

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL122017)**

Report Issued on February 15, 2018

INTRODUCTION

On December 20, 2017, the Nevada Superintendent of Public Instruction received a Complaint dated December 18, 2017 from an attorney in a named organization regarding the provision of a free appropriate public education to a student enrolled in the Clark County School District (CCSD) in the 2017/2018 school year. The Complainant alleged CCSD violated the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) with regard to the CCSD's disregard of a Manifestation Determination review; the placement of the student in general education classes contrary to the student's IEP; and the failure to provide the student's general education teachers the student's IEP and behavior intervention plan. The Complainant's proposed resolution was to order training at the student's High School for staff and administration so that these alleged violations did not occur with other students.

As referenced in the State Complaint, a Due Process Complaint was filed on behalf of this student on or about November 1, 2017 and was withdrawn on December 5, 2017 upon reaching a resolution in that matter. Given the resolution of this case was not reached by a due process decision issued after a hearing, Title 34 C.F.R. 300.152(c) of the IDEA, did not apply. However, the NDE conditioned the assumption of jurisdiction over this Complaint on a determination that it is not precluded by the settlement agreement that resulted in the withdrawal of the Due Process Complaint and requested and received a copy of the settlement agreement. While the description of the nature of the problems in the resolved Due Process Complaint were the same allegations raised in this Complaint, the NDE determined that the Resolution Agreement signed by the CCSD and the student's Parent and the Complainant attorney that provided individual student remedies did not preclude the filing of this State Complaint.

Since the Complainant was not the parent of the named student, the Complainant was notified that in order for NDE to release any personally identifiable information to the Complainant, including the Complaint Investigation Report, the NDE must receive parental consent authorizing disclosure of such information to the Complainant. (34 C.F.R. §300.622, NAC §388.289) The student's Parent, as defined by the IDEA, 34 C.F.R. §300.030, and NAC §388.071, did not provide the required consent to the NDE to release personally identifiable information to the Complainant.

All documents and arguments submitted by the Complainant and the CCSD relevant to the issues in the Complaint were reviewed in their entirety in this investigation. The Complaint Investigator also received, collected and reviewed additional information as needed during the investigation. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint.

COMPLAINT ISSUES

The allegations in the Complaint, as further clarified during the investigation, that are under the jurisdiction of the NDE to investigate through the special education complaint process raise the following issues for investigation:

Issue One:

Whether the CCSD complied with the IDEA and NAC with regard to the suspension of the student on October 26, 2017, specifically with regard to the suspension of the student for the same misconduct that was determined to be related to the student's disability and the failure to implement the student's Individualized Education Program (IEP) on October 23, 2017 for a separate incident of misconduct.

Issue Two:

Whether the CCSD complied with the IDEA and NAC with regard to implementing the student's IEP in the 2017/2018 school year through November 1, 2017, specifically with regard to the student's placement in general education classes.

Issue Three:

Whether the CCSD complied with the IDEA and NAC with regard to ensuring the student's IEP, including the student's behavior intervention plan (BIP), was accessible to each regular education teacher who was responsible for its implementation in the 2017/2018 school year through November 1, 2017.

FINDINGS OF FACT

General

1. Classes began for the student in the 2017/2018 school year on August 14, 2017. (2017/2018 CCSD School Calendar)
2. During the time period of this Complaint, the student had a January 10, 2017 IEP in effect, that was later amended in the area of the Present Levels of Academic Achievement and Functional Performance with the stated reason of "Manifestation Determination." The listed specially designed instruction and supplementary aides and services in the amended IEP reflected the beginning date of October 23, 2017. (January 10, 2017 IEP and Amended IEP, hereinafter IEPs)
3. The student's IEP Team considered and determined that the student's behavior impeded the student's learning or the learning of others. The IEP noted that the positive behavioral strategies, supports and interventions or other strategies, supports and interventions were addressed in the student's IEP. (IEPs)

October 26, 2017 Suspension

4. The student's IEPs included two annual goals in the area of behavior:
 - a. By the annual review date, the student would handle frustration appropriately in four out of five opportunities in structured and unstructured settings. The goal had four benchmarks/short-term objectives.
 - b. By the annual review date, during classroom activities the student would work consistently throughout the class period, maintaining and achieving 85% participation during class. The goal had four benchmarks/short-term objectives. (IEPs)
5. While the student's IEPs identified a Behavior Plan in the location of the school campus and access to a Case Manager when "escalated or triggered" in the location of the classroom as Supplementary Aids/Services, the frequency is zero minutes per year for both. The student's specially designed instruction of Social/Behavioral Skills for 211 minutes per week in the self-contained classroom is the only identified service to be provided to the student in the area of behavior. (IEPs)
6. The student had a September 16, 2015 BIP, but it was not revised after that date. (CCSD Response)
7. Relevant to this Complaint, the CCSD proposed a 20-day suspension and expulsion of the student for a behavioral incident of a battery with staff on October 9, 2017 that did not result in injury. (Behavior Detail Report)
8. The Manifestation Determination on the cited misconduct was conducted on October 23, 2017¹, and the Team determined that the conduct in question was a manifestation of the student's disability. Specifically, in relationship to the misconduct, it was determined that the conduct in question was caused by or had a direct and substantial relationship to the student's disability and was a direct result of the CCSD's failure to implement the student's IEP. All of the IEP Team members agreed with this determination and the decision that the student would return to school on October 24, 2017 with a schedule change to take effect immediately following the meeting and that a review/amendment of the student's IEP would be held as soon as possible to make sure the IEP is in compliance and meets the student's needs and services. (Manifestation Determination Summary, Confidential Status Record)
9. The student was suspended on October 26, 2017 for at least five of the eight periods of the school day with two additional periods of unverified absence. The suspension was not due to a new behavioral incident, but rather was an additional behavior 'resolution' assigned on October 25, 2017 for the prior misconduct that was the subject of the Manifestation Determination. (Student Period Attendance Detail, Complaint, Behavior Incident Report)

¹ The Parent reportedly requested an advocate for the Manifestation Determination and the Manifestation Determination meeting was delayed. This delay was not at issue in this Complaint. (Behavior Detail Report, Complaint)

10. The suspension on October 26, 2017 was unilaterally set by the Principal of the student's High School. The given rationale for the newly assigned 'resolution' was that the High School would be moving forward with the expulsion of the student, with the explanation that "the law was on the" High School's "side." The Principal advised the Dean to give the Parent the suspension paperwork at the end of the day. (Behavior Incident Report)

Placement in General Education Class

11. The student's IEPs provided all of the student's special education services would be provided in the location of either the self-contained classroom or the resource room. The designated placement of the student was in a self-contained program with zero percentage of the school day in the regular education environment. One of the justifications for the student's removal from the regular education environment was that the student's need for social/behavioral skills would limit the ability to interact with peers appropriately. (IEPs)
12. From August 14, 2017, the student's classes included band and physical education classes taught by general education teachers. Based on the response of the CCSD to this Complaint and the Behavior Incident Reports, the student may have also been assigned to a social studies class and an art class taught by a general education teacher during the time period within the scope of this Complaint. (Student Schedule, CCSD Supplemental Response, Behavior Incident Report, Complaint)

Access to IEP

13. The CCSD was provided multiple opportunities to provide documentation that all of the student's assigned general education teachers had access to the student's IEP and were informed of their responsibilities in that regard, and provided no documentation in response. (NDE Issue Letter, Request for Supplemental Information).

CONCLUSION OF LAW

Issue One:

Whether the CCSD complied with the IDEA and NAC with regard to the suspension of the student on October 26, 2017, specifically with regard to the suspension of the student for the same misconduct that was determined to be related to the student's disability and the failure to implement the student's IEP on October 23, 2017 for a separate incident of misconduct.

In accordance with the IDEA, 34 C.F.R. §300.530(f), and NAC §388.265, upon the determination that the behavior subject to disciplinary action was a manifestation of the child's disability, the IEP Team must, unless special circumstances under Title 34 C.F.R. 300.530(g) exist that do not apply in this case, return the student to the placement from which the student was removed, unless the parent and the educational agency agree to a change of placement as part of the modification of the BIP. In this case, the student's IEP Team conducted the Manifestation Determination on October 23, 2017 and determined that the conduct in question was a manifestation of the student's disability. (Finding of Fact (FOF) #7) The IEP Team further determined that the student would return to school on October 24, 2017 with a schedule change to take effect immediately following the meeting. (FOF #8) Notwithstanding the IEP Team's determination, the Principal of the student's High School unilaterally imposed an additional suspension on the student on October 26, 2017 for the prior behavioral incident that was the subject of the Manifestation Determination, with the intent to move forward with the expulsion of the student. (FOFs #8, #9) By doing so, the Principal disregarded the IEP Team's determination and the requirements of the IDEA and the NAC.

Therefore, the CCSD failed to comply with the IDEA and NAC with regard to the suspension of the student on October 26, 2017 by suspending the student for the same misconduct that was determined to be related to the student's disability and the failure to implement the student's IEP.

Issue Two:

Whether the CCSD complied with the IDEA and NAC with regard to implementing the student's IEP in the 2017/2018 school year through November 1, 2017, specifically with regard to the student's placement in general education classes.

The requirements of the provision of a free appropriate public education to students with disabilities under the IDEA and the NAC, Chapter 388, necessitate that special education and related services and supplemental aids and services are provided in conformity with an IEP. (NAC §388.281(6)(g), 34 C.F.R. §§300.17(d) and 300.101) In this case, the student's IEPs required all of the student's special education services to be provided in either the self-contained classroom or the resource room. The designated placement of the student was in a self-contained program with zero percentage of the school day in the regular education environment. (FOF #11) Contrary to the student's IEP, the student was placed in general education classes for a portion of the student's school day from the commencement of the school year on August 14, 2017. (FOFs #1, #12)

Therefore, the CCSD failed to comply with the IDEA and NAC with regard to implementing the student's IEP in the 2017/2018 school year through November 1, 2017, specifically with regard to the student's placement in general education classes.

Issue Three:

Whether the CCSD complied with the IDEA and NAC with regard to ensuring the student's IEP, including the student's BIP, was accessible to each regular education teacher who was responsible for its implementation in the 2017/2018 school year through November 1, 2017.

Pursuant to the IDEA, 34 C.F.R. §300.323(d), and NAC §388.281(6)(c), each public agency

must ensure that: (1) the student's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and (2) each such teacher and provider is informed of his or her specific responsibilities related to implementing the student's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. The CCSD was also required to establish a system of records to verify implementation of required measures and that each student identified as a student with a disability received services appropriate to the disability. NAC §388.215(5)(b).

In this case, no general education teacher was designated in the student's IEP to be responsible for the implementation of the student's IEP in any regard. (FOFs #4, #5, #11) In addition, the student did not have a BIP in effect during the time period of this Complaint. (FOFs #5, #6) Had the student's IEP been implemented in the self-contained classroom and the resource room as required (FOF #11), there would have been no general education teacher responsible for the implementation of the student's IEP and no reciprocal responsibility of the CCSD to comply with the IDEA, 34 C.F.R. §300.323(d), and NAC §388.281(6)(c) with regard to access to the student's IEP.

However, given the student's unauthorized assignment to, and receipt of services in, the general education environment (FOF #12), CCSD created the obligation to ensure the assigned general education teachers had access to the student's IEP and were informed of their responsibilities with regard to the implementation of the student's IEP, including the behavior goals. (FOF #4)

In the absence of documentation (FOF #13), it is determined that the CCSD did not fulfill this obligation under the IDEA, 34 C.F.R. §300.323(d), and NAC §388.281(6)(c).

Therefore, the CCSD failed to comply with the IDEA and NAC with regard to ensuring the student's IEP was accessible to each regular education teacher who was responsible for its implementation in the 2017/2018 school year.

ORDER OF CORRECTIVE ACTION

Corrective Action Plan (CAP)

Given the Resolution Agreement signed by the CCSD and the student's Parent regarding the previously filed and withdrawn Due Process Complaint on the same described matters, no student specific directed action is required. However, in accordance with NRS §385.175(6), the NDE requests a plan of corrective action from CCSD for the involved High School to correct the identified noncompliance with regard to the unauthorized suspension of the student on October 26, 2017; the failure to implement the student's IEP with regard to the student's designated placement; and the failure to provide the student's general education teachers access to the student's IEP. The CAP must be provided to the NDE within 14 days of the receipt of this Report and must be approved by the NDE prior to implementation. The CAP must result in the below ordered actions being completed within a reasonable period of time after the NDE's approval of the CAP, but no longer than 60 days after such approval.

The CAP must include a plan to:

1. Train personnel at the student's assigned High School at the time of the October 26, 2017 suspension on the requirements of Title 34 C.F.R. §300.530(f) of the IDEA with regard to the actions that must be taken upon the determination that behavior subject to disciplinary action at issue in a Manifestation Determination is a manifestation of a student's disability. The identified personnel must include the High School Principal, behavior administration professional staff assigned to the school, and the special education case managers for the school. The plan must include the development and implementation of a method for the CCSD to determine that the participants have mastered the contents of the training.
2. Establish a system at the student's assigned High School at the time of the October 26, 2017 suspension to document and monitor the implementation of the requirements of Title 34 C.F.R. §300.530(f) of the IDEA with regard to the actions that must be taken upon the determination that behavior subject to disciplinary action at issue in a Manifestation Determination is a manifestation of a student's disability.
3. Establish a system at the student's assigned High School at the time of the October 26, 2017 suspension to monitor and document the class assignments for students with disabilities at the commencement of each school year are consistent with each student's IEP and to document that the student's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and each such teacher and provider is informed of his or her specific responsibilities related to implementing each student's IEP.

Following completion of the CAP as described above, documentation of the completion and mastery of the training and the establishment and implementation of the systems of documentation/monitoring must be submitted to the NDE within 15 days of the completion of the CAP.