

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL061220)
Report Issued on September 28, 2020**

INTRODUCTION

On June 12, 2020, the Nevada Superintendent of Public Instruction received a State Complaint from a Parent alleging a violation of the Individuals with Disabilities Education Act (IDEA) and the Nevada Administrative Code (NAC) by the Clark County School District (CCSD) in a student's special education program. The allegations in the Complaint were that CCSD failed to: implement the student's Individualized Education Program (IEP) in the 2019/2020 school year, specifically with regard to providing the specially designed instruction of 125 minutes of direct written expression and the designated "CC" placement and failing to provide reports of progress; failing to convene an IEP meeting upon request in August 2019 to modify the student's accommodations; failing to provide an adequate meeting notice for the student's exit IEP meeting prior to graduating; and, as of June 1, 2020, failing to provide copies of "all papers" in the student's file requested by the Parent on May 18, 2020. The Parent's proposed resolution was for disciplinary action to be taken against the school the student attended in the 2019-2020 school year for the student's senior year of high school.

In the June 19, 2020 issue letter to the CCSD, the Nevada Department of Education (NDE) requested additional documents and information in order to investigate the State Complaint. The documents and information were required to be received by the NDE no later than July 7, 2020 in order to timely investigate the Complaint. The CCSD was notified in that same correspondence that if the 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; and specifically reference the documentation provided to the NDE that factually supported the denial and that a failure to do so by July 7, 2020 or an extended timeline authorized by the NDE, would be considered a concession of noncompliance for purposes of this State Complaint.

On July 10, 2020, the CCSD requested an extension of the due date to August 31, 2020 to provide requested documentation and information to the NDE because of the proposed delayed opening of the CCSD schools in the 2020/2021 school year. Title 34 C.F.R. §300.152(b) of the IDEA permits the extension of the 60-day timeline for the submittal of the final report in a complaint investigation due to exceptional circumstances. Due to the documented intra-agency delay of the receipt of this Complaint during the COVID-19 pandemic and the time period necessary for the responsible office in the CCSD to access the requested information and documentation from school/agency staff needed to resolve the Complaint, the NDE granted the requested extension. Accordingly, the deadline for the NDE's receipt of documentation from both parties was extended to August 31, 2020 and the time limit for the NDE to conclude its investigation and issue the decision was extended to September 30, 2020.

In the July 13, 2020 communication to the CCSD granting the extension, the NDE again informed the CCSD that, if the CCSD disputed the allegations of noncompliance in the Complaint, the

documents and information provided by the CCSD must: include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; and specifically reference the documentation provided to the NDE that factually supported the denial. The CCSD was again notified that failure to do so by August 31, 2020, or a further extended timeline authorized by the NDE, would be considered a concession of noncompliance for purposes of this State Complaint.

While the CCSD did timely provide some of the requested documents and information to the NDE, the CCSD failed to include in the documents and information a denial of the allegations and specified content relevant to that denial. Therefore, consistent with the notices explicitly provided to the CCSD, the failure of the CCSD to do so was determined to be a concession of noncompliance for purposes of this Complaint and that concession is noted in the Conclusions of Law. The documents and information provided in the CCSD's response were reviewed and considered in the development of background facts and determination of any corrective action.

The Parent's Complaint and the documents submitted by the CCSD were reviewed in their entirety in this investigation. The Findings of Fact cite the source(s) of the information determined necessary to resolve the issue in this Complaint.

COMPLAINT ISSUES

The allegations in the Complaint that are under the jurisdiction of the NDE to investigate through the special education complaint process raise the following issues for investigation from June 12, 2019, one year prior to the receipt of the Complaint, 34 C.F.R. §300.153(c); NAC §388.318(1)(b):

Issue One:

Whether the CCSD complied with the IDEA and NAC, Chapter 388, with regard to implementing the student's IEP(s) in the 2019/2020 school year, specifically with regard to:

- a. The provision of 125 minutes of direct written expression and the designated placement for the provision of this specially designed instruction; and**
- b. The provision of reports of the student's progress toward meeting the IEP goals.**

Issue Two:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, and either provided a Prior Written Notice (PWN) or convened the student's IEP Team upon the Parent's written request for an IEP meeting in August 2019 to modify the accommodations in the student's 2019/2020 IEP.

Issue Three:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to providing the Parent notice of the exit IEP meeting conducted at the end of the 2019/2020 school year.

Issue Four:

Whether the CCSD complied with the requirements of the IDEA and the NAC,

Chapter 388, with regard to permitting the Parent to inspect and review the student's education records after the May 18, 2020 request had been made, including providing a copy of the student's education records if failure to provide those copies would effectively prevent the Parent from exercising the right to inspect and review the records or, without the copies, any meaningful review of the records was impractical.

FINDINGS OF FACT

1. The student was a student with a disability enrolled in the CCSD in the 2019/2020 school year which commenced August 12, 2019 and ended May 20, 2020. (CCSD 2019/2020 School Calendar for Students)
2. The student's April 3, 2019 IEP was in effect through April 3, 2020. On May 18, 2020, the student's IEP Team, including the Parent, met and an IEP was developed with the stated anticipated duration of services from May 18, 2020 to May 20, 2020, two days. (No documentation was provided by either the Parent or the CCSD of the conduct of an annual IEP review on or before April 3, 2020. However, the absence of the latter was not raised as an allegation of noncompliance.) (April 3, 2019, May 18, 2020 IEPs, Complaint)
3. The student's April 3, 2019 IEP included the specially designed instruction of written expression – direct from April 3, 2019 through April 3, 2020 with the frequency of 125 minutes a week and the location of the services in the regular education class. The method for reporting the student's progress toward meeting annual goals was Specialized Progress Reports with the projected frequency of quarterly. (April 3, 2019 IEP)
4. The services in the student's May 18, 2020 were from May, 18, 2020 through May 20, 2020 and the student's specially designed instruction was "Case Manager Contact" five minutes a week with the location of distance education. The method for reporting the student's progress toward meeting annual goals was Specialized Progress Reports with the projected frequency of quarterly. (May 18, 2020 IEP)
5. The student's April 3, 2019 IEP included two modifications, accommodations, or supports for the student or personnel, specifically: the student's grades would be determined by the student's special education and regular education teachers when grades are given in regular education classes; and the student will go to the resource room to get help, complete assignments, assessments and quizzes when assignments, quizzes, and assignments are given in the location of the resource room. (April 3, 2019 IEP)
6. The Parent asserted in the Complaint that during the May 18, 2020 IEP meeting the CCSD special education department acknowledged they had not met any of the required minutes of the specially designed instruction of written expression. By email communication to the Parent, CCSD personnel acknowledged that there was not a "CC teacher" in the second period English class with the student, but that the student had done "really well." (Complaint, May 14, 2020 and May 13, 2020 Email Communications)

7. The CCSD failed to provide the requested written documentation of the provision of the minutes of the direct specially designed instruction of written expression in the designated setting in the student's IEP(s). The CCSD's response did include one Progress Report dated October 11, 2019, but no documentation that the Parent was provided this one Progress Report. (October 11, 2019 Progress Report, Review of the Response)
8. The Parent asserted that twice in August 2019, the Parent requested an IEP meeting to modify the accommodations in the student's IEP. The Parent provided email communications between the Parent and CCSD requesting a phone conference with the student's case manager with regard to various matters, including adjusting the student's schedule to half day and required classes. (Complaint, August 7, 12, and 18, 2019 Email Communications)
9. The CCSD did not provide a copy of the Parent's written request(s) for an IEP meeting in August 2019 and the CCSD's response as requested by the NDE, including any PWN issued in this regard and/or a copy of the IEP meeting notice and resultant IEP and PWN or otherwise provide an explanation. (Review of the Response)
10. The Parent requested an exit IEP meeting prior to the student's graduation and, after initially refusing to conduct the IEP meeting, the CCSD scheduled an IEP meeting on May 18, 2020, two days before the end of the 2019/2020 school year, and issued written meeting notices on May 14, 2020 and May 15, 2020 that were transmitted electronically to the Parent. The stated purpose in the notices was to review the student's IEP for the purpose of "[A]nnual IEP due for compliance." The meeting notices did not reference the purpose of exit or graduation or related factors such as "Parent concerns" or change in placement. The student's May 18, 2020 IEP did state the purpose of the meeting as "Exit/Graduation". (May 14, 2020 and May 15, 2020 Meeting Notices, Complaint, May 18, 2020 IEP, CCSD Response, May 14, 2020 Email Communications, Confidential Status Record)
11. Parent orally requested a copy of the student's entire education record on May 18, 2020 and reiterated the request in writing on June 1, 2020. The CCSD informed the Parent by email communication that "it" was put in the mail and it would be picked up June 8, 2020. While the CCSD's response was not provided until August 11, 2020, the CCSD did not provide any documentation that the education record was sent to or received by the Parent or that the education record included all of the records directly related to the student and maintained by the CCSD. (Complaint, June 1, 2020 Email Communication)
12. The student earned a 4.0 GPA the final quarter of the 2019/2020 school year and graduated. (CCSD Email May 18, 2020)

CONCLUSIONS OF LAW

Issue One:

Whether the CCSD complied with the IDEA and NAC, Chapter 388, with regard to implementing the student's IEP(s) in the 2019/2020 school year, specifically

with regard to:

- a. The provision of 125 minutes of direct written expression and the designated placement for the provision of this specially designed instruction; and**
- b. The provision of reports of the student's progress toward meeting the IEP goals.**

The requirements of the provision of a Free Appropriate Public Education (FAPE) 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. (34 C.F.R. §§300.17(d) and 300.101; NAC §388.281(6)(e)).

"Part B does not contain specific requirements for public agencies to document that a child with a disability has been provided with FAPE in accordance with the child's IEP. However, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76 and 80 are applicable to the Part B program. Section 76.731 requires that a State and a subgrantee must keep records to show its compliance with Federal legal requirements.... Consistent with the EDGAR provisions cited above, States and public agencies must maintain documentation sufficient to ensure that a public agency provides FAPE to a child with a disability in accordance with the child's IEP. A State determines the form of documentation deemed sufficient to demonstrate whether its public agencies are in compliance with this requirement...." (*Letter to Broussides*, OSEP June 9, 2010)¹

Pursuant to NAC §388.215, the State of Nevada has established measures each public agency must take to ensure that every student with a disability in the school district is identified, evaluated and served in the manner appropriate to the unique needs of the student. These measures include the establishment of a system of records that verifies these measures were implemented, including that each student identified as a student with a disability is receiving special education and related services appropriate to the student's disability. This requirement for a verifiable system of records is particularly important in the State Complaint system because, unlike due process hearings where testimony is under oath and the Hearing Officer can judge the credibility of the testimony, there is no impartial method other than verifiable documentation to reach a determination that the assertions of the public agency should be believed over the assertions of the complainant or vice versa.

In this case, the student's April 3, 2019 IEP included the specially designed instruction of written expression – direct from April 3, 2019 through April 3, 2020 with the frequency of 125 minutes a week and the location of the services in the regular education class. From May 18, 2020 through May 20, 2020, the student's IEP did not specifically provide the specially designed instruction of written expression, but rather provided five minutes a week of Case Manager Contact with the location of distance education. The method for reporting the student's progress toward meeting annual goals in both of the student's IEPs was Specialized Progress Reports with the projected frequency of quarterly. (Finding of Fact (FOF) #3, FOF #4)

As set out in the Introduction to this Report, the CCSD is determined to have conceded this

¹ This policy letter issued by the United States Department of Education, Office of Special education is publicly available at: <https://sites.ed.gov/idea/idea-files/policy-letter-june-09-2010-to-maryland-attorney-eric-broussides-esq/>

allegation by its failure to deny the alleged noncompliance; include a brief statement of the factual basis for the denial; and specifically reference the documentation provided to the NDE that factually supported the denial. However, for purposes of the determined corrective action, it is noted that the documents and information provided by the CCSD in its response did not include the requested written documentation in accordance with NAC §388.215 that the minutes of direct specially designed instruction of written expression in the designated setting in the student's April 3, 2019 IEP were provided to the student in the 2019/2020 school year; did not include any documentation that three of the four required Progress Reports were generated and that any of the Reports were provided to the Parent; and the CCSD did not provide any contrary explanation to the Parent's assertions of acknowledged noncompliance. (FOFs #5, #6, #7)

Therefore, the CCSD failed to comply with the IDEA and NAC with regard to implementing the student's IEP(s) in the 2019/2020 school year, specifically with regard to the provision of the required minutes of direct written expression and the designated placement for the provision of this specially designed instruction; and the provision of reports of the student's progress toward meeting the IEP goals.

Issue Two:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, and either provided a PWN or convened the student's IEP Team upon the Parent's written request for an IEP meeting in August 2019 to modify the accommodations in the student's 2019/2020 IEP.

Pursuant to the IDEA, 34 C.F.R. §300.324 and the NAC §388.281(6)(a), each public agency must ensure that the IEP Team reviews a student's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revise it as necessary. In this case, the Parent alleged the CCSD failed to convene an IEP meeting upon request in August 2019 to modify the student's accommodations.

"Although a public agency is responsible for determining when it is necessary to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP Team meeting at any time. However, if the agency refuses to grant the parent's request, the agency must provide written notice to the parents of the refusal, including an explanation of why the agency has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. See 64 Fed. Reg. 12476 (Mar 12, 1999)." (*Letter to Anonymous*, 112 LRP 52263 (OSEP March 7, 2012))²

The CCSD did not provide a copy of the Parent's written request(s) for an IEP meeting in August 2019 or the CCSD's response requested by the NDE. For purposes of the determined corrective action, it is noted that the only written documentation available in this case was provided by the

² This policy letter issued by the United States Department of Education, Office of Special education is publicly available at: <https://sites.ed.gov/idea/idea-files/policy-letter-march-7-2012-to-an-individual-personally-identifiable-information-redacted/>

Parent and while it did not clearly establish the Parent requested an IEP meeting in August 2019, the CCSD did not refute, or provide any contrary explanation to, the Parent's assertions that an IEP meeting was requested. (FOFs #8, #9) As set out in the Introduction to this Report, the CCSD is determined to have conceded this allegation by its failure to deny the alleged noncompliance; include a brief statement of the factual basis for the denial; and specifically reference the documentation provided to the NDE that factually supported the denial.

Therefore, the CCSD failed to comply with the IDEA and NAC with regard to either providing a PWN or convening the student's IEP Team upon the Parent's written request for an IEP meeting in August 2019 to modify the accommodations in the student's 2019/2020 IEP.

Issue Three:

Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to providing the Parent notice of the exit IEP meeting conducted at the end of the 2019/2020 school year.

In accordance with the IDEA, 34 C.F.R. §300.322(a) and NAC §388.281(8), the CCSD was required to provide a written notice with specific content to the Parent in advance of the May 18, 2020 IEP meeting to ensure the Parent was present at the meeting or afforded an opportunity to participate. In this case, the Parent alleged that the CCSD did not provide an adequate meeting notice for the student's exit IEP meeting prior to graduating. (The Parent did not allege the student's Parent was not present at the meeting.)

Graduation from high school with a regular high school diploma constitutes a change in placement pursuant to the IDEA, 34 §300.102(a)(3)(iii), requiring a prior written notice in accordance with 34 C.F.R. §300.503. While an exit IEP meeting is not required for a student with a disability graduating with a regular high school diploma, the IDEA, 34 C.F.R. §§300.305(e), and NAC §388.340(8) require a public agency to provide the student with a written summary of the student's academic achievement and functional performance, including, without limitation, recommendations to assist the student in meeting postsecondary goals. While not required, this written summary of a student's academic achievement and functional performance, at the public agency's discretion, could be developed in an IEP meeting by the student's IEP Team.

As set out in the Introduction to this Report, the CCSD is determined to have conceded this allegation by its failure to deny the alleged noncompliance; include a brief statement of the factual basis for the denial; and specifically reference the documentation provided to the NDE that factually supported the denial. For purposes of the determined corrective action, it is noted that the Parent did request an exit IEP meeting and, after initially refusing to conduct the IEP meeting, the CCSD scheduled an IEP meeting on May 18, 2020, two days before the end of the 2019/2021 school year, and issued meeting notices on May 14, 2020 and May 15, 2020 that were transmitted electronically to the Parent with the stated purpose of reviewing the student's IEP for the purpose of "[A]nnual IEP due for compliance." While the stated purpose of the meeting documented in the May 18, 2020 IEP was for "Exit/Graduation", the meeting notices did not reference this purpose or related factors such as "Parent concerns" or change in placement. (FOF #10)

Therefore, the CCSD failed to comply with the IDEA and NAC with regard to the meeting notice provided to the Parent of the exit IEP meeting conducted at the end of the 2019/2020 school year.

Issue Four:

Whether the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to permitting the Parent to inspect and review the student's education records after the May 18, 2020 request had been made, including providing a copy of the student's education records if failure to provide those copies would effectively prevent the Parent from exercising the right to inspect and review the records or, without the copies, any meaningful review of the records was impractical.

NAC §388.287(1) requires parents of a student with a disability be allowed to inspect and review any education records relating to their child which are collected, maintained, or used by a public agency. The public agency must comply with such request without unnecessary delay and in any event: (a) before an IEP meeting or any hearing relating to the identification, evaluation or placement of the student or the provision of a FAPE; and (b) not later than 45 days after the request has been made. (See also 34 C.F.R. §300.613)

Neither the IDEA nor the NAC require an educational agency to provide parents copies of requested education records in all cases. Rather, the parents have the right to inspect and review the education records relating to their child. (NAC §388.287; 34 C.F.R. §300.613) This right to inspect and review only includes the right to request that the agency provide copies of education records if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records or, without the copies, any meaningful review of the records is impractical. (NAC §388.287(2)(c); 34 C.F.R. §300.613(b)(2))

As set out in the Introduction to this Report, the CCSD is determined to have conceded this allegation by its failure to deny the alleged noncompliance; include a brief statement of the factual basis for the denial; and specifically reference the documentation provided to the NDE that factually supported the denial. For purposes of the determined corrective action, it is noted that after the Parent orally requested a copy of the student's entire education record on May 18, 2020, the CCSD prepared documents to be sent to the Parent on or about June 8, 2020. However, no documentation was provided that the education record was sent to or received by the Parent or that the education record included all of the records directly related to a student and maintained by the CCSD in accordance with the IDEA, 34 C.F.R. §300.611(b). (FOF #11)

Therefore, the CCSD failed to comply with the requirements of the IDEA and the NAC, Chapter 388, with regard to permitting the Parent to inspect and review the student's education records after the May 18, 2020 request had been made, including providing a copy of the student's education records if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records or, without the copies, any meaningful review of the records was impractical.

ORDER OF CORRECTIVE ACTION

The CCSD is required to take corrective action to address the violations found in this Complaint at the school the student attended in the 2019/2020 school year. The Parent did not request a student specific remedy and, given the student graduated from CCSD with a regular high school diploma (FOF #12) and is no longer enrolled in the CCSD, no student specific remedy is ordered.

Corrective Action Plan

In accordance with NRS §385.175(6), the NDE requests a plan of corrective action from CCSD to correct the identified noncompliance in this Complaint. The ordered Corrective Action Plan (CAP) must be provided to the NDE for approval within 30 days of the receipt of this Report. The CAP must indicate the timeline within which it will be implemented and must be approved by the NDE prior to implementation. Following completion of the CAP and NDE approval, documentation of the completion of the CAP must be provided to the NDE no later than 60 days from the approval date of the CAP.