

**CLARK COUNTY SCHOOL DISTRICT
COMPLAINT INVESTIGATION
(#CL121422)**

Report Issued on February 2, 2023

INTRODUCTION

On December 14, 2022, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations by the 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 Parent submitted a written request to CCSD on September 20, 2022 for a speech evaluation regarding the student's delays in language and literacy skills and CCSD refused to conduct a speech/language evaluation. The Parent indicated that no formal testing/data has been completed to determine whether the student needs further related services to benefit from special education. It is the Parent's position that the student requires speech/language therapy to benefit from special education and by refusing to conduct a speech/language evaluation, CCSD is denying the student a Free Appropriate Public Education (FAPE). The Parent's proposed resolution was that CCSD agree, with Parent consent, to conduct the speech/language and literacy evaluation as soon as possible.

The Parent's Complaint, including the enclosed documents and information, additional information provided in the Parent interview and documentation thereafter, 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.

COMPLAINT ISSUE

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

Issue:

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to its refusal to conduct a speech/language evaluation of the student in response to the Parent's written request on September 20, 2022, specifically whether CCSD followed procedures and applied required standards under IDEA and NAC and reached a determination that was reasonably supported by the student-specific data.

FINDINGS OF FACT

1. The student with a disability is enrolled in the CCSD in the 2022/2023 school year and is placed in a regular class and special education class (e.g., resource) combination with 84% of the school day in the regular education environment. (Student's IEPs)
2. The student had an April 19, 2022 annual IEP in effect in the 2021/2022 and 2022/2023 school years, with subsequent revisions on May 23, 2022 and October 10, 2022. The student's annual goals in all three IEPs were in the areas of behavior, self-advocacy, math (problem solving) and

writing. The student's IEP Team considered the special factor of whether the student had communication needs that required IEP services and determined the student did not need require IEP services in this area in all three IEPs. (April 19, 2022, May 23, 2022, October 10, 2022 IEPs)

3. The Parent agreed with the components of the student's April 19, 2022, May 23, 2022, and October 10, 2022 IEPs. The Prior Written Notices issued subsequent to the development/revision of each IEP indicated in the proposed action to implement the IEP that the IEP Team agreed that the IEP met the student's needs as written. (April 19, 2022, May 23, 2022, October 10, 2022 IEPs; April 19, 2022, May 23, 2022, October 10, 2022 Prior Written Notices)
4. The specially designed instruction in the student's April 19, 2022 annual IEP and May 23, 2022 revision IEP were in the areas of written expression, math and behavior/social skills. The specially designed instruction of reading in content areas was added to the student's October 10, 2022 IEP. The student's in-person specially designed instruction was provided in general education. (April 19, 2022, May 23, 2022 October 10, 2022 IEPs)
5. The student's last progress report for the 2021/2022 school year and the first and second quarter of the 2022/2023 school year on October 7, 2022 and December 14, 2022 showed the student made satisfactory progress on all of the students IEP goals in place during the previous quarter. (Student's IEPs, Progress Reports)
6. In April 2020, CCSD conducted a speech/language evaluation. The student's scores for language comprehension, oral comprehension and total language ability were all in the average to high average range and, based on an informal speech sample, student's language was determined to be appropriate and the student was determined not to be eligible for speech services at that time. (Speech/Language Pathologist Notes - Student Confidential Status Record)
7. Referencing evaluation results from the University of Nevada, Reno (UNR) Language and Literacy Department, by letter dated September 19, 2022 the Parent requested CCSD conduct a speech evaluation of the student for delays in language and literacy skills. The Parent specifically referenced UNR's determination that the student had difficulty in speech perception, holding speech sound in the memory, the ability to reproduce the sequence of speech sound accurately and verbal working memory, (Complaint, Parent Interview, Request for Evaluation)
8. On September 26, 2022, after the Parent's request for a speech/language assessment, the CCSD speech/language pathologist conducted a review of the parentally-provided reports from University of Nevada Las Vegas (UNLV); UNR; and Silver State Psychology; the student's record; and the speech/language assessment previously conducted in April 2020. (CCSD Student Confidential Status Record)
9. On September 30, 2022, CCSD conducted a staffing with the Parent regarding the Parent's request for assessment. The Parent's concerns and findings of all three parentally-provided reports were discussed during the staffing. CCSD responded to the Parent's concerns with an explanation of the results and the work related to the identified deficits being done in the educational setting, including feedback and reteaching throughout the school day. During the staffing, the teacher reported that there were no concerns in language, speech sounds or reading comprehension at school. (CCSD Student Confidential Status Record)
10. On October 4, 2022, the speech/language pathologist sent the Parent a parent consent form for the provision of short-term support services that might also involve some limited assessment or evaluation of the student's needs and progress. The purpose of the short-term support services

included making a decision whether to move forward with assessment based on the student's performance and response to intervention. The services/intervention conducted were a classroom observation, academic intervention, and speech evaluation. These services were recommended due to the Parent's concern regarding reading comprehension, speech perception, holding speech sounds in immediate memory, ability to reproduce the sequence of speech sounds accurately impeding learning. The Parent gave consent for the proposed services to be provided. (October 4, 2022 Parent/Guardian Consent, CCSD Student Confidential Status Record, Email Communications)

11. On CCSD provided a Prior Written Notice dated October 19, 2022 to the Parent in response to the Parent's request for assessment to determine eligibility for speech/language services. The notice included the Parent's proposal; the reason for the Parent's proposal; the CCSD's refusal to take the requested action; the reason for refusing to take the requested action; options considered; the reason for the rejection of the requested action; the evaluation procedures, assessments, records or reports utilized by CCSD as a basis for its refused action; the relevant factors considered; the right to seek resolution; and a copy of the explanation of procedural safeguards and contact information if the Parent had any questions regarding special education rights or needed assistance. (October 19, 2022 Prior Written Notice, Complaint)

Parentally-Provided Independent Evaluations

12. The UNLV School of Medicine evaluation was a neuropsychological, psychological and behavioral assessment conducted in June and July 2020, with an addendum in February 2021 that included an updated diagnostic clarification. The evaluation in 2020 noted that the Parent reported problems with academics and with being bullied and, since the student had been tested multiple times in the preceding eight months, there was an increased practice effects for testing. The February 2021 determination was that the student met the clinical criteria for ADHD, Autism Spectrum and learning disorders in math and writing and additional recommendations were provided in the areas of handwriting, written and verbal materials, and math. No recommendation was made for a speech/language assessment or speech/language pathology services in these assessments. (UNLA 2020 and 2021 Neuropsychological, Psychological and Behavioral Assessments)
13. The student's pediatrician referred the student to Silver State Psychology to conduct a neuropsychological evaluation of the student and the evaluation report was issued April 25, 2021. The Parent was seeking a second opinion regarding the student's academic issues. With regard to the student's verbal and language abilities the student fell in the low average to average range on the four administered assessments; the student's speech rate, rhythm and prosody were within the norm and sentence structure and vocabulary were broadly within the norm.

In the review of the student's IEP, the Silver State Psychology evaluator commented: A review of []¹ most recent IEP impressed this evaluator and appeared to provide a comprehensive set of strategies to help [] in the classroom environment. Based on [] performance on the present evaluation, I recommend the following for consideration: preferential seating, being given a start date for large projects, a reduced homework load, and extra time on assignments and tests. Teachers ought to check in with [] to make sure [] understands instructions. [] may benefit from multimodal and multi-sensory teaching." In June 2021, the same evaluator completed a referral checklist and made recommended referrals; however, while the form included speech/language therapy as a possible referral, the evaluator did not recommend this as a referral. (April 25, 2021

¹ Brackets denote the deletion of personally identifiable information.

Silver State Psychology Child Neuropsychological Evaluation Report and June 26, 2021 Referral Checklist)

14. In July 2021, the student was referred to UNR School of Medicine's Speech and Hearing Clinic by the student's doctor due to the Parent's concerns with the student's reading and writing skills. The summary of findings in the August 4, 2021 UNR speech pathology evaluation report indicated:
- Student presents with a literacy disorder with demonstrated difficulty at the word/sound level (dyslexia). Regarding language, student showed strengths at the sentence/discourse level in vocabulary awareness, retelling a story just heard (story retell), comprehending a story (listening comprehension), reading comprehension, following directions, writing at a discourse level, writing at a sentence level, and social communication. The student showed difficulty at the sentence/discourse level with long term memory (delayed story retell).
 - Regarding literacy, the student showed strength at the sound/word level with short-term memory, spelling nonreal words, automatic word recognition (reading fluency), and writing at a discourse, sentence and word level. The student showed difficulty with phonological awareness and decoding nonreal words (nonword reading). (August 4, 2021 UNR Evaluation Report)
15. UNR's August 4, 2021 Evaluation Report concluded that it is likely that student's short-term memory is impacting the student's decoding, encoding, and oral language skills. The student's oral language skills were at the low end of the average range and speech services were determined to be "medically necessary" at that time. The evaluations documented a clinically significant speech/language/hearing /communication disorder resulting in an inability to perform at the previous functional level (or achieve age-appropriate speech-language milestones). It was not anticipated that the impairments would self-correct without skilled intervention. "Services provided in this clinic are not of an educational nature." (August 2, 2021 UNR Evaluation Results)
16. UNR August 4, 2021 Evaluation Report recommended specific (non-exhaustive) accommodations, which, while generated in a medical assessment, could be applied in an academic setting for the purpose of accessing curriculum:
- Present directions in small chunks and allow for clarification of directions as needed.
 - Provide written instructions to accompany oral instructions as needed.
 - Provide Assistive Technology to increase access to written material, such as text-to-speech software, C-Pen Reader, or an I-Pad.
 - No graded spelling tests.
 - Ignore spelling mistakes on written assignments and/or allow use of a spell checker.
 - Reduce or limit handwritten assignments or allow a peer/sibling note taker.
 - Extended time for assignments and examinations." (August 4, 2021 UNR Evaluation Report)
17. The assessment results of the parentally-provided August 4, 2021 UNR Evaluation Report were summarized as parental input in the present levels of academic achievement and functional performance of all three of the student's IEPs, along with the results of the assessments conducted by CCSD to date of each IEP. (April 19, 2022, May 23, 2022 October 10, 2022 IEPs)
18. The October 10, 2022 IEP revision to the student's April 19, 2022 was to amend the student's IEP to revise the accommodations and specially designed instruction at the Parent's request. The student's IEP included the additional specially designed instruction of reading in content areas and five additional accommodations addressing the amount of time for the student to complete projects,

assignments, and assessments; the determination of grades; breaking larger projects, assignments, and assessments into smaller parts; frequent checks for understanding and repeating directions or having the student repeat directions for understanding. (October 10, 2022 IEP)

November 2022 UNR Evaluation Report

19. Subsequent to the Parent's request to CCSD for a speech/language evaluation, UNR conducted additional assessments on November 1, 2022, November 8, 2022 and November 15, 2022. The Parent reported primary concerns regarding the student's school work, including needing support to start projects and struggling with reading comprehension, as well as with formulating and answering questions. (UNR November 2022 Evaluation Report)
20. With regard to speech therapy, the UNR November Evaluation Report indicated that the student presented with a language and literacy disorder and specifically presented with difficulty at the word/sound level, though the student also has other areas of weakness. It was concluded that:
"It is likely that [] difficulty with working memory is impacting decoding, encoding, and oral language skills, as indicated by [] difficulty with non-word repetition and spelling. Speech services are considered medically necessary at this time. [] difficulties in the area of language and literacy can impact [] ability to communicate with peers, family, and community. It is not expected that these skills will improve without skilled intervention from a licensed Speech-Language Pathologist. When provided with interventions, it can be expected that measurable progress will be documented. Services are not of an educational nature." (UNR November 2022 Evaluation Report)
21. In response to an inquiry from the Parent with regard to the "medical necessity" terminology in the UNR Evaluation Report, UNR responded that they were in fact considered a medical setting, and due to the requirements in medical settings there is specific information that need to be included in reports in order to clearly establish medical necessity and gain reimbursement by an insurance company. With regard to school-based and medical-based services, UNR explained: "School-based and medical-based services are, in fact, separate with regards to funding, eligibility, and purpose of intervention. An educational setting is governed by the Individuals with Disabilities Education Act Part B (IDEA), and services are two-fold: to ensure that students with disabilities have access to the curriculum, and to support the development of social relationships with fellow students... There are clear differences between educational and medical settings, and one should never dictate the service in the other. I cannot speak to whether [] meets the eligibility criteria with regards to the school setting; this is dependent on state academic standards and the professional and clinical judgment of the school-based team...My report could be used to provide them with information; however, it will be the determination of the school district if any of the information is applicable to their process. My report was not intended to guide or dictate any aspect of the school IEP process and spoke only to medical setting regulations." (UNR December 1, 2022 Email Response to Parent)
22. As of January 6, 2023, the Parent had not provided CCSD with the UNR evaluation reports for the evaluation conducted on November 1, 2022, November 8, 2022 and November 15, 2022. (Parent Interview, Review of Record)

CONCLUSIONS OF LAW

"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. *Discussion in the 2006 IDEA regulations: Federal Register / Vol. 71, No. 156 / Monday, August 14, 2006 / Rules and Regulations, Page 46601.* 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))²

In this case, the Parent did not allege that CCSD failed to follow the required procedures with regard to CCSD’s consideration of the Parent’s request to conduct the speech/language evaluation and notification of the refusal to conduct the requested evaluation. Consistently, the Investigation Team also concluded CCSD complied with the IDEA and NAC in this regard. Specifically, CCSD considered the Parent’s request for a speech/language evaluation and issued the required Prior Written Notice to the Parent in accordance with IDEA, 34 C.F.R. 300.503, and NAC §388.300 of the refusal to conduct the requested evaluation. (Finding of Fact (FOF) #11) It is the substantive determination that CCSD made in refusing to conduct the Parent’s requested speech/language evaluation that is at issue in this Complaint.

“The appropriateness of a determination regarding a student’s eligibility should be assessed in terms of its appropriateness at the time of the child’s evaluation and not from the perspective of a later time with the benefit of hindsight.” *L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 68 IDELR 121 (9th Cir. 2016)³, citing *Adams v. Oregon*, 31 IDELR 130 (9th Cir. 1999). Likewise, in this case, the determination whether CCSD’s refusal to conduct a speech/language evaluation of the student was reasonably supported by the student-specific data will be based on the data available to CCSD at the time of the Parent’s request for this evaluation.

Related services mean transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. 34 C.F.R. §300.34, NAC §388.101. The Parent’s request for a speech/language therapy evaluation was in order to assess whether the student was “eligible” for speech/language therapy. It is the Parent’s position that the student requires speech/language therapy as a related service in order to benefit from special education.

Given the Parent’s reliance on the results of the August 4, 2021 independent evaluation from UNR in the September 2022 request for a speech/language evaluation, it is important to note at the outset that the student’s IEP Team, including the Parent, had already considered and summarized the assessment results of the UNR Evaluation in the present levels of academic achievement and functional performance in the development/revision of the student’s April 19, 2022 annual IEP and May 23, 2022 revision IEP. (FOF #17) The Parent participated and agreed with these IEPs, including the determination that the student did not need require IEP services to address communication needs; the annual goals in the areas of behavior, self-advocacy, math (problem solving) and writing; and the specially designed instruction in the areas of written expression, math and behavior/social skills. (FOFs #2, #3, #4) The student made satisfactory progress on all of the student’s IEP goals prior to and after the Parent’s request for a speech/language assessment. (FOF #5)

² This policy letter is publicly available at: https://sites.ed.gov/idea/files/policy_speced_guid_idea_memosdcltrs_acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf

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

Notwithstanding the Parent's prior agreement regarding the absence of the student's communication needs after the IEP Team's consideration of the UNR Evaluation Report, the Investigation Team reviewed this and other parentally-provided independent evaluations relative to the student's speech and language needs:

- UNR's August 4, 2021 Evaluation Report included a conclusion that the student's oral language skills were at the low end of the average range and that speech services were "medically necessary." The evaluator specifically noted that the "[S]ervices provided in this clinic are not of an educational nature." (FOFs #14, #15, #16)
- The 2020 and 2021 UNLV assessments were neuropsychological, psychological and behavioral assessments. No recommendations were made for a speech/language assessment or speech/language pathology services in these assessments. (FOF #12)
- The 2021 Silver State Psychology Child Neuropsychological Evaluation Report and subsequent referral determined that the student's verbal and language abilities fell in the low average to average range on the four administered assessments; the student's speech rate, rhythm and prosody were within the norm and sentence structure and vocabulary were broadly within the norm. Of note, the Silver State Psychology evaluator specifically commented: A review of [] most recent IEP impressed this evaluator and appeared to provide a comprehensive set of strategies to help [] in the classroom environment. Based on [] performance on the present evaluation, I recommend the following for consideration: preferential seating, being given a start date for large projects, a reduced homework load, and extra time on assignments and tests. Teachers ought to check in with [] to make sure [] understands instructions. [] may benefit from multimodal and multi-sensory teaching." The evaluator recommended some referrals after the evaluation and, while the form included the option to designate speech/language therapy, the evaluator did not recommend a speech/language therapy referral. (FOF #13)

CCSD's refusal to the Parent's request for a speech/language evaluation was reached after the consideration of the parentally-provided independent evaluations; the student's record; the CCSD speech/language assessment conducted in April 2020; the student's program related to the identified deficits in the evaluation reports; and the absence of concerns at school in the areas of language, speech sounds or reading comprehension at school. In addition, prior to making a formal refusal to conduct the speech/language evaluation, CCSD also conducted a staffing with the Parent to discuss and explain the three parentally-provided evaluations; and, with the Parent's consent, provided short-term support services to make the decision whether to move forward with assessment based on the student's performance and response to intervention. (FOFs #8, #9, #10)

Based on a thorough review and consideration of the student-specific data contained in the documents and information provided in the course of this investigation regarding the student's communication needs and verbal/language abilities, including the above-referenced independent parentally-provided evaluations, the student's IEPs and progress toward the agreed-upon goals (FOFs #2-6, #12-#17), the Complaint Investigation Team has determined that the data available to CCSD did not evidence a suspicion that the student needed speech/language therapy in order to benefit from special education or otherwise present cause for CCSD to conduct a speech/language assessment to meet the student's educational needs in response to the Parent's September 19, 2022 request. 34 C.F.R. §§300.34, 300.303; NAC §§388.101, 388.440.

Therefore, it is determined that, based on the data available to CCSD at the time of the Parent's request for a speech/language evaluation, CCSD applied required standards and reached a determination that is reasonably supported by the child-specific data. In fact, CCSD is to be commended for engaging in a documented thorough consideration of whether the student should be evaluated for speech/language prior to making the decision to refuse to conduct the requested evaluation. (FOFs #8 - #10)

Given the consideration of subsequent events can provide further insight into the student's "condition," (*E.M. v. Pajaro Valley Unified School District*, (652 F.3d 999, 57 IDELR 1 (9th Cir. 2011)), it is worthy of mention that UNR's recent November 2022 evaluation does not provide a contrary perspective/insight. Rather, this most recent evaluation reiterated that while the student's need for skilled intervention from a licensed Speech-Language Pathologist remained a medical necessity, those services were not of an educational nature. (FOFs #19-21) In addition, subsequent to the Parent's request for a speech/language assessment and prior to CCSD's formal refusal to conduct the requested speech/language assessment, the student's IEP Team, including the Parent, again considered the special factor of whether the student had communication needs that required IEP services and determined the student did not need require IEP services and, consistently, no annual goals, specially designed instruction or related services in the area of communication were included in the student's IEP. (FOFs #2 - #5, #18)

Therefore, CCSD complied with the provisions of IDEA and NAC, Chapter 388, with regard to its refusal to conduct a speech/language evaluation of the student in response to the Parent's written request on September 20, 2022. CCSD followed procedures and applied required standards under IDEA and NAC and reached a determination that was reasonably supported by the student-specific data.