assessed the student's attentional system and executive functioning; information processing speed; verbal and language skills; visual perception and organization; social perception; overall intellectual functioning; and academic functioning.
  - In the area of academic functioning, the assessment reported a concern in the area of mathematic achievement: the student performed in the low average range in math calculations and in the practical application of mathematical concepts to word problems; and in the borderline range in the ability to complete simple math problems with speed and authenticity.

- The diagnostic impressions (DSM-5) from these assessments were Unspecified Anxiety Disorder; Oppositional Defiant Disorder, mild; and Specific Learning Disability, with impairment in mathematics. The diagnosis of mild Oppositional Defiant Disorder was based on the occurrence of behaviors solely with the Parent or within home and no other environments.
  - The diagnosis of Specific Learning Disability, with impairment in mathematics, was due to the student's performance in math being between the borderline range to the lower end of the low average range for tasks of calculations, word problems, and mathematical fluency. (While the student's math scores were largely low average, the Report noted that these scores are on the cusp of the borderline range and considered a definite area of concern.)
  - The Report included a variety of therapeutic interventions and classroom accommodations to manage the student's symptoms. The educational recommendations included that the student would benefit from an IEP or further accommodation to provide the student with further accommodations in the classroom in order to support the student's difficulty with mathematics and anxiety. The specific recommendations were:
    - i. Encouraging the student's Parents to begin utilizing flash cards outside of school;
    - ii. The student would benefit from being provided additional assistance from educators in strengthening math skills and encouraging teachers to check in with the student when learning new mathematical theories or skills to ensure understanding and mastery of the content;
    - iii. Preferential seating near an authority figure and away from distractions so the student's understanding of materials presented could be monitored and it may be helpful for an adult to check in with the student to ensure the student understands the lessons;
    - iv. The student may benefit from taking tests or exams in a space away from peers and distractions and using coping mechanisms to assist the student in reducing anxiety; and
    - v. A named technique with activity breaks and named academic resources to teaching reading, writing, and math with a mention that these resources can be purchased on line and completed with the parents at home or lessons provided through a tutoring center in the geographical area. (October 4, 2023 Independent Child Neuropsychological Evaluation Report)
6. On October 4, 2023, the student's Parent requested an IEP Team meeting be scheduled for the student and requested a new evaluation. (October 4, 2023 Email Communication, Confidential Status Record)
7. There were extensive regular written communications between the student's Parent and CCSD during the relevant time period of this State Complaint. The Parent indicated in the October 4, 2023 referral of the student for evaluation that the Parent had informed CCSD repeatedly of the student's need for an IEP. However, the October 4, 2023 communication is the first documentation provided in the course of this investigation of the student's Parent to CCSD, or CCSD staff to the Parent, of a suspicion that the student may be a student with a disability in need of special education between December 6, 2022 and October 4, 2023. (The communications did occasionally reference the content and implementation of the student's Section 504 Plan, but did not denote the Parent's suspicion that the student might be a student with a disability in need of special education.) (Parent – School Email Communications, State Complaint)

8. The student's independent evaluation report was provided to CCSD on October 4, 2023. (October 4, 2023 Fax Transmission)<sup>2</sup>
9. On October 6, 2023, the school psychologist from the student's school contacted the Parent and offered to have the school team meet with the Parent to discuss the independent evaluation, concerns, and next steps. The student's Parent responded stating a distrust of representatives of the school and concern with having another representative from CCSD conduct an evaluation of the student. (October 6, 2023 Email Communications, State Complaint)
10. On October 10, 2023 CCSD offered to conduct another evaluation of the student for special education services relative to the diagnostic impressions in the independent evaluation along with a recent drop in the student's grades. To start that evaluation, CCSD informed the Parent that the team would like to meet with the Parent to review parental rights, discuss disability suspicion, discuss scope of evaluation and request parental consent for evaluation. The Special Education Rights of Parents and Children document was attached to the email communication. (October 10, 2023 Email Communication)
11. CCSD followed up on October 12, 2023, with a Prior Written Notice proposing to evaluate the student and identify the student's special education needs as the proposed action and to meet to review parental rights, discuss the scope of assessment/disability suspicion, and secure parental consent for evaluation. The reasons for the proposed action were academic concerns and Parent concerns with reliance on student records and the independent evaluation. The other options considered by CCSD were continuing the student's Section 504 Plan in the general education environment and continuing Response to Intervention Services targeting specific skill deficit areas based on interim assessments. These options were not rejected and would continue. (October 12, 2023 Prior Written Notice)
12. CCSD proposed a tentative meeting date of November 2, 2023 for the Multidisciplinary Team meeting, including the Parent, to discuss the information in the Prior Written Notice. CCSD asked the Parent to confirm the appointment and if there was a scheduling conflict, an alternative meeting date and/or time may be needed. The Parent was again provided the Special Education Rights of Parents and Children document on October 12, 2023 and again on October 20, 2023. (The November 2, 2023 meeting date was 18 school days after the Parent's referral of the student for evaluation.) (October 13, 2023 Proposed Meeting Arrangement Notice, Prior Written Notice, October 12, 2023 Email Communication, October 20, 2023 Letter to Parents, Confidential Status Record, CCSD 2023/2024 School Calendar for Students)
13. On October 12, 2023, the student's Parent informed CCSD that the Parent would like to proceed with a meeting to discuss any further evaluation and then on October 17, 2023 CCSD was notified that the Parent would not be meeting with CCSD on November 2, 2023. CCSD responded that the November 2, 2023 meeting date and time would remain open in the event the student's Parent changed their mind. On November 1, 2023, CCSD reminded the Parent of the meeting and once again provided the meeting notice and Prior Written Notice. (October 12, 2023, October 17, 2023, October 18, 2023 Email Communications, Confidential Status Record)

---

<sup>2</sup> On October 5, 2023, the student's Parent requested an independent educational evaluation at public expense in the areas of educational, emotional therapy. The Parent stated that they did not agree with the previous results of the district's evaluation. (October 5, 2023 Email Communication) The Parent's request for an independent educational evaluation and CCSD's response are not at issue in this investigation.

14. The Multidisciplinary Team met on November 2, 2023 to discuss the scope of assessment for the student and disability suspicion, but the student's Parent did not attend. The Team reviewed the student's independent evaluation report and other data, including current data from Response to Intervention in which the student was participating in math interventions. The Team determined the data showed good growth in that area and expressed concern that the student's math skill deficits may be related to the 32 absences and 17 tardies last year. (The student's last five data points on easyCBM for numbers and operations were well above the 25<sup>th</sup> percentile average range.) The student's teacher reported the student was responding well to the Section 504 accommodations with regard to the diagnostic impressions of Unspecified Anxiety Disorder and mild Oppositional Defiant Disorder. The Team determined there was a suspicion that emotional disturbance might be impacting the student's ability to be successful in school; however, based on data that included the student was scoring in the average range for grade level skills, the Team determined there was no suspicion of specific learning disabilities currently present. (Confidential Status Record, Student, EasyCBM Numbers and Operations, 2023/2024 School Year Math Progress Monitoring Report, November 2, 2023 Email Communication)
15. On November 2, 2023, after the conduct of the Multidisciplinary Team meeting, CCSD notified the student's Parent of the findings and results of the meeting and provided a second Prior Written Notice with the proposed action to evaluate and identify the student's special education needs; another copy of Special Education Rights of Parents and Children; and request for parental consent for evaluation. In addition to the previously stated academic and Parent concerns, an additional reason of behavior concerns was added. In the factors relevant to the proposed action of Parent concerns, CCSD added that the district stands ready to evaluate the student for a suspicion of emotional disturbance pending informed parental consent. (November 2, 2023 Prior Written Notice, Student Services Referral Form, November 2, 2023 Email Communication, with Attachments)
16. On the day this State Complaint was filed, CCSD provided the student's Parent a revised Prior Written Notice and, subsequent to the filing of this State Complaint, CCSD provided the Parent a request for parental consent with the scope of the evaluation and, at the Parent's request, included evaluation based on the area of specific learning disabilities as well as emotional disturbance. The Parent's consent for evaluation was received January 3, 2024. (December 6, 2023 Parental Prior Notice of District Proposal, December 18, 2024 Parental Consent for Evaluation Form, December 6, 2023 – January 3, 2024 Email Communications, Confidential Status Record)
17. The student's overall earned grades in the 2022/2023 school year, second semester, were as follow: A grade in language (after a first semester grade of F); D grade in math (after a first semester grade of F); A grade in reading; A in social studies; A grade in speaking and listening; B grade in writing after a first semester grade of A); meets grade in science; and A grade in health. The comments for the two semesters noted that the student receives intensive instruction in math; made satisfactory growth in reading with 100% on the sight words with 152 words correct per minute (fluency goal is 98 words correct), an earned a score of 199 in MAP reading assessment ((MAP goal is 189); and, with regard to math, earned a score of 177 (the MAP goal is 189). (Student Report Card 2022/2023)
18. The student was absent 32 school days in the 2022/2023 school year and tardy on 17 days. The student's 2022/2023 report card noted the absences and commented: "Absences and tardies can have a negative impact on students, causing gaps in their knowledge and skills." (2022/2023 Student Period Attendance Detail, Student Report Card 2022/2023)
19. The student's overall earned grades in the first semester that ended December 15, 2023 were as follows: B grade in language; D grade in math, (up from a progress grade of F in October 2023),

with approaches grade on two measurements; B grade in reading; A grade in social studies; A grade in speaking and listening; D grade in writing; A grade in science with meets grades on two measurements; and A grade in health. The comments noted that the student is currently working on grade level in reading (with the 63<sup>rd</sup> percentile on MAP assessment); and, with regard to math, the student is at the 14<sup>th</sup> percentile on the MAP math assessment. (The student at this grade level typically scores within the 50<sup>th</sup> percentile on the reading and math MAP assessments.) The comments noted that the student is considered chronically absent; that is, absent for 10% or more of the days enrolled and that the student was absent 11 days and enrolled for 79 days in the first semester of the 2023/2024 school year, which gives a percentage of 14. The comments added that the student would benefit from being on time every day so instruction and learning is not missed. (Student Report Card 2023/2024, Student's October 10, 2023 Progress Grades)

20. In the past the student has had a difficult time adapting to in-class learning. In September 2023, the student was continuing to work on feeling more comfortable with change in this area especially as the new school year begins. At times the student's anxiety caused the student to miss classes due to having to regulate emotions and anxiety. The student had been learning to articulate feelings to the teacher, using established coping strategies, and talking about feeling, all of which helped in this regard. (September 1, 2023 Section 504 Evaluation Summary and Accommodation Plan)

## CONCLUSIONS OF LAW

### Issue One:

Whether since December 6, 2022, CCSD complied with IDEA and NAC, Chapter 388, with regard to conducting an initial evaluation of the student if good cause existed to suspect the student had a disability under IDEA and NAC, Chapter 388, specifically whether CCSD followed required procedures and applied required standards under IDEA and NAC and reached a determination that was reasonably supported by the student-specific data.

In accordance with NAC §388.215, each public agency is required to take measures to ensure that every student with a disability who resides within the school district is identified, located, evaluated and served in the manner appropriate to the unique needs of the student. (See also the required State policies and procedures in 34 C.F.R. § 300.111.) While this State Complaint cited the systemic child find requirements as the applicable authority, the allegation was student-specific, not systemic; specifically, that CCSD should have suspected the student was a student with a disability in need of special education as early as the 2021/2022 school year and conducted an initial evaluation to determine whether the student was a student with a disability.

“We believe that an SEA, in resolving a complaint challenging the appropriateness of a child's educational program or services or the provision of FAPE, should not only determine whether the public agency has followed the required procedures to reach that determination, but also whether the public agency has reached a decision that is consistent with the requirements in Part B of the Act in light of the individual child's abilities and needs. Thus, the SEA may need to review the evaluation data in the child's record, or any additional data provided by the parties to the complaint, and the explanation included in the public agency's notice to the parent as to why the agency made the determination regarding the child's educational program or services.” *Discussion of IDEA regulations*, 71 Fed. Reg., 46540, 46601 (August 14, 2006). Citing the Federal Register, the United States Department of Education, Office of Special Education Programs (OSEP), indicated that: “The SEA may find that the public agency has complied with Part B requirements if the evidence clearly demonstrates that the agency has followed required procedures, applied

required standards, and reached a determination that is reasonably supported by the child-specific data.” (OSEP Memorandum 13-08: Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B), 61 IDELR 232 (OSEP July 23, 2013).<sup>3</sup>

Therefore, to resolve this State Complaint regarding whether CCSD complied with IDEA and NAC, Chapter 388, in the conduct of the initial evaluation of the student, NDE must determine whether CCSD followed required procedures; applied appropriate standards; and reached a determination reasonably supported by student-specific data. At the outset, it is important to note that the IDEA does not require a local educational agency to conduct an initial evaluation of all students upon a parent’s request for evaluation to determine whether a student is a student with a disability. A local educational agency is only required to evaluate a student when the agency suspects a student has a disability and is in need of special education and related services. (Pursuant to NAC §388.337(1), the standard for suspicion is good cause.) However, if the local educational agency refuses to conduct the evaluation, it must provide the parents with written notice of its refusal, including an explanation of the applicable procedural safeguards and the means to challenge it. *Pasatiempo v. Aizawa*, 103 F.3d 796; 25 IDELR 64 (9th<sup>4</sup> Cir. 1996); *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119-20, 67 IDELR 227 (9th Cir. 2016).<sup>5</sup>

The State Complaint, and accordingly this issue, included the allowable time limitation of one year prior to the filing of the State Complaint. However, just two months prior to December 6, 2022, the student’s Parent referred the student for evaluation and, upon the completion of the evaluation of the student, the student was determined not to be eligible as a student with a disability by the student’s Multidisciplinary Team, including the student’s Parent. (Finding of Fact (FOF) #3) By the end of the 2022/2023 school year, the student’s academic grades had improved in two areas, including in the subject of math, and fell only in one area, writing (from a grade of A to a grade of B), even in light of a number of absences and tardiness. (FOFs #17, #18) In addition, although there were regular written communications between the Parent and CCSD, the Parent’s referral of the student on October 4, 2023 is the first documented instance after December 6, 2022 that CCSD was put on notice that the student’s Parent again suspected that the student may be a student with a disability in need of special education. (FOF #7)

In the absence of any documentation evidencing a suspicion that the student may be a student with a disability in need of special education between December 6, 2022 and October 3, 2023 (FOFs #7, #17, #18, #19), the State Complaint Investigation Team determined that good cause did not exist to suspect the student had a disability under IDEA and NAC, Chapter 388, during that time period. Therefore, it is the period from October 4, 2023, upon the independent evaluation of the student and the Parent’s referral of the student for evaluation, that is the applicable time period.

---

<sup>3</sup> This memorandum is publicly available at:

[https://sites.ed.gov/idea/files/policy\\_speced\\_guid\\_idea\\_memosdcltrs\\_acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf](https://sites.ed.gov/idea/files/policy_speced_guid_idea_memosdcltrs_acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf)

<sup>4</sup> The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

<sup>5</sup> This position was also articulated by the United States Department of Education, Office of Special Education Programs early on in *Letter to Anonymous*, 21 IDELR 998 (OSEP, August 29, 1994). Since it is no longer publicly available the following relevant paragraph is provided verbatim: “The Department’s position is that parents may request a Part B evaluation at any time. However, the parents’ request for a Part B evaluation does not automatically trigger the obligation of the LEA to conduct the evaluation. Rather, an LEA must conduct an evaluation without undue delay only if the LEA suspects that the child has a disability and is in need of special education and related services. If the LEA refuses the parents’ request to conduct an evaluation, the LEA must provide the parents with a written prior notice of its refusal, including a full explanation of applicable procedural safeguards and due process rights, as well as an explanation of why the agency is refusing to take the action requested by the parent. See 34 CFR § 300.505(a)(1)-(2). If a parent disagrees with the LEA’s refusal to evaluate the child, the parent may request a due process hearing under 34 CFR §§ 300.506-300.508.”



## October 4, 2023 Referral of Student for Evaluation

Neither IDEA nor NAC establish the procedure for a local educational agency to determine whether good cause exists to suspect a student is a student with a disability and in need of special education and related services. 34 C.F.R. §§300.8, 300.111; NAC §§388.215, 388.337(1)(a). However, upon the receipt of the Parent's request for the evaluation of the student to identify any suspected disability that might impede the student's learning, CCSD was required to consider the Parent's request. Upon determining whether it was suspected that the student had a disability and was in need of special education and related services, CCSD was then required to provide the Parent a Prior Written Notice a reasonable time before CCSD's proposed or refused to initiate the requested evaluation of the student; seek parental consent within a reasonable period of time after the referral for evaluation, if CCSD agreed that an evaluation was needed; and provide the Parent a copy of the procedural safeguards available to the Parent upon the Parent's request for evaluation. 34 C.F.R. §§300.503(a), §300.504; NAC §388.300; *Discussion of IDEA regulations*, 71 Fed. Reg., 46540, 46637 (August 14, 2006).

While there is a timeline for a local educational agency to conduct an initial evaluation after the receipt of a parent's informed written consent, 34 C.F.R. §300.301(c). NAC §388.337(1), neither IDEA nor NAC, Chapter 388, provide timelines for a local educational agency to act on a referral of a student suspected of being a student with a disability and to request parental consent, if good cause is found to evaluate the student. The United States Department of Education, however, indicated in the discussion of the 2006 IDEA regulations: "Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed." *Discussion of IDEA regulations*, 71 Fed. Reg., 46540, 46637 (August 14, 2006).<sup>6</sup>

In this case, on October 4, 2023, the student's Parent requested an IEP Team meeting be scheduled for the student and requested a new evaluation. (FOF #6) On that same day CCSD was provided the student's independent evaluation. (FOF #8) After informally contacting the Parent on October 6, 2023, and again on October 10, 2023, in response to the Parent's request for an evaluation and the CCSD's review of the independent evaluation (FOFs #9, #10), CCSD provided the Parent a Prior Written Notice on October 12, 2023 proposing to evaluate the student and identify the student's special education needs. CCSD also provided the Parent a Procedural Safeguards Notice on October 10, 2023 and again on October 12, 2023 and October 20, 2023. (FOFs #10, #11, #12)

CCSD proposed a tentative meeting date of November 2, 2023 for the student's Multidisciplinary Team, including the Parent, to discuss the scope of assessment for the student and disability suspicion and to secure parental consent. (FOFs #11, #12) In response, the Parent informed CCSD that the Parent would like to proceed with a meeting to discuss any further evaluation, and subsequently informed CCSD that the Parent would not be meeting with CCSD. The Parent chose not to attend the Multidisciplinary Team meeting, as is the Parent's right, and the meeting proceeded without the Parent present. (FOF #13) At the meeting, the student's Multidisciplinary Team reviewed existing evaluation data on the student, including, once again,

---

<sup>6</sup> In the course of the investigation, documentation was provided that the student was being provided intensive instruction in math and participating in Response to Intervention at the time of the referral for evaluation. (FOF #14, #17) Pursuant to NAC §388.325, if a student is participating in "research-based intervention" (RTI) a parent of the student may ask for an initial evaluation of the student if the parent suspects that the student has a disability and may qualify for special education and related services. If the public agency also suspects the student has a disability, the public agency may not refuse to conduct the initial evaluation or delay the initial evaluation until the RTI is completed and must promptly request parental consent to evaluate the student.

the independent evaluation provided by the student's Parent, and identified what additional data were needed to determine whether the student is a student with as disability and the student's educational needs. (FOF #14) (See related discussion under Issue II with regard to parental participation.)

After the conduct of the Multidisciplinary Team meeting, CCSD notified the student's Parent of the findings and results of the meeting that same day. CCSD provided the student's Parent a second Prior Written Notice with the proposed action to evaluate and identify the student's special education needs pending informed parental consent; request for parental consent for evaluation; and another Procedural Safeguards Notice.<sup>7</sup> (FOF #15) By taking these required actions, the State Complaint Investigation Team determined that, upon receiving the Parent's request for an evaluation and the independent evaluation, CCSD took the required actions under IDEA and NAC, Chapter 388.

The only remaining inquiry is with regard to timeliness; that is, whether CCSD sought parental consent within a reasonable period of time after the referral for evaluation and determination that an initial evaluation was needed. CCSD requested parental consent to evaluate the student on November 2, 2023, after the conduct of the Multidisciplinary Team meeting, 18 school days after the referral of the student for evaluation. (FOFs #12, #15) The State Complaint Investigation Team determined that delaying the request for consent for 18 school days until such time as the Parent was fully informed of all of the information relevant to the conduct of the proposed initial evaluation, including the scope of assessment and disability suspicion, was reasonable. 34 C.F.R. §§300.9, 300.300; NAC §388.300. As such, it is determined that CCSD's delay in this case to request parental consent met the requirement to seek parental consent within a reasonable period of time/promptly after the referral for evaluation. NAC §388.325; *Discussion of IDEA regulations*, 71 Fed. Reg., 46540, 46637 (August 14, 2006).

Therefore, CCSD did follow required procedures upon receiving the Parent's request for an evaluation and the independent evaluation by considering the request; providing the Parent a Prior Written Notice a reasonable time before CCSD's proposed or refused to initiate the requested evaluation of the student; upon agreeing that an evaluation was needed, seeking parental consent within a reasonable period of time after the referral for evaluation; and providing the Parent a copy of the procedural safeguards available to the Parent. 34 C.F.R. §§300.503(a), §300.504; NAC §388.300; *Discussion of IDEA regulations*, 71 Fed. Reg., 46540, 46637 (August 14, 2006). In addition, based on the student-specific data contained in the documents and information provided in the course of this investigation, the State Complaint Investigation Team determined that the CCSD's proposal to conduct an initial evaluation of the student to determine if the student has a disability and is in need of special education and related services after the October 4, 2023 receipt of the Parent request for evaluation and the independent evaluation is reasonably supported by the student-specific data. (FOFs #4, #5, #14, #20)

*Therefore, CCSD complied with the required procedures and applied required standards under IDEA and NAC, Chapter 388, with regard to conducting an initial evaluation of the student if good cause existed to suspect the student had a disability under IDEA and NAC, Chapter 388, specifically CCSD followed required procedures and applied required standards under IDEA and NAC and reached a determination that was reasonably supported by the student-specific data.*

---

<sup>7</sup> On the day this State Complaint was filed, CCSD provided the student's Parent a revised Prior Written Notice and, subsequent to the filing of this State Complaint, CCSD provided the Parent a second request for parental consent with the scope of the evaluation that, at the Parent's request, included evaluation based on the area of specific learning disabilities as well as emotional disturbance. The Parent's consent for evaluation was received January 3, 2024. (FOF #16)

## **Issue Two:**

Whether, if required, CCSD complied with IDEA and NAC, Chapter 388, with regard to CCSD's October 10, 2023 unilateral refusal to determine the student eligible as a student with a disability on the basis of the independent evaluation and proposal to conduct an evaluation, specifically:

- a. Parental participation in the determination pursuant to IDEA, 34 C.F.R. §300.306, and NAC §388.302; and
- b. Consideration of the results of the independent evaluation provided to CCSD on October 5, 2023 in the determination pursuant to NAC §388.450(6).

## **Parental Participation**

The parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of a student and the provision of a Free Appropriate Public Education to the student. 34 C.F.R. §§300.322, 300.501; NAC §388.302. The student's Parent relied upon this general parental participation authority in IDEA and NAC, Chapter 388, as well as a parent's explicit right to be a member of the group of qualified professionals in the determination of whether the student is a student with a disability, 34 C.F.R. §300.306.

Notwithstanding that one of the very purposes of IDEA is to ensure the rights of students with disabilities and their parents are protected, 20 U.S.C. §1400(d), 34 C.F.R. §300.1, IDEA recognizes that the right of parental participation is not limitless. For example, the right of a parent of a student with a disability to be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a Free Appropriate Public Education to the student does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision or preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. 34 C.F.R. §300.501.

Did the student's Parent in this case have the right to participate in CCSD's deliberation/determination on how CCSD should respond to the Parent's request for an IEP Team meeting and a new evaluation of the student? No. As previously discussed, neither the IDEA nor NAC establish the procedure for a local educational agency to determine whether the agency suspects a student is a student with a disability and in need of special education and related services. 34 C.F.R. §§300.8, 300.111; NAC §§388.215, 388.337(1)(a). There is no meeting requirement for a local educational agency to make that determination or right of a parent to participate in the agency's decision whether to propose or refuse to conduct the initial evaluation of a student in response to a parent's request, including in the agency's review and consideration of existing data to reach the decision.

Nonetheless, without a requirement to do so, two days after receiving the Parent's request for an evaluation and the independent evaluation. CCSD offered to meet with the Parent to discuss the independent evaluation, the Parent's concerns, and next steps. (FOFs #9, #10) The student's Parent was not receptive to the offer and CCSD proceeded to make the determination and did so by proposing to conduct the evaluation of the student and providing the Parent a Prior Written Notice and procedural safeguards notice. (FOF #11).

While the issue of parental participation in this State Complaint was with regard to CCSD's precedent determination to conduct an initial evaluation of the student, not the Multidisciplinary Team meeting that followed, it is important to note that the Parent did have the right to participate in the Multidisciplinary Team meeting as a member of the IEP Team and declined to do so upon being afforded the right. (FOFs #13, #14) 34 C.F.R. §§300.305, 300.321, 300.501; NAC §§388.302, 388.281, 388.336.

## **Consideration of Independent Evaluation**

In accordance with IDEA and NAC, Chapter 388, a local educational agency is required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining whether the student is a student with a disability and the content of the student's IEP. Consistently, the agency is prohibited from using any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student. 34 C.F.R. §300.304, and NAC 388.340. Therefore, even if CCSD was inclined to determine the student eligible as a student with a disability on the basis of independent evaluation alone, both IDEA and NAC, Chapter 388 would have prohibited CCSD from taking that action. As such, by refusing to determine the student eligible as a student with a disability on the basis of the Parent's independent evaluation alone and proposing to conduct an evaluation of the student in response to the Parent's request, CCSD complied with IDEA and NAC, Chapter 388.

Pursuant to IDEA, 34 C.F.R. §300.502(c), and NAC §388.450(6), if a parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of a Free Appropriate Public Education to the student. As defined by IDEA, 34 C.F.R. §300.17, a Free Appropriate Public Education, in part, means special education and related services are provided in conformity with an IEP. In this case, the student had not been identified as a student with a disability at the time CCSD received the independent evaluation of the student. Accordingly, this requirement of consideration is not applicable to this case.

However, as part of an initial evaluation (if appropriate), the IEP Team and other qualified professionals were required to review existing evaluation data on the student, including evaluations and information provided by the Parent. On the basis of the review of the existing evaluation data, and input from the student's parents, the Team was required to identify what additional data, if any, are needed to determine whether the student is a student with a disability and the educational needs of the student; the present levels of academic achievement and related developmental needs of the student; and whether the student needs special education and related services. 34 C.F.R. §300.305(a); NAC §388.336(1).

In this case, even before the conduct of the Multidisciplinary Team meeting, CCSD considered the independent evaluation in determining whether good cause existed to suspect the student may be a student with a disability in need of special education and related services and the proposal to evaluate the student. (FOFs #10, #11) At the Multidisciplinary Team meeting, the Team reviewed existing evaluation data on the student, including, once again, the independent evaluation provided by the student's Parent, in the identification of what additional data were needed to determine whether the student is a student with a disability and the student's educational need. (FOF #14) By doing so, CCSD complied with IDEA, 34 C.F.R. §300.305(a), and NAC §388.336(1).

*Therefore, in the absence of a requirement of parental participation, CCSD complied with IDEA and NAC, Chapter 388, with regard to the CCSD's "unilateral" determination to propose to conduct an evaluation of the student in response to the Parent's request and the review of existing evaluation data on the student, including the independent evaluation provided by the Parent.*